

BOARD OF ZONING APPEALS
July 26, 2017

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD ON WEDNESDAY, JULY 26, 2017 AT 7:30 P.M.

Those present were: Richard Herring, Chairman
 Frank Morris, Vice-Chairman
 Bob Runkle, Member
 Lyle Durrer, Member
 Bill Schmidt, Member
 Brent Wilson, Alternate Member

Staff present were: Dale Herring, Ex-Officio Member
 Bart Svoboda, Zoning Administrator
 Stephanie Golon, County Planner
 Shawn Leake, Zoning Officer
 Marsha Alley, Secretary

CALL TO ORDER

The Chairman called the meeting to order.

DETERMINATION OF QUORUM

The Chairman asked Mr. Svoboda to determine a quorum by roll call.

Mr. Svoboda took roll and determined a quorum.

PLEDGE OF ALLEGIANCE & PRAYER

Mr. Herring lead the Pledge of Allegiance and Mr. Morris offered a prayer to begin the meeting.

Mr. Herring introduced William (Bill) Schmidt as the recently appointed member to the BZA.

Mr. Svoboda clarified that the election of officers was completed at the February meeting and remained on tonight's agenda in error. He apologized for the error.

PUBLIC HEARINGS

Larry & Barbara Hall request an appeal of the Zoning Administrator's determination (VIO#17-020) regarding the violation of condition b of SUP#15-004 relating to the continued operation of a recycling center on a 23.08 acre tract which is zoned, A-1, Agriculture, and located on Seminole Trail and identified on County Tax Maps as 60-(A)-20. (BZA App#17-001)

The Chairman asked Mr. Svoboda for a report.

Mr. Svoboda read the request, dated March 26, 2017, and reviewed the description of the request, noting that it is an appeal of zoning violation VIO#17-020. He stated that the property contains a recycling center for rock, topsoil, and asphalt and that a special use permit was approved with conditions by the Board of Supervisors on May 12, 2015. He described the location, size, and zoning of the parcel. He noted that condition "b" stated that the special use permit would expire on February 25, 2017. He explained that it has been determined that the recycling center has been operating and is in violation of the special use permit conditions. He explained that the scope of the appeal is limited to issue of whether the zoning administrator's decision is correct. He added that the statements by the appellants or his attorney may further limit the scope of the appeal, noting that the only statement from the appellant is the statement on the application under "Justification". He stated that in the consideration of an appeal, the BZA may not determine whether a proposed use is appropriate in the zoning district, determine what is in the public interest, amend or repeal a zoning regulation or determine that a zoning regulation is invalid.

Mr. Svoboda reviewed the history and the use of the parcel, noting that the appellants made application for a special use permit on March 16, 2015. He noted that on April 15, 2015, the Planning Commission held a public hearing and recommended approval of the special use permit amendment (SUP#15-004). He explained that on May 12, 2015, a public hearing for SUP#15-004 was held by the Greene County Board of Supervisors. He stated that at that meeting, the Board of Supervisors approved the request by a 3-2 vote to amend the conditions for the special use permit. Mr. Svoboda noted that the staff report references a 5-0 vote which is a typographical error. He added that the request to amend the special use permit conditions for the recycling center was approved. He stated that an excerpt from the minutes which indicates the motion and the vote of the Board of Supervisors has been included in the packet. He added that on May 21, 2015, the appellant recorded the approval letter with the conditions in the Clerk's office. He noted that the appellant knew the conditions of the special use permit as they were present at the meeting, they agreed on the date, and they recorded the document in the Clerk's Office so they knew what the conditions meant.

Mr. Svoboda stated that on March 9, 2017, an on-site inspection was performed by the Zoning Officer and that during that inspection it was observed that the recycling center was in operation. He reviewed condition "b" and stated that the inspection took place after the specified date of expiration and therefore, the recycling center was found to be operating in violation. He stated that on March 29, 2017, the appellants were given notice of official determination of violation based on the March 9, 2017 inspection. He explained that the appellant made application to appeal on April 28, 2017 and that the case had been scheduled to hear last month but added that the appellant requested a deferral to this month's meeting.

Mr. Svoboda stated that the basis of determination is the conditions of the special use permit and that the recycling center is still in operation based on the definition, which he

read. He stated that crushing has stopped but the sale of the materials has continued which is in violation. He added that the continued operation of the recycling center and its associated uses violates the conditions of approval as just discussed. He read the appellant's own statement acknowledging they have finished crushing and still have a stockpile of rock that is still selling. Mr. Svoboda stated that in the appellant's justification he is admitting that the use continues. He explained that the recycling center and the associated uses are not in compliance as the permit has expired and that all uses should have ceased and desisted and the property should have been restored to its agricultural nature. He noted that no amendments to the special use permits have been obtained that authorizes the use in question, meaning that the appellant has not come back before the Board of Supervisors to request an extension or amend conditions and that the ordinance has not been amended to allow the use by right and no special use permit to allow the use has been approved by the Board to have it continue so those conditions still stand.

Mr. Svoboda stated that the appellant's argument is not about whether the appellants are operating the recycling center on the parcel as they have not disputed that. He added that they have openly acknowledged that they are in operation by the statement on the application which states that they are still selling rock. He stated that the appellant did not provide facts evidencing that the recycling center is compliant with the special use permit conditions or applicable regulations, noting that in fact, all evidence points to the opposite. He explained that the fact that the appellant applied for the special use permit on March 16, 2015 verifies their knowledge and understanding of ordinance requirements. He summarized that the ordinance lists a recycling center as a use permitted by special use permit. He stated that the appellants do not provide facts evidencing that this use is compliant with the valid special use permit. He added that the zoning ordinance has not been revised to allow the uses by right in the A-1 district. He stated that because the recycling center is not compliant with the special use permit as required by current law, the zoning administrator's Notice of Official Determination of Violation should be upheld.

Mr. Svoboda informed the Board that the appellant has a representative present.

The Chairman swore in all speakers for tonight's public hearings.

Becky Burkhart addressed the Board of Zoning Appeals on behalf of Larry & Brent Hall as they could not be present for the meeting. She stated that they received the letter regarding the hearing on July 18th. She added that they contacted Mr. Svoboda on July 19th to inform him that Mr. Hall would be out of town and to request a deferral. She stated that Mr. Svoboda indicated to them that it was too late to request a deferral and that they needed to send a representative. She stated that because Larry and Brent Hall would like to be present for the matter to be able to answer questions and discuss the situation, they would like to defer the hearing and due to scheduling conflicts, they respectfully request that it be deferred to September 27th.

Mr. Herring asked if this needed to be brought to a motion or if the Board could continue the hearing and then decide on the deferral.

Mr. Svoboda stated that it would be the preference of the Board. He noted that Mr. Leake has gone to retrieve the file that contains the email from Brent Hall requesting today's date.

Mr. Schmidt asked Mr. Svoboda what was observed on the March 9th inspection.

Mr. Svoboda stated that Mr. Leake performed that inspection and could testify to what was observed when he returns.

Mr. Schmidt asked about the time and date stamp on the presented photos.

Mr. Svoboda stated that the photos were taken during the day

Ms. Burkhart presented the letter from the Halls stating what she just requested.

Mr. Herring asked what the date was on the letter.

Ms. Burkhart stated that the letter is dated July 21st, right after they received notice of the hearing.

Mr. Herring stated that there would be a brief wait for Mr. Leake to return with the email.

Mr. Svoboda stated that waiting would be up to the Board. He added that the Board could decide how to proceed with the deferral request without the email if they chose or they could continue with the hearing and defer the decision, continue with the hearing completely, or defer the hearing to a specific date.

Mr. Durrer pointed out that it was previously deferred to today's date and that is the information that Mr. Leake is retrieving.

Mr. Svoboda stated that Mr. Durrer was correct. He stated that he did not know whether or not that would have bearing on the decision, but that if it does not, the Board could proceed with the request for deferral.

Ms. Burkhart stated that both Larry and Brent Hall would be able to attend the September 27th meeting.

Mr. Herring asked for comments from the Board.

Mr. Runkle asked if there are any time limits or legal requirements relating to the number of deferrals.

Mr. Morris stated that Mr. Vanderveer deferred for two (2) years.

Mr. Herring stated that the Board had deferred a past case for about five (5) or six (6) months about two (2) years ago.

Mr. Runkle stated that it appears that there may not be a time limit.

Mr. Svoboda stated that the Code of Virginia does not give a specific time limit only that it should be in a timely manner. He noted that it is designed to protect both the appellant's rights and any aggrieved party. He added that he does not believe any codes have been violated.

Mr. Schmidt asked Mr. Leake to expand on the observations made at the March 9th inspection.

Mr. Leake explained that he observed the rocks being crushed, trucks being loaded, and workers working.

Mr. Schmidt affirmed with Mr. Leake that crushing was observed.

Mr. Leake stated that he did see crushing.

Mr. Schmidt asked if Mr. Leake had taken the photos in April.

Mr. Leake stated that he had taken numerous photos of the site.

Mr. Schmidt explained that he asked about the photos because he can see the equipment, etc. but that he cannot see what is going on. He noted that it was the March visit that Mr. Leake observed activity on site.

Mr. Leake confirmed that the observations were made on March 9th.

Mr. Herring asked the Board if anyone had thoughts on how to proceed.

Mr. Schmidt stated that he did but that he was the new guy.

Mr. Morris suggested holding the public hearing and deferring the decision so that the public in attendance could speak.

Mr. Schmidt stated that he agreed and thought that to be a great idea.

Mr. Herring asked if that was agreeable for everyone.

Mr. Morris asked Mr. Svoboda if that would be allowed.

Mr. Herring stated that if it is determined after the public hearing to defer, then the Board could take that action, noting that now the Board could proceed.

Mr. Svoboda stated that the Board is within their purview to act either way.

Mr. Herring stated that the Board would proceed with the public hearing.

The Chairman opened the public hearing.

The following citizens addressed the BZA regarding the request:

- V.B. Weber: present to speak in a broad sense about the appeal. She commended Greene County for putting up the welcome signs; concerned about the blight that affects the county; this area is one of the three areas that she considers a blight area; Luckstone was a good steward to the county by screening the activities there; this particular stone quarry was apparently asked to screen the activity, but it did not happen; entering the county, you encounter a cloud of dark brown dust that crosses the road in the area; it is an unsightly, dirty, eyesore; Ruckersville deserves better; Stanardsville has received grants for improvements; Ruckersville does not receive any funds for beautification; not the place that one would want to come and do business if you care about your surroundings; they are in business, they continue business, they have been told to close business; ask the Board to consider not just the appeal but the whole question of how you want the county to look; love living here but do not like how it looks.
- Davis Lamb: spoke on behalf of the Halls; has known them since 1969; anyone trying to open business has to recoup the startup cost which is great; have spoken with Larry Hall and they are moving out of Greene; has helped with the tax base in the county; if not for Larry Hall, there would probably be no Lowe's or Walmart; the Halls are a hard working family from Nelson County, then Albemarle then to Greene with businesses; the trees in the front would not have blocked anything; talked with DEQ and they stated that Larry Hall was in compliance; as for dust, the county and RSA prohibited the temporary edu; believe a businessman needs a fair shake; not against people moving into the county, it helps the county; you cannot have Disney World in a rural county; operate a dairy farm; in Northern Virginia, fertilizer on small yards run into the Potomac; thinks it is a beautiful county; family came here in 1961 from Albemarle County; his grandfather is buried on Marshall's farm; knows a lot of businessmen in Greene who probably feel the same way.

There being no further public comment, the public hearing was closed.

Becky Burkhart submitted the letter from the Halls to the Board for the file. She restated that Larry & Brent Hall will be able to attend the September meeting and would very much like to be able to discuss this matter with you in person. She respectfully requested deferral to September 27th.

Mr. Durrer clarified with Mr. Svoboda that the Halls requested the previous deferral to this month.

Mr. Svoboda stated that on Friday, June 9, 2017 around 8:41 am, Mr. Hall confirmed by email that he had spoken to Mr. Svoboda regarding rescheduling the request to the July meeting. He added that the adjacent property owner letter and applicant letters were mailed on July 6, 2017. He noted that notice was given but that he had no way to know when they check their mailbox.

Mr. Durrer stated that they are saying that they got letter on July 18th but that by him deferring it to this month, he knew the July date when he requested the deferral.

Mr. Svoboda agreed with that statement noting that the email reflects that as well.

Mr. Svoboda stated that the deferral request is an issue all its own and whether or not you want to do that in order to hear directly from the applicant is up to you. He added that the deferral request should not have any influence on your decision on the appeal as they are two separate items.

Mr. Herring stated that the applicant was given until April 17th to remove the material and equipment and how the date was determined.

Mr. Svoboda explained that the department generally works with all alleged violators because the goal is compliance and not penalty, noting that the county would prefer that they use their money and resources coming into compliance. He stated that the department likes to extend the opportunity for them to make the issue right and allow time for that.

Mr. Durrer asked when the April 17th deadline was provided to Mr. Hall.

Mr. Svoboda stated that it is in the letter.

Mr. Herring stated that the letter states March 29th.

Mr. Svoboda referred to the second page of the letter.

Mr. Herring asked if all the materials had to be removed by that day because at that point, they were not crushing anymore and the stone was just sitting there.

Mr. Svoboda stated that on the date in question the argument would be that they were crushing that day, noting that they may not be crushing now but they were crushing that day.

Mr. Durrer clarified that when the violation was seen, they were crushing on the date of inspection.

Mr. Svoboda agreed and stated that the letter was sent on March 29th giving the deadline of April 17th.

Mr. Herring asked if they are still in violation since the gravel is still there, noting that he did not see any crushing equipment there, just some elevators.

Mr. Svoboda stated that it is the county's contention because the property is zoned A-1 and without a special use permit there is no provision to allow the sale of gravel or recycling materials as those uses would be considered accessory to the primary use.

Mr. Schmidt asked if the special use permit refers to the extraction process for shipment.

Mr. Svoboda stated that shipment would be customarily incidental but those are not vested uses on their own.

Mr. Schmidt stated that the special use permit expired on a set date and asked what actually expired. He noted that clearly the processing expired but he wondered if that included the storage and sale of the product or is that would also require a special use permit.

Mr. Svoboda stated that the storage and sale of the product is a use not permitted.

Mr. Schmidt asked if the product originated on the property.

Mr. Svoboda stated that he was not sure if some did and some did not. He added that if he was mining there would be a permit for mining or mineral extraction, noting that it was his understanding that they were not mining and that the product came from off site.

Mr. Herring asked if the gravel could be there but not be sold.

Mr. Svoboda stated that it could not because it is a part of the use. He explained that the special use permit is for crushing or recycling and that storage and sale are

accessory uses only and not allowed as the primary use has expired.

There was a brief discussion using a car lot as an example and the uses in A-1 and C-1 zoning uses.

Mr. Schmidt asked if he would need a special use permit to if he dug up rocks on his A-1 property to fill potholes and then left them in a pile because he decided not to fill the holes.

Mr. Svoboda stated that he would not need a special use permit and asked if he was going to sell the rocks.

Mr. Schmidt stated that he was not selling the rocks but noted that you could not tell if he had dug them up for household use or for sale.

Mr. Svoboda stated that based on the permit that he applied for and the statements he made through the process, the material was brought to the site and recycled and was not mined on site.

Mr. Schmidt stated that was important to know.

Mr. Svoboda stated that there is an agricultural exemption on that parcel but not for the area covered by the special use permit.

Mr. Schmidt asked if it would have made a difference if the material was extracted on site.

Mr. Svoboda stated that if the materials had been extracted on site for sale, then a special use permit would have been needed for a quarry, not for a recycling center as they are two different uses under the ordinance.

Mr. Durrer noted that a cease and desist order has been given and asked how to get the materials removed, wondering if he must go before the Board of Supervisors for a time limit amendment.

Mr. Svoboda stated that the Zoning Department has the ability under their enforcement procedures to work with them to come into compliance.

Mr. Durrer noted that the BZA cannot do that but wondered who can.

Mr. Svoboda stated that the Zoning Administrator has the authority under the Code of Virginia to facilitate a remedy for the situation.

Mr. Svoboda stated that during the process, which may or may not be in the Board of Supervisors minutes, the statement was made that all of the stuff could be gone within thirty (30) days.

Mr. Durrer clarified that this could all be worked out but that the appellant would need to come to you to work out the details.

Mr. Svoboda agreed. He reminded that the goal is compliance and not penalty.

Mr. Durrer stated that it could be worked on and asked if it could be moved with the cease and desist order in place.

Mr. Svoboda stated that it could be moved if an agreement is worked out.

There was a brief discussion regarding the possibilities of working the situation out.

Mr. Svoboda stated that he could not speak to what the appellant may or may not do.

Mr. Herring stated that he had visited the site and spoken with an employee who said that they were having trouble selling right now. He added that it is likely to force him to pay someone to haul it away and dump it which is likely to require a permit, noting that it just does not seem reasonable. He asked if the Halls were in compliance with the gravel just sitting there now and the equipment not in operation, taking everything into consideration that if he knew in the beginning that it had to all be moved by February. He asked if the appellant was still not in compliance.

Mr. Svoboda stated that in accordance with the Zoning Administrator's determination, he is not in compliance. He stated that excellent points were made by the public. He noted that the Halls received a special use permit, began the use, and were instructed to follow those original conditions. He added that they then amended those conditions because they found that some of the landscaping items were unreasonable and extended the completion deadline to February 2017 with the second special use permit. He stated that a site plan review process was performed for the site. He added that there has been no evidence of pollution violations and the applicant has been compliant with those portions of the operation which demonstrates that he understands rules and how to follow them. He stated that the Zoning Administrator's contention is that the deadline was February 2017.

Mr. Durrer stated that something still has to be done in order to get the stuff moved.

Mr. Svoboda agreed.

Mr. Herring stated that if the BZA acts tonight and denies the request, then fines could

begin to accrue.

Mr. Svoboda stated that there is potential for that.

Mr. Herring stated that if the BZA defers, then it would allow extra time for him to do something.

Mr. Svoboda explained that the appeal stays enforcement activity on the county's end as well as activity on site on the appellant's end. He stated that the county doing what they are supposed to be doing, but that he could not speak on behalf of the Halls.

Mr. Herring commented that everyone just wants it gone.

Mr. Svoboda explained that those are the special use permit conditions by the Board of Supervisors and that they are actually law placed on that particular parcel. He described them as special zoning laws placed on that parcel for that particular use. He added that it could be described as a contract between the county and the property owner stating that this would be completed by Feb. 2017. He pointed out that it is not a contract but it is additional law that has been placed on the parcel through the special use permit process.

Mr. Durrer stated that it seems that he would have been better suited to contact you and work with the department to get this matter taken care of.

Mr. Svoboda stated that staff has spoken with him but noted that he did not want to put words in his mouth and suggested that perhaps a deferral would be best in order to allow the Board to hear from him directly.

Mr. Schmidt stated that he believes that it is a close question as to whether a special use permit is required simply to have permission to process the material and prepare it for shipment. He added that it seems that it is a gotcha situation. He noted that he was not sure how he would come down on that but just wanted to mention it.

Mr. Svoboda explained that there is no special use permit for the sale of the materials. He referred to the zoning ordinance under uses permitted and noted that it would be a part of the recycling center or it is a use not listed, which would make it a use not permitted and therefore, if he requested a special use permit to sell recycled material, the Board of Supervisors could not grant it, in the Zoning Administrator's opinion, because the use does not exist. He stated that it is a part of the accessory use of the original permit.

Mr. Schmidt suggested that it should have been inferred that everything should have been off the property.

Mr. Svoboda stated that during the conversations that have been shared it has been more than inferred but added that Mr. Hall needs to speak to what he understood.

Mr. Schmidt stated that he is troubled by the fact that a deferral was requested and no one attended, noting that it weights against granting an additional deferral. He added that he still believes it is a close issue and he would like to hear what was going on there given that there is testimony that crushing was occurring and that, no matter where you come down on the shipment issue, as of March 9th something was going on that should not be. He stated that on the whole, he would like to defer it and see what could be worked out.

Mr. Runkle asked if there is anything else scheduled for the September meeting.

Mr. Svoboda stated that he was not aware of any other applications at this time.

Mr. Herring commented that it is two months away.

Mr. Runkle noted that we may not know the schedule yet. He just wondered what the cost to taxpayers would be to hold another meeting.

Mr. Svoboda reminded that the decision should be based on the facts of the appeal and that determination not whether or not the time is convenient or the cost.

Mr. Schmidt stated that there are two questions, one being should the BZA defer and the other being, if there is not a deferral, then what would the basis be for making a decision.

Mr. Morris stated that he would move to defer it based on the fact that others have been allowed to defer several times in the past and suggested that a deferral be accepted in order to maintain consistency with past requests and to allow the opportunity to ask questions directly to the Halls. He added that he believed it should be deferred to September 27th if it is in fact deferred.

Mr. Herring asked Mr. Morris if that was his motion.

Mr. Morris made a motion to defer BZAAPP#17-001 to the September 27, 2017 meeting.

Mr. Runkle seconded the motion.

The vote was taken.

AYE

Mr. Runkle
Mr. Schmidt
Mr. Morris
Mr. Herring

NAY

Mr. Durrer

The motion to defer BZAAPP#17-001 carried by a 4-1 vote.

Mr. Svoboda announced that with the date specific deferral, there would be no additional advertising necessary.

Mr. Morris pointed out that the public hearing was held tonight.

Mr. Svoboda agreed stating that the public hearing was held and that the deferral was for the decision of the appeal.

Mr. Herring stated that it will not cost as much.

Mr. Runkle stated that the taxpayers have put enough into it.

CMH Homes, Inc./Shirley Henshaw request a 1 ft. front setback variance from Article 4 of the Greene County Zoning Ordinance which requires a 75 ft. front setback. This request is on property that is identified on the County Tax Maps as 28-(5)-1 located at 6339 South River Road containing approximately 2.065 acres and is zoned A-1, Agriculture. (VAR#17-001)

The Chairman asked Mr. Svoboda for a report.

Mr. Svoboda read the request and reviewed the description. He reviewed the items include in the packet as well. He read the definition of "variance" in the Code of Virginia §15.2-2201. He displayed Exhibit A which was submitted with building permit application of the proposed location and Exhibit B which demonstrates the existing location of the structure as it sits today. He added that there had been some confusion by a third party as opposed to the property owner relating to the location of the house, noting that the home was approved in one location and set up in a different location by a third party. He stated that the applicant is seeking relief from the front setback and that it does not appear to have a detriment to adjacent property. He stated that the property was acquired in good faith and that permits were applied for accordingly. He reminded the Board that the BZA has the power to vary the requested setback as well. He added that the property owner is having a boundary line adjustment done in order to address the side setback which is not a part of the variance request.

Teresa Kite, representative for Clayton Homes (CMH Home, Inc.), addressed the BZA. She stated that they have set several homes in the county and they exercise due diligence on where the homes are placed. She noted that stakes were in place but that pins were not placed as the lot had not been cleared at the time. She stated that she was unsure as to what happened in this case, noting that the stakes were moved at some point and that she does not have an answer to why. She added that measures have been put in place to prevent this from happening in the future. She stated that she did not believe that the one foot variance would be a hindrance in the area or to surrounding property values. She requested that the variance be granted.

Owen Henshaw addressed the BZA on behalf of the property owner. He stated that he did not quite understand this issue but was of the opinion that this variance would not make a difference in this area. He stated that he was under the impression that everything was okay since the inspections had been performed by the Health Department and for the footers. He added that he thought it would have been found at that time, before concrete was poured. He noted that there are similar locations for other houses in the area and that he would appreciate any help.

The Chairman opened the public hearing.

There being no public comment, the public hearing was closed.

Mr. Morris asked when inspections are performed.

Mr. Svoboda stated that a preliminary zoning inspection is performed before the footers are inspected in order to approve the location. He added that once the footers are dug, a building inspector inspects the footers. He explained the inspections process noting that a zoning inspection is the first inspection to assure setbacks are met.

Mr. Durrer pointed out that the building inspector would only inspect the footers and not pulling a tape for setbacks.

Mr. Morris asked if the lot had been cleared.

Mr. Leake answered that the lot was wooded at the time of inspection.

Mr. Durrer asked Mr. Leake if he put stobs in ground.

Mr. Leake stated that stobs were in the ground when he arrived.

Mr. Durrer pointed out that those stobs marked the proposed site.

Mr. Leake agreed.

Mr. Durrer stated that this house was moved a lot.

Mr. Leake agreed.

Mr. Svoboda suggested that it was moved about eighty feet.

Mr. Durrer noted that the distance was a little over the length of the house itself.

Mr. Herring asked how the mistake was found.

Mr. Leake explained that he found that the house had been moved when he went to do the final zoning inspection. He stated that when he went to perform the preliminary zoning inspection, he found the stakes in place and that when he returned for the final zoning inspection, he found that the house had been relocated. He added that he then spoke with Clayton Homes and they provided a survey of the location and it showed how far the house had been moved.

Mr. Herring commented that without the survey, it was unknown if the house had been moved.

Mr. Leake explained that he knew where the property line was and that it did not meet setbacks but that he did not know how close the house was to the property line. He stated that there was an issue with the side setback and that he did not look at the front at the time.

Mr. Durrer stated that the boundary line adjustment has been done to address the side setback and asked if it has been recorded.

Mrs. Golon stated that it cannot be recorded until the variance process is complete.

There was discussion regarding the boundary line adjustment to address the side setback issue, noting that it is underway and pending the variance process outcome.

Mr. Morris asked if the owners are living there.

Mr. Svoboda stated that the Certificate of Occupancy has not been issued.

Mr. Herring asked how the BZA could approve the request because most of the requirements for approval have not been met.

Mr. Svoboda stated that the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the

variance. He explained that the owner had to sign the application and the application for the variance is actually the builder, noting that there is some case law that refers to the third party.

Mr. Herring noted that the homeowner did not place the house in the wrong spot.

Mr. Svoboda noted that it could be argued that the homeowner could be responsible for the contractor but added that there is also other litigation that suggests that in certain circumstances that is not always the case.

There was a brief discussion regarding the application process and responsibility.

Mr. Durrer stated that the property owners did what they could do to make it right once they were aware of the situation.

Mr. Svoboda agreed. He reviewed the criteria for granting a variance and explained how it applies to this request. He referenced the distance from other properties, the minimal impact in the area, etc. He added that all adjacent property owners were notified in accordance with the Code of Virginia.

Mr. Morris made a motion to approve the request for a 1 ft. front yard setback variance (VAR#17-001).

Mr. Durrer seconded the motion.

Mr. Herring asked Mr. Morris if he would like to give a reason for approval.

Mr. Morris asked if it is needed.

Mr. Svoboda stated that it is always better to include a reason.

Mr. Morris moved to amend the motion to add that he believes that the hardship affects the owner of the property and not the contractor and because the house is located approximately one-half mile off of the end of the state road.

Mr. Herring confirmed Mr. Durrer's second to the motion.

The vote was taken.

AYE
Mr. Schmidt
Mr. Morris
Mr. Runkle

NAY

Mr. Durrer
Mr. Herring

The motion to approve VAR#17-001 carried by a 5-0 vote.

OLD/NEW BUSINESS

There was no old business for discussion.

Mr. Svoboda stated that there are no pending application and that the next meeting would be on September 27th for the deferral from tonight.

There was no new business for discussion.

MINUTES

Mr. Runkle made a motion to approve the minutes of February 22, 2017 as presented.

Mr. Morris seconded the motion.

The vote was taken and the minutes of February 22, 2017 were approved by a 5-0 vote.

OTHER MATTERS

Mr. Svoboda stated that staff will be sure to obtain written confirmation from the appellant regarding the date of deferral. He reminded that there will be no advertising as the deferral was made to a specific date. He added that if another application is submitted, then advertising will be made for the new application.

Mr. Durrer clarified that there will be no public hearing on the deferred application.

Mr. Svoboda stated that the public hearing was held and the decision was deferred.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Respectfully submitted,
Marsha Alley

Marsha Alley, Secretary

Richard F. Henry 9/27/2017
BZA Chairman/Vice-Chairman Date