

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS**

April 4, 2002

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, April 4, 2002, beginning at 2:00 P.M. in the Meeting Room of the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Barr, Chairman; Mr. John Meadows, Vice Chairman; Mrs. Margaret Mailler, Secretary; Mr. James Van Luven; Mr. Eugene Lofdahl; Mr. Maximilian A. Tufts, Jr.; and Ms. Sonja R. Addison. Also present were Mrs. Tracy Gallehr, Assistant County Attorney; Mrs. Carolyn Bowen, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator, Ms. Holly Meade and Carole L. Hensley, Office Associate III.

**MINUTES:** On motion made by Mr. Van Luven and seconded by Mr. Tufts, it was moved to amend the minutes by correcting the spelling of Mr. Lofdahl's name. On motion made by Mr. Meadows and seconded by Mr. Tufts the March minutes were approved as amended and submitted. Motion carried unanimously.

**LETTERS OF NOTIFICATIONS & PUBLIC NOTICE:** The Zoning Administrator stated that to the best of her 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. Mr. Barr asked Ms. Hensley to read the Public Hearing Protocol.

**SPECIAL PERMIT #49021 MARY HOWE DIZEREGA (OWNERS)**

Applicant requested a variance of 33 feet from the centerline of Route 712 (Delaplane Grade Road) for a proposed addition of a bedroom, play room, bathroom, closet, linen storage and hallway to an existing non-conforming two-bedroom single family dwelling unit built more than 100 years ago. This property is zoned Rural Agriculture (RA) and is located at 2000 Rectortown Road, Marshall, VA, ***MARSHALL DISTRICT***.

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

He stated that the addition would be 42 feet from the centerline of Route 712 (Delaplane Grade Road) wherein the Zoning Ordinance requires 75 feet from the centerline of a local collector road in the Rural Agriculture zoning district. This proposed addition will be farther from Route 712 than the nearest portion of the existing structure. The health department has issued a permit to upgrade the septic tank and drainfield to a three-bedroom system.

Mr. Barr asked if anyone would like to speak. Mr. Ed DuBerry spoke in favor of the application stating that the bank is solid rock with a pronounced slope.

Mr. Meadows inquired as to the drainfield location on the plat, with Mr. DuBerry pointing out the site.

No one else spoke in favor or against the application.

On motion made by Mr. Tufts and seconded by Mrs. Mailler, in application No. 49021, it was moved to approve the variance based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because: of the unusual size and age of the existing building and location of drainfield.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are 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 size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are: *(specific findings as to a, b, or c above)*:
6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
7. The strict application of the Ordinance will produce undue hardship.
8. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.

9. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
10. The minimum variance that is necessary to afford relief is 33 feet.

The motion carried unanimously.

**SPECIAL PERMIT #49024 WILLIAM D. & JOYCE L. BARBER (OWNERS)**

The applicants requested a special permit approval to locate a retail sales establishment and shopping center of 5,000 square feet or greater but less than 75,000 square feet on the site. The property contains 7.699 acres, located at the intersection of Routes 603 and 605, and is zoned Commercial-1 (C-1) and Residential-1 (R-1).

Mr. Hodge stated that a site visit was made and he reviewed the staff report, a copy of which is attached hereto and made apart of these minutes.

He said that the applicants state (4) employees will be on site, with the proposed hours of operation to be 8 a.m. until 7 p.m. Sunday through Saturday. The entrance to the site would be off of Route 603 upon approval granted by the Virginia Department of Transportation. The health department states that a permit was issued for the parcel for a (3) three bedroom single family dwelling in 1967, with the permit citing a maximum flow capacity of 405 gallons per day. The operation will include an inventory of seasonal items such as plants, flowers, shrubs, mulch, soil, pottery, fruits, vegetables, Christmas trees and firewood. The display includes several structures and a large outdoor display and storage. Site plan approval is required for this type of operation.

Mr. Barber spoke in favor of his application stating that his business will be low impact family run nursery, a showplace in the neighborhood.

Mr. Lofdahl asked if it would be similar to Meadows Nursery in New Baltimore, displayed nicely with shaded areas. Mr. Barber replied that it would be but on a much smaller scale.

Mr. Meadows showed concern about the pond on the premises and asked if that was included in the plan. Mrs. Bowen interceded by saying the pond location is an issue that could be addressed, should application be approved.

Mr. Barber said he would check with the County Engineer and comply with any necessary requirements.

Mr. Bob Sowder spoke in favor of the application, noting he had lived in that neighborhood for 35 plus years. He the county needs to preserve such family businesses as much as possible. He stated that he knows the Barber family and believes the proposed business would be an asset to the area and community

Mr. Benjamin Russ spoke in opposition of the application, reiterating his earlier letter, a copy of which is attached hereto and made apart of these minutes. He stated concerns about the noise level, dust pollution, large amounts of traffic, heavy machinery and activities with music. He said this would be a major nuisance to the residential area. He added that the property values would diminish. He stated that he was an engineer with experience in the environmental field, and that nurseries may have poisonous fertilizers, pesticides, water drainage problems (including the proposed pond), the possibility of plant diseases, dust arising from piles of dirt and soil.

Mr. Meadows asked how long Mr. Russ had lived there. He also asked if Mr. Russ was aware of the C-1 zoning and the Country Store zoning. Mr. Russ said he was not aware of the C-1 zoning but was aware of the Country Store zoning, and he had always been worried about gasoline spills and fumes from the store.

Mr. Lofdahl inquired as to what proof Mr. Russ had regarding poisons that could endanger the neighborhood. Mr. Russ explained that any man-made product could destroy the air and environment.

Mr. Lofdahl also reassured Mr. Russ that the Board of Zoning Appeals can control the length of time for a special permit, and the BZA may take measures if a business does not comply with the recommended standards.

Mr. Russ asked if opening times can be controlled and noise control with events. Mr. Meadows and Mr. Lofdahl both stated that that was correct.

Ms. Marcia Valentine spoke in opposition of the application and stated that she was aware that the property was zoned half residential (R-1) and half commercial (C-1). Mr. Meadows said that the property had seven and a half acres and he believed approximately 60% of the acreage lay in the commercial district and 40% was residential. Mrs. Bowen said that additional study would be needed to determine an exact percentage in each district.

Ms. Valentine asked if the special permit was retail sales or nursery and if it was being set up as a landscaping business.

Mr. Hodge stated the application had been filed under retail sales establishment and shopping center of 5,000 square feet or greater but less than 75,000 square feet. The application was not for a nursery, which is a different category.

Mrs. Bowen clarified again that the property is zoned C-1 and R-1 and not Rural, and that she was confident the property was appropriate for retail sales.

Mr. Barr stated that the Board of Zoning Appeals is bound by the Code of Virginia. The BZA cannot change the zoning of the property, concentrating on whether the application constituted a permissible use for the site.

Mr. Barr reminded Ms. Valentine of the Protocol time limit, and she went on to summarize about the air pollutant, water control, traffic, noise and property value decrease.

Ms. Kathy Barber spoke in favor of the application stating that her brother and father had gotten verbal acceptances from the adjoining neighbors for this proposed use. She stated she would be glad to supply the BZA with written proof if necessary within 48 hours. She added that the neighbors are elderly and welcome the family business with open arms.

Mr. Meadows asked Ms. Barber if she could address the concerns of festivals with music and growing products using pesticides or sale of pesticides.

Mr. Bill Barber replied no pesticides would be sold or used. The use will be a small operation that one day may expand to include small shrubs or trees, but any such plans would be in the future. Mr. Barber added there are no plans to have festival type events with loud noise.

Ms. Andrea Marsh spoke in opposition of the application stating that she lived directly across from the proposed landscaping business and wants to voice her opinion against the noise and traffic associated with the business along with concerns with possible pollution and trash.

Mrs. Valentine, (who is related to the previous speaker Ms. Marcia Valentine), stated her opposition of the application for landscaping business.

Mr. Hodge stated that another letter supporting the application was presented during the Board's site visit. The letter was submitted for the record.

No one else spoke in favor or in opposition of this application.

On the motion made by Mrs. Addison, and seconded by Mr. Meadows, it was moved to grant special permit #49024, after due notice and hearing, as required by Code of Virginia Section 15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's 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, 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 including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance):
- (a) meet VDOT's approval for entrance off of Route 603
  - (b) meet Health Department's approval and maintaining maximum water flow capacity of 405 gallons per day.
  - (c) site plan approval
  - (d) meet conditions and requirements for the pond as determined by the County Engineer
  - (e) permit will not convey with the sale of the property
  - (f) time period of 5 years
  - (g) time of operation is from Sunday through Saturday 8:00 a.m. – 7:00 p.m.
  - (h) no sale of pesticides

Mr. Meadows made motion to change the 5-year term to a 3-year term and Mrs. Mailler made motion to add no festival type events with amplified noise on premises. Motions were seconded by Mr. Lofdahl and passed as follows:

- (a) meet VDOT's approval for entrance off of Route 603
- (b) meet Health Department's approval and maintaining maximum water flow capacity of 405 gallons per day.
- (c) site plan approval
- (d) meet conditions and requirements for the pond as determined by the County Engineer
- (e) permit will not convey with the sale of the property
- (f) time period of 3 years
- (g) time of operation is from Sunday through Saturday 8:00 a.m. – 7:00 p.m.
- (h) no sale of pesticides
- (i) no festival type events with amplified noise.

The motion carried unanimously.

**JOHN CASSELL AND FIELDING KINES (APPLICANTS)**

Applicants are requesting special permit approval to locate a mulching operation and special permit approval to conduct retail sales in conjunction with a Category 16 or 17 use. This operation will include the production as well as wholesale and retail sale of the product. The operation would produce mulch from wood materials brought to this site from land clearing projects. The site is zoned Industrial-2 (I-2). The property is located at the Southside of Route 28 (Catlett Road) across from the intersection with Route 650 (Messick Road) ***CEDAR RUN DISTRICT***.

Mr. Hodge stated that a site visit was made prior to the meeting and he reviewed the staff report, a copy of which is attached herewith and made part of these minutes.

He stated that the proposed site currently is a vacant parcel, and the use is subject to site plan approval. There is a small sliver of floodplain on the southern corner of the property according to the Flood Insurance Rate Map. The Virginia Department of Transportation noted the need for a commercial entrance. The exact specifications for the entrance will be addressed at the time of site plan submission.

Mrs. Bowen stated that the applicants did not appear to be present and recommended that the Board of Zoning Appeals continue the case to the next meeting. There was discussion amongst the BZA and staff, and it was decided to hold the public hearing, so those in attendance could register their comments on this application.

Mr. Gene Longerbeam, President, Midland Cemetery Association, spoke in opposition of the application. He stated that he has circulated letters to the lot owners of the cemetery for their signature and return to the Zoning Office, copies of which are attached herewith and made a part of these minutes. He stated that the Association is a non-profit organization of 100 years. Mr. Longerbeam stated that the traffic on Route 28 (Catlett Road) with just two lanes is a dangerous and congested road now. He believed the applicants' site is proposed near a dangerous curve where many wrecks have occurred. He questioned how VDOT could approve an entrance or deceleration lane from the north side of the road and suggested that applicant be responsible for this. Mr. Longerbeam stated that this operation would cause bad fumes and odors from mulch and burned materials and would create water pollutants. He then added that the road would become more dangerous from the mess associated with the traveling trucks coming and going.

Mr. Elmer Dunford spoke in opposition of the application. His concerns were of the noise pollution issues associated with trucks and the grinding of stumps and trees. He felt air pollution was a concern because of mulch, dust, dirt and the big trucks and noted the unpleasant odor associated with mulch storage piles. He stated that he lived in a residential area and there should be respect for the neighboring properties.

Mr. Meadows inquired if a neighboring dog kennel bothered him with the noise of barking dogs. Mr. Dunford replied that he had a problem six or seven years ago, but has experienced no recent problems after speaking with the neighbor.

Mr. William E. Chaney spoke in opposition of the application reiterating some of the same complaints as previously presented. He wanted the BZA to know that he has lived near the proposed site since 1977. He said he lost his wife who is now buried at the cemetery, and he plans to be buried beside her.

Mr. Lofdahl inquired as to how far it was between the cemetery and the proposed site. Mr. Meadows stated that 900 feet lay between the two parcels, with the intervening property being zoned Industrial-2 (I-2). Mr. Lofdahl inquired as to whether there were any dense pines to offer a noise buffer. The Board of Zoning Appeals examined an aerial view of the property.

Ms. Lorene Payne, Zoning Administrator for the City of Manassas, stated that her father was buried in that cemetery. She voiced concerns over the construction noise level during services at the cemetery. She suggested to the Board that the request be denied based upon the applicants' failure to state procedures for control of possible pollution issues and dust mitigation. She stated that these grinding tubs could emit dust as high as 500 feet into the air. Ms. Payne said the BZA needs to know the type and size of the equipment to be used and the water supply required to mist tubs and mulch for dust control. She also recommended that if the special permits are approved, then the Board should consider mandating a buffer such as Holly, Nelly evergreen trees or Leyland Cypress, their growth creates an attractive visual barrier that stays evergreen all year around.

She recommended that hours of mulch production be limited to before 10 a.m. or later in the day such as between 4:00 and 8:00 p.m. to be considerate of services at cemetery.

Mrs. Payne stated that she felt this industrial zone was not the best place for this type of business.

Mr. Lofdahl asked Mr. Longerbeam how many funeral services are conducted at the cemetery annually. Mr. Longerbeam answered that there were six to ten a year, with cemetery also having special services on holidays such as Memorial Day and Veteran's Day. Mr. Lofdahl asked how much noise do the grinder tubs produce. Ms. Payne replied approximately 110 decibels and that some grinders exceed this level depending on the size and type.

Mr. Chaney stated that you couldn't hear a conversation standing next to a running chipper and stump grinder.

Mrs. Bowen wanted it to be entered into record the Zoning Office received 44 letters from members of the cemetery association, with some of the letters signed by family members for people already deceased.

Mr. Longerbeam asked the Board of Zoning Appeals members to consider that people who have purchased lots can ask for their money back.

No one else spoke.

Mr. Meadows submitted a motion was made to continue the public hearing for this application until the May meeting, with Mrs. Mailler seconding.

The motion carried unanimously.

**ADJOURNMENT** There being no further business before the Board, the meeting adjourned at approximately 3:35 P.M.

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William W. Barr, Chairman

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Mrs. Margaret Mailler, 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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