



BOARD OF ADJUSTMENT MINUTES

OCTOBER 26, 2023, 6:30PM, SFD COMMUNITY CENTER

The meeting was called to order by Chairman Brady at 6:33pm. The following persons were present:

Board of Adjustment

James Brady
Ronald Willis
Andrew Broom
Anthony Donato
Taylor Robertson

Staff

Brad Rentz, Planning Manager
Sarah Tibbetts, Town Clerk
Bob Hornik, Town Attorney

CONSENT AGENDA

Willis made a motion to approve the consent agenda, the motion was seconded by Broom and carried unanimously. Willis also made a motion to amend the agenda to reverse agenda items 4 & 5, this amendment was seconded by Robertson and carried unanimously.

PUBLIC HEARING/ACTION RE: A-02-2023 (Appeal Case for 6606 Alley Rd. re: Appeal to the Administrator's determination that the subjected property is located in a Watershed Critical Area.)

Brady asked anyone in attendance who wished to testify to stand and be sworn in for either of the cases before the Board tonight.

Tibbetts swore in all wishing to offer testimony by stating to them simultaneously the following: "Do you solemnly swear (or affirm) that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?" To which they all verbally said "yes" or "I do"

Rentz presented the case to the Board, reviewed the staff report, and briefly explained each attachment within, as well as giving the timeline of the case which began in May 2023 as a citizen complaint to the Planning Department regarding an alleged business being operated from a residential lot. Rentz stated that the Planning Department made the determination that, because the proposed use of a "Landscape and Horticultural Services" business on the property was not allowed due to the Watershed Critical Area (WCA), there was no need to apply for a Special Use Permit (SUP). The applicant is appealing the administrative decision that the property is within the WCA and the SUP could not be allowed as a result.

Hornik asked Rentz a series of questions regarding the subject property. Hornik asked how the standards set forth in the determination was made that the property was being used for landscaping/horticultural services, which Rentz replied he used the town's ordinance, and found that was closest use applied from the Permitted Use Table in the UDO given the applicant's business use. Hornik then asked how Rentz came to his understanding of what the applicant's business use was. Rentz replied that he spoke with the original complainant about what was happening on the property as well as speaking with the applicant directly himself about what the use is intended to be. Hornik asked if Rentz had been out to the property himself, to which Rentz replied he never saw the active use, but he had seen the property himself and seen the improvements made on the



property. Hornik asked Rentz to describe the improvements he saw on the property, which Rentz stated grading, land cleared, gravel put down, and a carport structure was put up which he felt the improvement were accessory to the business use. Hornik asked where Rentz obtained the map that showed the WCA that Rentz put in the Board's packet. Rentz stated the map is from Guilford County's GIS website. Hornik asked what prompted Rentz to look at this map to determine if the property was in the WCA, Rentz replied after speaking with the Chair of the Board it was determined the property is within the WCA.

Brady asked anyone wishing to offer evidence to speak.

The applicant's attorney, Thomas Roupas, 119 N Greene Street, Greensboro, had questions for Rentz and wished to offer testimony. Roupas stated that he supplemented his applicant's appeal to make it clear he felt a SUP was not necessary. He claimed part of the evidence is that his client should not have been cited and that if it were determined that a SUP was needed, that it be granted. Roupas asked Rentz when he first received the complaint what was stated. Rentz replied the complaint was regarding water runoff coming from the property which snowballed into the larger question of what was happening on the property and if it were a business then from there the complaint was regarding a business being operated from the property. Roupas asked Rentz if anyone stated or saw a business being operated from the subject property, which Rentz replied that it is mostly being used as a staging area for vehicles to park in the morning. Roupas stated that the Permitted Use Table in the UDO states "Landscape and horticultural services" not "Landscape or horticultural services." Roupas stated he felt very clearly that the "and" or "or" made a huge difference legally. With no further questions from Roupas, the applicant spoke next.

Emilio Cruz (applicant), 4703 Yorkwood Drive, Greensboro, spoke. He stated he owns a landscaping business, not a horticultural business. Cruz said his employees come in the morning, get into work trucks, and come back in the afternoon. He stated he doesn't grow anything on the property, he bought the property to park his equipment there for his small business. Cruz submitted Exhibit 1 to the Board which was a photo of his property. Brady asked Cruz what the item shown in the photo under the carport, Cruz stated it was a small bobcat excavator. Brady pointed out mowers parked in the photo as well. Cruz stated he takes all his equipment to the gas station to be fueled or to a mechanic shop for work to be done. Cruz also stated he stores fertilizer in the barn for his business when asked by Brady what chemicals he used for his business. Broom confirmed with Rentz the reason the watershed tiers were put into place was in part to prevent chemicals from getting into the water. He asked Cruz what equipment he used or stored for his business besides what he had previously stated. Cruz stated that he has 4 trucks, 2 trailers, 1 excavator, and 1 bobcat. Broom asked Cruz if he was aware he needed a permit to build his shed, to which Cruz stated yes and that he had his friends help him build it. Brady asked Rentz to display the watershed areas on the screen, and then he asked Cruz if he agreed or disputed that the area shown in red on the map was his property. Cruz replied that it was his property. Brady then asked him if he agreed or disagreed that his property is shown in the critical watershed area, to which Cruz stated he did not know. Hornik asked Cruz how many employees came to the property each day, Cruz stated he has 3 employees and 1 part-time employee. Cruz stated the employees park their personal vehicles, take their equipment and head out for the day. Willis asked Cruz, besides the previously stated fertilizer what other chemicals were stored; Cruz stated only fertilizer is stored on the property.



Roupas stated that there is no violation in question. Roupas felt this was only a parking violation, not a violation of town ordinance due to the fact the UDO said "and" instead of "or" in the Permitted Use Table and presented the Board with a case law he felt stated this argument. Roupas also stated no evidence had been given that his client was conducting business on the property.

Hornik replied to Roupas' arguments and stated he felt per the UDO, Cruz is running a Home Occupation from the property and read the UDO definition of same. He stated that since landscaping is not in the Permitted Use Table at all, if the Board were to go to the extreme then his client would not be able to operate his business at all. Hornik stated he felt that staff made the right decision and that it was unfortunate that it wasn't caught earlier but that staff's interpretation is correct, and a court would likely agree. Hornik stated again that Rentz's interpretation and decision should be upheld by the Board.

Roupas replied to Hornik's statements regarding Home Occupation and stated that Cruz was not cited for that, and he does not feel a Superior Court judge would agree with the Board's decision if turned down and thanked the Board for their time.

Brady asked if anyone else would like to offer testimony.

Cory Barnett approached the Board and gave them each a packet, which Hornik declared as Barnett Exhibit 1. Barnett questioned if Cruz even lived at the property. Barnett showed the Board where his home was in relation to the subject property, stating that since Cruz had begun grading work on the property his back patio now floods due to gravel in Cruz's yard. Barnett stated that trucks come in and out of Cruz's property which has calmed down a little since the initial complaint. Barnett stated the trucks roll in in the mornings, the employees are loud, they crank up equipment early in the mornings and come back in the afternoon and do it again. Barnett stated that this use is not compatible with the area around it. Rupas spoke out and stated that he for the record, he objects to all of Barnett's testimony. Barnett stated that he does not think that Cruz lives on the property, different people come to the house, and that the house is just used for his business therefore he is conducting business on the property.

Brady closed the evidentiary period and stated the Board would deliberate openly and asked for no interruptions.

Broom stated that it would appear there is a business being operated out of a residential area, Cruz stated that his stepson lives in the house on the property.

Brady stated that the Board members are not operating as lawyers, they are simply there to follow the town's UDO. Brady stated that Cruz testified that he stores fertilizer on the property, Barnetts photo evidence shows the property is not consistent with the area, the property has run-off issues, and it sits within a WCA and therefore he concludes that Cruz's appeal should be denied.

Willis motioned that Appeal A-02-2023 be denied, the Board affirmed the town's decision per the evidence that had been presented. The motion was seconded by Robertson and carried unanimously.

**Donato arrived after the hearing began and therefore sat as a bystander for the duration of this case and was fully present for the next hearing (V-02-2023.)*



PUBLIC HEARING/ACTION RE: V-02-2023 (Variance request for 7508 & 7602 Addison Dr. from the minimum lot size for Business (BN) zoning district.)

All those wishing to speak or offer testimony were previously sworn in at the beginning of the meeting.

Rentz presented first, explaining the applicant's request for a variance from the UDO article 4, table 4.F.3 for Non-Residential District Dimensional Requirements. The properties are located at 7508 & 7602 Addison Drive, with parcel numbers of 147087 & 147086. The parcels are currently zoned "Single-Family Residential" (RS-30) and are within the US-220 Scenic Corridor Area Overlay. They amount to a total of 1.22 acres, or 53,143ft. Rentz also reminded everyone that for a variance request to be granted it must require a concurring vote of four-fifths of the Board.

Hornik stated that per NCGS 160D-705(d) the Board must use the four findings to determine whether to grant or deny the variance. Hornik stated the Board needs to focus on the findings and the applicant's application for the hearing and decision.

Matt Cross (applicant) testified first. Cross stated that he and his wife purchased the two properties in August 2023 from a NCDOT auction. He is a full-time firefighter in Greensboro, and for his part-time employment he runs a car detailing/vehicle upfitting business that adds graphics to vehicles. Cross stated when he first looked at the properties, they did meet the UDO requirements in regards to lot size. Cross also stated for the car decals to work, they need to be done inside in a climate-controlled area which is why he hoped to purchase the land and build a building on the property to run his business. When Cross purchased the properties, he was under the assumption that it was over 60,000sqft but it wasn't until he got the deed from NCDOT that the lot size was in fact much smaller. Cross stated he has been working with Rentz for 4-5 months since he first found the properties and he contacted him first thing when he found out the lots were smaller than he thought, which Rentz corroborated. The properties were listed for sale as 60,000 plus square-feet and it was listed on GIS as that as well.

Brady asked if anyone else wished to offer testimony.

Dave Hanson, 5008 Lorrie Drive, stated he didn't feel investing in the property was a good idea.

Keith Highfill, spoke on behalf of his mother who lives in the neighborhood and asked about HOA restrictions. Hornik replied that the town has no authority to enforce HOA restrictions or covenants.

Renee Collins, Myers Fork Road, asked questions about the rezoning process.

Joe Biggum, Lorrie Drive, stated concerns about a business being in his neighborhood.

Renee Collins, Myers Fork Road, asked about how the property owner would enter the property since there is a steep embankment on the US-220 side, the applicant stated he would enter from Addison Drive.

Brady closed the evidentiary period and stated the Board would deliberate openly and asked for no interruptions.

Broom stated he feels the hardship was not caused by the owner and feels it meets the requirements for a variance.



Donato asked the applicant questions pertaining to the lot sizes when NCDOT auctioned off the properties. Cross said the dimensions were listed on the sale as well as GIS and he purchased them with the understanding they were 60,000 feet or more.

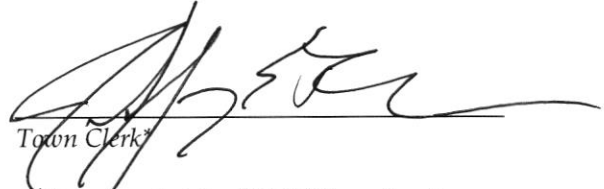
Broom motioned to approve the variance request V-02-2023, carrying out the strict letter of the zoning based off affirmative agreement on all 4 standard findings, and the granting of the variance being conditional to the rezoning of the property to the BN District by the Planning Board recommendation, and the Town Council's decision. The motion was seconded by Willis and carried unanimously.

OTHER BUSINESS

None.

Upon motion by Broom, seconded by Robertson and carried unanimously, the meeting was adjourned at 8:38pm.


James Brady, Chair


Town Clerk

** Not present at the 10/26/24 meeting to approve. Attesting approve of minutes at this meeting.*