**MINUTES OF**
**FAUQUIER COUNTY BOARD OF ZONING APPEALS**
October 1, 1998

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, October 1, 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; Mr. William W. Barr, Vice-Chairman; Mrs. Barbara Wilson, Secretary; Mr Eugene Lofdahl, Mr. John Meadows, Mrs. Peg Mailler and Dr. James Branscome. 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.

**MINUTES**

The minutes of the September 3, 1998 hearing were approved as submitted.

**LETTERS OF NOTIFICATIONS**

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

**SPECIAL PERMIT #42955**
**Mark E. & Elizabeth A. Checchia (Owners) and Fauquier County Soccer Club Corporation (Contract Owners)**

Applicants/Contract Owners wish special permit approval to locate a Parks and Recreational Facility (soccer fields) and locate an identification sign on property identified as PIN# 6992-60-0615-000 containing 49.253 acres, located on Beach Road (State Route 616) in Cedar Run District. Mr. Lofdahl reviewed the file and listened to the tape of the public hearing held on August 6, 1998.

Don Margraf reviewed the staff report and stated that this request had been continued from the August and September meetings. He stated that the public hearing had been closed. He also stated that staff has received additional information submitted by Mr. Merle Fallon, Attorney for Fauquier County Soccer Club Corporation, and from Mr. Cris Lindsay, Attorney for the adjacent property owners, both of whom were present to discuss this information.

Mr. Rider referred the members of the Board of Zoning Appeals to the additional information that had been received since the September meeting.

Mr. Merle Fallon, Attorney spoke on behalf of the soccer club. He stated that he served as Director of Parks and Recreation from 1975 – 1980 and is well aware of the problems of availability of soccer fields in Fauquier County. He addressed the issue of the category in which this application has been filed. He stated that this is the category in which the Zoning Administrator has placed this request and therefore it is appropriate. He reviewed the information that he had submitted on behalf of his clients, including the chart indicating the approximate number of youth that would use the proposed soccer fields. He also directed the BZA to the traffic estimates submitted and that the applicants did not use ITE traffic count tables, as there is not a table available for this type of use. He stated that the soccer club had calculated the traffic numbers based on the number of players and spectators present. He referenced the table presented in the attached material. Mr. Fallon also submitted a test that was conducted measuring the decibels of sound at an actual soccer game on five (5) fields on September 19, 1998 at Vint Hill. He stated that the sound was measured at 160 feet, the same distance as from the Gonzales' residence to the nearest soccer field at the proposed site. The decibel table was also submitted for your review with examples of levels of sound. He also stated that no matter where this soccer field is placed in Fauquier County, the process will remain the same, thus requiring special permit approval, and will most likely be next to someone who will oppose it.

Mr. Lofdahl inquired about the source of origination of the table that was provided in the material. Mrs. Jennifer Kilanski, Fauquier County Soccer Club representative stated that the table was found on the Internet and the data was compiled by a company that designs wind turbines.

Mr. Cris Lindsay, Attorney for the adjacent property owners spoke regarding this request for special permit approval. He stated that his clients do not feel the proper administrative procedure for classifying this use is being followed for this application. He further stated that there are two tests to determine impact on the adjacent property owners, one is traffic impact and the second is noise impact. He referenced the BZA to the information received from Mr. Fallon of behalf of Fauquier County Soccer Club and stated that these figures are nothing more than a guess or assumption. Mr. Lindsay stated that the sound tests are not accurate in that there are too many variables to consider. In conclusion of the opposition, Mr. Lindsay stated that his clients feel that this application is procedurally incorrect and the use will have substantial impact on adjacent property owners and his clients are requesting that the BZA deny this request.

Mr. Rider stated that a letter had been submitted from Mr. Bob Moore, Resident Engineer, stating that traffic will not be impacted on Beach Road (State Route 616) with regard to this application.

On the motion made by Dr. Branscome and seconded by Mrs. Mailler it was moved to deny special permit #42955, 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 applicant has other reasonable use of his property.
5. The reasons for denial of this special permit request are as follows:
    a. The facility will be noisy.
    b. There will be impact on the traffic.
    c. The use will adversely effect other properties in the area.
    d. The use is not compatible with the neighborhood.

The vote was 4 to 3, with the motion made by Dr. Branscome seconded by Mrs. Mailler, Mrs. Wilson and Mr. Barr voted in favor of the motion. Mr. William Rider, Mr. John Meadows and Mr. Eugene Lofdahl opposed the motion.

**SPECIAL PERMIT #43250**
**LEROY E. AND LYNNE C. DICE/OWNERS**

Applicants are requesting special permit approval for a therapeutic massage professional office located within the dwelling, and for a freestanding sign up to two (2) square feet on property containing 12.044 acres located at 4118 Ringwood Road (State Route 669), further identified as PIN #7914-95-0380 in Cedar Run District.

Mr. Don Margraf reviewed the staff report. He stated that Mrs. Dice is a licensed, certified massage therapist with the Commonwealth of Virginia, Department of Health Professions. He also stated that the room to be used for massage therapy is 14 x 17 and the family room will be used as a waiting area. He further stated that staff is awaiting comments from the Fauquier County Health Department.

Mr. and Mrs. Dice were present in support of their request. Mrs. Dice stated that she wants to be able to have clients into her home for massage therapy. She stated that she does not plan to have any employees and will only have one client at a time, with a maximum of four clients per day. All appointments are scheduled so as to give a ½ hour break in between. She further stated that she has obtained a business license with Fauquier County.

On the motion made by Mrs. Wilson and seconded by Mr. Meadows, it was moved to grant special permit #43250, 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 proposed freestanding sign for the business will be two (2) square feet, a maximum of two (2) colors, and will display the name "Dice" only and to be located at least twenty-five (25') feet from the center of the right-of-way.
(b) The hours of operation will be 9:00 A.M. to 7:00 P.M. Daily.
(c) The maximum number of clients will be four (4) a day.
(d) There will be no employees, other than Mrs. Dice.
(e) There will be four (4) parallel parking spaces near the driveway on the site.
(f) Special Permit is granted for three (3) years.

The motion carried unanimously.

**VARIANCE #43254**
**DENNIS W. AND DEBRA ANN FORTNEY/OWNERS**

Applicants are requesting a variance of seventeen (17) feet to the minimum front yard requirements for the location of an inground swimming pool on property identified as PIN #6985-76-6445 containing .482 acres, located at 7043 Westmoreland Drive (State Route 1415) in the Center District. The property fronts onto Westmoreland Drive (State Route 1415) and Airlie Road (State Route 605), the variance requested is to Airlie Road.

Mr. Don Margraf reviewed the staff report indicating that the applicants are seeking this variance due to shortage of space available on the property. He stated that a site visit was made. He further stated that a variance had been granted in 1985, to the adjacent property for the construction of an inground swimming pool due to similar hardships. Mr. Margraf also stated that staff had received a letter from Virginia Department of Transportation. VDOT recommended that a minimum of fifty (50) feet be maintained from the center of Airlie Road (Route 605) for the location of the inground pool.

Mr. and Mrs. Dennis Fortney were present in support of their request. They stated the reasons for their variance request; the obstruction of the power transformer, telephone company pedestals, and underground telephone and power lines on the northeast portion of the property; and the location of the drainfield and distribution box on the west portion of the property.

No one was present to speak in opposition of this request.

On the motion made by Mr. Lofdahl, and seconded by Mr. Meadows it was moved to grant variance #43254 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 depth of the back yard.

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) 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:

(a) 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 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:

The variance granted is Seventeen (17') feet to the minimum front yard requirements to State Route 605 (Airlie Road) for the purpose of construction of an inground pool.

The motion carried unanimously.

**VARIANCE #43257**
**RENO E. AND VERONICA J. BONFANTI/OWNERS**

Applicants are requesting a variance for the purpose of constructing a barn, of fifty (50) feet to the side property line, wherein the Zoning Ordinance requires one-hundred feet (100'). The property is identified as PIN #7012-42-0476, containing 43.3 acres, located at 2804 Landmark School Road (State Route 776) in Scott District.

Mr. Don Margraf reviewed the staff report and stated that the applicants are seeking a variance of fifty (50') feet, for the proposed construction of a barn, due to the topography, accessibility to water and electricity, aesthetic considerations, financial reasons, and the desire to avoid removal of trees. He stated that a site visit had been made.

Mr. Reno Bonfanti was present in support of this request for a variance. He stated that the reasons are due to severe topographic conditions, location of the well and drainfield, swales, and the location of the existing trees.

Mr. Rider stated that a variance can not be granted as a matter of convenience and he felt that there are other suitable locations on the property for the location of the proposed barn that would comply with the setback requirements.

Mrs. Wilson also stated that she felt there are other possible locations for the barn on this property.

Mr. Rider asked if there was anyone present who wished to speak regarding this request.

Mr. Dean Elgin spoke in opposition of this request. Mr. Elgin and his brothers oppose the granting of this variance. Mr. Elgin stated that at some point his family would divide the farm. He felt that the location of a barn fifty (50') feet from their property line will decrease the value, should the need ever arise to sell the property. He presented a letter to the BZA. Mrs. Wilson read the letter and is attached to and becomes a part of these minutes.

On the motion made by Mrs. Wilson and seconded by Mr. Meadows, it was moved to deny variance #43257, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. Strict application of the Ordinance would not effectively prohibit or unreasonably restrict use of the property;
2. 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.
3. 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;
4. 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.

5. The strict application of the Ordinance will not produce undue hardship.
6. 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.
7. 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.

ADJOURNMENT There being no further business before the Board, the meeting adjourned at 3:20 P.M.

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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.