

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

May 7, 1998

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, May 7, 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; Mr. William Barr, Vice-Chairman; Mrs. Barbara Wilson, Secretary; and Mrs. Peg Mailler. 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. Mr. Eugene Lofdahl, Mr. Leon Williams and Dr. James Branscome were absent.

The minutes of the April 2, 1998 meetings were approved as submitted.

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 properly advertised, posted, and letters of notification sent to adjoining property owners.

SPECIAL PERMIT #42331 HOLLY L. JORGENSEN (OWNER)

Holly L. Jorgensen has filed for special permit approval to continue the operation of a kennel on 12.553 acres located at 10162 James Madison Highway (State Routes 15-29) and further identified in County land records as PIN #6980-28-1112, Lee District. The BZA approved a special permit on August 1, 1985 for the location of an 80 dog kennel and cattery on this parcel which contained 28.03 acres at the time. Since that time, the property has been subdivided and the Zoning Administrator has ruled the original special permit to be void.

Mr. Don Margraf read the staff report. He stated that the applicant is requesting special permit approval for an 80 dog kennel/cattery on 12.553 acres. He also stated that the Board of Zoning Appeals continued this request on March 5, 1998 for sixty (60) days in order for the Owner's representative, Mr. Sherman W. Everlof, Jr., to obtain additional information. Mr. Margraf informed the BZA that new correspondence was received in the Zoning Office at 1:15 P.M. today. This correspondence indicated the property to be under contract for purchase by Caroline T. Woods.

Mr. Sherman W. Everlof, Jr. was present to represent the owner, Holly L. Jorgensen. He stated that the property is under contract with Ms. Woods. Mr. Rider stated that comments have been received from the Fauquier County Health Department. Health Department Sanitarian, C.A. Jackson, Jr. visited the site and has stated that the current drainfield can only handle a kennel of approximately 35 dogs and two employees. Mr. Everlof stated that he had spoken with Mr.

Jackson at the Health Department. Mr. Everlof further stated that the contract purchaser has stated in a memorandum attached to these minutes, a list of conditions, in which the use will be in full compliance in accordance with the requirements of the Fauquier County Health Department.

No one else was present to speak.

On the motion made by Ms. Barbara Wilson and seconded by Mr. William Barr it was moved to grant special permit# 42331, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely effect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, namely:

5-1301

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 designed 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 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. Conditions as offered by Ms. Caroline T. Woods, contract purchaser, and agreed to by Mr. Sherman Everlof, attorney for Holly L. Jorgensen:
 - a. As purchaser, if Ms. Woods decides to expand the capacity of the Kennels to eighty (80) dogs, she will expand the drainfield in accordance with the terms and conditions established by the Fauquier County Health Department to allow for eighty (80) dogs.
 - b. The maximum number of cats on site would not exceed twelve (12).
 - c. The current gravel parking lot will be expanded to a gravel parking lot of an area to meet the Board's requirements.
 - d. Signage will be limited to the existing signage with the right to modify text i.e. phone number, etc.) and perform maintenance and upkeep and limited to that allowed by the Fauquier County Zoning Ordinance.
 - e. The operating business hours will be 7 A.M. to 7:30 P.M. with attendance after hours by staff as required.
 - f. A site plan for the above conditions will be prepared and submitted as required by the Fauquier County Zoning Ordinance.
 - g. In response the questions about the methods for washing dogs and kennels, the attached "Dog and Kennel Washing" statement is made a part of these conditions.
2. Compliance with Fauquier County Health Department.
3. Maximum number of dogs permitted is eighty (80).
4. No residential use is permitted in kennel.
5. Special Permit is issued to Ms. Holly L. Jorgensen or Ms. Caroline T. Woods and does not convey with a subsequent owner.

The motion carried unanimously.

SPECIAL PERMIT #42449 THOMAS H. E. AND EILEEN T. DRINKWATER (OWNERS)

Applicants are requesting an extension of Special Permit #40263 issued on June 6, 1996 for a gunsmithing shop/home occupation with retail sales on property identified as PIN #6994-99-1416, containing .574 acre, located at 7493 Cedar Knolls Drive (State Route 1490) in Center District.

Mr. Don Margraf read the staff report. He stated that the applicant is requesting special permit approval for a period of thirteen (13) years. The original special permit was issued on June 6, 1996 for a period of three (3) years. He also stated that all other conditions would remain the same.

Mr. Drinkwater was present in support of this special permit request. He stated that his intention was for the special permit to run concurrently with his Alcohol Tobacco and Firearms license, which renews every three years.

There were no opposing parties to speak.

On the motion made by Mrs. Margaret Mailler and seconded by Mr. William Barr is was moved to grant special permit #42449, 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 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 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.

Section 6-302.14

Gunsmithing with an inventory for retail sales of not more than ten (10) guns at any one time, none of which can be fully automatic, with no on-site signage or advertising and with special permit approval.

Section 6-304 Use Limitations

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

1. A home occupation must be conducted within a dwelling which is a bona fide 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 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) Inventory for retail sales shall not exceed ten guns.
- (b) There shall not be any fully automatic guns.
- (c) The permit is granted pending verification of a legal gunsmith license.
- (d) The permit does not convey with the sale of the property.
- (e) The permit is granted for thirteen (13) years.

The motion carried unanimously.

SPECIAL PERMIT #42477 LAVERN T. AND JOHNNY L. MILLER (OWNERS) AND ROBERT S. MILLER (APPLICANT)

Messrs. Miller are requesting special permit approval to use existing buildings for farm equipment sales, rental and service and place a sign on the building of up to 12 square feet on property located at 10259 Elk Run Road (State Route 806), further identified as PIN #7930-97-2775 (1.790 acres, PIN #7930-97-1803 (.50 acre) and PIN #7930-97-0696 (1.027 acre), Cedar Run District.

Mr. Don Margraf read the staff report stating that the applicant is requesting special permit approval to use existing buildings on site for farm equipment sales, rental and service, and to erect a sign of twelve (12) square feet on one (1) building.

Mr. Rider stated that the site was visited earlier today. He indicated that Virginia Department of Transportation may require the entrance to the property to be upgraded for commercial purposes. Mr. Rider stated that all outdoor storage would need to be screened and indicated on the site plan.

Mr. Robert Miller was present in support of his special permit request. He stated that his intent for this business is that local farmers and property owners would use his business for farm and tractor equipment repairs.

There were no opposing parties.

On the motion made by Mr. Barr and seconded by Mrs. Mailler it was moved to grant special permit # 42477, 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 5-1404 Additional Standards for Farm Equipment Sales, Rental and Service Establishments

Such uses shall satisfy the same standards as set forth in Section 1403, except that in Residential and Rural Zoning Districts no parking, storage, loading or display shall be conducted in any required front yard or within fifty (50) feet of any side or rear lot line.

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, 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:
- (a) Site plan approval.
 - (b) Compliance with Virginia Department of Transportation.
 - (c) Compliance with Fauquier County Health Department.

The motion carried unanimously.

VARIANCE #42541 GARY A. AND KATHERINE L. JOHN (OWNERS)

Mr. and Mrs. John have requested variances to the front yard (setback) requirements for the purpose of constructing an attached garage on an existing foundation, and constructing a porch.

The variance that is requested for the garage is seven (7) feet and twenty-eight (28) feet is requested for the porch. The property is located at 8167 Old Waterloo Road (State Route 678) , further identified as PIN #6974-03-2612 containing 5.00 acres, Marshall District.

Mr. Don Margraf read the staff report stating that the applicants, Gary and Katherine John had purchased the dwelling from Raymond and Carmen Heflin and that they were unaware that the dwelling had been constructed in violation of the front yard setback. He stated that the site had been visited.

Mr. Ben Jones, was present to represent the applicants. He stated that Mr. and Mrs. John had purchased the property in 1992 and want to construct a garage on an existing foundation, as well as add a front porch. Mr. Jones stated also that Mr. and Mrs. John are also requesting that the Board of Zoning Appeals grant a variance for the existing dwelling that was built in violation of the front yard setback.

Mrs. Christina Whiteside spoke in opposition of this variance request. She stated that her concern is the further encroachment of the garage and porch into the front yard setback. She also stated that she had met with officials from the Virginia Department of Transportation. Although VDOT does not take any exception to the variance, they feel it would be inappropriate to encroach even further into this front yard setback area. She further stated that if this variance is approved, it would infringe on her privacy and the ability for her to enjoy her property.

Mr. Henry Blalock was also present in opposition of this request. He felt that at this section of Old Waterloo Road (State Route 678), there have been accidents and further encroachment into the front yard could be of danger to the Johns.

On the motion made by Mr. Barr and seconded by Mrs. Mailler, it was moved to grant in part and deny in part, variance application #42541, for the existing dwelling and for the purpose of constructing a garage, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because the existing dwelling was built in error.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of error of location of existing dwelling.
5. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
6. The strict application of the Ordinance will produce undue hardship.

7. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.

8. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

9. The minimum variance that is necessary to afford relief is

(a) 20.5 feet to the front yard setback for the existing dwelling and

(b) 7 feet to the front yard setback for the purpose of constructing garage on the existing foundation.

The motion carried unanimously.

On the motion made by Mr. Barr, and seconded by Mrs. Mailler, it was moved to deny application #42541 for the purpose of constructing a porch, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and

2. Strict application of the Ordinance would not effectively prohibit or unreasonably restrict use of the property;

3. The granting of the variance will not alleviate a clearly demonstrable hardship approaching confiscation, and is not distinguished from a special privilege or convenience sought by the applicant.

4. Any hardship or restriction on the use of the property is not by reason of:

(a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance;

(b) exceptional topographic conditions or other extraordinary situation or condition of the property;

(c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto.

5. The variance will not be in harmony with the intended spirit and purpose of the Ordinance, and would not result in substantial justice being done.

6. The strict application of the Ordinance will not produce undue hardship.

7. Such hardship is generally shared by other properties in the same zoning district and the same vicinity, and is of so general and reoccurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.

8. The authorization of the variance will be of substantial detriment to adjacent property and that the character of the district will be changed by the granting of the variance.

The motion carried unanimously.

SPECIAL PERMIT #42550 JANE ANDES (OWNER), REMINGTON POST #247, INC.(OWNER) MARY JOYCE WYNN (APPLICANT)

Ms. Wynn is requesting special permit approval to locate two (2) directional signs, two (2) square feet each in size on properties located on James Madison Highway (State Route 15 & 29), further identified as PIN #6888-26-5595 (3.40 acres) and PIN #6888-28-4173 (2.180 acres), Cedar Run District.

Don Margraf read the staff report. He stated that Ms. Wynn has requested special permit approval to erect a directional sign of two (2) square feet on each of the described properties, for the purpose of directing traffic to her antique shop.

Ms. Wynn was present to support her request. Mr. Rider referred to a letter received from the Virginia Department of Transportation. The letter stated that the proposed signs need to be placed on private property and not in the right-of-way. Ms. Wynn stated that she understood the request and had obtained the two property owners permission.

On the motion made by Mrs. Wilson and seconded by Mr. Barr it was moved to grant special permit #42550, 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. Compliance with Virginia Department of Transportation.
 - b. Sign to be two (2) square feet in size.

The motion carried unanimously.

SPECIAL PERMIT #42592 DAVID W. BEACH (OWNER), ROY BOATWRIGHT, WRIGHT TRUCKS, INC. (APPLICANT)

Mr. Boatwright has requested special permit approval to locate truck and heavy equipment rental, sales and service on property located at Lee Highway (Routes 15 & 29) and Telephone Road (State Route 838) in New Baltimore, containing 4.615 acres, further identified as PIN #7906-00-9413, Scott District.

Don Margraf read the staff report. He noted that a site visit was conducted earlier in the day. He stated that the applicant has requested special permit approval to operate a truck and heavy equipment sales, rental and service on property located at the intersection of Lee Highway and Telephone Road.

Mr. Boatwright was present in support of his special permit request. Mr. Rider asked for clarification regarding display on the front portion of the lot. Mr. Boatwright explained that front lot would be used for approximately 50 trucks and that the trucks awaiting repair will be located in the service area. Mr. Rider explained that site plan approval will be required.

Mr. Barr asked Mr. Boatwright to explain the lighting on the site. Mr. Boatwright stated that there is no lighting planned for the site at this time.

Mrs. Wilson inquired about the size of the sales trailer and the proposed landscaping. Mr. Boatwright stated the sales trailer is 10 x 28 feet in size and he plans to have a small deck attached to the entrance of the trailer and place lattice around the base of the trailer. At the request of Mrs. Mailler, Mr. Boatwright showed the Board of Zoning Appeals pictures of proposed equipment to be located for sale of this property.

There were no opposing parties present.

On the motion made by Mrs. Wilson and seconded by Mr. Barr, it was moved to grant special permit # 42592, 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. Compliance with Virginia Department of Transportation.
 - b. Site Plan approval is required.
 - c. Permit is granted for a period of five (5) years.
 - d. Permit does not convey with the sale of the property.
 - e. Proposed sales trailer to be skirted and landscaped.
 - f. Maximum of fifty (50) trucks to be located in the display area.
 - g. Maximum of ten (10) trucks to be located in the service area.

The vote was 3-1, with Mrs. Mailler opposing.

OTHER MATTERS:

ADJOURNMENT There being no further business before the Board, the meeting was recessed at 3:45 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.