

MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS

November 1, 2001

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, November 1, 2001, beginning at 1:00 P.M. in the Meeting Room of the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Rider, Chairman, Mr. William Barr, Vice Chairman, Mrs. Margaret Mailler, Secretary, Mr. John Meadows, Mr. James Van Luven, and Mr. Maximilian A. Tufts, Jr. Mr. Eugene Lofdahl was absent. Also present were Mr. Paul McCulla, County Attorney, Mrs. Tracy Gallehr, Assistant County Attorney; Mrs. Carolyn Bowen, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Miss Holly Meade, Zoning Planner and Carole L. Hensley, Zoning Office Associate.

MINUTES

On motion made by Mr. Tufts and seconded by Mr. Barr a motion was made to correct the October 4, 2001 Minutes to change the name of the person making the motion in case #48098 from Mr. Tuft's name to Mr. Van Luven on page 4, paragraph 4. The minutes were approved as submitted.

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.

APPEAL #47997 JOHN W. AND JANETE CASSELL (OWNERS)

Applicants are appealing a decision of the Zoning Administrator made July 11, 2001 that they are operating a sanitary landfill in violation Section 3-311.13 of the Zoning Ordinance. The subject properties are identified as PIN #7911-80-8219-000 and PIN #7911-81-0567-000, containing 35.00 acres and 72.00 acres respectively, located on Old Calverton Road (Route 642) and Boteler Road (Route 790), and is zoned Rural Agricultural, Cedar Run District.

Mr. and Mrs. Cassell were represented by their attorney, Jeffrey B. Rice.

The Zoning Administrator requested the BZA to consider her memo, dated September 28, 2001, in which she asked the BZA to dismiss the appeal in that it had been improperly filed. A copy of the memorandum is attached to and made a part of these minutes.

She cited the *Code of Virginia*, Section 156.2-2311, which was attached to the memorandum as Attachment C..

On the motion made by Mr. Van Luven and seconded by Mr. Barr and pursuant to §2.2-3711.A.7 (a)(7) of the Code of Virginia it was moved to go into a Closed Meeting for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel on specific legal matters relating to

Appeal #47997 John W. and Janete Cassell. Mr. Rider asked Miss Meade to read the motion to bring the Board of Zoning Appeals out of the closed meeting.

The motion carried unanimously.

Mr. Meadows made a motion to include the Zoning Administrator in the closed meeting and Mr. Barr seconded the motion.

The Fauquier County Board of Zoning Appeals, having adjourned into Closed Meeting this day for the purposes stated in the resolution authorizing such Session, does hereby certify that to the best of each member's knowledge (I) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (II) only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in the Closed Meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Meadows and seconded by Mr. Barr. Motion carried.

Ayes: Mr. Rider, Mr. Barr, Mr. John Meadows, Mr. Van Luven, Mr. Tufts, and Mrs. Mailler.

Nays: none

Abstention: none

Absent: Mr. Lofdahl

Mr. Van Luven made motion to deny the Zoning Administrator's motion to dismiss the appeal based upon incorrect filing, and Mrs. Mailler seconded it. The motion passed unanimously.

Mr. Rider asked the appellants to address the appeal. Mr. Rice gave background information regarding the Cassell's farm, a 160-acre dairy farm that has been in family for 100 years. He stated in addition they lease 200 acres for farming crops such as corn, beans etc. Mr. Rider asked if the property is primarily a dairy farm and Mr. Rice responded yes plus some crops. He said that Mr. Cassell's son, John Cassell, has started a mulching and wood recycling operation in conjunction with a sawmill that has been a part of the farm for 40-50 years. Mr. Cassell said they have actually been through three sawmills.

Mr. Rice continued that without Mr. Cassell's knowledge or consent, a contractor had brought in all types of construction materials. He told them he would accept no additional building or demolition materials, just hard wood. He started burning and then was told by the Fire Marshall and Jon Terry from Department of Environmental Quality that he could not burn. He is still in the process of cleaning up this debris and taking it to the landfill.

Mr. Rider asked if the burning was in a pit or whether an air curtain was in place.

Mr. Cassell said from a pit, and a large fan was brought in to get rid of the smoke.

Mr. Rice explained that Mr. Cassell had no intentions of operating a landfill use, burying trash, debris or stumps. He was going to split the stumps with a wood grinder that he rented. His plan is to get the wood ground up into mulch. He saws logs that come in and only takes logs suitable for firewood. He did not believe this operation constituted a landfill as Mrs. Bowen cited in her original letter.

Mr. Rider asked if the property was used for a solid waste area at the time of the citation. Mr. Rice replied that some waste was brought in without permission but Mr. Cassell put a stop to that importation immediately. Mr. Rice said that Mr. Cassell did make a mistake but has tried to correct the situation after being told of the violation. Mr. Terry from Virginia Department of Environmental Quality informed him the site had to be cleaned up and then the site would be re-inspected.

Mr. Rice referred to Mr. Terry's letter regarding plastic bags and other materials, and told the BZA that they were silage bags for farm feed storage.

Mr. Rice further indicated he won't have future material dumped in its original location but will put it where it can't be seen; he'll keep it out of visibility of public/neighbors view. He said his client had ordered 150 hybrid trees that grow 8-10 ft. in one year and eventually grow 70 feet in height, so they can be a screen for the operation area for mulch. Once they start marketing the mulch, the mulch will be gone.

Mr. Cassell told the Board that he didn't deny that the debris had been brought to the site but he thought he could do burning. He reiterated that he was told the trucks would bring in 2x4's and without his knowledge they brought in construction materials other than wood, such as plastic, and drywall. Mr. Tufts wanted to clarify that Mr. Cassell said three loads were construction debris brought in, and Mr. Cassell replied yes.

On the motion made by Mr. Meadows and seconded by Mr. Van Luven and pursuant to §2.2-3711.A.7 (a)(7) of the Code of Virginia it was moved to go into Closed Meeting for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel on specific legal matters relating to Appeal #47997 John W. and Janete Cassell. Mr. Meadows made a motion to include the Zoning Administrator, in the closed meeting and Mr. Barr seconded the motion. Mrs. Bowen and staff remained in the closed meeting.

The motion carried unanimously.

Mr. Rider asked Miss Meade to read the motion to bring the Board of Zoning Appeals out of closed meeting.

The Fauquier County Board of Zoning Appeals, having adjourned into Closed Meeting this day for the purposes stated in the resolution authorizing such Session, does hereby certify that to the best of each member's knowledge (I) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (II) only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in the Closed Meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Meadows and seconded by Mr. Barr.

Ayes: Mr. Rider, Mr. Barr, Mr. John Meadows, Mr. Van Luven, Mr. Tufts, and Mrs. Mailler .

Nays: None

Abstention: None

Absent: Mr. Lofdahl

Mr. Meadows made the following motion, and Mr. Barr seconded the motion:

A Resolution Denying the Motion of the Zoning Administrator to Dismiss the Appeal and Affirming The Decision of the Fauquier County Zoning Administrator in Appeal #47997 by John W. and Janete Cassell.

WHEREAS, John W. and Janete Cassell have appealed the attached decision of the Fauquier County Zoning Administrator, and

WHEREAS, the Zoning Administrator has requested that the Board of Zoning Appeals dismiss this appeal as not being properly filed as the Notice of Appeal did not contain the “grounds thereof”; and

WHEREAS, the Board of Zoning Appeals has, after reviewing the Notice of Appeal and hearing arguments on the Zoning Administrator’s Motion to Dismiss, determined that the appeal was properly filed and that the Zoning Administrator’s motion to dismiss should be denied; and

WHEREAS, The Board of Zoning Appeals has conducted appropriate proceedings on the said appeal, and has determined that the decisions of the Zoning Administrator should be affirmed; now therefore, be it,

RESOLVED this 1st day of November 2001 by Fauquier County Board of Zoning Appeals. That the Motion to Dismiss filed by the Zoning Administrator herein be, and is hereby denied; and, be it

RESOLVED FURTHER, 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 decision of the Zoning Administrator appealed herein.

This motion carried unanimously.

(Mrs. Tracy Gallehr, Assistant County Attorney replaced Mr. Paul McCulla, County Attorney)

SPECIAL PERMIT #48156, DANNY ROSE AND SAMANTHA GILLION

Mr. Hodge stated that the public hearing had been closed, and the special permit request was tabled until the November meeting.

Applicant is requesting special permit approval to locate a cottage industry (cabinet making and custom millwork) in a proposed 420 square foot building on his property. The subject property is identified as PIN #6054-65-1902-000, containing .533 acre, located at 9330 Brooks Cluster Circle (private) off of Patrick Street (State Route 619), and is zoned Rural Agricultural and Residential-1, Scott District.

Mrs. Mailler stated that she had reviewed the record and would participate in the voting of the special permit.

Mr. Hodge stated that the Zoning Office received a letter dated October 19, 2001 from John R. Largent of the Health Department, showing a search of their records indicates the whole lot appears to be covered by the house, drainfield and drainfield reserve.

Therefore, unless the owners are locating the proposal within the house footprint, his office could not approve a location for an additional 420 sq. ft. building if it encroached upon the drainfield or drainfield reserve areas. A follow-up fax was received from the Health Department stating they had no objection if the structure was placed on skids, located in the extreme northeast portion of the lot and no soil disturbed. Mr. Rose stated that he planned on placing the structure on skids and reminded the Board that the structure is only 420 square feet and can be easily moved.

Mr. Rider asked Mr. Rose if he would place the building on skids, and Mr. Rose advised that the building will be located on skids and he would use the building for cabinet making, and associated work.

On the motion made by Mr. Van Luven and seconded by Mr. Meadows, it was moved to deny special permit #48156 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 adversely affect the use or development of neighboring properties.
2. It is not 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 not be compatible with the neighborhood in which it is to be located.
4. The application does not comply with the specific standards, which apply to the use in question, namely Section 5-204 Additional Standards for Cottage Industries.
5. The applicant has other reasonable use of his property.

VARIANCE #48219 LOREN A. & CAROLYN W. RODWAY

Applicants are requesting a variance to construct a one-car attached garage 14.5 feet from a side property line wherein the Zoning Ordinance requires 25 feet. The property is located at 7546 Cannoneer Court, Warrenton, VA, Marshall District.

Mr. Hodge reviewed the staff report and reminded the Board that a site visit was made that morning.

He stated the applicant is requesting to construct a third car garage at the end of an existing two-car garage attached to the dwelling.

Mr. Rider excused himself and Mr. Barr assumed the chair.

Mr. Loren Rodway spoke in favor of his request. He stated he wanted to add an additional bay to the existing garage in order to bring it into the standards within his community. He contemplated placing the garage on the other side of the dwelling; however, it would be encroaching on the feeder line to the drainfield. He presented signed letters from the owners of lots 33, 34 and 35a stating they had no objection to his request.

Mr. Barr asked Mr. Rodway if there was a hardship associated with his request, and Mr. Rodway replied that his third vehicle, without being garaged, causes an eyesore or

nuisance to the neighbors. Mr. Meadows explained that the BZA doesn't grant variances based on convenience. Mr. Rodway stated that his hardship would be that the drainfield is on the other side of the house. Mr. Meadows replied that was a financial hardship and the Board does not consider financial hardships in variance requests.

On the motion made by Mr. Van Luven and seconded by Mr. Meadows, it was moved to deny variance #48219, after due notice and hearing, as required by Code of Virginia 15.2-2204 and based upon the Board's 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. 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.
4. The strict application of the Ordinance will not produce undue hardship.
5. 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.
6. 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.

Mr. Rider resumed chairmanship.

VARIANCE #48249 WILLIAM J. & MARIE G. COMSTOCK

Applicants are requesting a variance to construct a studio/storage building on an existing foundation of an agricultural building that burned in June 2000. The structure would be 15.2 feet off of the side property line wherein the Zoning Ordinance requires 25 feet. The property is located at 7279 Moss Lane, Warrenton, VA, Scott District.

Mr. Hodge reviewed the staff report and reminded the Board a site visit was made that morning.

Mr. Hodge stated that the proposed structure will be 15.2 feet from the side property line, wherein the zoning requires 25 feet. The existing foundation is 18.2 feet from the side property line at its nearest point. The proposed structure has a three-foot overhang on the elevation facing the side property line. A variance of 9.8 is requested.

Mr. Comstock thanked the Board for visiting his property and pointing out that he may have requested this variance in error. He asked the Board to defer his application until such time he can obtain an accurate survey.

On the motion made by Mrs. Mailer and seconded by Mr. Tufts, it was moved to defer the case.

This motion carried unanimously.

VARIANCE # 48313 MICHAEL V. & SANDRA J. GREENAN

Applicants are requesting an amendment to a variance granted by the Board of Zoning Appeals in October of 1994 for the construction of a detached garage. The variance granted was for 15 feet. The structure actually was constructed 7.8 feet from the property line at its nearest point wherein the Zoning Ordinance requires 25 feet. The property is located at 6625 Wilson Road, Marshall, VA, Marshall District. Mr. Greenan appeared at the meeting in support of his request.

Mr. Hodge reviewed the staff report and stated that the BZA made a site visit in October of 1994 and granted a variance to the applicants to permit a structure to be placed 10 feet from a side property wherein the Zoning Ordinance requires 25 feet. At that time the BZA granted a variance of 15 feet. A later survey placed the structure 7.8 feet from the property line at one corner and 9.3 feet at the other corner, leading the applicant to apply for this variance request of 2.2 feet (for a total of 17.2 feet).

Mr. Greenan spoke in favor of his request. He stated he hired a contractor to construct a 2½ car garage. The garage was built and in the process of applying for electrical permits it was brought to his attention that the garage was built in error.

Mr. Greenan was asked how such an error occurred? Mr. Greenan stated he didn't understand how his contractor figured the measurements. Mr. Rider asked if the lot line was in error. Mr. Greenan stated that he didn't think that was the problem, however, that was merely speculation. Mr. Rider asked if the contractor staked out the building and Mr. Greenan responded that he did. Mr. Rider asked what stage of construction the garage was in. Mr. Greenan stated the doors are in, it is roofed, has siding, windows, and doors. The garage is basically complete.

On the motion made by Mr. Van Luven and seconded by Mr. Meadows, it was moved to approve the variance #48313 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.
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 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;

5. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
6. The strict application of the Ordinance will produce undue hardship.
7. 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.
8. 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.
9. The minimum variance that is necessary to afford relief is 2.2 feet for a total of

17.2 feet.

This motion carried unanimously.

SPECIAL PERMIT #48314 DRS. LINDA R. STONE & KENT ALLEN

Applicants are requesting renewal of a special permit granted in 1996. The applicants are also

requesting that three conditions be amended: those relating to the number of horse trailers allowed in a week, length of time of the special permit, and access being limited to Landmark Road and Landmark School Road. The property is located at 2714 Landmark School Road, Middleburg, VA, Scott District.

Mrs. Bowen reviewed the staff report and reminded the Board a site visit was made that morning. She stated that in the process of renewing Dr. Allen's Special Permit, he expressed a

desire to have conditions 1, 5 and 6 of the original approval removed, and they are as follows:

1. The traffic is restricted to no more than three horse trailers per day or fifteen in a week, per five-day week.
5. The permit is granted for two years from the day the occupancy permit is issued.
6. Access to the facility is limited to Route 629, Landmark Road, to Route 776, Landmark School Road. Landmark School Road will not be used to go into Middleburg in relation with the business.

Mr. Rider stated that it appeared Dr. Allen had done a fine job with his facility. He stated he had

no problem with eliminating the limit on the number of horses or approving for more than two years; however, access to the property was such a big factor in 1996 that request would require more discussion.

Dr. Allen stated that regarding the access road, he has asked people not to drive trucks and trailers on that road but the clients he has had sometimes disregarded his direction.

Mrs. Mailler asked him how many trailers he has on the road in a week and if it caused hardship to others using the road, Dr. Allen said approximately 15 a week and even if it were 1 an hour, it would not bother anyone. Mr. Rider inquired if Dr. Allen did all of his work at that facility and he replied yes. Mr. Tufts asked if he did any surgery at the facility and he replied no.

Mr. Barr asked him if any neighbors have complained. Dr. Allen stated that he and Dr. Stone get along with all neighbors except one family they can never seem to please. He also stated that he and Dr. Stone want the road to be safe.

Mrs. Mailler inquired about the fourth condition regarding business being restricted to daylight hours. Dr. Allen stated that they take the last appointment at 4 p.m. and finish work by 5:00 p.m. At dark there is no business conducted. Mr. Rider asked Mrs. Bowen if there were any complaints as to the working hours and conditions and Mrs. Bowen replied that there had been none.

On the motion made by Mr. Van Luven made and was seconded by Mrs. Mailler, it was moved to grant the Special Permit #48314 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 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, 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.
3. 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 permit does not convey with the sale of the property
 2. The permit is granted predicated on the plan to operate a very restrictive veterinary operation limited to the things outlined by the applicant, as opposed to a general emergency type operation. The operation must be a non-surgical facility.
 3. Traffic in relation to the business is restricted to daylight hours.

This motion carried unanimously.

ADJOURNMENT There being no further business before the Board, the meeting adjourned at approximately 3:15 P.M.

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.