

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

April 5, 2001

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, April 5, 2001, at 2:00 P.M. in the Meeting Room of the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Rider, Chairman; Mrs. Peg Mailler, Mr. John Meadows, Mr. James VanLuven and Mr. Maximilian A. Tufts, Jr. Also present were Mr. Paul McCulla, County Attorney; Mrs. Carolyn Bowen, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; Ms. Holly Meade, Planner; and Mrs. Beverly Pullen, Office Associate. Mr. William Barr and Mr. Eugene Lofdahl were absent.

**MINUTES**

The minutes of the March 1, 2001 meeting were approved as distributed.

**LETTERS OF NOTIFICATIONS**

**PUBLIC NOTICE** Mrs. Bowen stated that to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing have been properly advertised, posted, and letters of notification sent to adjoining property owners.

**SPECIAL PERMIT #47044 MAIN STREET LIMITED PARTNERSHIP  
(OWNER)/MARSHALL FORD**

Applicants are requesting an extension of one year for special permit #45626 for an automobile sales, rental, and service. The subject properties are identified as PIN #6969-89-6085-000, #6969-88-1625-000, and #6969-89-2054-000 containing approximately 8.69 acres, located on Old Stockyard Road (State Route 1001) and John Marshall Highway (State Route 55), zoned Commercial-3, in Marshall District.

Mr. Hodge reviewed the staff report and stated that the BZA approved special permit #44059 on May 6, 1999 for Automobile Sales, Rental and Service, for Marshall Ford. He also stated that an extension was granted on May 4, 2000 for one year, and the applicants are requesting another extension for one year.

Mr. David Baird, of Marshall Ford, spoke in support of this request. He stated that he needs additional time to secure a buyer for his property, and would like a one-year renewal of the permit. He explained that he is currently reviewing a contract for his property.

Mr. Rider asked if anyone wished to speak regarding this request.

No one spoke.

On the motion made by Mr. Van Luven, and seconded by Mr. Meadows, it was moved to grant special permit #47044, after due notice and hearing, as required by Code of Virginia §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 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 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, namely:

**5-1403**

**Additional Standards for Automobile Sales, Rental and Service Establishments**

1. Outdoor storage, parking and display areas shall be permitted only on the same lot with the ancillary to a sales room, rental office or service facility, which shall be entirely enclosed on all sides.
2. The outdoor area devoted to storage, loading, parking and display of goods shall be limited to that area so designated on an approved site plan. Such areas shall not be used for the storage or display of vehicles that are not in operating condition.
3. Notwithstanding the bulk regulations of the zoning district in which located, any such outdoor area that is located on the ground and is open to the sky may be located in any required yard but not nearer to any front lot line than ten (10) feet.
4. All such uses shall be provided with safe, convenient access to a public street. If any outdoor area is located contiguous to a street, ingress and egress shall be provided only through driveway openings in the curb or similarly controlled by other means appropriate to the design of the abutting street.
5. All outdoor areas used for parking, storage, loading, display and driveways shall be constructed and maintained with an all-weather dustless surface.
6. All lighting fixtures used to illuminate such outdoor areas shall be designed to comply with the performance standards as to glare of the zoning district in which such facility is located. Such facilities shall

not be lighted at any time other than during the same hours that the facility is open for business, except for necessary security lighting.

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):
- (1) Special Permit #47044 is granted a one-year extension of previously issued special permit #44059 with the same conditions as issued with the original permit as follows:
  - (2) If the property owner develops the remaining 5.69 acres of the subject development, an interparcel access shall be provided to the fifty (50) foot dedicated public right-of-way located on the Marshall Shopping Center site.
  - (3) The property development shall provide right-of-way dedication and improvements as required by the Virginia Department of Transportation.
  - (4) The subject property shall have a maximum of two (2) entrances onto Old Stockyard Road (State Route 1001).
  - (5) No access shall be permitted onto John Marshall Highway (Virginia State Highway Route 55).
  - (6) All outdoor light shall be fully shielded. A fully shielded fixture must be a full cutoff luminaire or a decorative luminaire with full cutoff optics. The light source visibility shall be shielded from the adjoining property and project no further than the property line.
  - (7) Any “spillover lighting” from parking area luminaires onto public roads and property in residential zoning districts shall not exceed one-half (1/2) foot-candle.
  - (8) All outdoor lighting fixtures, including display lighting along the perimeter of the site, shall be turned off at close of business. The only outdoor lighting permitted after business hours will be security lighting at a minimum level for the display area near to, and including the building.
  - (9) All outdoor lighting for the parking area shall be limited to an average horizontal illuminance of three (3) foot-candles.
  - (10) A lighting plan shall be included with site plan submission identifying the type of lighting, the intensity and location of fixtures on the site, and to demonstrate how the plan, installed parking lot and building lighting shall conform to special permit conditions.
  - (11) The lighting requirements are to be approved by the Zoning Administrator as per the lighting ordinance and/or the above stated conditions.
  - (12) Site plan approval as required.

The motion carried unanimously.

**VARIANCE #47051 MARGARET N. SANDERS (OWNER)**

Applicant is requesting a variance for a horticultural/equipment shed located 65.5 feet from the

centerline of Orchard Hill Lane, wherein the Zoning Ordinance requires 75' feet. The subject property is identified as PIN #6022-66-9552-000 containing approximately 10.14 acres, located at 11636 Audubon Trail (Private) off of Apple Manor Road (Private) off of Leeds Manor Road (State Route 688), zoned Rural Conservation, in Marshall District.

Mr. Hodge reviewed the staff report and stated that the structure was originally constructed without a permit and as a barn. He stated that the Zoning Office received an inquiry as to the structure, and the applicant was contacted. He further stated that the applicant came into the office and obtained a Zoning/Building Permit, however the original complainant said the distance of 77' to the centerline of Orchard Hill Lane was incorrect. Staff then visited the property to measure the distance, and the structure was located 65.5' feet from the centerline of Orchard Hill Lane, wherein the Zoning Ordinance requires 100' feet. He stated that the barn cannot be used as such because of the required setback and the owner stated she would convert the use of the building to a horticultural/equipment shed.

Mr. Rider stated that a site visit was made earlier.

Mr. Hodge stated that the building is currently being used for hay storage, and also has stalls.

Dr. Margaret Sanders spoke regarding her request. She stated that she is requesting a 9.5 foot variance for the structure. She stated that the structure was built originally without a permit, as she did not think a permit was required. She stated that her husband, Robert Wright, is the Architect who erred in locating the building, and a letter is in the file explaining the reasons for the mistake. She stated that she felt that the letter from Melanie Fein, does qualify under Section 13-406. She explained that the use of the building originally was for a barn, however the use will be changed to a horticultural/equipment shed. She stated that the letter from Ms. Payandeh and Ms. Fine is incorrect. She stated that Ms. Fein wanted her to plant trees to provide buffer, and that she would be willing to do this. She stated that Ms. Payandeh wanted her to move the driveway. She explained that there are ten neighbors near her property, and seven of them have been supportive, and three are opposed.

Mr. Rider asked Dr. Sanders about the intended use of the building, and Dr. Sanders responded that she understood that she would have to change the use, and they will build another barn 100' feet from the property lines.

Mrs. Mailler asked Dr. Sanders when the structure was built, and Dr. Sanders stated that the construction started in August, 2000, but has not been completed.

Ms. Melinda Neese spoke in support of the request. She stated that she felt that the structure was a nice building, and was not an eyesore. She stated the placement of the building was appropriately placed out of line of sight, on behalf of the neighbors. She also stated that there are trees in place that provide a thick buffer.

Ms. Nancy Hanscom spoke in support of the request. She stated that she thought the variance should be granted, and they should not have to move the building, and also thought that the trees would provide sufficient buffer.

Mr. Don Neese spoke in support of the request. He read two letters from neighbors. One statement was sent from John and Monica Nixon stating their support for the granting of the variance, as felt there was no practical or aesthetic reason for denying the variance. Another statement was read from Tricia Askey and Mark Hoptiak stating their support for the variance. Mr. Neese stated that he felt that the area is mostly large lots and a 9 foot variance is not excessive. He further stated that he felt that Dr. Sanders is very sensitive, and would be willing to follow any conditions.

Mr. Dan O'Connell, Attorney, was present representing Ms. Mehrmah Payandeh. He stated that his client is opposed to the variance. He stated concerns with a precedent being set, if the variance is granted, for other properties in that area. He stated that he felt the hardship was self-imposed, and the standards of the Zoning Ordinance could not be met for qualifying for a variance. He stated that the private road used by his client, Dr. Sanders, and others has not been formally constructed, and that during construction, trees will have to be removed that will only increase the view of this building from his client's property. He stated that he felt the building does stick out, and that the location was to protect Dr. Sanders' view, and not the neighbors. He explained that the building is being used as a barn. He felt that Dr. Sanders has sufficient room to meet the setback requirements for a barn, and that the shape, slope or narrowness does not meet the hardship requirements. He explained that he felt the original permit application was falsified with incorrect setbacks.

Mr. Rider stated that the Board of Zoning Appeals visited the property, and he felt the terrain made the setback requirement difficult to measure and meet. He stated that other concerns are possible rock needing to be removed, the swale of the property, and the presence of floodplain. He further stated that he has to believe the applicant's statement, unless otherwise informed.

Mr. O'Connell stated that the setback measurements used were incorrect from the beginning, and he is concerned that this application does not meet the standards of Section 13-406, as he feels the applicant was at fault when locating the building, and that it will be detrimental to other properties, and that a hardship does not exist. He stated that he felt this application does not come close to satisfying the requirements of the Zoning Ordinance.

Mr. Jim Harris, of Carson, Harris & Associates spoke in opposition to this request. He stated that he surveyed the property, and that he felt the setback requirements can be met in many places on the property.

Mr. Jim Ruffner, Appraiser, spoke in opposition to the request. He stated that he felt that non-enforcement of the Zoning Ordinance would result in decreased property values to the adjoining property owners.

Mr. O'Connell stated that he felt the greenhouse existing on the property violates setback requirements, and Mrs. Bowen responded that she was not sure, as the greenhouse is not part of this application.

Ms. Mehrmah Payandeh, adjoining property owner, spoke in opposition to this request. She

stated that she came to Fauquier County, because of the strict enforcement of the zoning laws. She further stated that Dr. Sanders has violated the covenants of the property. She stated that she hopes that the Board of Zoning Appeals will not allow this variance to be granted, as she felt the person that makes the mistake must pay, and not the adjoining property owners. She explained that although a 9' foot variance doesn't seem like a lot, but the elevation increases the impact.

Mr. Rider asked Ms. Payandeh what impact the building would have on her property, and Ms. Payandeh stated that although her property has not been developed, she feels that the building, as well as sight of the other multiple structures on the property, is impactful to her view, she stated that the building could be moved and that the cost for doing so is minimal. Ms. Payandeh explained that she respects the rights of Dr. Sanders, but wants protection that the variance will not be granted.

Ms. Melanie Fein, an adjoining property owner spoke in opposition to the variance. She stated that she owns three lots in Apple Manor, and that she is the most impacted by the structure. She cited concerns that she felt if the variance is granted, the county would become like Fairfax or Loudoun, and the development would be appalling. Ms. Fein stated that Section 1-500 does respect covenants and easements in place regarding properties in Fauquier County. Ms. Fein further stated that she had thought about placing her properties in an easement, but if this variance is granted she would have to reconsider. She stated that she felt Mr. Wright's letter demonstrates his knowledge of building, and she felt he was aware of the setback requirements. She cited concerns that Dr. Sanders would violate the covenants of the property, and if the setback requirements are not enforced, that it would set the path for other neighbors to violate the rules. Ms. Fein stated that Section 6-105 of the Zoning Ordinance requires that if any portion of a building be used as a barn, then the entire structure would have to meet the requirements for a barn.

Mr. Rider stated that each case is based on it's own merits.

Ms. Fein stated that it would not be hard to find a suitable location for a barn on ten acres.

Mr. O'Connell stated that only a small portion of the building would have to be removed to comply with setback regulations.

Ms. Susan Huberth, Secretary for Scuffleburg Junction Neighborhood Association, spoke in opposition to the variance. She cited concerns with impact to the adjoining properties.

Mr. Joe Verga spoke in support of the variance application. He stated that his home is directly below Dr. Sanders' property, and he felt the amount of variance being requested is reasonable.

Mrs. Bowen stated that the applicant has indicated that the use will be converted to an Equipment Shed/Horticultural Building.

Mr. Meadows asked if the variance was not needed, if the request would have been handled administratively with permits, and Mrs. Bowen stated that it would.

Mr. Van Luven asked if screening is required.

Mr. Tufts stated that he felt heavy landscaping could alleviate the visual height of the building.

Mrs. Bowen stated that the variance could be conditioned.

Mr. Rider stated that only one person would be able to view the building.

Mr. Meadows asked Mr. O'Connell if Ms. Payandeh is in the process of constructing the road and if the road could be moved.

Mr. O'Connell stated that the road has to stay within the 50' foot right of way and each party owns to the center of the right of way.

On the motion made Mr. Van Luven, and seconded by Mrs. Mailler, it was moved to grant variance #47051, 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 exceptional topographical conditions of the property.
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 topographic conditions or other extraordinary situation or condition of the property.
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 exceptional topographic conditions or other extraordinary situation or condition of the property.
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 9.5 feet to the centerline of Orchard Hill Lane.

The motion carried unanimously.

**VARIANCE #47052 DETTRA COMMUNICATIONS, INC. (OWNER)**

Applicant is requesting a variance of 10' +/- feet for an existing antennae on a 300' foot tower. The subject property is identified as PIN #6983-60-1777-000 containing approximately 2.00 acres, located at 6546 Lover's Lane (State Route 744), zoned Rural Agriculture, in Marshall District.

Mr. Hodge reviewed the staff report and stated that the BZA previously approved a variance to replace an existing tower with the current 300' foot structure and that a copy of the minutes is attached. He referenced Section 2-506 D. of the Zoning Ordinance stating that "any antennae located in a district permitting residences shall be located to a height that is equal to or less than the distance from the base of the antenna to the closest property line." He explained that the regulation means any antennae should be no closer to a property line than its height, so the antenna will fall completely upon the owner's property in the case of a catastrophic failure. He further stated that two motions would be required if the variance is granted.

Mr. McCulla, County Attorney, spoke regarding the two motions. He stated that the first motion required would delete condition #8.d of special permit #33009 to permit action on variance #47052 as requested. He further explained that the second motion would be for variance #47052.

Mrs. Bowen stated that there is a question as to how the County defines a tower and specifically the height definition. She stated that the Telecommunications Ordinance in Section 11.101 G. states that "the distance measured from the ground level to the highest point on the tower or other structure, even if the highest point is an antenna." She further stated that she has discussed this with Mr. Dettra and has informally told him that he has gone above the previous approval, and they did not count the lightning/safety rod. She explained that this matter has gone on for some time, and Mr. Dettra has been willing to resolve the concerns, due to complaints with regard to radio/TV interference.

Mr. Rider asked Mr. McCulla if it is proper to proceed with the application without a formal interpretation, and Mr. McCulla stated that he believes it is appropriate. He explained that the Telecommunications Ordinance was adopted only two years ago, and that in order to issue an interpretation, Mrs. Bowen would have to research the previous requirements. He further explained that in an interpretation letter the Zoning Administrator would have to determine what the Board of Zoning Appeals meant at that point with regard to height. Mr. McCulla stated the second part of the application for a variance does not require an opinion from the Zoning Administrator.

Mr. Robin Gulick, Attorney, was present to represent the property owner, Mr. John Dettra of Dettra Communications, Inc. He stated that complaints had been received by the Zoning Office regarding TV interference; and subsequently the issues with regard to height, and co-location of an antennae arose at that point. He further stated that when the original variance was granted there was not a Telecommunications Ordinance in effect, or a definition of height. He stated that

he felt the best way to handle the situation was to amend the previously approved variance condition, and to apply for co-location of a new antennae that would be used for pagers. Mr. Gulick stated that he thought the intention of the Telecommunications Ordinance was to allow co-location. He explained that Mrs. Trainum has experienced difficulties with Channel 7, and that he believes the Christian Radio Station antennae is the cause of this interference. He further explained that the Christian Radio Station has a license from the Federal Communications Commission and Mr. Dettra cannot do anything about that. He stated that he does not believe that Mrs. Trainum's concerns are related to the variance request of today.

Mr. Rider stated that when the original request was approved, he believed that height was not an issue, or danger, in that the tower was self-collapsible and would not affect adjoining property owners.

Mr. Gulick stated that the only concern from Virginia Department of Transportation was that the tower not collapse into Route 15-29. He further stated that the Board of Supervisors has reserved space on the tower for a future antennae for the Sheriff's Office, and if this variance is approved it would cover the needed area for that office.

Mr. John Dettra, along with his wife, owners of Dettra Communications, Inc. were present in support of their request. Mr. Dettra stated that they lease space to Christian Radio Station, who operates in accordance with the Federal Communications Commission.

Mr. Rider asked if there is a light on top of the tower, and Mr. Dettra stated that the Federal Aviation Agency requires a light on any structure over 300 feet tall.

Mr. Van Luven asked what the impact would be if the proposed antennae were lowered, and Mr. Dettra stated that the prime location is on the top, and the Federal Aviation Agency approved twenty additional feet.

Mr. Rider asked if anyone wished to speak regarding this request.

Mrs. Eloise Trainum, who lives on Lee's Ridge Road, spoke citing concerns with interference to her TV, and felt that the height of the tower was causing the problem. She asked that this request be denied.

Ms. Jacquelyn Murri, who lives also lives on Lee's Ridge Road spoke in opposition to this request. She cited concerns with interference, and stated that certain radio traps were given to her several years ago, and they do not correct the problem.

Mr. Rider stated that with new technology, more and more towers and antennas would be needed to provide service for cellular phones, and pagers.

Mrs. Arabelle Arrington spoke regarding this request. She stated that she has had serious difficulties with interference since 1997 as well. She stated that the filters provided had worked fairly well, but is still concerned about problems.

Mr. Gulick stated that the tower height was increased to 300' feet in 1990, and that in 1997 the Christian Radio Station located their antennae on the tower, and thus the concerns of the neighbors.

Mrs. Bowen stated that she would try to find out who at the Federal Communications Commission can help correct this interference problem. She stated that she felt this problem does not have anything to do with today's application.

Mr. McCulla stated that the responsibility of the interference problem does not fall to the Board of Zoning Appeals, but with the Federal Communications Commission. He further stated that he doesn't live far from the property, and has had the same problem. He stated that local governments do not have the authority to regulate.

Mr. Rider stated that a site visit was made to the property earlier.

On the motion made by Mrs. Mailler, and seconded by Mr. Meadows, it was moved to amend special permit/variance #33009:

**MOTION TO AMEND**  
**SPECIAL PERMIT/VARIANCE #33009**

**Whereas**, the Fauquier County Board of Zoning Appeals approved Special Permit/Variance number 33009 for Goldcup Broadcasting, Inc on April 5, 1990 for an increase in broadcast tower height to 300 feet, and

**Whereas**, Condition 8. d of the motion for approval stated "the board accepts the agreement of Mr. Dettra not to come before this Board again for the purpose of increasing tower height above 300'," and

**Whereas**, the applicant has requested the Board of Zoning Appeals delete condition 8. d attached to special permit/variance #33009, and

**Whereas**, Section 13-401 of the Fauquier County Zoning Ordinance states "a property owner . . . may appeal to the BZA for a variance of the strict application of the terms of this Ordinance . . . ", which permits the applicant to come before the BZA again, now, therefore,

**I move** to delete Condition 8. d of the April 5, 1990 special permit/variance #33009 to permit action on variance request # 47052.

The motion carried unanimously.

Mr. Van Luven asked if it would degrade the ability to use the antennas for pagers, cell phones, etc. if the antennas were lowered within 300 feet.

Mrs. Bowen stated that she would speak with George Condyles, the County Consultant on

Telecommunication Towers, and try to obtain the information.

Mrs. Mailler agreed that this information would be most helpful.

Mr. Meadows moved to close the public hearing, and table the request for thirty days. Mr. Van Luven seconded the motion.

The motion carried unanimously.

**SPECIAL PERMIT #47062 ROGER STEELE CLEARING & EXCAVATION CO., INC. (OWNER)**

Applicant is requesting special permit approval to locate a contractor's office and shop on property identified as PIN #7906-42-8883-000 containing approximately 1.9042 acres, located at 5193 Lee Highway (State Route 15, 29 & 211) in New Baltimore, zoned Residential-1 and Commercial-2, in Scott District.

Mr. Hodge reviewed the staff report, and stated that the property has two zoning districts, however the activity is limited to the Commercial-2 zoning area. He stated that there are comments in the file from Fauquier County Health Department and from Virginia Department of Transportation, and site plan approval will be required. He further stated that there is a considerable amount of floodplain located on this parcel.

Mr. Rider asked how far the Zoning boundary is from the back of the existing house, and Mr. Hodge stated that at the western property line it is about 200' feet, deep as measured from the front property line and 235 feet along the eastern property line.

Mr. Rider asked how close the floodplain boundary is from the house, and Mr. Hodge replied that the 100 year floodplain from South Run is about 500' feet, however the existing house is outside of the floodplain. He also stated concern with regard to site distance at the entrance.

Mr. Roger Steele, owner of the property spoke regarding his request. He stated that previous uses of the building were an interior decorating business, a lawn/construction type business, a palm reading business, and an antique shop was also operated from the existing house. He explained that he had met with Dave Cabbage from Virginia Department of Transportation regarding the entrance, and Mr. Cabbage stated that VDOT would require the widening of the radius and shoulder, however would most likely not require an acceleration lane.

Mr. Rider stated that almost all of the property is located within the 100 year floodplain. He asked Mr. Steele what he plans to use the house for, and Mr. Steele stated that he will use it as an office.

Mrs. Bowen stated that the 100 year floodplain runs almost up to the back of the house. She asked Mr. Steele how much fill had been added to the parking area on the back portion of the lot.

Mr. Rider asked what legally can be done within the floodplain, and Mrs. Bowen stated that she was not sure.

Mr. Steele stated that he had cleared the area and placed gravel on the back portion, maybe a few inches of gravel.

Mr. Rider stated that Mr. Steele needed to provide information with regard to contact with Federal Emergency Management Agency, and specifically with regard to accurate boundaries on this property. Mr. Rider further stated his concern with regard to traffic, specifically heavy equipment and vehicles entering and leaving the property, and the safety issues.

On the motion made by Mr. Meadows, and seconded by Mr. Van Luven, it was moved to carry over the public hearing until the May meeting, to allow Mr. Steele time to work with Mrs. Bowen regarding the floodplain issues.

The motion carried unanimously.

**SPECIAL PERMIT #47067 CURTIS R. AND SHEILA A. HANSEN (OWNERS)**

Applicants are requesting special permit approval to locate automobile sales, rental and service on property identified as PIN #6054-75-1855-000 containing approximately 0.169 acre, located at 9183 John Mosby Highway (State Route 50) in Upperville, zoned Commercial Village, in Marshall District.

Mr. Hodge reviewed the staff report and stated that a site visit was conducted earlier. He stated that the applicants have indicated they will only have automobile sales, and there will not be any repair or servicing of the automobiles. He further stated that this use is only to be located on this parcel, and not the adjacent parcels, also owned by the Hansens. He explained that the Zoning Ordinance does not allow any display on the front portion of the parcel, and this area may only be used for employee parking or for customers.

Mr. Rider asked for the zoning of the parcel, and Mrs. Bowen stated that the parcel, and the adjoining parcels are zoned Commercial Village.

Mrs. Valerie Pullman was present to represent the Hansens. She stated that her clients will not have any repairs or servicing performed on site. She also stated that her clients wanted to provide a service to the area, and thought this would be an appropriate use for the site. She explained that her clients understood the parking and display requirements on the property. She stated that the neighbors have requested the right to come onto the property and the Hansens understand their request.

Mr. Rider stated that after visiting the site, he did not think that more than 15 cars would fit on the rear of the property, due to the size of the parcel.

Mrs. Pullman stated that she had scaled the parking spaces allowing 6' x 15' feet per car, and her clients would be willing to accept a reduction in the number of cars.

Mr. Rider asked Mrs. Pullman the size of the area from the building to the rear property line, and Mrs. Pullman stated that the area is approximately 35' x 80'.

Mr. Rider stated that if the permit is granted that a fence may be required, and that any conditions of the permit would be strictly enforced.

Mr. Rider asked Mr. Hodge if Virginia Department of Transportation had commented on the application, and Mr. Hodge replied that they had not.

Mr. Meadows stated that he felt that 7' x 15' feet is more reasonable for a car, and thought the maximum number of cars would be 22.

Mr. Rider stated that he felt that a fence along the rear property line should be required.

Mr. Rider asked if anyone wished to speak regarding this request.

Ms. Mary Nesbitt spoke in opposition to this request. She stated that due to Mr. Hansen's past history of violating conditions of another special permit, and subsequently having the permit revoked that he should not be granted this permit. She stated that Mr. Hansen does not live in Upperville and has previously parked cars on this property for sale.

Ms. Susan Huberth, representing the Mosby Heritage Area Association, spoke in opposition to this request.

Mr. Warren spoke in opposition to the request. He stated that he lives in the village of Upperville, and is concerned about a "glit strip" being created on Route 50.

Mr. Michael Motion spoke in opposition and on behalf of his daughter, Claire Nichols, who lives in Upperville. He cited concerns with creating a commercial strip in Upperville, and did not feel this use was appropriate.

Mr. Dave Mullins who resides at 9501 John Mosby Highway, spoke in opposition. He cited concerns with the safety along Route 50.

Ms. Mary Belle Clark spoke in opposition to the request citing concerns with traffic.

Ms. Carol Sherman, a resident of Upperville, spoke in opposition to the use, and thought other uses would be more appropriate.

Mrs. Pullman spoke on behalf of the Hansens and stated that Mr. and Mrs. Hansen will be the owner/operator of this business. She explained that the previous special permit was operated by a tenant. She stated that Mr. Hansen is willing to accept any conditions placed to re-establish himself with the Board of Zoning Appeals.

Mr. Meadows stated that one of the conditions, if granted, would be that this use would not transfer with a change in proprietorship or ownership.

Mr. Rider stated that the number of vehicles should be limited.

On the motion made by Mr. Meadows, and seconded by Mr. Tufts, it was moved to grant special permit #47067, after due notice and hearing, as required by Code of Virginia §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 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 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, namely:

5-1403 Additional Standards for Automobile Sales, Rental and Service Establishments

1. Outdoor storage, parking and display areas shall be permitted only on the same lot with the ancillary to a sales room, rental office or service facility, which shall be entirely enclosed on all sides.
2. The outdoor area devoted to storage, loading, parking and display of goods shall be limited to that area so designated on an approved site plan. Such areas shall not be used for the storage or display of vehicles that are not in operating condition.
3. Notwithstanding the bulk regulations of the zoning district in which located, any such outdoor area that is located on the ground and is open to the sky may be located in any required yard but not nearer to any front lot line than ten (10) feet.
4. All such uses shall be provided with safe, convenient access to a public street. If any outdoor area is located contiguous to a street, ingress and egress shall be provided only through driveway openings in the curb or similarly controlled by other means appropriate to the design of the abutting street.
5. All outdoor areas used for parking, storage, loading, display and driveways shall be constructed and maintained with an all-weather dustless surface.

6. All lighting fixtures used to illuminate such outdoor areas shall be designed to comply with the performance standards as to glare of the zoning district in which such facility is located. Such facilities shall not be lighted at any time other than during the same hours that the facility is open for business, except for necessary security lighting.
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):
    - (1) Permit issued only to Curtis R. and Sheila A. Hansen as owners/proprietors.
    - (2) Permit does not convey with the sale of the property or with change of proprietorship.
    - (3) Hours of operation shall be 9 A.M. to 7 P.M. Monday through Friday, 9 A.M. through 2 P.M. Saturday, and there shall be no operation on Sundays.
    - (4) Lighting of the site shall be downshielded, and turned off at 7 P.M., and in conformance with the Fauquier County Lighting Ordinance.
    - (5) Site plan approval is required.
    - (6) All vehicles shall be parked in an upright position on the ground. Vehicles may not be stacked.
    - (7) A six (6') foot high chain link fence, with no access gate, shall be placed on the rear property line.
    - (8) There shall be no on-site repair of automobiles.
    - (9) Signage shall be in accordance with Fauquier County Zoning Ordinance. No flags, balloons, etc. will be allowed.
    - (10) The permit is granted for a period of one (1) year.

The motion carried unanimously.

**SPECIAL PERMIT #47068 PIEDMONT EQUINE PRACTICE L.L.C. (OWNER)**

Applicant is requesting special permit approval to amend conditions of a previously approved special permit #45630. The subject property is identified as PIN #6070-60-7640-000 containing approximately 4 acres, located at 4122 Zulla Road (State Route 709), zoned Rural Agriculture, in Scott District.

Mr. Hodge reviewed the staff report and stated that a site visit was made earlier. He stated that the applicants are requested to amend the conditions of special permit #45630 approved by the BZA on June 1, 2000. He stated that one of the amendments is to decrease the amount of fencing required along the common property line with Coleman Elementary to 400' feet, due to the thick established vegetation already in place. He further stated that the applicants wish to add a surgical suite onto the west side of the existing building. He also stated that a new concept development plan shows the entrance to the property to be moved northward toward the elementary school, which would allow for the proposed small animal clinic to be moved

southward and away from the boundary line shared with the school site.

Dr. John Noland, owner of Piedmont Equine Practice LLC was present, along with Mr. Ben Tissue, architect, were present regarding this request.

Mr. Rider asked if anyone wished to speak regarding this request.

No one spoke.

On the motion made by Mr. Tufts, and seconded by Mr. Meadows, it was moved to grant special permit #47068, after due notice and hearing, as required by Code of Virginia §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 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 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, namely:

#### **5-1302**

#### **Additional Standards for Veterinary Clinics**

1. All such facilities shall be within a completely enclosed building, such building being adequately soundproofed and constructed so that there will be no emission of odor or noise detrimental to other properties in the area.
2. In a Residential or Rural District, the facility shall have direct access to 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 facility is such that it will not cause an undue impact on the neighbors or adversely affect 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: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance):

- (1) The proposed sign shall be up to twenty (20) square feet.
- (2) Site plan approval as required.
- (3) Site will be developed in general conformance with the revised plan dated March 12, 2001 and presented to the Board of Zoning Appeals on April 5, 2001.
- (4) A six (6') foot board on board wooden fence shall be placed along the northern property line. The fence shall be 400 feet in length and begin at Zulla Road/front property line.

The motion carried unanimously.

**ADJOURNMENT** There being no further business before the Board, the meeting adjourned at approximately 5:20 P.M.

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William Rider, Chairman

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.

C:\bza files\2001 minutes\4-5-01.doc