

# ALBEMARLE COUNTY BOARD OF ZONING APPEALS

COUNTY OFFICE BUILDING  
401 MCINTIRE ROAD – LANE AUDITORIUM  
TUESDAY, SEPTEMBER 11, 2012 – 2:00 P.M.

Board Members: David Bass, Chairman  
Randy Rinehart, Secretary  
David Bowerman  
L.F. Wood  
Ed Robb

Staff Members: Amelia McCulley  
J.T. Newberry  
Ron Higgins  
Stewart Wright  
Carla Harris

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, who stated there was only one item to be considered and said that if there is anyone who is aggrieved by a decision of the Board they had the right to appeal it to the circuit court within 30 days of the BZA's decision.

## 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 Hearing

None were presented, and the meeting proceeded.

## 5. Special Use Permit Hearing

### SP 2012-00022 Kegler's-Rivanna Plaza

Mr. Wright: Good afternoon, gentlemen. We're here for the...2012 BZA meeting to discuss the special use permit for the offsite sign for Kegler's at the Rivanna Plaza, Special Use Permit 2012-00022, and the petition – Rivanna Plaza and Mark Green petitioned the Board of Zoning Appeals to issue a special use permit for an offsite sign in accordance with Section 4.15.5.A.1. The applicant's proposal is an offsite sign on Tax Map Parcel 45-109 to identify Kegler's of Charlottesville, which is located on Tax Map 45-112C, and the new sign would be located on Seminole Trail at the new entrance for Rivanna Plaza, Schewels, and Kegler's. And just one quick note at the bottom – Tax Map Parcel 45-109 is eligible for two 32-square foot signs because we have two road frontages there. The second road frontage would be the new access easement that would serve Kegler's.

Alright, here's the site, and the red sign designation at the bottom is the original Kegler's sign – which has been there for years and years that was at the old entrance, and that entrance was closed as a condition of the approval of the site plan for Rivanna Plaza, and the blue "x" roughly marks the spot where the new sign for

Rivanna Plaza would be going in. The old sign, as near as I can tell – I wish I'd had a chance to measure it before it was removed – was taller and a little bit bigger than what the zoning ordinance would allow. The new sign that's being proposed is much shorter, it would be conforming to all present sign regulations – except for the location, which requires the special use permit. But otherwise it meets the 32-square feet, the height requirements, and the Architectural Review Board has done preliminary review of the proposed sign and they have no issue with the location – a few minor details would have to be worked out about the design, but everything is favorable so far.

And as you can see, the location of Kegler's surrounded by the purple border, the Kegler's property down to the edge of Route 29 is about 500 feet. Alright, with the first slide here, the location of the proposed offsite sign would be roughly where the Stellar One sign is located. This is presently what Kegler's has as far as signage – it's just channel letters on a wall and as you can see white letters on a tan background, kind of difficult to see in the daytime, definitely more visible at night. And then here we are down at Route 29 looking up at Kegler's, and if you look really closely you can just about make out the wall sign that they have – but again, this is from Route 29 looking up the hill towards the Kegler's property. This is just a shot of the new entrance, which will be serving Schewels, Rivanna Plaza and Kegler's, and again the sign location would be roughly that middle white sign. And here we are looking down 29 South over on Schewels property looking at the old Schewels... exit, which will be closed as part of the site plan. And the new entrance going up to Rivanna Plaza and Kegler's. And this is a shot looking northbound on the southbound lane, and that traffic light right there is roughly in front of Better Living Furniture.

And when I went out to do my fieldwork and look at this, the one thing that I wanted to see was how many lanes of traffic do we have out there, what is the speed limit, what is the location of the traffic signal. The traffic signal is not located right in front of this new entrance to Rivanna Plaza. The speed limit is 45 out there, it's four-lane highway – that definitely raised some concern about traffic safety, people slowing down trying to find the new entrance and changing lanes at the last second. Four lane highway at 45 miles an hour definitely, in my opinion, created a traffic hazard. This is looking down from the Kegler's property to the entrance, and as you can see it's a pretty good distance, stepped it off, and we also scaled it on GIS again. It's roughly 500 feet to the road. And another shot from Rivanna Plaza property, and as you can see the distance to the traffic light, so again the traffic light is not right in front of this entrance, so slowing down and turning in is definitely a concern.

One of the criterion that the Board of Zoning Appeals has to use to find whether or not to issue a special use permit for an offsite sign would be because the sign would be ineffective to communicate its message onsite because of topography or vegetation. Again, Kegler's is 500 feet back from the road, there are new buildings being constructed in front of it that are further limiting visibility... a freestanding sign on Kegler's property, at the edge of their parking lot, it may be visible – but again you've got screening trees and canopy trees in the Kegler's parking lot so it does limit visibility on the Kegler's property. I walked up and down the sidewalk on Route 29 with the new construction and all that, and for the most part it's difficult to see Kegler's building at all, let alone the sign.

This is standing across the street at the... bank across the street looking up there, and again trying to see the Kegler's sign from Route 29 so that I would know to turn at the traffic light in front of Better Living, make a U-Turn and pull into the Kegler's property. Again, visibility with the new construction and the required canopy of trees in the Kegler's parking lot definitely makes visibility an issue – so we feel like it does meet the criterion that topography and vegetation would make an onsite sign ineffective. And here, I just took a few steps further up the road, and again with that new building right there you can barely see Kegler's. And here I walked a little bit further up the street, and you can see the Kegler's just to the left side of that frame, but with that picture being taken I would also add that there's another building that's being built further back, so we're going to have

more construction that will create a visibility problem for a Kegler's onsite sign. And just another angle the other way, and again you can see how Kegler's really just disappears behind the trees up there.

Alright, Section 31.2.4.1 brings the issue about whether or not the proposed sign would be a detriment to adjacent property and would go against the character of the area. This whole stretch of 29 is commercial, there are commercial signs all up and down that stretch of road. Staff's opinion – this proposed sign would not create a detriment to the character of the area.

And here we are at the summary, staff recommends approval of Special Use Permit 2012-00022 with the following conditions: the offsite sign shall not exceed 32 square feet in sign area; the permit number for the special use permit shall be affixed to the sign in a conspicuous place as is required by the zoning ordinance Section 4.15.5; and the permitted sign must contain the name of the occupants of Parcel 45-112C, which is Kegler's. And again, this site is allowed two 32-square foot signs so they have an entirely additional 32-square foot sign to use for the tenants of Rivanna Plaza, who will be moving in hopefully in the next couple of months.

I would be happy to take any questions at this time.

Mr. Wood: What was your last comment, there will be another sign coming in?

Mr. Wright: Yes sir, it won't require a special use permit, this will be an onsite sign for Rivanna Plaza. It's a permitted sign, there won't need to be any special use permit to grant the permit.

Mr. Rinehart: Stewart, do I see that there is not a decel lane to get into this?

Mr. Wright: No there's not, but there will be. It's still under construction.

Mr. Bowerman: Kegler's is not on this sign that's proposed, just the bowl and the AMF?

Mr. Wright: Yeah, I think that's just a temporary sign that's out there right now, the proposed sign – there you go, y'all all have a copy of what has been proposed – and again, that's not the final product. I mean that still has not gone through full Architectural Review approval yet. But the size and scope of the sign is very representative of what they're proposing.

Mr. Bowerman: But it won't say 'Kegler's,' it will say "Bowl" or something. We don't know for sure.

Mr. Wright: Don't know.

Mr. Bass: If the Board has no further questions at this time, we'll ask the applicant to come forward.

Mr. Green: Thank you and good afternoon, I'm Mark Green from Rivanna Plaza. I appreciate Stewart's report, and we agree with his analysis and conclusions. I'll just add a little bit of historical context. When we were developing this site plan, we had several discussions with the County Development Department about trying to create some inter-parcel connectivity between our property, the bowling alley and the Schewels. That was the reason that we ultimately moved the old bowling alley entrance road up to the north side of our site, so that it can access both Schewels parking lot, our parking lot and the bowling alley. So we kind of function more as an integrated series of properties even though we're all under separate ownership. In creating that plan, that left the old Kegler's sign – which is already on our property – stranded at an entrance that was being closed, so we put it on our site plan that the sign was to be moved up to the north side, and that was approved as part of our site plan so this change was anticipated and is on our site plan as currently approved.

You have two pictures that I brought in today. One is a picture of the old Kegler's sign, just so you can all remember what a beautiful thing it was, and the photograph that you held up Mr. Bowerman is the proposed sign. That's what AMF uses for their bowling alley graphics, and the bowling alley is owned and operated by AMF. So Kegler's is the name I think that maybe Frank Stoner had on the bowling alley originally, and they've kind of kept that around, but I don't believe they're going to use that on their sign. I'd be happy to answer any questions if you have any.

Mr. Wood: This sign is going to be exclusively for Kegler's?

Mr. Green: That's correct.

Mr. Wood: [inaudible] to have the names of the businesses on there, if it's going to be a single-use sign.

Mr. Green: That's correct, this particular sign is just single use, it's just for the bowling alley. And it sits, if you were going up the driveway towards Kegler's, it sits on the right hand side on the north side. Our project will have a monument sign of similar size – 32 square feet on the left hand side of the driveway, and that has space for three tenants on it. Half of the sign will be for the daycare center that sits in the back of our site, and then the other two quarters of the sign have not been allocated to any tenants yet.

Mr. Wood: That's the reason for my question. We're going to have two signs within 50 feet of each other?

Mr. Green: Uh, yes sir.

Mr. Wood: Is it not possible, or was it discussed, that we could have one sign with the bowling and the daycare center and the other donut place?

Mr. Green: I don't think there was room on one sign to put all those tenants on it.

Mr. Wright: Regardless of one sign or two sign, either way Kegler's would have had to have gotten a special use permit to put their panel on a sign structure located on the Rivanna Plaza property.

Mr. Wood: That would have been an offsite sign then, that makes sense. Well it doesn't sound like it's a big deal if y'all have reviewed it, but it seems like even if you had to have a special use permit for one sign larger than 32 square feet, it may be better to have one sign rather than two that close together. I'm just asking the question.

Mr. Green: That's something we could look at. I think a single sign though would exceed the size parameters that the County limits us to in terms of 32-square feet.

Mr. Wright: A larger sign would require a variance by this Board, not a special use permit.

Mr. Wood: Say that again?

Mr. Wright: A larger sign that would incorporate all of the tenants there would require a variance by this Board, not a special use permit.

Mr. Robb: Could that occur?

Mr. Wright: You cannot have an offsite sign that exceeds 32-square feet, so that would pretty much be prohibited.

Mr. Bowerman: They might each end up with less square footage than they would in this manner, with Kegler's being in one sign, and the other being a monument sign with the three property users. That's what I'm thinking.

Mr. Robb: My question is basically, let's suppose that on down the road they wanted to increase the sign of this sign and add additional tenants on it.

Mr. Wright: The Kegler's sign?

Mr. Robb: Yes.

Mr. Wright: It would not be prohibited by these conditions....let's say Kegler's builds a 32-square foot sign, and then a tenant of Rivanna Plaza wishes to incorporate a panel into this. Kegler's would have to reduce the size of their sign – but this proposed sign must contain the occupant...if Kegler's moves out, it's whoever the tenant of Tax Map 45 Parcel 112C is, but it does not prohibit other businesses from being located on that sign, but they would still have to maintain the 32-square feet or less sign area.

Mr. Robb: So if Kegler's would move out and XYZ company would move in, then XYZ company, there name would have to be on that sign or their advertising.

Mr. Wright: Correct, yes.

Mr. Green: And we have no right to put anything on that sign, that's dedicated. We're paying to build it because we needed to take down their old sign, but once that sign is built it belongs to them, so we have no right to put any panels on it or anything. We're just using our own monument sign.

Mr. Robb: What was the Architectural Review Board's position on this?

Mr. Wright: Again, they did a preliminary review of it and the size and general shape – the fact that they were coming in with a monument sign as opposed to a pole sign – was favorable. But there are still some minor details to be worked out as far as the finish, colors, things like that.

Mr. Bass: Any other Board questions for the applicant? If not, the matter is before the Board.

Mr. Green: Thank you.

Mr. Bass: This is an offsite sign request, as opposed to...a request for more square footage than what would be normally permitted in the ordinance. And this is a classic case – I think Ron would agree with me – where you've got a property that does not front on a public road, a parcel that's set back by itself that would require an offsite sign to have any signage in my opinion.

Mr. Wright: If it would help the Board in this matter, I do have my correspondence with Margaret Maliszewski from the ARB. I'd be happy to read it to you if y'all did not receive that in your staff report.

Mr. Rinehart: Mr. Chairman, I move for approval of Special Use Permit 2012-00022 with the conditions staff has enumerated here on the screen.

Mr. Bowerman: Second.

Mr. Bass: Moved by Mr. Rinehart and seconded by Mr. Bowerman, thank you sir. If there's no further discussion, Carla would you call the roll?

Ms. Harris: Mr. Bowerman?

Mr. Bowerman: Yes.

Ms. Harris: Mr. Bass:

Mr. Bass: Aye.

Ms. Harris: Mr. Rinehart?

Mr. Rinehart: Aye.

Ms. Harris: Mr. Wood?

Mr. Wood: Aye.

Ms. Harris: Mr. Robb?

Mr. Robb: Aye.

Mr. Bass: Got that one. Nice report, Stewart.

#### **6. Approval of Minutes – July 2012 BZA Meeting**

Mr. Rinehart moved to approve the minutes as presented. Mr. Robb seconded the motion, which passed unanimously (5-0).

#### **7. Old Business**

None was presented, and the meeting proceeded.

#### **8. New Business**

Ms. McCulley reported that the appeal related to hobby chickens in a residential district would be heard October 2, and the applicant requested deferral from today's meeting to that date because he could not be present today. She said that they also have an appeal from Mr. Chiles with Crown Orchard, preliminarily scheduled for November 13 – although she hasn't been able to confirm with them that the date works for them, it is in the statutory timeline in which an appeal must come before the BZA. She said that anything that comes in on their October 15 deadline would be scheduled for that date, and they would have to determine whether they need another meeting.

Mr. Bass noted that election day in November would push the meeting one week ahead for that month.

Ms. Bass asked Mr. Herrick about a situation whereby a zoning officer goes to inspect a property with enforcement in mind, whether it's a citizen complaint or an observation by a staff person, if permission must be asked from the property owner. He asked what the remedies would be for the zoning officer if the permission is not granted in order for them to make the inspection.

Mr. Herrick explained that a zoning officer does need to obtain permission to enter the property, just as with a police search, and similarly if permission is not granted they must go to the court and get a search warrant – which has been done in at least one case he is aware of.

Mr. Bass asked if in the specific situation he is alluding to there was permission to visit the property.

Ms. McCulley explained that some of the photos staff has were taken from off the property, and she can't speak for the code enforcement officer as to his understanding of whether or not there was permission – but over 3 ½ years, the staff member had met onsite with the owner's son, so there was never any indication by the owners that they did not have permission to be on the property.

Mr. Robb asked if there was any indication he did have permission.

Mr. Herrick suggested that the code enforcement officer be present to describe his interactions, rather than to speculate as to what happened. He said that there were ongoing conversations and that officer was never asked to leave, so that might create a gray area that would be best resolved with that person present.

Mr. Bass said that the real issue would be whether the determination is affirmed or not by the Board in terms of their review of the matter, as opposed to the fact that Mr. Chiles is upset about the access to the property, in which he thought he did not give permission. "That's really not relevant."

Mr. Herrick said that was a collateral issue and something that could be addressed in a legal memo to the Board.

Mr. Bass pointed out that if there is a complaint against the County for trespass, that would be a separate matter than the enforcement action.

Mr. Herrick agreed.

Mr. Bass said that he has been asked to visit the site and he will, and asked Mr. Herrick if more than two members going together would constitute a meeting.

Mr. Herrick said that it would be best to go with two or less at a time.

Mr. Bass commented that they should go individually in the interest of schedules and timing, and then they could discuss their thoughts at the formal appeal hearing.

Mr. Rinehart asked Ms. McCulley if she felt it was necessary for BZA members to visit the site in order to understand the case.

Ms. McCulley responded that if the property owner allows them onto the property to take photos of the current situation, that would suffice, but staff would like for the BZA to see it firsthand or see photos that depict all of the issues staff has raised.

Mr. Herrick said that the photos in some ways are preferable in that the notice of violation deals with the state of the property on the day of the violation, so there may be a moving target if the owner has since abated or partially abated the violation. "It may look different now than it did at the time the violation was issued."

Ms. McCulley said that the Board has expressed concern before about what their role is and how appropriate it is for them to have interaction with appellants before a meeting, so that is something for them to consider.

Mr. Bass said that it's a fact-finding mission, and Board members should stay away from opinions, preliminary decisions, and interpretations. "Eyes only."

Mr. Wood said that he plans to visit the site and has only missed one or two site visits for hearings. He also stated that he had read Mr. Chiles' communication and was familiar with farming, so it seemed to him that farm equipment is "just that type of thing." Mr. Wood said that it seems like it is a part of a farming operation, and an orchard seems to be a farm – and to him this whole issue could be worked out administratively. "Now if it cannot be, that's another subject."

Mr. Herrick stated that he didn't want to get ahead of things here because it is not yet before the Board and the appellant is not present, nor is the code enforcement officer. He said that the best matter of course would be to schedule it, put it on the agenda, and wait until next month's meeting to discuss it.

Mr. Wood agreed, but said it would be better to work it out administratively.

Mr. Bass said, "But it hasn't been worked out. It's been formally appealed." He added that there was the opportunity to work it out, but that didn't happen.

Ms. McCulley confirmed that was the case.

Mr. Bass noted that the date of the official determination was June 27, 2012, and they didn't get pictures on that date.

Ms. McCulley said that they had pictures from some date in June, and there should be photos from June 27 because the notice of violation usually refers to the date of the inspection.

Mr. Bass read, "visited the listed property on June 27, 2012."

Ms. McCulley said there should be some photos from that date.

Mr. Bowerman said he would like to ride with Mr. Wood.

Mr. Robb noted that he lives in the Batesville area and is very familiar with the subject property and Mr. Chiles, but that will not affect his objectivity as it relates to the matter.

Mr. Bass confirmed that he is not an adjacent property owner and thus does not have an interest.

Mr. Bass asked if there were any circuit court issues to be aware of.

Mr. Herrick responded that they continued to have pending dates on a number of appeals that have been before the Board – both ReStore'N Station and the Arganica case still have pending court dates in the coming months.

Mr. Bass said that he thought the Arganica issue would be moot because of their change in ownership and corporate status.

Mr. Herrick said he had read about that in the papers, but in speaking with counsel it has not yet been withdrawn.

## **9. Adjournment**

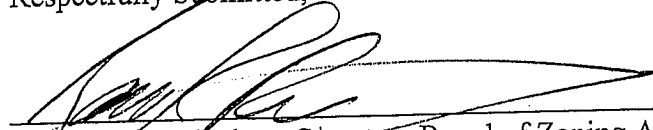
Mr. ? moved to adjourn the meeting. Mr. ? seconded the motion, which passed unanimously (5-0).



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,



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Randolph R. Rinehart, Secretary Board of Zoning Appeals