

CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
June 9, 2011

REGULAR MEETING

The Currituck County Board of Adjustment met on June 9, 2011 at 7:30 p.m. in the Historic Currituck County Courthouse. The following members were present: Bryan Bass, David Palmer, Donald Ferebee, Ralph Jones, Cameron Tabor, and Theresa Dozier. The following member was absent: Christian Conner. Brad Schuler, Planner; Tiffany Sanders, Planning Technician; Jennie Newbern, Code Enforcement Officer; Donna Voliva, Planner II; and Benjamin Gallop, Board of Adjustment Attorney; were also present.

SWEARING IN OF NEW MEMBERS

Mr. Bass introduced one new member, Mr. David Palmer. Donna Voliva, Planner I, swore in Mr. Palmer.

Mr. Bass called the meeting to order and announced a quorum had been met with three regular members and two alternate members. Mr. Jones was present but dismissed himself. The alternate members were called upon to be voting members.

RESOLUTION OF APPRECIATION

Mr. Bass presented Mr. Paul Beaumont, who was not present, with a Resolution of Appreciation for his service to the Currituck County Board of Adjustment.

APPROVAL OF APRIL 14, 2011 MINUTES

Mr. Ferebee motioned to approve the April 14, 2011 minutes as presented. Mr. Tabor seconded the motion and the motion passed unanimously.

APPROVAL OF APRIL 14, 2011 ORDERS

Mr. Beaumont motioned to approve the BOA 11-05 order with a correction to the year from 2010 to 2011. Ms. Dozier seconded the motion and the motion passed unanimously.

Mr. Tabor motioned to approve the BOA 11-04 order with a correction to the year from 2010 to 2011. Ms. Dozier seconded the motion and the motion passed unanimously.

BOA 11-06 MARK & KELLI THOMPSON: Appeal of administrator's decision that a heavy equipment operation is not allowed in a residential zoning district and is in violation of Chapter 2, Section 2.5 of the Currituck County Unified Development Ordinance, located at 2040 Ocean Pearl Road in Carova, Parcel 099C-000-0013-0000, Fruitville Beach Township.

Mr. Schuler, Ms. Newbern, Mr. Mark Thompson, Mrs. Kelly Thompson, Mr. Jay Bender, and Mr. Arthur Winter appeared before the board and were sworn in.

Mr. Schuler reviewed the letter of violation for the board.

DISCUSSION

Mr. Tabor asked if the mine was still being operated.

Ms. Newbern stated that the mining was still being operated and the equipment on the property was used for that as well as for other uses.

Mr. Bass asked about the mining permit requirements.

Mr. Schuler explained the mining permit didn't allow a commercial business operation.

Mr. Palmer asked if the sale of the sand from the mining was allowed with the mining permit.

Mr. Schuler stated there was no problem with selling the sand.

Mr. Bass asked for clarification of the violations.

Ms. Newbern explained there were three violations issued for the property. She explained that the applicant was only appealing the violation for the operation of heavy equipment.

Mr. Gallop asked for the section of the Unified Development Ordinance that referred to mining.

Ms. Newbern stated section 3.8.3 of Chapter 3.

Ms. Dozier questioned if there was a requirement that limited the number of machinery used for a mining operation.

Ms. Newbern stated no.

Mr. Palmer asked if there was other equipment on the property not being used for the mining operation and if that was the reason for the violation being issued.

Ms. Newbern explained the reason for the issuance of the violation.

Mr. Tabor questioned the reason why the heavy equipment operation was a violation.

Ms. Newbern stated that only residential uses are allowed in the RO2 zoning district.

Mr. Palmer asked if there was a time limit for the mining permit. He asked if the equipment used for that operation was allowed to be taken off the property for use at another location.

Ms. Newbern stated that was the reason for the violation being sent. She stated doing other jobs with the equipment would be considered a business.

Mr. Gallop explained a decision would need to be made regarding if the equipment was being used for the permitted use or if it was being used outside of that use, without proper a permit. He explained the mining permit requirements.

Mr. Palmer questioned the using of the mining equipment for other uses at different properties.

Mr. Gallop explained the information that would need to be reviewed for the Board to make a decision.

Mr. Ferebee asked about the uses of the equipment.

Ms. Newbern confirmed the equipment was being used on other properties and other uses than solely for the mining operation.

Mr. Gallop advised the Board to hear all evidence before making a decision.

Mr. Palmer questioned the allowable uses of the equipment that is being used in conjunction with the mining permit.

Ms. Newbern stated the use of the equipment on other properties created a business operation that was being based out of the subject property.

Mr. Bass explained his understanding of staff's decision.

Mr. Palmer questioned the requirements for equipment uses for other operations.

Mr. Mark Thompson explained his business and stated that the heavy equipment was used to do various jobs in Carova Beach as well as for the mining operation. He previously located his equipment on a property located in Corolla but had to remove it due to access problems. He stated he had cleaned up the subject property once he had purchased it.

Mr. Bass clarified the different types of operations that were being conducted.

Mr. Tabor questioned if the type of operation that Mr. Thompson was conducting was located anywhere in that area.

Mr. Schuler stated the use was not allowed in the current zoning district.

Ms. Newbern said the appellant does provide the community with a good service but it's just not an allowable use.

Mr. Bass read the three violations. He asked about the unlicensed vehicles that were on the property.

Mr. Thompson explained that some trucks were used as equipment trucks in the event he has a vehicle break down.

Mr. Bass questioned if the parts trucks would be considered a vehicle.

Mr. Thompson stated that he does many types of work in that area that help other residents of that area.

Mr. Palmer questioned the primary and secondary use of the property.

Mr. Thompson stated his desire for the property be zoned Agricultural. He explained that he had just moved to this property due to his previous location no longer being accessible.

Mr. Ferebee asked about the complainant.

Ms. Newbern stated the complainant was not a resident to the area but did own property in the area as the subject property.

Mr. Gallop if the equipment was used for more than the hauling of sand out of the mine.

Mr. Thompson stated yes.

Mrs. Thompson appeared before the board and stated there was no office or monetary transactions that occurred on the subject property.

Mr. Gallop clarified the location of the monetary exchange.

Mr. Jay Bender appeared before the board and stated the intent of the subject property when it was originally subdivided. He felt that the use was in harmony with the area.

Mr. Arthur Winter appeared before the board and stated he was in favor of the appellant's appeal.

ACTION

The Board discussed the evidence as presented.

Mr. Palmer moved to uphold the administrator's decision that a heavy equipment operation was being conducted and to modify the administrator's date for compliance by allowing six months for the appellant to comply. A review of the case will be heard at the scheduled December 8, 2011 BOA meeting. Mr. Ferebee seconded and the motion passed unanimously.

Mr. Tabor moved to reverse the administrator's decision that there was an excessive amount of trash, litter, and debris on the property. Mr. Palmer seconded and the motion passed unanimously.

Mr. Tabor moved to uphold the administrator's decision that there were several unlicensed vehicles being improperly stored on the property and to modify the administrator's date for compliance by allowing six months for the appellant to comply. A review of the case will be heard at the scheduled December 8, 2011 BOA meeting. Ms. Dozier seconded the motion and the motion passed unanimously.

ADJOURNMENT

There being no further business to discuss Mr. Ferebee motioned for adjournment. Mr. Tabor seconded the motion and the motion passed unanimously. The meeting adjourned at 9:03 p.m.

Respectfully Submitted,

Tiffany B. Sanders/s/

Planning Technician