

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
JUNE 2, 2005**

AN ADJOURNED MEETING OF THE FAUQUIER COUNTY BOARD OF ZONING APPEALS WAS HELD JUNE 2, 2005 AT 10:45 A.M. IN 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; and Mr. Roger R. Martella, Jr. Also present were Mr. Todd Benson, Assistant Zoning Administrator; and Mr. Fred Hodge, Senior Planner.

Mr. Hodge reviewed the site visit agenda. He stated that there was only one site visit which would be held as follows:

1. Qureshi Animal Park and Petting Zoo at 11:00a.m.

With no further business, the meeting was adjourned at 11:36a.m., to reconvene at 2:00p.m. at 10 Hotel Street, Warren Green Meeting Room, Warrenton, Virginia.

MEETING:

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, June 2, 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. Kimberley Johnson, Zoning Administrator; Mr. Todd Benson, Assistant Zoning Administrator; Mr. Fred Hodge, Senior Planner; and Mrs. Debbie Dotson, Office Associate III.

MINUTES: On a motion made by Mr. Martella and seconded by Mrs. Mailler, the BZA moved to approve the May 5, 2005, minutes as amended:

- page 3, condition #11 should read "No music on Sundays before 1:00pm".

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-CR-025, A. W. & WILLIAM C. PATTON
(OWNERS) / LEE HOLLANDER (APPLICANT)**

Applicant is seeking special permit approval to locate a recreational shooting range on the property, PIN #7819-66-3353-000, located on Midland Road, Cedar Run District, Midland, Virginia.

Mr. Benson reviewed the staff report and introduced into the record a zoning map, a copy of which is attached to and made a part of the minutes, showing the location of possible houses within a two mile area of the Range 82 location. He provided to the BZA members a list of revised conditions submitted by the applicant for review if the application should be approved, a copy of which is attached to and made a part of the minutes.

Mr. Martella asked Mr. Benson if there was a representative from the Airport Committee present. Mr. Martella expressed disappointment in the letter received from the Airport Committee which did not address specific concerns the Committee had on proposed Range 82.

Mr. Meadows stated that the public hearing was closed on May 5, 2005. He asked the BZA members if they had questions of the applicant or staff.

James Downey, attorney, appeared representing the application.

Mrs. Bowen asked that the owner, Mr. Patton, show on the zoning map (introduced earlier by staff) other parcels that are owned by Mr. Patton and any family members.

Mr. Martella asked Mr. Downey if he had received a copy of the letter from the Airport Committee. Mr. Downey stated he had and stated that he was disappointed that there were no specific concerns listed. He stated that if there were any specific concerns he would have been able to propose conditions to address the concerns.

Mr. Martella stated that the letter talked about the potential for accidental discharge of firearms, reckless use of firearms, and firearms being fired at more vertical elevations. He asked Mr. Downey to respond to this. Mr. Downey stated that the "no blue sky" is the measure that addresses the concern. He stated that the safety course was another step, Range personnel on site monitoring situations, and the ability of staff to turn away anyone at their own discretion are other measures that address the concern.

Lee Hollander, applicant, appeared representing the application. He stated that another measure addressing that concern was eliminating the skeet and trap shooting ranges which was one of the revised conditions submitted to the BZA.

Mr. Meadows asked how long patrons would be there and if there would be more than 100 patrons in one day. He stated concerns with traffic. Mr. Hollander stated with the proposed changes made to the application that he did not expect more than 75 patrons and those patrons would probably be there the length of the day.

David Lux, applicant, appeared representing the application. He stated that by reducing the number of ranges and eliminating skeet and trap shoot ranges reduces the number of patrons.

Mr. Meadows asked each member if there were any more questions of the applicant. All members stated they did not have any further questions.

On a motion made by Mr. Van Luven and seconded by Mr. Guerra, the BZA 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.
3. Aircraft and bullets don't mix. Allowing the range as proposed in the airport safety and impact zone creates too much of a risk.

Per County records, currently the airport supports 35 – 40,000 operations annually. This figure is estimated to increase to 86,000 per year by 2012.

Depending on wind direction, left turns from the airport runway place aircraft directly over the proposed range property. This will be particularly hazardous and disturbing to student pilots doing the “Touch and Go” portion of their training, when the aircraft is at low altitude and in control of the trainee.

There is always a risk of accidental discharge of a firearm. A .38 caliber handgun bullet can travel in excess of a mile, a 30-06 rifle, commonly used for deer hunting, can send a bullet in excess of three miles.

I am certain that everyone in this room has heard of or read about cases of death, damage, or serious injury because some person with a firearm did not know the gun was loaded or accidentally discharged a firearm in the wrong setting, i.e. parking lot, assembly area, etc.

The FAA provided the County guidance for the safety of the airport and related operations. As a result, Fauquier County established the Airport Safety and Overlay District, and published Article 4, Part 5 of the Fauquier County Zoning Ordinance. That Ordinance prohibits any type of activity that would endanger or interfere with the landing, take off, or maneuvering of aircraft, in the vicinity of, and intending to use the airport.

Given even a slight risk to those aeronautical activities, I do not feel the BZA can make a valid determination or finding that the use as proposed will not impact the safety of flight operations.

Mr. Meadows asked if there was any discussion.

Mr. Guerra stated that this was not a typical metes and bounds application that the BZA is accustomed to, and that this application really impacts the community. He stated that this is a wrong application for this area and this application does not benefit the County at all. He stated the residents in the area do not want this use and that the speakers for the application do not live in the area. There are now three shooting ranges within a 10-mile radius of Rt. 17 and Rt. 28 in the southern end of Fauquier County.

Mr. Meadows asked for a vote on the motion by a show of hands.

Ayes: Mrs. Mailler, Mr. Van Luven, Mr. Guerra

Nays: Mr. Tufts, Mr. Martella, Mrs. Bowen, Mr. Meadows

Abstained: None

Absent: None

The motion was denied 3-4.

Mr. Meadows asked if there was any discussion before another motion was made.

Mrs. Bowen stated that this is a land use decision to be made in accordance with the requirements of the Zoning Ordinance.

Mr. Martella stated that the first time the application came before the BZA he voted against it because what was proposed was what was not intended by the Board of Supervisors when they passed the Ordinance. He stated that the application submitted by the applicants the second time was changed substantially so that now it does fit what was intended by the Ordinance. Mr. Guerra does raise significant concerns that he shares regarding the impact to the local community. Mr. Martella stated that this is something that is permitted by the Ordinance but at the same time the BZA has an obligation to enforce conditions that would protect the community.

Mr. Tufts agreed with Mr. Martella.

Mr. Meadows added that the Zoning Ordinance allows for an application like this to be on a 50-acre parcel; this parcel is 240 acres. He noted the application must meet standards and that the BZA can establish conditions. Mr. Meadows stated that should there be another motion to grant the permit, then the BZA needs to work very hard on conditions. He noted that the conditions could be worked on prior to another motion being made.

On a motion made by Mr. Van Luven and seconded by Mrs. Bowen, the BZA moved to discuss conditions to be placed on the special permit should there be a motion for approval during this meeting.

The motion carried 6-1, with Mr. Guerra voting against.

Mr. Meadows started the discussion with Condition #1 listed on the Pattern Motion for Approval, dated June 2, 2005, and discussion went as follows:

Condition #1 – Operation of the shooting range shall be consistent with the application, including the Special Plat entitled “Range 82” prepared by Carson-Harris & Assoc. LLC and dated March 1, 2005, except as modified by these conditions.

No changes made to condition #1.

Condition #2 – Prior to commencement of operations, the applicant shall file with the Zoning Administrator a lead management plan consistent with “Best Management Practices for Outdoor Ranges” published by the U.S. Environmental Protection Agency (EPA).

No changes made to condition #2.

Condition #3 - In addition to normal landscaping and stormwater management requirements imposed by the County, landscaping and stormwater management shall be designed, installed, and maintained to control lead in a manner consistent with “Best Management Practices for Outdoor Ranges” published by the U.S. Environmental Protection Agency (EPA); the County Engineer shall determine consistency.

There was discussion about having the County Engineer submit a report to the Zoning Administrator and having the Zoning Administrator make the final ruling on this condition, as typically this is a function of the Zoning Administrator.

Condition #3 was amended to read: “In addition to normal landscaping and stormwater management requirements imposed by the County, landscaping and stormwater management shall be designed, installed, and maintained to control lead in a manner consistent with “Best Management Practices for Outdoor Ranges” published by the U.S. Environmental Protection Agency (EPA); **the Zoning Administrator shall determine consistency based upon a report filed by the County Engineer.**”

Condition #4 - With the exception of clearing required to place the shooting ranges in the wooded areas on the site; existing vegetation will remain on the property to the extent practicable.

No changes were made to condition #4.

Condition #5 - This permit is subject to the Virginia Department of Health's approval of well and septic for the facility.

No changes made to condition #5.

Condition #6 - This permit is subject to VDOT approval of the entrance and/or other road improvements associated with accessing the site from State Route 610.

No changes made to condition #6.

Condition #7 - No food preparation facilities shall be on site.

No changes made to condition #7.

Condition #8 - The maximum number of concurrent patrons and personnel shall not exceed one hundred (100).

There was discussion on this condition about the maximum number of patrons and personnel that should be allowed. It was suggested that the limit pertain not to personnel but rather to patrons, and that patrons be limited by day rather than "concurrently" to better control potential impacts.

Condition #8 was amended to read: **"The maximum number of patrons per day shall not exceed seventy-five (75)."**

Condition #9 - This Special Permit approval does not remove any Site Plan, Administrative Special Permit, Special Permit or Special Exception approval required for specific uses, pursuant to Article 3 of the Zoning Ordinance.

No changes made to condition #9.

Condition #10 - Rifle and pistol target ranges shall have divider barriers and backstops shall be faced with sand berms.

No changes made to condition #10.

Condition #11 - A "Range Safety Officer" or "Range Master" shall be present at each range during shooting activities.

No changes made to condition #11.

Condition #12 - Weapons on Range 82, LLC shall be limited to hand guns, rifles, shotguns, longbows, compound bows, and air guns.

There was discussion prohibiting shotguns from the Range. However, condition #12 was left unchanged.

Condition #13 - The single point 200 yard precision shooting range shall employ a “no blue sky” type design.

Condition #13 was deleted because other conditions now address this issue.

Condition #14 - Noise levels shall meet the Fauquier County Zoning Ordinance standard for non-residential lots.

There was discussion about setting a decibel level and how this condition would be enforced. There was concern that the 80 decibels permitted for residential/rural areas might be excessive since this use generated noise not normally anticipated in rural/residential areas and was ongoing throughout the day rather than sporadic.

On a motion made by Mr. Guerra and seconded by Mr. Van Luven, the BZA moved to set the decibel level at 60 db.

The motion carried 5-2, with Mrs. Bowen and Mr. Tufts voting against.

Condition #14 was amended to read: “**Noise levels shall not exceed 60 decibels at lot line.**”

Condition #15 - No firearms or ammunition shall be stored on the Range 82 site.

There was discussion about the sales of firearms not being allowed.

Condition #15 was amended to read: “No firearms or ammunition shall be stored on the Range 82 site **and no firearm sales shall be permitted on the Range 82 site.**”

Condition #16 - A groundwater monitoring well shall be established at a location approved by the County Engineer. Prior to commencement of operations, the applicant shall test the ground water for lead and file the results with the Zoning Administrator. An annual lead test shall be made thereafter and the results filed with the Zoning Administrator.

There was discussion about the number of times a lead test should be performed. There was also discussion about how to handle the results.

Condition #16 was amended to read: “A groundwater monitoring well shall be established at a location approved by the County Engineer. Prior to commencement of operations, the applicant shall test the ground water for lead and file the results with the Zoning Administrator. **A quarterly** lead test shall be made thereafter and the results filed with the Zoning Administrator.”

On a motion made by Mr. Martella and seconded by Mr. Van Luven, the BZA moved to add a condition as follows:

“Range 82 must comply with all Federal, State and Local environmental laws and regulations and provided that any violation of such Federal, State and Local environmental laws and regulations shall be deemed a violation of the special permit.”

The motion carried 7-0.

Condition #17 - Prior to commencement of operations, the applicant shall test the stormwater runoff for lead and file the results with the Zoning Administrator; the sample shall be taken at a location approved by the County Engineer. An annual lead test shall be made thereafter and the results filed with the Zoning Administrator.

There was discussion about the number of tests per year.

Condition #17 was amended to read: “Prior to commencement of operations, the applicant shall test the stormwater runoff for lead and file the results with the Zoning Administrator; the sample shall be taken at a location approved by the County Engineer. **A quarterly** lead test shall be made thereafter and the results filed with the Zoning Administrator.”

Condition #18 - No use shall be made of any land or water in such a manner as to:

- a) Create electrical interference with navigational signals or radio communications between the airport and aircraft;
- b) Diminish the ability of pilots to distinguish between airport lights and other lights;
- c) Result in glare in the eyes of pilots using the airport;
- d) Impair visibility in the vicinity of the airport;
- e) Create the potential for bird strikes;
- f) Otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft in the vicinity of and intending to use the airport; and
- g) No structure shall exceed 150 feet in height.

No changes made to condition #18.

Condition #19 - Events must be separately permitted under Fauquier County Zoning Ordinance Section 3-309.

No changes made to condition #19.

Condition #20 - “No blue sky” technology shall be employed on all rifle and pistol venues.

This condition was deleted because the issue is addressed in a separate condition.

Condition #21 - The following weapons are prohibited: fully automatic weapons, handguns above .45 caliber, rifles above .30 caliber, and black powder weapons above .54 caliber.

There was discussion about the appropriate caliber for black powder weapons; no changes made to Condition #21.

Condition #22 - This permit is valid for [ten] [five] [three] years.

There was discussion about the time period on the permit and about the renewal process at the end of the proposed time period.

Condition #22 was amended to read: **“This permit is valid for five (5) years and to be administratively renewed annually for periods of five (5) years thereafter.”**

Condition #23 - Shooting hours of operation shall be: 7:00 a.m. until thirty minutes prior to sunset on Monday through Friday; 8:00 a.m. until thirty minutes prior to sunset on Saturday; and, on Sunday, 12:00 p.m. until thirty minutes prior to sunset or 6:00 p.m., whichever is earlier. During hours of operation, as set forth above, automatic bursts of fire shall be limited to the hours of 9:00 a.m. until 5:00 p.m.

There was discussion at this point to incorporate the new conditions proposed by applicant and to change the starting time of shooting.

Condition #23 was amended to read: **“Shooting hours of operation shall be limited to Monday through Friday 9:00am to thirty (30) minutes before sundown; Saturday 12:00pm through 6:00pm; and no range use on Sundays.”**

The following additional conditions were added to the above.

- Improvements to enhance safety or mitigate sound may be approved administratively.
- All ranges will be equipped with “no blue sky” structures:
 - a) The 25-yard ranges will be completely covered.
 - b) The 100-yard ranges will be equipped with “no blue sky” style structures at the 100-yard and 50-yard firing lines. These structures will physically limit the direction and angle of fire from those points. The 100-yard range will be completely covered from the 25-yard firing line to the target area.

- The total number of ranges will be limited to four: two 100-yard ranges and two 25-yard ranges. There will be no skeet, trap, or sporting clays courses, thus removing the facilities that were the main concern in the discussions between the Airport Committee's representatives, the FAA and the State Department of Aviation.

There was discussion about including a condition that only members who pass the safety training course use the Range.

The following condition was added:

- Range 82 shall be used only by facility members who complete the safety training course.

On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the BZA moved to go into a closed meeting, pursuant to Code of Virginia Section 2.2-3711(A)(7), for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to Special Permit #SPPT05-CR-025 Range 82.

The motion carried 7-0.

On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the Fauquier County Board of Zoning Appeals, having adjourned into Closed Meeting this day for the purposes stated in the resolution authorizing such Session, does hereby certify that to the best of each member's knowledge (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (2) only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in the Closed Meeting.

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

NAYS: None

ABSTENTION: None

ABSENT: None

Mr. Meadows stated the BZA was back in session.

Mr. Martella stated that, in reviewing the evidence, he had some questions about imposing a 60 decibel limit. He stated that a 75 decibel limit would be feasible from the applicant's perspective and, at the same time, it would be consistent with the sound ordinance in the County.

Mr. Meadows stated that Condition #14 would change to a 75 decibel limit.

On a motion made by Mrs. Bowen and seconded by Mr. Tufts, 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 Board 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. Operation of the shooting range shall be consistent with the application, including the Special Permit Plat entitled "Range 82" prepared by Carson-Harris & Assoc. LLC, and dated March 1, 2005, except as modified by these conditions.
2. Prior to commencement of operations, the applicant shall file with the Zoning Administrator a lead management plan consistent with "Best Management Practices for Outdoor Ranges" published by the U.S. Environmental Protection Agency (EPA).
3. In addition to normal landscaping and stormwater management requirements imposed by the County, landscaping and stormwater management shall be designed, installed, and maintained to control lead in a manner consistent with "Best Management Practices for Outdoor Ranges" published by the U.S. Environmental Protection Agency (EPA); the Zoning Administrator shall determine consistency based upon a report filed by the County Engineer.

4. With the exception of clearing required to place the shooting ranges in the wooded areas on the site, existing vegetation will remain on the property to the extent practicable.
5. This permit is subject to the Virginia Department of Health's approval of well and septic for the facility.
6. This permit is subject to VDOT approval of the entrance and/or other road improvements associated with accessing the site from State Route 610.
7. No food preparation facilities shall be on site.
8. The maximum number of patrons per day shall not exceed seventy-five (75).
9. This Special Permit approval does not remove any Site Plan, Administrative Special Permit, Special Permit or Special Exception approval required for specific uses, pursuant to Article 3 of the Zoning Ordinance.
10. Rifle and pistol target ranges shall have divider barriers and backstops shall be faced with sand berms.
11. A "Range Safety Officer" or "Range Master" shall be present at each range during shooting activities.
12. Weapons on Range 82, LLC shall be limited to hand guns, rifles, shotguns, longbows, compound bows, and air guns.
13. Noise levels shall not exceed 75 decibels at lot line.
14. No firearms or ammunition shall be stored on the Range 82 site and no firearm sales shall be permitted on the Range 82 site.
15. A groundwater monitoring well shall be established at a location approved by the County Engineer. Prior to commencement of operations, the applicant shall test the ground water for lead and file the results with the Zoning Administrator. A quarterly lead test shall be made thereafter and the results filed with the Zoning Administrator.
16. Range 82 must comply with all Federal, State and Local environmental laws and regulations and provided that any violation of such Federal, State and Local environmental laws and regulations shall be deemed a violation of the special permit.
17. Prior to commencement of operations, the applicant shall test the stormwater runoff for lead and file the results with the Zoning Administrator; the sample shall

be taken at a location approved by the County Engineer. A quarterly lead test shall be made thereafter and the results filed with the Zoning Administrator.

18. No use shall be made of any land or water in such a manner as to:
 - a) Create electrical interference with navigational signals or radio communications between the airport and aircraft;
 - b) Diminish the ability of pilots to distinguish between airport lights and other lights;
 - c) Result in glare in the eyes of pilots using the airport;
 - d) Impair visibility in the vicinity of the airport;
 - e) Create the potential for bird strikes;
 - f) Otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft in the vicinity of and intending to use the airport; and
 - g) No structure shall exceed 150 feet in height.
19. Events must be separately permitted under Fauquier County Zoning Ordinance Section 3-309.
20. The following weapons are prohibited: fully automatic weapons, handguns above .45 caliber, rifles above .30 caliber, and black powder weapons above .54 caliber.
21. This permit is valid for five (5) years and to be administratively renewed annually for a period of five (5) years thereafter.
22. Shooting hours of operation shall be limited to: Monday through Friday 9:00a.m. to thirty (30) minutes before sundown; Saturday 12:00pm to 6:00pm; and no range use on Sunday.
23. Improvements to enhance safety or mitigate sound may be approved administratively.
24. All ranges will be equipped with “no blue sky” structures:
 - a) The 25-yard ranges will be completely covered.
 - b) The 100-yard ranges will be equipped with “no blue sky” style structures at the 100-yard and 50-yard firing lines. These structures will physically limit the direction and angle of fire from those points. The 100-yard range will be completely covered from the 25-yard firing line to the target area.

25. The total number of ranges will be limited to four: two 100-yard ranges and two 25-yard ranges. There will be no skeet, trap, or sporting clays courses, thus removing the facilities that were the main concern in the discussions between the Airport Committee's representatives, the FAA and the State Department of Aviation.

26. Range 82 shall be used only by facility members who complete the safety training course.

The motion carried 5-2, with Mr. Guerra and Mr. Van Luven voting against.

The BZA recessed at 3:47.

The BZA reconvened at 3:55.

ZONING APPEAL #ZNAP05-MA-003, MICHAEL PRENTISS (OWNER)

Owner is appealing the Zoning Administrator's interpretation as to how many lots are allowed on a large lot division on an adjoining property, PIN #6972-51-9166-000, located on James Madison Highway and Lees Mill Road, Marshall District, Warrenton, Virginia.

NOTE: Not a public hearing.

Mr. Hodge stated that this application was not a public hearing but a public meeting.

Kimberley Johnson, Zoning Administrator, stated that she would give a brief overview of the issue and the basis for her decision. She asked that the remainder of the ten minutes be reserved until after the appellant makes his argument. She stated the question before the BZA today is the number of lots allowed on a 715-acre parcel under the large lot provisions of the Zoning Ordinance. The parcel is owned by Chuck Rice of Superior Construction and he submitted an application last fall to divide the parcel into 13 large lots. Ms. Johnson stated that she determined that the 13 large lots were permitted under the regulations of the Zoning Ordinance, whereas the appellant believes that no more than 6 lots are allowed under the large lot regulations of the Zoning Ordinance.

Ms. Johnson explained that deed research was performed back to before 1968 and shows that this parcel was a 320-acre parcel pre-1968. It remained a 320-acre parcel until 1998 when a boundary line adjustment of about 400 acres increased the size to about 715 acres.

The applicant, Chuck Rice/Superior Construction, is proposing a large lot division, which has different rules than the standard subdivision under the Zoning Ordinance. The large lot division is an alternative form of dividing property that is available only to parcels that are zoned rural agriculture and rural conservation. The rules for large lot are contained in Section 2-310 of the Zoning Ordinance. The large lot provision was changed in October 2004. This application was filed pre-October 2004 and therefore the rules that apply in this case are the pre-October 2004 rules. There is no disagreement about this. Mrs. Johnson read a portion of pre-October 2004 Section 2-310 of the Zoning

Ordinance, as follows: “As an alternative to division in accordance with the sliding scale zoning density set forth in Section 2-308, any parcel zoned RA or RC which was of record as of May 21, 1981, and which is 100 acres or larger may be divided into lots of no less than 50 acres.” She stated that the provision sets forth two criteria for large lot division. The two criteria set forth are: 1) was the lot more than 100 acres, 2) was the lot a lot of record in 1981. Ms. Johnson stated that the answer to the first question is yes. She noted that the answer to the second question is a bit harder to answer, but emphasized that the answer was either ‘yes’ or ‘no.’ If the answer is ‘yes’ and a lot was a lot of record, large lot division can be done. If the answer is ‘no’ because a lot was not of record in 1981, large lot division cannot be done. She stated that her determination was based on the conclusion that the subject property was a lot of record in 1981. The lot did exist in 1981, although as a smaller lot. She noted the lot was 315-acre in 1981 whereas today it is 715 acres because it grew in size through a boundary line adjustment. Ms. Johnson stated that a boundary line adjustment is not a division; it does not create a new parcel but rather adjusts the boundaries of an existing parcel. Ms. Johnson noted that if her determination was wrong, and the answer to the second criteria is ‘no,’ the lot was not a lot of record in 1981, then the lot cannot be divided at all by large lot division and both Mr. Foote and I are incorrect.

She reiterated, if the lot was a lot of record in 1981, then it can be divided into 50 acre lots; if the lot was not a lot of record in 1981, then it cannot be divided into 50 acre lots through the large lot provisions.

Ms. Johnson noted that there is nothing in the Zoning Ordinance that limits division of a qualifying parcel. The appellant disagrees and cites Section 2-308. Ms. Johnson argued that Section 2-308 presents the rules for a different type of division, which has nothing to do with the question at hand.

Ms. Johnson noted that her conclusion is, in fact, supported by what appears to be the practice in the Planning Office of processing and approving large lot divisions over the last ten years. The Planning Office does not check to see if a boundary line adjustment has been done when they process a large lot subdivision. It is an irrelevant fact which they do not check. In addition, they have in fact approved a number of large lots that have used land that had been boundary line adjusted in. She stated that she pulled eight large lot applications that were easily accessible. Of those eight, two included land that was boundary line adjusted in. When you interpret an Ordinance, the first rule is that you go with the plain language. If the plain language is clear, you go with the plain language. In this case, we have relatively straight forward plain language. She asked that the BZA uphold her determination and give her a chance to respond to the appellant.

Mr. Martella asked how the additional 400+ acres come into the possession of Mr. Rice. Ms. Johnson stated that it was purchased when a boundary line adjustment was done. Mr. Martella asked what she thought was the purpose of the second requirement being put into the Section. Ms. Johnson stated that the 1981 date establishes a point at which you must choose large lot development or sliding scale. Once you start to do other divisions with your property, you have limited your options. Mr. Martella stated that

when he sees a date like this that it is intended to be something of a grandfather provision for lots that existed as of May 21, 1981. Ms. Johnson stated this is true, that not just the large lot provisions but also the regular subdivision provisions utilize the 1981 date to establish a benchmark for divisions. She stated that the intention of the Board of Supervisors was to fix in time the number of lots that could be created. But the fact that they used the same date to start the new rules for the two different types of division, doesn't mean that the procedures are otherwise the same.

Mr. Martella asked if he concluded that the 400 acres are not covered by this provision because they were not of record in 1981, would it be true that this large lot provision would apply to the initial 300+ acres and the remainder could be subdivided utilizing other procedures. Ms. Johnson stated that no; the residual 400 acres could then not be divided at all. It has no rights of division under any method. Ms. Johnson then noted that this was the case with the Pre-October 2004 rules under which this interpretation was made, but that she would have to confirm that this would still be the case today under the revised language of October 2004.

Mr. Martella asked Ms. Gallehr if Mr. Rice has an interest in presenting his views at this meeting. Ms. Gallehr stated that Mr. Rice has no ability to speak at this appeal because the appeal was filed by Mr. Prentiss' attorney.

John Foote, attorney for applicant, roughly drew the original parcels to show how the lots existed and how the boundary line adjustment created the 715 acre parcel. He stated that Mr. Rice was able to benefit from the grandfathered provision in the revised large lot division that took place in October 2004. He stated that the appellant's position is that there were a certain number of divisions available on the 300+ acre parcel which existed in 1981. The 400+ acres boundary adjusted in was not a parent parcel anymore and had no rights. The critical question is 'what is the parent parcel?' Mr. Foote noted that the parent parcel concept is not a classic grandfather provision but it was used by the Board of Supervisors to freeze parcels in the County for the calculations of further by-right divisions.

Consequently, if you look at the Ordinance now with respect to either sliding scale or large lot alternative, the critical question in each case is what was the parent parcel on May 21, 1981. Whatever ultimate implications the BZA determines from this boundary line adjustment, the fact of the matter is that when the survey plat was submitted for the boundary lot adjustment there was no longer a parent parcel as of 1981. That parcel is now a whole parcel that did not exist in 1981. Mr. Prentiss maintains that the parent parcel is 315 acres, not 715. Density rights were not enhanced through the boundary line adjustment. The density rights that apply are what were available to the parent parcel that existed in 1981. Mr. Foote stated that the critical language in the Section 2-310 of the Zoning Ordinance is: "As an alternative to division in accordance with the sliding scale zoning density set forth in Section 2-308, any parcel zoned RA or RC which was of record as of May 21, 1981, and which is 100 acres or larger may be divided into lots of no less than 50 acres." The fact that you must focus on is what the parent parcel was in 1981. The boundary line adjustment has no bearing here. Whatever else happened in

this case, the parent parcel disappeared. Mr. Prentiss does not assert that there are no division rights associated with this property; but what he maintains is the division rights the lot possess is for the 6 lots on the original 315-acre. He further argued that the County cannot permit 13 lots and spread them over the 715-acre parcel because that would be inconsistent with the very concept of the parent parcel. Regarding the other cases referenced by Ms. Johnson, Mr. Prentiss argued that prior practice that is inconsistent with the Ordinance is not controlling. Prior practice may instruct you but it cannot and does not bind the BZA. The question is what does the Ordinance mean today in this set of circumstances. In summary, Mr. Prentiss contended that the 400 acres that was boundary line adjusted into this property does not import development rights that may now be spread across the 700 acres because it was not a parent parcel in 1981. The critical question is whether the BZA must simply ignore the boundary line adjustment and conclude that it really made no difference that the 300-acre parcel could magically grow to a 700-acre parcel without the effect within the meaning of the parent parcel language in the Ordinance.

Michael Prentiss, applicant, appeared representing the application. He stated that he found it somewhat troubling in the sense that he had several meetings with Ms. Cook and she assured me that this was not allowed to be broken into 13 parcels. She stated that this was clearly consistent with the practice of the County in the past. He stated the second thing was that he had the opportunity to purchase the parcel and, out of respect to Mr. Rice, he stepped aside because he thought the intent was for the parcel not to be divided.

Mr. Foote stated that he neglected one practical matter, reversal of the Administrator's decision would simple be to stay that there are division rights but that be subject to the new ordinance that the BOS has adopted respective to large lot division because the old subdivision submitted in October would no longer be valid if you reverse the decision.

Ms. Johnson stated that she agreed with much of what Mr. Foote said except for one critical element: Mr. Foote spoke of the Parent Parcel concept being the critical question yet the large lot provisions do not include any language about a parent parcel. The rationale Mr. Foote presents is the rationale that applies for sliding scale division, which is based on the size of the parent parcel in 1981. The large lot provisions do not use this same language; rather only ask if a parcel was of record in 1981. The size of the parcel in 1981 is irrelevant therefore in considering large lot division. There are two different ways to divide land in the County. Sliding scale is Section 2-308. This section talks about a parent parcel. Large lot is Section 2-310. Each is a different section, with different language. The only thing these sections have in common is the date. The language of the sliding scale explicitly states you go to the size of the parent parcel in 1981. The language for large lot is explicitly different, stating only that you determine if the lot existing in 1981. To include that different language has the same meaning in each case is incorrect application of law. By using different language, the Board clearly intended something different.

Ms. Johnson also clarified that the letter mentioned by Mr. Prentiss came from the Zoning staff; it is a subdivision potential letter which states that up to 13 lots could be

developed under the sliding scale rules. The letter did not address large lot division, and the letter is completely consistent with this determination.

On a motion made by Mrs. Bowen and seconded by Mrs. Mailler, the BZA moved to postpone action on this appeal until the August BZA meeting.

Mr. Martella asked that a hypothetical be given some thought from both sides and presented as follows: if the BZA decided to conclude that the large lot ordinance applied only to the 315 acres, how would that determination affect the 400 acres.

The motion carried unanimously.

The BZA recessed at 4:29p.m.

The BZA reconvened at 4:35p.m.

SPECIAL PERMIT #SPPT05-LE-031, ALI AND RUTA QURESHI (OWNERS)

Owners are requesting special permit approval to locate an animal park and petting zoo on the property, PIN #6888-27-1435, located at 11471 Kings Hill Road, Lee District, Bealeton, 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.

Ali Qureshi, applicant, appeared representing the application and noted agreement with the staff report.

Mrs. Mailler stated to the applicant that a better site plan needed to be submitted indicating the new parking area and addressing a couple of areas that appear to be too close to the property line.

Ruta Qureshi, applicant, appeared representing the application. She stated that the site plan submitted was a conceptual site plan and that a formal site plan would be submitted for approval after this approval step.

Mrs. Bowen asked the applicants about the amphitheatre shown on the plat. Mrs. Qureshi stated that it only consisted of benches and was small area where animals could be brought in for children to see.

Mr. Meadows stated that the application presented as is was incomplete and would like to have more details provided.

Mr. and Mrs. Qureshi stated their frustration with this process and not having it move forward today but that a 90-day postponement would have to be acceptable.

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

On a motion made by Mrs. Mailler and seconded by Mr. Van Luven, the BZA moved to postpone the application for up to 90 days at the applicants' request.

The motion carried unanimously.

ADJOURNMENT: There being no further business before the BZA, the meeting was adjourned at 5:04 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.