

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
SEPTEMBER 2, 2004**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, September 2, 2004, beginning at 2:00 P.M. at the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Vice-Chairperson; Mr. James W. Van Luven; Mr. Maximilian A. Tufts, Jr.; Mr. J. Mark Rohrbaugh, Jr.; and Mrs. Carolyn Bowen. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Todd Benson, Assistant Zoning Administrator; Mr. Fred Hodge, Senior Planner and Mrs. Debbie Dotson, Office Associate III. Member absent was Mrs. Margaret Mailler, Chairperson.

Mr. Meadows turned the meeting over to Ms. Gallehr for election of secretary. Ms. Gallehr stated that Ms. Addison, the former Secretary, had resigned from the Board effective August 31, 2004, and new election for Secretary was needed. Ms. Gallehr asked for nominations from the BZA.

Mr. James W. Van Luven was nominated for secretary by Mr. Rohrbaugh.

There were no other nominations.

On a motion made by Mr. Rohrbaugh and seconded by Mrs. Bowen, the BZA voted to elect Mr. James W. Van Luven as Secretary.

The motion carried 5-0, with Mrs. Mailler absent.

MINUTES: On a motion made by Mr. Rohrbaugh and seconded by Mr. Tufts, the BZA voted to postpone the approval of the August 5, 2004, minutes to the next scheduled meeting.

The motion carried 5-0, with Mrs. Mailler absent.

LETTER OF NOTIFICATIONS AND PUBLIC NOTICE: Mrs. Dotson read the Public Hearing Protocol. Mr. Hodge stated that Items #2 and #3 on the agenda were not properly posted and therefore could not be heard at this hearing. Mr. Hodge stated, that to the best of his knowledge, the remaining 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 #SPPT05-CR-007, QUARLES PETROLEUM, INC. (OWNER)
Owner is seeking special permit approval to locate two 30,000 gallon tanks for bulk storage of petroleum products (liquefied petroleum gas) on the property, PIN #6981-23-9887-000, located at 9683 James Madison Highway, Cedar Run District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes. He stated that the plat submitted with the application shows a side yard setback of 50' for the tanks. The Zoning Ordinance requires a minimum setback of 75' on sides of property adjoining RA Zoning. He stated that site plan approval is required if special permit approved.

Doug Quarles, III, owner, appeared representing the application and noted agreement with the staff report. He stated that he had a plat showing the corrected setbacks.

Mr. Meadows asked if there were any speakers for or against this application. In that there were no speakers, the public hearing was closed.

On a motion made by Mr. Van Luven and seconded by Mr. Rohrbaugh, 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 and conditions:

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 site shall be in general conformance with the special permit application plat dated May 19, 2004.
2. Normal hours of operation shall be 6:00 a.m. until 6:00 p.m. Monday through Sunday.

3. The installation and construction of the propane tanks shall meet all local, state and Federal regulations for such containers. All hazardous material shall be stored in accord with all local, state and Federal regulations.
4. Site plan approval is required to include the required setback of 75' on sides adjoining RA Zoning.

The motion carried 5-0, with Mrs. Mailler absent.

SPECIAL PERMIT #SPPT05-SC-008, CHRIS PEARMUND AND MIKE & MARY ANNE WASSENBERG, PEARMUND CELLARS, (OWNERS)

Owners are seeking special permit approval for winery with minor events on the property, PIN #7906-09-1265-000 and PIN #7906-08-1765-000, located at 6190 Georgetown Road, Scott District, Broad Run, Virginia.

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

Mrs. Bowen stated that she would recuse herself from any discussion or vote on this matter because she had made prior decisions on this property when she was the Zoning Administrator for Fauquier County.

Christopher Pearmund, owner, appeared representing the application and noted agreement with the staff report except that the driveway is not fully paved. Mr. Pearmund submitted an additional plat to the BZA. He stated that the winery has been open for 14 months. He stated that his understanding of the County regulations at the time was that a minor event was between 50 and 150 people which has now changed to include less than 50 people. Because of that change they are now applying for a special permit to continue doing what they have been doing for the last 14 months. He stated that there is no live music and that the gatherings are between 20 and 50 people inside the winery walls themselves. Mr. Pearmund noted that the Health Department has been out three times to investigate and that they have given their blessing on what is planned. Mr. Pearmund stated that there has never been a direct complaint from any neighbor regarding the winery or its activities to this point. He stated that the winery is a mature business and is at 100% capacity and does not plan on growing or changing anything. He noted that the 50' right-of-way easement is larger than the average r-o-w easement and was granted to the property in 1975, and that the winery is located on a minor collector not a major. He stated that to his knowledge no winery in Fauquier County is located on a major collector. Mr. Pearmund stated that traffic flow at the winery has not been a problem, and that the 19 parking spaces are rarely filled up. He noted that the adjoining property owners located on the left and the right have been there longer than he has and that they did not have a complaint when he spoke with them directly about traffic flow or the ingress/egress. He stated the entrance is paved at the request of VDOT. He stated the winery is located in the center of the property and is well buffered. Mr. Pearmund noted that the Health Department's statement about the 300 gallons per day for a septic field is what the septic field is rated; the Health Department's statement about restaurant usage of

12 ½ gallons per person for a 4-hour visitation is not relevant because the winery is not a restaurant and does not prepare food. Mr. Pearmund stated that the winery has catering facilities where food is prepared off premise and then brought to the premises where staff serves the food.

Mr. Van Luven asked Mr. Pearmund if there was any amplified music. Mr. Pearmund stated that there was no live music, except at the last two 4th of July parties. Mr. Pearmund stated that the decision had been made well before this application was made not to have live music any more because it was not in the best interest of the family-owned business. He stated that the only music will be from the system at the entrance to the building.

Mr. Meadows asked if there were any speakers for or against this application.

Janice Summerville, Broad Run resident, appeared opposing the application. She stated concerns with the possibility of the winery growing, traffic flow on Georgetown Road, quality of life diminishing, and safety of residents.

Wayne Peterson, neighbor, appeared opposing the application. He stated that the back of his house overlooks the main entrance to the winery building, that the winery has held several large events that have been very noisy and disruptive to the quiet setting, that he finds it hard to believe Mr. Pearmund's statement about not knowing he needed a permit for the events given Mr. Pearmund's knowledge and expertise in the wine business. Mr. Peterson expressed concerns about the winery becoming a restaurant due to the advertising on the website of happy hours and dinners.

Susan Peterson, neighbor, appeared opposing the application. She stated she worked in DC and wanted her peace and quiet at home on the weekends. She noted that the permit issued to Mr. Pearmund for the winery specifically stated "no special events," and therefore Mr. Pearmund has known for over a year he was in violation. Ms. Peterson stated concerns with people driving under the influence.

Ralph Ruggiero, neighbor, appeared opposing the application and presented a picture showing the view from his property. Mr. Ruggiero stated that he is the President of the Valley Green HOA and he had contacted 42 members of the HOA, 37 of which are against the application. He stated concerns that Mr. Pearmund held special events even though the zoning permit issued to Mr. Pearmund specifically prohibited them.

Douglas Muller, representative of 5518 Snow Mountain Road resident, appeared opposing the application. He stated that the owner of the property, Margie Sherwood, purchased and developed the first lot of Valley Green Subdivision over 25 years ago. He stated concerns with the environment, safety, and the depreciation of individual property values. He stated that the business behavior of the winery to this point provides grounds for stronger objections; in particular, special events have already been held in violation. He stated that a big 4th of July fire started and frightened Mrs. Sherwood. He stated that there are happy hour noises into late hours, as opposed to wine tasting which has minimal

noise. He noted that the website advertises gourmet dinners and that the website states that all large parties require a waiver of responsibilities. Mr. Muller feels this shows the winery not willing to monitor alcohol consumption of patrons. He stated that events are now being held until 1:30 a.m., and that tax money is being wasted every time the sheriff has to be called to stop an event.

Scott McMichael, Valley Green Subdivision homeowner, appeared opposing the application. Mr. McMichael stated concerns with the blatant violations, total disregard for surrounding properties, and the continued violations if granted the special permit. He stated concerns that the road is inadequate for the current residents as far as safety and that he cannot imagine people driving under the influence on the road.

Mary Anne Wassenberg, owner/applicant, appeared representing the application. Mrs. Wassenberg stated that she is a 10% owner in the winery and also the webmaster for the winery. She stated that there was no advertisement for happy hour on the website. She noted that traffic is not at the site all at once, but scattered over a period of time. She stated that in her experience when she attended events they were over at 11:00 p.m.

Betsy Smith, area resident, appeared opposing the application. Mrs. Smith stated concerns with public safety and visitors of the winery regularly driving onto her nearby property. She does not want to see the community condoning people driving under the influence. She stated that the road is narrower than a standard road being built today.

Paul Wiedenhaefer, resident of Valley Green Subdivision, appeared opposing the application. Mr. Wiedenhaefer stated that he is not opposed to growing grapes and making wine but he is opposed to large outdoor events and the commercialization of the property. He stated that Mr. Pearmund has shown a total disregard for the permit already issued for the farm building by holding events when the permit states no special events. Mr. Wiedenhaefer stated that these events have greatly impacted the enjoying and quietude of his home. He asked the Board to consider what Mr. Pearmund would do if he had any sense that this Board endorses his past behavior by granting the permit he has requested today. Mr. Wiedenhaefer stated that Mr. Pearmund has clearly demonstrated his total lack of regard for authority and the rights of his neighbors to enjoy their property.

Tammy Wiedenhaefer, resident of Valley Green Subdivision, appeared opposing the application. Mrs. Wiedenhaefer stated concerns with the audible noises from these events in the form of loud music, hooting and hollering of party goers, and the continuous road noises that disturb the peace and serenity. She stated that there have already been instances of impaired drivers being lost on the road, and she submitted a copy of the website showing happy hour being advertised.

Jerry Motter appeared in favor of the application. Mr. Motter asked when there was a change in the law in regards to minor events. Ms. Johnson stated that there has not been a change in the last couple of years. Mr. Motter stated that two-thirds of the events will be inside. He stated that Mr. Pearmund has already held such events allowing local

artists to show their wares and he feels the BZA should approve the application as a promotion for agricultural businesses.

Harold Burr, area resident, appeared opposing the application. He stated concerns with Mr. Pearmund not following the current rules, the safety of the road, and people driving under the influence.

Shelton Raiford, Amissville resident, appeared in favor of the application. He stated that he has not seen the visitors to the winery becoming intoxicated and that he has not seen a restaurant being run at the winery. He has seen nice events there and has never heard any loud or boisterous noises coming from the winery.

Sam Lloyd, neighbor, appeared opposing the application. He stated that he has seen intoxicated people leaving the winery; in fact, a small dog was lost and the person who picked up the dog was intoxicated. He stated that Mr. Pearmund has shown from the past that he cannot manage events even with his own family.

Jon Hardy, The Plains resident, appeared in favor of the application. He stated that there is a significant relationship between the tourism industry and the wineries. He stated that vineyards are one of Fauquier County's primary tourist attractions and that it generates a significant amount of revenue for the County.

Ken Burgess, Valley Green Subdivision resident, appeared opposing the application. He stated that Mr. Pearmund has been in violation and hasn't even asked for the permit for the last 14 months. He stated that Mr. Pearmund cannot plead ignorance of the law since on his original application it stated no special events. The website talks about happy hours and has advertising for special events with no mention of people needing to sign up for the events. It is Mr. Pearmund's responsibility to notify 30 days prior to an event to contact the Zoning Administrator with the name and contact person, to notify the Sheriff's office, VDOT, Emergency Service Coordinate, and the Health Department of the event. Mr. Pearmund has not done any of these requirements.

Floyd Wilbanks, area resident, appeared in favor of the application. He stated that this is something Mr. Pearmund should be allowed to do. He stated that these are gourmet dinners that are held inside and not wild parties.

Mitzi Price, Valley Green Subdivision resident, appeared opposing the application. She stated she has bought wine from Mr. Pearmund and is not opposed to the winery itself but opposed to the events. She noted that there is not parking for 150 people. She further stated that Mr. Pearmund has shown continued lack of respect for neighbors and laws of Fauquier County.

Karen Henderson, Fauquier County Chamber of Commerce President and Chief Executive Officer, appeared in favor of the application. She presented a letter from the Blue Ridge Wine Way President. She stated that the wineries are to be considered a definite part of the Economic Development goals and objectives. She noted that wineries

encompass two distinct recommendations from this document. She further noted that wineries bring needed revenues to the County and property values escalate next to wineries and do not devalue property as has been suggested.

Kathy McCoubrey, neighbor, appeared opposing the application. She stated that the original zoning application was for a farm winery with no special events. She stated concerns with the traffic and the dust that is created with the events. She also stated concerns with the negative impact on the property values and lifestyles of the surrounding properties.

Anne Whitelaw, New Hope resident, appeared opposing the application. She stated she has lived there since 1975 and is not opposed to the agricultural part of the winery. She is concerned with the enormous sign and traffic on the narrow road.

Karen Gardner appeared opposing the application. She stated that the winery is located inside Valley Green Subdivision and is completely surrounded by homes, with the only access is through a gravel right of way easement running between two homeowners. She further noted that the winery is mostly open space and has few trees to buffer the sound. She stated that past events have affected her family very much and future events planned are on the weekend and will disrupt the peace and quiet. She asked the BZA to consider the increased noise, impact of the traffic on the historic homes, and safety of citizens.

Beverly Hauver, neighbor, appeared opposing the application. She stated that she was absolutely shocked that it has been operating without the necessary special permits. She had spoken to Mr. Pearmund and wished him success. She is concerned with the large events, the dust created, and as it grows it will become very much a problem.

Doris Eisel, Valley Green resident, appeared opposing the application. She stated that she has heard the fireworks and that was okay; but the screeching of a lady at an event at the winery went on for two hours. This is just one example of what the neighbors have to listen too.

Lisa Pearmund, owner, appeared in favor of the application. She stated that the County told Mr. Pearmund he was allowed to have the events with less than 50 people and they did not know that the rules had changed. She stated that the noise the previous lady spoke about was not at the winery but at an adjoining property. Ms. Pearmund noted that there have not been fireworks since the winery started. She further stated that they are raising a family at the vineyard and she is very strict about drinking and driving. She noted that wineries have only brought revenue to the state and counties. Ms. Pearmund stated she would like to compromise with everyone and ask to be granted a permit to do smaller events under 50 people if that would help the issue.

Mr. Meadows asked if there were any other speakers. In that there were no speakers, the public hearing was closed.

Mr. Tufts asked a question regarding the BZA's ruling on the winery being located on a minor collector. Ms. Gallehr stated the BZA has the authority to determine that the type and quantity of the traffic generated won't cause undue impact. The BZA has the ability to determine that regardless of the fact that it is an easement and not frontage directly on a road.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven to revisit the site and to postpone the decision until next month.

The motion carried 4-0, with Ms. Mailler absent and Mrs. Bowen abstaining.

SPECIAL PERMIT #SPPT05-MA-009, DAVID AND MELISSA WHITTINGTON, WHITTINGTON'S WILDLIFE TAXIDERMISTRY, (OWNERS)

Owners are seeking renewal of special permit issued in 2002 for a taxidermy business on the property, PIN #6944-95-0751-000, located at 10022 Wesley Chapel Road, Marshall District, Marshall, Virginia.

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

David Whittington, owner, appeared representing the application and noted agreement with the staff report. Mr. Whittington stated that he has complied with everything the BZA set two years ago and the business is growing.

Mr. Van Luven asked Mr. Whittington how long before the business is full time. Mr. Whittington stated that five years was safe.

Mr. Meadows asked if there were any speakers for or against the application. In that there were no speakers, the public hearing was closed.

Ms. Bowen asked staff if there had been any complaints on the permit. Mr. Hodge stated that there were none.

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 special permit, with the following finding and conditions:

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. No tanning is permitted on the premises.
2. Normal hours of operation shall be 8:00 a.m. until 8:00 p.m. weekends and no later than 9:00 p.m. weekdays.
3. Maintain all appropriate licenses from the Virginia Department of Game and Inland Fisheries.
4. Animal waste is to be taken to the landfill within three days of performing duties.
5. No sign is permitted.
6. The applicant is to maintain a safe entrance at all times but is not required to install a commercial entrance as recommended by VDOT.
7. Comply with all state and federal permitting laws.
8. The special permit does not convey with the sale of the property.
9. The special permit is issued for a period of 5 years.

Mr. Meadows asked if there was any discussion by the BZA. Mrs. Bowen stated that she does not support the conveying condition.

A motion to amend the motion to delete condition #8 was made by Mr. Rohrbaugh and seconded by Mr. Van Luven.

The motion to amend carried 5-0, with Mrs. Mailler absent.

The motion as amended carried 5-0, with Mrs. Mailler absent.

OTHER BUSINESS:

Ms. Johnson, Zoning Administrator, asked the BZA to consider revocation of Special Permit #51090, Roy and Lou Ann Boatwright (Owners). She described the following separate violations on the property:

- Special Permit condition that no more than 90 vehicles, 40 inoperable allowed on site; staff found 156 vehicles and only 9 of those were operable.
- More than one acre utilized in the storage of vehicles, a violation of a condition.
- None of the required landscaping had been installed, a violation of a condition.
- Trailer being utilized on the site as an office building, a violation of a condition.
- Outdoor storage of various parts and materials (tires, junk, etc) on the outskirts, a violation of a condition.
- Work occurring on vehicles outside the shop, a violation of a condition.

She asked the BZA to consider revocation of the special permit because of these violations. We are pursuing other enforcement action at the same time.

Mrs. Bowen stated that she would recuse herself from any discussion or vote on this matter because she had made prior decisions on this property when she was the Zoning Administrator for Fauquier County.

On a motion made by Mr. Tufts and seconded by Mr. Van Luven, the BZA voted to initiate revocation of Special Permit #51090 pursuant to Section 5-0105 of the Fauquier County Zoning Ordinance at the October hearing.

The motion carried 4-0, with Mrs. Mailler absent and Mrs. Bowen abstaining.

On a motion made by Mrs. Bowen and seconded by Mr. Rohrbaugh, the BZA voted to recognize Ms. Sonja Addison with a framed resolution and invite her to lunch.

The motion carried 5-0, with Mrs. Mailler absent.

Mr. Rohrbaugh regrettably informed the BZA that he would be moving out of Fauquier County in mid-to-late October. He indicated that he had talked with Ms. Gallehr and in that there is a residency requirement for membership on the BZA, October will be his last meeting.

Mr. Hodge asked the BZA that if they have anything specifically that you would like to look at, please contact him so that he can coordinate with Mr. Pearmund. Ms. Johnson stated that Mr. Ruggiero would like to show the BZA the view from his property to the winery. Mr. Meadows suggested that the BZA be given ample time to visit the properties. Ms. Johnson asked the BZA how much time they needed for the Pearmund visit. Mr. Meadows stated about 45 minutes.

Mr. Van Luven asked what the cutoff time is for accepting new material. Ms. Gallehr stated that material is accepted up to and at the public hearing and the BZA has the ability to postpone the hearing for up to 2 meetings so that they can review the material(s) submitted.

ADJOURNMENT: There being no further business before the BZA, the meeting was adjourned at 3:57 P.M.

Margaret Mailler, Chairperson

James W. Van Luven, 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.