

MINUTES
ORANGE COUNTY BOARD OF ADJUSTMENT
AUGUST 9, 2010

MEMBERS PRESENT: Thomas Brown, Chair
Dawn Brezina, Vice Chair
David Blankfard, Alternate
Mark Micol, Alternate
James Carter, Full Member
Larry Wright, Full Member, Planning Board Liaison

STAFF PRESENT: Michael Harvey, Zoning Enforcement Officer
Debra Graham, Board Secretary

OTHERS PRESENT: Sahana Ayer, Staff Attorney

1. CALL TO ORDER

2. SWEARING IN OF NEW MEMBER

Larry Wright was sworn in as a new member of the Board of Adjustment serving as the Planning Board liaison.

3. ELECTION OF OFFICERS

Thomas Brown: Next on the agenda is the election of officers. In accordance with the rules of procedure for the Board of Adjustment, the board must elect a chair and a vice-chair annually. The secretary/clerk is appointed by the chair. The term of the last board chairman expired in June of this year prior to the July election, which did not take place. Therefore, as vice-chair, I am required to conduct an election at this regularly scheduled meeting of the board. The chair and vice-chair must be regular members of the board and shall be elected by a majority vote of the membership of the board. This includes the alternate members. The current regular members of the board are myself, Dawn Brezina, Dr. James Carter and Dr. Larry Wright. We will first elect a new chair. Nominations are now in order for the position of the chair of the Board of Adjustment and will be accepted from board members currently present.

Dawn Brezina: I nominate Thomas Brown as Chair. David Blankfard: Seconded.

Thomas Brown: If there are no further nominations, the nominations are now closed. All in favor signify by saying "I". All opposed. The vote is unanimous. I am elected as the new chair for 12 months and until the next annual election. We will next elect a vice chair of the board. Nominations are now in order for the position of vice-chair of the Board of Adjustment and will be accepted from the board members present. Are there any nominations? David is an alternate. It must be one of the four regular members.

David Blankfard: I would like to nominate Dr. Brezina. Mark Micol seconded.

Thomas Brown: Any further nominations. Hearing none, the nominations for vice-chair are now closed. All those in favor of Dr. Brezina as vice-chair, signify by saying "I". All opposed. The unanimous decision is Dr. Brezina is now the vice-chair of the Board of Adjustment. As the chair, I must also appoint a secretary and clerk for the Board of Adjustment and that would be Ms. Debra Graham. She has agreed to continue as our secretary and clerk and does an excellent job. Thank you.

4. CONSIDERATION OF ADDITIONS TO AGENDA

There were no additions to the agenda.

5. APPROVAL OF MINUTES
a. May 10, 2010

Thomas Brown: The minutes start on page 001 and go through page 006. I have a clarification on page 002, line number 6 and 7 should read, "To my recollection on February 8th we did not swear in anyone because the discussion was about whether there was sufficient time for the case to be heard".

MOTION made by Dawn Brezina to accepted the corrected minutes. David Blankfard seconded.

VOTE: Unanimous

(These corrections have been made.)

Thomas Brown: A vote of four fifths of the board is required to reverse any order or determination of the zoning officer to decide in favor of an applicant in any matter which is required to pass under the zoning ordinance or to approve any variance to the ordinance. For this meeting, we have two alternates but Mr. Micol will be voting as a regular member. Does staff have any comments on the agenda?

6. A-2-10 – Pet Behavior Help – Class II Kennel on Davis Road (SR 1129)

The following individuals were sworn in:

- | | |
|-------------------|-----------------|
| Michael Neal | Fred Conner |
| LeAnn Brown | Ronda Buchanan |
| Ted Bryant | Louis Olszyk |
| Valerie Olszyk | James Buchanan |
| Vic Knight | Pat Conner |
| Randy Hall | Theresa Lord |
| Myra Gwin Summers | Lawrence Madden |
| Richard Summers | David Barlow |

Michael Harvey: I would like to make a few brief comments regarding the abstract. As you know from reading the abstract you have an application to locate a Class II Kennel facility on a parcel of property off Davis Road. If you refer to attachment 2 of your abstract on page 079, you have the same map that is displayed here. This is a parcel of property located at the intersection of Davis Road. To the north of the subject property we have the existing Hillsborough Development District Zoning. To the west, we have R1, rural residential zoning. To the south, we have R1 zoning and rural buffer zoning. And to the east there is R1 zoning. As noted in the abstract, a Class II kennel is a permitted use of property within the R1 and RB zoning districts with approval of a Class B Special Use Permit.

A Class II Kennel is defined with Article 22 of the Orange County Zoning Ordinance as an establishment with all the animals of any species excluding domesticated livestock engaged in the any of the following: a) owning or keeping, for any purpose, 20 or more animals, b) selling and/or training guard dogs or security dogs and c) the keeping of more than five animals at any given time for the purpose of breeding, boarding, or rehabilitation.

In order to successfully obtain a Class B Special Use Permit for a kennel, the applicant is required to demonstrate compliance with the specific standards detailed within Article 8, specifically Section 8.8.11 and the general requirements articulated in Article 8.2. We will go over those standards later this evening. Prior to the applicant being able to present their case, I have a couple of additions to your abstract for you to consider. First, I would like to ask the board to accept a replacement of your existing attachment 4, which is the Required Findings for this case. I am sure you read it and you will note that staff had used information for a camp retreat center which it is not the subject of tonight's hearing. We have corrected the error and provided you with the revised and corrected copy of the Required Findings. Are there any questions?

The last two items I would like to present are required under the Orange County Zoning Ordinance, Article 2 to certify that we not only mailed out copies of the certified letter to adjacent property owners within 500 feet but we also posted the property with a sign advertising the hearing. Please refer to attachment 5 that I am giving you providing the necessary documentation in order to allow you to make that determination. We have also included a copy of the letter in your packet along with copies

1 of the certified mailing receipts. Also, staff is giving you attachment 6 which is a memorandum staff received after the
2 abstract was disseminated from the Environmental Health Department indicated they had issued a septic permit for the
3 development of this property as a kennel operation.
4

5 As a review, you have a revised attachment 4 to utilize and discard what is in your packet. You have a new attachment 5
6 which is a certificate of mailing and posting of the property and an attachment 6 which is a memorandum from the Orange
7 County Health Department indicating that a septic permit has been issued. As you know, one of the findings that will have to
8 be made is that a septic permit has been issued. We included documentation indicating they have applied for and the Health
9 Department had found suitable soils. We were unable to secure the memorandum prior to the mailing of the abstract. I
10 would like to now turn it over to the applicant.
11

12 Thomas Brown: The board accepts attachments 4 through 6. Before we get started into the case, I would like to read the
13 summarization of the case A-2-10 Pet Behavior Help on Davis Road (SR 1129).

14 Ms. Valerie Olszyk, owner/operator of Pet Behavior Help, is requesting the issuance of a Class B Special Use
15 Permit to allow for the development and operation of a Class II Kennel for a parcel of property on Davis Road
16 (TMBL 7.2..29N / PIN 9862-99-8894). Specifically a twelve (12) acre parcel of property located at the intersection
17 of Davis Road and Old NC Highway 86 across from the Hillsborough United Church of Christ.

18 As detailed within the application, Ms. Olszyk is seeking to construct a 6,900 square foot training building as well as
19 a 24,725 square foot covered arena for dog shows and competitions. The project also proposed the creation of a
20 24,200 square foot fenced in competition field as well as a fenced in training area.

21 Access to the proposed facility is proposed to be through a proposed drive along Davis Road.

22 The submitted site plan shows the future development of a single-family residence, where Ms. Olszyk proposes to
23 reside.
24

25 LeAnn Brown: I am an attorney practicing in Orange County representing the applicant. All of you that have been on the
26 board for a while are aware that the North Carolina State Board has made it clear that in quasi-judicial hearings, other types
27 of professionals cannot do things that constitute a practice of law. Many people, including my clients, needed experts with
28 whom we are working has become comfortable having an attorney in the room in the event that something comes up that an
29 attorney is needed. What my plan to do is not treat this as a trial although it is quasi-judicial but it has a more relaxed feeling
30 than you are accustomed to. I want to instruct the folks I have been working with and ask them to come and testify this
31 evening. First, we have Val Olszyk and her husband Lewis, also with Pet Behavior Help, who is being our technical support
32 with the computer. Mike Neal is here who will be testifying about the project itself and pointing out the details of the project.
33 Randy Hall is here who works with Mike if there are questions of Randy. Vic Knight is here with us this evening. You have a
34 report in your evidentiary packet as to his findings regarding the value issues in both 8.8.1 and 8.2. I will be here in the
35 room. We appreciated the opportunity to tell you about Pet Behavior Help, what it does and what it hopes to do in Orange
36 County.
37

38 Valerie Olszyk: This is my husband Lewis and I appreciate you being here tonight to review our application. I would like to
39 tell you about Pet Behavior Help and what we do.
40

41 Michael Harvey: When everyone speaks, if they could state they have been sworn.
42

43 Valerie Olszyk: I have been sworn in. Basically, I want to tell you about my business. I do call it PBH which is pet Behavior
44 Help. PBH is not a traditional kennel. We do not board animals overnight. We are a training center. We basically have
45 owners come with their pets and can attend a group or private lesson and we teach them things like obedience, helping them
46 teach the dogs to sit down and heel and come when you call. We also do the sportive dog agility. If you have seen on
47 Animal Planet when the dogs are doing the jumps and climbing obstacles, that is something we do. This started eight years
48 ago when I turned my love of dog training and my passion for dog agility into a career. Basically, I rented a horse farm in
49 Durham County and that is where I teach my classes now. It has always been my dream to actually build a facility that was
50 made for what I do. Especially a place where I could both work and live. Now that I have a three-year-old daughter, it is
51 really important to me to be able to live on the same place as the training center. So mommy can spend more time with her
52 and it will also allow her to be more involved in the PBH activity as she grows up. I really want to create a sanctuary for dog
53 owners to come into a beautiful, natural environment and spend time with their pets and others who share their passions and

1 provide a resource for the community where they can bring their pets to get help in training them and making them fit better
2 in the community. About two years ago, I started my search for land on which to build this property and I do want to take this
3 opportunity to thank Mike Harvey. I cannot tell you how invaluable he has been to me. I have brought property after
4 property in for him and he helped me understand what was necessary for my training center. And when I finally bid on the
5 Davis Road property we are reviewing, I was sure I had found my future home. It is a beautiful property, a large property in a
6 rural area that is still residential that is still transitional right on the fringe of Hillsborough. Great location. It was just perfect
7 for PBH but I wanted to make sure the neighbors thought so before I made an offer on the land. I sent a letter to all the
8 adjacent property owners to introduce myself and my business and described my plans for the property. When the feedback
9 I received was positive, I made an offer on the land and that was the process that brought us here. In preparation for this
10 meeting, I wanted to once again contact the adjacent property owners so I sent them a letter a couple of weeks ago to invite
11 them to a meet and greet at the Hillsborough United Church of Christ which is right across the street from the property and
12 they have been very supportive. I have been in communication with their pastors throughout this process. They allowed us
13 to use their picnic area yesterday afternoon and we had a lovely chat with them. One of the adjacent property owners came
14 by and he was concerned about some of the things that are allowed in the ordinance but when I explained what we were
15 doing, he was much less concerned. He seemed happy with our use for it. Since a picture is worth a thousand words and
16 since we did do something that is very different than what many of you have seen, I would like to show you a short video of
17 our current training center so you can see what we do.

18
19 *(Video was shown and narrated by Ms. Olszyk).* This is a pedigree dance class going on in a small covered arena that was
20 built for the horses. It's similar to what we are hoping to build on the new property but the pedigree dance would be in the
21 enclosed building. There are three classes going on simultaneously. This is one of our agility classes. You will see the
22 students talking and laughing. These are friends getting together to train and enjoy their dog. It's about community. A lot of
23 PBHers get together and do things outside my work, which is their play. Next you will see a dog show on Memorial Day
24 weekend. The owners bring their dogs to compete for the day and take them home at night. These dogs are athletes so
25 they spend most of their time resting in the crating area. The owners bring them out for warm up and they go back into the
26 crated area which is why you will see very few dogs at a time even though there are 106 participants this day. This is the
27 view from our neighbor's property and as you can see there is no tree buffer at the current facility. We have a great
28 relationship with them and we have a letter of support from them in your packet. This is my baby dog and you will see he
29 has his own ideas about what to do. That is the neighbor's house in the background. I really love what I do and I could talk
30 about it all night long but I think it is important for you to see our plans so I would like to turn if over to Mike Neal and he can
31 show you how he helped me make my dream and put it into the plans.

32
33 Mike Neal: I am the Principal of Michael Neal & Associates, a civil engineering and surveying firm in Hillsborough. We were
34 retained by Val to help her design this obedience and training facility for dogs. This is the key element of our design. This
35 site is located on the corner of two roads, Old NC 86 and Davis Road. I am sworn in. The first key element was to decide
36 where to put the ingress and egress for this site. With Old 86 you have an average daily traffic of around 3,500 vehicles and
37 Davis Road having an average of 1,600 vehicles and our site roughly wanted to generate 35 trips in and out in 24 hours each
38 day. We immediately looked at Davis Drive as being the better of the two locations. Old 86 would be a better visibility site;
39 we thought from a safety standpoint, Davis Drive was a much better location with ingress and egress. We narrowed it down
40 to Davis Road. Where you see, in your packet and on the board, we can put out something for the audience to see. We
41 found the high point on Davis Road because Davis Road is a straight road which allowed us clear site lines in both directions
42 to easily see and be seen as we enter and exit the drive. Also, we were concerned that we had adequate spacing between
43 Old 86 and our driveway so we wouldn't have any backups conflicting movements there that would present a danger. We
44 located the driveway spaced approximately 500 feet which is adequate spacing for these driveway locations. Lastly, it was
45 across the street from where the church selected their driveway location so we determined that was the best location for the
46 driveway. Then we began to look at the site layout. There were several things we looked at, the site layout and Val told us
47 some things she wanted. One of those was that it be centrally located for adequate buffering and screening around this
48 facility from the road and the neighbors. You see it sitting in the middle of the property with trees around the three corners.
49 The other thing was to minimize grading and land disturbance so where the covered building and the enclosed building that
50 will be the training facility will be located is basically on the top of a knoll on the high point of the site. That allowed us to
51 minimize grading and land disturbance then we would have access to all three sides. Also by placing it there it helped us to
52 control storm water and we can direct the majority of the storm water to one central location. There is a pond located on the
53 northwest corner which would be a sediment and erosion control facility during construction to manage the runoff of erosion.
54 Once the site is completed that will be converted into a permanent pond not a lake. I hesitantly use the word pond but it will
55 be a storm water feature to collect the runoff that comes from the build upon site and then will be the best management

1 practice to manage our storm water. By putting this on top of the knoll, it allows access around the building and parking. We
2 were able to limit the service and delivery vehicles to come into the driveway; you will see the dumpster there. The service
3 and delivery vehicles do not have to traverse the whole site and then reduce the conflict between pedestrians and dogs.
4 That was a key site design. Another thing was we wanted to be sensitive to where Val was going to ultimately site her
5 house. We looked at a very large lot of 12.3 acres. Her house was sited providing a single-family use next to the existing
6 single-family use. Her house will be somewhat of a continuation of her neighbor to the west, then the proximity of her house
7 to the facility for security reasons and her ease of access. Those were the general site elements that we looked at. There
8 are a couple of specific points we would like to discuss. First, on our plans, we have labeled the fences as four-foot high
9 fences. The ordinance provision calls for six-foot high fences. We believe this generic six-foot high fence, I guess the fence
10 could be wooden, lattice or rail but they had to be six feet high and the ordinance was very generic about that. I would think
11 those generic requirements includes every type of animal from livestock, horses and such. It is one size fits all. We believe
12 since this is not a kennel where dogs will be housed and maintained unattended all of the animals will be attended. We think
13 a four-foot fence makes sense especially when we have competitions and shows at the site where, as you saw, the dogs
14 running and people, we think the four-foot fence facilitates spectators better than a six-foot fence. One other thing is that this
15 property is unique in that to the north, as Michael mentioned, there is Hillsborough Economic Development zoning and that
16 zoning requires a 100 foot vegetated buffer. When that develops into an EDD that will require that property to establish a
17 100 foot vegetated buffer. The requirements for a pet kennel, let me read this, one of the standards of the county states that
18 no part of any building structure, runway or riding area in which animals are housed or exercised shall be closer than 150
19 feet from the property line except property occupied by the owner of the kennel. It is not really a kennel but a training facility
20 that just falls under the county's name for a kennel. The property to the north is Economic Development that requires a 100-
21 foot buffer and then there is also a Duke Energy transmission line which is 150 feet in width. We believe that this
22 transmission line is not going to go away anytime in the near future. Often when you are able to find some alternative energy
23 and hopefully that will go away but I don't see that in the near future but we think that meets the intent of separating the
24 spacing. It is not a buffer requirement but 150 foot spacing between this type of use and the adjacent property so what we
25 are asking this board to do is to add an additional stipulation allowing us to maintain a 30 foot buffer that we are proposing
26 between our use and the property line and add a ninth stipulation to what the staff has and I will read this to you and enter
27 this into the record. This is our proposed additional condition: "should the Duke Power easement electrical transmission line
28 along the north side of the property line parallel to Davis Road, properties cease to exist or should the existing 150 foot
29 Economic Development perimeter buffer requirement be eliminated, the applicant will be required to amend the site plan
30 such that no part of any building structure, runway or riding area which animals are housed or exercised be closer than 150
31 feet from the property line except property occupied by the owner/operator of the facility and except as any portion of the
32 facility which animals are housed that is wholly enclosed in the building." To summarize, what we are asking is to let reason
33 prevail here, that the intent is to provide space between these uses and the other use. There won't be of the high voltage
34 lines and transmission lines any use that comes within 250 feet of this property. If that ever goes away, we are willing to
35 back up and provide the 150-foot spacing, the standard requirement. We are asking this board to let reason reign to let this
36 transmission line provide that buffer of the EDD vegetated buffer. With that, I would like to thank you.

37
38 Vic Knight: I am a certified general real estate appraiser in Orange County and I have been sworn in earlier. I was
39 requested to do an analysis on this property as it relates to the impact of any of the surrounding areas as if it were complete.
40 The premise on how I base that is contained in the information in your packet. My report is roughly 33 pages long and the
41 cover letter generalizes the approach. Specifically, what I did in the beginning was look at a controlled neighborhood that
42 had an impact from a major intense use. We have done a significant amount of work following property values in the
43 Wildwood Subdivision that is on new 86, relatively close to I-85 just south of that as it was impacted later after its original
44 construction phase for the Wal-Mart Shopping Center and Home Depot location. After viewing details of that information
45 over an extended period of time, we arrived at what appreciation rate had been in that area. Then I went to the basic market
46 to try and discover if there were any other kennel facilities, a kennel that was specific to boarding facilities for intense use.
47 The reason I went to that situation was to compare a relatively intense use with something, not just a dog kennel but also a
48 more similar intense use to the proposed project. The similarities distinction between these two is as the applicant said
49 earlier, this is not being proposed to house any animals of any nature any longer that during a day or during an event or
50 training or competition so there is no over evening or over extended periods of day. This is the next closest thing we could
51 find that is in the relatively general proximity of the western triangle area. There are a number of other dog kennels in
52 Durham and Raleigh and actually into western Alamance County but I believe that people's familiarity with some of those is a
53 stretch but most people that traverse Orange County would know where there is. It is Sunshine Acres Resort off US 70.
54 There is a relatively approximate residential subdivision called Whispering Pines that is roughly a couple hundred yards,
55 generally south of the Sunshine Acres location so we analyzed sales in that location for about a twenty-year period. There

1 was continued appreciation there and as you compare with the dog kennel with the controlled use that has an intense
2 infusing to it, there did not appear to be a significant differential in what the appreciation values had been in a period of
3 time, roughly a twenty year period. Once that is completed, we then look at the information provided to use specifically, the
4 applicant put together in their application and their narrative, a description of that use that has been described in terms of the
5 site plan. Then, we try and analyze what similar usages may have been in some of these other facilities as it relates to
6 setbacks, traffic issues, those kinds of things. Once you begin to look at this site and what those proposed improvements
7 happen to be, given the overall size of this site being large, over 12 acres, located adjacent to a north/south arterial, the
8 traffic count certainly is not insignificant but not overbearing for an otherwise suburban rural location. Its zoning and the fact
9 that it is significantly vegetated with mature hardwoods and pines and some under brush and the way the proposed
10 improvements have been planned, I can't see anything in the proposal that indicates negative impact on values by this
11 proposed use. I am pretty familiar with this area, specifically and have been for a number of years. I am an original founding
12 member of the United Church of Christ and actually built the building and worked with the original director for the daycare
13 center that is there. If you have any questions, I would be more than happy to try and answer those.

14
15 LeAnn Brown: I want to do a brief summary of our presentation. As Mike has pointed out on the plan before you, this is a
16 large parcel and therefore certainly of adequate size under 8.8.1 for the use that is proposed. The type of permit this
17 property falls within actually contemplates much more intense animal uses. This is sort of the animal use right in terms of the
18 plan. It is a use that is designed to give animals an opportunity to be trained appropriately and yet they go home. The
19 design feature that Mike pointed out, it is important the location of the single-family house is really designed as an additional
20 buffer to the single-family house down the road. I think as we go through, I won't belabor the standards because the staff
21 has addressed them nicely and the report given to you both the project meets the comprehensive plan and ordinance
22 requirements both as to Special Use Permits in general and this type of use in general. I did want to speak to you about this
23 150-foot thing because on first hearing it was probably a lot of information. I have copies of this proposed additional
24 condition that I will pass out to you that Mike read to you. If you look at the recommendation of the planning staff, the staff
25 states in paragraph three that if the board agrees to allow the encroachment as denoted on the site plan or the applicant
26 agrees to remove it, that is the 150 feet and what we are asking you to do, is to recognize that we have on the ground a
27 transmission facility and you can't put a whole lot near one. It has a huge buffer, it is severely planted and we think under
28 the circumstances, it is appropriate for the board to recognize that function under 8.8.1 that said I don't think it is fair to allow
29 us to do that if we don't ask you to put a condition in this site specific development plan in case that will change. The
30 condition we have proposed is designed to say this board has thought about that ordinance requirement and it is being met
31 in a certain way and if that changes, you have to come back and address it and that is why we wanted to propose the
32 condition. We felt it was a fair thing to ask the board to have the backstop in case there was ever a change. The odds of
33 that transmission line coming out, the odds of that easement going away and the odds of that EDD buffer going away are
34 extremely remote, certainly not in my lifetime and probably not in any of our lifetimes, but that gives the county protection in
35 the unlikely event occurred and so the spirit in which we offer that is to provide that protection for that particular condition. As
36 to the fences, we think the four-foot fence is a little less intimidating both inside and outside. The six-foot is designed with the
37 idea there are animals being kept there unattended. What we understand is that if the board determined that the ordinance
38 requires six feet, it would have to be six feet. We believe the spirit of the ordinance is met by the four feet. In conclusion, we
39 believe the plan that is before you is a nice transition for this particular area. It is consistent with what the Comprehensive
40 Plan has identified for this particular part of the county. It is a nice transition use that still maintains some rural feel to it and
41 meets nicely with the rest of the neighborhood. We are all here if you have any questions.

42
43 Thomas Brown: Is there any further testimony on behalf of the applicant?

44
45 LeAnn Brown: Not at this time.

46
47 Thomas Brown: Are there any questions from the board on any of the applicant's presentation?

48
49 Dawn Brezina: Could you show us exactly where the Duke Power line is?

50
51 Mike Neal: This is the site. This is the Duke Power line. This is Old 86 and this is Davis here.

52
53 Mark Micol: What is the red line?

54
55 Mike Neal: The red curve line is the rural buffer line.

1
2 Larry Wright: On page C-2 of the plans, on the right hand side is a dwelling. This property fronts on 86 and then from his
3 property line, there is a 77.9-foot buffer between his property line and future parking clearing grade only.
4
5 Mike Neal: It is not really a buffer, just a dimension. Just telling you how far off the property line the parking will be.
6
7 Larry Wright: There is a 30 foot buffer.
8
9 Mike Neal: There is a 30 foot type B buffer but the 77.9 is a dimension for your information.
10
11 Larry Wright: How far is his property line with the covered area that would probably be 150 feet?
12
13 Mike Neal: I don't have a scale on me but it looks like double.
14
15 Larry Wright: We have all these parking spaces, which way is the slope of the land going?
16
17 Mike Neal: Go to sheet C-3. This is sitting on a knoll. This slope is off to the north, this slope is off back towards Davis
18 Road and all this slopes back to the west.
19
20 Larry Wright: We have a high run off coefficient of this asphalt, is it asphalt?
21
22 Mike Neal: No, they will be gravel.
23
24 Larry Wright: All this parking area will be gravel?
25
26 Mike Neal: Yes sir.
27
28 Larry Wright: That is still a fairly high runoff coefficient. Maybe .3 or .4?
29
30 Mike Neal: It would be higher than that.
31
32 Larry Wright: How are you going to control this into that wet pond area?
33
34 Mike Neal: On sheet C-3, you will see the grading, if you start with a swale that we carry all the way around and we have a
35 little bmp that captures what is coming off here. BMP is an acronym for best management practice. Then we have a high
36 spot here and capture everything coming off here and carry it to that pond. We have a little pond here. What we have to do
37 to meet the County's equipments is to calculate the storm water runoff from the existing site using the C values you are
38 talking about and then we have to calculate the runoff using the proposed C values which is a coefficient. Then we have to
39 use, either through these ponds or some type of measure, we have to use some type of management to equal the peak rate
40 of discharge or be less than.
41
42 Larry Wright: My line of questioning was directed to Mr. Lee's property if any of the runoff from this future parking area on C-
43 3 will affect his property. Could you make a statement about this runoff and how this may or may not affect his property?
44
45 Mike Neal: Yes. The peak rate, the rate of runoff he experienced yesterday or the day before will be equal to or possibly
46 less than what he will experience after this is built.
47
48 David Blankfard: On your previous site, how tall is that existing fence?
49
50 Valerie Olszyk: Those are four foot fences.
51
52 Mark Micol: You had also stated you had dog shows, how often?
53
54 Valerie Olszyk: Six to eight times a year.
55

1 Mark Micol: How much traffic does that generate on average?

2

3 Valerie Olszyk: We usually have anywhere from 50 to 80 or so participants and then they may have more than one dog.
4 They arrive early on Saturday morning, around 8:00am and leave mid afternoon. The shows usually conclude by 3:00 or
5 4:00. Most of the time they stay on the property.

6

7 Larry Wright: Do they all leave at once?

8

9 Valerie Olszyk: No, usually because the dogs each perform in turn so one dog is performing at a time so the folks that finish
10 will pack up and take off.

11

12 Dawn Brezina: Do you have shows other than Saturdays?

13

14 Valerie Olszyk: Saturdays and Sundays, sometimes we may have, like the Memorial Day trial was a three day trial so we
15 had Saturday, Sunday and Monday.

16

17 Larry Wright: I have a question for Mr. Knight. You talk about the impact of Sunny Acres, the kennel. I am an old man and I
18 have been here since the early 70s. That has been there a long time. My issue I would like to raise is that while I agree and
19 I cannot challenge because I don't have the expertise on what this has affected, if at all, property in Whispering Pines. As
20 you stated, this is not really the same sort of enterprise that the applicant has here tonight. I would like to also state that we
21 do not have an impact of what that kennel did once it moved into the area. In this area, we are going to have an impact of
22 something moving into the area that may or may not enhance property value. I think that needs to be addressed that during
23 the span of years of property's existence, what you have measured property values, in the Whispering Pines area, you don't
24 have a kennel moving in that area.

25

26 Vic Knight: That's correct.

27

28 Thomas Brown: Any other questions? One question for Valerie Olszyk, what would be the impact or your intention if the
29 fence and the buffer were not changed?

30

31 Valerie Olszyk: Certainly, with the fence we already said we are happy to move to six feet if we have to. If we can't use the
32 150 feet behind the property, we might be able to use sections to the west for some outdoor training. It does create a lot
33 more problems with grading because the property does slope and it also clears out more visibility from Davis Road. I would
34 prefer to use the area behind. It is a lot more natural grain.

35

36 Thomas Brown: Any further questions?

37

38 LeAnn Brown: As a housekeeping note, all the staff moves into evidence the paper documents you received but we have
39 shown a video, we need to move that into evidence as well.

40

41 Michael Harvey: That would be applicant's Exhibit 1 Video Evidence.

42

43 Thomas Brown: Next, we will allow anyone opposed to the application to have comments can come forward.

44

45 Lawrence Madden: I have not been sworn in.

46

47 Mr. Madden was sworn in.

48

49 Lawrence Madden: Every few years, someone dreams up this stuff. They all come along with, a tower, a sewage plant, now
50 with this thing. I don't have anything against these people. I don't give a damn who they are. We live here, this is our back
51 yard. You are going to put a kennel, I don't care what you call it, and it is a kennel. You are going to put this kennel here,
52 somewhat on top of the hill, the rest is a swamp. It's already loaded with water, what are you going to do with this runoff?
53 What are you going to do with the waste? What are you going to do with the smell? What are you going to do with the
54 traffic? What are you going to do with all this stuff? Never mind how many lawyers you've got, planners and the rest of this

1 garbage. You people ought to know better. It is your damn job to protect us the people. You don't work for them, you work
2 for us.
3

4 Teresa Lord: I have been sworn in. As I pointed out prior, where I live, if you would pull up the second slide again, there is a
5 lot of talk of where my home is. When I came to this area, I am not from Hillsborough, but it is a beautiful wooded, residential
6 area. That's why I moved here. I didn't want to live in Chapel Hill or Mebane. I wanted trees, beautiful hardwoods. I chose
7 this spot here. With this home site, there are lots and lots of taxes. We chose to live here due to the beautiful wooded
8 residential area. Where I live here, this actually goes down hill. I don't have a degree but I do know water flows downhill. I
9 know between this home and my home, it is always wet. Something scares me about having a gigantic arena and I didn't
10 see this until an hour ago so I'm pretty upset. I have talked to other neighbors who are not happy about it but they couldn't
11 be here. I am looking at this arena on a hilltop with a four foot see through fence with a circus. I have an eight year old son.
12 I am currently a dog owner and I adore my dog and she is very well trained. In the past, I have watched him clear a six foot
13 fence. I understand you have to have a place to go but a residential backyard, I don't feel that is the right place. Mr. Neal,
14 you mentioned the traffic; you mentioned 35 or so other vehicles. I have been to several events and as you mentioned it is a
15 good opportunity. People get together and spend the whole day. You don't show up and leave, you don't leave the shows. I
16 drive this curve; it is a blind curve with lots of deer and lots of people. There is a stop sign coming from Davis and none on
17 Old 86. Extremely busy road with bicyclists everywhere. I am interested, was there an NCDOT survey done?
18

19 Mike Neal: I'll answer the questions at the end.
20

21 Teresa Lord: Another concern that I have is this pond. I am not sure where it is. We already have problems with
22 mosquitoes and more problems that you can imagine with ticks where we live. Brining a lot of dogs in our area, we already
23 have the deer, they do enough, we don't need more dogs. I don't think a pond is a good idea for health and sanitary
24 reasons. You mentioned dumpsters, I don't know where they are meant to be but I can only imagine for this home site and a
25 facility where people go and train and play with their dogs why you would need delivery services. I don't understand that
26 either. I understand that while people are there, they will need to utilize facilities for the restroom. I am interested to hear
27 where those are coming from. I really don't want port-o-potties in my back yard. I don't want dogs jumping four foot fences
28 coming after my child or my dogs. Also, I am concerned about calling it a training center. Currently my English bulldogs
29 goes to the kennel in Julius, North Carolina to go to the kennel. I don't know about the rest of our neighbors but we are
30 accustomed, when we need a service, we don't mind driving to get it or we will go downtown to Hillsborough. I imagine dog
31 training is one of those items. I don't know that it will appreciate our property values in any way to have people from eastern
32 North Carolina coming into where we don't have businesses. We don't even have gas stations. If they take 40 they won't
33 get to a gas station. That is the way the land is laid out. I don't see how it will appreciate anybody's property value unless
34 they are looking for a circus. I have lived here for quite sometime. Our well water is extremely dirty and full of iron. The
35 filtration is a nightmare and it is expensive. My well is already well over 230 feet deep and I don't want to have to dig it
36 deeper because people are running water to clean kennels. We already have a pressurized septic system because I am not
37 joking when I say this area is very wet. I don't trust the septic will be adequate for that group of people unless you are doing
38 port-o-potties and I don't think that is appropriate for a residential area for long term use. In addition, the shear volume of the
39 waste. I live with the power lines in my backyard. In fact my property butts to it. I have to give them the right of way. 150
40 feet is not very far. I see this every day in my backyard.
41

42 Myra Gwin-Summers: I have not been sworn in.
43

44 Ms. Gwin-Summers was sworn in.
45

46 Myra Gwin-Summers: I live two doors down from the proposed facility. I am next door neighbors to the facility which would
47 be right off the line and my husband and I live here and own the land surrounding that they are building right next door to
48 where we are and we have two lots behind us on the other side of the Duke Power right of way.
49

50 Thomas Brown: So you are to the west of that facility?
51

52 Myra Gwin-Summers: Yes. Numbers one, two, three and four are our properties so we are representing the whole
53 neighborhood. This is property we bought around the house where we live because it was going to be sold and we didn't
54 want surprises coming in so we bought the bulk of the surrounding property in self defense. I came prepared with specific
55 comments but I did want to make a comment on some of the presentations. When you come in, the video is very compelling

1 of the dogs and puppies are cute; the competitions look like fun and presenting the dream of living in a place and pursuing
2 the dream on your own property. The second person, Mr. Neal, presented a lot of technical comments that are very
3 confusing. There is a lot of jargon, acronyms, and best practice model. It is very hard to sit and listen to that and feel you are
4 making an informed decision about this. He also presented this as the wonderful, specific location selected because the
5 facility couldn't go anywhere else except this wonderful wooded knoll. The first thing that jumps in mind is that it will no
6 longer be wooded once this is done. I would like to make a correction to the record. This is Davis Road, not Davis Drive.
7 Davis Drive is in Research Triangle Park; we are talking about Davis Road which is in North Carolina. Some of the
8 neighbors received the letters from the applicant but we got this fusty letter. I don't know the applicant so I am speaking from
9 impression. Nice letter, nice pictures talking about wanting to be a good neighbor, live on the property and work training
10 dogs. There is no mention of the public competition facility that went out to the neighborhood which makes me wonder if that
11 is what the church across the street has made a decision on because I understand the zoning or planning department
12 received a letter from the church saying that they are in support of it but I don't know the particulars there so I am not sure
13 whether the full breadth of the project has been revealed there. I also wanted to say in support of the other speakers; I have
14 had Lyme's disease twice. We are buried in mosquitoes and ticks in that area. As soon as you turn on Davis Road, you are
15 on a downhill into a curve. Everything flows downhill but when we have heavy rains, it shoots straight off that knoll in all
16 directions and if you go out that way on one of these flash flood days or even a seasonal rain, you could be pouring down
17 Davis Road and we constantly have a problem with it going down Davis Road and right into our driveway and across our
18 property and I know the adjoining properties, I mean we are one property over from the facility but I do have grave concerns
19 about how regular storm runoff would be handled much less the sewage, the washing down of the facilities and all the other
20 associated uses and having large numbers of public events there. How will all that waste be handled? It doesn't make a lot
21 of sense. Those are my comments off the cuff and I will now read what I wrote. "We do not feel that the application and the
22 proposed project comply with basic elements of the zoning ordinance and therefore should not be considered by the board.
23 It does not meet the 150 foot setback requirement from the northern property line. That alone should have it thrown out of
24 this process altogether. As a property owner in Orange County who pays taxes that goes up and up. Our property values
25 went up over 70% in the reevaluation. When we bought that property and did the minor subdivision so we could build the
26 house that I need for my physical disabilities, we were bound to all these county setbacks. We ended up with a postage
27 stamp in the middle of our lot that we are permitted to build our house so to see a facility of this magnitude being proposed is
28 shocking because it is a rural residential area and then I find it really decedent for them to propose that you use common
29 sense and not even require them to go by the zoning setbacks. I find that hard to believe. Other property owners in the
30 neighborhood and in the rest of the county are not allowed to take advantage of such exceptions and must meet all setback
31 requirements within their property lines. The proposed plan does not meet this basic requirement and should be pulled from
32 consideration because of it. Number Two, the Class II Kennel zoning ordinance was never intended to include a public
33 competition arena on the scale of what is being proposed. This exception or the request for special use permit was intended
34 to allow rural property owners to be able to work and earn a living on their property. This was never intended to be a
35 loophole so you could put in a big commercial business that would have lots of traffic and lots of people and lots of waste.
36 Number Three, the documentation or proof regarding the proposed water management plan, there has been a plan proposed
37 there is no documentation and there is no proof that what is offered will actually work as a water management plan. The
38 storm water drainage has not been adequately addressed. The affects of the deforestation on the proposed area have not
39 been addressed and the negative impact on area wells has not been addressed. I know from living here since 1986 and
40 being one of the older homes in that area, when they built the houses around the corner on Old 86, we had to dig a new well
41 because our well suddenly went dry. The property owner that says she hopes to not have to dig another well after this.
42 There is not endless water and you are on top of the hill. There is a concern regarding the area wells. Number Four, the
43 Impact Analysis of Mr. Knight does not take into account the public events, competition aspect of this property. It does not
44 address that in any way, shape or form and as someone on the board already pointed out, the Impact Analysis, the property
45 that were used for that, are not even equivalent to what is being proposed so there is no Impact Analysis in this proposal for
46 this public competition project. Number Five, the applicant is making the argument that this competition component is part of
47 her training program and that is a key thing to look at because it is being presented as zoning says we can do training and
48 this is part of the training and should be approved under the Class B Special Use Permit. When this special use permit was
49 created, it was created so that people in rural areas could earn a living on their property and maybe offer some services in
50 terms of riding stables or dog training or even dog kennels. That provision in the ordinance was never intended to allow a
51 huge public arena to be slipped in under that disguise. Traditionally and pretty much across the board, that has never been
52 included and the proposed plan. When I did look at in the Zoning and Planning Department today, it uses all sorts of daily
53 numbers and usage figures and there is all kinds of information here but is it really relevant. It is the impact on traffic that
54 looks at daily numbers of traffic or cars on Davis Road and Old 86 supposedly; I don't know where the figures came from.
55 What you are proposing would require turn lanes and all sorts of restructuring of that intersection. Davis Road is a cut

1 through road for Orange Grove and Efland and all those communities up that way. We have a huge amount of traffic already
2 so I don't feel the traffic has been sufficiently addressed. On the face, getting the letter from Valerie and having the
3 impression that we are talking about someone who wants to live in a rural area, picked out this nice wooded property to raise
4 their family and do some dog training. We would not have a problem with someone wanting to do that. We have
5 reservations about that in and of itself. They are the same things everyone else has brought up. The water usage, the
6 impact on the wells and the water, the drainage and the run off, the noise, the traffic, and the waste disposal. I couldn't help
7 but notice in the video the buzzer that is going off all the time. You will be hearing that to the other end of Davis Road. In
8 closing, we don't have a problem with someone who wants to live and work on their property but a competition facility is not
9 consistent with land use in rural residential areas and the principal use is not only the training but also the competition events
10 so we feel this is a huge commercial business that is more consistent with the Economic Development Districts and should
11 not be considered by the Board of Adjustment for a Special Use Permit for a Class II Kennel in a rural buffer, rural residential
12 area."

13
14 Ronda Buchanan: I have been sworn in. I live off Oakridge Drive which is about a quarter mile on Davis Road and this is my
15 neighbor, Fred Connor, who is also our Homeowners Association President and the things I would like the board take note
16 on is that I am concerned about future use. Valerie, while this may be your dream, in this economy what is going to happen,
17 property may have to be sold and this special permit may allow others to come in and do what on this property. While you
18 are saying this is what you are going to do with it, I am concerned about what is happening in the future. I am an animal
19 lover but I also feel like I need to control my animals because other people are not animal lovers and I do not impose my
20 animals on other people. Setting up something like this imposing the noise, the waste, etc. is an imposition. I don't agree
21 with the property value assessment. I think comparing our area to Wildwood is not a true comparison. I am very concerned
22 about property value and I do pay large amounts of Orange County taxes. We have a private road that is part of our
23 subdivision and with this increased traffic; I am concerned this private road may become a cut through to bypass the
24 congestion at this intersection. We built there because we wanted to be in that small contained setting and we want to be
25 able to sustain that and with this much traffic, it will force people around it which means that our road, and we pay to maintain
26 our road, it is not state maintained in any way, the homeowners pay for that. We want to keep it simple and comfortable.
27 Those are my concerns.

28
29 Fred Conner: The issue I have is the property tax issue. We have a last tax \$680,000 and I don't want that to go downhill
30 which I think will happen if something like this comes. I think the future hospital planned on Waterstone will bring huge
31 volumes of traffic into the area as well. This will enhance that. I am also concerned about the future use of that property. I
32 understand your dream and I don't want to poke a hole in that but a lot of this has failed. I am a business owner in Chapel
33 Hill and this is a major concern.

34
35 David Barlow: I have not been sworn in.

36
37 David Barlow was sworn in.

38
39 David Barlow: I am a property owner immediately adjacent to the applicant's spot. If any of you have been in the area on
40 Davis Drive, I can assure you when they talk about runoff, there isn't a slope, and it's almost ravine like. Off the back of my
41 property, through here, there is an old creek bed, the land is steep. The lady was talking about runoff, there is a runoff. It
42 comes from this slope down my driveway and right back around the property. I have had ditches dug and whatnot to try to
43 catch it and take it off. My house sits on the highest, levelest area of anybody's house to the further west. There is a huge
44 vein of granite that runs through this area that runs all the way up to the New England states. If any of you were here when
45 they were cutting through making I-40, they had boulders the size of houses. I am on my second well since 1992. The first
46 well drilled here, they hit a rock at 45 feet all the way down to 220 feet. Solid rock. You have 40 good feet in that area of
47 perk soil. I had another well drilled about here. That hit sold bedrock at 65 feet down to 360. You walk through and there is
48 boulder outcropping everywhere, granite. I ain't talking about sandstone, granite. I know for a fact that right beside the
49 property line when I was having my area perked, none of this would perk for the county. The only place that would perk
50 pumps up here with the repair area because of that granite shell. The water hits it and takes off. When you are dealing with
51 something that size and talking about storm water, to me that is also a wastewater type. There will be ecoli prolific there is
52 no doubt, that percolates down and gets into the aquifer. I am saying that could happen, it could also be contaminated well
53 500 yards away. I don't like that idea, to me is like a wastewater holding. I don't like that. It is asking for trouble. I know that
54 lady and gentleman, you buy property and want to do what you want with it but this ain't the property. You have got a power
55 line here; incidentally, this slopes straight down. You have an Economic Development node and this is residential, why do

1 you want this huge thing sitting there between an Economic Development node and a residential area. There are too many
2 points on the compass that are already rural you can have. You can buy that amount of land for a less price than that and
3 have what you want without it causing these potential problems. It is too big for where you want to put it. It has too many
4 problems with it as well as what Myra was saying about the zoning regulations. I don't know why you want to shoe horn that
5 in on that last 12-acre buffer between the two roads. Thank you for your time.
6

7 Theodore Bryant: I have been sworn in. I am the property owner of the tract on Old 86 across the street known as Settler's
8 Ridge. My wife and I own that tract and currently trying to sell that tract. I live in Durham. Much like the young lady that
9 talked about future use, that is my concern now that the applicant has talked about it not being a traditional boarding kennel
10 and I applaud that but I would be very concerned about if this was approved that it might migrate into something other than
11 what it was originally approved for. That is basically my comment for this not to become a boarding kennel that would have
12 all kinds of other implications. Thank you for your time.
13

14 Pat Conner: I have been sworn in. I am a property owner on Oak Ridge Drive. My husband is Fred. I do have a number of
15 concerns besides what has already been verbalized. I am concerned with this facility as described here changing our lovely
16 rural neighborhood that we moved into in 1996 hoping to remain as much as possible in the country on our three acres. Nine
17 property owners live on our little Oak Ridge which is privately maintained. Part of our joy of living there has been able to sit
18 on our porch, perhaps on Memorial Day weekend and have a quiet cup of coffee without any other noise going on of all the
19 exuberance and chaos of a huge competition going on. I am all for that but not in our neighborhood. I can't help but think of
20 the mosque being proposed in New York. That is wonderful, a mosque should be built but not perhaps right where 3,000
21 have a vested interest in it. I am not making a comparison but I think this is a great idea, a wonderful idea, a beautiful dream
22 but I don't think it is appropriate for this location because there are a lot of people in.... Another thing is that we were not
23 notified at all and we live less than ½ mile from Oak Ridge. Other than the sign we happened to stop and look at, that is how
24 we realized this meeting was taking place and our other neighbors as well had not been notified and we have been in contact
25 with them and some are on vacation, etc. but they certainly share our feelings and ask us to speak for them to protest the
26 appropriateness of permitting this to be built here. As far as the church approving it, I have to remember about six or seven
27 years ago there was a large cellular tower that was proposed to be built on the church property and they supported that
28 again. The rest of us came together and protested that as well because we didn't feel that was appropriate or compatible
29 with our neighborhood and that was rejected and did not get built. So I don't know how or why the church is supporting that
30 but I know the rest of us who live there and have a vested interest and invested our lives and financial resources into building
31 homes and families here really hope that you will seriously consider the impact this would have on the neighbors.
32

33 LeAnn Brown: Mr. Chairman, you had several items mentioned that we could possibly address, waste as well as a
34 description of the topography of this piece of property, if the board is interested in further information about that.
35

36 Thomas Brown: In one moment rebuttals will be allowed. Does the board have any questions of any of the residents that
37 have spoken?
38

39 Mark Micol: I thought the arguments were compelling but I still haven't heard any expert testimony from anyone that spoke.
40 Is there any expert documentation to support what was said by those who opposed?
41

42 Fred Conner: We really didn't have time to do that since none of us were notified. We saw the little sign and we are 300 or
43 400 yards from there and we never got any notification. We had to stop because we couldn't read it as we were going down
44 the road and I don't think the neighbors were properly notified.
45

46 Michael Harvey: The Orange County Zoning Ordinance and North Carolina General Statute require that the County
47 advertise public hearings two consecutive weeks before the hearing which was done. We are required and obligated to send
48 certified letters to everyone within 500 feet of the property which we have attested to was done and the property was posted
49 in compliance with all applicable standards.
50

51 Myra Gwin-Summers: In addressing what he just said which is a very good point and so I felt like by referencing the zoning
52 ordinance that is pretty definitive. I am not just saying how I feel or how it looks but I would say to ask they not meet the
53 setback and use the buffers that are already there on the other properties. I felt that was very definitive and the impact
54 analysis did not address the competition aspect of it so I may not be an expert but at the same time I did specifically address
55 the zoning ordinance as it pertains to this and you might find it interesting that the proposed covered arena is the size of the

1 senior center in Chapel Hill but the senior center is on two floors so you are proposing to build something twice the size of
2 the senior center and that is just one component. I looked up all the things that were required to consider having a senior
3 center and I just feel like comparing that to this that this is just not being adequately addressed as far as the issues.
4

5 Lawrence Madden: As far as an expert, I don't know what the hell kind of expert you are and I don't care. This is my back
6 yard and I know what is there. I know the water running the knoll. It runs every day even in this drought. There is a stream
7 there and a pond there. There is another stream over here. There are ridges under the road. You people don't know what
8 the hell you are talking about, we live there!
9

10 Thomas Brown: That's quite enough. For the applicant, do you have any points you would like to make before staff?
11

12 LeAnn Brown: Let me point out a couple of things in your record and I will ask Ms. Olszyk and Mr. Neal to come back up.
13 First, there has been discussion about the setbacks and I want to make it clear, as demonstrated in your packet, that this
14 application as proposed complies with all setbacks and buffers in the Orange County Ordinance. The 150 foot from the
15 property line requirement that we have been talking about is an additional requirement in Section 8.8.11 for kennels or riding
16 stables and that requires simply that unless the building is enclosed that it should be 150 feet. The board determined that we
17 need to meet that 150 foot if it is open. The solution to that is to move it or enclose it, one of the two. That is simply an extra
18 requirement. The reason we would not ask you to waive, although the ordinance does allow some waiver of buffers, we are
19 not asking you to waive a buffer or waive a setback, we are asking you to recognize that the 150 feet in that area from that
20 building because it happens to be open is a requirement that is met by the fact that there is a tremendous amount of space
21 back there. Mike Neal is here and I listened to Mike testify about storm water for years before he is doing what he is doing
22 now and when he used to do it for another municipality in Orange County but the evidence before you clearly demonstrates
23 that this development as proposed meets the Orange County wastewater and stormwater requirements so the testimony you
24 have received I understand neighbor concern about runoff and waste water but the reality is that Orange County has
25 ordinance provisions to control that and they have been complied with as this project is proposed. If you want to ask detailed
26 questions about the storm water or waste water and the runoff, Mike Neal will be happy to testify about that as an expert at
27 length if you need more information. I am going to ask Val to come up first and talk to you about waste, waste disposal and
28 how it is handled there since that has come up and then we will move on to the next topic.
29

30 Valerie Olszyk: At my current place, we basically are very conscientious dog owners, you have to understand these are
31 people paying money to train their dogs and they are spending money for dog sports with their dogs. We just have a bag
32 it/dump it policy for dog waste. They do that and comply wonderfully with it. I work there eight to ten hours a day. It is clean,
33 nice and picked up. We take the trash, we have a dumpster. Currently, we have a dumpster service once a month. There is
34 no smell, flies, everything is tied. It only has to be emptied once a month. That is how we handle it and intend to handle it. It
35 is not really an issue; most of the time, people are only there for an hour and leave. We have port-o-potties now. I would like
36 very much not to see one ever again although I keep mine nice and clean. It is cleaned once a week and is perfectly
37 adequate for what we do because the people show up for an hour and train their dog and go home so much don't even use
38 our facility. We have indoor bathrooms that are designed so we have no intention of having port-o-potties on the facility.
39

40 LeAnn Brown: There has been discussion about the topography of the property. If you could talk about the topography of
41 your 12 acres and show the board on the map that would be helpful.
42

43 Valerie Olszyk: This property, because it is very tall and flat in this area, is very dry. In fact, I have walked the whole thing
44 so many times I can't even tell you and there is no standing water on this property. I do know that over back here there is,
45 certainly, of course but basically the way it is laid out is there is a lovely flat here which is where we will put the building then
46 it slopes down and there is a ditch that when the water runs off it runs off and comes down here towards the property area
47 back here in a nice big ditch and then rises back up again and in fact, where we have our future house site is where it rises
48 back up again after the ditch so that everything, if there were anything that came out of the pond, it would be going toward
49 there and rises back up again so there is a nice area that raises up where we are planning to have our house. This area,
50 where the ditch is, is going to be left natural.
51

52 James Carter: What is the distance between your house and the PBH?
53

54 Valerie Olszyk: I think it's about 350 feet because of that ditch from there.
55

1 Larry Wright: There has been quite a bit of discussion tonight about the amount of water, washing kennels, keeping things
2 clean and compared with a household of four people living in the dwelling, how much water would you use at this facility?
3

4 Valerie Olszyk: What we do right now is, we are on an old horse farm, there is no plumbing, there is port-o-potties and a
5 hose so we fill up a baby pool for the dogs to cool off and people occasionally fill their water buckets for the dogs to drink. I
6 know the port-o-potty; the inside says use by 8 people for one week. It is not full after one week. We use one port-o-potty's
7 worth and I am sure that probably with non-port-o-potties, they will be more likely to go to the bathroom. I can't imagine
8 there will not be laundry or hosing down of the facility. I can't imagine there would be a big issue in terms of the amount of
9 water we were using; we are not used to using water. We don't irrigate grass areas.

10
11 Larry Wright: Getting back to my question, let's say this house with four people living there and they are ones that bought
12 the property and set it.

13
14 Valerie Olszyk: I am sure they use more water. I have one kid and my husband and we are constantly doing laundry and
15 taking baths and showers.

16
17 LeAnn Brown: We had some question about noise. On the video the board saw tonight, how close were the photographs to
18 the activity?
19

20 Valerie Olszyk: They were standing in the middle of the show. The only time they were not in the middle when we did that
21 wide angle view and that was 50 feet off the competition line.
22

23 LeAnn Brown: Have you ever done any measurements of noise at your facility? What kind of noise levels are there?
24

25 Valerie Olszyk: Absolutely. We knew that if you don't know us and know what we do, that might be a concern so we did
26 take some sound level measurements both at our current facility when it was empty, when we had classes, when we had
27 events going on and at the Davis Road property and the Davis Road property is not quiet. You can hear I-40 all the time and
28 you can hear a motorcycle go down 86. 3,500 cars is pretty significant on 86 and 1,600 on Davis Road is a lot of traffic and
29 you hear it and when we were doing the data levels for Davis Road and we took measurements at five different places, we
30 found the maximums and averages were in some cases on an empty Davis Road property more than at our current facility
31 when things were going on.
32

33 LeAnn Brown: You prepared a summary of that, correct?
34

35 Valerie Olszyk: Yes.
36

37 LeAnn Brown: I think we would like to introduce this into evidence since that has come up. This is a document you prepared
38 from your actual on-site measurements.
39

40 Valerie Olszyk: We took a 2000 noise meter and took the data so we would have it. The nice thing is that we are actually
41 doing this now, it is not a question of what might be, we are doing this now and we know what it's like.
42

43 David Blankford: Would the sound level amplify? Would you have the noise level from I-40 and add onto it the noise level
44 from your facility?
45

46 Valerie Olszyk: I don't think so, I am not an expert but the covered arena is pretty low, it is designed to have a low roof and
47 low profile so those are big trees around it so I would think the trees would buffer any noise. The other thing is that the
48 crating area where the dogs rest from competition and also the area where the pet obedience dogs, the untrained dogs that
49 will bark and do crazy stuff, that all will be inside with closed doors. It will be heated and air conditioned and that is where
50 they will be so that covered arena would be used for the agility training, those are the trained dogs. Those are the ones that
51 will be outside. My guess is that it would actually be considerably quieter when we can put the new dogs inside. I did
52 change some of that data the first night of the pet obedience class that will be there so that we were addressing the sound
53 we make now.
54

1 LeAnn Brown: Mike, could you come up and speak briefly about traffic impact? If you would tell the board your expertise
2 and why you would be an expert giving this testimony and let the board know.
3

4 Mike Neal: I am a registered professional engineer in the state of North Carolina and Virginia. I started my career working at
5 NCDOT and worked in the traffic engineering branch for a while, also attended courses at Georgia Tech specifically in Traffic
6 Engineering. Then in another lifetime, for 21 years, I was Assistant Director of Engineering in Chapel Hill, while there, in that
7 career, traffic engineering and reviewing plans, etc. As far as the traffic count for this site, in your packet, you will see the
8 traffic, ADT (Average Daily Traffic) are in there. There is a map in your packet that is from NCDOT that is their annual
9 traffic counts where we obtained the average daily traffic on Davis Road and NC-86 that we used in our analysis. We used
10 the industry standard institute of Transportation and Engineers, the ITRIS, trip generation software to determine the average
11 daily traffic for this use, specifically, I said 70 trips a day, I rounded it off specifically it was, I believe 37 in a 24 hour period
12 during the weekday and 38 or 39 trips on Saturdays.
13

14 Larry Wright: Was school in session?
15

16 Mike Neal: It doesn't take in account, the Trip Generation software, it is industry standard, it doesn't take into account
17 whether it is seasonal or school is in. It is the number of trips that we generated for that specific use. If your use was a
18 school then it would take it into account. It is looking at the traffic generated by a specific use. I appreciate your question; I
19 think what you are thinking about is background, which is the traffic on 86 and Davis Road. That would be the background
20 traffic. When you say school, are you talking about classes?
21

22 Larry Wright: I am saying that when school is in session, there is much more traffic on the roads, than when it is out of
23 session.
24

25 Mike Neal: I agree with you. That is the background traffic and that is taken into account in DOT's numbers of the Average
26 Daily Traffic. They look at the Average Daily Traffic over a long time span, then they will include when school in session and
27 when schools not. From that they determine what the average daily traffic would be. That is the traffic that is on Davis Road
28 and NC 86. The answer is yes that does take into all the seasonal, schools, Christmas, and any other thing. I was
29 discussing trip generation and that is just strictly based on the use.
30

31 LeAnn Brown: Can you tell the board the amount of traffic that this project adds to Davis Road and Old 86 that is statistically
32 different from an engineering point of view?
33

34 Mike Neal: No, it is not. The small amount of 35 trips would not impact the intersection. In addition, we also sent the plans
35 to NCDOT for review and analysis. Should they disagree, they would come back and ask us to do certain improvements.
36 They have not indicated in our preliminary reviews, any concerns about the intersection or the turning movements into and
37 out of our driveway.
38

39 Larry Wright: There was some discussion of Old 86 and Davis Road. Can you address that?
40

41 Mike Neal: We have submitted to NCDOT, when we had preliminary discussion and they have not raised any red flags or
42 addressed any concerns.
43

44 David Blankfard: I have a couple of questions about the proposed drainage system. Right now, what is the proposed
45 coefficient of runoff? A number? It doesn't matter what the number is because it would not mean anything to me. What is it
46 now, is there going to be more filtration or less? Is that why you are collecting. I am worried about how much water is
47 flowing off this hill to the neighbors. You will be capturing it because you have more pervious surface. You would have to
48 capture it and put it into this BMP so are the neighbors going to see more water rushing off this hill during a rain event or will
49 they see the same amount of water but four hours later? Is it delayed?
50

51 Mike Neal: It's the latter. A good way to explain this is that the rate of runoff for the neighbors will not be any increase than
52 what they see now. I want to quantify that by saying there is Noah's flood and when Noah's flood comes, it doesn't matter
53 what use is anywhere but they will not see any increase in the rate of runoff post-development than they see pre-
54 development.
55

1 David Blankfard: So the problems they have now, they will still have? It's not going to get any worse?
2
3 Mike Neal: There may be improvements.
4
5 David Blankfard: Is it going to be able to impact that?
6
7 Mike Neal: There are several methods. You mentioned .3 and some other coefficients that use numbers of 7.6 or so. The
8 best way to answer is the rate of runoff will not increase. What is the effect? In some cases, I think things will improve.
9 There is a big draw that runs through here and if you notice we moved our development away from that and intercepted our
10 water before it gets there and mitigated it at a rate greater than that. That problem will not get worse but may get better but
11 certainly will be equal. We will meet all the county's requirements.
12
13 David Blankfard: The wet pond you have, I am assuming that will fluctuate the high waters going up and down when it rains
14 through the weekend.
15
16 Mike Neal: It will have a pool with an elevation. If there is a rain event, it will rise to some elevation based on the amount of
17 elevation of the fall and slowly bleed off back down to that elevation and be maintained there.
18
19 David Blankfard: There will still be standing water?
20
21 Mike Neal: Yes. That is the acceptable method that Orange County allows. There is a pallet of methods, there could be a
22 dry pond, a wet pond, and the applicant wants the wet pond.
23
24 David Blankfard: I have one question about the mosquitoes?
25
26 Valerie Olszyk: We will either put one of the fountains in or there are treatments you can work on to make sure that is not an
27 issue.
28
29 David Blankfard: Nor having an outside event swatting.
30
31 Valerie Olszyk: We will take care of that.
32
33 Larry Wright: You mentioned the draw. There is one thing that I'm perplexed about this whole plan. Of course I am on the
34 planning board too and I just don't see a stream buffer near a stream. You mentioned it is a draw and I just wonder what is
35 this and where is it on the map and where does it go?
36
37 Mike Neal: We have had county staff look at it to see if it is a stream thus the requirement.
38
39 Larry Wright: I am listening to you I just want to make sure I don't hear the other noise.
40
41 Mike Neal: We have had county staff look at it. There is no stream or stream buffer.
42
43 Larry Wright: Not an intermediate stream?
44
45 Mike Neal: An intermediate stream does not meet the county's requirements.
46
47 Larry Wright: Where does that end up?
48
49 Thomas Brown: Is that all the information you have now Mr. Neal.
50
51 Larry Wright: I am fine.
52
53 Unknown Speaker: Do you know how many wells to anticipate? One well?
54
55 Mike Neal: We are just anticipating one well and we met with the health department, our well permit has been issued.

1
2 Unknown Speaker: You are estimating the one well would be used by the family?
3

4 Mike Neal: If you look in your packet, there is from the Health Department the waste water usage figures and if I remember,
5 there were figures from the Environmental Health.....
6

7 Michael Harvey: Mr. Chairman, if you will refer to attachment 3 on page 85, you will have the permit to request applications
8 zones 86 through 92 is all the relevant documentation from the health department.
9

10 Mike Neal: They are indicating that roughly 3,300 gallons a week. The best part to look at that is the State of North Carolina
11 considers that a three bedroom single family house uses 850 gallons per day so that times seven would be substantially
12 more than 3,300 gallons a week.
13

14 Thomas Brown: Page 87 addresses the design flow.
15

16 Mike Neal: That 3,375 gallons would be for 150 people at an event. That would be the worst case scenario.
17

18 Mark Micol: Would you need a separate well for the single family residence?
19

20 Mike Neal: Yes.
21

22 Mark Micol: So you will have two wells?
23

24 Mike Neal: Right. And the depth will be determined at the time we drill.
25

26 LeAnn Brown: There was testimony given as to whether Mr. Knight had considered the public event aspect and since he is
27 here, I will let him very briefly answer that. Did you consider all her activities?
28

29 Vic Knight: As described on page 6 of my report, the bottom sentence, in referencing the review of the documents, the site
30 plan document, I noted the location of the competition field on the plan so in considering that, it is all part of considering what
31 is being proposed to be put on the property and its use so the answer is yes.
32

33 LeAnn Brown: Unless the board has more questions of us, I have tried to answer the questions I heard the neighbors have
34 asked. One final thing I want to comment on is the concern about future use. I probably don't need to remind you but for the
35 sake of everyone in the room, this is a site specific plan and this plan, if you approve it, and provide a permit, it is a plan to do
36 what it shows with the conditions you have attached. It is not there for some change in the future and someone wants to do
37 something different, they have come back through this process and come before you. I understand neighbor concerns about
38 that if this were a rezoning to a bunch of uses. Because it is a site specific development plan, what PDH has to do and can
39 do without coming back to you to do is what they have shown on the plan tonight. I hope that will address that concern. I
40 believe we have demonstrated to the board that the plan as proposed meets all the requisite ordinance requirements. We
41 have had experts testify to you about specific concerns, particularly traffic, storm water and the kinds of things that do require
42 expertise to speak about them meaningfully before you. We very much appreciate it that if there is anything else you would
43 like to ask we are here and available.
44

45 Michael Harvey: Mr. Chairman, given the lateness of the hour and what the board has to do and the fact that we have a
46 second case pending this evening, a variance case, I will be incredibly brief. First, I would like the board to enter into the
47 record, the abstract submitted by staff with the revised Attachment 4, the submitted Attachment 5 and the submitted
48 Attachment 6 you received this evening. I would also like the board to enter into the record a copy of the Orange County
49 Zoning Ordinance in its entirety that reflects the use of the development of this property.
50

51 Thomas Brown: So moved.
52

53 Michael Harvey: As you know on Attachment 4, as we have outlined in our abstract, we have provided our assessment of
54 whether or not this proposed facility, as it exists on the site plan is compliant with the various standards or not. There are
55 two sets of findings you have to make.

1
2 There are specific findings, specifically from 8.8.11 of the Zoning Ordinance. There are specific standards dealing with the
3 submission of Special Use Permit applications in Sections 8.6 and 8.8. There are actual provisions in Article 5, dimensional
4 requirements in Article 6, application dimensional requirements have to be met. Finally, there are general findings
5 specifically containing Section 8.2.1 that the use will maintain or promote the public health, safety and general welfare if
6 located where proposed and developed and operated in accordance with the plan as submitted. The use will maintain or
7 enhance the value of contiguous property. That the location of character, if developed according to the plan submitted, will
8 be in harmony with the area in which it is located and the use is in compliance with the plan of a physical development of the
9 county as embodied in these regulations or in the Comprehensive Plan or a portion thereof. Normally, I would like to go
10 through these section by section but in the interest of time I will not do but I will stipulate that staff has made an affirmative
11 finding with respect to compliance to Articles 8.6 and 8.8 Application Components, that the applicant has provided all
12 necessary documentation to submit this application as we have articulated in our findings, that the applicant has
13 demonstrated compliance with the dimensional requirements as delineated and detailed in the Article of the Zoning
14 Ordinance with respect to minimum lot area, minimum lot width and setbacks, that the applicant has demonstrated
15 compliance with those applicable standards as articulated within Article 6, specifically focusing on the required minimum
16 open space ratio, required minimum pedestrian landscape ratio is all contained on their site plan, that respect to compliance
17 with Section 8.2.4, you have in your packet that you were provided documentation from the Orange County Health
18 Department and Orange County Sheriff's Office, the Emergency Management Department, Fire Department about their
19 abilities to service this site. Last, Specific Standards and Findings, staff is unable, as you know from our abstract and earlier
20 testimony to make an affirmative on the 150 foot setback requirement. The applicant is offering you what they believe is a
21 rational argument, as to why they should not have to meet that. Staff is obviously obligated to say it doesn't meet the
22 ordinance. You have to determine if the applicant's argument is consistent with the standard and intent of the ordinance or if
23 there needs to be some modifications to address the specifics that staff has listed herein and that would require the removal
24 or enclosure of the proposed competition field with the exercise area to the north of the existing area, south the northern
25 property of the EDD boundary. It is correct that the Economic Development District has a 150 buffer perimeter restricting
26 development from locating within that area. There is also the fact there is a Duke Power easement and an electrical line
27 running through the area. It is also just as doubtful there will be any development as far as that property. The argument is
28 that staff cannot make an affirmative finding and the applicant has been made aware of that fact. With respect to the
29 fencing, I believe that staff has indicated that we are requiring a fence to be six foot high in accordance, if you determine you
30 can approve this permit and finally, if you do elect to approve this permit, we recommended several conditions. First, they
31 apply for and obtain an Orange County Building Permit. Second, the Fire Marshall review and approve a plan per current
32 standard. Third, the applicant completes and receives an approval for a Class II Kennel Application with the Orange County
33 Animal Control Department. Fourth, the applicant be required to submit a sign rendering for review based on the site plan,
34 we need the formal rendering. Fifth, the applicant apply for and receive the driveway permit from NCDOT. I believe that has
35 been testified to this evening, there have already been preliminary conversations, and we are requiring the final permit. I
36 have already talked about Condition 6, which is the fencing. Conditions 7 and 8 are typical for the ordinance that if any
37 condition is violated, if it becomes invalid or if the SUP work does not begin within 12 months from the date of approval to
38 begin construction, or this facility as approved under the SUP, it becomes invalid. In closing, all staff would like to do is
39 remind you of your duties. You are to decide, on the merits of issuing or denying a Special Use Permit based on testimony
40 you have heard this evening. As you know from Article 9 of the zoning ordinance, there is a requirement that you receive
41 and review competent sworn testimony of all parties to determine whether or not the applicant has met their burden in
42 establishing through the evidence submitted that they comply with the standards of the ordinance. Conversely, you have to
43 look at the sworn testimony of others that offer comments for or against it, warrant the rejection department. Also, with the
44 issuance of the special use permit, as you have heard from the applicant's attorney, does not change the zoning of this
45 property to allow for future non-residential development. This is a site specific development plan that only allows the
46 development shown on the plat.

47
48 Thomas Brown: On page 4, of revised Attachment 4, states the required side and rear setbacks – 20 feet. Staff did not
49 make any annotation there.

50
51 Michael Harvey: It is a yes.

52
53 Thomas Brown: Also, on page 10, under b, that is where we are talking about the 150 foot buffer.

54
55 Michael Harvey: That is a correct statement.

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Thomas Brown: You did not annotate this because the site plan as it stands did not show a 150 foot buffer?

Michael Harvey: As we stated in our abstract, we have essentially made a negative finding but we believe that the applicant should have an opportunity to present their argument to the board. It is up to the board's discretion to determine if they have met the spirit of the ordinance. Staff cannot make an affirmative finding based on the site plan.

Thomas Brown: But if it is a no, that could be put into the conditions. Would that be appropriate?

Michael Harvey: Without trying to lecture the board on what they should do if they make a negative finding, I think the board has several options and the applicant will have several options depending on the Board's findings. The board could mandate that the areas be enclosed to comply with the section of the ordinance or moved so there would be a 150 foot setback as required by the language of the ordinance or you could make a finding that the applicant has argued that existing conditions provide a defacto 150 foot requirement. Staff is unable to make an affirmative finding based on that argument however it is up to the board's discretion to do so. That can be a condition and it can become a discussion point between you and the applicant as you continue deliberations. Without interrupting anyone else, let me remind you that if and when you close the public hearing, there will be no further comments from anybody.

David Blankfard: When you say if the board finds it a no, they can enclose it, what does that mean?

Michael Harvey: If you review the ordinance, the stipulation states that no part of any building structure, runway, riding arena which animals are housed should be closer than 150 feet so the minimum distance shall apply to all portions of the facility in which the animals are housed or wholly enclosed within a building. You could conceivably require that everything be enclosed within a single building and that would comply with the spirit and letter of the law.

Mark Micol: In its current state, what are other uses of this property? Could it be a minor subdivision? How many lots could be broken up?

Michael Harvey: Assuming that the special use permit is issued, there are no other uses on this property. The special use permit will encumber the property and will be utilized for that purpose.

Mark Micol: I meant if it were purchased by another buyer. If someone else bought it and wanted to do something else with the property to maximize the use. Could there be a minor subdivision and break it into three or four acre lots?

Michael Harvey: That is conceivably possible but you have to abandon the special use permit or modify the special use permit and ensure the facility would still be compliant with the various standards of the ordinance meaning setbacks, buffers, open space requirements, minimum floor requirements, etc.

Mark Micol: What are the other uses for this property?

Michael Harvey: As detailed within Section 4.3, Table of Permitted Uses, there are a myriad of residential and non-residential land uses that could occur on this property but if either from a permitted use standpoint or from the review of the Special Use Permit, that could be a Class A Special Use Permit which is reviewed by the Board of County Commissioners or a Class B Special Use Permit reviewed and approved by this board and a brief recitation of those uses would be a child care facility, single family residential land uses, a group care facility, a bed and breakfast, a bed and breakfast inn, a country inn, a cemetery, community center, technically a landfill with the issuance of various special use permits, a telecommunication tower subject to the issuance of the appropriate special use permits, a camp retreat center subject to the issuance of special use permits, so the lists varies.

Mark Micol: What about the uses without the special use permits, what could someone put on there without going through this?

Michael Harvey: From a permitted use standpoint, you could have a single family residential dwelling, technically you could have duplexes, you could have a center to residences which is a daycare operation, a family care home caring for up to six individuals and has to be licensed by the state of North Carolina. You could have a bed and breakfast up to three bedrooms.

1 Customary accessory uses all associated with all those activities. You could have a botanical garden, church, and park,
2 public and non-profit, a telecommunication tower that is less than 75 feet in height. Technically, you could have a
3 university/college institute, government facility and office building, a water and sanitary sewer pumping station, a club, lodge,
4 social fraternal or clubhouse, a Class I kennel, which is 20 dogs or less for personal use.
5

6 Mark Micol: Would you agree that there would be as much runoff with some of those permitted uses as what is being
7 proposed tonight without going through this process?
8

9 Michael Harvey: You are asking me could one of those permitted uses install as much impervious surface as being
10 proposed with this site plan, the answer is yes. This is in an unprotected watershed and according to Article 6 in the Zoning
11 Ordinance; there is no pervious surface limit. Regulations governing the development of this property are found in Article 5,
12 which is the minimum allowable floor area ratio requirement, the minimum open space requirement and the minimum
13 vegetation landscape ratio requirement of which this site plan does meet. I will further stipulate for the record that staff will
14 allow the single family residence to be built as a customary accessory use and we would allow it to be built under a general
15 zoning permit and not have you come back before this board. We don't do that as a modification to the site plan.
16

17 Mark Micol: Where is the four foot fence versus the six foot fence?

18
19 Michael Harvey: In our recommendation, we have a condition recommended, number 6 of our conditions.
20

21 Mark Micol: Do you know why this property wasn't included in the EDD property?
22

23 Michael Harvey: I am afraid not. The best answer I can give from my limited and my expert capacity is that it failed the line of
24 what was feasible for sewer and water service.
25

26 Mark Micol: Is there any estimate as to when water and sewer will be provided to this area?
27

28 Michael Harvey: No sir.
29

30 Thomas Brown: Are there any other questions of staff? As you can see the 150 foot buffer will get more attention during our
31 deliberation and as it stands on the plan, it is not annotated as a 150 foot buffer.
32

33 Michael Harvey: It would be 150 foot setback. A 150 foot buffer would actually give the connotation there would be
34 plantings and trees. This property only has a 30 foot buffer.
35

36 Thomas Brown: As it stands now, we would have to answer that no, you are not complying with that. What would be your
37 intention if that were to happen?
38

39 LeAnn Brown: It would be our hope for the reasons we have given you that you would add the proposed condition that we
40 have provided to protect the county long term and approve this as designed. What I would ask you to do, if the board in its
41 wisdom determines that it cannot agree with us on the 150 feet, my preference would be that you would condition the
42 application on compliance with that particular condition in 8.8.11 so that we could go back and look at it. We have two ways
43 to comply, one is to enclose that and the other is to move it back. As opposed to denying it on that basis, we would ask you
44 to condition it on that basis. We are showing the four foot, I understand the condition in six feet. I think that is a decision you
45 will make, we will live with the condition you choose on that. The 150 foot is a bit more economically troubling and because
46 of the topography and the land is a bit more intrusive on the land to actually comply but we would ask that you condition it if
47 that is what the board determines we will look at how to fix it.
48

49 Thomas Brown: Are there any more questions of the applicant from the board at this time.
50

51 Unknown Female Speaker: Does staff have an opinion about the 150 foot setback or is that not an acceptable question?
52

53 Dawn Brezina: Unfortunately my answer has to be that the ordinance requires a 150 foot setback and that has to be my
54 answer.
55

1 Mark Micol: The EDD has a buffer that will remain in tact even if that land is developed. Will that vegetation stay in its
2 current state or could it possibly be bulldozed and replanted?
3

4 Michael Harvey: The EDD regulations governing the Economic Development District requires a 150 perimeter buffer around
5 the edge of the established district boundary. Effectively the property to the north can't be developed within 150 feet of that
6 southern property line because it is required of that EDD district to have that perimeter buffer. Is there a possibility 10, 15 or
7 20 years from now that the county could remove that requirement, certainly. I don't think any of us will try to argue
8 otherwise. That is one of the reasons the applicant offered a condition of their own. They recommended the condition the
9 County should impose is that if the perimeter buffer condition within the EDD District changes they would have to comply
10 with the 150 foot setback requirement. My position is that the ordinance as written now provides only two options for you to
11 consider.
12

13 David Blankfard: When you said there was 100 foot setback or buffer?
14

15 Michael Harvey: The EDD is 150 foot perimeter buffer. That is a buffer requirement.
16

17 David Blankfard: I am looking at drawing C3 and they are developing 100 foot vegetation.
18

19 Michael Harvey: That power line was there long before EDD standards incorporated the 150 foot perimeter buffer.
20

21 David Blankfard: That buffer should be another 50 feet.
22

23 Michael Harvey: Yes.
24

25 David Blankfard: So when they show a distance of 163 feet that means there is 13 feet leftover that they can build on.
26

27 Michael Harvey: You also have to remember that according to our zoning ordinance, that high tension electric lines are
28 required to have their own 50 foot buffer. So there will be an additional buffer imposed.
29

30 David Blankfard: There is nothing left?
31

32 Michael Harvey: There is a small amount of property left but I agree it is not much.
33

34 Mark Micol: Even if we allow them to forego the 150 foot setback, would that extend all the way to the Barlett property or
35 would that stop short of the wet pond or could we stipulate that we would allow the 30 foot buffer to stop at the west pond
36 and then go back to the 150 foot property?
37

38 Michael Harvey: That is up for the board's purview. You have a site specific development plan that currently shows no
39 development to the west of the wet pond. Since that is what you would be approving, the argument could be made that you
40 haven't approved any development in that area. It would all have to be at 150 feet.
41

42 LeAnn Brown: As a point of verification, I don't think there is anything in the area that you are talking about that is within 150
43 feet of her property line.
44

45 Mark Micol: The residents to the west.
46

47 LeAnn Brown: There is nothing over here that is outside the 150 feet. The only issue within the 150 feet is where it backs up
48 to the transmission line. We are not asking for any difference other than at the transmission line.
49

50 Thomas Brown: Any further questions? We are about to close the public hearing portion so if you have any questions of
51 staff or applicant. The public hearing portion is now closed. We will begin the internal deliberation phase of the board. We
52 will have Attachment 4 as the key application components that we must review and approve or not. As we go through these
53 when you get to pages 1-4, we can either go page by page or a number of pages on the discretion of the member making
54 the motion on either approval of these particular elements, however, when we get to page 10, we will probably want to have

1 a discussion on that until the board feels it should go or what action to take on that particular item before we make that
2 decision if everyone is in agreement.

3
4 Larry Wright: Say that again, someone was speaking to me.

5
6 Thomas Brown: We will go through the items starting on page 1.

7
8 Larry Wright: Up to page 10?

9
10 Thomas Brown: Up to page 10, it will require motions from a member of the board on whether to approve or not to approve
11 each item. There will be a motion, a second and a vote. When we get to page 10, I think we need to have a discussion on
12 the item at the top of the page before we make a motion on that particular item so we will know the sense of the board going
13 forward. If the board would like to begin and make a motion concerning pages one through nine.

14
15 **FINDINGS OF THE ORANGE COUNTY PLANNING STAFF**
16 **PERTAINING TO REQUEST SUBMITTED BY VALERIE OLSZYK**
17 **REQUESTING A CLASS B SPECIAL USE PERMIT TO ALLOW FOR A CLASS II KENNEL**
18 **FOR A PARCEL OF PROPERTY LOCATED ON**
19 **DAVIS ROAD (TMBL 7.2..29N / PIN 9862-99-8894)**
20

21 Special Uses must comply with general and specific standards as set forth in Article 8.

22
23 Article 8.2.1 b) requires written findings certifying compliance with the following:

- 24
25 (1) The use will maintain or promote the public health, safety and general welfare, if located where proposed
26 and developed and operated according to the plan as submitted;
27
28 (2) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in
29 which case the use need not maintain or enhance the value of contiguous property); and
30
31 (3) The location and character of the use, if developed according to the plan submitted, will be in harmony with
32 the area in which it is to be located and the use is in compliance with the plan for the physical development
33 of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted
34 by the Board of County Commissioners;
35

36 In addition, the Board shall make findings certifying that the application is complaint with the following specific standards:

- 37
38 (1) Specific standards for the submission of Special Use Permit applications as outlined within Section(s) 8.6
39 and 8.8 of the Ordinance,
40
41 (2) Applicable provisions of Article 5 (Dimensional Requirements) and Article 6 (Application of Dimensional
42 Requirements) of the Ordinance.
43
44 (3) Section 8.2.4 relating to the method and adequacy of the provision of:
45 a. Sewage disposal facilities,
46 b. The adequacy of police, fire, and rescue squad protection, and
47 c. The adequacy of vehicular access to the site and traffic conditions around the site,
48
49 (4) Specific regulations governing the development of individual Special Uses as set forth in Article 8.8,
50 specifically Section 8.8.11 *Kennels or Riding Stables/Academies* of the Ordinance

51 Listed below are the findings of the Orange County Planning Department regarding the application in question. The findings
52 have been presented by Article and requirement to assist the Board of Adjustment in its deliberations.

53
54 **ARTICLE 8.6 AND 8.8 - APPLICATION COMPONENTS** ("Yes" indicates compliance; "No" indicates non-compliance)
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FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<u>Ordinance Requirements</u>			
8.6 - Application submitted on	<u> x </u> Yes <u> </u> No	A complete application on	<u> x </u> Yes <u> </u> No

forms providing full and accurate description of proposed use, including location, appearance and operational characteristics.

appropriate forms has been submitted.

8.8 a) - Ten (10) copies of the site plan prepared by a registered land surveyor, architect, or engineer. Yes No

Ten (10) copies of the site plan, prepared by MANA – Michael A Neal and Associates have been submitted. Yes No

8.8 b) - Elevations of all proposed structures to be used in the development. Yes No

Proposed structures are shown on the site/landscape plan. The application contains renderings of the proposed buildings Yes No

8.8 c) - Ten (10) copies of the Environmental Assessment and/or Environmental Impact Statement, if required, by the Orange County Environmental Impact Ordinance. Not applicable – An EIS statement is not required by the Orange County Environmental Impact Ordinance as the proposed amount of land disturbance is under the minimum amount necessary to warrant an EIS statement

Not applicable – An EIS statement is not required by the Orange County Environmental Impact Ordinance as the proposed amount of disturbance is under the minimum amount necessary to warrant an EIS statement Not Applicable

8.8 d) - A fee, as set by the Orange County Board of Commissioners. Yes No

The application fee has been paid. Yes No

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ARTICLE 5 - DIMENSIONAL REQUIREMENTS (“Yes” indicates compliance; “No” indicates non-compliance)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
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Ordinance Requirements:

Article 5 lists standards for minimum lot size, lot width, front, side and rear setbacks, maximum building height and lot coverage, and development intensity.

The applicant has applied for a Special Use Permit on property zoned Rural Buffer. The standards for the RB district are set forth in Article 5.1.2 and are as follows:

a) Minimum lot area per use 40,000 and/or 87,120 sq. ft. Yes No

The property is split zoned Rural Residential One (R-1) requiring a minimum lot area of 40,000 square feet and Rural Buffer (RB) requiring a minimum lot area of 87,120 square feet. There are 12.3 acres in the tract. Yes No

Approved 10/11/2010

b) Minimum lot width - 150 ft. Yes No

The lot is approximately 1,084 feet in width Yes No

c) Required front setback - 40 ft. Yes No

The proposed kennel facility is approximately 150 feet from the front property line. The proposed house, as shown on the site plan, is 275 feet from the front property line Yes No

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d) Required side and rear setbacks - 20 ft. Yes No

The proposed kennel facility is approximately 150 feet from the eastern property line and 660 feet from the western property line. Yes No

The proposed kennel facility in Phase I is 220 feet from the rear property line. The site plan shows fenced in competition fields and training facilities that are 38 feet from the rear property line.

The proposed house is approximately 80 feet from the western, 960 feet from the eastern, and 190 feet from the rear property lines

e) Maximum building height - 25 ft. Yes No

The proposed kennel facility is shown within the submitted renderings as being compliant with the maximum height requirement. Yes No

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ARTICLE 6 - APPLICATION OF DIMENSIONAL REQUIREMENTS

("Yes" indicates compliance; "No" indicates non-compliance)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<u>Ordinance Requirements:</u>			
Article 6 lists specific standards that apply to various types of development applications.			
Article 6.12 contains those development intensity standards which apply to group developments controlled by the Land Use Intensity (LUI) system			
a) Minimum gross land area - N/A	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the minimum gross land area requirement	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the minimum gross land area requirement	___ Not Applicable
b) Maximum gross land area - N/A	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the maximum gross land area requirement	Not applicable – This proposed project is not subject to the requirements of Article 6.12 of the Zoning Ordinance with respect to the maximum gross land area requirement	___ Not Applicable
c) Maximum floor ratio - .088 or 45,999 sq feet of allowable floor area	<p><u> X </u> Yes ___ No</p> <p>The site plan indicates that the proposed floor area of the kennel building, as well as other buildings that will serve some use on the property, is approximately 13,800.</p> <p>Staff has determined that the proposal is consistent with the permitted Maximum Floor Area Ratio limits</p>	In utilizing the information supplied on the site plan, the Board finds that the applicant's proposal complies with the Maximum Floor Ratio limit of .088 per Section 5.1.2 and Section 6.12.2.3 of the Orange County Zoning Ordinance	<u> x </u> Yes ___ No

d) Required minimum open space ratio - .84

Required minimum open space – **439,084** sq. ft.

Yes No

Staff has utilized the submitted site plan and calculated the existing open space on the property and verified that there is approximately **440,810 square feet** of open space on the property.

In utilizing the information supplied on the site plan, the Board finds that the applicant's proposal complies with the Required Minimum Open Space Ration requirement of .84 per Section 5.1.2 and Section 6.12.2.4 of the Orange County Zoning Ordinance.

Yes No

e) Required minimum pedestrian/landscape ratio - .21
Required minimum pedestrian/landscape space – **109,771** sq. ft.

Yes No

Staff has utilized the submitted site plan and calculated the existing landscaped area on the property and verified that there is approximately **112,575** square feet, of pedestrian/landscaped area as defined under Section 6.12.3 of the Orange County Zoning Ordinance

In utilizing the information supplied on the site plan, the Board finds that the applicant's proposal complies with the Required Minimum Pedestrian/Landscape Ratio of .21 per Section 5.1.2 and Section 6.12.3 of the Orange County Zoning Ordinance

Yes No

Staff has determined that the proposal is consistent with the required Minimum Pedestrian/Landscape space.

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1 **ARTICLE 8.2.4 - SPECIFIC STANDARDS/ALL SPECIAL USES**
 2 **(“Yes” indicates compliance; “No” indicates non-compliance) (continued)**
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FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
Article 8.2.4 requires the applicant to address the following:			
a) Method and adequacy of provision for sewage disposal facilities, solid waste and water service.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Information contained within Attachment Three (3) of the abstract completed by staff indicate that the well and septic system have been approved by the Orange County Health Department, indicating that the method and adequacy of sewage and water service is acceptable. With respect to solid waste disposal, the applicant has indicated that he will contract with a private firm for the removal and disposal of waste. According to staff this is acceptable with respect to the requirements of the Ordinance	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b) Method and adequacy of police, fire and rescue squad protection.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	The New Hope Rural Fire Department will provide fire protection. Rescue services will be provided by Orange County EMS. The Orange County Sheriff's Department shall provide police protection. Based on letters/memorandum contained within Attachment Three (3) of the abstract, staff has asserted that these services can be adequately provided to support the proposed use.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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c) Method and adequacy of vehicle access to the site and traffic conditions around the site. Yes No

The site plan indicates the lot is accessed through a driveway onto New Hope Church Road. Yes No

NC DOT has indicated that a driveway permit can be issued allowing for the existing driveway to be used to support the kennel.

They cannot issue final approval until there is an approved site plan. This should be a condition of approval.

ARTICLE 8.8.11 - SPECIFIC STANDARDS FOR A CLASS II KENNEL
("Yes" indicates compliance; "No" indicates non-compliance) (continued)

FINDINGS	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
<p>In addition to the information required by Subsection 8.2 and 8.8, the following shall be submitted as part of the application in order to determine compliance with the site specific development requirements for a Class II Kennel as outlined within Section 8.8.11 of the Ordinance:</p>			
<p>Section 8.8.11.1</p> <p>a) Plans for all kennels, barns, exercise yards, riding arenas, pens and related improvements, including signage.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The submitted site plan shows the location for all buildings proposed for use as part o the kennel operation.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Section 8.8.11.1</p> <p>b) Site plan showing the improvements listed in a) above, other structures on the same lot, and structures on adjacent property</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The submitted site plan provides all essential information as required under Section 8.8.11.1 (b)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Section 8.8.11.2</p> <p>a) The site is of adequate size to protect adjacent properties from adverse effects of the kennel or riding stable/academy</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The site appears to be of sufficient size to allow for the development of the proposed facility</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

7

1 **MOTION** made by Dawn Brezina to accept in the affirmative staff findings for Ordinance Requirements 8.6, 8.8 a through d,
2 Ordinance Requirements, Article 5, a through e, Ordinance Requirement 6, 6.1.2 a through e, Article 8.2.4 a through c and
3 Article 8.8.11, Section 8.8.11.1a, 8.8.11.1b and 8.8.11.2a. Larry Wright seconded.

4 **VOTE:** Unanimous

5
6 Thomas Brown: Let's move to Section 8.8.11.2b. This is worth a little bit of discussion on the feelings on the 150 foot
7 setback. As it stands, the setback in the plan does not include that 150 foot setback which is a requirement. In reality, staff
8 would have to answer to that and so would we. Technically that is where we are with the facts. However, going forward, we
9 have the option of going along with what the applicant proposed in their additional conditions or we could apply our own
10 condition that says we must comply with 8.8.11.2.

11
12 Larry Wright: This is my first Board of Adjustment meeting. On the Planning Board we are going over the Unified
13 Development Ordinances. I feel that I do know that having read up on Board of Adjustment that they can make
14 recommendations to the Board of County Commissioners. I do feel that the ordinances regarding kennels really need to be
15 reviewed. This is a case where you read what is here and it is for training of security dogs and guard dogs and so on. There
16 is no provision for rescue animals. What happens if you have 12 greyhounds, what you are going to do to get it to a Class II,
17 that staff has to wink at that? There is a lot in this ordinance that really needs to be reviewed and I kind of find it flawed.
18 Here we are trying to deal with a setback and this is for a kennel like the applicants in the testimony, the Sunny Side, it is not
19 a kennel where you have barking dogs because their owners are 500 miles away so we can see why you would want a 150
20 setback. I just really feel that 150 foot for the spirit of the use the applicant will be usingI think the way they are doing
21 this, a 30 foot buffer, I find it realistic. I think the ordinance is flawed.

22
23 Mark Micol: To support what he is saying, we have a unique situation here. The 150 feet is designed to protect other
24 residential structures is the way I would interpret the ordinance. In this case you have an EDD so it is a little different. If we
25 had a housing development over here, I would say keep the 150 feet but in this case with the power line and the EDD, I don't
26 see a need to stay with the 150 feet.

27
28 David Blankfard: My thoughts are, there is nothing these owners can do with this property building-wise. I think they would
29 need to have the 150 foot setback because what if this owner wanted to do something, you don't want to see their dogs. He
30 wants the 150 feet; I am going to make paths back there. They might make a nature trail for the dogs. Having them put this
31 competition field that close could be limiting them from enjoying their property.

32
33 Mark Micol: This property on EDD cannot be developed.

34
35 David Blankfard: I'm just saying enjoying it as a nature preserver.

36
37 Mark Micol: I don't think EDD can be a nature preserver.

38
39 Larry Wright: No, it can't. In fact, this is a small business and more in keeping with the EDD than actually

40
41 Mark Micol: That is why I thought it was an EDD originally.

42
43 David Blankfard: No one is ever going to be able to put a house out there?

44
45 Larry Wright: In fact, there is every effort by commissioners to develop the EDD to lower the tax burden. Most revenue to
46 the county is returned by small businesses.

47
48 Thomas Brown: We will continue this discussion with conditions because I don't think the material changes in 8.8.11.2
49 because as it stands now, the site plan does not have a 150 foot setback and we have to answer no.

50
51 Larry Wright: The no would be what now?

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Section 8.8.11.2

Yes No

The site plan denotes that any and all areas where animals are housed are within enclosed buildings.

Yes No

b) No part of any building, structure, runway or riding arena, in which animals are housed or exercised shall be closer than 150 feet from a property line, except property occupied by the owner/operator of the kennel. These minimum distances shall not apply if all portions of the facility, in which animals are housed, are wholly enclosed within a building

The site plan shall be revised, on the direction of the Board of Adjustment and with the agreement of the applicant, to show that all buildings, structures, runways, and arenas associated with the project will comply with the 150 foot setback requirement.

2

Thomas Brown: Page 10 Section 8.8.11.2b. They chose not to answer that because in reality it has not been proposed that the 150 setback would be accommodated by the site plan as a statement of fact. Right now we are bound to say no to that particular item and if we wish to deal with it in the conclusion we may do so.

3

David Blankford: Is there a way to add a note to this or is it just yes or no?

4

Thomas Brown: Chair will entertain a motion on the remaining sections. You can treat section b separately if you wish and then the rest of the sections up to page 12 so basically 10 and 11 are the last two pages before we get into the last two components before we get into the final approvals or disapprovals.

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MOTION made by Dawn Brezina to accept findings on Sections 8.8.11.2b be rendered as no. Mark Micol seconded.

6

VOTE: Unanimous

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Section 8.8.11.2

Yes No

The site plan denotes that the open air exercise area will be enclosed by a fence

Yes No

c) Any kennel which is not wholly enclosed within a building shall be enclosed by a security fence at least 6 feet in height, which shall include primary enclosures or runs

The site plan shall be revised, on the direction of the Board of Adjustment and with the agreement of the applicant, to show that all fences associated with the kennel shall be 6 feet in height

Section 8.8.11.2

Yes No

The site plan denotes the proposed parking, access areas, and screening devices for buildings and animal training facilities

Yes No

d) The site plan shows parking, access areas and screening devices for buildings and animal boarding facilities

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Section 8.8.11.2

Yes No

The site plan has been tentatively reviewed and deemed appropriate by Animal Control.

Yes No

e) The Site Plan shall be reviewed by the Orange County Animal Control Department, and found in conformance with Section XIX of the Animal Control Ordinance

The applicant will be required to apply for and obtain a permit from Orange County Animal Health in addition to the Special Use Permit.

A condition of approval is that the applicant be required to obtain this permit within one hundred eighty (180) days from the issuance of the SUP

Section 8.8.11.3

Yes No

The renderings and floor plan have been reviewed by Animal Control.

Yes No

a) Building plans for all kennel facilities shall be reviewed and approved by the Director of Animal Control prior to issuance of any building permits

The applicant cannot make an application for final approval until the SUP is issued.

A condition of approval is that the applicant be required to obtain a building permit within one hundred eighty (180) days from the issuance of the SUP and that the building plans have to be approved by the Director of Animal Control

Section 8.8.11.3

Yes No

The applicant has indicated on the site plan that there will be a sign on the property adhering to this condition

Yes No

b) A sign clearly visible from the ground shall be posted at the main entrance to the facility and shall contain the names, addresses, and telephone numbers where persons responsible for the facility may be contacted at any hour of the day or night. The sign shall comply with dimensional requirements as set forth in Section 9.11 of this Ordinance

A recommended condition of approval is that the applicant be required to submit a sign rendering for review and approval by the Planning Department within one hundred eighty (180) days from the issuance of the SUP and that the approved sign shall be installed prior to the issuance of a Certificate of Occupancy allowing for kennel operations to commence.

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Section 8.8.11.3

Yes No

The applicant has indicated that the plan will be reviewed and approved by the Orange County Department of Animal Control. Yes No

This should be a condition of approval

c) Where required by the Animal Control Ordinance a Class II Kennel Permit shall be obtained from the Department of Animal Control within the first 30 days of occupancy. Failure to obtain and maintain a valid Class II Kennel Permit or other related permits which may be required by the USDA or Wildlife Resources Commission will result in revocation of the Special Use Permit.

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3 Thomas Brown: This is really a statement of fact as we are now but we still have to deal with this and make a determination
4 how to deal with this if we want to deal with this in the conditions. Starting with Section c and for the remaining sections
5 through page 11.

6

7 **MOTION** made by Dawn Brezina to accept findings section 8.8.11.2, section c through e and section 8.8.11.3 Section a
8 through Section c. Mark Micol seconded.

9 **VOTE:** Unanimous

10

11 Thomas Brown: On page 12, we need to think about the Findings of Fact. A quick review as you are going through these
12 articles and proposing motions, the Article 8.2.1 and 8.2.2 must determine whether the use will maintain or promote the
13 public health, safety and general welfare, if located where proposed and developed and operated according the plan as
14 submitted. Article 8.2.1, must determine if the use will maintain or enhance the value of contiguous property (unless the use
15 is a public necessity, in which the use need maintain or enhance the value of contiguous property. Article 8.2.1 Section 3,
16 the location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which
17 it is to be located and the use is in compliance with the general plan for the physical development of the County as embodied
18 in these regulations or in the Comprehensive Plan or portion thereof, adopted by the Board of County Commissioners.

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ARTICLE 8.2.1 & 8.2.2 - APPLICATION COMPONENTS
("Will" indicates compliance; "Will Not" indicates non-compliance)

FINDINGS <u>Ordinance Requirements</u>	Planning Staff Recommending Findings:	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	Board of Adjustment Findings:
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In accordance with Article 8.2.1 and 8.2.2 of the Zoning Ordinance, the Board of Adjustment shall also consider the following general conditions before the application for a Special Use can be approved:

Article 8.2.1 & 8.2.2

1. The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.

To be determined by Board after receiving evidence to be submitted or heard at public hearing.

___Will ___Will Not

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MOTION made by Mark Micol to approve Article 8.2.1 and 8.2.2 based of the findings of fact based on the professional testimony of Mr. Neal, Civil Engineer and absent any professional rebuttal from the community stating the site plan meets Orange County Ordinances with respect to storm water runoffs. Dawn Brezina seconded.

VOTE: Unanimous

Article 8.2.1

2. The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property).

To be determined by Board after receiving evidence to be submitted or heard at public hearing.

___Will ___Will Not

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MOTION made by Mark Micol to approve Article 8.2.1 Section 2 based on the findings of fact and the professional testimony of Mr. Vic Knight and absent any professional rebuttal from the community on the historical sales in other communities near kennels and that the property values will be maintained. James Carter seconded.

VOTE: Unanimous

Article 8.2.1

3. The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the general plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners.

To be determined by Board after receiving evidence to be submitted or heard at public hearing.

___Is ___ Is Not

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MOTION made by Mark Micol to approve Article 8.2.1 Section 3 based on the findings of fact through Mr. Harvey and staff that the site is of adequate size to protect adjacent property owners from adverse effects of the kennel or riding stable of the academy.

Thomas Brown: Do you wish to add anything about the Comprehensive Plan?

Larry Wright: I think the attorney, LeAnn Brown, did state that it does conform to the Comprehensive Plan. I do believe it does in that it reduces traffic and that people do not have to drive into Durham and they have it locally and I also believe that the spirit of this does conform to the EDD.

Thomas Brown: Mr. Micol would you agree to those additions to the motion?

Mark Micol: Yes.

MOTION made by Mark Micol to approve Article 8.2.1 Section 3 with the additions stated by Mr. Wright.

VOTE: Unanimous

Thomas Brown: It has been determined that Article 8.2.1 Section 3 is in harmony with the area. We now go to page 13, which is the recommendation from staff and the conditions recommended by staff. I think we should have a discussion on whether we need to add number 1, do we agree with the conditions as stated and the staff's recommendation. Are there any further conditions to be applied to the Special Use Permit?

RECOMMENDATION:

The Planning Staff has not received any information that would establish grounds for making a negative finding on the general standards. These standards include maintaining or promoting the public health, safety, and general welfare, maintaining or enhancing the value of contiguous property, and the use being in compliance with the general plan for the physical development of the County.

The Planning Staff has reviewed the application, the site plan, and all supporting documentation and has found that the applicant **does** comply with the specific standards and required regulations given their testimony that they will revise the site plan to comply with applicable setback and fence height requirements as required by the Board of Adjustment.

In the event that the Board of Adjustment makes the determination that the permit can be issued, Planning Staff recommends the attachment of the following conditions:

- (1) That the site plan be modified, as agreed to by the applicant, for all structures to comply with the 150 foot setback, as well as the 6 foot height fence requirement, as mandated by the Orange County Zoning Ordinance.
- (2) That the applicant complete and submit a formal application to the Orange County Inspections Department requesting authorization to commence construction of the proposed kennel facility. The application, including all applicable fees, shall be submitted within one hundred eighty (180) days from the approval of the Special Use Permit. Further, the building permit application shall be reviewed and approved by the Director of Animal Control for compliance with any and all applicable animal control regulations in accordance with the provisions of Section 8.8.11.3 of the Zoning Ordinance,
- (3) That the Orange County Fire Marshall's office shall review and approve the building plans, as part of the normal building permit review process, and that any and all modifications to the structure be made to address fire code issues prior to the issuance of the permit authorizing the commencement of construction activities,
- (4) That the applicant complete, submit, and receive approval for a Class II Kennel application from the Orange County Animal Control Department within one hundred eighty (180) days from the issuance of the SUP,
- (5) That the applicant be required to submit a sign rendering for review and approval by the Planning Department within one hundred eighty (180) days from the issuance of the SUP and that the approved sign shall be installed prior to the issuance of a Certificate of Occupancy allowing for kennel operations to commence.
- (6) That the applicant apply for and receive a driveway permit from NC DOT within one hundred eighty (180) days from the issuance of the SUP and provide planning staff with a copy of the issued permit,
- (7) That the site plan shall be revised to indicated that all outdoor competition and/or training areas denoted on the site plan shall be fenced in to a height no less than six (6) feet as required by the Ordinance,
- (8) If any condition of this Special Use Permit shall be held invalid or void, then this Special Use Permit shall be void in its entirety and of no effect, and
- (9) The Special Use Permit will automatically expire within twelve (12) months from the date of approval if the use has not commenced or construction has not commenced or proceeded unless a timely application for extension of this time limit is approved by the Board of County Commissioners as provided in 8.4.11 of the Orange County Zoning Ordinance.

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Dawn Brezina: We are assuming that all the conditions will be met?

Thomas Brown: That is part of the discussion. We should review items 1 through 8 and make sure you agree with those and determine if you wish to add any more conditions or modify the current conditions. The last part of that discussion would be about the setback. That needs to be addressed.

David Blankfard: Is everybody happy with the six foot fence?

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Dawn Brezina: I think I will be but I still have concerns.

Thomas Brown: As it stands now, everyone is agreement with 1 through 8 and the recommendations of staff to this point? If everyone is okay with that, we have to deal with the 150 foot setback which was answered no in the earlier portion and do we add a condition that specifically addresses that. What is the will of the board?

Larry Wright: Our options for the conditions would be to enclose the arena, or to move

Thomas Brown: We would state they must stay in compliance with 8.8.11.2 which would require the 150 foot setback and they would have to determine how they would comply or we could agree to what they have provided us as a condition. That is the 150 foot setback not be required due to the special circumstances of this particular request.

James Carter: When you say special circumstances, what are you talking about.

Thomas Brown: Because of the additional conditions about the Duke Power easement and electric transmission line which is already on the northern side of the property they want to amend the site plan. In earlier discussions they wanted a 30 foot setback and a 150 foot setback so I think our decision was going to be from the line, the limit states 150. By the literal word of the ordinance is 150 setback and we can place that condition and then they must comply with that condition or we can accept what they have written or some modification thereof but I think that is a discussion we need to have here and determine.

Mark Micol: So without the setback, they are not required to have a fence. If you take the setback away, they are required to have a fence.

Thomas Brown: The fence would be required either way.

Mark Micol: Then the four feet would go to a six foot.

Thomas Brown: They desire a 30 foot setback and then saying that the condition would be if something changed in the transmission lines or the buffer that they would be willing to go to 150 but they do not want the 150 as a setback but that is what the ordinance calls for.

Larry Wright: I think the 30 foot is adequate because there is nothing that can be done underneath the power lines. I think that is adequate.

Thomas Brown: I think that is the core of the question, is that buffer really necessary to protect everyone.

Larry Wright: Once you put this into the recommendations, item 9, that if anything ever happens to be that easement and the buffer then the approved setback would go away. I can't make that recommendation to add that.

Mark Micol: I don't have a problem with the EDD adjacently. My concern is where you have the lead property, the Barlow property to the east and the Barlow property to the west. I have a problem reducing it around what it was intended for which is to protect the residential. That is the only thing I have.

Unknown Male Speaker: Is this property part of the EDD?

Mark Micol: I am looking at residential. Larry Lee is an existing residence and we have Barlow on the west. Who knows what future boards will do, that is why I ask the question, what could happen in the future. I am okay with the EDD.

Thomas Brown: What happened is the no part, it says that no part of any building, structure runway or riding arena, which animals are housed or exercised shall be closer than 150 feet from a property line except property occupied by the owner/operator of the kennel. These minimum distances shall not apply if all portions of the facility which animals are housed are wholly enclosed within a building. What you are doing is saying, the property line, I want 150 feet for any of this activity, riding arena, housing, any of that.

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Mark Micol: Currently, there is no activity.

Thomas Brown: You are saying that I want 150 feet because that is what the ordinance says.

Dawn Brezina: The area we are talking about is only that back border and only with respect to that.

David Blankfard: The entire site plan.

Dawn Brezina: So we would be changing the whole site plan?

David Blankfard: I have no problem here but we are talking about the entire property. I understand what the Chairman said but I wanted to give it due diligence before we sign.

Larry Wright: When I was asking about Mr. Lee's property, that is what I was alluding to because the 77.9 feet on C2, then you double that and you are about 150 feet. It is more than 150 feet for the arena.

Mark Micol: But this site plan is built with a 30 foot but they are not building it with 150 so what you are seeing is the final product assuming we approve what we are asking.

Thomas Brown: You have a 30 foot type B buffer but the setbacks are separate.

David Blankfard: This is not showing the 150 setback because there is construction here that would not exist with the 150 feet.

Thomas Brown: The testimony was that the 150 feet would only be on the back side. However, the question before us is do we feel that is adequate and want to have that modification. Do we have a motion for 150 feet setback?

Larry Wright: This is all the way around?

David Blankfard: Yes. There is supposed to be a 150 foot setback.

Larry Wright: All the way around?

David Blankfard: Yes, to any open air structure.

Larry Wright: You go to Mr. Lee's property line and to the first road, say future parking, it is 77.9. I am just talking about distance. Then you take that distance and hold it against your pencil and then you have about double that which comes to the wall of the covered arena and that is the closest place to Mr. Lee's property line and 77 is 154 feet.

Thomas Brown: We are meeting that on everywhere but the back.

Larry Wright: Why are we worried about this all the way around?

Thomas Brown: Because in the back, they are proposing less of a setback.

David Blankfard: It says we have to have 150 feet from the property line to where that competition field is and we have 30.

Larry Wright: I am really confused when you started addressing 150 feet all the way around. This is what I was talking about initially and I think this is realistic.

David Blankfard: I think that is realistic. The only stipulation is if you look at C2, the distance from that competitive field to Mr. Lee's property is only 146 feet. You are worried about people on the side.

1 Thomas Brown: I think you are getting into a lot of problems when you go off of what the ordinance is stating. The
2 ordinance states that compliance with 8.8.11.2 is you must have 150 foot setback from building structure, runway or riding
3 arena in which animals are housed or exercised and nothing shall be closer than 150 feet. When you start mixing and
4 matching you are going into potentially dangerous territory but we need a motion from a member.
5

6 **MOTION** made by Dawn Brezina to maintain the 150 foot perimeter buffer/setback requirement. James Carter seconded.

7 **VOTE:** Unanimous
8

9 Thomas Brown: The condition to be added will be the applicant must comply with Section 8.8.11.2 in its entirety. Are there
10 any other conditions or stipulations to add to the recommendations? This will be number 9 as a condition. Now, we will need
11 another motion to accept all the motions including all the conditions.
12

13 Debra Graham: Would you please restate the condition?
14

15 Thomas Brown: That condition and the motion that was approved was the applicant would comply with Section 8.8.11.2 in
16 its entirety. We need another motion to accept the recommendation of staff as stated on page 13 with conditions 1 through
17 9.
18

19 **MOTION** made by Dawn Brezina to accept the recommendations made by staff on page 13 to include the 8 conditions stated
20 by staff and to include condition 9. Mark Micol seconded.

21 **VOTE:** Unanimous
22

23 Thomas Brown: Case number 8-2-10 Pet Behavior Help Class II Kennel on Davis Road has been approved by the Orange
24 County Board of Adjustment.
25

7. A-1-10 – Application for a Variance from Section 6.23.2(c)(1) of the Orange County Zoning Ordinance

Dr. Mary Maklhoun and Ms. Jennifer Rees have submitted a request for a Variance from Section 6.23.3 (c) (1) *Stormwater Infiltration and Detention – Impervious Surface and Detention Pond Requirements – Residential Development* of the Orange County Zoning Ordinance seeking an increase of the impervious surface area for property located within the Little River Protected Watershed Overlay District as defined within Section 4.2.27 of the Zoning Ordinance.

The applicants recently purchased a parcel of property located at 2131 Waterwheel Road (TMBL 2.36..15H / PIN 9877-36-8253 within the Cedar Grove Township of the County. The property is zoned Agricultural Residential (AR) and Little River Protected Watershed Overlay District. The property is limited to an impervious surface area of 6%.

The lot has frontage along two (2) existing roads, impacting the overall impervious surface area available to support the development of the property. The applicants are seeking the variance to increase the impervious surface limitation on the property from 6% to 8% to allow for the development of a garage and a longer driveway.

If the variance is approved, the lot would be allowed an additional 3,700 square feet of impervious surface area to support additional development.

Thomas Brown: Would all those planning to testify step forward to be sworn in.

The following individuals were sworn in:

Jennifer Rees
Mary Maklhoun
Benjamin Overby

Michael Harvey: In the interest of time, I am going to move a couple of things forward. You have already been provided with the summary. I am going to call your attention to Attachment 1 on page 133. This is a plot plan of the existing lot, as you will recall from the abstract we have provided. This lot has an interesting history. It was originally part of a 10 acre lot exempt subdivision. It was a part of a recombination plat where it became a four acre tract of land. It has frontage on two roads. The important thing to remember about an exempt subdivision that it does not have to go through our development review process meaning staff does not get to impose development restrictions on the project to ensure something like we are dealing with tonight doesn't happen. Normally with subdivisions, what planning staff will do is take the existing proposed development and determine what the total amount of impervious surface is going to be allowed for any given project, reduce the roads out of that total allotment and work with the applicant to redistribute the impervious surface to all the lots equally. As this was a 10 acre exempt subdivision that wasn't done because we, as the staff, are not allowed to review it, to approve it, we can't do anything to it but sign a statement saying it is an exempt lot. This property, as I indicated, was further subdivided through what is known as a recombination plat process, which is also exempt from local, formal review.

The applicant bought a four acre tract of land thinking it was a four acre tract of land. When they came to us to pull a building permit unfortunately, we had to break the bad news that technically the roads and the impervious surface of the roads are assessed on their lots. Why, because that is where they are. There is no right of way breaking out the road into a separate tract or easement and then calculating the required impervious surface limit area. It is all on somebody's lot. We did the same thing with the 10 acre lots. We all know that on a 10 acre lot the allowable impervious surface versus what would be allowed on a four acre lot is a pretty big difference. The applicant met with a bunch of their neighbors to determine if there was any way they could get additional property through means of an exempt subdivision and unfortunately it couldn't be worked out. There were other limitations on what their surrounding neighbors could do so they have sought a variance.

Their variance was essentially asking the County to increase the existing impervious surface requirement which is 6% to 8% so the specific variance request is for 2% additional impervious surface or roughly an additional 3,700 square feet to allow for the development of a garage and a longer driveway.

1 As part of the justification, they have put forth that, I will let them fill in the blanks; they are required to have a house of a
2 certain size that is setback a certain distance off the property in excess of our zoning regulations, which is within the purview
3 of the development. In this particular instance, that actually imposes additional impervious surface area requirements on
4 their ability to develop this property. They would like a garage because every property in this subdivision has a garage and
5 has the opportunity to build a garage, they can't. They have also had to scale back their driveway and come to the minimum
6 amount of setback requirement of local covenants in order to comply with their standards as well as county's standards. In
7 fact, they almost didn't get the house located on the property due to the local neighborhood setback requirements and the
8 impervious surface limitations imposed as part of the zoning ordinance. The reason they got the house was because staff
9 spent a day and a half measuring all the impervious surface to do the formal count in accordance with their survey so we
10 found a little bit of impervious surface they could actually have the house they proposed. Staff has provided some
11 documentation to look at, attachments, some comments in general. One point of clarification, the applicant, makes the
12 comment that they are subject to a set of covenants. They are not technically subject to it but to a different set of covenants
13 which included the language is essentially but for purposes of making sure we have a complete record, we are asking you to
14 take note of that.

15
16 As this is a variance case, your job is to make final findings on the appropriateness of the request. A variance is a relaxation,
17 turnoff the literal terms and conditions established with this ordinance. A variance can only be granted if it would not be
18 contrary to the public interest and where there are conditions peculiar to the property not are not commonly experienced by
19 other property owners throughout the area..

20
21 The findings you have to make are essentially that the alleged hardship or practical difficulties are unique and singular as
22 regards to the property of the person requesting the variance and are not those suffered in common, that the alleged
23 hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in
24 question for any use in conformity with the provisions of this ordinance, that the variance, if allowed, would not substantially
25 interfere with the injury or interfere with the rights of others whose property would be affected by the allowance of the
26 variance, that the variance is in harmony with and serves the general intent and purpose of the comprehensive plan and the
27 ordinance, and that allowing the variance will result in substantial justice being done. You have a total of nine attachments
28 and I am asking you to recognize a tenth attachment which is the certificate of mailing and posting of property.

29 Mr. Chairman, I formally ask the board for a motion to include the abstract with all my attachments including number 10 as
30 part of the record.

31
32 Thomas Brown: Is there a motion to include staff's attachments as part of the proceedings for the variance case?

33
34 **MOTION** made by Dawn Brezina to accept the addendum (Attachment 10) as presented by staff. Larry Wright seconded.

35 **VOTE:** Unanimous

36
37 Michael Harvey: Mr. Chairman, I further make a request that the Board of Adjustment enter into the record a copy of the
38 Orange County Zoning Ordinance as they relate to these proceedings.

39
40 Thomas Brown: So moved.

41
42 Michael Harvey: In closing, to allow the applicant to speak and for you to ask me questions, I will call to your attention, the
43 last attachment in your packet, the proposed script and order for this issue. You have two functions; the first function is to
44 make general findings of fact and conclusions of law. We have provided you with a sample of 15. These 15 are general
45 findings that are not in dispute. They are essentially, you have an owner of property and zoned agricultural residential and
46 Little River Protected Watershed. These are facts that are not in dispute, i.e., how the lot was created and why we are here,
47 and you have jurisdiction. The next item is for you to make the specific findings on the information entered into the record to
48 either confirm or deny the variance request. Right now I will stop and answer any questions.

49
50 Thomas Brown: If there are no questions, I would ask that the members, as we listen to the applicant speak, review page
51 220, 1 through 5, the findings of fact and keep those in mind as we are listening to the testimony because those are the
52 things that have to come to the floor with motions after the completion of the testimony. Feel free to ask questions of staff.

53
54 Ben Overby: I am counsel for Dr. Maklouf and Ms. Rees. It is late and I will be brief. I appreciate ya'll staying. As Mr.
55 Harvey said, this is sort of a strange set of circumstances that created the situation we are in today. Back in 1996 and 1998,

1 this lot was created out of an exempted subdivision. The two roads were along front of it so when my folks came to buy it in
2 2009, they thought they were getting four acres. It turns out when those two roads were added into those four acres that
3 eats up almost 8,600 square feet of their space leaving a total of about 1850 to do something with. When you take that into
4 account, with the restrictive covenants on the property which require a minimum residential space of 1,600 square feet, my
5 folks are essentially left with being unable to put a garage on it which is a necessary, customary use and is in every one of
6 these other pieces of property. Their driveway is about 100 feet short of their house. We would ask that be found as a
7 hardship. They are asking for a minimal amount of increase. We think the difficulty created out of this is substantial and the
8 fact their house will be different than everybody else's. They can't do what they want with the property. They barely can get
9 the house on. I think it is fairly summarized in our application. I will open it up for questions but we would ask you make
10 those findings and grant them this variance.

11
12 Michael Harvey: Mr. Chairman, if I may call your attention to page 220. As you start deliberating, the first question that the
13 alleged hardships or practical difficulties are/are not unique and singular as regards to the property of the person requesting
14 the variance and are/are not those suffered in common with other property similarly located, what essentially the applicant is
15 asking you to find is that given the exempt subdivisions that have occurred over 20 plus years on this property, given the fact
16 the developer never took the road situation into account with the county planning staff and has arbitrarily required this one lot
17 to absorb the impervious surface coverage restrictions essentially for an entire corner of the development, the hardship is
18 unique given the fact that it was never intended to be under a 10 acre size lot necessitating a request for the variance. I
19 think that is one of the things they would argue.

20
21 On number 2, this is a question that Mr. Overby and I had several discussions about. Obviously, part of staff's comment
22 would be that it all depends on what your definition of reasonable use is going to be. Obviously within their application, the
23 point the applicant is trying really hard to make is the alleged hardships and practical difficulties will result in failure to grant
24 the variance because the driveway will have to be ridiculously short. They actually had to modify their house plan not only to
25 comply with the covenants but with the impervious surface requirements for county staff provisions that obviously they can't
26 have a garage which every surrounding residence is going to have which reduced the marketability of the lot and then
27 obviously this has all been predicated that someone decided to meddle with the subdivision to make it a four acre versus a
28 10 acre lot.

29
30 Number 3, I know the applicant in their letter stated that nobody would actually be adversely impacted by this because all
31 development would be kept on the property and it's the minimum variance required and it only seeks to allow development
32 on the property consistent with Orange County Zoning Ordinance and the requirements of the covenants and would be
33 considered a customary accessory use to a single family residence.

34
35 Number 4, the argument that the applicants make in their letter and all their attachments, which I will refer back to
36 attachment 1, is essentially that the general intent was to allow for not only reasonable use of property but in compliance with
37 watershed management and impervious surface standards. If this property had been developed in accordance with the
38 subdivision regulations as it was originally intended, if it was a regulated subdivision, we wouldn't be here this evening
39 because we would have allocated the appropriate impervious surface allotment. Since that has not occurred, the applicant is
40 simply seeking a 2% increase in impervious surface which is not inconsistent with the overall goals and policies of the county
41 in that it does not represent a massive allowable impervious surface for this district and allows for a reasonable use given the
42 nature of the development surrounding it.

43
44 Number 5, Mr. Overby's concluding remarks in his letter to this board and actually within the applicant's justification to the
45 variance indicated they believe that this would result in substantial justice being done because it would allow them
46 reasonable use of the property and address an oversight created by the developer when he erroneously subdivided the
47 property and created the situation where you have a lot that is encumbered by 8,600square feet of additional impervious
48 surface that was never intended to be encumbered as a non-exempt lot and that the individual hardships that will/will not be
49 suffered by failure of the board to grant the variance that there will be individual hardships suffered given the fact that this lot
50 will still be penalized by the lack of forethought from a developer who subdivided the property and creating the situation
51 where there was insufficient amount of impervious surface left reasonable the development of the property consistent with
52 the covenants. That is what essentially is the argument. As you are going through the provisions of this script, you are going
53 to be making the findings of whether or not they have met those requirements based on information they have provided and
54 what I have just talked about.

1 Thomas Brown: For the board members, as you review the findings of fact and how those would have to lay out, if you have
2 any questions for the applicants or Mr. Harvey, if you would ask for further clarification or anything that will assist you in
3 making your motions, please do so.
4

5 Michael Harvey: When you close the public hearing and start deliberating, you can actually make a motion to adopt the staff
6 recommended findings if you agree with them in their entirety and then move on.
7

8 David Blankfard: How do we refer to the five elements, normally we have sections.
9

10 Thomas Brown: When we get into that portion, we will refer to each specific item 1 through 5 as they are specified but
11 before we close the public hearing, I want to ensure that each board member, looking at these five, ask questions to make
12 sure.
13

14 David Blankfard: Can I make a motion that this a unique hardship.
15

16 Thomas Brown: You can make that motion and have a finding of fact, if not, you need to ask the question before we close
17 the hearing to make sure you understand each of these because I am going to be asking for a motion for each one of these
18 and whether you feel that this is justified or not and back that up with findings of fact.
19

20 Larry Wright: I am looking at Attachment 3, Recombination Plat, Phase II, Woods Mill, Plat Book 81, Page 125. Apparently
21 Eddie Kirk, on 9/8/98 he signed, "I hereby certify that the land shown and described here is not a subdivision" and this is
22 what we are talking about when it was divided into the four parcels? On one of the articles, we have to say that it conforms
23 to the comprehensive plan and I have worked on this and I know the previous ones. I would like to know how this conformed
24 to the previous comprehensive plan, that Mr. Kirk would have signed this.
25

26 Michael Harvey: The lot complies with the minimum lot requirements of the district in which it is located and the
27 recombination subdivision is an exempt subdivision meaning it does not have to go through formal planning board or staff
28 approval. The reason is that, as you can see, a 10 acre lot and they simply took six acres and recombined it with the
29 property to the south so that six acres became part of the larger tract to the south leaving the four acres to the south. As the
30 minimum lot requirement, this district is 40,000 square feet for it to be a conforming lot of record. Four acres complies with
31 the minimum lot acreage requirement. The comprehensive plan at the time when Mr. Kirk signed this, would not have
32 allowed for the development of a lot that was inconsistent with the minimum zoning requirements which this would comply
33 with the zoning requirements and as it was created originally, it was part of the exempt subdivision process. It was
34 considered a legal lot of record and could be legally recombined with another lot meaning there was no regulated subdivision
35 here.
36

37 Larry Wright: Right, but I guess what I am driving at is how that would have happened and not...I think the applicant as you
38 state...I am trying to get a handle and I am casting in my mind, how am I going to deal with the comprehensive plan
39 component and I am trying to get a strong argument for this. My argument is, if it never conformed all along...this is a very
40 granular problem and the comprehensive plan is very universal. How do you get a handle on this?
41

42 Michael Harvey: If you are asking me did this process, as we have articulated in this process, as we have identified what
43 occurred, did that process comply with the comprehensive plan, the goals and policies and what not, yes. Does this lot
44 conform to the requirements of the comprehensive plan in terms of allowing its development, the answer is yes.
45

46 Larry Wright: Why?
47

48 Michael Harvey: Why what?
49

50 Larry Wright: Does it conform?
51

52 Michael Harvey: The lot meets and exceeds the minimum base requirements for the zoning district where it is located. The
53 subdivision that created it was consistent with county code and county policy or state policy. The process observed to get
54 this four acre lot into existence was consistent with county code and county policy. This did not usurp county rules and
55 regulations, it was a legally created lot and it meets the density requirements as suggested by the comprehensive plan. The

1 problem is the fact that the developer never considered the potential impact of impervious surface on this lot when he
2 created it in 1998. That is the problem. Prior to the county adopting the comprehensive impervious standards in 1994, these
3 lots never would have been required to distinguish or separate impervious surface from roadways to lots given it was an
4 exempt subdivision. What the comprehensive plan talked about not only in the 1981 plan but in the current plan is that we
5 want to encourage subdivision that meet and exceed the standards of not only the zoning but the subdivision ordinance,
6 which these does at least meet and exceed the standards of zoning. You want to encourage purposeful development that is
7 consistent with the policies of the zoning ordinance. What the applicant is arguing is that this meets the goals and policies,
8 not only of the comprehensive plan and the zoning ordinance and they should not be penalized essentially because the lot
9 was subdivided at a point in time reducing the allowable impervious surface to essentially an unusable amount.

10
11 Larry Wright: So that goes...

12
13 Michael Harvey: In trying to give you additional clarification of the comp plan, the comprehensive plan in both the 1981
14 iteration and the current plan recognize there are situations you have lots created prior to the adoption with comprehensive
15 regulations, whether they be impervious surfaces, stream buffers, etc. The goal, at least from my standpoint, is going to be
16 that each individual situation be reviewed and determined if there are hardships that exist and this should be taken on a case
17 by case basis which is what we are doing here. This board has to decide if they agree with the applicant that a hardship was
18 not created by any action they did. Staff is stating they bought the property in 2009, 10 years or so after it had been
19 subdivided thinking they had four acres of impervious surface they could build on and that is not the case.

20
21 Thomas Brown: If there are no more questions, we are approaching the time we will close the public hearing and then we
22 will address the findings of fact and conclusions of law as well as the five specific findings of fact that must be approved by
23 board members.

24
25 Thomas Brown: Mr. Harvey, how do you refer to the five specific findings of fact as opposed to the general findings of fact to
26 discern between those two?

27
28 Michael Harvey: I would suggest that the board, in their motion, on page 218, you are going to draw the following findings of
29 fact and conclusions of law. There are 15 that staff had recommended. On making that finding, you are going to make the
30 statement, the Board of Adjustment, in conjunction with provisions of Article 2, Section 2.3.61 includes the following with
31 respect to granting of the variance and make the following findings. These five findings are articulated in Section 2.3.6.1 are
32 the five required findings to issuance of a variance. I will remind the board you will need a 4/5 vote on each.

33
34 Thomas Brown: Could we refer to these as the general findings of fact and conclusions of law and then the specific findings
35 of fact as stipulated by Section 2.3.6.1?

36
37 Michael Harvey: Yes sir. If the motion is to be approved, then the final motion as I have articulated here needs to be specific
38 on the basis of foregoing it is ordered that the application in this section, increasing impervious surface area from 6% to 8%
39 be granted/denied or whatever it is. You have to have a motion.

40
41 Thomas Brown: You have to have a motion to approve the variance as stated at the end. Any more questions before we
42 close the public hearing?

43
44 Sahana Ayer: I would like to add that you make the findings of fact fairly specific, they can't be very general. I would
45 encourage you to ask questions.

46
47 Dawn Brezina: Those five have to be specific?

48
49 Thomas Brown: If you make a motion, you have to provide a finding of fact of why you want to make that motion.

50
51 Michael Harvey: Remember you need to deliberate on these items; essentially you are closing the public hearing so you
52 cannot ask those questions.

1 Dawn Brezina: I have a question for the applicant. I am understanding this as pretty straightforward to me. You bought a lot
2 to build on in a community, in a residential community, then found that it had basically, because of the roadways around it,
3 that it did not allow enough space to be cleared?
4

5 Dr. Mary Maklough: That is correct.
6

7 Dawn Brezina: It would sound like this is not the home you had in mind so you have been limited.
8

9 Dr. Mary Maklough: We have been limited to the fact we cannot get the garage or the driveway that gets to the house and
10 the fact that 8% of what we could of built on we can't. Eight percent of what our allowable was is gone and we didn't realize
11 that.
12

13 Dawn Brezina: It would be improvements to your property that you are proposing and it would be usually that is a positive for
14 the community to have residential improvements within the community.
15

16 Mark Micol: You bought the property last year but I am assuming the lot was on the market a while. Do you have any idea
17 how long it was on the market and have you taken any recourse against the realtor or any such legal action for
18 misrepresentation?
19

20 Ben Overby: There is no pending action.
21

22 Dr. Mary Maklough: I think we were told that it had just gotten off the market and the person before us has gone to Australia.
23 He had gotten the land to perk. When we got to the HOA to approve any building plans, we said did they ever submit any
24 building plans because we wondered if they knew about that. They said no. I don't know where the rest of those facts are.
25

26 Mark Micol: Michael, what percentage of the lots in the neighborhood is 10 acres?
27

28 Michael Harvey: I would say that as part of this plat, this is the only four acre size lot. There are approximately 10 acres
29 surrounding this that are 10 acres or higher. There was a phase I of this subdivision that had no connection to this
30 application that created lots that were five to six acres.
31

32 Mark Micol: This is considered Phase II?
33

34 Michael Harvey: That is correct. The important reason I bring that up is because there are different covenants covering
35 Phase I and Phase II. While the language is the same, you will note, there are some subtle differences in Phase II, that the
36 applicants in their application actually make it harder to develop their property given it is a four acre lot size. One is the size
37 of the house requirements and the other was a setback requirement.
38

39 Ben Overby: The neighbors around them have tried to help them. They were looking at deeding property to them if they
40 could but nobody could make it work. They have all been very supportive.
41

42 Mark Micol: Do we have any written letters from neighbors?
43

44 Ben Overby: There were two that I forwarded to Mr. Harvey. I did forward those this afternoon.
45

46 Mark Micol: Can we elude to that in the motion?
47

48 Thomas Brown: Not if they are not on record.
49

50 Michael Harvey: I don't have them. I did talk with one of the original principle developers of the project who obviously
51 worked diligently to find a solution that did not work out because it would have created other problems with the covenants
52 with those lots. No, I don't have copies.
53

54 Thomas Brown: Would it be fair to say that the unique hardship by this lot come about because the lot absorbs the
55 impervious surface requirements to a greater extent as opposed to other lots in the community?

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Michael Harvey: If I could call your attention to page 159 which is the final plat of Phase II which was signed by Mr. Kirk in 1996. You will note that lot 1, which is this lot, is the only lot bisected by two roads that serve as the major junction point to get access to the various lots in the subdivision. The answer to your question from my standpoint is yes.

Thomas Brown: We have practical difficulties due to the house size restrictions in the covenant as well as the setback restriction of the county in combination.

Michael Harvey: I think the applicant is arguing that the practical hardship here is that given the fact that this is bisected by two roads that take up 80% of its impervious surface, complying with the county's impervious surface requirement allotment of 6% and trying to comply with the covenants for the neighborhood has created a situation where they cannot develop a lot reasonably. They can't have a driveway going to their house. They can't build a garage. The obvious concern is they can't make reasonable use of their property consistent with their neighbors and still comply with the covenant and other issues. The driveway doesn't reach the house. They will basically be parking and walking to the house.

Larry Wright: This would prohibit them from making a brick walkway?

Michael Harvey: That is something we discussed with the applicant. They actually had to alter one of their decks that was supposed to be a covered porch but we couldn't do it because it was an impervious surface.

Thomas Brown: This will not substantially interfere into the rights of others because of the unique situation of this particular lot.

Michael Harvey: That is the argument they are making because it will only apply to this lot. They are only asking for the minimum necessary to build a garage and finish the driveway. It would not create a situation where they would not be in violation of their own covenants inconsistent with the development by the surrounding lots.

Thomas Brown: The general intent is to limit the impervious surface to the greatest extent possible while still maintaining a buildable lot and protecting the watershed and I would think a reasonable use of that lot would at least be in keeping with the comprehensive plan.

Michael Harvey: One of the arguments the applicant makes in the letter is essentially saying that the comprehensive plan never intended a strict enforcement of the ordinance to stop an individual from having a driveway that goes to the house, restricting access or limiting the size of house with the scope of what they could have on the property. I think if the applicant would further argue while they understand the need of the comprehensive impervious surface regulations we do have, that their unique problem creates an incompatibility with trying to allow for reasonable development of this property while still complying with the letter of the law. The argument is that the variance is in harmony and in the spirit of the comprehensive plan because it doesn't seek to allow development inconsistent with that policy it, merely seeks to avert an impervious surface problem that has been created by an unregulated subdivision.

Larry Wright: If this is approved, does this permit them to have a driveway to their house?

Michael Harvey: If you approve the application, you essentially give them 3,700 feet of impervious surface which they can develop any way they wish to, so yes, they can have a driveway to their house and they can develop the garage they originally proposed. They are seeking the minimum variance amount necessary.

David Blankfard: When this lot was created, this development created six lots, the recombination of Lot I to Lot J, did they subdivide Lot J as well?

Michael Harvey: Yes.

David Blankfard: What is the total number of lots in Phase II?

Michael Harvey: Technically, you will find that lot.....

1 Thomas Brown: The point is there is more than six lots there now which the original intent of the original subdivision was
2 that the impervious surface was created by the six lots, now they have ten lots that has created a lot more impervious
3 surface within itself.

4
5 Michael Harvey: From a roadway extension standpoint, you are correct. They took the six acres, recombined it with Lot J
6 from the south to do more 10 acre lot subdivisions and created a four acre lot.

7
8 Mark Micol: If I was an adjacent property owner, I could argue that you, if I bought my lot when it was originally built that
9 there was only six lots and you have created more runoff by adding four more lots. I am trying to work through this from an
10 adjacent homeowner's perspective. To their point, they don't have neighbors that are complaining.

11
12 Michael Harvey: I haven't received any phone calls... that's all I can attest to. If you are asking if the additional 3,700 of
13 impervious surface creates a problem, given the fact that I have already got the roadways the way they are, probably not.
14 The applicant hasn't offered any testimony on that fact; I can only offer my opinion.

15
16 Thomas Brown: Any other questions. The public hearing is closed. If the board members have reviewed pages 218 and
17 219, a motion would be in order to approve or disapprove based on what you have heard, the general findings of fact and
18 conclusion of law incorporated on pages 218 and 219.

19

ORDER VARYING THE ORANGE ZONING ORDINANCE:

The Board of Adjustment for Orange County having held a PUBLIC HEARING on **August 9, 2010** to consider application number **A-02-10** submitted by Dr. Mary Maklhof and Ms. Jennifer Rees for a variance from the Orange County Zoning Ordinance, specifically 6.23.3 (c) (1) *Stormwater Infiltration and Detention – Impervious Surface and Detention Pond Requirements – Residential Development* of the Orange County Zoning Ordinance to increase the allowable impervious surface area for a parcel of property located at the intersection of Millstone and Waterwheel Road (TMBL 2.36..15H / PIN 9877-36-8253) from six percent (6%) to eight percent (8%) allowing an additional 3,700 square feet of impervious surface area for development on the aforementioned parcel, and having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT** and draws the following **CONCLUSIONS OF LAW**:

1. That Dr. Mary Maklhof and Ms. Jennifer Rees are the owners of parcel of property located at the intersection of Millstone and Waterwheel Road (TMBL 2.36..15H / PIN 9877-36-8253) a four (4) acre parcel of property within the Cedar Grove Township of Orange County;
2. The property is zoned Agricultural Residential (AR) and Little River Protected Watershed Overlay District;
3. That the lot in question was created through the recordation of an exempt subdivision recorded in 1996 in Plat Book 75 Page 170 of the Orange County Register of Deeds entitled 'Final Plat Phase 2 Woods Mill'. At that time the lot was approximately ten (10) acres in area;
4. That there was a further subdivision of the subject property in 1998 through the recordation of a recombination subdivision plat recorded in Plat Book 81 Page 125 of the Orange County Register of Deeds entitled 'Recombination Phase 2 Woods Mill' reducing the total size of the property from ten (10) to four (4) acres;
5. That Section 6.23.3 (c) (1) of the Orange County Zoning Ordinance (hereafter 'the Ordinance') establishes specific impervious surface area limitations for lots located within Watershed Protection Overlay Districts;
6. That property located within the Little River Protected Watershed Overlay District is limited to having only six percent (6%) of the lot, as based on its size, covered with impervious surface;
7. That given the current acreage of the property, four (4) acres, development of the property is limited to a total allowable impervious surface area of 10,454 square feet;
8. That the property has frontage on two (2) roadways, specifically Millstone and Waterwheel Roads;
9. That the actual improved (i.e. gravel) travel ways for both roads are located on the subject property, encumbering 8,600 square feet of impervious surface area leaving approximately 1,854 square feet of impervious surface area available to support the development of the parcel;
10. That in the spring of 2010, the applicant began the process of applying for a building permit to allow for the development of a single-family residence and a garage on the subject parcel;
11. That Planning staff informed the applicant that they would have to observe a six percent (6%) impervious surface limit on the development of the property, in accordance with Section 6.23.3 (c) (1), and that due to the location of the roads there was approximately 1,854 square feet of impervious surface area available to support the development of the parcel;
12. That staff approved a building permit application, number CB10-00456, allowing for the development of a single-family residence on the property. This permit did not include the construction of the requested garage as there was insufficient impervious surface area available to support
13. That Dr. Mary Maklhof and Ms. Jennifer Rees have the right, under the Ordinance, to request a variance to allow for the relaxation of the impervious surface area requirements;
14. That proper notice of this hearing has been given to all parties; and
15. That the Orange County Board of Adjustment has jurisdiction over the parties and controversy before it.

1 MOTION made by Dawn Brezina to accept the findings of fact and conclusions of law on pages 218 and 219, numbers 1
2 through 15 to accept them as written by staff. Mark Micol seconded.

3 VOTE: Unanimous

4
5 Thomas Brown: That was unanimous. Now we go to the specific findings of fact on pages 220 which are governed by
6 Section 2.3.6.1 beginning with number 1.

7
8 Upon the foregoing findings of fact and the necessary conclusions of law the Board of Adjustment, in conjunction with the
9 provisions of Article Two (2) Section 2.3.6.1 of the Zoning Ordinance, concludes the following with respect to the granting of
10 a Variance from the Orange County Zoning Ordinance, specifically Section 6.23.3 (c) (1):

- 11
12 1) That the alleged hardships or practical difficulties (are / are not) unique and singular as regards to the property
13 of the person requesting the variance and (are / are not) those suffered in common with other property
14 similarly located.

15
16 This Conclusion is based on the following FINDINGS OF FACT:

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18 MOTION made by Dawn Brezina to accept finding number 1 that the burden of the impervious surface is disproportionately
19 assigned to their lot.

20 Mark Micol seconded.

21 VOTE: Unanimous

22
23 Thomas Brown: Finding number one is approved.

- 24
25 2) That the alleged hardships and practical difficulties (will / will not) result from a failure to grant the variance,
26 and (would/would not) extend to the inability to use the land in question for any use in conformity with the
27 provision of this ordinance and (would/would not) include, substantially, more than mere inconvenience and
28 inability to attain a higher financial return.

29
30 This Conclusion is based on the following FINDINGS OF FACT:

31 MOTION made by Mark Micol to accept finding number 2 based on the findings of fact provided by testimony
32 from Mr. Harvey that all the other residences in the developments are of larger lot sizes therefore reducing the
33 market value of the applicant's property. Also, the other residences in the development also have garages. If
34 the variance is not approved they would not be able to have a garage and would limit the market value as well.

35
36 Larry Wright: seconded.

37 VOTE: Unanimous

38
39 Thomas Brown: Finding number two is approved.

- 40
41 3) That the variance, if allowed, (will / will not) substantially interfere with or injure the rights of others whose
42 property would be affected by allowance of the variance.

43
44 This Conclusion is based on the following FINDINGS OF FACT:

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46 MOTION made by Dawn Brezina to accept finding number 3 based on that improvements on this property would improve the
47 community and approve the adjacent property values considering that the property next door doesn't not have a driveway
48 that goes to the house would probably limit the values. The variance would allow the finishing of a garage and driveway
49 which would enhance the rights of others by maintaining an acceptable level of development within the community.

50 Larry Wright: seconded.

51 VOTE: Unanimous

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53 Sahana: I would like more explanation as to how it would not substantially interfere or injure the rights of others.

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55 Dawn Brezina: Does anyone have an addendum to that.

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Mark Micol: The variance would allow the finishing of a garage and driveway which would enhance the rights of others by maintaining an acceptable level of development within the community. We can add that as an addendum to the motion.

Thomas Brown: Finding number three is approved.

- 4) That the variance (is / is not) in harmony with and serves the general intent and purpose of this Ordinance and the adopted Comprehensive Plan.

This Conclusion is based on the following FINDINGS OF FACT:

MOTION made by Larry Wright to accept finding number 4 based on Mr. Harvey's testimony that it conforms to both the actions of dividing the property he stated, conformed to the 1981 Comprehensive Plan and currently conforms with the zoning of the 2030 Comprehensive Plan.

Dawn Brezina seconded.

VOTE: Unanimous

Thomas Brown: Finding number four is approved.

- 5) That allowing the variance (will / will not) result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that (will / will not) be suffered by a failure of the Board to grant a variance.

MOTION made by mark Micol to accept finding number 5 based on Mr. Harvey's testimony when he stated that the developer made an error in creating this lot and by issuing this variance, it would remedy that error and would allow for this property owner as well as future property owners to enjoy the reasonable use of this property.

Dawn Brezina seconded.

VOTE: Unanimous

Thomas Brown: Finding number five is approved. We need one final approval of the variance to allow an increase in impervious surface area from 6% to 8%.

THEREFORE, on the basis of all of the foregoing, IT IS ORDERED that the application for a VARIANCE from Section 6.23.3 (c) (1) of the Orange County Zoning Ordinance increasing the allowable impervious surface area from 6% to 8% is (GRANTED / DENIED) for the purpose of constructing a garage and additional driveway area as proposed by the Applicant in the application submitted to the Board.

IN WITNESS WHEREOF, the Board of Adjustment of Orange County has caused this Variance to be (approved / denied) in its name as binding on the applicant, and their successors in interest.

MOTION made by Larry Wright to accept the statements, "THEREFORE, on the basis of all of the foregoing, IT IS ORDERED that the application for a VARIANCE from Section 6.23.3 (c) (1) of the Orange County Zoning Ordinance increasing the allowable impervious surface area from 6% to 8% is (**GRANTED**) for the purpose of constructing a garage and additional driveway area as proposed by the Applicant in the application submitted to the Board."

Mark Micol seconded.

VOTE: Unanimous

Thomas Brown: Case number A-1-10 application for a variance from Section 6.23.2 c1 of the Zoning Ordinance is hereby approved.

5. Adjournment

MOTION made by Larry Wright to adjourn. Seconded by Mark Micol.

VOTE: Unanimous

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The meeting was adjourned at approximately 11:55 p.m.

Minutes Preparer: Tina Owen

Assisted by: Debra Graham