

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
September 4, 2003**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, September 4, 2003, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mr. Eugene Lofdahl, Vice Chairman; Mr. John Meadows, Secretary; Mr. James VanLuven; Mr. Mark Rohrbaugh; and Mr. Maximilian A. Tufts, Jr. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; Ms. Holly Meade, Planner; Mr. Doug Morgan, Senior Planner; and Ms. Debbie Dotson, Office Associate III.

MINUTES: On a motion made by Mr. Meadows and seconded by Mr. VanLuven, the Board of Zoning Appeals voted to make the following corrections to the August 7, 2003 minutes:

- on page 2, the word “the” in the third paragraph should be “them”.
- on page 4, the word “of” should be inserted in the fourth paragraph between the words “storage” and “parts”

The motion carried unanimously.

On the motion made by Mr. Meadows and seconded by Mr. VanLuven the Board of Zoning Appeals voted to approve the corrected minutes of the August 7, 2003 meeting.

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.

VARIANCE #52118, GARY & KATHERINE JOHN (OWNERS)

Applicants are requesting a variance from the front yard setback to construct a deck, identified as PIN #6974-03-2612, located at 8167 Old Waterloo Road, Marshall District, Warrenton, Virginia.

Mr. Hodge stated the BZA made a site visit last month. He reviewed the staff report, a copy of which is attached to and made a part of the minutes. He noted that the Board had closed the public hearing last month, with action deferred until comments from VDOT could be supplied. VDOT has provided a response, via letter, dated July 14, 2003; stating they have no comments on the proposed variance.

Mr. Lofdahl stated that this case was heard several years ago and was denied. He asked if anyone from the board or staff knew of anything that had changed since the previous rejection?

Mr. Hodge stated he was not working with the board at that time, but that he had no knowledge of any changes since the initial variance request.

Mr. VanLuven noted that when Mr. John purchased the property in 1992 the dwelling encroached in the required front yard. In 1998 the BZA granted a variance of 20.5' to accommodate the existing dwelling, and denied the request to add a front porch. Mr. VanLuven stated the Mr. John's position that a hardship exists because a double door exists and the exterior is not usable, does not constitute a hardship under the Zoning Code.

On a motion made by Mr. VanLuven 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 deny the variance, with the following findings:

1. Strict application of the Ordinance would not effectively prohibit or unreasonably restrict use of the property;
2. The granting of the variance will not alleviate a clearly demonstrable hardship approaching confiscation, and is not distinguished from a special privilege or convenience sought by the applicant.
3. Any hardship or restriction on the use of the property is not by reason of:
 - the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance;
 - exceptional topographic conditions or other extraordinary situation or condition of the property;
 - exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto.
4. The variance will not be in harmony with the intended spirit and purpose of the Ordinance, and would not result in substantial justice being done.
5. The strict application of the Ordinance will not produce undue hardship.
6. Such hardship is generally shared by other properties in the same zoning district and the same vicinity, and is of so general and reoccurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
7. The authorization of the variance will be of substantial detriment to adjacent property and that the character of the district will be changed by the granting of the variance.

The motion carried with 3 ayes and 2 nays, with Mr. Tufts and Mr. Meadows voting against.

SPECIAL PERMIT #52203, STEPHAN M. & DEBORAH A. LAMB (OWNERS)

Applicants are seeking special permit approval to construct a single family dwelling 40.5 feet in height wherein the Zoning Ordinance allows 35 feet, PIN #6987-28-5860, located off of Route 698, O'Bannon Road, Lot 8 of Kenthurst Subdivision, Scott District, Warrenton, Virginia.

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

Mr. Ben Jones, attorney for Stephan M. & Deborah A. Lamb, agreed with the staff report. Mr. Jones read the definition from BOCA and CABO codes referencing height, to illustrate it differs from the definition in the zoning ordinance. He asked the BZA to consider a text amendment in reference to height; separate from today's meeting.

Mr. Rohrbaugh noted he would abstain from the vote due to a conflict of interest.

Mr. Meadows asked how far the house was from the rear lot line and who owned the property with the woods. Mr. Jones stated the house was 110' from the rear lot line, and the woods were owned by an adjoining property owner who submitted a letter of support.

On a motion made by Mr. Tufts and seconded by Mr. VanLuven, the BZA noted that the Application number was to be corrected to read "52203".

The motion carried unanimously.

On a motion made by Mr. Tufts and seconded by Mr. VanLuven 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 approve the special permit, with the following findings and conditions:

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 which apply to the use in question:

PART 24
5-2400

STANDARDS FOR APPROVING AN INCREASE IN BUILDING HEIGHTS

5-2401

The BZA may approve a special permit for an increase in height above the maximum building height regulations specified in Part 4 of Article 3, if it determines that such an increase would not violate the general standards set forth in Section 006 above. Further, the minimum yard requirements applicable to the structure shall be increased by two (2) feet for every one (1) foot of increase in height in excess of the maximum building height set forth for the zoning district.

5. 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: Conditions including those recited in Section 5-007 A-L of the Zoning Ordinance.

The motion carried on a vote of 4 Ayes, with Mr. Rohrbaugh abstaining.

SPECIAL PERMIT #52217, FAUQUIER SPCA, INC. (OWNERS)

Applicants are requesting special permit approval to enlarge an existing animal shelter and to amend a special permit condition, PIN #7902-51-8200, located at 9350 Rogues Road, Cedar Run District, Casanova, Virginia.

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

Mr. Tim Nevill, Executive Director, Fauquier SPCA Board of Directors appeared at the meeting representing the application, and asked the BZA to note that the 75' setback requested is from Route 602 rather than from an adjoining property.

Mr. Lofdahl stated that after visiting the site and looking at the plat the Board had a number of questions. Mr. Lofdahl asked whether the proposed location is the only spot available for expansion, and for more information regarding what is going into the new building.

Mr. Nevill stated that 6 drainfields had been required to support the shelter, leaving limited space to build on. The proposed location was the only available site on the lot. Mr. Nevill stated the addition was needed to isolate animals brought in by Animal Control; whereas those animals are now mixed with the general population. Mr. Nevill stated that there would be 20 runs in the addition.

Mr. Lofdahl asked if drawings were available. Mr. Nevill responded that he hadn't prepared drawings as he didn't want to expend significant funds without the Board's approval of this request.

Mr. Meadows stated that he was hesitant to grant a permit for expansion without more information about what was being built and where; the drawing provided with the application is very unclear. Mr. Meadows also stated that he was concerned about potential noise.

Mr. Nevill stated that he is aware of no noise issues, and that animals are kept inside at all times except when cleaning the runs.

Mr. Meadows asked if VDOT destroyed any buffer or screening when they widened the road. Mr. Nevill stated VDOT took down the fence and he is waiting on VDOT to replace it.

Mr. Rohrbaugh stated he is a neighbor of the SPCA. He stated there were no odor or traffic problems; however, sometimes there is noise depending on atmospheric conditions. He stated he

hoped the runs would not be located towards the road but in the back of the property. He reiterated that more information was needed about what was to be built, and where. Mr. Nevill stated there would be no runs near the road and he would do everything possible to come up with a wise, compatible design.

Mr. Lofdahl asked that a drawing (working sketch) be submitted to give the board more information about the proposed building. Mr. Meadows noted that private industry or a private individual would not be given approval without such a sketch, and it would not be fair to allow a County entity to have less regulations. The BZA will need a conceptual plan showing the footprint of the proposed building and the use of the structures (i.e. a rough floorplan). Mr. Tufts requested setbacks from property lines also be shown on the drawing.

On a motion made by Mr. VanLuven and seconded by Mr. Rohrbaugh, the BZA voted to table the special permit until October 2, 2003 in order to receive the additional information.

The motion carried unanimously.

SPECIAL PERMIT #52271, SUFFIELD MEADOWS, LLC (OWNERS)

Applicants are requesting special permit approval to construct two apartment buildings 43 feet in height wherein the Zoning Ordinance allows 35 feet, PIN #6995-79-4111, located off of Route 29, Scott District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. Mr. Hodge noted there had been some confusion about the application with neighbors because of the use of the term “apartments” in the application. Mr. Hodge stated that the two buildings referred to in this special permit are “condominiums” that were approved earlier under a Special Exception, and that no new “apartment” buildings were planned.

Mr. Lofdahl stated that the Board understands the height problem in this instance is due to putting in underground parking.

Mr. Gary Hill, representing his application, noted agreement with the staff report. He displayed elevations showing the two-story buildings that were approved. He noted that the distance to Snow Hill is 1500 feet and to the Foster Fork property is 500 feet. He noted one of the conditions of the Special Exception was to provide a tree buffer between Snow Hill and also the Foster Fork property, which will be done.

Mr. Meadows stated that by his calculations putting the 24 parking spaces under each building eliminates approximately 8000 sq ft of paved area. He asked if this area will remain green grass or if something else will be put there? Mr. Hill stated that they would not add any additional parking spaces.

Mr. Peter Jackson, Snow Hill resident, spoke in support of the request. He stated he was glad to be here today and that a lot of confusion was cleared up.

Ms. Linda Dodge, of Fosters Fork Road, voiced concerns regarding the approval. Ms. Dodge presented area photos showing the mass drainfields next to her property. She stated there is no buffering between her property and the drainfields or condominium buildings. She asked that if this is approved, the following conditions be set:

- a. parking lots outside the buildings be eliminated entirely as a condition of approval;
- b. that these will be the only two buildings that will allow this extra 8' in height solely because of the issue of measurement and that this approval would not set precedence for future buildings to be higher than what is required; and
- c. that there be some appropriate buffering required between the rear garage doors and the nearby homes.

Mr. Hill pointed out where the parking entrance would be located. He stated it is not visible from any property to the rear and there is a substantial hill blocking the view.

Mr. Meadows wanted to know the difference in building height and hill elevation. Mr. Hill stated it was in excess of 10 feet.

Mr. Rohrbaugh asked if all outdoor parking would be excluded and Mr. Hill answered no. He reminded the BZA that the special exception that was approved by the Board over 1½ years ago included more parking than what we have here today. He stated he was working on the site plan now and deciding on the final parking. He stated he would be able to minimize surface parking by placing this parking underground.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Meadows, 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 approve the special permit, the following findings and conditions:

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 which apply to the use in question.

PART 24

5-2400

**STANDARDS FOR APPROVING AN
INCREASE IN BUILDING HEIGHTS**

5-2401

The BZA may approve a special permit for an increase in height above the maximum building height regulations specified in Part 4 of Article 3, if it determines that such an increase would not violate the general standards set forth in Section 006 above. Further, the minimum yard requirements applicable to the structure shall be increased by two (2) feet for every one (1) foot of increase in height in excess of the maximum building height set forth for the zoning district.

5. 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: Conditions recited in Section 5-007 A-L of the Zoning Ordinance.

The motion carried unanimously.

SPECIAL PERMIT #52282, MCC, LCC (OWNER)/JOE VAN DYKE (APPLICANT)

Applicant is requesting special permit approval to locate a fast food eating establishment, PIN #7906-32-1665, located at 5282 Lee Highway, Scott District, New Baltimore, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. He noted that if the special permit was approved it would be subject to site plan approval.

Mr. Joe Van Dyke, applicant, appeared at the meeting representing the application and noted agreement with the staff report. He stated he purchased this mobile establishment as an afterthought. He is in a current contract to take over the building business (Daniel's Construction) and the Amish Homestead where the fast food trailer will be located. He stated he wanted to do this to supplement the other businesses and to create an activity to serve the public. He stated the unit has been operable for the last 4 days as part of a grand opening and he worked a sale at Mr. Mast's gift shop with Health Department approval.

Mr. Charlie Moore, property owner, stated he had no objections to this proposal.

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

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 not 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 which apply to the use in question.
5. 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: Conditions recited in Section 5-007 A-L of the Zoning Ordinance.

The motion carried unanimously.

SPECIAL PERMIT #52305, TRL, LLC (OWNER)

Applicant is requesting special permit approval to install decals and magnetic signs on vehicles, PIN #7924-10-1452, located at 4220 Dumfries Road, Cedar Run District, Catlett, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. He noted that if the special permit is approved it would be subject to site plan approval.

Ms. Gina Marie Raimondo appeared at the meeting representing the application and noted agreement with the staff report.

Mr. Rohrbaugh asked how many vehicles she was averaging per day. Ms. Raimondo stated that she did maybe 1 to 2 a month; she could not handle more than 1 vehicle a day. She stated the work is done on the ground behind store.

Mr. Meadows stated that the Board had the opportunity to view the property from Tarring Lane. He commented on the large pine trees on the property going east towards Rt. 28, and noted that one tree appeared diseased. He stated as a Board they are possibly looking at some screening being required.

Ms. Raimondo stated her work is performed by the propane tanks and no one except the store across the street could see.

Mr. Meadows stated that should this permit be approved he would not want vehicles awaiting decals to be stored on property and cause traffic hindrance.

Ms. Raimondo stated that it hasn't been a problem so far and she paved an additional area for parking so the traffic would not interfere with the deli.

Ms. Cherie House, a neighbor who has lived in the area for over 11 years, stated she supports the special permit. She stated the corner had finally come alive since Ms. Raimondo has owned the property. Mrs. House stated she is on the road at least five times a day and has not witnessed a traffic problem. She stated the business was run extremely well, with no loitering on the premises.

Mr. Lofdahl asked Ms. House if she had ever seen the lot crowded with parked vehicles. Ms. House stated no, that Ms. Raimondo only does a truck once in a blue moon. She stated the trucks are parked underneath the awning, where a truck would be parked anyway.

Mr. Rohrbaugh stated he would like to find a spot where she could do the work so the business could grow. Ms. Raimondo stated she could not handle that much work.

Mr. Lofdahl wanted to know how long it took to put on a sign. Ms. Raimondo said it could take anywhere from 15 minutes to 2 hours, depending on the size of the job.

Mr. Wayne Thompson, neighbor, stated he was very familiar with the corner. This store is an amazing improvement to the corner. He stated there is nothing that should cause any problems.

Mr. Ernest Valentine, neighbor across street, presented pictures he had taken yesterday and earlier. He stated this business has been in violation since it had been there and Zoning has sent them a letter. He stated they are working on vehicles with the radio very loud. In addition, they use Rt. 605 for their auto sales. He was concerned if they can't honor the Zoning Ordinance then will they honor the special permit if granted. He stated it takes several hours to do some signs and he knows because he was the originator of drag car lettering. The only thing new to him was sticking them on. He stated this use is bad for the people who are in sight of it. The business has an outdoor toilet and they don't have a cover over the dumpster.

Mr. Lofdahl asked Mr. Valentine to confine his comments to the sign business.

Mr. Tom Raimondo, Ms. Raimondo's father, stated that Gina Marie is the only employee in this business. She is the only one putting a signs on, and she runs the deli. Mr. Raimondo stated it is a busy shop. He stated there are trucks and traffic on that property all day long; therefore, she cannot have an accumulation of vehicles - she can only accept so many.

Mr. Rohrbaugh noted that in the beginning the BZA heard that lettering was done below, but then that it was done at the pumps. He stated concerns about blocking the pumps, preferring that the activity be limited to a specific area. He stated he supported the use so long as no more than one vehicle was on site at a time. He also indicated that area should have some sort of screening.

Mr. Meadows agreed with Mr. Rohrbaugh. He stated he could support one or two vehicles per day. He noted an area around back where the garage door is located which appears to be a good location for the use.

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 approve the special permit, with the following findings and conditions:

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 not 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 which apply to the use in question.
5. 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:
 - (a) all sign work to be performed on the southeast side of store on paved area or in back of store on lower level;
 - (b) limit to two (2) vehicles at one time; and
 - (c) plant two (2) staggered rows 6' living white pines with the existing white pines and not to exceed 60' apart.

The motion carried unanimously.

SPECIAL PERMIT #52306, RICHARD & EDNA KING (OWNERS)

Applicants are requesting special permit approval to operate a family-owned dog care facility, PIN #7903-88-1079, located at 5042 Old Auburn Road, Center District, Warrenton, Virginia.

Mr. Hodge reviewed a letter from Richard & Edna King, owners, dated August 27, 2003 requesting this application be deferred to the October 2, 2003 meeting so they would have time to work on some issues.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Tufts, the BZA voted to defer the special permit until October 2, 2003.

The motion carried unanimously.

VARIANCE #52310, REX & SUSAN SHELDON

Applicant is requesting a variance of 13 feet to construct a garage 12 feet from the side property line wherein the Zoning Ordinance requires 25 feet, PIN #7905-11-9416, located at 7354 Baldwin Ridge Road, Warrenton, Virginia.

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

Mr. Rex David Sheldon, owner, appeared at the meeting representing the application and noted agreement with the staff report. He stated that they purchased the property in March with expectations of building a garage to consolidate sheds and provide storage for his cars (one is antique). He stated he believed a garage would enhance the property, and that he would leave the pine trees and also incorporate landscaping to keep the property attractive

Mr. Lofdahl stated that one requirement of a variance is to prove a hardship. He asked Mr. Sheldon to elaborate on the hardship he faces.

Mr. Sheldon stated he was not quite sure how hardship was defined; however, it would be a great deal more convenient.

Mr. Meadows asked Mr. Hodge about a building code issue. Mr. Hodge said a 3' offset is required from the existing chimney to the garage, if the garage was attached. Alternatively, the garage could be attached, with no setback required. Mr. Meadows stated it appeared the garage could be attached to the existing dwelling.

Mr. Meadows stated he did not see that the applicant had proved a hardship. The applicant had room to build.

Mr. Rohrbaugh stated he hasn't seen a hardship either, only a convenience.

Mr. VanLuven stated a hardship must be associated with the land not a personal hardship. Mr. VanLuven read the definition of hardship.

On a motion made by Mr. Meadows and seconded by Mr. Tufts, 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 deny the variance, with the following findings:

1. The property was not acquired in good faith; and
2. Strict application of the Ordinance would not effectively prohibit or unreasonably restrict use of the property;
3. The granting of the variance will not alleviate a clearly demonstrable hardship approaching confiscation, and is not distinguished from a special privilege or convenience sought by the applicant.

4. Any hardship or restriction on the use of the property is not by reason of:
 - (a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance;
 - (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
 - (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto.
5. The variance will not be in harmony with the intended spirit and purpose of the Ordinance, and would not result in substantial justice being done.
6. The strict application of the Ordinance will not produce undue hardship.
7. Such hardship is generally shared by other properties in the same zoning district and the same vicinity, and is of so general and reoccurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
8. The authorization of the variance will be of substantial detriment to adjacent property and that the character of the district will be changed by the granting of the variance.

The motion carried unanimously.

APPEAL #52320, JOHN & JANETTE CASSELL

Applicants are appealing the constitutionality of Section 3-317.2 of the Zoning Ordinance as it relates to Code of Virginia Section 3.1-22.28, the Right to Farm Act, and the USDA Small Farms Policy.

Mr. Hodge turned the appeal over to Mrs. Kimberley A. Johnson, Zoning Administrator.

Mr. Lofdahl stated this was not a public hearing but an appeal. He asked Mrs. Johnson to state her case first and then Ms. Cassell could present her case.

Mrs. Johnson stated this appeal was filed in response to a notice of violation that was sent to the Cassell's regarding a mulching operation on their property. She stated the appeal challenges the legality and constitutionality of the Fauquier County Zoning Ordinance and whether it is appropriate for mulching to not be considered an agricultural use. Mrs. Johnson stated she advised Ms. Cassell that this was not an issue under the jurisdiction of the Board of Zoning Appeals. Specifically what Ms. Cassell is challenging is the legality and constitutionality of Section 3-317.2 of the Zoning Ordinance, maintaining that it is in conflict with Virginia Code, in conflict with the Right to Farm Act, in conflict with the USDA Small Farms Policy, and in conflict with the Bill of Rights. She stated the Board of Zoning Appeals is charged in the Code of Virginia and the Zoning Ordinance to make a determination regarding her interpretation of the Zoning Ordinance. She stated this is not a question of interpretation; it is a question about the

validity of the Zoning Ordinance and the courts have reserved that for themselves to determine. Mrs. Johnson asked the Board today to dismiss this application.

Janete Cassell appeared, representing her application. She stated her argument is that Ms. Johnson applied erroneous principles of law. She stated Mrs. Johnson placed her use of the property under the category of commercial, and that is the notice she was sent. Ms. Cassell stated her property is zoned RA and to say that you can't have commercial activities on your own property is erroneous. She stated the Right to Farm act does not limit uses to agriculture. She stated forestry comes under agricultural as well as silvacultural. She stated Ms. Johnson sent her the commercial Section 3-317 Category 1 of the Zoning Ordinance and more appropriately she should have been sent agricultural Section 3-318. Ms. Cassell stated Section 3-318 of the Zoning Ordinance was a permitted agricultural use and that is what her son, Johnny, was doing on the property. Ms. Cassell called attention to a case that is now before the Circuit Court in Loudoun County where a gentleman had a logging operation and the Zoning office said he was operating in violation. This gentleman stated that what he was doing is allowed under the Right to Farm Act and she is making the same argument.

Mr. Lofdahl asked Ms. Cassell if she was arguing that the law applied here is the wrong law, and is there another law giving her the right to do what she wants to do.

Ms. Cassell stated yes; Ms. Johnson cited her as a commercial use and she is operating an agricultural use.

Mr. Lofdahl stated there are two different situations. First, the BZA needs to define the law that Ms. Johnson is applying.

Mrs. Johnson stated the Zoning Ordinance specifically defines agriculture. The term agriculture is defined in Section 15-300 and it states "The term agriculture shall not include the manufacture, processing or storage of mulch from off-site material." She stated that Ms. Cassell's argument is that the provision, which was adopted by the county last year, is in conflict with these other provisions of law and should not have been adopted.

Mr. Tufts read the term agriculture to Ms. Cassell and asked if it was clear.

Mr. Lofdahl stated it is clearly defined.

Mr. Tufts asked Ms. Cassell if she was in operation without a site plan.

Ms. Cassell stated in July 2001 John started operating the business. She stated she was not the one operating the use but she was the one cited with a violation. Mr. Tufts asked if Ms. Cassell was the owner of the property. Ms. Cassell replied yes, and Mr. Tufts explained the property owner is responsible.

Ms. Cassell stated that she was not aware that they had to have a site plan. Ms. Bowen, former Zoning Administrator, said the property would need to be rezoned to have this operation.

Mr. Meadows stated the issue at hand is whether or not the BZA has jurisdiction.

Mr. Lofdahl stated the BZA cannot change the laws. He explained decisions are made and based on the Fauquier County Zoning Ordinance. He stated the BZA is not the legislative body and the proper body will hear what you have to say and make that decision.

On a motion made by Mr. Meadows and seconded by Mr. Tufts, 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:

Whereas, Appellants, John and Janete Cassell, have appealed the determination of the Zoning Administrator made in her May 8, 2003 letter that the use of the property for a mulching and storage business is a violation of Section 3-317.2 of the Fauquier County Zoning Ordinance.

Whereas, the Board of Zoning Appeals has concluded appropriate proceedings on the said appeal, and has determined that it does not have jurisdiction to determine the matters brought before us by the appellants; now, therefore be it

Resolved this 4th day of September, 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 DISMISS the appeal #52320 filed by John and Janete Cassell due to the lack of jurisdiction.

The motion carried unanimously.

SPECIAL PERMIT #52321, LYNN HUNT (OWNER)

Applicant is requesting special permit approval to operate a massage therapy business from her home, PIN #6969-69-0598, located at 8322 Salem Avenue, Marshall, Virginia.

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

Ms. Lynn Hunt appeared at the meeting representing the application and noted agreement with the staff report.

Mr. Rohrbaugh stated his only concern was the parking situation. He stated with two vehicles on site, it is a little hard to turn around. Ms. Hunt stated she did not think that would be an issue at this point. Mr. Rohrbaugh asked if Ms. Hunt envisioned 2 customers at a time and Ms. Hunt stated she did not.

Mr. Lofdahl wanted to know how many vehicles Ms. Hunt owns. Ms. Hunt replied two but one is used to commute to work.

Mr. Meadows shared the concerns Mr. Rohrbaugh stated previously. Mr. Meadows stated backing out into the street is his only concern.

Mr. Lofdahl stated that when turning into the driveway there is a little area for a turn around spot and thought maybe some gravel in that area would create an additional space. Ms. Hunt stated that people usually use that spot anyway.

Mr. VanLuven asked if Ms. Hunt proposed to put any signs up and Ms. Hunt stated no.

Mr. Tufts noted the hours of operation should be in the conditions.

Mr. Lofdahl wanted to know how the Zoning Office could enforce not backing out into the street.

Ms. Gallehr stated that Ms. Hunt would be under obligation to tell her clients about this condition and, if it became a problem, the permit could be revoked.

On a motion made by Mr. Rohrbaugh and seconded by Mr. VanLuven, 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 approve the special permit, with the following findings and conditions:

1. The proposed use will not adversely effect 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 not 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 which apply to the use in question.
5. 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:
 - (a) add gravel to make one (1) additional parking space;
 - (b) no one is to back out onto street; and
 - (c) hours of operation are to be:
 - 5 P.M.to 7 P.M. – Monday through Wednesday
 - 8 A.M. to 7 P.M. – Thursday and Friday
 - 8 A.M. to 12 P.M. – Saturday.

The motion carried unanimously.

SPECIAL PERMIT #52323, BRENDAN C. STACK (OWNER)

Applicant is requesting special permit approval to temporarily store sheep and goat skins, PIN #6981-76-3665, located at 9633 Clark's Road, Opal, Virginia.

Mr. Hodge stated that the BZA attempted to make a site visit earlier today; however, they could not get onto the property. Mr. Hodge reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Meadows stated that they got to the site today but were unable to get in.

Mr. Brendan C. Stack, owner, appeared at the meeting representing the application and noted agreement with the staff report.

Mr. Lofdahl asked if the purpose of putting the skins in the barn was to dry them and, if so, how air is moving in and out of barn. In addition, he wanted to know if there was a smell to this air? Mr. Stack replied the purpose was to dry the skins and the air is circulated inside the barn with about 90 to 100 fans. He stated there is no odor because the barn is sealed up.

Mr. Rohrbaugh wanted to know which barn Mr. Stack was using. Mr. Stack replied that it was the old dairy barn.

Mr. VanLuven stated that since these are raw skins he assumed a shipment would be arriving daily. Mr. Stack stated that sheep hides are a landfill item and the overseas market is high for this product. He stated he goes to slaughterhouses and gathers the skins and brings them in to dry. He has made arrangements with the slaughterhouses to lay them flat, cover with salt, and stack them.

Mr. VanLuven asked if there were any state or federal regulations that Mr. Stack would have to adhere to.

Mr. Stack stated there were just custom regulations. He stated the skins are stored in 45' containers that are parked next to the barn.

Mr. Lofdahl asked how much moisture (blood) is in this process. Mr. Stack stated that there was no blood at all. Mr. Lofdahl asked how many skins were in the barn at one time. Mr. Stack replied approximately 1500 skins. He stated when one batch is ready to ship, there is another batch to be dried.

Mr. Meadows wanted to know the chance of hides coming from diseased animals and if there are any health hazards.

Mr. Stack stated he did not know of any health hazards. Mr. Tufts stated that the tanning solution would probably kill any bacteria.

Mr. Meadows asked Mr. Stack if he washed the floor down and kept the floor clean? Mr. Stack stated that everything gets absorbed by the salt and the salt is reused.

Ms. Gloria Beahm, neighbor, stated that Mr. Stack has a lot of enterprises. She stated she was representing approximately 6 other property owners. She stated concern regarding disease and runoff and; if approved, she would like to have the access restricted to Clarke Road. She stated she wanted to make sure these items were covered.

Mr. Lofdahl asked Mr. Stack if he would have any problem with the condition that access be restricted to Clarke Road. Mr. Stack stated that he had no problem with that, but he does have rights to the other access road. He stated Mrs. Beahm is 5000 to 6000 feet away from the barn.

Mr. Meadows asked Mr. Hodge if there were other agencies that should have been contacted, i.e. USDA, Department of Health.

Mr. Hodge replied that normally we send these cases out for referral to the Health Department and the Health Department tells us if there are issues. They did not identify any other agencies that should review and we rely on their knowledge.

Mr. Meadows asked that if this special permit should be approved, is there a business license that would need to be obtained so that the county would benefit from the revenue.

Ms. Gallehr stated that there is an income requirement for a business license.

Mr. VanLuven stated he was not comfortable with an endeavor of this nature without finding out if there are government regulations and guidelines to comply with.

Mr. Lofdahl reminded the BZA that the Board has the authority to put a time limit on the special permit.

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 approve the special permit, with the following findings and conditions:

1. The proposed use will not adversely effect 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 not 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 which apply to the use in question.

5-1502 Additional Standards for Commercial Storage and Processing of Bulk Agricultural Products in Rural Zoning Districts

1. The minimum lot size requirement shall be five (5) acres.
 2. The road frontage requirement shall be 300 feet on a road designated as a major collector (or higher) in the Comprehensive Plan unless the Board of Zoning Appeals finds that the type and amount of traffic generated by the particular use is such that it will not cause an undue impact on the neighbors or adversely effect safety of road usage.
5. 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:
 - (a) ingress/egress limited to Clarke's Road; and
 - (b) special permit granted for one (1) year.

The motion carried unanimously.

APPEAL #52329, HARRY GRAY

Applicant is appealing a decision of the Zoning Administrator with regard to the setback requirement from a private right of way for construction of an agricultural equipment shed.

Mr. Hodge stated the case was an appeal of the Zoning Administrator's decision to revoke a Zoning permit in regards to setback requirements.

Ms. Susan Frazier, attorney for applicant, appeared representing the appeal. She stated in this case, someone did something wrong a long time ago and they are now trying to correct it. She stated Mr. Gray's mother made this subdivision and Mr. Gray received his portion of it. When Mr. Gray received his plat, it did not show the right-of-way. Ms. Frazier stated the unusual shape of the property and the unknown right-of-way as reasons for not being able to meet the 75' foot requirement.

Ms. Gallehr stated this argument appears to be more pertinent to a variance application and the question for the Board is if Kimberley Johnson properly interpreted the Zoning Ordinance.

On a motion made by Mr. Rohrbaugh and seconded by Mr. VanLuven, the BZA voted to affirm the decision of the Fauquier County Zoning Administrator by the following resolution:

Whereas, Appellant, Harry Douglas Gray, has appealed the following decision of the Zoning Administrator:

- a. The Zoning Administrator's July 11, 2003 determination that Zoning Permit Z03-51990 for a proposed shed must be revoked due to the shed being located within a recorded ingress-egress easement,

and

- b. The Zoning Administrator's July 18, 2003 determination that there is a 75-foot setback requirement from the recorded 50-foot right-of-way easement under Fauquier County Zoning Ordinance Section 15-300.

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 4th day of September, 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.

ADJOURNMENT: There being no further business before the Board, the meeting adjourned at 4:50 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.