

**BOARD OF ZONING APPEALS**  
**December 17, 2009**

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD ON THURSDAY, DECEMBER 17, 2009 AT 7:30 P.M.

Those present were:           Joel Snow, Chairman  
                                      Bob Runkle, Vice Chairman  
                                      Frank Morris, Member  
                                      Richard Herring, Member  
                                      Bart Svoboda, Zoning Administrator  
                                      Shawn Leake, Zoning Officer  
                                      Marsha Alley, Secretary

The Chairman called the meeting to order and asked Mr. Svoboda for a report.

Mr. Svoboda stated that he would be willing to do that but informed the Board that the appellant was not present at this time.

Mr. Snow acknowledged that information and asked Mr. Svoboda if it would be appropriate to wait five minutes for the appellant to arrive.

Mr. Svoboda stated that waiting would be his recommendation.

There was a five minute wait for the appellant to arrive.

**PUBLIC HEARING**

**Tri Properties, LLC requests an appeal of the Zoning Administrator's determination (VIO#09-048) in regard to sign violations located on Seminole Trail and identified on County Tax Maps as #60C-(A)-36. (BZA App#09-002)**

The Chairman asked for a report from Mr. Svoboda.

Mr. Svoboda gave a report and presentation regarding the request. He reviewed history of the request:

February 2009	A sign refacing zoning application was applied for on February 9, 2009 to reface the existing signage. The Zoning Administrator had no proof indicating the signage was in existence prior to March 1, 1975; therefore, the existing sign located on Tax Map Parcel 60C-((A))-36 is not considered a legally non-conforming sign under the Greene County Zoning Ordinance, Article 15. Therefore, the refacing application Sign#09-001 was denied.
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April 2009	A Notice of Official Determination, dated April 14, 2009, explained that the existing signage located on Tax Map Parcel
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Parcel 60C-((A))-36 was **NOT** considered legally non-conforming signage under the Greene County Zoning Ordinance, and therefore the zoning permit for sign refacing was denied. The applicant did not exercise his right to appeal the official determination, and therefore the official determination became final and binding. The decision is a “thing decided” and thus is not subject to court challenge *Lilly v. Caroline County, 259 Va. 291 (2000)*; *Dick Kelly Enterprises, Virginia Partnership, No. 11 v City of Norfolk, 243 Va. 373 (1992)*; *Gwinn v. Alward, 235 Va. 616 (1988)*; *Board of Supervisors of Fairfax County v. Martin, 23 Va. Cir 37 (1990)*. After research, it was determined in April that the permit could not be granted due to the lack of permitting for the existing sign. The applicant did not appeal that decision.

- May 2009                      On May 8, 2009, the Zoning Officer performed a site visit and found that the existing signage had been refaced without a valid zoning permit for the existing signage or for the refacing of the existing signage. Mr. Svoboda spoke with a witness who could not adequately describe the supposed signs. It was found that the signs were refaced without a permit after the permit was not granted in February 2009. A violation was noted. This violation is the issue being appealed tonight.
- September 2009              On September 15, 2009, the first Notice of Official Determination of Violation was sent to Tri-Properties. The applicant was given 30 days to exercise the right to appeal.
- October 2009                      On October 15, 2009, Mr. Doug Watson of Tri-Properties requested a 30 day extension on the right to appeal the Official Determination of Violation. A second Notice of Official Determination of Violation was sent on October 21, 2009 to reflect the requested extension. The extension was granted in order for the property owners to search their own records and research previous owner records.
- November 2009                  The applicant submitted an application to appeal on November 11, 2009.

Mr. Svoboda explained that “a thing decided” is when a determination is made and not appealed by the aggrieved party. The February application was denied and was not appealed, so is therefore, a thing decided. He added that the placement of the freestanding, wall, canopy, and temporary signs upon this parcel constitutes a violation of

of Article 16-1-1, Article 14-2-8.3, and Article 14-3 of the zoning ordinance.

Mr. Svoboda reviewed the presentation with the Board demonstrating the signs on the property.

Mr. Herring asked if any of the signs had valid permits.

Mr. Svoboda stated that there are no valid sign permits issued for the site. As the Zoning Administrator, he asked that his determination be upheld due to the evidence presented.

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

Julius Morris, applicant, addressed the Board on behalf of Douglas Watson who could not attend tonight. He distributed a summary of events related to the property. He stated that the sign existed prior to March 1, 1975. He explained that the sign company and the Zoning Administrator spoke in January and the company was told that there was no issue with the sign and that he did not know what changed from January to April. He explained that the original owner is deceased so they asked people who lived in the area during that timeframe who could vouch that the sign was installed in the 60's. He added that they were granted an extension and recently found a family member who recalls the sign being in place in 1970 when he graduated from high school, an affidavit was provided. He noted that he had contacted Randolph Shifflett in the past week of Midway Market, where there is an identical sign in structure as the one on Route 29. Mr. J. Morris stated that Mr. Shifflett told him that he opened his business in 1973 and that the sign was installed at that time. He added that Mr. Shifflett would be willing to provide any information if needed. He stated that the question is whether or not the sign is legal. He added that it would be a legal sign as it was in place prior to March 1, 1975.

Frankie Daniel addressed the Board. He stated that he has been a lifelong resident and recalls the sign being on site since at least 1969 as he could remember.

Mickey Cox addressed the Board. He stated that he had purchased tires at that location approximately 2 years after 1963 and had to change them in the lot as the owner would not put the tires on for him. He stated that this memory of having to change tires in that lot assured him that a sign was present prior to 1975.

Larry Snow addressed the Board. He stated that the store has changed ownership as many as three times since 1975. He asked if he understood correctly that because the county cannot find an original sign permit, the new owners will have to apply for a sign permit. He used an analogy of building an addition to an existing home that they purchased and a permit cannot be found for that home, will the new owners have to apply for a permit for the original home before approving an addition to the existing home. He

home. He stated that the new owners would not know if the previous owners had applied for a sign permit or not. He added that if the previous owners did not apply and the sign was installed anyway, then it would appear that the county was falling down on the job at that time. He added that now the new owners are being held responsible for someone else's misconduct.

Glen Richards addressed the Board. He stated that he built the station in 1965 and that he dug the fuel tank holes and the sign footers as well.

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

Mr. Runkle asked if the canopy was part of the original building.

Mr. Richards stated that it was not.

Mr. Runkle asked when the canopy was built.

Mr. Svoboda answered that the canopy was on site in 1985 there was a variance was granted to Virginia Oil Company for setback on the canopy although the sketches do not indicate the sign location at that time.

Mr. Runkle asked if there were any records reflecting how long the sign has been on the wall of the building.

Larry Snow stated that he believed that the wall sign went up when Virginia Oil took ownership in the 80's. He added that he would not have any knowledge of whether they got permits or not.

There was discussion as to what part of the canopy is the sign. It was determined that the canopy and wall signs would be in accordance with the Zoning Ordinance after a sign permit is applied for and approved.

There was discussion regarding "a thing decided" and the appeals language and the process for appeals.

Mr. Svoboda clarified for the Board which determination was being appealed. He explained that tonight's appeal is in regard to the determination that the signs in question do not have permits. He added that if the sign is legally non-conforming then the structure would not need a permit and could be refaced with a sign refacing permit.

Mr. J. Morris asked if the sign company applied for a refacing permit.

Mr. Svoboda stated that the company did apply and the file is closed due to denial and

has been filed.

There was discussion regarding the non-conformity of the sign. There was another review of the background and dates regarding the sign applications and determinations.

Mr. Herring asked if a sign was placed without a permit would it have to be removed.

Mr. Svoboda stated that the sign would have to become conforming to the ordinance.

There was a discussion regarding the submitted affidavits and the Koontz affidavit was read aloud by the Chairman.

There was discussion as to finding information from the sign registration tag. Mr. J. Morris explained that Mr. Watson spoke with that sign company and that there was no information available.

Larry Snow asked if this case would go to court no matter the outcome.

Mr. Svoboda stated that it would not be necessary but could be appealed by either party.

Larry Snow asked if the county was in such a shape that they would drag someone to court for \$50 + \$2 per square foot after owning the property for such a short time.

There was discussion regarding a motion and its possible conditions. There was a lengthy review of the appeals, letters, and submitted documents.

Mr. Herring stated that he knew that Mr. Svoboda is trying to follow the law but that he could not believe that a judge or a reasonable person would require a sign that has been up that long to come down. He added that one of the gentlemen present was his uncle and that he believed everyone. He added that it was his belief that there was a sign of some nature there prior to the Zoning Ordinance. He added that he could not believe that in 1985 during the variance process that this was not found at that time.

Mr. Herring made a motion to overturn the Zoning Administrator's decision for the following reason:

- I believe there was a sign of some nature there prior to 1975.

Mr. Runkle stated that there could be a problem as there are many beliefs as to "the" sign, "a" sign, or the original sign. There was discussion regarding the motion, the specifics of "a sign" versus "the sign", and the concept of "a thing decided".

Mr. J. Morris explained that they have done everything possible to research the dates for the sign.

Mr. Runkle seconded the motion.

Mr. Svoboda asked that the motion be restated for the record.

Mr. Herring made a motion to overturn the Zoning Administrator's decision regarding Article 16-1-1, Article 14-2-8.3, and Article 14-3 of the Greene County Zoning Ordinance for the following reason:

- I believe we have evidence that a sign was in existence prior to 1975.

Mr. J. Snow stated that it would be wise to note the Letter of Determination of Violation dates of September 15, 2009 and October 21, 2009.

Mr. Herring agreed.

The vote was taken.

AYE

Mr. Runkle  
Mr. Herring  
Mr. Snow

NAY

Mr. F. Morris

The motion to overturn the Zoning Administrator's decision (BZA App#09-002) carried by a 3-1 vote.

## **OLD/NEW BUSINESS**

Mr. Svoboda stated that there are no pending cases at this time but reminded the Board that an election of officers would need to take place at the first meeting of the year. It was determined that a meeting would be held in February if a meeting is not necessary in January.

Mr. Herring asked for an update regarding Cedar Grove church.

Mr. Svoboda stated that a special use permit has been applied for and the church is working with an adjoining property owner regarding a land swap possibility.

There was a brief update regarding the recent revision to the sign ordinance, specifically electronic message center.

## **MINUTES**

The minutes of the July 22, 2009 meeting were approved as submitted by a 5-0 vote.

## **OTHER MATTERS**

Mr. Herring asked Mr. Svoboda to rephrase for the Board what was done tonight and what the next step would be.

Mr. Svoboda explained that he would not know what the next step would be because, as the Zoning Administrator, he cannot appeal but added that the Board of Supervisors could appeal the Board of Zoning Appeals decision. He stated that the appeal guidelines are outlined in the Code of Virginia. He added that ultimately tonight's decision allows the installation of signs without a permit.

## **ADJOURNMENT**

There being no further business, the meeting was adjourned.

Respectfully submitted,

*Marsha Alley*

Marsha Alley, Secretary

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Board of Zoning Appeals, Chairman

Date