MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
JUNE 3, 2021

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, June 3, 2021, 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; Mrs. Mary North Cooper; Mr. Benjamin Tissue, Jr.; and Mr. Lawrence G. McDade.

Also present were Mr. Adam Shellenberger, Chief of Planning/Secretary; Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Mary Catherine Anderson, Deputy County Attorney, who joined the meeting after the Appeal; and Mrs. Meredith Meixner, Planning Associate II.

Staff participating remotely included Ms. Kara Krantz, Planner III; and Ms. Lauren Kopishke, Planner.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mr. Shellenberger 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 Mr. Tissue, it was moved to approve the May 6, 2021 minutes.

The motion carried unanimously.

REGULAR AGENDA:

APPEAL – AZAD-21-015164 – WILDCAT EQUESTRIAN FARM, LLC (OWNER)/JOCELYN L. ALEXANDER (APPELLANT) – WILDCAT EQUESTRIAN FARM, LLC – An appeal of the Zoning Administrator's issuance of a Zoning Permit for the grading of a paved access road to a proposed barn and a dirt trail, PIN 6976-49-8096-000, located on the west side of James Madison Highway (Route 17), Marshall District, The Plains, Virginia. (Amy Rogers, Staff) ***Note: This is a public meeting, not a public hearing.***

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

COUNTY PRESENTATION

Ms. Rogers stated that the matter before the Board for consideration is an appeal of a Zoning Administrator's issuance of a Zoning Permit on April 2, 2021 to allow the grading of a paved access road to a proposed barn and dirt trail. The Board is tasked with reviewing the information provided and determining if the issuance of the permit was in accordance with the applicable Ordinances and regulations.

Ms. Rogers provided the Board with a copy of *Code of Virginia* § 15.2-2309.1 (Powers and Duties of Boards of Zoning Appeals), which states:

"Boards of Zoning Appeals shall have the following powers and duties: To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. ***The determination of the administrative officer shall be presumed to be correct*** *[emphasis added]. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* ***The board shall consider any applicable ordinances, laws, and regulations in making its decision*** *[emphasis added]. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special."*

Ms. Rogers explained that a Zoning Permit for grading allows a property owner to alter the topography and change the land cover from grass/trees (natural state) to dirt, sand, gravel, pavement, or some other surface accessory to the primary use of the property. She noted that the question before the Board is if her decision to issue a Zoning Permit for grading of the property was correct.

On April 2, 2021, a Zoning Permit (ZONE-20-015029) was issued to Wildcat Equestrian Farm, LLC to allow the grading of 3.15 acres of a 111.34-acre property. This permit allowed the grading of a paved access road to a proposed barn as well as the grading of a dirt trail. The

subject property is zoned Rural Agricultural (RA), contains a residence and has livestock, which are permitted uses on the property.

Zoning Ordinance Section 13-301.A allows any person aggrieved by a decision of a Zoning Administrator to file an Appeal with the Board of Zoning Appeals (BZA). On April 29, 2021, Ms. Jocelyn L. Alexander filed an application appealing the issuance of the Zoning Permit. Wildcat Equestrian Farm, LLC and its attorney have provided statements and additional documents in opposition to the appeal, which are attached to the Staff Report.

On October 7, 2020, the Fauquier County Zoning Office received a Land Disturbing Permit ("LDP" or Grading Permit) application to construct a paved access road to a proposed barn and a grassed/dirt trail on the property. The property owner signed the application, certifying the information contained therein was true and correct.

Along with the application, a plan entitled "E&SC and SWM Plan Wildcat Farms, LLC Proposed Paved Access Road, Barn and Dirt Trail" was also provided. The materials were reviewed by County staff for compliance with the applicable Ordinances. It was determined that the application met the criteria for approval and, subsequently, the Zoning Permit and Land Disturbing Permit were issued for the project.

The relevant criteria includes Zoning Ordinance Section 13-501, which states: *"No excavation or grading of a parcel shall be begun before the issuance of a Zoning Permit therefore by the Zoning Administrator."*

Zoning Ordinance Section 13-504.2 requires a Grading Permit in order to issue a Zoning Permit to grade a parcel.

Fauquier County Code Section 11-53 requires a Land Disturbing Permit, which is a Grading Permit, when the site to be graded exceeds one acre. This section applies since the area of the subject property to be graded totaled 3.15 acres.

The property owner submitted an application and all necessary documentation as required by the Zoning Ordinance and County Code to grade the property. Having met the requirements of the Zoning Ordinance and County Code, the Zoning Administrator was, therefore, obligated to issue the Zoning Permit for grading.

The Appellant argues the permit should be overturned based on a speculative future use of the property and an alleged misrepresentation by the property owner. However, this is not something provided for in the Zoning Ordinance. As stated, the permit was issued for land disturbing or grading ***only***. It did not authorize any change of use on the property nor the construction of a proposed barn, which would require a separate Zoning Permit.

Ms. Rogers once again highlighted *Code of Virginia* § 15.2-2309.1, which presumes the determination of the Zoning Administrator to be correct. It also requires the Board to make its determination based on the applicable Ordinances and regulations when rendering its decision.

Ms. Rogers concluded by respectfully requesting that the Board uphold her issuance of the Zoning Permit to allow grading of the Wildcat Equestrian Farm, LLC property.

Mr. Tissue inquired if a bond estimate was submitted for this project.

Ms. Rogers stated that no bond estimate was required since this was for personal use.

Mr. McDade asked if there are any remedies available to the County or Zoning Administrator if what the Appellant alleges does occur.

Ms. Rogers stated that doing work other than what is authorized by the permit would constitute a Zoning violation, which would then be pursued through the Code Enforcement process.

Ms. Rogers then acceded her remaining allotted time to J. Gregory Ashwell, Esq., who is representing the property owner, Wildcat Equestrian Farm, LLC, and Mr. Najaf Husain.

Mr. Ashwell stated that while he appreciates the Appellant's right to voice her objection, the Zoning Permit was issued pursuant to Zoning Ordinance requirements for agricultural purposes only – nothing more and nothing less. The grounds stated by the Appellant are filled with speculation and hearsay. However, the Zoning Permit clearly states that is issued for: *"1. Land disturbing only; no construction authorized; 2. Paved access road for personal and ag[ricultural] use only; 3. Dirt trail for personal and agricultural use only*." He stated that should the applicant deviate from these requirements, which he will not, there are numerous legal remedies, including revocation of the permit, criminal prosecution, civil penalties, etc. Mr. Ashwell further stated that the Zoning Administrator's determination has the presumption of correctness and the Board should not accept mere speculation of intended activities which could possibly occur at some unknown point in the future, as a basis to reverse her findings. In conclusion, Mr. Ashwell respectfully requested that the Board uphold the Zoning Administrator's decision and deny the Appeal.

Mr. McDade noted that the Zoning Permit states the *"paved access road is for personal and agricultural use only."* However, since the word "personal" can have a broad meaning, Mr. McDade asked if this would preclude personal use as a motorized training track.

Mr. Ashwell responded that there is no application pending that would suggest this will be used for anything other than agricultural purposes. As mentioned previously, if it were determined that there was something more taking place, the County has the authority to bring criminal or civil charges, sanctions, and/or injunctions against the property owner.

APPELLANT PRESENTATION

David L. Konick, Esq., representative, stated that the Zoning Administrator is entitled to accept the representations that are made when someone applies for a permit. He emphasized that the Appellant is not finding any fault with what she did in approving this permit. However, the Appellant believes that material facts were either misrepresented or not disclosed at all about the intended use of this roadway for which the permit was granted. In

addition to the Zoning Permit, a Land Disturbing Permit, which has been appealed to the Board of Supervisors, was also issued. Referring to an enlarged drawing of what was submitted, Mr. Konick pointed out that the applicant intends to pave the trail. The applicant has indicated they have cows, goats, sheep and horses on the property. He stated that what is depicted on the drawing looks more like a racetrack than a trail for agricultural use.

Mr. Konick stated that, while the Appellant has only hearsay evidence they have requested that the Board exercise its discretion to compel the attendance of witnesses pursuant to *Code of Virginia* § 15.2-2312, which states *"…The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses."* This provision is included for cases just like this. Mr. Konick stated that, as a former member of the Rappahannock County Board of Zoning Appeals and former Planning Commission Chairman, he understands the Board's duties and what most cases involve. But, this is a very unusual case. Usually there is a proposed use, an application, a plat, a Site Plan and there is no dispute about the facts. Everyone agrees about what the facts are and what the intended purpose is and the Board's job is to sift through all of that and make a determination of whether or not it is an appropriate use for which a permit should be granted. However, with this case, there is obviously a dispute about the facts. The applicant and his counsel are saying that they do not intend to use it for an improper purpose. There are others, including the engineer who drew up the plans, the excavation contractor, the property owner's ex-wife and one of her friends, in addition to his business partner, who are not going to testify unless they are compelled to do so because of their ties to the applicant. Each of these individuals have made statements that they heard Mr. Husain say that it is his intent to build a racetrack on the property.

Mr. Konick went on to say that, as a quasi-judicial body, the Board should exercise its judicial function when there is a dispute in the facts. Part of that is weighing the evidence, determining the credibility of the witnesses and making a decision as to what the facts truly are. Mr. Konick requested that the Board allow him to present witnesses and have them testify under oath, if necessary. He also asked that the applicant, Mr. Husain, be required to testify, under oath, that he does not intend to use the property as a racetrack. His sworn statement would then be on record should the County need to go to court regarding this matter. Mr. Konick stated that both the Appellant, Ms. Jocelyn Alexander, and Mr. Peter Arundel are present and asked if the Board wished to hear from them. He also asked if their testimony would be part of the allowed 20 minutes for rebuttal.

Mr. Meadows stated that the Rules of Procedure allow the Appellant 20 minutes for rebuttal, but he would be willing to give Board members the opportunity to hear from witnesses if they feel it is necessary.

Mr. McDade stated that we are here on an appeal of the Zoning Administrator's action and it is his understanding that her decision is presumed to be correct unless it can be demonstrated that it was either arbitrary or not consistent with the law or the facts. The Zoning Administrator received an application, which was approvable and she acted accordingly. Therefore, the Board is compelled to support the decision of the Zoning Administrator absent any evidence of misrepresentation.

Mr. Konick responded that the Appellant should be given an opportunity to present evidence of misrepresentation. In a case like this, we cannot do that without calling witnesses, having the Board compel the attendance of witnesses and having them testify under oath. Some of the witnesses work for the property owner or they have personal reasons for not wanting to testify. This is a very difficult position for them to come here voluntarily and testify against their neighbor or someone who is a very wealthy and influential man.

Mr. Konick went on to say that while the Zoning Administrator is presumed to be correct, in order to rebut that presumption, you have to have some facts. The application states it is for agricultural and personal use. But, what are those uses and how are they consistent with the yellow tracks on the drawing? What does that yellow loop provide access to or from? Coincidentally enough, there is an area called, not a "horse paddock," but a "paddock." A "paddock" is a racing term for the infield of a racetrack where the cars are repaired and new tires are put on. In addition, the drawings submitted show underground fuel tanks within the paddock. What is this for – to fuel up the sheep? You do not check your common sense at the door when you come into one of these meetings. If it walks like a duck, it quacks like a duck, and looks like a duck, it is a duck and this looks like a racetrack to anyone who looks at it. It does not look like an access road from the barn out to the pasture.

Mr. McDade remarked that the applicant is bound by what he put in his application. While it may look like a racetrack according to the neighbor's speculation, the County would have significant remedies to prevent it from being used as such.

Mr. Konick stressed that, with all due respect, the best remedy would be to examine the evidence, listen to all the statements from witnesses, and have their testimony entered into the record. This would allow the Board to determine if a material misrepresentation or a failure to disclose information was made and resolve it now. Otherwise, it is like saying "Well we have a fire department, so if you want to play with matches and you set your house on fire, they will come put it out." While it is theoretically true that the Zoning Administrator and County can enforce an injunction, doing so would place a huge burden on County staff, the neighbors and the Appellant. The Zoning Ordinance was enacted to serve as a protection against having something like this happening.

Mr. McDade asked if the Appellant had the opportunity to weigh in on this application prior to its approval by the Zoning Administrator.

Mr. Konick stated that the Appellant had no knowledge of what was being requested until the equipment started coming to the property approximately 10 – 12 days after the permit was issued. Mr. Konick reiterated that he feels it is a denial of the Appellant's due process right if the Board is not going to listen to all of their evidence and hear from all of their witnesses so as to make a fully informed decision. He asked that if the Board is not going to hear from their witnesses, to at least make a very clear statement that should this become a racetrack in the future, there will be serious consequences. This will ensure that it is on the record should this matter come before the Board at a later time and there are different members.

Mr. McDade asked if he is correctly interpreting the representative's argument to be, not that the Zoning Administrator's action was inappropriate, but that she acted on the facts she had at the time. However, there was no procedure in place for his client to have any input into that

decision or to make any kind of a factual presentation that there were material misrepresentations in the application.

Mr. Konick agreed with this statement and noted that his client had no notice that the permit had been applied for or that it was under consideration. He again reiterated that his client is not saying that the Zoning Administrator did anything improper or wrong in relying on the information that she had. What we are saying is that the information she had was either incorrect or incomplete and if she had all the correct information and had known what the intention was, she may have made a different decision.

Mr. McDade asked if the witnesses are present.

Mr. Konick responded that some are present, but the rest would need to be subpoenaed.

Mr. Meadows inquired if the Board would like to hear from witnesses. The Board voted, 4 to 1, not to hear from witnesses, as follows:

AYES: Mr. McDade

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

ABSTENTION: None

ABSENT: None

Mr. Konick requested to have his exception to the Board's denial of calling witnesses noted in the record.

REBUTTAL – COUNTY

Ms. Rogers stated that, according to Zoning Ordinance Sections 13-501 and 13-504.2, a Grading Permit must be issued prior to a Zoning Permit in order for excavation or grading to take place.

Mr. Tissue asked if public input is necessary on this type of personal construction.

Ms. Rogers responded that public input is not required for personal construction on a parcel.

REBUTTAL – APPELLANT

None.

BOARD ACTION

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

On motion made by Mr. McDade and seconded by Mr. Tufts, it was moved to affirm the decision of the Zoning Administrator, after due notice and hearing as required by the Fauquier County Zoning Ordinance and *Code of Virginia*, in Appeal #AZAD-21-015164, finding that:

- No evidence, beyond mere speculation, has been presented to demonstrate that any material misrepresentation was made in the application and, accordingly, the Appellant has not been able to meet its burden of showing that the Zoning Administrator's decision was arbitrary or not supported by the applicable law and facts.

The motion carried unanimously.

Ms. Anderson joined the meeting.

SPECIAL PERMIT – SPPT-21-015093 – BRANDT & MARTHA WILLIAMSON (OWNERS/APPLICANTS) – STONEY COBBLER HILL – An application for a Category 3 Special Permit to allow a tourist home, PIN 6041-21-4394-000, located at 10551 Cobbler Valley Lane, Marshall District, Delaplane, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the staff report.

Mr. Meadows opened the public hearing.

Ms. Martha Williamson, applicant, participating via phone, expressed agreement with the staff report and reviewed the proposal.

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 Zoning Ordinance, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties or 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.

7. The type and amount of traffic generated by the use is such that it will not cause an undue impact on neighbors or adversely affect the safety of road usage.

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 use 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 Tourist Home shall be limited to the existing house and the maximum occupancy shall not exceed six (6) guests. No additional guests or events are permitted on the property.

3. The property shall only be rented to one (1) party at a time. Single room rentals and occupancy by multiple parties simultaneously shall not be permitted.

4. One of the property owners shall reside on the property at any time the Tourist Home is open to guests, or a caretaker shall reside and generally be present on a nearby property, within two (2) miles of the subject property, at any time the Tourist Home is open to guests.

5. No on-site food service shall be provided.

6. Signage related to the use shall be limited to a maximum of six (6) square feet. Illumination of signage shall be prohibited and all appropriate permits shall be obtained.

7. All applicable Virginia Department of Health, Virginia Department of Transportation, Fauquier County Building and Zoning Permits shall be obtained prior to commencement of the use.

8. The parking areas shall be located out of the required yards and be effectively screened from view.

9. A Site Plan shall be required prior to establishment of the use.

The motion carried unanimously.

SPECIAL PERMIT – SPPT-21-015156 – OPAL OIL, INC. (OWNER)/ANGELA JRAB (APPLICANT) – A & M PUPPIES, LLC d/b/a THE PUPPY SHOP – An application for a Category 13 Special Permit to allow the continued operation of a kennel offering pet sales in a Commercial District, PIN 7906-83-4511-000, located at 5021-A Lee Highway, Scott District, Warrenton, Virginia. (Lauren Kopishke, Staff)

Ms. Kopishke reviewed the staff report.

Mr. Meadows expressed appreciation for the large volume of letters and e-mails received. In addition, he noted that all members of the Board are animal lovers and have pets. However, he explained that the Board of Zoning Appeals has the responsibility to consider land use issues only. He noted that if there are additional concerns, these will be addressed by other agencies. Thereafter, Mr. Meadows opened the public hearing.

Ms. Angela Jrab, applicant, expressed agreement with the staff report and reviewed the proposal. Ms. Jrab stated that she signed the lease for the space in March of 2020 and applied for the Special Permit. However, approval was not received until August 6, 2020 due to numerous postponements because of the COVID-19 pandemic. In the meantime, during April and May 2020, we started removing damaged drywall and old sinks in preparation for our build-out. She emphasized that it was not as if they started construction as soon as they received the approval.

Mr. Meadows stated that this was, however, prior to getting a Building Permit. Ms. Jrab agreed that it was done prior to receiving a Building Permit.

Ms. Jrab stated that, after placing several banner signs on the property and at other locations, she was asked to remove them by the Zoning Office because they are not allowed. She informed the Zoning Inspector that numerous other businesses in the area have these types of signs. The Zoning Inspector told her that his office investigates signs when a complaint is received. Thereafter, she made a complaint directly to the Zoning Inspector about approximately 28 signs in the area. However, she expressed concern that while she has been cited for violations, nothing has been done about the other signage.

Ms. Jrab stated that she received a phone call from Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services, stating that there were 31 puppies on-site, but the Special Permit approval limited the number to 24 puppies intended for sale. While there were 31 puppies in the shop, the additional puppies were in quarantine and were not for sale at the time. She explained that when the puppies are received, they are quarantined for approximately 7 – 10 days and that only 23 or 24 were actually for sale. However, in order to comply, the additional puppies were removed that day.

Mr. Meadows emphasized the fact that the additional puppies were on-site. Ms. Jrab acknowledged that they were indeed on-site, but not for sale.

Ms. Jrab explained that she has abided by all of the Animal Control Officer's requirements. A log is kept on-site at all times showing that each of her breeders are United States Department of Agriculture (USDA) approved. It also contains inspection reports, covering a two year period, which have been reviewed by Animal Control.

In addition, a USDA veterinarian inspects each puppy and an up-to-date log, which contains information on Health Certificates, where the puppies are from, inspection reports, a list of vaccinations, disposition of the puppies, microchip numbers and other vital information, is also kept on-site.

Ms. Jrab explained that she is requesting a three year renewal period, but has withdrawn her request to use the on-site dumpsters for animal waste.

Mr. McDade asked if the applicant was told, not that she could not have signage, but that an application needed to be submitted to allow them.

Ms. Jrab responded that she was advised that, while banner signs are not allowed, she is allowed the one sign, which is affixed to the building. In addition, the Zoning Office recently told her they would entertain us putting up a sign along with the barber shop and the coin shop because we are considered a strip mall.

Ms. Rogers clarified that the Zoning Ordinance does not permit banner signs; therefore, she could not apply for one. She also stated that there is currently a freestanding sign along Route 29 that Zoning would consider having the applicant add to in order to advertise her business.

Mr. Tissue asked how often Animal Control comes to the shop to make inspections.

Ms. Jrab responded that they have no set schedule and can come at any time, with or without a complaint.

Ms. Devon Settle, Executive Director of the Fauquier SPCA, spoke in opposition to approval. Ms. Settle explained that in order to properly quarantine puppies, they should be in an isolated area with only one person, who would be suited up at all times, assigned to be with them. The Puppy Shop does not contain an area where this can be done; therefore, quarantining does not explain why there were 3l puppies in the shop. The dealer's permit from Animal Control allows for annual inspections unless there has been a complaint. Ms. Settle further stated that she does not believe the applicant intends to follow the rules since the shop has only been open for a few months and there have already been several citations for violations.

Ms. Polly Gault, with the Middleburg Humane Foundation, spoke in opposition to approval stating that it took years for her organization to get approval for their new facility. She stated that her facility, which is located on a 23-acre site rather than a store front in a strip mall, is only allowed to provide care for on an annual daily average of 30 dogs. Ms. Gault stated that the County should have the same requirements for everyone. Ms. Gault explained that they have a totally separate area for dogs in quarantine and these also go toward her animal count. Ms. Gault urged the Board to deny the applicant's request.

Ms. Angie Roeder, Executive Director of the Washington Area Animal Adoption Group (WAAAG), spoke in opposition to approval, stating that she agrees with the two previous speakers. She noted that all new animals coming to her facility are quarantined for a two week period in their own separate space. Ms. Roeder also said that even though her facility has records on the animals coming in, they are also taken to a local veterinarian for an examination.

Ms. Caitlyn McIntosh, who recently moved to the County, stated that trust has been eroded with this business, both in Culpeper and Fauquier Counties. Ms. McIntosh expressed dismay that the applicant has so quickly disregarded Zoning regulations. She asked the Board to deny the applicant's request since she had explanations for all of the violations, but did not deny any of them.

Mr. Jared Nieters stated that there is no reason to believe the applicant will abide by the conditions of her approval in the future since she has already demonstrated she does not intend to or is unable to do so. Mr. Nieters strongly urged the Board to deny this request to avoid continuing to expend the County's limited resources on monitoring and enforcing the conditions of approval. He also expressed concern that facilities like this put an undue burden on our shelters and rescue facilities, which are already overwhelmed.

Mr. Jeff Hazel, who previously worked with the Middleburg Humane Foundation, acknowledged their good work and expressed agreement with the previous comments.

Ms. Lisa Dowd, participating via phone, spoke in opposition to granting approval. Ms. Dowd voiced her concern about the applicant's multiple prior violations, which are a slap in the face to the wonderful job done by the SPCA and Animal Control. She stated that this property, along a busy highway, is not an appropriate site for these animals since they are confined inside with no outdoor play time and then left alone for hours when the store is closed. Ms. Dowd urged the Board to deny the application.

Ms. Taryn Meeks, participating via phone, urged the Board to consider where the puppies come from and the conditions in which they are kept. She stated that when she went to the shop several months ago, all the breeders listed were from a small town in Ohio, which suggests a puppy mill. Ms. Meeks asked that the Board deny the application.

Ms. Morgan Miller, representing the Virginia Chapter of Bailing Out Benji, spoke via phone. Her organization is a non-profit working to end puppy mills through public education and advocacy. Ms. Miller urged the Board to deny the applicant's request because of her numerous Zoning violations. The applicant has continued to ignore the approved Special Permit conditions and has sought to find loopholes in the approval language. Ms. Miller strongly urged the Board to deny the applicant's request.

Ms. Molly Armus, Virginia State Director of The Humane Society of the United States, participating via phone, spoke in opposition to approval. Ms. Armus stated that, in addition to the previous speakers' comments, she is also concerned that the store is open from 11:00 a.m. until 6:00 p.m., seven days per week, which could mean that young, fragile puppies may be unattended for many hours as well as overnight. Puppies as young as 8 weeks require a lot of care, and can quickly develop disorders such as hypoglycemia if left unmonitored. Young puppies from puppy mills often get sick quickly, and if not immediately brought to a veterinarian, their illness can escalate and spread to other animals, especially when puppies are sharing cages and are exposed to one another's waste. Ms. Armus asked the Board to deny this request.

CLOSED SESSION

On motion made by Mr. Tufts and seconded by Mr. McDade, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711.A. (7 and/or 8), for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to Special Permit #SPPT-21-015156.

The motion carried 5 – 0, as follows:

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

NAYS: None

ABSTENTION: None

ABSENT: None

Upon reconvening from the closed meeting, Mr. Tufts 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 seconded by Mrs. Cooper.

The motion carried 5 – 0, as follows:

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

NAYS: None

ABSTENTION: None

ABSENT: None

In that there was no further comment, Mr. Meadows closed the public hearing.

BOARD ACTION

On motion made by Mr. Tufts and seconded by Mrs. Cooper, 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 Zoning Ordinance, 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 or will impair the value of nearby land.

3. The Applicant failed to observe and abide by all requirements of the Fauquier County Zoning Ordinance and Building Code with respect to this use and with respect to the conditions imposed by this Board on the Special Permit approved for this use on August 6, 2020, as was demonstrated by the Stop Work Order and Notices of Zoning Violations related to this use and issued to the Applicant since August 13, 2020. Those Special Permit conditions were necessary to alleviate the impacts of this use and make it compatible with the use and development of neighboring properties. Upon review of Applicant's current application and after conducting the public hearing, this Board finds that conditions are necessary to alleviate the impacts of this use currently sought by Applicant. However, the Applicant's history of noncompliance with applicable ordinances and the conditions of the previously approved Special Permit demonstrates that she is unlikely to comply with conditions imposed by this Board upon the current Special Permit she is seeking. Absent strict compliance with those necessary conditions, this use is incompatible with the use and development of neighboring properties.

4. Adequate facilities are **not** provided to serve the proposed use.

5. The Applicant has made clear by her repeated violations of the Zoning Ordinance by erecting signs on and off-site to draw customers to her business that this location is inadequate for the proposed use.

The motion carried unanimously.

OTHER BUSINESS:

- Mr. Meadows stated that, with Mrs. Williams working remotely, it has become necessary to appoint a new Secretary.

  On motion made by Mr. Tufts and seconded by Mr. Tissue, it was moved to appoint Mr. Shellenberger as Secretary.

  The motion carried unanimously.

- Mrs. Anderson stated that additional revisions are necessary for the Rules of Procedure Regarding Appeals. She will continue working on these and will have them ready for the Board's consideration at next month's meeting.

ADJOURNMENT:

There being no further business, the meeting was adjourned at approximately 4:25 p.m.

_____ _____

John R. Meadows, Chairperson Adam Shellenberger, 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.