

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
NOVEMBER 5, 2009**

*Work Session
11:30 a.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, November 5, 2009, beginning at 11:30 a.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; Mrs. Mary North Cooper; 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. Sandra O'Connell, Senior Planner. Member absent was Mrs. Sonja Addison.

On motion made by Mr. Van Luven and seconded by Mr. Guerra, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711(A)(7) for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to the following appeals and special permit on the agenda: (Zoning Appeal #ZNAP09-CR-005, Elk Mount Farm, LLC & William C. Patton (Owners)/Range 82, LLC (Applicant) – Range 82; Zoning Appeal #ZNAP10-LE-001, Luck Stone Corporation (Owner)/Mary DeCarlo (Applicant) – Luck Stone Corporation – Bealeton Plant; Zoning Appeal #ZNAP10-MA-002, Brian & Lucy S. Conboy (Owners/Applicants) – Conboy Property); and Special Permit #SPPT09-MA-017, William & Susan G. Chewning (Owners/Applicants).

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra,
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Upon reconvening from the closed meeting, Mr. Van Luven read the following Certification of Closed Meeting:

The Fauquier County Board of Zoning Appeals, having adjourned into a closed meeting this day for the purposes stated in the resolution authorizing such meeting, does hereby certify that to the best of each member's knowledge:

1. Only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act; and
2. Only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered in the closed meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Van Luven and seconded by Mr. Guerra.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

REVIEW OF AGENDA:

Mr. Meadows stated that the agenda will need to be revised due to the large number of applications to be considered and the fact that Item #5 (William & Susan G. Chewning – Owners/Applicants) must be acted on at today’s meeting.

On motion made by Mr. Van Luven and seconded by Mr. Tufts, it was moved to consider Item #5 (William & Susan G. Chewning) as Item #1a.

The motion carried unanimously.

SPECIAL PERMIT #SPPT09-MA-017, WILLIAM & SUSAN G. CHEWNING (OWNERS/APPLICANTS)

Reconsideration of a previously denied special permit to reduce the required one hundred (100) foot setback for an existing barn, PIN #6064-92-7483-000, located at 1285 Rokeby Road, Marshall District, Upperville, Virginia. (Andrew Hushour, Staff)

Mr. Hushour reviewed the application.

SPECIAL PERMIT #SPPT10-SC-005, HICKORY TREE FARM, LLC (OWNER/APPLICANT) – HICKORY TREE FARM

Applicant is requesting special permit approval to reduce the required one hundred foot setback for an existing barn to allow for an addition, PIN #6093-33-2569-000, located at 6137 Hickory Tree Lane, Scott District, The Plains, Virginia. (Saundra O’Connell, Staff)

Ms. O’Connell reviewed the application.

SPECIAL PERMIT #SPPT10-MA-008, DOROTHY G. BUTLER (OWNER)/BRAD & TIERNEY DOVAN (APPLICANTS) – MARSHALL MIDWIFERY PRACTICE, LLC

Applicants are requesting special permit approval to operate a minor medical care facility, PIN #6969-48-6054-000, located at 8434 West Main Street, Marshall District, Marshall, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the application.

SPECIAL PERMIT #SPPT10-MA-009, MORGAN OIL CORPORATION (OWNER)/MIGUEL CORTES & JUAN JOSE CORTES (APPLICANTS) – CORTES CUSTOMS

Applicants are requesting special permit approval to operate a vehicle part sales and installation business, PIN #6969-68-3834-000, located at 8343 West Main Street, Marshall District, Marshall, Virginia. (Andrew Hushour, Staff)

Mr. Hushour reviewed the application.

SPECIAL PERMIT #SPPT10-SC-010, L. FREDERICK & ALISON J. WORRALL (OWNERS)/ALISON J. WORRALL (APPLICANT) – CHESS, INC.

Applicant is requesting an expansion of a previously approved special permit to allow for non-spectator horse boarding and instruction, PIN #7907-42-4018-000, located at 6105 General Hunton Road, Scott District, Broad Run, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the application.

The meeting was adjourned at 1:45 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, November 5, 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; Mrs. Mary North Cooper; 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. Member absent was Mrs. Sonja Addison.

ANNOUNCEMENTS:

Mr. Meadows stated that the agenda would be revised to consider Item #5 (William & Susan G. Chewning – Owners/Applicants) as Item #1a.

Mr. Meadows also stated that due to the large number of items on the agenda, the meeting would be adjourned at 7:00 p.m. and any cases not acted on will be considered at the next regularly scheduled meeting.

MINUTES:

On motion made by Mr. Guerra and seconded by Mr. Tufts, it was moved to approve the October 1, 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-MA-017, WILLIAM & SUSAN G. CHEWNING (OWNERS/APPLICANTS)

Reconsideration of a previously denied special permit to reduce the required one hundred (100) foot setback for an existing barn, PIN #6064-92-7483-000, located at 1285 Rokeby Road, Marshall District, Upperville, Virginia. (Andrew Hushour, Staff)

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.

Jennifer R. Moore, Esquire, representative, stated that the Fauquier County Circuit Court remanded this matter to the Board of Zoning Appeals for rehearing. Ms. Moore stated that the existing structure, which is located on the only feasible site on the property, is located in a different drainage divide from the neighboring Parva well, thus eliminating

the danger of contamination. Ms. Moore also noted that the applicants have installed a privacy fence to screen the structure.

Ms. Amy Pritchard, Carson-Ashley & Associates, LLC, stated that the structure is located on the only feasible site on the property due to setback constraints, rock outcropping, and the topography. Ms. Pritchard also explained in detail why this structure poses no risk of contamination to the neighboring Parva well and provided plats and photographs, a copy of which are attached to and made a part of these official minutes, demonstrating her findings.

Dr. Behzad Parva, a neighbor, spoke in opposition to the granting of this special permit. Dr. Parva stated that the applicants were originally issued a permit for a shed, but unlawfully constructed a barn. Dr. Parva expressed concern about the close proximity of this barn to his house and well due to the possibility of contamination. Dr. Parva also stated that the location of the barn will have a negative impact on the resale value of his property.

John Wine, Esquire, representing Bernice Ramsay, a neighbor, spoke in opposition to the granting of this special permit. Mr. Wine stated that he concurs with Dr. Parva's statements and that his client is also concerned about run-off and its effect on her drinking water.

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

On motion made by Mr. Tufts and seconded by Mrs. Cooper, 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.

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 barn setback shall be reduced from one hundred (100) feet to approximately thirty-eight (38) feet. This reduction is limited to the barn as identified in the special permit application and its accompanying plat, and no additions to the barn shall be permitted.
2. When in use, the stalls of the barn shall be cleaned two (2) times per day, and all animal waste must be stored in an appropriate waste disposal container until such time that it is directly applied to the subject property for agricultural purposes, properly composted, or removed by a duly licensed waste disposal contractor. The stockpiling of animal waste on-site is strictly prohibited.
3. Screening shall consist of three staggered rows of a mixture of evergreen and deciduous trees with a minimum height of six (6) feet. Trees shall be planted for one hundred (100) feet parallel to the property line, fifty (50) feet on either side of the centerline of the barn. Any dead or diseased tree shall be replaced within thirty (30) days with a tree that is a minimum of six (6) feet in height.

The motion carried 5 – 1, as follows:

AYES: Mr. Meadows, Mr. Tufts, Mrs. Cooper, Mr. Guerra, Mr. Russell

NAYS: Mr. Van Luven

ABSTENTION: None

ABSENT: Mrs. Addison

ZONING APPEAL #ZNAP09-CR-005, ELK MOUNT FARM, LLC & WILLIAM C. PATTON (OWNERS)/RANGE 82, LLC (APPLICANT) – RANGE 82

Applicant is appealing a determination by the Zoning Administrator that they are in violation of an approved special permit for a recreational shooting range, PIN #7819-66-3353-000, located at 4818 Midland Road, Cedar Run District, Midland, Virginia. (Andrew Hushour, Staff) *Note: This is a public meeting, not a public hearing.*

Mr. Meadows opened the public meeting and stated that staff and the applicant would each be given one hour for their presentations.

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

During the review of the staff report, Mr. Fallon objected to Mr. Hushour’s reference to alleged training occurring after the Notice of Violation and Corrective Order was sent to his client. Mr. Fallon stated that the Board must consider only those events which may have occurred prior to the Notice of Violation and Corrective Order, which was dated May 15, 2009.

On motion made by Mr. Van Luven and seconded by Mr. Tufts, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711(A)(7) for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to Zoning Appeal #ZNAP09-CR-005, Elk Mount Farm, LLC & William C. Patton (Owners)/Range 82, LLC (Applicant) – Range 82.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra,
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Upon reconvening from the closed meeting, Mr. Van Luven read the following Certification of Closed Meeting:

The Fauquier County Board of Zoning Appeals, having adjourned into a closed meeting this day for the purposes stated in the resolution authorizing such meeting, does hereby certify that to the best of each member's knowledge:

1. Only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act; and
2. Only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered in the closed meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Van Luven and seconded by Mr. Tufts.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Mr. Meadows informed Mr. Hushour that he could present all the evidence he has.

Mr. Hushour continued with his presentation.

Merle W. Fallon, Esquire, representative, presented the Board with additional material, a copy of which is attached to and made a part of these official minutes. Mr. Fallon reviewed the material just submitted, stating that the Notice of Violation and Corrective Order does not give notice of what activities allegedly occurred on the site and staff has taken the position that any training at this facility is a zoning violation, which is a misreading of the law, the Zoning Ordinance, and the practice of the County. Mr. Fallon noted that numerous other facilities within the County offer training as part of their business practice even though this is not specifically permitted in their approvals (i.e., swim clubs offer swimming lessons; golf clubs offer golf lessons; tennis clubs offer tennis lessons; Parks & Recreation offers numerous training/instruction classes, etc.). Mr. Fallon also noted that what is recreation for one person may not be considered recreation for another person. Mr. Fallon further stated that his client fully disclosed his intention in the Statement of Justification submitted with the special permit application, which states, in part, “*Range 82, LLC proposes to develop a comprehensive, member-based, recreational shooting facility...It will offer a full range of sports shooting opportunities accommodating both individual and organizational demands.*” Mr. Fallon concluded by saying that his client is not in violation of the Zoning Ordinance, but has done what every other recreational organization with a special permit under the same category has done – provide instructional classes for recreational purposes so that people can learn how to use a gun and utilize the range effectively. Mr. Fallon encouraged the Board to overturn the Zoning Administrator’s determination.

After a brief recess, on motion made by Mr. Van Luven and seconded by Mr. Tufts, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711(A)(7) for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to Zoning Appeal #ZNAP09-CR-005, Elk Mount Farm, LLC & William C. Patton (Owners)/Range 82, LLC (Applicant) – Range 82.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra,
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Upon reconvening from the closed meeting, Mr. Van Luven read the following Certification of Closed Meeting:

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2. Only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered in the closed meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Van Luven and seconded by Mr. Tufts.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Mr. Meadows closed the public meeting.

On motion made by Mr. Guerra and seconded by Mr. Van Luven, it was moved to affirm the decision of the Zoning Administrator, after due notice and hearing as required by the Fauquier County Code and *Code of Virginia*, in Zoning Appeal #ZNAP09-CR-005, Elk Mount Farm, LLC & William C. Patton (Owners)/Range 82, LLC (Applicant) – Range 82.

The motion carried unanimously.

ZONING APPEAL #ZNAP10-LE-001, LUCK STONE CORPORATION (OWNER)/MARY DeCARLO (APPLICANT) – LUCK STONE CORPORATION – BEALETON PLANT

Applicant is appealing the Zoning Administrator’s determination that she has insufficient evidence to determine Luck Stone has violated Condition #18 of their special exception, PIN #6898-27-5158-000, located at 6319 Cedar Ridge Road, Lee District, Bealeton, Virginia. (Kimberley Johnson, Staff) *Note: This is a public meeting, not a public hearing.*

Mr. Meadows opened the public meeting.

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

Mr. Van Luven stated that he would like to hear technical information regarding the floodplain study, which was done in 1987 by James H. Harris & Associates, Inc.

Mr. Rick Ashley, Carson-Ashley & Associates, LLC, stated that while he did not conduct the floodplain study, he has reviewed it. Mr. Ashley stated that the floodplain study was done using methodologies that were fully accepted at the time.

Jonathan C. Shoemaker, Esquire, representative, stated that his client has been a neighbor of Luck Stone for approximately 20 years and understood that the Zoning Ordinance and the special exception conditions of approval were there to protect all adjacent property owners, not just residents of the Marsh Run Mobile Home Park. Mr. Shoemaker also stated that his client's March 12, 2009 letter specifically requested that *"the Zoning Administrator make a determination that Luck Stone Corporation is in violation of its Special Exception Use Permit...and take such action as is necessary to insure that Luck Stone remedies its violation and, heretofore, strictly complies with the conditions set forth in the Special Exception."*

Mr. Shoemaker stated that, despite the Zoning Administrator's determination that she has insufficient evidence to determine whether Luck Stone is compliant with or in violation of the Zoning Ordinance, Section 5-001 places the burden upon the applicant (Luck Stone) to demonstrate that the proposed use is consistent with the purpose and intent of the applicable zoning district and satisfies the standards contained herein after. Further, Condition #4 of the January 12, 2006 approved special exception states: *"The applicant shall submit, once every three (3) years, from the date of Board of Supervisors' approval, a report documenting that the use of the property as approved by the Special Exception is in full compliance with all requirements of law and respect to the maintenance and conduct of the use, with all of the requirements and the standards of the Zoning Ordinance and with all conditions of this Special Exception. This report shall be submitted to the Zoning Administrator to demonstrate compliance. The report shall show that all appropriate local, state, and federal regulations are met. It shall include, but not be limited to, permit information, aerial maps from Virginia Department of Mines, Minerals and Energy (DMME) annual submittals and any other pertinent data."* Mr. Shoemaker noted that Luck Stone has not provided this information to the County since these documents were not included in response to a Freedom of Information Act (FOIA) request made by his office. In conclusion, Mr. Shoemaker encouraged the Board to overturn the Zoning Administrator's determination.

Mr. Shoemaker presented the Board with a memo dated November 28, 2005, a copy of which is attached to and made a part of these official minutes, from Christer Carshult, former County Engineer, to Melissa Dargis, Assistant Chief of Planning, regarding Luck Stone's request for a special exception amendment.

On motion made by Mr. Van Luven and seconded by Mr. Tufts, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711(A)(7) for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to Zoning Appeal #ZNAP10-LE-001, Luck Stone Corporation (Owner)/Mary DeCarlo (Applicant) – Luck Stone Corporation – Bealeton Plant.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra,
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Upon reconvening from the closed meeting, Mr. Van Luven read the following Certification of Closed Meeting:

The Fauquier County Board of Zoning Appeals, having adjourned into a closed meeting this day for the purposes stated in the resolution authorizing such meeting, does hereby certify that to the best of each member's knowledge:

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2. Only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered in the closed meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Van Luven and seconded by Mr. Tufts.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Mr. Meadows closed the public meeting.

On motion made by Mr. Guerra and seconded by Mr. Van Luven, it was moved to overturn the decision of the Zoning Administrator, after due notice and hearing as required by the Fauquier County Code and *Code of Virginia*, in Zoning Appeal #ZNAP10-LE-001, Luck Stone Corporation (Owner)/Mary DeCarlo (Applicant) – Luck Stone Corporation – Bealeton Plant.

The motion failed 5 – 1, as follows:

AYES: Mr. Guerra

NAYS: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Russell

ABSTENTION: None

ABSENT: Mrs. Addison

After discussion, on motion made by Mr. Russell and seconded by Mr. Van Luven, it was moved to affirm the decision of the Zoning Administrator, after due notice and hearing as required by the Fauquier County Code and *Code of Virginia*, in Zoning Appeal #ZNAP10-LE-001, Luck Stone Corporation (Owner)/Mary DeCarlo (Applicant) – Luck Stone Corporation – Bealeton Plant.

The motion carried 5 – 1, as follows:

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

NAYS: Mr. Guerra

ABSTENTION: None

ABSENT: Mrs. Addison

ZONING APPEAL #ZNAP10-MA-002, BRIAN & LUCY S. CONBOY (OWNERS/APPLICANTS) – CONBOY PROPERTY

Applicants are appealing the Zoning Administrator's determination of subdivision potential for the subject property, PIN #6928-73-3271-000, located at 5217 Leeds Manor Road, Marshall District, Hume, Virginia. (Kimberley Johnson, Staff) *Note: This is a public meeting, not a public hearing.*

Mr. Meadows opened the public meeting.

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

James P. Downey, Esquire, representative, stated that his clients do not intend to subdivide their property, but they would like to determine its density in order to apply for a conservation easement. Mr. Downey stated that the Zoning Administrator's interpretation concluding that the density is limited to two lots is incorrect because it does not focus on the existing state of the title as of May 21, 1981, but instead gives retroactive effect to an event occurring on June 15, 1981 as a means of determining density attributable to the parent parcel. The title on May 21, 1981 showed four subdivided lots on his clients' parcel. This approach violates rules of interpretation and disregards rules of vested rights. The vacation statute is not retroactive, and his clients had vested rights to the four lot density existing on May 21, 1981.

Mr. Downey emphasized that the Zoning Administrator's view that the conveyance to his clients effectively boundary adjusted and consolidated these lots, making them into a single parcel is also incorrect because it disregards the actual terms of the deed and the prescribed statutory procedure under Section 15.2-2272 that provides for lots to be vacated only by set procedures, which did not take place here until after May 21, 1981. In conclusion, Mr. Downey encouraged the Board to overturn the Zoning Administrator's determination and uphold the four lot potential of this parcel.

Mr. Downey submitted his memorandum, a copy of which is attached to and made a part of these official minutes, to the Board at the conclusion of his presentation.

Mr. Brian Conboy, appellant, stated that he has been actively involved with the Piedmont Environmental Council regarding land use and conservation issues for the past twenty years. Mr. Conboy also stated that the Zoning Administrator's determination regarding this matter is contrary to the intent of the parties of the deed. Mr. Conboy noted that he and his wife never intended to forfeit rights that might affect the use of their property for conservation easement purposes and the subsequent agreement to vacate property lines occurred without their knowledge.

After discussion, on motion made by Mr. Van Luven and seconded by Mr. Tufts, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711(A)(7) for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to Zoning Appeal #ZNAP10-MA-002, Brian & Lucy S. Conboy (Owners/Applicants) – Conboy Property.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra,
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Upon reconvening from the closed meeting, Mr. Van Luven read the following Certification of Closed Meeting:

The Fauquier County Board of Zoning Appeals, having adjourned into a closed meeting this day for the purposes stated in the resolution authorizing such meeting, does hereby certify that to the best of each member's knowledge:

1. Only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act; and

2. Only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered in the closed meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Van Luven and seconded by Mr. Tufts.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

Mr. Meadows closed the public meeting.

On motion made by Mrs. Cooper and seconded by Mr. Russell, it was moved to affirm the decision of the Zoning Administrator, after due notice and hearing as required by the Fauquier County Code and *Code of Virginia*, in Zoning Appeal #ZNAP10-MA-002, Brian & Lucy S. Conboy (Owners/Applicants) – Conboy Property.

The motion carried 6 – 0, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mr. Tufts, Mrs. Cooper, Mr. Guerra
Mr. Russell

NAYS: None

ABSTENTION: None

ABSENT: Mrs. Addison

SPECIAL PERMIT #SPPT10-SC-005, HICKORY TREE FARM, LLC (OWNER/APPLICANT) – HICKORY TREE FARM

Applicant is requesting special permit approval to reduce the required one hundred foot setback for an existing barn to allow for an addition, PIN #6093-33-2569-000, located at 6137 Hickory Tree Lane, Scott District, The Plains, 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. Karen Friedel, representative, expressed agreement with the staff report.

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.

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 addition shall not exceed the 36' x 36' size proposed in the application and shall be designed to match the existing structure on the exterior for visual continuity.

The motion carried unanimously.

SPECIAL PERMIT #SPPT10-MA-008, DOROTHY G. BUTLER (OWNER)/BRAD & TIERNEY DOVAN (APPLICANTS) – MARSHALL MIDWIFERY PRACTICE, LLC

Applicants are requesting special permit approval to operate a minor medical care facility, PIN #6969-48-6054-000, located at 8434 West Main Street, Marshall District, Marshall, 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. Tierney Dovan, 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. Van Luven 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 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. Hours of operation for office hours and appointments shall be Monday through Friday 8:00 a.m. to 5:00 p.m.
3. Childbirth classes shall be limited to Wednesdays from 7:00 p.m. to 9:00 p.m., with no more than two (2) couples in attendance at any one time.
4. Birth center births shall be limited to two (2) per month.
5. Appointments shall be scheduled so that no more than two (2) clients are on-site at any one time.
6. Medical waste shall be picked up by appointment by a qualified medical waste disposal company. Prior to pick up, medical waste shall be sealed in individual, single-use containers.

7. In addition to what is proposed as part of this application, additional landscaping shall be installed on the east side of the existing driveway.
8. A site plan is required for this use.
9. Any signage shall not exceed sixteen (16) square feet.

The motion carried unanimously.

SPECIAL PERMIT #SPPT10-MA-009, MORGAN OIL CORPORATION (OWNER)/MIGUEL CORTES & JUAN JOSE CORTES (APPLICANTS) – CORTES CUSTOMS

Applicants are requesting special permit approval to operate a vehicle part sales and installation business, PIN #6969-68-3834-000, located at 8343 West Main Street, Marshall District, Marshall, Virginia. (Andrew Hushour, Staff)

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. Miguel Cortes, 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 Mrs. Cooper, 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.

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 submitted with the special permit application except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. All activity related to the tire sale and repair establishment shall be limited to Mondays through Saturdays, between the hours of 8:00 a.m. and 5:00 p.m. All activity shall occur indoors within the area identified as the “tire shop” on the approved special permit plat.
3. The outdoor storage of used tires shall be completely enclosed with appropriate privacy fencing, and all other materials associated with the tire sale and repair establishment are prohibited from being stored outdoors.
4. Screening shall be installed along the rear property line adjacent to all residentially zoned property.

The motion carried unanimously.

SPECIAL PERMIT #SPPT10-SC-010, L. FREDERICK & ALISON J. WORRALL (OWNERS)/ALISON J. WORRALL (APPLICANT) – CHESS, INC.

Applicant is requesting an expansion of a previously approved special permit to allow for non-spectator horse boarding and instruction, PIN #7907-42-4018-000, located at 6105 General Hunton Road, Scott District, Broad Run, 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.

Mrs. Alison Worrall, applicant, expressed agreement with the staff report. However, Mrs. Worrall clarified that she is requesting up to five students on Saturdays and if, because of her schedule, she is unable to provide instruction on Saturdays, that she be allowed to shift this to Sundays.

Mr. Meadows stated that her request of up to five students on Saturdays or Sundays would be noted.

Mr. Paul Borzellino, a neighbor, spoke in opposition to the granting of this special permit and also requested the revocation of the applicant’s original special permit approval. Mr. Borzellino expressed concerns about the following issues: the effect on neighboring properties; the number of horses; the number of trailers on the property; the hours of operation; access to the activities on the applicant’s property; winter operations; the evergreen buffer requirement was not adhered to until recently; and the security lighting,

which was just recently adjusted. Mr. Borzellino asked that the Board require a scale drawing showing everything on the property.

Ms. Maurisa Payne, a neighbor, spoke in opposition to the granting of this special permit. Ms. Payne expressed concern about the excavation of steep slopes on the applicant's property as well as heavy duty traffic using this private road, which is maintained solely by the homeowners.

Mr. Steve MacMahon, a neighbor, spoke in opposition to the granting of this special permit. Mr. MacMahon expressed concern that the applicant is not in compliance with her previously approved special permit and, therefore, should not be allowed to expand.

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

On motion made by Mr. Guerra and seconded by Mr. Van Luven, it was moved to postpone action on this item until the next regularly scheduled meeting, with the public hearing left open.

The motion carried unanimously.

OTHER BUSINESS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 6:55 p.m.

John R. Meadows, Chairperson

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.