

BOARD OF ZONING APPEALS
October 22, 2014

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS
WAS HELD ON WEDNESDAY, OCTOBER 22, 2014 AT 7:30 P.M.

Those present were: Richard Herring, Chairman
 Bob Runkle, Vice-Chairman
 Frank Morris, Member
 Janet Frye, Member
 Brent Wilson, Alternate Member
 Davis Lamb, 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 and gave a brief review of the hearing process.

DETERMINATION OF QUORUM

The Secretary took a roll call vote to determine a quorum.

PUBLIC HEARINGS

David & Kumud Vanderveer request an appeal of the Zoning Administrator's determination (VIO#14-026) regarding the violation of operating a Lodge/Bed and Breakfast without the required special use permit, on a property which is zoned, A-1, Agriculture, and located on Mulberry Drive, Springbranch Trail and Glade Road and identified on County Tax Maps as 48-(2)-23, 24, 26, 59, 65, 66, & 67. (BZA App#14-001)

The Chairman asked for a report from Mr. Svoboda.

Mr. Svoboda read and reviewed the request. He stated that a letter of determination of violation was written to the Vanderveers regarding a Bed & Breakfast/Lodge that was operating without a special use permit on property zoned A-1, Agriculture. He noted that the BZA should concentrate on determining whether or not the decision was correct, adding that the appeal has nothing to do with whether or not the use is appropriate for the district or whether or not it is within the public interest or whether or not the regulation is valid or invalid. He explained that the appeal is strictly about whether or not the Zoning Administrator interpreted the Zoning Ordinance correctly and whether or not Mr. Vanderveer had a special use permit.

Mr. Svoboda reviewed the history as follows:

- June 17, 2014: The Vanderveers made application for a special use permit for a lodge and bed and breakfast (SUP#14-008).
- June 30, 2014: The applicant was notified of a violation of the Greene County Zoning Ordinance. It was determined that he was operating a Bed & Breakfast without a special use permit on the parcels listed in your staff report (Tax Map Parcels 48-(2)-23, 24, 26, 59, 65, 66, & 67). The Articles referenced were Article 3-1-2.1, 3-1-2.2 and 16-2 of the Greene County Zoning Ordinance.
- July 30, 2014: The applicant made an appeal in a timely manner.
- August 1, 2014: The applicant requested that the appeal hearing be delayed to October 22, 2014 to allow adequate time to proceed through the Special Use Permit process.
- August 20, 2014: The Planning Commission held a public hearing and recommended denial of the request to the Board of Supervisors.
- September 23, 2014: A public hearing was held by the Greene County Board of Supervisors. At that meeting the Board of Supervisors denied (5-0 vote) the Vanderveer's special use permit request for a lodge/bed and breakfast/lodging houses. An excerpt from the draft minutes, provided below, indicates the motion and vote of the Supervisors:

- Excerpt from Draft BOS Meeting Minutes September 23, 2014:

Upon motion by David Cox and unanimous vote, the Board denied the request from David & Kumud Vanderveer for a Special Use Permit (SUP#14-008) as the proposed use is not in harmony with the established pattern of development in the community and risks adversely impacting the use of neighboring property.

Recorded vote:

▪ Jim Frydl	-	Yes
▪ David Cox	-	Yes
▪ Eddie Deane	-	Yes
▪ Davis Lamb	-	Yes
▪ Bill Martin	-	Yes

Motion carried.

Mr. Svoboda stated that the decision of the Board of Supervisors is evidence that a special use permit is needed but that it was denied. He added that if the request had been approved, then the notice of violation would have been withdrawn; however, the request

was denied.

Mr. Svoboda presented additional evidence both collected by staff and submitted by the applicant during the special use permit process which indicates that the Vanderveers were operating the Bed & Breakfast. He added that a copy of the business license, obtained from the Commissioner of the Revenue, included in the packets, which permits one to pay taxes but does not give permission to operate. He noted that there is an article in The Hook dated May 21, 2014, indicating that the business had been in operation for approximately one and one-half years prior. He added that other evidence is included in the packet including reviews submitted by the applicant during the special use permit process. He stated that the reviews indicate that the Vanderveers provide an excellent service. He explained that whether or not Mr. Vanderveer's establishment is well-operated, well-maintained, or whether or not he is a good host is not in dispute. He stated that tonight's discussion is about whether or not he is operating without a valid special use permit.

Mr. Svoboda stated that, as the Zoning Administrator, he requested the BZA to affirm and uphold the Zoning Administrator's decision that Mr. Vanderveer was operating without a special use permit based on the Zoning Ordinance and the evidence that was presented, both collected by staff and submitted by the applicant.

Mr. Herring stated that he visited the site and found that the site is pretty and the operation appears to be nice.

Mr. Herring opened the public hearing and swore in all speakers.

David and Kumud Vanderveer, applicants, addressed the Board.

Mrs. Vanderveer stated that the violation notice that was issued said that they were operating a Bed & Breakfast/Lodge without the required special use permit on Tax Map Parcels 48-(2)-23, 24, 26, 59, 65, 66, & 67. She stated that they were not operating overnight rentals on seven lots, noting that what they had in operation was located on Lot 24, which is their primary residence in which three bedrooms are used as overnight rentals and also in operation on Lot 66 was a single-family home with three bedrooms used for overnight rentals. She stated that there were never any breakfasts or meals served to the guests the entire time they were open; hence, they are not functioning as a Bed & Breakfast as defined in the Zoning Ordinance. She read the definition of Lodge as a collection of lodging houses, noting that they are not a collection of lodging houses as the homes located on Lots 67, 23, and 59 are and have always been long term rentals rented for thirty days and above and do not have overnight guests and are not short-term rentals. She added that Lot 26 is a new, unfinished construction and is not currently occupied. She added that Lot 65 is a vacant lot with no home on it and is just a picnic area. She noted that the only homes in consideration should be those on Lots

24 and 66 with three bedrooms in each home that were in operation. She stated that any lodge or Bed & Breakfast typically allow reservations by availability. She added that a lodging house, as defined, provides accommodations and meals. She stated that there is nothing in the Zoning Ordinance that says that any establishment that houses overnight guests has to have a special use permit, noting that the Zoning Ordinance is specific to Lodge, Bed & Breakfast, or Country Inn. She explained that what they have in operation is a private residence and a separate private home on a separate lot where guests are allowed to stay by approval only. She added that reservations are only taken by request from the guest. She stated that the decision to accept or decline the request is made based on the profile that is created by the guest. She added that they look at the personal references and reviews from other hosts to determine acceptance. She noted that an acceptance is made only if everything is to their satisfaction. She stated that it is like allowing a guest for an overnight stay. She stated that the guest is required to create a profile including a picture, personal information, email address, photo id, and a government issued id, such as a driver's license or passport. She added that if the procedures are not completed, the guest cannot even complete the process for making a reservation request. She explained that reservations are made through Airbnb. Airbnb is defined as to rent unique accommodations from local hosts. She added that Airbnb is an online community marketplace that connects people who are looking to rent their homes to people who are looking for accommodations. She explained that it is a new concept that is not defined in the Zoning Ordinance. She stated that the host has to be a member of the Airbnb community, like being a member of a club, in order to create a listing and they can only accept members of Airbnb to this listing. She added that if you stay at a lodge, inn, or Bed & Breakfast, you can make a reservation if there is availability without setting up a profile, etc.; hence, they are not in violation of operating a Bed & Breakfast/lodge on Tax Map Parcels 48-(2)-23, 24, 26, 59, 65, 66, & 67.

Mr. Herring asked if there were any questions.

Frank Morris stated that during the public hearing process, the applicant estimated 200 guests at fifty percent occupancy in one year and half. He asked the applicant to explain the computation.

Mrs. Vanderveer explained that there are 6 bedrooms in 2 houses. She added that not each bedroom went online at the same time.

Mr. Vanderveer stated that there are six bedrooms and 52 weeks per year.

Mr. Morris clarified that most people stay weekends and Mr. Vanderveer agreed.

Mr. Vanderveer stated that 200 guests over 52 weekends multiplied by 6 which equals 312 per year. There seemed to be confusion in the computation. Mr. Vanderveer stated that some people just stay one night.

Mr. Herring asked how many structures have multiple rental units. He clarified with Mr. Svoboda that a single-family dwelling could be rented as a single unit but a multiple unit could not be rented.

Mr. Svoboda stated that in the A-1 zoning district, a duplex would require a special use permit, noting that a multi-family dwelling would require a different approval. He agreed that as Mr. Vanderveer stated, the permits on file for these structures are for single-family dwellings.

Mr. Herring restated that Mr. Vanderveer could rent to a family or to an individual a single unit on a property but not multiple units.

Mr. Svoboda agreed.

Mr. Herring asked Mr. Vanderveer how many multiple units he has that would apply to that question.

Mr. Vanderveer stated that there are two buildings, each having three bedrooms that they have been renting.

Mr. Herring asked if those bedrooms are rented individually or as one home.

Mr. Vanderveer stated that he had been renting the rooms in their house for 32 years mostly long term.

Mrs. Vanderveer stated that the rooms in the primary house there are three bedrooms that are listed online for overnight rentals for the short-term individually.

Mr. Herring asked Mrs. Vanderveer to clarify that the personal home is being rented as an apartment house.

Mrs. Vanderveer stated that it is their primary residence and the home on Lot 66 has three bedrooms, listed individually, added that it has not been online for thirty years as it is a newer construction.

Mr. Vanderveer stated that, according to Mr. Svoboda, if you are living in a house, you can rent rooms in the house to others as long as you share the same kitchen.

Mr. Herring reiterated in your own house not in the secondary house.

Mr. Vanderveer stated that he thinks that is the case.

Mr. Wilson asked if the second structure was rented to multiple parties.

Mr. Vanderveer stated that yes, it was. He added that he would think that they would not be in violation for the one that they are living in where units are being rented, as long as they are living there and sharing the same kitchen which is the case.

Mr. Wilson asked Mr. Vanderveer if the other house has multiple people renting units individually which is not in the structure in which the Vanderveers live.

Mr. Vanderveer stated that they do.

Mr. Wilson asked if the people pay to stay there.

Mr. Vanderveer stated that they do.

Mr. Herring asked Mr. Svoboda for clarification for the rental units in the primary home.

Mr. Svoboda stated that traditionally, a long-term rental within your own home, such as, for example, a rental to a college student for the semester, has been allowed as it is considered as accessory to the primary use. He explained that renting by short-term, such as every weekend to someone different, would be considered transient lodging or tourist lodging which is not considered accessory to the single-family dwelling.

Mr. Wilson asked if a special use permit would be required to allow the rental by different people on different weekends in their residence.

Mr. Svoboda answered yes as it would be considered a Bed & Breakfast. He added that if there were more than one structure or uses that went along with those structures such as trails, Frisbee golf, picnic areas, that encompass more than those parcels then they are considered uses that accompany the Bed & Breakfast or a Lodge.

Mr. Wilson stated that the length of stay factors in as people staying for longer times is one thing but if people are changing every weekend, that is something that has not been traditionally allowed.

Mr. Svoboda agreed.

Mr. Vanderveer pointed out that what it said in Zoning is that if you are like a Bed & Breakfast or lodge, a lodge is defined as a number of housing units, because we are not serving meals or breakfast, we are not really a Bed & Breakfast. He stated that the question is, are we a lodge, which is a collection of lodging houses. He stated that if they are just using their home then they are not a collection of lodging houses and they are not serving breakfast so they are not a Bed & Breakfast.

Mr. Svoboda stated that a lodge is a collection of lodging houses and a lodging house is a building designed or occupied as a temporary abode, noting that the Vanderveers just testified that they are renting temporarily, with or without meals. He added that this is the reason that the Zoning Administrator chose that category, in addition to the letter submitted by Mr. Vanderveer and how he is operating and what he calls himself.

Mr. Svoboda added that the Bed & Breakfast is also included in that determination because the Vanderveers have said that they have made breakfast at times. He noted that meals do not have to be required but are about the temporary lodging or lodging house and the activities that go with that. He pointed out that the other parcels are listed in there because as a person who rents a room in the lodging house, you get to use the amenities which cross parcel lines as shown on a map provided by the Vanderveers; therefore, the use itself has accessory uses that accompany it. He suggested that someone staying in the green barn on one parcel could use the sauna located at the castle which is located on a different parcel. He noted that these comments are listed online as submitted by Mr. Vanderveer.

The following citizens addressed the Commission voicing their comments and concerns:

- Hildegard Moll: resident of Riverdale; reiterated her objection to the Bed & Breakfast as she and her husband live next door and do not appreciate the noise; stated that it is a private subdivision and she wants it to remain private and not a business; noted that the subdivision insurance will skyrocket due to the business and possible lawsuits; noted that residents are determined to keep area as a residential subdivision; appreciates the consideration.
- Paul Harrington: lives in Stanardsville; friend of Mr. Vanderveer's; amenities have been there all along, except for the Frisbee Golf which is new, and are mostly for his friends; has had breakfast there quite a bit as a friend, noting that the breakfast was not open to the guest per se but to friends and people who know them; they enjoy having friends over; the occupancy rate that he is quoting is for every day throughout the year and the weekends are very miniscule.

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

Mr. Herring clarified the duties of the Board and the question at hand tonight.

Mr. Vanderveer referred to the notice of official determination of violation which reads uses permitted by special use permit country inns, bed and breakfast, and similar establishments, noting that lodges, which is plural, is defined where the minimum tenancy is thirty days, offering that nothing in the ordinance says any establishment that houses overnight guests has to have a special use permit. He stated that the Zoning Ordinance is specific to lodge, bed and breakfast, or country inn. He pointed out that a country inn is defined as a food service organization as well as overnight and that bed and breakfast is obvious and breakfast is not served to their guests. He added that Zoning Ordinance is specific to lodge which is specified as a collection of lodging houses. He stated that he understood that if he has two houses that is in violation but pointed out that at least their personal home should not be in violation and that they should at least be able to continue operating in their own home because it says lodging houses and that they are not lodging houses. He added that lodging houses would also be in question because the definition states that food/meals are served as well if you look in the dictionary. He stated that if a lodge is a collection of lodging houses, then, yes, two are in violation, but that does not mean that if we just have our one house then I would assume that it is not in violation.

Mr. Runkle referred to Mr. Vanderveer's comments regarding country inn, Bed & Breakfast, and similar establishments. He stated that it sounds very much as though as if this is a similar establishment.

Mr. Wilson added that the ruling is not regarding the primary residence only but regarding the current operation and was the ruling done correctly. He noted that Mr. Vanderveer's point about the use of the personal home only is not for consideration tonight but that tonight is regarding the current operation without a special use permit. He added that if the applicant wants to amend the special use permit request and re-apply, he would have to discuss that with Mr. Svoboda in the future.

Mr. Herring asked for clarification regarding the rental of units within the personal home being a violation.

Mr. Svoboda stated that at the time the determination was made the two houses minimum were used as, by Mr. Vanderveer's own admission, a collection of lodging houses which makes it a lodge which places him in violation. He stated that to advise Mr. Vanderveer during this hearing regarding his other option would not be appropriate at this time. He added that if he would like to set up a meeting, we would be more than happy to meet with him to discuss those options. He stated that tonight's discussion is regarding the violation notice and not to determine whether or not his house by itself is appropriate as that is a legislative action in the hands of the Board of Supervisors not the Board of Zoning Appeals.

Mr. Morris asked if a precedent would be set in regard to this type of establishments in other subdivisions.

Mr. Svoboda stated that this appeal is specific to this violation.

Mr. Vanderveer reread the notice of violation as it reads: based on advertisements online and inspections of Tax Map Parcels 48-(2)-23, 24, 26, 59, 65, 66, & 67 on June 26, 2014, a lodge/Bed & Breakfast is operating without required permit, noting that it was not true as not all of these places were operating as they only have two residences. He agreed that two other lots were being used on the grounds but that they were not operating all of the listed property so they are not in violation of operating all of the lots. He stated that if you go by what is technically written, then they are not in violation.

Mr. Herring stated that he understood from Mr. Svoboda that in the totality, the use of the other lots, not for lodging but in conjunction with your other uses such as the fire pit, etc., is why those lots are included. He noted that what is being considered is whether what you have been doing is in violation or not in violation.

Mr. Vanderveer explained that one house is a private residence and that no one uses that property other than long term residents and that there is another lot with a cabin and that no one ever goes over there as it is used for a private residence. He stated that they do use another lot, the Frisbee Golf is on the two lots of the residence and another lot has the fire pit, noting a total of three lots not seven.

Mr. Vanderveer mentioned that some believe it is like a Bed & Breakfast, lodge, and country inn. He stated that if you want to rent any of these, you go online or make a phone call to check for availability, you look at photos and decide if you want to go there, you give them a credit card number and you make a reservation. He pointed out that what they are doing is nothing like that, adding that it is not like any of those things at all. He stated that it is like being a private club but only people with profiles, including references, proper id, etc. can participate, adding that they have to have a profile as well. He noted that what they are doing is quite unique, perhaps being termed a home-stay, where you open your home to guests through a private, online web site.

Mr. Wilson asked if the renters pay to stay there.

Mr. Vanderveer stated that they do.

Ms. Frye made a motion to uphold the Zoning Administrator's determination regarding Article 3-1-2 and 16-2 of the Greene County Zoning Ordinance (BZA App#14-001).

Mr. Morris seconded the motion

The vote was taken.

AYE

Mr. Wilson
Mr. Runkle
Ms. Frye
Mr. Morris
Mr. Herring

NAY

The motion to uphold the Zoning Administrator's determination regarding BZA App#14-001 carried by a unanimous vote.

OLD/NEW BUSINESS

Mr. Svoboda announced that the next meeting will be held on Thursday, November 20th due to the Thanksgiving holiday. He explained that this will be an opportunity to approve the October minutes and to finalize year-end business. He added that the following meeting would be the reorganization meeting in January pending no other applications for hearing in December.

Mr. Svoboda stated that the Board of Supervisors would like the Planning and Zoning Department to look into some ordinance revisions and also to make sure that the playing field is level for business compliance; he noted that it could result in some additional appeals in the future.

MINUTES

Mr. Runkle made a motion to approve the minutes of January 22, 2014.

Mr. Morris seconded the motion.

The minutes of January 22, 2014 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

Date