

BOARD OF ZONING APPEALS
October 25, 2017

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD ON WEDNESDAY, OCTOBER 25, 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

Those absent were: 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.

PLEDGE OF ALLEGIANCE & PRAYER

Mr. Herring lead the Pledge of Allegiance.

Mr. Morris offered a prayer to begin the meeting.

DETERMINATION OF QUORUM

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

Mr. Svoboda took roll and determined a quorum.

The Chairman announced that anyone in attendance who would like to speak should sign in on the sheet. He stated that he would not be participating in the vote for the request.

PUBLIC HEARINGS

M & M Service & Salvage Yard, Inc./K & B Properties request an appeal of the Zoning Administrator's determination (VIO#17-021) regarding the violation of

Articles 4-1-1, 4-1-2, and 16-1-1 of the Greene County Zoning Ordinance which do not list vehicle sales, service and rental business as a use by-right or by special use permit in the A-1, Agriculture, zoning district. This violation is found upon a portion of the 184.42 acre tract which is zoned, A-1, Agriculture, and located on Spotswood Trail/Dunnes Shop Road and identified on County Tax Maps as 50-(A)-42B. (BZA App#17-002)

Mr. Svoboda reviewed the description of the request and offered a brief history. He stated that the use of vehicle sales, service, and rental is not a use allowed by-right or by special use permit in the A-1, Agricultural, district in the zoning ordinance. He reminded the BZA that the issue being appealed is whether or not the zoning administrator's determination was correct based on the zoning ordinance.

Mr. Svoboda reviewed the basis for determination which offered a brief history from 1988 to date. He stated that the zoning ordinance predates the purchase which establishes that the use does not qualify as a non-conforming use. He reviewed the information used to make the determination. He stated that based on an inspection, it was noted that the use was in operation and a sign was displayed. He added that the definitions for Vehicle sales, service, and rental business was considered. He stated that in speaking with the applicant, sales are in operation on the site. He explained that the use (vehicle sales, service, and rental business) is taking place on site and that it is operating in violation as it is not a use allowed in the district. He added that the existing use is not a non-conforming use and the proposed use is not allowed in the district by-right or by special use permit. He stated that a significant affirmative governmental act, as defined by the Code of Virginia, has not taken place to vest the use or to certify the use on this parcel, noting that this is the basis for the zoning administrator's determination. He restated that the appeal is not about whether the use is operating as the appellant has indicated that it is. He explained that M & M Salvage is a non-conforming use on tax map parcels 59-(A)-21, 25, 26, and 27 but not on this parcel and that information is not being disputed. He stated that those tax map parcels are established on the DMV form from the beginning and that those signatures are for those parcels not others. He added that the parcel in question was not a part of the use listed on those parcels and was purchased later. He stated that he does not dispute that M & M Salvage is vested on those listed parcels but not for the parcel being discussed tonight. He restated that the appellant has provided no evidence to show that the use is allowed in the district, noting that the opposite is true. He explained that the reference to the parcel across the road, 51-(A)-42, in the letter dated February 7, 2003 is specific to the use on that specific parcel and does not grant permission for parcel 42B. He stated that it does not meet the burden of establishing a significant governmental act under the Code of Virginia. He concluded that the appellant does not provide evidence of compliance with the applicable regulations, the zoning ordinance does not list the use, vehicle sales, service, and rental business, as a permitted use by-right or by special use permit within the district, the zoning ordinance has not been revised to allow the use, the

use was not in existence prior to the adoption of the zoning ordinance, there has been no significant governmental act to vest the use on that parcel, and the parcel was not purchased by the appellant until after the adoption of the zoning ordinance. He stated that since the appellant has not provided facts evidencing that the use is either non-conforming or is in compliance with the zoning ordinance, on this basis, the zoning administrator's notice of official determination should be upheld.

The Chairman swore in the speakers.

Carroll Morris addressed the Board of Zoning Appeals. He stated that he originally had a car lot at Fisher's Auto Parts in Ruckersville. He explained that at the time DMV would issue a supplemental license for a separate location which did not require a salesman or office, etc. He stated that he closed the lot in late 90's and applied for the license to open on Route 33 West. He explained that DMV had changed the guidelines in that time and the new regulations required an additional site to be located within 500 ft. of the primary site in order to be issued a supplemental license. He stated that Ron Hachey provided a letter in 1998 and referenced the two acre parcel on the west side of 33 and the 184 acres across the road and noted that they were both zoned for what he was doing. He added that DMV issued the supplemental license. He stated that in 2003, he had to prove that he owned the property from the salvage yard on Route 617 to where this car lot is located. He stated that Nick Hahn provided information to DMV stating that M & M Salvage is within 500 ft., not 500 yds., noting that it would make the 184 acres would have to be zoned to sell cars. He stated that DMV reissued the license. He pointed out that in 2004, Steve Borders signed the DMV form. He stated that this has been going on for 19 years and that DMV has gotten a letter every year signed by a county official and that they all said the same thing, that M & M Salvage is within 500 yards of the west side of 33, noting that the only way that it could be possible is to be that the 184 acres is zoned for car sales, except for the reference by Ron Hachey of 500 feet, not yards, which would have to be to the edge of the dual lane of Route 33.

Mr. Morris stated that in 2009, an overzealous DMV agent towed a trailer out of the field and that the issue went to court. He stated that Bart testified that he was not zoned or licensed to sell cars in that field and that Bill Jackson, DMV, testified that he was legal, licensed by the county and that was why DMV issued the license. He added that he provided Bart with that information and that was the end of it until he needed to renew his license. He noted that then, Bart started covering his butt by adding maps, noting that the 43 acres that the salvage yard is on is the only thing that is being licensed now. He added that he and Bart had several discussions over the years and that he did not agree with the maps, but that he continued to sell cars in that field for 19 years. He stated that he met with Bart prior to graveling the lot and making it look nicer by putting the building there and that he applied for a building permit, a sign permit, and an address. He added that he was told that he could not have a building permit, a sign

permit, or an address for the site. He stated that he graveled the lot, put the building there, and put up a sign. He added that then Bart issued him this letter so he applied to appeal. He stated that he met with Bart and discussed the interpretation of the landowner being within the 500 ft., not the business, and explained that M & M Salvage has not owned land since 2000. He noted that he was told that Mr. Hachey and Mr. Hahn were not zoning officials, that Julius Morris was zoning official. He stated that the story changes every time he goes to see Bart. He added that he has had lots of dealings with Bart over the years and that he has always been straight with him but that this is the biggest circus that he has ever seen. He stated that at their last discussion, he asked if the zoning official's signature says that he is legal, does he have to keep going through this, and if Bart gets fired, does he have to go through this again with the next guy. He noted that Mr. Svoboda stated that he would not have to go through it again. Mr. Morris asked why he had to deal with Bart if the other three people signed off on it. He stated that Steve Borders can testify that he signed off on it in 2004 and that he understood it to be legal. He added that Bart was going to check with Mr. Hachey as to his opinion on the issue. He stated that as far as he was concerned, he is legal to sell cars in the field and that as far as DMV is concerned he is legal to sell cars in the field. He stated that the building is then an issue as if it is not used for the car lot, then it is illegal under agriculture. He asked if he could sell agricultural vehicles and equipment in that lot without a permit.

Mr. Svoboda stated that he would not make a determination in a meeting. He pointed out that an example that might apply would be the sale of an occasional vehicle or piece of equipment would be similar to selling a car in your yard, or a garage sale versus a retail shop, noting that there would be a threshold to establish a commercial use.

Mr. Morris asked who would decide what that line would be.

Mr. Svoboda stated that the Zoning Administrator would make that decision.

Mr. Morris stated that the line keeps moving and that is the problem noting that it is a moving target and he cannot hit it. He stated that he has had four meetings and gotten four different stories and that he does not know what is legal and what is not. He added he has been selling vehicles out of the field for 19 years and that Bart knows that too, noting that they had that discussion in front of the courthouse on the day that the judge ruled that he was legal. He wondered why nothing was done in 2009 if he was illegal, pointing out that the only thing that changed was that the map was included with the forms. He stated that the DMV forms were signed each time with the 500 yd. reference and asked why he is now considered illegal, noting that he has not been illegal for 19 years, adding that if he was illegal, then DMV would have charged him by now. He stated that he has never applied for a rezoning and that he went by the information provided by the county regarding where M & M Salvage stops. He stated that he has four zoning officials' signatures saying that the field across from the west side of Route

33 is M & M Salvage. He noted that if that is true than he is legal.

Mr. Schmidt asked Mr. Morris if by the west side of 33, he means the north side.

There was discussion regarding the reference to the west side of 33. It was determined that Mr. Morris' reference to the west side of 33 actually referred to the north side of Route 33 Westbound.

Mr. Morris reminded the Board that four county officials reached the same decision on the issue and now there is a problem with it.

Mr. Schmidt stated that he had not paid a lot of attention as to what is located on the property and noted an auto repair shop and several buildings. He asked what operates on the site.

Mr. Morris stated that there are about five auto repair shops, three car lots but that he cannot get his supplemental license back because he gave it up when he moved across the road and without a letter from the county saying that the field is legal, he cannot obtain the supplemental license.

Mr. Herring clarified that the parcel that is being discussed is on the south side of the road.

Mr. Morris agreed with Mr. Herring.

There was discussion regarding the DMV process to obtain the supplemental license. Mr. Morris explained that if it is connected to your property, you do not need a supplemental license but that he needed the supplemental license because the lot had been located across 33.

Mr. Durrer asked if the 4 parcels that were referenced each time were the parcels that included the junk yard.

Mr. Morris stated that in 2009, Mr. Svoboda started referencing the 43 acres as legal and that everything else was out of bounds. He noted that those references did not begin until after the court case where he lost, or DMV lost.

Mr. Svoboda clarified that the county has not taken Mr. Morris to court.

Mr. Morris stated that Mr. Svoboda was a witness for DMV. He wondered why this was not settled then.

Mr. Svoboda reviewed the history of the parcel on the north side and the rezoning

process that occurred in 2002. He referred to the letter from Mr. Hachey in 1998 noting that it established the ownership of the property and not the use. He read the letter which noted that parcel 51-(A)-44, 2 acres, is owned by Carroll & Lynnette Morris and 50-(A)-42B, 184.42 acres, is owned by M & M Salvage. He noted that additional DMV Dealer Board information refers to M & M Sales, Service, & Salvage. He noted that a post office box is provided but an address is not provided. He stated that the letter is about land ownership and not about use.

Mr. Morris stated that the second page is about use.

Mr. Svoboda reviewed the address information that was provided pointing out that Route 617 is provided but not Route 33. He reviewed the DMV form which consistently says 59-(A)-21, 25, 26, & 27.

There was discussion regarding the DMV form references relating to the 500 yard distance requirement.

Mr. Svoboda stated that there is a nonconforming application for M & M Salvage signed by Mr. Hahn in 2000 for the nonconformity of M & M Salvage which is not in dispute that refers to 59-(A)-21, 25, 26, & 27. He stated that parcel 42 B is not included on that form.

Mr. Schmidt asked where parcel 42 is located.

Mr. Svoboda stated that parcel 42 was combined with parcel 44 around the same time as the rezoning.

Mr. Morris presented Mr. Svoboda with a document. There was a brief discussion as to whether it was submitted to Mr. Svoboda or not.

Mr. Svoboda noted that the document does list the fees for DMV licenses which includes the supplemental license cost.

Mr. Morris pointed out that the document does say that the supplemental license location should be located within 500 yards of a licensed location. He added that there is no way that the car lot is within 500 yards of the 43 acres that Mr. Svoboda is referencing but that the field is.

Mr. Svoboda stated that the determination is that the letters from Mr. Hachey and Mr. Hahn are in regard to the parcels on the north side, adding that they reference the distance to M & M Salvage but do not determine the use. He stated that he cannot consider what was meant or what was hearsay or what he thought they meant because that is not the subject of the letter. He read from the Code of Virginia, vested rights, §15.2-2307. He stated that one of the significant governmental uses is a determination

of permissibility of a specific use, noting that the letter determines permissibility of car sales on the north side of 33 not on the south side.

There was discussion regarding parcel 51-(A)-44 and the portion of 50-(A)-42B and the distance requirement as well as why the same reasoning would not be used throughout.

Mr. Svoboda stated that there is nothing to determine whether the reference was for ownership or use. He noted that it is not spelled out in the letter and that his argument would be that if it does not say, then it refers to the use.

Mr. Schmidt stated that item number 3 in the letter states that parcel 51-(A)-42 is within 500 feet of the salvage yard

Mr. Svoboda referred to the plat stating that the county does not regulate how DMV issues licenses and that DMV regulations do not affect how county regulations are applied.

Mr. Schmidt asked about the significance of the referenced 500 feet.

Mr. Svoboda explained that having an auto business within 500 feet of the primary location would allow Mr. Morris to be issued a supplemental license for the property on the north side of Route 33.

Mr. Morris he understands the first letter in 1989 to state that the 184 acres is legal for car sales but that Mr. Svoboda does not read it that way. He stated that the upon renewing the license, DMV wanted to verify the information and Mr. Hachey said the Mr. Morris was within 500 feet, not 500 yards, which would mean that the whole field is legal.

Mr. Schmidt clarified that the 500 feet reference is a DMV regulation not a zoning regulation.

Mr. Svoboda stated that it is not a zoning regulation.

Mr. Svoboda stated that he is not disputing the information that Mr. Morris submitted but that he may be disagreeing regarding the interpretation of it. He explained that he, Mr. Borders, Mr. Hachey, and Mr. Hahn all had the authority to sign the letters to give permission to operate the nonconforming business on M & M Road.

Mr. Morris stated that the property goes from M & M Road to Route 33 as one continuous 300 plus acres of land.

There was discussion regarding the nonconforming use location and the rezoning of the property on the north side of Route 33. It was noted that parcel 51-(A)-42 was the site of

the nonconforming use and that parcel 51-(A)- 44 had to be rezoned. It was further noted that Mr. Morris actually rezoned both pieces rather than have the restrictions of the nonconformity which made it all conforming and easier to operate commercial business there.

Mr. Schmidt asked if that had that never happened, would there be anything in the zoning ordinance that allows a nonconforming use to extend to uses within 500 feet.

Mr. Svoboda stated that there is nothing in the zoning ordinance to that effect noting that it is specific to the area.

Mr. F. Morris asked if Mr. Hachey was present, noting that he saw Mr. Borders and asked if the Board could hear from him.

Mr. Svoboda stated that he could not speak for Mr. Hachey or Mr. Hahn noting that he can only go by what the documents say.

Mr. F. Morris stated that the property was rezoned in 2002-2003 and Mr. Borders signed the form in 2004 so the rezoning had been approved.

Mr. Svoboda explained that the rezoning was for the parcel on the north side of Route 33 and that the forms that were signed which are not in dispute note the parcels as 59-(A)-21, 25, 26, & 27 as known by the county as M & M Salvage.

Mr. Morris stated that there are two different licenses, a dealer's license which is for the four parcels that Mr. Svoboda referred to and a supplemental license is separate and is for the lot on 33, noting that they renew at different times. He pointed out that the property on 33 had been a business since 1947 and was purchased by his father in 1955 and was zoned as nonconforming agriculture and was one of the oldest buildings in the county, noting that his father was just not in the clique when zoning came into effect. He stated that they had the nonconformity until he purchased the property behind it and had it rezoned, adding that it had been a garage and body shop since the 40's.

There was discussion regarding the zoning of the property and the history of the use. There was also discussion regarding the property that included a parsonage and how the zoning was determined as Mr. Morris did not request a zoning change.

Mr. Schmidt stated that in reviewing the DMV forms, he only found references to tax map parcels 59-(A)-21, 25, 26, & 27, noting that he did not see anything referring to tax map parcel 51-(A)-42 or 44.

Mr. Morris stated that the 1989 letter from Mr. Hachey refers to the 184 acres.

Mr. Herring suggested that it was the 1998 letter.

Mr. Morris corrected himself as he was referring to the 1998 letter. He stated that he understands it to say that what he is doing is legal, noting that Mr. Svoboda does not read it that way. He stated that he did not understand why four Planners have signed off on it and there is still an issue.

Mr. Schmidt asked Mr. Svoboda if there was any dispute regarding the two page letter that is being referenced.

Mr. Svoboda stated that there is no dispute and referred to the paragraph that refers to the Code of Virginia §46.2-1510 pointing out that he did not see a reference to 500 feet.

There were several inaudible comments from the Board.

Mr. F. Morris mentioned that Mr. Borders was being referenced a lot.

Mr. Herring stated that if Mr. Borders could speak if he would like to.

Mr. Borders stated that Mr. Svoboda had already clarified that the forms that he had signed were appropriate.

The Chairman opened the public hearing.

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

Mr. Schmidt asked Mr. Morris to characterize the vehicle sales that have taken place on the parcel.

Mr. Morris stated that smaller vehicles were on the west side and larger vehicles were in the field. He stated that he and Mr. Svoboda had numerous conversations about what was being sold in the field, noting that it was not continuous. He added that the property is used by the reenactors and for other events, noting that vehicles would be moved for the events and then moved back. He stated that there are times when there are a lot of vehicles for sale and times when there are not, noting that it has been continuous since Route 33 became dual as before that there was a row of cedar trees and the field could not be seen.

Mr. Schmidt noted that this is a little different with having cars in the lot, the building, the sign. He noted that before it could be said that a farmer is selling some equipment but now you could hardly say that.

Mr. Morris stated that he had never said it was a farmer selling equipment. He added that it is a lot better for the customers. He noted that he tried to get permits for all of this but was turned down for everything.

Mr. Durrer asked Mr. Svoboda what Mr. Morris' options would be and asked if removing the sign would help.

Mr. Svoboda explained that due to state regulations, when gravel is added and a commercial use begins, then a site plan is needed as well as having to meet other regulations. He reviewed the history of having met with Mr. Morris and discussing the possibilities there. He stated that records were reviewed to identify and verify that there was a significant governmental act or that the use existed prior to the adoption of the zoning ordinance and that there was no evidence to that effect. He stated that there were a few more conversations to try to figure out how to proceed. He noted that the gravel was on site but that he was unsure of the size of the gravel area. He explained that when there is a commercial use in operation and the owner admits that there is a commercial use, and a commercial use is not allowed in the district, there is no way for him to approve a plan because it does not meet the criteria. He stated that Mr. Morris has testified that he believes that it is a use that he has had and should be allowed. He added that as the zoning administrator, he found no evidence that the use is allowed as accessory uses do not vest under state law. He noted that the other events that were mentioned are legal under an approved special use permit. He added that the 2000 nonconforming use (NCU) that was submitted refers to M & M Salvage and that in 2002, Mr. Hahn specifically listed 59-(A)-21, 25, 26, & 27 as non-conforming and that he does not have the ability to add to that list. He stated that he is stuck to interpreting the word on the page and that it is not a permitted use, noting that one option would be a rezoning request.

There was discussion regarding the rezoning option and the possibility of it being approved given that there is business zoning across Route 33. It was noted that the Comprehensive Plan and the growth area designation may have changed in that area over the years.

Mr. Svoboda explained how the violation was determined and why the letter was sent regarding the appropriate use of the parcel.

Mr. Schmidt asked if the certification from DMV is a significant governmental act.

Mr. Svoboda stated that his understanding of the code is that it is not as it would be limited to the power of the governing body, noting that the form states that the use must comply with local zoning restrictions. He reviewed vested rights in the Code of Virginia and noted that DMV certifications are not listed.

Mr. Schmidt stated that the 1998 letter refers to ownership and the address provided is the Route 617 address.

Mr. Svoboda stated that in 2000, Mr. Morris had the opportunity to include parcel 42B as a part of the nonconforming use for M & M Salvage and it was not included. He explained that the county is not looking to stop uses but wants to be sure that property owners keep their rights. He stated that in trying to find evidence that the parcel was included he referred to the application submitted by the owner and found that the parcel is not listed.

There was discussion regarding the ownership and the use of the parcel on the north side of Route 33 West. There was also discussion relating to signage on the parcel.

Many comments were made out of range of the microphone and were inaudible and could not be transcribed.

Mr. Schmidt asked Mr. Morris if a car lot was in operation on the parcel in 1998.

Mr. Morris stated that he moved from Ruckersville to that site in 1998 and operated a car lot. He stated that he made it look better and safer and now it is illegal. He added that he thought Greene County was promoting business not trying to run it away.

Mr. Morris told Mr. Herring that he would prefer that he voted noting that it was his privilege and that he just wanted an honest opinion.

Mr. Herring stated that he appreciated the comments but would prefer not to vote.

Mr. Schmidt noted that Mr. Svoboda is probably right but was troubled in that there are two parcels operating as M & M Service & Salvage, one under a lease and the other owned out right with DMV certificates approving the uses. He stated that the statute describes a significant governmental action and a DMV certification is not one of them. He noted that he does not like it but that seems to be the case.

Mr. Durrer stated that he had to agree with Mr. Schmidt in that regard noting that it seems to be a technicality because if the parcel had been added on the form, then this would not be an issue tonight. He noted that it seems that the BZA sees issues that if things had been written more clearly it might have been avoided.

Mr. F. Morris stated that with what has been seen regarding things needing to be written more clearly and definitions needing to be better understood, there are two Planning Directors, one acting at the time and the current Planning Director, with one saying he agrees with Mr. Morris and one saying...

Mr. Svoboda interrupted Mr. F. Morris to clarify that there is not one saying that. He explained that there is a letter that states that the business is within 500 feet of M & M Salvage not that the use is permitted on parcel 50-(A)-42B. He also clarified that the zoning certification form states that parcel 51-(A)-42 is in compliance with zoning not 51-(A)-42B. He agreed that Mr. Hahn wrote the letter stating 500 feet but it does not indicate that there are any car uses on that property.

Mr. Schmidt stated that the February 10, 1998 letter that has the attachment that the uses are conforming and references the 184 acres.

Mr. Herring stated that the letter needs to be cleared up, noting that the letter refers to the ownership and not the use.

There was discussion regarding the letter and the importance of writing clearly in order to avoid confusion and ambiguity.

Mr. Schmidt noted that he could understand Mr. Morris' confusion.

Mr. Durrer wondered how this became an issue at this time.

Mr. Svoboda stated that he met with Mr. Morris and explained what the possibilities were on the parcel. Mr. Svoboda recalled that at that time, Mr. Morris stated that he would go to the BZA.

Mr. Morris agreed with Mr. Svoboda's account.

There was discussion regarding equipment being sold on the site over the years and the lack of evidence to make a finding of other than incidental during that time. It was noted that generally, violations are dealt as they are found in other application reviews or by questions or complaints, noting that they are prioritized by health, safety, and welfare concerns.

Mr. Svoboda stated that he would prefer for the form to have included the parcel as it would make everything easier. He noted that when a certain threshold is crossed it is no longer an incidental use and becomes a different use. He added that there is no statute of limitations on zoning and that he had referred to old ordinances to see if the use qualified at an earlier time. He noted that it did not.

There was discussion regarding the same type of situation occurring in Quinque and how it has been addressed.

Mr. Herring stated that improving the property and changing the license is what put the use in jeopardy.

Mr. Morris stated that the license had nothing to do with it but that improving the property caused this.

There was discussion regarding the license for M & M Salvage and what is covered under the license as it relates to display of vehicles, etc.

Mr. Morris stated that zoning is the issue but only for him and not for others. He noted that he has complained every year since 2004 and nothing has happened but that someone complained about him and here he is. He added that Greene County has a different set of rules for different people and that it is the same business, less than a half-mile apart.

Mr. F. Morris asked Mr. Morris about the court case and the removal of a vehicle from the property.

Mr. Morris gave an overview of the court case, the charges, and the ruling, noting that the case was thrown out of court and the trailer was returned.

Mr. Svoboda clarified that the case was dismissed without a ruling. He stated that there was no decision by the judge saying that the sales were legal, noting that they reviewed that in effort to provide an outcome for this case.

Mr. Morris made an inaudible comment.

Mr. F. Morris stated that he did not understand this and wanted to ask that if a vehicle is towed and a man is charged with selling a vehicle and the judge dismisses the case, would that mean something regarding the legality.

Mr. Svoboda stated that the county did not do that.

Mr. F. Morris stated that he did not know who towed it and thought it was the county.

Mr. Svoboda stated that DMV towed the vehicle it and was enforcing DMV regulations, noting that he may have had a license to sell vehicles but that it does not mean that he was in compliance with zoning.

Mr. Morris pointed out that was in 2009 and nothing has been said until now.

Mr. Svoboda stated that the other parcel that Mr. Morris is referring to also has a non-conforming use which is not a part of this discussion.

There was discussion regarding special use permits and home occupations that allow

auto sales. It was noted that currently auto sales are not allowed by special use permit in the A-1 zoning district.

Mr. Morris asked how he could dispute the A-1 zoning on the parsonage property.

Mr. Svoboda stated that a determination could be requested.

There was discussion regarding the parsonage property, its zoning designation, and the possibility of getting a special use permit. There was also discussion relating to the location and proximity of the parsonage parcel to the current location of the auto sales. It was noted that structures were moved during the widening of Route 33.

Mr. Svoboda stated that he cannot create or modify zoning regulations, noting that it is not up to him whether he likes it or dislikes it.

Mr. Runkle stated that Mr. Schmidt likely has the best legal training here and was hoping that maybe he would make the motion.

Mr. Schmidt made a motion to affirm the zoning department's determination (regarding the violation of Article 4-1-1 and Article 4-1-2 of the Greene County Zoning Ordinance (BZA APP#17-002)), noting that he was unsure if the motion was worded quite the right way but believed it to be clear enough based on the reasons that he gave earlier, noting that he is not happy about it but finds this to be his conclusion.

Mr. Runkle seconded the motion.

The vote was taken.

AYE

Mr. Durrer
Mr. Runkle

NAY

Mr. Morris

ABSTAIN

Mr. Schmidt

Mr. Herring

The motion to uphold the zoning administrator's decision carried by a 3-1 vote with Mr. Herring abstaining.

Mr. Herring stated that even if he had voted, it would not have made a difference.

OLD/NEW BUSINESS

Mr. Svoboda stated that there will be a variance request for next month. He reminded the

BZA that it will be a Thursday meeting on November 16, 2017 at 7:30 pm due to the normal holiday schedule revisions. He noted that the December meeting will also be a Thursday meeting on December 21, 2017 at 7:30 pm if there is a case to be heard.

Mr. Svoboda stated that the BZA has asked in the past about a transcript for the Rummage 33 case. He stated that there is no transcript available but that the judge's order is available. He added that he had copies and distributed them to the members.

Mr. F. Morris asked if there were any training updates.

Mr. Svoboda stated that he is still waiting to hear from Mr. Chandler noting that this is his slow season and it may be easier to schedule something with him. He added that there may be the possibility of combing the Planning Commission and the Board of Zoning Appeals for training. He stated that he will try to schedule training on a meeting night and will keep everyone posted. He added that it will depend on Mr. Chandler's schedule. He noted that the public could come and listen to the training session.

Mr. F. Morris asked if there was an update on legal counsel.

Mr. Svoboda stated that the budget submittal deadline is coming up and that it would be considered for inclusion in the next fiscal year budget. He added that it was requested last year but not approved, noting that he would request it again this time.

Mr. F. Morris stated that now that everybody is gone, he remembers when Ken Lacey was here and his grandfather and uncle would come in to apply for things and plans were drawn on napkins or box tops, etc. He asked how to determine things without legal counsel when county officials do not agree.

Mr. Svoboda stated that Mr. Chandler would revisit that issue because a part of the training and responsibility as a decision maker is to understand the code and what the limitations are. He reviewed some previous non-conforming appeals cases. He stated that he finds that nonconforming cases are the hardest ones to deal with because you are dealing with folks who have been doing something for a length of time when they should not have been doing it and do not understand why they cannot continue to do it.

Mr. Svoboda stated that the county does it's best to side with the use and the protection of rights at the same time while being bound to interpret the ordinance as it is written.

There was reference to some of the maps and information from the public hearing.

Mrs. Golon reminded everyone that specific discussion could be a gray area since the public hearing has been held and the applicant is not present.

Mr. Svoboda stated that the applicant does have to ability to appeal tonight's decision.

MINUTES

Mr. F. Morris made a motion to approve the minutes of September 27, 2017 as presented.

Mr. Durrer seconded the motion.

The vote was taken and the minutes of September 27, 2017 were approved by a 5-0 vote.

OTHER MATTERS

There were no other matters for discussion.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Respectfully submitted,
Marsha Alley

Marsha Alley, Secretary


BZA Chairman/Vice-Chairman 11-16/2017
Date