

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER, 101C MOUNTS BAY ROAD, BOARDROOM, AT 7:30 P. M. ON THE TWENTY-EIGHTH DAY OF APRIL, NINETEEN HUNDRED AND EIGHTY-THREE.

1. ROLL CALL

Mr. Gerald H. Mephram, Chairman  
Mr. Joseph A. Abdelnour  
Mr. David Hertzler  
Mr. Warfield Roby, Jr.  
Ms. Elizabeth N. Vaiden

OTHERS PRESENT:

Mr. Orlando A. Riutort  
Mr. Allen J. Murphy, Jr.  
Mr. Henry H. Stephens  
Mr. Frank M. Morton, III  
Mr. Daniel R. Lynn, Jr.

2. MINUTES

The minutes of the March 24, 1983 meeting were approved as presented.

3. CASE NO. ZA-3-83. AN APPLICATION OF MR. MICHAEL B. WALTRIP for a special exception to allow the placement of a mobile home within the A-2 district.

Mr. Murphy presented the staff report stating that the mobile home would be located on a 3/4 acre lot (500 feet north of Powhatan Springs Road and approximately 600 feet west of the intersection of Powhatan Springs and Ironbound Road) in an open field with several single family dwellings in the vicinity. There is a mixture of single family dwellings and nonconforming mobile homes along Powhatan Springs Road. Mr. Waltrip desires to place a 52'x24' double wide mobile home on his lot on a permanent foundation. Also, he intends to connect to public water and sewer.

Mr. Murphy further stated that the existing mobile homes in the area are nonconforming; they were placed on the property prior to the adoption of the Zoning Ordinance in 1969. Also, there are several single family residences clearly within site of this property, and that the Comprehensive Plan designates this area for low density, residential development. The staff also felt that approval of this request would establish a precedent for similar requests in the A-2 district and that such a precedent would not serve the general welfare nor protect community interests. For these reasons the staff recommended denial of the request.

Mr. Mephram opened the public hearing.

Mr. Mayo Waltrip, the applicant's uncle, spoke in favor of the application. He stated his nephew's personal family reasons for needing to have his mobile home on this property, close to parents and babysitter.

There being no further speakers the public hearing was closed.

Upon a motion by Ms. Vaiden, seconded by Mr. Hertzler, the applicant's request was granted by a 5-0 roll call vote.

4. CASE NO. ZA-4-83. AN APPLICATION BY MR. D. R. DANSBY, ON behalf of 64 Associates, Inc., to appeal the Zoning Administrator's decisions as they apply to Article II, Site Plan, and Article IV, Division 2, Agricultural, General District, A-1, of the Zoning Ordinance. The Zoning Administrator interpreted that a preliminary site plan for the Croaker Service Center was for a truck stop which is not a permitted use in the A-1 District. Also appealed was the Zoning Administrator's decision not to forward the preliminary site plan to the Site Plan Review Committee.

Mr. Riutort presented his report to the Board, which is appended hereto, stating the series of events which brought this case before the Board of Zoning Appeals for a decision. Briefly, Mr. Riutort stated that on March 15, 1983, Mr. W. J. Scruggs on behalf of 64 Associates, Inc., filed a preliminary site plan with the County for the Croaker Service Center. Staff reviews indicated the project to be a truck stop because of its size, layout, and proposed activities. Because the A-1 District does not allow truck stops as a permitted use, the plan, application, and filing fee were returned to the applicant. On March 24, 1983, Mr. Dansby and Mr. Scruggs refiled the preliminary site plan. The application was accepted on the advice of the County Attorney. The applicant asked that the site plan be presented to the Site Plan Review Committee at the April 12, 1983 meeting. This site plan was similar to the previously filed site plan, with no additional information either supporting or refuting the Zoning Administrator's interpretation. On the advice of the County Attorney the site plan and filing fee were returned to the applicant on April 5, 1983.

The applicant was advised of the alternatives open to him, including filing an appeal to the Board of Zoning Appeals. On April 7, 1983, Mr. D. R. Dansby, attorney, on behalf of 64 Associates, Inc., filed the appeal.

Mr. Mephram opened the public hearing.

Mr. Dansby spoke on behalf of 64 Associates, Inc., stating that he was in conformance with section 20-18 of the Zoning Ordinance regarding preliminary plans, which reads: seven copies of a preliminary site plan shall be submitted to the administrator ... who shall review the plans for compliance ... and shall transmit such plans to the Site Plan Review Committee with his comments for their review.

Mr. Dansby said this was not done. Instead, the preliminary site plan was returned because the development was determined to be a truck stop by the Zoning Administrator. The letter sent to the applicant did not state that additional information was needed. It stated that the site plan would not be considered. Nowhere in the ordinance, he said, could he find where it says that the Zoning Administrator has that power, which is why his client had come before this Board.

Mr. Dansby said that the A-1 District is the more permissive and intended to be the most unrestricted district and covers a large portion of the County. Also that A-1 is to permit almost all activities with a minimum of regulation.

Mr. Scruggs testified. He stressed the minimum regulations in the A-1 District. Also that the I-64 interchange encourages commercial development which increases the tax base. He discussed the zones, their uses, and regulations, and stated that he was not asking for anything that is not permitted in the Zoning Ordinance.

Mr. Alvin Anderson, representing the Croaker Coalition, distributed a file to each member of the Board prior to the meeting containing portions of his presentation. The Croaker Coalition represented citizens of Elmwood, Woodland Farms, Quaker Estates, Croaker, Sycamore Landing and Pineridge, who are opposed to the applicant's position.

Mr. Anderson discussed the applicant's position, which he said could be answered in two questions: What is it and where is it located? He said the facility was designed to attract trucks and that the applicant made no attempt to change the design when the site plan was resubmitted. All characteristics, he indicated, point to it being a truck stop.

As to where it is permitted, Mr. Anderson said that a truck stop is not specifically excluded in the A-1 district. He discussed "exclusionary" and "inclusionary" zoning ordinances. Mr. Anderson emphasized in his defense that under an inclusive ordinance, such as James City County's ordinance, only those uses which are specifically named are permitted, and the burden is on the property owner, in this case the developer, to show that the purposes are included in one of the permitted uses. If it is not specifically included, he said, it's excluded.

Mr. Anderson, in answering where a truck stop might be allowed, discussed the M-1 District in which the preamble reads "...buildings to be erected or land to be used shall be for one or more of the following or similar uses. He felt that implication could be used in both M-1 and M-2 Districts, but not in A-1. In M-1 and M-2 a truck terminal is specifically permitted. Is a truck stop a similar use as a truck terminal, he asked. Mr. Anderson said an examination of the stated questions reveals that the development is a truck stop, and a truck stop is permitted in M-1 or M-2.

In response to Mr. Hertzler's question regarding the Board's responsibility on the matter before it, Mr. Morton stated that the Board of Zoning Appeals is to decide whether the interpretations made by the Zoning Administrator are correct; i.e. should the plans have gone to the Site Plan Review Committee and are the uses permitted in the A-1 District?

Mr. Clinton Bourdon of 108 Tanbark Lane, Elmwood Subdivision, presented the Board with a petition signed by landowners and homeowners opposed to this development. Mr. Bourdon stated that they are not opposed to commercial development but feel that the 64 Associates project was not a permitted use under the A-1 zone; it would have adverse impacts on adjacent areas, including noise, pollution, traffic hazards and crime.

Mrs. Marie Shephard, Route 607, representing the Croaker community, stated that they were in opposition to this development citing as reasons: crime, noise, and the transport of dangerous chemicals. Also that to have a truck stop at the major exit of the community was unreasonable and felt the County and the Zoning Ordinance should protect the community from these kinds of problems.

Mr. Stephen Tompkins, 117 Woodland Road, Woodland Farms Subdivisions, had two major concerns: Would the County provide adequate fire and police protection and what would actually be built at the site. He felt that neither concern had been adequately answered.

At this point, the Chairman, Mr. Mephram, asked that further speakers keep in mind that the two questions before the Board are whether this case should have been sent to the Site Plan Review Committee, and whether it is a permitted use.

Mr. Robert Deeds, Elmwood Subdivision, stated that at a recent meeting of the Elmwood Civic Association, there was overwhelming opposition to the truck stop. He said they had no problems with the grocery store, drug stores, "those types of things." He further stated that in December, 1982, at a public meeting at the Norge Community Center, the owner of Frank's Truck Stop, "made a statement that an acquaintance or friend of his in Virginia International Realty, which Mr. Scruggs represents, made the statement that they intended to build a truck stop at this location."

Mrs. Sue Hill, resident of Elmwood Subdivision and representative for the Croaker Coalition, stated that they were not opposed to commercial development at the site; they are opposed to what looks like a truck stop. At three public meetings, she said the developers accented the grocery store and retail shops, and admitted these stores could not fly alone. The developers have mentioned eight fueling islands, including islands for diesel fuel, she said. Mrs. Hill was very concerned about the huge volumes of diesel and gasoline fuels and the tremendous traffic she felt it would generate, as well as the danger to the children of the area because of the traffic.

Mrs. Barbara Cochran, Woodland Farms resident, submitted a written document to the Board for its consideration. She said the residents of Woodland Farms, Pine Ridge, Elm Ridge, and Old Quaker Estates do not lend support to the truck stop project although they are not opposed to commercial development.

Mr. Dan Helmick of the Kristiansand Homeowners Association said that of the 70 people he contacted regarding the truck stop, 60 were opposed.

Mr. John McFall, 304 Elmwood Lane, spoke in opposition to the truck stop.

Mr. Andy Bradshaw, attorney for the Wrights who own the subject property, asked that the Board determine that the "alleged nonpermitted use falls within the categories of permitted uses in the A-1, and that the second alternative, a combination of permitted uses may be a special case and therefore not permitted ... rule that the proposed plan is a permitted use in the A-1 zone and direct that the plans be sent to the Site Plan Review Committee."

Mr. Mel Bryant stated that he did not believe this development was a truck stop and should have gone to the Site Plan Review Committee.

Mr. Hammond Branch said the County needs commercial development and did not believe this to be a truck stop.

Mr. George Marston agreed that it was not a truck stop and that it should have gone to the Site Plan Review Committee.

In summation, a number of citizens spoke in opposition to this development for the following reasons: not a permitted use, insufficient fire and police protection, uncertainty as to exactly what would be built, increased traffic volume, noise, pollution, poor use of land, and questioned if there was a support base for the facility. A number of citizens stated that they were not opposed to commercial development, but they were opposed to this particular development of the land. Several citizens spoke in favor of the development.

Mr. Mepham closed the public hearing.

Mr. Morton spoke briefly of the responsibility of the Site Plan Review Committee stating that they are without authority to make a determination as to whether a specific project is or is not a permitted use. He recapped Mr. Riutort's procedure in returning the site plan to the applicant, further stating that he acted correctly.

A brief discussion followed.

Mr. Roby made a motion that the permit be denied.

Mr. Mepham stated that the motion as stated was not the question before the Board.

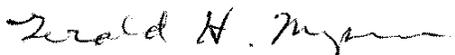
Mr. Roby withdrew his motion.

Mr. Roby made a motion sustaining Mr. Riutort's statement that the plan was not a permitted use, which failed for lack of a second.

Mr. Abdelnour made a motion to approve the contemplated use of the property for the Croaker Service Center and that the Zoning Administrator give directions that it be sent on to the Site Plan Review Committee. The motion passed 4-1 with Mr. Roby voting nay.

There being no further business the meeting was adjourned.

  
Elizabeth N. Vaiden, Secretary

  
Gerald H. Mepham, Chairman