

BOARD OF ZONING APPEALS
January 28, 2009

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD ON WEDNESDAY, JANUARY 28, 2009 AT 7:30 P.M.

Those present were: Raymond Daughtry, Chairman
 Joel Snow, Vice Chairman
 Richard Herring, Member
 Bob Runkle, Member
 Bart Svoboda, Zoning Administrator
 Stephanie Golon, County Planner
 Shawn Leake, Zoning Officer
 Marsha Alley, Secretary

The Chairman called the meeting to order stating that there would be two requests for consideration tonight.

ELECTION OF OFFICERS

Mr. Runkle nominated Mr. Herring for Chairman

Mr. Herring graciously declined the nomination and nominated Mr. Snow for Chairman.

Mr. Runkle seconded the nomination.

A consensus vote was taken and the nomination carried by unanimous vote.

Mr. Snow nominated Mr. Runkle for Vice-Chairman.

Mr. Herring seconded the nomination.

A consensus vote was taken and the nomination carried by unanimous vote.

Mr. Daughtry nominated Marsha Alley to continue to serve as the Secretary.

Mr. Runkle seconded the nomination.

A consensus vote was taken and the nomination carried by unanimous vote.

Mr. Snow took his seat as Chairman.

PUBLIC HEARING

New Vision Homes, Inc. requests a one (1) foot front yard variance from Article 4 of the Greene County Zoning Ordinance which requires a 75 ft. front yard setback. This request is on property that is identified on the County Tax Maps as 61C-(A)-14 located on Hancock Drive containing 2.15 acres and is zoned A-1, Agriculture.

(VAR#08-004)

Mr. Snow asked Mr. Svoboda for a report.

Mr. Svoboda read the request and gave a summary of the application stating that the applicant is seeking a variance to reduce the front setback (at 697 Hancock Drive) from 50 feet to 49 feet (1.0' variance) for a single family dwelling on this parcel. He added that a sketch has been provided showing the location of the existing home, noting that the lot is served by private well and septic.

Mr. Snow swore in speakers and opened the public hearing.

Scott Hiller, of New Vision Homes, addressed the Board. He described the property and the circumstances of finding the encroachment upon surveying the site. He explained that the road is not in the center of the right-of-way when he measured after finding the corner pins of the lot. He assured the Board that he would have surveys from this point forward on future projects.

There being no further public comment, the public hearing was closed.

Mr. Daughtry stated that due to the topography of the lot and the walk-out basement, the house is placed more forward than some others in the subdivision but that he could understand the reasons for the placement. He added that he believed Mr. Hiller has learned to be more accurate in the future.

Mr. Runkle asked what difference approval or denial would make.

Mr. Hiller answered that the error was found after the house was under roof and that he discussed options with Mr. Svoboda. He explained that trying to comply by altering the structure would be detrimental to the house and the business.

There was discussion about the placement of the house, the topography of the lot, and the backyard.

Mr. Herring stated that it is unfortunate but that something will have to be done.

Mr. Snow stated that there is a portion of culpability on the county as the footers were approved upon inspection in this case. He reminded the Board of his first case which was similar to this one. He reminded the Board that it is a judicial board and must be open to some situations. He stated that these types of situations are frowned upon by the county and that builders, developers, etc. should adhere to the regulations.

Mr. Runkle made a motion to approve variance VAR#08-004.

There was discussion regarding conditions for the motion.

Mr. Runkle amended his motion to approve variance VAR#08-004 with the following conditions:

1. The front setback is modified along the front (along Hancock Drive) property line only.
2. That any change to this proposal shall be modified by the BZA only.

Mr. Daughtry seconded the motion.

The vote was taken.

AYE

Mr. Herring
Mr. Runkle
Mr. Daughtry
Mr. Snow

NAY

The motion to approve variance VAR#08-004 with conditions carried by a 4-0 vote.

Kenneth Collier, Sr. requests an appeal of the Zoning Administrator's determination (ZC#08-025) regarding the expansion of a non-conforming structure located on Carpenters Mill Road and identified on County Tax Maps as #66-(8)-A. (BZA App#08-001)

Mr. Snow asked Mr. Svoboda for a report.

Mr. Svoboda read the request and gave a summary of the application. He stated that the applicant is appealing the determination of the Zoning Administrator regarding the expansion of a non-conforming structure. He offered background information regarding the issue as follows:

The Greene County Zoning Ordinance became effective on March 1, 1975, at which time the non-conforming use, an auto body & repair shop, was operational for TMP 66-8-A. The use was recorded and identified as a nonconforming use (NCU#002) in 2000. The County retains a building permit (BP#031) that was issued on February 27, 1974, for a 1,200 square foot building, which was specified for the non-conforming use, an auto body & repair shop.

January 2007, the above referenced non-conforming structure was identified as being destroyed by a fire. On December 18, 2007, a building permit (BP#3828-2007) was issued for a temporary trailer to be placed until a site plan could be

submitted and approved by the Zoning Administrator.

Article 15-7 of the Greene County Zoning Ordinance establishes that any structure or activity existing prior to March 2, 1974 may be restored or replaced. Under the Greene County Zoning Ordinance Article 15-5-2, the structure may be extended or enlarged up to fifty (50) percent of the area occupied by such use or structure at the time the ordinance became effective. The original non-conforming structure that was destroyed in the January 2007 fire was 1,200 square feet and may be restored to 1,800 square feet under Article 15-5-2 of the Greene County Zoning Ordinance. On July 16, 2008, a site plan was approved that indicated the total square footage of the new structure to be sized 36'x50' or 1,800 square feet which is inline with Article 15-5-2 of the Greene County Zoning Ordinance.

On July 31, 2008, a building permit was issued for a 36'x50' or 1,800 square foot structure to restore the non-conforming structure that was destroyed in the January 2007 fire. On October 31, 2008, an application (BP#4239-2008) for a building permit was submitted for an additional 36'x50' or 1,800 square foot structure. This structure exceeds the non-conforming expansion allowed under Article 15-5-2 of the Greene County Zoning Ordinance. Therefore the zoning permit application received October 31, 2008 (BP#4239-2008) is denied for the additional 36'x50' or 1,800 square foot structure.

On November 7, 2008, the zoning permit (BP#4239-2008) denial was noted in the AS400 system.

On November 7, 2008 the Official Determination was sent to the applicant.

On December 4, 2008 the Appeal (BZA App#08-001) was filed by the applicant.

The appeal has been scheduled to be heard by the Board of Zoning Appeals for January 28, 2009 at 7:30 pm.

Mr. Svoboda added that the appellant is stating that "This Notice of Appeal is based, including but is not limited to actions taken by Mr. Svoboda that are evidenced and reflect this official Determination to have been an administrative action to have been preordained, and arbitrary and capricious." which is the reason for the appeal, noting that the determination under appeal pertains to Article 15-2 and 15-7 of the Greene County Zoning Ordinance. He concluded that as provided in the summary under "Background" and as stated in the Letter of Determination dated November 7, 2008, the proposed zoning permit application does not comply with Article 15-2 and 15-7 of the Greene County Zoning Ordinance and cannot be issued.

Mr. Snow swore in speakers and opened the public hearing.

Kenneth Collier, Sr. addressed the Board offering his thanks for allowing him to appear tonight. He asked the Board for a continuance for several reasons:

1. He stated that he had not received all of the information from the county that he had requested.
2. What he had received was too much too digest in the short time that he has had it
3. The County Administrator, Barry Clark, has ordered his agent, Joe Miller, not to come back in the county buildings so therefore, Mr. Miller has not been able to do his job for Mr. Collier on some research and handing out some papers.

He added that if the Board chose not to grant it, then he guessed they would end up across the road at the courthouse.

Mr. Collier presented two sets of papers, the first set being submitted to the Chairman and the second set being submitted to Mr. Svoboda. He advised them to read the papers carefully, adding that they could answer by letter as he had to leave. At that point, Mr. Collier thanked the Board and exited the hearing.

There being no further public comment, the public hearing was closed.

There was discussion by the Board as to hearing the request with the applicant not being present. It was decided that Mr. Collier has made application, appeared before the Board, and presented information to the Board; therefore, he has been given the opportunity to be heard and the Board may continue this hearing.

Mr. Snow stated that the submitted papers include the amended complaint, legal service to various parties, and the 11/13/08-11/19/08, #0746, edition of The Hook.

The Board reviewed the items presented by the applicant. There was discussion regarding the submission and its relevance to this request.

Mr. Svoboda stated that he could answer some questions but could not speak for the applicant. He added that Mr. Collier's agent, Mr. Miller, has not been banned from the building by the County Administrator.

Mr. Runkle asked if it would be reasonable to have the documents reviewed by the county attorney to determine their pertinence to this case.

Mr. Daughtry stated that the applicant appears to be using scare tactics.

Mr. Runkle agreed as the applicant had threatened the Board and he was plainly trying to be unpleasant.

Mr. Svoboda informed the Board that the same information packet received by the Board

was delivered to the applicant as well. He added that tonight's submittal by the applicant is new to the Zoning Department as well.

Mr. Snow asked several questions for discussion including, what is the relevance of this new information to the case, should the county attorney review the information, and should the Board act tonight based on the information presented by the applicant and the zoning ordinance.

Mr. Runkle asked if it would be a good idea to continue the request for thirty (30) days to allow the county attorney to review the information.

Mr. Daughtry stated that, in his opinion, this submission does not have any relevance to the case at hand.

Mr. Snow agreed. He added that if the idea is to set a precedent, the Board makes decisions based on a case to case basis.

Mr. Svoboda stated that there is a motion for continuance further in the packet. He reviewed the motion for the Board.

There was discussion regarding the motion for continuance and possible deadlines and action by the Board.

Mr. Svoboda reviewed some pertinent dates regarding the use and the request.

Mr. Snow stated that there was a lot of information to process.

Mr. Herring asked if there were other items for next month and if deferring to next month would allow the Zoning Department enough time to re-advertise if needed.

Mr. Svoboda stated that there are no other requests for next month and explained that if the deferral is made date specific, no advertisements would be required, adding that the applicant has stated on record that he could be notified by letter. Mr. Svoboda added that interested parties are present and would be considered notified by the decision.

Mr. Herring made a motion to defer the appeal request BZA App#08-001 until the February 25, 2009 meeting.

Mr. Snow asked if the information would be forwarded to the county attorney for review.

Mr. Svoboda stated that it would be sent to the county attorney for review.

Mr. Runkle seconded the motion.

The vote was taken.

AYE

Mr. Herring
Mr. Runkle
Mr. Daughtry
Mr. Snow

NAY

The motion to defer the appeal request BZA App#08-001 carried by a 4-0 vote.

Mr. Daughtry pointed out a possible typographical error on page 57, in Article 15-2-1.1 of the Greene County Zoning Ordinance, referring to Section 21-4-1. He added that he could not find that referenced section.

Mr. Svoboda stated that he would research that section and find out when the ordinance was revised.

There was discussion regarding Mr. Collier's application in regard to the history of the property, the non-conformity of the business, the background information of the appeal, the abandonment of non-conforming options, the possibility of expansion, the possible rezoning options, and the future land use map designation.

OLD/NEW BUSINESS

Mr. Herring asked if any progress had been made regarding the moving sign request.

Mr. Svoboda stated that a response had been filed to their pleading but added that he had not heard anything since then.

Mr. Svoboda stated that next month's agenda would only include tonight's deferral. He added that it was previously mentioned that the bylaws should be reviewed and offered to have them available to the Board for discussion next month.

Mr. Snow asked if revisions had been made to the Private Road Standards as discussed in the past.

Mr. Svoboda stated that staff did not get to the Private Road Standards to date as they have been working on revisions to the Business Districts. He added that it is still on the to-do list.

Mr. Svoboda reminded the Board of the Comprehensive Plan work session meeting scheduled for tomorrow night, January 29, 2009.

MINUTES

Mr. Runkle made a motion to approve the minutes of August 27, 2008 as submitted.

Mr. Herring seconded the motion.

The minutes of August 27, 2008 were approved by a 4-0 vote.

OTHER MATTERS

There were no other matters for discussion.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Respectfully submitted,

Marsha Alley

Marsha Alley, Secretary

Board of Zoning Appeals, Chairman

Date