FLUVANNA COUNTY BOARD OF ZONING APPEALS
The Morris Room
MINUTES OF JANUARY 13, 2015
7:30 P.M.

Members Present: Mr. Harold Morris (**Chairman**
Mr. Peter Von Keyserling (**Vice-Chairman**)
Mrs. Patricia Eager
Mr. R. Easton Loving

Staff Present: Mr. Jason Stewart, Planning and Zoning Administrator/ (**Secretary**)
Mr. Frederick Payne, County Attorney
Mr. Scott Miller, Code Compliance officer
Deidre Creasy, Senior Program Support Assistant

Members Absent: Carol Walker (**Recused**)

CALL TO ORDER:

Harold Morris (**Chairman**) called the Board of Zoning Appeals meeting of January 13, 2015 to order at 7:28 p.m.

ELECTION OF OFFICERS:

Planning and Zoning Administrator, Jason Stewart advised the Board of Zoning Appeal members that an election of officers was required before the start of the meeting.

MOTION:

Mr. Loving made a motion to keep Harold Morris as Chairman and Peter Von Keyserling as Vice-Chairman of the Board of Zoning Appeals, seconded by Mrs. Eager. The election of Chairman and Vice-Chairman was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

Mrs. Eager made a motion to keep the Planning and Zoning administrator as Secretary to the Board of Zoning Appeals, seconded by Mr. Von Keyserling. The election of Secretary was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

APPROVAL OF MINUTES:

MOTION:

Mr. Loving made a motion to approve the minutes of the October 07, 2014 meeting with the second paragraph of the motion amended from approve/deny to approved. The motion to approve was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

Mrs. Eager made a motion to approve the minutes of the December 02, 2014 meeting as submitted. The motion to approve was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

By-Laws and Meeting Schedule Discussion for 2015:

A discussion of the current meetings schedule of every second Tuesday of the month at 7:30 P.M. was accepted with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

MOTION:

Mrs. Eager made a motion to add email to the communication listed in the by-laws Article 8 Section 8-2. The motion to approve was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

APPROVED

PUBLIC HEARING:

> **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 616. The subject property is zoned A-1, Agricultural, General.

Jason Stewart, Planning and Zoning Administrator presented 2 Notice of Violations issued on 9-16-2014.

Jason Stewart advised that the Notice of Violation was sent in regards to violations of Article 4 Section 22-4-2.1, Article 4 Section 22-4-2., Permitted Uses in Agricultural, General, District (A-1), Article 22-22-1 Definitions and Article 19, Section 22-19-2 Violation and Penalty of the Fluvanna County Zoning Ordinance. The violations consist of utilizing the subject property for the storage of broken concrete and masonry blocks, rusted metal scaffolding, miscellaneous metal objects, tires and wooden logs. (Contractor's Storage Yard, Salvage & Scrapyard, Junkyard, and Lumberyard)

Jason Stewart presented definitions such as Contractor's Storage Yard: Storage Yard's operated by, or on behalf of, a contractor for storage of large equipment, vehicles or other materials commonly used in the individual contractor's type of business; storage of scrap materials used for repair and maintenance of contractor's own equipment; and buildings or structures used for offices and repair facilities.

Junk: Old scrap or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

Junkyard: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard and the term shall include garbage dumps and sanitary fills.

Salvage and Scrap Yard: Facilities engaged in the storage, sale, or dismantling or other processing of uses of waste materials which are not intended for reuse in the original forms. Typical uses include but are not limited to paper and metal salvage yards, automotive wrecking yards, junk yards, used tire storage yards, or retail and/or wholesale sale of used automobile parts and supplies.

Lumberyard: An area used for the storage, distribution and sale of finished or rough cut lumber and lumber products, plywood, drywall, paneling, concrete masonry unit (CMU) blocks or other concrete products, but not including the manufacturing of such products.

Jason Stewart advised that each of those uses as defined are present on the subject the property and the A-1 (Agricultural, General) Zoning District does not permit those uses by right or with a Special Use Permit. A previous violation resulted in a Judicial Determination and Conviction that states there is a contractor's storage yard use present on the subject property in violation of the Zoning Ordinance. Mr. Stewart then explained and showed several photos.

Jason Stewart stated that he moved to uphold the Zoning Administrator's determination as stated in the staff report for BZA 14:02. He also advised that he appellant, Mr. Sherrill and his attorney, Mr. Mullen were also present.

Eager: Do you know what business Mr. Sherrill is in?
Stewart: No, does not know what business Mr. Sherrill is specifically in now?
Eager: Would he have to be a contractor or in that business to have his things classified as contractor materials?
Stewart: Advised that Mr. Sherrill stated that he would be using the materials to build a house at one time
Miller: The previous planning administrator asked Mr. Sherrill to provide a letter documenting his intent and a time frame and Sherrill indicated that the materials would be used for agricultural building and possibly a house. He also indicated that he would start building within a year and this occurred in January of 2012 and the letter was received and signed.
Eager: The materials shown don't look like materials that you can build a house with, it would require more materials.
Miller: Agreed

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Eager: However how is this any different and from any other neighbor who stores these types of materials in their yard?
Miller: This was initiated from a complaint; we don't do proactive enforcement in the county.
Eager: Brought up the issue of upholding the constitution and Virginia state laws and if he does not have contractor materials and is not a contractor how is this any different from any other farmer that stores materials on their property?
Payne: It is the zoning administrator's duty to construe these ordinances and yours on an appeal. There are a lot of actions that the zoning administrator takes that you never see. He advised that Eager has the right to look at the ordinances and determine what they mean. He recommended her to consider the fact that this issue has been tried in court and the facts haven't changed and the judge advised that it was a contract storage yard and that there was no special use permits. The case was appealed from district court to circuit court and the circuit court upheld the district court's opinion. The parties and facts are identical.
Eager: If the issue has already been settled in court then why is it coming to the Board of Zoning Appeals?
Payne: The appellant has the right to appeal the determination but he has been in violation since September 30, 2013.
Eager: Does Board of Zoning Appeals have the power to overrule the court's decision?
Payne: Unsure. Collateral estoppel, same parities and facts but a different case, those issues are no longer arguable.
Mullen: Fred Payne is wrong. The court decided years ago that Mr. Sherrill was guilty under different circumstances and there are three things that you must know. First, General District is not courts of record in Virginia and there decision is not binding on the BZA. Second, Mr. Sherrill is here for JWS Enterprises. Jws enterprises doesn't have a right to a hearing that is fore gone by a determination already made years ago because that would be a hollow right. He has the right to due process. Third, Mr. Payne is wrong on the law, procedure and the facts, the property has changed and JWS enterprise is a farming enterprise and they have evidence.
Eager: Tried to research JWS Enterprises and couldn't find anything online about JWS enterprises.
Mullen: Advised Mrs. Eager that the facts are different and it is up to you make the right decision. The first difference is that there was a different version of the right to farm act in which JWS Enterprises at that time didn't fall under. The law has changed code section 15-22.88.6. The zoning administrator can't make determinations of that are contrary to the law. There has been no threat to public health, safety or welfare; this case began because of a neighbor's complaint. This point is scary because it looks just like most of the houses in Fluvanna County. Also there is no esthetics ordinance in Fluvanna County and the VA state law requires that no county has right to make zoning ordinances based on esthetics and thankfully that is not what is being done here. Mr. Sherrill is not a contractor, and has never been a contractor since he owned the property. Mullen then went on to go through all of the definitions listed previously to explain how none of them apply because the property is a farm. JWS enterprise is not Sanford and Son. The neighbor's yard has tires on it too but the only difference is that no one complained about it. He then read an email from Fred Payne, April 11 2014 in which he acquired under the F.O.I.A where Mr. Payne questioned the enforceability of the code and advised that since then no one went to the Board of Supervisors to change the ordinance. JWS has a permit from the Department of Game and Inland fisheries to propagate and sell certain wildlife in Virginia.
Loving: The permit permits the sale and the propagation of the American Bullfrog and that would be constituted as Aqua-culture. Aquaculture in the commonwealth is not classified as the right to farm.
Mullen: However, the Fluvanna county code defines aquaculture as agriculture. He then read a letter from the Virginia Department of Agriculture that advised JWS had some issues to possibly cause water pollution in which Mullen advised that JWS used the *"accoutrements"* on the property to clean the possibility of pollution up. Now the farm has been fully approved in the state of Virginia for its requested agricultural use. Also there are no requirements under state law or county code that requires an owner to tell the Government what they intend to do with their property and a time frame.
Morris: Is Mr. Sherrill able to hunt and sell deer on his property?
Mullen: Yes to Hunt, no to sell.
Eager: What is his intended purpose with the catfish and the bullfrogs, how is it profitable?
Loving: Has the appellant engaged in sales of the things that he farms?
Mullen: Unsure, the appellant can answer that.
Eager: On the posts going to his farm, they advised that he can only produce things from his own use.
Mullen: He bought the land with his family's money that was land locked and had to get a 10-foot easement from his neighbor's property. A fence was erected and the court deliberated on the use of the easement and determined that it can only be used under certain circumstances.
Payne: Advised Mrs. Eager that he has a copy of the easement.
Mullen: (***Attempted interjection***)
Morris: (***Established Order***)
Payne: spoke of easement restrictions
Mullen: Presented a letter from Darren Coffee, prior planning director advising that he was reversing the determination of the violation that it was a wood storage yard and anyone including the county had

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30 days to appeal. He advised that the notice is insufficient because no description or specific date of violation was presented. Also he asked the owner's agent for permission before he advised that he was at the meeting for free, that he has bored every cost for the appeal and every instance at his own expense. He stated that Mr. Sherrill will speak and show pictures of various places in the county including the appellant's property as well. He also showed pictures of various locations showing pallets and tanks including The Pleasant Grove Park.
Payne: We don't have these files, where are the rest of the properties?
Mullen: That is not required
Morris: Advised Mullin to answer the question
Mullen: Sherrill will answer
Sherrill: Advised that he took pictures of various properties around the county, Pleasant Grove, E.W. Thomas, the Sheriff's office, the library and other private residences.
Loving: Established that Sherrill was taking pictures from the road
Sherrill: Went through various pictures of the properties and sighted what he thought to be violations
Von Keyserling: This is a lot of information to digest and to be requested to assemble it in a single evening is unreasonable.
Sherrill: Well he took a lot of pictures because he felt intimidated and that no violations were on his property. He then began to tell his life story starting from 1947 to present day which included when he was a contractor.
Payne: Asked Sherrill to answer a question in reference to the violation and Sherrill refused to answer.
Mullen: advised that he was unable to cross examine the Governments witnesses so Fred Payne could not cross examine his.
Morris: Mr. Payne can asked a question
Payne: Proceeds to ask questions in regards to various documents
Von Keyserling: Advised Mr. Payne that he is out of order and unable to take over questioning
Loving: Would like for Mr. Payne to proceed with the question
Payne: Asked what agricultural uses has he done after March of 2009 because the Virginia department of Agricultural retracted their support after no signs of agricultural usage were found
Sherrill: Would not answer the question and would only answer question directed from the board and he feels like his back is against the wall.
Loving: Time to hear public comments
Von Keyserling: Asked for a bathroom break

10 minute recess at 9:13 p.m. at the discretion of Chairman, Harold Morris and resumed at 9:21

Public Comments Section: 1

Chairman Morris opened the first opportunity for Public Comments.

1. Nik Teichmann- Property Owner and neighbor: His concern is that the equipment there is not functional and can create lubricants that can cause ground water contamination, tire bringing mosquitos and his yard was one of the first yards in the county to find a dead animal with the West Nile virus. Also advised that it may take an effect on the value of his property and that it looks like junk.

There being no one else wishing to speak, Chairman Morris closed the first round of Public Comments.

MOTION:

Mr. Von Keyserling made a motion to defer the 1402 appeal until the February 10, 2015 meeting, Seconded by Eager. The motion to approve was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

PUBLIC HEARING:

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.

Jason Presented 14:03 which is an appeal of determination of the Zoning Administrator that the subject property is in violation of 22-17-9 (Conditional Rezoning) and Violation and Penalty 22-19-2 (Permitted) Uses, B-1, General Business District) at Tax Map parcel 51A-(A)-22.

APPROVED

Only uses permitted on property per proffers include:

1. Bakeries 2. Retail stores 3. Office Building 4. Restaurants 5. Agricultural Supply, greenhouses, and nurseries, 6. Printing Plants 7. Feed and seed stores 8. One & Two Family Dwelling 9. Bed & Breakfast/Country Inn 10. Fitness Center and Health Club.

Violations issued on 9-16-14, Complaint states that storage use and maintaining a Contractor's Storage Yard on the subject's property are not permitted uses per the proffers approved by the Board of Supervisors in 2005. The property was previously convicted of having the same non-permitted use in the fall of 2013. Appellant was convicted of maintaining a Contractor's Storage Yard on the property in 2013. The Applicant has claimed to have a Fine Arts Studio which is also not a use permitted by proffers and the Violation still exists. The Approved Proffers on the Property Do Not Allow This Use.

Jason Stewart moved to uphold the Zoning Administrator's determination as detailed in BZA 14:03.

Public Comments Section: 2

Chairman Morris opened the second opportunity for Public Comments.

There being no one wishing to speak, Chairman Morris closed the second round of Public Comments.

Mullen: Business property in the fork union district but no sewer services available
Loving: with all due respect there are multiple businesses with no sewer that operate in Fork Union
Mullen: Advised this case is different because there is no complainant and Mullen believes that Sherrill is being targeted for different reasons. Also, no law requires residents of Fluvanna County to keep their property to be put in a storage trailer. Mullen advised that Sherrill scheduled a meeting with, community development's Bobby Popowicz, drove 2 ½ hours and got to Fluvanna to find out that the meeting was canceled and that Mr. Popowicz was instructed by the county attorney not to meet with any of the parties. He advised that Sherrill had a plan to bring business and tax revenue to the county. He stated that the court ruled that it was a contractor's storage yard and that the courts were wrong and the Board of Zoning Appeals is not required to repeat that error. Mullen advised that since that conviction the property has been changed.
Sherrill: Fork Union Board of Supervisor's representative, Mozell Booker has been to his property and has not complained.
Payne: The difference with this issue and all the other business he showed is that the other businesses are active businesses. Also the principal uses must be within the proffers that JWS set when they applied for the B-1 zoning. So what JWS wants to do is not a permitted use. Mr. Popwicz's opinion does not represent the county and in order to get his opinion he will have to be compelled. Also the ruling of the courts is binding on the parties.
Von Keyserling: Established that JWS is the company and Mr. Sherrill is the sole owner and Manager of the business
Morris: Does he have a business? Is he selling something? Is he making something?
Loving: The issue is that Mr. Mullen is taking the ordinance and stretch to fit what the client's predicament.
Morris: The issue is does he have a business in this place of business?
Sherrill: Sells personal things in a yard sales
Loving: Reiterated that a "Stop In" was run out of that building without a sewer system. Also advised that the health and the welfare of the county should be discussed with the Virginia Department of Health and not necessarily the Fluvanna County Community Development initially.
Sherrill: He wanted to talk to the community development office about a pump station. Also he is storing only his personal property on the 1/3 of an acre property, non-conforming use of the property.
Eager: Established that when he bought the property he knew it had no sewer.
Sherrill: Advised that he invoked the E.L.E. "Everybody love Everybody". He then asked what he can do to fix what's on his property, can he get building permits. Also stated that SGT. Peterson advised his business is a great place for a speed trap.

Public Comments Section: 3

Chairman Morris opened the Third opportunity for Public Comments for a citizen with a raised hand to speak.

1. Lewis Johnson, Adjoining property owner: Offered clarification of his views of the property, he didn't say that he was pleased with the way the property was, he only said that he doesn't think it effects the renting of his property.

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Von Keyserling: If the Board of Zoning Appeals decides on either determination can they make suggestions
Payne: Suggestions can be made but the determination made has to be if the zoning administrator determination is correct or incorrect and the discretion to take the suggestion is up to the zoning administrator.
Eager: Requested that the contaminates be removed from both properties
Mullen: Advised that the contaminates would be removed

MOTION:

Mrs. Eager made a motion to defer the 1403 appeal until the February 10, 2015 meeting, Seconded by Von Keyserling. The motion to approve was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None.

ADJOURNMENT:
There being no further business, Chairman Morris adjourned the Board of Zoning Appeals meeting of January 13, 2015 at 11:01 p.m. No Motion was made and the next meeting is set for February 10, 2015 at 7:30 P.M.

Meeting recorded by Deidre Creasy.

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Chairman Harold Morris
Fluvanna County Zoning Board of Appeals

APPROVED