

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
SEPTEMBER 5, 2013**

*Work Session
1:00 p.m.
Second Floor Conference Room, Warren Green Building
10 Hotel Street, Warrenton, Virginia*

The Fauquier County Board of Zoning Appeals held a work session on Thursday, September 5, 2013, beginning at 1:00 p.m. in the Warren Green Building, Second Floor Conference Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Michael Brown, Vice-Chairperson; Mrs. Mary North Cooper; and Mr. Harry Russell. Also present were Ms. Holly Meade, Assistant Chief of Planning/Secretary; Mr. Chuck Floyd, Assistant Chief of Zoning/Development Services; Ms. Mary Catherine Sheridan, Assistant County Attorney; Ms. Marianne Primeau, Senior Assistant County Attorney; Mr. Don Del Rosso, Planner II; Mr. Adam Shellenberger, Senior Planner/Urban Designer; Mr. Rob Walton, Senior Planner; and Mrs. Fran Williams, Administrative Manager. Member absent was Mr. Maximilian Tufts, Jr.

AGENDA REVIEW:

SPECIAL PERMIT #SPPT14-CR-002, RICHARD P. & BETSY A. ALLDREDGE (OWNERS/APPLICANTS) – LOVVBUGG FOR DOLLS, INC.

Applicant is requesting special permit approval to allow a major home occupation for the Internet and mail order sales of doll clothing and accessories, PIN 7829-07-4092-000, located at 3570 Cattle Lands Drive, Cedar Run District, Catlett, Virginia. (Don Del Rosso, Staff)

Mr. Del Rosso reviewed the application.

SPECIAL PERMIT #SPPT14-SC-003, BERNARD W. & ANNA RAPP HOSTROP (OWNERS)/BERNARD W. HOSTROP (APPLICANT) – GBH GUNSMITHING, LLC

Applicant is requesting special permit approval to allow a major home occupation for gunsmithing, accessory sales of firearms, and classroom firearms safety education, PIN 6995-72-1941-000, located at 7207 Mill Run Drive, Scott District, Warrenton, Virginia. (Don Del Rosso, Staff)

Mr. Del Rosso reviewed the application.

SPECIAL PERMIT #SPPT14-CT-004, UMLVINHO INVESTMENTS, LLC (OWNER)/BRIAN C. SMITH (APPLICANT) – MOUNTAIN RIDGE CHURCH

Applicant is requesting special permit approval to allow a place of worship in an existing structure, PIN 6984-99-6795-000, located at 7373 Comfort Inn Drive, Center District, Warrenton, Virginia. (Adam Shellenberger, Staff)

Mr. Shellenberger reviewed the application.

OTHER BUSINESS

Mr. Walton reviewed a memo, a copy of which is attached to and made a part of these official minutes, dated September 5, 2013 regarding On-Site Composting in Relation to Kennels.

The meeting was adjourned at 1:45 p.m.

Regularly Scheduled Meeting

2:00 p.m.

Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, September 5, 2013, beginning at 2:00 p.m. in the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Michael Brown, Vice-Chairperson; Mrs. Mary North Cooper; and Mr. Harry Russell. Also present were Ms. Holly Meade, Assistant Chief of Planning/Secretary; Mr. Chuck Floyd, Assistant Chief of Zoning/Development Services; Ms. Mary Catherine Sheridan, Assistant County Attorney; Ms. Marianne Primeau, Senior Assistant County Attorney; Mr. Don Del Rosso, Planner II; Mr. Adam Shellenberger, Senior Planner/Urban Designer; Mr. Rob Walton, Senior Planner; and Mrs. Fran Williams, Administrative Manager. Member absent was Mr. Maximilian Tufts, Jr.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mrs. Williams read the public hearing protocol. Ms. Meade stated that, to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing have been properly advertised, posted, and letters of notification sent to adjoining property owners.

MINUTES:

On motion made by Mr. Brown and seconded by Mrs. Cooper, it was moved to approve the August 1, 2013 minutes, as amended.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Brown, Mrs. Cooper

NAYS: None

ABSTENTION: None

ABSENT: Mr. Tufts

REGULAR AGENDA:

SPECIAL PERMIT #SPPT14-CR-002, RICHARD P. & BETSY A. ALLDREDGE (OWNERS/APPLICANTS) – LOVVBUGG FOR DOLLS, INC.

Applicant is requesting special permit approval to allow a major home occupation for the Internet and mail order sales of doll clothing and accessories, PIN 7829-07-4092-000, located at 3570 Cattle Lands Drive, Cedar Run District, Catlett, Virginia. (Don Del Rosso, Staff)

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

Mr. Meadows opened the public hearing.

Ms. Betsy Alldredge, applicant, expressed agreement with the staff report.

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

On motion made by Mr. Russell and seconded by Mrs. Cooper, it was moved to grant the Special Permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

- 6. The proposed use is consistent with the general standards for Special Permits.

The Special Permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

- 1. The site shall be in general conformance with the information and drawings submitted with the Special Permit application except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
- 2. No more than two (2) employees other than members of the household residing on the premises shall be permitted on the subject property at any one time.
- 3. Prior to installing a restroom in the storage building, the applicants shall obtain the necessary County and Health Department permits.
- 4. No clients shall visit the subject property.
- 5. There shall be no items displayed for sale on the subject property.
- 6. All lighting on the site shall conform to Article 9 of the Fauquier County Zoning Ordinance.
- 7. All signs on-site shall conform to Article 8 of the Fauquier County Zoning Ordinance.

After discussion, on motion made by Mr. Brown and seconded by Mrs. Cooper, it was moved to amend the above motion to add Condition #8, as follows:

- 8. Public contact via Internet, email, or telephone, shall be permitted at all hours of the day and shall not be restricted to a specific time.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Brown, Mrs. Cooper

NAYS: None

ABSTENTION: None

ABSENT: Mr. Tufts

Thereafter, the original motion carried 4 – 0, as amended:

AYES: Mr. Meadows, Mr. Russell, Mr. Brown, Mrs. Cooper

NAYS: None

ABSTENTION: None

ABSENT: Mr. Tufts

SPECIAL PERMIT #SPPT14-SC-003, BERNARD W. & ANNA RAPP HOSTROP (OWNERS)/BERNARD W. HOSTROP (APPLICANT) – GBH GUNSMITHING, LLC

Applicant is requesting special permit approval to allow a major home occupation for gunsmithing, accessory sales of firearms, and classroom firearms safety education, PIN 6995-72-1941-000, located at 7207 Mill Run Drive, Scott District, Warrenton, Virginia. (Don Del Rosso, Staff)

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

Mr. Meadows opened the public hearing.

Mr. Bernard Hostrop, applicant, expressed agreement with the staff report.

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

On motion made by Mrs. Cooper and seconded by Mr. Brown, 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 and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for Special Permits.

The Special Permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The site shall be in general conformance with the information and drawings submitted with the Special Permit application except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. The hours of operation for the gunsmithing business, including firearms repairs, sales and transfers, shall be limited to 1:00 p.m. to 6:00 p.m., Sunday through Friday, and 10:00 a.m. to 6:00 p.m. on Saturday.
3. All gunsmithing client visits to the site shall be by appointment only and such visits shall be limited to a maximum of nine (9) per week and a maximum of five (5) on any one day. No more than one (1) gunsmithing client shall be allowed on the subject property at a time.
4. The applicant shall be limited to conducting gun range safety officer and firearms safety training classes a maximum of three (3) days per month. No more than one (1) class shall be conducted per day. The classes shall be held on Saturday, Sunday, or a holiday Monday, from 8:00 a.m. to 6:00 p.m. Enrollment shall be limited to a maximum of four (4) persons per class.
5. The applicant shall be limited to conducting a maximum of six (6) firearms basic maintenance classes per year, with no more than one (1) class per two (2) month period. The class shall take place from 1:00 p.m. to 5:00 p.m. on weekdays and weekends. Enrollment shall be limited to a maximum of four (4) persons per class.
6. No gunsmith client visits shall be allowed during the training classes.
7. The inventory of firearms offered for retail sales shall not exceed ten (10) guns at any one time, none of which can be fully automatic.
8. No firearms associated with the commercial activity shall be fired on the subject property.
9. This Special Permit is conditional upon the applicant obtaining and maintaining all federal, state and local permits applicable to this use.
10. This Special Permit shall be granted for ten (10) years with one five (5) year Administrative renewal.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Brown, Mrs. Cooper

NAYS: None

ABSTENTION: None

ABSENT: Mr. Tufts

SPECIAL PERMIT #SPPT14-CT-004, UMINHO INVESTMENTS, LLC (OWNER)/BRIAN C. SMITH (APPLICANT) – MOUNTAIN RIDGE CHURCH

Applicant is requesting special permit approval to allow a place of worship in an existing structure, PIN 6984-99-6795-000, located at 7373 Comfort Inn Drive, Center District, Warrenton, Virginia. (Adam Shellenberger, Staff)

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

Mr. Meadows opened the public hearing.

Mr. Brian Smith, applicant, expressed agreement with the staff report.

Ms. Angela Smith, representing the owner, spoke in support of approval.

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

On motion made by Mr. Brown 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 and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for Special Permits.

The Special Permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The site shall be in general conformance with the information and drawings submitted with the special permit application except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. The hours of operation for the place of worship are generally limited to Sundays as specified in the applicant’s Statement of Justification.
3. The use shall be limited to the existing improvements on-site. Any increase in square footage or impervious surface will require an amendment to the Special Permit.
4. All signage shall conform to Article 8 of the Fauquier County Zoning Ordinance and be properly permitted.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Brown, Mrs. Cooper

NAYS: None

ABSTENTION: None

ABSENT: Mr. Tufts

ZONING APPEAL #ZNAP14-LE-003, JOAN P. MILLER (OWNER/APPLICANT) – MILLER PROPERTY

Applicant is appealing a Zoning Administrator’s determination that the seven (7) lot limit of Section 7-501.1 has been exceeded and any additional lots created from either of the two subject parcels require the provision of public water unless a Special Exception is approved pursuant to Section 7-501.3 of the Fauquier County Zoning Ordinance, PIN 6889-25-8957-000 and 6889-36-3075-000, located at the northeast corner of Oak Shade Road and James Madison Highway, Lee District, Bealeton, Virginia. (Kimberley Johnson, Staff) **Note: This is a public meeting, not a public hearing.**

Mr. Meadows opened the public meeting.

Mark Hyson, Esq., representative, stated that the two subject parcels, which were created in 1977, are zoned R-1 (Residential District, 1 Dwelling Unit/Acre) and are located outside of a service district. Section 7-501 of the Zoning Ordinance states: “Public water shall be required for all residential subdivisions, multi-family or townhouse development of 7 or more lots or units under the following circumstances...outside service districts in the R-1, R-2, RR-2 and V zones.” The term “subdivision” is defined through reference in Section 2-39 of the

Subdivision Ordinance as “*the division of a lot, tract or parcel of land into two or more lots, tracts or parcels...*”

Mr. Hyson distributed portions of the Zoning Ordinance and Subdivision Ordinance, copies of which are attached to and made an official part of these minutes.

Mr. Hyson continued by stating that under Virginia law, an unambiguous ordinance must be applied as it is written. An ambiguity exists only when the language is difficult to comprehend, is of doubtful import, or lacks clearness and definiteness. When an enactment is clear and unequivocal, general rules for construction of statutes of doubtful meaning do not apply and reliance on legislative history and extrinsic facts is not permitted because courts take the words as written to determine their meaning.

Mr. Hyson stated that the question in this appeal is whether the Ordinance is ambiguous. Given that the parcels are zoned R-1 and located outside of a service district, the operative part of the statute to be evaluated is “*Public water shall be required for all residential subdivisions...of 7 or more lots...*” Mr. Hyson reiterated that this language is clear and unambiguous. Nothing in the Zoning Ordinance or Subdivision Ordinance allows, authorizes or directs the Zoning Administrator to count all divisions as cumulative following the ‘original subdivision.’ The Zoning Administrator does not point to any provision of the existing Zoning Ordinance or Subdivision Ordinance that authorizes the lot count to be cumulative.

Mr. Hyson further stated that the provision of public or central water is not required unless either of the two subject parcels is subdivided into seven or more new lots.

Mr. Hyson concluded by stating that the Zoning Administrator’s determination is in error and respectfully requested that the Board overturn it.

Mr. Chuck Floyd, Assistant Chief of Zoning/Development Services, stated that while performing the requested subdivision potential research, it was discovered that both subject parcels were subdivided from the same original parent parcel, with the first subdivision occurring in 1977. It was further determined that 12 lots had been created from the original parent parcel, with three of the lots not being counted as subdivisions because they were created by family transfers or boundary line adjustments, which were specifically excluded from the definition of a “subdivision” in the Subdivision Ordinance in effect at that time. Therefore, nine subdivision lots have been created from the original parent parcel.

Mr. Floyd distributed portions of previous Subdivision Ordinances, copies of which are attached to and made an official part of these minutes, indicating that “*...seven lots or more shall be cumulative and shall include resubdivision or any addition to an existing subdivision.*”

Mr. Floyd continued by stating that the sole issue before the Board is if the Zoning Administrator was correct in making the determination that the seven lot limit of Section 7-501.1 of the Zoning Ordinance has been exceeded and any additional lots created from either of the two subject parcels require the provision of public water unless a Special Exception is approved pursuant to Section 7-501.3 of the Zoning Ordinance.

Mr. Floyd stated that the fact that there is a disagreement that the network of Ordinances must be read together, given meaning and applied in this case, proves there is sufficient ambiguity that warrants the Zoning Administrator's interpretation. He also stated that the appellant does not question the fact that Section 7-501.1 of the Zoning Ordinance clearly requires public water for all subdivisions consisting of seven or more lots. The appellant's primary argument is that the language is clear and unambiguous and does not authorize the Zoning Administrator to count all divisions as cumulative following the original subdivision. Specifically, the appellant contends that public water is only required when a lot zoned R-1 is divided into seven or more *new* lots. Mr. Floyd stated that the application of this argument would clearly give property owners the incentive and ability to circumvent the Ordinance requirement for public water by developing lots in small increments.

Mr. Floyd concluded by respectfully requesting the Board to affirm the Zoning Administrator's determination.

After discussion, Mr. Hyson requested that action on this request be postponed.

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

After conferring with his client, Mr. Hyson rescinded his request for a postponement.

After discussion, on motion made by Mr. Brown and seconded by Mr. Russell, it was moved to overturn 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 #ZNAP14-LE-003, finding that the Zoning Administrator incorrectly determined that the seven (7) lot limit of Section 7-501.1 had been exceeded by a cumulative counting of lots subdivided or resubdivided, thereby triggering the public water requirement.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Brown, Mrs. Cooper

NAYS: None

ABSTENTION: None

ABSENT: Mr. Tufts

OTHER BUSINESS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:15 p.m.

John R. Meadows, Chairperson

Holly Meade, Secretary

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