



**Agenda
Board of Zoning Appeals**

Town Hall Council Chambers

September 7, 2016 7:00 PM

1. **Call to Order** – Chairman
2. **Pledge of Allegiance**
3. **Public Hearings (Action Items)**
 - a. **SPEX16-03:** An application for a Special Exception pursuant to Article 4 Section 1.29 to establish a residential child care facility for up to 12 non-resident children at 130 Misty Pond Terrace in Purcellville Ridge.
4. **Other Business as Required**
5. **Approval of Minutes from Previous Meeting**
6. **Adjournment**

If you require any type of reasonable accommodation as a result of physical, sensory or mental disability in order to participate in this meeting **OR** if you would like an expanded copy of this agenda, please contact Tucker Keller at (540) 338-2304 at least three days in advance of the meeting. *Expanded copies of the agenda may not be available the night of the meeting, please request a copy in advance.*

USE OF ELECTRONIC DEVICES DURING MEETINGS For the comfort and consideration of others, all cellular phones must be turned off and cannot be used in the Council Chambers. Pagers must be set on silent or vibrate mode. This is requested because of potential interference with our recording devices and the transmittal of our hearing impaired broadcast.

Staff Report - BZA Public Hearing

Subject: SPEX 16-03 Child Care Special Exception request

Meeting Date: September 7, 2016

Staff Contacts: Patrick Sullivan

SUMMARY.

This is a special exception review of a request for approval of a residential child care facility by Ms. Annie's Home Child Care. The facility is located at 130 Misty Pond Terrace. The facility is a single family attached dwelling unit (Townhouse) and is part of the Purcellville Ridge Homerowners Association (HOA). It is located in the R-8 Residential Zoning District (Townhouse). PIN # 453459901000.

BACKGROUND.

As of February 2016 the Purcellville Town Council adopted new zoning regulations regarding residential child care in the Town of Purcellville. The biggest change is requiring all applications for residential child care facilities that want to take care of 6 to 12 children to get approval from the Board of Zoning Appeals (BZA). The review process for the BZA is provided in the zoning ordinance in Article 4 Section 1.2.27.

Prior to February 2016 the Town of Purcellville limited the number of children to no more than five at one time in residential child day care. Once the number of children exceeded 5 the ZO viewed it as a commercial day care center and was no longer allowed in a residential district. The State of Virginia regulates the number of children that may participate in residential child care in a single family dwelling unit. The State regulations allow for up to 12 children in residential daycare, whereas the Town of Purcellville only allowed up to 5 children.

Ms. Uceda has been operating a day care facility in her townhouse since 2008. During that time she enrolled 12 children and was registered with the State as was required; the planning department was not aware that she was not in compliance with the ZO until a problem with her state license surfaced because of some changes to State law. The new regulations required that the facility be in compliance with local regulations. When she came to renew her license a State inspector informed her that she would have to be in compliance with local zoning. She was not in compliance with the local ZO as she had too many children enrolled in her program and therefore she could not have her license renewed.

Mailing Address:

Ms. Uceda requested a text change to the Purcellville Zoning Ordinance that would allow for 12 children to be enrolled in a residential single family home. The Town approved the text change and along with the approval required numerous conditions, one of which was the requirement to obtain approval through the special exception process.

Following the approval of the text change Ms. Uceda filed a special exception application to establish a residential child care facility at 130 Misty Pond Terrace.

SPECIAL EXCEPTION PROCESS (SE).

There are numerous requirements that the applicant must meet in order to get approval through the SE process. The requirements are detailed in the ZO. In order to approve the SE permit, the BZA must find that the application meets the regulatory requirements of the ZO. The following staff analysis details the requirements and provides comments on the applicant’s responses.

Regulatory Requirements	Staff Analysis
A complete application form	Applicant has provided a complete form
A diagram drawn to a legible scale depicting: the boundary lines and dimensions of the lot, area of the lot, required yards, location and dimensions of any existing or proposed building or addition, the distance from all boundary lines to any existing or proposed building or addition, pathway to door of facility, child drop off and pick up locations, location of any permanent in-ground play equipment, location and area of any required on-site outdoor play area, location and area of any off-site park or playground, and location and height of any required fence. This diagram is not required to be certified by a registered engineer or surveyor	This was partially done. The plan is included with this report. Staff recommends that the Board pay careful attention and request more information on where and how the child dropoff and pickup area is located and determine that it is adequate for the safety of the children. The drop off area was not delineated. The play area along with its area was not provided. Fence location and height were not provided on the plan.
If the proposed location of a residential child care is subject to a declaration of covenants, conditions, and restrictions for a homeowners association (HOA),	HOA Letter attached. The applicant requested and received a letter from the HOA granting approval to have the Child Day Care in her residence. The HOA did not approve the use of common parking spaces by Ms. Annie’s clients. The HOA did not approve the use of any

<p>then the residential child care provider shall provide the town with certified documentation from the HOA stating whether or not the use is allowable under applicable HOA covenants, conditions, and restrictions. HOA documentation shall only be considered certified if printed on HOA letterhead or signed by an officer or employee of the HOA and notarized.</p>	<p>of the HOA facilities by the children. It is recommended that the BZA condition any approval on compliance with the HOA restrictions.</p> <p>The applicant is not planning on making any changes to the exterior of the site.</p>
<p>Public notice requirements. Prior to the issuance of a special exception for a residential child care, the applicant shall fulfill the notice requirements of Article 9: Board of Zoning Appeals and Article 11, Section 16</p>	<p>Applicant provided notice letters to those required. Public notice requirements have been complied with.</p>
<p>A residential child care shall comply with any and all applicable requirements of the Code of Virginia including, but not limited to obtaining a state family day home license.</p>	<p>The applicant agrees to meet any mandatory requirements of the Code of Virginia.</p>
<p>A residential child care shall comply with any and all town regulations, including, but not limited to, obtaining a certificate of occupancy and maintenance of a town business license.</p>	<p>The applicant will meet any mandatory Town requirements.</p>
<p>A residential child care shall comply with any and all requirements of the county and state building codes.</p>	<p>The applicant will comply with any County and State mandatory requirements</p>
<p>A residential child care location shall be the principal residence of the residential child care provider.</p>	<p>The location is the principal resident of the residential child care provider</p>
<p>A residential child care shall only be located within a single-family detached, duplex, or single-family attached dwelling.</p>	<p>The location is within a single family attached dwelling and complies with this requirement</p>

Mailing Address:

<p>The hours of operation for a residential child care shall be limited to five days a week between the hours of 6:00 a.m. and 7:00 p.m.</p>	<p>The applicant agrees to this requirement. The stated hours are 7:30am to 5:30pm Monday through Friday. It should be noted as a condition of approval.</p>
<p>Two non-resident assistants/employees shall be permitted.</p>	<p>The applicant agrees to this requirement. It should be noted as a condition of approval.</p>
<p>Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the residential child care in such a manner that children do not have to cross a street to enter or exit the facility.</p>	<p>The applicant has not proposed any outside changes. Staff recommends that the BZA question the applicant on how this requirement will be met.</p>
<p>The applicant shall demonstrate availability of sufficient employee parking on-site or along the street. Alternatively, the applicant may utilize any available HOA community parking spaces for employee parking if the HOA provides certified documentation that the applicant is authorized to use such spaces.</p>	<p>The HOA has determined that the applicant may not utilize any community parking spaces for the child care use. There does not appear to be enough parking. The only parking area is the townhouse driveway and that only supplies 2 parking spaces. If there are two employees plus the applicant that would take up all the available spaces and not provide any parking for clients. Staff recommends that the BZA determine if there is adequate parking. The BZA will have to determine if the site can handle 2 staff members, 1 homeowner, and up to two client cars at one time. The decision and conditions if any must honor the requests of the HOA as the BZA does not have the authority to give permission to the applicant to disregard the HOA's decisions.</p>
<p>A residential child care shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.</p>	<p>The applicant agrees to this requirement. It should be noted as a condition of approval.</p>
<p>There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up</p>	<p>The applicant agrees to this requirement. It should be noted as a condition of approval. There appears to be an appropriate pathway but it is not delineated on the plan.</p>

<p>locations to the entrance of the residential child care. The pathway shall be kept free of any snow or ice.</p>	
<p>Seventy-five square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when the applicant can demonstrate the residential child care is located within 1,000 feet of an existing park or playground that is at least twice the area otherwise required for the residential child care. The park or playground must be public or owned by the HOA to which the residence belongs and must be accessed without crossing an arterial or collector road. The applicant may only utilize a park or playground owned by the HOA if the HOA provides certified documentation that the applicant is authorized to use such space. The park or playground must be shown to scale on the diagram submitted at the time of application.</p>	<p>The HOA will not allow the child care center to utilize any of its facilities to include parks and playgrounds.</p> <p>In order to meet the 75 sf requirement the applicant will have to utilize the existing land within the lot borders at 130 Misty Pond Terrace. It does not appear that the back yard has sufficient lawn area square footage to meet the 75 sf per child considering that a good piece of the back yard is the deck. Meeting the 75sf standard depends on whether the deck is considered outdoor play area. If the facility has 12 children the needed play area would have to be 900 sf. The area of the backyard including the deck is approximately 1190 sf. If you take out the deck it is approximately 730 sf. The BZA will have to determine if the applicant meets this requirement.</p>
<p>Any outdoor play area must be enclosed by a fence with a minimum height of four feet.</p>	<p>It is not clear from the plans if there is a fence and if so what the height is. It should be noted as a condition and delineated on the plan.</p>
<p>No play equipment shall be located within any required front yard or within five feet of any side or rear lot line.</p>	<p>The applicant agrees to this requirement.</p>
<p>There shall be no change in the outside appearance of the dwelling or lot housing the residential child care nor other visible evidence of the conduct of a residential child care other than what may be</p>	<p>This is also a condition of the HOA approval. This should be noted as a condition.</p>

Mailing Address:

required by the state family day home license.	

MOTIONS.

1. I move to approve the child care facility SPEX16-03 as presented.

2. I move to approve the child care facility SPEX16-03 with the following conditions.
 1. The applicant shall meet any mandatory Town, County or State requirements to operate a Child Day Care Center.
 2. Hours of operation will be from 7:30 am to 5:30 pm, Monday through Friday.
 3. There will be no more than two non-resident employees/assistants.
 4. There shall be a staggered pickup and dropoff so that there are never more than 2 vehicles picking up or dropping off at the same time.
 5. The drop off area must be kept clear of snow and ice.
 6. Any outdoor play area must be enclosed by a fence with a minimum height of 4 feet.
 7. There shall be no change in the outside appearance of the dwelling or lot housing the residential child care nor other visible evidence of the conduct of a residential child care other than what may be required by the State license.
 8. _____
 9. _____

3. I move to disapprove the child care facility SPEX16-03 for the following reasons.

ATTACHMENTS.

- Application
- Site plan
- Survey
- HOA Letter of Approval
- Applicant's response to staff comments
- New Zoning Requirements
- Applicant's statement of support

ATTACHMENTS

Patrick Sullivan, AICP CED, Director
Community Development Department
Town of Purcellville
psullivan@purcellvilleva.gov

Mailing Address:
Community Development Department
Town of Purcellville
221 South Nursery Avenue
Purcellville, VA 20132
540-338-2304 www.purcellvilleva.gov

**Town of Purcellville
Department of Community Development**

221 S. Nursery Avenue Purcellville, VA 20132
(540)338-2304 Fax (540)338-7460

SPEX 16-03

**Special Exception
Application**

Date 3/10/16 PIN 453459901000 Zoning District R-8

Street Address 130 Misty Pond Terrace Purcellville VA 20132

Agent's Name _____

Owner's Name Ana Maria Uceda

Fax No. _____ Phone No. _____

Fax No. _____ Phone No. 540 751 0864

E-mail _____

E-mail annie@annieschildcare.us

Mailing Address _____

Mailing Address 130 Misty Pond Terr.
Purcellville, VA 20132

A special exception is requested for a home day care as per Article 4 / 15

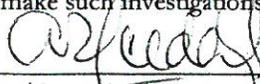
Section 1/2 subsection _____

Additional Submission Requirements:

- An application properly completed.* The application must be filed in the name of the owner, occupant or contract owner. A statement from the property owner claiming knowledge and agreement with the request for a special exception must be included.
- A statement of support.* Applicant must file a statement in support of their request stating the nature of their request, and how it conforms to Article 9 of the Purcellville Zoning Ordinance, Section 5.
- A site plan or plat of the property.* A site plan or plat must be included drawn to scale and showing all existing buildings including accessory buildings and any proposed structure or alteration.
- Payment of fee.* The fee for a special exception application must be paid at the time of submission. FEES ARE NON-REFUNDABLE.
- Applicant must attend meetings.* Applicants or their agents must be present at the Board of Zoning Appeals meeting on the advertised public hearing date.

Agent/Owner:

I have read this completed application, understand its intent and freely consent to its filing. The information provided is accurate to the best of my knowledge. I understand that the Town may deny, approve, or conditionally approve that for which I am applying. Furthermore, I grant permission to the Town or authorized government agents to enter the property and make such investigations and tests as they deem necessary.


Agent/Owner's Signature

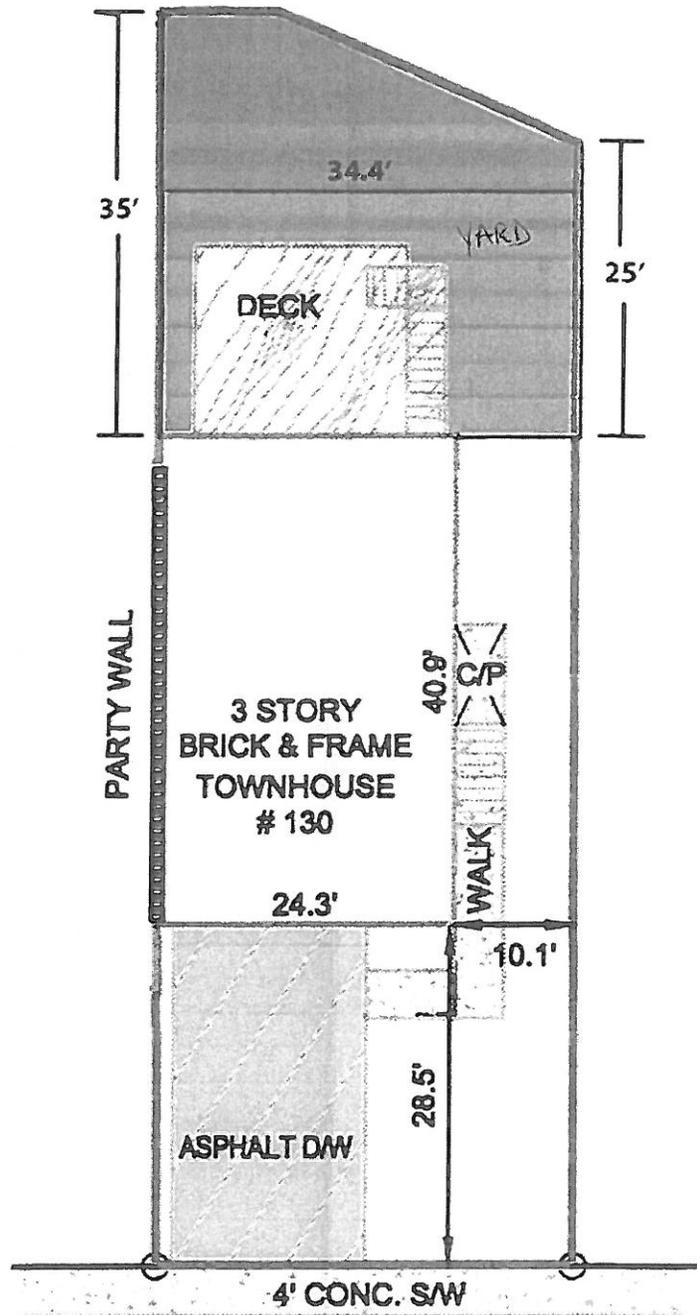
3/10/16
Date

APR 29 2016

For Town Use Only

Application Received:	<u>4/25/16</u>	Hearing Date:		<input checked="" type="checkbox"/> Fees Paid Amount \$ <u>500⁰⁰</u>
Approved:		Denied:		Permit # <u>SPEX1603</u>

Spex 16-03



MISTY POND TERRACE

PROPERTY ADDRESS

130 MISTY POND TERRACE PURCELLVILLE, Virginia 20132

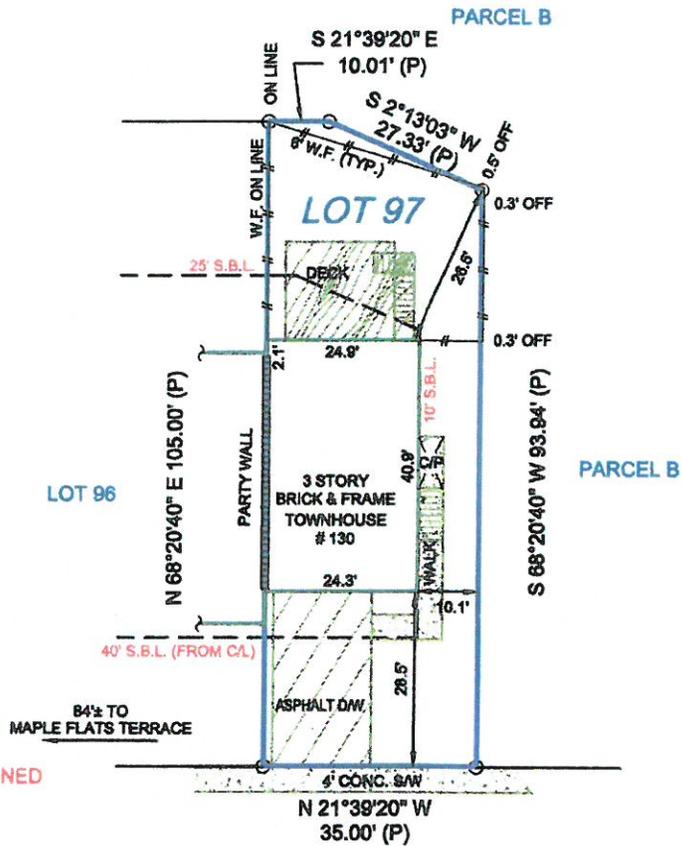
SURVEY NUMBER

1334

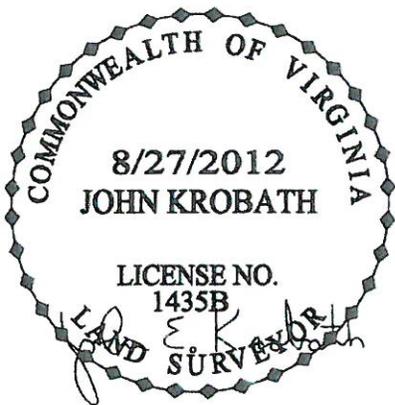
FIELD WORK DATE: 8/22/2012

REVISION DATE(S): (rev.1 8/27/2012)

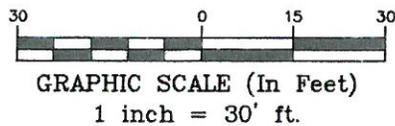
1208.1641
LOCATION DRAWING
LOT 97
PURCELLVILLE RIDGE
LOUDOUN COUNTY, VIRGINIA
08-23-2012 SCALE 1"=30'



NOTE - FENCE OWNERSHIP NOT DETERMINED



MISTY POND TERRACE
(RW VARIES)



NOTES NONE VISIBLE

Purcellville Ridge Homeowners Association, Inc.
c/o Sentry Management Inc., AAMC®
Post Office Box 2070, Purcellville VA 20134-2070
(Office) 540-751-1888 ext. 113 - (Fax) 540-751-1899 - (Email) susan@sentrymgt.com

July 7, 2016

Ana Maria Uceda
130 Misty Pond Terrace
Purcellville, VA 20132

RE: Home Day Care Business

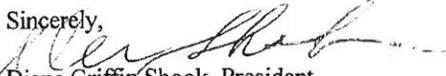
Dear Ms. Uceda:

This letter is to inform you that the Board of Directors for the Purcellville Ridge Homeowners Association at their meeting held on July 6, 2016, reviewed your request for continuation and certification of approval of a home day care business at your residence, with a maximum capacity of twelve (12) children, as the Commonwealth of Virginia and the Town of Purcellville zoning allows. The Board approves your request, with the condition that you continue to operate this business in a manner that does not change the residential character of the Purcellville Ridge Community, and with the continuing approval of your adjacent neighbors.

The Board of Directors does not, however, approve your request to use Purcellville Ridge HOA common parking spaces for your clients, or any employees that you engage now or in the future. Given that the Town requires a "staggered" drop off/pick up schedule for residential day care in the newly adopted zoning regulations, we feel that you have adequate parking in your driveway to provide for your clients' needs and for your employees. In addition, the Board does not permit you to use any of the facilities (pool, playgrounds) due to liability and insurance coverage issues.

If you have any questions regarding this certified approval, or any rules, restrictions or guidelines of the Association, please feel free to contact Susan Miller, the HOA management agent at SMiller@sentrymgt.com or at the contact numbers listed above.

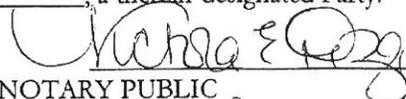
Sincerely,


Diane Griffin Shook, President
Purcellville Ridge Homeowners Association

COMMONWEALTH OF VIRGINIA
COUNTY OF Loudoun, to wit:

The foregoing instrument was personally acknowledged before me this 8th day of

July, ²⁰¹⁶~~2013~~, by Diane Griffin Shook, a therein-designated Party.


NOTARY PUBLIC

My commission expires: 2/28/17 Notary registration: 301778



July 25th, 2016

Mr. Patrick Sullivan
Zoning Administrator

Re: Special Exception Application SPEX 16-03

In response to your request of additional information:

- 1) The plan is now in a larger format.
- 2) The plan provides dimensions as requested.
- 3) I do not use in-ground play equipment.
- 4) I do not plan to use any off-site or play area.
- 5) The actual HOA permission letter is in this package.
- 6) HOA does not approve of parking in the street. My driveway will be available entirely for my clients.
- 7) I am sending a new Special Exception Adjoining Property Owner Information Sheet with an additional address.
- 8) The certified letters have been sent.
- 9) Copy of the letter sent to my neighbors is in this package, as well as proof of Certified Mail.
- 10) My yard has more than 900 square feet.
- 11)
 - a) Drop off and pick up location is the main entrance of my home. No children enter or exit from the garage, nor the patio door. It's shown on the plan.
 - b) Continuous hard surface pathway connecting the drop off and pick up area to the entrance of the townhouse is on the plan.
 - c) My future employee will use my garage.
 - d) My driveway will be used for child home care use.
- 12)
 - a) 130 Misty Pond Terrace in Purcellville is my principal residence.
 - b) My home daycare is located within a single family attached dwelling.
 - c) My hours of operation is Mon-Fri 7:30am-5:30pm.
 - d) I am aware I can have a maximum of 2 employees.
 - e) I will make sure no more than 2 vehicles are picking up or dropping off at the same time as it has been doing in the last 8 years.

Thank you,



Ana Maria Uceda

Ms. Annie's Home Day Care

AMENDED RESIDENTIAL CHILD CARE REGULATIONS

(As approved in Ordinance 16-02-01 on February 23, 2016)

ARTICLE 4. - DISTRICT REGULATIONS

Section 1. - Use Regulations.

1.1 Use table.

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Use	R2	R3	R3A	R8	R15	C1	MC	C4	CM1	M1	PDH	X	IP	AC	RT	Use Standard
.....																
Child care, residential	P/SE	P/SE	P/SE	P/SE	P/SE		P/SE	P/SE			PPU/SE	P/SE		P/SE	P/SE	Art. 4, Sec. 1.2.27
.....																

1.2 Use standards.

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27. Child care, residential

a. General standards.

- i. Applicability. Pursuant to the Code of Virginia, a residential child care serving one through five children, exclusive of the provider's own children and any children who reside in the home, is exempt from the following regulations and is a permitted use in a residential dwelling. Any other residential child care requires a special exception to be granted by the Board of Zoning Appeals in accordance with *Article 9: Board of Zoning Appeals*.
- ii. Application Submission Requirements. In addition to any application requirements for a special exception set forth in *Article 9: Board of Zoning Appeals*, a complete application for approval of a residential child care shall include the following:
 1. A completed special exception application form.
 2. A diagram drawn to a legible scale depicting: the boundary lines and dimensions of the lot, area of the lot, required yards, location and dimensions of any existing or proposed building or addition, the distance from all boundary lines to any existing or proposed building or addition, pathway to door of facility, child drop off and pick up locations, location of any permanent in-ground play equipment, location and area of any required on-site outdoor play area, location and area of any off-site park or playground, and location and height of

any required fence. This diagram is not required to be certified by a registered engineer or surveyor.

3. If the proposed location of a residential child care is subject to a declaration of covenants, conditions, and restrictions for a homeowners association (HOA), then the residential child care provider shall provide the Town with certified documentation from the HOA stating whether or not the use is allowable under applicable HOA covenants, conditions, and restrictions. HOA documentation shall only be considered certified if printed on HOA letterhead or signed by an officer or employee of the HOA and notarized.
 4. If a residential child care proposes to utilize a parking space, park, playground, or any other facility owned by a HOA to meet any requirement of this ordinance, the applicant shall provide the Town with certified documentation from the HOA stating that the residential child care is authorized to use such facility. HOA documentation shall only be considered certified if printed on HOA letterhead or signed by an officer or employee of the HOA and notarized.
- iii. Public Notice Requirements. Prior to the issuance of a special exception for a residential child care, the applicant shall fulfill the notice requirements of *Article 9: Board of Zoning Appeals* and *Article 11, Section 16: Public Notices*. In addition, the applicant must send written notice of the application to the last known address of the owner of each adjacent property as shown on the current real estate tax assessment records of Loudoun County. If the proposed location of the residential child care is a member of a HOA, the applicant must also send written notice to such HOA. Any written notice shall be sent by certified or registered mail and must include the following information:
1. A statement that an application for a residential child care has been submitted to the Town;
 2. The address of the property subject to the application for the residential child care; and
 3. A statement informing the recipient that if they have any objection to the proposed residential child care that they can send a written objection, which shall include the specific issues that are the basis for their objection, to the Zoning Administrator who will transmit the written objection to the Board of Zoning Appeals. The address of the Zoning Administrator shall also be included in the notice letter.
- iv. A residential child care shall comply with any and all applicable requirements of the Code of Virginia including, but not limited to, obtaining a State Family Day Home License.

- v. A residential child care shall comply with any and all Town regulations, including, but not limited to, obtaining a Certificate of Occupancy and maintenance of a Town Business License.
- vi. A residential child care shall comply with any and all requirements of the County and State Building Codes.
- vii. A residential child care location shall be the principal residence of the residential child care provider.
- viii. A residential child care shall only be located within a single-family detached, duplex, or single-family attached dwelling.
- ix. The hours of operation for a residential child care shall be limited to five days a week between the hours of 6:00 AM and 7:00 PM.
- x. Two non-resident assistants/employees shall be permitted.
- xi. The applicant shall demonstrate availability of sufficient employee parking on-site or along the street. Alternatively, the applicant may utilize any available HOA community parking spaces for employee parking if the HOA provides certified documentation that the applicant is authorized to use such spaces.
- xii. Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the residential child care in such a manner that children do not have to cross a street to enter or exit the facility.
- xiii. A residential child care shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.
- xiv. There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up locations to the entrance of the residential child care. The pathway shall be kept free of any snow or ice.
- xv. Seventy-five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when the applicant can demonstrate the residential child care is located within 1,000 feet of an existing park or playground that is at least twice the area otherwise required for the residential child care. The park or playground must be public or owned by the HOA to which the residence belongs and must be accessed without crossing an arterial or collector road. The applicant may only utilize a park or playground owned by the HOA if the HOA provides certified documentation that the applicant is authorized to use such space. The park or playground must be shown to scale on the diagram submitted at the time of application.
- xvi. Any outdoor play area must be enclosed by a fence with a minimum height of four feet.

xvii. No play equipment shall be located within any required front yard or within five feet of any side or rear lot line.

xviii. There shall be no change in the outside appearance of the dwelling or lot housing the residential child care nor other visible evidence of the conduct of a residential child care other than what may be required by the State Family Day Home License.

b. Reserved.

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ARTICLE 15. - DEFINITIONS

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Section 2. - Definitions.

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Child care, residential. A program conducted within a residential dwelling which offers care, protection, supervision, and/or education to less than 13 children under the age of 13 during any 24-hour period, and then only for part of any 24 hour day, for compensation or otherwise.

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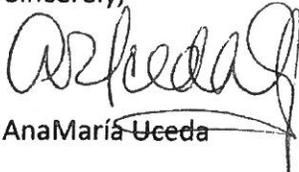
Statement of Support

I am running a home daycare since October 2008, Ms. Annie's Home Child Care. I got the respective Certificate of Occupancy in 2008 and I have been renewing the Town Business License annually. Also, since 2008, I got the Family Day Home license from the Commonwealth of Virginia, The State of Virginia granted me the State License for 12 children after the corresponding paperwork and home inspection.

On May of 2015, that is almost 7 years running my home daycare with a license for 12 children, the State of Virginia's inspector informed me that my license would be dropped to 6 children because of the town of Purcellville. The state decided to follow the Town of Purcellville guidelines even though they were more restrictive than the State. Since May of last year, I have been in contact with the town in order to change the law. Finally, an amendment was made for the article 4, section 1 and Article 15, section 2.

That is why I am requesting a Special Exception from the Town of Purcellville to allow me to enroll a maximum of 12 children as the Commonwealth of Virginia permitted.

Sincerely,



AnaMaria Uceda

Ms. Annie's Home Child Care
130 Misty Pond Terrace
Purcellville, VA 20132
540 751 0864
www.annieschildcare.us

March 28th 2016

**MINUTES
BOARD OF ZONING APPEALS
REGULAR SESSION
JULY 29, 2015**

The Regular Session of the Purcellville Board of Zoning Appeals convened at 7:00 p.m. and the following attended:

PRESENT: Betsy Self, Chairman
 John Cooper, Vice Chairman
 Orlo Paciulli
 Melanie Fuller

ABSENT: Eric Zimmerman

STAFF: Patrick Sullivan, Zoning Administrator
 Tucker Keller, Recorder

CALL TO ORDER:

Chairman Self called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

CLOSED MEETING:

Vice Chairman Cooper made a motion that the Board go into a closed meeting pursuant to VA Code 2.2-3711(A)(7) for consultation with legal counsel regarding specific legal matters in the Mason appeal requiring legal advice by such counsel.

Motion: Vice Chairman Cooper
Seconded: Board member Fuller
Carried: 5-0

The following individuals attended the closed session:

Chairman Self
Vice Chairman Cooper
Board member Paciulli
Board member Fuller
Robert T. Mitchell, Jr., Counsel to the BZA

Chairman Self asked if each board member certify that to the best of his or her knowledge only public business matters lawfully exempt from open meeting requirements as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting.

Board member Paciulli:	Yes
Board member Zimmerman	Yes
Chairman Self	Yes
Vice Chairman Cooper	Yes
Board member Fuller	Yes

Chairman Self made the following statement:

This matter before the Board of Zoning Appeals is an appeal by the owners of the property located at 341 North Maple Street in Purcellville of a determination made by the Purcellville Zoning Administrator that the proposed use of the property by the owners tenant, Green Acres Lawn Care, Inc., as a contractor storage yard is not an allowed use on the property. The Board's decision on this appeal shall be based on the Board's judgment of whether the Zoning Administrator was correct in his administrative determination. In making this decision, the determination of the zoning administrator is presumed to be correct. The Appellant has the burden to rebut such presumption of correctness by a preponderance of the evidence. Concurring vote of the majority of the membership of the Board, that is three (3) votes, is necessary to reverse the determination by the zoning administrator.

The procedure to be followed at this hearing shall be as follows: The Zoning Administrator or his counsel shall make the first presentation to the Board, limited to a maximum of 15 minutes. Thereafter, the owners or their counsel may make a presentation to the Board, limited to a maximum of 15 minutes. Thereafter, members of the public may make statements to the Board, limited to a maximum of, I think I am going to increase this a little, from one (1) to five (5) minutes each. Statements shall be limited to the issue before the Board of whether the Zoning Administrator's determination was correct. Upon completion of all citizen comments, the Zoning Administrator and owners or their counsel, in that order, may make brief closing statements.

As set forth in the public notice for this hearing, any documents for consideration by the Board were to be submitted at least seven (7) days in advance of this hearing and no documents submitted thereafter shall be considered without leave of the Board.

PUBLIC HEARING:

- a) BZA15-02 Appeal by James Alfred Mason and Barbara T. Mason of determination made by the Purcellville Zoning Administrator regarding property located at 341A North Maple Avenue, Purcellville, VA.

Gifford R. Hampshire, Blankingship & Keith, P.C., representing Patrick Sullivan, Town of Purcellville Zoning Administrator

Mr. Hampshire repeated that the decision of the Zoning Administrator is presumed to be correct and the burden is upon the applicant to rebut that decision by preponderance of evidence and

noted that preponderance of evidence is the evidence that you find most convincing and not necessarily quantity of evidence received.

Mr. Hampshire said that zoning administrator's decision was not based upon whether or not Mason had a valid occupancy permit but it was a finding that the zoning administrator made that the occupancy permit for Mason, the landlord and owner of the property, did expire sometime in 2007. He continued that it was evidence in this matter that Mason did have a nonconforming use that continued after the Town Council rezoned the property from M-1 to C-1 in 2008 and zoning administrator found that Heritage, the major tenant on the property, did continue that legal nonconforming use within the required two (2) year period. He stated that based upon the evidence submitted to the zoning administrator, there was only one contractor on the site whether it be Mason until about 2008 or then Heritage from 2008 until late 2014 or early 2015. Mr. Hampshire said that based upon a complaint; there was an indication that there was a second contractor on the site, namely Green Acres, so what we have, based upon all the available evidence, was a doubling of the intensity of the nonconforming use. He

Mr. Hampshire referenced Purcellville Zoning Ordinance Article 5, Section 2(a) that states, "No conforming use, structure, and/or activity shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date or amendment of this ordinance unless the enlargement, increase or extension does not result in an increase in nonconformity" and subsection b, the last sentence says, "No additional nonconforming structures shall be constructed in connection with any nonconforming use of land" and "No additional uses which would be prohibited generally in the zoning district involved shall be permitted." He said that what the zoning administrator found consistent with subsection b is that the addition of a second contractor storage yard, Green Acres storage yard, was an additional nonconforming use and that his decision is further supported by Subsection a, since you have a doubling of the users in the area. Mr. Hampshire said that it is not necessary that there be an increase in the area of land but that there is an increase in the intensity of the use. He noted that the plat dated 1999 does not show a chain linked fence separating this parcel into essentially two different uses as is today, so as best we can tell we not only have an increase in intensity but an expansion of the use. Mr. Hampshire added that Article 5, Section 2 of the Zoning Ordinance is based on Virginia Code Section 15.2-2307. He cited the Supreme Court of Virginia case of Gardner v. City of Chesapeake. He said that what is intended is that you can have an increase in a nonconforming use as long as that increase is consistent with the zoning ordinance. What we have is a doubling of the non-conforming use and the Supreme Court has upheld limitations on expansions of non-conforming uses under the idea that nonconforming uses are disfavored and they are inconsistent with the comprehensive zoning plan. He said that this use is inconsistent with the Town of Purcellville's zoning plan and zoning ordinance and therefore the law presumes that it should not expand.

Mr. Hampshire said that it is not enough that the applicant be the owner of the property because the applicant has to have a direct interest in the issue. He continued that Mason is not Green Acres and is not the entity applying for this occupancy permit but he is the landlord therefore his interest is indirect. Mr. Hampshire stated that it is not substantial since Mr. Mason can continue

to lease this property to Heritage or any other one contractor within the area that is shown on the plat.

Mr. Hampshire said that they submit for the reasons stated that the Zoning Administrator was correct in his decision that this occupancy by Green Acres should not be allowed because it represents an unlawful increase and expansion, mainly an additional nonconforming use in the C-1 District where it is not allowed.

Mr. Hampshire responded to a question from Board member Paciulli regarding the expansion of the use by saying that doubling the number of contractors and the use on the site would not be allowed.

Board member Cooper questioned the amount of land leased and if the use was increased since the zoning ordinance requires that no nonconforming use, structure and/or activity shall be enlarged, increased, or extended to occupy a greater area of land that was occupied on the effective date .

Mr. Hampshire responded that Mr. Sullivan has asked for but has not received a copy of the lease that shows how much was leased so we are left to assume based upon everything that was submitted that it was the whole area by Heritage.

Michael Banzhof, Reed Smith LLP on behalf of the property owners, Mr. and Mrs. Mason

Mr. Banzhof stated that the property owner has standing since who could be more impacted than the property owner, particularly if he is going to be landlord, because it is mightily important to him if he can or cannot lease his ground. He noted that the notice of violation was issued by the Town to Mr. and Mrs. Mason.

Mr. Banzhof stated that reading through this decision that the Town's Zoning Administrator is of the opinion that once the occupancy permit ended for Mr. Mason's use, that that was the cessation of his use of the land but in fact that may have been the time that his business stopped being there but he continued to use the ground as shown on the plat of the grounds dated 1999. Also Mr. Banzhof argued that the installation of a 10 inch water line in 1999, which was larger than needed, according to an approved site plan, plus the fence and gravel installed gives him a vested right to use that ground under the preexisting zoning. He continued that who has used it since does not matter if you find he has a vested right to use it as it was at that time and in fact that is what it has been used for all this time. He said that Mrs. Mason, who keeps the books, will speak to the fact that Heritage did have a lease and that they have used all of the ground as had Mr. Mason and that it has been continuance.

Mr. Banzhof stated that he does not know anything in the State law or the Purcellville Zoning Ordinance which says that since both Heritage and Green Acres are considered contractor's storage yards, only one can be allowed to benefit from the status. He said that the question is what's the use and was it continuance not whether you have one or five people on it. He added that it is a matter intensity of use and it is his understanding that when Mr. Mason was running his business, he had lots of equipment and storage out there so if you look at that as a benchmark

it has not intensified. Mr. Banzhof stated that it is his understanding that Mr. Mason is doing what he has always done, tries to be a good neighbor and to honor business hours and instructs others on the ground to do so.

Mr. Banzhof stated that there is a permit issued in 2014 to a man who restores Morgan classical cars and if you want to see a common pattern of practice, the Town has more recently given permits for the very same kind of uses that have been on there. He said that he could argue that this determination is inconsistent with the affirmation of use that was determined by the issuance of the permit in 2014. He added that people rely on pattern of practice when they run their business.

Mr. Banzhof said that from the government's point of view you might have nonconforming uses go away if you can but when it has been continuously used like that then it is allowed to be used in the same fashion. He does not think it matters how many people will use it, it is a question of whether the intensity increased and is not the number but it is the manner in which it is being used.

Board member asked for clarification of this use as was defined in the M-1 zoning district.

Mr. Banzhof explained that it was a contractor's storage use was a broader category then and Mr. Mason had a contracting business so he had heavy equipment out there and he stored materials, trucks, graders, gravel and there was a lot more equipment out there than there is today. He said that the world has changed around this property but as long as it is a continuance and legal use, it is permitted as a legal nonconforming use. He added that it matters if you increase the intensity of use; hours, pieces of equipment, employees or whatever, but the Masons can address that better than I.

Mr. Banzhof responded to Chairman Self's question regarding the area being used by saying that the current tenant is here and will say that he uses and has used the whole area to the extent that he has been allowed to do so and that it seems to him that he could sub-lease but that it would work out the same way. He stressed that he sees no bases in the zoning ordinance or in case law that states that it is the number of businesses but that it is the intensity of use and that when Mr. Mason was out there he had a lot of equipment and trucks out there.

Chairman Self opened the public hearing for public comments.

David Jones, 529 E. Skyline Drive

Mr. Jones said that when his family moved into their home in February of 2012, he understood the land behind him was zoned for office commercial and from this time until early November of 2014, he observed the property appeared to be utilized as storage by the owner as there was no active use of the property. He said that that was the case until operations by both Heritage Site Development and Green Acres Landscaping commenced and ramped up operations in early November of 2014 and continuing until today. He said that this has led to poor air quality while in operation and excessively, sustained loud noise as early as 6:30 a.m. and continued until 8 p.m. Mr. Jones said that the use of Heritage Site Development's Gradall Crane can be running as

close as within 100 feet from his house and that the noise penetrates through his entire home. He said that the wind blows towards his house and when his HVAC is on, it will pick up either diesel fumes, yard dust and chemicals they are using on the premises. He added that this also happens if a door or window is open. He said that this also makes it impossible for them to use their backyard when these entities are operating and that he has a constant concern for his family's safety.

Mr. Jones stated that the property had installed fencing separating themselves from the office building on the property so both entities can have their space to operate their businesses, but they have graded and conditioned the property as to create more space to store their vehicles, equipment, and materials. Mr. Jones also said that a section of the yard is being used as a dumping ground for the refuse from their job sites. Mr. Jones stated that based on their operations and use of the land, he finds it violates the C-1 zoning as this is clearly a full operation of a landscaping and construction business that was not the case from February, 2012 to November, 2014. He requested that the appeal be denied so that the businesses, Heritage Site Development and Green Acres Landscaping cease operation and are removed from the premises.

Amy Jones, 529 E. Skyline Drive

Mrs. Jones stated that she is speaking to voice her opposition to this appeal. She said that when she and her family moved here in February of 2012, she did not have any issue with the property behind them since it was used as passive storage and was and has been generally quiet. She said that in November, 2014, the use of the property went from passive storage to active use that has included heavy equipment operating as early as 6:30 a.m. and as late as 8 p.m. She added that the equipment is very loud and disruptive and is consistently operated within a few yards of people's homes. She played a few seconds of a recorded video that she recorded on June 29th at 6:45 a.m. to give the Board an idea of the noise. She said that she hopes the Board agrees that this kind of activity is nonconforming and should not be allowed.

Karen Jimmerson, 520 E. Skyline Drive

Ms. Jimmerson stated that she lives across the street from Amy and David Jones. She said that when Catocin Crossfit moved in she thought it was great since the building was being used. She said that the entire time she has lived here, it has been passive storage and that she never saw pieces of equipment on that property. She added that she walks that path with her dogs and she looks at it all the time. She said that she has no issue with the Green Acre Landscaping Company moving in until she got up and walked her daughter to school at 7:15 and that noise was coming from the property. Ms. Jimmerson said that she recorded the noise and sent it on to the entire Town Council. She said that when this is going on she cannot hear someone talk to her within a few feet of her face in her front yard and that the angle of her back porch has a direct line of sight to that property and that the noise also goes to her backyard. She said that the issue is also the noise ordinance of this Town which does not allow this noise to be permeated to her house. Ms. Jimmerson stated that she has no issue with them using it as a storage yard but that she does care about the noise that she can hear in the rooms in her house facing that side of the road, on her deck, and in her front yard. Ms. Jimmerson said that one of the neighbors has lived

there 11 years and she has never seen a change in that property in all that time and in the 4 years she has lived there she has never seen any changes, and all of a sudden it has changed and it is a change of use. She added that she is sorry it went to this and that she wishes they had mediated the noise issue.

Barbara Mason, owner of 341A N. Maple Avenue

Mrs. Mason addressed the intensity of use of the property by saying that they purchased the property in 1982 and that they ran a rather large construction business out of there that did state highway work and built a lot of roads in Virginia. She said that they had large equipment, moderators, big CAT moving pieces of equipment and that the property would not hold all of their equipment so it was generally out in the field where it was being used on the jobs. She said that the equipment started at 5 or 5:30 in the morning when it was to be on projects at 7 a.m. Mrs. Mason said that they also repaired equipment there and ran it there during the day. She said that due to health issues they had to close the company down and started the process January of 2008. She said that Mike Bertelson of Heritage bought some of the equipment and started using the property at that time to store his equipment and to work on it at their maintenance facility. She stated that in 2010 Mike and moved his office there and leased a certain part of the property from us and that there was an understanding from 2008 on that he could use it at his convenience at any time to store any equipment. She said that the property is not being used now at the intensity that it was used when they operated their business.

Mrs. Mason stated that she and her husband purchased the property in January of 1982 and at that time their company began using the property as a storage and equipment maintenance facility and they also personally began using the property for storage, repair, restoration, etc. She said that in the fall of 1999 they moved their office onto the property. She said that they began the process of closing down their business in January of 2008 but that when the business went away, they continued to personally use the property and do so until this day. In April of 2008, Mike Bertelson of Heritage Site Development bought some of their equipment and continued to store such equipment there along with other pieces anytime and was given full use of the property for storage, etc. Mrs. Mason said he continued the use of the property and signed a lease with them when he moved his office there in July of 2010. She said that the property has been used at all times and that they have allowed various friends and businesses to use this property on an as needed basis and that the property has remained in continuous use since they purchased it in 1982 and that the intensity has not increased on that property.

When Mrs. Mason was asked about the noise, she said that when you have diesel engines that you are repairing, you have to run it and that they had the same issues. She said that they had huge pieces of equipment that went out there at 5 or 5:30 in the morning that had to be on jobs so equipment has run and noise has been there for all those years. She added that Heritage does have equipment there and has used it.

Mike Bertelson, President, Heritage Site Development

Mr. Bertelson stated that he leased this property from Alfred Mason in 2010, moved all of his equipment in there and also used the property for material, equipment, and tool storage and pretty much had the run of the whole lot. He said that he tries to get his equipment to not start until after 6:30 a.m. with respect to the residents but there are times that he has to be on the job by 7 a.m. He said that they have been there running a construction yard for five years now and that he has any number of pieces of equipment in there several times a week, if not more. He owns three dump-trucks, 4 or 5 pickup trucks and continually use it probably since the time Alfred left.

Mr. Bertelson responded to Chairman Self that the lot is right next to the residential neighborhood.

Regarding the hours of operation, Mr. Sullivan responded that it usually attached to the approved site plan that they cannot start before 7 in the morning and continue after either 7 or 8 at night and would not necessarily be attached to the storage yard. He continued that there are noise standards regarding excessive noise.

Mr. Bertelson did say that he could probably get the equipment further away from the neighborhood and could be considerate in that nature if required. He continued by saying that most of the time there is nothing there but he every once in a while he could have equipment running at any time during the day. He agreed that equipment is loud and that diesel fuel does smell.

Mr. Banzhof stated that the appeal concerns the use and not the noise and that if the use is in violation of the noise ordinance, that is a different discussion.

Mrs. Jimmerson stated that she never had an issue with Heritage and that the use was passive until Green Acres moved in. She said that there has been a distinct use change in the last year and a half.

Mr. Bertelson said that he is located in the back corner of the lot and that the fence was put up because of some vandalism.

Mrs. Jimmerson said that it was the noise that led to this appeal. She said that there was an intensity change because of the noise and the equipment going in and out.

On motion by Vice Chairman Cooper, the Public Hearing was closed at 8:15 p.m.

Motion: Vice Chairman Cooper

Second: Board member Fuller

Vote: 4-0

Board member Paciulli moved that the Board find that the Zoning Administrator's determination was not correct and that the decision of the Board is that the Zoning Administrator's determination is reversed.

Motion: Board member Paciulli
Second: Vice Chairman Cooper
Vote: 4-0

Chairman Self requested due diligence from the zoning administrator regarding the noise issue at the site.

OTHER BUSINESS:

The Board will request that the Town Council approve the continued services of Robert Mitchel as counsel to the Purcellville Board of Zoning Appeals.

Chairman Self proposed that the BZA continue to meet a few times a year even if there is no formal business. She suggested that starting this fall the Board have seminars instructed by persons knowledgeable of the issues concerning the BZA. She also recommended that all members attend the BZA certification program.

By consensus, it was decided that they did not see a need at this time for the Town Council to appoint alternates to this Board but would like to keep the option open if they feel alternates are needed in the future.

APPROVAL OF MINUTES:

On motion by Vice Chairman Cooper the minutes of the July 1, 2015 which was continued until July 24, 2015, and the minutes of the July 24, 2015 meeting were approved.

Motion: Vice Chairman Cooper
Second: Board member Fuller
Vote: 4-0

The meeting was adjourned at 8:20 p.m. on motion to Vice Chairman Cooper.

Motion: Vice Chairman Cooper
Second: Board member Fuller
Vote: 4-0

Betsy Self, Chairman

Tucker Keller, Clerk