

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
OCTOBER 7, 2004**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, October 7, 2004, beginning at 2:00 P.M. at the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mrs. Margaret Mailler, Chairperson; Mr. John Meadows, Vice-Chairperson; Mr. James W. Van Luven; Mr. Maximilian A. Tufts, Jr.; Mr. J. Mark Rohrbaugh, Jr.; and Mrs. Carolyn Bowen. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberly 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. Van Luven and seconded by Mr. Tufts, the BZA moved to approve the August 5, 2004, minutes as amended:

- page 2, last paragraph, site to '*sight*';
- page 3, paragraph 12, site to '*sight*'; and
- Page 5, paragraph 10, applicant to clarify '*on the lot*' the proposed.

The motion carried unanimously.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the BZA moved to postpone the approval of the September 2, 2004, minutes until the November hearing.

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 applicants have requested the public hearing be deferred until the November 4, 2004, hearing.

On a motion made by Mr. Van Luven and seconded by Mr. Meadows, the BZA moved to defer the public hearing until the next meeting of the BZA.

The motion carried unanimously.

SPECIAL PERMIT #SPPT05-CR-005, DAVID J. LUCASH, LUCASH ENTERPRISES, LLC, (OWNER)

Owner is seeking special permit approval for a contractor's storage yard on the property, PIN #6981-15-9981-000, located at 9566 James Madison Highway, Cedar Run 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. He stated that site plan approval would be required if the special permit is approved.

Dave Lucash, owner, appeared representing the application and stated agreement with the staff report.

Mrs. Mailler stated that development of the site is limited by setback and buffer requirements. Mr. Meadows suggested to Mr. Lucash that the proposed buffering be moved to the boundaries of the property to provide more space for the use and to provide better protection to neighbors.

Mrs. Bowen raised a number of questions about the use and plat. Ms. Bowen indicated that she would like the plat to show whether there will be an office on site, where employee parking is located, all landscaping and lighting, and the exact area of the site that is usable for the use. Mr. Lucash stated that there will be no office on the site. Mr. Lucash stated that no office is planned for site, that no lighting is planned, the disturbed area is under 10,000 sq.ft., no employees will show up at the site on a daily basis, and it is his intention to apply for a dustless surface waiver with the site plan.

Mrs. Mailler asked Mr. Lucash about the trailer parked on the site, noting that it was a zoning violation. She asked Mr. Lucash if the trailer was going to remain on the site. Mr. Lucash explained that he had originally intended to start two different businesses on the site, but because of space limitations, that is no longer an option and he intended to move the trailer off of the property, or incorporate it into the storage yard use.

Mr. Meadows asked Ms. Johnson if the application could move forward with a pending zoning violation on the property. Ms. Johnson confirmed that the trailer is a zoning violation, and stated that it has been the practice of the BZA to defer decision on applications where there is a violation, unless granting the permit was necessary to resolve the violation. She stated that in this case the concept plan does not show the trailer, so BZA approval of a special permit for the use as proposed would not help resolve the violation.

Mrs. Mailler 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 Mrs. Bowen and seconded by Mr. Meadows, the BZA moved to close the public hearing and defer action on the application until the November 4, 2004, hearing.

The motion carried unanimously.

SPECIAL PERMIT #SPPT05-SC-008, CHRIS PEARMUND AND MIKE & MARY ANNE WASSENBERG, PEARMUND CELLARS, (OWNERS)

Owners are seeking special permit approval for winery with minor events on the property, PIN #7906-09-1265-000 and PIN #7906-08-1765-000, located at 6190 Georgetown Road, Scott District, Broad Run, Virginia.

Mr. Hodge stated the public hearing for this application was held and closed last month and that another BZA site visit was made earlier that day. Mr. Hodge reviewed the staff report, a copy of which is attached to and made a part of the minutes. He stated that site plan approval would be required if the special permit was approved.

Mrs. Bowen stated that she would recuse herself from any discussion or vote on this matter because she had made prior decisions on this property when she was the Zoning Administrator for Fauquier County.

Chris Pearmund, owner, appeared representing the application and noted agreement with the staff report.

Mrs. Mailler stated that she had read all the minutes and read all the materials from last month's hearing and she has determined she is qualified to vote on the application today. She stated that the site visit provided the BZA a prospective from both sides of the issue. She noted that noise does carry in the valley and it would therefore be preferable to have events held indoors.

Mr. Meadows stated that the BZA did visit the site earlier today and also visited properties surrounding the winery. He stated that the site visit clearly showed the BZA how the vineyard is located in proximity to the neighbors. He noted that events held indoors would clearly be less impactful to the neighbors with respect to potential noise.

Mr. Rohrbaugh noted that there were speakers located outdoors and asked if they were necessary if events were held indoors. Mr. Pearmund stated that the speakers were for background music during normal operating hours of the winery.

Mr. Meadows asked Ms. Gallehr if it would be appropriate for the BZA to place a decibel level for amplified sound at the property line. Ms. Gallehr stated that if the BZA believes there is ample evidence in the record and from your site visit today that shows noise would be too impactful on the neighborhood, a condition that would alleviate some of the noise problems would be reasonable. Ms. Gallehr also stated that any conditions the BZA puts on noise levels is limited to the use applied for on the special permit (the events).

On a motion made by Mr. Meadows and seconded by Mr. Rohrbaugh, the BZA noted that due notice and hearing, as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009, had been provided, and voted to grant the special permit, with the following findings and conditions:

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 cause an undue impact on the neighbors or adversely affect safety of the road usage on Route 674 (Georgetown Road).

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. Events shall occur indoors within a fully enclosed permanent structure.
2. A maximum of 15 events, with no more than 50 attendees per event shall be permitted.
3. Events shall occur only on Friday, Saturday and Sunday or holidays, ending no later than 10p.m.
4. Measures shall be taken to control dust on the easement leading to the property and on driveways and parking areas within the property; such measures shall be approved to the satisfaction of county staff in conjunction with approval of the site plan.
5. The special permit is issued for a period of three (3) years.

6. At least 30 days prior to each event, the applicants shall provide the Zoning Administrator:
 - A. Proof of coordination with the following agencies:
 1. Fauquier County Sheriff's Office
 2. Virginia Department of Transportation
 3. Fauquier County Emergency Services Coordinator
 4. Fauquier County Health Department; and
 - B. The name, address and a contact person for each individual, group, association, partnership or corporation which is expected to conduct retail sales at the event.
7. Site plan approval shall be secured prior to any events being held.
8. No amplified music is permitted outside during an event.

The motion carried 5-0, with Mrs. Bowen abstaining.

SPECIAL PERMIT #SPPT05-SC-010, KAREN E. COSNER, TRUSTEE (OWNER)

Owner is seeking approval to amend a condition of the special permit approved on April 8, 1999, for a professional office with six (6) or less employees, PIN #7916-14-9773-000, located at 4483 Lee Highway, Scott 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.

Ben Jones, attorney, appeared representing the application and noted agreement with the staff report except for the statement which indicates that Ms. Cosner will continue to operate a real estate business from the property. He noted that statement is incorrect. He also noted agreement with the proposed condition requiring a site plan to include VDOT approval of access with any use other than a real estate office.

Mrs. Mailler asked if there were any speakers for or against the application.

Ronald Fahy, neighbor, appeared opposing the application. He stated that he was present at the 1999 BZA hearing and spoke in opposition then. He stated that Ms. Cosner's argument for the special permit in 1999 was due to a hardship. The BZA approved the special permit due to her hardship, with the condition that if the property was sold, it was to revert back to residential use.

The BZA members discussed traffic issues, and noted some concerns about traffic entering the property. There was discussion about alleviating the traffic by creating an entrance at the rear of the property, and that these issues could be addressed at site plan by review of VDOT.

Mrs. Mailler asked if there were any other speakers. In that there were none, the public hearing was closed.

On a motion made by Mr. Van Luven and seconded by Mr. Rohrbaugh, the BZA noted that due notice and hearing, as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009, had been provided, and voted to grant the special permit, with the following findings and conditions:

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 hours of operation shall be limited to 9:00 A.M. to 8:00 P.M. Monday through Saturday by appointments.
2. The business shall have no more than six employees.
3. Revised site plan shall be approved by the County for any office other than a use as a real estate office.
4. In conjunction with site plan approval, adequate access shall be provided to the satisfaction of VDOT as far as a commercial entrance to the property.
5. The special permit shall be limited to a period of three (3) years.

The motion carried unanimously.

SPECIAL PERMIT #SPPT05-LE-012, DWAYNE H. AND KELLEY S. BROOKS (OWNERS)

Owners are seeking special permit approval to operate a home occupation with services (bookkeeping and tax services) on the property, PIN #6889-94-6272-000, located at 6627 Lancia Court, Foxmeade Subdivision, 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.

Kelley Brooks, owner, appeared representing the application and noted agreement with the staff report.

Mrs. Mailler 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 Mr. Van Luven, the BZA noted that due notice and hearing, as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009, had been provided, and voted to grant the special permit, with the following findings and conditions:

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. No more than one (1) person other than a member of the household may be employed.

2. Parking area for clients will be limited to the driveway area for the existing single family dwelling.
3. Hours of operation will be limited to 9 a.m. until 8 p.m. Monday through Saturday.
4. The special permit shall be limited to a period of three (3) years.

The motion carried unanimously.

SPECIAL PERMIT #SPPT05-SC-011, FAUQUIER LIVESTOCK EXCHANGE, INC. (OWNER) / TRI-COUNTY FEEDS (APPLICANT)

Applicant is seeking special permit approval to locate a farm supply establishment on a three (3) acre portion of a 17.8462 acre parcel identified as PIN #6979-69-5629-000, located on John Marshall Highway, 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.

Amy Pritchard, representative, appeared representing the application and noted agreement with the staff report except for the statement about tractor trailers. She stated that there would be tractor trailers but that they would be hidden from view.

Mrs. Mailler asked if there were any speakers for or against the application.

James Furr, area resident, appeared in favor of the application and stated the area needed this business.

Mrs. Mailler asked if there were any other speakers. In that there were no more speakers, the public hearing was closed.

On a motion made by Mr. Rohrbaugh and seconded by Mrs. Bowen, the BZA noted that due notice and hearing, as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009, had been provided, and voted to grant the special permit, with the following findings and conditions:

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 be generally consistent with the information submitted with the special permit application and the special permit plat prepared by Carson Harris and dated September 9, 2004.
2. Hours of operation shall be 7 a.m. until 5 p.m. Monday through Friday and 7 a.m. until 12 p.m. Saturday.
3. The existing commercial entrance shall be upgraded per Virginia Department of Transportation specifications and deceleration lane is required.
4. Site plan approval is required.

The motion carried unanimously.

REVOCATION OF SPECIAL PERMIT #51090, ROY AND LOU ANN BOATWRIGHT (OWNERS)

Fauquier County Zoning Administrator is requesting the Fauquier County Board of Zoning Appeals revoke Special Permit #51090 (approved August 7, 2003) for truck and heavy equipment sales, rental and service on property identified as PIN #7906-00-9413-000, located at 5391 Telephone Road, Scott District, Warrenton, Virginia.

Mrs. Bowen stated that she would recuse herself from any discussion or vote on this matter because she had made prior decisions on this property when she was the Zoning Administrator for Fauquier County.

Kimberley Johnson, Zoning Administrator, appeared before the BZA requesting that they revoke Special Permit #51090, which was granted on August 7, 2003, to Roy and Lou Anne Boatwright for the operation of a truck and heavy equipment sales, rental and service business on the property identified as PIN #7906-00-9413. She stated the Zoning Ordinance allows the BZA to revoke a special permit if there are violations of the conditions which the BZA placed on the permit and also if there are violations of general law and laws such as the Zoning Ordinance, and noted that there has been a long history of violations on this property.

Ms. Johnson elaborated on the violations of special permit conditions found at a site inspection on July 26, 2004 and a follow-up visit on July 30, 2004. She noted that one condition on this special permit was that applicant shall have no more than 90 vehicles on the site at any time, of which no more than 40 shall be inoperable. Because the BZA wanted to ensure no confusion about what constituted a vehicle for the purposes of the condition, they included in the condition a definition of vehicle which included “any motorcycle, moped, automobile, truck, recreational vehicle, mobile home, trailer of any type, nature or size, or heavy equipment of any type, nature or size.” Ms. Johnson stated that staff observed 156 vehicles on the site, with 147 of these vehicles being inoperable (without current tags and/or inspection stickers). The vehicles on site included 38 cars, 87 trucks, 22 trailers, and 17 pieces of equipment. Ms. Johnson noted that there were an additional 52 vehicles that were not on the site but on the adjoining property known as the sawmill property. This extension onto the adjoining site is not technically a violation of a special permit condition, but it is a violation of the Zoning Ordinance.

Ms. Johnson elaborated on the second violation of a condition. She stated that condition #2 requiring the applicant to delineate on the site plan a one acre area to be used for storage of inoperable vehicles is also being violated. On the site visit, staff noted that the entire site is being utilized for inoperable vehicles. In addition, no site plan has been submitted, as required.

Ms. Johnson detailed additional violations of conditions. She stated that condition #8 required landscaping be placed along the fence line to facilitate the screening of the site, but no landscaping has been planted by the applicant. She stated that condition #10 prohibits any additional structures being placed on site, but a trailer was observed being utilized for office or otherwise occupied space. She stated that condition #11 prohibited outdoor storage of parts or materials or of motor vehicle parts unattached from a vehicle, but large amounts of misc. items such as tires, pipes, tubing, pieces of vehicles, engines and trash were observed throughout the site.

Finally, Ms. Johnson noted that condition #12 prohibited any work on vehicles to occur outside the shop building, but that an individual had been observed working on a vehicle and another individual was observed power-washing an oil-covered engine in the middle of the parking lot.

Ms. Johnson provided photographs from the site inspection to the BZA. Ms. Johnson noted that the zoning ordinance allows a revocation of a special permit to also be based on other violations of law. In this case, there are numerous other violations of the Zoning Ordinance, to include operation of a junkyard/automobile graveyard (section 3-314.7); operation of the junkyard use requiring a special exception without special exception approval (Section 2-304); expansion of a special permit use in area and number of vehicles without amendment to the special permit (Section 5-004.1, 2); operation of the truck repair business without a required site plan (Section 12-200); and failure to secure the required zoning permit for the truck repair business (Section 13-501).

Ms. Johnson noted that in the materials provided to the BZA, there is a copy of the notice of violation that was sent out on July 28th. She also pointed out the letter received from Mr. Boatwright's representative, Angela Barlow, dated September 1. This letter acknowledges that in fact there were violations on the site and that Mr. Boatwright was working to bring them into compliance.

Ms. Mailler asked if the applicant wished to speak to the issue.

Angela Barlow, counsel for Mr. Boatwright, stated that there obviously are and were violations on the property. She stated that she hoped that the BZA sees that he has worked to remedy many of the violations. She stated that the property is under contract for sale, and that Mr. Boatwright hopes to close the sale soon. She concluded her remarks stating that Mr. Boatwright would like the opportunity to address the concerns and remedy the violations; his main goal is to get the property sold.

On a motion made by Mr. Van Luven and seconded by Mr. Rohrbaugh, the BZA moved to revoke the special permit in accordance with section 5-015.1 of the Fauquier County Zoning Ordinance, after due notice and hearing as required by section 5-015.2 of the Fauquier County Zoning Ordinance, based upon the staff report and the following findings:

1. The owner or operator of the use covered by the permit or exception has failed to observe all requirements of law with respect to the maintenance and conduct of the use and all conditions in connection with the special permit or special exception that are designated in issuing the same.
 - a. The owners/operators have failed to observe all conditions of approval of the special permit for the use;
 - b. The owners/operators have failed to observe all requirements of the Fauquier County Zoning Ordinance;
 - c. The owners/operators have failed to obtain site plan approval and zoning permit approval for the use.

The motion carried 5-0, with Mrs. Bowen abstaining.

OTHER BUSINESS:

Mr. Meadows stated that prior to taking anything to the Planning Commission he wanted to discuss it with the BZA. He noted that Fauquier County has more wineries than any other county in the nation other than one county in California, Napa Valley. He feels that maybe the BZA should ask the Planning Commission to look at the ordinances for conditions related to wineries, and that he would like the BZA's permission to move forward on this. The BZA members were in agreement with taking a look at the winery provisions. Mr. Meadows directed Mr. Benson to look into the Napa Valley Ordinances.

Mrs. Bowen asked the BZA if a resolution could be made up and given to Mr. Lofdahl's wife to recognize Mr. Lofdahl's service to the BZA. There was discussion about how Mr. Lofdahl's service to the County extended beyond serving on the BZA. Ms. Johnson suggested that the Board of Supervisors prepare one that would include his many years of service with the County, and indicated she would pursue this on behalf of the BZA if the BZA wished. The BZA concurred with the approach.

ADJOURNMENT: There being no further business before the BZA, the meeting was adjourned at 3:36 P.M.

Margaret Mailler, Chairperson

James W. Van Luven, Secretary

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