

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
AUGUST 4, 2005**

**AN ADJOURNED MEETING OF THE FAUQUIER COUNTY BOARD OF
ZONING APPEALS WAS HELD AUGUST 4, 2005 AT 9:45 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; Mr. Serf Guerra; and Mr. Roger R. Martella, Jr. Also present was Mr. Fred Hodge, Senior Planner.

Mr. Hodge reviewed the site visit agenda. He stated that there would be four site visits which would be held as follows:

1. Dennis G. Hite property at 10:00a.m.
2. Belvoir Assembly of God at 10:30a.m.
3. Piedmont Investment, LC at 10:45a.m.
4. Judith & Todd Heflin property at 11:15a.m.

With no further business, the meeting was adjourned at 11:25a.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, August 4, 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 Mrs. Mailler and seconded by Mr. Tufts, the BZA moved to approve the July 7, 2005, minutes as amended:

- page 5, eliminated Condition #3 of the Fauquier SPCA special permit;
- page 6, correct “piers” to “peers”;
- page 7, correct “closed” to “close”.

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.

ZONING APPEAL #ZNAP05-MA-003, MICHAEL PRENTISS (APPELLANT)
Appellant 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 noted that the public meeting was held last month. He stated that there was a request from Mr. Rice, the owner of the property upon which the decision had been rendered, to allow his attorney to speak briefly at this meeting.

Mrs. Johnson, Zoning Administrator, reviewed the opinion she presented to the BZA last month and addressed the additional materials submitted by the appellant since the last meeting.

Robin Gulick, attorney for Mr. Rice, noted his agreement with Ms. Johnson's interpretation and asked that the BZA uphold Ms. Johnson's decision.

John Foote, attorney for Mr. Prentiss, reviewed the opinion he presented to the BZA last month and also reviewed the new material he had submitted.

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 Appeal #ZNAP05-MA-003, Michael Prentiss (Appellant).

The motion carried unanimously.

The Fauquier County Board of Zoning Appeals, having adjourned into a closed meeting this day for the purposes stated in the resolution authorizing such meeting, 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.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Van Luven, seconded by Mr. Tufts.

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

NAYS: None

ABSTENTION: None

ABSENT: None

On a motion made by Mr. Guerra and seconded by Mrs. Mailler, the BZA moved to affirm the decision of the Fauquier County Zoning Administrator in Appeal #ZNAP05-MA-003, after due notice and hearing as required by the Fauquier County Code and Code of Virginia, finding that the interpretation of Section 2-310 of the Fauquier County Zoning Ordinance by the Zoning Administrator is correct.

AYES: Mrs. Bowen, Mrs. Mailler, Mr. Guerra, Mr. Meadows

NAYS: Mr. Martella, Mr. Van Luven, Mr. Tufts

ABSENT: None

The motion carried 4-3-0.

SPECIAL PERMIT #SPPT05-CR-032, DENNIS G. & MARY L. HITE (OWNERS)

Owners are requesting special permit approval to locate a small contracting business on their property as a home occupation, PIN #7923-39-1149-000, located at 4115 Dumfries Road, Cedar Run District, Catlett, 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.

Dennis Hite, owner, appeared representing the application and noted disagreement with some of the facts related to the violation.

There was discussion between Mr. Hite and the BZA members about the violation letters received, unlicensed vehicles on site, possibility of farming the land, and setting up a meeting with Chief Myer from Emergency Services.

Mr. Meadows asked if there were any speakers for or against the application.

Robert Hughes, neighbor, appeared opposing the application, citing three concerns: 1) potential oil leakage into the well systems, 2) decrease in the value of the surrounding properties, and 3) agricultural-zoned parcels not being used agriculturally.

On a motion by Mr. Van Luven and seconded by Mr. Tufts, the BZA moved to continue the public hearing for up to 60 days to allow for an evaluation of the site by Emergency Services personnel and receipt of any additional comments arising from the evaluation.

Mrs. Bowen suggested to Mr. Hite that the postponement would allow him time to come into compliance on any zoning violations.

The motion carried unanimously.

SPECIAL PERMIT #SPPT05-SC-035, BELVOIR ASSEMBLY OF GOD
(OWNER)

Owner is requesting special permit approval to expand an existing place of worship by locating a detached modular structure on the property, PIN #6979-68-3851-000, located at 4180 Belvoir Road, Scott District, Marshall, 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.

Brook Hicks, representative, appeared representing the application and noted agreement with the staff report.

There was discussion about the location, landscaping, and appearance of the trailer.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

On a motion made by Mr. Tufts and seconded by Mrs. Bowen, 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. A freestanding sign up to 20 square feet is approved.
2. The use shall be in general conformance with the special permit application plat and materials submitted with the amendment application.

The motion carried unanimously.

ZONING APPEAL #ZNAP05-CT-006, EC INVESTORS, L.L.C. (OWNER)

Owner is appealing a Zoning Administrator's decision regarding development potential, PIN #7904-66-5674-000 and #7904-56-3583-000, located on Dumfries Road, Center District, Warrenton, Virginia. **NOTE: Not a public hearing.**

Kimberley Johnson, Zoning Administrator, provided a summary of the issue and of the basis for her decision, as set forth in her memo to the BZA.

Mr. Meadows asked if the BZA members had any questions.

Mr. Martella asked whether the text amendment before the BOS on boundary line adjustments had any impact on this issue. Ms. Johnson answered that the text amendment as currently proposed has no impact, but the BOS could always change the text before approval.

Merle Fallon, attorney representing EC Investors, noted agreement with Ms. Johnson on the facts of this case and that he had filed the appeal in order to preserve his client's rights in the matter now filed before the Circuit Court. He reviewed his case and asked that the BZA make a decision based on the current law, and not the law as the BOS may change it with the text amendment. Mr. Fallon noted that he had asked Ms. Johnson to provide examples of other cases where density credit was not given for boundary line adjustments to substantiate that this administrative interpretation was not new.

There was discussion about long standing administrative determinations, time period to decide the appeal, and additional information being provided. Ms. Bowen requested that the Zoning Administrator provide examples of other cases involving boundary line adjustments.

On a motion made by Mr. Guerra and seconded by Mr. Van Luven, the BZA moved to postpone the appeal until the October 6, 2005 meeting.

The motion carried unanimously.

SPECIAL PERMIT #SPPT06-MA-001, PIEDMONT INVESTMENT, LC
(OWNER)

Owner is requesting special permit approval to locate a business office of 11,200 square feet on the property, PIN #6969-79-9311-000, located at the intersection of Main Street and Old Stockyard Road, Marshall District, Marshall, 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.

Chuck Floyd, representative, appeared representing the application and noted agreement with the staff report.

There was discussion about parking spaces and location, Marshall Water Works water taps, and landscaping.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

On a motion made by Mrs. Mailler and seconded by Mrs. Bowen, 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. The site shall be in general conformance with the special permit application drawings and materials submitted with the application, with modifications to the layout allowed as necessary to comply with zoning ordinance requirements.
2. Site plan is required.

The motion carried unanimously.

SPECIAL PERMIT #SPPT06-MA-002, JUDITH M. & TODD W. HEFLIN (OWNERS)

Owners are requesting special permit approval to operate a professional accounting office with three or less employees on the property, PIN #6974-89-2198-000, located at 7353 Iron Bit Drive, Marshall 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.

Judith Helfin, owner, appeared representing the application and noted agreement with the staff report.

There was discussion about staggering appointments, hours, parking, and employees.

On a motion made by Mrs. Bowen 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 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. The use shall operate in general compliance with the descriptive material submitted with the special permit application, and as may be modified by these conditions.
2. The business shall be located within the existing single family dwelling.
3. The hours of operation shall be limited to 8:30a.m. to 7:00p.m. Monday through Friday and 8:30a.m. to 12:00p.m. on Saturday.
4. Client parking shall be restricted to use of the existing driveway serving the single family dwelling. No client parking will be permitted on subdivision streets.
5. Appointments shall be staggered to ensure adequate parking is available in the driveway.
6. The special permit approval is limited to five (5) years as requested by the applicants.
7. The permit is granted with one employee being hired within the five year time period.

The motion carried unanimously.

SPECIAL PERMIT #SPPT06-CT-003, WARRENTON CHURCH OF CHRIST (OWNER)

Owner is requesting special permit approval to host two night outdoor music concerts on church property October 7th and 21st, 2005, PIN #6985-90-1007-000, #6985-90-2124-000, #6985-90-3212-000, #6985-90-4299-000, #6985-90-5480-000, #6985-90-6591-000, #6985-90-7682-000, and #6985-90-8760-000, located at 6398 Lee Highway Access Drive, Center District, Warrenton, Virginia.

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

Bob Counts, representative, appeared representing the application and noted agreement with the staff report. Mr. Counts stated that the applicants have spoken to the Sheriff's Office and Emergency Services.

The BZA discussed that there was no track record of previous events, possibly postponing the hearing, and revoking special permit if applicant did not comply with conditions.

Jon Justice, applicant, appeared representing the application. Mr. Justice stated that it would be easier to cancel a band than to hire one on short notice. He stated that the Elders of the Church would decide on the side of caution and cancel any future events if something major would occur at any of the events.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

On a motion made by Mr. Van Luven 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.
7. The Board of Zoning Appeals finds the type and quantity of traffic generated by the use will not adversely affect the safety of the road usage on Lee Highway Access Road or adversely affect the neighborhood.

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 music events shall be in general conformance with the drawing and information submitted with the special permit application.
2. Hours for the musical performance shall be limited to 9:30 p.m. until the time specified in the County Code, which is 11:00 p.m. on Fridays and Saturdays, on October 7 and October 21, 2005.

3. The stage/performance area shall be oriented so that the musical performance will be directed toward the Lee Highway Access Road and away from residential structures in Warrenton Lakes subdivision.
4. All activity and parking shall be limited to church owned property. No parking will be permitted on Lee Highway Access Road or neighboring streets.
5. The church shall provide for traffic control at Nordix Drive and the Access Road for ingress/egress into the event and shall also arrange for a police car presence along Rt. 29 to provide caution of the event during the length of the event.
6. The church shall notify Emergency Services and the Sheriff's Department of the upcoming event.
7. The church shall provide for uniformed police presence during the event.

The motion carried 5-2, with Mr. Meadows and Mrs. Mailler voting against.

ADJOURNMENT: There being no further business before the BZA, the meeting was adjourned at 4:20 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.