

BOARD OF ZONING APPEALS
March 1, 2010
MEETING MINUTES

Present: Chair John Bradshaw, Members Gifford Childs, Linda Russell, Kim Cash, Goffrey Miles, and Alternate Ron Moyer

Staff: Fred Boger, Planning Director

Call to Order: Mr. Bradshaw called the meeting to order at 7:30 P. M.

Minutes of November 2, 2009 – Several corrections were needed for these minutes. Corrections will be made and minutes resubmitted at the next regular meeting.

Election of Officers for 2010

Ms. Russell made a motion that the current slate of officers be re-nominated for 2010. Ms. Cash provided the second and motion passed 5-0. Consequently, the following officers will serve in 2010: Chair – John Bradshaw, Vice Chair – Gifford Childs, Secretary – Betty Fortune.

Zoning Interpretation #2010-001 – Wintergreen Nature Foundation

Mr. Stuart Sadler, Attorney at Law, was present at the meeting to represent Wintergreen Nature Foundation (WNF). Mr. Bradshaw asked that he be sworn in and Mr. Sadler said that typically lawyers don't swear under oath, but he would agree to do so in order to follow Board procedure. He was sworn in .

Before discussion began, Ms. Russell read the following statement:

The Code of Virginia, Chapter 31, Item 2.2, prohibits a government officer from participating in transactions in which the officer has a personal interest. Personal interest is defined as financial benefit or liability. Although I am a past member of the Board of Directors of the Wintergreen Nature Foundation and a current member of its finance committee, I will derive no financial benefit from the affiliation or from my residence in Wintergreen.

Mr. Childs stated that he is an employee of WNF WPI but feels there is no conflict of interest or financial gain from the upcoming discussion.

Mr. Moyer owns property in Stoney Creek, but is not a member of the WNF.

Mr. Boger reported that Mr. Sadler made an inquiry in January 2010 regarding the division of 12.5 acres from a 25.481 acre parcel identified as TM #22-A-57 on which the prospective buyer wants to keep horses on the property and construct a shed for their shelter. The subject property is part of the Wintergreen Residential Planned Community and is identified on the Master Plan as Single-Family Residential Sector which is described as:

7-5-2 Single-Family Residential Sector – SR

In Single-Family Residential Sectors, the following uses will be permitted:

1. Single-family detached dwellings.
2. Single-family attached dwellings.
3. Other uses as permitted in Residential Districts R-1 and in Section 7-5-1(b).

After carefully considering this proposed use and consulting with the County Attorney, the conclusion was reached that this use is not a permitted use in the Single-Family Residential Sector. Reasons for this decision are:

1. A horse is considered to be livestock. Livestock is usually defined as horses, mares, mules, jacks, jennies, colts, cows, calves, yearlings, bulls, oxen, sheep, goats, lambs, kids, hogs, shoats and pigs.
2. A horse is considered a farm animal. In Western countries, "farm animals," with the exception of poultry, encompasses primarily cattle, sheep, pigs, goats, horses, donkeys, and mules; other animals, such as buffalo, oxen, or camels, may predominate in the agriculture of other areas.
3. The proposed shed/stable to shelter the horses is a stable. A stable is generally defined as a building for the shelter and feeding of domestic animals, especially horses and cattle.
4. The proposed shed and keeping of two horses on the property is an agricultural use and is not permitted in the Single-Family Residential Sector as shown on the Wintergreen Master Plan. The proposed use would be permitted in the Multiple Use Sector (riding stable) and maybe in an area designated as open space on the Master Plan. (Further consideration would be required on this.)
5. The construction of a shed/stable on the property does not relate to the existing use of the property. It would be an accessory building and is permitted when a primary dwelling exists or by Special Use Permit when construction of a primary dwelling is anticipated.

Mr. Boger stated that this type of use is allowed in A-1 zoning; however, the Master Plan designates this area as RPC – Single-Family Residential zoning. Properties to the north and across Rt. 151 from this parcel are zoned A-1.

Mr. Sadler handed out and read a prepared statement which is attached to these minutes . He reiterated that horses are not farm animals or livestock, but pets. Ms. Cash stated that the Zoning Ordinance specifies what is allowed in each zoning district, not what is prohibited. If a use is not listed as permitted, it is considered to be prohibited. While many zoning districts allow livestock on properties, the Single-Family Residential does not.

Ms. Cash added that the request is to build an accessory building without a permanent residence existing or, to her knowledge, planned. She said that it appears evident that this property would be used only for housing animals.

Ms. Russell added that placement of animals in these residential zones has been illegal for some time. Mr. Sadler said he was asking the Board to approve something that has been past practice, realizing that precedence may be set. Ms. Cash said that this "past practice" was illegal and unapproved by the County.

Ms. Cash pointed out that the Zoning Ordinance doesn't allow for an accessory building on a piece of property without a residential dwelling unless a Special Use Permit is issued in anticipation of the primary dwelling being built.

Ms. Russell asked if Mr. Sadler had abandoned his position that this property could be used as a "playground." He agreed with the interpretation stated in the County Attorney's letter of February 25, 2010, as follows:
WNF points to the inclusion of "recreation" in Section 7-5-1(b) and, turning to the referenced provisions of the R-1 district, relies on "playground" in Section 5-1-4 as the permitted recreational activity that enables use of the property solely for housing and pasturing horses. However, "playground" appears as an example of the "public and semi-public uses" permitted by Section 5-1-4. The use envisioned is neither public nor semi-public. Even without the limiting language of Section 5-1-4, a horse stable and pasture undertaking simply does not fit with the common sense meaning of "playground."

Ms. Russell said that if Wintergreen encourages the allowance of horses in residential zoning, it would be clearly stated, as it is in Multiple Use Sector.

The public hearing was opened.

Laura Burrows, an adjoining property owner, stated that in her opinion, horses are not pets. The property being discussed is unsuitable for horses because it is wooded with a deep ravine. She has concerns about placing a horse(s) on the property with no one living there to care for it. She also said several others in the community oppose this use of the property, but could not attend the meeting due to a power outage in their area.

The public hearing was closed.

Ms. Russell said she could not see this shed/stable and horse as an appropriate use of this property, in addition to the fact that it is not permitted by the Zoning Ordinance. If it were rezoned like the surrounding property, it would be more reasonable. In her opinion, a horse is not considered a pet, and the housing of such is not allowed in a residential district. Even if the applicant/buyer wished to build a stable, a Special Use Permit would be required if it were done prior to the building of the primary dwelling. She said she could not support Mr. Sadler's position.

Mr. Childs said he agreed with Ms. Russell and supported Mr. Boger's interpretation. It would be a huge mistake to allow this use in a residential area.

Ms. Cash stated that her position on this interpretation has no bearing on her support for Wintergreen Nature Foundation. The request just doesn't fit with the wording or intent of the Zoning Ordinance.

Mr. Boger said that one option would be to amend the Zoning Ordinance rather than the Master Plan.

Mr. Bradshaw said he was familiar with the property and it is not suitable for a residential dwelling. He feels this request is an appropriate use for the property, but not as the Zoning Ordinance stands at this time.

Mr. Sadler said the property has been on the market for 5-10 years, and if it is not sold soon, it could be deeded to Wintergreen Property Owners Association and therefore, removed from the County's tax records. Zoning would stay the same.

Ms. Russell made the following motion:

The Board of Zoning Appeals finds the following:

1) The Virginia Code establishes that horses are considered agricultural animals, thus their keeping is an agricultural activity. The Nelson County Zoning Ordinance does not permit agricultural uses in R-1 zoning district or the Residential Planned Community, Single-Family Residential Sector. Horses are not considered pets.

2) Section 7-5-1(b) permits "recreational uses" including playgrounds. However, common usage does not support defining the keeping of horses as a "playground."

3) The Zoning Ordinance supersedes any covenants between landowners.

4) Construction of an accessory building prior to a dwelling requires a Special Use Permit. Generally the Board has required that construction of the dwelling begin within 1-2 years.

Therefore, the Nelson County Board of Zoning Appeals affirms the Planning Director's January 14, 2010 interpretation of Section 7-5-2 of the Nelson County Zoning Ordinance that denied the application of the Wintergreen Nature Foundation to permit the keeping of horses and construction of a shed (stable) on parcel identified as Tax Map #22-A-57 which is located in the Single Family Residential Sector on the Wintergreen Master Plan.

Ms. Cash provided the second, and motion passed 5-0. Mr. Bradshaw said he was voting "yes," but with reservations.

Other Business

Mr. Childs confirmed with Mr. Bradshaw that his vote on election of officers was "yes."

Mr. Bradshaw referred back to the zoning interpretation for WNF and said that he felt an appeal could be made which will end up in court. In his opinion, horses and donkeys are can be considered pets.

Adjournment: At 8:45 P. M. Ms. Russell made a motion to adjourn. Motion passed 5-0.

Next Meeting: April 5, 2010

Respectfully submitted,

Betty Fortune
Planning Secretary