

**BOARD OF ZONING APPEALS**

**OCTOBER 22, 1992**

**A. ROLL CALL**

**ABSENT:**

Mr. Feigley  
Mr. Ripley  
Mr. Giedd  
Mr. Carr  
Ms. James

**Others Present:**

Bernard M. Farmer, Jr. Zoning Administrator  
Leo Rogers, Assistant County Attorney  
John Patton, Code Compliance Officer

Mr. Feigley, Chairman of the Board, announced that the meeting tonight was being recorded on video tape to be used for creating the meeting record.

**B. MINUTES**

The minutes of the July meeting were approved as presented.

**C. OLD BUSINESS**

Mr. Feigley asked for an update on the University Square case. Mr. Rogers gave the status of the appeal and the filings he has made. He expects to hear something from the Courts in January.

Mr. Farmer said he is still working on a report to the Board on how we can decrease the number of cases brought before the Board for variances for encroachments on building setback lines.

**D. NEW BUSINESS**

Mr. Feigley explained the role of the Board and how the meeting would be conducted and procedures to be followed during the meeting. He then announced the case before the Board.

ZA-7-92; James T. Wood, Centerville Salvage and Auto Parts Inc.

Mr. Feigley asked Mr. Farmer to first clarify what the applicant was appealing, the expansion of a nonconforming use or the loss of the nonconforming use.

Mr. Farmer explained that he had asked this same question of the applicant in person and in writing but had not received any

response. Mr. Farmer referenced the written correspondence in the case file including a letter dated October 9, 1992 that specified in the absence of any supporting information it would be assumed that the sole issue before the BZA would be whether or not nonconforming rights to use the property for an auto parts and salvage yard exist beyond September 26, 1992.

Mr. Feigley asked Mr. George Brooks, from the audience, if he could clarify the appeal.

Mr. George U. Brooks, III, identified himself as an associate of Mr. Wood but stated he was unfamiliar with the case. He indicated he was here to ask for a continuance of the case because one of the parties was ill and the other out of town. He said that he felt that they were short of time to prepare for the case, having only 7 days to prepare since they had received Mr. Farmer's letter of October 13th.

Mr. Feigley disagreed with the assertion of having only a short time to prepare and felt that the applicant had been heedless of the requests for clarification.

Mr. Brooks stated that his basis for asking for a continuance was on the basis of one party being out of town and the other ill and the other issues were only secondary.

Mr. Feigley asked if the Board continued the case would it have to be advertised again.

Mr. Rogers indicated that the County was not obligated to re-advertise if the meeting proceeded and the public hearing was opened.

Mr. Farmer added that all notifications and legal requirements had been met.

Mr. Feigley then stated that they would proceed as normal.

Mr. Farmer asked if the Board wanted a brief summation of the case or all of the information at this time.

Mr. Feigley said that since this would probably be continued, a brief summation was all that was necessary at this time.

Mr. Farmer presented a brief description of the facts and his recommendation:

Mr. Oscar Howard had an established automobile graveyard and auto salvage business in operation on his property prior to Zoning being adopted by the County and therefore had established a nonconforming use. The use as it existed when zoning was adopted could continue indefinitely.

In 1986 Centerville Salvage and Auto Parts Inc. obtained an interest in parcel (1-24) the center parcel of the three parcels of "Howard's Auto Parts". It appears that Mr. Howard continued to operate his business on all three parcels until his death in 1989. The auto parts business was then continued by his son, Oscar Howard, Jr. until his death the following year. At this time the business was taken over by Mr. Howard Sr's daughters, Dolores Howard and Doris Taylor. The auto salvage business stopped with the death of their brother, Oscar Howard Jr, and their only activity was to sell off the remaining vehicles in May of 1990 to be crushed.

Ms. Howard and Mrs. Taylor have not operated the site as a business nor received any income from the property since May of 1990. To their knowledge no business has been conducted on any of the property.

The Code Compliance Office has made frequent inspections of the property since 1989 due to various violations on the property.

In the spring of 1992 a number of trees were cut down on the property but no enforcement action was called for until land disturbing activity, stump removal, grubbing, clearing and land disturbing activity began without a land disturbing permit.

Summation: The property was a nonconforming automobile graveyard but since it has not operated as such since Mr. Oscar Howard Jr. died in 1990 when the business was abandoned and two years have passed without a resumption of the business it lost its nonconforming status as an automobile graveyard. For these reasons the Board should uphold the decision of the Zoning Administrator.

Mr. Carr asked if Centerville Salvage and Auto Parts totally owned parcel 24.

Mr. Farmer replied that the ownership is in dispute but available records show that some right to the property has been established.

Mr. Carr inquired as to what business activity the two sisters had conducted under their ongoing business license.

Mr. Farmer stated that the only activity was to have the vehicles removed in May of 1990.

Mr. Ripley asked questions related to the tree removal and land clearing activity.

Mr. Farmer explained what had transpired and that he felt it was not relevant to this case at this time.

Mr. Feigley agreed and stated that the Erosion and Sedimentation Ordinance was not a problem for this Board to consider.

Mr. Feigley then opened the public hearing.

Mr. Brooks asked to have Mr. Farmer state if there was any activity on going on the property at this time.

Mr. Farmer answered there was no on going activity.

Mr. Feigley asked the members of the Howard family if they would like to say anything to the Board.

Mr. Farmer introduced Dolores Howard, Doris Taylor, and Curtis Taylor, Doris's husband, to the Board.

Dolores Howard stated that she does not want Mr. Wood to have the business on the property, the ownership of the property is in dispute. In response to questions from members of the Board, Ms Howard stated that the last business activity on the property was in May of 1990 when they sold off the remaining vehicles due to thefts. The only vehicle reaming on the property was the old wrecker truck. She and her sister had continued to renew their business license because their father had worked so hard at the business and they intended to continue the business sometime in the future if they could. She described how vehicles for the business had been on all three parcels of land. When asked if she had to express the dollar value of the business on the business license application she stated yes and that it has been zero income since May of 1990.

Mr. Carr asked Mr. Farmer when the twenty-four months started and stopped in this case.

Mr. Farmer explained the rationale for his determination and reason for selecting September 26, 1992 as the end date. He felt he wanted to be fair to Mr. Wood and give him time to respond even though aerial photos and other evidence indicated that the use had been terminated prior to August of 1990.

Mr. Carr asked Ms Howard if there had been no income from the business since September 1990.

Ms. Howard responded, "That's true."

Mr. Ripley asked for clarification as to just what having a business license issued by the County meant.

Mr. Farmer explained that the relevance of having a business license in relation to nonconforming use. Basically it was only one indication of intent to do business but did not establish that business activity occurred.

Mr. Rogers explained that "Business License" was a misnomer in that it was really a tax license. If tax records were to be checked and no income was produced, then no business activity had transpired.

Mr. Curtis Taylor addressed the Board and asked why they were considering giving Mr. Wood additional time to respond when Mr. Farmer had already given him enough time. He asked why they were considering to continue the case.

Mr. Feigley asked the Board if they felt they had enough information on the case to make a decision.

Mrs. James wanted to know if taking action today would allow Mr. Wood a cause for appeal if they found against him.

Mr. Giedd asked Mr. Brooks when he was notified to represent Mr. Wood.

Mr. Brooks replied that he had not been retained to represent Mr. Wood and was only here as a law partner of Mr. Wood. He again asked for a continuance expressing the opinion that since no activity was occurring on the property it made little difference if the case were to be continued another month.

Mr. Farmer reminded the Board that he had not made a full presentation to the Board and would like to have an opportunity to do so before a decision was rendered.

Mr. Feigley polled the Board and all members expressed their opinion that they should continue the hearing until next month.

Mr. Carr moved that the case be continued and Mrs. James seconded the motion. The motion was carried by voice vote.

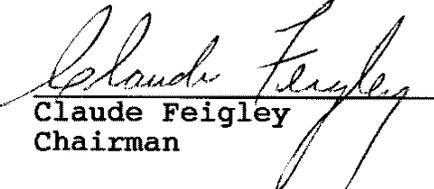
Mr. Feigley said the case would be continued until the November meeting and that the Public Hearing remained open.

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Feigley announced that the next two BZA meetings would be on the third Thursday of the month instead of the fourth Thursday because of the holidays.

F. ADJOURNMENT

The meeting was adjourned at 8:00 P.M.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary