

**FLUVANNA COUNTY BOARD OF ZONING APPEALS**

**The Morris Room**

**MINUTES OF FEBRUARY 10, 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 February 10, 2015 to order at 7:30 p.m.

**APPROVAL OF MINUTES:**

**MOTION:**

Mr. Loving made a motion to approve the minutes of the January 13, 2015 meeting as submitted with a footnote on the minutes that the audio is available if needed. The motion was seconded by Mr. 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.

**PUBLIC HEARING:** None

**Unfinished Business**

**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.

Payne: Established with Chairman Morris that the Board of Zoning Appeals heard the public hearings on January 13, 2015 and just needed time to process the information.

Morris: Advised that Dr. Von Keyserling has written a consideration for the cases.

Von Keyserling: Ensured that everyone including the appellant and his legal counsel received a copy of the determination

Mullen: Ensured that the February 6<sup>th</sup> and February 10<sup>th</sup> letter is made a part of the record.

Payne: Established that the February 9<sup>th</sup> response be made a part of the record

Mullen: Advised there was no objection to Von Keyserlings resolution for the A-1 property. He however objects the resolution to the B-1 property.

Loving: Established with the board members that no outside legal counsel is needed to proceed with the meeting. He then established that Fred Payne is not advising the Board of Zoning Appeals.

Mullen: Advised that he had no additional information to present.

Von Keyserling: Read his determination and discussed thought processes behind the determination with the Board.

Eager: Advised that the appellant cannot be singled out for the way his property looks without this case setting precedence for every other property owner, with similar situations that choose to keep their land the same way

Loving: Explained that there are definitions that give him pause for concern when he starts going down the path of saying the appellant has no rights under A-1, Under by right. Aquaculture is not listed under the commonwealth but it is in the code of Fluvanna. The appellant built a pond on the property and he has acquired permits from D.G.I.F. The county's definition itself gives broad latitude to a property owner to practice conservation in any parcel or area with a substantially undeveloped land conserved in its natural state to preserve or protect endangered species, critical environmental features, view sheds, or other natural elements etc. If you apply that definition to the majority of the property that the appellant owns in the Union Mills area it meets that test. He explained that the Board can't go outside the bounds of what the counties code says, and when you strictly look at the counties code and apply these tests, the appellant is within his latitudes and a lot of this goes back to a civil matter.

Morris: Asked if there was any other discussion?

Von Keyserling: Advised he would like to call for a vote

Payne: Established that Dr. Von Keyserling was making a motion

Morris: Chairman Agreed

Payne: Advised the board they would need a second

Morris: Asked if there was anyone to second

Loving: Asked Von Keyserling if he could re direct him on something

Von Keyserling: Agreed

Loving: Asked for clarification "When you say this you are essentially modifying, you're not reversing the zoning administrator's position and you're not affirming it, you're modifying it with what we are saying here right? Or are we essentially taking a position?"

Von Keyserling: Advised he is taking the position that he sees no violation as cited, and therefore the board has two choices. First choice, to "ask the zoning administrator if he is willing to withdraw it, if he is then that issue is taken care of, if he doesn't feel he is free to do that, then the board can say that they don't uphold that citation and reverse it."

Loving: Questioned the estoppel issue of if the Board is abdicating their responsibility, in that sort of motion by not taking any kind of stand on the issue.

Von Keyserling: Disagreed and advised, there is no violation according to code by the definitions cited so they are taking a look at the administrators ruling, saying agree or disagree. Then he asked the administrator would he be willing to withdraw the violation and let it seek other avenues and resolutions? Or would he like the board to make a decision?

Stewart: Advised that the administrator's preference is for the Board to make a decision on the determination

Von Keyserling: Advised the board that they should not uphold the cited violation because it is a court matter.

Mullen: Advised that "reversal" is the language the court uses

Payne: Advised that the Statute says in exercising its powers the board may reverse or affirm, wholly or in part or may modify an order requirement decision or determination appeal.

Loving: Offered clarity and stated that the decision to reverse is built around the basis of question they have in regard to definitions in 22-22-1. He then stated that part of the concern is that the board had the benefit of reading some of the county's correspondence and if they acted on something that was being discussed between county attorney and the commonwealth attorney's office that could potentially set the

board up for a Circuit Court appeal. He then stated, "If the County chooses to pursue it, it's up to the county at this point."

Morris: Advised let's have the motion as corrected

**MOTION:**

Von Keyserling made a motion to reverse the determination of the zoning administrator for 14:02. Eager seconded the motion. The motion to approve was carried with a vote of 4-0-0. AYES: Eager, Loving, Von Keyserling, Morris. NAYS: None. ABSTAIN: None

Payne: The record needs to show what the vote was? So if you could just summarize what the vote was?

Morris: The vote is 4-0

Von Keyserling: No nays and no abstentions

Morris: Made a comment to the appellant that was agreed upon by Loving that the property needs to be cleaned up.

Loving: Also thanked the appellant for cleaning up potentially contamination risks on the property.

Eager: Asked if the appellant could please close the hand dug well on the back of his property to prevent animals or people from falling in it.

**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.

Von Keyserling read his determination in which he advised that the zoning administrator's determination should be upheld

Mullen: Advised that the question of use and not things on the property that are an issue. The appellant is here to answer for having a contractor's storage yard.

Loving: advised if Mr. Miller can explain the ordinance as specific to the violation.

Miller: Listed the 10 Proffers that the B-1 building is to be used for ONLY! In which Mr. Sherrill originally created the proffers

Mullen: Asked the question of what "use" is prohibited?

Eager: Advised that in 2005, the appellant asked for A-1 to B-1 with a list of proffers that the property could ONLY be used for.

Mullen: Advised that the appellant is permitted to have the things that he has on his property related to the proffers.

Eager: Advised the building is in dis repair

Mullen: He doesn't know that to be the case and unsure if the county has a maintenance code or not.

Loving: The appellant advised Mr. Miller in a letter that he wants to use the facility as a self-storage facility or a fine arts studio.

Mullen: Advised that this information is not in the code and if it is a violation it should be.

Loving: Advised the information is in the code under the definitions. Also in the record and testimony he has advised uses other than the proffered.

Morris: Listed each proffer and asked if they were in that use.

Mullen: Advised the building is being used as an office

Morris: Then asked if the trailers that are sitting outside are necessary for him to run the office building.

Mullen: Advised that he has not been to the property, however the determination does not comport with law and doesn't indicate a use

Von Keyserling: Established that he is not sure if having a personal office in a building is classified as an office building.

Mullen: (Personal Integrity) advised he has not seen the property only pictures

Loving: Advised that it just doesn't meet the use.

Eager: Advised that she remembers clearly when his wife made up the proffers and they state ONLY.

Payne: Summarized that Mr. Mullen is wrong about the uses. A yard sale is an accessory use, not a primary use. In addition, in order to have the uses that the appellant is using the property for he will need a site development plan and to go through the proper channels.

Von Keyserling: Advised that the appellant is in violation and to uphold the zoning administrator's decision

Mullen: Asked for clarity on the "uses"

Von Keyserling: Advised Mullen that "uses" refer to the proffered list and the appellant's uses fit none of them

Payne: Raised the procedural issue with the Board that they need to speak with one voice through its action which is motions, seconds and a vote. Also suggestions are not a part of the decision they have to affirm, reverse or modify. He then established that the only thing the county wants is to have the violations gone. Also if the matter goes to court, all the court will use is whatever vote the board took.

Von Keyserling: Advised that he would like the property turned into a successful business and the county should be offering help like they do with other businesses not refusing help.

**MOTION:**

**Von Keyserling made a motion to affirm the zoning administrator's determination in 14:03 and the resolution of subsequent issues is up to the county and the appellant to deal with. Loving seconded 4-0-0. 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 February 10, 2015 at 8:36 p.m.**

**Meeting recorded by Deidre Creasy.**

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Chairman Harold Morris  
Fluvanna County Zoning Board of Appeals

**\*Audio recordings of the minutes are available upon request\***