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**IN AND BEFORE THE COUNTY COMMISSIONERS  
FOR FRANKLIN COUNTY**

**IN RE THE SPECIAL USE PERMIT  
(SUP) OF MIRROR MINISTRIES; (FOR  
A SUP TO OPERATE A GROUP CARE  
FACILITY IN A RESIDENTIAL ZONE)**

APPELLANT'S BRIEF  
Appeal No. 2020-01  
(CUP 2019-09/SEPA 2019-15)

**TO: COUNTY COMMISSIONERS OF FRANKLIN COUNTY,  
WASHINGTON**

**AND TO: MIRROR MINISTRIES (THROUGH COUNTY PLANNING STAFF)**

**I. FACTS AND PROCEDURAL HISTORY**

Our office represents Mr. Henry Field individually and holding a Power of Attorney for his parents (who own property ready for residential development near the proposed site of the Mirror Ministries group care facility and who were the former owners of the property in question). The Fields, and almost all the neighbors, are opposed to the siting of the Applicant's proposed commercial facility in a residential neighborhood based on land use concerns and compatibility issues, **not** based on the character and mission of the Applicant or the crime victims it sets out to help.

Under the Franklin County Zoning Ordinance ("FCZO"), commercial uses such as the group care facility proposed by Applicant require a "Special Use Permit" (SUP) to operate. (**FCZO 17.82.010 et. seq.**). The Franklin County Planning Commission is only given power to make a recommendation to the Board of

1 reserve the ultimate decision-making authority and have the responsibility to see that  
2 the land use criteria in its zoning ordinance is properly administered. (**FCZO**  
3 **17.82.070-.090**). By law, only one open record hearing is allowed on permits (and  
4 one closed record appeal). The Franklin County Planning Commission conducted  
5 its initial open record hearing on February 4, 2020, and following testimony from the  
6 Applicant and neighbors, the Planning Commission deadlocked (on a 3 to 3 vote)  
7 and could not reach a recommendation to approve or deny the permit.  
8

9 In a highly unusual (and our client believes illegal) move, the Planning  
10 Commission in essence gave the Applicant a “do-over” and conducted a closed  
11 record review at a subsequent meeting on March 10, 2020, where it allowed  
12 Planning Commission member, Melinda Didier (who we understand is  
13 Commissioner Clint Didier’s sister) to review the record and break the tie. Melinda  
14 Didier was not present at the only authorized open record hearing, did not hear the  
15 testimony in person and was not present to judge the credibility of witnesses who  
16 provided comments. After claiming to have reviewed the record (but without any  
17 input from neighbors and without deliberation by the PC members present), Planning  
18 Commission member, Didier moved to approve the permit and cast the deciding  
19 vote, basically rubber stamping Planning Staff’s proposed findings and conditions of  
20 approval without change. For reasons that will be outlined below, our client believes  
21 allowing Planning Commission member Didier to break the tie was unnecessary,  
22 procedurally and legally improper and in any event doesn’t change the duties of the  
23 three-member Board of County Commissioners to review the land use impacts of the  
24 SUP at issue.  
25  
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27 Even though the Planning Commission’s findings are only a non-binding  
28 recommendation to the Commissioners on special property use permits, the FCZO  
29 appears to require appeals to the Commissioners where affected property owners  
30 impacted by permit decisions disagree with the Planning Commission. (**FCZO**  
31 **17.82.100**). Our client’s grounds for appeal are generally outlined in an appeal  
32 timely filed on March 18, 2020, and the written grounds for appeal were attached.  
33 While our client believes that there were procedural errors in processing the  
34 application (which will be raised at the closed record appeal hearing on  
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1 October 27, 2020 and in any future judicial appeal), oversimplified, our client as  
2 nearby property owners (and frankly on behalf of the entire neighborhood) simply  
3 believes that a group care facility complex in the middle of a rapidly developing  
4 residential neighborhood **is not in harmony with the area and doesn't meet the**  
5 **permit criteria set forth in FCZO 17.82.080 (A) - (F)**. The primary objectionable  
6 land use impacts include allowing in essence three residential homes on one lot  
7 (which private citizens could not do in the same zone), and obvious impacts from  
8 allowing multiple commercial uses in a residential area including 24-hour group care  
9 facilities with associated staff, full-time in-home tutors and schooling and equine  
10 therapy. These impacts and uses are inconsistent with the low-density residential  
11 area and puts a strain on the local roads and on-site septic systems.  
12

13 In this case, our client specifically requests that the Commissioners carefully  
14 review the record, including the arguments set forth in this brief and to be presented  
15 at the upcoming closed record hearing, and deny the Applicant's SUP, requesting  
16 Planning Staff to prepare and present new Findings and Conclusions consistent with  
17 a decision to deny the permit.  
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19 All the reasons justifying denial of the Applicant's permit (summarized below)  
20 will be based on the record developed by Staff and the Planning Commission.  
21

## 22 **II. SUMMARY OF TESTIMONY AT THE PLANNING COMMISSION HEARING**

23 Part of each Commissioner's duty when acting in a quasi-judicial ("like a  
24 judge") capacity is to review the record and apply the law. Our client was required to  
25 pay for the cost of transcribing both hearings before the Planning Commission (the  
26 original one on February 4, 2020 and the do-over hearing attended by  
27 Commissioner Melinda Didier on March 10, 2020). These transcripts are part of the  
28 record. As a land use attorney doing this for almost 34 years, the in-person and  
29 written testimony presented by the Applicant and its supporters, and by concerned  
30 neighbors are what one would expect to find when attempting to site a much more  
31 intensive commercial use in a residential zone. The Applicant and its 14 supporters  
32 who actually testified (many of whom were affiliated with the Applicant itself and  
33 none of whom live in the area) want to see the SUP approved because of the  
34 compassion for the ministry and services the Applicant provides to young crime  
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1 victims. (See **transcript of February 4, 2020 hearing, pgs. 36-60**). The best  
2 example of this sentiment was supporter, Pastor Dustin Meyers who said something  
3 honest but legally wrong; namely, that Mirror Ministries' SUP ". . . is not an issue of  
4 zoning, this is an issue of conscience". (See **Tr., pg. 42**).

5 As expected and in contrast, the entire neighborhood (including our clients as  
6 Appellants) who own property or live near the site, are opposed to the introduction of  
7 commercial uses in a residential zone because they believe they are not in harmony  
8 or compatible with an increasingly developed residential area. They, like the three  
9 Planning Commission members opposed to the granting of the permit, believe that  
10 the land use impacts of introducing full-time commercial uses in this residential area  
11 justify permit denial including (1) allowing three instead of one home on one lot; (2)  
12 24/7 full-time counseling and staffing; (3) full-time on-site schooling; and (4) equine  
13 therapy (all of which are being conducted on-site). They believe such uses are  
14 incompatible with the neighborhood. (See **Tr. pgs. 60-82**). It is the nearby property  
15 owners that are most impacted by the proposed commercial uses, not Mirror  
16 Ministries' supporters. Following testimony, even the County's Planning Staff  
17 member, Derrick Braaten, admitted to Planning Commission members asking  
18 questions that (1) full-time group homes or group care facilities are "**not a match**" for  
19 residential areas; and (2) are more in the nature of commercial activities. (See **Tr.**  
20 **pg. 95**). This is why the uses proposed are not allowed outright, but require special  
21 use permits approved by the Commissioners after a thorough review.  
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### 25 III. ARGUMENT

26 A. The Applicant's Request for a Permit Should be Denied or Remanded  
27 Because of Procedural Errors.

28 In its Appeal, our client raised and reiterates multiple procedural errors  
29 relating to the way County Staff and the Planning Commission processed the  
30 application. They include (1) allowing absent member, Melinda Didier to review the  
31 record and break a tie forcing this Appeal; (2) having Planning Staff meet with the  
32 Planning Commission members and being an advocate for the permit instead of  
33 adopting neutral findings (especially when Staff knew that there would be substantial  
34 opposition to the permit request); and (3) having Staff make legal conclusions in  
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1 advance of the hearing that were not supported by the record, and that denied our  
2 client the opportunity to address the Planning Commission unfettered by Staff's  
3 opinion. Our client reiterates the procedural grounds for error set forth in this Appeal  
4 (as supplemented by this Brief) and to preserve the record on appeal. However, it  
5 does not intend to spend significant amounts of time on these legal issues because  
6 there are plenty of grounds in this record to deny the permit. Suffice it to say that as  
7 an experienced land use attorney, on behalf of our client, we object to Staff's legal  
8 analysis it submitted in response to this Appeal. Staff is not an attorney and his  
9 analysis is wrong in many respects.

11 1. Staff Should Not be an Advocate in Contested Permit Application.

12 Staff's response to this appeal basically proves our client's argument that it is  
13 acting as an advocate. Staff did not need to respond to this legal appeal which  
14 should have been left to the Applicant; perhaps letting the County Attorney respond  
15 to questions from the Commissioners at the closed record appeal hearing. As  
16 somebody experienced in representing owners in contested land use matters, the  
17 best and most common approach is for Staff to prepare a neutral recommendation,  
18 or at least alternative recommendations (to approve or deny) based on what the  
19 Commissioners (or PC) wants, especially where Staff knows in advance that a SUP  
20 will be hotly contested. At the Planning Commission hearing, Staff shot down and  
21 disagreed with all our client's legitimate land use concerns (both before and after  
22 public testimony) and seemed to push an outcome. There is no other conclusion  
23 possible from an objective review of the record.

26 2. Planning Commission Member, Didier Should Not Have Been Allowed to  
27 Participate and Make a Tie Breaking Recommendation on the Open  
28 Record Hearing She Missed

29 The Appellant disagrees with and objects to Staff's response saying it was  
30 "okay" for Commissioner, Melinda Didier to come back a month later and break a 3/3  
31 deadlock at the Planning Commission meeting without deliberation or new input.  
32 First, under Washington law, a permit applicant in a quasi-judicial permit hearing is  
33 allowed only one open record hearing and one closed record appeal. Commission  
34 Member, Didier essentially was allowed an opportunity the law does not provide . . .  
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1 to review (after the fact) a detailed record and make a tie breaking recommendation.  
2 The Planning Commission's action was based on an inappropriate assumption, that  
3 an agreed, majority written recommendation of the Planning Commission is required,  
4 **it is not.** In land use matters, it is not uncommon for an even numbered quorum to  
5 be deadlocked. Under applicable Washington law, the impact of a deadlock is that  
6 the party that has the burden of going forward on a permit loses (in this case, Mirror  
7 Ministries). With an even numbered quorum on the only open record hearing  
8 allowed, the Planning Commission could have stopped the hearing before it started  
9 until a time when an odd numbered quorum was present. However, deciding to go  
10 forward it was bound by the outcome, especially in a case where the party  
11 conducting the open record hearing (the Planning Commission) is making only a  
12 recommendation as opposed to a decision.  
13

14 A recommendation to approve or deny the permit was not needed under PC  
15 rules, Roberts Rules of Order and applicable law. The legal impact of a deadlocked  
16 quorum is that action being requested is deemed disapproved or the matter could  
17 have been referred to the Commissioners with no recommendation at all.  
18

19 It is clear after reviewing the record that Planning Commission member,  
20 Didier had ex parte contacts with both the City Attorney and City Staff. In the  
21 transcript from the March 10th closed record hearing (where basically the only one  
22 allowed to speak was Commission Member, Didier) she read and interpreted  
23 Washington's Appearance of Fairness statute incorrectly (I assume with advice of  
24 Staff or County legal counsel). Specifically, she claims **RCW 42.36.090** entitles her  
25 to come back in, review the record and vote. She is wrong. **Where a quasi-judicial**  
26 **body is only making a recommendation and where quorum exists, a majority**  
27 **vote or majority recommendation of the Planning Commission was not**  
28 **needed.** The Applicant's permit could have been submitted to the Commissioners  
29 without a recommendation, or the proper legal effect of a 3/3 tie and deadlock was  
30 that the Applicant did not meet its burden of establishing it was entitled to a permit.  
31 **Our client believes any reliance by the Commissioners on the Planning**  
32 **Commission's recommendation given this procedural defect would be legal**  
33 **error.**  
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1           3. Planning Staff's Workshops and Prejudgment Introduced Bias into the  
2           Decision-Making Process Warranting at Least a Remand Where  
3           Neighbors Can Participate

4           Staff is correct that it is common before open public hearings for Staff to give  
5 input on pending applications. However, this is inappropriate where legal  
6 conclusions on compatibility are needed, there is significant opposition and in any  
7 appeal. Legal requirements for permits should be reviewed by the City attorney at  
8 the open record hearing and not in private workshops with Staff, who appeared to be  
9 acting as an advocate. In this case, many of the slides and information provided by  
10 Staff to the Planning Commission were simply wrong or slanted in a way to imply  
11 that special property use permits for group care facilities must be approved where  
12 they meet legal requirements. This is untrue. Special property use permits can and  
13 should be denied where the decision-making body believes they don't meet the  
14 compatibility requirements set forth in the County's own zoning ordinance. (See  
15 **FCZO 17.82.080 (A) - (F)**). Each one of these standards involves legal conclusions  
16 to be made by the decision-maker (the Commissioners) and not Staff, and involves  
17 weighing the facts provided at the hearing. Applicant has no issue with Planning  
18 Staff providing objective "findings" in a written Staff Report to help the Planning  
19 Commission evaluate a permit application. However, its "Findings" should stop at  
20 facts such as pointing them to written comments made, a description of the  
21 application, the zoning of the property, etc. They should **not** include legal  
22 conclusions that should only be made after **all parties have had an opportunity to**  
23 **speak**. This is especially important during lengthy contested hearings where  
24 members of the public were only given a limited opportunity (2 minutes) to speak. At  
25 the Planning Commission hearing (the only hearing where our clients had an  
26 opportunity to speak), Staff demonstrated its bias by only submitting proposed  
27 findings and conclusions in support of the application (knowing in advance that it  
28 would be vehemently opposed).

29           In this case, many of the Staff's statements in its PowerPoint presentation  
30 (attached to our client's appeal as Exhibit A-3) are wrong or misleading, including  
31 statements such as CUPs is a process used to negotiate reasonable  
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1 accommodations with the Applicant. The job of the Planning Commission and the  
2 County Commissioners is simply to objectively listen to the evidence and review the  
3 record and decide whether or not an application meets the requirements of the  
4 zoning ordinance.

5 4. Staff's Legal Interpretation of the Zoning Code as Applied to the Permit  
6 was Wrong.

7  
8 For purposes of this closed record appeal, I would hope that the Staff and  
9 Appellant could agree on some simple principles: (1) Staff's recommendations  
10 should not influence the Commissioners in this appeal; (2) under the Franklin County  
11 Zoning Ordinance, it is the Commissioners that make the ultimate decision, and the  
12 decision must be based on the criteria in the zoning ordinance; and (3) the  
13 Commissioners have the power to deny the permit based on the record and qualified  
14 land use criteria. The Appellant disagrees with the County's legal response to this  
15 appeal. The Appellant also disagrees in multiple respects with Staff's application of  
16 the zoning code to this case. Specifically, Staff has legally concluded that it is "okay"  
17 to have up to three residential structures on one lot in the RC-5 zone and/or that the  
18 Applicant's proposed facility is a listed and allowed classified use, it is not. By  
19 definition, the Applicant is not proposing a group home, but a "group care facility"  
20 because it involves potentially housing more than six residents. (Compare **FCZO**  
21 **17.06.440 against 17.06.430**). On its face, Mirror Ministries' application involves  
22 more than six unrelated persons living together on-site. Staff argues that whatever  
23 the Applicant calls its facility, a group home, a group care facility, a restoration care  
24 facility or therapeutic center, that it may be approved with conditions. Only if it  
25 meets the specific criteria in the zoning ordinance and is compatible with and in  
26 harmony with the surrounding area. Converting two non-residential structures to  
27 homes and then having at least three or four separate businesses running from the  
28 homes is not compatible with the area. On this basis, our client asks that the permit  
29 be denied.  
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1 B. The Application and PC Recommendation (to the Extent it is Relevant or  
2 Valid) Fails to Demonstrate Compliance with Required Permit Criteria

3 Like many zoning authorities, Franklin County has adopted criteria that  
4 special property use permits must meet before they can be approved. These criteria  
5 are set forth in **FCZO 17.20.010** and **17.82.080 (A) - (F)**. These criteria require the  
6 Applicant to prove and establish that (1) to introduce classified or unclassified  
7 commercial uses in a residential district, the “nature and location must not be  
8 detrimental to the intended rural residential environment”; (2) the proposal must be  
9 in accordance with the goals, policies and objectives of the comprehensive plan; (3)  
10 the proposal must not adversely affect public infrastructure; (4) the proposal must be  
11 operated and maintained in harmony with the existing or intended character of the  
12 neighborhood; (5) the location and height of structures and design should not  
13 discourage permitted (residential) development in the vicinity; (6) the operations  
14 proposed should be no more objectionable than permitted residential uses; and (7)  
15 the development and operation of the proposal should not endanger public health or  
16 safety.  
17

18  
19 Based on the record, our client believes that Mirror Ministries has not met its  
20 burden, and that Planning Commission recommendations or Staff conclusions to the  
21 contrary are not supportable. **Each one of the above require legal conclusions**  
22 **to be made by the Commissioners, and are not “factual findings” to be made**  
23 **by Staff.** While our client appreciates the opportunity to expand on its primary  
24 concerns, in short summary our client believes (1) introducing multiple commercial  
25 uses and full-time employees into a rural residential neighborhood are detrimental,  
26 especially due to increased trips from employees, increased traffic and proposed  
27 multiple residential structures on one lot; (2) the proposal is not in accordance with  
28 the goals and objectives of the County’s comprehensive plan which among other  
29 things includes goals/policies protecting existing residential neighborhoods and  
30 avoiding incompatible uses; (3) the proposal will adversely affect public  
31 infrastructure, mainly from the significant strain on adjoining roads from additional  
32 trips per day and from on-site septic systems now required to handle 24/7  
33 commercial-type uses; (4) the proposal is not in harmony with existing (and planned  
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1 future) residential development as it introduces multiple commercial-type uses (24/7  
2 counseling, private schools, equine therapy, etc.); (5) the proposed structures  
3 discourage adjoining residential development by introducing a more intensive use  
4 and allowing potentially three homes on a one lot; at a minimum the Applicant's SUP  
5 should be limited only to use of the primary residence even if it were approved; (6)  
6 The Applicant's facility and full-time counseling business will produce way more  
7 traffic than any permitted residential use; and (7) for reasons set forth above, our  
8 clients reasonably believe that introduction of such an intense commercial use will  
9 endanger the safety of neighborhood residents primarily from the additional traffic  
10 and increased risk of outside criminal elements; of course not from the Applicant's  
11 clients who are victims of abuse, but from those continuing to wish to hurt them. In  
12 fact, a review of the record seems to be an admission that neighbors' safety may be  
13 implicated when the Planning Commission and Staff in the local newspaper was  
14 admonished for even publishing the proposed address of the Applicant's new  
15 facilities (unfortunately under existing law and because of the permit requirement,  
16 the address of the facility cannot legally be kept secret).

## 19 V. CONCLUSION

20 For the above stated reasons, our office on behalf of our client and the entire  
21 neighborhood, respectfully requests that the Commissioners vote to deny the  
22 Applicant's special property use permit and adopt an expanded version of Staff's  
23 draft resolution to deny, which it submitted as part of the record (fixing a procedural  
24 or legal defect at the Planning Commission hearing where Staff failed to even offer a  
25 proposed resolution to deny).

26 DATED this 21<sup>st</sup> day of October, 2020.

27  
28  
29 HALVERSON | NORTHWEST Law Group P.C.  
30 Attorneys for Appellant

31  
32 By: Mark E. Fickes  
33 Mark E. Fickes, WSBA #17427  
34  
35