

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

July 22, 2008

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, July 22, 2008 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Ernest Ackermann in the Board of Supervisors Chambers, in the Stafford County Government Center. Mr. Ingalls 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. Ingalls stated the Bylaws of this Board state 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, Cecelia Kirkman, John Overbey, Robert Gibbons and Michael Levy

Members Absent: Steven Beauch and Larry Ingalls

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

Ms. Kirkman arrived at 7:03 pm.

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

Mrs. Musante stated there were no changes to the agenda.

PUBLIC HEARINGS

1. **SE08-5/2800352 - UK KANG** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", to allow the production of Soy Sauce/Paste as a Rural Home Business on Assessor's Parcel 59-56D. The property zoned A-1, Agricultural, is located at 415 Forest Lane Road.

Mrs. Musante read the staff report. She stated the applicant had 1,860 square foot shed to produce the soy sauce. She stated the property was 23 acres with vegetation, which provided screening from adjacent properties. She stated the outdoor storage was 3,100 feet and in compliance with the requirement of no more than 25 percent of the property on which the business was located. She stated the total gross floor area of the accessory building does not exceed the maximum allowed of 4,000 square feet; the applicant indicated there were no employees. She stated the single-family home was constructed in 1998 and a permit for a 62' by 30' shed was issued in 2007; a permit for a 36' by 86' pole barn was issued in April 2008.

Ms. Kirkman asked staff why this request was not considered a by-right use in the agricultural zone.

Mrs. Musante stated the applicant was using a large area for the manufacturing of the produce and manufacturing was not considered a by right use.

Ms. Kirkman asked if this use was not listed, why the request was for a home business rather than a Conditional Use Permit as a use not otherwise listed.

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Mrs. Musante stated she could not answer the question; the Zoning Administrator would need to answer the question.

Mr. Overbey asked if the large shed was used for manufacturing and storage.

Mrs. Musante stated the shed was used for manufacturing and the pole barn was used for storage.

Mr. Gibbons asked what the difference was between a shed and pole barn.

Mrs. Musante stated there was no definition listed within the county code.

Ms. Kirkman stated in reviewing the definition in the County Code, she was not able to find a definition for shed, barn, pole barn or shelter and asked how the county could accept applications for the structures when there was no definition listed in the code.

Mrs. Musante stated that would be a building issue. She stated zoning only works with the use of the property and setbacks.

Mr. Ackermann asked what the need was for a Special Exception.

Mrs. Musante stated the need for the Special Exception was for the home business and the magnitude of the business. She stated the Zoning Administrator made that determination.

Mr. Ackermann asked if the request was to have a Rural Home Business on the property.

Ms. Musante stated yes, home businesses were by right in the A-1, Agricultural zone, which did not allow outdoor storage. She stated the applicant had a large area for outdoor storage with barrels to produce soy paste.

Mrs. Kirkman asked if that was necessary for the fermentation of the soy product.

Mrs. Musante stated yes, a home business does not allow outdoor storage and the Zoning Administrator determined the applicant needed the rural home business, which provided the outdoor storage.

Ms. Kirkman stated under the definition of the Light Manufacturing, the production of food products, she asked if any food product made would mean the zoning for the property would include Light Manufacturing as a by-right use.

Mrs. Musante stated yes, under the A-1 table, Light Manufacturing was not a by right use.

Ms. Kirkman stated she did not understand why there was a Special Exception application, rather than requesting a Conditional Use Permit or Rezoning of the property.

Mrs. Musante stated it was because the applicant was the owner of the property and business.

Mr. Overbey stated the Ordinance states that outdoor storage would not comprise more than 25 percent of the property.

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Mrs. Musante stated the applicant had 25 acres.

Mr. Overbey stated 5 percent of 25 acres was 5 acres and asked of the applicant was using that 5 acres for storage.

Mrs. Musante stated the applicant was using only the pole barn for outdoor storage. She stated she would provide the definitions of building and outdoor storage. She stated the pole barn was not a building because a building was a structure with a roof and enclosed walls or firewalls; the pole barn has a roof with no sides on the building.

Mr. Overbey asked how much acreage the building covered.

Mrs. Musante stated it was 3,100 square feet; she stated an acre was 43,560 square feet.

Mr. Overbey stated he agreed with Mrs. Kirkman, the applicant was not even close to 25% for outdoor storage.

Ms. Musante stated Home Businesses did not allow outdoor storage at all.

Mr. Overbey stated Rural Home Businesses would allow outdoor storage.

Mrs. Musante stated that was correct, which was the reason the Rural Home Business was advertised.

Ms. Kirkman asked if there was a zoning violation on the property.

Mrs. Musante stated there was a complaint made for this property.

Ms. Kirkman asked if there was a violation filed.

Mrs. Musante stated not to her knowledge.

Ms. Kirkman stated there was no zoning violation.

Mrs. Musante stated if the applicant did not receive an approval for the application, there would be a violation issued for operating a business without a permit.

Ms. Kirkman asked if there was a copy of the Zoning Administrator's determination for the Board.

Mrs. Musante stated no, it was not a formal determination.

Ms. Kirkman stated it was just something the Zoning Administrator said; there was nothing in writing.

Mrs. Musante stated this falls under the definition of Rural Home Business.

Mr. Gibbons asked if there would be an issue with outdoor storage if the building was enclosed.

Mrs. Musante stated correct, there would be other issues, under the definition of Rural Home Business, a non-residential building would be allowed up to 4,000 square feet for the use of the business; the square footage for the shed and pole barn would exceed the requirements.

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Ms. Kirkman stated the Zoning Administrator should be present to answer the questions from the Board. She stated under the definition of Rural Home Business, production of soy sauce/paste did not fall within the definition.

Mrs. Musante stated the outside storage was the biggest issue. She stated her recommendation was to postpone the hearing until the August meeting when the Zoning Administrator could be present to answer any questions.

Mr. Levy stated in the presentation, Light Manufacturing was discussed, which was an issue for the Zoning Administrator to discuss at the August meeting.

Mrs. Musante stated Light Manufacturing was a by right use in other zoning districts, therefore, a request for a Conditional Use Permit for a use not listed if that use was listed in other zoning districts would not be possible.

Ms. Kirkman stated under the definition of outdoor storage, “the keeping in an area that is not enclosed by a building of any goods or material of outdoor display”, which included wood piles. She asked if there was a definition of the maximum amount of materials that could be stored outdoors.

Mrs. Musante stated this would be found in the County Code under trash.

Mr. Gibbons stated there was nothing in writing regarding a determination.

Mrs. Musante stated she and the Zoning Administrator had discussed the issue; the Zoning Administrator decided the Special Exception was the appropriate route to go.

Ms. Kirkman asked if the applicant was here at the advice of the County.

Mrs. Musante stated yes, this was the best option for the applicant or the applicant would need to close his business.

Ms. Kirkman asked why the applicant would need to close the business, given the applicant was never issued a violation, which he could appeal.

Mrs. Musante stated the County tried to work with the residents; the applicant had done what the County discussed, which was why no violation notice was issued.

Ms. Kirkman stated she could not make sense of the solution within the Zoning Ordinance.

Mr. Overbey stated the Board would need to here the reasoning from the Zoning Administrator before moving forward with the hearing.

Ms. Kirkman asked if the Board could hold the public hearing to hear from the applicant to get all the issued out for discussion.

Mr. Ackermann stated he would prefer to have the entire hearing all together with the Zoning Administrator present.

Motion:

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Mr. Overbey made a motion to defer this item to the August meeting.

Mr. Gibbons seconded the motion.

Vote:

The motion to defer the Special Exception until the August 26, 2008 meeting passed 5-0.

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – absent

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – absent

2. **SE08-6/2800442 - ROGER MURPHY** - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 43-76D. The property zoned A-1, Agricultural, is located at 188 Rocky Run Road.

Mrs. Musante read the staff report; she listed the item provided to the Board. She stated the applicant was requesting a Special Exception to construct a 47' by 20' addition on an existing nonconforming single-family dwelling. She stated the existing dwelling sets 16 feet from the side property line, which does not meet the requirement of 20 feet. She stated there would be no further encroachment into the nonconforming area. She stated the dwelling was built in 1978, at which time the side yard requirement was 15 feet.

Ms. Kirkman stated legislation introduced in the General Assembly this year that defined expansion of a nonconformity, it had to be measured by the square footage of a building and whether the square footage of the building was being expanded. She asked if that legislation passed.

Mrs. Musante stated she could not answer the question because she did not know.

Roger Murphy, 188 Rocky Run Road, stated he would like to add an addition onto his home.

Ms. Kirkman asked when the applicant bought the house.

Mr. Murphy stated he built the house in 1972.

Mr. Ackermann asked if the addition would be visible from the road.

Mr. Murphy stated no, the house would obstruct the view of the addition.

Mr. Levy stated in looking at the vicinity map of the property, it looked like there were a number of structures on the property.

Mr. Murphy stated he had three (3) garages on the property for his collector cars.

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Mr. Levy asked of the structure immediately behind the house was a garage.

Mr. Murphy stated that was a shed.

Mr. Ackermann opened the hearing for public comment.

With no one coming forward, Mr. Ackermann closed the hearing for public comment.

Motion:

Mr. Gibbons made a motion to approve SE08-7/2800442.

Mr. Levy seconded the motion.

Ms. Kirkman stated she would abstain from voting on the motion; with recent legislation introduced that if passed could have a significant impact on the decision at this meeting. She stated she was uncomfortable making a decision without knowing the outcome of the General Assembly.

Vote:

The motion to approve the Special Exception passed 4-0-1.

Mr. Ackermann – yes

Ms. Kirkman – abstained

Mr. Ingalls – absent

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – absent

3. **SE08-7/2800443 – BRADLEY & KAREN ROCK** - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 46G-1-54. The property zoned R-1, Suburban Residential, is located at 26 Willow Branch Place, Hickory Ridge Subdivision.

Mrs. Musante read the staff report. She stated the applicant was requesting a Special Exception to construct a 13' by 17' addition on an existing nonconforming single-family dwelling. She stated the existing dwelling sets 9.9 feet from the existing property line, which does not meet the requirement of 10 feet. She stated the proposed addition was on the opposite side of the nonconformity, therefore, there would be no further encroachment into the nonconforming area. She stated the dwelling was built in 1977.

Mr. Levy asked if the 9.9 feet was ever in conformity with the County Code.

Mrs. Musante stated the Board was provided a copy of the 1978 Ordinance; the side yard at that time was 12 feet.

Mr. Levy asked if that was when the home was built.

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Mrs. Musante stated that was correct.

Bradley Rock, 26 Willow Branch Place, stated the addition would be a playroom and would answer any questions of the board.

Mrs. Kirkman asked if the applicant made an attempt to buy the .1 foot from the neighbor in order to make the property conforming.

Mr. Rock stated he did not know he could do that; he was told he could have his property resurveyed to check to see if the property conformed to the code.

Mr. Ackermann opened the hearing for public comment.

With no one coming forward, Mr. Ackermann closed the hearing for public comment.

Motion:

Mr. Gibbons made a motion to approve the Special Exception SE08-7/2800443.

Mr. Overbey seconded the motion.

Ms. Kirkman stated she would abstain from voting on the motion; with recent legislation introduced that if passed could have a significant impact on the decision at this meeting. She stated she was uncomfortable making a decision without knowing the outcome of the General Assembly.

Mr. Levy stated he was concerned with the nonconformity but since the applicant did not build the house or cause the nonconformity, he would vote in favor of approval.

Vote:

The motion to approve the Special Exception passed 4-0-1.

Mr. Ackermann – yes

Ms. Kirkman – abstained

Mr. Ingalls – absent

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – absent

UNFINISHED BUSINESS

Mr. Ackermann stated there was an issue with the bylaws, section 7-6, and provided copies the Board for discussion. He stated the version of the bylaws that he sent was not the bylaws that were approved.

Ms. Kirkman stated the Board did agree to bylaws with the statement provided at the beginning of each meeting.

Motion:

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Ms. Kirkman made a motion to affirm the bylaws provided by Mr. Ackermann.

Mr. Gibbons seconded the motion.

Vote:

The motion to affirm the bylaws passed 5-0.

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – absent

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beach – absent

Ms. Kirkman stated where in the bylaws was it listed about disclosure of contacts outside of the BZA meeting.

Mr. Ackermann stated it was 6-1(d).

Mr. Gibbons stated the Zoning Administrator needed to comment on Section 28-62, Variance. He stated there needed be a correction to that section.

Mrs. Musante stated in the additional information provided, under Variances, was what gave authorization for the Variance to come before the BZA. She stated any questions should be directed to Amber Forestier, Environmental Planner, Department of Planning and Zoning.

Mr. Gibbons stated Mrs. Forestier quoted what the state required; the Ordinance did not have the state language included. He stated the Ordinance should be brought into compliance.

Ms. Kirkman stated she did not support the motion because Mrs. Forestier brought before the BZA the Administrative guidelines that were put forth by the Department of Conservation and Recreation (DCR), it was rare for a locality to incorporate administrative guidelines into Ordinances. She stated the application was before the BZA because the applicant had already started construction of a non-permitted used in a Resource Protection Area (RPA).

Mr. Levy stated the question was what Ordinance was the applicant in violation of unless the applicant received the Variance. He stated highlighted was 28-62(f)(1)(c), which stated a new use 28-62(g)(2) General Performance criteria of this article, which was the other section cited in the cover sheet. He stated there did not seem to be a specific in the Ordinance regarding the Variance.

Ms. Kirkman stated the violation in the Gullede case had nothing to do with the Chesapeake Bay Ordinance, the applicant was sited for beginning construction without a permit. She felt the applicant received a Variance for the wrong part of the code.

Mr. Ackermann stated he received a letter from the Circuit Court in response to the letter sent by the BZA. He stated the letter stated the judge could not communicate with parties of the court case and would place a copy of the letter in the Circuit Court file.

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Mr. Levy stated it was not an unusual letter to send when a party to litigation tried to send a letter directly to the court. He stated the BZA may be able to have further dialogue about leaving aside the cases at issue, the County's letter from Ms. Hudson indicated an out right denial, not just pertaining to the cases. He stated the BZA may be able to broaden the request and stated without communicating about any pending cases, the county had indicated it would not provide the BZA, which you had appointed, with counsel for any matters and see if the BZA could get a response.

Motion:

Mr. Overbey made a motion to go forward with that.

Ms. Kirkman seconded the motion.

Vote:

The motion to affirm the bylaws passed 5-0.

Mr. Ackermann – yes
Ms. Kirkman – yes
Mr. Ingalls – absent
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – absent

Mr. Gibbons asked why the BZA was not notified by the Board of Supervisors to stop taping the BZA meetings. He stated out of courtesy the BZA should have been notified. He also stated in the event the Zoning Administrator was not available to attend the meeting, there should be someone to take her place at each meeting.

Mr. Ackermann stated he would like the BZA minutes to reflect that the BZA was not notified concerning discontinuing taping as of July 1, 2008.

Ms. Kirkman asked staff to provide a copy of the Board of Supervisors minutes where it was discussed to stop video recording the BZA meetings.

Ms. Kirkman asked if she could be provided a copy of the audio file.

Mrs. Musante stated that would not be a problem. She stated going forward the Zoning Administrator would not be attending every meeting. She stated the meetings attended by the Zoning Administrator would be by request of the BZA.

Ms. Kirkman stated there are often questions regarding the Zoning Ordinance that the Zoning Administrator should be available to answer.

Mr. Overbey stated he remembered in the past the Zoning Administrator at each meeting.

Ms. Kirkman stated the Zoning Administrator should be present at each meeting that was the reason for a Zoning Administrator report on the agenda. She stated the purpose of a public hearing would be to

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asked questions of staff and the Zoning Administrator.

REPORT BY ZONING ADMINISTRATOR

None

ADOPTION OF MINUTES

- May 27, 2008

Ms. Kirkman suggested deferring adoption of the May minutes specifically because on page 6 of 13, it stated Ms. Kirkman stated she was opposed to the motion and felt for the property owners, she stated her reasons for the opposition. She stated as a member of the BZA some of the most important comments made of how members voted and why they voted, she suggested the recording secretary go back and list the reasons for the motion. She asked the action be deferred until the minutes were corrected.

Mr. Gibbons stated the transcripts provided to the court were minutes and should be documented correctly.

Mr. Overbey asked if transcripts provided to the Court were more than the minutes provided.

Ms. Kirkman stated the minutes were the only transcription of the meetings provided to the Court. She stated there was no literal transcript of the proceedings.

Mrs. Musante stated the minutes would be provided to the court, as well as everything in the BZA package with a cover sheet of what was included.

Mr. Gibbons asked why an audio copy of the meeting was not provided.

Mrs. Musante stated once the minutes were approved, that was what the court would receive.

Mr. Ackermann stated the May minutes would be deferred to allow time for staff to make any corrections.

- June 24, 2008

Ms. Kirkman stated she would abstain from voting because she was not present at the June meeting.

Motion:

Mr. Gibbons made a motion to approve the June minutes.

Mr. Overbey seconded the motion.

Vote:

The motion to approve the June meeting minutes passed 4-0-1.

Mr. Ackermann – yes

Ms. Kirkman – abstained

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Mr. Ingalls – absent
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beach – absent

OTHER BUSINESS.

1. **A08-4/2800483 - H. CLARK LEMING** - Appeal of a Notice of Violation dated June 6, 2008 for the installation of a distribution propane tank without a Conditional Use Permit. The property zoned M-1, Light Industrial, on Assessor's Parcel 13-9, is located at 4022 Jefferson Davis Highway.

Mrs. Musante stated the Board would need to schedule a date for the appeal to be heard.

Ms. Kirkman asked what the statutory guideline were to set a date.

Mr. Ackermann stated 60 days, which would put the appeal into September.

Ms. Kirkman stated the Ordinance states the BZA should fix a reasonable time for the hearing if an application or appeal. She asked if the BZA could delegate the authority to staff to set the appeals.

Mr. Gibbons stated the advertisement stated it was from the Board of Zoning Appeals and that was the reason the Board should set the date for the appeals.

Ms. Kirkman stated staff had been setting the dates for the application and did not see why staff could not schedule dates for appeals.

Mr. Ackermann stated the County Attorney suggested that the BZA affix the dates of the appeals.

Motion:

Ms. Kirkman made a motion to affix reasonable time to hear appeals at the first meeting after 2 months from the date of submission.

Mr. Overbey seconded the motion.

Mr. Levy stated he was not sure that would address the problem of hearing the appeal within 60 days.

Ms. Kirkman withdrew the motion.

Mr. Gibbons asked the Mr. Ackermann to schedule this appeal for the August meeting.

Ms. Kirkman made the motion that the appeal shall be heard at the next meeting for which there was sufficient time to advertise.

Mr. Overbey seconded the motion.

Vote:

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The motion to approve the appeal shall be heard at the next meeting for which there was sufficient time to advertise passed 5-0.

Mr. Ackermann – yes
Ms. Kirkman – yes
Mr. Ingalls – absent
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – absent

Mr. Overbey stated this appeal would be heard at the August meeting.

Mr. Gibbons asked Mr. Levy if the time limits were in the State Code. He would like to know where in the State Code it discussed the time limits.

Ms. Kirkman stated in the language stated, the decision needed to be made within the 60 days of hearing the case, not within filing of the appeal. She stated so far the BZA had not been challenged.

Mr. Overbey stated on most occasions the delays on appeals were on the part of the appellant, not on the part of the BZA.

Mr. Levy stated the Board could look at State Code and see if that was the difference between applicants and appellants.

Ms. Kirkman asked if staff saw any implementation problems with this.

Mrs. Musante stated she did not any problems and stated it would be taken to the County Attorney for review.

ADJOURNMENT

Motion:

Mr. Overbey made a motion to adjourn.

Mr. Gibbons seconded the motion.

The meeting adjourned at 8:41 pm.

Ernest Ackermann, Chairman
Board of Zoning Appeals