

Town of Lexington

**Board of Zoning Appeals
Minutes**

August 4, 2022

The Board of Zoning Appeals held their regular meeting on August 4, 2022 at 5:30 p.m. in the Council Chambers located in Town Hall, 111 Maiden Lane, Lexington, S.C. Those present for the meeting were Chair Mary Watts, Vice-Chair Troy Fite, Board Members Justin Brown, Ronald Fisher and Reve' Richardson.

Staff members present were: Director of Planning, Building and Technology John Hanson, Assistant Zoning Administrator Jessica Lybrand, Economic Developer Jack Stuart, Digital Media Coordinator Michael Tolbert and Municipal Clerk Becky Hildebrand.

Twelve (12) citizens were present and no one from the news media was present.

Chair Watts called the meeting to order at 5:30 p.m. and read an opening statement to explain the rules of procedure for a Board of Zoning Appeals meeting as follows:

All four points must be met and should be read as part of the official record. The Board of Zoning Appeals is a legal board operating under the Comprehensive Planning Act of the State of South Carolina; they make decisions within the parameters of State law and may hear and decide appeals for a variance from the requirements of the ordinance when strict application of the provision of the ordinance would result in unnecessary hardship and a variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing all their findings: (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. (2) These conditions do not generally apply to other property in the vicinity. (3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. (4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. State law further prohibits the board from granting a variance simply because the property could be used more profitably if the variance were granted. The board is not concerned with the use of the property because that is determined by others. If the applicant believes the board made an incorrect decision, they may appeal the decision through Circuit Court within certain time limits provided by State law. Those testifying at the meeting are asked to sign-in.

ACTION ITEMS

1. **Appeal of an Administrative Decision at 129 Foxridge Run:** Laura Anne Hunt with The Cre8tive Canine appealed an Administrative decision denying a home

Board of Zoning Appeals Minutes
August 4, 2022

occupation permit for this business. The denial was based on a concern that this type of business could be inconsistent with a residential setting and create conflicts with the neighboring single-family residents. Additionally, this type of activity is intentionally noted only as an ancillary activity of a veterinary clinic in the Zoning Ordinance. The ordinance allows indoor boarding as an ancillary activity of Veterinarian Limited uses. It allows indoor and outdoor boarding as an ancillary activity of Veterinarian Extensive uses. (Copies attached.)

Director Hanson added that in this case Staff thought it would be better to have a public discussion on whether home occupation regulations authorized this type of business in a residential setting. He stated that the Board was provided several emails from residents and there are people present who would like to speak on this item.

Vice-Chair Fite asked for clarification on the difference between Veterinarian Limited uses and Veterinarian Extensive uses. Director Hanson responded that indoor boarding is only allowed for Limited uses and those are in Neighborhood Commercial, Office Commercial and Veterinarian Clinics. He added that both are only allowed in Veterinarian Clinics, but one allows indoor and outdoor boarding and one only allows indoor. He stated that they discussed a boarding facility (not home occupation boarding) that did not have a veterinarian aspect, with the Planning Commission a few years ago during an annexation request. Director Hanson stated that the Planning Commission's concern at that time was if they changed the ordinance it would open it up for any type of dog run to be in someone's backyard. He felt the request tonight needed to have a public, written meeting so as to have documentation of any stipulations that might be required. Additionally, he stated that Staff did some outside research and Lexington County does not allow any type of animal impoundment activity in a home occupation. He therefore justified that the decision to deny it was consistent with the County. Director Hanson requested that Ms. Hunt appeal the decision in order to have a discussion.

Chair Watts called on the applicant.

Ms. Laura Anne Hunt, owner of The Cre8tive Canine, 129 Foxridge Run, and her fiancé, Trevor Brown, Chief Paw Officer, stated that should they be allowed to operate the business, it was not to cause a disturbance but to go through the proper channels to provide quality pet care services in their neighborhood and that they are insured. She stated that after discussions with Director Hanson she talked to several insurance companies and legal representatives and they were advised to get pet sitters specific insurance even if she was going to have her cousins over for pup dates because as you work with animals there are risks. Ms. Hunt stated that there are services you can use like Rover and Wag that are like Uber for dogs, but the Rover guarantee does not guarantee or insure the sitter and she wants to be an insured pet sitter. While she has been learning more about this she had a friend in another state who was a Rover sitter and was losing her house because the worst had happened and she was sued for the loss of a pet who was in her care. Her friend found out that the Rover guarantee did not help her. Ms. Hunt stated that on November 23, 2021 she filled out the paper work for a Business License and talked to the zoning

Board of Zoning Appeals Minutes
August 4, 2022

representative several times about pet restrictions and she was told by Ms. Bassett that there were none. She was advised several hours later that her request was denied and then she talked to Mr. Hanson and asked for the code. She stated that it is not defined in the code only being mentioned twice as part of a Veterinarian Clinic. On December 2, 2021 she asked for appeal, found out about the \$180 for the hearing, she had to wait to proceed and on June 30th she was able to provide her appeal check; on July 9th she and her neighbors received a letter about the notice for the hearing; and then a sign was placed in their front yard on July 19th according to the Town's requirements. Ms. Hunt stated that one neighbor posted on their neighborhood Facebook page about HOA restrictions. She added that as far as she and her attorney could tell, they do not have an HOA. She wished to clear up some items on her request. They have no intentions of creating a neighborhood disturbance or building a facility for this operation outside of their home. The point of their services is to provide a less stressful environment for pets who do not do well in traditional kennels or boarding situations which are puppy prisons and very stressful, loud with high density of pets. Ms. Hunt stated that some of her neighbors are here today or wrote letters in support of their endeavor. Her five immediate neighboring homeowners were notified in person of their intent to pursue this license and they have no opposition to it. She discussed with them if they did have an issue they should notify her right away so she could rectify the problem immediately. Ms. Hunt stated that these are house pets and not wandering streets, left outside or kenneled or tethered or in anyway left out in the heat. She added that they would not be building kennels in their yard. Ms. Hunt stated that they want to be pet sitters and unlike Rover, they want to be insured. Her insurance company requested that within a year, they should form an LLC and forming an LLC requires a Business License. She stated that they are trying to go through the proper channels to protect themselves and establish themselves as pet sitters. Ms. Hunt stated that part of their mission is to make pets comfortable in their environment. She added that her insurance company limits them to six (6) boarded pets overnight in a residential setting, but they do not plan to have any more than four (4) boarded pets at a time. Ms. Hunt stated that they have a fenced in back yard and the property backs up to a power line. She added that aside from potty time and supervised outdoor playtime, there will be limited noise disturbance to the surrounding properties. Ms. Hunt stated that there was an anonymous complaint that someone was worried about their operation because they were worried about the smell. She stated that the smell of the neighborhood would not be altered due to their operation because they pick up pet waste as it comes out; therefore, there should be no change in smell if the Business License is granted. She added that when pets require exercise it would be limited to their backyard or to walk on a leash around the neighborhood and if there should be pet waste, they have pet waste bags. Ms. Hunt stated that they believe in responsible pet ownership and care and picking up pet waste is part of that responsibility. She added that all dogs would be required to have a meet and greet to determine if they are right for their home and services. If a dog is not a good fit they would be unable to accept that pet as a client. Ms. Hunt stated that they are not hiring staff to run their operation as they will be providing care of the pets. With these considerations, they requested to be granted a Business License and a variance if necessary to provide safe, responsible, convenient, insured and quality pet care for their neighborhood furry friends. Ms. Hunt stated that they were further requesting a consideration for a change in the table

Board of Zoning Appeals Minutes
August 4, 2022

of uses to allow for specialty pet care such as home pet care and pet sitting services, the alternative choice for boarding that would be allowed in Town limits including residential areas with the restrictions of: the homeowner is the owner/operator; there are no additional kennels or out buildings for housing pets; the noise and smell concerns are addressed and agreed to as outlined; the property is fenced; the business has a separate insurance policy for the household occupation of animals and there are no more than 4 to 6 animals boarded at a time. Ms. Hunt stated that there are over 21,000 residents in the Town of Lexington and with more people come more pets. They were asking for the Board to consider that these services are needed, desired and manageable under the right care and implementation. She wished to present written letters on their behalf from her neighbors and invite other neighbors who were present to speak.

Chair Watts asked what type of pets would be boarded. Ms. Hunt responded, just dogs and if someone had cats they could care for them at the pet owners house, but not bring them to her house. Chair Watts asked for the letters from the neighbors. (Copies of 10 letters attached.) Chair Watts read the names of the neighbors (9) who submitted letters in favor of Ms. Hunt and one (1) opposed: Mike and Tammy Finch, Lee and Susan Shepherd, Alicia J. Carney, Melissa and Steven Carter, Morgan Pratt, Robin Cucurullo, David and Stephanie Harper, Richard and Jilene Kropp, Julia and Justin Head and (opposed) anonymous signed "Mallard Lakes Homeowner". Ms. Hunt stated that one had an attachment about the HOA procedures. Chair Watts responded that this Board supersedes an HOA. Ms. Hunt added that she has two additional emails from neighbors who could not attend.

Vice-Chair Fite stated that Ms. Hunt mentioned that her attorney told her there was no HOA. He asked if there was no mandatory HOA or no HOA at all. Ms. Hunt responded that according to the documents that she signed, there is no HOA in the neighborhood.

Chair Watts called on those who wished to speak in favor of the business.

Ms. Erica Brown stated that she lives to the left of Ms. Hunt who is very responsible and a great neighbor. She added that as Ms. Hunt said, they back up to the powerlines and Ms. Hunt has some pets in her yard from time to time through Rover, but she is trying to become protected by this license. Ms. Brown asked if former Councilmember Todd Shevchik had worked on getting chickens approved for the Town which she thought was approved and had mentioned no livestock locked in the backyard. Mr. Hanson stated that they had discussed the County ordinance which does not allow animal impoundment. Chair Watts responded that she had no idea. Vice-Chair Fite responded that as Chair Watts stated, this Board has to deal with what is in front of them and Ms. Hunt was not asking to board chickens. Chair Watts added that these animals would not belong to Ms. Hunt, they would be someone else's animals.

Ms. Julia Head stated that she and her family live in Mallard Lakes and wished to speak in favor of Ms. Hunt and support someone who is trying to open a business the right way. She added that she was born and raised in Lexington and they have seen

Board of Zoning Appeals Minutes
August 4, 2022

the growth which she has not always been on board with, but her family owns a small business and she knows how hard it is to do it the right way but their customers appreciate it. Ms. Head stated that dog boarding is happening in Lexington, whether they are going through the proper channels or not, because she sees ads for it all the time. She added that if Ms. Hunt is having this much trouble getting a license, she bet the others did not get one. She respects the current laws and she would ask for a consideration to make an amendment to allow these small businesses to operate legally. Ms. Head stated that this is an important part of Lexington which has a dog park and sidewalks making pets a huge part of our community. She stated that if she had a dog she would trust Ms. Hunt to watch it. She wished to comment that on their neighborhood Facebook page 95% of the neighbors are on board with Ms. Hunt.

Ms. Jilene Kropp lives in Mallard Lakes has known Ms. Hunt for several years and she has helped her with her dog several times when she needed a sitter. She added that Ms. Hunt is great with animals, has everything so organized, very clean, she trusts her 100% with the animals and she is behind her 100%.

Ms. Jessica Bleakley lives across the street from Ms. Hunt and she wished to speak in favor of her business. She added that she is not a dog person so if she ever heard dogs barking she would have complained, but she has never had an issue. Ms. Bleakley stated that in this economy two jobs are important so if someone wants to support someone with this type of business she fully supports them.

Chair Watts called on those who were opposed. There were none. She called on Ms. Hunt for questions from the Board.

Vice-Chair Fite asked who provided the format for the letters submitted from the neighbors. Ms. Hunt responded that she did the format. Vice-Chair Fite commented that four of the letters are exactly the same. He added that he had one written by someone, 3 from those opposed and 4 are exactly the same. He wished to state for the record that Ms. Hunt distributed a form letter in support of her business for neighbors to electronically sign. Ms. Hunt responded that those were from neighbors who were unable to attend the meeting and she tried to make it accessible for those who work full time.

Chair Watts called for the Board discussion if there were no further questions.

Vice-Chair Fite stated that his issue is with how the Zoning Ordinance is written and doesn't address this issue. Board Member Fisher agreed. Chair Watts stated that the Board could make a decision on this particular item as to if they agree with the Administrative decision or not and separately discuss an amendment. Board Member Brown asked if the Town does not have a specific ordinance does it revert to the County's ordinance. Chair Watts responded that it does not revert back to the County.

Director Hanson stated the ambiguity of the ordinance is why we are here and he was substituting his judgement for the wisdom of this Board and therefore called for a meeting to discuss it and better understand the issues. He stated that there is a

separate section that discusses general home occupation, but it does not say that you cannot do pet boarding. He added that it does say things like it cannot occupy more than 25% of the dwelling or be no more than 750 square feet. Director Hanson asked how would you apply that to pet boarding because the dog may be taking up the whole first floor of the house. He stated that it also says exterior displays of goods visible from the outside by any method indicating the home is being used for a home occupation. Director Hanson stated that his point is the ordinance is very generic and the typical request would be to run a bookkeeping business out of a home.

Chair Watts reviewed that Ms. Hunt had stated that she was not going to use any out buildings, no runs and a maximum of four (4) dogs at a time. Ms. Hunt responded that this could be related to a day care and they do not feel comfortable having more than four dogs even though the insurance allows them to have up to six. Vice-Chair Fite confirmed that daycares also have an ordinance to allow for six. Director Hanson added that there are also restrictions on traffic generators and the type and timing of the traffic. Chair Watts stated that Ms. Hunt has presented a good case for her business and would be responsible and she saw no reason not to grant her Business License. She asked the other Board Members if they had an argument against it. Vice-Chair Fite stated that he did not have an argument against it and did not want to stop anyone from having their own business, but his concern was it is not addressed in the ordinance. He added that if the Board approves this where would it put this Board when someone in the next neighborhood wants to open a business. Chair Watts responded that this Board does not set a precedent. Director Hanson responded that a Council Member recently told him that if the Town has more than a handful of variance requests on the same issue then perhaps we need to change the ordinance. He added that if the Town has this as a growing business in Town perhaps the ordinance needs to be more specific with regulations such as the County.

There being no further questions from the Board, Chair Watts called for a motion.

A motion was made by Chair Watts and seconded by Board Member Fisher to overturn the appeal of the Administrative decision and grant Ms. Hunt her dog boarding business as stated. Chair Watts called for a roll call vote. Roll call vote results: Brown – Yes to the motion. Fite – Yes to the motion. Watts – Yes to the motion. Richardson – Yes to the motion. Fisher – Yes to the motion. The motion to overturn the appeal of the Administrative decision and grant Ms. Hunt her dog boarding business as stated was unanimously carried. Vice-Chair Fite requested that Ms. Hunt not make them regret their decision.

- 2. Variance 2022-9 (V) Variance from the Buffer Requirement in the Presentation Corridor Special Overlay at 5304 Sunset Boulevard.** Frank Cason, Cason Development Group, requested a variance from the Preservation Corridor Buffer requirement at 5304 Sunset Boulevard. The Preservation Corridor Special Overlay requires a 20 foot buffer along Sunset Boulevard. The requirement is intended to preserve right of way for future road improvements. In this case, the property is being redeveloped with a new decel lane and new sidewalk. These road improvements will improve access to this site and the

Board of Zoning Appeals Minutes
August 4, 2022

adjacent business. They will also improve efficiency and reduce the risk of collisions on Sunset Boulevard. To complete the improvements, the developer is required to dedicate 18 feet of property frontage to the SCDOT which reduces the available buffer area to 11 feet in width. An 11 foot buffer is consistent with the buffer requirement for commercial developments located outside of the Preservation Corridor Special Overlay District.

Director Hanson further explained that the Zoning Ordinance requires 20 feet of grass if you are developing on a major thoroughfare so if and when the road is widened the government would have to purchase the property and not a building or parking lot. In this case, the redevelopment of the previous Pizza Uno's site is requiring a road improvement; however, the code does not give Staff the authority to waive the buffer requirement when the improvement is installed.

Chair Watts stated that in other words it is a catch 22. Director Hanson responded yes and just another fault in the ordinance and similar to a situation this Board reviewed for Sonic, Wellmore and Chick-fil-A a few years ago. Chair Watts called on the applicant.

Mr. Hoyt Burnett, Cason Development Group, stated that Mr. Hanson had summed everything up and what they can do with the 20 foot buffer because they are already putting in a turn lane and a sidewalk. He added that typically the back of the sidewalk is the right of way line and SCDOT asked for another five feet. He stated that if they push the building back another five feet it will not line up with the driveway that is shared.

Vice-Chair Fite asked for a site plan so he could see the curb cuts. Mr. Burnett stated that they currently have a two way drive way close to 14 Carrot and another shared drive way closer to the oil lube shop. They are getting rid of the two way and having an entrance only and the decel lane will access the entrance only. Director Hanson confirmed that the Town's Transportation Department has reviewed the plan and agrees with it.

Chair Watts called on anyone who wished to speak in favor or opposed. There were none.

There being no further questions from the Board, Chair Watts called for a motion.

A motion was made by Board Member Brown and seconded by Vice-Chair Fite to approve the variance request as stated and based on the following findings: there are exceptional and extraordinary conditions pertaining to this particular piece of property because of its size, shape and topography and the Town is requiring a deceleration lane and sidewalk to be added to the property which is taking property and giving it to SCDOT for said purpose; these conditions do not apply to all of the properties in the vicinity because they have not yet been required to add any road improvements, sidewalks or deceleration lanes; because of these conditions the property would effectively prohibit or unreasonably restrict

Board of Zoning Appeals Minutes
August 4, 2022

utilization of the property and would cause traffic to back up on Highway 378; the authorization of a variance would not be of substantial detriment to adjacent property or the public good; the character of the district will not be harmed by the granting of a variance because the deceleration lane will ease access to the business along with the additional of a sidewalk.

Chair Watts called for a roll call vote. Roll call vote results: Brown – Yes to the motion. Fite – Yes to the motion. Watts – Yes to the motion. Richardson – Yes to the motion. Fisher – Yes to the motion. The motion to approve Variance Request 2022-9(V) as stated was unanimously carried.

Chair Watts confirmed that a Habit Burger was going to be built on the property.

3. **Variance 2022-7(V) JT's Chrysler Jeep Sign Variance:** Christian Snider submitted a variance request to install a Jeep Mountain Rockscape at JT's Chrysler Jeep located at 4838 Sunset Boulevard. According to the definition of a sign in the ordinance the rockscape is considered a sign. This means that for it to be installed variances will need to be granted addressing the number of signs on the site, the size of this individual sign and to allow significantly more square footage for a single sign.

Chair Watts asked why the rockscape was considered a sign. Director Hanson responded because it attracts attention to the business for the purpose of conducting commerce. He read the definition of a sign from the ordinance. Chair Watts asked would it make a difference if it was just a mound of dirt and not a rock and how tall is the sign. Director Hanson responded that theoretically it could be considered a sign. Chair Watts called on the applicant.

Mr. Matt Davis, Davis Architecture, representing Christian Snider from his office, apologized for missing last month's meeting. He stated that the rockscape is 17 feet long, 9 feet 8 inches wide and 4 feet high at the tallest point. He wished to make two points. First, he would appeal to the Board to consider it more of a landscape element and not a sign. Second, the application did not include where they want to place the rockscape.

Director Hanson interjected that the Board discussed that last month. He presented the larger version of the drawing to the Board to show them the placement of the rockscape. Chair Watts demonstrated on the site plan that the rockscape would be off the road just as you come into JT's. She did not think it would be very visible from Highway 378. Director Hanson described the signs already installed at JT's. Board Member Brown stated that they have a monument sign and a wall sign.

Vice-Chair Fite stated that he did not have a problem with whether it is rock or dirt, his concern was this is a directive or a strong suggestion

Board of Zoning Appeals Minutes
August 4, 2022

coming from the Jeep corporation to put this on the property. Mr. Davis agreed.

Board Member Richardson stated that it is a sign when they put the Jeep name on it. She confirmed that stipulations could be applied if the Board approves it. Mr. Davis confirmed that the Jeep name would be printed on it. Chair Watts suggested they not print the name Jeep on the rockscape but just have the Jeep parked on it because people know what that is. Mr. Davis was not sure if that would be an option. Vice-Chair Fite returned to his point that if the Board approved it, he wanted to make sure it was just for this and the square footage could not be applied elsewhere. He was concerned if a corporate name changed or if Jeep decided the rock was old and they wanted to put a wrecked car out front, they would have to come back to the Board for any type of change. Chair Watts stated that she understood the concern and this is advertising the capability of a Jeep. She confirmed that the rockscape is not movable. Board Member Fisher stated, in comparison, the Land Rover display in another city is three times this size. Vice-Chair Fite stated that because of topography and it is off the road, he did not have a problem with it. He added that if the Board placed stipulations on an approval, the Town has to be able to enforce it. Director Hanson stated that based on JT's permits, there are eight product signs and one monument sign. Ms. Lybrand confirmed what verbiage was on the product signs.

Board Member Brown asked for clarification regarding the 500 foot road frontage. Director Hanson responded that if you have more than 500 feet of road frontage it is treated like a separate parcel and can have additional signage. He added that they still have a maximum 2 road frontage signs, 4 signs and 225 feet of total signage for the parcel. Board Member Brown confirmed that the product signs count toward the maximum square footage, but they do not count toward the total number of signs allowed.

Chair Watts stated that the Board could grant a variance for a specific sign at a specific location. She confirmed that someone is making this standard rockscape for Jeep and this is the standard size on all of them. Vice-Chair Fite was concerned that Mr. Davis stated the rockscape was "approximately" a certain size and what is the Board comfortable with give or take a few inches. Board Member Brown stated that it could be off a small amount depending on the manufacturer. Vice-Chair Fite would want the stipulations to include location, size, purpose and that it would not be interchangeable.

There being no further questions from the Board, Chair Watts called for a motion.

A motion was made by Vice-Chair Fite and seconded by Board Member Brown to approve the variance request #2022-7 (V) as stated with the following stipulations: (1) approve the sign

(rockscape) as presented for the location only as shown on the plans presented to the Town; (2) the sign and shape of the sign cannot exceed any more than 10% of what was presented; (3) it can only be used for the purpose that was presented; (4) and the sign is not interchangeable with any other sign meaning if it is determined that this sign is no longer of use, it cannot be replaced without approval from this Board. Vice-Chair Fite added that the following are the Board's findings: there are exceptional and extraordinary conditions pertaining to this particular piece of property because of its size, shape and topography being that this is a car dealership and the sign is located off the road frontage; these conditions do not apply to all of the properties in the vicinity because there are no other car dealerships that would be affected; it will not negatively affect the property due to its location; because of these conditions the property would effectively prohibit or unreasonably restrict utilization of the property because it is located in a median area and not affecting any roadways; the authorization of a variance would not be of substantial detriment to adjacent property because there are no adjacent properties that would be blocked or create any hazard.

Chair Watts called for a roll call vote. Roll call vote results: Brown – Yes to the motion. Fite – Yes to the motion. Watts – Yes to the motion. Richardson – Yes to the motion. Fisher – Yes to the motion. The motion to approve Variance Request 2022-7(V) with stipulations was unanimously carried. Chair Watts advised Mr. Davis that he had his mountain.

APPROVAL OF MINUTES

A motion was made by Vice-Chair Fite and seconded by Board Member Richardson to approve the Board of Zoning minutes from the July 21, 2022 meeting as submitted. The motion was unanimously carried.

OTHER BUSINESS

Director Hanson advised the Board that they would have a meeting with three items on September 1, 2022.

ADJOURNMENT: There being no further business, Chair Watts called for a motion to adjourn. A motion was made by Board Member Richardson and seconded by Board Member Fisher to adjourn. The motion was unanimously carried. The Board of Zoning Appeals meeting adjourned at 6:26 p.m.

Respectfully submitted by:



Becky P. Hildebrand, CMC
Municipal Clerk

**Board of Zoning Appeals Minutes
August 4, 2022**

APPROVED:

A handwritten signature in blue ink, appearing to read "Mary Watts", is written over a light gray rectangular background.

Mary Watts
Chair

FOIA COMPLIANCE – Public notification of this meeting was published, posted and mailed in compliance with the Freedom of Information Act and the Town of Lexington requirements.