

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
FEBRUARY 3, 2005**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, February 3, 2005, beginning at 2:00 P.M. at 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; Mr. Maximilian A. Tufts, Jr.; Mrs. Carolyn Bowen; Mr. Roger R. Martella, Jr.; and Mr. Serf Guerra. Also present were Ms. Tracy Gallehr, Acting Deputy County Attorney; Ms. Kimberly Johnson, Zoning Administrator; Mr. Fred Hodge, Senior Planner; and Mrs. Debbie Dotson, Office Associate III.

MINUTES: On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the BZA moved to approve the January 6, 2005 minutes.

The motion carried unanimously.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE: Mrs. Dotson read the Public Hearing protocol. Mr. Hodge stated, that to the best of his 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 #SPPT05-MA-004, JOHN A. MCINTIRE (OWNER) /
WILLIAM MCINTIRE AND JOHN R. MCINTIRE, STILLHOUSE VINEYARDS
(APPLICANTS)**

Applicants are seeking special permit approval for winery with minor events on the property, PIN #6929-75-3501-000, located at 4366 Stillhouse Road, Marshall District, Hume, Virginia.

Mr. Hodge stated that the BZA held a public hearing on this application January 3, 2005 and closed the hearing. He stated that the BZA visited the site earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

John McIntire, applicant, appeared representing the application.

Mrs. Bowen asked Mr. McIntire about putting in an entrance off Rt. 688. Mr. McIntire stated it may be possible but that it would require a fair amount of work. He stated that another possibility would be to enlarge the entrance on Stillhouse Road from 16' to 24'.

Mr. Meadows stated the BZA was concerned about the knoll on Leeds Manor Road near where traffic exits from the winery and Stillhouse Road. He noted that VDOT has posted a sign that states "Watch for Turning Vehicles" because of the visibility issue. Mr. McIntire stated that clearing brush from the road side would improve visibility.

Mr. Meadows asked Ms. Johnson if a Saturday and Sunday event constitutes one event or two one day events. Ms. Johnson stated she would consider that a one-day event but the maximum number of people allowed at the event would need to be spread over the two days.

Mrs. Mailler stated concern about the traffic impact on Rt. 688 and stated that event signs would need to be posted. Mr. Martella stated that a long term solution needs to be defined. Mr. Meadows asked Ms. Gallehr if the BZA could impose a condition that the entrance be on the knoll pending VDOT approval. Ms. Gallehr stated that the BZA could do so. She noted that Mr. McIntire could ask the BZA to table the application until a solution could be worked out with VDOT.

Mr. Martella asked Mr. McIntire what time an event would start on Sunday, in particular music associated with events. Mr. McIntire stated the winery is open from 11:00am to 5:00pm. and that the music, a gentleman playing the guitar, typically starts at 1:00 pm.

Mr. McIntire asked that the BZA postpone the application indefinitely to allow him to work to resolve the issues identified by the BZA, to include: the possible relocation of the entrance, event signage, dustless surface for the driveway, and hours of music.

On a motion made by Mr. Guerra and seconded by Mr. Tufts, the BZA moved to postpone the application indefinitely at the applicant's request.

The motion carried unanimously.

SPECIAL PERMIT #SPPT05-LE-019, THOMAS J. AND LINDA D. OLIVER (OWNERS)

Owners are seeking special permit approval to operate a small contracting business as a home occupation on the property, PIN #6971-80-6347-000, located at 7313 Opal Road, Lee District, Warrenton, Virginia.

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

Mr. Martella recused himself from any discussion or vote on this application.

Thomas Oliver, owner, appeared representing the application. He noted agreement with the staff report. He stated that he works out of the home only half the year because the business is seasonal.

Mrs. Bowen asked Mr. Oliver what the maximum number of employees was. Mr. Oliver stated that there were three not counting himself. Mrs. Bowen noted VDOT's comment about a commercial entrance. Mr. Van Luven stated that Mr. Oliver could coordinate with VDOT on the entrance.

Mr. Meadows asked if there were any speakers for or against the application. In that there were no speakers, the public hearing was closed.

On a motion made by Mr. Van Luven and seconded by Mrs. Mailler, the BZA 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 following 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.
6. The proposed use is consistent with the general standards for special permits.

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 site shall be in general conformance with the special permit application plat and information provided by the applicant.
2. No more than five persons involved with the business shall come to the site. These five persons include the owner and his wife, as they are involved in the business operations.
3. No equipment other than three trucks and one fork-lift shall be parked on the site in conjunction with business operations. The area occupied by the equipment/vehicle parking shall not exceed 1,000 square feet.
4. Any materials stored on site in conjunction with the business shall be stored inside the barn.
5. The special permit shall be valid for one year from the date of BZA approval. The permittee may apply annually to the Zoning Administrator for renewal of the

permit, and the Zoning Administrator shall renew the permit in accordance with the provisions of Section 5-203.9 of the Zoning Ordinance.

6. The applicant shall coordinate with Virginia Department of Transportation (VDOT) to obtain an updated entrance permit for determination on the need for a commercial entrance.

The motion carried 6-0, with Mr. Martella abstaining.

SPECIAL PERMIT #SPPT05-SC-020, RAYMOND SCHNEIDER (OWNER / MICHAEL CATLETT (APPLICANT)

Applicant is seeking special permit approval to operate a professional office of six or less employees for a construction management business on the property, PIN #6038-87-1272-000, located at 1548 Easton Lane, Scott District, Middleburg, Virginia.

Mr. Hodge stated the adjoining property owners' notification letter was mistakenly sent out with the wrong BZA meeting date; therefore, the BZA could not take action on the application.

ZONING APPEAL #ZNAP05-CR-001, JOHN AND CAROLYN FAGNANI (OWNERS)

Owners are appealing the Zoning Administrator's determination of zoning violations, PIN #7925-26-4133-000, located at 7130 Rogues Road, Cedar Run District, Nokesville, Virginia.

Ms. Johnson asked that the BZA dismiss the case because an agreement with the appellant has been reached and there was no longer an issue to be appealed.

Merle Fallon, attorney, representing the appeal stated that for the record the Zoning Administrator withdrew her opinion. He stated that the appellants agree that they must comply with the special permit previously issued.

Mrs. Bowen recused herself from any discussion or vote on this appeal.

On a motion made by Mrs. Mailler and seconded by Mr. Tufts, the BZA moved to dismiss the case as requested by the Zoning Administrator.

The motion carried 6-0, with Mrs. Bowen abstaining.

OTHER BUSINESS

Mr. Hodge stated that Edward and Betty Wheaton submitted a letter asking the BZA to reconsider the decision on their application for a variance.

On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the BZA moved to uphold its decision on the application.

Mrs. Bowen stated that there were several inaccuracies in the letter dated January 17, 2005 signed by Mrs. Wheaton. She stated for the record that the Acting Deputy County Attorney gave advice to the BZA because not all members were aware of the Virginia Supreme Court's ruling on variances. The Virginia Supreme Court's decision was not two weeks ago but occurred in April 2004 and nothing had changed since then regarding that decision.

There was discussion on the proper type of motion. Mrs. Gallehr explained that the BZA needed to decide whether or not to rehear the case, with someone making a motion to reconsider. If the BZA decided to reconsider the case, then at the next meeting the issue could be heard and a motion to uphold the prior decision, or change the prior decision, could be made.

Mr. Martella asked what the standard was under which the BZA can grant a motion for reconsideration. Ms. Gallehr stated that the BZA could rehear any matter; but, the motion to rehear typically is brought by somebody who voted with the majority on the previous motion.

Mr. Meadows asked the BZA if there was a motion to rehear the case.

Mr. Guerra made a motion to rehear the case. Mr. Meadows asked if there was a second. Mr. Meadows stated that having no second the motion dies. Mr. Guerra stated that under Robert's Rules of Order governing small meetings a second is not necessary for discussion. Mr. Meadows asked Ms. Gallehr for clarification. Ms. Gallehr stated that under the applicable Robert's Rules of order, a second is needed in order for discussion to proceed. However, the BZA has the authority to suspend Robert's Rules of Order so that discussion and a vote can proceed.

Mr. Meadows asked for a vote on Mr. Guerra's motion.

AYES: Mr. Guerra

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

ABSTAINED: None

The motion did not carry with a vote of 1-6.

By-Laws: The BZA discussed amending the by-laws. There was discussion on the election of officers, definition of majority, and what addition of the Robert's Rules of Order is used.

Mrs. Mailler suggested changing the by-laws so that the election of officers takes place in January with the officers taking position in February. There was general discussion about the advantages of members taking office in different months.

There was a motion made by Mr. Guerra but no second was made to amend Article 6 of the By-Laws. Ms. Gallehr advised the BZA that a discussion could be held by a majority vote. The BZA discussed adding “as amended” to Article 6 pertaining to Robert’s Rules of Order. The BZA asked staff to bring back an amended version of Robert’s Rules for consideration.

Mr. Meadows asked Ms. Johnson about the wording of a condition under Section 5-203.9 of the Zoning Ordinance, in particular the word “may”. Ms. Johnson stated that that was the wording in the Zoning Ordinance. Ms. Gallehr stated to clarify or change “may” to “shall” would require a text amendment. Mr. Meadows asked Ms. Johnson to prepare an amendment and present it to the Planning Commission.

ADJOURNMENT: There being no further business before the BZA, the meeting was adjourned at 2:59 P.M.

Mr. John 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 year.