

MINUTES
PAGE COUNTY BOARD OF ZONING APPEALS
February 20, 2018

MEMBERS PRESENT:

Phillip Mims, District 1
Kevin Moyer, District 3
William J. Turner, District 5

John Coleman, District 2
Danny Comer, District 4

MEMBERS ABSENT:

None

STAFF PRESENT:

Tracy Clatterbuck

CALL TO ORDER:

Chairman Coleman called the meeting to order of the Page County Board of Zoning Appeals at 10:15 a.m., in the Board of Supervisors Room located at the Page County Government Center, 103 S Court Street, Luray, Virginia.

ADOPTION OF AGENDA:

Mr. Comer made a motion to adopt the agenda as presented. The motion was seconded by Mr. Turner. The motion passed unanimously.

PUBLIC HEARING:

A. Herbert & Elizabeth Karp

Ms. Clatterbuck presented the following: Herbert and Elizabeth Karp have requested an appeal of the Zoning Administrator's determination to require a special use permit (SUP) to operate a wedding venue located at 170 Kibler Drive, Luray, VA, and further identified by tax map number 30A2-3-1. This property contains 3.870 acres and is currently split zoned Agriculture (A-1) and Residential (R). Under the Zoning Ordinance, § 125-10 (D).16, banquet and event facilities (as defined in § 125-4), are only permitted by SUP in the Agriculture (A-1) district.

On November 14, 2017, Mr. & Mrs. Karp made application to rezone the above listed parcel of land. On the rezoning application, the applicants listed that it was proposed that the property would be put to the following use: "All current uses in place, currently a barn converted to rental cabin residence/wedding venue" (Exhibit A). During the review of the rezoning application, staff checked with the Commissioner of Revenue's Office to see if the applicants held a valid business license for the rental cabin residence and the wedding venue. It was discovered that while the applicants had a business license for the rental cabin residence, they did not have a business license that covered the wedding venue. They were notified via the Commissioner of Revenue's Office that they would have to submit a business license application for the operation of the wedding venue (Exhibit B).

On November 20, 2017 the applicants submitted the business license application to our office for review. The applicants were sent notice on November 27, 2017 (Exhibit C) from the Zoning Administrator that the portion of land that the barn is currently located on is zoned as Agriculture (A-1). Under Section 125-4 of the Page County Zoning Ordinance, banquet and event facilities are defined as follows:

Banquet facility: An establishment which is rented by individuals or groups to accommodate private functions, including, but not limited to, banquets, weddings, anniversaries, and other

such similar celebrations.

Event facility: A building, which may include on-site kitchen/catering facilities, where indoor and outdoor activities such as weddings, receptions, banquets, and other such gatherings are held by appointment.

Under Section 125-10(D).16 of the Page County Zoning Ordinance, banquet and event facilities are only permitted by special use permit in the Agriculture (A-1) zoning district. Therefore, to continue operating the wedding venue legally, the applicants would be required to apply for a special use permit (SUP).

The appellants submitted their appeal application (Exhibit D) to our office on December 22, 2017. They are appealing the "entire statements/conclusions in letter dated November 27, 2017 from Tracy Clatterbuck, Page County Zoning Administrator". The reason for their appeal is "use of property is grandfathered".

Staff would argue that the use of the wedding venue is not considered non-conforming aka "grandfathered" because they have never had a business license that included the wedding venue. If they have been operating a wedding venue, they have done so in violation of the ordinance, and without proper county licensure. It is staff opinion that it would not be wise of the Board to grant them a non-conforming wedding venue when the business has not been operating legally. This would set a precedent for other land owners in our community.

The applicants' attorney, David Reed, requested a meeting with Nathan Miller, County Attorney, and staff regarding this issue prior to appealing the decision of the Zoning Administrator. Mr. Miller concurred with the Zoning Administrator's opinion that the county should not grant the applicants a non-conforming use for operating their property as a wedding venue based on facts presented by staff (Exhibit E). Therefore, in his opinion as well, a special use permit would be required should the applicants desire to continue operating the wedding venue because the county has no evidence it was operating legally.

The applicant has communicated with Nick Black at the Page County Health Department who has no objections to the use of the wedding venue. They have also communicated with R. Scott Snider with the Virginia Department of Transportation who noted there was no problem with the existing entrance. The only thing he advised was to make sure the Karp's understood there is no parking allowed within VDOT's right-of-way (Exhibit F).

The applicants have also communicated with Don Williams, Page County Building Official, who sent the applicants a notice of denial on November 27, 2017 (Exhibit G) for the business license review for the wedding venue. The reason for the denial is as follows: "The referenced structure will require an Architect/Engineer evaluation with a seal supporting a "change of use" from its original use to that of a "wedding venue". Per the 2012 Virginia Construction Code, Chapter 3, Section 303.3 the proposed use group would be classified as "A-2." The current Virginia Building and Fire Code Related Laws Package (dated 3/14) requires such seal on any "A" use group. Applicable fire codes would also apply and must be addressed. Code of Virginia Section 54.1-402 require a seal whenever there is a change of occupancy, occupancy load or modification to the structure or an increase in fire hazard." The applicants have also appealed Mr. Williams' determination and this matter is pending hearing to the Local Building Code Board of Appeals.

Adjoining/adjacent property owners were notified pursuant to state code and those comments that were received are included in the packets.

Chairman Coleman opened the public hearing at 10:25 a.m.

David Reed- Mr. Reed started off by explaining that he was representing Mr. & Mrs. Karp's appeal

application. This issue came about because the applicants were honest on a recent rezoning application that was submitted for this property. The owners were notified by the Commissioner of Revenue that they needed a business license application for the wedding venue being operated out of the existing barn. Since 2002, they have had a business license for lodging (short term vacation rental) at this same location. The challenge is that this is a split use facility. They have always maintained a license for the lodging and have been reporting all income to include the venue. They did not know they needed to have a separate license for the wedding venue as well. Part of the application for the licensure requires review from the Zoning Administrator. Her denial letter is included in the packet presented to the board. The keys to be discussed today are non-conforming use. There is no denial that the building is being used as a banquet/event facility. Mr. Reed reviewed the deed of ownership that is on record in the Clerk's Office. The Bowman's owned this property and were also the creators of the subdivision adjacent to this property. This particular piece of property is not in the subdivision though. A survey of the property was provided to the board showing the location of the facility along with lot lines in which Mr. Reed explained in detail. He also detailed the construction of the existing facility. Mr. Reed stated that a nonconforming use has three requirements under the Virginia Code and the county code. There has been no interruption (to exceed 24 months) of use of the venue. The county code was changed in October 2016 to allow banquet and event facilities. Currently, in the county code, these types of venues are only permitted by special use permit in the Agriculture zoning district. That was not adopted by the county until February 2017. He urged the Board to consider the time when these new laws were put into place, and also to understand the use of the venue was established way before these changes in code were made. Another requirement is that there is no change in size or use of the barn. The barn has not been expanded in a long period of time. There have been no inspections on record of any building permits issued for this structure. A landowner has a vested right if the use was in place prior to the adoption of the ordinance. The government cannot take that use away if the use was in place prior to local code adoption. The burden of proof has been met by the landowner with the evidence provided. If this was a new use, or a change of use, the situation would be different. However, there has been no change of use. The applicants are requesting that the Board determine this is considered a non-conforming use, and direct staff to approve the business license request based on this determination.

Chairman Coleman asked if the income from the venue rental has been reported in with the lodging license that they currently have. Mrs. Karp responded absolutely yes as she was scared to death of the IRS. Mr. Reed stated that back in 2002, the county did not have a good form in place for business licensure to explain the dual use of the structure.

Mr. Moyer asked prior to 2017, was there a special use permit requirement for venues. Ms. Clatterbuck explained that when the code was changed how they handled ones that were already in existence such as FaithBrooke, Mr. Cave's, etc. was that those that were issued a business license prior to the adoption of the code were considered non-conforming. The Karps' do not have a license for the venue. Mr. Moyer asked what the difference was between a high school reunion and a wedding. Mr. Reed read the definitions according to the county Code. Mr. Moyer pointed out that at one point he approached the county about doing a wedding venue. He was told by county staff that he didn't need anything and they would not even inspect it because it was considered an Agriculture operation. Mr. Moyer also stated he remembered way back into the 80's when the property in question was holding events. He didn't understand why they needed another license. Ms. Clatterbuck stated she was told by the Commissioner of Revenue that they did because it was a different type of service being offered. Chairman Comer asked if Wal-Mart added a tire center service if they would need another license. Ms. Clatterbuck stated yes because it was an additional type of service being provided. She noted that the Commissioner of Revenue's Office is who specializes in business license requirements. Her office simply reviews them prior to issuance. She proceeded to explain

the business review process.

Gary Bauserman- Mr. Bauserman reviewed a list of events he was aware of that had occurred in this barn since the 70's to include reunions, weddings, dances, costume parties, alcoholic anonymous, memorial service, etc.

Chairman Coleman closed the public hearing at 10:56 a.m.

Chairman Coleman pointed out he had been attending events since 1969 in the barn. Mr. Turner stated he felt they should be able to continue as the county has taxed them significantly since 2002 for their business. Mr. Comer asked if they were given proper notification of the county code changes in 2017. Ms. Clatterbuck replied that any ordinance amendments are put in the newspaper that are circulated throughout the county, along with being posted on the county website.

Mr. Turner made a motion to overturn the Zoning Administrators determination of denial, and that the Karp's would be allowed to continue operating their event/banquet facility as they have for many years. The motion was seconded by Mr. Moyer. The motion passed by a roll call vote of 5-0 (Mims: yes; Moyer: yes; Turner: yes; Comer: yes; Coleman: yes).

UNFINISHED BUSINESS:

None

NEW BUSINESS:

A. Approval of Minutes- December 19, 2017

Mr. Turner made a motion to adopt the minutes as presented. The motion was seconded by Mr. Moyer. The motion passed unanimously.

B. Bylaw Review

Ms. Clatterbuck provided a copy of the current bylaws for review. If there are any changes, you can bring them back to the next meeting for discussion. Mr. Turner stated that the Board was not following the bylaws as written. For example, some of the members are not Board of Zoning Appeals certified (Mr. Moyer and Mr. Coleman). Ms. Clatterbuck pointed out that the bylaws do say "subject to the availability of funds". She noted she has money in the budget to send one person this fiscal year and the other person the next fiscal year. Mr. Coleman asked if he was willing to pay for his so that they could go at the same time could the county reimburse him out of the next fiscal year. Ms. Clatterbuck stated she would have to discuss with the Finance Department. Mr. Turner also noted that the bylaws say the meeting starts at 10 a.m. They should not be starting at 10:15 a.m. They need to start on time as advertised. Chairman Coleman asked what happens if someone shows up late. Mr. Turner explained that you just come in and sit down. Members should be arriving early prior to the meeting to review any additional material that is left at the table.

C. Election of Officers (Chairman, Vice Chairman, & Secretary)

Mr. Comer made a motion to keep all officers in place as is. The motion was seconded by Mr. Moyer. The motion passed on a roll call vote of 5-0 (Mims: yes; Moyer: yes; Turner: yes; Comer: yes; Coleman: yes).

D. 37th Certified BZA Program September 10, 2018

Ms. Clatterbuck provided the Board the upcoming schedule for the remainder of the year on the certified Board of Zoning Appeals program. Should anyone be interested in attending, please let staff know in advance.

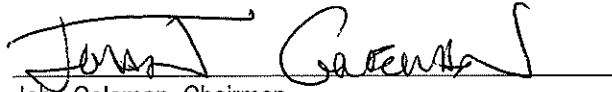
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OPEN DISCUSSION:

None

ADJOURN:

The meeting was adjourned at 11:15 a.m.


John Coleman, Chairman

