LANCASTER COUNTY
BOARD OF ZONING APPEALS
REGULAR MEETING
JUNE 09, 2015
MINUTES

Members Present: Reid Rushing, Harvey Carnes, Don Brouwer, Frances Liu, Terry Graham.

Others Present: - Elaine Boone, Planner II; Nick Cauthen, Planner I; Judy Barrineau, Secretary; Kenneth Cauthen, Zoning Officer; Dwight Witherspoon, Zoning Officer; John Weaver, County Attorney.

Others Absent: Penelope Karagounis, Planning Director; LaVilla Brevard, Board of Zoning Appeals Member; John Neal, Board of Zoning Appeals Member; Amy Bowers, Zoning Officer; No members of the press were present.

The following press were notified of the meeting by mail or by fax in accordance with the Freedom of Information Act: Lancaster News, York Observer, Kershaw News Era, The Rock Hill Herald, Fort Mill Times, Cable News 2, WRHM Radio, and the local Government Channel.

Approve the Agenda
Frances Liu made a motion to amend the agenda by adding under New Business: Nomination for Board Member of the Year; Don Brouwer seconded the motion.

VOTE: UNANIMOUS MOTION CARRIED

Frances Liu made a motion to approve the agenda as amended and Don Brouwer seconded the motion.

VOTE: UNANIMOUS MOTION CARRIED

Reid Rushing – I need to bring to the board members attention regarding the last meeting that we had back in March Mr. Weaver spoke to use about the item listed on our packets named "Communications". This communications section gives you the opportunity as a board member at this time if you have at any time discussed any of the variance request applications before you tonight with any applicant or citizen. We will take this time for anyone to acknowledge if they have been contacted or discussed any of the applications on the agenda tonight, now is the time to speak.

Approval of the Minutes
Don Brouwer made a motion to approve the March 2015 minutes and Harvey Carnes seconded the motion.

Reid Rushing – If everyone still has their minutes from your packet please get them out. In March when we met Mr. Weaver also brought it to our attention that when you make a motion to approve or deny you are required to give a reason using the guidelines we have called "Findings Required for Granting Variances". There are five findings to consider – A through E.

Reid Rushing called the meeting to order.

Staff introduced themselves and Judy Barrineau swore them in.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

Staff – Yes.

Reid Rushing – Have all the adjacent property owners and the applicant been made aware of tonight's meeting including place, date, and time and advertised in the paper including a copy on file?

Nick Cauthen – Yes.

Reid Rushing – The zoning board of appeals duties are within three specific areas: A) Administrative review is an appeal of an order, requirement, decision, or determination of the Administrator that has alleged error. B) The power to grant variances when strict application of the zoning ordinance would not cause an unnecessary hardship and the granting of variances would not cause substantial detriment to adjacent property or the public good. C) Special exceptions are permitted when uses require a public hearing prior to granting authorization. The public hearing is conducted to review comments and information both for and against a proposed application. During the public hearing portion of the meeting all interested parties will be given the opportunity to speak and give factual information or present factual documentation. All people speaking will be placed under oath. All persons wishing to speak must sign the proper registry prior to speaking. Anyone speaking will come forward to the podium, speak into the microphone, state your name, address, and your telephone number. We must record all information for the record. Applicant will speak first, all opponents second, the proponents next. The applicant will also have an opportunity for a rebuttal. Please, a 5 minute limit will be placed on each speaker.

Variance application of David & Sandra Benson. The applicant is requesting a variance from Ordinance No. 631, Section 11.3, relating to the Sun City Carolina Lakes Planned Development District, PDD-18, for a variance regarding the setback requirements. BZA 015-003

Nick Cauthen – Presented the statement of matter.

Reid Rushing – I will now proclaim the public portion of our meeting open.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth? (Both David and Sandra Benson were sworn in at the same time)

David & Sandra Benson – Yes. My address is 2005 Wheatfield Court, Indian Land SC. My wife and I would like to construct a 12 by 16 screened sunroom into the back of the house. One of the reasons we would like to do this other than having an outdoor space that is bug free; last summer my wife was stung by a yellow jacket that required hospitalization because unfortunately we found out that she is allergic to bee stings. She has been afraid to use the outdoor space fearing she would be stung again. That is the primary reason that we are looking for approval of this variance so we can enjoy the beautiful outdoors of Sun City. As stated, neighbors on each side of us have signed off with their approval and have no problem with it. The area behind us is an easement of Duke Energy and beyond that is Van Wyck Road and the property of Sun City that is adjacent to Van Wyck Road. I did provide photographs with the original packet and I do have copies if anybody would like to take a look at it. The only people that would be affected by the looks of it being on the back of the house would be my two neighbors and I have one of the sets of neighbors with us tonight who are in support of this. My wife and I would appreciate your approval on this project so we can move forward.

Reid Rushing – I will now proclaim the public portion of our meeting closed.

Reid Rushing – Has a site check been done?

Kenneth Cauthen – Yes sir, turn to page 9 and you will see on lot 22 that back property line is where the 68 foot Duke Energy right of way is and is included in the open space. It is considered open space. On Van Wyck Road there is a steep hill probably 25 feet tall behind this house and Van Wyck Road is; I meant to measure it but I didn't but it's at least 100 feet away if not 200. Another thing I noticed when I first looked a plat. One property line on the side is only 120 feet and the other one is 107 and that's mighty small; most Sun City lots are around 140. This lot was a little unusual.

Reid Rushing – Have all measurements been verified?

Kenneth Cauthen – Yes.

Frances Liu – It looks like the concrete patio encroaches over the setback and I wondered how that happened.

Dwight Witherspoon – That is not included in the setback.

Kenneth Cauthen – Anything under 12 inches.

Frances Liu – Thank you, I was just curious.

Reid Rushing – If you look on page 10 it shows the location of the proposed 12 by 16 sunroom is to be placed, is that correct?

David Benson – Correct.

Reid Rushing – Why would not move that sunroom over the concrete pad and utilize that concrete pad that is existing?

David Benson – That concrete pad that is shown was removed to enlarge the concrete patio that is there now. That patio extends out I want to say 16 feet and it's the entire width of the house. The screened in room will sit on that concrete pad.

Reid Rushing – Could you not move your screened porch all the way to the far corner of your home there? That way you wouldn't have to be so much in the encroachment area.

David Benson – The only problem with that is the back door won't open into the screened portion in such a way that it is usable. That was a consideration. Is there anything else that we would be able to do but it just wasn't feasible to do that.

Frances Liu – May I ask when you were stung?

Sandra Benson – August.

Frances Liu – At this property?

Sandra Benson – No I was not, but I ended up at the hospital.

Frances Liu – Overnight.

Sandra Benson – No, they just kept me there for a couple of hours. They had to give me IV medicine.

Frances Liu – I can sympathize because I've been hospitalized for bee stings. I've been allergic my whole life. So it didn't occur on the property?

Sandra Benson – No. My throat starting closing up and I had never been stung before so I didn't know until it happened.

Don Brouwer – How soon would you need to have this approved by the HOA in Sun City?

David Benson – As soon as we can, I'm not waiting on it. I'd like to have it erected so we can enjoy the outdoors.

Frances Liu made a motion to deny because I don't feel that it meets any of the criteria and I feel the reason is because of a bee sting and we are not allowed to take that into account and the setback on the property. I think most of the cul-de-sac lots have a small area for building and I just feel it would open many others in Sun City who were denied already to come back and ask for a variance; Harvey Carnes seconded the motion.

VOTE: 4 AFFIRMATIVE 1 NEGATIVE MOTION CARRIED

The one negative vote came from Don Brouwer.

Reid Rushing – Frances Liu made a motion to deny due to the fact of the five findings for granting a variance that we have to look at. She didn't feel like that the application that you have presented to us met any of the criteria required.

David Benson – Just so the board knows; we have the smallest lot within Sun City. There is no other lot that would fall into this category. Everybody else that has applied to the homeowners association for a variance has been approved and I have been notified from my homeowners association that they would approve it if I had your approval tonight. I respect the decision of the board. Is there a possibility of asking again in the future? Or is this a dead issue for us?

Elaine Boone – You would have to have some type of new evidence, something that wasn't presented at this meeting here. We can look over tomorrow and give you a call.

John Weaver – I believe the rule is that if they file an application for a rehearing within 30 days with new information that has not been presented tonight but that was available and for whatever reason was not presented tonight; then if they file that application, it is appropriate to put it back on the agenda for reconsideration.

Frances Liu – We have denied variances in Sun City for the same criteria.

Elaine Boone – If you decide you want to come back in the 30 days with more information, that will be another fee.

John Weaver – In order for a variance to be granted it can only be one of those on the list.

David Benson – Does it have to be just one or has to be all five?

John Weaver – It only has to be one.

Variance application of Brent & Kim Whitlock. The applicant is requesting a variance from Chapter 5, Density and Dimensional Regulations, Section 5.5, Accessory Building Setback Requirements of the Lancaster County Unified Development Ordinance regarding the setback requirements.
BZA 015-004

Elaine Boone - Presented the statement of matter.

Reid Rushing – I will now proclaim the public portion of our meeting open.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth? (Both Brent & Kim Whitlock were sworn in at the same time)

Brent & Kim Whitlock – Yes. My address is 620 Baker Place Road, Lancaster SC. You can see some of the grading that has already been done by these pictures here. (Unable to hear complete response due to applicant is referring to pictures and moving around and not talking directly into the microphone) According to Brian Enfinger went we got him back at there for the survey; he stated when we contacted him after we closed on the property, when he looked into the system it still showed the B-2 and that is what he picked up. Apparently there is some kind of lag because when the rezoning was done in October 2013. When we closed on the property is was January 2014. When we got Enfinger out there it was February 2014 and it still showed the B-2. Also, I don't know as far as the specifics of what you have but when we were having the property graded the guys that were doing the grading picked up a on this old permit and it said 170 feet there. That is the only place that showed 170 feet in any dimension from the side of the road to the front of the building. When we got Donna Hagins drawing, it showed the setback but it didn't show the dimension road out from the front to the back. So that is what those guys picked up on when they were grading. When we were talking to Brian Enfinger that is when he figured out what had happened. Apparently DHEC picked the exact same measurement again so somewhere another when we did rezone it took awhile for the County's computer system that these guys pull off of to catch up. But then by the time Donna Hagins came along and did her drawings, it was there. We are just trying to get this done. We are not trying to get away with anything.

Reid Rushing – Let's go back over your dates again. You bought this piece of property and it was B-2 correct?

Brent Whitlock – No sir, we was waiting on the rezoning. It had already been rezoned when we bought it. The rezoning was complete in October 2013.

Reid Rushing – So you did not rezone it from B-2 to B-3? Someone else did?

Brent Whitlock – No we did.

Reid Rushing – The rezoning was completed when?

Brent Whitlock – October 2013 and we closed on the property in January 2014. The survey was done February 2014.

Reid Rushing – So it was over a year?

Brent Whitlock – 3 or 4 months.

Reid Rushing – The Lancaster County website had not been updated?

Brent Whitlock – Right, but DHEC's permit which I think was in May, so yes October to May.

Kim Whitlock – We got permission from the owner to come to county council to have it rezoned before we purchased the land because it would not be any good to us if we didn't.

Brent Whitlock – We have been through several different properties and for whatever reason or another; either it wasn't approved by the county or perk problems, or zoning problems that wouldn't fit our needs as far as the trucks. The trailers are parked off site for the most part. When they are repaired that is done off site as well. We do need to get all the trucks grouped together because right now I've got them scattered all over five different properties.

Reid Rushing – After you pass J & S it's on the right?

Brent Whitlock – No sir, it's right past Catawba Mental Health.

Reid Rushing – Yes right across from J & S Concrete.
Brent Whitlock – Just about yes sir. We shouldn't be bothering anybody as far as trucks. Also Catawba Mental Health if you will notice on those pictures how close they are to the road. We are still back behind that.

Reid Rushing – They are going to the 100 foot setback?

Brent Whitlock – Right.

Kim Whitlock – If the state ever come in and widening the road they wouldn't have anymore room to operate.

Reid Rushing – They would take the parking lot.

Brent Whitlock – We've already said as far as the front parking for the employees; if we stay right where we are at and everything was still clear, we would still have the trucks at the back.

Reid Rushing – The public portion of this meeting is now closed.

Elaine Boone – We did not get any telephone calls or letters at all.

Reid Rushing – Has a site check been done?

Kenneth Cauthen – We've been working on this for a long time. I'm really familiar with Highway 521 below Kershaw and all the way to the North Carolina line and I've never seen a right of way that is 118 feet from the center line of the road. I don't know how SCDOT came up with that. That is why he is going to be sitting way off the road.

Reid Rushing – Let me ask you a question then Kenneth. That 118 feet right of way; how long has it been on the books?

Kenneth Cauthen – I can't remember.

Harvey Carnes – When they come through there to do that they went ahead and bought enough land to do it all the way to start with. They just stopped right there. They can still come back there later on.

Reid Rushing – Are you telling me that is the only piece of property on Highway 521 that has that particular type setback?

Kenneth Cauthen – A few lots on past that, vacant lots that were sold at auction years ago. The right of way on the other side of the road is only about 70 feet from the center line of the road.

Reid Rushing – The right of way on the opposite side, J & S side, is how much?

Kenneth Cauthen – I didn't write it down but I want to think it is 70.

Reid Rushing – On one side of the highway it's 70 and the other side is 118?

Kenneth Cauthen – Usually on 521 it's 33 feet from the center line to the end of the right of way and right here it's 70 and then 118 on the other side. So I don' know why they had a right of way like that.

Harvey Carnes – On 521 the right of way varies from one end to the other.

Kenneth Cauthen – It does, all the way up the Charlotte Highway.

Reid Rushing – He had his rezoned to B-3. Are the lots after you pass his on his side; are they still B-2?

Elaine Boone – They are residential.

Reid Rushing – Have all measurements been verified?

Kenneth Cauthen – On page 26 where the septic system is; about the middle of the page it states that the septic system site specific drain field, so that means it can't be moved. The septic system is right at the back of the building and if the building has to be moved back it's going to be too close to the septic system. On page 30, it has a 100 year flood plain back there too. If he has to move the building back any further; you've got the pad and then the tow of the slope would need to be at least 2 to 1, preferably at least 3 to 1 to prevent erosion. That tow is going to be down in a flood plain and you can't fill in that flood plain.

Frances Liu – When he had the property rezoned to B-3, did you know what the setbacks were at that time for the rezoning?

Brent Whitlock – No not me personally. We didn't get the surveyor out there until after the fact. We had gotten preapproval for the land back in the summer of 2013. We started the rezoning process but we didn't want to buy the land if it wasn't rezoned because then we couldn't use it. Once the rezoning was complete then that was when we went back to our lending institution. We had lost our preapproval because the time had expired. It closed in January and we got our own surveyor out there and the reason for that was, I wanted to pick who we got because we wanted to make sure about the buffers and where we could put things. This has been going on since 2008. We didn't want any problems with anybody. All we want to do is make a living and it's just been difficult. It probably wasn't in a normal order but that is the reason things fell like they did. We were just trying to put as many safeguards out there as we could and we still go bit.

Kenneth Cauthen – Then has been going on a long time. He is in a residential area and he is trying to get out and do the right thing.

Harvey Carnes – Didn't you say if he moved it back then he would be in a flood zone?

Kenneth Cauthen – Yes.

Reid Rushing – I'm surprised he has been able to do the grading that he has done to this point.

Kenneth Cauthen – Especially having to come back 118 feet from the center line of the road.

Frances Liu – I'm struggling because had you known the setbacks before you zoned it you would feel that this was not suitable for your business because you couldn't put anything where you needed to put it if you knew where the setbacks were?

Brent Whitlock – Right now I feel like I might as well donate it to the state. This has been going on for a long time. We looked at so many pieces of land and felt like this was our best option. Unable to hear complete response.

Frances Liu – My question to Kenneth is you stated there are very few properties that have this setback.

Kenneth Cauthen – I don't know of a single one on 521 from three miles all the way down.

Reid Rushing – You have to keep this in mind also. The reason he has 118 foot setback is because of Highway 521 on the right hand side of it. The next two lots that adjoin him above him are zoned residential. They still have the same setbacks but the got a hole a lot bigger than he has at the back.

Kenneth Cauthen – But those two properties zoned residential have only 40 feet instead of 75.

Reid Rushing – You just got through telling me that the setback was 118 feet on that property on that side and 70 on the other side.

Kenneth Cauthen – It's not the setback it's the property line.

Reid Rushing – But those other lots above him are 118 feet also.

Kenneth Cauthen – Close to it but their setbacks are 40 feet and not 75.

Reid Rushing – Because of the residential?

Kenneth Cauthen – Yes.

Reid Rushing – He had his piece of property rezoned to B-3, he could not move his business into a B-2 zoning?

Elaine Boone – No it had to be a B-3.

Don Brouwer made a motion to approve because of theses conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and also the authorization of a variance will not be of substantial detriment to the adjacent property or to the public good and the character of the district will not be harmed by granting of the variance nor will the granting of a variance impair the purpose and intent of this ordinance or the comprehensive plan; Frances Liu seconded the motion.

VOTE: 5 AFFIRMATIVE 0 NEGATIVE MOTION CARRIED

Variance application of Mr. Robert Whitaker. The applicant is requesting a variance from Chapter 5, Density and Dimensional Regulations, Section 5.5, Accessory Building Setback Requirements of the Lancaster County Unified Development Ordinance regarding the setback requirements. BZA 015-005

Nick Cauthen – Presented the statement of matter.

Reid Rushing – I will now proclaim the public portion of our meeting open.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

Robert Whitaker – Yes. My address is 4112 Shiloh Unity Road, Lancaster SC. I would like to build a storage building right beside my home. There is not enough room behind my home because of the septic tank. There is actually a two foot slope behind where the building would go and the woods are there. I've already got to have 40 loads of dirt hauled in beside the home to make it level. I was not aware of the stipulations with a corner lot. There is actually three other homes with buildings beside them on corner lots between Lancaster Speedway and Tradesville. It is the same thing that I'm going through.

Reid Rushing – I will not proclaim the public portion of our meeting now closed.

Reid Rushing – Has a site check been done?

Kenneth Cauthen – We didn't have a septic permit but I looked at the side yard and front yard and the grass was so yellow it has to be in the back somewhere.

Robert Whitaker – It's in the back towards the woods.

Reid Rushing – Have all measurements been verified?

Kenneth Cauthen – His back yard is fairly small but his side and front yard are a pretty good size. It's not in the packet. How big is the building?

Robert Whitaker – 40 by 60 or 40 by 40 if it has to be smaller. It won't go past the front of the house towards Shiloh Unity Road. It will actually be behind the home and closer to Legend Road.

Kenneth Cauthen – There was an underground power line coming from the service pole back to the meter of the house so it's somewhere in that back yard, just don't know where.

Reid Rushing – The actual building is going beside the home right?

Robert Whitaker – Yes sir.

Reid Rushing – Between the home and Legend Road?

Robert Whitaker – Yes sir.

Reid Rushing asked for applicant to come forward and show him where the septic tank is located on paper.

Reid Rushing – If this is your clean out for the septic system and these lines are going this way. Why would you not put this building back here?

Robert Whitaker – There is a four foot difference between here and here and there is actually a six foot difference in slope in the back. I would have to get the trees cut and more dirt hauled in.

Reid Rushing – So what you are telling me is, there is less expense in putting it here than putting it back there? A storage building of this size is going to be as big as your home.

Robert Whitaker – Yes sir, close.

Reid Rushing – It's going to be right on the same plain as your home.

Robert Whitaker – Yes sir and it will still be 28 feet from the center line of Legend Road.

Terry Graham made a motion to deny based on there is not extraordinary and exceptional conditions pertaining to this particular piece of property since he can place the building on the back side; Frances Liu seconded the motion.

VOTE: 5 AFFIRMATIVE 0 NEGATIVE MOTION CARRIED

Frances Liu made a motion to adjourn and Don Brouwer seconded the motion.

VOTE: UNANIMOUS MOTION CARRIED

Respectfully Submitted,

Reid Rushing

Reid Rushing
Chairman

J. Elaine Boone

J. Elaine Boone
Planner II