

BOARD OF ZONING ADJUSTMENT
MINUTES
FOR MEETING HELD JULY 28, 2009

MEETING: Shown herein is a summary of action taken at the Pine Bluff Board of Zoning Adjustment Meeting held July 28, 2009 at 4:00 p.m. in the City Hall Chambers.

QUORUM: Those members present included: Lou Taylor, Joe Clement, Frank Hartwick, David Lausten, Edward Long, Gordon Reese and Don Scott

OTHERS

PRESENT: Others present include: Jerre George, Regional Planner, Lakishia Hill, Zoning Official, and other concerned citizens.

CALL TO

ORDER: Chairman Taylor called to order the Pine Bluff Board of Zoning Adjustment meeting for July 28, 2009.

**CONSIDERATION
OF MINUTES:**

June 2009 minutes were adopted.

OLD BUSINESS:

NONE

NEW BUSINESS:

Item 1: Appeal of Zoning Administrator's Decision by Roy D. Smith DBA Wesco Construction Company concerning the use of 5036 Bobo Road as a commercial business.

Attorney Mac Norton of 501 E 8th Avenue spoke for this request.

Attorney Norton stated the following: Mr. Smith operates an asphalt and heavy equipment business on Bobo Road. When that property was annexed into the City of Pine Bluff, it was automatically brought in as an R-1 property. If you are an existing business, you can be grandfathered if certain steps are taken. If you are not an existing business and you want to operate a business or concern that is not a permitted use in that district, you have to apply for a zoning change or a UPOR, which is an acronym for Use Permit on Review. So what has happened is Mr. Smith has went to apply for a UPOR and has not been allowed to make that application because the UPOR he seeks is probably not a permitted use under the R-1 district. We are here today to ask to be able to make the application. Once the application is presented you will see the special circumstances of what has taken place out there. Mr. Smith has talked to the neighbors out there and no one out there within the notice area who objects to him operating his business. He has been out there a number of years. He is a good neighbor. The business does not generate a lot of noise or extra activity. He stores his equipment there and works on his trucks and

equipment on his property at his garage. It is not a commercial operation for other people to bring their stuff in and work on it. He simply stores his equipment there and works on his equipment and transports it out to do work in this area of the state. What he wants to do is legally operate that business because quite frankly he has not been in legal operation because of the R-1 annexation matter, which he understood. A number of years ago Mr. Smith spoke with Mr. Garner. He thought Mr. Garner was assisting him in that regard. Now Greg has retired and apparently what Mr. Smith thought was being done did not get done. All we ask to do is make the application. You can send notice or have waivers from all the people in that area. As a matter of fact I have signatures from probably seventy-five (75) percent of the people in the area that don't object. I suspect we will get 100 percent of signatures in the area. I know that does not gain us permission. You still have to approve us but at least you will know that no one in the immediate vicinity of the notice area objects. All we want to do today is have your permission and blessing to get an application, pay the fee, submit and go through the normal process of review and approval, hopefully. If it doesn't we will follow the necessary steps. We can't get to step one unless we can make an application.

Commission Chair Taylor asked if commissioners had questions of Attorney Norton.

Commissioner Reese asked: Was the building was there prior to annexation?

Attorney Norton stated: I am not sure.

Zoning Official Hill stated: The building was not there prior to annexation. The building was constructed in 2001 under former Zoning Official Greg Garner's approval. In that approval Mr. Smith was instructed that the building was not to be used for commercial purposes.

Mr. Reese stated: This has been an ongoing problem for seven to eight years.

Commission Chair Taylor asked: How much land is out there?

Attorney Norton answered: 6 acres.

Mr. Smith stated: There is actually 7.2 acres.

Commissioner Lausten stated: I live in that area and travel up and down Bobo Road quite frequently. I don't ever see any backflow from his business. Is there a back way to the property? Is Womble Lane a city road?

Commissioner George stated: Womble Lane is a city road.

Commissioner Lausten stated: It is almost like a private drive because he is the only one located on the road.

Commission Chair Taylor stated: There is one additional house on the road.

Commission Chair Taylor asked: Attorney Norton, how would we address the R-1 situation when the commercial endeavor is not a permitted use permit on review.

Attorney Norton answered: The commission will have to review the special circumstances in that regard. The commission deals with this month end and month out. I deal with it infrequently as an attorney because most people can not afford to hire an attorney in this area. After looking at the code sections, I might encourage Mr. Smith as opposed to making application for a UPOR to instead apply for a zoning change. It is harder to get a zoning change than a UPOR. The commission has a lot more control with a UPOR. Conditions can be inserted that can not be inserted in a zoning change and the UPOR is not transferable. There is not a lot of commercial activity in the area. We would not want to get into island zoning and we cannot tell you if the people that live in the area would be opposed to a zoning change. They are not opposed to Mr. Smith living, working and running his business from that property but they might be opposed to a permanent change to an industrial zone that may transfer to whoever he may sell his property. Someone else could come in and operate a business that could become noxious. There is more here than meets the eye and so all we want is the opportunity to make application. If Mr. Smith makes application for a UPOR and is turned down the rules and regulations state that he can not come back before the commission for one (1) year. What would he do with his business then? He has been operating for a long time with the consent of everyone in the area.

Commission Chair Taylor stated: It looks as though the commission's hands are tied because it is not a permitted use.

Attorney Mac Norton stated: The commission could make it a permitted use. The catch all phrase at the end of the list of permitted uses reads "and any other this body deems appropriate".

Zoning Official Hill stated: The phrase also included "conform to the basic intent of this district, and which can be demonstrated to be equal to or less intense than other permitted uses in this district".

Commissioner Clement stated: Mac makes a good point. A UPOR gives the ability to say certain things about screening. When driving back there you never see it.

Commissioner Lausten stated: It is not decreasing the characteristics of the neighborhood.

Commissioner Clement stated: It seems like giving them a chance to make a case is a good idea.

Commissioner Hartwick asked: How many people does he employ?

Attorney Norton answered: Thirty (30).

Commissioner Reese stated: My concern is the wear and tear on Bobo Road from those commercial trucks.

Attorney Norton stated: A lot of heavy equipment was out there when the church was built. I don't know how much is caused by that or the normal traffic that comes through that area.

Commission Chair Taylor stated: I would not be opposed to tabling this for thirty (30) days to look into this.

Attorney Norton stated: We are asking for permission to make a request.

Regional Planner George stated: We are not looking at a UPOR right now. We are looking at an issue that will impact every other issue like this. That is what we have to look at right now.

Commissioner Clement stated: This is a unique situation whether there is limited access back there. There are not too many other streets and areas in Pine Bluff that are configured like this. It may impact some other areas but it looks to be unique.

Commissioner Lausten asked: How many times have we seen something like this?

Commission Chair Taylor asked if there were any further questions of Attorney Norton. Since there were none he asked if there was anyone else to speak about the appeal. Since there were none he asked for staff recommendation.

Regional Planner George stated: First of all the Planning Commission needs to be clear that we are not looking at a UPOR or whether his use is appropriate. He is appealing the zoning administrator's decision that he can not apply for a UPOR because he is zoned R-1. He is operating a contractor's storage yard on this site. It is not listed as a UPOR and as far as the catch all phrase which Lakishia says "which conforms to the basic intent of this district, and which can be demonstrated to be equal to or less intense than other permitted uses in this district". So we do not feel that this particular use can fall under that catch all phrase. So it is our opinion that you can not apply for a UPOR for a contractor's storage yard in an R-1 district, just as Lakishia has determined. A contractor's storage yard is much more intense than uses that are listed in the R-1 district, which is single family and accessory uses. In addition, a contractor's storage yard is listed in some industrial zones. If it is listed in other zones we do not allow it to go in other zones. Therefore, we feel that she acted properly and there have been other situations where the planning commission did not allow other uses to go in because it was listed in other zones.

Commissioner Lausten stated: Basically our hands are tied because of regulations.

Regional Planner George stated: This is the way that staff interprets this. As the board of zoning Adjustment you can interpret it differently. If you allow this you are not saying that it is ok for just Mr. Smith to do this. You are saying that anyone who wants to have a contractor's storage yard in an R-1 zone can apply for a UPOR.

Commissioner Lausten stated: Normally when we look at these situations we look at the community as a whole. He has been operating for several years and he is trying to become compliant with code.

Regional Planner George stated: He is trying to come to code by applying for this but we are not looking at Mr. Smith or his situation. We are looking at the regulations and whether or not you can apply for a contractor's storage yard in an R-1 zone. It is up to you to make your own interpretation but our advice to you is that it cannot.

Commissioners Clement stated: The catch all phrase is something deemed appropriate to the Planning Commission. It seems that from a process standpoint, the Planning Commission needs to take the UPOR to determine whether they think the catch all phrase applies.

Regional Planner George stated: If you do it that way we will be in here for everything that comes in. One of the reasons that the catch all phrase is in there is because there is no way to list all the millions of uses in the world. So we list certain uses and if there is a certain use that we cannot see is permitted in the zone. The zoning official has to make a decision or interpretation of whether the use is similar enough to something or appropriate for the zone.

Commissioner Lausten stated: I am up and down Bobo Road all the time and I have never seen anything.

Zoning Official Hill stated: I take hundreds of application all year long for office uses in residential zones. Part of the regulations that I have to apply for those businesses is that they cannot store commercial equipment at their homes. I get complaints from neighbors and other people in regard to one vehicle being stored in relation to the business. If we allow this for one person, imagine all the hundreds from over the years that are going to say they should be allowed to do it too. They will also say they have been in operation for years and they should be allowed to do it too.

Commissioner Reese asked: Have there been any complaints in the seven (7) years that Mr. Smith has been operating.

Zoning Official Hill answered: There was a complaint made in regard to Mr. Smith's business.

Commissioner Hartwick stated: I don't think we ever asked if there was anyone here to speak against the request.

Commission Chair Taylor stated: We are dealing with Lakishia's decision to deny application for a UPOR.

Commissioner Long stated: We either have rules or we don't. We cannot sit here forever and show favor for a particular person. It is too easy to do that and get washed away in the moment.

Commissioner Long started a motion in favor of staff recommendation.

Commissioner Scott seconded the motion.

Commission Chair Taylor asked if there was any discussion of the motion.

Commissioner Clement stated: This situation is unique because of the geography and the way the roads run. This is a part of what we do and this is not a cookie cutter situation.

Commissioner Long stated: All situations are unique.

Commission Chair Taylor stated: I have a motion and a second on staff recommendation. All in favor of staff recommendation signify by saying Aye. All opposed signify with the same sign. The vote was three (3) in favor of staff recommendation and three (3) against staff recommendation. No action was taken.

Regional Planner George stated: The motion failed.

Attorney Norton stated: The motion was to affirm or disprove the action of staff to deny application. I recommend the item is tabled until the next meeting.

Commissioner Lausten made a motion to table the item until the next meeting.

Commissioner Hartwick seconded the motion.

Commission Chair Taylor asked all in favor of tabling the issue to signify by saying "Aye". The motion to table passed unanimously.

Note: After consulting with the City Attorney it was determined that because the Board did not reach a decision by a majority vote the zoning officials decision stands. A letter to the Board will be retained with the minutes as an explanation.

ADJOURNMENT:

Commission Chair Taylor entertained a motion to adjourn.

The motion was made and seconded.

Commission Chair Taylor adjourned the meeting.

THESE MINUTES ARE ADOPTED THIS 25TH DAY OF AUGUST 2009.

CHAIRMAN

SECRETARY