

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
MAY 3, 2007**

AN ADJOURNED MEETING OF THE FAUQUIER COUNTY BOARD OF ZONING APPEALS WAS HELD ON MAY 3, 2007 AT 10:30 A.M. IN WARRENTON, VIRGINIA.

Members present were Mr. John Meadows, Chairperson; Mrs. Margaret Mailler, Vice-Chairperson; Mr. James W. Van Luven, Secretary; Mrs. Carolyn G. Bowen; Mr. Serf Guerra; and Mr. Maximilian Tufts. Also present were Mr. Wally Horton, Senior Planner; and Mr. Doug Morgan, Senior Planner. Member absent was Mr. Roger R. Martella, Jr.

SITE VISITS:

Mr. Horton reviewed the site visit agenda and stated that there would be two (2) site visits as follows:

1. Bernard F. & Tamara A. Palisi at 10:51 a.m.
2. Miller (Jr.) & April R. Attkisson at 11:22 a.m.

With no further business, the meeting was adjourned at approximately 11:50 a.m., to reconvene at 2:00 p.m. at 10 Hotel Street, Warren Green Meeting Room, Warrenton, Virginia.

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, May 3, 2007, beginning at 2:00 p.m. in the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mrs. Margaret Mailler, Vice-Chairperson; Mr. James W. Van Luven, Secretary; Mrs. Carolyn G. Bowen; Mr. Serf Guerra; and Mr. Maximilian Tufts. Also present were Mrs. Tracy Gallehr, Deputy County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Wally Horton, Senior Planner; and Mrs. Fran Williams, Administrative Specialist. Member absent was Mr. Roger R. Martella, Jr.

MINUTES:

On motion made by Mr. Tufts and seconded by Mrs. Bowen, it was moved to approve the April 5, 2007 minutes.

The motion carried unanimously.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mrs. Williams read the Public Hearing protocol. Ms. Johnson stated that, to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners.

**SPECIAL PERMIT #SPPT07-MA-022, PAUL J. & E. CARROLL DEVINE
(OWNERS)/RONALD C. DEVINE (APPLICANT)**

Applicant is requesting special permit approval to construct a private helistop, PIN #6944-82-8113-000, located at 8025 Leeds Manor Road, Marshall District, Marshall, Virginia.

Mr. Horton reviewed the staff report, a copy of which is attached to and made a part of these minutes.

Mr. Meadows stated that the public hearing remained open.

Mr. Scott Gunderson, representative, expressed agreement with the staff report. Mr. Gunderson stated that the applicant has requested an increase to a maximum of thirty (30) flights because he is sure that this number will not be exceeded. Mr. Gunderson also stated that they are requesting a 12" x 18" aluminum sign for safety reasons as well as night flights to accommodate the sun setting earlier in the winter. Mr. Gunderson further stated that the pilot has agreed to fly in at steep angle approaches when it is safe to do so and to notify residents, who have provided their e-mail addresses, as they leave the hangar.

Mr. David McAlister, a neighbor, spoke in opposition to the granting of this special permit, stating that the noise would have a detrimental effect on residents and animals in the area. Mr. McAlister related a recent article in *The Washington Post* in which a confrontation arose between hobbyists flying model airplanes and individuals at a nearby horseback riding school. Mr. McAlister also stated that the helistop would clearly be an intrusion; otherwise, it would not be necessary to consider notifying the neighbors prior to an incoming flight. Mr. McAlister concluded by saying that if this special permit is granted, restrictions should include limiting the number of flights to ten (10) as was originally requested, with a log being kept of all flights and no night flights allowed.

Mr. Lawrence Ball, a neighbor, spoke in opposition to the granting of this special permit, stating that while his property is not directly adjacent to the site, it is in the proposed helicopter flight path. Mr. Ball stated that his family operates a horse breeding facility and that his trainer, who has been around horses all of her life, has indicated that she will not ride a horse when helicopters are anywhere in the area because of the potential danger. Mr. Ball stated that Mr. Ronald Devine, who is not a resident of the County, will not be affected by the impact of the helistop. Mr. Ball expressed further concern that property values would decrease as well as the potential effect a helistop would have on the area since Leeds Manor Road (Route 688) is a Scenic Byway. Mr. Ball stated that he has hired an attorney, Christopher Whelan, to determine if residents would have any legal recourse if the special permit is approved.

Ms. Melissa McDonald, a neighbor, spoke in opposition to the granting of this special permit. Ms. McDonald stated that she concurs with Mr. Ball and further expressed concern about the impact the proposed helistop would have on horses in the area as well as for the safety of her children and other individuals who may be horseback riding. Ms. McDonald also noted that Mr. Ronald Devine will not be adversely affected since he is not a resident of the neighborhood.

In that there were no further speakers, Mr. Meadows closed the public hearing.

Mr. Guerra stated that when this application first came up it cut his heart strings and he was sympathetic because he felt that this would be good for emergency uses, but after closer consideration, this appears to be more a matter of convenience. Mr. Guerra expressed concern about the impact a helistop would have on residents in the area. Mr. Guerra further stated that he feels that this application has changed completely and, therefore, he cannot support granting the special permit.

Mrs. Mailler expressed agreement with Mr. Guerra, stating that at first it seemed that a helistop would help in alleviating critical situations, but now it appears to be more of a convenience for one person to fly in, which would be an imposition on the neighbors.

Mrs. Bowen stated that this is a land use issue which is allowed by the Zoning Ordinance with special permit approval and that, with conditions and a time limit on the special permit, it could work without inconveniencing the neighbors. Mrs. Bowen further stated that the Board could revoke the special permit if its conditions are violated or not renew it if it caused an undue hardship on the neighbors.

On motion made by Mr. Guerra and seconded by Mrs. Mailler, it was moved to deny the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the following Board findings:

1. The applicant has other reasonable use of the property.
2. The proposed use will adversely affect the use or development of neighboring properties and will impair the value of nearby land.

After discussion, the motion failed 2 – 4 as follows:

AYES: Mr. Guerra, Mrs. Mailler

NAYS: Mrs. Bowen, Mr. Meadows, Mr. Tufts, Mr. Van Luven

ABSTENTION: None

ABSENT: Mr. Martella

Mr. Guerra asked to be excused from the meeting briefly. Mr. Guerra noted his continued opposition to approving this special permit.

After discussion, on motion made by Mrs. Bowen and seconded by Mr. Van Luven, it was moved to grant the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.

2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The proposed facility will meet the standards and requirements imposed by such agencies as the Federal Aviation Administration (FAA) and all other federal, state or local statutes, ordinances, rules or regulations applicable thereto.
2. No maintenance, repair and/or mechanical work shall be performed on-site.
3. No outdoor storage, equipment, machinery, or facilities other than the helistop, as detailed in the applicant's "Description of Helistop" on page two of the submitted memorandum, will be located on-site.
4. No flight training will take place at this helistop.
5. There shall be no more than fifteen (15) uses by family members within any one (1) year. The only other use allowed is for emergency services purposes. A record of all non-emergency flights to and from the helistop shall be provided to the Zoning Administrator each year to verify compliance with this condition.
6. Non-emergency hours of operation shall be restricted to daylight hours only.
7. Lighting will only be activated under emergency circumstances.
8. The one allowed safety sign shall be no larger than 12" x 18".
9. A site plan is required.
10. The special permit shall be granted for a period of three (3) years.

The motion carried 4 – 1, as follows:

AYES: Mrs. Bowen, Mr. Van Luven, Mr. Meadows, Mr. Tufts

NAYS: Mrs. Mailler

ABSTENTION: None

ABSENT: Mr. Guerra (absent for second vote), Mr. Martella

**SPECIAL PERMIT #SPPT07-CR-024, DONALD H. & LINDA P. LECHER
(OWNERS/APPLICANTS) – TOP DOG RESORT, INC.**

Applicants are requesting special permit approval to operate a kennel, PIN #7924-72-8704-000, located at 7939 Kettle Creek Drive, Cedar Run District, Catlett, Virginia.

Ms. Johnson stated that the applicants have withdrawn their request.

**SPECIAL PERMIT #SPPT07-CR-025, MILLER (JR.) & APRIL R. ATTKISSON
(OWNERS/APPLICANTS)**

Applicants are requesting special permit approval for an increase in the maximum building height from thirty-five (35) feet to thirty-eight (38) feet, PIN #7816-93-3872-000, located on the west side of Marsh Road (Route 17), Cedar Run District, Bealeton, Virginia.

Mr. Horton reviewed the staff report, a copy of which is attached to and made a part of these minutes, and stated that a site visit was made earlier in the day.

Mr. Meadows opened the public hearing.

Mr. Miller Attkisson, Jr., applicant, expressed agreement with the staff report. Mr. Attkisson stated that the house was not intentionally designed to exceed the maximum height restriction, but rather, an error was made in measuring the height. Mr. Attkisson urged the Board to consider changing this restriction due to the size of the majority of homes being built today.

Ms. Johnson stated that a revision to the maximum height restriction is being discussed. However, Ms. Johnson noted that there are numerous smaller lots that would not be able to meet the additional setback requirements.

Mrs. Gloria Robinson, a neighbor, spoke in opposition to the granting to this special permit. Mrs. Robinson stated that her home was constructed approximately three (3) years ago and her family followed the County's regulations. Mrs. Robinson stated that an increase in height will obstruct her view and expressed concern that if this special permit is granted, a precedent would be set for others.

Mrs. Bowen stated that the Zoning Ordinance allows a property owner to apply for a special permit to increase the maximum height requirement; however, an increase requires a much greater setback.

In that there were no further speakers, Mr. Meadows closed the public hearing.

On motion made by Mr. Tufts and seconded by Mrs. Bowen, it was moved to grant the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The maximum height allowed shall be 38 feet, with a minimum setback of 256' for the house as shown on the plat submitted with the application.

The motion carried unanimously.

SPECIAL PERMIT #SPPT07-MA-026, BERNARD F. & TAMARA A. PALISI (OWNERS)/JOSEPH A. PALISI (APPLICANT) – AARON ARMS

Applicant is requesting special permit approval to operate a gunsmithing business as a home occupation, PIN #6965-76-6376-000, located at 8265 Meadows Road, Marshall District, Warrenton, Virginia.

Mr. Horton reviewed the staff report, a copy of which is attached to and made a part of these minutes, and stated that a site visit was made earlier in the day.

Mr. Meadows opened the public hearing.

Mr. Joseph Palisi, applicant, expressed agreement with the staff report. Mr. Palisi stated that there will be no delivery of firearms to the site by Fed Ex or UPS to alleviate the possibility of any weapons being left outside unattended.

In that there were no further speakers, Mr. Meadows closed the public hearing.

On motion made by Mrs. Mailler and seconded by Mrs. Bowen, it was moved to grant the special permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The business shall be in conformance with the information provided in the special permit application.
2. The business shall be in compliance with all applicable regulations governing such use.
3. No employees shall be allowed.
4. No customers shall come to the site.
5. No outdoor storage shall be allowed.
6. No test firing of weapons shall occur on-site.
7. There shall be no inventory for retail sales stored on-site.
8. No on-site advertising or signage allowed.
9. The special permit shall be issued for a period of five (5) years.

The motion carried unanimously.

OTHER BUSINESS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:00 p.m.

John R. Meadows, Chairperson

James W. Van Luven, Secretary

Copies of all files and materials presented to the BZA are attached to and become a part of these minutes. A recording of the meeting is on file for one (1) year.