

LANCASTER COUNTY
BOARD OF ZONING APPEALS
REGULAR MEETING
NOVEMBER 10, 2015
MINUTES

Members Present: Harvey Carnes, Don Brouwer, Frances Liu, LaVilla Brevard; Terry Graham.

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

Others Absent: Reid Rushing, Board of Zoning Appeals Member; John Neal, Board of Zoning Appeals Member; Penelope Karagounis, Planning Director; Amy Bowers, Zoning Officer; Dwight Witherspoon, 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

LaVilla Brevard made a motion to approve the agenda and Terry Graham seconded the motion.

VOTE: UNANIMOUS MOTION CARRIED

Approval of the Minutes

Harvey Carnes made a motion to approve the August 2015 minutes and LaVilla Brevard seconded the motion.

Frances Liu 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.

Frances Liu – 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.

Frances Liu – 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 Mr. Michael Ned Bailey. 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 015-007

Nick Cauthen – Presented the statement of matter.

Frances Liu – 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?

Michael Ned Bailey – Yes, 447 Tram Road, Lancaster SC – My lot drops off everywhere around my house. Before I bought my house they had built a wall in front of the house with enough brick to build five houses just so the house would have a front yard. It drops off to a creek and the only other level piece of property that I have besides where I want to put the carport is where all my services come in; my water, telephone, gas, and everything so I can't put it there. I don't have anywhere else to put one. I have a lot of trees so I'm trying to get my vehicles covered because it messes up the paint and leaves sticking on them also.

Frances Liu – I will now proclaim the public portion of our meeting closed.

Frances Liu – Has a site check been done?

Kenneth Cauthen – This property does have grade issues. It drops off all around the house. On the east side of the house there is a regulated flood plain and the creek comes up pretty close to the house. Sixty five feet from the edge from the right of way on Knotty Pine Drive; the right of way is 33 feet, pavement is 22 feet so half of that is 11 feet so really the carport is going to be 87 feet from the edge of the road. We are working on changing the UDO and this is one of the main things we want to change. If you have a corner lot and want to put a detached structure there; you really can't do it at all unless your house is three or four hundred off the right of way and then the accessory use can be a 100 feet from the right of way. This is one of the biggest ordinance requirements that we know we have to change.

Frances Liu – Have all measurements been verified?

Kenneth Cauthen – Yes.

Terry Graham – Would changing the ordinance help the applicant?

Kenneth Cauthen – Yes, on a corner lot on the front the setbacks usually, depending on whether you have sewer or septic; 40 feet on the sides. It is either 10 or 20 feet. What we will probably do is have two front setbacks on the corner lot. It will be 35 or 40 on the front or 35 and 40 on the side. His is going to be 65 feet off the side.

Terry Graham – Any idea when that is going to happen?

Elaine Boone – Hopefully by March 2016.

Don Brouwer made a motion to approve because of these conditions to the property this application of the ordinance of this particular piece of property would effectively prohibit or unreasonably restrict the use of the property and LaVilla Brevard seconded the motion.

VOTE: 5 AFFIRMATIVE 0 NEGATIVE MOTION CARRIED

Variance application of Mr. Evan Carroll. The applicant is requesting a variance from Chapter 4, Conditional and Special Exception Uses, Section 4.1.6, Commercial Kennels of the Lancaster County Unified Development Ordinance regarding the setback requirements. BZA 015-008

Nick Cauthen – Presented the statement of matter.

Frances Liu – 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?

Kristine Carroll – Yes, 8713 Laurelwood Lane, Marvin NC 28173. We are looking at opening a pet resort on Charlotte Highway. I know the biggest concern at this point is noise abatement from the surrounding neighbors. We need a variance for 500 feet from the closest residential structure. The property that we are looking at to purchase is almost 4 acres. However, given all the setbacks that we have it gives us about 5 feet wiggle room. So we really only have one location there that we can put it on. The closest residential structure is 365 feet and not the required 500 feet. However, it is on the other side of a four lane highway. In terms of the facility itself we are not looking for a good facility but we are looking for the best facility. One of the major concerns that I know will be voiced is regarding noise. There is a lot that we are doing for noise abatement in the construction of this building. One of the major reasons that you have noise in kennel situations is one the construction, you see a lot of concrete and a lot of chain link fence; both of those words are dirty words when it comes to our facility. Our dogs will not be on concrete, they will be on specialized epoxy flooring. We have sound insulation in the ceilings and the walls and there will not be one inch of chain length fence. That is the biggest problem when it comes to noise with dogs. It leads to a behavior known as fence fighting. If the dogs can see each other then they are going to bark at each other. It is basically going to be rooms. Our dogs will have individual suites and at no point whether they are inside or outside will they see another dog. Unless it is one of their siblings that they are boarded with; this is to cut down on noise. Every wall is insulated, including the walls in between each chamber. The outdoor section of our facility is in the very center of the square in the courtyard. We are not looking to be a facility that has what is typically known as daycare within the industry where the dogs are dropped off and they are just left to run and play for hours on end; we are not going to do that. We are strictly a boarding resort facility. We will offer play time but in shorter sessions and smaller groups. We are not looking to be the noisy one out there because if anything, that is going to push us away from the clientele we want to have. We are looking to be the best facility out there.

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?

Scott Bruntmyer – Yes, 511 New Harbour Court, Indian Land SC. I live in the neighborhood of Lakeview Landing which is located behind where this proposed facility is going. About six years ago a similar facility was proposed to go into the industrial park where our neighborhood is and I came and spoke against it. Thankfully everyone agreed and decided not to allow this as a use. The concern being at the time and the concern today is the problem with noise and how it would affect our neighborhood. Many of you on this board are probably familiar with the problems that our neighborhood has experienced from a local industry in that industrial park and the number of complaints that have come from that. I believe and many of my neighbors believe that we will have a similar problem with a dog kennel near our neighborhood as well. I heard some good things about noise abatement but I also heard about the outdoor facilities. Although the inside facilities are well insulated I didn't hear how the outdoor ceiling was insulated because it probably isn't an outdoor ceiling, its outdoors. I personally don't want to hear dogs barking repeatedly at my neighborhood. I also noticed on the Board of Zoning's sign notice for this property that there was no case number actually on that sign which makes it somewhat difficult for people that are concerned in the community to look up and find out what is going on with this zoning request. If you look at the number of people signing up to speak and if they had been able to track down what is going on you might have had more people concerned about this issue as well.

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?

Dan Ballou – Yes, 331 E. Main Street, Rock Hill SC. I am an attorney from Rock Hill and I'm representing Inspiration Network. We represent the property owners across the street including the owner of the residential property nearest to the proposed use. From a legal prospective looking at the requirements for a variance; a variance is something obviously that this board has a lot of experience and I don't need to educate you at all regarding the requirements of a variance. There are pretty specific and one of those is exceptional circumstances justifying relief from the language of the ordinance. All we've heard in the application and today is that there are residential properties all around this property; nothing about this particular property is exceptional or extraordinary that would require or justify the granting of the variance. I've looked at the drawings and from my prospective it looks like a very nice well designed facility and is probably appropriate for someplace in Lancaster County but just not this place. Our position would be that the distant requirements built into the ordinance are there for a reason. There is nothing unusual about the topography of this site or the conditions of this site. It is located adjacent to some residential properties and you will hear probably from some other folks today who live in those homes who would be affected by it and that is what they ask for; a variance because of the ordinance itself and not because the property warrants it. So we don't think that is justified to meet the first and most important element of granting a variance. The effect of this on the other properties, you will hear and certainly from my clients prospective is that this would be a negative impact both from the noise and also from the character of the development of this part of the county as you are well familiar. The County is in the process of a large scale revision of the UDO (Unified Development Ordinance) and part of the reason for those revisions is to make the ordinance more sensitive and responsive to the development needs of the County and right now under the existing ordinance we can't argue that a kennel is not an allowed use under the B-3 designation, it is. There are these built in requirements of these buffers that have to be addressed that were here for you today. However, in March when the new ordinance comes into play, the new ordinance I believe would prohibit this use. If you grant a variance today, what you will in effect be doing is creating a non-conforming use when the new ordinance is adopted. That is reflective of what the county in the process of developing this new ordinance is designating as appropriate uses for particular parts of the county. When the County has gone through this effort to try and define what are these appropriate uses and an applicant comes before you asking for your blessing for a permission to not comply with the existing ordinance; only to fall into an ordinance that will prohibit it as a matter of law, I don't think that's good policy or good planning. I think that for a lot of reasons would justify rejection of this application. Again, nothing personal about the applicant, they seem very nice and very well intentioned and I hope that a facility of this kind is located somewhere in Lancaster County that is appropriate but not in this particular location. We don't believe that they have met the technical requirements for the variance. The only issue that they have addressed is this question of the impacts and the design of the building and we don't know whether or not the external uses, the outside run area; what impact mitigation there might be for that. It certainly seems like that is an open area where there would be dogs regularly through the day with barking and that kind of thing. I appreciate your time and again, a good idea but wrong location and we don't believe that they have complied with requirements of the variance.

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?

Bryan Tuttle – Yes, 3014 Southcross Blvd., Rock Hill SC. The Tuttle Company has been the project manager and consultant for Inspiration Network for over ten years. We have been part of the original campus for planning design and construction and since then have helped to orchestrate the Inspiration Network acquisition of an 88 acre tract that is directly across the road. You can see the retail plans and outparcels, business parcels are located on the map; it is directly across the street from the subject property. I want to say also, we have spent in these ten years a lot of time and energy in trying to adhere to the responsibilities of proper development and maybe even setting a standard in a lot of ways. With the landscaping we've created in the Highway 521 right of way; nobody had done that except for Del Webb prior to us coming on to that property. It's not so much about the money but is about the beauty of that development. We have spent ten of millions of dollars creating an environment there that again can be pointed to say "That's the way we want development done in Lancaster County". We are the standard by

which other people and other developments are measured; so with the existing development known as Inspiration Network's campus which was roughly 100 acres, this is an additional 88 acres that is between the Publix's and the headquarters for INSP. All of that is a planned commercial enterprise to again, be able to set another standard and create another depth of development tax base and quality of life for Lancaster County. We have spent a whole lot of time trying to plan and organize personally and as a group we have participated in the overlay which was a year and a half worth of work that planning staff did such an amazing job. It was a wonderful effort to try to make Highway 521 and the Corridor that is represented by the panhandle a better place or a standard of place that is not going to be hodgepodge or the Cherry Road of the world. Having just met them tonight I applaud who they are and what they are trying to do is a family enterprise and frankly is a great approach to what they are trying to do. I've not seen anything that nice lately myself. I do want to appeal to your sense of governance over top of what we all are trying to do out here in creating a better place and a standard that is second to none. INSP is directly across the street which includes Class A corporate offices, high end restaurant's, movie theatres, and high end retail.

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?

Deborah Forbes – Yes, 611 Lakeview Landing Road, Indian Land SC. In 2003 I took a daily trip from South Charlotte to Doby Bridge Road and at that time the Highway 521 Corridor was miles of pristine undeveloped vacant land. You may remember the Carolina Feed Store where they had the statue of the six foot horse. I was sad to see that go. Although I moved here to enjoy the country atmosphere, growth and opportunity was inevitable. So today twelve years later I would never have predicted that the panhandle would be the subject of such gross mismanagement and out of control development; particularly in an area perceived to have prime real estate. There is an old saying – “If you don't know where you're going, any road will get you there”. Lancaster County has a strategic plan along with land use regulations; they are the road maps used to guide responsible and compatible development to encourage progress. Clearly so far there is no evidence of a master plan being used. The process you are using has failed; due to a disconnect between your authority and the needs of the citizens that live here. The panhandle is proof of your reactive development as opposed to managed development. The courts held that a variance is a corrective measure used to protect surrounding parcels. Explain how a kennel with outdoor pens full of barking dogs at any given time of the day prevents an adverse impact to the residents that live in that area and the adjacent B-3 property values and the community at large. You are obligated to a certain legal process with your signage for rezoning and I would like to submit to you a picture of the BZA sign and perhaps the reason why there aren't more people speaking this evening. It's devoid of any meaningful information. I would like for this to be submitted as part of my statement. You are mandated by several statutory laws that must consider any detrimental effects to the community. I respectfully request my entire statement to be part of this record. It reflects my opposition to your approval for any conditional exceptions and variance that will allow the operation of a commercial dog kennel on the proposed specified property.

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?

Thom Trimnal – Yes, 409 Brook Bluff Lane, Indian Land SC. I live directly behind in that neighborhood called Lakeview Landing and I've lived there for over 16 years. It's interesting to me and I don't have anything against dogs, I have one myself and we love him. If they live in Marvin NC then why aren't they putting the kennel there? We already listen to the concrete plants non stop and there isn't much we can do about that and now you are going to put a dump right there in our backyard; and now we've got to listen to dogs. At some point that has got to be enough; you are impacting our way of life. I timed it last night and at 10:15pm I was still hearing machines running from the concrete plant and I finally went inside. What people say they are going to do and what they do can be two different things. How are we going to enforce that years from now. It doesn't seem fair to me as a homeowner to have dogs outside barking in the night. We are looking for your protection please on this matter.

Frances Liu – I will now proclaim the public portion of our meeting closed.

Frances Liu – Has a site check been done?

Kenneth Cauthen – What we measured is within just a few feet of stated distances in the record.

Frances Liu – Have the measurements been verified?

Kenneth Cauthen – Yes.

Harvey Carnes – There was a dog kennel further up at one time and was up for sale. Ya'll couldn't go up there and buy that place and redo it and make it work? It's on Highway 521 right before you get to Wal Mart.

Kristine Carroll – Is it an old veterinary office?

Harvey Carnes – It was a dog kennel at one time.

Kristine Carroll – I would love to but we are a family business and we can't afford it.

Elaine Boone – You would still have to meet the setbacks and everything as well.

Kenneth Cauthen – That was a veterinarian office.

Elaine Boone – That is actually under contract with the grocery store, MGP.

Terry Graham – You actually bought this property?

Kristine Carroll – We under contract right now and trying to get all of our permitting in place. For security reasons, all the dogs on the property will be locked indoors at night. There have instances where dogs have been stolen from outdoor areas. That is not a practice that we want to see happen on our property; so all dogs will be locked indoors starting around 8:00pm each night.

Harvey Carnes – They are asking for 365 feet?

Frances Liu – They are asking for 135.

Don Brouwer made a motion to deny due to no legal reason to allow the changes needed to meet the conditions required; Terry Graham seconded the motion.

VOTE: 5 AFFIRMATIVE 0 NEGATIVE MOTION CARRIED

New Business: Continuing Education Class will be held on December 10, 2015 @ 4:30pm at the Lancaster County Administration Building.

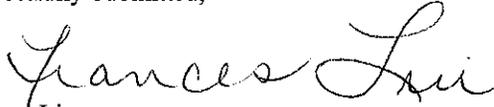
Passed out 2016 Calendar for Board of Zoning Appeals Meeting Dates - Approved

VOTE: UNANIMOUS MOTION CARRIED

Frances Liu adjourned the meeting.

VOTE: UNANIMOUS MOTION CARRIED

Respectfully Submitted,



Frances Liu
Vice-Chairman



Elaine Boone
Planner II