

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
JULY 2, 1998**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, July 2, 1998, 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; Mrs. Barbara Wilson, Secretary; Mrs. Peg Mailler, Mr. Eugene Lofdahl, and Dr. James Branscome. Mr. William Barr, Vice-Chairman, was absent. Also present were Mrs. Carolyn G. Bowen, Zoning Administrator; Mr. Paul McCulla, County Attorney; and Mr. Don Margraf, Assistant Zoning Administrator.

MINUTES

On the motion made by Mrs. Wilson, and seconded by Mrs. Mailler, the minutes of the June 4 and May 7, 1998 were approved with changes.

LETTERS OF NOTIFICATIONS

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

SPECIAL PERMIT #42794

Chestnut Forks Tennis Club/John T. Maloney (Owner/Applicant)

Chestnut Forks Tennis Club, Owner John T. Maloney, has requested an amendment to special permit issued on April 12, 1979 to allow a fitness center as an accessory use on property identified as PIN #6995-13-6499, containing 5.00 acres, located at 6379 Airlie Road (State Route 605) near Warrenton, in Center District. The property is zoned R-4 (Residential).

Mr. Margraf read the staff report, a copy of which is attached and becomes a part of these minutes. He stated that the applicant is requesting special permit approval to allow a fitness center as an accessory use within the existing tennis club. Mr. Margraf further stated that Mr. Maloney had been operating a fitness center within the tennis club for two (2) years and that he was unaware that the use required additional zoning approval. He stated that on February 17, 1998, Mr. Maloney received approval from the Fauquier County Board of Supervisors for a zoning ordinance text amendment to allow a swimming/tennis (racquet) facility, public or private as a permitted use in the R-4 Zoning District, and to amend the standards for such a facility to allow a fitness center as an accessory use.

Mr. Margraf referenced the site plan as provided and indicated that parking accommodations may be a problem, but would be addressed during the site plan approval process. Mrs. Bowen explained that Mr. Maloney has options available for additional parking.

Mr. John T. Maloney, owner of Chestnut Forks Tennis Club, was present in support of this request. He explained that a fitness center has always been a part of his tennis (racquet) facility. He expanded his fitness facility in 1982-1983. He was unaware of his non-compliance and wants to obtain the appropriate special permit for his facility.

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

Mr. Merle Fallon, Attorney for an adjoining residential property owners, George Elmore and Marjorie Huffman et al, spoke regarding this request, he presented the BZA with a letter dated July 2, 1998, a copy of which is attached to these minutes. He stated that his clients have no objections to the granting of this special permit, however they are requesting that conditions be imposed as part of this request. Mr. Fallon asked that these conditions be imposed at the time that his clients would begin development of their adjacent residential property. The conditions are as follows:

1. Setback for existing parking spaces be brought into compliance with the zoning ordinance with a 50' foot setback.
2. All parking spaces to be paved.
3. Adequate parking spaces be provided as set forth in the zoning ordinance.
4. Lighting be installed in the parking lot in conformance with lighting requirements of the zoning ordinance in existence at the time residential development occurs.
5. A fence be installed between Chestnut Forks and the adjoining residential properties.
6. Landscape buffering be installed in accordance with landscaping requirements and that the landscaping be adequate to shield the site from the adjoining residential site.
7. The hours of operation be limited to 6:00 A.M. to 10:00 P.M. once residential development occurs.
8. That Chestnut Forks acquire written confirmation that sewer and water service is available from the Town of Warrenton should the existing well or drainfield fail.

Mr. Fallon stated that this property is used as a commercial operation and his clients feel these conditions are necessary to protect the adjoining residential property, at the time of development of this property.

Mr. Malcom Huffman, spouse of Marjorie Huffman, adjoining property owner, spoke in support of the above conditions being placed upon this request. He stated that these conditions need to be imposed for protection of his residentially owned property. He further stated that he does not object to the approval of Mr. Maloney's request.

Mr. Maloney responded to the above requested conditions, he stated that he has an approved site plan for his previous special permit issued. He explained that during site plan review, the parking needs will be addressed according to the requirements of the zoning ordinance. He does not want to install lighting, as that of a commercially zoned property, as the subject parcel is zoned R-4 (Residential), and he want to maintain as such. Hours of operation as proposed above are currently being observed. Mr. Maloney stated that he will obtain a letter from the Town of Warrenton, if requested by the Board of Zoning Appeals.

Mrs. Bowen requested that the Board of Zoning Appeals table meeting to allow staff time to obtain counsel regarding imposing future conditions on this special permit application.

Mr. Rider declared the public hearing closed on this matter. On the motion made by Dr. Branscome, and seconded by Mr. Wilson, it was moved to defer action on this request until the August 6th Board of Zoning Appeals meeting.

The vote carried unanimously.

VARIANCE #42800

Joseph E. and Cotella Powers (Owners/Applicant)

Applicants are requesting a variance of 768 square feet to the maximum square feet allowed (800 square feet) for a family apartment on property identified as PIN #7814-99-0512, containing 5.68 acres, located at 14072 Ash Lane (private) and Route 651 near Sumerduck in Lee District. The applicants wish a variance to allow their grand-daughter to place a family dwelling unit that contains 1,568 square feet for the care of a handicapped child of the grand-daughter, as additional space is necessary for her medical equipment.

Mrs. Carolyn Bowen read the staff report, a copy of which is attached to these minutes. She stated staff recommends approval of this application.

Ms. Veronica Mullins, grand-daughter of Joseph E. and Cotella Powers, was present in support of her request for this family apartment. She stated that her daughter, Misty has cerebral palsy and severe neurodevelopment delay. The request is for an additional 768 square feet to accommodate the equipment necessary for Misty's care, such as a hospital bed, wheelchair, garden tub, hydraulic lift, feeding machine, etc.

Mrs. Wilson inquired as to accommodations as mandated by the Americans with Disabilities Act. Mr. McCulla stated reasonable accommodations are required with regard to unique circumstances to allow variances.

On the motion made by Mrs. Wilson and seconded by Mrs. Mailler, it was moved to grant variance #42800 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 of the need to accommodate a disabled great-granddaughter of the owner. The equipment necessary to provide care is unusually large and requires additional space.
 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 a disability requiring more than the 800 square feet allowed for a family apartment.
 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 768 square feet.
- (a) Subject to the following conditions, which are necessary or desirable in furtherance of the intend and purpose of the Ordinance:
1. The variance is granted for the duration of the great-granddaughter's habitation of the proposed family apartment.
 2. If the great-granddaughter ceases occupancy of the family apartment, then the manufactured dwelling unit shall be removed from the property or brought into conformance at that time with the current zoning ordinance requirements.
 3. The variance does not convey with the sale of the property.

The motion carried unanimously.

SPECIAL PERMIT #42818
CFC, L.L.C./William R. Cordova, Sr. (Owner)

Applicant is requesting an amendment to special permit #40983 to extend the time period from three years to twenty years for the purpose of obtaining permanent financing on property identified as PIN #7808-67-5339-000, containing 168.00 acres, located on Rogues Road (State Route 602) near Midland in Lee District.

Mr. Don Margraf read the staff report, a copy of which is made a part of these minutes. He stated that Mr. William R. Cordova, Sr. has applied for an amendment to special permit #40983 to extend the time duration of said permit, all other conditions imposed to remain the same. The applicant is requesting the special permit be issued for twenty (20) years to fulfill the twenty-year permanent financing he has obtained for the project.

Mr. William R. Cordova, Sr. was present in support of his request. He stated that he is requesting that the time duration of special permit #40983 be extended from three years to twenty years. This is a requirement of the permanent financing with the bank. The bank is requesting twenty years from the time the loan closes. Mr. Cordova is estimating the closing to be in approximately 3-4 months.

On the motion made by Mr. Eugene Lofdahl, and seconded by Mr. John Meadows it was moved to grant special permit #42818, 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

(a) Special Permit is granted for a period of twenty (20) years from the date of the permanent loan closing, to occur no later than January, 1999.

(b) All previous conditions of Special Permit #40983 to remain the same.

The motion carried unanimously.

SPECIAL PERMIT #42849

Jelks H., Jr. and Anne M. Cabaniss/Owner and Detail Private Catering, Inc. (Contract Owner/Applicant

Applicant/Contract Owner, Details Private Catering, Inc. has applied for special permit approval to allow a fast food eating establishment (over-the-counter service) and retail sales of gourmet foods. The proposed use will be located on the south side of Main Street (State Route 55) in the Village of Marshall in the C-1 Zoning District. The parcel is further identified as PIN #6969-58-4299-000, containing .459 acres in Marshall District

Mr. Don Margraf reviewed the staff report, a copy of which becomes a part of these minutes and is attached. Mr. Rider asked for clarification as to whether there would be on-site seating available. Mr. Margraf replied that there is no on-site seating available, only carry-out service.

Donna Draisey, co-owner of Details Private Catering, Inc. spoke in support of this request. She stated that Details Private Catering is planning to develop a gourmet food retail sales operation in approximately 625 square feet of the existing building. Mr. Rider asked Ms. Draisey to explain the parking available for customers. Ms. Draisey explained that there is public street parking, as well as that indicated on the proposed site plan. Mrs. Bowen stated that the required parking will be addressed at site plan review.

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

Mr. Jack Lynch, a Marshall resident, Secretary of Marshall Ruritan Club and a Member of Fauquier Heritage Society, spoke in favor of this request. He stated that this business would be a great asset to the Marshall Community and the local businesses.

On the motion made by Mrs. Margaret Mailler and seconded by Mrs. Wilson it was moved to grant Special Permit #42849, 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) The total number of employees for the business shall be five (5).
 - (b) The special permit is granted for a period of three (3) years.
 - (c) The proposed fast food eating establishment (over-the-counter sales) and retail sales of gourmet foods shall occupy 625 square feet of the existing building.
 - (d) Site plan as required.
 - (e) Compliance with the Fauquier County Health Department.
 - (f) Compliance with the Fauquier County Water and Sanitation Authority requirements.
 - (g) Compliance with the Marshall Waterworks requirements.
 - (h) Compliance with the Virginia Department of Transportation.

The motion carried unanimously.

VARIANCE #42857

Ramsay A. and Debra J. Barrett (Owners)

Applicants are requesting two variances for two structures built by a prior owner. A machine shed was built in 1988 18.7' feet from a side property line wherein the Zoning Ordinance requires 25 feet. A barn (stable) was built in 1988, 75.7' from the property line, wherein the Zoning Ordinance requires 100' feet. Previous owner, Eleanor Bartenstein obtained the necessary construction permits (zoning and building) for both structures. More than one-half of the property is located within the 100 year flood plain of Carter's Run. The property is identified as PIN #6954-13-6688, located at 7831 Carter's Run Drive off Wesley Chapel Road (State Route 798), containing 11.96 acres in Marshall District.

Mrs. Carolyn Bowen reviewed the staff report, a copy of which becomes a part of these minutes and is attached. Mrs. Bowen stated that the necessary permits were obtained, but the structures were placed too close to the property lines. She also stated that over half of the site is located within the 100 year floodplain. The site had been visited earlier in the day.

Mr. Ben Jones, Attorney for the owner was present along with Mrs. Eleanor Bartenstein, previous owner, in support of this request. Mr. Jones stated that the necessary permits were

obtained, but due to the large amount of floodplain that exists on this property, these structures were obviously located so as to be out of this area, but too close to the property lines. Mr. Jones presented the Board of Zoning Appeals with photos of past flooding that had occurred on this property. He also stated that several of the adjoining property owners, Mr. Henry Fletcher and Mrs. Mary Jolley do not oppose this request. Mr. Jones stated that although the shape of the lot may not be unusual, the topography of this parcel is severe.

Dr. James Branscome asked if there are any living facilities above the barn. Mr. Barrett, present owner of the property replied that there are not any living facilities in the barn. Mr. Rider asked what the room in the barn with the air-conditioning unit in it, is used for. Mr. Barrett stated that this is an office for personal use and a tack room.

There was no one present to speak regarding this variance request.

On the motion made by Ms. Barbara Wilson, and seconded by Mrs. Margaret Mailler, it was moved to grant variance #42857, 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 due to the topography and the location of the 100 year floodplain on the property.
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:
 - (b) exceptional topographic conditions or other extraordinary situation or condition of the property; and floodplain.
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 due to the topography and location of floodplain.
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 recurring 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
 - (a) Specify findings to grant what was applied for:
 1. 6.5 feet to a side property line for the existing shed.
 2. 24.5 feet to a side property line for the existing barn (stable).
 - (b) Subject to the following conditions, which are necessary or desirable in furtherance of the intend and purpose of the Ordinance:

1. Future expansion of the existing shed or barn shall meet setback standards as required by the Fauquier County Zoning Ordinance.

The motion carried unanimously.

OTHER MATTERS

Mr. Paul McCulla discussed the Vested Rights Legislation.

ADJOURNMENT There being no further business before the Board, the meeting adjourned at 4:45 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.