

**BOARD OF ZONING APPEALS**  
**November 5, 2012**  
**MEETING MINUTES**

Present: Gifford Childs, Kim Cash, Linda Russell, Goffrey Miles, and Alternate Ron Moyer

Absent: Chair John Bradshaw and Melissa Thompson, Secretary

Staff: Fred Boger, Planning Director and Candy McGarry, Acting Secretary

Call to Order: Mr. Childs called the meeting to order at 7:30 P.M. with five members present to establish a quorum.

**Minutes of meeting of June 4, 2012:** Mr. Childs suggested a correction to the minutes on page two where he was referred to as “Mr. Gifford”. Ms. McGarry noted she would pass this correction along to Ms. Thompson. There being no further corrections, Ms. Russell moved to approve the minutes from the June 4, 2012 Board of Zoning Appeals meeting with one correction. Ms. Cash provided the second and the motion passed 5-0.

Mr. Childs explained to those in attendance how Board members were appointed, the Court process, and how the swearing in process worked for those providing testimony. Mr. Chad Artz then took the oath as provided by Mr. Childs and signed the Oath affidavit form.

**Special Use Permit #2009-005, Chad Artz**

Mr. Boger reported that on September 14, 2009, the original SUP was approved for Mr. Artz to install a storage shed on site and noted the Highland on the James subdivision address. Mr. Boger reported that with the approval of the SUP, there was a condition that construction of the primary residence needed to begin before September 14, 2010 and the shed could not be used for residential purposes. He then referred to the site on the tax map.

Mr. Boger then showed a recent picture of the storage shed. He noted that in 2011, a letter was sent to Mr. Artz regarding the SUP and an extension was granted by the BZA until September 2012. Mr. Artz added that now he has requested another extension. Mr. Boger then reported that the applicant’s original application indicated that the shed was for storage and now the present application says it is for recreational use. Mr. Boger added that the shed has electricity and an AC unit in the window. He then showed a photo of an additional storage shed on the property and said he was not sure if it predated 2009 or not. Mr. Boger stated that approval of a third extension would be very unusual based on recent history.

In response to questions, Mr. Boger noted that he could not tell what was in the shed because it had curtains. He added that Mr. Artz has canoes and a picnic table on site also. He then noted that he did not have a copy of the covenants for the subdivision; however there were places along the James that camping occurred. Mr. Boger also stated that he

had checked with the Health Department and there were no known well or septic permits on file.

Mr. Artz stated that the timelines of events presented by Mr. Boger were correct. He added that he bought the shed in 2009 to have as a base in order to build a house. He noted that he lived in Alexandria and did not plan to live there full time but wanted to have it for vacation. Mr. Artz admitted that he had done things backwards and thinks he should have gotten a building permit first. He stated that he had contracted with an electrician and came off of the neighbor's box and he then learned from CVEC that he needed an SUP. This he obtained in 2009 but has financially not been able to start construction on a residence.

Ms. Cash then inquired as to what was being stored in the shed and Mr. Artz noted that there were tools, camping stuff, and canoes and kayaks. He noted that the AC was there for his pregnant wife's comfort when they would spend the night in the shed on their visits. He added that his daughter who was now two and a half also stayed in the shed. Mr. Artz then related that he was on the Highland on the James Board and that the President of the association has in the past stated no objections. He added that he did not come down to the property very often and his wife had not been down in two years; however he does come for the Board meetings every four months. Mr. Artz then noted that the second shed had been given to them by their neighbor.

Mr. Childs then inquired as to Mr. Artz's plans for construction and Mr. Artz noted that his plans were on hold but were still out there as something they wanted to do.

Ms. Cash questioned Mr. Artz as to whether or not he misunderstood that he could not use the building as a residence and Mr. Artz noted that it had been made clear; however he did not see how it was different from using a tent outside of the building. Ms. Cash related that would be camping in her opinion but that staying in the building to her meant living in it. Mr. Artz explained that he just wanted to have the air-conditioned comfort in the summer for his pregnant wife.

Ms. Cash further noted that the approved shed was to be used for storage and now there was a shed on site that was 12x20 in size with electricity, AC, and curtains. She noted that the BZA's intent was for it not to be used as a residence. Mr. Artz further stated that he thought that staying in the shed would not constitute living there because there was no 911 address etc. and that he now understands the Board's intent.

Ms. Russell then explained that they expect people to build homes on their property first otherwise there could be these sheds all over the county and that was why the regulations were the way they were. She added that she appreciated the situation that they were in.

Mr. Artz then asked the Board what the cheapest solution would be and Ms. Russell noted that the sheds must be removed in her opinion because he has not lived up to the intent of the SUP to begin with. She added that if in the future he were to take out a building permit for the main residence and wanted a shed, she would reconsider it.

Mr. Miles then questioned what was powering the AC and Mr. Artz noted that the shed has underground utilities to it and Mr. Boger noted that CVEC did hook it up as permitted based upon the SUP approval.

Ms. Cash then suggested that the Board hold the public hearing and then get advisement from Staff.

Mr. Childs then opened the public hearing and the following person was recognized:

**1. Lois Holden, Highland on the James Neighbor**

Ms. Holden noted that she was an adjacent property owner to Mr. Artz. She stated that she understood the reasons for rules and regulations in Nelson County and noted that she did not want a ramshackle property up near her; however Mr. Artz had gone into the process intending that the house would be completed within five (5) years. She added that he had talked to them about putting the shed up and that they had no objections. Ms. Holden added that it would be a shame if he were to take down this particular shed, whereas the other one would not be a problem to take down. She noted that he has the intention of complying with the letter of the law and since has had financial setbacks that he would not be able to remain there and if he had to find somewhere else to put it, this would be a financial burden for him. She noted that she did not want to lose him as a neighbor and that it would be a shame if he could not carry out his plans. Ms. Holden then stated that she was asking if perhaps another exception could be made to give him more time or at minimum more time to move the shed if the extension was not granted so he could comply in a manner that would not stress him out. She then confirmed that Mr. Artz was not coming down very often and that his wife and daughter had been down once. She added that she thought it was great that they could be inside the shed and not in a tent and did not interpret the word residence the same as the Board. She noted that this was not even a weekend getaway in her opinion and was speaking in his favor even though she did understand zoning rules etc.

There being no other persons wishing to be recognized, the public hearing was closed.

Mr. Boger then advised that Mr. Artz could talk to the Building Official to see what he would need to do to get the shed classified as a cabin and then he could get an SUP for that. He then read the definition of a cabin as follows:

*Cabin:* A single, permanent detached dwelling unit, which may or may not contain cooking facilities and electrical service, and/or bathroom facilities, dedicated to temporary occupancy of no more than 180 days per year, for purposes of recreation, education, or vacation. Rental properties meeting this description shall be considered cabins. If approved, the property owner agrees to place a restrictive covenant on the property that would limit the occupancy/use of the cabin to 180 days per year.

Mr. Boger noted that this option had not been previously discussed with Mr. Artz; however it may be a viable option depending upon the Building Official's interpretation. Members then noted that the County had two (2) "cabins" thus far, one on the North Fork and one in Shipman.

Mr. Childs supported this alternative. Mr. Childs then noted that he would be okay with granting the extension if the real plan was to build in a year or so; however that did not seem plausible to him. Then Mr. Boger reiterated that Mr. Artz would require approval from the Building Inspector and Planning Commission of a Special Use Permit to be in compliance with county regulations. Mr. Childs then noted that he could support granting the extension if the real plan was to build in a year or so.

Mr. Boger then advised the Board that it would take 3-4 months to pursue an SUP for a cabin and Ms. Cash noted that she was not willing to grant another extension for any other reason except to pursue the cabin exception and she again noted to the applicant that there were no guarantees.

Ms. Cash then noted that the Board did not create the situation and that she was again not willing to approve any other extensions any time soon for construction because she did not think it would happen and Mr. Childs indicated his agreement. Ms. Cash then noted to Mr. Artz that the Board had worked with him from the beginning and that she thought he knew he was not supposed to stay there and the Board had to apply the regulations uniformly for all.

Mr. Artz agreed that the Board had not created the situation; however he wanted to note that he had not intentionally disregarded the non-residence requirement.

Ms. Russell inquired as to whether or not Mr. Artz would be in a position to do a well and septic if it were required and Mr. Artz noted that it was possible. It was then noted that he would still have to go to the Planning Commission and apply for an SUP for a primitive cabin. Mr. Artz then asked that if this were granted with no conditions, how long would it last and it was noted that the approval would be forever unless the Planning Commission limited it for a certain number of years or imposed any other conditions.

Mr. Boger then noted that he would report back based on what Mr. Thompson says.

Members and staff then discussed the period of time to give for an extension in order to allow Mr. Artz to pursue this option and Ms. Russell suggested three (3) months to allow for a determination to be made by Mr. Thompson and Planning Commission approval of the SUP; after which time if the SUP was not granted, the shed would have to be removed.

Mr. Artz inquired about the option of moving the shed and then applying for a building permit and it was noted that this would put him in the same situation.

Mr. Childs reiterated that the Cabin provision seemed perfect for the current use and that was why they were crafting this option in order to bring this into compliance.

Mr. Boger then advised that another option would be to move the shed to another site that already had a house on it and members did not think this was a better option than the one proposed.

Ms. Russell then made the following motion:

"The Board of Zoning Appeals approves an extension of Special Use Permit #2009-005 for no more than 3 months, until February 5, 2013 to allow the applicant to pursue a permit from the building inspector and subsequent Special Use Permit from the Planning Commission for a cabin. If the applicant is unable to obtain the necessary permits for a cabin, the two current storage buildings must be removed within 60 days or no later than April 5, 2013."

Ms. Cash then indicated that she would be willing to grant more time if this were still in process after the three months and other members concurred.

Ms. Cash then provided the second and there being no further discussion the motion passed 5-0.

**Other Business:**

There was no other business considered by the Board.

**Adjournment:**

The meeting adjourned at 8:15 P.M.

**Next Meeting:**

Members noted that the next meeting would be December 3, 2012 if needed.