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Camden County Board of Adjustment
Record of Proceedings
July 11, 2005
7:00 PM
Camden County Courthouse Courtroom
Courthouse Complex

Chairman Roger Lambertson called to order a meeting of the Camden County Board of Adjustment with the following members present:

Chairman Roger Lambertson
Vice Chairman Morris Kight
Members William McPherson, Emory Upton, Patrick Duckwall and Douglas Lane

The following members were absent: Tony Royle

Also present were Dave Parks, Permit Officer, Dan Porter, Planning Director and Melissa Joines, Clerk to the Board.

Chairman Lambertson read the purposes and procedures of the Board of Adjustment.

Chairman Lambertson stated the voting members would be Chairman Lambertson, Vice-Chairman Kight, Emory Upton, William McPherson and Patrick Duckwall.

Chairman Lambertson called for consideration of the agenda. Staff added an item under Items from Board and Staff.

Chairman Lambertson called for consideration of the February 14, 2005 minutes. Duckwall made a motion to approve the minutes. Upton seconded the motion. The motion passed 5-0.

Chairman Lambertson called for comments from the public. Hearing none he continued with the agenda.

New Business

Item #1 Appeal (UDO 2005-06-20) from Brian Loftus in opposition to the "Stop Work Order" placed on his business located at 630 Main Street, South Mills Township

Chairman Lambertson called for a motion to open the public hearing. McPherson made a motion to open the public hearing. Kight seconded the motion. The motion passed 5-0.

Chairman Lambertson stated that anyone wishing to speak for or against the appeal must be sworn in.

Dave Parks, Permit Officer, was sworn in and stated the conditions of the required zoning permit that was issued on September 15, 2004, the findings of the property since the issuance of the permit and extensions given to bring the property into compliance with county ordinances. A Stop Work Order was placed on the business on June 8, 2005 because Mr. Loftus had not complied with the conditions of the permit.

Chairman Lambertson questioned was there a business located on the property immediately prior to Mr. Loftus opening his business. Mr. Parks stated there was not a commercial business located on the property. The building was used for storage.

Chairman Lambertson questioned the difference between a zoning permit and a conditional use permit. Mr. Parks stated the business is a permissible use allowed with a zoning permit. Conditions were placed on the permit to comply with the area in which the business is located. The business is located in a Highway Commercial zoned area but the area is primarily residential.

McPherson questioned the number of vehicles allowed on the property. Mr. Parks stated Mr. Loftus was permitted 15 unregistered vehicles which were to be located inside an enclosed 6 foot fence. Any vehicles located outside the fence must be registered. At the time of the stop work order there were approximately 25 unregistered vehicles on the property.

Kight questioned how long the business has been located on the property. Mr. Parks stated the business had been located there since February 2004. Mr. Parks stated once a property has been abandoned for six months, the property must come into compliance with current zoning.

Brian Loftus, of 932 South Highway 343 was sworn in and stated he was employed by a previous business owner on the property. Mr. Loftus stated he has informed all the customers that the vehicles must be titled. Every vehicle on the lot is titled to an individual. If a car is on the lot there is a work order in place for the vehicle, there are no junk cars on the property. Mr. Loftus stated he does not sell parts and he currently has 24 vehicles on the lot. He does not conduct business on Sundays but he would like to be able to work in the shop doing paper work and cleaning. Mr. Loftus stated that he felt he did not need a zoning permit because he was in a commercial area conducting a business. The length it takes to restore a vehicle could vary therefore a vehicle could sit on the property for six months because of finances or other problems.

Chairman Lambertson stated the purpose of the appeal is to determine if the Stop Work Order can be justified. The board cannot override the conditions of the zoning permit.

Joseph Jackson, 632 Main Street, stated he lived within twenty feet of the property. Mr. Jackson stated the previous occupant of the property used the building as storage. Mr. Jackson supplied the board with photos of the property and stated there had been people at the shop on Sundays and that he had been awoken late at night by a racing motor in the past. Mr. Jackson stated there was a car brought into the property the day before the meeting. Mr. Jackson stated he and other members of his family have talked with Mr. Loftus.

Diana (last name), 922 (address) Street, was sworn in and stated the vehicle brought

to the property on Sunday belongs to her. She will not register the vehicle due to the fact that it is not drivable.

Chairman Lambertson asked Mr. Loftus did he know about the car being brought into the property. Mr. Loftus stated no, he did not know about the car being brought in.

Beatrice Franklin, 184 Franklin Lane, was sworn in and stated she is the owner of the property. She has not had any problems with the renters, she had rented the property to business owners since she had owned the property. She tells the renter they must contact the county to see if there are any requirements. The property had been vacant for only three months when Mr. Loftus contacted her about renting the property. Mr. Colbertson was the renter prior to Mr. Loftus and the business was repair work. Ms. Franklin stated she was notified by Ms. Harris, Code Enforcement Officer that a fence was needed around the property. She has received every letter that was sent to Mr. Loftus. Ms. Franklin stated she did not realize that Mr. Loftus needed a variance.

Chairman Lambertson stated Mr. Loftus did not need a variance. There are rules and regulations required for county businesses that have become strict due to the tremendous growth in the county.

Ms. Franklin stated she has only received one complaint about the property being run as a junkyard. She has spoken with the surrounding property owners.

Chairman Lambertson stated it is not up to the board to decide if the business is a good business or whether Mr. Loftus is doing the right thing. Mr. Loftus received a zoning permit with conditions and he violated the conditions. The board cannot authorize changes to the permit, the board has to rule on the appeal to determine if the Stop Work Order was justified.

Ms. Franklin asked was there anything she could do with the county to change what has been done.

Chairman Lambertson stated the board has an appeal and the decision of the appeal is final and if the applicant did not like the outcome the only recourse would be to take the appeal to court. Mr. Loftus agreed to run his business under the conditions of the zoning permit and he is not abiding by those conditions.

Carrie Joseph, 204 Charles Street, was sworn in and presented a petition to the board. Chairman Lambertson stated the board could not hear the petition. All of the persons who signed the petition would have to be present. Miss Joseph stated there was work conducted on Sundays, but it was to clean the shop, not to conduct business but only to help friends.

Joseph Jackson stated he had called Ms. Franklin to complain about Mr. Loftus. Mr. Jackson stated the building was used for storage of construction materials prior to Mr. Loftus.

Ruth Yancey, 1274 North 343, was sworn in and stated she had listened to the complaints and stated there is more noise living on North Highway 343 and feels people are just complaining.

Evan Morris, 911 (address), stated he has only known Mr. Loftus for a few months and would rather see the kids hanging out at the shop than getting in trouble. He does

see a problem with Mr. Loftus running the shop.

Dan Porter, Planning Director was sworn in and stated he would like to bring to the board's attention that the appeal addresses specific items which were appealed. The zoning ordinance does not have specific conditions related to junkyards or auto repair shops. It is an administrative decision to place the conditions on the permit and is within the authority of the permit officer to do so. Mr. Parks did consult with Mr. Porter on the conditions of the permit. Because there are not specific conditions in the zoning ordinance, Mr. Loftus does have the opportunity to appeal the conditions of the zoning permit. However, the board should address the specific points of the appeal.

Chairman Lambertson stated that if any one of the conditions is violated then the Stop Work Order would be justified. Mr. Porter stated Mr. Loftus was given certain conditions on his permit and he violated those conditions which caused the Stop Work Order to be placed on his business.

Chairman Lambertson questioned if the county had authority to require a zoning permit for the business. Mr. Porter stated the county does have authority to issue zoning permits administratively under the permissible uses table.

Chairman Lambertson stated that the appeal states the business was an existing nonconforming use at the time the ordinance was adopted. However there have been different statements on what was located on the property prior to Mr. Loftus.

Mr. Porter advised the board to address each item in the appeal.

Ms. Franklin stated Emil Colbertson was the prior occupant of the property using the property for a body shop and sold used cars six months prior to Mr. Loftus. The property was used for storage prior to Mr. Colbertson.

Jean Smith, 400 Old Lebanon Trail, was sworn in and stated Mr. Loftus was helping kids stay off the street. Mr. Loftus has attempted to call the customers and have them remove their cars. There have been people on the property on Sunday to clean up the property. Does not think Mr. Loftus needs to be shut down.

Chairman Lambertson called for a motion to close the public hearing. McPherson made a motion to close the public hearing. Kight seconded the motion. The motion passed 5-0.

Appeal

1. The use at 630 Main Street, South Mills, NC was an existing nonconforming use which did not violate any applicable ordinance on the date the Unified Development Ordinance (UDO) was adopted and it was a non violating nonconforming use prior to the adoption of any applicable Zoning or Land Use restrictions prior to the adoption of the current UDO.
2. The classification of the use is properly "Auto Repair or Body Shop" under the definitions set forth in the UDO.
3. Camden County did not have the authority to require Appellant to obtain a

Zoning Permit as the use was an existing nonconforming use on the date the ordinance was adopted.

4. Attempted regulations of the nonconforming use is and would be an unconstitutional “taking” without due process of law in violation of the Federal and State Constitutions.
5. The permit officer failed to comply with the following provisions of the UDO by failing to serve written notice to the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it.

§ 151.567 PROCEDURES UPON DISCOVERY OF VIOLATIONS.

- (A) (1) If the Administrator finds that any provision of this chapter is being violated, he or she shall serve written notice to the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it.
 - (2) Additional written notices may be sent at the Administrator's discretion.
 - (B) The final written notice, and the initial written notice may be the final notice, shall state what action the Administrator intends to take if the violation is not corrected and shall advise that the Administrator's decision or order may be appealed to the Board of Adjustment in accordance with § 151.530 through 151.536.
 - (C) In cases when delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health, safety or welfare, the Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in § 151.568.
6. The following provision which grants the permit officer the power to act in a arbitrary and capricious manner or out of mean spirit or personal animosity is in violation of the Federal and State Constitutions, and it therefore unconstitutional and beyond the power of Camden County to adopt:

“**JUNKYARD.** A lot land or structure or part thereof, used primarily for the collecting, processing, storage and/or sale of salvage paper, animal hides, rags, rubber, glass, scrap metal, lumber or other 304 Camden County – Land Usage building materials or for the dismantling of parts thereof. Any lot with more than two vehicles stored without current registration plates or having an amount of trash, either burnable or nonburnable, considered as excessive in the judgment of the Administrator shall be classified as a JUNKYARD and will require the appropriate zoning and permits.”

7. That in the exercise of fairness and equity, the actions of the administrator should be reversed.

Wherefore the Appellant requests the following:

1. determination that the permit officer was in error by his acts,
2. hat, alternatively, the Appellant’s use is a nonconforming use which may not be

- regulated by the UDO,
3. hat, alternatively, the provisions of the ordinance which attempt to regulate the Appellant's use are unconstitutional,
 4. That, alternatively, the provisions of the ordinance which purport to grant the permit officer discretion to make the determinations in the definitions of "Junkyard" in the UDO are unconstitutional.
 5. That, alternatively, fairness and equity demand that the acts of the permit officer be reversed,
 6. That, alternatively, a Variance be granted to allow the Appellant to continue the use.

Chairman Lambertson requested Mrs. Franklin bring proof of evidence of the prior use. Duckwall made a motion to table the application. Kight seconded the motion. The motion passed 5-0. The next meeting date will be on Wednesday, July 27, 2005 to hear the information requested from the property owner and the applicant.

Items from Board Members and Staff

Staff handed out a resume to the board from Stephen E. Davenport who offers training services. Staff stated there was a tentative training date scheduled for August 22, 2005.

Board stated to revise the approved February 14, 2005 minutes on the motion on Item 2.

Staff gave an update on the Hockmeyer court case. The Board of Commissioners denied to support the Board of Adjustment's decision therefore the variance approval is void.

Consideration for date of next meeting – August 8, 2005

The board set a special meeting date for Wednesday, July 27, 2005.

Adjournment

Chairman Lambertson made motion that the meeting of the Camden County Board of Adjustment be recessed until July 27, 2005. Upton seconded the motion. The motion passed 5-0. The meeting recessed at 8:45 p.m.

Approved: _____
Date Chairman

ATTEST:

Melissa Joines
Clerk to the Board