

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

May 6, 1999

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, May 6, 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; Dr. James Branscome, Mr Eugene Lofdahl, and Mr. John Meadows. Also present were Mrs. Carolyn G. Bowen, Zoning Administrator; Mr. Paul McCulla, County Attorney; and Mrs. Beverly Pullen, Zoning Office Technician. Mrs. Peg Mailler was absent.

MINUTES

It was moved to approve the minutes of the April 8, 1999 hearing 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 #43892

KAREN E. COSNER, TRUSTEE (OWNER)

Mrs. Bowen stated that a letter had been received from Ben Jones of Walker, Jones, et al, on behalf of his client, Karen E. Cosner requesting a motion to amend a condition approved on Special Permit #43892 at the April 8, 1999 meeting.

Mr. Ben Jones, Attorney, was present on behalf of Mrs. Cosner. He stated that the wording of Condition #2 is problematic and would prohibit the placing of a deed of trust on the property to secure a bank loan for the improvement of the property, and therefore the condition as written will not allow her to finance improvements to the property.

Ms. Wilson asked if a loan placed on the property would cause a conveyance.

Mr. Jones replied that technically the owner conveys the legal title to the trustee on a deed of trust. The use of the property remains with the owner.

Mr. Meadows asked Mr. Jones if the requested amendment to this condition would alter the intent of the original condition.

Mr. Jones replied the proposed change would not change the intent, but would allow Mrs. Cosner to obtain a loan on the property.

Ms. Wilson stated that her understanding is, when a deed of trust is obtained, the title is technically transferred.

Mr. McCulla explained that when a deed of trust is placed on a property, the owner is transferring bare legal title to the trustee. He further explained that the owner still holds beneficial title and the right to use the property, but the trustee has the ability to act in certain circumstances.

Mr. Meadows made the motion to accept the changes as indicated in Mr. Jones letter dated April 21, 1999 regarding Special Permit #43892, as follows:

Condition #2 is hereby amended to read:

The special permit is restricted solely to the property owner, Karen E. Cosner, Trustee, by deed dated April 2, 1999, recorded in the Clerk's Office of the Circuit Court of Fauquier County, Virginia, in Deed Book 834 at page 1715; and should Mrs. Cosner transfer any right, title, or interest in the property including, but not limited to transference by lease, deed, or operating agreement, the permit shall be void. This restriction shall not prohibit conveyance of the property to secure any deed of trust loan.

The motion was seconded by Mrs. Wilson. The motion carried unanimously.

SPECIAL PERMIT #43984

OPAL MINI STORAGE LTD. PARTNERSHIP (OWNER)

Applicant is requesting special permit approval to construct mini-storage warehouse units on the one (1) acre portion of the five (5) acre parcel (the remaining four (4) acres currently contains such units). The subject property is located at the intersection of Marsh Road (State Route 17) and Fayetteville Road (State Route 844) in Opal, containing 5.00 acres, zoned C-2 (Commercial), and identified as PIN #6980-47-5042-000, Lee District.

Mrs. Bowen reviewed the staff report. She stated that the Board of Zoning Appeals had previously granted special permit approval for mini-storage warehouses on four (4) acres. She further stated that this request, if approved would allow the applicant to build additions to three (3) of the existing buildings. She also stated that site plan approval would be required. She referred to a copy of the proposed realignment of Route 17 that would only affect the existing buildings on the property and not the proposed additions of the remaining one (1) acre portion.

Mr. Powell O'Bannon, owner of Opal Mini Storage Limited Partnership, was present in support of this request. He stated that he would like to use the remaining one-acre by increasing the number of mini-storage warehouse units. The proposed buildings would be thirty (30') feet by two hundred (200') feet.

Mr. Rider stated that Virginia Department of Transportation has commented on this request and stated they have no objection to the request.

Mr. Meadows asked Mr. O'Bannon about the original special permit requiring the planting of white pines five-foot on center. He stated that he noticed on the new plat, the proposed planting is on ten-foot center.

Mr. O'Bannon stated that Mrs. Bowen had brought this to this attention. He further stated that the property is still bonded for the completion of this condition. He indicated that he would be willing to plant the white pines on five-foot center, if required.

Mr. Lofdahl asked if there are any proposed changes to the entrance at the property.

Mr. O'Bannon replied that there are no proposed changes to the entrance.

Ms. Wilson asked about the existing screening on the property.

Mr. O'Bannon stated that the original planting of white pines had died. He stated that the property is still bonded due to this requirement, and he is planning to complete the screening, with this last phase of development.

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

No one spoke.

On the motion made by Mr. Lofdahl, and seconded by Mr. Meadows, it was moved to grant special permit #43984, 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 special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:
 - (a) Site plan approval as required.

(b) Screening to be provided and maintained along Route 17, Route 844 and along the south side of the property adjoining the agricultural zoning – said screening to be of white pines, at least six (6) feet tall and planted on ten (10) foot centers in a staggered manner.

The motion carried unanimously.

SPECIAL PERMIT #44012

JOSEPH P. AND GAIL A. DONAHUE (OWNERS)

Applicants are requesting special permit approval to continue operating a home occupation/pet grooming business. Original special permit #38695 was granted on March 3, 1995 for a period of three years. The subject property is located at 8410 Lunsford Road (State Route 674), containing 7.32 acres, zoned RA (Rural Agriculture), and identified as PIN #6993-44-7190-000, Center District.

Mrs. Bowen reviewed the staff report. She stated that a site visit was conducted earlier

Ms. Linda Hall, was present in support of this request on behalf of Mr. and Mrs. Donahue. She stated that Mr. and Mrs. Donahue are requesting a release of the two-year time period.

Mr. Rider asked Mrs. Bowen if any complaints had been received.

Mrs. Bowen stated that no complaints had been received and to the best of her knowledge, the Donahues' had complied with all aspects of the special permit.

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

No one spoke.

On the motion made by Ms. Wilson, and seconded by Mr. Barr, it was moved to grant special permit #44012, 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:

Section 5-202 Standards for Home Occupations with Retail Sales and Services

1. Such use shall be permitted as a home occupation in accordance with Section 6-302 and shall not be listed in Section 6-303 or similar thereto.
 2. All public contact related to such a use shall be limited to the period of 7:00 A.M. and 8:00 P.M.
 3. Off-street parking for the use shall be provided in accordance with the provisions of Article 7 in addition to that required for the dwelling unit and shall not be located in any required front yard.
 4. Signs shall be limited to those allowed for home occupations in the zoning district where located.
 5. Such use shall satisfy the use limitations set forth in Section 6-304, except that retail sales are limited to those items produced on the site and those produced by an approved off site home occupation – off site products shall be incidental to those sold on site.
 6. Such use shall have frontage on a public street maintained by VDOT.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:
- (a) The special permit does not convey with the sale of the property.

The motion carried unanimously.

SPECIAL PERMIT #44055

AMINOMOHAMED H. AND NOORSULTAN SHERIFF (OWNERS)

Applicants are requesting special permit approval to locate a professional office, three or less employees, above a proposed detached garage. The subject property is located at 7383 Wilson Road (State Route 691), containing 10.414 acres, zoned RA (Rural Agriculture), and identified as PIN #6965-36-4043-000, Marshall District.

Mrs. Bowen reviewed the staff report. She stated that a site visit was made earlier.

Mr. Aminomohamed Sheriff, along with Mr. Tom Steder were present on behalf this request. Mr. Sheriff stated that his CPA office is presently in the Town of Warrenton and he would like to locate his office in a proposed detached garage at the subject property. He stated that he would like to work from home so he can be home with his children. He also stated that he only has a few clients that would actually come to the home, as the majority of his clients are in Maryland.

Mr. Meadows inquired as to the floor plan and the need for one and one-half baths in the office.

Mr. Steder responded that initially Mr. Sheriff wanted to have his own private bath and not share with his clients, but the half bath had been removed from the plan.

Mr. Rider asked Mrs. Bowen if an apartment would be allowed at this property.

Mrs. Bowen stated that with proper application and qualifications he would be allowed.

Mr. Steder stated that Mr. Sheriff is not requesting an apartment in this application, however expects that the proposed garage and office would increase his property value, as well as be more economically beneficial than leasing office space off site.

Ms. Wilson asked if this space could be converted in the future to a dwelling unit.

Mrs. Bowen stated that the applicants could have a guest cottage, without kitchen facilities and with proper permits. She also stated that the applicants could use this area for their own personal use.

Ms. Wilson expressed concern that this area would be converted as a separate living unit.

Mrs. Bowen stated that if the applicant wanted a permit for an apartment, it would not require special permit approval.

Mr. McCulla stated the applicants could add an additional bath or living area for their own personal use, with proper approvals from the Health Department.

Mr. Sheriff stated the application process would have been easier for a garage apartment.

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

Mr. Fred Hufnagel a member of the Board of Directors of Bellevue Farms Homeowners Association, spoke in opposition to this request. He stated that the covenants of the HOA require approval from the Board of Directors prior to operation of a business from the home.

Mr. Rider stated that the Board of Zoning Appeals does not enforce covenants.

Mr. Hufnagel stated that this application was in violation of the covenants of the Bellevue Farms HOA. He further stated that there are no other professional businesses in the subdivision, which have outside employees.

On the motion made by Mr. Lofdahl, and seconded by Mr. Meadows, it was moved to grant special permit #44055, 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:

Section 5-1305 Additional Standards for Office, Professional (including Clinics), Not more than Six Persons Employed

 1. Not more than six (6) persons may be engaged in the operation of the office, including part-time employees and/or professionals.
 2. No retail or wholesale sales or storage conducted on the premises.
 3. The building so used shall have the exterior appearance of a residential structure of a type allowed in the zoning district in which located.
 4. There shall be no lighting of signs or parking areas on the premises in general in any manner not usual in a residential area.
 5. Such uses in multi-family structures shall be located in end units of townhouse structures or on the lowest floor of other multi-family structures.
 6. Office hours shall be limited to the period between 8:30 A.M. and 8:00 P.M., Monday through Saturday. Offices may open at other times for emergencies.
 7. Off-street parking for the office shall be provided in accordance with the provisions of Article 7 in addition to that required for the dwelling units, unless the office hours are limited to the period between 9:00 A.M. and 4:00 P.M.
 8. In the V, R-1 and R-4 zoning districts, no off-street parking space shall be located in any required front yard, and all parking spaces accessory to the use shall be screened so that they are not visible from the first story window levels of adjoining property.
 9. Such a use 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. Such alternative access shall be to a road designated in the Comprehensive Plan no lower than rural minor collector or urban local.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest

to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:

- a. Special permit does not convey with the sale of the property.
- b. There shall be not identification sign.
- c. Special permit is limited as per the application to three (3) or less employees.
- d. There shall be no lighting of the site.

The motion carried unanimously.

SPECIAL PERMIT #44059

MAIN STREET LIMITED PARTNERSHIP (OWNER)

Applicant wishes to locate an automobile sales, rental and service on approximately 8.69 acres. The subject property is located on the east side of Old Stockyard Road (State Route 1001) and south side of Route 55 (John Marshall Highway), containing approximately 8.69 acres, zoned C-3 (Commercial), and identified as PIN #6969-89-6085-000, 6969-99-1625-000, and 6969-89-2054-000, Marshall District.

Mrs. Bowen reviewed the staff report and stated that staff has recommended nine conditions regarding lighting and access to the property. She stated that a site visit was made earlier.

Mr. Ben Jones, Attorney, was present on behalf of the applicant, Steve Athey of Main Street Limited Partnership. He stated that David Baird of Marshall Ford wants to lease the property and relocate his automobile dealership from the present location to the proposed site. Mr. Ben Jones stated that the hours of operation requested are 7:30 A.M. to 9:00 P.M., Monday through Saturday. Mr. Jones expressed concern with regard to the lighting requirements and the need for sufficient security lighting.

Mr. Rider stated that the lighting requirements, as well as access to the property are important issues that will be addressed.

Mrs. Bowen stated that adequate security lighting would be allowed.

Mr. Brad Docos, of BDA Architects was also present on behalf of Main Street Limited Partnership, in support of this request.

Mr. David Baird of Marshall Ford, was present in support of his request. He stated that he wants to relocate his auto dealership to the subject property, due to the growth planned for the area. He stated that adequate lighting is necessary, for security, as well as insurance requirements.

Mrs. Bowen stated that condition #7 in the staff report does allow for security lighting of the display area of the property, near to and including the building. She explained the intent is to downshield the lighting, so as not to affect the adjacent properties.

Mr. Baird agreed to work with the Zoning Administrator on acceptable security lighting that will meet the lighting requirements.

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

Ms. Charlene Long, who works with George Thompson, spoke regarding this request. She inquired about the lighting requirements per the Zoning Ordinance.

Mrs. Bowen stated that the Zoning Ordinance requires lighting to be downshielded. She also stated that staff is preparing a lighting ordinance to further define the requirements but, such an ordinance has not been adopted. She indicated that staff has recommended five conditions, and felt that the conditions would adequately address the lighting of this site.

On the motion made by Mr. Meadows, and seconded by Ms. Wilson, it was moved to grant special permit #44059, 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:

Section 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. 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.
 2. The property development shall provide right-of-way dedication and improvements as required by the Virginia Department of Transportation.
 3. The subject property shall have a maximum of two (2) entrances onto Old Stockyard Road (State Route 1001).
 4. No access shall be permitted onto John Marshall Highway (Virginia State Highway Route 55).
 5. 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.
 6. 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.

7. 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.
8. All outdoor lighting for the parking area shall be limited to an average horizontal illuminance of three (3) foot-candles.
9. 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.
10. Special permit does convey with the sale or lease of the property.
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.

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