

FLUVANNA COUNTY BOARD OF ZONING APPEALS
The Morris Room
MINUTES OF DECEMBER 2, 2014
7:00 P.M.

Members Present: Mrs. Patricia Eager
Mr. R. Easton Loving
Mr. Peter Von Keyserling
Mrs. Carol Walker (Recused)

Staff Present: Mr. Jason Stewart, Planning and Zoning Administrator
Mr. Frederick Payne, County Attorney
Ms. Christina Guidry, Assistant County Attorney
Mr. Scott Miller, Code Compliance officer
Deidre Creasy, Senior Program Support Assistant

Members Absent: Mr. Harold Morris (Chair)

CALL TO ORDER:

Mr. Von Keyserling acting Chair, called the Board of Zoning Appeals meeting of December 2nd, 2014 to order at 7 p.m.

APPROVAL OF MINUTES:

MOTION:

Mr. Loving made a motion seconded by Mrs. Eager to approve the minutes of the December 2, 2014 meeting with a change from the second paragraph of the motion from approve/deny to approved. The motion to approve was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Walker. NAYS: None. ABSTAIN: None.

Fred Payne: Informed the board that the appellant has raised two procedural issues. He then suggested that the board deal with those issues first because it could determine if they want to continue with the meeting tonight or re schedule until a later date.

- The appellant has challenged two members of the board for conflict of interest. The appellant also challenged Mr. Payne for a conflict of interest in which Mr. Payne advised there was none.
- The appellant also questioned whether the statutorily required advertisement is appropriate and requested that this matter be deferred until a later date

Peter Von Keyserling: Asked the members of the Board if anyone wanted to raise the issue of conflict of interest and disqualify themselves from voting.

Carol Walker: Advised that she had a conflict of interest and recused herself.

Fred Payne: Advised Ms. Walker that she has to refrain from speaking as a board member or voting, however she could speak freely as a citizen.

Patricia Eager: Mrs. Eager addressed the issue of being an adjoining property owner and advised that she does not see his property and has no conflict of interest.

Peter Von Keyserling: Advised that the matter of publication is definitely within the limits that the state requires and to proceed with the meeting.

Dale Mullen: (Counsel for the Appellant) Asked if the BZA had received a letter dated November 26 from the planning commission with regards to the public hearing matter.

Fred Payne: Advised that the letter Mullen is referring to was transmitted to his office on Wednesday, November 26 at 5:47 P.M. and in lieu of the holiday, the letter was forwarded to the BZA members the following Monday.

Dale Mullen: Disagreed with Payne and advised that the paper was sent via email well before 5 pm.

Fred Payne: Re advised that the email was sent promptly at 5:46pm.

Dale Mullen: Advised that the conflict of interest with Mrs. Eager warrants consideration that cannot be done in this public forum. He advised that the reasons stated by Mr. Payne were incomplete and he wanted an opportunity to explain why it is in the best interest to hold the meeting at a later time.

- Mullen advised that holding a meeting on December 2, 2014 is not an appropriate amount of time given the information that was provided to the Board of Zoning Appeals. He stated that he has documents directly pertaining to the matter that have not been transmitted to the BZA. The documents include a former zoning administrator's determination in relation to the property.
- Mullen stated that he believes the situation has been discussed prior to the board meeting and predeterminations have been made and the appellant to date has not received any information about any members wanting to recuse themselves.
- Mullen stated that according to the Bylaws this is an irregular notice of hearing, Fluvanna County is supposed to have a meeting the 2nd Tuesday at 7:30 P.M. He made the point of; if the appellant has to adhere to the Bylaws the BZA should also.
- Mullen advised that the attachments were missing a letter from the General District Court and also discussed an issue of due process in regards to proper notice. He stated that from November 21st until December 2 was not enough time to prepare an appeal.

Fred Payne established that the code specifies that the zoning administrator present only the information that he used to make his determination to the board. The other information that Mr. Mullen is referring to that is missing from the packet is not related to this issue. He then confirmed that the members of the Board should not be discussing the substance of issues outside of the board meetings. He also reconfirmed that Carol Walker being a complainant she can speak with whomever she chooses on the subject matter as a citizen.

Peter Von Keyserling: Advised that Walker discussed only her complaint to him and nothing further.

Fred Payne: Advised that the statute requires a member to announce conflict of interest and recuse themselves before participating in the meeting, so the fact that the recusal was not done before the meeting is irrelevant. In relation to the advertisement he advised that the statute requires the Board set a proper time and place for the meeting, not a particular time. Likewise the General District Court opinion was given to the previous representation of the appellant, Mr. Steven Armstrong on September 30, 2013. He then stated that the Law requires that the public are entitled to staff reports at the time the board gets them.

Jason Stewart: The appellant received the staff report copy prior to the BZA receiving it.

Fred Payne: The inspector has the right to go on property as long as it doesn't have a reasonable expectation of privacy on the property. (Virginia Supreme Court Case: 1923 Open Fields Exception) However Payne advised the Planning Staff to stay off Sherrill's property and to take pics from other adjoining property owners land if permitted by the land owner.

Dale Mullen: Advised that the appellant only had 12 days to prepare for the meeting over the course of a holiday. He also advised that there is a perception that the BZA is a rubberstamp for the zoning administrator and the zoning department. He also suggested that any members who participated in outside conversations with Carol Walker be recused.

Easton Loving: Stated that he would like the matters deferred until January 13th to allow all board members to be present. He also stated that he found some of Mullen's remarks to be demeaning to the Board

Patricia Eager: Agreed with Easton Loving and wanted to defer the matter until January 13th.

Fred Payne: Spoke to ad that if Mr. Mullen's is going to challenge members they should know right now

Easton Loving: Agreed

Dale Mullen: Asked the Board to have until next Monday to provide that challenge to the Board in writing.

Fred Payne: Interjected to add, he was unsure if that request is fair because he should have no more information than he does tonight so he should challenge now.

Dale Mullen: Advised that he has no benefit of the knowledge of the personal conversations between Carol Walker and the BZA. He also inquired if Fred Payne was representing the BZA.

Fred Payne: Advised he is not representing the BZA, the BZA is an independent body appointed by and responsible to the court.

Peter Von Keyserling: Advised that the meeting be deferred until January 13th at 7:30 P.M.

Dale Mullen: Challenged Peter Von Keyserling and asked him to ask the other members of the board if they had Mrs. Walker contact them. All members present advised that they have been contacted by Mrs. Walker as a complainant and Mr. Mullen expressed that he was unprepared to go forward with the challenge tonight

Fred Payne: Reconfirmed that none of the members present feel like they need to recuse themselves.

Peter Von Keyserling: Advised that the meeting was adjourned and all matters deferred until January 13th 2015 at 7:30 P.M.

PUBLIC HEARINGS: (Deferred until January 13, 2015 at 7:30 P.M.)

BZA 14:02 – JWS Enterprises LLC: An appeal of a zoning determination by the Zoning Administrator under Fluvanna County Code Section 22-18-1-7, that the appellant is in violation of Fluvanna County Code Sections 22-19-2 and 22-4-2.1, 22-4-2.2 and 22-22-1 at the property located at Tax Map parcels 3 (A) 31 & 32. The affected property is located in the Palmyra Election District northeast of Union Mills Road on Route 16. The subject property is zoned A-1, Agricultural, General.

BZA 14:03 – JWS Enterprises LLC: An appeal of a zoning determination by the Zoning Administrator under Fluvanna County Code Section 22-18-1-7, that the appellant is in violation of Fluvanna County Code Sections 22-19-2 and Section 22-17-9 at the property located at Tax Map parcels 51A-A-22 . The affected subject property is located in Fork Union Election District at 4985 James Madison Highway Fork Union, VA 23055. The subject property is zoned B-1, Business, General and is located in the Fork Union Community Planning Area.

ADJOURNMENT:

There being no further business, Mr. Von Keyserling adjourned the Board of Zoning Appeals meeting of December 2, 2014 at 7:56 p.m. No Motion was made and the next meeting is set for January 13, 2015 at 7:30 P.M.

Meeting recorded by Deidre Creasy.

Chairman Harold Morris
Fluvanna County Zoning Board of Appeals