

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS  
AUGUST 6, 2009**

*Work Session  
12:30 p.m.  
Second Floor Conference Room, Warren Green Building,  
10 Hotel Street, Warrenton, Virginia*

The Fauquier County Board of Zoning Appeals held a work session on Thursday, August 6, 2009, beginning at 12:30 p.m. in the Warren Green Building, Second Floor Conference Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. James W. Van Luven, Vice-Chairperson; Mr. Maximilian Tufts, Secretary; Mr. Serf Guerra; and Mr. Harry Russell. Also present were Ms. Mary Catherine Sheridan, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Andrew Hushour, Assistant Zoning Administrator; Mr. Wally Horton, Senior Planner; and Ms. Saundra O'Connell, Senior Planner. Members absent were Mrs. Sonja Addison and Mrs. Mary North Cooper.

**REVIEW OF AGENDA:**

**SPECIAL PERMIT #SPPT09-MA-042, VIK RAILAN (OWNER/APPLICANT) – RAILAN'S USED CARS**

Applicant is requesting special permit approval to operate an automobile sales dealership, PIN #6969-79-4305-000, located at 8277 East Main Street, Marshall District, Marshall, Virginia. (Drew Hushour, Staff)

Mr. Hushour reviewed the application.

**SPECIAL PERMIT #SPPT09-CR-043, WARRENTON ASSEMBLY OF GOD CHURCH, TRUSTEES (OWNER/APPLICANT) – WARRENTON ASSEMBLY OF GOD CHURCH**

Applicants are requesting special permit approval to construct a place of worship, PIN #6983-64-0890-000 and 6983-65-4213-000, located at 8437 James Madison Highway, Cedar Run District, Warrenton, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the application.

**SPECIAL PERMIT #SPPT10-MA-001, KATHLEEN W. TAYLOR (OWNER/APPLICANT)**

Applicant is requesting an amendment to an approved special permit that allowed the reduction in a side yard setback for a barn. The proposed amendment seeks to increase the number of animals allowed to be kept in the barn from one to two, PIN #6946-51-

2358-000, located at 6685 Bull Moose Court, Marshall District, Marshall, Virginia. (Saundra O’Connell, Staff)

Ms. O’Connell reviewed the application.

**SPECIAL PERMIT #SPPT10-LE-002, PAMELA McALWEE & ROSS UNDERWOOD (OWNERS/APPLICANTS) – LOST DOG & CAT RANCH**

Applicants are requesting special permit approval to operate a kennel (animal rescue facility), PIN #7815-40-9120-000, located at 14083 Silver Hill Road, Lee District, Sumerduck, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the application.

The meeting was adjourned at 1:50 p.m.

*Regularly Scheduled Meeting  
2:00 p.m.  
Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia*

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, August 6, 2009, beginning at 2:00 p.m. in the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. James W. Van Luven, Vice-Chairperson; Mr. Maximilian Tufts, Secretary; Mr. Serf Guerra; and Mr. Harry Russell. Also present were Ms. Mary Catherine Sheridan, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Andrew Hushour, Assistant Zoning Administrator; Mr. Wally Horton, Senior Planner; Ms. Saundra O’Connell, Senior Planner; and Mrs. Fran Williams, Administrative Specialist. Members absent were Mrs. Sonja Addison and Mrs. Mary North Cooper.

**MINUTES:**

On motion made by Mr. Tufts and seconded by Mr. Van Luven, it was moved to approve the July 2, 2009 minutes.

The motion carried unanimously.

**LETTERS OF NOTIFICATION AND PUBLIC NOTICE:**

Mrs. Williams read the Public Hearing protocol. Mr. Horton stated that, to the best of his knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners.

**SPECIAL PERMIT #SPPT09-CR-038, JAIME ZAMBRANA & MARIA L. MENDEZ (OWNERS/APPLICANTS) – J. W. APPLICATORS, LLC**

Applicants are requesting special permit approval to operate a small contracting business as a major home occupation, PIN #7837-07-6714-000, located at 3158 Midland Road, Cedar Run District, Midland, Virginia. (Drew Hushour, Staff)

Postponed.

**SPECIAL PERMIT #SPPT09-MA-042, VIK RAILAN (OWNER/APPLICANT) – RAILAN’S USED CARS**

Applicant is requesting special permit approval to operate an automobile sales dealership, PIN #6969-79-4305-000, located at 8277 East Main Street, Marshall District, Marshall, Virginia. (Drew Hushour, Staff)

Mr. Russell recused himself from any discussion or vote on this matter.

Mr. Hushour reviewed the staff report, a copy of which is attached to and made a part of these official minutes.

Mr. Meadows opened the public hearing.

Mr. Chuck Floyd, representative, stated that he agrees with most of the staff report. Mr. Floyd stated that his client’s proposal has been revised to retain the existing structure and as much vegetation as possible.

Ms. Sara Fowler, Marshall District, spoke in opposition to the granting of this special permit. Ms. Fowler stated that even with the applicant’s revisions, a used car lot is contrary to the Marshall Service District Plan.

Mr. Bill Clark, Marshall District, spoke in opposition to the granting of this special permit. Mr. Clark stated that this proposed use is incompatible with uses on Main Street in Marshall.

Ms. Katharine Ayres, Marshall District, spoke in opposition to the granting of this special permit, citing concerns about noise and increased traffic.

Mr. Henry Ayres, Marshall District, spoke in opposition to the granting of this special permit, stating that this historic property should be preserved. Mr. Ayres expressed concern about the increased traffic and the negative impact this proposal would have on residential properties east of the site.

Mr. George Thompson, Marshall District, spoke in opposition to the granting of this special permit and stated that a used car dealership is not an appropriate use for this location.

Mr. Duke Yowell, Marshall District, spoke in opposition to the granting of this special permit. Mr. Yowell stated that he has spoken with numerous individuals who live in the area and has been unable to find even one who supports this proposal.

Ms. Adrienne Garreau, Scott District, spoke in opposition to the granting of this special permit. Ms. Garreau stated that the Board of Supervisors is currently considering a Zoning Ordinance text amendment, which would encourage more neighborhood oriented and pedestrian friendly uses within the C-1 zoning district.

Mr. John Suter, Marshall District, spoke in opposition to the granting of this special permit, stating that this proposed use would be incompatible with the existing area.

In that there were no further speakers, Mr. Meadows closed the public hearing.

On motion made by Mr. Van Luven and seconded by Mr. Tufts, it was moved to deny the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the following Board findings:

1. The applicant has other reasonable use of the property.
2. The proposed use will adversely affect the use or development of neighboring properties and will impair the value of nearby land.
3. A number of Marshall District citizens have spoken in opposition to the granting of this special permit. They feel, and I agree, that a used car dealership is not an appropriate use at the Main Street location. In addition, the Marshall Service District Plan is very specific about this proposed use when it states “The guidelines seek to *discourage* the location of gasoline stations, auto sales, and other auto-oriented/drive-in uses on Main Street.” Further, although the applicant is requesting a “temporary” use, cutting down trees and installing asphalt surfaces will have a permanent effect on the area.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mr. Guerra

NAYS: None

ABSTENTION: Mr. Russell

ABSENT: Mrs. Addison, Mrs. Cooper

**ZONING APPEAL #ZNAP09-MA-004, BRIAN & LUCY S. CONBOY (OWNERS/APPLICANTS)**

Applicants are appealing the Zoning Administrator’s determination on subdivision potential and buildable lot status. PIN #6928-73-3271-000, 6928-63-7411-000, 6928-

62-2945-000, and 6928-82-4932-000, located on the east side of Leeds Manor Road (Route 688), Marshall District, Hume, Virginia. (Kimberley Johnson, Staff) *Note: This is a public meeting, not a public hearing.*

Withdrawn.

**SPECIAL PERMIT #SPPT09-CR-043, WARRENTON ASSEMBLY OF GOD CHURCH, TRUSTEES (OWNER/APPLICANT) – WARRENTON ASSEMBLY OF GOD CHURCH**

Applicants are requesting special permit approval to construct a place of worship, PIN #6983-64-0890-000 and 6983-65-4213-000, located at 8437 James Madison Highway, Cedar Run District, Warrenton, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the staff report, a copy of which is attached to and made a part of these minutes.

Mr. Meadows opened the public hearing.

Mr. Charles Floyd, representative, expressed agreement with the staff report.

Dr. Hurley Shortt, Pastor, spoke in support of the granting of this special permit and stated that it is the desire of his congregation to be a good neighbor and give back to the community.

Ms. Kim Gregg, a church member, spoke in support of the granting of this special permit.

Mr. Tony Kincaid, a church member, spoke in support of the granting of this special permit.

Mr. Terry Gregg, a church member, spoke in support of the granting of this special permit.

Mr. Walter Hitchcock, representing, The Drew Corporation, which is an adjacent property owner, spoke in support of the granting of this special permit. Mr. Hitchcock stated that The Drew Corporation has access to natural gas, sewer, and water within 200 feet of the applicant's property line and would like to work with the church to minimize their expenses and save as many trees as possible.

In that there were no further speakers, Mr. Meadows closed the public hearing.

On motion made by Mr. Tufts and seconded by Mr. Van Luven, it was moved to grant the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.

2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading, and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The site shall be in general conformance with the information and drawings submitted with the special permit application except as specifically modified by the conditions below or as necessary to meet Zoning Ordinance requirements.
2. Aside from worship, all uses and activities shall be clearly incidental and subordinate to the primary use as a place of worship. No schools (other than Sunday School and Vacation Bible School), day care facilities, or athletic facilities shall operate on-site as part of the church without separate approval and amendment to this special permit.
3. The interior property line shall be vacated prior to site plan approval to insure conformance with Zoning Ordinance standards.
4. The easternmost parking bay shall be relocated to the area occupied by the existing house and driveway in order to reduce clearing and grading near the crest of the site.
5. Clearing shall be limited to the areas shown on the Special Permit Plat, as modified by these conditions.
6. The first floor elevation (not basement elevation) of the proposed church building shall be no higher than an elevation of 590 feet above sea level.
7. The building shall employ a predominantly earth-toned pallet on all façades and materials shall be composed of façades of either masonry (brick or stone, or stucco used in conjunction with either brick or stone), or wood siding (including hardy plank or an equal alternate), or a combination of a masonry and wood siding. Such shall be detailed as part of the required site plan.

8. All windows above the ground floor shall be of a “punched” rather than “ribbon” (a continuous band of windows unbroken by parts of the façade) pattern, with window sills, and cover at least 25% of the first floor and walkout basement façades located between three (3) and eight (8) feet in height. Such shall be detailed as part of the required site plan.
9. The Applicant shall plant additional landscaping around all parking areas and along the proposed new entrance, if necessary in order to provide adequate screening. The County shall make this determination in conjunction with site plan approval.
10. Parking shall be moved to comply with the 25’ setback requirement for off-street parking or loading areas in or adjoining a Residential District.
11. SWM facilities shall be located generally:
  - a. In the existing cleared area to the front of the existing parking area for the house, or
  - b. North of “Proposed Drainfield #3” and the proposed parking area in an area that provides for the preservation of existing tree buffering of the parking areas and church building.
12. When selecting between viable drainfield locations, the applicant shall consider the impacts upon the existing tree canopy cover and visibility so as to maximize the extent to which the existing landscaping will be preserved, with the location of least impact being the required site.
13. A major site plan is required for this use.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT10-MA-001, KATHLEEN W. TAYLOR (OWNER/APPLICANT)**

Applicant is requesting an amendment to an approved special permit that allowed the reduction in a side yard setback for a barn. The proposed amendment seeks to increase the number of animals allowed to be kept in the barn from one to two, PIN #6946-51-2358-000, located at 6685 Bull Moose Court, Marshall District, Marshall, Virginia. (Saundra O’Connell, Staff)

Ms. O’Connell reviewed the staff report, a copy of which is attached to and made a part of these official minutes.

Mr. Meadows opened the public hearing.

Ms. Kathleen Taylor, applicant, expressed agreement with the staff report.

In that there were no further speakers, Mr. Meadows closed the public hearing.

On motion made by Mr. Russell and seconded by Mr. Tufts, it was moved to grant the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading, and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The special permit is granted permitting the reduction of the side yard requirements for the existing 24' x 24' barn for two animals.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT10-LE-002, PAMELA McALWEE & ROSS UNDERWOOD (OWNERS/APPLICANTS) – LOST DOG & CAT RANCH**

Applicants are requesting special permit approval to operate a kennel (animal rescue facility), PIN #7815-40-9120-000, located at 14083 Silver Hill Road, Lee District, Sumerduck, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the staff report, a copy of which is attached to and made a part of these official minutes.

Mr. Meadows opened the public hearing.

Ms. Pamela McAlwee, applicant, expressed agreement with the staff report. Ms. McAlwee stated that she was previously unaware of the requirement for a special permit to operate a kennel. Ms. McAlwee noted that this facility has been in operation since 2002 and she has never received any complaints about noise. She also noted that the humane investigator and animal control officers have visited the site and have never found any reason to issue a citation regarding conditions at the facility. Ms. McAlwee further stated that she does not breed any animals; there are no exotic animals at the

facility; she is stringent on temperament testing; and that any aggressive dogs are taken to the humane society to be euthanized. Ms. McAlwee concluded by highlighting the benefit this facility provides for the animals and the community.

Mr. Guerra applauded the applicant's concern and humanitarian efforts. Mr. Guerra requested clarification regarding veterinarian care for the animals, if any animals are euthanized at the facility, and if animals brought from other states are taken regardless of their condition.

Ms. McAlwee stated that she uses two degreed veterinarians to care for the animals and when euthanasia is necessary, it is done humanely at the Spotsylvania Animal Shelter. Ms. McAlwee noted that animals crossing state lines must have a current health certificate.

Mr. Ross Underwood, applicant, spoke in favor of granting this special permit.

Mr. Patrick Sullivan, a neighbor, spoke in opposition to the granting of this special permit, citing concerns about the large number of animals, noise, and the possible risks of the unpermitted structures, which have not been inspected, to the animals and people working within them.

Mr. James Howard, a neighbor, spoke in opposition to the granting of this special permit, expressing concern about the noise, possible groundwater contamination, and decreased property values. Mr. Howard encouraged the Board not to put animals ahead of people.

Ms. Patricia Utz, a neighbor, spoke in support of the granting of this special permit, stating that she has not seen an increase in traffic and only hears the dogs once in the morning and once in the evening, which she assumes is when they are being fed.

Ms. Diane Crocker, a neighbor, spoke in support of the granting of this special permit. Ms. Crocker stated that she has lived in her home for twenty-one (21) years and has never experienced any problems with this facility.

Ms. Barbara Hutcherson, a member of the Lost Dog and Cat Foundation Board of Directors, spoke in support of the granting of this special permit, stating that they are willing to plant trees or do whatever is necessary in order to have a minimal impact on the neighborhood.

Mr. Peter Izzo, a volunteer at the facility, spoke in support of the granting of this special permit.

Mr. Richard Hitzelburg, a neighbor, stated that he cannot sit on his porch because of the noise. Mr. Hitzelburg noted that the topography contributes to how the sound carries and which neighbors hear the most noise. Mr. Hitzelburg suggested that a soundwall be put in place to alleviate the noise.

Ms. Tamara Shaw, a neighbor, spoke in support of the granting of this special permit and encouraged the Board to give the facility an opportunity to put measures in place to mitigate the noise.

Mr. Paul Blumberg, a volunteer at the facility, spoke in support of the granting of this special permit. Mr. Blumberg stated that it is their desire to be good neighbors and they will do everything they can to abate the noise.

Ms. Edith Tespur, a volunteer at the facility, spoke in support of the granting of this special permit, stating that she is proud to be a part of this organization.

Ms. Tina Ponikvar, a former employee, spoke in support of the granting of this special permit.

Mr. Mark Foldenaur, a neighbor, spoke in opposition to the granting of this special permit because of the noise.

Dr. Kim Kincheloe, with the Virginia Kincheloe Spay/Neuter Clinic, spoke in support of the granting of this special permit. Dr. Kincheloe encouraged the Board to approve this much needed facility.

Mr. Neil Selby, Shady Grove Kennel and Hunting Preserve, spoke in support of the granting of this special permit. Mr. Selby stated that he has toured this facility, which is immaculate, and found the animals in excellent condition.

Ms. Sarah Barnett spoke in support of the granting of this special permit.

Ms. Evelyn Sullivan, a neighbor, spoke in opposition to the granting of this special permit, citing concerns about excessive noise as well as the health of the animals.

Mr. Jim Hendrickson, a neighbor, spoke in support of the granting of this special permit and encouraged the Board to give the applicants an opportunity to alleviate the neighbors' concerns.

Mr. Robert Taylor, a neighbor, stated that he hears the dogs barking twice a day, which is a concern because the noise created by his cow and calf operation may become an issue.

Mr. Meadows stated that he was contacted by Ms. Diane Clark, a neighbor, who has stated that she is not opposed to what is currently on the site, but does not want to see any expansion of this facility.

In that there were no further speakers, Mr. Meadows closed the public hearing.

Mr. Meadows asked Dr. Kincheloe about the health of the animals at the facility.

Dr. Kincheloe stated that approximately 90% of the animals come through her veterinary clinic. Dr. Kincheloe further stated that all of the animals have their documentation and have been given all the necessary tests and shots.

On motion made by Mr. Guerra, it was moved to postpone action on this item until the next regularly scheduled meeting to allow the applicant and neighbors time to cool off and resolve the issues that have been raised.

In that there was no second, the motion failed.

Mr. Van Luven stated that he visited the facility earlier in the day and he lives within 1,500 feet of another kennel. Mr. Van Luven stated that it is his understanding that the noise level at the property line does meet the standards set forth in the Zoning Ordinance.

After a brief recess, on motion made by Mr. Van Luven and seconded by Mr. Russell, it was moved to grant the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading, and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The site shall be in general conformance with the information and drawings submitted with the special permit application except as specifically modified by the conditions below or as necessary to meet Zoning Ordinance requirements.
2. No more than 150 dogs and 30 cats shall be kept on-site at any given time.
3. All adoption activities for the animals shall occur off-site.
4. Applicant shall provide documentation that adequate provisions for disposal of the waste have been made prior to the release of the required site plan.

5. The maximum sign area shall be six (6) square feet, with a height not exceeding six (6) feet.
6. The Applicant shall submit a plan for noise abatement to the Zoning Administrator to ensure the 90 db noise level, as outlined in the Zoning Ordinance, is met at the property line.
7. A Site Plan is required for this use.
8. All required building permits shall be secured within six months of approval of this permit.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Tufts, Mr. Van Luven

NAYS: None

ABSTENTION: Mr. Guerra

ABSENT: Mrs. Addison, Mrs. Cooper

**OTHER BUSINESS:**

- Ms. Johnson stated that a neighbor has filed an appeal related to a determination she made regarding Luck Stone Quarry. Ms. Johnson stated that Luck Stone would like to participate as a third party and provide technical expertise when the case comes before the Board in October.
- Ms. Sheridan advised the Board to keep the resolution regarding site visits in place.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 4:45 p.m.

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John R. Meadows, Chairperson

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Maximilian A. Tufts, Jr., Secretary

*Copies of all files and materials presented to the BZA are attached to and become a part of these minutes. A recording of the meeting is on file for one (1) year.*