

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

January 8, 1998

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, January 8, 1998, at 2:00 P.M. in the Warren Green Building located at 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Rider, Chairman; Mrs. Barbara Wilson, Secretary; Mrs. Peg Mailler, Mr. William Barr, and Dr. James Branscome and Mr. Leon Williams. 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 minutes of the December 4, 1997 were not voted on, as the public hearing was held open until the January 8, 1998 meeting. The December 4, 1997 and January 8, 1998 minutes will be voted on at the February 5, 1998 meeting.

LETTERS OF NOTIFICATIONS

PUBLIC NOTICE Mrs. Bowen stated that to the best of her knowledge, the cases before the BZA for a public hearing had been advertised, posted, and letters of notification sent to adjoining property owners.

ELECTION OF OFFICERS

Mr. Rider gave up the seat as Chairman. Mr. McCulla asked for a nomination for the office of Chairman. Mrs. Wilson made a motion to re-elect Mr. Rider as Chairman. The vote was unanimous. Mrs. Mailler made the motion to elect Mr. Barr as Vice-Chairman. Mr. Williams seconded the motion. The vote was unanimous. Mrs. Mailler made the motion to re-elect Ms. Wilson as Secretary. Mr. Barr seconded the motion. The vote was unanimously.

**SPECIAL PERMIT #42116
PHYLLIS ANN GIROUX**

Phyllis Ann Giroux, Owner and Richard Groux, Attorney were present to support Dr. Giroux's request for special permit approval for a Kennel, Veterinary Clinic and Dog Grooming Service on property located at 13727 Blackwells Mill Road in Goldvein. PIN #7825-74-5296 in the Cedar Run District.

Mrs. Bowen read the staff report. Mr. Groux stated that since the December BZA meeting a business license has been obtained by Dr. Giroux from Fauquier County. He also clarified for the BZA that the survey obtained was from 49 local residents, of which 29 have a Goldvein

address. He gave the BZA a sketch of the proposed enclosed structure that would house the kennel facility.

Mr. Rider inquired as to the type of construction . Mr. Jack Jagoda, stated that the building would be wood siding with a masonry base.

Mr. Rider stated that the BZA had visited the site in question as well as had participated in a demonstration for the purpose of determining the amount of noise off-site from shooting used in training of the dogs. Mrs. Joyce B. Gunderson had given the BZA permission to be on her property while shooting took place at the training site. Mr. Lofdahl asked for confirmation that shooting had taken place at the training site while the BZA was on the Gunderson property. Mr. Jagoda stated that he had fired the shotgun while the BZA member were on the Gunderson property.

Mr. Rider asked if there was anyone present who wished to speak in favor of this special permit request.

Mr. Ashby Grove spoke in favor of this request for special permit. He lives approximately 2-3 miles away from the property.

Mr. Marty Gerbaus, a Quantico resident spoke in favor of this request. He stated his dog was trained by Dr. Giroux and her operation is very professional.

Dr. Camilla Blackwell also spoke in favor of this request. Dr. Blackwell's family lives across the street from the property. She referred to her letter (attached to the minutes) and stated that her family has not had any problems with Dr. Giroux or with the noise of the dogs.

Mr. Rider asked if there was anyone who wanted to speak in opposition of this special permit request.

Mr. Alfred Hull lives directly behind the church, Clever Oak Baptist Church. He did not have any complaints, as he had not heard barking. He does not presently reside at his property. Mrs. Wilson asked Mr. Hull to clarify his opposition. He stated that he planned to build and/or sell his property in the future and wanted to know about the kennel operation and the noise that would be generated. He asked to see the proposed kennel structure. Mr. Groux showed the sketch to Mr. Hull.

Mr. Rider clarified that no field trials will be allowed and that this special permit does not render permission for field trials.

On the motion made by Dr. Branscome to approve special permit #42116, the BZA discussed the conditions that would be placed on this special permit.

Dr. Branscome withdrew his original motion. On a new motion made by Dr. Branscome and seconded by Mr. Lofdahl, to grant special permit #42116 after due notice and hearing as required

by Code of Virginia Section 15.1-431 and Section 5-009 of the Fauquier County Code, based on the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and the applicable provisions of the adopted Comprehensive plan, and conforms 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 complies with the specific standards which apply to the use in question, namely:

5-1301 Additional Standards for Kennels

1. The minimum lot size requirement shall be two (2) acres.
2. No structure for the confinement, care or breeding of dogs, and no associated structure shall be located closer than 75 feet to any lot line, except that this requirement shall not apply to structures which are completely enclosed, adequately soundproofed and constructed so that there will be no emission of odor or noise detrimental to other properties in the area.
3. All dogs shall be kept in pens designated and maintained for secure confinement.
4. In consideration of an application for a permit, the BZA shall take into account the numbers and kinds of dogs proposed to be kept and the characteristics thereof and may prescribe conditions with respect thereto.
5. Maximum of ten (10) dogs per acre.

5-1302 Additional Standards for Veterinary Clinics

1. All such facilities shall be within a completely enclosed building, such building being adequately soundproofed and constructed so that there will be no emission of odor or noise detrimental to other properties in area.
2. In a residential or rural district, the facility shall have direct access to a road designated as a major collector (or higher) in the Comprehensive Plan unless the Board of Zoning Appeals finds that less restrictive standards do not negatively impact any other general or specific standard contained in Article 5 for this use and will serve the purposes of promoting public health, safety, and welfare to an equivalent degree.

5-202 Standards for Home Occupation 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 between 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 limitation set forth in Section 6-304 except that retail sales may not be displayed, stored or sold on the premises other than that which is produced on the premises.
6. Such use shall have frontage on a public street maintained by VDOT.

6-304 Use Limitations (Home Occupations)

In addition to the use limitations applicable to the zoning district in which located, all home occupations shall be subject to the following limitations:

1. A home occupation must be conducted within a dwelling which is the bonafide residence of the principal practitioner or in any accessory building thereto which is normally associated with a residential use.
 2. No retail sales shall be conducted on the premises (for uses allowed in accordance with Section 3-302.1).
 3. No mechanical or electrical equipment shall be employed other than machinery or equipment customarily found in the home associated with a hobby or avocation not conducted for gain or profit, or machinery or equipment which is essential in the conduct of the home occupation.
 4. No outside display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.
 5. No more than one (1) person other than a member of the household occupying such dwelling shall be employed.
 6. No sign shall be permitted except in accordance with the provisions of Article 8.
5. The special permit is granted subject to the following conditions, safeguards and restrictions upon the proposed use 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. Permit is granted for a period of three (3) years.
 2. Maximum number of dogs allowed is fifty (50).
 3. Shotguns may be used for training from 8:30 A.M. to 6:00 P.M. Monday-Saturday. Shotguns are not allowed to be used on Sunday.
 4. Kennel to be constructed in accord with submitted plan.
 5. Site Plan is required.
 6. Special Permit does not convey with the sale of the property.

The motion carried unanimously.

VARIANCE #42129

RONALD G. AND BARBARA P. WILLIS

Ronald G. and Barbara P. Willis applied for a variance to the front yard (setback) requirement to allow the construction of a garage 43 feet from the centerline of a 50 foot right-of-way for Lot 6 in the Vallevue Subdivision, and a variance to the front yard (setback) to allow the construction of a storage shed 50 feet from the aforementioned centerline. The property is located at 5297 Merry Oaks Road and contains approximately 1.96 acres located in the Marshall District, further identified at PIN #6978-71-9413-000.

Mrs. Bowen read the staff report indicating that the applicants are seeking a variance due to the exceptional topography of the lot and on the basis that the right-of-way is not constructed or in use by adjacent property owners. She stated that a site visit was made earlier today.

Mr. Willis was present in support of his request for the variance. He stated as part of his application was a letter signed by adjacent property owners recommending approval of the variance. He explained the location of the proposed garage and shed on his property.

On the motion made by Ms. Wilson and seconded by Mrs. Mailler it was moved to approve variance #42129, based on the Board's findings; after due notice and hearing as provided by Section 15.1-431, Code of Virginia:

1. The property was acquired in good faith, and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because of topography, drainage, and location of septic field.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of exceptional topographic conditions or other extraordinary situation or condition of the property.
5. The size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are exceptional topographic conditions or other extraordinary situation or condition of the property.
6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
7. The strict application of the Ordinance will produce undue hardship.
8. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or reoccurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.

9. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
10. The minimum variance that is necessary to afford relief is 32' feet to the front yard (setback) requirement for construction of the garage and 25' feet to the front yard (setback) for the construction of a storage shed.

The vote carried unanimously.

SPECIAL PERMIT #42185

CARLA NAMMACK AND EDWARD WENGER (CONTRACT OWNERS)

GERALD J. AND KIMBERLY D. HOY (OWNERS)

Owners, Gerald J. and Kimberly D. Hoy and applicants Carla Nammack and Edward Wenger, Contract Owners are requesting special permit approval to operate a kennel on a 43.87 acre parcel on Bristersburg Road (State Route 616) identified at PIN #7930-11-8700-000.

Mrs. Bowen read the staff report and stated that a site visit was made earlier in the day.

Ms. Nammack and Mr. Wenger were present to support their request. Ms. Nammack has an existing kennel facility know as Country Club Kennels & Training, Inc. located on 1538 Cromwell Road in Catlett, Virginia, PIN #7848-73-3423). The facility has been in operation since October of 1996 after acquiring a special permit (SP #39882) on March 7, 1996, from the Fauquier County Board of Zoning Appeals for a duration of five (5) years. The zoning office has not received any complaints since approval of the original special permit. Ms. Nammack plans to relocate her existing kennel operation to the 43.87 acre parcel.

Mr. Rider asked if anyone wished to speak in favor of this request.

Mrs. Kim Hoy, present owner of the property spoke in support of this application. She stated that she not only has a financial interest in this request, but has also seen Ms. Nammack's present kennel operation and feels it would be an appropriate use for this property.

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

Mr. Lamar Boone lives directly behind the property and is concerned with the noise and barking that the dogs will generate. He is also concerned about the number of dogs that would be allowed . He stated that his home is 1/4 mile from the proposed kennel site. Mr. Rider stated that by right, Ms. Nammack could have 12 dogs as pets. Mrs. Wilson asked Mr. Boone if he had seen the plans for the proposed kennel. Mr. Boone reviewed the plans for the proposed kennel.

Mrs. Bowen stated that a neighbor of Ms. Nammack's, Michael Aubrey called the Zoning Office and stated that he lives approximately 1000 feet from her present kennel and noise has never been a problem.

Ms. Nammack reassured Mr. Boone that she operates a first class business and supervises the dogs very closely.

Mrs. Mary Vanderwoude also spoke in opposition of this special permit. She stated she raises Cottswold sheep and Nubian goats. In the past she had lost several of her animals due to stray dogs chasing them. Her concern is that dogs loose from the kennel would be of detriment to her livestock.

Mrs. Rebecca George spoke in concern of the run off from the kennel. Mr. Barr asked Mrs. Bowen about this concern for run off. Mrs. Bowen referred the BZA to the Virginia Department of Health letter.

On the motion made by Mr. Barr and seconded by Mrs. Mailler it was moved to grant special permit #42185 after due notice and hearing as required by Code of Virginia Section 15.1-431 and Section 5-009 of the Fauquier County Code, based on the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and the applicable provisions of the adopted Comprehensive plan, and conforms 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 complies with the specific standards which apply to the use in question, namely:

5-1301 Additional Standards for Kennels

1. The minimum lot size requirement shall be two (2) acres.
 2. No structure for the confinement, care or breeding of dogs, and no associated structure shall be located closer than 75 feet to any lot line, except that this requirement shall not apply to structures which are completely enclosed, adequately soundproofed and constructed so that there will be no emission of odor or noise detrimental to other properties in the area.
 3. All dogs shall be kept in pens designated and maintained for secure confinement.
 4. In consideration of an application for a permit, the BZA shall take into account the numbers and kinds of dogs proposed to be kept and the characteristics thereof and may prescribe conditions with respect thereto.
 5. Maximum of ten (10) dogs per acre.
5. The special permit is granted subject to the following conditions, safeguards and restrictions upon the proposed use as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance):
1. The special permit is issued for 3 years from date of site plan approval.

2. The maximum number of dogs allowed is forty (40).
3. The special permit does not convey with the sale of the property.
4. Sign approved to be no larger than 10 square feet.
5. Site plan is required.
6. Compliance with Virginia Department of Health.
7. Compliance with Virginia Department of Transportation.

The motion carried unanimously.

SPECIAL PERMIT #42196
PAUL MELLON, OWNER AND
PIEDMONT CHILD DEVELOPMENT CENTER

The applicant, Thomas Beach, architect with Earth Design Associates, applied for this special permit on behalf of Piedmont Child Development Center to operate a day care center on property identified as PIN #6054-84-3625-000, 9.44 acres in the Marshall District located on John S. Mosby Highway (State Route 50) in lieu of present day care operation at Trinity Episcopal Church across the street. They also wish to place a sign at the entrance to the facility.

Mrs. Bowen read the staff report. Mr. Beach described the operation of Piedmont Child Development Center and the desire to expand their current operation to offer child care services to more children. Alice Fitch, founding Director of PCDC was also present in support of this request.

Mr. Barr asked from what area do most of the children come from. Ms. Fitch stated children come to their center from Fauquier, Loudoun, Clarke, Frederick, Warren Counties and Winchester City.

Mrs. Bowen explained to the BZA that this special permit request is in lieu of the existing special permit for the day care operated from Trinity Episcopal Church that has been in existence for 14 years.

Mr. Rider asked for the total square footage of the center. Mr. Beach stated that the total square footage would be 6,400 square feet. Mrs. Mailler inquired as to the size of the outside play area. Mr. Beach stated the outside play area is approximately 4,000 square feet. He further explained the screening and the fencing. He stated the fence would be 48 inches tall with mesh wire on the inside.

Mr. Rider asked if anyone wished to speak in support of this request. Ms. Sherry Sheridan of Clarke County spoke in favor of this request. She stated that the center is funded privately with parent tuition.

Ms. Hillary Davidson, President of Piedmont Child Development Center since 1992, also spoke in favor of this request. She stated that she had two children of her own and has had difficulty in

finding licensed quality day care. A recent survey of the area was conducted and they received a 79% favorable rating.

Mr. Rider asked if anyone wished to speak in opposition of this request. Mr. Wade Vance owns the adjacent property. He is concerned about the water and sewer available to Upperville residents as the local businesses expand. He does not feel the community benefits when these businesses expand. He is also concerned about the additional traffic that will be generated as well as the noise of the children.

Mr. Rider stated that the Virginia Department of Transportation will most likely require a decel lane to allow for turning vehicles. Virginia Department of Transportation has not commented as of this date.

On the motion made by Mrs. Mailler and seconded by Mr. Barr it was moved to grant special permit #42196 after due notice and hearing as required by the Code of Virginia Section 15.1-431 and Section 5-009 of the Fauquier County Code, based on the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties;
2. It is in accordance with the applicable zoning district regulations and the applicable provisions of the adopted Comprehensive Plan, and conforms 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 complies with the specific standards which apply to the use in question, namely:

Section 5-503 Additional Standards for Pre-School/Day Care Center/Nursery School

1. In addition to complying with the minimum lot size requirements of the zoning district in which located, the minimum lot area shall be of such size that 100 square feet of usable outdoor recreation area shall be provided for each child that may use the space at any one time. Such area shall be delineated on a plat submitted at the time the application is filed.

For the purpose of this provision, usable outdoor recreation area shall be limited to:

- A. That area not covered by buildings or required off-street parking spaces.
- B. That area outside the limits of the required front yard.
- C. Only that area which is developable for active outdoor recreation purposes.

2. All outdoor recreation area shall be full fenced.

5. The special permit is granted subject to the following conditions, safeguards and restrictions upon the proposed use as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:
 1. The maximum number of children allowed is 87.
 2. Special Permit approval to operate at Trinity Episcopal Church will be relinquished when the occupancy permit is issued.
 3. Sign to be no larger than 6 square feet in size.
 4. Site Plan is required.

The motion carried unanimously.

VARIANCE #42210
BEULAH BAPTIST CHURCH TRUSTEES

The applicant, Beulah Baptist Church Trustees requested a variance to the front yard (setback) of 22 feet and is also requesting a variance of 23 feet to the rear yard (setback). The property is identified as PIN #6021-74-9976-000, 7.361 acres located at 3124 Beulah Road (State Route 852) near Markham, Virginia in the Marshall District.

Mrs. Bowen read the staff report and explained the church is requesting the variance to allow for the construction of a covered walkway at the front entrance and a covered stairway at the rear entrance to the church building.

Mr. Chuck Henry explained that the addition would also make the building wheelchair accessible. He also stated that they church is planning to update the interior of the church.

Mr. Rider inquired as to whether the walkway is existing. Mr. Henry responded that it is.

On the motion made by Mr. Williams and seconded by Mrs. Mailler it was moved to approve variance #42210 , based on the Board's findings, after due notice and hearing as provided by Section 15.1-431, Code of Virginia:

1. The property was acquired in good faith, and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because of the specific layout of the property.

3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of:
 - A. The exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance.
5. The size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance.
6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
7. The strict application of the Ordinance will produce undue hardship.
8. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or reoccurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
9. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
10. The minimum variance that is necessary to afford relief is 22' to the front yard and 23' to the rear yard.

The motion carried unanimously.

ADJOURNMENT There being no further business before the Board, the meeting was recessed at 5:05 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.