

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
MAY 6, 2010**

*Work Session
12:30 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, May 6, 2010, beginning at 12:30 p.m. in the Warren Green Building, Second Floor Conference Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Harry Russell, Vice-Chairperson; Mr. Maximilian Tufts, Jr., Secretary; Mr. Michael Brown; and Mrs. Mary North Cooper. Also present were Ms. Mary Catherine Sheridan, Assistant County Attorney; Mr. Andrew Hushour, Assistant Zoning Administrator; and Mr. Wally Horton, Senior Planner.

DISCUSSION ON VARIANCES:

Ms. Sheridan reviewed the Board's authority to grant variances subsequent to the 2009 amendment to *Code of Virginia* Section 15.2-2309(2).

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)(7) for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to pending litigation, Conboy v. BZA, and applications ZNVA10-LE-001 (John H. Anderson), ZNVA10-MA-002 (Terry Kave), and SPPT10-CR-006 (Bryant's Powerwashing).

The motion carried 5 – 0, as follows:

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

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. Russell, Mr. Tufts, Mr. Brown, Mrs. Cooper

NAYS: None

ABSTENTION: None

ABSENT: None

ZONING VARIANCE #ZNVA10-LE-001, JOHN H. & KELLY C. ANDERSON (OWNERS/APPLICANTS)

Applicants are requesting a variance from the required twenty-five (25) foot side yard setback to construct an addition to an existing residence, PIN #6879-58-3625-000, located at 10615 Fox Plantation Lane, Lee District, Bealeton, Virginia. (Andrew Hushour, Staff)

Mr. Hushour reviewed the application.

ZONING VARIANCE #ZNVA10-MA-002, TERRY KAVE (OWNER/APPLICANT)

Applicant is requesting a variance from the required fifty (50) foot side yard setback to construct a detached accessory structure, PIN #6956-79-3573-000, located at 6125 Enon School Road, Marshall District, Marshall, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the application.

SPECIAL PERMIT #SPPT10-CR-022, MICHAEL E. & SANDRA L. GETZ (OWNERS/APPLICANTS) – CREEKSIDE KENNELS, INC.

Applicants are requesting an amendment to a previously approved special permit for a kennel to allow for a modification in the hours of operation, maximum number of dogs

and an expansion of the fenced areas, PIN #6991-93-5470-000, located at 5566 Balls Mill Road, Cedar Run District, Midland, Virginia. (Wally Horton, Staff)

Mr. Horton reviewed the application.

MINUTES:

Mr. Tufts stated that page 2 of the April 1, 2010 minutes should be revised to read “Upon reconvening from the closed meeting, Mr. Meadows Tufts read the following Certification of Closed Meeting...”

OTHER BUSINESS:

Mr. Steve Bryant, Bryant’s Powerwashing, requested clarification on when the Board would reconsider his application (SPPT10-CR-006) to amend a previously approved special permit for a small contracting business as a major home occupation, PIN #7931-17-2097-000, 7931-16- 1895-000, and 7931-16-0895-000, located at 9529 Elk Run Road, Cedar Run District, Catlett, Virginia.

Mr. Meadows stated that on October 1, 2009 the Board postponed action on this item, at the applicant’s request, until the Certificate of Occupancy is issued for the new residence. Mr. Meadows encouraged Mr. Bryant to consult with the Building Department to resolve any outstanding issues so that the Certificate of Occupancy can be issued.

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, May 6, 2010, 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. Harry Russell, Vice-Chairperson; Mr. Maximilian Tufts, Jr., Secretary; Mr. Michael Brown; and Mrs. Mary North Cooper. Also present were Ms. Mary Catherine Sheridan, Assistant County Attorney; Mr. Andrew Hushour, Assistant Zoning Administrator; Mr. Wally Horton, Senior Planner; and Mrs. Fran Williams, Administrative Specialist.

INTRODUCTION:

Mr. Meadows introduced and welcomed Mr. Michael Brown to the Board of Zoning Appeals. Mr. Brown will fill the unexpired term of Mr. Serf Guerra.

RESOLUTION OF APPRECIATION:

Mr. Meadows thanked Mr. James W. Van Luven, who was in attendance, for his many years of dedicated service and presented him with the following Resolution:

**A RESOLUTION TO RECOGNIZE JAMES W. VAN LUVEN FOR
HIS SERVICE TO THE FAUQUIER COUNTY BOARD OF ZONING
APPEALS AND THE CITIZENS OF FAUQUIER COUNTY**

This resolution was adopted at a regular meeting of the Fauquier County Board of Zoning Appeals, held in the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia, on Thursday, May 6, 2010.

WHEREAS, James W. Van Luven served in an outstanding manner as a member of the Fauquier County Board of Zoning Appeals since January 5, 2000. He served as Secretary from January of 2005 through December of 2007 and served as Vice-Chairman from January of 2008 through January of 2010; and

WHEREAS his many exemplary years of leadership and service contributed significantly to both County staff and Board of Zoning Appeals' knowledge and helped to protect, through the application and interpretation of the Fauquier County Zoning Ordinance, the unique quality, vision, and sense of place felt by citizens of this County; and

WHEREAS, his concern for the citizens and knowledge of Fauquier County contributed significantly to the Board of Zoning Appeals' efforts to apply the zoning regulations of this County in a fair and impartial manner to the benefit of all who came before the Board of Zoning Appeals; and

WHEREAS, the Board of Zoning Appeals, on behalf of all the citizens of Fauquier County, wishes to express its profound appreciation for his significant and outstanding service to the citizens of Fauquier County and his devotion and dedication to the betterment of the County;

NOW, THEREFORE, BE IT RESOLVED, That the Fauquier County Board of Zoning Appeals does hereby offer its heartfelt appreciation and extends its best wishes to James W. Van Luven in all future endeavors; and

BE IT FURTHER RESOLVED, That this Resolution be placed within the minutes of the Board of Zoning Appeals in recognition of James W. Van Luven's distinguished service to Fauquier County.

MINUTES:

On motion made by Mr. Tufts and seconded by Mr. Russell, it was moved to approve the April 1, 2010 minutes, as amended.

The motion carried unanimously.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mrs. Williams read the Public Hearing protocol. Mr. Horton stated that, to the best of his knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners.

ZONING VARIANCE #ZNVA10-LE-001, JOHN H. & KELLY C. ANDERSON (OWNERS/APPLICANTS)

Applicants are requesting a variance from the required twenty-five (25) foot side yard setback to construct an addition to an existing residence, PIN #6879-58-3625-000, located at 10615 Fox Plantation Lane, Lee District, Bealeton, Virginia. (Andrew Hushour, Staff)

Mr. Hushour 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. John Anderson, 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. Tufts, it was moved to grant the variance, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 13-402 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. That the strict application of the Zoning Ordinance would result in unnecessary, unreasonable, or undue hardship to the property owner; and
2. That the need for the variance is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance; and
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
4. That such variance is necessary in order to afford relief, is not contrary to the intent and purpose of the Ordinance, and results in substantial justice being done.

The variance 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 variance application except as specifically modified by the conditions below or as are necessary to meet Zoning Ordinance requirements.
2. The proposed garage addition shall be located no closer than six (6) feet to the northern property line.
3. All applicable permits for the proposed garage addition shall be obtained prior to the commencement of construction activities, and all necessary inspections completed prior to occupancy.

Mr. Brown encouraged the Board to exercise care in the consideration of variance requests, stating that the Zoning Ordinance is very specific regarding what is an undue hardship, which should be based on the physical aspects of the property. Mr. Brown further stated that while the applicant’s personal circumstances are certainly something that this Board can and should take into account, the primary focus should be to make a determination that the variance is one that is brought about by the strict application of our Zoning Ordinance and that it is not something that is being done merely for the convenience of the applicant.

The motion carried 4 – 1, as follows:

- AYES: Mr. Meadows, Mr. Russell, Mr. Tufts, Mrs. Cooper
- NAYS: Mr. Brown
- ABSTENTION: None
- ABSENT: None

SPECIAL PERMIT #SPPT10-CR-021, ROBERT TED CRABTREE & MICHAEL R. ZUPAN (OWNERS)/LARRY R. CARTER, ROBERT TED CRABTREE & MICHAEL R. ZUPAN (APPLICANTS) – ROYACE CONTRACTING, INC.

Applicants are requesting an amendment to a previously approved special permit to expand the use to include a general contracting business, PIN #6980-19-2537-000 and a portion of 6980-18-3105-000, located on the south side of Opal Road (Route 687) and west of James Madison Highway (Routes 15/17/29), Lee District, with a portion in Cedar Run District, Warrenton, Virginia. (Wally Horton, Staff)

Withdrawn.

SPECIAL PERMIT #SPPT10-CR-022, MICHAEL E. & SANDRA L. GETZ (OWNERS/APPLICANTS) – CREEKSIDE KENNELS, INC.

Applicants are requesting an amendment to a previously approved special permit for a kennel to allow for a modification in the hours of operation, maximum number of dogs and an expansion of the fenced areas, PIN #6991-93-5470-000, located at 5566 Balls Mill Road, Cedar Run District, Midland, Virginia. (Wally Horton, Staff)

Mr. Horton 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. Sandra Getz, applicant, expressed agreement with the staff report. Ms. Getz stated that she did not realize the fenced-in areas were considered structures and apologized for installing them without the necessary approvals.

Mr. James Read, a neighbor, expressed concern about the noise, which is affecting his quality of life. Mr. Read stated that the applicant has violated every condition of her approved special permit and requested that it be revoked.

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

After discussion, the applicant requested a postponement up to ninety (90) days.

On motion made by Mr. Russell and seconded by Mrs. Cooper, it was moved to postpone action on this item, with the public hearing closed, for up to ninety (90) days, at the applicant's request, to allow for a survey of the property and additional information the Board may need to further consider this application.

The motion carried unanimously.

ZONING VARIANCE #ZNVA10-MA-002, TERRY KAVE (OWNER/APPLICANT)

Applicant is requesting a variance from the required fifty (50) foot side yard setback to construct a detached accessory structure, PIN #6956-79-3573-000, located at 6125 Enon School Road, Marshall District, Marshall, Virginia. (Wally Horton, Staff)

Mr. Horton 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. Terry Kave, applicant, expressed agreement with a portion of the staff report. Mr. Kave stated that the area behind his house will not accommodate the size garage that he wants to construct. Mr. Kave further stated that the northeastern portion of the property is not suitable because of the steep topography.

Ms. Amanda Dulevitz, a neighbor, spoke in opposition to the granting of this variance. Ms. Dulevitz stated that, while she is not opposed to the applicant constructing a garage, she would like to have it meet the required setback.

Mr. David Dulevitz, a neighbor, spoke in opposition to the granting of this variance and encouraged the Board to enforce the setback requirement, which is in the Zoning Ordinance for a reason.

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

On motion made by Mr. Brown and seconded by Mr. Tufts, it was moved to deny the variance, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 13-402 of the Fauquier County Zoning Ordinance, based upon the following Board finding:

1. That the strict application of the Ordinance does not produce an undue hardship.

The motion carried unanimously.

OTHER BUSINESS:

Mr. Meadows inquired if there is a provision for an alternate Board member now that the number is down to five in the event one or two members are absent.

Ms. Sheridan will research this for the Board.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 2:55 p.m.

John R. Meadows, Chairperson

Maximilian A. Tufts, Jr., Secretary

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