

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS  
DECEMBER 4, 2008**

**AN ADJOURNED MEETING OF THE FAUQUIER COUNTY BOARD OF ZONING APPEALS WAS HELD ON DECEMBER 4, 2008 AT 10:00 A.M. IN WARRENTON, VIRGINIA.**

Members present were Mr. John Meadows, Chairperson; Mr. James W. Van Luven, Vice-Chairperson; Mr. Maximilian Tufts, Secretary; Mrs. Sonja Addison; Mrs. Mary North Cooper; Mr. Serf Guerra; and Mr. Harry Russell. Also present were Mr. Andrew Hushour, Assistant Zoning Administrator; and Mr. Wally Horton, Senior Planner.

**SITE VISITS:**

Mr. Meadows reviewed the site visit agenda and stated that there would be four (4) site visits as follows:

1. Safiullah & Humaira Rashid at 10:25 a.m.
2. Donald Lee & Debra L. Sherbeyn at 10:59 a.m.
3. Frank C. Ott, Jr. Katherine O. Anderson & Others at 11:08 a.m.
4. Gilbert R. Andes, Ruth C. Andes, Et Al at 11:22 a.m.

With no further business, the meeting was adjourned at approximately 11:36 a.m. to reconvene at 2:00 p.m. in the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia.

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, December 4, 2008, 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. Sonja R. Addison; Mrs. Mary North Cooper; Mr. Serf Guerra; and Mr. Harry Russell. Also present were Mrs. Tracy Gallehr, Deputy County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Andrew Hushour, Assistant Zoning Administrator; Mr. Wally Horton, Senior Planner; and Mrs. Fran Williams, Administrative Specialist.

**MINUTES:**

On motion made by Mrs. Addison and seconded by Mr. Tufts, it was moved to approve the October 2, 2008 minutes.

The motion carried unanimously.

On motion made by Mrs. Addison and seconded by Mr. Russell, it was moved to approve the November 6, 2008 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.

### **ANNOUNCEMENTS**

Mr. Meadows stated that the agenda would be changed so that Item #5 (Zoning Appeal #ZNAP09-CR-002, Willard A. Green) would become Item #6.

### **SPECIAL PERMIT #SPPT09-CR-011, DONALD LEE & DEBRA L. SHERBEYN (OWNERS)/DEBRA L. SHERBEYN (APPLICANT) – HEALING HANDS MASSAGE THERAPY**

Applicant is requesting renewal of a special permit and an amendment to expand the operation of a professional office with six or less employees for therapeutic massage, PIN #7816-89-1656-000, located at 13199 Elk Run Road, Cedar Run District, Bealeton, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the staff report, a copy of which is attached to and made a part of these minutes, and stated that a site visit was made earlier in the day.

Mr. Meadows opened the public hearing.

Ms. Debra Sherbeyn, applicant, expressed agreement with the majority of the staff report. However, Ms. Sherbeyn stated that she was unaware that site plan approval was a requirement of her previous special permit approval.

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

On motion made by Mr. Van Luven and seconded by Mrs. Addison, 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 type and amount of traffic generated by this facility is such that it will not cause an undue impact on the neighbors or adversely affect safety of road usage.
2. 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 necessary to meet Zoning Ordinance requirements.
3. Office hours shall be limited to the period between 8:30 a.m. and 8:00 p.m., Monday through Saturday.
4. A maximum of three (3) employees, including the owner/applicant, shall be allowed.
5. This permit shall expire in one (1) year if the applicant has not secured the required site plan and certificate of occupancy approvals within that one year period; otherwise, the permit shall expire in five years.
6. Permits shall be obtained from the Virginia Department of Transportation (VDOT) to upgrade the existing entrance to the site to a Commercial Entrance and to make all appropriate entrance improvements in accord with VDOT requirements.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT09-LE-012, FRANK C. OTT, JR., KATHERINE O. ANDERSON & OTHERS (OWNERS)/KATHERINE ANDERSON, REBECCA MULLINS & MORGAN OTT, III (APPLICANTS)**

Applicants are requesting special permit approval to reduce the required 100-foot setback for an existing barn relative to the newly proposed property line, PIN #7806-09-7359-000

and 7806-18-6295-000, located on the southeast side of Savannah Branch Road (Route 668), Lee District, Bealeton, Virginia. (Drew Hushour, Staff)

Mr. Hushour reviewed the staff report, a copy of which is attached to and made a part of these minutes, and stated that a site visit was made earlier in the day.

Mr. Meadows opened the public hearing.

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

Mr. Frank Ott, Jr., owner and cousin of the applicant, expressed concern that a parcel adjoining the subject property should have been included on the plat prepared by Carson, Ashley and Associates. Mr. Ott also stated that, in his opinion, an additional barn that houses livestock should have been included on this application.

Mr. Morgan Ott III, applicant, stated that the issue of the additional barn raised by his cousin, is a different matter. Mr. Ott respectfully requested that his application for a reduction of the required setback on this particular barn be approved.

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 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 necessary to meet Zoning Ordinance requirements.

2. The setback requirement for a barn shall be reduced from one hundred (100) feet to eighty-five (85) feet.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT09-CR-013, SAFIULLAH & HUMAIRA RASHID (OWNERS)/FRAIDOOON RASHID (APPLICANT) – FAMILY GROWN GARDEN**

Applicant is requesting special permit approval to operate a plant nursery/greenhouse with retail sales, PIN #7933-21-1288-000 and 7933-11-7174-000, located on the west side of Catlett Road (Route 28), Cedar Run District, Catlett, Virginia. (Drew Hushour, Staff)

Mr. Hushour reviewed the staff report, a copy of which is attached to and made a part of these minutes, and stated that a site visit was made earlier in the day.

Mr. Meadows opened the public hearing.

Ms. Humaira Rashid, owner, expressed agreement with the staff report.

Ms. Janice Sanford, a neighbor, spoke in opposition to the granting of this special permit. Ms. Sanford expressed concern about the appearance of the property as well as safety issues.

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

On motion made by Mr. Tufts, and seconded by Mr. Russell, 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.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT09-LE-015, GILBERT R. ANDES, RUTH C. ANDES, ET AL (OWNERS)/FILBERTO CANAS BEHAVIDEZ (APPLICANT)**

Applicant is requesting special permit approval to operate an auto repair garage, PIN #6887-07-4193-000, located at 12213-B James Madison Street, Lee District, Remington, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the staff report, a copy of which is attached to and made a part of these minutes, and stated that a site visit was made earlier in the day.

Mr. Meadows opened the public hearing.

Mr. Filberto Behavidez, applicant, expressed agreement with the staff report.

Mr. Scott Pierson, a neighbor, stated that while he is not in opposition to the granting of this special permit, he would like clarification about the need for a special permit for this operation and also, the precedent that would be set if the applicant ceases his business within the next few years.

Mr. Horton stated that since the property is zoned C-1 (Commercial – Neighborhood), an auto repair business requires a special permit, which will run with the land. Mr. Horton further stated that he would be happy to meet with Mr. Pierson to discuss these issues.

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

On motion made by Mrs. Addison, 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 necessary to meet Zoning Ordinance requirements.

2. The type of work proposed as part of the auto repair establishment will be limited to repairs, oil changes, servicing, tire rotation, and general services related to auto care.
3. A maximum of one (1) employee, including the owner/applicant, shall be allowed.
4. No outdoor storage will take place, except for cars awaiting pickup by customers.
5. No expansion or enlargement of the existing building or use area shall be allowed.
6. Disposal of all fluids, including oil, shall be in accord with Building Code, Environmental Protection Agency, and all other applicable regulations.
7. Permits shall be obtained from the Virginia Department of Transportation (VDOT) as required.
8. Hours of operation shall be 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturdays.
9. Site Plan approval is required.

The motion carried 6 to 1, as follows:

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

NAYS: Mr. Guerra

ABSTENTION: None

ABSENT: None

Mr. Guerra stated that a limit should be imposed on the length of time allowed for the outdoor storage of vehicles. On motion made by Mr. Guerra, and seconded by Mr. Meadows for discussion purposes, it was moved to reconsider this item. The motion to reconsider failed 5 to 1, with Mr. Meadows abstaining, as follows:

AYES: Mr. Guerra

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

ABSTENTION: Mr. Meadows

ABSENT: None

**ZONING APPEAL #ZNAP09-CR-002, WILLARD A. GREEN  
(OWNER/APPLICANT)**

Applicant is appealing the Zoning Administrator's determination that worship services and associated meetings are being held on-site without Special Permit and Site Plan approvals; and a training/educational facility for religious instruction is in operation without Special Exception and Site Plan approvals, PIN #6993-20-2462-000, located at 8608 Green Road, Cedar Run District, Warrenton, Virginia. (Kimberley Johnson, Staff)

***Note: This is a public meeting, not a public hearing.***

Mr. Meadows stated that this is a public meeting, not a public hearing.

Mr. Van Luven stated "There is a preliminary matter that the BZA would like to address before we proceed with this appeal. There is some discussion in the Zoning Administrator's written argument in this matter that Mr. Green is appealing a determination made by the Zoning Administrator that he operated an education program – indoor technical school – in violation of the Zoning Ordinance. I note that there is no reference to this matter in the appeal application nor in the grounds for appeal which is in the form of a letter from Daniel A. Ball, attorney for Mr. Green, dated October 30, 2008. Therefore, this portion of the appeal is not properly before the BZA and I move that the portion of the appeal relating to the education program be dismissed."

On motion made by Mr. Van Luven, and seconded by Mrs. Addison, it was moved to dismiss that portion of the appeal relating to the education program.

The motion carried unanimously.

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

Daniel Ball, Esquire, representative, stated that the appeal does include the allegation that his client was operating an educational program without Special Exception and Site Plan approval in violation of Section 3-305 (Educational Uses, Category 5) of the Zoning Ordinance even though the term "technical school, indoor" was not mentioned. Mr. Ball requested that he be allowed to address this issue.

Pursuant to *Code of Virginia* Section 2.2-3711(A)(7), it was moved by Mr. Tufts and seconded by Mrs. Cooper to go into a closed meeting 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-002.

The motion carried unanimously.

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. Tufts and Mrs. Cooper.

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

NAYS: None

ABSTENTION: None

ABSENT: None

Mr. Meadows stated that since the violation was for a "pastoral school," rather than a "Funnday School," the appellant could not appeal something for which he was not cited. However, Mr. Meadows stated that the appellant would be given three minutes to discuss this issue.

Mr. Ball stated that his client has been a successful businessman in Warrenton for the past ten years. Mr. Ball noted that Encouragement Temple *is* Mr. Green, not a church and that the term is a derivative of the name of his client's farm, Encouragement Farm. Mr. Ball stated that his client is a person who encourages others to be their best, to grow financially, spiritually, and emotionally.

Mr. Ball further stated that there were no dates specified in the Official Notice of Zoning Violation and Corrective Order indicating when his client allegedly operated a place of worship. Mr. Ball noted that there has been no testimony, affidavit, or observation from anyone witnessing this alleged occurrence. Mr. Ball acknowledged that his client has had some friends and family come to his property for fellowship, which does not require County approval. However, he maintained that his client has not operated a public place of worship at the site.

Mr. Ball stated that the website appeared to indicate that his client was operating a public place of worship, which is inaccurate. Mr. Ball noted that no member of the public has come to the property or called about it. Mr. Ball further stated that when the Official Notice of Zoning Violation and Corrective Order was issued, it was based on an inaccurate website.

After being sworn in, Mr. Willard Green, appellant, stated that he believes he has the right to pray and worship God wherever he wishes to. Mr. Green also stated that he started inviting family and friends to his property so that his two small children, who visit

him on the weekends, could have playmates. Mr. Green also noted that his website did contain inaccuracies, but has since been revised.

Mrs. Addison asked what the inaccuracies on the website were, who placed them there and if the County's action prompted its change.

Mr. Green replied that his staff had placed this inaccurate information on the website.

Mr. Tufts noted that some of the information from the website appears to indicate worship services are held on Sundays, with other services being held throughout the week.

Mr. Green stated that the website directs people to call for the location, not that the services are being held at his property on Green Road. Mr. Green stated that he also owns a commercial property that seats 250 people within the Town of Warrenton, the Mural Building located on Fourth Street, where he has started having services.

Mr. Meadows asked when the appellant started having services in the Town of Warrenton.

Mr. Green responded that he does not recall the exact date, but it was several weeks ago. Mr. Green noted that he has only had one service there.

Mr. Russell stated that he strongly feels the appellant was operating a place of worship at the Green Road property when the violation was issued.

Mr. Green stated that he stopped having services there when he received the Official Notice of Zoning Violation and Corrective Order. Mr. Green stated that he does not take up a collection, as is typically done in churches, and the children that he ministers to are friends of his family.

Mr. Hushour stated that the website, which is a public domain, clearly indicates that these services were taking place at the Green Road location and says that "everyone is welcome." Mr. Hushour stated that this appears to go above and beyond the scope of private fellowship.

Mr. Hushour further stated that Mr. Green has testified under oath that he has had a fellowship meeting at his property in the Town of Warrenton. However, he has received correspondence dated November 24, 2008, a copy of which is attached to and made a part of these minutes, from Mickey Rhoades, Zoning Administrator with the Town of Warrenton, which specifically states she was assured by the appellant that no services have been held at this location and that, to the best of her knowledge, he has been using it as an office.

Mrs. Cooper and Mr. Guerra left the meeting.

After further discussion, on motion made by Mr. Van Luven and seconded by Mr. Russell, it was moved to affirm the decision of the Fauquier County Zoning

Administrator in Appeal #ZNAP09-CR-002, after due notice and hearing as required by the Fauquier County Code and *Code of Virginia*, finding that the appellant was operating a place of worship at the time the Official Notice of Zoning Violation was issued.

The motion carried 4 – 1, as follows:

AYES: Mr. Meadows, Mr. Van Luven, Mrs. Addison, Mr. Russell

NAYS: Mr. Tufts

ABSTENTION: None

ABSENT: Mrs. Cooper, Mr. Guerra

**OTHER BUSINESS:**

- Mr. Meadows stated that the January 1, 2009 meeting will be cancelled since it falls on a holiday. The next regularly scheduled meeting will be on February 5, 2009.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 3:54 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.*