

Building Planning & Zoning  
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## Bath County Board of Zoning Appeals

Bath County Courthouse – Room 115  
March 21, 2016

**MEMBERS PRESENT:** Chairman Janice O’Farrell, Vice-Chair Scott Miller, Rick Armstrong, Jason Miller

**MEMBERS ABSENT:** Richard Hise

**PUBLIC IN ATTENDANCE:** Mike Bollinger, Press, Glen & Tammy Lowry, Linda Woodzell, Karen Williams, Mr. & Mrs. David Black

**STAFF PRESENT:** Sherry Ryder

Chairman O’Farrell called the meeting to order at 7:00 p.m.

**PUBLIC COMMENT—MATTERS UNRELATED TO THE AGENDA:** None

**ADDITIONS AND CORRECTIONS TO AGENDA:** None

### **PUBLIC HEARING:**

- **Allen Glen Lowry, Jr. (TM#41-22A)**– Conditional Use Permit application to operate an automotive repair shop at 16161 Sam Snead Highway, Warm Springs, VA. The property comprises 0.77 of an acre situate in the Warm Springs Magisterial District and is zoned A-2 Agricultural General.

**Sherry Ryder:** Mr. Lowry has made application for a Conditional Use Permit to use his personal garage to operate an automotive repair shop.

He is making application under section 603.03-6: Bath County Land Use Regulations, “Automobile service stations, automotive repair garages” and relevant Sections - Page 4-3 Economy Goals #3 and #8 and Objective b page 4-3 of the Bath County Comprehensive Plan. At this time, the property’s main use is residential. He has a small garage on his property. The total acreage of property is approximately 1.28 (2 parcels combined).

Mr. Lowry has submitted conditions that if approved, his hours of operation would be Monday-Friday 8:00 a.m. - 6:00 p.m. and Saturday 8:00 a.m. 5:00 p.m. (only if work would dictate the need).

It appears that repair work would be by appointment only and parking of vehicles has been mentioned, however, you may want to consider the number of vehicles allowed. Typically in the past this has been done.

This property is not located within a designated growth area.

The adjoining properties are zoned A-2. Just north of the property is Jason's Pizza, which is zoned B-2 Business General.

**Sherry Ryder:** In your packet you have the application with proposed conditions attached. He references the Public Hearing for Mr. Puffenbarger who was granted a Conditional Use permit and is within sight distance of Mr. Lowry, south of Jason's Pizza on the same side of the road. He was granted a permit but never actively pursued it and it expired. You have a copy of his plat, an aerial of his land and photographs. VDOT has said that due to the minimal amount of traffic and being a small garage, the entrance requirement would be the same without increase traffic count and they did not need anything.

The Planning Commission met on January 25, 2016 and has made recommendations for approval of Glen Lowry's request for a Conditional Use permit, for a time of 5 years under the Land Use Regulations, Section 603.03-6 "Automobile service stations, automotive repair garages," with conditions of not more than 3 vehicles at any one time on the premises as according to his plans. No car parts or inoperable vehicles are to be permitted.

I will be glad to answer any question you may have. Mr. Lowry and his wife are here to answer questions you may have.

**Chairman O'Farrell:** I now open the Public Hearing.

**Mr. Lowry** said he didn't plan on adding on or doing any late night work. This location is also his home and he plans on keeping things picked up and clean.

**Chairman O'Farrell** asked if any of the other BZA members had any questions for Mr. Lowry. None were asked. Chairman O'Farrell closed the Public Hearing. She then asked for a motion.

**Jason Miller:** I make a motion to accept the application under Bath County Land Use Regulation section 603.03-6. Automobile service station, Automotive repair garages, with no more than three (3) customers cars on the property at any one given time and old car parts are not to be stored.

**Rick Armstrong:** Seconded the motion.

**Vote: 4-0**

## **PUBLIC HEARING**

- **Karen Williams** – David Black etals – (TM#72-78) – Conditional Use Permit application to operate a business for overnight pet boarding and dog day care business at 9405 Sam Snead Highway, Hot Springs, VA. The property comprises 2.92 acres situated in the Cedar Creek Magisterial District and is zoned B-2 General Business.

**Sherry Ryder:** She is making application under uses similar to section 610.02-17 – "Retail business or service establishments such as grocery, fruit or vegetable stores, drug stores, barber and beauty and other personal service shops, florists, dry cleaning and laundry, pickup stations and food lockers" and 610.02-22 – Veterinary clinics, kennels and animal hospital provided that any structure or premised used for such purpose shall be distant at least two hundred (200) feet from any Residential District" and relevant Section - Page 4-3 Economy Goals #3 and #8 and Objective b page 4-3 and page 11-9 #1 of the Bath County Comprehensive Plan.

The property is owned by the Black family and is currently under a contract for purchase pending approval of this Conditional Use Permit.

At this time the property's main use is residential. As you can see from Mrs. Williams' application the pets will all be boarded inside the house. There will be strict criteria that has to be met. There will be someone on the premises at all times.

Property is located within a designated growth area.

The adjoining properties are zoned B-2 Business General, A-2 Agricultural General, M-1 Industrial, and R-1 Residential Limited. Across the street is First and Citizens Bank. The closest residentially zoned property is less than 100 feet (Schelch) and the property owned by Chestnut is approximately 150 feet from this property (structure) to the residential zoning line.

At this time I have had a concern from the Bath County Welfare Ladies and calls expressing that this was a kennel along with twenty (20) dogs were too many and concerns on barking. Today I had a call asking me to remind the Board the definition of a kennel was more than four (4) dogs and setback distance had to be at least two hundred (200) feet from any residentially zone property line from where dogs are kept and it doesn't meet that criteria. These concerns came from one of the property owners that were adjacent to and one not adjacent to the property.

The relevant sections again are 610.02-17 and 610.02-22 under the County Land Regulations and the Comprehensive Plan, under Economy Goals #3 & #8 and Objective b, [age 4-3 and 11-9. The Planning Commission did meet on January 25, 2016 and heard this matter. The motion was passed 5-0 to recommend approval for a period of three (3) years with the maximum limit of twenty (20) dogs. To include boarding, grooming and retail.

You may want to consider the number of dogs on the premises that are being cared for at any given time. You may also want to consider reviewing this in one year as opposed to a longer period of time if it is decided to approve the Conditional Use Permit.

You have a copy of her plans. The first picture shows how a kennel is normally laid out, very cold and unfriendly with chain link fences and runs. Then samples of what she wants to do, not a kennel. You have a copy of her Deed and property information. You also had letters of support.

We have had a problem in the past with dogs barking in Mitchelltown and residents complaining. That is why I made the suggestion to recommend a one year trial. We are talking about residents and this is a new business. If there is a problem, the permit could be taken away. I don't think we will have that problem, she says she will have more control due to the dogs being inside and someone with them at all times. Karen has been looking for property for a long time and hopes it will work out. Karen Williams can give you more information.

I will be glad to answer any questions you may have for me.

**Chairman O'Farrell:** Does anyone have any questions?

**Rick Armstrong:** By definition, do we have a good definition on this? Does this requested use fall among those guidelines?

**Sherry Ryder:** The definition 302.118 in Land Use Regulation: A kennel is more than four (4) dogs and under section 610.02-22 states a kennel would be permitted provided setbacks distance was at least two hundred (200) feet from any residentially zone property line from where dogs are kept.

Mrs. Williams expressed to me many times that her business was not a kennel. It was more of a pet hotel. So when this place came open, she was hoping it would fit. I suggested she may want to give a Conditional Use Permit a try and see how the two Boards looked at it.

**Rick Armstrong** asked Sherry to read again the Land Use Regulation requirement on kennels.

**Chairman O'Farrell** opened the Public Hearing for comments.

**Vice-Chair S. Miller:** Where will the dogs go outside?

**Sherry Ryder:** There is a fenced in area on the side of the house, as well as behind the house.

**Karen Williams** talked about the need for peoples vacationing in Bath County and those going out of town, to have a place to leave their dogs. The dogs would be boarded inside and go outside supervised at times for exercise a few at a time. Her daughter would be helping her and is a Vet Tech and trainer. She works for a boarding business and is well trained on animal behavior. Karen Williams said it was a mission of hers to find a place where she could fill this need. We need this type of business here. I hope this location will fit the need. Dogs would be inside at night. I work at the Owners Club and am asked a lot if there is a place for their dog to stay.

**Rick Armstrong:** You heard Mrs. Ryder read the definition of a kennel a couple times. With the exception of the breeding part. How do you see your boarding being different from a kennel? Being fair with everyone else who has a kennel. The reason I ask is, to me, that's the question that's the hardest to address and be fair and consistent with everybody else who may or not have a kennel license.

**Karen Williams:** To visualize, in your packet there are pictures of a kennel with concrete floors and chain link fence runs where dogs come and go outside as they need to go or exercise. Mine is a home. Three (3) bedrooms upstairs would have little cubicles with compatible beds. They would be taken outside to a fenced in area to walk, exercise, have fun, and play in a plastic pool. Owners could stop and take their dogs out to the lake or go for a run. A kennel is cold concrete. My customers dogs are used to comfort and home like life. My members at work ask about my progress and look forward to being able to bring their pet to me.

**Vice-Chair S. Miller** asked Sherry to read again the definition of a kennel.

**Jim Petrakis:** The concept of the Owners Club was that you could have a second home where you could spend four (4) weeks at first class, at a cheaper cost than owning a second home. Karen Williams has worked as manager of the Owners Club for fifteen (15) years. We just happened to be here this week. She has helped keep the place first class. Five (5) years ago we became empty nesters, we have dogs and ours like watching TV. We pay one hundred (100) dollars per night for a pet sitter. We feel the Owner's Club would no longer meet our needs if we couldn't bring our dogs. Karen keeps our dogs at her home. He would not use a kennel with concrete floors. The definition of a kennel needs to change if Karen's business doesn't meet the definition.

**Sherry** was asked about a business, kennel that did grooming and didn't have the required setbacks either.

**Sherry Ryder:** That kennel was in business before the County's regulation were written. She was unsure of the rules then.

**Rick Armstrong:** The definition is what it is. The need for boarding is there. As a Board we have to work within the limitation of what we are facing. Jim you make a good point. We may need to redefine a kennel versus a

boarding, versus grooming business. I don't know what kind of process that is, Sherry maybe you can address that. At the same time, looking at everybody else in the County and how they approach it and whether or not they have to have a permit. We need to be consistent. The setbacks are the point.

**Vice-Chair S. Miller:** I have been making notes and agree with Rick's point. Maybe the definition needs to be changed. There is a clear need for a business like this.

**Chairman O'Farrell:** Are there any more question? Do I hear a motion?

**Rick Armstrong:** Relevant to section 610.02-17 and 610.02-22 of the Bath County Land Use Regulation and the limitation and restrictions set forth by the definition there. I would make the motion that the issue be tabled until we could get a clearer definition on a kennel and separate the functions that are different. My motion is not to deny but to wait.

**Sherry Ryder:** The amendment would have to be drafted, presented before the Planning Commission. They then would set a Public Hearing date, possibly Monday before their meeting but I am unsure if I can get it in there. It probably wouldn't be until April, then a Public Hearing in May, then it would go before the Board of Supervisors in June or July before to would get adopted. They (The Black's) may not want a contract hanging in limbo until then. As Mr. Armstrong said you guys are the judicial branch. You are to judge by what is in black and white. You can table it if you want and I don't think the Planning Commission would have a problem with that, but the Black's may.

**Rick Armstrong:** There have been other businesses that have followed or should have followed under the same umbrella. Maybe we need to separate the function more clearly. We need to do it the right way.

**Jason Miller:** We can't split hairs on this. What would we tell the people who had to get rid of dogs or move fence lines or move due to the rules.

**Sherry Ryder:** We have had people get rid of their dogs over the regulation. This summer we had someone who had ten (10) dogs and had to get rid of all but four (4) because she didn't have a kennel license.

**Chairman O'Farrell:** Could you, Sherry go over again the opposition.

**Sherry Ryder** read again the letter from the Bath County Animal Welfare ladies. They sent their letter after the Planning Commission meeting. The other concerned person didn't get notified and learned about it after the Planning Commission meeting and is concerned about the barking. Another one called and made a point that they had to go through the process to get their kennel license and wanted to make sure they did too, to be fair.

**Rick Armstrong:** Rescinded his motion.

**Vice Chair S. Miller:** I make the motion to deny the application under section 610.02-17, 610.02-22 on the basis that the applicant's proposed business doesn't meet the definition of a Kennel nor the required setbacks.

**Rick Armstrong:** Seconded motion

**Chairman O'Farrell:** Do I hear any more discussion?

**VOTE: 4-0**

**CHAIRMAN'S REPORT:**

**STAFF REPORT:**

The staff report is in the packet. The work downtown is at a standstill until more tests on what's there and compaction test are done. The Warm Springs Farm Village is in the process of applying for a rezoning from Agricultural to Residential and a Subdivision Application, for start, seven (7) homes. With the possibility for thirty five (35) home, but the slope of the property could cause problems for that many. VDOT will be out to look at the entrance and the first Public Hearing will be Monday. Monday we will be having a Public hearing on the Fee schedule and the Bed & Breakfast locations. We had a request to include them in R-1, R-2 and R-3 localities.

I will ask the Planning Commission about the kennel line distance and changing the definition to fit.

The EDA has a potential business that is looking pretty hard at Bath County. We should be hearing something in the next couple weeks, whether Bath County is picked over other localities. Andy and I went to meeting for a Micro-Brewery site. Then we have Mr. Donze who has property on Coles Mountain and will be planted sixteen hundred (1600) grape vines. He will be putting in a winery, wine tasting shop, and maybe a Bistro in the old Mitchelltown School. He will be planting grape vines of different types on the field below to see if he has any luck. He has renovated the old school bus garage and it is beautiful.

You will have a meeting next month. We have a renewal on a Conditional Use Permit for the Farmer's Market to hear. A one year renewal.

**Chairman O'Farrell:** Does anyone have questions for Sherry: none

**OLD BUSINESS:Revision to Bylaws**

They are to incorporate changes that were effective July 1, 2015 by Virginia Code.

**Sherry Ryder:** Bylaw were amended to meet the code that was incorporated on July 1, 2015 on Variances, the language taken here was taken from the State Code of Virginia. But we need to adopt it to be legal.

**Rick Armstrong:** This is really just a formality, right?

**Sherry Ryder:** Yes

**Chairman O'Farrell:**Do I hear a Motion?

**Vice-Chair S. Miller:** I make a motion to approve the revisions.

**Rick Armstrong:** Seconded the motion.

**VOTE:** 4-0 to approve.

**NEW BUSINESS:** None

**MINUTES:**

**Chairman O'Farrell:** Do I hear a motion to approve the minutes of July 25, 2015?

**Rick Armstrong:** I make a motion to approve the minutes of July 25, 2015.

**Vice-Chair S. Miller**seconded the motion.

**VOTE: 4-0**

**Chairman O'Farrell** asked for a motion to adjourn.

**Jason Miller**motioned to adjourn

**Vise-ChairS. Miller**seconded the motion.

**Chairman O'Farrell**adjourned the meeting.

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**Janice O'Farrell, Chairman**

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**Date**