

ALBEMARLE COUNTY BOARD OF ZONING APPEALS

COUNTY OFFICE BUILDING

401 MCINTIRE ROAD – LANE AUDITORIUM

TUESDAY, OCTOBER 19, 2010 – 2:00 P.M.

Board Members: David Bass, Chairman
Lloyd (L.F.) Wood, Vice-Chairman
Randy Rinehart, Secretary, *absent*
David Bowerman
M. Clifton McClure

Staff Members: Amelia McCulley
J.T. Newberry

County Attorney: Andy Herrick, Assistant County Attorney

1. Call to Order

The meeting was called to order at 2:00 p.m. by Board Chairman David Bass.

2. Establish a Quorum

A quorum was established, and the meeting proceeded.

3. Matters not on the Agenda

None were presented, and the meeting proceeded.

4. Matters Deferred from Previous Hearings

None were presented, and the meeting proceeded.

5. Special use Permit Hearing

SP201000024 Liberty Hall/Ryan Homes Offsite Sign

Mr. Bass: We only have one item on the agenda, and for the benefit of all members here, if anyone is aggrieved by a decision of this board, you have the right to appeal it to the circuit court within 30 days. So if we could start with the staff report and then we'll include [Mr. Herrick].

Mr. Wood: Mr. Chairman, before we get started too far, I'd like to recognize a young lady in the audience. I had a discussion with her prior to the meeting and she's at the University of Virginia studying government and is here to observe. I thought she might want to come up and say what they're doing and introduce herself.

Mr. Bass: Would you like to do that now, ma'am.

Ms. Roth: Hi, I'm Hallem Roth. I went to U.Va. undergrad but I'm also at U.Va.'s Law School now. I'm taking local government and one of our requirements and suggestions was that we come actually see some local government meetings. And I've also been an Albemarle County resident for about 10 years, and I had never been to a zoning meeting of any kind so I think it's high time I started. Thank you for letting me observe.

Mr. Wood: Well thank you for coming, and I hope you'll come back.

Ms. McCulley: Thank you, Mr. Chairman. As the Board may recall at their meeting on October 5th you voted to approve the special use permit 2010-00024 for Ryan Homes as applicant for an offsite sign that advertises Liberty Hall Subdivision. On October 11th we received a letter from John Grady, representing Ryan Homes with his company – Central Virginia Permitting, asking that that application be withdrawn. And I captured some of his words and I think... we gave you a copy of the letter, but basically they're asking to withdraw the application and further agreeing that the BZA can rescind and void the approval for the application that was given approval on October 5th, 2010. Mr. Herrick is here and can lead us in some of the appropriate motion or motions that would be necessary in the event the Board would accept the withdrawal request.

Mr. Herrick: Thank you, Mr. Chair. Just for the record again, we represent or our office represents the Board of Supervisors and the Zoning Administrator, but procedurally I've provided – or our office has provided – some suggested language if in fact the Board chooses to rescind the prior approval of the special use permit, then there would also be a separate motion to accept the withdrawal of the application if in fact that's what the Board is inclined to do. And I'd be happy to answer any procedural questions that the Board might have.

Mr. Wood: Two separate motions then?

Mr. Herrick: Yes sir. With the second one on the sheet actually taking place first.

Mr. Bass: Thank you, Andy. Any questions of Andy or Amelia?

Mr. Bowerman: Mr. Chairman...I move that Board of Zoning Appeals rescind its October the 5th, 2010 approval of Special Use Permit 2010-00024.

Mr. Bass: Is there a second?

Mr. Wood: I second the motion, Mr. Chairman.

Mr. Bass: Any comments? If there's no Board discussion, would you call the roll J.T.?

Mr. Newberry: Mr. McClure?

Mr. McClure: Aye.

Mr. Newberry: Mr. Wood?

Mr. Wood: Aye.

Mr. Newberry: Mr. Bass?

Mr. Bass: Aye.

Mr. Newberry: Mr. Bowerman?

Mr. Bowerman: Aye.

Mr. Bass: We need to act on the withdrawal request for the same special use permit.

Mr. Bowerman: Mr. Chairman, I move that Board of Zoning Appeals accept the applicant's request to withdraw its application for Special Use Permit 2010-00024.

Mr. Wood: I second the motion, Mr. Chairman.

Mr. Bass: Moved by Mr. Bowerman, seconded by Mr. Wood. J.T., would you call the roll?

Mr. Newberry: Mr. McClure?

Mr. McClure: Aye.

Mr. Newberry: Mr. Wood?

Mr. Wood: Aye.

Mr. Newberry: Mr. Bass?

Mr. Bass: Aye.

Mr. Newberry: Mr. Bowerman?

Mr. Bowerman: Aye.

Mr. Bass: Those two motions carry unanimously.

Mr. McClure: Mr. Chairman, could I ask [Ms. McCulley] one question? Now that that's done, do we have a directional sign?

Ms. McCulley: There is a sign at the entrance to Liberty Hall Subdivision on Route 250, and their subdivision sign is in that location.

Mr. McClure: I'm talking about as I read the ordinance it says "a special use permit shall not be required for an offsite directional sign."

Ms. McCulley: A directional sign has to be limited to, I think, four square feet. So this sign could not be a directional sign.

Mr. McClure: But if they reduced it to four square feet then it would be permissible?

Ms. McCulley: Let me look that up real quickly.

Mr. Bass: But you're still saying offsite, [Mr. McClure], right? Not onsite.

Mr. McClure: Right. It says "a special use permit shall not be required for an offsite directional sign."

Ms. McCulley: We haven't in the past considered a sign this far offsite to be a directional sign. A typical directional sign would be closer to what you're directing people to and telling people for example where the drive-through lane is, where the parking area is, or something like this. So I don't think that I would consider the sign that this Board ended up with – that is without the logo and the phone number – as a directional sign.

Mr. McClure: If you go down Route 20, before you get to Little Carter's Bridge, there's a winery sign there. It says the name of the winery and it gives you direction to turn left and that's at least two miles from that winery.

I don't want to belabor it, but I just don't understand. I don't see anything in the ordinance that says that a directional sign has to be within a half mile, or 300 yards, or two miles. I don't see anything in the ordinance that says a directional sign has to be anywhere near...it just bothered me that it seemed to me we were given an alternative last time of either denying the request or granting it with conditions. So I explored the code, and it seems like to me – of course this sign is too big – but if the sign was reduced to four square feet, I don't know why it wouldn't be legal.

Ms. McCulley: I'm not familiar with the sign that you're talking about. It's possible that that's a sign that was authorized by VDOT to be put up in the right of way, the winery sign. But I do understand your question, definitely. And we can look into that more in general. It definitely hasn't been used, the incidental sign or directional sign hasn't been used that way in the past for a permanent use. We've had temporary directional signs, like if you all remember going to the county fair and there would be a sign at 29 South where you turn on Plank Road to get to the county fair – that's a directional sign that we've permitted on a temporary basis. It's actually offsite. It's all the way at 29 on other property, the example I'm giving.

Mr. Bass: [Ms. McCulley], I've got to admit, if you just read this literally – I think [Mr. McClure] has a point here. I mean, but it includes political signs – we've seen a lot of them lately – subdivision signs, or temporary signs of any kind, and offsite agricultural product signs.

Mr. Bowerman: I was going to say, if there's any ambiguity that maybe staff ought to look at it and there could be a recommendation to the Board because..."

Mr. Bass: Look at that, because wow, that could open up a whole bunch of...[Mr. Herrick], are we off base here?

Mr. Herrick: Well, two thoughts Mr. Chairman. First of all, and I don't have the language of the ordinance in front of me either, but if in fact those don't require a special use permit then it wouldn't come back before the BZA anyway, so the BZA wouldn't have to approve or disapprove – it would be something that would be handled administratively through a sign permit. I'm also not familiar with the sign to the winery off of Route 20, but perhaps if there's interest on the part of the BZA perhaps staff could prepare a report and report back to the BZA at the next regular meeting, just on what is allowed under the ordinance. I'm not sure that we've looked at that coming into this meeting though.

Ms. McCulley: The timing's actually really good. We're right in the middle of a zoning text amendment on our sign regulations. Ron Higgins is in charge of that, and in fact tonight at the Planning Commission meeting, the last item on the agenda is a worksession to chat with the Planning Commission on some of the sign ordinance amendments – and that ambiguity probably should be addressed with that amendment.

Mr. Bass: Do you know what we're talking about here? 15 point...

Mr. Bowerman: It's 4.15.5, 1 and D it looks like.

Mr. Wood: Under the context of what?

Mr. Bass: What I'm saying, [Mr. Herrick], is that if [Ms. McCulley] had denied that as a sign permit and her decision were appealed to us, I would be sitting here like Cliff is saying, it kind of says like you can have one for a directional sign.

Mr. Herrick: Correct. And that would be the one instance in which it would be before the BZA, is if it were an appeal of the administrative determination to deny it. But otherwise, the route by which the prior sign came to you all is that it was thought to require a special use permit.

Mr. Bass: I understand the case we just settled, after two weeks of work. I got that one. But we've seen cases here, and they become recurring where the zoning text needs to be amended. And it takes us a while, but we get 'er done, right?

Mr. Herrick: And that's a point well taken, and thank you for bringing it to staff's attention. And like I said we can certainly report back.

6. New Business

Mr. Bass asked Board members for their comments for the proposed schedule presented for 2011, and indicated that he had requested that the first meeting take place on January 4.

Ms. McCulley said that it was acceptable.

Mr. McClure stated that he would have a conflict with July 5th.

Mr. Bass responded that the meeting is scheduled for July 12th, as the other dates listed pertain to staff filing and advertisement deadlines.

Mr. Herrick indicated that the April meeting was moved to accommodate school spring break.

Mr. Wood noted that he would not be attending the February 1st meeting, but would be back by March 1st.

Mr. Bass reported that when he joined the Board he took Mr. Davis' course and the CPEAV – a graduate seminar for zoning staff and BZA members sponsored by Virginia Tech.

Ms. McCulley mentioned that the program he did initially was the Board of Zoning Appeals certification program.

Mr. Bass responded that he didn't take the test as he wasn't going to become a staff member in a Virginia county, but he found it very helpful – especially the discussion by the presenters of cases where a BZA decision was appealed and then either upheld or reversed in either the Circuit Courts or in some cases the Supreme Court. He said that he has suggested that Mr. Kamptner review the highlights of actions and duties of BZA members in reference to court cases where BZA decisions have been overturned by a higher court.

Ms. McCulley suggested that at a meeting in the near future, the Board give staff with some input as to how they might cause less confusion – as denial is frequently recommended, yet conditions are provided in the event of approval. “We just want to make it clear and easier for the Board, yet give you something to think about in the event you do decide to approve something.” She added that most variances are very individual and specific, so there is less likelihood that actions would become precedent setting, as is the case with many appeals and special use permits.

Mr. Bowerman asked how this is handled with the Planning Commission and Board of Supervisors.

Ms. McCulley replied that they will recommend denial, but also provide recommended conditions in the event those bodies grant approval.

Mr. Bass commented that it seems that with variances there is more discretion in the BZA's decision-making process than there are with appeals, and the very limited powers available for special use permits. He noted that providing certain conditions may appear to be "enabling."

Mr. Wood said that he felt that way about the sign special use permit they have been discussing. He said that it doesn't meet the three criteria the BZA usually uses in its evaluation and deliberations, adding that when the Board originally discussed it they added their own provisions and conditions.

Ms. McCulley said that the Board could either continue as they have been, with staff making a clear distinction between their recommendation and the conditions; staff could not provide conditions of approval; or staff could provide conditions but make them a separate attachment so that they don't appear within the same report in which staff is recommending denial.

Mr. Wood responded that a separate report would be more confusing, and continuing with the current process would provide a broad picture to give some options to make it more palatable to the Board as well as those in the public who are opposed or in favor. He said that he likes the approach of staff being strong in their recommendation, but letting the BZA know that they have the prerogative to make changes.

Mr. Bowerman commented that he understands the nature of conditions, and what has been suggested by Mr. Wood is enough indication for him to proceed.

Ms. McCulley stated that she could have made it more clear that a special use permit for an offsite sign is "different than anything else this Board hears" in terms of the amount of discretion they have, as the ordinance is very specific about the findings they must make.

Mr. Herrick clarified that the county attorney's office represents the Board of Supervisors, and the Zoning Administrator technically works for them as well.

Mr. Wood mentioned that it occurred to him that there might be a feeling by the Board of Supervisors that they may appeal this recent sign decision, but the applicant hadn't graciously withdrawn his request. He asked who would have represented the BZA in that case.

Mr. Herrick replied that the statute has been amended to take the BZA out of the appeal process, and their role under the new statute is simply to provide the record to the court – with the new statute naming the landowner, the applicant, the local governing body as necessary parties and the circuit court empowered to add additional parties as necessary parties. "BZAs are not themselves parties to appeals up to circuit court, and that's a welcome improvement because there's been a lot of ambiguity..."

Mr. Wood commented that he felt that this recent case made him feel bad that there might be a disagreement between a governing body and the BZA.

7. Old Business

None was presented, and the meeting proceeded.

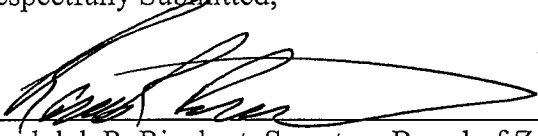
8. Adjournment

Mr. McClure moved to adjourn the meeting; Mr. Wood seconded the motion, which passed unanimously (4-0).

There being no further business, the meeting adjourned at 2:30 p.m.

(Recorded by J.T. Newberry and transcribed by Beth Golden)

Respectfully Submitted,



Randolph R. Rinehart, Secretary Board of Zoning Appeals