

MINUTES
PAGE COUNTY BOARD OF ZONING APPEALS
July 7, 2017

MEMBERS PRESENT:

Phillip Mims, District 1
Kevin Moyer, District 3

John Coleman, District 2
Danny Comer, District 4

MEMBERS ABSENT:

William J. Turner, District 5

STAFF PRESENT:

Tracy Clatterbuck
Stephanie Lillard

CALL TO ORDER:

Chairman Coleman called the meeting to order of the Page County Board of Zoning Appeals at 10:15 a.m., in the Board of Supervisors Room located at the Page County Government Center, 103 S Court Street, Luray, Virginia.

PUBLIC HEARING:

Chairman Coleman opened the public hearing at 10:15 a.m. regarding the appeal request of Shawn & Cheryl Fittry (owners), whom have requested an appeal of the Acting Zoning Administrators determination of a notice of violation regarding numerous parcels (review of all lots are available at the Zoning Office) owned by the applicants in Mine Mountain/Roundhead Subdivisions, that are zoned as Residential in which they are keeping livestock. Under the Zoning Ordinance, § 125-11 Residential, agriculture (the keeping of livestock) is not permitted in this zoning district).

Ms. Clatterbuck began by explaining that this issue came to our attention back in February 2017 when we received a complaint that there was land disturbance activity being done on some of these lots. The Erosion and Sediment (E&S) Inspector performed a site visit and confirmed they were in fact disturbing land. The Fittry's claimed they were doing the disturbance for agriculture purposes which then excluded them from needing an E&S permit so they signed an agriculture exemption form for the land disturbance activity. By them signing this form, this prompted the conversation with zoning staff noting that they were not zoned for agriculture, but in fact residential, and agriculture activities are not permitted in the residential zoning district. Based on our current definition of agriculture, they Fittry's are not permitted by-right or by special use permit to keep livestock on these residential lots. The Fittry's feel that the livestock (water buffalo, cow, and goats) on their properties are not considered livestock but rather their pets. Initially, the livestock was being kept on lots C14 and C15. They want to be able to keep livestock on any and all of the lots they own in these subdivisions. As shown on the map provided on the big screen, the Fittry's own approximately 49 lots in these subdivisions that range in acreage from .7607 to 3.67 and total approximately over 60 acres in total.

Ms. Clatterbuck detailed that she has been actively working with the Planning Commission to amend the ordinance regarding agriculture activities in the residential district; however, it is a touchy subject amongst members but they continue to work in finding a solution to resolve or allow for options for people in the residential districts that have livestock. Staff recommends that the Board of Zoning Appeals affirm the decision of the Acting Zoning Administrators decision of the notice of violation because we have to enforce the code as it's written today; however, staff suggests that a provision be included that the county would suspend enforcement action of the violation for a period of 120 days, beginning, today, and will only take enforcement actions if the property owner is in violation of the then existing zoning ordinance when the 120-

day period expires. Under this provision, if the zoning ordinance is amended, and they are no longer in violation of the amended ordinance no further action would be taken against the property owner regarding this matter.

Mr. David Reed began by noting he represented The Fittry's and their appeal application. These subdivisions are known as recreation subdivisions that were established in the 60's. They were large tracks of mountain land split up into small tracks of land that are not even buildable according to the code today. This particular subdivision is very steep as it's on the side of the mountain. When they were developed, the county did not even have a zoning ordinance. When the county developed the zoning ordinance, these lots were blanketed residential as one could speculate it was due to the size of the lots. They did not give any consideration to topography of this subdivision. Many years ago the developers of this subdivision went bankrupt and L&L Corporation and Omco Corporation took possession of these subdivisions for payment of establishment of the roads. The Fittry's own the majority of this subdivision with the exception of the county, whom owns lots near the old landfill. They do reside on the property and do have animals on the property which are considered their pets. They are not raised for sell or slaughter. The applicants are not looking to open a confined feeding operation on the mountain. The county has received some adjoining landowner comment sheets back regarding this appeal. All comments received that are against the keeping of animals are all from individuals that do not reside or even have dwellings on the mountain. They do not have a home owners association and dues are not collected for road maintenance. The applicants take care of the roads up there as well. In one of the comments submitted, the homeowner spoke on enforcement of covenants but Mr. Reed suggested the BZA ignore those comments as the county does not enforce covenants of any subdivisions. He stated that his clients have been working with the county since this issue come about and are aware staff has been working with the Planning Commission to amend the ordinance. There is an argument that you can't even have a garden in the residential zoning district much less chickens, goats, etc. Mr. Reed stated his argument is that this property should not even be zoned residential, and it was inquired if the property could be rezoned, but the county indicated they would not support the rezoning of these properties. The challenge is that if someone is in violation of the zoning ordinance, they can be charged with a criminal misdemeanor. Mr. Reed requested the BZA go along with staff recommendation to suspend enforcement actions to allow for time for the code to change.

Mr. Mims questioned if all subdivisions in the county were zoned as residential. Mr. Reed replied that yes, most all subdivisions in the county are zoned as residential. If the county choose to enforce the ordinance that says agriculture in residential districts are not permitted, there would be numerous people in violation because this is not a well-known ordinance. In closing, he recommended the BZA consider crafting any ruling on a motion due to the time it takes for a code change to occur.

Mr. Clyde Miller pointed out that he lived on lot C11 above the Fittry's in which he acquired the property in 1989. He was told it was a subdivision and there was road maintenance fees, etc. Once he got there, there was no one to pay and no one taking care of the roads. He takes care of his own road maintenance along with Mr. Fittry. He has known the Fittry's for 15 years. They are hardworking people and they built their business from scratch. They do not have an agriculture enterprise on these lots. Those animals are their pets. The animals are friendly and will eat right out of your hands.

Mr. Gary Good stated he had known the Fittry's for a long time. He has cattle and horses that border the Fittry's land. These people are hardworking and they do not bother anyone. They maintain that road and the county should be since they own both sides of the road. He stated he felt what these people were being put through was uncalled for and the county should leave them alone.

Chairman Coleman closed the public hearing at 10:37 a.m.

Mr. Mims stated that if agriculture is not permitted in the residential zones then staff has their work cut out

because there are at least 500 people in violation. Mr. Moyer stated the ordinance needed to be changed. He recommended giving them a 180-day grace period because it takes at least 90 days to get something done in this county. Chairman Coleman asked if they allow for a 120-day period now, and the ordinance amendment is not complete, could they meet then to extend additional time to the Fittry's, and Ms. Clatterbuck responded no. A decision needs to be voted on today for this matter. Mr. Reed recommended tailoring the motion to not include a time frame, but rather a vote on the proposed pending ordinance amendment. Mrs. Fittry pointed out that Ms. Clatterbuck has stated before that enforcement is done on a complaint basis only. The original complaint was not about their animals. Mr. Moyer explained that real estate agents are actively selling and telling people they can put horses, cows, etc. on these residential properties when in fact, the ordinance says they cannot. Chairman Coleman asked if the Fittry's have a contingency if this goes past day 120. Mr. Reed stated they would have to look at their options if that situation comes. They want to work with the county. Mr. Comer asked if they could table the matter. Ms. Clatterbuck replied that it could not be tabled as the BZA has 90 days to act on the application. We waited as close to the 90-day timeframe to even bring it to the BZA in hopes the code could be amended. Action needs to be taken today on this application. There was discussion amongst the members regarding the 120-day grace period. Mrs. Lillard noted the 120-day period is time to set the path for the amendment. For example, if the amendment would go through and the Fittry's would need a special use permit (SUP), that SUP process is not included in that 120-day time period. Mr. Mims asked if Mrs. Lillard felt the Board of Supervisors could make a decision within 120 days. Mrs. Lillard stated she felt confident with the draft at hand now as long as the momentum continues amongst the Planning Commission and Board of Supervisors. The Fittry's have shown good faith in continuing to work with the county. As long as that effort is continued there will be no pursuit of legal action taken upon them nor the need for them to have continued representation. It will only change if the effort from the Fittry's goes cold or indifferent but that has not been the experience thus far.

Mr. Moyer made a motion that the Board of Zoning Appeals affirm the prior decision of the Acting Zoning Administrator, and enforcement of any violation be suspended for a period of 180-days from July 7, 2017. The motion was seconded by Mr. Comer. The motion passed by a roll call vote of 4-0.

UNFINISHED BUSINESS:

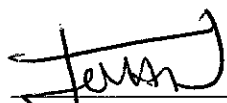
None

NEW BUSINESS:

Mr. Moyer made a motion to approve the June 20, 2017 minutes as presented. The motion was seconded by Mr. Mims. The motion was approved unanimously.

ADJOURN:

11:00 a.m.


John Coleman, Chairman

