

BOARD OF ZONING APPEALS
June 6, 2011
MEETING MINUTES

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

Staff: Fred Boger, Planning Director, and Wanda Staton, Secretary

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

Approval of Minutes May 2, 2011 – Deferred until next meeting.

Variance 2011-002

Michael and Heather Penny were sworn in by Mr. Bradshaw.

Mr. Boger reported that Mr. and Mrs. Penny are appealing the Zoning Administrator's denial of a Zoning Permit to construct an agricultural shed in the front yard for their dwelling presently under construction at 51 Cherry Grove Lane, Afton, Virginia. The proposed shed would be approximately 40 feet from the center of Cherry Grove Lane and 23 feet from the electric line (easement) crossing their property in the front yard. Mr. Boger showed the attached diagram of where the Pennys' want to place the shed.

The petitioners' state that they would like to place an agricultural shed 40 feet from the center of Cherry Grove Lane for the following reasons:

1. We do not need to clear any trees.
2. No grading required and better for water drainage.
3. Will house a tractor used to keep road clear in winter.

The hardship identified by the applicants is:

1. They will have to do a lot more grading and clear some trees.
2. Less accessible because of land sloping and utility right-of-way.
3. It will cost at least \$2,000 to grade and clear the land.

The petitioners' further state that the power company right-of-way is approximately 55 feet from the center of the road. (This distance would place the shed within the right-of-way).

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Staff has reviewed the information provided and visited the site, and it appears the shed could be built on the property in compliance with the required setbacks for a property zoned Agricultural, A-1. The shed could be located near the garage under construction in front of the house, or along the road leading to the house. Locating the agricultural shed at the proposed location appears to be a convenience for the Petitioners and not a hardship to justifying the reduction in the front yard setback.

Ms. Russell asked Mr. Boger what the difference is between an agricultural shed vs. a shed. Mr. Boger stated that an agricultural shed is exempt from building code requirements. Ms. Cash clarified that the term agricultural shed was a building code term and not a zoning term.

Mr. Michael Penny stated that he realized that they could put the shed back further in the woods but would have to cut down more trees which they didn't want to do. Putting the shed back further would also require more grading. Ms. Russell asked how big the shed was going to be and Mr. Penny stated it would be a 12 'x 22' shed. Ms. Russell asked who plowed Cherry Grove Lane currently and he stated that he didn't know because he doesn't live there. He wants to be able to get out in the winter and also help surrounding neighbors.

Ms. Cash asked what the other buildings near the house were and what they were being used for.

He stated that one building was going to be used for an office and guest room and the other structure was going to be a carport and a small storage unit.

Ms. Heather Penny stated that the land is mostly forested. She said there were only two small areas where the house could be sited because it's mostly flood plain. She and her husband hate to cut down any more trees. She stated it was their intention to help everyone in their community by plowing the hill on Cherry Grove Lane. She feels having the shed close to the road will not only help them but also the neighbors as well. The Board questioned whether their property was in the flood plain. Ms. Russell stated that the plat didn't show any flood plain on the property.

Ms. Penny said that they were told by the realtor that there was flood plain on the property. Mr. Penny stated that most of their property was in the flood plain and where the septic system is the only place where it could go. He stated that Mr. Steve Thomas, Soils Scientist, tested 13 places and the land didn't perk any place except where the septic is located. After further clarification from the Pennys, Mr. Bradshaw was of the opinion that the property was in a watershed not flood plain.

Mr. Bradshaw opened the public hearing. There were no comments so Mr. Bradshaw closed the public hearing.

Ms. Russell has been to the property and the topography was not unique to the area. She feels the Pennys can enjoy the use of their land by placing the shed further back from Cherry Grove Lane. Mr. Childs agrees that the Pennys should follow the zoning ordinance regulations.

Ms. Russell made the following motion:

The Board of Zoning Appeals denies the application submitted by Michael and Heather Penny for Variance #2011-002 to locate a shed in the front yard setback of their property at 51 Cherry Grove Lane based upon the fact that the hardship is shared equally by many people in this neighborhood and the hardship is not so severe that it renders the use of this property impossible.

Mr. Childs provided the second and motion passed 4-1 with Mr. Miles voting no.

Zoning Violation Appeal- William and Evelyn Snead

Mr. Bradshaw recused himself from the Board and asked Mr. Childs to be the chair for this hearing because of a 20-25 year personal relationship with the applicant. Mr. Bradshaw asked Mr. Moyer to replace him as a voting member on this application.

Temporary Chairman Mr. Childs stated that this is an appeal by William and Evelyn Snead of a decision by the Zoning Administrator, Mr. Fred Boger. Mr. Childs asked Mr. and Mrs. Snead to come forward and be sworn in and sign the oath affidavit.

Mr. Boger stated that Mr. William Snead is appealing the Zoning Administrator's "notice of Zoning Violation" sent to him on May 6, 2011 concerning the operation of an Automobile Graveyard "C" without the required Special Use Permit at 299 Appleberry Mountain Road in Faber. Mr. Snead stated that the use of his property for storage of inoperative vehicles is pre-exists the adoption of the zoning ordinance in 1977. It is an existing non-conforming use.

Staff has discussed this violation with Mr. Snead and talked with the people who reported the violation. As a result of these discussions and a visit to the site staff could not determine an approximate time period when this use started. At this time, Mr. Snead does not have a County Business License for the use or a permit from the State Division Motor Vehicles for a salvage yard.

During discussion with Mr. Snead, Mr. Boger had suggested appealing the violation notice to the Board of Zoning Appeals. If the BZA upholds the Planning Director's decision, Mr. Snead could then apply for a Special Use Permit to operate a Class C automobile graveyard or he could appeal to the Circuit Court. In response Mr. Snead stated that his business has been operating before 1977 and he would therefore appeal to the BZA. Mr. Boger presented some pictures to the Board showing what is on Mr. Snead's property.

Mr. Moyer clarified that if the business was there prior to 1977 then the automobile graveyard would be grandfathered. Mr. Boger concurred that it would be non-conforming. Ms. Cash wanted to know why the vehicles are stored in the woods. Mr. Boger stated that is where Mr. Snead stores them. Ms. Cash stated that some of the vehicles are very old and asked how long had they been sitting there. Mr. Childs asked Mr. Boger how many vehicles he thought were on the property and he replied more than five.

Ms. Russell stated that if Mr. Snead had been operating since before 1977, and he expands his business he should have obtained a Special Use Permit. Mr. Boger stated he does not know if it has expanded and Ms. Russell stated that she would assume that he wouldn't still be in business if he hadn't expanded. It was her understanding that any nonconforming business that expands more than 50% is no longer grandfathered. Mr. Boger stated that showing his business has grown more than 50% would be hard to prove. Ms. Cash stated it would be Mr. Snead's problem to prove. Mr. Childs asked if Mr. Snead would need a license to operate the graveyard. Mr. Boger stated if he is selling scrap he will need a business license. If he has a salvage yard he will need a permit from DMV.

Mr. William Snead, applicant, stated that the Board was assuming too much. He stated that the bus and Studebaker shown in the pictures did not belong to him and they were on his brother, David's adjoining property. He stated that David Snead did not receive a notice of this hearing. Ms. Cash asked for clarity of what was located on which parcel. She asked why there were pictures of vehicles from someone else's property and Mr. Boger replied he didn't know where the line was since he was out in the woods. Mr. Snead stated he has 3 inoperable vehicles and the chassis of a van. He used the van for parts for the one he is driving and he also has a log truck that he uses for parts. Ms. Russell asked how many vehicles he has on the property that was inoperable. He stated he has 3 or 4 inoperable vehicles. Mr. Boger stated that inoperable is defined as not having a valid license or inspection sticker. Mr. Snead stated that he has 12 vehicles with licenses on them and 5 farm tractors. He has been fooling with that stuff since he was 18 years old. He also said that he had worked with Mr. Goffrey Miles for 17 years. Ms. Russell asked Mr. Snead to look at the photographs of vehicles and indicate whether each is on his property and whether each is inoperable. He admitted that he has probably had more than 5 inoperable vehicles on his property at times. Mr. Childs said that it appears there are vehicles in the back of the property that can't be identified. Mr. Moyer asked Mr. Snead if he was operating since 1977 and he replied that he and his dad had been in operation since before 1977. Ms. Russell asked Mr. Snead if he had any proof other than his word that he had been operating since before 1977. Mr. Snead answered that he didn't. Ms. Russell asked him if he had any business records dating back before 1977. He replied that he didn't. Ms. Russell asked if he has always operated as a salvage yard. Mr. Snead stated that he wasn't; he was dealing in junk iron. He said once he got enough money to get a rollback he started hauling cars. He said he picked up a lot of cars from AAA. He said if they would break down on the road, he would go and pick them up, bring them to his property, demolish them and take them out. Ms. Russell stated that she understands from his statement that he was not operating a salvage yard prior to 1977. He stated he was operating a salvage yard. He would take in a few cars, probably one or two. She asked if he had any witnesses that could testify he was in business before 1977.

Ms. Evelyn Snead, wife of Mr. Snead, stated that all of the adjoining property owners were not notified. She said that David Snead, William's brother was not notified and Teresa Campbell was not notified. Mr. Boger stated that Ms. Campbell's lot was cut out of David Snead's property and that her land did not adjoin William and Evelyn Snead's property. Mr. Boger stated that the office obtains the records from the tax maps. Mr. Boger stated that if the issue of the adjoining property owners not being notified was to be challenged, the applicant could go to court.

Mr. Childs opened the public hearing.

Mr. James Tinder, stated that he was ashamed of people accusing somebody that their word is no good. He stated that Mr. Snead had worked hard all of his life and has been dealing in salvage for as long as he can remember. His property faces Mr. Snead's property, and he has no complaints about what he does. He stated that most of the stuff he brings in stays on the truck and it's not a scrap yard operation and it's not disassembled. He said that Mr. Snead has been in business prior to 1977.

Ms. Kara Tinder, 338 Appleberry Mtn. Road, stated that she has lived there since 2000 and has never had any problem with Mr. Snead's business. She stated that she also was not notified. She stated that she wouldn't have built her house there if what Mr. Snead was doing was wrong.

Ms. Lynn Hughes, stated that she is William Snead's niece. She presented a plat from 1977 showing her grandfather gave Mr. Snead 2.19 acres where the house sits. She also had a plat indicating where the shop sits and Mr. Snead did not own that until 1999. She stated that there is a family cemetery with an access road that is continuously blocked by junk cars. The plat shows there is a right of way to be used for the family cemetery. She stated that there have been several hundred cars on the property over a period of time. She said that in order to have a junkyard business all of the fluids must be drained prior to crushing them. She stated that he was not operating prior to 1977 and that he didn't even own that land at that point. She stated that she knows animals have died from the antifreeze on the property. She stated that she has seen Mr. Snead take a backhoe and smash cars to the ground.

Ms. Laura Goolsby, 483 Appleberry Mtn. Road, stated that she is William and Evelyn's daughter. She stated that the salvage, recycling business started well before 1977 and provided a supplemental income in the winter for the Sneads. She stated that it was her understanding of the County Ordinance that a violation only occurs when it can be seen from a public roadway or a residence. She said that the vehicles are not demolished and the salvage yard removes the glass and liquids from the vehicles. She said how all this got started was unclear but the business hasn't bothered anyone in the past and it is a legal operation.

Donna Snead, stated that she works for the county and that her grandparents are buried up on Mr. Snead's property. She said for a long time her boyfriend has helped Mr. Snead smash the cars with a backhoe, and fluids and glass would go into the ground. She stated that it was illegal to put contaminated items in the county dumpsters and she felt like her grandparents graves were being contaminated by Mr. Snead's business. She stated that this business had been going on for 8 or 10 years but not prior to 1977. She stated it started when he got his first roll back and Curtis Lawhorne and Duck Johnson were helping him. She said he was always going to make a living, doing whatever he had to do.

Mr. William Snead stated that the DEQ had visited his property twice and hadn't found anything.

Mr. Childs closed the public hearing.

Mr. Snead replied to issues discussed in the public hearing. He stated that he doesn't drink and on Friday and Saturday nights they drink and party up at the cemetery. He stated if they wanted to visit the graveyard then they would have to walk.

Ms. Cash asked if the County initiated citation of Mr. Snead. Mr. Boger stated that a complaint was received. Ms. Cash said that she resented the way the applicant and witnesses acted as though the County came after Mr. Snead. She stated that when there was a complaint the Board handles the complaint by being fair to everyone and hearing all sides of the issue and then rendering a decision.

Ms. Russell stated that it does appear that this property does have more than 5 inoperable vehicles at times and if that is the case then it would be classified as a Class "C" automobile graveyard and will need a salvage license. She stated that she has seen no evidence that this automobile graveyard existed prior to 1977 or that it was the size that it is now. She said it may have started out as one or two vehicles and expanded it's not grandfathered anymore. She stated that Mr. Snead needs to get a salvage license unless he can prove it existed prior to the zoning ordinance and it hasn't expanded. Ms. Cash clarified that Ms. Russell was supporting the Zoning Administrator's decision.

Mr. Miles stated that he had known Mr. William Snead for a long time. He said Mr. Snead used to haul scrap iron and he even sold Mr. Miles a scrap 1964 or 1965 truck. He stated that he can't say that everything was done correctly. Mr. Snead always hauled iron; it's not that he ran a salvage yard.

Mr. Moyer stated that the applicant and 2 other people testified that he had been operating prior to 1977 and 2 said that he wasn't operating prior to 1977. He has a problem penalizing Mr. Snead. Mr. Childs asked the Board for a motion.

Ms. Russell made the following motion:

In the matter of the appeal of Mr. William Snead of the Zoning Administrator's decision that he is in violation of the Zoning Ordinance, the Board of Zoning Appeals upholds the Zoning Administrator's decision based on the lack of proof that the salvage yard existed prior to 1977 and that the use has not expanded more that 50%.

Ms. Cash provided a second and motion did not pass 2-3 with Mr. Miles, Mr. Moyer and Mr. Childs voting no.

Mr. Boger stated that the aggrieved party can appeal the decision to the circuit court within 30 days. Unless it goes to Circuit Court and further evidence is brought forward, Mr. Snead will need to get a DMV License for a salvage yard and a Business License from the County. Since the board's decision determined that Mr. Snead's salvage business predated the Zoning Ordinance, he is allowed more than 5 inoperable vehicles on his property.

Mr. Bradshaw adjourned the meeting at 9:00.

Respectfully submitted,

Wanda Staton

BZA Secretary