

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

February 11, 1999

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, February 11, 1999, 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; William Barr, Vice Chairman; Ms. Barbara Wilson, Secretary; Mr Eugene Lofdahl, Mr. John Meadows, and Mrs. Peg Mailler. Also present were Mrs. Carolyn G. Bowen, Zoning Administrator; Mr. Don Margraf, Assistant Zoning Administrator; Mr. Paul McCulla, County Attorney; and Mrs. Beverly Pullen, Zoning Office Technician. Dr. James Branscome was absent.

MINUTES

The minutes of the January 7, 1999 hearing 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 had been properly advertised, posted, and letters of notification sent to adjoining property owners.

SPECIAL PERMIT #43647

Curtis R. and Shelia A. Hansen (Owners)

Owners are requesting special permit approval to continue using the property, building J (5,737 square feet) and building Q (224 square feet) for retail sales in excess of 5,000 square feet, and auctions. The BZA approved a Special Permit for this property on December 4, 1997 with a time limited of one year. The subject properties are located on John S. Mosby Highway (State Route 50), identified as PIN #6054-75-1744-000, and PIN #6054-65-8611-000, containing approximately 3.3 acres, in Marshall District.

Mr. Don Margraf reviewed the staff report. He stated that Virginia Department of Transportation takes no exception to the continued use. The Fauquier County Health Department sent a letter indicating it had no objection to approval provided adequate and proper sewage disposal methods are utilized. He further stated that a site visit was conducted earlier in the day.

Mr. and Mrs. Hansen were present in support of their request. Mr. Hansen stated that Calvin Neal, who rented the buildings, was also present in support of this request. Mr. Hansen further stated that he has monitored the business with regard to issues with parking and noise concerns. He stated there are no outside speakers or phone bells at the site. He also stated that he has not received any complaints, other than an outdoor lighting problem.

Mr. Rider addressed concerns with the number of auctions that had been held in the past year.

Mr. Hansen stated that he recalled the original permit being issued for 3-4 auctions per month.

Mr. Calvin Neal spoke regarding this request stating that he is an auctioneer, licensed by the State of Virginia. He stated that when he had obtained a business license, he had inquired as to whether he needed to do anything additional to hold the auctions at the site. Mr. Neal indicated that he has held auctions at the property since June 27, 1998 (see attached schedule of auctions held). He stated that this request is to hold 48 auctions per year, but 45 auctions is a more realistic number. He also stated the hours of the auctions are generally 5:00 P.M. to 10:00 P.M. on Saturdays and occasionally on Sundays at 1:00 P.M.

Mr. Rider stated he felt that 48 auctions per year would be too many auctions.

Ms. Wilson read the conditions of the original special permit issued on December 4, 1997. She specifically stated that the special permit was granted subject to a condition stating that "the special permit is approved for a maximum of 24 auctions per year, with there being no more than 3 auctions in any one month period."

Mr. Neal stated that he was never made aware of the condition limiting the number of auctions. He stated that he was informed that he could hold 2 three-day auctions per month.

Mr. Barr inquired as to why the auctions could not be held during the day, as one of the concerns of the adjoining property owners was the holding of the auctions at night.

Mr. Neal stated that there are a number of estate auctions held during the day and this would increase the competition and take away from his business. He felt that the traffic is the heaviest during the day on Route 50.

Mr. Hansen stated that he has monitored the noise levels of the auctions at night, and he did not feel that the noise levels were excessive.

Mr. Meadows inquired as to how Mr. Hansen had monitored the noise level, and he replied by listening.

Ms. Wilson stated that she thought the auctions would offer only antiques.

Mr. Neal stated that his merchandise is generally furniture, a few antiques, and new merchandise, such as overstocked items from Price Club, BJ's or Wal-Mart. Mr. Hansen stated originally he did indicate that the auctions would be primarily antiques.

Mr. Meadows inquired as to the latest time of the auctions.

Mr. Neal stated that 10:50 P.M. is the latest he had ever been there. He explained that the auction sales are computerized and patrons can pay immediately after they purchase an item, without having to wait.

Mr. Meadows asked Mr. Neal if the special permit was granted for less than 48 auctions, would he need to look for additional space or a different space for his business.

Mr. Neal stated that he did not know at this point.

Mr. Hansen stated that he feels these auctions offer a valuable service to the community with the sale of new merchandise.

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

Ms. Mary Belle Clark spoke in opposition to this request. She stated that she lives at 9199 John Mosby Highway in Upperville and that her property adjoins the Hansen property on the west side. Ms. Clark presented a zoning map of the Hansen property, as well as adjoining property owners. She presented a letter to the Board of Zoning Appeals opposing this request, she cited concerns with noise, security, health concerns of food sales on site, and violation of the previous special permit conditions. Ms. Clark felt that if the Board of Zoning Appeals grants this request, conditions should limit the auctions to two per month, with only 1 auction in a 7-day period, and all auctions should end by 6:00 P.M. Ms. Clark also stated that Ms. Juanita Secrist, also an adjoining property owner, could not be at the hearing, opposes this request.

Mr. John Masland, who lives at 9202 John Mosby Highway in Upperville, spoke in opposition to this request. He cited concerns with traffic, security, health department compliance with food sales, and violation of the present special permit conditions.

Mr. Charles Warren, who lives in Upperville, also spoke in opposition to this request. He cited concerns with the type of auction allowed. He also cited concerns with health department compliance and not complying with current conditions of special permit.

Ms. Mary Nesbitt, residing at 9083 John Mosby Highway in Upperville, spoke in opposition to this request. She cited concerns with the type of merchandise for auction, the conditions in which the auctions are held, and the noise it generates to the adjacent property owners.

Ms. Kitty Smith, residing near the village of Rectortown, spoke in opposition to this request. She cited concerns with the type of products sold at the auctions, and does not feel this use is compatible with the village neighborhood.

Mrs. Shelia Hansen spoke in support of this request. She stated that she was not aware of the problems or concerns of the adjoining property owners, and that they have not been approached regarding these issues. She did not feel that Mr. Neal, intentionally did anything wrong. She also stated that antique auctions were originally planned for this site, however no profit could be made selling antiques. She stated that she believes there was a misunderstanding on their part of the conditions of this permit and that Mr. Neal is not to blame.

Mr. Curtis Hansen spoke regarding the use of this commercial property. He stated that the property has been used commercially since the early 1800's and he does not understand how one

auction every week can be a problem. He stated that there are 21 buildings on the property containing 150,000 square feet, and they only want to use a small portion for these auctions.

On the motion made by Ms. Wilson and seconded by Mrs. Mailler, it was moved to close the public hearing and defer action on this request until the March 4, 1999 meeting.

The motion carried unanimously.

Mrs. Bowen answered a questions for the audience that the auctions were not authorized to continue on the property, without special permit approval, and to continue would be at their own risk.

SPECIAL PERMIT #43707

Steepbottom, L.L.C. (Owner) Richard and Kathleen Fitzsimmons (Contract Owners)

Applicants wish special permit approval to operate a residential care facility on a portion of property identified as PIN #7828-40-2249-000, containing 21.836 acres, located at 3493 Midland Road (State Route 610), in Cedar Run District.

Mr. Margraf reviewed the staff report and stated that a site visit was conducted earlier. He stated that the applicants, Richard and Kathleen Fitzsimmons are requesting special permit approval to operate a residential care facility as a privately owned non-profit corporation. He stated that Virginia Department of Transportation recommends that the entrance be improved to meet commercial entrance standards. Fauquier County Health Department has no objection to approval provided no more than eight (8) persons (students and staff) occupy the facility unless the sewage disposal system is upgraded.

Richard and Kathleen Fitzsimmons were present in support of their request. Mrs. Fitzsimmons stated that this request is for an extended foster home in the existing Sommerville Mansion. She indicated that she and her husband have lived in the Nokesville area for about 18 years and are active members in the school, church and community. They have raised four children of their own and many foster children. She stated that the petition circulated through the community in opposition contained a statement taken out of context from their statement of proposed use and the community is associating this request to a previous request for a boot camp. She explained that this facility is a licensed, foster care program offering physical, emotional and spiritual support 24-hours a day. She explained that the co-ed youth would be between the ages of 11 and 17 years old. She explained that these children are considered at-risk youth, through either parental problems or otherwise, they are placed into the foster-care system. She stated that this group of children needs placement where more structure, discipline and learning life-skills can be a part of their environment. She explained that the youth to be served are local, Fauquier County youth, already in the school system. She reviewed the financial aspects of this request and stated that currently, Fauquier County has 19 youths in out-of-county facilities at a cost of \$1,051,848 annually. She stated that many of these youths could be served in the county for a cost of approximately \$400,000. She felt that these county funds paying for this care could be better spent in the county. She indicated that the referrals would come from the Department of Social

Services, the Juvenile Court System or the Sheriff's Office. Mrs. Fitzsimmons referred to two other similar youth group home facilities, Deep Run Lodge Facility near Goldvein, and Rainbow Christian Services near Gainesville. She stated that there are several letters of support attached to this file.

Mr. Rider asked the name of the agency that issues the license and inspects such a facility.

Mrs. Fitzsimmons stated that the Interdepartmental Agency would license and inspect their facility.

Mr. Rider inquired as to the qualifications or acceptability of the youth for this facility.

Mrs. Fitzsimmons stated that she would decide which youth will work best in her program and has the right to deny any youth that risk the safety of the other youth within the home.

Mr. Rider asked for clarification on the non-profit aspect of the ownership of the facility.

Mrs. Fitzsimmons stated that she was not sure at this point how the ownership of the property would be handled, due to tax implications.

Mr. McCulla explained that the non-profit aspect of the organization is a tax issue, as well as liability concerns, whereas the special permit request is a land use matter. He further explained that the BZA could condition the permit as to whether it conveys with the sale of the property, however by conditioning the permit to a specific person, there must be a reason, such as experience or education.

Mr. Barr asked if this facility would allow mentally disturbed youth into the program. He further asked for clarification on the type of youth and what threat they will be to themselves or the neighbors.

Mrs. Fitzsimmons stated that there are institutions throughout the state for the mentally disturbed youth. She stated that she would not allow violent offenders into her foster care program, however there may be an occasion in which the Juvenile Court may refer a youth to her with truancy charges or similar charges which are non-threatening to the community as well as the other youth in the home.

Mr. Lofdahl asked Mrs. Fitzsimmons if she has a child in the program that is not responding, is she free to return the child to the agency from which they were referred.

Mrs. Fitzsimmons stated that a child could be returned to the appropriate agency. She further stated that she interviews each child prior to accepting them into the program, to be sure they understand the goals of their care.

Mrs. Mailler asked how long a youth could be in the program.

Mrs. Fitzsimmons stated anywhere from two or three nights or through college, depending on the length of the need.

Mr. Meadows inquired to the maximum number of children that can be accommodated.

Mrs. Fitzsimmons stated that she has requested a maximum of twenty due to the type of license involved, however she will probably only have sixteen, as the Sommerville Mansion has two separate wings that can easily accommodate each gender.

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

Rev. William Day spoke in support of this request, he lives in Manassas, but he has ministered at two churches, one in Midland and the other in Calverton. He stated that he has known the Fitzsimmons' for many years and can attest to their character and integrity. He also stated that he is in favor of the youth home, as he understands there is a great need for this service in Fauquier County.

Mrs. Jamie Cooper of 11350 Bristersburg Road, spoke in opposition. She stated that her son's childcare provider lives within $\frac{3}{4}$ of a mile from the proposed facility. She cited concerns with impact on the community, well capacity, and discipline of the youth.

Mr. Michael Wallace of 12483 Elk Run Road, spoke in opposition. He cited concerns with security, increased traffic, and negative impact on property values. He also cited concerns with the percentage of youth in the program coming from Fauquier County.

Mrs. Silvia Hitchings of 3507 Midland Road and also an adjoining property owner, spoke in opposition. She stated that her understanding from Mrs. Fitzsimmons is that she will not live at the property. She cited concerns with the program criteria and the financial support of this program. She stated concerns with runaways, limited police & fire services to the area, and the negative impact on the value of her property.

Mrs. Cindy Linton of Opal, spoke in opposition. She stated that she recently purchased eight acres of property located on Ensors Shop Road. She cited concerns with security, the number of children, time period of the special permit, and credentials of the staff employed.

Mrs. Donna Grove of 2381 Aquia Road, spoke in opposition. She cited concerns with distance from recreational facilities, and security of the community.

Mr. Tom Cooper, residing on Bristersburg Road, spoke in opposition. He cited concerns with lack of fire and rescue services.

Ms. Judy Nevil of 4218 Elk Run Road, spoke in opposition. She read a letter from Wayne and Linda Arrington citing concerns with traffic, and security of the community.

Mr. Will Hitchings of 3507 Midland Road, and also an adjoining property owner, spoke in opposition. He cited concerns with the negative impact on his property value, impact on his children, traffic, noise, and security.

Mr. James Blackwell of 3549 Midland Road, an adjoining property owner spoke in opposition. He cited concerns with security.

Mr. Eric Grove of 12042 Greentree Lane, spoke in opposition. He cited concerns with suitability of the area, the sight distance for the driveway, well and septic concerns, safety of the community, and the response time for fire and rescue services. He suggested Vint Hill as a possible location for this type of facility. He also cited concerns with the Fitzsimmons' not residing at the property.

Mrs. Audrey Grove of 3432 Midland Road spoke in opposition. She cited concerns with undue burden on schools, traffic, noise, security and negative impact on land values.

Mr. William Wright of 4349 Razor Hill Road spoke in opposition. He cited concerns with financial stability, sprinkler system of residence, well & septic capacity, and impact on school system.

Ms. Ethel Grove spoke in opposition. She cited concerns with property values.

Mrs. Debbie Grove of 14042 Greentree Lane, spoke in opposition. She cited concerns with security.

Mrs. Eva Thorpe of Midland, spoke in opposition. She cited concerns with security and safety of children and elderly women in the community.

Mrs. Fitzsimmons spoke regarding the concerns of the community. She stated that according to the Licensing Agency, she and her husband would be allowed to live there for the first 3-6 months. The Licensing Agency requires that the Fitzsimmons' maintain a legal residence elsewhere during this time period. With regard to the safety concerns, she stated that Mr. Fitzsimmons has applied with the Fauquier County Sheriff's Office to become an auxiliary sheriff. She addressed the concerns with the public school system. She stated that these children would already be in the Fauquier County School System.

On the motion made by Mrs. Mailler and seconded by Mr. Barr, it was moved to close the public hearing and defer action of this request until the March 4, 1999.

The motion carried unanimously.

OTHER MATTERS

Due to the upcoming Board of Zoning Appeals Seminar in April and June, a motion was made by Mr. Lofdahl, and seconded by Mr. Meadows, to change the April and June public hearing

dates to the second Thursday of April and June. The Board of Zoning Appeals will meet April 8, 1999 and June 10, 1999.

ADJOURNMENT There being no further business before the Board, the meeting adjourned at 5:10 P.M.

William Rider, Chairman

Barbara Wilson, 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.