



## **COUNTY COUNCIL OF BEAUFORT COUNTY**

### **Beaufort County Planning & Zoning**

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The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, September 23, 2021, at the Beaufort County Administration Bldg., Council Chambers, Beaufort, South Carolina.

#### **MEMBERS PRESENT**

Mr. Kevin Mack, Chairman  
Mr. Chester Williams, Vice Chairman  
Mr. John Chemsak  
Ms. Lynne Hoos  
Ms. Gail Murray

#### **MEMBERS ABSENT**

Mr. Cecil Mitchell  
Mr. Mark McGinnis

#### **VACANCY**

None

#### **STAFF PRESENT**

Mr. Eric Greenway, County Administrator  
Mr. Robert Merchant, Acting Planning/Zoning Director  
Ms. Hillary Austin, Zoning Administrator  
Mrs. Lisa Anderson, Zoning Analyst III

#### **ATTORNEY PRESENT**

Mr. Thomas Keaveny, Attorney for Staff  
Mr. Ben Coppage, Attorney for the County  
Mr. Fred Kuhn, Attorney for the Appellant (Mr. Mark Haskett)

**CALL TO ORDER:** Mr. Mack called the meeting to order at 5:00 p.m.

**PLEDGE OF ALLEGIANCE:** Mr. Mack led those assembled with the Pledge of Allegiance.

**FOIA – PUBLICATION NOTICE:** Mr. Mack asked if all public notices were sent out, Ms. Austin verified that they were.

#### **ADOPTION OF AGENDA:**

**MOTION:** Mr. Chemsak made a motion to adopt the agenda with Item 5 being moved to the end of the meeting. Ms. Hoos seconded the motion. The motion passed unanimously.

#### **MARK HASKETT'S APPEAL**

Mr. Fred Kuhn stated he represents the applicant in this appeal to the Zoning Administrator to not issue a home based business permit to allow the applicant to assemble ammunition. He also stated there were two reasons the permit was denied. 1) assembly did not qualify as a home business. 2) The neighborhood has covenants and restrictions that prohibits the commercial use. He also stated that the applicant has been

making these ammunitions for a few years now and he now wants to start selling them to the gun stores. He needs the Zoning Permit and Business License to be able to receive his permit from the ATF.

Mr. Kuhn also stated that the business would not change the character of the neighborhood because the assembly is being done inside the house. He stated that he submitted a number of cases where the courts upheld that even if restrictive covenants say something like single family dwellings only, or one family dwelling only, the home business does not violate the covenants unless it changes the character of the structure or the neighborhood.

Mr. Chemsak asked if Mr. Haskett has already applied for his permit from the ATF.

Mr. Kuhn answered that the zoning permit is needed for the ATF's approval.

Mr. Chemsak asked about the storage of gun powder and how many rounds would be assembled.

Mr. Haskett answered that it would be a limited amount, because this is only to supplement his retirement, he would not be doing a large scale manufacturing. He also stated that he is not trying to compete with the commercial industry, just trying to supplement his retirement.

Mr. Keaveny stated that the county does not believe this use meets the definition of a home business. He stated that the use is an industrial use and not an office or service use as stated in the definition of Home Business. 2) The covenants and restrictions does not allow the use. He stated the burden of proof is on the appellant to show that the decision maker made an error in determining that the standards hadn't been met.

Mr. Keaveny also directed the board to refer to the first page of his handout, line 9 and 10 under residential home office and home business, and is listed in the C3 zoning district as a conditional use. He directed the board to go to the 2<sup>nd</sup> page and to look at page 2 where the industrial district list manufacturing, processing and packaging – light less than 15,000 square feet is not permitted in the C3 zoning district. The definition for light manufacturing includes craft product, manufacturing clothing and fabric, product manufacturing such as cabinet shops, media printing and publishing. Even food preparation, wineries and microbreweries are listed. So by definition what Mr. Haskett wants to do is industrial.

Mr. Keaveny also stated that when you go to the restrictive covenants, number 1 states, "The lots shall constitute single family resident purposes only." Then you go to number 16 of the covenants, it states, "There shall be no business or commercial activity conducted on any residential building areas. So we believe that those 2 provisions prohibit the use.

Mr. Keaveny also stated that Mr. Kuhn referred to approximately 56 cases, I will only discuss the 3 cases from South Carolina. 1 was Cauthern vs. Stroman, this case did not discuss the appearance of the business as to whether there would be the appearance of business, or whether there would be cars visiting the property. This case was about a hairdresser who established a business, and the residents filed an action because there were restrictive covenants that read, "No lot shall be used except for residential purposes. The trial judge concluded that the restriction shouldn't be interpreted to prohibit the activity. However the Supreme Court disagreed and held that in their opinion that the commercial activity clearly violates the plain and obvious purpose of the covenants and the use is prohibited. In the 2<sup>nd</sup> case a Doctor was using his home as a home office for his practice, the Court ruled that the use was a violation of the covenants.

Mr. Keaveny continued to discuss the 3<sup>rd</sup> case which involved a condo being used as a Bed and Breakfast, the other condo owners brought suit against the owner that stated the condo owner was violating the Master Deed which stated that each dwelling unit shall be occupied and used by respective owners only as a private

residential dwelling for the owner, his family, his servants, tenants and social guest and no other purposes. The By-Laws also had a restriction that stated, dwelling units shall be used only as residences. The Court held that it was clear that the customers were not social guests and that they were not tenants and that the use clearly violated the master deed and the by-laws.

Mr. Williams asked if the proposed use is prohibited under the CDC why isn't it listed in the list of prohibited uses.

Mr. Keaveny stated, there are a lot of uses that are prohibited that are not listed. He continued to state that County Council could not possibly list all of the uses that are prohibited in that section.

Mr. Williams stated he does not think it is unreasonable for a property owner to assume that if their use isn't listed in the prohibited uses, then it is not prohibited.

Mr. Keaveny stated, it is not unreasonable for the property owner to come to the Zoning Office and get a permit to do the use. And that is what happened in this case. I go back to the definition of a home office and a home business.

**MOTION: Mr. Williams made a motion to uphold the Zoning Administrator's decision on the basis that the proposed use does not meet the requirements of the Community Development Code and that it violates the applicable Restrictive Covenants. Ms. Hoos seconded the motion. The motion passed unanimously.**

#### **THOMAS O'BRIEN APPEAL**

Mr. O'Brien stated that he is a native of Beaufort County, and that he has owned businesses with the municipality of Port Royal since 1980. His position is that his property is grandfathered. He stated he bought the property in 1982 or 1983 and has had approval from the Joint Planning Commission for a Bicycle Track and a Campground. He stated that he sold 8 acres of the property and retained an acre (+/-). He showed the Board a book that he stated controlled development in the County during that time. He stated there was no zoning at the time, and he bought the property with the expectation that he would be able to use the property for commercial purposes. He continued to state that his property does not fall under the Community Development Code.

Mr. Williams stated, you are subject to the current code.

Mr. O'Brien stated that he is not, he is grandfathered.

Mr. O'Brien stated that he spoke to Mr. Greenway who was at the time the Planning & Zoning Director, and he told him that he would bring a text change to the County Council. He stated he never got a response from Mr. Greenway. He also stated that he was never notified by the County that there would be zoning placed on the property. Mr. O'Brien continue to state that his property is grandfathered and by zoning his property without his knowledge and limiting what uses he can use it for constitutes a taking of his property.

Mr. Coppage stated that he represents the County and that the issue before the Board tonight is very limited. Mr. O'Brien sought an interpretation from the Zoning Department that the use of the property should be grandfathered. The business in question falls under the definition of Vehicle Sales and Rental Automobile, Light Trucks and Boats. The T4 Hamlet Center zoning district does not allow that use, so this use would not

be classified as a non-conforming use. There are those non-conformities that were properly permitted, legally established, but no longer comply with the applicable provisions of the CDC. So for the vehicle sales and rental to be grandfathered, Mr. O'Brien would need to show that at some point the property was used for that purpose and properly permitted and legally established. Mr. O'Brien has not given any evidence of either.

Mr. Williams to Mr. Greenway Mr. O'Brien stated that you were going to fix the Code to allow him to have vehicle rentals.

Mr. Greenway stated that Mr. O'Brien came to the office and inquired about the U Haul Rental Business before he established it and was told no, the use was not allowed. I stated to Mr. O'Brien that I would see if the County Council would like to change the zoning district to allow the U Haul Rental. Staff took it to the County Council and while we were doing that, Mr. O'Brien went out and illegally established his business on the property, then proceeded to erect a least one, maybe two buildings on the property with a permit. County Council denied the amendment. We communicated that to Mr. O'Brien, he may not recall.

Mr. Greenway continued to state that the business is not only an illegal use, it is a public safety hazard. Riding by the property you will see that Mr. O'Brien has parked the U Haul vehicles in the woods and the road right-of-way. The vehicles and trailers are all over the property.

Mr. Williams asked if after taking the text change to Council did anyone have a conversation or send a letter out to Mr. O'Brien.

Mr. Greenway stated he asked the Code Enforcement to pursue that, and he is not sure what happened.

**MOTION: Mr. Williams made a motion to uphold the Administrative Interpretation of the Zoning Administrator on the grounds that the applicant failed to establish that the U Haul use on the property was legally established at the time it was established and therefore it is an illegal use on the property. Mr. Chemsak seconded the motion. The motion passed unanimously.**

#### **NEW BUSINESS:**

Mr. Mack stated new business is to adopt the Board's schedule for next year.

**MOTION: Mr. Williams made a motion to adopt the 2022 meeting schedule. Ms. Murray seconded the motion. The motion passed unanimously.**

Mr. Mack stated we are going back to Item 5, Adoption of the minutes for June 24, and August 26, 2021.

**MOTION: Mr. Williams made a motion to adopt the June 24 minutes. Ms. Murray seconded the motion. The motion passed unanimously by the members present at the meeting.**

**MOTION: Mr. Chemsak made a motion to adopt the August 26 minutes. Ms. Murray seconded the motion. The motion passed unanimously.**

**ADJOURNMENT:**

**MOTION: Mr. Williams made a motion to adjourn the meeting. Mr. Chemsak seconded the motion. The motion passed unanimously.**

The meeting adjourned at 6:02 p.m.