

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

October 5, 2000

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, October 5, 2000, 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; Mr. William Barr, Vice Chairman; Mrs. Peg Mailler, Mr. John Meadows, Dr. James Branscome and Mr. James VanLuven. Also present were Mr. Kevin Burke, Deputy County Attorney; Mrs. Carolyn Bowen, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; Ms. Holly Meade, Zoning Planner; and Mrs. Beverly Pullen, Office Associate. Mr. Eugene Lofdahl was absent.

MINUTES

The minutes of the September 7, 2000 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 AND VARIANCE #46315 LLOYD A. FORBUSH (OWNER)

Applicant wishes special permit approval to allow retail sales in conjunction with a contractor's office shop and material storage yard. Applicant is also requesting a variance to the front yard (setback) requirement for storage areas. The subject property is identified as PIN #6993-05-7655-000, contains approximately 2.504 acres, zoned Industrial 1, located on Meetze Road (State Route 643), in Cedar Run District.

Mr. Hodge reviewed the staff report and stated that a site visit was made earlier. He stated that a twenty (20') foot variance to the centerline of Route 643 is being requesting for a materials storage yard, as the Zoning Ordinance requires 90' from the centerline of Route 643 for outdoor storage.

Mr. Lloyd A. "Gus" Forbush, owner was present in support of his request. He stated that in the past the property was leased by Fauquier County Water and Sanitation Authority. Columbia Propane would like to lease the property for their offices, including retail sales of propane equipment, and materials storage yard. He further stated that the Fauquier County Board of Supervisors recently approved a zoning ordinance text amendment to permit retail sales of items produced on and off site, with special permit approval.

Mr. Rider asked Mr. Forbush if the prospective tenant was present to answer questions regarding the variance for the storage yard, and he stated that he is.

Mr. Joe Penazzi, of Columbia Propane was present in support of this request. He explained that the storage yard will be used for storage of small propane tanks, and for commercial/service related vehicles with gross vehicle weights of less than 26,000 lbs. and single axle. He further stated that in the future they may use the storage yard for bulk storage and possibly for loading/unloading of delivery trucks.

Mr. Rider asked what type of items will be offered as retail sales, and Mr. Penazzi stated they will sell stoves, fireplace inserts, gas grills, clothes dryers, etc.

Mr. Meadows asked if all storage would be in the enclosed fenced area, and Mr. Penazzi indicated that it would, except one cabinet of small propane tanks might be located in front of the building.

Mr. Rider asked if anyone wished to speak in support or opposition to this request.

No one spoke.

On the motion made by Mr. Meadows, and seconded by Mrs. Mailler, it was moved to grant special permit #46315, 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:

5-1202 Additional Standards for Retail Sales in Conjunction with Category 16 or 17

1. Retail sales of goods may be produced on or off the site as part of the primary use.
2. Retail sales shall represent an activity clearly subordinate to the primary use on the site and shall not involve more than 10% of the gross floor area of the facility (or outdoor area involved in the use, if appropriate).

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) Site plan approval as required.
 - (2) Special permit does not transfer to future tenants.

The motion carried unanimously.

On the motion made by Mr. Meadows, and seconded by Mrs. Mailler, it was moved to grant variance #46315, 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 its past use.
- 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 variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
- 5. The strict application of the Ordinance will produce undue hardship.
- 6. 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.
- 7. The minimum variance that is necessary to afford relief is twenty (20') feet to the centerline of Route 643 (Meetze Road).

(a) Subject to the following conditions, which are necessary or desirable in furtherance of the intend and purpose of the Ordinance:

- (1) Site plan approval.

The motion carried unanimously.

VARIANCE #46287 JIMMY HOA DO AND ANNA MONG DO (OWNERS)

Applicants are seeking a variance to the side yard requirement for a garage began in 1988, and later completed with 2nd story living area. The garage and second story addition are located 2.5 feet off the property line, wherein the Zoning Ordinance requires 25 feet. The subject property is identified as PIN# 7905-77-0293-000, contains approximately 1.001 acres, zoned R-1 (Residential), located at 6835 Chestnut Oak Lane (State Route 1306), in Scott District

Mr. Hodge reviewed the staff report and stated that site visit was conducted earlier.

Mr. Daniel Hawes, Attorney, was present to represent Mr. and Mrs. Do regarding their request for a variance. He distributed and explained to the Board of Zoning Appeals members and staff, a color coded layout of the property and the closest adjoining properties affected by this request. He stated that the previous owner, Mr. Dewey Chapman, had assumed maintenance responsibility of a strip of land belonging to the adjoining property, owned by family members. He planted a row of trees to delineate as such. In 1988, he had begun the addition of the garage, and had shown on his permit the garage to be located 55 feet from the side property line (tree line). In 1991, Mr. and Mrs. Do purchased the property through a foreclosure and at the time of settlement, the house location survey only showed a patio. In 1995, Mr. and Mrs. Do applied for permits to complete the garage and to add a second story addition with living space. They relied heavily on the application filed by Mr. Chapman in 1988, using the same setbacks. The zoning violation was not discovered until a recent house location survey was done in preparation for a real estate settlement.

Mrs. Bowen stated that the original permit did show 55' feet to the side property line.

Mr. Hodge stated that he believes that Mr. Do relied solely on the previous information for the 1995 permit.

Mr. Rider stated that he was surprised that when Mr. Do purchased the property the attorney did not discover the problem.

Mr. Hawes explained that he felt that the attorney, surveyor, and bank were all from Northern Virginia, and not familiar with Fauquier County requirements.

Mrs. Bowen stated that the second permit would not have been issued with a house location survey.

Mr. Rider asked Mr. Do if he had any idea of the problem, and Mr. Do stated that he did not. He further stated that when he applied for the permit, he used the previous information.

Mr. Rider asked if anyone wished to speak in support or opposition regarding this request.

No one spoke.

Mrs. Bowen that staff would like to suggest a condition be placed on the variance, that in the event the addition was destroyed or damaged, it would have to be rebuilt in conformance.

On the motion made by Dr. Branscome, and seconded by Mr. Barr, it was moved to approve variance #46287, 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 size of the lot, location of drainfield, and due to the current owner being misinformed as to the true location of the property line.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of:
 - (a) the exceptional 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 because of the size of the lot, location of drainfield, and due to the current owner being misinformed as to the true location of the property line.
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 22.5 feet to the side property line.
 - (a) Subject to the following conditions, which are necessary or desirable in furtherance of the intent and purpose of the Ordinance:
 - (1) If the existing garage and second story addition are destroyed more than 50%, it would not be allowed to be rebuilt, except in accordance with the Zoning Ordinance.

The motion carried unanimously.

VARIANCE #46318 WILLIAM F. AND JEANNA H. BROWN (OWNERS)

Applicants wish a variance to place an addition of approximately 384 square feet to an existing dwelling. The proposed addition will be 10.5 feet from the side yard, wherein the Zoning Ordinance requires 25 feet. The subject property is identified PIN #7817-85-4575-000, contains approximately .8108 acres, zoned Rural Residential 2, located at 12800 Elk Run Road (State Route 806), in Lee District.

Mr. Hodge reviewed the staff report and stated that a site visit was conducted earlier. He stated the parcel is a non-conforming lot containing only .81 acre, wherein the current minimum lot size in the RR-2 Zoning District is two (2) acres, and current minimum lot width is 200 feet, where this lot is approximately 82 feet in width.

Mr. Brown was present on behalf of his request, and stated that he would like a variance to the side property line so that he may construct an addition. He stated that the property is only 82 feet wide, due to the location of the well, drainfield, septic tank and distribution box, he is unable to locate the addition anywhere else. He explained that the addition would not encroach any further than the existing deck, and would in fact replace the deck.

Mr. Meadows asked Mr. Brown as the capacity of the existing well and septic.

Mr. Brown stated that the existing system is only for a two bedrooms, and he does not plan to use the addition for a bedroom, only for living area.

Mr. Rider asked Mr. Brown if he had checked with the Health Department, and he stated that he had.

Mr. Rider asked if anyone wished to speak in support or opposition.

No one spoke.

On the motion made by Mr. Barr, and seconded by Mr. Meadows, it was moved to grant variance #46318, 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 nonconforming size of the lot, the location of the well, drainfield, septic tank, and distribution box.
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 strict application of the Ordinance will produce undue hardship.
5. 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.
6. The minimum variance that is necessary to afford relief is 14.5 feet to the side property line, subject to the addition being placed where the existing deck is located.

The motion carried unanimously.

VARIANCE #46322 FAUQUIER COUNTY FAIR, INC. (OWNER)

Applicant wishes a variance to the standard requiring a one-hundred (100) foot setback from adjoining properties for a proposed multi-purpose building. Applicants wish to locate the building seventy (70) feet from a side property line and 91.5 feet from the rear property line. The subject property is identified as PIN #6993-27-8197-000, contains approximately 10.0 acres, zoned Rural Agriculture, located on Old Auburn Road (State Route 670), in Center District.

Mr. Hodge reviewed the staff report and stated that a site visit was conducted earlier in the day. He also stated that the Zoning Ordinance requires any structure associated with a fairground to be located a minimum of 100 feet from any property line.

Mrs. Brenda Rich, President of Fauquier County Fair, Inc., was present in support of their request. She stated that due to the location of the drainfield, they are unable to locate the building elsewhere on the property.

Mr. Rider asked Mrs. Rich if the proposed building would be a single story, and what it would be used for.

Mrs. Rich stated that she believed it would be single story, and they would have meetings, dances, dinners, craft shows, etc. in the building.

Mr. Rider asked if anyone wished to speak in opposition or support of this request.

No one spoke.

On the motion made by Mrs. Mailler, and seconded by Mr. Meadows, it was moved to approve variance #46322, 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 location of the drainfield, and the narrowness 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:
 - (a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Ordinance; and the location of the drainfield.

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 the exceptional narrowness of the property and due to the location of the drainfield.

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 thirty (30') feet to a side property line, and 8.5' feet from the rear property line.

The motion carried unanimously.

VARIANCE #46329 ANTHONY WELLS (OWNER)

Applicant wishes a variance to the front yard requirement to allow an addition to be located 51.1 feet from the centerline of Halfway Road (State Route 626), wherein the Zoning Ordinance requires 75 feet. The subject property is identified as PIN #6091-83-9928-000, contains approximately 5.03 acres, zoned Rural Agriculture, located on Halfway Road (State Route 626) and Landmark Road (State Route 679), in Scott District.

Mr. Hodge reviewed the staff report and indicated that the site was not visited. He stated that the existing non-conforming dwelling was constructed in the mid 1700's. He further stated that the proposed addition is approximately 1,560 square feet, and that the Zoning Ordinance would allow by-right 694 square feet for the addition, however the remaining 866 square feet would need approval from the BZA.

Dr. Anthony Wells was present in support of his request. He explained that the house is very small, and they need additional living area, and he referenced the BZA to the pictures submitted with the application. He stated that the addition would be two stories, the lower level would enlarge the kitchen, and add a bathroom, and the upper level would enlarge the master bedroom and bath. He explained that his home is not visible by any other dwellings.

Mr. Rider asked Dr. Wells if it is possible to enlarge in another direction on the property.

Dr. Wells responded that he could not due to the location of the drainfield.

Mr. Hodge explained that at the rear of the property, there is substantial floodplain.

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

No one spoke.

On the motion made by Mr. Meadows, and seconded by Mrs. Mailler, it was moved to approve variance #46329, 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 floodplain boundaries, and location of drainfield.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of:
 - (a) 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 eleven (11') feet to the centerline of Halfway Road (State Route 626).

The motion carried unanimously.

ADJOURNMENT There being no further business before the Board, the meeting adjourned at approximately 3:10 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.

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