

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

November 5, 1998

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, November 5, 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; 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; and Mrs. Beverly Pullen, Zoning Office Technician. Mr. William Barr, Vice-Chairman was absent.

MINUTES

The minutes of the October 1, 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 properly advertised, posted, and letters of notification sent to adjoining property owners.

SPECIAL PERMIT #43309

James M. and Barbara J. Stewart (Owners)

Mr. and Mrs. Stewart have requested special permit approval to continue operating a gunsmithing shop approved on June 6, 1996 on property identified as PIN# 6995-90-8188-000 containing 1.0 acre, located at 7450 Maple Court (State Route 1409) off of Dumfries Road (State Route 605) in Center District.

Mrs. Bowen reviewed the staff report and stated that the Board of Zoning Appeals had issued special permit approval on June 6, 1996 for a period of two years. Mrs. Bowen also stated that to the best of her knowledge, the applicants had complied with the standards for a home occupation with retail sales, and that no complaints had been received. She referred the BZA to letters received from neighbors supporting this request.

Mr. Stewart was present in support of his request. He stated that he currently holds a Federal Firearms license, which he renews every three (3) years.

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

No one spoke.

On the motion made by Mrs. Wilson and seconded by Mr. Meadows, it was moved to grant special permit #43309, 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 hose 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.
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 (10) guns.
 - (b) There shall not be any fully automatic guns
 - (c) The special permit is subject to possession of a federal firearms license.
 - (d) The special permit does not convey with the sale of the property.
 - (e) The special permit is granted for a period of five (5) years.

The motion carried unanimously.

SPECIAL PERMIT #43371

Karl F. and Annerose Hertag/Owners

Applicants are requesting a variance of eight (8') feet to the minimum front yard setback requirements for the construction of an attached garage to be located 67' feet from the center of the right-of-way, wherein the Zoning Ordinance requires 75' feet. The subject property is located at 8483 Old Dumfries Road (State Route 667), containing 4.9498 acres, further identified as PIN #7913-84-3121-000 in Cedar Run District.

Mrs. Bowen reviewed the staff report and stated that a site visit had been conducted.

Mr. and Mrs. Hertag were present in support of their request for a variance. Mr. Hertag stated that the proposed garage would only be located 67' feet from the center of the right-of-way. He also stated that this right-of-way serves only two lots.

Mr. Rider asked if the covenants assure the right-of-way will not serve additional lots in the future. Mr. Hertag stated that was his understanding. Mr. Rider asked Mr. McCulla if the covenants could be changed.

Mr. McCulla stated that the covenants could be changed or modified with the approval of all property owners. He also stated that the *Code of Virginia* would allow the Board of Zoning Appeal to condition a variance.

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

No one spoke.

On the motion made by Mr. Lofdahl and seconded by Mrs. Mailler, it was moved to approve variance #43371, 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 location of the driveway and other aspects of the house.
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) Eight (8') feet to the center of the right-of-way for the purpose of constructing an attached garage.

The motion carried unanimously.

VARIANCE #43372

Paul W. and Tammy C. Weidenhaefer/Owners

Mr. and Mrs. Weidenhaefer have requested a variance for an existing barn. A variance of 6.2' feet was granted by the BZA on August 6, 1998 based on a submitted recertified survey. A new (third) survey shows that the barn is actually located 81.7' feet from the property line, wherein the Zoning Ordinance requires 100' feet. A variance of 18.3' feet is requested on property located at 6195 Lerner Lane (private) off of Snow Mountain Road (State Route 829), identified as PIN #6996-88-4569-000, containing 4.5708 acres, in Scott District.

Mrs. Bowen reviewed the staff report and stated that the BZA granted a variance on August 6, 1998 based on a re-certified plat. She stated that a new survey completed on September 22, 1998 illustrates that the existing stable is located 81.7' feet from the front property line and not 93.8' feet as previously surveyed.

Mrs. Weidenhaefer was present in support of this request.

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

No one spoke.

On the motion made by Mrs. Mailler, and seconded by Dr. Branscome it was moved to grant variance #43372 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 setback violation and error in the previous re-certified survey.
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 strict application of the Ordinance will produce undue hardship.
5. 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.
6. 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.
7. The minimum variance that is necessary to afford relief is
 - (a) Specify findings to grant what was applied for:
 - (1) The variance granted is 18.3' feet to the minimum yard requirement for an existing barn.
 - (b) Subject to the following conditions, which are necessary or desirable in furtherance of the intent and purpose of the Ordinance:
 - (1) If the barn is destroyed, the re-construction of the structure shall conform to the current Zoning Ordinance requirements.
 - (2) No living quarters permitted in the existing barn.

The motion carried unanimously.

SPECIAL PERMIT #43374

David S. and Lucile M. Robinson/Owners and Greater New Life Ministries Trustees/Contract Owners

David S. and Lucile M. Robinson, Owners and Greater New Life Ministries Trustees, Contract Owners have requested special permit approval for the construction of a place of worship and for a church bulletin board up to 20 square feet, on property zoned Village and identified as PIN #6993-09-3520-000, containing 8.1217 acres, located on Wince Lane off of Meetze Road (State Route 643) in Center District.

Mrs. Bowen reviewed the staff report and stated that a site visit was conducted. She also stated that a previous special permit was issued to Harvest Christian Fellowship for a place of worship on May 3, 1990, for a two (2) year time frame. That permit, however, has expired.

Mr. and Mrs. David Robinson, Reverend Jeffrey Trimble, Greater New Life Ministries, along with Ms. Linda Martin, Real Estate Agent were present in support of this special permit request.

Reverend Trimble of Greater New Life Ministries spoke in support of this request. He stated that currently the church is meeting in the Ben Franklin Building on Broadview Avenue for their church services. He also stated that the church membership is approximately 100 members at this time, and ultimately hopes to grow to about 300 members. Reverend Trimble stated that he felt the property on Meetze Road was an appropriate site for the church as special permit approval had previously been granted for the same use. He also stated that there are other churches in the same area.

Mr. Rider stated that when the previous special permit was granted, there were no homes on Wince Lane, and the BZA needs to take into consideration the fact that this is now a residential area.

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

Greg and Sherry Carter spoke in opposition to this request. They cited concerns with traffic, noise and the adverse effect this use will have on their property and the value of their property. Mr. and Mrs. Carter stated that they do not feel this use is compatible with the neighborhood. They are concerned about traffic and the safety for the children on Wince Lane. They also cited concerns with the water supply in this area.

A friend of Marilou Church, (name unknown) read a letter in opposition to this request. She cited concerns with noise, safety of the children in the neighborhood, lighting, traffic, and land values.

Mrs. Susan Bersee spoke in opposition to this request. She stated her concerns are with excessive traffic in the neighborhood, noise and safety issues.

Mr. John Martin Covey, a resident of Poplar Grove spoke in opposition.

Mr. Ricardo White, adjacent property owner, spoke in opposition due to the location of the church being too close to residential homes.

Mr. Wendall Gilroy, neighboring property owner, spoke in opposition. He cited concerns with the entrance to the proposed church, traffic along Meetze Road, and safety for the children in the neighborhood.

Mrs. Diana Tully, adjacent property owner, spoke in opposition and presented to the BZA a copy of a petition of residents of the Poplar Grove subdivision that oppose this request.

Mrs. Lilly Carter, a resident on Frytown Road, spoke in support of this request, although she cited concerns with the water clean up.

Mr. Decker Tapscott, Pastor of Faith Christian Church stated that he was not in opposition or support, only to clarify that when Faith Christian Church received special permit approval, there was no opposition to their request.

Mrs. Mailler asked if Virginia Department of Transportation had commented on this request.

Mrs. Bowen stated that she had spoken with Mike Gardner from VDOT. Mr. Gardner did not think that VDOT would issue a highway entrance permit on Meetze Road, most likely would require it off of Wince Lane.

On the motion made by Mr. Meadows, and seconded by Mrs. Wilson, it was moved to deny application #43374, 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 5-602 Additional Standards for Place of Worship

Uses proposed in conjunction with place of worship shall be subject to regulations applicable to such use (e.g., schools, athletic facilities)

5. The applicant has other reasonable use of his property.

The motion carried unanimously.

SPECIAL PERMIT #43408
Wakefield School, Inc./Owner

Owner is requesting special permit approval for an increase of 6.88' to the building height of a proposed building. The Zoning Ordinance allows a height of 35' and the proposed building will be 41.88'. The property is located at 4439 Old Tavern Road (State Route 245) in The Plains, identified as PIN #6989-85-8341-000, containing 49.876 acres, in Scott District.

Mrs. Bowen reviewed the staff report and stated that Wakefield School is requesting a height increase of 6.88' for a proposed building.

Mr. Bob Roberts, Chairman of the Board and Director of Wakefield School, spoke in support of this request. He stated that the school is on approximately 50 acres, on property that used to be Archwood Farm. The proposed building would house additional classrooms, and would accommodate the increasing enrollment at their school. He stated that the purpose of the proposed building would be to locate the first floor at the same grade as the existing building, so as to provide easy pedestrian access and compliance with the standards of the Americans with Disabilities Act.

Architect Richard Pittman was present with a model of the proposed and existing buildings at the Wakefield School.

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

On the motion made by Dr. Branscome and seconded by Mrs. Wilson, it was moved to grant special permit #43408, 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 5-2401 Standards for Approving An Increase in Building Height

The BZA may approve a special permit for an increase in height above the maximum building height regulations specified in Part 4 of Article 3, if it determines that such an increase would not violate the general standards set forth in Section 006 above. Further, the minimum yard requirements applicable to the

structure shall be increased by two (2) feet for every one (1) foot of increase in height in excess of the maximum building height set forth for the zoning district.

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) An increase is granted to allow the maximum building height of thirty-five (35') feet to be increased to 41.88' feet for a proposed school building.

The motion carried unanimously.

ADJOURNMENT There being no further business before the Board, the meeting adjourned at 3:35 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 not available due to a faulty recording.