

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS  
October 3, 2002**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, October 3, 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, Mr. James Van Luven; Mr. Eugene Lofdahl; Mr. Maximilian A. Tufts, Jr. and Ms. Sonja Addison. Also present were Mrs. Tracy Gallehr, Assistant County Attorney; Mrs. Carolyn Bowen, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator, Ms. Holly Meade, Zoning Planner and Ms. Nancy Albert, Office Associate III.

**MINUTES:** On motion made by Mr. VanLuven and seconded by Mrs. Mailler, the August and September minutes were approved as submitted, the 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. Albert to read the Public Hearing Protocol and it was read.

**SPECIAL PERMIT #49890 DESYD LC (OWNER) & NICHOLAS SWEENEY (LESSEE)**

Applicants are requesting a special permit to locate an indoor technical school (cheerleading/tumbling training center) on the site. The subject property is identified as PIN#6983-88-6090, containing approximately 2.097 acres, located at 6418 Old Meetze Road, Cedar Run Magisterial District, Warrenton, Virginia.

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

Mr. Russ Tantillo appeared at the meeting representing the special permit. He stated that the staff report given by Mr. Hodge was correct.

Mr. Lofdahl asked who would monitor the water meter?

Mr. Doug Darling, owner, said the way the system works is that there are two pumps, one pumps into the other, then goes to a filter and then trips the meter when it cycles. It has been used over a year and has not cycled a single time. He said that the water evaporates before it reaches the top. The information will be recorded on a clipboard and usage will be compared as the building is built out.

Mr. Lofdahl asked if Mr. Darling if he worked there or was the owner?

Mr. Darling said he was both, that he is the Washington Post distributor and owns the facility.

Mr. Lofdahl asked how often Mr. Darling was at the property, and he stated at least five times a week.

Mrs. Bowen said the Health Department is responsible for ensuring that the monitoring is done properly.

Mr. Darling stated that there are fifty spaces, and currently there are two tenants. The heating/air company has one employee that comes to the building and the Washington Post hours are 11:00 p.m. to 2:00 a.m. He will tell any new tenants the parking is on a shared basis. He further stated that the parents usually drop off the children, so the parking spaces will not have that much use.

Mr. VanLuven asked if there will be a sign for the school and Mr. Darling said there would be a freestanding sign for the industrial park and the tenant's names will be listed.

Mr. Hodge stated the industrial park is allowed one freestanding sign by right.

No one else was present to speak to the request.

No one else spoke in favor or against the application.

On a motion made by Mr. VanLuven and seconded by Mr. Tufts, in application No. 49890, it was moved to grant the special permit based on the Board's findings, after due notice and hearing, as provided by Code of Virginia Section 15.2-2204 and Section 5-009 of the Fauquier County Code:

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.

**5-501 Standards for All Category 5 Uses**

All off-street parking and loading areas, swimming pools and tennis courts and similar facilities shall be effectively screened and shall not be located in any required yard in all Residential and Rural District.

**5-504 Additional Standards for Primary School, Secondary/Advanced Schools and Technical Schools (Indoor)**

1. In addition to complying with the minimum lot size requirements of the zoning district in which located, the minimum lot area for a private school of general education shall be of such size that:
  - A. 200 square feet of usable outdoor recreation area shall be provided for each child in grades kindergarten through three (3) that may use the space at any one time, and
  - B. 430 square feet of usable outdoor recreation area shall be provided for each child in grades four (4) through twelve (12) that may use the space at any one time. Such usable outdoor recreation shall be delineated on a plat submitted at the time the application is filed. For the purpose of this provision, usable outdoor recreation area shall be limited in the same manner as paragraph 503.1.
2. The following standards shall apply to primary and secondary/advanced schools in residential zoning districts: **DOES NOT APPLY- ZONED INDUSTRIAL.**
  - A. Minimum lot size shall be 5 acres.
  - B. The maximum number of students should not exceed 300.
  - C. All exterior lighting shall be designed and installed so that all direct rays are confined to the site and adjacent properties are protected from glare.
4. 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) Hours of classes are 4 p.m. to 9 p.m. Monday through Friday and 1 p.m. to 8 p.m. on Saturdays and Sundays.
  - (b) No competition to be held on site, this is a practice facility only.
  - (c) Site plan approval.
  - (d) All activities will be contained inside the building.
  - (e) Thirty minutes will be scheduled between classes.
  - (f) All parking is to be onsite, with no on street parking allowed.

The motion carried unanimously.

**SPECIAL PERMIT #50230 HEART'S DELIGHT BAPTIST CHURCH (OWNER)**

Applicants are requesting a special permit for an addition to an existing place of worship. The subject property is identified as PIN #7849-93-5280, containing approximately 1.0 acre, located at 11229 Brent Town Road, Cedar Run Magisterial District, Catlett, Virginia. Approval was given by the BZA in December, 2000 but has expired since site plan approval was not obtained.

Mr. Hodge reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Ray Panone of Blue Lion Construction appeared at the meeting to represent the special permit.

He stated the staff report given by Mr. Hodge was correct.

Mr. Meadows asked if anything had changed with the original application.

Mr. Hodge stated he had viewed the site when he posted the property and there were no changes in the site and the character of the area had not changed.

Mrs. Bowen stated to the Chairman that they might want to ask the Church if they are ready to proceed with site plan approval, and that the Zoning Ordinance allows one year to obtain site plan approval, but once you obtain site plan approval you have five years.

Mr. Panone stated they are ready to file for site plan approval and begin construction.

No one else spoke in favor or against the application.

On a motion made by Mrs. Mailler and seconded by Mr. Meadows, in application No. 50230, it was moved to grant the special permit based on the Board's findings, after due notice and hearing, as provided by Code of Virginia Section 15.2-2204 and Section 5-009 of the Fauquier County Code:

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.

**5-601 Standards for All Category 6 Uses**

No off-street parking or loading area shall be located within any required yard or within 25 feet of any lot line in or adjoining a Residential or Rural District.

**5-602 Additional Standards for Places of Worship**

Uses proposed in conjunction with places of worship shall be subject to regulations applicable to such use (e.g., schools, athletic facilities).

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) Site plan approval obtained within one year.

The motion carried unanimously.

**SPECIAL PERMIT #50241 JOHN E. & TONYA M. LAPHAM (OWNERS) & MELISSA DAWN & DAVID LEE WHITTINGTON (CONTRACT OWNERS)**

Applicants are requesting a special permit to locate a taxidermy shop on the property. The subject property is identified as PIN #6944-95-0751, containing approximately 5.13 acres, located at 10022 Wesley Chapel Road, Marshall Magisterial District, Marshall, Virginia.

Mr. Hodge stated a site visit was made by the BZA earlier in the day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. David Whittington appeared at the meeting to represent the special permit and stated the staff report given by Mr. Hodge was correct.

Mr. Whittington stated he is applying for a special permit to run a small taxidermy business from his home out of the garage. He is currently residing in Fairfax City and is running a part time taxidermy business in an out building. He said he has a full time job, currently working at night and stays home during the day to watch the children.

He said he had received copies of the letters of concerns from the neighbors. He said he, his wife and Mr. Lapham went door to door and to speak with the neighbors. He said their concerns were to the amount of traffic that would be added to the area, animal waste disposal, amount of water usage, the view to the Church and their homes, and fumes from the chemicals he might use.

He said his current business from his home in Fairfax had operated for four years and he had not had any complaints. He stated his home was much closer to his neighbors that this home is, and a lot of people do not understand the idea of taxidermy, most people don't know what you do is an art form. He said his part time business would not be a commercial business only a home based business. He will continue to work full time and build the taxidermy business slowly until he has a

base to go to a commercial property. The business is done by word of mouth and business cards, there will be no advertising.

Mr. Lofdahl asked Mr. Whittington if he ever received any complaints from his neighbors and he stated that he had not.

Mr. Meadows asked Mr. Whittington if he had fully read his Federal Fish and Wildlife Permit?

Mr. Whittington said it is very lengthy and he did not read the whole thing.

Mr. Meadows stated that item K in your Federal Fish and Wildlife Permit states "All unused nongame birds must be returned to the person and/or institution who originally provided the birds. All unused migratory bird parts must be destroyed by burial or incineration." He stated in the letter of intent from Mr. Whittington states "this will then out in the normal trash pickup if appropriate. If necessary, during a busy time, waste may be taken directly to the local landfill. He stated that Mr. Whittington should take the time to read his permit.

Mr. Whittington stated he had abided by the permit and had not done any migratory birds, however he would reread it.

Mrs. Mailler asked the garage was two story? Mr. Whittington said it was not.

Mr. Court Johnson stated he was the adjoining neighbor to the left. He stated he did not have the opportunity to meet Mr. Whittington. He said he had two letters from other adjoining neighbors to present. He stated that he purchased the home with the expressed covenants that it would remain residential, there were not going to be any commercial businesses. He said his main concern was it would change the character of the neighborhood, and he thought this would open the door or provide the flood gate for other people to come into the neighborhood and start businesses. He stated that Mr. Whittington would like to make this a full time basis and possibly add onto or extend the garage. He said he is concerned it is going to change the environment of the neighborhood.

Letters from John S. & Suzanne M. Corrao and John and Julie Dixon were entered into the record.

Mrs. Silvija Rubinstein stated she and her husband had submitted a letter. She asked the Board to keep in mind they were touring the property while the trees are still filled with leaves. In the Fall and Winter when the trees are bare, she could view the site as she can see Wesley Chapel church.

Mr. Barr asked if it is OK to use regular trash disposal.

Mr. Meadows asked who monitors that all the parts are to be buried or incinerated.

Mrs. Bowen stated that it is a federal permit.

Mr. Tufts stated that #L acceptance of this permit authorizes inspection in accordance with 50 CFR 13.47 refers to migratory birds.

Ms. Gallehr stated that Federal Law regulates migratory birds in the permit.

Mr. Meadows stated there is a lot of concern today with covenants and told those present that covenants are not enforced by the BZA but by the property owners.

Mr. Whittington stated he has kept records for seven years and while his Federal permit allows him to do migratory birds, he has not done any. He said his State permit would cover any big or small game and fish, that he can be visited anytime by the local game warden, which he has been. He said he can remove the tag while working on the animal and but must retag it when he completes his work. He said he logs everything into a book – name, address, phone number, date of kill and county of kill. He said the Federal government regulates the disposal of migratory waterfowl and birds.

Mr. Barr asked if the methods of disposal are adequate according to the VA Department of Game and Fisheries.

Mr. Whittington said he had not checked.

Mr. Lofdahl asked if your business grows at what point would you move out of your garage to a larger facility.

Mr. Whittington stated he does approximately 12 deer head a year. He would have to do 50 deer head to move to a larger facility.

Mr. Lofdahl asked if he works by himself, and he replied yes.

Mr. Lofdahl asked if he has any plans in the foreseeable future to hire someone, and Mr. Whittington said he did not.

Ms. Gallehr stated he must comply with all conditions of permits. If he violated any conditions, Mrs. Bowen can seek removal of special permit or an injunction.

Mr. Lofdahl asked how often is trash pickup, and Mr. Whittington said once a week.

On a motion made by Ms. Addison and seconded by Mr. Meadows, in application No. 50241, it was moved to grant the special permit based on the Board's findings, after due notice and hearing, as provided by Code of Virginia Section 15.2-2204 and Section 5-009 of the Fauquier County Code:

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) Site plan approval.
  - (b) Special permit does not convey with the sale of the property after the transfer to Mr. and Mrs. Whittington.
  - (c) No tanning permitted on the premises.
  - (d) Hours of operations are: 8:00 a.m. to 8:00 p.m. on weekends and no later than 9:00 p.m. weekdays.
  - (e) Maintain all appropriate licenses from the Virginia Department of Game and Inland Fisheries and Federal government as required.
  - (f) No sign is permitted.
  - (h) Animal waste is to be taken to the landfill within three days of performing duties.
  - (i) Special permit is issued for two years.
  - (j) The applicant is to maintain a safe entrance at all times but is not required to install a commercial entrance as recommended by VDOT.
  - (k) Comply with all state and federal permitting laws.

The motion carried unanimously.

**SPECIAL PERMIT #50265 JOYCE M. & PATRICK D. NUTZ (OWNERS) & ERIN NUTZ (APPLICANT)**

Applicant is requesting a special permit to operate a repair service (upholstery, draperies & home decoration services) from the existing single family dwelling on the property. The property is identified as PIN #6985-91-1325, containing approximately .878 acre, located at 7290 Hunton Street, Center Magisterial District, Warrenton, Virginia.

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

Ms. Erin Nutz appeared at the meeting to represent the special permit. She stated the staff report given by Mr. Hodge was correct.

Mr. Barr asked where the 250 square feet was located in the dwelling and Ms. Nutz stated two rooms on the lower level in the back of the house.

Mr. Lofdahl asked if there was a back door and she replied there were French Doors for access.

Mr. Lofdahl asked if Ms. Nutz would use the doors to move products unfinished and finished, and she said yes.

Mrs. Becky Crouch said she is not an adjoining property owner but lives in the neighborhood, she said she had not had an opportunity to meet the family. She said she was not opposed to the kind of business, but felt it might open the door for other businesses in my neighborhood, which concerned her. She said she had spoken to several neighbors whose homes are empty during the day while they are at work, and we do not want strange people in the neighborhood.

Mr. Barr stated that each case stood on its own.

No one else appeared to speak to the request.

On a motion made by Mr. Lofdahl and seconded by Mr. Meadows, in application No. 50265, it was moved to grant the special permit based on the Board's findings, after due notice and hearing, as provided by Code of Virginia Section 15.2-2204 and Section 5-009 of the Fauquier County Code:

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.

**6-301 Authorization**

Home occupations are permitted subject to the following provisions and any use limitations applicable in the zoning district in which located.

**6-302 Permitted Home Occupations**

Home occupations include the following uses and those uses determined by the Zoning Administrator to be sufficiently similar thereto in terms of type, scale and impact:

Repair service establishment as a home occupation with special permit approval.

**6-304 Use Limitations**

In addition to the use limitations applicable to the zoning district in which located, all home occupations shall be subject to the following use limitations:

1. A home occupation must be conducted within a dwelling which is a bona fide residence of the principal practitioner or in any accessory building thereto which is normally associated with a residential use.
  2. No retail sales shall be conducted on the premises (for uses allowed in accordance with Section 3-302.1).
  3. No mechanical or electrical equipment shall be employed other than machinery or equipment customarily found in the home associated with a hobby or avocation not conducted for gain or profit, or machinery or equipment which is essential in the conduct of the home occupation.
  4. No outside display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.
  5. No more than one (1) person other than a member of the household occupying such dwelling shall be employed.
  6. No sign shall be permitted except in accordance with the provisions of Article 8.
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) No clients will be coming to the home, the practitioner will deliver the product.

The motion carried unanimously.

**VARIANCE #50268 DAVID A. ROBERTSON (OWNER)**

Applicant is requesting a variance to the side yard setback requirement to locate an attached garage on his property in the Lakeway Subdivision. The proposed structure would be located 11 feet 1 inch from the side property line wherein the Zoning Ordinance requires 15 feet. The applicant

cites the exceptional narrowness of the lot, location of the existing dwelling, drainfield, reserve drainfield and well as reasons the structure cannot be located elsewhere on the property. A variance of 3 feet 11 inches is requested. The subject property is identified as PIN #7905-83-6804, containing approximately 0.729 acres, located at 5062 Dogwood Drive, Scott Magisterial District, Warrenton, Virginia

Mr. Hodge reviewed the staff report, a copy of which is attached to and made a part of the minutes. In the staff report it was stated the Board of Zoning Appeals granted variance #49483 on June 6, 2002 to permit a proposed garage to be constructed 12 feet from the property line. After construction had commenced, the applicant and his contractor discovered a measurement error for the original variance request. Mr. Robertson states he ran a string from his property corners to obtain the original measurements, but shrubbery, fence, telephone pole and guide wires led to the mistake.

Mr. David Robertson appeared at the meeting to represent his variance. He stated the staff report given by Mr. Hodge was correct.

Mr. Meadows asked who made the mistake in measuring the setback and Mr. Robertson stated he did.

Mr. Robertson said yes, obstacles caused him to make the error.

No one else appeared to speak to this request.

On a motion made by Mr. Lofdahl and seconded by Mr. Meadows, in application No. 50268, it was moved to grant the special permit based on the Board's findings, after due notice and hearing, as provided by Code of Virginia Section 15.2-2204 and Section 5-009 of the Fauquier County Code:

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 layout of the lot with respect to the streets.
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 the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Ordinance.
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 having three front yards and one side for a back yard.

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 minimum variance that is necessary to afford relief is 3' 11".

The motion carried unanimously.

**ADJOURNMENT:** There being no further business before the Board, the meeting adjourned at 3:30 P.M.

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William W. Barr, Chairman

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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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