

## MINUTES

**Regular Meeting  
Wake County Board of Adjustment  
Tuesday, August 9, 2016  
9:00 a.m., Room 2700  
Wake County Justice Center  
300 S. Salisbury St.  
Raleigh, North Carolina**

**Members Present: (5)** Mr. Tim Clark, Mr. Brenton McConkey, Mr. Trenton Stewart, Mr. John Barker, and Mr. Donald Mial

**Members Not Present: (4)** Mr. Terence Morrison, Mr. Billy Myrick, Mr. Will Barker, and Mr. Blake Cason

**County Staff Present: (13)** Mr. Steven Finn (Land Development Administrator), Ms. Celena Everette (Planner II), Ms. Stacy Harper (Planner II), Mr. Bryan Coates (Planner III), Mr. Adam Cook (Planner II), Mr. Charlie Johnson (Deputy Fire Services Director), Ms. Kristin Athens (Legal Assistant), Ms. Kathryn Hobby (Environmental Consultant), Ms. Kathy Williams (Planner I), Mr. Jason Horton (Deputy Community Services Director), Ms. Stephanie Olson (Student Assistant), Mr. Frank Cope (Community Services Director), and Mr. Russ O'Melia (Clerk to the Board)

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

**Item 1, Call to Order:** Mr. Clark called the meeting to order at 9:00 a.m. with 5 members present.

### IN RE MINUTES

#### **Item 2, Approval of Minutes of the May 10, 2016 Meeting**

Mr. Mial made a motion to approve the May 10<sup>th</sup> meeting minutes, and Mr. John Barker seconded. The motion carried unanimously.

Before the case was heard, Mr. Clark reviewed the procedures for quasi-judicial hearings.

Before the case was heard, Wake County staff members Ms. Everette, Mr. Cook, and Mr. Coates were duly sworn.

#### **Item 3, BA SU-2227-16**

Before the case was heard, Mr. Stewart disclosed that he has worked with Agri-Waste Technology, Inc. (AWT), the firm that prepared the site plans for the applicant, on another project in another county in the past. He said that he has not worked on this project, and he did not believe that this would impact his ability to be an impartial decision maker in this matter. None of the board members objected to Mr. Stewart acting as a voting member on the case. Mr. Andrew Petesch, attorney representing adjacent property owners Michael and Sandra Baker of 401 Martindale Drive, said that his clients did not have any objection to Mr. Stewart voting on the case.

Voting Members: Mr. Clark, Mr. McConkey, Mr. Stewart, Mr. Mial, and Mr. John Barker

Landowner: Connell Properties, LLC

Petitioner: Cayce Connell

PIN#s: 1709-45-7247

Size: 1.39 acres

Location: The site is located at 11021 Six Forks Road.

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

Land Use Classification: Non-Urban water supply watershed

The petitioner is requesting special use permit approval as required by section 4-11 of the Wake County Unified Development Ordinance (UDO) to establish a dog daycare facility.

**TESTIMONY AND EVIDENCE PRESENTED**

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, and relevant sections of the Unified Development Ordinance were shown and/or available.

- Petitioner's Exhibit 1: floor plans for the proposed facility
- Petitioner's Exhibit 2: "K9Grass" document that shows the technical materials for the canine turf
- Exhibit 3: slides showing photographs of the area that Ms. Baker took and maps
- Exhibit 4: a report prepared by Mr. Thorburn
- Exhibit 5: a brief resume for Mr. Yelle
- Exhibit 6: an email from T.R. Elmore, District Supervisor from NCDOT
- Exhibit 7: a model prepared by Mr. Yelle
- Exhibit 8: maps and a photo of the area
- Exhibit 9: a map showing the distance from the site to the activity center at Six Forks Road and Norwood Road

Testimony:

Mr. Cook, Planner II, entered the staff report and PowerPoint presentation for BA SU-2227-16 into the record. Mr. Clark accepted the staff report and PowerPoint slides into the record. Mr. Cook stated the petitioner's name, zoning classification, background and history of the petition. The 1.39 acre site currently contains a single-family residence. The petitioner is proposing to remove the existing residence from the site and construct a 7,908 square foot dog daycare facility. The subject property and adjacent parcels are zoned residential-40 watershed (R-40W). The property to the north contains a non-conforming retail business. To the east, across Six Forks Road, is a mix of undeveloped land and single-family residences. To the south, across Martindale Drive, are single-family homes. Single-family homes are also located to the west of the subject property. The applicant is proposing to construct a two-story 7,908 square foot dog daycare facility with a maximum height of 35 feet. The dog daycare facility also contains an outdoor dog run area that is surrounded by an 8-foot high masonry block sound barrier wall and a 25-foot wide dense evergreen noise screen in accordance with section 4-46 of the Unified Development Ordinance. For the proposed use, parking is required at the following rates: 1 space per 1,000 square feet of area intended for animal use and 1 space per 300 square feet of office area. The site plan is proposing 7,771 square feet of area intended for animal use and 137 square feet of office space resulting in 9 parking spaces required. The site plan is proposing 13 standard parking spaces and 1 ADA van space for a total of 14 parking spaces. The site plan illustrates a 40-foot Type C landscape buffer along the southern and western property lines. A 10-foot Type F street front screen is also provided along Six Forks Road. The plan also shows a 25-foot evergreen noise screen around the outdoor dog run. A total of 14,376.5 square feet of impervious surface, which totals 23.96% of the site, is proposed. The maximum allowed impervious coverage is 24%. A stormwater BMP is proposed in the northeast portion of the lot. Notification letters were mailed to adjacent property owners on July 20, 2016 and a public hearing placard was also placed on the site on July 20, 2016. A notice of the meeting was placed in the News and Observer newspaper on July 22nd and again on July 27th.

Mr. Clark asked what land use category a dog daycare facility would fall under in the Wake County UDO, and how the screening and buffers for this use would work. Mr. Cook said that the Use Table in the Wake County UDO has a category for Animal Services under which a kennel falls. A dog daycare facility would be classified under the kennel use. Section 4-46 of the UDO contains the requirements for kennels. One of the requirements is that no outdoor play area may be within 100 feet of any property line unless it is surrounded by a noise screen. The applicant has proposed a masonry, stone, or block wall augmented by dense evergreen

shrubs and trees with a minimum height of 8 feet, and the vegetation will have a minimum width of 25 feet. Using the proposed noise screen will allow the setback to be reduced to 50 feet.

Mr. John Barker asked if there is a covering proposed for the outdoor area. Mr. Cook answered that the site plan does not show any covering for the outdoor area.

Mr. McConkey asked about the setback from the property line to the outdoor area. Mr. Cook said that the setback could be 50 feet with the proposed screening. The site plan shows that the distance to the property line from the outdoor area varies; at some spots it is close to the 50-foot minimum. The proposed site plan meets the setback requirement.

Mr. Andrew "Andy" Petesch came forward stating that he is an attorney representing the adjacent property owners, Michael and Sandra Baker of 401 Martindale Drive. Mr. Petesch submitted a Motion to Intervene for Michael and Sandra Baker. He said that his clients will be directly and adversely impacted by the proposed development. Mr. Clark said that the board would hear from Ms. Baker later in the hearing.

Sworn witnesses in favor of the petition:

Cayce Connell, 6444 Therfield Drive, Raleigh, NC 27614

John Spivey, 12008 Six Forks Road, Raleigh, NC 27614

Ms. Connell submitted Petitioner's Exhibit 1: floor plans for the proposed facility. Mr. Clark accepted the exhibit into the record. She said that she represents Connell Properties, LLC. Ms. Connell testified that the proposed use would be best described as a dog daycare and boarding facility. She said that being able to offer dogs exercise, social, and mental stimulation is appealing to many, and it is a need that is not currently met within the 27614 zip code. The purpose of the business would be to engage the dogs in a positive and controlled environment. The floor plans show five indoor play areas to accommodate various dogs. The outdoor area would only be used when the weather is favorable. Ms. Connell said that the dogs would be inside 90% of the time, and the outdoor area would be used as a recess opportunity for the dogs. She said that the outdoor area would not be covered, and it would have a turf that is designed for dogs. A training area is also on the proposed plan. The staff to dog ratio will never exceed 1 staff person for every 15 dogs. Ms. Connell said that acoustic ceiling tiles, mass loaded vinyl, acoustic panels, and baffles would all be used to minimize noise within the building. Solid walls, vegetation, and existing road noise on Six Forks Road will dampen any barks that occur in the outdoor play area. Dogs in the outdoor area will always be supervised, and there will never be more than 15 dogs in the outdoor area. A valet drop off service will be provided, and there will be webcams for dog owners to check on their dogs. Dispensing of medication will be provided. Ms. Connell said that traffic flow has been addressed with a northern entry, a southern exit, a two lane drop off, and a two lane exit. She said that the location is not in the critical area of the Falls Lake watershed. There will not be any floor drains or grooming. Solid waste will be picked up immediately, liquid waste will be blotted dry, and a sanitizing spray will follow. Ms. Connell said that she will try to preserve the home that is on the site. She said that she has tried to design a commercial space with a residential feel so that the business and building would be viewed as an asset to the community. Ms. Connell discussed the five required findings.

1. *The proposed development will not materially endanger the public health or safety.* Ms. Connell said that the traffic conditions would be negligible. The goal of the business would be to serve the people who already travel on Six Forks Road on a daily basis. The service would alleviate some traffic throughout the day since dog owners would not need to go home to care for their dog. The water and electrical use will remain the same. Ms. Connell said that the site plan takes care of all septic and stormwater standards.
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. Connell said that the dog daycare use is an approved use in the R-40W zoning district according to sections 4-11 and 4-46 of the UDO. The proposal meets the 24% impervious surface limitation. The outdoor run area has been screened for noise in accordance with the UDO, Ms. Connell stated.

3. *The proposed development will not substantially injure the value of adjoining property, or is a public necessity.* Ms. Connell said that it is her belief that the proposal would not injure the value of adjoining property. There are existing businesses in the corridor, including gas stations, auto repair facilities, bait shops, fire station, a veterinary hospital, a deli, and a store. She said that the proposal will be an asset to the community. She said that there are no other dog daycare facilities in the zip code or along that corridor.
4. *The proposed development will be in harmony with the area in which it is located.* Ms. Connell said that she has taken time to ensure that the development will be something that the residents are proud of.
5. *The proposed development will be consistent with the Wake County Land Use Plan.* Ms. Connell noted that the Land Use Plan aims to promote mixed uses. The facility will provide a use that is not present in the area, and the goal of the development will be to serve the residents along the Six Forks Road corridor. Ms. Connell said that the facility will not pose a threat to human or environmental safety. She said that non-residential uses are allowed in the zoning district, and the location is not within the critical area of the Falls Lake watershed. She said that she is in compliance with the Wake County UDO. She has not requested or received any variances from the county for the project. She said that she has satisfied all preliminary requirements for Wake County Environmental Services pertaining to stormwater and wastewater. She has provided all landscape buffers and noise screens for the property. Ms. Connell added that her proposal is below the threshold needed to require a traffic impact analysis.

Mr. Clark asked Ms. Connell if she would be present at the facility on a regular basis. Ms. Connell answered that she would not be there since she has another business, but she will have a large part in the dog daycare business. She said that there will be two managers at the facility, and there would always be at least one manager onsite during operating hours. Mr. Clark asked how many employees the business would have. Ms. Connell said that there would be up to seven employees. The primary focus would be daily dog care, but there will also be the ability to board dogs overnight.

Mr. McConkey asked what the hours of operation would be related to the outdoor area. Ms. Connell answered that the outdoor area would be used between 9 a.m. – 5 p.m. The intent is for the dogs to be in a controlled environment and space, and the outdoor area would be used for the dogs and employees to have a short recess.

Mr. McConkey asked about the measures planned to handle the noise. Ms. Connell said that she has designed the facility to control the noise and to dampen the flow of the noise. There would be six-inch walls, mass loaded vinyl within the walls, acoustical ceiling tiles, panels, and hanging baffles. She said that the dogs would be at the facility to play; she said that a happy dog would not be a barking, manic dog.

Mr. Mial asked what the capacity of the facility would be. Ms. Connell said that there would be a maximum of 70 dogs.

Mr. Spivey came forward to speak in favor of the petition. He said that he has lived less than ½ mile north of the property since 1993. He said that the only development in the area that he has seen has been a gas station between his property and the proposed location of the dog daycare. He said that he is surrounded by dogs where he lives. He testified that the proposal would be an asset to the community.

Sworn witness in favor of the petition:

Brandon Harris, 3203 Osage Drive, Holly Springs, NC 27540

Mr. Harris said that he will be moving to the north Raleigh area soon, and he works in the area of the site location. He said that he has a dog that he needs to care for during the work day. He testified that the proposal would be a benefit to him and the area.

Sworn witness in favor of the petition:

Duncan Parker, 8967 Galatia Church Road, Fayetteville, NC

Mr. Parker stated that he works for ForeverLawn of the Carolinas, and he would be installing the artificial turf in the outdoor play area. Mr. Mial asked how the turf operates. Mr. Parker said that the turf is installed over a four-inch aggregate base surrounded by a perimeter. The turf is pervious; it is designed for a canine application in the type of setting as is being proposed. The turf is constructed in a manner that liquid waste drains through, and solid waste can be scooped easily. The blades of the turf have antimicrobial protection. The four inches of aggregate base provides filtration of the liquid waste.

Mr. Stewart asked if the turf is considered impervious. Mr. Parker answered that the turf is pervious. He said that the data for the turf indicates that it can handle over 2,000 gallons per hour. Mr. Stewart asked if Wake County staff had determined that the turf is pervious. Mr. Cook said that staff reviewed the documentation, and staff determined that the turf would be pervious, and it would not be counted as impervious surface. He said that the turf would drain at least as well as the ground in the area based on how it is designed.

Mr. Petesch asked Mr. Parker if there would be compacting of the soil before the aggregate is laid down. Mr. Parker said that there would be compacting of the soil, and the aggregate is compacted at a 95% rate. The liquid drains through the turf into the aggregate itself. Mr. Petesch asked what other capacities Mr. Parker works with aggregate. Mr. Parker said that installing turf is what he does. He testified that the turf eliminates odors. He said that product that Ms. Connell has chosen is a superior product compared to many of the other turfs available on the market.

Mr. Clark asked staff how they determined that the artificial turf was pervious. Ms. Kathryn Hobby of Wake County Environmental Services came forward and was duly sworn. Ms. Hobby said that the application included technical details of the canine grass. She said that she and the staff engineer reviewed the technical details and found that the infiltration of the canine grass is better than soil, and they came to the opinion that it would not be considered impervious.

Mr. Petesch asked for an opportunity to review the technical materials related to the canine grass. Mr. Clark said that it would be beneficial to have the technical materials submitted into the record.

The board took a brief recess.

Ms. Hobby said that the BMP, a bioretention cell, is proposed for the northern side of the building. The bioretention is the best BMP in the stormwater manual. The proposal met the requirements of peak flow and Falls nutrient management strategy. She said that canine turf was not proposed as a BMP or any credit for infiltration.

Mr. Petesch asked Ms. Hobby who reviewed the technical materials of the canine grass to determine whether the turf was impervious. Ms. Hobby answered the she and the staff engineer, Shawn Springer, reviewed the technical materials.

Ms. Connell requested that the technical materials for the canine turf be submitted into the record since it supports the determination that the turf is pervious. Mr. Petesch had no objection. Mr. Clark accepted the "K9Grass" document as Petitioner's Exhibit 2.

Sworn witness:

Frank Isaacs, 1128 Hawk Hollow Lane, Wake Forest, NC 27587

Mr. Isaacs said that he lives about five miles from the site, and he owns a rental house about one mile from the site. He said that it was speaking not necessarily in support of the petition. He said that he does not know the petitioner. He expressed support for the process being followed.

There was no one else wishing to speak in favor of the petition.

Mr. Petesch came forward to address the board on behalf of Sandra and Michael Baker who live at 401 Martindale Drive, which is adjacent to the site across the street. He said that the Baker's house is oriented so

that it faces the site. Mr. Petesch noted an objection that the plans submitted by Agri-Waste Technologies are not sealed by the principals of that firm. He noted an objection to Agri-Waste Technologies including information regarding traffic safety and property values since they had not presented any evidence that they are experts in those areas. Mr. Petesch said that Ms. Connell commented on traffic safety and property values, but she has not been admitted as an expert on those issues. He said that expertise is required when it comes to sound when it comes to compliance with the code. He said the Ms. Connell did not provide testimony regarding what the decibel level would be at the property line.

Sworn witnesses in opposition to the petition:

Mr. Jim Craig, 413 Martindale Drive, Raleigh, NC 27614

Ms. Nancy Dunn, 11124 Six Forks Road, Raleigh, NC 27614

Dr. Jackie Price, 5616 Yates Garden Lane, Raleigh, NC 27606

Mr. Steven Thorburn, 2500 Gateway Centre Blvd., Suite 800, Morrisville, NC 27560

Ms. Sandra Baker, 401 Martindale Drive, Raleigh, NC 27614

Mr. Harold Yelle, 7700 Serenity Lake Drive, Raleigh, NC 27609

Ms. Baker said that all of the trees in front of her property have been removed. Her house is pointed directly at the outdoor dog run. She said that she believes that the proposal will greatly affect her property value and marketability of her home. She said that the proximity to the proposed use is one reason why buyers would choose to not even view the home. She said that she would have to convince buyers that the noise from the site would not be an issue, and she would not have the opportunity to do so. She said that there are traffic issues on this part of the road where drivers go 45 miles per hour, and there is a blind curve going north on Six Forks Road. Going south on Six Forks Road there is a crest of a hill that makes it difficult. During school hours and rush hours, it can be difficult to get out of the area, and the proposed use would add additional traffic. Mr. Baker said that noise is one of the biggest concerns. She said that this would be a 24-hour boarding facility with dogs onsite 24 hours a day. She had concerns about whether the facility would be staffed at night and whether there would be lighting on the site 24 hours a day. She said that she had a concern about the light pollution and the possibility of a dog escaping onto her property.

Mr. Petesch asked Ms. Baker about whether the proposed use would be in harmony with the area. Ms. Baker said that they are on a two-lane highway. The area is known as the Bayleaf Community. She noted a petition with 339 signatures in opposition to the proposal. Mr. Clark asked the audience to raise their hands if they had signed the petition.

Ms. Baker submitted Exhibit 3: slides showing photographs of the area that Ms. Baker took and maps. Mr. Clark accepted the exhibit into the record. Ms. Baker testified that she took the photographs included in Exhibit 3. She said that the site is at the entrance to her subdivision.

Mr. Petesch asked Ms. Baker if she had done research regarding kennels in the area. Ms. Baker said that she searched Google for kennels in the area. She showed maps that denoted where kennels in the area are located.

Mr. Clark asked if there is a separation requirement in the UDO regarding how far kennels need to be from one another. Mr. Cook answered that there are not any requirements regarding spacing of kennels.

Ms. Baker discussed the location of the kennels in the area. She said that there is one kennel in the 27614 zip code. She said that there are two kennels on Six Forks Road.

Ms. Connell objected to Ms. Baker's testimony since the location of kennels is not relevant to a dog daycare facility. Mr. Petesch said that kennels and dog daycare facilities board dogs.

Ms. Baker said that the proposed facility is not in harmony with the area based on size or appearance of either the residential or non-residential uses (the When Pigs Fly retail business and the bait shop) in the area.

Mr. Mial asked Ms. Baker how close her home will be to the property. Ms. Baker estimated that it is 131 feet from the outdoor dog run to her property line.

Mr. McConkey asked Ms. Baker if her concerns regarding noise were related to the indoor noise or outdoor noise. Ms. Baker said that the primary concern would be noise from the outdoor area, but there are other concerns as well. Mr. McConkey asked if the testimony by Ms. Connell that the outdoor area would only be used between 9 a.m. – 5 p.m. changes her concerns. Ms. Baker answered that those hours do not change her concern since her husband is always at home, and she sometimes works from home.

Mr. Thorburn came forward to address the board. Mr. Thorburn said that he is a professional engineer, and he has practiced acoustical consulting for 37 years. He said that he reviewed the application and site plans, and his office has worked on kennels and canine hotels in the past. Mr. Thorburn said that his office measured how loud dogs were near an outside play area of a facility in the San Francisco Bay area. Just outside a chain link fence the noise level of the dogs was 86 decibels.

Ms. Connell objected to Mr. Thorburn's testimony based on the lack of correlation between the conditions in San Francisco with a chain link fence versus the conditions that would be present at the proposed facility with a maximum of fifteen dogs in the outdoor area that would comply with the UDO noise standards.

Mr. Petesch offered Mr. Thorburn as an expert in the field of acoustics and sound engineering. Mr. Clark accepted Mr. Thorburn as an expert witness. Mr. Petesch submitted Exhibit 4: a report prepared by Mr. Thorburn. Mr. Clark accepted the report into the record. Mr. Thorburn said that the UDO states that the maximum noise level that could be created would be 55 decibels. He said that there is a 5 decibel penalty for anything that is considered impulsive which would take the requirement down to 50 decibels at the nearest adjacent property line. Mr. Thorburn said that the measurement of 86 decibels that his office measured in San Francisco was taken from approximately 20 feet away from the barking dogs. Mr. Thorburn testified that the brick sound wall that is proposed would reduce the noise levels by approximately 10-15 decibels. He said that every time he would double the distance from a sound source like a barking dog, the sound level goes down by 6 decibels. He said that at the lot line that is 60 feet away from the center of the play area, he would estimate the noise level to be around 72-74 decibels. Mr. Thorburn testified that when you factor in the noise wall a single bark of a dog in the outdoor play area would exceed the 50 decibel limit. He recommended that all of the dog play areas be inside the building to control the noise. He said that the devices proposed to control the indoor noise would be effective. Mr. Petesch asked if the proposal could comply with the noise regulations relative to the parking lot area. Mr. Thorburn answered that they would not. Mr. Petesch asked whether the configuration of the wall and the building acting as the fourth side facing the Baker property would affect the noise. Mr. Thorburn said that the fourth side will reflect some additional sound, but he did not look at the reflection in his analysis. He said that the traffic is quiet in the area, and the dominant sound in the area while he was standing on the Baker's driveway was crickets. Mr. Petesch asked if the traffic on Six Forks Road would drown out the noise of dogs barking. Mr. Thorburn said that it would not based on what he experienced when he was at the site.

Mr. Mial asked what the decibel level would be at the Baker's home which is approximately 181 feet from the proposed outdoor play area. Mr. Thorburn said that based on the starting decibel level of 86 decibels fifteen feet away from the noise source, at 240 feet the decibel level would be 62 decibels.

Ms. Connell asked how the noise levels would change based upon what is proposed on the site plan for vegetative buffers. Mr. Thorburn said that vegetation does not do anything for noise unless there are 100 feet of dense conifers. Ms. Connell said that conifers are called for on the site plan.

Mr. Petesch asked Mr. Thorburn if the landscaping called for on the landscaping plan would have an effect on the noise level. Mr. Thorburn said that he would assume that there would be no measurable effect from the landscaping.

Mr. Clark asked about the noise regulations in the UDO. Mr. Cook said that the UDO states that the noise may not exceed 55 decibels for any residential district. The code does not specify whether that noise level would be one bark or multiple barks.

Mr. McConkey asked Mr. Thorburn if the standards in the UDO could ever be met by an outdoor dog enclosure. Mr. Thorburn answered that an outdoor dog enclosure could never meet the UDO standards.

Mr. John Barker asked about the starting point of 86 decibels used in Mr. Thorburn's analysis. Mr. Thorburn said that if there was a masonry wall present the starting point would be 12-15 decibels less.

Ms. Connell asked Mr. Thorburn how many dogs were present when he took his measurements. Mr. Thorburn said that he did not take the measurement. Based on the video he saw, there were approximately a dozen dogs in the area at the time. Mr. Thorburn said that one of his engineers took the measurements. Ms. Connell asked if there was any instigating of the dogs to get them to bark. Mr. Thorburn said that there was not any instigation. Ms. Connell asked about the staffing level at the kennel when the measurements were taken. Mr. Thorburn said that he did not know the answer to that. Ms. Connell asked how the ambient noise from traffic on Six Forks Road could affect the noise level. Mr. Thorburn said that the sound levels from the cars on Six Forks Road would cover over the basic sound levels, but the tire noise on the road would be below what the dog barks would be. Ms. Connell asked if one dog bark by any Wake County resident would fail to meet the Wake County UDO standard for noise. Mr. Thorburn answered that based on how the UDO is written that would be correct depending on where the property line is.

Mr. McConkey asked how topography impacts noise. Mr. Thorburn said that topography does play into account when the line of sight is broken, but the area in question is essentially level. Mr. McConkey asked how tall a wall would have to be to contain the noise. Mr. Thorburn said that the wall would have to be infinitely tall because sound would diffract over the top. He said that the only way to contain the noise would be to have the dogs inside an enclosed structure. Mr. McConkey asked if there is anything that the applicant could erect to contain the noise. Mr. Thorburn said that he cannot come up with a solution to meet the requirements other than to put a roof on the outdoor area.

The board took a brief recess.

Ms. Connell asked Mr. Thorburn if he had done any other studies besides the measurements taken in San Francisco. Mr. Thorburn said that the measurements used were his most recent measurements. The levels that were measured were those of a typical dog. Ms. Connell asked about the conditions when the noise level measurements were taken. Mr. Thorburn said that the measurements were taken when dogs were outside playing.

Mr. McConkey asked Mr. Thorburn if he had a projection of the noise level at the Baker's property line. Mr. Thorburn said that he did not do a projection based on the Baker's property line because the UDO regulation is the noise level at the nearest property line.

Mr. John Barker asked about the noise level at the Baker's property line. Mr. Thorburn said that he estimated 62 decibels at the nearest property line on the subject property; going across the street would bring the noise level down to approximately 56 decibels.

Mr. Yelle came forward to address the board. He said that he is a licensed professional engineer and a professional land surveyor. Mr. Petesch submitted Exhibit 5: a brief resume for Mr. Yelle. Mr. Clark accepted exhibit 5 into the record. Mr. Petesch submitted Mr. Yelle as an expert witness. Mr. Clark accepted Mr. Yelle as an expert witness. Mr. Petesch asked Mr. Yelle about the impervious surface on the site. Mr. Yelle said that since the subgrade under the artificial turf in the outdoor play area would have been compacted, that area should be classified as some rate of impervious surface. Based on that, Mr. Yelle said that the site would be over the 24% limit for impervious surface. Mr. Petesch asked Mr. Yelle if the Petitioner's Exhibit 2 changed his opinion. Mr. Yelle said that he reviewed the document, and the cross section showing 3-4 inches of crushed aggregate should not be considered impervious surface. Mr. Petesch asked Mr. Yelle about the proposed

stormwater BMP. Mr. Yelle said that his conclusion is that the plan meets the water quality volume required for the first inch of runoff as related to the Falls Lake Neuse watershed. He said that it does not meet the peak flow runoff rates for the two year or ten year stormwater. Mr. Petesch asked if the outlet enter into a drainage way. Mr. Yelle said that it outlets through a fifteen-inch pipe to an adjacent stream. He said that it appears that they could be dumping into the Neuse River buffer stream which would not be allowed by NCDENR regulations. Mr. Yelle questioned whether there is enough space provided on the plan to install the fifteen-inch pipe. He said that the exit velocity of the fifteen-inch pipe at a 6½% slope will be in excess of the requirements. He said that the impervious surface addition calculations are not correct since they do not include the two driveways on Six Forks Road since they do not lie within the lot lines. Mr. Petesch asked how the proposal may affect the property owner to the north. Mr. Yelle said that there is an increase of about 35% in the one year storm runoff rate. He said that he does not know if it will be harmful. Mr. Petesch asked about the transportation impacts of the proposal. Mr. Yelle questioned whether NCDOT would allow two driveways. Mr. Petesch asked Mr. Yelle if he contacted NCDOT regarding this project. Mr. Yelle said that he emailed the site plan to Reed Elmore with NCDOT. Mr. Petesch submitted Exhibit 6: an email from T.R. Elmore, District Supervisor from NCDOT. Mr. Murphy said that there is an exception to the hearsay rule that says that a written document that is prepared by a public official in the course of doing their job can be accepted into the record. Mr. Clark accepted Exhibit 6 into the record. Mr. Petesch asked Mr. Yelle about the email from Mr. Elmore. Mr. Yelle said that Mr. Elmore's email indicates that roadway improvements to add a left-turn lane may be required in order to install a full access driveway. He said that he created a model to display the effect that a left turn lane would have on the area. Mr. Petesch submitted Exhibit 7: a model prepared by Mr. Yelle. Mr. Clark accepted exhibit 7 into the record. Mr. Yelle said that adding a left turn lane would be adding an additional quarter-acre of impervious surface in the watershed.

Mr. Clark asked Ms. Connell if she has had any contact with NCDOT. Ms. Connell answered that she has not had any contact with NCDOT.

Mr. Cook said that staff would require a driveway permit from NCDOT at the site plan stage. The driveway permit is not required for the special use permit. Mr. Cook said that staff sent NCDOT the special use permit request, and staff did not receive any comments back from NCDOT. He said that requiring a driveway permit from NCDOT could be a condition of the special use permit.

Mr. McConkey asked what would happen if NCDOT denied the driveway permit and the site plan needed to be amended from the one approved for the special use permit. Ms. Everette said that if there is a minor modification to the site plan, staff can approve the modification without going back to the Board of Adjustment. If staff finds that the modification is a major modification, then the applicant would need to go back before the Board of Adjustment for a modification to the special use permit.

Mr. Clark asked about the additional impervious surface that would be added with the driveways. Mr. Cook said that the county-wide method to calculate impervious surface is based on the lot boundaries.

Mr. Petesch asked Mr. Yelle about traffic hazards. Mr. Yelle said that trying to make a left turn into the site coming from the north would be a hazardous turn. Mr. Yelle said that the use proposed would be more appropriate in an activity center.

Dr. Jackie Price came forward to address the board. Dr. Price said that she has been a veterinarian for 27 years and a practice owner for 15 years at Six Forks Animal Hospital which is four miles from the site. Mr. Petesch asked if her facility offers boarding. Dr. Price said that most veterinary hospitals offer boarding, and many of them also offer dog daycare. Mr. Petesch asked about her facility's capacity and utilization. Dr. Price said that they can board 102 dogs and 6 cats. She said that she has been boarding animals for over 20 years, and the fullest time around Christmas and July 4<sup>th</sup> they have around 49-50 animals which is well under their capacity. She is able to hear dogs barking from inside the building when she is in the parking lot of her facility. Her facility includes a ventilation system to help with the smells. She said that her staff takes the dogs outside at least three times a day to go to the bathroom. On a typical week, Dr. Price said that they are at about 10% capacity. Mr. Petesch asked Dr. Price if the proposal is a public necessity. Dr. Price answered that it is not a

public necessity. She added that a drainage system is important, and she does not know how to keep the area clean without drains in the floor.

Mr. Jim Craig came forward to address the board. He said that he has been a residential designer for 45 years. Mr. Petesch asked Mr. Craig whether the proposal would be in harmony with the area where it would be located. Mr. Craig said that all of the houses abutting the property are single story residences between 1,800 – 2,000 square feet. The proposal is for an 8,000 square foot two-story building that is 125 feet long and 54 feet deep. This would be a large commercial building amongst small houses. Mr. Petesch asked about the art gallery next door. Mr. Craig said that the building with the art gallery is a one story building that is about 50 feet by 50 feet, and it has a shallow setback. The other houses in the area have larger setbacks from the road compared to what is proposed. Mr. Craig noted the covered canopy that would be sixteen feet into the setback.

Mr. Cook said that canopies are allowed within the setback for non-residential uses.

Mr. Craig said that the floor plans do not show a door to the outdoor area. He questioned how staff would get the dogs to the outdoor area if they need to go through an unfenced area. He said that there is not a sidewalk to one of the back doors which would be required by ADA standards. He questioned whether the building would have sprinklers since he did not see any sprinkler storage inside the building.

Ms. Nancy Dunn came forward to address the board. She said that she has a direct line of sight to the proposed development from her property. She said that there are no tree buffers proposed between her property and the proposed development. Ms. Dunn said that she has lived at this location for 16 years, and she has concerns related to traffic. She said that the curve to the north on Six Forks Road is an “S” curve, and both curves are blind curves. Ms. Dunn testified that she has had two trash companies refuse to pick up her trash because they said that the road was too dangerous. Mr. Petesch asked whether any mailboxes have been hit in the past. Ms. Dunn answered that she has lost two mailboxes, and Ms. Lowery has lost more than two mailboxes. She said that a car could not make the turn, and it ran into her porch. Ms. Dunn said that in the morning the traffic will back up from Durant Road and Interstate 540 to the south all the way to her house. She questioned whether any driveway for a commercial use should go on that side near the blind curve. Mr. Petesch asked Ms. Dunn about character of the other businesses in the area. Ms. Dunn said that the proposal would not be in harmony with the neighborhood. She said that the four or five grandfathered businesses are approaching 100 years old, and they are all in their original style with white wood and metal roofs. The businesses have low volume. She said that the scale, safety, and noise of the proposed development would not be in harmony with the neighborhood.

Mr. Petesch said that he did not have any other witnesses to call to testify.

Sworn witness in opposition to the petition:

Todd Griffin, 105 Hartland Court, Raleigh, NC 27614

Mr. Griffin said that his children stand on Six Forks Road to ride the school bus each day. He said that there have been three rollover accidents near the curve in the road in the last few years. Mr. Griffin quoted parts of UDO section 4-46-1 (A) which states:

**(A) Purpose**

*These provisions are intended to recognize that although kennels provide a service for owners of animals, the noise, odor, insects, and traffic associated with kennels are not in keeping with what is ordinarily desirable in developed areas. However, within the zoning jurisdiction of the county, kennels might be appropriate and conveniently located therein provided that sites are carefully selected and establishments are built and operated in compliance with all applicable standards. It is further intended that the Board of Adjustment must consider each proposed site with reference to the character of the immediate neighborhood, topography, natural vegetation (and other purposes of zoning as set forth in Section 153A-341 of the General Statutes), and determine whether a kennel would be a suitable land use thereon.*

Mr. Griffin said that approving the proposal would be creating a problem that does not exist. He said that he did not hear anything regarding other sites that were looked at for the proposed development. He questioned what would make this site better than a site in the nearby activity center. He said that most of the development in the area is residential. Mr. Griffin said that other kennels in the area are located near uses such as a hardware store and a dump. He noted the topography of the area in that the site sits on almost the highest land in the area, and the building would be 35 feet tall. He said that the proposed development would be thirteen times bigger than the flower shop building nearby. Mr. Griffin said that there are four wells within 575 feet of the site, and one of the requirements is to protect the public water supply. He said that there is no vegetation on the back side of the site that faces his property. He said that there has been no discussion about how dog escapes would be treated. There is a volunteer fire station a mile away, and Mr. Griffin said that the dogs would bark when the fire trucks drive by the site. Mr. Griffin said that the proposal is not in harmony with the area. Mr. Griffin submitted Exhibit 8: maps and a photo of the area. Mr. Clark accepted the exhibit into the record.

The board took a recess for lunch.

Sworn witness in opposition to the petition:

Tony Davis, 404 Martindale Drive, Raleigh, NC 27614

Mr. Davis said that his property abuts the site. He said that the water on the south side of Martindale Drive drains across his yard. He said that the ditch can fill up when it rains since it catches the runoff from the south side, and rain can sometimes gather in his garage. He said that the site is not good due to how it would affect runoff to his property and the water quality of Falls Lake.

Sworn witness in opposition to the petition:

Dr. Rebecca Gore, 405 Martindale Drive, Raleigh, NC 27614

Dr. Gore said that she has owned her own kennel for 20 years, and she has a boarding facility and a daycare. She said that her facility is beside a CVS, and there is an accident in her parking lot every day. She said that getting off of Six Forks Road will be a problem with the traffic in the area. Dr. Gore supported the testimony of Dr. Price. Dr. Gore said that there will be noise from the facility.

Sworn witness in opposition to the petition:

Aleksandar Jovic, 408 Martindale Drive, Raleigh, NC 27614

Mr. Jovic testified that he worked next to a kennel for six years. He said that kennels have odors that cannot be removed or ignored. He said that the odors have a direct effect on property values.

Sworn witness in opposition to the petition:

Joan Crain, 416 Martindale Drive, Raleigh, NC 27614

Ms. Crain said that her children rode the school bus, and they picked up the school bus at the intersection of Six Forks Road and Martindale Drive. She said that there are parents who are reluctant to let their children pick up the bus at that location due to the traffic. There is a lot of traffic on Six Forks Road with boats and jet skis being towed since Six Forks Road is the access to Falls Lake. There are often cyclists on Six Forks Road, and it is difficult to get around them due to the curves. She said that there is not a lot of shoulder on Six Forks Road. She said that the morning traffic is often backed up to the north past the entrance to Coachman's Trail at the other end of the S curve. Ms. Crain expressed concern that the entrance to Martindale Drive is close to the present driveway to the site. She said that if people are trying to turn left into the site, that would create an even bigger traffic issue.

Sworn witness in opposition to the petition:

Wanda Fitzpatrick, 7005 Daniel Road, Wake Forest, NC 27587

Ms. Fitzpatrick said that she has owned and operated a kennel on Strickland Road since 1990. Ms. Fitzpatrick said that she does not view the proposal as a public necessity based on her experience as a kennel owner. She said that neighbors near her kennel can hear dogs when they are barking inside the building.

There was no one else wishing to speak in opposition to the petition.

Ms. Connell came forward to offer rebuttal testimony. She said that she will not have apartments or other businesses close by. She said that the dogs will be inside the building 90% of the time. She said that there will be a door to the outdoor play area, so the dogs will not have to walk outside to the enclosed outdoor area. Ms. Connell said that the only opportunity for a dog to escape would be when an owner is walking a dog into the building. She said that the North Carolina Department of Environment and Natural Resources issued a letter on November 30, 2015 that stated that the stream in the back is not subject to the Neuse buffer. She said that there would be a retention pond on the right side of the building to handle runoff. Regarding traffic, she said that the maximum traffic would be 70 cars during peak traffic times when the traffic is a crawl through the area. She said that the proposed daycare could alleviate some traffic in the area since dog owners would not need to go home during the day to care for their dogs. She said that there is a need for this type of business in the area, and she believed that it would be an asset to the community.

Mr. Petesch said that the proposed development would need a special use permit since it has been identified as having harmful effects and needing to be sensitively placed. He said that there are heightened standards that should be protected, and he said that the application shows compliance with the minimum standards of the UDO. He said that there is no guarantee that Ms. Connell would follow the business practices that she has said would be employed at the site. If the special use permit was approved, Mr. Petesch said that another operator could take control of the site who may not have the same values that Ms. Connell purported to have. Mr. Petesch discussed the five required findings.

1. *The proposed development will not materially endanger the public health or safety.* Mr. Petesch noted testimony from a professional engineer regarding traffic hazards involving ingress and egress. There was testimony regarding the location of wells in the area.

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.* Mr. Petesch said that there was testimony from a sound engineer who talked about what the decibels will be at the property line, and that the noise from the proposed development could not meet the code.

3. *The proposed development will not substantially injure the value of adjoining property, or is a public necessity.* Mr. Petesch said that there was no competent expert testimony offered by the applicant with respect to property values. He said that there was testimony from three veterinarians who operate boarding and daycare facilities that indicated that the proposed development would not be a public necessity. He said that there are not any similar uses in the area because it is a residential area, and it is not an appropriate location for this type of use.

4. *The proposed development will be in harmony with the area in which it is located.* Mr. Petesch said that there was testimony that the proposed development is not in harmony with the area. Most of the homes in the area are one-story, and around 1,800 – 2,000 square feet. The proposed building would be 8,000 square foot, two-story building close to the road.

5. *The proposed development will be consistent with the Wake County Land Use Plan.* Mr. Petesch said that there was testimony that an activity center would be a more appropriate location for the proposed use. He said that the Land Use Plan directs commercial, non-residential development into the activity centers. He said that the nearest activity center is at the intersection of Six Forks Road and Norwood Road which is 0.63 miles away from the site. Mr. Petesch is that the Land Use Plan states that the maximum distance that a non-residential use may radiate outward from the center of the activity center along roadways is 800 feet. He said that the 0.63 mile distance is well in excess of the 800 feet. Mr. Petesch submitted Exhibit 9: a map showing the

distance from the site to the activity center at Six Forks Road and Norwood Road being 0.63 miles. Mr. Clark accepted the exhibit into the record.

Based on all of those factors, Mr. Petesch requested that the board deny the special use permit.

There was no one else who wished to speak in favor of or in opposition to the request. Mr. Clark closed the public hearing.

Mr. Murphy asked the board to rule on the motion to intervene that Mr. Petesch presented. Mr. Murphy said that his advice to the board is that the board does not have the responsibility to act on the motion to intervene. He said that the board does not have jurisdiction to act on the motion to intervene. He said that the motion to intervene would be a question for the Superior Court if there were to be an appeal of the board's decision. Mr. McConkey said that the board heard Ms. Baker's testimony, and he said that it was not in the board's jurisdiction to make the determination. Mr. Clark made a motion that the board decline to rule on the motion to intervene for lack of jurisdiction. Mr. McConkey seconded the motion. By a vote of 5-0, the motion passed.

## BOARD DISCUSSION

The board discussed the five required findings.

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

*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.*

Mr. John Barker said that his biggest concern was the noise level that the development would create. He said that the general nature of the UDO regulation having the noise level be 55 decibels at the property line is because the neighbor's property line would be adjoining. He said that in this case there is a street between the site and other properties. He said that the testimony from the sound engineer was that the noise at the Baker's property line would be one decibel above what the UDO calls for. He said that this would not materially endanger the public health or safety from a noise perspective.

Mr. McConkey commented on the traffic conditions. He said that there is an issue with the traffic on the road as well as the road conditions with the curve. He said that those two conditions will continue to exist regardless of whether the project is approved or denied. He noted testimony from the applicant that the intent is to serve the commuters who are already on Six Forks Road. He said that NCDOT would have to approve a driveway permit, and road improvements may be needed if the project is approved which could result in improved road conditions as a result. He said that he did not hear any evidence that this project would impact the traffic or road conditions such that it was create in itself a material endangerment of public health and safety.

Mr. Clark said that the project does not exceed the traffic needed to require a traffic impact analysis.

Mr. John Barker said that it appears that the applicant has met the site requirements for wastewater with the detention pond and the required septic area. He noted the testimony regarding wells that are 575 feet away, but he said that if the water is treated onsite properly, it would not be an issue. He said that those conditions do not endanger the public health or safety.

*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.*

Mr. McConkey referred to staff's testimony that the development would comply with all regulations and standards provided that the two recommended conditions are in place. He said that the proposed impervious surface is just under the impervious surface limit, and there was testimony by staff that the surface used in the outdoor play area would be considered pervious surface. Staff testified that classifying the surface used in the outdoor play area as pervious is consistent with prior practice.

Mr. John Barker said that the application has met the parking requirements, the landscaping requirements, and the bufferyard requirements of the UDO.

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

*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.*

Mr. McConkey stated that there was testimony on both sides regarding whether the proposed development would be a public necessity. He stated his opinion that the proposal would not be a public necessity since that type of classification is typically used for utility-type developments like landfills. Mr. McConkey said that there was testimony on both sides regarding the impact on property values, but there was not any expert testimony.

Mr. McConkey discussed the expert testimony by Mr. Thorburn that the noise level at the closest adjoining property line of a neighbor could be within one decibel of the UDO regulation. He referred to Mr. Thorburn's report (exhibit 4) that says that "noise walls of this scale will reduce the noise from the source by 10 to 15 dBA depending on the height of the noise source and how tall the listener is." He said that Mr. Thorburn used 12 decibels when performing his calculations; if he had used 10 decibels or 15 decibels to perform the calculations, it could have changed the result in either direction. Mr. McConkey said that he had enough questions about the noise evidence, and the results were so close to the UDO regulations, that he could go either way on whether the evidence related to noise shows that the proposed development will substantially injure the value of adjoining property or whether the proposed development will be in harmony with the area.

Mr. Clark said that the noise evidence was very close to the UDO regulations, and it is something that had not come up before.

Mr. McConkey said that, if approved, the owner of the facility would be subject to penalties in the future if the noise from barking dogs violates the noise ordinance.

Mr. Mial questioned whether the evidence presented related to noise would mean that every kennel in Wake County would not be in compliance with the UDO noise regulations.

Mr. John Barker commented that the intent of the UDO noise regulation is to keep the noise level down, and the testimony that the noise level would be within one decibel of the UDO standard is in keeping with the intent of the UDO.

Mr. McConkey noted the testimony from Ms. Connell that she was well aware that the noise level is a concern of the neighbors, and, if approved and built, the neighbors will alert her if she is not living up to the commitments that she has made.

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

*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.*

Mr. McConkey said that the proposed development is a commercial business that is intended to serve the residences in the area.

Mr. John Barker said that there was testimony that there are 22,000 cars that travel on this section of Six Forks Road which suggests that this is more of a commercial road than a residential road. When you travel further north on Six Forks Road, it becomes a two-lane road that is more of a residential area.

*5. The proposed development will 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.*

Mr. Clark said that the use is allowed outside of activity centers, and it is consistent with the Land Use Plan.

Mr. McConkey said that the UDO requires a separation of any outdoor area to a property line. The separation is 100 feet unless measures are taken to reduce noise, such as a wall with evergreen shrubs and trees. He said that there was testimony from Mr. Thorburn that these standards set forth in the UDO are insufficient, but there is a presumption that if the standard is met then the noise will be sufficiently mitigated. He said that the UDO noise regulations were thoughtfully adopted by the Wake County Board of Commissioners, and the Board of Adjustment is not able to throw out UDO regulations that some may find to be insufficient. Mr. McConkey said that the applicant has met the requirements, and the applicant testified that she will operate the facility such that she will be responsive to neighbors and that any potential impacts will be mitigated.

## MOTION

Mr. John Barker made a motion in the matter of BA SU-2227-16 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. The noise levels created will not materially endanger the public health or safety.

*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. The issues that exist with the traffic on the road and the*

conditions of the road will continue to exist. Road improvements required by NCDOT may improve the conditions of the road. This project would not impact the traffic or road conditions such that it would create in itself a material endangerment of public health and safety. The project does not exceed the traffic needed to require a traffic impact analysis.

b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection. The application meets the requirements for wastewater and septic systems.

c. Soil erosion and sedimentation.

d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater. The application meets the requirements for wastewater and septic systems. Water would be treated onsite so it should not have an adverse effect 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 development would comply with all regulations and standards. The proposed impervious surface is under the impervious surface limit. The surface used in the outdoor play area would be considered pervious surface. The application meets the parking requirements, the landscaping requirements, and the bufferyard requirements of the UDO. The application meets the UDO standard that the outdoor area must have a 50 foot setback with the appropriate noise screen.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The noise level at the closest adjoining property line of a neighbor could be within one decibel of the UDO regulation. The owner of the facility will be subject to penalties in the future if the noise from barking dogs violates the noise ordinance. The noise level would be within one decibel of the UDO standard which is in keeping with the intent of the UDO.

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. The proposed use is not a public necessity.

(4) The proposed development will be in harmony with the area in which it is located. The proposed development is a commercial business that is intended to serve the residences in the area. There are 22,000 cars that travel on this section of Six Forks Road which suggests that this is more of a commercial road than a residential road.

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 use is allowed outside of activity centers, and it is consistent with the 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 Current Planning Section of Wake County Planning;
- 2) The petitioner must obtain appropriate permits from the Wake County Inspections Development/Plans/Permits Division and Environmental Services;

**Item 5: New Business** – Mr. Finn updated the board regarding recent development activity.

**Item 6: Old Business** – There was none.

### **Item 7: Adjournment**

Hearing no additional business, the meeting was adjourned at 1:51 p.m.

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REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
August 9, 2016

All petitions complete, Timothy W. Clark declared the regular meeting  
of the Wake County Board of Adjustment for  
Tuesday, August 9, 2016 adjourned at 1:51 p.m.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Brenton McConkey', with a long horizontal flourish extending to the right.

Brenton McConkey  
Wake County Board of Adjustment

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