

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

August 5, 1999

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, August 5, 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; Mrs. Peg Mailler, Mr Eugene Lofdahl, Dr. James Branscome and Mr. John Meadows. Also present were Mrs. Carolyn G. Bowen, Zoning Administrator; Mr. Paul McCulla, County Attorney; Mr. Don Margraf, Assistant Zoning Administrator, and Mrs. Beverly Pullen, Zoning Office Technician. The member absent was Ms. Barbara Wilson.

**MINUTES**

It was moved to approve the minutes of the July 1, 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 have been properly advertised, posted, and letters of notification sent to adjoining property owners.

**SPECIAL PERMIT #44357**

**LAKE WHIPPOORWILL L.L.C. (OWNER) AND GREATER NEW LIFE MINISTRIES TRUSTEES (APPLICANT)**

Mrs. Bowen stated that item #2 on the agenda for today, #44357 Lake Whippoorwill L.L.C./Greater New Life Ministries, has been withdrawn by the owner. She further stated that notices to adjoining property owners had been mailed informing them of the withdrawal.

**APPEAL #44303**

**SALAHY FAMILY LIMITED PARTNERSHIP (OWNER)**

The Salahy Family Limited Partnership has filed an appeal to certain determinations made by the Zoning Administrator in a letter dated May 26, 1999. The owners are appealing decisions regarding an open house held on May 29, 1999, the number of persons that may attend an open house, the holding of an open house and a Class C event at the same date and time, and what constitutes the tasting or sampling of wine for purpose of using a farm structure under the Zoning Ordinance. The subject property is identified as PIN #5998-87-0439-000, located at 14141 Hume Road (State Route 635) near Hume, containing approximately 99.72 acres and is zoned RA (Rural Agriculture), Marshall District.

Mrs. Bowen stated that a site visit was conducted earlier in the day. She referred the Board of Zoning Appeals to an Affidavit she has filed regarding the appeal. She requested that a date be established for any additional material to be given to staff, for a timely delivery to each member for review.

Mr. Rider asked if the written letter of opinion was furnished in the member's books.

Mrs. Bowen confirmed that the letter is included in the book. She stated that John Foote and Henry Day are present to represent the Salahi Family Limited Partnership, and Sarah Hall is present in representation of the neighbors' appeal, which is the subject of the next hearing on the agenda.

Mr. Rider asked Mr. Foote to address the subject matter.

Mr. John Foote, Attorney, spoke on behalf of the Salahi Family Limited Partnership. He presented additional material to the Board of Zoning Appeals and stated that a copy had already been given to Ms. Hall.

Mrs. Bowen also stated that letters were received this morning from Jim Law at Linden Vineyard, and from Robert Harper at Naked Mountain Vineyard. She stated that this information was handed out this morning to each member, and that it would be included as a part of the record.

Mr. Rider asked Mr. Foote if the information he presented to the Board of Zoning Appeals was different than the material submitted by the Zoning Administrator, and Mr. Foote indicated that it was.

Mr. Foote explained the appeal and the three issues it involved. He asked if Mr. Salahi could give the members some background on the winery, as he felt it was important for the BZA to understand the operation of the winery.

Mr. Rider asked Mr. Foote if the information would pertain to the appeal.

Mr. Foote stated that the information is all relevant, and whether the permit has been properly followed.

Mr. Tariq Salahi, spoke on behalf of the Salahi Family. He stated that he is the youngest son, and that his family has been in the winery business since 1977. Mr. Salahi stated that he grew up in Hume, and went on to study wine-making, and the science of wine-making, at the University of California. After graduation, he went to work in Napa Valley and obtained experience in the business. He then returned home to take over the family's business in 1993.

Mr. Foote asked Mr. Salahi when the business began and how it has grown since then.

Mr. Salahi stated that the business began in 1977 and quickly grew from one acre to the approximately one hundred acres being used for the vineyard today. He stated that Oasis is one of the largest in Virginia.

Mr. Foote asked Mr. Salahi if the wines are sold at different places.

Mr. Salahi stated that the wine is sold primarily (75%) through the winery. He further stated that the remaining (25%) is sold to restaurants, bed and breakfasts, hotels, etc.

Mr. Foote asked Mr. Salahi, relevant to the Alex Fox issue, why is the (75%) of on-site sales significant to the winery.

Mr. Salahi stated that because Oasis is one of the largest wineries, producing 10,000-20,000 cases of wine a year, they rely on tours and people coming to the vineyard, special events, wine tasting lunches & dinners, weddings, etc. to purchase the wine.

Mr. Foote asked if this is true of other major national wineries, such as Mondavi.

Mr. Salahi stated that no, they rely on retail sales of their wines, and that Oasis cannot command shelf space in stores such as Giant & Safeway. He further stated that they (Oasis) rely on guests coming out to the vineyard to purchase their product.

Mr. Foote asked Mr. Salahi to describe the activities related to the sales of their wines.

Mr. Salahi explained that wine tastings are held through out the day at the vineyard. He further explained that the winery is open year round. He stated that wine tasting lunches, wine tasting dinners, weddings, receptions, and other special activities are the fundamental way that rural wineries throughout the world sell their wine. He stated that other wineries such as Mondavi have concerts every single weekend, during the summer months. Mr. Salahi stated that Oasis is not at that level, and not what they are looking for.

Mr. Rider asked Mr. Salahi if they do wholesale business.

Mr. Salahi stated that approximately 25% of their sales are wholesale. He further stated that their wines could be found at a few grocery stores in Northern Virginia, as well as a few stores in Warrenton.

Dr. Branscome asked Mr. Salahi if their product is sold in the ABC Store.

Mr. Salahi stated that yes it is in the ABC store, but only a limited amount.

Mr. Foote asked Mr. Salahi if there are more important days, other than drop in business, with respect to this type of business.

Mr. Salahi stated that even though they are open every day, there are some theme weekends that more advertising dollars are spent to generate business, such as Memorial Day, July 4<sup>th</sup>, Labor Day, and Harvest weekends, Family weekends, etc.

Mr. Foote asked if these special days are more heavily advertised.

Mr. Salahi stated that they are more advertised through the internet, local papers, etc.

Mr. Foote asked Mr. Salahi what role the music plays at the winery.

Mr. Salahi stated that music is fundamental, as the music completes the whole experience, of visiting the winery, sitting on the deck, and creates moments and memories.

Mr. Lofdahl asked if music had been a part of the operation since 1977.

Mr. Salahi stated that yes, and in the past, Oasis had held very large wine festivals with music, with 2500+ guests attending. He stated that Oasis has chosen not to hold these types of events any longer, and they hold smaller, more intimate type of events focusing on wine education and wine tasting. He stated that they are a higher level winery, and demand a higher level price. He stated that the winery gears more toward the wine dinners, and special receptions.

Mr. Lofdahl asked if 2500 persons is a large event, what number constitutes an intimate event.

Mr. Salahi replied that wine dinners are typically about 100-150 persons, but it can range from 10 to 250 persons. He stated that currently the special exception limits the number of persons to 250, and are losing a lot of business because of the limitation.

Mr. Foote stated that the current special exception limits the number of events, and the number of persons allowed at each event.

Dr. Branscome inquired as to how Oasis compares in size to other wineries in the area.

Mr. Salahi stated that in Virginia, Oasis is one of the largest, and in Fauquier County, they are the largest winery.

Dr. Branscome asked if they buy fruit from other growers.

Mr. Salahi stated that in the past they bought more, however currently they do not buy as much. He stated that if the vintage is good, they purchase less. Production varies from year to year and that drought conditions are actually good for the growing of grapes.

Mr. Foote asked if Mr. Salahi was familiar with other wineries in the area, and if the other wineries in the area conduct similar events.

Mr. Salahi stated that he is familiar with other wineries in the area, and the other wineries do conduct similar events, maybe less because they are five to ten times smaller

Mr. Foote stated that in the materials he distributed to the members, there is an advertising brochure from the Mondavi winery in California, because it demonstrates the events at other major wineries. He also stated that a sheet from a wine festival magazine, a Virginia publication, that indicates the extraordinary number of events similar to those that Mr. Salahi has described to you, was included for the purpose of putting into context the types of events.

Mr. Foote asked Mr. Salahi to describe the Alex Fox event and what actually happened May 29, 1999.

Mr. Salahi stated that Memorial Day Weekend is one of the bigger events at the winery, because of the national holiday and being a three day weekend. He stated that folks like to get out of the city and come out to the country. He further stated that it is a typical open day, they are open for tours and tastings, and they also have music there, as well as a hot air balloon. He stated that this is primarily for the children and the families that bring their children. He further stated that visitors can also take a tour of the wine cellar, which is two stories underground. They will listen to the music and enjoy the wine, and some food. He stated that it is a nice day in the country and it is held from 10 to 5.

Mr. Foote asked Mr. Salahi to physically describe what happens when Alex Fox is there.

Mr. Salahi stated that Alex Fox's performance occurred on the tent pad, located beside the pond. He stated that the area was cordoned off, for an area up to 250 people. He stated that they placed stakes and roped it off and they had an entrance staffed with volunteers, as well as the Sheriff's Deputies, marking the number of guests coming into this area, while he was performing. The wine festival took place on the other side of the cordoned off area in the barn area.

Mr. Foote referred the BZA to a memo from Major Waddell of the Sheriff's Office.

Mr. Salahi stated that Oasis Winery possesses a Virginia ABC Farm Winery License.

Mr. Foote asked if there are other kinds of licenses that the ABC issues that people can get to serve wine.

Mr. Salahi stated that there are several other types of licenses other retailers can get, for example a deli can get a tasting license, where they are allowed to taste four wines, with each tasting of no more than two ounces, maximum per serving. He further stated that Oasis does not possess this type of license, and never has, and the only license that Oasis has ever possessed is a Virginia farm winery license. He stated that the farm winery license allows tasting, as well as the sale of wines. Mr. Salahi stated that this goes back to the Virginia Farm Act of 1981. He stated that the license allows tastings, and if a person tastes a wine and wants to purchase the wine, he can do so by the glass or bottle.

Mr. Foote asked Mr. Salahi if a tasting license is a permanent or annual license?

Mr. Salahi stated that a tasting license, is more on a per case basis.

Mr. Foote asked Mr. Salahi if he knows how many times a year a person can get a tasting license.

Mr. Salahi stated that he did not know.

Mr. Foote stated for the BZA, that a person can only get a tasting license four times per year. He further stated that a tasting license limits you to the sale of two ounces of four products of wine.

Mr. Foote asked Mr. Salahi if they serve any food at the winery.

Mr. Salahi stated that they do not prepare any of the food, but they have a caterer that comes in and will sell sandwiches or hot dogs or special things on the weekends. He stated that they do sell cheese at the winery, along with the wine.

Mr. Foote asked if they are required by the ABC license to have food available.

Mr. Salahi stated that they are not required, like that of a restaurant needing to have certain percentages, such as 60/40 or 50/50, but for a winery you have to have something there, they don't tell you percentages, because obviously you want to sell more wine, and a lot of people just come in and buy wine and go, but they need to have something there, as part of being responsible and having some type of food such as cheese, bread or salami.

Mr. Foote asked if putting aside the permitted wine tasting dinners and lunches that you are authorized to have in the special exception, could he go out to the winery and get a full meal.

Mr. Salahi stated that he could not get a full meal at the winery.

Mr. Foote asked if Mr. Salahi ever planned to offer full meals.

Mr. Salahi stated no.

Mr. Foote addressed the questions of the activities at the winery as an agricultural use which is a portion of Mrs. Bowen's ruling, what has been your understanding that you have been told in the past by the County, that you may do as an agricultural use at the winery.

Mr. Salahi stated that his understanding is that they are allowed to do the tastings, the sale of wines, and sell things such as t-shirts, wine glasses and wine openers.

Mr. Foote asked if he understood that to be the County's understanding as well.

Mr. Salahi stated yes it had.

Mr. Foote explained that there are three appellant issues, the first is the neighbors appeal as to whether or not a wine tasting event is a permitted agricultural use. He stated that his clients are

in agreement with Mrs. Bowen's opinion that wine tastings are agriculture and part of the process of growing, promoting and selling the wine at the winery.

Second, he stated that the open house at the winery and the holding of a Class C event could occur at the same time. He also stated that Alex Fox had performed in an open tented area, not enclosed, but in a cordoned off area and while the music did wander past the cordoned off area, his clients did not allow more than 250 people into this area.

The third issue concerns wine tasting and whether or not the Zoning Administrator has the right to limit wine tastings at a vineyard. He stated that Oasis Vineyard holds a farm winery license, which permits the retail sale of wine at the winery and no restrictions on tastings. He felt that under Virginia law the County is powerless to limit the meaning of a farm winery license, but did not suggest that Virginia ABC laws regulate or preempt local power. He cited several Virginia Supreme Court decisions.

Mrs. Bowen stated that the Oasis Winery special exception for Class C events limits the number of persons to 250. The renewal of the special exception by the Board of Supervisors contains a condition that after September 15<sup>th</sup> Oasis Winery cannot have the winery/vineyard open to the general public at the same time that a Class C event is being held, but that this condition was not previously imposed on their special exception.

Mr. Foote stated that thousands of people could stop at the winery and vineyard and one of the ways to determine such would be to count the number of wine glasses sold on a daily basis. He stated that Mrs. Bowen has interpreted the Zoning Ordinance to allow the winery/vineyard to be open as an agricultural use and that under certain circumstances a Class C event could be held, even though it is difficult to do so.

Mr. Rider suggested that the appeal be deferred to the September 2, 1999 meeting, commencing at 1 P.M. with an executive meeting.

On the motion made by Mr. Meadows, and seconded by Mr. Lofdahl, it was moved to defer action on the appeal until the September 2, 1999 meeting, commencing at 1:00 P.M. and to hold an Executive Session. Any additional information to be submitted must be received by the Zoning Office by August 26, 1999.

The motion carried unanimously.

**APPEAL #44428**

**FREDERICK AND LINDY HART, KEVIN AND JENNIFER HANDFORD, ET ALS**  
**(APPELLANTS)**

The Appellants have filed an appeal to a determination made by the Zoning Administrator, dated May 26, 1999. The appeal is filed with regard to the Salahi Family Limited Partnership's property, The Oasis Winery, located on Hume Road, Marshall District. The appellants have appealed a Zoning Administrator's determination that wine tastings are permitted by right, as

part of an agricultural use, and that depending upon circumstances it may be permissible to hold an event at the winery, not governed by special exception approval.

Mrs. Bowen stated that she has submitted an Affidavit stating the reasons for the determination.

Mr. Rider asked if the appeal, in her opinion, was filed in a timely manner.

Mrs. Bowen stated, that at this time, she believes that it was filed timely.

Ms. Sarah Hall, Attorney with Blankingship & Keith of Fairfax, was present representing the appellants as listed on Attachment A. She stated that several of her clients are adjoining property owners and all are property owners in the immediate area and as such all are aggrieved by certain conclusions reached by Mrs. Bowen's in her letter of May 26, 1999.

Mr. Jim Moorman, spoke regarding the appeal. He stated that he could not speak to the legalities of the issue, but felt he should give some background. He stated that he felt like he should explain why the appeal was filed. He stated that Oasis has had music at winery in the past, and in the last couple of years the amplified music has become a nuisance and the neighbors have been unable to deal with it directly. One neighbor was told to shut her windows, when she asked Oasis to turn down the noise. Another neighbor had to call the Sheriff's Office. During the special exception process, the neighbors felt there should be no amplified music, while Oasis Winery wished unlimited music. He felt the Board of Supervisors made a compromise which allowed a certain number of events with amplified music and a maximum number of 250 persons being allowed at an event. He felt that Oasis was now holding open house wine tastings at the same time as the entertainment event and that the facilities and surroundings do not lend themselves to a separation. Mr. Moorman further stated that he felt the Board of Supervisors intended a limit of 250 persons, certainly not thousands.

Mrs. Brenda Moorman spoke and stated that she was present at the May 29, 1999 event, along with other neighbors. She stated that she was there for about an hour, and had sent a written statement to Mrs. Bowen. She counted the cars that were there during that hour, took photographs, and estimated that there were about 500 people there. She further stated that there was no distinction between the people that wanted to listen to the music and the people that were there to taste wine, there was a gate that you could walk into, and there was no one there asking if you wanted to listen to the music or taste wine. She stated that the music was not in a tent, it was under a canopy, as it was one hundred degrees that day.

Mr. Jim Conaway spoke regarding whether events of this nature, with amplified music are typical of fine wineries. He stated that he is a resident of Fauquier County and a close neighbor of Oasis winery. He further stated that he heard Mr. Salahi speak earlier regarding the Mondavi winery in Napa Valley and felt Mr. Salahi misrepresented what actually takes place at that winery. He stated that the Mondavi winery does hold concerts in the summer time, however they are the only winery in the Napa Valley, out of three hundred, that are allowed to do this. He stated that the only reason they are allowed to do this is because they are grandfathered and started doing this, before the agricultural zoning was established. The fact that Mondavi has concerts is deplored by the Zoning Board, the Board of Supervisors, the neighbors, and by others

in the wine industry. He further stated that the Salahi's are attempting to confuse two things, Class C events and an open house. Mr. Conaway stated that he has visited a number of Virginia wineries and there are no other wineries that are allowed to do what Oasis is doing. In addition, none of the wineries, in the area approve what Oasis is trying to do. He proceeded to read a letter from Jim Law, owner of Linden vineyard, a copy is attached to and made a part of these minutes.

Ms. Hall stated that she knew the BZA has read the appellants statement of support and did not feel that Mrs. Bowen and her clients are far apart on the issues, and that her clients are in agreement on the following points:

- tasting or sampling of wine is permitted as part of the agricultural use, provided such tasting is not an event;
- the second point of agreement regarding the May 29, 1999 open house, as advertised and conducted is an event in its entirety, and as such is an event controlled by Special Exception 98-M-15, and subject to its attendance restrictions, of 250 people;
- The third point is the appellants agree with Mrs. Bowen that balloon rides and music events are not part of an agricultural use and require either a special permit for wineries with events, minor, which means fewer than 150 people, or a special exception for wineries with events, major, for more than 150 people, or a special exception for spectator and non-spectator events;

Ms. Hall stated that the neighbors disagree with the following two points:

- Her clients do believe that Oasis cannot conduct a publicly advertised wine tasting event not authorized by special permit or special exception. The neighbors believe that the only wine tasting as permitted as part of an agricultural zoning use is by drop-in sampling, similar to one visiting an orchard and when wine tastings reach the level of an event, and advertised as such, a special permit or special exception is required.
- The appellants do not feel that it is possible to simultaneously hold a Class C event and an open house event at the same time. She quoted an article from the Virginia Winery Gazette "there is so much happening at Oasis these days, their newest project and most recent expansion, includes a new 25,000 (sic) square foot outdoor infrared heated pavilion, the winery can accommodate up to 800 (sic) guests for wine tasting dinners and over 4,000 (sic) guests for special events. It is something worth seeing and photographing." She indicated that her clients feel that this is the Salahi Family's plan and why they felt it so critically important that they not be allowed to circumvent the attendance restrictions imposed by the Board of Supervisors and ruled that any publicly advertised event held at Oasis Winery be subject to the special exception. She stated that her clients are not contending that Oasis Winery cannot hold events at the winery, but that those events are required to be permitted with either special permit or special exception approval.

She stated that her statement of support addresses the 1992 amendment to the Zoning Ordinance that now allows events at a winery with special permit for minor events, and special exception for major events. She reminded the BZA that in January of this year, they granted a special permit to Linden Vineyards for events that included two blending Cabernet seminars for 25-30 persons, and two barrel tastings for one weekend for 50-100 persons, although small discreet events relating simply to wine, but required Linden Vineyard to obtain permission in order to hold. She concluded this point by stating wine tasting events are not permitted by right as part of an agricultural use and may take place only with special permit or special exception approval. The other point of disagreement is Mrs. Bowen's determination that it is possible to hold simultaneously a Class C event, governed by special exception 98-M-15 and an Open House event at the same time. She quoted an article from the *Virginia Winery Gazette*, "there is so much happening at Oasis these days, their newest project and most recent expansion, includes a new 25,000 (sic) square foot outdoor infrared heated pavilion, the winery can accommodate up to 800 guests for wine dinners and over 4,000 guests for special events. It is something worth seeing and photographing." This is the Salahi Family's plan, and this is why it is so critically important that they not be allowed to circumvent the attendance restrictions imposed by the Board of Supervisors and rule that any publicly advertised event, held at Oasis, is in its entirety subject to special exception 98-M-15. She further stated that no one is contending that Oasis cannot have events at the winery, those events need to be permitted, i.e.; special permit or special exception.

Mr. Barr asked if wine tastings are routinely regarded as a special event?

Ms. Hall explained that when a wine tasting is advertised, such as for a new product, you advertise so that more people than would ordinarily come, do come. She felt that the Zoning Ordinance addressed that type of event, Winery with Special Events, Major or Minor, and required special exception or special permit approval.

Mrs. Lorraine Kesting spoke regarding the appeal. She stated that she and her husband are long time residents of Fauquier County, and their property is in close proximity to Oasis. She stated that when the Board of Supervisors granted special exception approval, they established firm limitations on the number of persons attending events at Oasis. In the Oasis application, they sought unlimited events with no limit on the number of people attending, however the neighbors wanted limitations on the number of people that could attend and a ban on amplified music. In the spirit of compromise the Board established specific limitations, allowing two events with amplified music per year, with 150-250 people, and fifteen events with fewer than 150 people. She felt dismayed that Oasis has exceeded these limits, as well as holding an event, along with wine tasting events. She stated that on Memorial Day, May 29, 1999, everyone was all mixed together and she thought there was at least 500 people.

On the motion made by Mr. Lofdahl, and seconded by Mr. Meadows it was moved that action on this appeal be deferred until September 2, 1999, at 1:00 P.M. to allow the BZA to hold an executive session prior to the regular meeting at 2:00 P.M.

The motion carried unanimously.

**SPECIAL PERMIT #44471****ADEL AND SUSAN WAHDAN (OWNERS) K.E. TAX OF VIRGINIA, KATHERINE E. TAX, (APPLICANT)**

Mrs. Katherine E. Tax, Applicant is requesting special permit approval to locate a professional office, three or less employees on property located at 11518 Kings Hill Road (State Route 786). The subject property is identified as PIN# 6878-97-0832-000, containing approximately 66.48 acres, zoned RA (Rural Agriculture) in Lee District.

Mr. Don Margraf reviewed the staff report and stated that the site was visited earlier. The applicant, Katherine E. Tax is a licensed internal revenue service income tax agent and wishes to locate a professional office on the property with no more than two client interviews each month. He referred the BZA to the floor plan of the proposed office. He stated that the access to the site is derived from the existing thirty-foot wide right-of-way. He further stated that Staff is still awaiting comments from VDOT and the Health Department.

Mrs. Susan Wahdan, owner was present in support of this request. She stated that her mother, Ms. Katharine E. Tax would like to semi-retire from her office in Fairfax and eventually build a house on the property. She would like to continue to do part of her representation work out of the proposed professional office.

Mr. Rider asked if the proposed office would be a modular office.

Ms. Katharine E. Tax stated that at this time, she has placed a down payment on a modular office. She stated that it needs to be road worthy and moved from Front Royal in order to complete the sale.

Mrs. Wahdan stated that without special permit approval, they could not finalize their plans for purchase or relocating the modular office. She explained that she is aware that Fauquier County does not allow a mobile home to be used as a dwelling. She further explained that Ms. Tax has case files that need to be stored, and that would be the primary purpose of this office.

Mr. Lofdahl asked Mrs. Wahdan to show the BZA where the office would be located on the property.

Mrs. Wahdan stated that the proposed office would be located in the semi-cleared area. She further stated that the Health Department had visited the property, as they have applied for up to a proposed 4 bedroom dwelling and the office could share the same well and septic.

Mr. Meadows asked Ms. Tax if the office would be opened to the public.

Ms. Tax explained that she would have up to two clients per month maximum, but most of the work is done via e-mail, fax, phone, or mail.

Mr. Meadows asked if any comments had been received from the Health Department.

Mrs. Bowen stated that none had been received.

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

No one spoke.

On the motion made by Mrs. Mailler, and seconded by Mr. Lofdahl, it was moved to grant special permit #44471, 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:

- (1) Special permit is contingent upon Health Department approval.

- (2) The permit is granted for a period of three years.

The motion carried unanimously.

### **SPECIAL PERMIT #44489**

#### **WANDA F. JACOBS (OWNER)**

Mrs. Wanda F. Jacobs has filed a request for special permit approval to construct a single family detached dwelling on each parcel, identified as PIN #6969-48-9563-000, PIN #6969-48-9413-000, and PIN #6969-48-9437-000, located on Salem Avenue (State Route 1006) zoned C-1 (Commercial) in Marshall District.

Mr. Margraf reviewed the staff report stating that on June 1, 1995, the BZA approved Special Permit #39046 for a ten unit apartment building, and then on October 5, 1995, the BZA denied Special Permit #39362 to allow single family detached dwellings on the three (3) subject parcels, based on the Board's findings that the proposed use was of adverse impact to neighboring properties, incompatibility with the neighborhood, and the potential conflict with future community development. He stated that a site visit was conducted earlier in the day.

Mr. Merle Fallon, Attorney, was present on behalf of Mrs. Jacobs. He stated that Mrs. Jacobs was recently a heart transplant recipient, and does not travel well, and could not be present. He stated that Mrs. Jacobs has a contract on for the sale of this property, contingent upon special permit approval, for affordable housing units. Mr. Fallon presented a display of the area, showing zoning of the adjoining properties, as well as the area. He stated that the property currently has natural screening to adjoining properties. He stated that on two sides, the adjacent properties are zoned R-4 (Residential). He referenced the Comprehensive Plan for the area,

which does not show any changes. He asked that if the BZA should grant approval, that they not require Mrs. Jacobs to bring the access to the property to full VDOT road scale, since the properties beyond are undeveloped at this point. He indicated that Mrs. Jacobs would comply with any requirements VDOT should request for access to the site.

Mr. Rider asked Mr. Fallon if he was aware that the BZA had denied approval for single family dwellings, and he asked Mr. Fallon what had changed in that regard.

Mr. Fallon stated that Mrs. Jacobs owned the property involuntarily, and had tried to sell the property since March 1995 but had had no interest. He stated that there is a natural vegetation barrier on the property and that the BZA had approved a special permit for multi-family use.

Mr. Rider stated that he felt a rezoning of the property was necessary.

Mr. Fallon stated that the commercial development in Marshall is taking place on the other side of town and there is no planned development in the area of the subject property proposed.

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

Ms. Priscilla Chamley spoke in support of the request. She stated that she is a seven-year resident of Fauquier County and is speaking as such. As site selection chairman for Habitat for Humanity, it is difficult to find affordable building sites in Fauquier County, and there is a need for more affordable housing.

Mr. Mike Straight, adjoining property owner, spoke in support of this request. He stated that he would rather see residential use on the property, than commercial.

Mr. Lofdahl asked what the previous reasons were for denial of single family dwellings.

Mrs Bowen stated that the impact with potential commercial uses was the main reason.

Mr. Fallon stated that there were no opposing parties last time or this time.

On the motion made by Dr. Branscome, and seconded by Mrs. Mailler, it was moved to deny special permit, 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 effect 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 5-103 Standards for All Residential Uses in C-1 and CV District  
In addition to the standards set forth in Section 006 above, all residential uses shall satisfy the following standards:

- 1. While the C-1 and CV Zoning Districts are intended to accommodate a mixture of commercial and residential uses, and to recognize the mixed use character of many village center in the County, residential uses allowed by special permit in such districts shall be of such scale as to avoid conflict with existing and potential commercial uses in the district where located.
- 2. Such uses shall be subject to use regulations set forth in Part 4 of Article 3 for conventional developments in the zoning districts indicated:

<u>Dwelling Unit Type</u>	<u>Zoning District</u>
Single Family, Detached	R-4
Single Family, Attached	TH
Multi-Family	GA

5. The applicant has other reasonable use of his property and should seek rezoning of the property.

The vote was 3 to 3 and did not carry.

Mr. McCulla explained that if a motion does not pass, then the BZA can vote to table or continue to discuss the request.

On the motion made by Mr. Meadows, and seconded by Mr. Lofdahl, it was moved to defer action for 30 days, until the September 2, 1999 meeting.

The motion carried unanimously.

**SPECIAL PERMIT #44505****ROY L. AND LOU ANNE BOATWRIGHT (OWNERS)****HENRY MERCKLI (TENANT)**

Applicant wishes to amend special permit #42592 to allow a truck and heavy equipment rental, sales and service and wholesale facility for the sale of bulk mulch, topsoil, and other related landscape materials. The subject property is identified as PIN #7906-00-9413-000, containing 4.615 acres, and is zoned I-2 (Industrial) and located at 5391 Telephone Road (State Route 838) and Lee Highway (State Route 15 & 29), in Scott District.

Mr. Margraf reviewed the staff report and stated that a site visit was conducted earlier in the day. He stated that on May 7, 1998, the BZA approved Special Permit #42592 to allow a truck and heavy equipment sales, service and rental on the entire 4.6 acres. Mr. Boatwright is requesting approval to amend his permit, to allow Mr. Henry Merkli to lease approximately 2.2 acres of the front portion of the site for wholesale facility for the sale of bulk mulch, topsoil, and other related landscape materials. Staff is awaiting comments from the Health Department and VDOT.

Mr. Roy Lee Boatwright, Owner, Mr. Henry Merkli, Tenant, Mr. Ben Tissue, Planner, and Mr. Merle Fallon, Attorney, were all present in support of this request. Mr. Fallon spoke regarding this request, stating that Mr. Merkli is seeking to lease the front portion of the property as outlined on the proposed site plan. He stated that he is aware that Mr. Boatwright is currently operating without an approved site plan and Mr. Boatwright will explain to the BZA why it has not been approved. Mr. Fallon stated that Mr. Boatwright hired Mr. Tissue in June of this year, and the site plan is almost ready for submittal. Mr. Fallon referenced the proposed site plan, including landscaping. He explained that the dirt stock piled on the site is to be used for a proposed four-foot earth berm with landscape plantings on top. Mr. Fallon stated that there would be a sales trailer on site.

Mrs. Bowen asked if the trailer currently located on the site is going to be used for the sales office.

Mr. Fallon stated no, the trailer on site should not be there and will be removed immediately. He further stated that there is one more issue that needs to be dealt with, before it can be submitted, regarding the storm water management.

Mr. Boatwright spoke regarding his request. He stated that the BZA granted him special permit approval over a year ago, he then purchased the property from Mr. Beach. He explained that the original minor site plan was rejected, and it was then determined that a major site plan was required. He had hired an architect, however it took him over four months for the original minor site plan and that plan was rejected. He stated that he had made mistakes and should have hired a qualified individual earlier to complete his site plan. He has now hired an Engineer to complete the site plan for him and he would like to lease a portion of this site to Mr. Merkli.

Mr. Rider asked Mr. Boatwright about his progress regarding the site.

Mr. Boatwright stated that he had met with Mrs. Bowen and thought he understood that some storage of dirt was allowed by right.

Mrs. Bowen stated that in her conversation with Mr. Boatwright, he was told that he needed site plan approval prior to any activity on the site. She stated that based on the lack of site plan approval, Mr. Boatwright was sent a 30 day letter to bring the property into conformance. She further stated that during the BZA site visit today, she noted there are other problems on the property. Mrs. Bowen stated that the office has received numerous complaints on the property and she would recommend that Mr. Boatwright vacate the site, until he has proper approvals.

Mr. Boatwright stated that he did not intend to operate the business prior to site plan approval, however due to problems with the architect he had hired it was not possible.

Mr. Fallon stated that every effort will be made to correct the situation. He further stated that Mr. Boatwright did not appeal the 30-day letter that was sent to him and he understood that at the current time Mrs. Bowen could issue a cease and desist order if progress is not made. He stated that Mr. Boatwright chose not to appeal Mrs. Bowen's letter and to proceed with the application. Mr. Fallon stated that although he is operating his business at the present time and technically in violation, but that is a result of ignorance and not understanding the system, not the result of intentional violations. He stated that it would be devastating for Mr. Boatwright if he had to close his business down for sixty to ninety days. Mr. Fallon stated that a site plan could be submitted for consideration, by the end of the following week, but it could still take sixty to ninety days before that is approved.

Mr. Barr asked about the proposed lease of the property.

Mr. Fallon stated that if the BZA were to amend the special permit, they could proceed to lease the area as designated, and immediately modify the site plan with that use in mind and submit them immediately.

Mr. Fallon stated that he was aware that his client needs site plan approval, however the BZA's actions at this hearing would tell his client whether they need to go to the expense of proceeding to get site approval.

Mr. Rider stated that he does not see anything wrong with the proposed use, however until the improvements are in, and properly screened, he does not believe that the BZA would look kindly if another load of mulch is brought in.

Mr. Fallon asked Mr. Rider to understand that if another load of mulch, Mr. Boatwright will be put out of business, because Mrs. Bowen is able to cease and desist the entire site.

Mr. Meadows asked about the mulch that has been spread out to act like a berm on the site.

Mr. Boatwright stated that the purpose of the mulch is to contain the siltation, instead of putting grass seed down. He stated that Jamie from John Marshall Soil and Water Conservation came out to the site and approved it as is.

Mrs. Bowen stated that she had not seen a letter from Jamie from John Marshall Soil and Water Conservation. She also noted that the special permit for the trucking business expired on May 7, 1999.

Mr. Boatwright stated that he had met with Don Margraf on the site prior to the expiration date of the special permit. He thought that Mr. Baker, the surveyor was working with the County towards an approved site plan.

Mr. Rider asked Mr. Boatwright if he would be amenable to putting a stockade fence along the front property line and along Telephone Road.

Mr. Boatwright asked if he meant a temporary screening.

Mr. Rider stated yes he meant temporary.

Mr. Boatwright stated that yes he would be glad to do that.

Mr. Fallon explained the development process. He stated that once approval is given on a project, then you start getting the site plan approved. You obtain a land disturbance permit, which allows you to strip the site and move some of the topsoil off, you can do that while the site plan is going through the process, so that when you get to site plan approval, you are a month or so ahead of construction schedule. Once the site plan is approved, you put everything into place. Mr. Fallon explained that Mr. Boatwright followed the necessary steps and the surveyor did not get the site plan in and Mr. Boatwright ended up with a stripped area, and then he couldn't follow through because he did not have an approved site plan.

Mrs. Bowen stated that you would follow those steps, but you do so before you move onto the site to use it.

Mr. Fallon stated yes, but this site was already in existence when he purchased the property, but not with an approved site plan.

Mrs. Bowen recommended that the matter be continued for thirty days, so that staff may meet with the applicant.

Mr. Fallon stated that if the matter is continued, they can't move forward with the site plan.

Mr. Bowen stated that she realized that, but there are so many violations on the property now, that will give Mr. Boatwright time to correct them. She further asked if he knew how tall the material would be stored on site, in order to determine the height of the landscaping needed. She stated that staff would need additional information.

Mr. Fallon stated that he and Mr. Tissue will certainly work with staff to move the process along, since they have come late into the process, and would like to get things accomplished as quickly as possible.

Mrs. Bowen stated that more progress has been made in the last twenty days, since she met with Mr. Tissue, than has been made in the previous twelve months. She would rather it be done correctly, by continuing the hearing, and give Mr. Boatwright time to remove any items on the site. She stated that this must be done immediately or she will be forced to take further action, until site plan is approved.

Mr. Meadows asked if there was concern with regard to the stripped area of the property and should Mr. Boatwright do something, within the next thirty days to prevent future erosion.

Mrs. Bowen stated that the County Engineer told her the mulch could not be used, and until she sees the letter from John Marshall she does not know what to recommend.

Mr. McCulla stated that the BZA's position is to move on the request, be it to grant, tabled, deny or continue. He further stated that the issues with regard to soil and erosion must be handled by the County Engineer, however he stated that Mrs. Bowen could share the concerns of the BZA with the County Engineer to insure that there is no impact off site due to the soil.

Mr. Barr stated that there are problems on the site that need to be corrected prior to the issuance of a special permit.

Mr. Fallon spoke on behalf of Mr. Boatwright, he stated that by not appealing the thirty day letter, they have placed themselves in a situation that they have to make progress and correct the problems or Mrs. Bowen will take further action.

Mr. Meadows made a motion to continue the hearing until the September 2, 1999 and that Mr. Boatwright will continue to make progress under Mrs. Bowen's direction. Mr. Lofdahl seconded the motion and the motion carried unanimously.

Mrs. Bowen stated that she will meet with the applicants early in the week.

**REVOCATION OF SPECIAL PERMIT #43647**  
**CURTIS R. AND SHELIA A. HANSEN**

A request by the Zoning Administrator to revoke special permit #43647, as it has come to her attention, from an Attorney, representing her client, and by a sworn affidavit, that the special permit conditions have been violated. She explained that two of the conditions, condition #2 is the hours of operation being from 5:00 P.M. to 9:00 P.M., and auctions have been held at 10:00 A.M., 3:00 P.M., 4:00 P.M., etc. She stated that her records as presented indicated only two auctions were held in July and now has received notice that a third auction was held. Mrs. Bowen stated that condition #4 of the special permit stated that there would be a maximum of two auctions in any one month, with May, June and July exceeding that number by holding three auctions. She asked that in accordance with Section 5-015 2. of the Fauquier County Zoning

Ordinance that the BZA consider revoking the special permit due to the violations of the conditions. The procedure is if the BZA votes to consider the revocation, then written notice will be sent to Mr. and Mrs. Hansen and they have the right to request a hearing, otherwise the matter will be considered at the September 2, 1999 meeting.

Mr. Rider asked what the Ordinance provides for notice.

Mr. McCulla explained that before revoking any permit, the BZA gives at least ten days written notice prior to doing so, and any time during the ten day, the owner can request a hearing on the matter.

Mr. Rider asked the BZA if there is sufficient cause to put Mr. Hansen on notice for violation of the special permit conditions.

Dr. Branscome stated that he believed the permit conditions had been violated.

Mr. Meadows asked if should the BZA act to have this letter issued to Mr. Hansen, are they required to note that there be no more action at the property until next month.

Mr. McCulla stated no, the permit still remains valid to operate within the conditions of the permit and to the extent the owners do not operate within those conditions, then the BZA has the ability to take their actions into consideration and evidence. He further explained that the owner does not have the right at this point to speak regarding at this issue.

Mr. Meadows made the motion to give the Zoning Administrator the necessary authority to move forward with the revocation of the special permit by giving notice to the owner. Mrs. Mailler seconded the motion. The motion carried unanimously.

Mr. Rider asked Calvin Neal if Mr. Hansen is represented at the meeting today and he stated that the Hansens were out of town. Mrs. Bowen stated that out of courtesy, she sent Mr. Hansen a letter explaining her actions and told him what the reasons were. She stated that she had spoken with Mr. Hansen and told him that he would be getting a letter after the hearing if the BZA voted to consider revoking the permit.

Mr. Neal stated that he had not received a copy of the letter notifying him of the violations. He further stated that he did not receive a copy of the original special permit approval letter.

Mrs. Bowen stated the property owner was properly notified and the Mr. and Mrs. Hansen were at the public hearing, as was Mr. Neal. She further stated that staff does not have any knowledge of a lease.

Mr. Rider stated that Mr. Hansen is the property owner and secured the permit, and as such all actions or mailings are directed to Mr. Hansen.

Mr. Hansen's son stated that Mr. Hansen is out of town and wasn't sure if his father would receive his mail.

Mr. Rider stated that he should contact his father and notify him of the possible revocation of this permit.

Mrs. Bowen stated that Mr. Hansen would be properly notified according to the Zoning Ordinance and if he chose to request a hearing, the hearing would be held on September 2, 1999.

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

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William Rider, Chairman

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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.

C:\bza files\1999 minutes\8-5-99