

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
APRIL 1, 2004**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, April 1, 2004, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Margaret Mailler, Chairperson; Mr. John Meadows, Vice-Chairperson; Ms. Sonja Addison, Secretary; Mr. James W. Van Luven; Mr. Mark Rohrbaugh; and Ms. Carolyn Bowen. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Mrs. Debbie Dotson, Office Associate III. Members absent were: Mr. Maximilian Tufts, Jr.

MINUTES: On a motion made by Ms. Bowen and seconded by Mr. Meadows, the Board of Zoning Appeals voted to defer the approval of the March 4, 2004 minutes to the next scheduled hearing.

The motion carried unanimously.

LETTER OF NOTIFICATIONS AND PUBLIC NOTICE: Mr. Hodge stated, that to the best of his 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. Mrs. Dotson read the Public Hearing Protocol.

APPEAL #ZNAP04-MA-003, RAY PENNINGTON, III (OWNER)

Applicant is appealing the Zoning Administrator's decision that a Mountain View Estates lot is not a buildable lot, PIN #6958-38-7138, located in the Marshall District, Warrenton, Virginia.

Mr. Hodge noted that this item had been deferred from the prior month in order to allow the applicant to provide additional information. No information has been provided, and the applicant is requesting the BZA defer the item until the May meeting because additional time is needed to provide the information to the BZA.

Ms. Bowen stated she would abstain from any discussion or voting on this matter because she had made a prior decision on this matter in the 1980's, as Zoning Administrator for the County.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the BZA moved to defer the appeal until the May 6, 2004, meeting.

AYES: Mr. Meadows, Ms. Addison, Mr. Van Luven, Mr. Rohrbaugh, Ms. Mailler

NAYS: None

ABSTAINED: Ms. Bowen

ABSENT: Mr. Tufts

The motion carried.

SPECIAL PERMIT #SPPT04-LE-021, JOHN N. DEOUCES, WILLIAM B. BAYNE, JR. & JOHN D. CLAYBOURNE (OWNERS) / SHEETZ, INC. (OWNER / CONTRACT OWNER)

Owner/Contract Owner is seeking special permit approval for redevelopment of the existing Sheetz service station onto a larger tract to include an auto service station with a convenience store and fast food restaurant, PIN #6980-29-9580 & #6980-39-0038, located at the intersection of Marsh Road (Rt. 17) and James Madison Hwy. (Rt. 29), Lee District, Bealeton, Virginia.

Mr. Hodge noted that the BZA made a site visit to the Sheetz property last month and had continued the public hearing from last month. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Ben Jones, attorney representing Sheetz, stated that he did not agree with the staff report and he was not sure that he understood the staff report. He indicated that he had only received a copy of staff's proposed conditions, and would focus his comments on the proposed conditions.

Ms. Mailler indicated that the BZA had been provided a copy of Sheetz's proposed conditions and that they had been taken into consideration when the BZA drafted proposed conditions for Sheetz.

Mr. Jones stated that the applicant would agree to condition #5, requiring reservation of right-of-way on the site, but would like the reservation to terminate in a set period of time if the road was not built.

Ms. Mailler asked Mr. Jones if the desire was for a 15-year time limit on Condition #5.

Mr. Jones stated Sheetz was requesting a 10-year time limit, but 15 would be satisfactory.

Mr. Van Luven stated that he did not think the BZA should put a time limit on the reservation as the road was envisioned by the Comprehensive Plan and the drafted language already eliminated the requirement at such time as the road might be dropped from the Comprehensive Plan. If the applicant wishes to have the obligation removed, they have the opportunity to work to change the Comprehensive plan.

Mr. Jones stated that Sheetz also had a concern with the language of condition #6 stating "All costs associated with construction of this new entrance shall be the sole responsibility of Sheetz." He asked the BZA to clarify that the condition did not require Sheetz to pay for or build any off-site improvements.

Ms. Johnson brought to the BZA's attention that one issue addressed by a condition was water. She stated that Mr. Barney Durette of Fauquier County Water and Sanitation Authority was present to address the proposed condition and to answer any questions the BZA might have.

Mr. Jones asked if the water condition was #7 on the list. Ms. Johnson replied that #7 on the list was the water condition drafted by the BZA, but that WSA had provided an alternative condition for consideration. Mr. Jones indicated he had not received the WSA wording. Ms. Johnson explained that the condition had just been received, and she provided a copy to Mr. Jones for review.

Ms. Bowen stated that she felt a 15 to 20 year reservation for the right-of-way was fair, given that the road was in the Comprehensive Plan which would be reviewed every five years. She noted that the BZA had been told by VDOT last month that they had no plans to build the road and that to build the road would take a grade separation which would be extremely costly.

Ms. Johnson clarified that the road could be built without a grade-separated interchange with 29 and still provide some of the secondary circulation benefit envisioned by the Comprehensive Plan.

Mr. Jones stated that he had reviewed the WSA water comment and that his only concern with the language was that it required an agreement to be executed prior to site plan approval and he wasn't sure this time restriction was appropriate.

Ms. Mailler asked if anyone wished to speak on this item.

Mr. Pete Linardakis, owner of Pete's Park & Eat, stated he has been at the Opal location for 32 years. He indicated that he is concerned about water because he has been without water 3 times. He asked the BZA to not give permits to additional businesses in the area because his well is down to one-gallon a minute, from a high of twenty-five gallons a minute before McDonald's came to the area. He stated that Opal does not have good water and that water needs to be brought to the area if new businesses are going to be built.

Mr. Barney Durette, representing the Fauquier County Water and Sewer Authority, stated that WSA had no position on this application. He stated that WSA has a public water presence in the Opal Service District at Clarkes Dead End Road, which is across Rt. 17 from this site. He stated there is a public water system at Green Meadow Subdivision down the road and some extra water capacity is available to offsite uses, this applicant included. He further stated that WSA is working with the County Government to complete a hydro-geological study with the goal of bringing additional water sources online and ultimately building a more comprehensive water system in the area. Mr. Durette stressed that in general WSA is not going to build a system until they have a demonstrated demand for the service, and by "demonstrated" he means applicants who

are willing to put money up to help in the construction of the facilities. He stated FCWSA does not speculatively build facilities in growth areas.

Mr. Rohrbaugh asked Mr. Durette how far away public water is from Sheetz and whether it is feasible to run a line from the public water source to Sheetz at this time.

Mr. Durette indicated that it is feasible but a matter of cost. He indicated that the line is about three-quarters of a mile from Sheetz. He further indicated that a drilling zone has been targeted for a hydro-geological test halfway between the end of Clarkes Dead End Road and the Route 17 intersection, with drilling exploration anticipated in April or early May. Mr. Durette stated that WSA could certainly work with the applicant to provide public water at Sheetz's expense and that there were several different approaches to doing so.

Mr. Meadows asked if there were any others in the area who would share in the expense of extending the line.

Mr. Durette replied that there were none in the vicinity of this particular applicant's site. FCWSA does have some other properties in the vicinity. He further explained that WSA operates strictly on a first come first serve basis.

Mr. Meadows asked if Sheetz understood that the development of a water line to the Sheetz property would be solely at their expense.

Mr. Durette stated that WSA has not formally sat down with Sheetz representatives to negotiate the provision of public water for the site. WSA has had some discussions with Sheetz about their water problems and about Sheetz's plans to drill another private well on the site, but there have been no formal negotiations for the provision of water.

Mr. Jones stated they have no problem with Mr. Durette's suggested condition except for "prior to site plan approval," because it could potentially take years for the water extension plans to be worked out. Mr. Jones reiterated that if the Board eliminated the words "prior to site plan approval" and added an item "c" to number 7, that the conditions were acceptable.

Mr. Charlie Robinson, Sheetz representative, stated that Sheetz was not concerned about being able to reach an agreement with WSA because Sheetz was willing to do that. He explained that the problem is how long it will take to deliver the water once an agreement is reached.

Mr. Meadows stated that the condition doesn't require you to have the water by site plan approval but only to have entered into an agreement with WSA regarding water before site plan approval.

Ms. Bowen stated that she reads the condition differently. She indicated that she is convinced that Sheetz wants public water as soon as they can get it. The question of concern is who pays for the extension of the water line.

Mr. Meadows responded that Mr. Durette has indicated that the applicant is the one to pay.

Mr. Jones indicated that a condition was not necessary for Sheetz to negotiate with WSA over the provision of water. He stated that Sheetz was willing to pay their proportionate share of the cost of water, but that it was difficult to agree to anything because no one knows what that cost is.

Ms. Bowen stated that she does not believe the BZA should hold up Sheetz.

Mr. Meadows stated the goal was simply to establish a time-line for reaching agreement.

Ms. Bowen noted that even if they don't reach an agreement, Sheetz will have adequate water to operate from their own wells. She questioned why the BZA was requiring an applicant to negotiate with a government entity for something that they do not need. Ms. Bowen reiterated that there are many other potential water users between Sheetz and Green Meadows who will have to pay their share for water; Sheetz is willing to pay its share, but not pay for the whole system at this time.

Mr. Meadows asked Mr. Durette if he had read the staff's memorandum with the proposed conditions for Sheetz, including the water condition. Mr. Durette stated he had objections to the staff recommendation on water. Ms. Johnson clarified that the condition in the memorandum was not the staff recommendation, but a recommendation of the BZA with respect to water.

Mr. Meadows stated that he wanted to respond to Mr. Van Luven and Ms. Bowen's comments on the Comprehensive Plan. He stated that if they tie the road condition to 20 years then the Comprehensive Plan will have been revisited four times in that period. He noted that there will be changes in the Plan over that time, as there generally are, and that the applicant would have some interest and some say in whether the Comprehensive Plan changed. He agreed that it might be reasonable to have a time limit on the road requirement.

Mr. Van Luven acknowledged that many things are unknown. But, he reiterated, we have an adopted Comprehensive Plan in effect with today's date and it is important that we require this reservation so that they may uphold the Plan. By not doing so we are changing the Comprehensive Plan, which is not in the BZA's purview, but rather the Planning Commission and Board of Supervisors'.

Mr. Rohrbaugh stated that he felt the Board was not changing the Plan if they gave 20 years to accomplish the construction of the road.

Mr. Van Luven stated that the Plan does not establish whether the road should be built in five years or twenty years and he wants to see the approval be consistent with the Plan.

Mr. Meadows stated he'd like to hear from staff as to whether they feel approving the road reservation without a time limit is a change to the Plan.

Ms. Clark stated that there had been some discussion of relocating the northern part of Rt. 608 so that it would line up more directly with the road as shown in the Comprehensive Plan in which case road reservation might not be needed.

Ms. Johnson stated that a time limit was not necessarily inconsistent with the Plan, but that if a time limit was imposed she would recommend a long time limit since the changes that are going to happen in Opal are not going to happen overnight. The way the condition is drafted, without a time limit, the condition automatically goes away if the Board of Supervisors amends the Comprehensive Plan relative to the road; therefore it isn't an entirely open-ended requirement. If the Plan changes Sheetz is automatically released from the requirement and Sheetz has an opportunity to participate in the Planning process to work to affect the Plan. If Sheetz thinks it is a bad idea to have such a road, they can participate in the planning process to get the road changed in the Comprehensive Plan. Therefore, the current draft of the language does give the applicant a great deal of flexibility, and it provides a mechanism to get it changed through the Comprehensive Plan process which may be the better process for which to address these issues.

Ms. Mailler asked if there were any more questions, or if anyone else would like to address this application. She stated that the BZA members have made site visits and have discussed and worked on this. She asked the BZA members if they needed any more information or if someone was ready to make a motion.

On a motion made by Mr. Van Luven and seconded by Ms. Addison, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.

5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the specific standards for Service Stations in Section 5-1401 of the zoning ordinance.

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:

1. Prior to issuance of site plan approval, Sheetz shall file a staging plan that shows the progression of all construction and demolition to be approved by the Zoning Administrator which includes:
 - a) a temporary construction entrance, which is labeled as temporary on staging and site plans which also shows the flow of all construction traffic; and
 - b) a plan that specifically addresses the operation of the business when the existing underground gas tanks are removed or replaced.
2. Design of the building shall substantially conform to that shown on elevations submitted to the BZA with this Special Permit application.
3. The entrances and traffic flow shall substantially conform to the design as submitted and approved with this Special Permit, except for any changes required by VDOT or by any other condition of this Special Permit approval.
4. No entrance shall be constructed on Route 29 any closer to the intersection with Route 17 than the existing northernmost entrance.
5. Twenty-five feet along the eastern property line adjacent to property belonging to Clark's Gun Shop and as shown on plan submitted to the BZA shall be reserved for future relocation of Route 608 until either:
 - a) the development of Route 608; or
 - b) the removal of the portion of the future Route 608 from the Comprehensive Plan.
6. If Route 608 is developed along the eastern boundary line adjacent to property belonging to Clark's Gun Shop, the entrance closest to the intersection of Route 608 and 17, as shown on the site plan submitted to the BZA, shall be closed and relocated to Route 608 at a location to be approved by VDOT.

7. Once notified that public water is available to the parcel from the WSA or other governmental authority:
 - a) Sheetz shall obtain public water from the authority as the sole source of water for the site other than irrigation of landscaping; and
 - b) Sheetz shall make their wells available to the authority if their production is deemed sufficient to be beneficial to the authority. Compensation for use of the wells shall be negotiated in good faith with the authority.

Amendments to the motion were proposed prior to voting on the motion.

Mr. Meadows noted that on item #6 the last sentence had been deleted and that it should now include: "All onsite costs associated with construction of this new entrance shall be the sole responsibility of Sheetz."

On a motion made by Mr. Van Luven and seconded by Ms. Addison, the sentence "All onsite costs associated with construction of this new entrance shall be the sole responsibility of Sheetz" was added to Item #6.

The motion to amend condition #6 carried unanimously.

On a motion made by Mr. Meadows and seconded by Mr. Rohrbaugh, an amendment to add a 25 year time limit installed on the relocation of the future Route 608 on Item #5.

The motion to amend condition #5 to add a 25 year time limit was approved by a vote of 5 to 1, with Mr. Van Luven voting against and Mr. Tufts absent.

The motion to approve the special permit, with the above conditions, as amended, was approved 6-0, with Mr. Tufts absent.

SPECIAL PERMIT #SPPT04-CR-022, BENJAMIN C. GRAVETT (OWNER) / RIVERSIDE MULCH, INC. (CONTRACT OWNER)

Contract Owner is seeking special permit approval to locate a mulch business on the property and also special permit approval for retail sales in conjunction with this use, PIN #7819-08-5767, located on Midland Road, Cedar Run District, Midland, Virginia.

Mr. Hodge stated that this matter is not before the BZA today for public hearing because the Zoning Administrator had determined that the proposal was not consistent with proffers on the property. Mr. Hodge indicated that Counsel for the applicant would like to present something to the BZA.

Ms. Mailler asked Counsel to come forward and speak. No one came forward.

Ms. Gallehr stated that her office was contacted by the applicant's attorney who said she would be here today to ask that the BZA move to table this item rather than dismiss it,

giving the applicant the opportunity to appeal the Zoning Administrator's decision to the Board of Supervisors. If the Board of Supervisors overturns the Zoning Administrator's interpretation, the applicant would not have to refile. She noted that if this body chooses not to do that, the applicant would probably seek a refund of his previous application fee until a later time

Ms. Bowen asked if it was permissible to carry this item over to the end of the meeting in order to allow the applicant's Counsel time to appear.

Ms. Mailler agreed.

On a motion made by Ms. Bowen and seconded by Mr. Rohrbaugh, the BZA moved to defer the application until the end of the meeting.

The motion carried unanimously.

VARIANCE #ZNVA04-CR-007, SANDRA REVARD (OWNER)

Owner is seeking an 18.03' variance to the 100' required side yard setback on the northeast property line and a 17.46' variance to the 100' required side yard setback on the southwest property line, PIN #7829-51-1507, located at 11763 Elk Run Road, Cedar Run District, Catlett, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Sandra Revard, owner and applicant, appeared and stated agreement with the staff report.

Ms. Mailler stated that during the site visit earlier that day the BZA members had noticed a run-in shed in the back of the property.

Ms. Revard confirmed that she had a run-in shed and stated that she had purchased the building at Byler's.

Ms. Bowen asked Ms. Revard whether she had obtained the proper permits for the run-in shed and noted that it did not appear to meet the required setbacks for an agricultural building.

Ms. Revard stated that she had not been aware that she needed a permit for a pre-fab building.

Ms. Bowen stated that Ms. Revard would need to contact staff regarding the proper permits and noted that the setbacks for an agricultural building were 100' from the property lines. Ms. Bowen asked staff when the lot was created.

Mr. Hodge stated that the lot was created in 1974, part of a 12-14 lot subdivision approved by Richard McNear on June 25, 1974.

Ms. Bowen stated that she had concerns because the run-in shed on the property is in violation, but noted that it wasn't the BZA's responsibility to address this issue; rather it is staff's.

Ms. Gallehr stated that in the past the BZA has deferred cases where they have discovered zoning violations during a site visit, giving the applicant the opportunity to resolve the violation prior to BZA action. Ms. Gallehr asked Ms. Bowen if this was her point.

Ms. Bowen indicated that she would treat the violation separately from the special permit application but that one issue might influence her decision on the other. She noted again that the run-in shed is too close to the property line and is, therefore, a violation which staff should address.

Ms. Mailler asked Ms. Bowen if she wanted staff to address her concerns prior to any decision.

Ms. Bowen responded by asking the applicant to address how she is going to deal with the violation now that she has just found out that she needs a permit.

Ms. Revard responded that once the new barn is built she would no longer need the run-in shed, and that she could then move it or use it to store equipment.

Ms. Bowen explained that a shed being used for equipment rather than livestock has a different setback requirement. She asked Ms. Revard to see staff about the proper permits.

Ms. Bowen indicated that she believed the fact that this lot was created prior to the current requirement for a 100' setback was relevant to the issue, and that since there was only a 50' setback when the lot was created she could support a variance for a lesser setback.

Mr. Meadows indicated that he agreed with Ms. Bowen on this issue. He asked if it was necessary for the BZA to add a condition requiring the new barn to comply with the approved setbacks.

Ms. Gallehr stated that a condition was not necessary; the applicant would have to comply with the setbacks regardless.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings:

1. The strict application of the Ordinance would produce undue hardship because the lot is less than 200-feet wide at all points except its frontage along Route 806, and the minimum total setback requirement for a barn from the two side property lines requires at least 200 feet;
2. That 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;
3. That the authorization of such 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; and
4. The minimum variance that is necessary to afford relief is an 18.03-foot reduction from the 100' setback requirement along southeast property line and a 17.46-foot reduction along the northwest property line.

The motion carried unanimously.

Mr. Meadows cautioned the applicant to be very careful when building the barn to comply with the setbacks. He stated that the applicant should have a survey done so that the barn is not mis-located and an additional variance is needed.

Ms. Revard asked for clarification as to whether the barn needed to be built exactly within the setback, within inches. Ms. Meadows explained yes, because that was the setback requested and approved by the BZA..

Ms. Johnson noted that those measurements were the closest you could build to the property line, but that you could make a slightly smaller building to give a little more room for error.

SPECIAL PERMIT #SPPT04-CT-024, TAMMY J. ABEL (OWNER)

Owner is seeking approval to amend the condition of the special permit approved on January 8, 2004, in order to build a parking area off Ghadban Court instead of a circular or U-shaped driveway, PIN #6994-19-7452, located at 7392 Cedar Run Drive, Center District, Warrenton, Virginia.

Mr. Hodge noted that a BZA site visit was made earlier that day and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Tammy Abel, owner, appeared representing the application and stated that she did not agree with the staff report completely. She indicated that she wanted to utilize the entrance on Cedar Run Drive solely for customers and the entrance on Ghadban Court solely for personal use. She stated that she has placed a “finger” off the existing

driveway so that there is now plenty of room for customers to pull into the driveway and turn around to pull onto Cedar Run Drive.

Ms. Mailler stated that the application before the BZA stated that the Ghadban Court entrance would be for customers, and suggested that perhaps the BZA should table the request for a month in order for Ms. Abel to work with staff and clarify the application.

Ms. Gallehr noted that the advertisement for the application did not specifically address who was going to be using either driveway, so therefore the BZA could vote on this application regardless of how the driveway was utilized.

Ms. Johnson explained that the applicant had indicated to staff in their meetings that the Ghadban Court entrance was to be used for customers and the Cedar Run Drive entrance for personal use, and that this is a different application than staff understood. She noted that there has been significant interest in this application and staff had provided information to individuals over the phone regarding the application, explaining that Ghadban Court was to be used only for customers and Cedar Run Drive only for personal use. She stated that the BZA may wish to defer their decision until the next meeting to ensure that the public is clear on the request.

Mr. Meadows stated that there is a public hearing today but raised concerns about making a decision giving the confusion on the application. He suggested postponing the hearing.

Ms. Bowen requested a 5 minute recess. The BZA recessed.

The BZA reconvened. Ms. Mailler turned the meeting over to Mr. Meadows.

Mr. Meadows again expressed concerns that the application was different from what the applicant wanted and that people speaking today may not be clear on the application.

Ms. Gallehr stated that the public hearing that was advertised encompasses both the previous understanding of staff and Ms. Abel's description of what she now wants. She noted that anybody that read the ad would not know who would be using which entrance and whether each would be exclusive for one use or the other. She stated that there may be people here today who would like to speak to the access in general. She further stated that the issue came up that staff has made comments and given information to people who called about this application based on staff's understanding that Ghadban Court would be used exclusively for customers. She noted that there could be people here today to speak to this request who may not be able to take off work next month to attend the meeting again. She suggested hearing the public's comments today and keeping the public hearing open to take additional comments next month.

Mr. Meadows stated the public hearing would be kept open and the Board would hear those who were there to speak to this application. He reminded the public that the application may change a bit over the next month, and if they did take off work to come today, stay in touch with staff to see if the application has changed. He noted that if

people could not make the hearing again next month, that comments could be submitted in writing to staff for the Board's consideration.

Ralph Stickle, resident, stated concerns with traffic, property losing value, safety of the kids, and noise from dogs. He stated the proposed use is changing the whole atmosphere of the neighborhood.

Bill White, resident, stated concerns with accidents and water drainage.

Marie Foreman, resident and customer of Ms. Abel's, stated support for the application. She noted that Ms. Abel is very rule-oriented, and if a customer does not obey the rules, Ms. Abel will not take their business anymore.

John Body, neighbor and customer, stated concerns with a parking lot off Ghadban Court. He stated he was under the impression that the Ghadban Court entrance would be for personal use and did not want it used for customers.

Katherine Rizzo, neighbor, stated that the entrance was unacceptable no matter who uses it because it will change the water flow patterns on adjoining properties. She stated that there has not been an engineering study to see how the neighboring properties would be affected by the altered drainage patterns.

Joyce Heflin Pierson, CPA for Ms. Abel, spoke in support of this application.

Jim Bush, resident, spoke against the application stating concerns with safety, liability and legal issues.

Mr. Rohrbaugh stated that the initial special permit was approved with the understanding that a circular driveway would be put in, and it was on that basis that he supported it. He stated that it was discussed at the initial meeting that a large swale on the property would make construction of the driveway difficult, but Ms. Abel had indicated it would be done. Mr. Rorhbaugh stated he still supports the continuous driveway and does not like the alternative proposals.

Mr. Van Luven stated agreement with Mr. Rohrbaugh. He stated that a second entrance with a connecting driveway would allow customers to enter on Cedar Run Drive and exit on Ghadban Court, allowing customers to safely pull out on to Cedar Run Drive again. He stated that he approved the special permit in January with this understanding.

Ms. Bowen stated that she was not on the Board when the initial permit was approved. She stated that after the site visit she felt the circular drive was the best solution and the safest.

Ms. Addison stated agreement with the circular drive.

Mr. Meadows stated that it was the agreement of the Board to have the circular drive, and the applicant knew from the onset it was going to be difficult to fill in the swale to make this work.

On a motion made by Mr. Van Luven and seconded by Ms. Mailler, the BZA moved to defer any action until the May 6, 2004, meeting.

The motion carried unanimously.

VARIANCE #ZNVA04-SC-008, JON J. AND LISA M. WHITE (OWNERS)

Owners are seeking a variance of 14 ½' to the 25' side yard requirement on the north property line in order to build an attached garage, PIN #6995-95-6047, located at 7131 Gray's Mill Road, Scott District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day and reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Jon J. White, owner and applicant, appeared and noted agreement with the staff report. He submitted computer-generated drawings of the proposal, which are attached to and made a part of the minutes.

Mr. Meadows asked if there were any speakers for or against the application, and closed the public hearing as there were no speakers.

Ms. Bowen asked Mr. White if he had given thought to an oversized single car garage that would meet setbacks.

Mr. White stated that he had not considered such an alternative because he has two oversized vehicles.

Ms. Bowen stated that she could not support the application because there is an alternative solution, even though it is not the solution the applicant desires.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to deny the variance, with the following findings:

1. 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; and
2. The strict application of the Ordinance will not produce undue hardship.

The motion carried unanimously.

SPECIAL PERMIT #SPPT04-CR-023, CALVIN RITCHIE (OWNER) / ANDY WILFONG (APPLICANT)

Applicant is seeking special permit approval to expand abattoir by using an existing building, PIN #7808-52-4186, located at 5177 Ritchie Road, Cedar Run District, Bealeton, Virginia.

Mr. Hodge stated that the BZA made a visit to the site earlier today and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. He stated that a site plan has been approved for the abattoir, awaiting posting of the bond; but, if the special permit is amended, the site plan will also need to be amended to reflect the expansion.

Andy Wilfong, applicant, appeared and stated agreement with the staff report. He stated that the intent was to utilize the existing building in addition to the new one planned.

Ms. Bowen asked if the property was leased or a separate parcel. Mr. Wilfong stated that Mr. Ritchie was in the process of having a survey done to create a separate parcel.

Mr. Meadows asked if a boundary line adjustment would need to be done at a later date.

Ms. Johnson stated the abattoir land is currently part of a larger parcel that Mr. Ritchie owns, a portion of which is zoned I-1 and a portion zoned RA.

Mr. Meadows asked if the Board had restricted the use to one area.

Ms. Johnson stated that a one-acre area with I-1 zoning had been identified in the initial approval and that is the area the use is now restricted to. The proposed amendment would expand the area of the use to over 2 acres. While the abattoir area is part of a much larger parcel, the limits for the use are shown as property lines on the plat submitted with the application, because the owner has plans to subdivide the abattoir property from the remainder of the site in the future.

Ms. Bowen asked what landscaping would be required.

Mr. Wilfong stated that the landscaping has been approved on the approved site plan.

Ms. Bowen asked if some will be required for the additional area.

Ms. Johnson stated that landscaping will be required for the larger parcel with the amendment.

Mr. Van Luven asked if the same requirements for disposal of waste would be required as those imposed on the previous approved special permit. Mr. Wilfong stated yes and explained where the by-products will be stored until they are regularly picked up.

Ms. Bowen asked if the road would be maintained with a dustless surface or if it would be paved. Mr. Wilfong stated that it would be with a dustless surface.

Mr. Meadows asked Ms. Johnson if the existing building meets the required setbacks in the I-1 zoning. Ms. Johnson stated the existing does meet the setbacks. She further explained that if the property was subdivided in the future, setbacks become an issue because the gravel road would need to become a road providing frontage to the new lot. As it is now proposed, the use complies entirely with zoning, including setbacks. The issues arise with subdivision and there may be impediments to subdivision. She stated that Planning is aware of the issue and is working on a solution on how to best divide the property in the future.

Mr. Meadows asked if there was the possibility of the road needing to be realigned.

Ms. Johnson stated that there are structures (silos) that are right on the road and there are some impediments to relocation. She stated she did not know what the solution was to a future subdivision, but that the building does now meet setback requirements because there are no property lines right now.

Mr. Meadows suggested that one way to eliminate part of the problem would be to eliminate part of the building so that it would comply with setbacks if the property is subdivided.

Mr. Wilfong stated that when they were doing the original site plan the setback was 75' and the end of the new building is 100+' and it is 75' or more to the end of the existing building.

Ms. Johnson stated that the plat before the Board shows the new building being 92' from the road and it looks as though the existing building does not quite make 75'.

Mr. Meadows stated that Mr. Wilfong may have to cut 10' off the existing building. Mr. Meadows asked Ms. Gallehr if she could give a little guidance.

Ms. Gallehr stated that whether or not the Board approves this as a use is irrelevant to whether or not he is allowed to do the subdivision. She stated that he does not have a property line and he doesn't have a setback problem at this point. She further stated that it would all be addressed by the Subdivision Ordinance and whether or not his subdivision plat gets approved.

On a motion made by Mr. Van Luven and seconded by Ms. Mailler, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.

2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

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:

1. The development shall be consistent with the approved site plan and amended conceptual special permit plat submitted with the application, showing the existing structure requested for inclusion in the abattoir facility.
2. The hours of operation shall be 8 A.M. to 9 P.M.
3. The facility shall comply with the additional standards set forth in Sections 5-1705 (Additional Standards for an Abattoir) and 5-1202 (Additional Standards for Retail Sales in Conjunction with Category 16 or 17 Uses).
4. The use shall adhere to the application.

Ms. Bowen asked why retail sales was included in the conditions when you cannot have retail sales of deer meat.

Ms. Johnson stated this is an amendment to a permit and it all becomes one permit and part of the original permit was for retail sales. The conditions apply to the entire operation, not just to the new building.

Ms. Bowen asked if these were the only conditions on the original abattoir.

Ms. Johnson stated that there were no conditions on the original abattoir. She stated that all the conditions proposed here are new conditions that were developed in conjunction with the text amendment for abattoirs.

Ms. Bowen stated that the application is not an amendment to add a building, rather it's an amendment to the whole application and the Board is treating the application like it is a whole new application.

Mr. Meadows asked if that is correct.

Ms. Johnson stated that when an applicant amends an application then all of the conditions of approval are under consideration for the entire approval.

Mr. Meadows stated that with this knowledge, are there any additional conditions the board would like to put on this application at this time.

No additional conditions were suggested.

A vote was taken on the motion; and the motion carried unanimously.

VARIANCE #ZNVA04-MA-009, ERNEST M. OARE (OWNER)

Applicant is seeking a 10.3' variance to the 100' required side yard setback due to lot subdivision and location of existing barn, PIN #6984-00-4336, located at the intersection of Route 744 and Route 802, Marshall District, Marshall, Virginia.

Mr. Hodge stated that the BZA visited the site earlier that day, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Gary Pearson, attorney representing the application, appeared and noted agreement with the staff report. He stated that the manor house was built in the early 1900's and the barn was built in the 1880's or 1890's, that Mr. Oare has done extensive renovations on the Manor House and Barn, and that Mr. Oare has applied for a listing with the historical registry. He noted that he had worked extensively with staff to reduce the amount of the variance being requested. He further stated that for liability, accounting, and tax purposes 23 of the 25 acres on the lot need to be subdivided and placed under separate ownership. He explained that the race-horse industry is very liability prone and that Mr. Oare needed to be shielded from that liability. Mr. Pearson stated that they are demonstrating a hardship approaching confiscation because of the amount of money that has been spent on the property.

Ernest M. Oare, owner, appeared. Mr. Oare stated that he bought the property in order to preserve it. He stated that there was really no need to subdivide it except that his son is going to live there and estate planning required it.

There being no speakers for or against, the public hearing was closed.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the variance, with the following findings:

1. The strict application of the Ordinance would produce undue hardship due to the location of the existing barn and existing dwelling and presence of the equipment shed. All these structures were constructed in close proximity to each other at a time prior to the existence of any zoning regulations.
2. That 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;
3. That the authorization of such 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;
4. The minimum variance that is necessary to afford relief is a 10.3-foot reduction from the stated 100' setback of Section 6-105.6 that requires barns to be a minimum of 100 feet from any property line

The motion carried unanimously.

SPECIAL PERMIT #SPPT04-MA-025, DULCIDA AND JUAN ESTRADA (OWNERS) / SAM SNEAD (APPLICANT)

Applicant is seeking special permit approval to locate a real estate office on the property, PIN #6953-77-1544, located at 9224 Lee Highway, Marshall District, Warrenton, Virginia.

Mr. Hodge stated that the BZA made a visit to the site earlier today and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. He further stated a site plan would also be required for this use.

Sam Snead, applicant, appeared and noted agreement with the staff report. He stated his only concern was with possible VDOT and Health Department requirements.

Mr. Hodge stated these concerns would be addressed by the applicant with the agencies during the site plan process.

Ms. Bowen stated concerns with signs.

Mr. Meadows asked if the applicant had a sign submitted as part of the application.

Ms. Bowen stated a sign had been requested and that the sign area on the property cannot exceed that allowed in the commercial zone.

Ms. Johnson stated that the applicant had requested a new sign for this property but that they could not have a new sign for the use under the current regulations of the Zoning Ordinance.

Ms. Bowen stated that with a special permit the Board could approve a sign.

Mr. Meadows asked if a sign would have to be a new application.

Ms. Johnson reiterated that a sign had been proposed in the application, but that the RA zoning regulations do not allow a sign for this type of commercial use, and that commercial uses themselves are very limited in the RA zoning district. She further explained that they do have existing commercial signage on the site that is nonconforming and therefore grandfathered. The applicant can make use of this existing signage for their business, by changing out the sign for the new use.

Ms. Bowen reiterated that the BZA could approve a sign with a special permit and provided Ms. Johnson with the ordinance provision.

Ms. Johnson responded that what Ms. Bowen is suggesting is that the Board has the authority to override the Zoning Ordinance and grant signs by special permit in cases where the sign is not allowed by the Ordinance. Ms. Johnson explained that her interpretation of the provision identified by Ms. Bowen is that the BZA is authorized, in the case of special permit uses, to place restrictions on signage, but not to give approval of a sign where none is allowed in the Ordinance.

Mr. Meadows stated that if the Board does grant this special permit the sign issue must be addressed in some manner.

Mr. Van Loven asked that if there is a sign currently up for an antique shop which could be given a fresh coat of paint to say Sam's Real Estate Office.

Ms. Johnson indicated that yes, any legally existing sign could be changed to be used for the real estate office. She explained that under the State Code any nonconforming signs on the site can stay, so if there is an existing sign the applicant may take it over.

Ms. Gallehr stated the Virginia Code limits the amount of money he can put into fixing and mending a non-conforming use as well. She stated that the amount is based on a percentage of the value.

Mr. Meadows asked if someone could combine the square footage of the existing signs to make the size of the sign proposed.

Ms. Gallehr stated that they are not allowed to take several existing signs and combine them together. She stated that they can only take the existing sign and repaint it.

Mr. Meadows asked Mr. Snead if he understood that he could only use the existing signage and repaint them and that the signs in the information could not be used.

Ms. Johnson stated that the pictures here are not going to work and part of the issue here is that there is another business at this location and Mr. Snead may need to negotiate with the landlord about which signs are out there and which portion they might want to give to this new business.

On a motion made by Ms. Addison and seconded by Ms. Bowen, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

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:

1. The development shall be generally consistent with the information submitted with the special permit application.
2. The hours of operation generally shall be limited to 9 A.M. to 5 P.M. Monday through Saturday, with after-hour appointments until 8 P.M.
3. No more than six employees associated with the real estate business.
4. The business is subject to site plan approval.
5. No new signage is permitted for the proposed use; the use may utilize a portion of any existing nonconforming signage on the site.

The motion carried unanimously.

The Board of Zoning Appeals revisited Special Permit #SPPT04-CR-022, Benjamin C. Gravett (Owner) / Riverside Mulch, Inc. (Contract Owner)

Mr. Meadows noted that Counsel for this applicant still was not present and asked Ms. Gallehr for her opinion.

Ms. Gallehr stated that the Board, by their own motion, could chose to defer or table this until after the Board of Supervisors' decision on the application.

She stated Ms. Johnson had asked that staff be given sufficient time to prepare a staff report for the BZA after any decision on the appeal, since the Board's decision is rendered toward the end of the month and the BZA meets at the beginning of the month. She suggested that the prudent motion may be to table this until the 2nd regularly scheduled BZA meeting immediately after the Board of Supervisors renders a decision on the appeal.

Ms. Bowen asked if there was time allowed in the Zoning Ordinance for that, and suggested tabling to the next BZA meeting instead.

Ms. Gallehr stated that the applicant is the one requesting the item be tabled, and that the Board could table this item for any period of time they desired.

Ms. Bowen asked if we had the request for tabling in writing.

Ms. Gallehr stated that it was not necessary and that the Board could table the item indefinitely.

On a motion made by Ms. Bowen and seconded by Mr. Rohrbaugh, the BZA moved to defer the application until next month.

The motion carried unanimously.

ADJOURNMENT: There being no further business before the Board, the meeting adjourned at 4:40 P.M.

Margaret Mailler, Chairperson

Sonja Addison, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A recording of the meeting is on file for one year.