

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
August 7, 2003**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, July 10, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Margaret Mailler, Chairperson; Mr. John Meadows, Secretary; Mr. James Van Loven; Mrs. Sonya Addison; and Mr. Mark Rohrbaugh. Also present were Mr. Paul McCulla, County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator and Ms. Holly Meade, Planner.

MINUTES: On the motion made by Mr. Meadows and seconded by Mrs. Addison the Board of Zoning Appeals voted to approve the July 10, 2003 minutes. The motion carried unanimously.

LETTERS OF NOTIFICATIONS & PUBLIC NOTICE: 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. Ms. Meade read the Public Hearing Protocol.

SPECIAL PERMIT #51090 ROY & LOU ANNE BOATWRIGHT (OWNERS)

Applicants are requesting a special permit for sales, service, repair and rental of heavy trucks, vans, equipment and trailers, to include inventory awaiting restoration. The subject property is identified as PIN #7906-00-9413, located at 5391 Telephone Road, Scott District, Warrenton, Virginia.

Mr. Hodge stated the BZA made a site visit last month and held the public hearing. He reminded the Board they closed the public hearing last month.

Mrs. Angela Barlow, attorney for the owner, appeared at the meeting representing the application and noted agreement with the staff report. She stated Mr. Boatwright was out of town and told the Board she had not received a copy of the draft conditions until today. Mrs. Johnson stated she faxed them to Mrs. Barlow's office on Tuesday, August 5, 2003.

After reviewing a copy of the draft conditions, Mrs. Barlow stated that she had several issues with the conditions. The first issue is the significant amount of fencing required by the conditions. She stated she understood the goal of the fencing requirement was to be able to delineate the different uses on the site. Mrs. Mailler stated she one of the reasons the site looks so bad is that it appears to run over into the adjoining site; Mr. Boatwright's trucks are mixed in with the vehicles associated with the body shop.

Another issue raised by Mrs. Barlow was that the fencing would impede the flow of traffic. She felt significant gates would be required for ingress and egress to the site. In addition, Mrs. Barlow questioned the fencing requirement along the adjoining vacant property and the type of

fencing required. She stated the green vinyl clad fence and slats would be a tremendous expense to her client. She asked if a wire, mesh or board fence could be substituted. Mrs. Mailler stated that the green vinyl fence would be less obvious, would not rust, and the fencing condition ensures that the entire fence would be constructed of the same material.

Mrs. Barlow asked if trees could be planted along some of the required areas instead of a fence. Mrs. Mailler stated that it would take too long for the trees to mature and the entire site is visible from Route 29. Mrs. Barlow reiterated that the required fencing would be significant and burdensome to her client and she was not aware of this requirement being imposed on any other uses in the County.

Mrs. Barlow stated another issue with the conditions is the time frame. She reminded the Board that her client had been working on this site for over a year and had already spent over \$125,000. She stated the Board was asking her to spend more money and then have the ability to take the permit away from him in fifteen months. Mrs. Mailler clarified that the fifteen months began at such time as the site plan is approved. Mrs. Barlow asked the to please consider approving it for a longer time frame.

Mrs. Barlow again summarized her reasoning for asking the Board to reconsider the time frame and fencing conditions. She reiterated the fact that she was not aware of this type of fencing requirement being imposed on any other uses in the County. Mrs. Johnson stated that she only has experience with what has taken place in the past several months; however, the Zoning Ordinance does require several uses to be “entirely enclosed or completely screened from view”. Mr. Rohrbaugh stated that his father’s two parcels where the family business, First Colony Homes, is located, is completely fenced.

Mr. Meadows reiterated what Mrs. Mailler had stated earlier, the vinyl fencing will last much longer than other types of fencing and it would be a better investment in that it would not rust. He also stated that the gates required to help with the flow of traffic are not an issue because almost all fencing requires the use of gates. Mr. Meadows pointed out to Mrs. Barlow that the draft conditions did not contain a lot of expense, just a lot of language.

Mrs. Barlow once again asked the Board to consider an extension of the fifteen month time period for the special permit realizing that if Mr. Boatwright did not comply the Zoning Administrator could correct the situation with the County’s violation process. Mr. Meadows stated that if Mr. Boatwright complies then he will not have any problem renewing his special permit. He stated this use could impact the neighborhood and that was the concern of the Board of Zoning Appeals.

On a motion made by Mr. Meadows and seconded by Mr. VanLuven, the Board of Zoning Appeals 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 approve the special permit, with the following findings and conditions:

Findings

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards in Section 6-102 which apply to the use in question.

Conditions

1. Applicant shall be permitted a total number of no more than 90 vehicles on site at any time, of which no more than 40 at any one time shall be inoperable.
2. Applicant shall delineate on the site plan the one acre area to be used for storage of inoperable vehicles.
3. For purposes of these conditions the term “vehicle” shall include any motor cycle, moped, automobile, truck, recreational vehicle, mobile home, trailer of any type nature or size, or heavy equipment of any size, type or nature.
4. Within one month of the approval of the site plan, the Applicant shall erect a green vinyl clad fence, with green vinyl slats, no less than 6 feet in height, around the site as shown in green on the attached Fencing Graphic.
5. Applicant shall remove and dispose of all oil and fluids from all inoperable vehicles prior to storage on site. Applicant shall annually provide to the zoning administrator an affidavit that all oil and fluids have been removed from the inoperable vehicles and disposed of in accordance with all applicable state, federal and local regulations. Attached to the affidavit shall be receipts for the disposal of the oil and fluids.
6. The term of this special permit shall be 15 months from the date of the approval of the site plan.
7. The hours of operation shall be Monday-Saturday, 7:30 a.m. to 8:00 p.m.

8. Additional trees, as required by the landscaping provisions of the County's zoning ordinance, shall be placed along the fence line, as determined by the Zoning Administrator, to facilitate the screening of the site.
9. Lighting shall meet the current County lighting ordinance.
10. No additional structures shall be erected on site.
11. There shall be no outdoor storage parts or materials or of motor vehicle parts unattached from a vehicle,
12. All work on vehicles shall occur within the existing auto shop.
13. Permit does not convey with the land.

The motion carried unanimously.

APPEAL – WKCW RADIO (OWNER) & MERLE E. FALLON, ESQ. (REPRESENTATIVE)

Mr. Merle Fallon, attorney, has filed an appeal to an interpretation made by the Zoning Administrator regarding the applicability of Section 2-506 of the Fauquier County Zoning Ordinance to the WKCW radio tower proposed antenna replacement.

Mr. Hodge reminded the Board they heard the appeal last month and moved to postpone action until today to allow time to review the additional information Mr. Fallon, attorney for WKCW radio, presented at last month's meeting.

Mr. Fallon asked the Board to continue action on the appeal until next month's meeting due to lack of full membership of the Board today. He stated he had been informed by the Zoning Administrator that only four of the five members present today would be allowed to vote due to the fact that Mrs. Addison was not present at last month's meeting. Mrs. Addison stated that she had reviewed the file and listened to the tape of last month's meeting and was prepared to vote at today's meeting.

Mr. Fallon stated that as he understands, an appeal requires four affirmative votes to overturn the Zoning Administrator's decision. Mr. McCulla confirmed Mr. Fallon's statement. Mr. Fallon respectfully requested action on the appeal be postponed until next month's regularly scheduled meeting. He stated that he would proceed with the Appeal in September no matter how many members were present at the meeting. Mrs. Mailler stated she would not be at September's meeting and noted that Mr. Lofdahl had not been at the last two meetings and did not know when he would be returning.

On the motion made by Mr. Meadows and seconded by Mr. VanLuven it was moved to act on the appeal this month. Mr. Fallon stated he would address any questions the Board members had regarding the material he presented last month. Mr. Fallon called attention to the material behind "Tab 8", a letter dated June 18, 2000 from Mr. Fallon to then Zoning Administrator Carolyn Bowen, in the booklet he presented last month. This letter asked if Zoning Ordinance Section 2-

506 applies to telecommunication towers. Mrs. Bowen's response stated that Section 2-506 does not apply to telecommunication towers or monopoles. Mr. Fallon pointed out that Mrs. Bowen's response is the exact reverse of what is before the Board today. Mr. Fallon stated that he had presented evidence that the radio at Big K is not a telecommunication tower.

Mr. Rohrbaugh called attention to a letter from Tony Hooper to Mrs. Johnson dated April 1, 2003 which he found confusing. Mrs. Johnson stated that County towers are non-commercial and that Article 11 contained language that specifically excluded non-commercial towers. Mr. Rohrbaugh asked if Section 2-506 only applies to non-commercial structures? Mrs. Johnson stated that Section 2-506 would apply to non-commercial structures, since they are not otherwise covered by Article 11. Mr. Fallon stated that Section 2-506 does not have a qualifier stating it does not apply to noncommercial towers, and reiterated that the WKCW is a radio tower, not a telecommunications tower. Mr. Rohrbaugh stated that the Board did get another definition from the Funk & Wagnalls Standard Encyclopedic Dictionary defining telecommunications as "The art and science of communicating at a distance, as in radio, radar, television, telegraphy, telephony, etc," clearly including radio towers as telecommunications.

Mr. Johnson summarized that the point to be decided is if a radio tower can be defined as "telecommunications". She then read the definition included in her affidavit dated May 28, 2003 from the American Heritage Dictionary which is identical to the above definition and encompasses radio as well.

On a motion made by Mr. VanLuven and seconded by Mr. Meadows, the Board of Zoning Appeals 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 uphold the Zoning Administrator's decision in the resolution as follows:

A RESOLUTION AFFIRMING THE DECISION OF THE FAUQUIER COUNTY
ZONING ADMINISTRATOR IN APPEAL #51456 FILED BY WKCW RADIO

Whereas, Appellant, WKCW Radio, has appealed the decision of the Zoning Administrator made in her March 17, 2003 letter that:

- a. section 2-506 is not the relevant section for review of improvements to the radio tower at WKCW, but rather Section 11-102.3 of the Fauquier County Zoning Ordinance and Sections 10-101 to 103 of the nonconforming provisions, and

Whereas the Board of Zoning Appeals has concluded appropriate proceedings on the said appeal, and has determined that the decision of the Zoning Administrator should be affirmed; now, therefore, be it

Resolved this 7th day of August, 2003 by the Fauquier County Board of Zoning appeals that after due notice and hearing as required by law and based upon both the written and verbal record before it in this appeal, the Board of Zoning Appeals does hereby AFFIRM the decisions appealed from.

The motion carried unanimously.

Mr. Fallon asked Mr. McCulla if the 30 days in which the Code of Virginia allows for an appeal begins today, the day of the vote, or the date of the letter from the Zoning Office officially giving the decision of the Board. Mr. McCulla stated that previously we've always operated on the practice that the 30 days begins the day the Board of Zoning Appeals votes.

VARIANCE #52118 GARY A. & KATHERINE JOHN

Applicant is requesting a variance to the minimum front yard (setback) requirement to construct a deck of approximately 200 square feet (10' x 20') onto the single family dwelling located on the property. The property is identified as P.I.N. 6974-03-2612-000 and is located at 8167 Old Waterloo Road, Warrenton, Virginia, Marshall District.

Mr. Hodge stated that the Board made a site visit prior to the meeting. He reviewed the staff report, a copy of which is attached to and made a part of the minutes. Mr. Gary John, owner, appeared at the meeting representing the application and noted agreement with the staff report.

Mr. John began by commending his son-in-law for starting this project while Mr. John was hospitalized. He explained that he spoke to Mr. Heinz, Fauquier County Building Plan Reviewer, and Mr. Sisson, Fauquier County Building Inspector, and said that his plans and structure are in accord with the applicable building code.

Mr. Meadows asked Mr. McCulla if this dwelling was considered non-conforming. Mr. McCulla responded that the dwelling was built in violation of the Zoning Ordinance but has since been authorized by a variance. Mr. Meadows stated that it was not the applicant's right to use the Zoning Administrator's ability to infringe on the front yard because it is a non-conforming dwelling. Mr. McCulla stated that he and Mr. Hodge had discussed the provision in the Zoning Ordinance allowing a deck to extend 6 feet into the required yard. However, in an area of non-conformity the Zoning Administrator cannot apply the provisions of the Ordinance allowing the 6 foot encroachment of the deck into the front yard making it "more non-conforming".

Mr. Meadows observed that the applicant has a door that essentially leads nowhere. He stated from his review of the material Mr. John had purchased the property not knowing that the dwelling was non-conforming and Mr. Meadows felt he should not be punished for that. He further stated that he did not see that a 10 foot deck was needed to make use of the doorway. It was Mr. Meadows feeling that the deck could be cut back considerably and still be able to use the doorway.

Mr. Phil Whiteside, neighbor across Old Waterloo Road, spoke in opposition to the request. He stated that nothing had changed since the Johns went before the Board of Zoning Appeals in 1998. He stated concern that further intrusion toward the road might in some way inhibit VDOT's plan to correct the curve in the road. In addition, he was concerned about the encroachment lowering property values and affecting the neighborhood.

Mrs. Chris Whiteside, neighbor, spoke in opposition to the request. She stated that in 1988 VDOT came to the site and measured in the vicinity of the curve stating they did not want anything constructed any closer to the right-of-way. Mrs. Whiteside said she felt the Johns were intruding on their property as they keep pushing things closer to the road.

Mr. John asked the Board if they had received the letter from VDOT stating they had no objection to this request. Staff stated that letter had not been received from VDOT. Mrs. Mailler asked if they Board could approve the variance contingent on VDOT approval. Mrs. Johnson stated they could do that. Mr. McCulla reminded the Board that they could also table the application until the Board had the VDOT response.

On the motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven it was moved to closed the public hearing and table the application until September 4, 2003.

The motion carried unanimously.

ADJOURNMENT: There being no further business before the Board, the meeting adjourned at 2:50 P.M.

Margaret Mailler, Chairman

John Meadows, Secretary

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

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