

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
NOVEMBER 4, 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, November 4, 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; Mr. Dell Ennis; Mr. Benjamin Tissue, Jr.; and Mr. Lawrence G. McDade.

Also present were Mr. Adam Shellenberger, Chief of Planning/Secretary; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Ms. Mary Catherine Anderson, Deputy County Attorney; and Mrs. Fran Williams, Administrative Manager. Staff participating remotely included Ms. Kara Krantz, Planner III and Ms. Rebecca Acland, 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 and letters of notification sent to adjoining property owners. The Tanner Dog Daycare project was properly posted. However, the completed Posting Affidavit for the Virginia Equine Rehabilitation and Performance Center was not submitted within the three day timeframe as required by Zoning Ordinance Section 13-111.3.A. Mr. Shellenberger suggested that the Board proceed with the public hearing, but postpone action until the next regularly scheduled meeting.

MINUTES:

On motion made by Mr. Tufts and seconded by Mr. Tissue, it was moved to approve the October 7, 2021 minutes, with one minor revision.

The motion unanimously.

REGULAR AGENDA:

SPECIAL PERMIT – SPPT-21-016125 – ARON LEE TANNER (OWNER)/ARON LEE & KATHERINE JO ANNE TANNER (APPLICANTS) – TANNER DOG DAYCARE AND KENNEL – An application for a Category 13 Special Permit to allow a minor kennel offering boarding, training and grooming. The property is located at 12330 Crest Hill Road, Marshall District, Hume, Virginia. (PIN 6926-02-7176-000) (Kara Krantz, Staff)

Ms. Krantz reviewed the staff report.

After discussion, Mr. Meadows opened the public hearing.

Mr. Aron Tanner, applicant, 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. McDade 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 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.

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 kennel shall be limited to a maximum of ten (10) dogs for boarding, including both day and overnight, and/or basic obedience training; no commercial breeding shall take place on the property. Additionally, there shall be no more than five (5) dogs boarded overnight at any one time.
3. An owner or employee shall be on the property at any time the Minor Kennel is operating.
4. All customer visits, including client drop-offs and pick-ups to the subject property, shall be limited to the hours between 7:00 a.m. and 7:00 p.m. daily and shall be by appointment only. When arriving and departing, all dogs shall be leashed or kept in carriers.
5. All animals shall be confined to a structure or within a fenced area.
6. Use of the outdoor play areas shall be limited to between the hours of 7:00 a.m. and 8:00 p.m. Supervision shall be provided at all times that these areas are in use.
7. Animal waste shall be collected daily and transported, at least weekly, from the site for deposit in an authorized facility.
8. No on-site burial of dogs shall be allowed, except for personal pets.
9. All applicable zoning, building, land disturbance and health permits shall be obtained prior to establishment of the use.
10. A Site Plan shall be required for the use.

The motion carried unanimously.

SPECIAL PERMIT – SPPT-21-016194 – JOHN W. & SHANNON L. CHIERICHELLA (OWNERS)/STEPHANIE DAVIS (APPLICANT) – VIRGINIA EQUINE REHABILITATION AND PERFORMANCE CENTER – An application for a Category 13 Special Permit to allow an equine veterinary clinic. The property is located at 8520 Cannonball Gate Road, Marshall District, Warrenton, Virginia. (PIN 6965-34-7554-000) (Rebecca Acland, Staff)

Mr. Shellenberger reminded the Board that the required Posting Affidavit for this project was not submitted within the timeframe required by the Zoning Ordinance.

Ms. Acland reviewed the staff report.

After discussion, Mr. Meadows opened the public hearing.

Dr. Stephanie Davis, applicant participating remotely via phone, expressed agreement with the staff report. She explained that there will be no changes to the existing structure and no horse shows will take place on the property.

Mr. John Chierichella, owner, clarified that individuals coming to the veterinary clinic will be able to use the restroom facilities which are located in a separate building on the property until the issues with the one within the barn are resolved.

Mr. Christopher Frost, adjacent property owner, spoke in opposition to granting approval of the request. He stated that the property is located in a residential area with covenants which strictly prohibit this type of commercial activity. Mr. Frost expressed concern about large amounts of waste near his property as well as the impact of additional traffic and large vehicles traveling on such narrow roads.

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

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

The motion carried unanimously.

OTHER BUSINESS:

Ms. Anderson reviewed the proposed revisions to the Rules of Procedure Regarding Appeals.

On motion made by Mr. Tufts and seconded by Mr. Tissue, it was moved to adopt the following revised Rules of Procedure Regarding Appeals:

FAUQUIER COUNTY BOARD OF ZONING APPEALS' **RULES OF PROCEDURE REGARDING APPEALS**

Adopted April 4, 2013

Revised May 2, 2013

Revised August 6, 2015

Revised November 4, 2021

The following procedural rules govern appeals before the Fauquier County Board of Zoning Appeals ("BZA"). Said rules are intended to promote the orderly, timely, and fair presentation of appeals to the BZA. The BZA may deviate from, modify and/or waive any of these rules in its sole discretion, including but not limited to, allowing for receipt of written materials, witness testimony, and/or argument from parties other than the appellant and Zoning Administrator when the BZA determines in its sole discretion that such appeal warrants that allowance.

A. Definitions:

Appellant: Any person aggrieved or any officer, department, board, commission, or authority of the County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Fauquier County Zoning Ordinance

Appeal: Action taken to contest a decision of the Zoning Administrator or to contest any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Fauquier County Zoning Ordinance

B. Appellant to receive copy of Rules:

County staff shall provide the appellant a copy of the BZA's rules of procedure regarding appeals upon appellant's request or no later than at the time appellant files their land development application noting their appeal. All appeals shall include as an Addendum, a statement by the appellants acknowledging receipt of these rules of procedure.

C. Submission requirements of written materials:

- (1) The appellant shall file a land development application noting their appeal and application fee, along with a detailed statement of justification detailing the grounds for the appeal including copies of all exhibits, in accordance with the relevant provisions of the Code of Virginia and the Fauquier County Zoning Ordinance with the Secretary of the BZA and the Zoning Administrator in Fauquier County's Office of Community Development located at 29 Ashby Street, Third Floor, Warrenton, Virginia 20186.
- (2) The Zoning Administrator shall file their original written response to the appeal with a complete copy of all exhibits with the Secretary of the BZA within fourteen (14) business days of the date appellant filed their appeal. The Zoning Administrator shall also transmit by hand delivery, facsimile, or email a complete copy of their response to the appeal, including a complete copy of all exhibits, to the appellant by 4:30 p.m. the same day they file their response with the Secretary of the BZA.
- (3) The appellant may, but is not required to, file a written reply to the Zoning Administrator's submission with the Secretary of the BZA. If appellant elects to file a written reply, it shall be filed within five (5) business days of the date the Zoning Administrator filed their response to the appeal. The appellant shall also transmit by hand delivery, facsimile, or email a complete copy of their response to the appeal, including a complete copy of all exhibits, to the Zoning Administrator by 4:30 p.m. the same day the appellant files their response with the Secretary of the BZA.
- (4) If appellant raises new or different arguments in their written reply to the Zoning Administrator's submission, the Zoning Administrator may, but is not required, to file a reply with the Secretary of the BZA. If the Zoning Administrator elects to file a reply, it shall be filed within three (3) business days of the date appellant filed their reply. The Zoning Administrator shall file their written reply including copies of all exhibits with the Secretary of the BZA. The Zoning Administrator shall also transmit by hand delivery, facsimile, or email a complete copy of their reply, including copies of all exhibits, to the appellant by 4:30 p.m. the same day the Zoning Administrator files their reply with the Secretary of the BZA.

- (5) There is no page limit for written submissions.
- (6) Untimely submission of written materials including exhibits may preclude or hinder the BZA's consideration of them but shall not be grounds for delay of consideration except at the discretion of the BZA.

D. Scheduling appeals:

Appeals shall be placed on the BZA's next agenda for which they can be properly advertised in accordance with the legal notice requirements of the Code of Virginia and the Fauquier County Zoning Ordinance. However, there may be instances in which an appellant must file an appeal to preserve their rights but appellant and the Zoning Administrator are actively pursuing a resolution to the issue which resulted in the appeal. In those instances, appellant and the Zoning Administrator may consent in writing to postpone the submission of written materials and scheduling of the appeal to be heard by the BZA in accordance with the limitations provided in Paragraph D. Upon such written agreement by the parties, the Zoning Administrator shall notify the BZA of the filing of the appeal by putting an announcement in "Other Business" on the BZA's agenda for its next regularly scheduled meeting.

The parties shall have until the BZA's second regularly scheduled meeting following the filing of the application to reach a complete resolution of the issue which resulted in appeal. If a complete resolution is not achieved by that date, then County staff shall schedule the appeal to be heard on the BZA's next agenda for which it can be properly advertised in accordance with the legal notice requirements of the Code of Virginia and the Fauquier County Zoning Ordinance. The following filing deadlines apply to written submissions for those appeals:

- (1) The Zoning Administrator shall file their original written response to the appeal with a complete copy of all exhibits with the Secretary of the BZA within fourteen (14) business days of the second regularly scheduled meeting following the filing of the application. The Zoning Administrator shall also transmit by hand delivery, facsimile, or email a complete copy of their response to the appeal, including a complete copy of all exhibits, to the appellant by 4:30 p.m. the same day they file their response with the Secretary of the BZA.
- (2) The appellant may, but is not required to, file a written reply to the Zoning Administrator's submission with the Secretary of the BZA. If appellant elects to file a written reply, it shall be filed within five (5) business days of the date the Zoning Administrator filed their response to the appeal. The appellant shall also transmit by hand delivery, facsimile, or email a complete copy of their response to the appeal, including a complete copy of all exhibits, to the Zoning Administrator by 4:30 p.m. the same day the appellant files their response with the Secretary of the BZA.
- (3) If appellant raises new or different arguments in their written reply to the Zoning Administrator's submission, the Zoning Administrator may, but is not required, to file a reply with the Secretary of the BZA. If the Zoning Administrator elects to file a reply, it shall be filed within three (3) business days of the date appellant filed their reply. The Zoning Administrator shall file their written reply including copies of all exhibits with the Secretary of the BZA. The Zoning Administrator shall also transmit

by hand delivery, facsimile, or email a complete copy of their reply, including copies of all exhibits, to the appellant by 4:30 p.m. the same day the Zoning Administrator files their reply with the Secretary of the BZA.

E. Witnesses:

- (1) The parties shall file with the Secretary of the BZA a written list of witnesses they intend to call, if any, during their oral presentation to the BZA by 4:30 p.m. three (3) business days prior to the public meeting when the appeal will be heard.
- (2) A copy of the witness list shall also be provided to the opposing party by 4:30 p.m. the same day it is filed with the Secretary of the BZA.
- (3) In addition to identifying the witness by name, the party seeking to call a witness shall briefly summarize in writing the anticipated testimony each witness will provide.
- (4) Failure to identify witnesses in writing completely and timely and provide a copy of the list of witnesses to the opposing party timely is grounds for the BZA in its sole discretion to exclude that testimony.
- (5) The Chair, or in the Chair's absence, the Acting Chair, may administer oaths and compel the attendance of witnesses.¹
- (6) If a party desires that the Chair compel the attendance of witnesses, that party shall appear at the public meeting and make their request there so that the BZA is afforded an opportunity to inquire as to why witnesses are necessary or appropriate.
- (7) A decision regarding whether the attendance of witnesses will be compelled shall be made by the BZA at the public meeting at which the appeal is scheduled to be considered. The parties should be prepared to present their arguments at the public meeting for which the matter is scheduled irrespective of the Chair's decision to compel witnesses. If the Chair decides to exercise their discretion to compel witnesses, the BZA will proceed with hearing the parties' presentations and will only defer the matter for the limited purpose of hearing the testimony of those witnesses whose attendance is compelled and any necessary rebuttal thereto.

F. Oral presentation at the public meeting:

- (1) Order of oral presentation:
 - a. Zoning Administrator shall explain the basis for their determination; such determination is presumed to be correct.
 - b. Appellant or the appellant's representative has the burden to rebut the presumption of the determination's correctness by a preponderance of the evidence.
 - c. Zoning Administrator shall have the opportunity to rebut the issues presented by Appellant.

¹ See, *Code of Virginia* § 15.2-2312.

- d. Appellant may only reply to Zoning Administrator's rebuttal if the Zoning Administrator raises new issues during their rebuttal.
- (2) Appellant and Zoning Administrator shall each have a total of thirty (30) minutes for the presentation of their arguments. Witness testimony, if any, shall be presented within that time allotment. The parties may allocate the time for their presentations at their discretion.
- (3) The Chair is responsible for monitoring the parties' use of their allocated time. However, the time allotments set forth regarding presentation of appeals at the public meeting may be modified at the discretion of the BZA.
- (4) Appeals will be heard in the order in which they appear on the agenda unless a majority of the membership of the BZA votes to modify the agenda.
- (5) If appellant or Zoning Administrator presents an exhibit at the public meeting which was not submitted with their written submission, then a copy shall be provided to the opposing party and submitted to the Secretary for the BZA at the public meeting. A copy shall be included in the BZA's official record relating to the appeal. Untimely submission of exhibits may preclude or hinder the BZA's consideration of them but shall not be grounds for delay of consideration except at the discretion of the BZA.

G. Requests for deferral:

- (1) A request for a deferral of an appeal shall be in writing, shall be addressed to the BZA, and delivered to the Secretary of the BZA. The party requesting the deferral shall transmit a copy of the request for a deferral to the opposing party or their representative by hand delivery, facsimile, or email so that the opposing party receives their copy by 4:30 p.m. the same day the request for deferral is delivered to the Secretary of the BZA.
- (2) A request shall include the reason(s) why deferral is necessary.
- (3) The party requesting deferral shall have three minutes of oral argument to address why a deferral is necessary and shall present their argument first.
- (4) The party opposing deferral shall have three minutes of oral argument to reply to the request for a deferral.
- (5) A decision regarding a deferral shall be made by the BZA at the public meeting at which the appeal is scheduled to be considered.
- (6) The parties shall be prepared to proceed with argument of the appeal in the event the request for deferral is denied.

H. Ex parte communications²

- (1) The non-legal staff of the governing body may have ex parte communications with a member of the BZA prior to the hearing regarding the appeal but may not discuss the facts or law relative to a particular appeal.
- (2) The applicant, landowner or his agent or attorney may have ex parte communications with a member of the BZA prior to the hearing regarding the appeal but may not discuss the facts or law relative to a particular appeal.
- (3) If any ex parte discussion of facts or law in fact relative to an appeal occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication.
- (4) For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

² See, *Code of Virginia* § 15.2-2308.1.

The motion carried unanimously.

ADJOURNMENT:

There being no further business, the meeting was adjourned at approximately 2:45 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.