

MINUTES

**Regular Meeting
Wake County Board of Adjustment
Tuesday, July 11, 2017
9:00 a.m., Room 2700
Wake County Justice Center
300 S. Salisbury St.
Raleigh, North Carolina**

Members Present: (7) Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice-Chair), Mr. Terence Morrison, Mr. Brian Foxx, Ms. Sheree Vodicka, Mr. Will Barker, and Mr. DeAntony Collins

Members Not Present: (2) Mr. Waheed Haq and Mr. John Barker

County Staff Present: (7) Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning, Development, and Inspections Director), Mr. Chris Record (Planner I), Mr. Frank Cope (Community Services Director), Charlie Johnson (Deputy Fire Services Director), Ms. Anna Hawksworth (Student Assistant), and Ms. Jenny Coats (Business Officer)

County Attorneys Present: (1) Mr. Ken Murphy (Senior Assistant County Attorney)

Item 1, Call to Order: Mr. McConkey called the meeting to order at 9:00 a.m. with 7 members present.

IN RE MINUTES

Item 2, Approval of Minutes of the June 13, 2017 Meeting

Mr. McConkey made a motion to approve the June 13th meeting minutes, and Mr. Mial seconded. The motion carried unanimously.

Item 3, Approval of Written Decision Granting the Special Use in the matter of BA SU-2250-17

Mr. Mial made a motion to approve the written decision granting the special use in the matter of BA-SU-2250-17, and Mr. McConkey seconded. The motion carried unanimously.

Item 4, Approval of Written Decision Granting the Special Use in the matter of BA SU-2249-17

Mr. McConkey made a motion to approve the written decision granting the special use in the matter of BA-SU-2249-17, and Mr. Will Barker seconded. The motion carried unanimously.

Item 5, Approval of Written Decision Affirming the Decision of the Wake County Planning Staff in the matter of BA A-2252-17

Mr. Mial made a motion to approve the written decision affirming the decision of the Wake County Planning Staff in the matter of BA A-2252-17, and Mr. McConkey seconded. The motion carried unanimously.

Before the case was heard, Wake County staff member Mr. Record was duly sworn.

Item 6, BA SU-2242-16

Voting Members: Mr. McConkey, Mr. Mial, Mr. Foxx, Mr. Morrison, and Ms. Vodicka

Landowner: Molly Goldston

Petitioner: Saving Grace Animals for Adoptions, Inc.

PIN#: 0891-06-7141

Size: 7.9 acres

Location: The property is located at 13400 Old Creedmoor Road directly north of the Creedmoor Commons Shopping Center.

Zoned: Residential-40 Watershed (R-40W)

Land Use Classification: Non-Urban Area Water Supply Watershed

The petitioner is requesting a special use permit to establish an animal shelter.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial maps, topographical map, relevant sections of the Unified Development Ordinance were shown and/or available, and Exhibit 1: documents submitted by Mr. Maiorano.

Testimony:

Mr. Record, Planner I, entered the staff report and PowerPoint presentation for BA SU-2242-16 into the record. Mr. McConkey accepted the staff report and PowerPoint slides into the record. Mr. Record stated the petitioner's name, zoning classification, background and history of the petition. The property to the north is single family residential and zoned Residential-40 Watershed. The properties to the west across Old Creedmoor Road are vacant and zoned Residential-40 Watershed. The property to the south and east is the commercially developed Creedmoor Commons Shopping Center and is zoned Residential-40 Watershed. The petitioner is proposing to legally establish an animal shelter on the property. An animal shelter has been operating on the site since 2004 without proper permitting. In late 2016, representatives for the petitioner approached Wake County Planning staff to initiate the process of applying for a Special Use Permit to allow the animal shelter to remain in operation. The property currently contains a single family residence, numerous farm-related outbuildings, two buildings related to the animal shelter use, and an existing parking area that has been on the property for decades. The site plan proposes an additional 2,500 square foot building and an outdoor dog run to be used for the animal shelter. The site will be served by individual well and septic system. The property has frontage on Old Creedmoor Road. A driveway permit from NCDOT is required for access onto Old Creedmoor Road. The site plan demonstrates the required 45 parking spaces that are to be provided for the intended use. Regarding setback standards for animal shelter uses, all buildings and structures related to the care of animals must be located at least 50 feet from any property line. The proposed site plan indicates all buildings related to the animal shelter use will meet this setback requirement. Additionally, the proposed outdoor dog run meets setback requirements by being located at least 100 feet from any property line. In terms of bufferyards, a 10-foot type F streetfront buffer is required along Old Creedmoor Road. A 40 foot Type C buffer is required along the northern property line that is in closest proximity to the special use on the property. This buffer is being proposed to be reduced to 30 feet with the construction of a fence via UDO 16-10-2(G). There is no required bufferyard along the eastern and southern property lines due to the adjacent land use being non-residential. The outdoor dog run will be surrounded by a vegetative screen per the requirements in the Unified Development Ordinance. Impervious surface coverage for non-residential uses in Residential-40 Watershed is limited to 12% before stormwater devices are required, with a maximum possible impervious surface limit of 24%. The site plan indicates the site will contain 11.7% impervious surface coverage, and thus no stormwater measures are required. Notification letters to adjoining property owners were mailed on June 28, 2017. A public hearing placard was placed on the site on June 28, 2017.

Mr. McConkey asked how the animal shelter operated without a permit. Mr. Record said that Wake County does passive code enforcement based on complaints.

Ms. Vodicka asked about the fence on the property line. Mr. Record said that the northern property line requires a 40-foot bufferyard. The UDO allows the bufferyard to be reduced by 25% with the presence of a six-foot wooden fence or wall. The site plan proposes to install a fence and reduce the bufferyard to 30 feet.

Mr. Wayne Maiorano and Ms. Eva Frongello of the Smith Anderson law firm came forward representing the petitioner.

Sworn witnesses in favor of the petition:

Molly Goldston, 13400 Old Creedmoor Road, Wake Forest, NC 27587

Frances Gallagher, 7011 Albert Pick Road, Greensboro, NC 27409

Sarah I. Osborne, 5905 Triangle Drive, Raleigh, NC 27617

David F. Brown, 137 S. Wilmington Street, Suite 200, Raleigh, NC 27601

Rose Tanksley, 137 S. Wilmington Street, Suite 200, Raleigh, NC 27601

Dr. Kelli Ferris, 1060 William Moore Drive, Raleigh, NC 27606

Neil C. Gustafson, 3803-B Computer Drive, Suite 100A, Raleigh, NC 27609

Mr. Maiorano submitted Exhibit 1: a binder of materials to support the application. Mr. McConkey accepted Exhibit 1 into the record. Mr. Maiorano said that Saving Grace Animals for Adoptions was before the board on a voluntary basis to bring the site into full compliance. He said that there has not been a single complaint or concern raised by the public in the 12+ years that the animal shelter has been in operation which speaks to the quality of the operation and the minimal impact on the surrounding community. The mission of Saving Grace Animals for Adoptions is to ensure a safe place for abandoned dogs where they can be adopted into loving homes. Mr. Maiorano said that Saving Grace Animals for Adoptions is a non-profit organization, and it does have a license in good standing from the North Carolina Department of Agriculture for the operation and use of an animal shelter. The property was historically used for farm purposes, and it continues to have attributes of a farm on it.

Mr. Maiorano called his first witness, Ms. Molly Goldston. Ms. Goldston said that she is the founder and director of Saving Grace Animals for Adoptions. She attended Meredith College, and in the past worked at an animal shelter and also training dogs. She has worked in animal care since 2000, and she is a certified dog trainer. Mr. Maiorano tendered Ms. Goldston as an expert witness. Mr. McConkey accepted Ms. Goldston as an expert witness. Ms. Goldston said that her site is inspected every year by the Department of Agriculture to maintain the license. She has 230 volunteers who do one or two shifts per month, and 150 of the volunteers do at least one shift per week. Ms. Goldston summarized a typical day at the site that involves dogs getting exercise, being fed, receiving medication, cleaning, adoptions, meetings with doctors, grooming, and so forth. All volunteers complete an application, and there is an orientation followed by two mentor sessions where new volunteers are trained by experienced volunteers. Saving Grace has three employees: Ms. Goldston, an adoption counselor, and an employee that handles maintenance of the site. Ms. Goldston said that she visits rural shelters that do not have ample resources for medical care. She evaluates which dogs have the potential for adoption. The rural shelters bring in many dogs, but not many of them are adopted. The dogs that come to Saving Grace are spayed or neutered as soon as they arrive and are at an appropriate age. Saving Grace will also receive dogs from puppy mill cases, cruelty cases, and hoarding cases. Ms. Goldston said that she is a certified rabies vaccinator. All dogs receive their vaccinations the day they arrive; the dogs are treated for parasites, they receive microchips, and they are spayed or neutered within the first week. Ms. Goldston described the adoption process which includes an application, an appointment, and analysis to determine which dogs would match each situation. Ms. Goldston said that Saving Grace has saved over 14,000 dogs that would have been euthanized. She said that the success rate for adoptions from Saving Grace is about 95%; some dogs have medical reasons which would impact their quality of life, and if dogs show aggressive qualities towards the other animals or volunteers they would not stay at Saving Grace.

Mr. Morrison asked how many dogs are typically on the property. Ms. Goldston said that there are typically 80 dogs at the site. She said that there are two main buildings. Every dog has a crate for sleeping, feeding, and in between their time for exercise. There are play groups so the dogs can play with other dogs that are compatible.

Mr. Maiorano asked Ms. Goldston if there are plans to expand the operation. Ms. Goldston said that they do not want to house any more dogs. She said that they would like to improve the care facilities.

Mr. Foxx asked if dogs have ever escaped. Ms. Goldston said that it has happened infrequently, but the dogs return quickly. Dogs would have to jump two fences to get anywhere.

Ms. Frongello called the next witness, Dr. Kelli Ferris of the North Carolina State University College of Veterinary Medicine. Dr. Ferris stated that she has been employed at the college since 1999. She said that she has been working in shelter medicine since 1999, and she shared a brief history of her work since then. Ms. Frongello tendered Dr. Ferris as an expert witness. Mr. McConkey accepted Dr. Ferris as an expert witness. Dr. Ferris said that she and her team do medical assessments as well as spay and neuter services for Saving Grace. Saving Grace provides 100% of the second-year surgery patients. It is the only option for the school to get animals that have been pre-screened for health factors and whether the animals are suitable for students to spay and neuter. Students at the College of Veterinary Medicine are required to perform these surgeries to graduate from the program. Dr. Ferris said that the college relies on Saving Grace to consistently provide appropriate patients so that the program can operate efficiently; she said that Saving Grace is the only entity in the area that can do so. Ms. Frongello asked how the college's training of veterinary students would be impacted if Saving Grace ceased operation. Dr. Ferris said that the college does not have any good options. Prior to Saving Grace, the college would spay or neuter dogs from some animal shelters; upon returning to the shelter after surgery, some dogs would proceed directly to be euthanized due to overcrowding. Dr. Ferris said that there is not another entity that could provide the services that Saving Grace does. She summarized some of the training that Saving Grace provides to veterinary students and other animal shelters, and how Saving Grace assists in disaster situations. Dr. Ferris said that Saving Grace treats dogs that are heartworm positive; many shelters would euthanize those dogs due to the expense of treatment.

Mr. McConkey disclosed that he works at North Carolina State University, but he said that it would not impact his ability to render a fair or impartial decision.

Mr. David Brown stated that he is the Director of Planning for WithersRavenel, and he is a registered landscape architect. He said that he has been in practice for 31 years. Mr. Maiorano tendered Mr. Brown as an expert witness. Mr. McConkey accepted him as an expert witness.

Ms. Rose Tanksley stated that she is a landscape designer for WithersRavenel. She said that she has worked in the field of landscape design and architecture since receiving her master's degree in 2006. Mr. Maiorano tendered Ms. Tanksley as an expert witness, and Mr. McConkey accepted her as an expert witness.

Ms. Frances Gallagher stated that she is a transportation manager for WithersRavenel. She said that she is a registered professional engineer, and she has been practicing civil engineering for 32 years. Mr. Maiorano tendered Ms. Gallagher as an expert witness, and Mr. McConkey accepted her as an expert witness.

Ms. Sarah Osborne stated that she is the President and owner of Soil Services. She said that she is a licensed soil scientist, and she has been consulting for over 12 years. Mr. Maiorano tendered Ms. Osborne as an expert witness, and Mr. McConkey accepted her as an expert witness.

Mr. Brown said that the submitted plan is in compliance with all UDO requirements and the Wake County Land Use Plan. Using an aerial map, he showed that the shelter use would have a 100-foot setback from the property line. The area of the site that is within 100 feet of the property line includes almost 65% of the site. The proposed shelter use area comprises about 10% of the land area of the lot. Mr. Brown noted the garden and trees on the property that contribute to the rural character of the site. He said that the animal waste is collected and put in a dumpster to be hauled offsite. Mr. Brown said that additional evergreen trees and shrubs would be added to the north side of the property to buffer the adjacent residential use. He said that densely wooded area on the east side of the property will remain since it is dedicated as permanently managed open space as part of the stormwater requirements in the watershed for the nearby Harris Teeter.

Mr. Morrison asked about the plan for the structures on the property. Mr. Brown answered that some of the buildings are farm buildings that will remain, and there is one new building proposed.

Mr. Maiorano called his next witness, Mr. Neil Gustafson. Mr. Gustafson said that he has worked for Worthy & Wachtel since 1978 as a certified broker, appraiser, and an MAI real estate appraiser. Mr. Maiorano tendered Mr. Gustafson as an expert witness, and Mr. McConkey accepted him as an expert witness.

Mr. Gustafson said that the business has been in operation for over ten years without complaints. He said that this means that it does not have an adverse impact on adjoining properties. To the south, the site backs up to the back side of the adjacent Harris Teeter shopping center. To the east is an undisturbed buffer that is part of the Harris Teeter development. To the north is an 8-acre property with a single-family home. The owners of that home have never filed a complaint, and they have adopted a pet from Saving Grace. On the other side of Old Creedmoor Road are two vacant lots. The use is so far back on the property that it would not impact the property on the other side of Old Creedmoor Road. Mr. Gustafson concluded that his professional opinion was that the proposed use would not have a negative impact on adjoining or abutting properties.

There was no one else wishing to speak in favor of or in opposition to the petition. Mr. McConkey closed the public hearing.

BOARD DISCUSSION

The board discussed the five required findings.

1. The proposed development will not materially endanger the public health or safety.

Mr. Morrison said that he has driven by the location many times, and he did not know that the operation existed at that location. He noted that Saving Grace has been in operation for many years. He cited the testimony that detailed the operation, how the animals are cared for, how the appointments are structured, and how waste is taken off the property. He said that the noise on the property is properly contained, and the areas where the animals reside are appropriate.

Mr. McConkey said that the operation is licensed by the Department of Agriculture. He noted the evidence that there is no traffic impact as a result of the use.

Mr. Mial noted that the site is inspected every year by the Department of Agriculture.

2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.

Ms. Vodicka said that the setbacks comply with all of the standards.

Mr. McConkey said that the expert opinions and materials from Mr. Brown, Ms. Tanksley, Ms. Gallagher, and Ms. Osborne all support the finding that the proposed development will comply with all regulations and standards.

Mr. Mial noted that the site is inspected every year by the Department of Agriculture.

3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity.

Mr. McConkey noted the expert testimony from Dr. Ferris stating that this use is a public necessity based on the training opportunities for NC State veterinary students, the medical care provided to the animals, and the assistance rendered in the cases of disasters.

Mr. Mial agreed that the evidence showed that the use is a public necessity.

Mr. McConkey said that Mr. Gustafson provided expert testimony that the proposed development will not substantially injure the value of adjoining property. He said that this is an 8-acre parcel that is well fenced and landscaped. The adjoining land uses include a commercial site, land that will not be developed, vacant land, and a residential property that has not filed any complaints about the operation.

4. The proposed development will be in harmony with the area in which it is located.

Mr. McConkey cited the expert testimony of Mr. Gustafson and the evidence that the site will be in compliance with all regulations to support this finding.

Mr. Foxx noted that the use has been in existence for over ten years.

5. The proposed development will be consistent with the Wake County Land Use Plan.

Mr. McConkey said that the conclusion of the staff report and the expert opinion of Mr. Brown was that the proposed development would be consistent with the Wake County Land Use Plan.

MOTION

Ms. Vodicka made a motion in the matter of BA SU-2242-16 that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. Mr. Mial seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

FINDINGS OF FACT

(1) The proposed development will not materially endanger the public health or safety. Saving Grace has been in operation for many years. The noise on the property is properly contained. The director has taken steps to ensure that the development will not materially endanger the public health or safety, including how the operation is run, how the animals are cared for, how appointments are structures, and how waste is removed from the property. The areas where the animals reside are appropriate. The operation is licensed by the Department of Agriculture. The site is inspected every year by the Department of Agriculture. There is no traffic impact as a result of the use.

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts.
- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
- c. Soil erosion and sedimentation.
- d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.

(2) The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. The setbacks comply with all of the standards. The expert opinions and materials from Mr. Brown, Ms. Tanksley, Ms. Gallagher, and Ms. Osborne all support the finding that the proposed development will comply with all regulations and standards. The site is inspected every year by the Department of Agriculture.

(3) The proposed development will not substantially injure the value of adjoining property, and it is a public necessity. The expert testimony from Dr. Ferris was that this use is a public necessity based on the training opportunities for NC State veterinary students, the medical care provided to the animals, and the assistance rendered in the cases of disasters. There was expert testimony that the proposed development will not substantially injure the value of adjoining property. This is an 8-acre parcel that is well fenced and landscaped. The adjoining land uses include a commercial site, land that will not be developed, vacant land, and a residential property that has not filed any complaints about the operation.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
- b. Whether the proposed development is necessary to the public health, safety, and general welfare of the community or County as a whole as to justify it regardless of its impact on the value of adjoining property.

(4) The proposed development will be in harmony with the area in which it is located. There was expert testimony from Mr. Gustafson and evidence that the site will be in compliance with all regulations to support this finding. The use has been in existence for over ten years.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

(5) The proposed development will be consistent with the Wake County Land Use Plan. The conclusion of the staff report and the expert opinion of Mr. Brown was that the proposed development would be consistent with the Wake County Land Use Plan.

Considerations:

- a. Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

IT IS THEREFORE ORDERED:

- 1) The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Planning, Development and Inspections Division of Community Services;
- 2) The petitioner must obtain and complete appropriate building permits from the Wake County Inspections Development/Plans/Permits Division;
- 3) The petitioner must obtain a driveway permit from the North Carolina Department of Transportation;
- 4) A final zoning inspection to verify site plan compliance must be performed by the Wake County Zoning Administrator prior to the issuance of a certificate of completion by the Wake County Planning, Development and Inspections Division of Community Services;
- 5) The landowner must maintain compliance with the special use approval and Wake County Unified Development Ordinance.

Item 7: New Business – Mr. Finn provided a brief update to the board.

Item 8: Old Business – Mr. Murphy provided an update to the board regarding case BA SU-2227-16.

Item 9: Adjournment

Hearing no additional business, the meeting was adjourned at 10:58 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
July 11, 2017

All petitions complete, Brenton McConkey declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, July 11, 2017 adjourned at 10:58 a.m.

Respectfully Submitted:

Brenton McConkey
Wake County Board of Adjustment

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