

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**Foxfire Village, North Carolina**  
**February 23, 2022**

**Petition# 1328: Appeal of Interpretation of a Village Zoning Ordinance**  
**191 Woodland Circle, Foxfire Village, NC**  
**Steve and Sherry Holm, Appellants**

<i>Members Present</i>	<i>Members Absent</i>	<i>Others Present</i>
Connie Korner, Chairperson	Tom Walburgh	Brady Herman, Village Attorney
Allan Taylor, Vice Chair	Neil Tighe, ETJ	Lisa Kivett, Zoning Administrator
Ellen Samuels, Secretary		
George Hedrick, Alternate		

Board Member, Connie Korner called the meeting to order at 12:30 PM and took roll call. A quorum of members was present.

**1. Elect Board Chair, Vice-Chair and Secretary**

Allan Taylor nominated Connie Korner to serve as the Board Chair, seconded by George Hedrick and a vote was called. **Connie Korner was unanimously elected to serve as Board Chair.**

Connie Korner nominated Allan Taylor to serve as the Board Vice-Chair, seconded by George Hedrick and a vote was called. **Allan Taylor was unanimously elected to serve as Vice-Board Chair.**

Connie Korner nominated Ellen Samuels to serve as the Board Secretary, seconded by Allan Taylor, and a vote was called. **Ellen Samuels was unanimously elected to serve as Board Secretary.**

**Attorney, Brady Herman**, provided a brief overview of the quasi-judicial process, the duties of the board, and the structure of this meeting.

**Board Chair, Connie Korner made a motion to recess the meeting, seconded by Ellen Samuels and carried unanimously. The meeting was recessed at 12:45 PM.**

**Board Chair, Connie Korner made a motion to reconvene the meeting seconded by George Hedrick and carried unanimously. The meeting reconvened at 1:00 PM.**

## **2. Petition# 1328: Appeal of Interpretation of a Village Zoning Ordinance - Steve and Sherry Holm, Appellants**

**Board Chair, Connie Korner**, introduced the request by Steve and Sherry Holm appealing the interpretation of the Village's Zoning Ordinance by the Village's Zoning Administrator, Lisa Kivett, regarding the in-home dog boarding and training business on the applicants property located at 191 Woodland Circle. The Holms were issued a Notice of Violation and Cease and Desist letter on December 13, 2021 because the Village Zoning Administrator determined that the Holms were in violation of Section 21-8-6 of the Zoning Ordinance for home occupations.

**Board-Chair Korner**, provided the following explanation of the quasi-judicial process:

The hearing on this matter is quasi-judicial in nature and will be conducted to protect the due process rights of parties involved. Members of the Board may ask questions of each witness after the witness testifies when questions are called for by the Board Chair. The testimony that witnesses give today shall be taken under oath. If a witness wants the Board to see written evidence such as reports, maps, pictures, or other exhibits, then he/she should be familiar with the evidence and should explain the document and ask that it be introduced during or at the end of his or her testimony. After the public hearing has been closed, the Board of Adjustment will deliberate and make a final decision based on substantial, competent, and material evidence in the record. The Board cannot make its decision based on evidence or information that is not part of the record. The final decision of Board will be reduced to writing and will include findings of fact and conclusions of law.

**Board-Chair Korner** asked for those who wished to testify to come forward and be sworn-in. **The following people were sworn-in: Lisa Kivett, Steve and Sherry Holm, Norm and Leslie Stein, Terry Nanney.**

**Board-Chair Korner** asked that board members reveal any possible conflicts and withdraw from these proceedings if necessary. Korner further explained that conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. Board members should also disclose at this time any information or special knowledge they have about the case. **There were no conflicts from the board members.**

**Board-Chair Korner** provided the following explanation of the proceedings:

In this hearing, we will first hear from the Village Staff and Zoning Administrator then from the applicant and its witnesses, and then from opponents to the appeal request. The applicant may, if it chooses reserve time at the end for rebuttal. Parties may cross-examine a witness after the witness testifies when questions are called for. If you want the Board to see written evidence such as reports, maps or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his/her testimony. As Board Chair, I will correct you if you do not follow the proper procedures and I will rule on all objections. Before you begin your testimony, please clearly identify yourself and your address for the record. There are no time limits on how long you may speak, but I

ask that you be considerate of everyone's time and concise with your comments. Also, I can and will stop any testimony that is irrelevant to the appeal, incompetent, unduly repetitive of evidence already given, or a personal attack.

**Board-Chair Korner opened the public evidentiary meeting.**

**Testimony Offered**

**Village Zoning Administrator, Lisa Kivett** testified to the circumstances resulting in the notice of violation issued to the appellants, Steve and Sherry Holm, on December 13, 2021. She provided a packet of the administrative materials to the Board and the Appellants including all relevant zoning ordinances and other documents in support of her decision (**EXHIBITS A-H**). She testified that the notice of violation was based on a complaint received in November of 2021 in which the opponents stated the appellants had numerous dogs on the property and that the dogs generated excessive noise (barking). It was also noted in the notice of violation and from testimony that the appellants were operating an in-home-based dog boarding/training business and were in violation of two items in the *Zoning Ordinance Sec. 21-8-6 Home Occupation*. Ms. Kivett stated the equipment in the appellants' yard and the noise generated as the primary reasons for issuing the notice of violation. Ms. Kivett based the violation on *Zoning Ordinance Sec. 21-8-6 item "(4) The occupation shall be conducted entirely within the dwelling" and item "(5) No sounds shall be audible outside the building."* Ms. Kivett stated the Village does not issue permits for in-home based businesses. She also stated she had not received complaints from Village residents prior to November of 2021. During rebuttal, Ms. Kivett explained the process taken by the Village Council when they recommended changes into the new Unified Development Ordinance (UDO) which was adopted in July of 2021. She stated the proposed changes are made public via a number of avenues well in advance of a public hearing. She stated the Village doesn't "grandfather in" those who violate the UDO. She stated that as the Village's Zoning Administrator, she must use the current UDO as the basis for issuing notice of violations. As the current UDO was adopted during a public hearing in July of 2021 by the Village Council, it was the only zoning ordinance she could use upon which to base the notice of violation. Ms. Kivett also stated the Village does not issue business licenses nor does the Village administer them.

**Appellants, Steve and Sherry Holm** testified to the circumstances leading up to the notice of violation. Mr. Holm stated he and his wife, Sherry, had moved to the Village approximately 15 months ago from a nearby municipality. He cited the location, lot size, and regulations regarding in-home business as the primary reasons for relocating. He stated his wife had been running a dog-sitting business in some form or fashion for over 40 years. Mr. Holm stated the current village UDO - Home Occupation, under which he is cited, is different than the UDO he read prior to purchasing the lot. Mr. Holm stated the difference in the ordinance he reviewed prior to purchasing the building lot and the current ordinance under which he was cited should justify being "grandfathered in" and therefore make the citation invalid. Mr. Holm showed a current license issued by the state of North Carolina giving the residents permission to operate a dog boarding facility. He described the golf- cart portion of the garage residence as being built with additional insulation, electricity, HVAC to accommodate animal boarding. He stated that while they could keep up to eight animals at one time, it was typical to have between one and four dogs in the boarding facility at any given time. He stated that either he and/or his wife monitored the animals during the boarding period. Mr. Holm stated the boarded animals were allowed in their primary living area within the home and were taken outside for additional exercise and to relieve themselves. He stated the dogs were allowed out of their confinement area no earlier than 7

AM and no later than 10 PM each day. He also stated that while the animals were in the backyard, he was able to monitor them from various locations within and outside of his home. He stated there were "brief" periods of time when they were not at home and thus could not monitor the behavior of the dogs. He stated that during these absences, the boarded animals were kept in individual crates within the garage kennel area. With respect to conducting training, he stated his wife did this only within their home, at parks, or similar public places. He admitted having an agility course set up in their back yard and emphasized this was for personal use. His wife has an active interest in agility training but confines this activity to the dogs he and his wife own. He mentioned a recent gathering of friends with similar interests, that these acquaintances and their animals used the agility course for about 45 minutes. A noise complaint was called to local law enforcement, but no citation was issued. Mr. Holm briefly described verbal and text message exchanges between adjoining neighbors and viewed the actions against he and his wife as excessive. He described two unannounced visits from the state of North Carolina Animal Care (NCAC) inspector to evaluate the boarding facilities compliance with state regulations and indicated such visits were a normal part of the state's evaluation process. Mr. And Mrs. Holm live with three dogs of their own in addition to animals boarded on the property. During the rebuttal process, Mrs. Holm described the steps taken to address excessive barking by dogs on the property, in that she removes the dog from the distracting environment and moves them to a quiet area within their home. Mrs. Holm also addressed the findings from the first report from the NCAC inspector and stated the facility had taken the necessary steps to address the findings.

**Opponents, Norm and Leslie Stein**, the next-door neighbors of the Appellants, testified to the circumstances leading up to the complaint. Mr. Stein stated he and his wife had moved to the area approximately one year ago. Mr. Stein stated no other homes were under construction when he and his wife selected their building lot. Mr. and Mrs. Stein personally own four dogs, Mrs. Stein is a dog groomer. Mr. Stein stated the problem with the dogs in the adjoining lot began around April 2021. The perimeter fence belonging to the property located at 191 Woodland Circle allowed the dogs viewing access to the Stein's property. The result would be excessive barking that was allowed to continue unabated by the appellants. To address the viewing problem, the appellants attached landscaping fabric to the lower portion of their perimeter fence. Mr. Stein presented a photograph of the altered fencing complete with a black and white dog being boarded on the appellants property. In the photo, the black and white dog had its front paws perched on the top of the fence. **A copy of the photo was admitted as EXHIBIT I.** Mr. Stein described the fence alteration and the backyard training equipment as not in keeping with an environment that should be esthetically pleasing. Mr. Stein also presented a public report from the NCAC inspector which highlighted two findings with which the Holms were not in compliance. **A copy of this report was admitted as EXHIBIT J.**

**Opponent, Terry Nanney** introduced herself as the realtor who sold the building lot to the Steins. She stated she has received numerous phone calls from the Steins regarding the number of dogs on the Holms property. She further stated she has observed changes in the Village area due to increased construction and hoped the Village Administration kept up with these changes.

### **Discussion**

**After all individuals presented their testimony and after the Board members asked all clarifying questions to those who testified, Board-Chair Korner closed the public hearing.** The Board members summarized the evidence and testimony of the individuals present, reviewed the language of the Home Occupation zoning ordinance and determined that the Notice of Violation administered by Ms. Kivett was appropriate.

**Decision**

In view of the above testimony and evidence, Board-Chair Korner called for a vote on the Appeal of Interpretation. **A motion was made by Board member Allen Taylor to affirm Ms. Kivett's decision in issuing the notice of violation and interpretation of the Zoning Ordinance, which was seconded by Board member Ellen Samuels. A roll-call vote was taken on the motion:**


**Aye: Taylor, Hedrick, Samuels, Korner**

**Nay: None**

Thus, the Board voted 4-0 to affirm Ms. Kivett's decision and interpretation. Having not gained the required votes to support the Appeal of Interpretation, the actions of the Zoning Administrator were upheld.

**Board member Taylor made a motion to adjourn, seconded by Board member Hedrick and carried unanimously. The meeting was adjourned at 2:54 PM.**

  
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Ellen Samuels, Board Secretary

  
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Connie Korner, Board Chairperson