MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
FEBRUARY 7, 2019

Work Session
1:45 p.m.
Warren Green Building, First Floor Meeting Room
10 Hotel Street
Warrenton, Virginia

The Fauquier County Board of Zoning Appeals held a work session on Thursday, February 7, 2019, beginning at approximately 1:45 p.m. in the Warren Green Building, First Floor Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mr. Bill Chipman; Mrs. Mary North Cooper; and Mr. Benjamin Tissue, Jr. Also present were Mr. Adam Shellenberger, Chief of Planning; Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Ms. Marianne Primeau, Senior Assistant County Attorney; and Mrs. Fran Williams, Administrative Manager/Secretary.

Mr. Meadows opened the meeting, which was then turned over to Ms. Primeau to initiate the election of officers.

ELECTION OF OFFICERS:

On motion made by Mrs. Cooper and seconded by Mr. Tufts, it was moved to retain the same officers – Mr. Meadows, Chairperson; Mr. Tufts, Vice-Chairperson; and Mrs. Williams, Secretary.

The motion carried unanimously.

The meeting was then turned over to Mr. Meadows, Chairperson.

MINUTES:

Board members reviewed the December 6, 2018 minutes.

AGENDA ITEMS:

VARIANCE #VARI-19-010500 – WARRENTON ENTERPRISES, LLC (OWNER/APPLICANT) – WARRENTON ENTERPRISES – An application for a variance of Zoning Ordinance Section 3-404 to reduce the 75' setback requirement to allow

the construction of an industrial structure, PIN 6983-98-1007-000, located at 6406 Old Meetze Road, Cedar Run District, Warrenton, Virginia. (Heather Jenkins, Staff)
Ms. Jenkins reviewed the application.

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

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

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, February 7, 2019, beginning at 2:00 p.m. in the Warren Green Building, First Floor Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mr. Bill Chipman; Mrs. Mary North Cooper; and Mr. Benjamin Tissue, Jr. Also present were Ms. Holly Meade, Director of Community Development; Mr. Adam Shellenberger, Chief of Planning; Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Ms. Marianne Primeau, Senior Assistant County Attorney; and Mrs. Fran Williams, Administrative Manager/Secretary.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mrs. Williams read the public hearing protocol.

Mr. Shellenberger stated that, to the best of his knowledge, the cases before the Board of Zoning Appeals for public hearing have been properly advertised, posted and letters of notification sent to adjoining property owners.

MINUTES:

On motion made by Mr. Tufts and seconded by Mrs. Cooper, it was moved to approve the December 6, 2018 minutes.

The motion carried unanimously.

REGULAR AGENDA:

APPEAL #AZAD-18-010455, JUDE J. COVAS & KATHLEEN M. FLAHERTY, TRUSTEES OF THE RAYMOND C. HAWKINS CHILDREN'S TRUST II/FBO MICHAEL SHAWN HAWKINS (OWNER/APPLICANT) – HAWKINS' FARM – An appeal of a Zoning Administrator's determination related to the storage or disposal of nonagricultural fill material in excess of the amount limited by Zoning Ordinance Section 5-

1816.2 and Section 10-101.2(B) related to the expansion of a non-conforming use, PIN 7838-79-6029-000 and 7838-89-3177-000, located at 15223 Copperhead Road, Cedar Run District, Catlett, Virginia. (Heather Jenkins, Staff) ***Note: This is a public meeting, not a public hearing.***

Ms. Primeau left the dais.

Mr. Meadows reminded the Board that they are without legal counsel in this matter. He further stated that should the Board feel the need for such, a closed meeting will be convened to discuss the matter.

Mr. Meadows reviewed the Rules of Procedure Regarding Appeals and opened the public meeting.

Mr. Meadows asked the Appellant if he would be representing himself in this matter.

Mr. Hawkins responded in the affirmative and also submitted additional material for review.

Mr. Meadows inquired if the Appellant had received a copy of the Rules of Procedure Regarding Appeals, had an opportunity to review them and if he is fully aware of the time limits for his presentation.

Mr. Hawkins responded that he was not originally (when he received the Official Notice of Zoning Violation and Corrective Order) given a copy of the Rules of Procedure Regarding Appeals, but was later given a copy (when his application for an Appeal was submitted). He further stated that he had not fully reviewed the Rules of Procedure Regarding Appeals, but was told by Staff that he had 20 minutes for his presentation.

COUNTY PRESENTATION

Ms. Jenkins stated that the subject property consists of two separate parcels totaling 30.59 acres and is located on Copperhead Road. Currently, the property is used for both residential and agricultural purposes.

Ms. Jenkins reviewed §15.2-2288 of the *Code of Virginia*, which states: *"Localities may not require a special use permit for certain agricultural activities. A zoning ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural products as defined in § 3.2-6400, including silviculture products,* ***but shall not include*** *the processing of agricultural or silviculture products, the above ground application or storage of sewage sludge,* ***or the storage or disposal of nonagricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm,*** *subject to the provisions of the Virginia Waste Management Act. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification. Nothing herein shall require agencies of the Commonwealth or its*

contractors to obtain a special exception or a special use permit under this section [emphasis added]."

The Attorney General issued an Opinion Letter on October 11, 2013, stating: *"...Accordingly, it is my opinion that §15.2-2288 authorizes localities to require a special use permit for 'the storage or disposal of nonagricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm,' regardless of the end use to which the materials may be put."*

On September 13, 2018, the Fauquier County Board of Supervisors adopted an Ordinance amending Articles 3, 5, and 15 of the Fauquier County Zoning Ordinance to regulate the importation and storage or disposal of nonagricultural fill materials to parcels zoned to the Conservation (RC) and Agriculture (RA) Districts in conjunction with an agricultural operation. Prior to September 13, 2018, the importation of nonagricultural fill to properties with an active agricultural use was not regulated.

With the adoption of this Ordinance, all nonagricultural fill operations on RC and RA zoned properties with an active agricultural use became non-conforming uses. Expansion of a non-conforming use (i.e., the importation of fill beyond the limits set by the Ordinance after September 13, 2018) requires the approval of a Special Exception per Section 10-101.2(B).

The following definition of Nonagricultural Fill Material was adopted in Section 15-300: *"The placement, storage or disposal of uncontaminated excavated material brought onto a parcel where the material is not generated. Excavated material brought to the parcel shall only include soil and rock. Other materials are acceptable if used solely for the maintenance of the farm operation. Such materials may include, but are not limited to, gravel and asphalt millings for driveway repair."*

Also adopted was Section 5-1816.2, Standards for Storage or Disposal of Nonagricultural Fill for Parcels Greater Than 10 Acres In Size: *"Special Exception approval shall not be required unless the amount of nonagricultural fill material brought to the parcel(s) exceeds 200 cubic yards within any 24 hour period OR if the amount of fill material brought to the parcel(s) exceeds 4,200 cubic yards within a one year period."*

On October 12, 2018, Mr. Rob Walton, former Zoning Administrator, issued a letter to the Appellant regarding the importation of nonagricultural fill material to the property in excess of the limitations found in Section 5-1816.2(1). Mr. Walton stated that the property was in violation of the Ordinance on both October 8, 2018 and October 9, 2018 when a total of 95 dump truck loads of fill material was delivered to the property during that two day period. The letter from Mr. Walton required that the Appellant cease the importation of nonagricultural fill to the property, and that the property be brought into compliance by applying for a Special Exception to allow the expansion of the non-conforming use as required by Section 10-101.2(B) of the Fauquier County Zoning Ordinance. It also stated that if the property was not brought into compliance, the County would proceed with enforcement action.

After issuance of the October 12, 2018 letter, the Appellant continued the importation of nonagricultural fill to the subject property, as documented by complaints received from neighboring property owners. Dump trucks were observed and documented by neighboring property owners to consist of trucks laden with material entering the subject property, and

then leaving empty. On three instances following the October 12, 2018 letter from Mr. Walton, the neighboring property owners submitted truck counts to County staff that were determined to exceed the allowable 200 cubic yards within a 24-hour period. Using an average of the County's assumed capacity of dump trucks (12 cubic yards), these three instances total as follows:

October 16, 2018: 25 dump trucks (12 cubic yards each) = 300 cubic yards
November 12, 2018: 21 dump trucks (12 cubic yards each) = 252 cubic yards
November 19, 2018: 30 dump trucks (12 cubic yards each) = 360 cubic yards

No documentation was submitted by the Appellant to indicate that the fill activity was exempt from Ordinance provisions.

Ms. Jenkins noted that the Appellant has stated that his trucks only carry eight cubic yards instead of the County's average of 12 cubic yards. If so, on November 19, 2018, the 30 dump trucks would have totaled 240 cubic yards, which is still in excess of the allowed 200 cubic yards per 24-hour period.

On November 19, 2018, staff made an inspection at the subject property and dump trucks were observed entering and unloading fill material. On this same date, complainants also documented 30 dump trucks entering the property and dumping fill material. Following the site inspection by staff and the receipt of documented truck counts in excess of the 200 cubic yard per day limit, the Notice of Zoning Violation and Corrective Order was issued.

Ms. Jenkins displayed several photographs, taken from the boundary of an adjacent property, which show two different trucks dumping fill material at the site as well as unconsolidated fill material piled parallel to the property line. Two additional photographs showed equipment spreading fill material over the property.

Ms. Jenkins stated that from November 20, 2018 to December 27, 2018, additional nonagricultural fill was imported to the property. Staff and complainants documented the number of trucks entering the property to dump fill material on 12 separate days following the issuance of the Notice of Zoning Violation and Corrective Order for a count of 223 dump trucks entering the property with fill material during this period.

Following the Notice of Zoning Violation and Corrective Order, during seven separate 24-hour periods from November 20, 2018 to December 27, 2018 the estimated amount of fill material brought to the property exceeded the 200 cubic yard limit allowed by Section 5-1816.2(1), as follows:

November 21: 21 trucks (12 cubic yards each) = 252 cubic yards
November 28: 33 trucks (12 cubic yards each) = 396 cubic yards
December 4: 48 trucks (12 cubic yards each) = 576 cubic yards
December 13: 17 trucks (12 cubic yards each) = 204 cubic yards
December 14: 32 trucks (12 cubic yards each) = 384 cubic yards
December 19: 26 trucks (12 cubic yards each) = 312 cubic yards
December 27: 27 trucks (12 cubic yards each) = 324 cubic yards

From complaints received, it is known that there were additional days on which the fill operation continued on the property; however, specific truck counts were not able to be documented on those days.

Ms. Jenkins reviewed a chart outlining the estimated 5,016 cubic yards of fill material that was brought to the subject property by 418 dump trucks between October 8, 2018 and December 31, 2018.

On December 19, 2018, the Appellant submitted an appeal to the Notice of Zoning Violation and Corrective Order, stating that the subject property is in active use as a farming operation, and that nonagricultural fill has been brought to the property in support of this activity since 2015. As justification for the Appeal, the Appellant asserts that agencies of the Commonwealth or its contractors are exempt from the requirement to obtain a Special Exception for disposal of nonagricultural fill per *Code of Virginia* §15.2-2288, and thus any and all material from contractors engaged in Commonwealth projects are therefore exempt from local regulation. The Appellant also states that nonagricultural fill has been imported to the property since 2015 to further an agricultural use of the property and, therefore, the continued importation of nonagricultural fill is not a change in character or use, but a permissible continuation of an established use.

The Appellant further states that *Code of Virginia* §15.2-2288 exempts any and all materials from Commonwealth projects from the authority of local government regulation. However, staff argues that this section of the *Code of Virginia* does not support this inference, as this interpretation would also exempt sub-contractors of contractors, which was not its intent. Ms. Jenkins noted that the Appellant has not produced any contract with the Commonwealth of Virginia indicating the material was directly from a Commonwealth project, nor has any documentation been submitted prior to today. The exemption that the Appellant is relying on applies exclusively to contractors of the Commonwealth, not their sub-contractors.

The Appellant argues that he had been lawfully engaged in the storage of nonagricultural excavation material for three years prior to the adoption of Ordinance "D" to regulate such a use, and therefore have a vested right to continue the storage and disposal of nonagricultural fill material on the property as a lawful use with no limitations.

Ms. Jenkins agreed with the Appellant that there is an existing, lawful use of the property as a farm and noted that the continued use of the property for permitted agricultural purposes was not included in the November 19, 2018 Notice of Violation and Corrective Order.

Staff asserts that use of the property for storage or disposal of nonagricultural fill material per Section 3-318(25) of the Zoning Ordinance, where the amount of fill has exceeded the reasonable limits provided for in Section 5-1816.2(1) is a violation of the Ordinance.

Section 15.2-2307 of the *Code of Virginia* states that a landowner can establish a vested right in a land use when they 1) obtain a significant governmental act – such as a permit or site plan approval – allowing the use of the property, 2) relies in good faith on this significant governmental act, and 3) incurs extensive obligations or substantial expenses in reliance on the significant governmental act.

The Appellant has never received a permit for either agriculture or storage and disposal of nonagricultural fill; therefore, he has not been the beneficiary of a significant governmental act, have not relied in good faith on any such act, and have not incurred extensive obligations or substantial expenses in reliance on any act. The Appellant does not meet the statutory test for claiming a vested right in the use of the property for the storage or disposal of nonagricultural fill.

Ms. Jenkins stated that the Appellant may continue to use the property as a farm as a lawful agricultural use; however, use of the property for the storage or disposal of nonagricultural fill material beyond those amounts allowed by-right in the Ordinance require the approval of a Special Exception. Should the Appellant determine that a significant amount of fill material is necessary for farm operations, he can seek the approval of a Special Exception to do so.

Per Section 10-101.2(B) of the Ordinance, where a use is non-conforming solely because the use now requires the approval of an Administrative Permit, Special Permit, or Special Exception, that non-conforming use may be expanded only with the approval of the required permit.

Staff asserts that the use of the property for the storage or disposal of nonagricultural fill per Section 3-318(25), where the amount of fill imported to the property after adoption of Ordinance "D" on September 13, 2018 exceeds the allowable limits found in Section 5-1816.2(1), is an impermissible expansion of a non-conforming use and requires the approval of a Special Exception.

The additional information submitted by the Appellant on February 6, 2019 and February 7, 2019 states that, as a contractor for the Commonwealth of Virginia, he is not required to obtain permits. A screen shot from an online vendor site (eVA) does not show that the Appellant is an active contractor, just that he has registered as an online vendor. It shows two deposits after September 13, 2018 when the property became a non-conforming use. The first is simply an application for an expired license in October and the second is an invoice from December 4, 2018. However, the printout does not indicate what the invoice is associated with nor does it show that all fill material brought to the site in excess of Ordinance limits after September 13, 2018 was generated from Commonwealth projects.

The subject property is zoned Agriculture and totals 30.59 acres in size. The property has an established agricultural use as a farm and nonagricultural fill was imported to the property prior to September 13, 2018.

On November 19, 2018, the subject property was found to have exceeded the 200 cubic yards of imported nonagricultural fill that is allowed by the Ordinance. Documented truck counts place 30 dump trucks on the subject property on this date, having brought an estimated 360 cubic yards of fill, a violation of Section 5-1816.2. Importation of nonagricultural fill over the limits allowed by the Ordinance is an expansion of a non-conforming use of the subject property, which requires the approval of a Special Exception, and is a violation of Section 10-101.2(B).

In conclusion, Ms. Jenkins stated that according to *Code of Virginia* §15.2-2309, the Zoning Administrator's determination is presumed, on appeal, to be correct, and respectfully requested that the Board of Zoning Appeals uphold the November 19, 2018 Notice of Zoning

Violation and Corrective Order. The property owners and resident have imported fill to the property beyond the reasonable limits set by the Ordinance as adopted by the Board of Supervisors.

From October 8, 2018 to December 27, 2018 a total of 418 dump trucks have been documented as bringing nonagricultural fill to the property, for an estimated total of 5,016 cubic yards.

Complaints received by staff indicate that additional dumping of fill material occurred on the property beyond what was documented; however, staff and complainants were not able to observe and document activities every calendar day.

The importation of fill, as well as the associated truck traffic on roadways and noise from trucks and heavy equipment, substantially impact adjacent property owners.

Ms. Jenkins stated that the importation of a significant amount of fill, where the placement and proper stabilization of the fill material cannot be assessed through the required Special Exception process, may also negatively impact area stream channels and waterways as well as other environmental resources.

QUESTIONS FROM THE BOARD

Mr. Tissue inquired if there is an Erosion and Sedimentation Control Plan in place, if a grading permit has been issued or if there has there been any additional dumping of nonagricultural fill material since December 27, 2018.

Ms. Jenkins stated that there is no Erosion and Sedimentation Control Plan in place or grading permit, so staff has not been able to make additional inspections. She also stated that she has not received notification from neighbors of any dumping since December 27, 2018.

APPELLANT PRESENTATION

Mr. Hawkins stated that since this application is closely related to the previously considered Schottler Property, Paige Lee Anne Way Appeal (AZAD-18-010081), he would like to have that information included in this record as part of his argument today. *(See attached November 1, 2018 Board of Zoning Appeals' meeting minutes.)*

Mr. Hawkins referred to Zoning Ordinance Section 5-1816.2, Standards for Storage or Disposal of Nonagricultural Fill for Parcels Greater Than 10 Acres In Size, which states: *"Special Exception approval shall not be required unless the amount of nonagricultural fill material brought to the parcel(s) exceeds 200 cubic yards within any 24 hour period OR if the amount of fill material brought to the parcel(s) exceeds 4,200 cubic yards within a one year period."* He stated that since his property contains two separate parcels, the Zoning Ordinance actually allows him to bring in up to 400 cubic yards (200 cubic yards per parcel) of nonagricultural fill per day. He noted that according to the County's presentation, he was not over that limit on any given day.

Mr. Hawkins stated that the previous Zoning Administrator, Mr. Rob Walton, did online research to determine the amount of material that a dump truck could hold and came up with approximately 10 to 16 yards. However, his trucks are loaded with three scoops of material from a 963 Loader bucket that holds approximately three cubic yards per scoop. Therefore, the most material that one of his trucks hauls is nine cubic yards of wet, heavy material. Mr. Hawkins also stated that no one has ever come out to measure the amount of material being dumped from one of his trucks nor have any of his trucks been cited by the Sheriff's Office, whose patrol vehicles often sit at Routes 28 and 806, for being overloaded.

Mr. Hawkins stated that he is also a Virginia Department of Transportation (VDOT) contractor. *Code of Virginia* §15.2-2288 specifically states that a contractor of VDOT may not be required to get a Special Exception permit. It did not say a contractor who works for VDOT, one who hauls dirt, or one who puts in pipe – it says *"a contractor."* He has provided a screen shot from the portal (eVA) contractors use to work with VDOT and be paid. In response, a Board member provided a large document with a list of pre-qualified vendors or contractors for the Commonwealth of Virginia. He noted that he is *not a pre-qualified contractor*, which would allow him to bid on $30 million projects. However, he is a contractor and service provider for VDOT. According to the paperwork just submitted, he gets paid by the Commonwealth of Virginia, which makes him a contractor of the Commonwealth of Virginia and, therefore, he cannot be required to obtain a Special Exception. In addition, he has been told by County officials that he will not be able to get a permit.

Mr. Hawkins again noted that his property contains *two separate parcels* and that he has not exceeded the allowable 200 cubic yard per day limit on either parcel, as shown from the County's presentation.

According to the *Right to Farm Act*, a County cannot require a permit for anything having to do with farming – no Erosion and Sedimentation Control Plan, no grading plan or anything else. Farmers are to use Best Management Practices, which he is in compliance with. He has silt fencing in place along stream beds, which has been verified by the Department of Environmental Quality (DEQ) and the U.S. Army Corps of Engineers. *Code of Virginia* §15.2-2288 states: "…*or the storage or disposal of nonagricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm,* ***subject to the provisions of the Virginia Waste Management Act****"* [emphasis added]. He noted that nothing in the Virginia Waste Management Act refers to nonagricultural excavated fill [emphasis added].

Referring to the County's photographs, Mr. Hawkins showed the property lines for each of his parcels. He indicated that one truck is on one parcel and the other truck is on another and no one has differentiated which lot is being dumped on. The dirt on his property is red shale. One piece of machinery in the photographs is putting in a check dam of rip rap for Best Management Practices to control run-off from getting into the stream that runs through his property. The other machine is maintaining the haul road so that no mud is tracked onto the paved road.

Mr. Hawkins also stated that none of the County's figures for the number of trucks entering the property have been certified, so he is not sure if they are accurate.

Mr. Hawkins asserted that he is a contractor of the Commonwealth of Virginia and he believes that the information he has submitted proves this. Regarding the citation for the expansion of a non-conforming use, the County has said that he has never obtained a significant governmental act allowing the use of the property, as mentioned in *Code of Virginia* §15.2-2307 which states: *"…a landowner can establish a vested right in a land use when they 1) obtain a significant governmental act – such as a permit or site plan approval – allowing the use of the property, 2) relies in good faith on this significant governmental act, and 3) incurs extensive obligations or substantial expenses in reliance on the significant governmental act."* However, he has a number of emails from the County, Department of Environmental Quality and the U.S. Army Corps of Engineers confirming that what was being done on his property prior to the adoption of Ordinance "D" was a legal use.

In conclusion, he emphasized that what is taking place on his property is a God-given right and he should be able to enjoy it without the interference of local government. He respectfully requested that the November 19, 2018 Notice of Zoning Violation and Corrective Order be overturned.

QUESTIONS FROM THE BOARD

Mr. Tissue stated that a grading plan is usually prepared for a project of this magnitude. He asked what the end result will be and how much dirt the Appellant feels is need to accomplish his goal.

Mr. Hawkins stated that he has not done a cross section or calibration to see how many cubic yards is needed. But, according to the topography sheet he has provided, the ravine he would like to fill is approximately 30 feet deep. Mr. Hawkins pointed to another portion of his property has been transformed into a rolling, gentle green pasture that can be maintained with a mower and also allows his family to safely ride their four wheelers. It is also his intent to increase the amount of livestock on his property.

CLOSED MEETING:

On motion made by Mr. Tufts and seconded by Mrs. Cooper, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711.A, to discuss legal matters referring to Appeal #AZAD-18-010455, Jude J. Covas & Kathleen M. Flaherty, Trustees of the Raymond C. Hawkins Children's Trust II/FBO Michael Shawn Hawkins (Owner/Applicant) – Hawkins' Farm.

The motion carried unanimously, as follows:

AYES: Mr. Meadows, Mr. Tufts, Mr. Chipman, Mrs. Cooper, Mr. Tissue

NAYS: None

ABSTENTION: None

ABSENT: None

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

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 seconded by Mrs. Cooper.

The motion carried unanimously, by roll call vote, as follows:

Mr. Meadows: AYE
Mr. Tufts: AYE
Mr. Chipman: AYE
Mrs. Cooper: AYE
Mr. Tissue: AYE

NAYS: None

ABSTENTION: None

ABSENT: None

REBUTTAL – COUNTY

Mr. Meadows inquired if new issues will be raised in the County's rebuttal.

Ms. Jenkins stated that she would not be raising any new issues, but will only address matters mentioned by the Appellant.

Mr. Meadows stated that since the County will not be raising any new issues, the Appellant will not have an opportunity for rebuttal.

Ms. Jenkins directed attention to Zoning Ordinance Section 5-1816.2, Standards for Disposal of Nonagricultural Fill for Parcels Greater than 10 Acres, which states: *"Special Exception approval shall not be required unless the amount of nonagricultural fill material brought to the parcel(s) exceeds 200 cubic yards within any 24 hour period OR if the amount of fill*

material brought to the parcel(s) exceeds 4,200 cubic yards within a one year period." She noted that the number of parcels is irrelevant and a property owner is not allowed 200 cubic yards per parcel. The subject property is treated as a whole regardless of the number of parcels it contains.

The Appellant has also argued that he is a VDOT contractor and that *Code of Virginia* § 15.2-2288 does not specify what type of service a contractor must provide and that he could install pipe and be afforded the exemption for unlimited amounts of fill. Ms. Jenkins stated that this is not its intent because that Code section clearly references nonagricultural fill. She also emphasized the fact that the Appellant has not submitted contracts or other information, such as Off-Site Tracking Forms, to indicate that the fill being brought to the property is from Commonwealth projects.

In agreement with the Appellant, Ms. Jenkins stated that the importation of nonagricultural fill was not regulated prior to September 13, 2018. However, on this date, the use became non-conforming solely because it now requires Special Exception approval.

QUESTIONS FROM THE BOARD

Mr. Chipman asked if the County would consider a 500 acre farm containing 15 parcels as one property.

Ms. Jenkins responded that it would be considered one property where the owner could count the property as being inclusive. For example, the owner would be allowed to have a barn on one parcel that would be accessory to a home on another.

Mr. Meadows asked if all the parcels would need to have shared property lines.

Ms. Jenkins stated that, according to Zoning Ordinance Article 6, it would only need to be under the same ownership.

Mr. Tissues asked if anyone has applied for a Special Exception for this use since the adoption of Ordinance "D" and what are the requirements to obtain a Special Exception.

Ms. Jenkins stated that, among other things, required setbacks would have to be met and a grading plan provided.

Mr. Meadows inquired if Board members would like to hear any additional information from Mr. Hawkins.

Mr. Chipman stated he would like to allow the Appellant an opportunity to address any seeming discrepancy about separate parcels being considered the same property.

Mr. Hawkins stated that he pays taxes on two separate parcels – one being his residence – and the other being a separate and distinct parcel on its own. He emphasized the fact that he is simply managing his farm.

ACTION

In that there was no further discussion, Mr. Meadows closed the public meeting.

On motion made by Mr. Chipman and seconded by Mr. Tissue, it was moved to postpone action on this item until the next regularly scheduled meeting to allow the Appellant an opportunity to submit all necessary documentation to verify that he is a qualified Virginia Department of Transportation (VDOT) contractor.

After discussion, the motion failed 3 to 2, as follows:

AYES: Mr. Chipman, Mr. Tissue

NAYS: Mr. Meadows, Mr. Tufts, Mrs. Cooper

ABSTENTION: None

ABSENT: None

On motion made by Mrs. Cooper and seconded by Mr. Tufts, after due notice and hearing as required by the Fauquier County Zoning Ordinance and *Code of Virginia*, it was moved to affirm the decision of the Fauquier County Zoning Administrator in Appeal #AZAD-18-010455, finding that the Zoning Administrator was correct in her findings.

The motion passed 4 to 1, as follows:

AYES: Mr. Meadows, Mr. Tufts, Mr. Chipman, Mrs. Cooper

NAYS: Mr. Tissue

ABSTENTION: None

ABSENT: None

VARIANCE #VARI-19-010500 – WARRENTON ENTERPRISES, LLC (OWNER/APPLICANT) – WARRENTON ENTERPRISES – An application for a variance of Zoning Ordinance Section 3-404 to reduce the 75' setback requirement to allow the construction of an industrial structure, PIN 6983-98-1007-000, located at 6406 Old Meetze Road, Cedar Run District, Warrenton, Virginia. (Heather Jenkins, Staff)

Ms. Primeau returned to the dais.

Ms. Jenkins reviewed the staff report.

Mr. Meadows opened the public hearing.

Mr. Daniel Donovan, representative, expressed agreement with the staff report. Mr. Donovan reviewed the applicant's proposal to construct a garage to house his construction business and renovate the older structure for office space. He noted that the applicant did not have a current survey when the property was purchased. Mr. Donovan stated that there is a drainfield currently on the property and the applicant is in the process of working with a Soil Scientist and the Health Department to determine its location.

Mr. Meadows stated that it is possible the drainfield may be located where the applicant is proposing to locate the new building. He clarified that in granting a Variance, the Board must adhere to strict guidelines. For this reason, they ask the applicant to look at all scenarios and the Variance must be the last resort, but, unfortunately, not enough work has been done and more information is needed.

Mr. John Kehoe, speaking on behalf of several neighbors, stated that while they are not necessarily opposed to the construction of an industrial building, there are concerns about screening, and maintenance of the road and fence line. Mr. Kehoe provided photos of the area.

Ms. Denise Haugsdahl, a neighbor, expressed concern about screening as well as the safety of bikers, runners and walkers in the area. Ms. Haugsdahl provided additional photos.

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

After discussion, on motion made by Mr. Chipman and seconded by Mrs. Cooper, it was moved to postpone action on this item until the next regularly scheduled meeting, with the public hearing closed, to allow the applicant to produce a better solution.

After further discussion, the motion failed unanimously.

Mr. Meadows asked the applicant if he wished to request a postponement.

Mr. Saul Reyes, applicant, responded that he would like to request a postponement until additional information can be provided for the Board's consideration.

On motion made by Mr. Tufts and seconded by Mr. Tissue, it was moved to grant the applicant's request to postpone action on this item, with the public hearing closed, until they are ready to bring it back before the Board.

The motion carried unanimously.

OTHER BUSINESS:

Mr. Meadows stated that the March 7, 2019 Board of Zoning Appeals' meeting will be held in the John Barton Payne Building, 2 Courthouse Square, Warrenton, Virginia.

ADJOURNMENT:

There being no further business, the meeting was adjourned at approximately 3:55 p.m.

_____ _____

John R. Meadows, Chairperson Fran Williams, Secretary

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