

Department of Community Development Staff Report

PROPERTY OWNERS: Opal Oil, Inc.

APPLICANT: Angela Jrab

LOCATION: 5021-A Lee Highway

DISTRICT: Scott

PIN: 7906-83-4511-000

ACREAGE: 1.71 Acres

ZONING: Commercial - Highway (C-2)

LAND USE: New Baltimore Service District, FEMA Flood Zone

MEETING DATE: June 3, 2021

REQUEST: SPPT-21-015156: An application for a Category 13 Special Permit to allow the continued operation of a kennel offering pet sales in a Commercial District, in accordance with Section 3-313.1.a of the Zoning Ordinance.

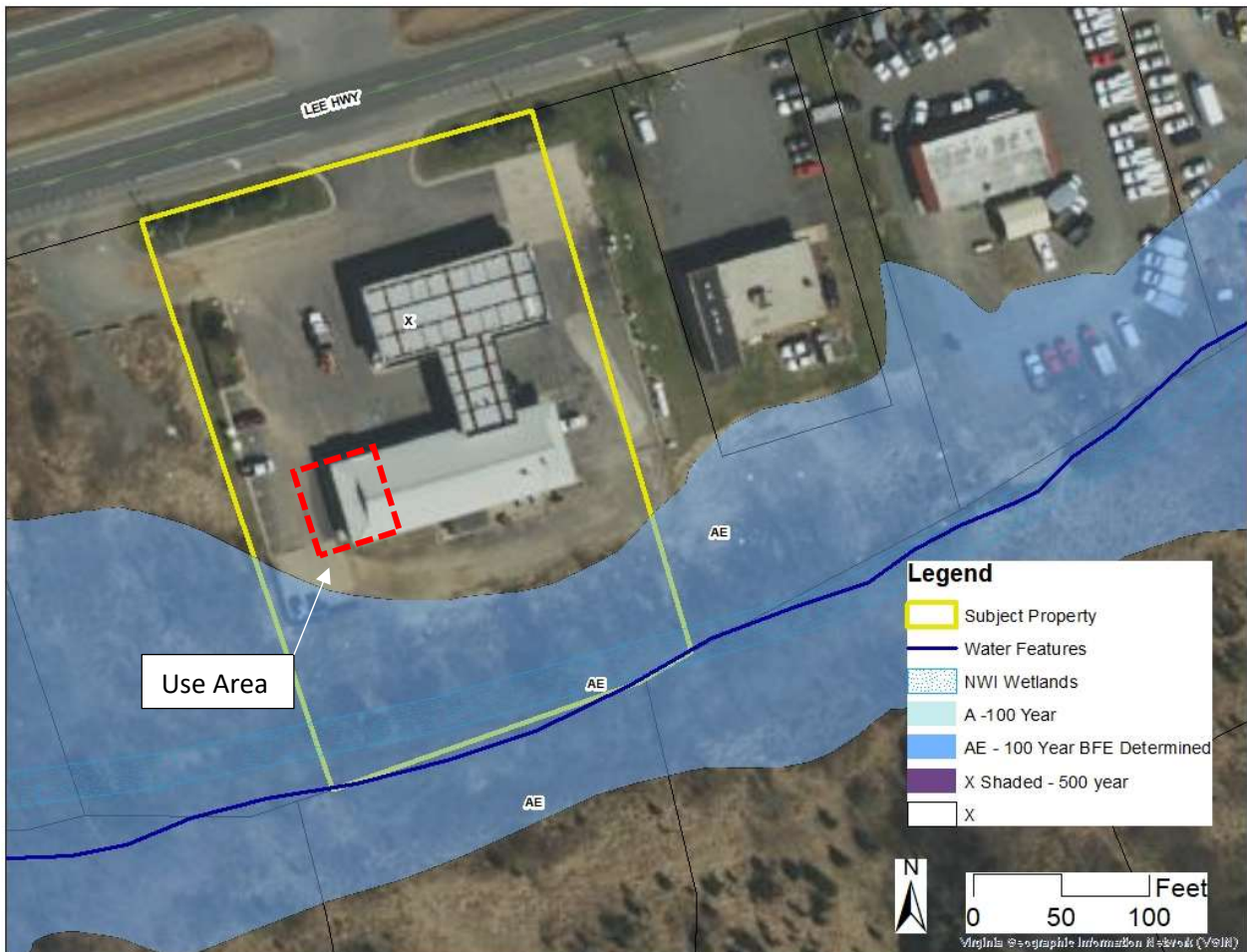
OUTSTANDING ISSUES: The Applicant is requesting several changes to the Special Permit. The Board of Zoning Appeals (BZA) should consider whether the requested changes to the use are appropriate. Should there be concerns, the Board may elect to approve a more limited scope than has been requested by the Applicant or deny the application.

The BZA should be aware that since approving SPPT-20-012645 on August 6, 2020, and The Puppy Shop subsequently opening on December 16, 2020, staff has received several complaints regarding the use. Three Notices of Violation and Corrective Orders and one Stop Work Order have been issued to the Applicant. Staff also has concerns over the Applicant maintaining compliance with all of the conditions associated with SPPT-20-012645. Please see the Project History section of this staff report for additional information.

Topic Description:

The Applicant, Angela Jrab, is seeking approval of a Category 13 Special Permit to continue operating a kennel offering pet sales in a Commercial District. The Applicant relocated the business to New Baltimore in December 2020. According to the Statement of Justification, The Puppy Shop is a family owned business specializing in the sale of purebred and specialty mix canines. There are four family member employees and two non-family member employees. The Puppy Shop opened on December 16, 2020 and to date has sold 191 puppies, approximately 10 per week. The Puppy Shop is open seven days a week from 11:00 a.m. to 6:00 p.m.

Site Aerial Map



The Applicant obtains puppies through arrangements with local and out-of-state breeders. All breeders are currently USDA licensed; however, the Applicant is requesting with this application to be able to use hobby breeders as well. The puppies typically arrive for sale between eight and 12 weeks old, and none are older than 16 weeks. The Applicant states that all of the puppies are examined and vaccinated prior to entering the store, then vaccinated two additional times prior to sale. They are microchipped and receive a Certificate of Veterinary Inspection from a USDA licensed veterinarian. The Puppy Shop also offers a 10-day health care guarantee with the total cost of any veterinarian visit and/or medication paid by them in the case of an illness.

While in the store, the puppies will be contained in one of 14 glass and Acrylonitrile Butadiene Styrene (ABS) plastic enclosures. There are eight large enclosures and six small enclosures. Each cage is equipped with LED lighting, removable air filters, removable doors, food bowls and water bottle holders. A ventilation system circulates air throughout the cages and controls temperature. The enclosures have glass bottoms to promote proper sanitation and adequate comfort for small animals. A private nine foot by 12 foot play area is provided in a separate room in the back of the store to allow the dogs to exercise. The Applicant uses wood chip bedding in the enclosures. The bedding is changed daily and disposed of off-site per the approved Waste Management Plan.

The Applicant is requesting several changes to the previously approved Special Permit. These are listed below, and following each change is the Applicant's justification and a staff analysis in *italics*.

1. Allow the procurement of puppies from hobby breeders in addition to USDA licensed breeders.

The Applicant states that she has contracted with several Virginia breeders in the past who are not USDA licensed. The Applicant states she would obtain health certificates from either a local USDA Licensed Veterinarian or other local veterinarians in the area.

State Code prohibits the dealer or commercial dog breeder who is not licensed or exempted from licensure by the U.S. Department of Agriculture to sell any dog to a pet shop. Furthermore, Pet Shops in the Commonwealth are only permitted to sell or offer for adoption a dog only procured from a humane society, private or public animal shelters or a person who has not received citations from the U.S Department of Agriculture for violations of the Animal Welfare Act (State Code § 3.2-6511.1. Pet shops; procurement of dogs; penalty). Staff does not support this request.

2. Increase the maximum number of puppies available for sale at the facility.

The Applicant would like to increase the number of puppies permitted for sale at any time to be based on three small breeds or two large breeds per enclosure. The Applicant states she has eight enclosures for large breeds and six enclosures for small breeds but with a maximum limit of 24 puppies she is never at capacity.

The previous limit of 24 dogs was based on the capacity of the seven enclosures the Applicant was proposing at the time of the 2020 Special Permit request. The Applicant now has 14 enclosures; eight enclosures for large breed dogs and six small breed enclosures. Based on the number of enclosures and number of dogs per enclosure, the Applicant could house 16 large breed puppies and 18 small breed puppies for a total of 34 puppies at any given time.

It should be noted that on May 20, 2021, staff visited The Puppy Shop and observed 31 dogs in the store. After receiving the Notice of Violation, the Applicant contacted staff and stated that of the 31 puppies in the store, only 24 were available for sale.

The Applicant explained the condition stated she could have no more than 24 puppies for sale but did not explicitly prohibit additional dogs being kept on the premises. Staff does not believe the increase in the number of puppies is justified due to the Applicant's inability to adhere to the previously approved conditions.

3. Allow all waste to be disposed of on-site.

The Applicant submitted a Waste Management Plan for the previous Special Permit stating she would dispose of trash off-site. She is requesting to be able to dispose of her trash in the dumpster located on-site.

Staff would note the dumpster unit for the shopping center is required to have a lid. During a site visit on May 7, 2021, staff observed that the dumpster unit did not have a lid and trash from the various businesses was strewn about the property. It should also be noted the dumpster enclosure is located within the FEMA 100-year flood plain. Staff does not support this request.

4. Allow on outdoor play area for the puppies.

The Applicant is requesting permission to construct a private, raised outside play area with floor drainage leading to the building waste line. She would like to locate the play area at the rear service area of the building.

Zoning Ordinance, § 5-1301.2(2), does not permit an outdoor area associated with Kennels in Commercial Districts to be located within 100 feet of the floodplain. The existing building is located between 24 and 50 feet from the limits of the floodplain. As such, there is no portion of the property outside of the 100 foot buffer that would be an appropriate play area for the puppies. This request is not permitted as it does not meet Zoning Ordinance standards associated with the use.

5. Allow the Special Permit to be issued for three years.

The Applicant is requesting an extension to the Special Permit renewal time to be three years instead of the one year that was associated with SPPT-20-012645. The Applicant states that she has proven herself to be a respectful business with healthy, happy puppies available for purchase. She has received no complaints from her buyers involving the health, happiness or safety of their newly purchased puppy. Any minor health issues have been addressed and resolved by Glenkirk Animal Hospital with all costs covered by The Puppy Shop.

The Board may choose to extend the renewal of the Special Permit and/or require Administrative renewals, as it deems appropriate. Staff would note that the conditions associated with SPPT-21-015156, including the one year time limit, were to ensure compatibility with the neighborhood. Furthermore, the BZA determined the conditions and time limit were necessary and appropriate for the protection of properties in the vicinity of the use. As mentioned previously and below, staff has received several complaints regarding the use. Three Notices of Violation and Corrective Orders as well as one Stop Work Order have been issued. Staff also has concerns over the Applicant maintaining compliance with all of the conditions associated with SPPT-20-012645; as such it may not be appropriate to allow for a longer approval term or approve the use.

Property History:

On August 6, 2020, the Board of Zoning Appeals approved SPPT-20-012645 to allow the Applicant to operate a kennel offering pet sales in a Commercial District. The Applicant renovated the space in accordance with the Building Code, Zoning Regulations and conditions of the Special Permit. On

September 24, 2020, a minor revision to the approved Site Plan, Site Plan #2017, was approved. The Applicant obtained a Dealer's permit from the Animal Control Office on December 15, 2020 and opened the pet store the next day.

Staff received several complaints regarding the use and three Official Notices of Violation and Corrective Orders have been issued. Please see below and attached.

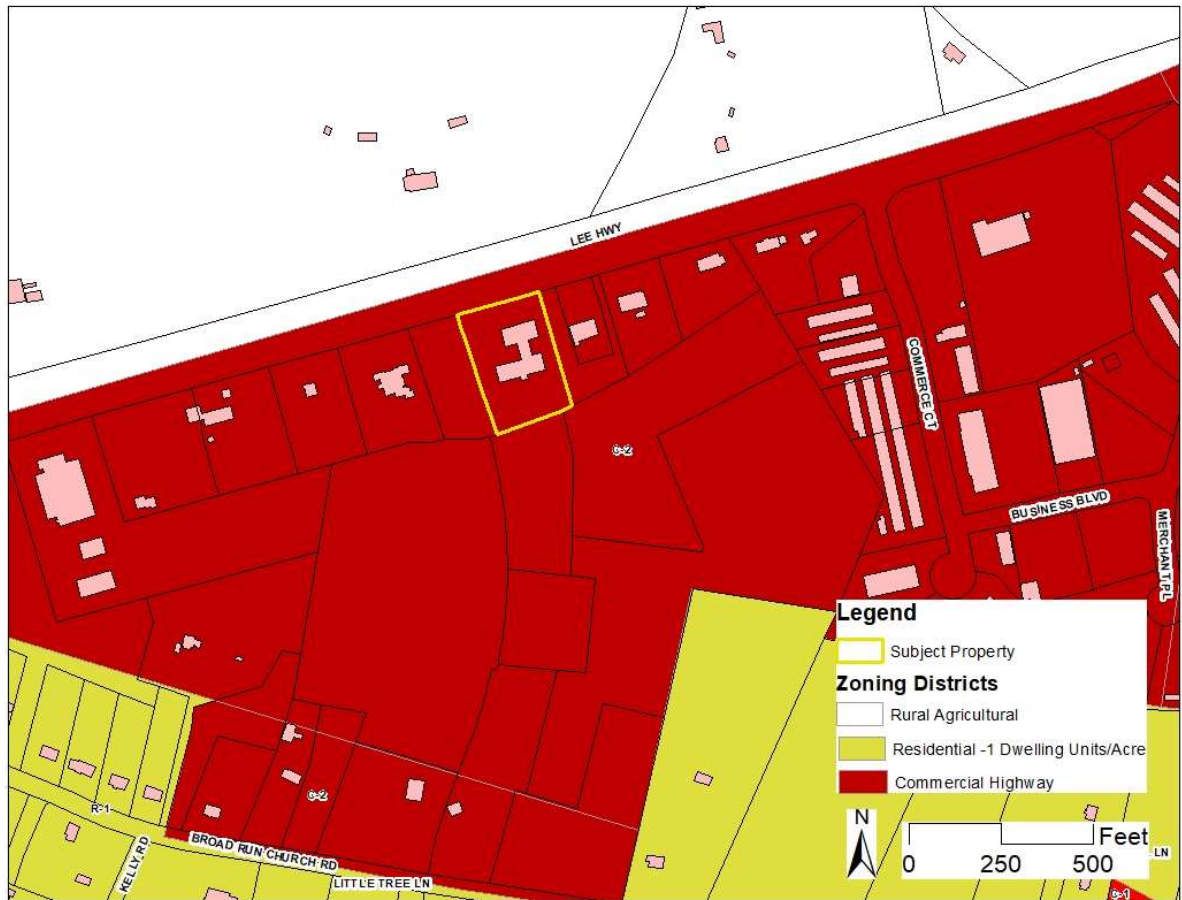
- A complaint was received of work started prior to the issuance of the required Building and Zoning Permits on August 12, 2020. This complaint was found to be valid following an inspection by the Building Office on August 13, 2020, and a Stop Work Order was issued by the Building Official on August 13, 2020.
- Multiple complaints were received of unpermitted and impermissible signs erected on-site and at off-site locations from December 21, 2020 to April 15, 2021. The complaints were found to be valid in all cases, and the business owner was notified in person by the Zoning Inspector on December 21, 2020 that the signs must be removed. Additional complaints were received following this verbal warning, and the business owner was notified of the violations by letter on December 30, 2020 and January 22, 2021. Unpermitted and impermissible signs were erected multiple times after notification in writing was provided to the business owner and, subsequently, a Notice of Violation and Corrective Order was issued to the business owner on April 15, 2021 and May 3, 2021, with both notices citing multiple dates where unpermitted and impermissible signs were erected in violation of the Zoning Ordinance.
- On May 20, 2021, information was provided to the Zoning Office that the business was operating in violation of the conditions of approval associated with Special Permit SPPT-20-012645, specifically for 31 puppies offered for sale, which is in excess of the 24 puppies permitted per condition of approval Number 4. A Notice of Violation and Corrective Order was issued to the business owner on May 21, 2021.

Based on the information above, staff has concerns that the use is not able to operate in accordance with the statutes of the Zoning Ordinance and the approved conditions of the Special Permit.

Location, Zoning and Current Land Use:

The 1.71-acre property is located on Lee Highway (Route 29), in New Baltimore, approximately 1.7 miles from the Prince William County line. The property is zoned Commercial - Highway (C-2). The parcel has a gas station and coin store with a vacant area available for lease. The property is served by public water and sewer provided by the Fauquier County Water and Sanitation Authority (FCWSA). Cross Creeks' 100-year floodplain and wetlands are located at the rear of the property.

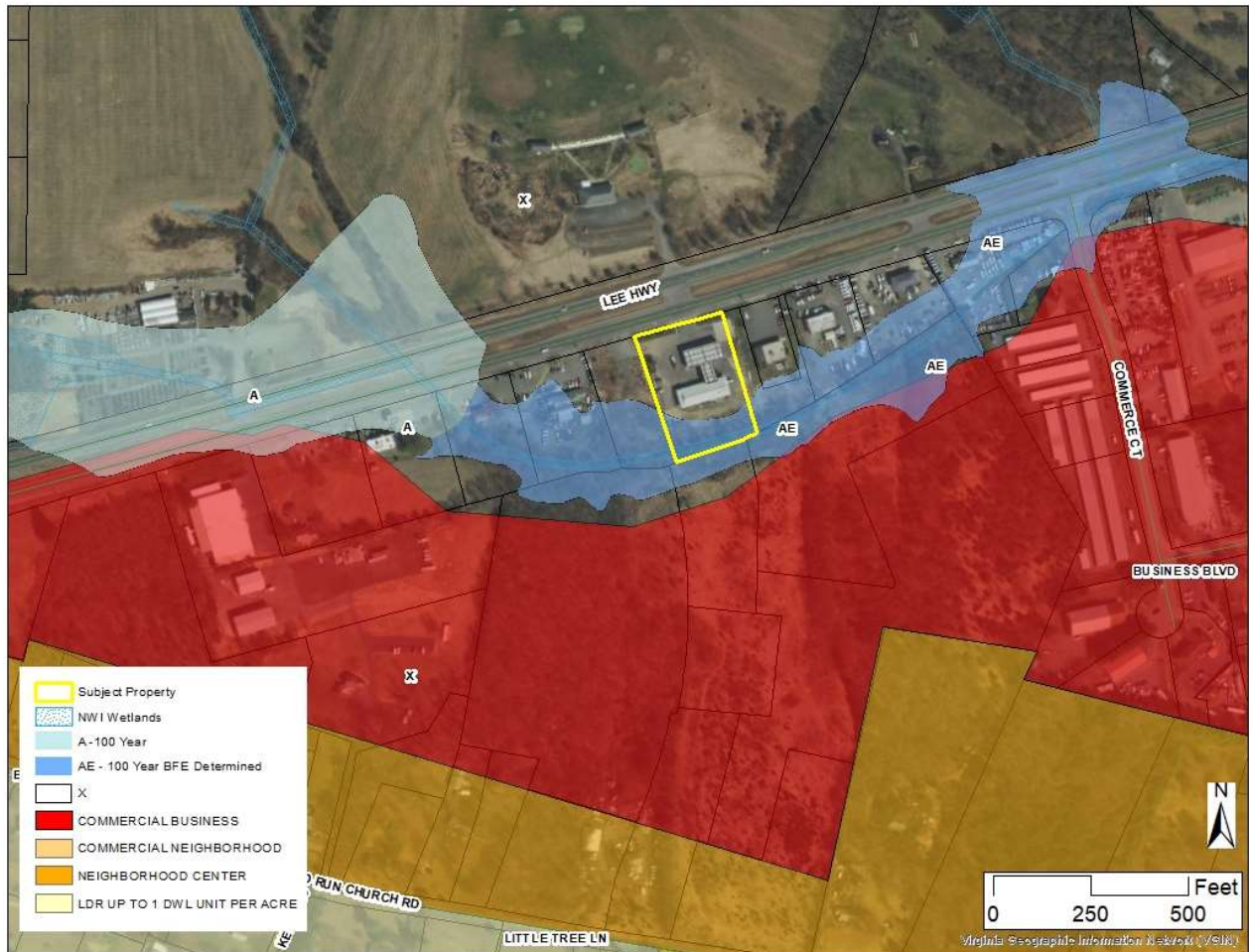
Location/Zoning Map



Surrounding Zoning and Current Land Use:

The adjacent properties on the south side of Route 29 are in the New Baltimore Service District and zoned Commercial - Highway (C-2). Many of these have businesses in operation. These include Spitony's Pizza, 7-Eleven, Effe's Frozen Favorites, Northside 29, Evergreen Auto Service, Country Chevrolet Commercial, Gateway Auto Repair and Trailers Plus. Additionally, the Cross Creek property which remains undeveloped, adjoins the property on the south. Adjacent properties across Route 29 in the Rural Agricultural Zoning District are outside the New Baltimore Service District and in the County's rural lands. These properties are zoned RA and are mostly open space and residential uses. Meadows Farms and the Golf Game Center are located in this area.

Land Use Map



Comprehensive Plan/Land Use:

The property is located in “the Triangle” of the New Baltimore Service District and has a land use designation of FEMA floodplain. As referenced previously, only the rear of the property is considered floodplain. The adjacent areas all have a similar land use designation or are designated Commercial Business. The “Triangle” area has long been intended for commercial businesses within the New Baltimore Service District, and specifically the plan encourages this portion of the District be proactively planned with a series of new and interconnected roads, as well as inter-parcel access. This is to provide for the maximum and coordinated use of the business area due to complications presented by the 100-year floodplain.

Staff believes a commercial use could be consistent with the Comprehensive Plan and compatible in such an area; however, the Zoning Ordinance requires a Special Permit for the use in the C-2 district because not all sites are necessarily appropriate for the particular use or special conditions may be required to ensure compatibility with surrounding areas.

Special Exception Analysis:

The standards below apply to this Special Exception. Following each standard is a staff evaluation in *italics*.

5-006 General Standards for Special Permits and Special Exception Uses

1. The proposed use shall be such that it will not adversely affect the use or development of neighboring properties. It shall be in accordance with the applicable zoning district regulations and the applicable provisions of the adopted Comprehensive Plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and/or use of adjacent or nearby land and/or buildings or impair the value thereof.

As with the previous application, the proposed use will not involve construction of any structures or additional site development. Therefore, the proposed use appears to continue to be in accordance with the applicable provisions of the adopted Comprehensive Plan. However, as indicated above, there have been several instances where the use has not been in compliance with the applicable zoning district regulations and conditions associated with SPPT-20-012645.

2. The proposed use shall be such that pedestrian and vehicular traffic generated will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood and on the streets serving the site.

There will be no pedestrian traffic generated by the use. The Puppy Shop estimates that it currently generates up to 30 trips per day with an average of five to 10 visitors per day plus staff and deliveries. It should be noted that the Applicant has requested the ability to have more puppies for sale, which would likely increase traffic generated by the use. However, no analysis has been provided by the Applicant to determine if there are any impacts associated with this level of use.

3. In addition to the standards which may be set forth in this Article for a particular category or use, the BZA and Board may require landscaping, screening, yard requirements or other limitations found to be necessary and appropriate to the proposed use and location.

Staff does not believe any additional landscaping, screening, yard requirements or other limitations beyond the Zoning Ordinance requirements are necessary. The property was evaluated as part of the previous Special Permit and the Site Plan process and no additional screening was required at that time.

4. Open space shall be provided in an amount at least equal to that specified for the zoning district in which the proposed use is located.

No open space is required with the proposed use in the C-2 zoning district.

5. Adequate utility, drainage, parking, loading, and other necessary facilities to serve the proposed use shall be provided. Low impact development techniques are encouraged by the County and shall be incorporated into the site and facility design when deemed appropriate by the Applicants

after consultation with appropriate county officials. Parking and loading requirements shall be in accordance with the provisions of Article 7.

Adequate facilities appear to be available. These were reviewed during Site Plan review. Staff has not been made aware of any outstanding issues.

6. Signs shall be regulated by the provisions of Article 8, except as may be qualified in the Parts that follow for a particular category or use. However, the BZA and the Board, under the authority presented in Section 007 below, may impose more strict standards for a given use than those set forth in this Ordinance.

A condition continues to be included which requires Zoning Permits for any new signs or refacing of existing signage. As mentioned previously, the Applicant has been issued three Notices of Violation and Corrective Orders for repeatedly installing unpermitted and impermissible signage.

7. The future impact of a proposed use will be considered and addressed in establishing a time limit on the permit, if deemed appropriate. Existing and recent development, current zoning and the Comprehensive Plan shall be among the factors used in assessing the future impact of the proposed use and whether reconsideration of the permit after a stated period of time would be necessary and appropriate for the protection of properties in the vicinity and to ensure implementation of the Comprehensive Plan.

The previous approval SPPT-20-012645 was for one year. The BZA determined that the time limit was necessary and appropriate for the protection of properties in the vicinity of the use. With this application, the Applicant has requested a three year time limit. It is at the Board's discretion to determine what time limit, if any, is appropriate.

Staff would note that the conditions associated with SPPT-21-015156, including the one year time limit, were to ensure compatibility with the neighborhood. As mentioned previously, staff has received several complaints regarding the use, three Notices of Violation and Corrective Orders and a Stop Work Order have been issued. Staff also has concerns over the Applicant maintaining compliance with all of the conditions associated with SPPT-20-012645, as such it may not be appropriate to allow for a longer approval term or approve the use.

8. The proposed use shall be such that air quality, surface and groundwater quality and quantity, are not degraded or depleted to an extent that would hinder or discourage the appropriate development and/or use of adjacent or nearby land and/or buildings or impair the value thereof.

Staff does not believe that the proposed use will deplete or degrade air quality or surface/groundwater quantity and quality to an extent that would hinder or discourage development of nearby properties.

9. Except as provided in this Article, all uses shall comply with the lot size, bulk regulations, and performance standards of the zoning district in which located.

All applicable lot size, bulk regulations, and performance standards of the C-2 zoning district appear to have been met.

5-1300 CATEGORY 13 COMMERCIAL BUSINESS AND PERSONAL SERVICES

In addition to the general standards set forth in Section 006 above, the following standards shall apply:

5-1301.2 Additional Standards for Kennels in the Commercial Districts

1. Kennels shall be limited to those providing only boarding, grooming, training and Pet Shops. No Commercial Breeding facilities are allowed.

Staff has included a condition that continues to limit the use to puppy sales and prohibit breeding.

2. Facilities shall be completely enclosed and soundproofed, except the permit approval may allow for outdoor exercise areas where dogs are accompanied. Animal confinement areas and dog runs shall be constructed and maintained so that there will be no emission of odor or noise detrimental to other properties in the area. No outdoor areas shall be allowed within 100 feet of a floodplain or 110 feet of a stream.

The Applicant installed soundproofing and ventilation structures as part of her interior renovations to the property. With this application, she has requested to construct an outdoor play area. However, there is no outdoor location not within 100 feet of the floodplain that would suffice as an outdoor play area. Staff has continued to include a condition requiring puppies be kept inside and exercised in an indoor dog run.

3. All animal waste and run-off or discharge containing animal waste shall be captured and disposed of in a manner that controls odors and protects the environment. A waste management plan detailing the amount of waste projected and the specific means for managing the waste shall be provided with the application for review and approval. The plan shall also address disposal of dead animals. In no case shall the plan provide for on-site burial or composting.

The Applicant has complied with the 2020 approval conditions requiring off-site waste disposal and submission of a Waste Management Plan. The Applicant is requesting permission to dispose of waste in the on-site trash container. Staff does not support this request due to the dumpster's location in a floodplain and the absence of a lid on the dumpster.

Agency Comments:

Staff and the appropriate referral agencies have reviewed the application and have the following comments. Staff has noted how the items will be addressed in *italicized* language following the comments.

Zoning:

1. A Minor Kennel may be permitted in the Commercial-Highway (C-2) with the approval of a Special Permit and a Site Plan per Section 3-313.1.a of the Zoning Ordinance.

Provided for reference; no action required.

2. Section 5-006 **General Standards for Special Permits and Special Exception Uses** applies to the subject property. Zoning staff defers to Planning staff in the compliance assessment of these standards.

See staff evaluation.

3. Section 5-1301.2 **Additional Standards for Kennels in the Commercial Districts** applies to the subject property. Zoning staff defers to Planning staff in the compliance assessment of these standards.

See staff evaluation.

4. A Minor Revision to the approved Site Plan, case number 2017, was approved September 24, 2020 to show the location of the Puppy Shop business within the existing commercial structure.

Provided for reference.

5. The subject property is partially within the Floodplain Overlay District as regulated by Article 4, Part 4 of the Ordinance. The rear portion of the property behind the building is within the Zone 'AE' Floodplain and Floodway as shown on FEMA FIRM map panel number 51061C0240C. Based off GIS data, the floodplain boundary is located approximately between 28 to 44 feet off the rear wall of the existing building where the business is located. Additionally, staff notes that the south-western portion of the dumpster pad area is constructed within the floodplain.

Provided for reference.

6. The Applicant has been issued two Notices of Violation and Corrective Orders for repeatedly installing unpermitted and impermissible signage, as associated with code enforcement case CODE-20-001297.

Provided for reference; during the site visit, staff explained the significance of the violations to the Applicant. Each time the Applicant has removed the signs and agreed to comply with the County's sign regulations.

Virginia Department of Transportation (VDOT):

1. The property is being served by a commercial entrance off Route. 29/15 that currently serves additional uses within the property, including a gas station, a retail store and a barber shop.

Provided for reference; no action required.

2. During the review of the first submission of SPPT-20-012645, VDOT provided a comment regarding demonstrating that the proposed use will not generate more traffic than the previous business ("Cleaners") which remains outstanding

Provided for reference.

3. No advertising is to occur within the State maintained right-of-way (e.g. signs, banners). Please confirm that the banner on Route 29 southbound is outside of the right-of-way.

The Applicant has been notified by staff, in writing, to remove all illegal signage and she has agreed to comply. As of a site visit on May 7, 2021, the signs were removed.