

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

March 25, 2008

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, March 25, 2008 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Ernest Ackermann in the A/B/C Conference Room in the Stafford County Government Center. Mr. Ackermann introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Ackermann said the By-Laws of this Board stated the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Larry Ingalls, Cecelia Kirkman, John Overbey, Robert Gibbons, Michael Levy and Steven Beauch

Members Absent: None

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Ackermann asked if there were any changes to the advertised agenda.

Mrs. Musante stated there were no changes.

Mr. Ackermann stated at the February 26, 2008 meeting, there was a consideration from the Board to adopt the new by-laws.

Motion:

Mr. Gibbons made a motion to approve the bylaws as presented at the February meeting.

Mr. Overbey seconded the motion.

Vote:

The motion to approve passed 6-0 (Mr. Beauch abstained)

Mr. Ackerman – yes
Ms. Kirkman – yes
Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – abstained

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PUBLIC HEARINGS

V08-1/2800051 - MAURICIO LUJAN - Requests a Variance from Stafford County Code, Section 28-59(f)(2), "Development Standards", to eliminate the pedestrian circulation requirement in the Highway Corridor Overlay District on Assessor's Parcels 38-110 and 111. The property is Zoned M-1, Light Industrial, located at 1546 Jefferson Davis Highway.

Mrs. Musante read the staff report. She stated the applicant was requesting a variance of 28-59(f) (2), "Development Standards", to eliminate the pedestrian circulation for the installation of a sidewalk on the frontage of property located at 1546 Jefferson Davis Highway. She stated it was determined to bring the property into compliance and conformity a major site plan would be required. She stated the applicant met with Dominion Power to discuss the location of utility lines along Route 1, to install a sidewalk at this location would be a complex issue because of steep topography, relocation of electrical facility including the installation of a new pole, top switch and numerous circuit taps to maintain existing facilities would be necessary. She stated there were fiber optic lines along Route 1 and may limit Dominion Powers ability to move existing polls and if the Variance was approved a minor site plan would be required. She stated parking areas should be paved and concrete curb and gutters would be installed.

Mr. Gibbons asked what parcel would be used for parking.

Ms. Hudson stated the parcel closest to Eskimo Hill Road was 38-111 and the back parcel was 38-110.

Ms Kirkman asked staff to clarify the history of the property.

Ms. Hudson stated this had come before the Board because the county has no legal documents on file. She stated there was a site plan for a portion of parcel 38-111.

Ms. Kirkman asked if there was any other activity related to this parcel.

Ms. Hudson stated several years ago the applicant appealed the determination of the Zoning Administrator and had withdrawn the appeal.

Ms. Kirkman stated at that point the applicant gave up their rights to contest whether or not this was a grandfathered use. She asked if the correct zoning was M-1.

Ms. Hudson stated that was correct.

Ms. Kirkman asked how parking of commercial vehicle fit into the M-1 use.

Ms. Hudson stated the uses allowed were by right, but in order to receive permits for occupancy and take advantage of the use listed in the M-1 by right, the applicant would be required to do a site plan.

Ms. Kirkman asked why the major and minor site plans were relevant to the proceedings.

Ms. Hudson stated the applicant asked for a Variance of the Highway Corridor requirement of installing sidewalks, the grading for the sidewalks would be over 2500 square feet, and if the applicant disturbed more then 2500 square feet there would be a requirement for a major site plan.

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Ms. Kirkman stated that would not be part of the consideration. She asked how long the applicant owned property.

Ms. Hudson deferred to the applicant.

Ms. Kirkman asked when the applicant acquired the property he knew it was in the Highway Corridor Overlay District (HCOOD).

Ms. Hudson stated yes.

Ms. Kirkman stated there was reference to a zoning violation and asked what the violation was.

Mrs. Musante stated the violation was for operating a business without a certificate of occupancy.

Ms. Kirkman stated the applicant did not appeal the zoning violation and asked if the applicant was a requesting a Variance.

Ms. Hudson stated the applicant requested a determination from the Zoning Administrator grandfathering the use of commercial parking. She stated the Director of Planning and Zoning made the decision that the applicant would need to complete a major site plan to come into compliance and the grading of the 2500 square feet would require the major site plan, less then 2500 square feet of disturbed area would require a minor site plan.

Ms. Kirkman asked was the purpose of the Variance request so the applicant would not have to install a sidewalk or was the request to avoid doing a major site plan.

Ms. Hudson stated the applicant would have to request a Variance and prove a hardship to the Board.

Mr. Gibbons stated he was concerned that the board had not seen any information regarding the violations from 2006.

Ms. Kirkman stated the board would see violation information only if the applicant appealed the violation.

Ms. Hudson stated staff had not proceeded with the violations because staff had been working with the applicant for two years.

Mr. Levy stated there was a violation for lack of screening, which had not been cited yet.

Ms. Hudson stated that was correct.

Mr. Levy asked if there was a requirement to resolve violations before coming to the Board to request a Variance.

Ms. Hudson stated the applicant could address that question.

Mr. Overbey asked if staff advised the applicant of the requirements for a Variance to be granted.

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Mr. Ingalls asked if the request was to eliminate the pedestrian circulation requirements on Jefferson Davis Highway and Eskimo Hill Road.

Ms. Hudson stated that was her understanding.

Mauricio Lujan, MJ Express, LLC Executive Vice President, stated he owned the family owned trucking business since 1998 and was requesting a variance for the HCOD requirement under section 28-59(f) (2), "Development Standards". He stated his hardships were the steep topography, conflict with Dominion Power and the overhead electric facility, fiber optic lines, 55 speed limit zones and a contractual agreement with LAMAR regarding the billboard on the property. He provided a history of the property and stated in 2006 Anthony Romanello approached Jo Knight from Aquia Realty and asked for a meeting with the Mr. Lujan and some department heads within the county, to discuss improving the property. He stated occupancy permits were granted for minor maintenance work in the garage and storing of the tractor-trailers within the fenced in area. He stated there were was an issue of the applicant having grandfather rights and stated he provided evidence that grandfather rights were legally established. He provided detailed information regarding the owners of the property since 1990 and any request made thru the county as well as the leasing agreements from Aquia Realty. He stated a major site plan would be required if the applicant was moving more then 2500 square feet of area and there would be extensive grading issues in order to comply with the HCOD and build a sidewalk. He stated after meeting with a representative form Dominion Virginia Power, the representative advised the applicant there would be extreme grading issues, relocation of poles would require Dominion Power to rebuild new top switch poles, and circuit taps with negative distribution to neighboring properties. He stated relocation of the poles would cost the applicant over \$50,000 and would be out of reach for the applicant. He stated a sidewalk in a 55 speed limit zone would be unsafe and there would be a major site plan required because the sidewalk would disturb over 2500 square feet. He provided pictures for the Board and stated he would not change the use.

Mr. Gibbons stated he would like to see on the plan the requirements of the applicant.

Mr. Ingalls stated the applicant chose not to give the board plans and has given what the applicant feels relevant to his application.

Mr. Beauch stated the applicant was appealing the Board to exempt him from putting in sidewalks.

Mr. Gibbons stated he had seen maintenance done outside of the designated area.

Mr. Lujan stated any work outside of the designated area was not permitted.

Mr. Gibbons asked if the vehicles parked on the property belonged to MJ Express.

Mr. Lujan stated there were a combination of his vehicles and independent owner operators that work under the flag of MJ Express.

Mr. Gibbons asked if there were health problems on the property.

Mr. Lujan stated no.

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Ms. Kirkman stated a current requirement would be to have a fence up and asked if there was a fence in place.

Mr. Lujan stated there was one fence on the back of the property.

Ms. Kirkman confirmed the applicant did not have all the fencing required under the HCOD.

Mr. Lujan stated he did not have a fence and wanted to wait to construct a fence until meeting with the county.

Mr. Kirkman stated whether there was a major or minor site plan; there would still be a requirement for a fence. She asked if there was a setback requirement for fences.

Ms. Hudson stated there was no setback requirements and stated a fence could not impede site distance.

Mr. Beauch asked the applicant if he was asking the Board for a variance for the sidewalk only.

Mr. Lujan stated that was correct.

Mr. Ingalls asked if the elimination would be along Route 1 and Eskimo Hill Road.

Mr. Lujan stated it was his understanding that it would be just along Route 1.

Mr. Ingalls asked if the sidewalk, curb and gutter were required on Eskimo Hill Road would the applicant install.

Mr. Lujan stated he would to a certain extent but was not told that sidewalk, curb and gutter was needed on Eskimo Hill Road.

Ms. Kirkman stated at the last meeting the applicant requested an additional month to work out the issues and asked what had been worked out.

Mr. Lujan stated he wanted to get clarification to some of the wording.

Ms. Kirkman asked if the applicant's primary desire was to complete a minor site plan.

Mr. Lujan stated if the variance were approved, he would complete a minor site plan.

Mr. Kirkman asked what would happen if the applicant did not get the variance.

Mr. Lujan stated if the variance were not approved, he would be forced to build a sidewalk, which would disturb over 2500 square feet and would require a major site plan.

Mr. Gibbons asked how many vehicles would be parked on the property under the minor site plan.

Mr. Lujan stated there would be approximately 25 tractor-trailers.

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Mr. Ingalls asked what the hardship for the applicant was.

Mr. Lujan reiterated the issues previously discussed.

Mr. Ingalls asked if the variance was not granted could the applicant, according to the zoned use, complete a site plan and utilize the property for that use.

Mr. Lujan stated yes.

Mr. Overbey stated there was not steep terrain from the corner of the property how far the property extended before sloping.

Mr. Lujan stated approximately 50 feet.

Mr. Overbey stated that according to state regulations there were very strict standards to follow when granting a variance.

Mr. Gibbons was concerned that staff had not properly discussed with the applicant the requirements within the HCOD.

Ms. Kirkman stated the applicant would be responsible for justifying to reason for the variance.

Mr. Ackermann opened the hearing for public comment.

Jo Knight, Aquia Realty, stated she had received a call from Anthony Romanello several years ago. She stated Mr. Romanello wanted to discuss the cleanup effort. She stated her husband bought the property in 1968 and this property used to be a truck stop with a diner on the corner. She stated this property had several owners that did not maintain the property. She stated previous owners never did anything to the property; they felt they would lose their grandfather rights. She stated the county asked for a meeting to be arranged with Mr. Lujan, Mr. Romanello and Ms. Hudson. She stated a cleanup to that property might have changed the grandfather rights of the property. She stated the property could have been sold at a higher price but the water pressure was to low.

John Vergeres stated he owned just about everything to the north of Mr. Lujan. He stated he had some issues with the applicants operation and they have since been taken care of. He stated the applicant would work to the best of his ability to work with the county and the applicant was providing an area for the Hispanic community. He stated the applicant might go out of business if he would be required to apply for a major site plan. He stated the area was not around subdivisions and there were no sidewalks for miles in any direction; it would be a true hardship to the applicant.

With no one else coming forward, Mr. Ackermann closed the public comment session.

Mr. Lujan asked the Board to take the request for a variance into consideration. He stated if the variance was not granted he might go out of business and would have to shut down.

Motion:

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Mr. Levy made a motion to deny the application for a variance.

Mr. Overbey seconded the motion.

Mr. Gibbons made a substitute motion to delay the request until the next meeting to give staff any opportunity to come and discuss options.

Mr. Ackermann stated the substitute motion died for a lack of a second.

Ms. Kirkman asked if a site plan was submitted, would the applicant have to provide sidewalks.

Ms. Hudson stated yes.

Mr. Beauch stated he felt something could be worked out but stated there was a need for sidewalks.

Mr. Gibbons stated he offered the substitute motion so staff could explain to the Board the specifics of the property and the effects to the county.

Mr. Overbey stated if a variance were granted, it would run with the property forever. He stated, eventually, the county would build up and in twenty year that may be an area that would need sidewalks and there would not be any. He stated he could not support the variance.

Ms. Kirkman stated she did not support the motion to defer another month because the conditions could not be self-imposed. She stated the applicant was aware of the HCOD requirements when the property was purchased and staff had been working with the applicant for nearly two years on violations with no resolution.

Mr. Beauch asked what necessitated the request for sidewalks.

Ms. Hudson stated the Director of Planning and Zoning, Jeff Harvey, stated sidewalks would be required on a major site plan for this site because it was over 2500 square feet of disturbance.

Mr. Beauch asked why the applicant would need the plan.

Ms. Hudson stated the plans were required to obtain permits to operate legally.

Ms. Kirkman stated several years ago the business operated without a permit, which was a violation that was never appealed.

Mr. Levy asked if a surrounding property were to receive a complaint would that owner of that property be required to follow HCOD guidelines.

Ms. Hudson stated it would be possible and would depend on the history of the property.

Mr. Ingalls stated he agreed with Mr. Gibbons and would have liked to have more information. He stated that the applicant could have given more information but felt the information provided was sufficient.

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Mr. Gibbons stated there might have been someone on staff that advised the applicant of the steps that need to be taken to request a variance.

Mr. Ackermann reiterated the motion to deny the request for a variance.

Vote:

The motion to deny passed 7-0

Mr. Ackerman – no

Ms. Kirkman – no

Mr. Ingalls – no

Mr. Overbey – no

Mr. Gibbons – no

Mr. Levy – no

Mr. Beauch – no

SE08-1/2800054 – CREATIVE ENERGY CORPORATION - Requests a Special Exception per Stafford County Code, Section 28-273, “Non-Conforming Structures or Residential Buildings”, to allow an addition to an existing nonconforming Single Family Dwelling on Assessor’s Parcel 54S-4-169. The property is Zoned R-1, Suburban Residential, located at 419 Chamonix Drive, Clearview Heights Subdivision.

Mrs. Musante presented the staff report. She stated the applicant was requesting to construct an addition to a single family dwelling; the lot was a corner lot and per the Stafford County Code 28-38 (b) the front shall be determined as the shortest front facing side which was Camden Drive. She stated the existing single-family dwelling was 20 feet from the rear property line, which does not meet the requirement of 35 feet, and there would be no further encroachment to the non-conforming setback. She stated the proposed addition was on the side of the home maintaining a 36’ foot setback from the side property line and the requirement was 10’ feet.

Mr. Gibbons asked why the applicants were not at the hearing to represent them.

Mr. Overbey stated the developer would speak on behalf of the applicant.

Ms. Kirkman stated the property owners sign an owner consent form, which allows the developer to speak on their behalf.

Ms. Kirkman asked if the property was a legally non-conforming structure.

Mrs. Musante stated yes.

Hunter Knuckles, Creative Energy, stated the request to construct a 22’ by 12’ sunroom. He stated there was a garage addition to the rear of the house in the early 1990’s. He stated the proposed addition would not encroach on any of the limitations.

Mr. Levy stated there would still be 36 feet distance between the property line and the sunroom.

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Mr. Knuckles stated yes.

Mr. Ackermann asked what the elevation of the sunroom compared to the home.

Mr. Knuckles stated there was no elevation provided. He stated the height would be one story and would replace the deck. He stated the proposed structure would be 2 feet off the ground and provided pictures for the Board.

Mr. Ackermann opened the hearing for public comment.

Mike Clem, VP of Creative Energy, stated he was asking for approval. He reiterated the information received from Mr. Knuckles.

With no one else coming forward, Mr. Ackermann closed the public comment session.

Motion:

Mr. Gibbons made a motion to approve the request for a special exception.

Mr. Overbey seconded the motion.

Mr. Kirkman stated in the Ordinance, a corner lot shall have two fronts, and asked staff how the rear was determined.

Mrs. Musante stated according to Ordinance, the shortest side would be the front, and stated opposite the front would be the rear.

Vote:

The motion to approve passed 7-0

Mr. Ackerman – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – yes

Mr. Gibbons stated it would be helpful for the information the Chairman reads at the beginning of each meeting could be sent to applicants. He stated that would advise the applicant of the regulations of the Board.

UNFINISHED BUSINESS

None

REPORT BY ZONING ADMINISTRATOR

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None

ADOPTION OF MINUTES

None

OTHER BUSINESS

Mrs. Musante stated there would be two appeals for April and three cases in May.

ADJOURMENT

Motion:

Mr. Overbey made a motion for adjournment.

Ms. Kirkman seconded the motion.

The meeting was adjourned at 8:45 p.m.

Ernest C. Ackermann
Chairman, Board of Zoning Appeals