

**MINUTES**

**BOARD OF ZONING APPEALS**

**NOVEMBER 19, 1992**

**A. ROLL CALL**

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

**ABSENT**

Mr. Giedd  
(Came in at 8:02)

**OTHERS PRESENT:**

Bernard M. Farmer, Jr.

**B. MINUTES**

**C. OLD BUSINESS**

No old business.

**D. NEW BUSINESS**

Case ZA-8-92; Jack & Karen Lubore

Mr. Farmer stated to the board members and the public that the meeting was being video taped for transcription purposes.

Mr. Farmer presented the staff report stating that Mr. Andy Bradshaw, on behalf of Mr. and Mrs. Lubore, owners, and Robert and Delores Bryant, prospective purchasers, has requested a four inch variance from the side yard requirements of Section 20-155 of the Zoning Ordinance for an existing dwelling at 109 Meadowcrest Trail in the Mirror Lakes Subdivision. The property is in the R-1, Limited Residential, Zoning District and is identified as Parcel (5-27) on Real Estate Tax Map (13-4). The zoning district requires a minimum side yard of fifteen (15) feet for each main structure. A survey of the property shows that the left rear corner of the home is only 14.66 feet from the left property line.

Mr. Farmer stated that the home was completed in 1985 and had a Certificate of Occupancy issued January 22, 1985. The site plan submitted with the building permit application showed the proposed structure to be within the established building setbacks. The encroachment is shown on a survey plat dated May 22, 1986 prepared

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for the Lubores, but was not brought to Code Compliance's attention until September of this year. A survey conducted for the Bryant's and dated September 24, 1992, confirms the encroachment. Both surveys show that there was adequate room on the lot to site the home with no encroachment.

Mr. Farmer stated that since no legal hardship exists and the owner's survey showed the encroachment, staff recommends denial of the request.

Mr. Giedd questioned Mr. Spearman's survey.

Mr. Farmer stated that there used to be a requirement that the side yards total thirty-five feet. Those requirements have since been superceded. There is no encroachment on the right side yard.

Mr. Feigley opened the public hearing.

Mr. Andy Bradshaw stated that he made an application on behalf of Mr. and Mrs. Lubore, as well as Mr. and Mr. Bryant. He also stated that the property has been transferred to Mr. and Mrs. Bryant, and that Mr. and Mrs. Lubore undertook an obligation to correct this problem that arose at the closing.

Mr. Bradshaw stated that two problems are before the BZA:

1. A violation of County Zoning Ordinance which requires a fifteen foot side yard setback.
2. Subdivision Restrictive Covenants, which require the older setbacks being a minimum of fifteen feet and a total of thirty-five feet for both sides.

Mr. Bradshaw asked for approval of the 4 inch variance of the County Zoning Ordinance and the Board's approval of violation of the Restrictive Covenants.

Mr. Bradshaw stated that the Lubores purchased the property in 1986. The survey at this time incorrectly showed fifteen feet on each side. At that time the Lubores were not aware of the covenant requirements for a total of 35 feet.

Mr. Bradshaw asked that the BZA approve these two variances because both parties are innocent, because it is a relatively modest violation, because it is not a new violation, and because it creates no hazards. Mr. Bradshaw also stated that the parties tried to solve the problem in other ways such as discussing the situation with neighbors (proposing to move fence over), but could achieve no resolution.

Mr. Farmer stated that in staff's review of the application there was only one violation of the County Zoning Ordinance. He stated that this was the four inch violation, and that the other matter is certainly a matter of the Boards discretion, but not a necessity that they legally grant relief from a subdivision covenant.

Mr. Feigley stated his confusion as to the BZA's authority to override a Restrictive Covenant.

Mr. Bradshaw stated that the BZA does have the authority to override the Covenant itself.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he feels this request is so minute that he would vote in favor of the variance.

Mr. Feigley motioned to grant the four inch variance from side yard requirements. The motion was carried.

Following a motion by Mrs. James the board also granted relief from Covenants.

Case ZA-9-92; Jeffrey T. & Lydia T. Oliver

Mr. Farmer presented the staff report stating that Mr. and Mrs. Oliver have applied for a 4 foot variance from Section 20-177 of the Zoning Ordinance for a single family dwelling at 2816 Mockingbird Drive in the Rolling Woods Subdivision. The property is in the R-2, General Residential, Zoning District and is found on Parcel (13-25) of James City County Real Estate Tax Map (48-1). The zoning ordinance requires a minimum side yard of ten feet for each main structure. The Olivers submitted a survey plat of their property dated September 15, 1988, to the Code Compliance Office as a part of a building permit application for a proposed deck on the north side of their home. The survey plat showed that the existing deck on the rear of their home encroached four feet into the required side yard and the Olivers were advised of the zoning violation.

Mr. Farmer stated that the home was constructed by Atlantic Homes Corporation in 1988 and Certificate of Occupancy was issued September 21, 1988. The plans submitted to the County did not show the deck on the rear of the home. The survey was completed prior to the Certificate of Occupancy being issued. Therefore, it is assumed that at the real estate closing both Atlantic Homes and the Olivers should have been aware of the encroachment. Mr.

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Smallenberg, the owner of the property adjacent to the encroachment provided a letter stating he has no objection to the deck and requests approval of the variance.

Mr. Farmer stated that since the survey was prepared prior to the Certificate of Occupancy being issued, and therefore prior to closing by the Olivers, and since there is no legal hardship involved it is the staff's recommendation that the variance be denied.

Mr. Carr questioned Mr. Farmer in reference to approving a building permit to construct the second deck.

Mr. Farmer replied that he did issue a building permit to build the new deck since it complied with our local ordinance.

Mr. Feigley opened the public hearing.

Mr. Billy Milner, attorney, stated that he was there to represent two parties in this case, Mr. and Mrs. Oliver, the homeowners, and Mr. Henry Stephens, Vice President of Atlantic Homes.

Mr. Milner stated that the house was built in 1988 and that "Atlantic Homes simply goofed." He stated that they can offer no logical explanation as to why the encroachment existed or why it went undetected. The only explanation he could come up with is that possibly the superintendent, who was no longer with the company thought that by moving the home back slightly it would line up nicer with the other homes located on Mockingbird Drive. He stated that Atlantic Homes is certainly at fault in this case.

Mr. Milner presented pictures and a letter from a licensed architect to the board to support his statement that the problem could not be corrected by design changes. He also presented a letter from an adjacent property owner stating no objection to the location of the structure.

Mr. Feigley questioned Mr. Oliver as to the purpose and function of the new deck.

Mr. Oliver stated that he is trying to improve the value of his home as well as make an access to that side of the home without having to walk around. He also stated that it would be used for recreational purposes.

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Mr. Feigley questioned Mr. Oliver as to any hardship he would incur if the present structure were to be removed. Mr. Feigley stated to Mr. Oliver that he feels that due to the new deck being constructed for identical recreational purposes, that the present deck removal would not cause any hardship.

Mr. Carr questioned Mr. Oliver as to what hardship would exist if the board placed the burden solely on the contractor.

Mr. Stephens spoke up on behalf of Atlantic Homes. He then went on to explain, in detail what took place when Mr. Oliver contacted him in reference to the encroachment. Mr. Stephens stated that he told Mr. Oliver that it was a mistake on Atlantic Homes part and that they would bear any and all costs to obtain this variance or make corrections.

Mr. Carr stated that the board recently heard a case very similar in content to this case, in that all the blame was placed on the surveyor. He expressed his feelings that the hardship should rest solely on the contractor's back.

Mr. Smallenberg, Mr. Oliver's neighbor, stated that he did not find the deck intrusive. He explained that due to the grading of his lot, he feels that Mr. Oliver would have "wet feet" if they were to replace the deck with a concrete slab. Mr. Smallenberg stated that he foresees no problem if the variance were to be granted.

Mr. Carr expressed his feelings stating that contractors building in the county of James City need to be fully aware of James City County's codes.

Mr. Feigley closed the public hearing.

The board discussed whether or not a hardship exists.

Mrs. James stated that she feels no real hardship does exist.

Mr. Carr stated that he feels that the hardship does exist due to the owner having to go through the trouble of tearing the deck down.

Mr. Ripley stated that he does feel that the deck could be restructured, but in this case he recommends granting the variance.

Mr. Giedd stated that the situation as he sees it is that "you simply do not build any structure without obtaining a building permit."

Mr. Giedd motioned to grant a variance with the condition that there be no further improvements to the existing deck structure. Motion was carried.

Mr. Farmer asked for clarification if normal maintenance would be allowed and Mr. indicated that was his intent.

The motion was carried 3 to 2 with Mrs. James and Mr. Feigley dissenting.

Case ZA-7-92; Centerville Salvage and Auto Parts, Inc.

Mr. Feigley stated to the public that all witnesses to testify for this case must be sworn in prior to testimony.

Mr. Leo Rogers, Assistant County Attorney stated to the board that he felt the board needed to take a close look at the application itself and that they needed to clarify Mr. Woods' appeal prior to the Zoning Administrator presenting the staff report.

Mr. Feigley said he understood the objection and appeal concerned whether or not the activity had ceased to exist.

Mr. Farmer and Mr. Wood indicated that was their understanding.

Mr. Wood stated to the board that he disagreed with the entire letter. Mr. Wood was then sworn in by Mr. Feigley. He said the main issue involved was whether or not the non-conforming status continued.

Mr. Farmer then addressed the board by stating that he is only prepared to discuss whether or not the lawful operation of an auto parts and salvage business has been in continuous use on Parcel 24 or abandoned for a period of at least two years. He stated that he was unprepared to speak on other issues and that he had made numerous attempts to get Mr. Wood to respond to staff as to the nature and basis of his appeal, and no such clarification was ever made.

Mr. Farmer then requested that the public hearing be deferred until next month if in fact Mr. Wood is appealing to every issue addressed in the letter of August 12, 1992.

Mr. Feigley stated that he would consider deferring the case if Mr. Wood could specify what it is that he is appealing.

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Mr. Wood again stated that he is appealing to all the decisions set forth by the James City County Zoning Administrator.

Mr. Feigley stated to Mr. Wood that the crucial question before the board is whether or not a nonconforming use has been discontinued for a period of two years, which in turn would cause it to lose its nonconforming status.

Mr. Wood continued to argue that there were other issues in this letter that he also wished to appeal.

Mr. Feigley stated to Mr. Wood that the majority of the statements he was appealing to were strictly facts that were stated verbatim from the County Ordinance.

After brief statements it was determined that Mr. Feigley and Mr. Wood were referring to two different letters. Mr. Wood was referring to a letter dated September 16, 1992 and Mr. Feigley was referring to a letter dated August 12, 1992 addressed to Mr. Wayne Wyatt.

Mr. Wood then stated that he did not receive a copy of the letter dated August 12, 1992 to Mr. Wayne Wyatt in reference to the confirmation of a conversation that took place that day (August 12, 1992) regarding the nonconforming status of the property in question and what may continue to be done within that status.

Mr. Farmer and all other witnesses were sworn in by Mr. Feigley.

Mr. Wood then stated that he was hand delivered a copy of the August 12th letter by John Patton on the same date that he filed his appeal.

Mr. Carr then questioned Mr. Wood in reference to his testimony of not seeing the letter of August 12, 1992.

Mr. Wood replied that he did not say "he hadn't seen the letter," only that he hadn't received a copy of it until the day he filed for appeal.

Mr. Farmer then stated to the board that the appeal filed before the BZA was dated August 11, 1992 and the letter in question is dated August 12, 1992 and was hand delivered to Mr. Wood by John Patton, from our office.

Mr. Wood then stated to the board that the day he received the letter was the same day he filed the appeal.

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Mr. Feigley stated that the records show that Mr. Wood's appeal notice was dated on August 11, 1992 and the letter addressed to Mr. Wyatt is dated August 12, 1992.

Mr. Wood then stated that he mistakenly dated his appeal for August 11, 1992 instead of September 11, 1992.

Mr. Farmer then stated that staff has a receipt for payment of the appeal dated September 11, 1992.

Mr. Feigley stated that the only issue he would like to hear testimony on this evening is whether or not a nonconforming use is still valid after two years.

Mr. Farmer presented the staff report stating that Mr. James Wood, for Centerville Salvage and Auto Parts, Inc., has appealed a decision of the Zoning Administrator related to the nonconforming use of property at 6132 Centerville Road. The parcel is part of the previous "Howard's Auto Parts" and is further identified as Parcel (1-24) found on James City County Real Estate Tax Map (31-1). The property is zoned A-1, General Agriculture Zoning District.

Mr. Farmer presented photographs to board members to support his statement of this particular parcel having "nonconforming" status.

Mr. Farmer then stated that the parcel in question is the center of three parcels of property formerly devoted to a junkyard/auto salvage operation on Centerville Road at the junction with Jolly Pond Road. The auto salvage operation on the property was begun by Oscar Howard, and existed on the property as far back as records show. The salvage operation was operated by Mr. Howard until just prior to his death, then the operation was continued by his son, Oscar Howard, Jr., until around the late Spring of 1990 when Mr. Oscar Howard, Jr. became too ill to operate the business.

Mr. Farmer further stated the history of violation notices for this property. He said staff received several inquiries about purchase of the property and possible renovations, but the response consistently given, as evidenced by the letter of June 6, 1990, was that any change had to be done in accordance with the zoning regulations governing a nonconforming use (which effectively required a Special Use Permit for any expansion or substantial alteration). In late June, Carolyn Murphy met at the site and had discussions with Mr. Wood about the property line location, the inoperable vehicles, and the fence. In the summer of 1990 the property was substantially cleaned of the inoperable vehicles. In subsequent contacts during November of 1990 with a Mr. Wayne Wyatt (who is the operator of U. S. 258 Auto Parts and has indicated he



is a partner and business associate of Mr. Wood in regard to Centerville Salvage and Auto Parts, Inc.) Mr. Wyatt was given copies of the ordinance provisions for the A-1 Zoning District, Site Plan, Landscaping, Parking and Special Use Permits. Mr. Wyatt indicated a desire to do some land clearing and create a new road entrance on parcel 24.

Mr. Farmer stated that no further activity at the site was observed until May of 1992 when the trees on parcel 24 were removed. Since the tree harvesting was considered a legitimate undertaking in an agricultural zone no action was taken at that time. In August of 1992 part of parcel 24 was bulldozed and the tree stumps removed. Violation notices were sent for the Erosion and Sediment Control actions and on August 12, 1992 staff met with Mr. Wyatt to explain the requirements for further development. The letter of August 12, 1992 contained information pertaining to erosion control, zoning issues, DMV requirements, and other issues. Mr. Farmer stated the single issue for the Board of Zoning Appeals to consider is whether or not the lawful operation of an auto parts and salvage business has been in continuous use on Parcel 24 or abandoned for a period of at least two years.

Mr. Carr questioned Mr. Farmer as to his anticipation of anything occurring on this property due to the photographs obtained in February of 1989 and February of 1990.

Mr. Farmer replied that in this particular instance he knew that Oscar Howard, Sr. and Oscar Howard, Jr. had both died and that staff had noticed that the activity had effectively ceased at this time. He stated that staff felt it prudent that if activity had ceased, that we begin documenting what changes had occurred on that property to show that the activity, as it had been conducted for many years was not continuing.

Mr. Feigley, at 9:20 requested a brief recess until Mr. Giedd returned to hear testimony.

The meeting was reconvened at 9:25.

Mr. Farmer stated staff has contacted the heirs of Oscar Howard, Jr., his two sisters, and they have confirmed that no auto parts sales or salvage activity has been conducted on their property since the death of their brother. They did indicate that vehicles on the property were sold to be crushed for purposes of cleaning the property up. The entrances to the nonconforming junkyard were on parcel 23 and parcel 25, both adjacent parcels still controlled by the Howards. The Howards have indicated that

it was their intent to abandon the use of an auto graveyard and that they controlled entry onto and off of the property. Because of relatives still residing on their parcels, they stated that no one could enter or leave without their knowledge, and that to their knowledge no one had been allowed to purchase or obtain auto parts or vehicles, other than the sale of vehicles for crushing in the summer of 1990. Mr. Farmer also stated that staff has conferred with The Department of Motor Vehicles, Dealer Services Section, who indicated that a state license would be required for lawfully selling auto parts or demolishing vehicles. A check of state records back to 1985 indicates that no license was issued for this property to either Mr. Wood, Mr. Wyatt, or Centerville Salvage and Auto Parts, Inc. It is staff's belief that no lawful auto parts or salvage business has been conducted on this property since the death of Oscar Howard, Jr.

Mr. Farmer stated that the burden of proof regarding a continuous non-conforming activity rests with Mr. Wood. The use of land for automobile graveyards, which includes the sale and salvage of auto parts, is regulated by the zoning ordinance and requires a special use permit in the A-1 Zoning District. He said since this activity existed at the time of adoption of the zoning regulations, it may remain forever, provided the activity continues and does not change. There is no right, except as allowed under Sections 20-400 and sequence of the Zoning Ordinance, to change. He said in the case of Knowlton v. Browning Ferris Industries of Virginia, Inc., 220 Va. 571, 260 S. E. 2d 232 (1979), the court held that the burden is on the owner to show that the use is a lawful nonconforming use. Neither Mr. Wood nor Mr. Wyatt has shown any evidence that they have conducted this business activity on the parcel during the last two years.

Mr. Farmer said prior to February of 1992 no local business license was ever issued to Centerville Salvage and Auto Parts, Inc. He felt the existence of a local business license might be some evidence that an auto parts or salvage activity had been conducted, but alone would not prove that the activity had been conducted on that property. Reasonably, a legitimate business activity should be able to furnish evidence that they had operated on the property, filed income statements for operation of the business, or produce receipts or other evidence of business operation. They should also be able to produce witnesses that could confirm their presence on the property and the conduct of a business activity in the same fashion that existed at the time it became nonconforming. Mr. Farmer said despite asking for this evidence, none has been produced by Mr. Wood, Mr. Wyatt, or anyone else connected with Centerville Salvage and Auto Parts, Inc. The evidence staff has been able to obtain shows no activity on the property and indicates no presence of any business concern since the summer of 1990.

Mr. Farmer requested that Mr. and Mrs. Taylor, heirs to the property, testify to substantiate and clarify statements made by staff.

Mrs. Taylor stated that she and her sister did try to operate the auto salvage business, but it soon became too much for them to handle. She then stated that she and her sister decided to save what they could of the vehicles and had the remaining vehicles crushed.

Mr. and Mrs. Taylor stated that the crushing of the vehicles occurred between July and August of 1990. They also stated that to the best of their knowledge no auto parts sales or salvage activity had been conducted on their property since the death of their brother (with the exception of Mrs. Taylor and her sister trying to run the auto salvage yard).

Mr. and Mrs. Taylor also stated that they would have been contacted if anyone did try to enter the property to conduct such business.

Mrs. Taylor testified as to the type business her father and brother conducted on this property. She stated that they brought vehicles onto the property and then salvaged them for parts.

Mr. Farmer stated that it is the staff recommendation that the decision of the Zoning Administrator pertaining to the nonconforming activity at 6132 Centerville Road, as stated in his letter of August 12, 1992, be upheld and confirmed.

Mr. Jim Wood, Registered Agent and Owner of Centerville Salvage and Auto Parts, Inc. spoke. He stated that Centerville Salvage and Auto Parts, Inc. acquired the property in question in 1986. In 1986 Centerville Salvage and Auto Parts, Inc. allowed Mr. Oscar Howard, Sr. to continue to run his salvage yard on that property. After he died it allowed Mr. Oscar Howard, Jr. to run the salvage yard on that property. When Mr. Oscar Howard, Jr. died in 1990, his son started selling auto parts on that property, and continued to sell parts on this property for a period of approx. 1 year afterward until such time as the crushing operation began on most of the autos on that property .

Mr. Wood referred to the photographs that Mr. Farmer presented to the board and stated that there were and still are automobiles on the property.

Mr. Wood stated that the pictures taken in February, 1991 and February, 1992 only show the front of the parcels and not the rear of the parcels where automobiles existed in earlier years, and still exist.

Mr. Wood stated that Centerville Salvage and Auto Parts, Inc. acquired a business license in February, 1992 to conduct business on that property. At that time he engaged the services of Mr. Wayne Wyatt through Centerville Salvage and Auto Parts, Inc. He stated that Mr. Wyatt had experience in the salvage business. He said he told Mr. Wyatt that he could utilize the property for continuing use of auto parts salvage. Mr. Wood stated that this was the sole purpose of engaging Mr. Wyatt; to continue this use.

Mr. Wood stated that he and Mr. Wyatt contacted the county as to what was needed to continue that use. He stated that the county wanted a fence erected to continue the use on the property. Mr. Wood then stated that they began clean-up on the property during the summer of 1992 and a fence permit was obtained in July, 1992. At the same time they also did some clearing on the property. This action was not permitted by the county, and the county in turn shut down the operation.

Mr. Wyatt testified as to Centerville Salvage and Auto Parts, Inc.'s intent with the property and the type business he has been conducting on the property since February, 1992. He said he also contacted a local representative for the Division of Motor Vehicles in reference to a DMV Salvage License. Mr. Wyatt stated that this representative informed him that there had never been a DMV Salvage License issued and she was not sure that one needed to be obtained. He also stated that as of this date there has been no further contact with the Local Division of Motor Vehicles. Mr. Wyatt assumed at this time that everything was fine.

Mr. Feigley questioned Mr. Wyatt as to the last noted time he sold parts from this location.

Mr. Wyatt replied that he had receipts showing he had sold parts through September, 1992.

Mrs. James questioned Mr. Wyatt as to his trying to obtain a DMV permit any time prior to his stated contact with the DMV in February, 1992.

Mr. Wyatt replied that an effort was made to try and obtain a license prior to this February contact with DMV.

Mrs. James questioned Mr. Wyatt as to any regular operating hours of business at the site.

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Mr. Wyatt stated that they did not have any regular operating hours at the site due to not having a building to operate the business out of.

Mrs. James also questioned Mr. Wyatt as to having a listed business telephone number.

Mr. Wyatt replied that no, he did not have a listed business telephone number.

Mr. Carr questioned Mr. Wyatt of his having a business license to operate in the County of James City.

Mr. Wyatt stated that he did have a business license and that he had been conducting business since February of 1992. He also stated that he had business receipts with him to show where the transaction took place.

Mr. Wyatt presented a business receipt book to the board as evidence.

The board questioned Mr. Wyatt briefly as to how many automobiles he would estimate to be on the parcel.

Mr. Feigley questioned Mr. Wyatt as to the time when he actually became active in conducting business from this site.

Mr. Wyatt replied that he had witnessed a person whom he assumed was Oscar Howard, Jr.'s son conducting business during the years of 1990 and 1991. Mr. Wyatt stated that he himself did not begin to conduct business until February, 1992.

Mr. Giedd questioned Mr. Wyatt as to where he kept the business receipt book.

Mr. Wyatt replied that he kept the receipt book in his briefcase.

Mr. John Patton, Zoning Officer for James City County stated to the board his involvement with the property since 1986. Mr. Patton also stated that Mr. Wyatt met with our staff in the Code Compliance Office and stated that "he needed to have a building, a telephone, and a road, etc. in order to obtain a DMV license to conduct business on this property." This conversation took place on August 12, 1992 and that conversation is what generated the letter of August 12, 1992. The letter was addressed to Mr. Wyatt since it was Mr. Wyatt who met in the office.

Mr. Patton also provided further clarification regarding contacts with Mr. Wyatt and the condition of the property.

Mr. Wyatt questioned Mr. Farmer as to why the injunction was placed against the property and how it affected the property.

Mr. Farmer clarified to the board that the injunction was placed against the property to prevent further land clearing and development of the property without having any Development approvals, Erosion and Sedimentation approvals or any Land Disturbance Permits.

Mr. Feigley questioned Mr. Rogers in reference to a violation of licensing laws being sufficient to invalidate the nonconforming status.

Mr. Rogers and Mr. Patton explained that the licensing laws are simply one element for the board to confirm that a business was operated on this property. They further discussed Mr. Patton's review of DMV licensing.

Mr. Carr questioned Mr. Wyatt as to his relationship with Centerville Salvage and Auto Parts, Inc., and why there had been no compensation for his efforts.

Mr. Wood replied to Mr. Carr's question by stating that he involved Mr. Wyatt to go onto the property and continue the use. He also stated that he had the intent of working out some type of lease arrangement with Mr. Wyatt.

Mr. Giedd questioned whether or not a Special Use Permit would be needed for an additional commercial entrance.

Mr. Farmer replied that yes, a Special Use Permit would need to be issued.

Mr. Rogers then stated his final closing remarks to the board. He stated that the issue before the board is whether the Zoning Administrators' opinion that on or before September 26, 1992 the nonconforming use which existed had expired. He also stated that the property owner needed to prove by a preponderance of evidence that the Zoning Administrators' opinion is wrong. He stated that the board had heard testimony from Mr. Farmer, Mr. Patton, and from the property owners. He stated that they had heard testimony that they have no business phone, that they have no bank accounts, that they have no payment to any employees, and that they only witnessed an unidentified person selling auto parts on this property.

Mr. Wood then stated his final closing remarks. He stated that he felt that Mr. and Mrs. Taylor confirmed in their testimony that a business had been actively operated on this parcel. He stated that the board had heard positive testimony that Mr. Wyatt sold parts on this parcel since February, 1992. Mr. Wood also stated that he felt that the licensing was only one aspect related to the continuation of business and that the business did not lapse for a period of two years.

Mr. Feigley closed the public hearing.

Mrs. James requested a short recess to examine all the evidence presented.

After approximately 5 minutes Mr. Feigley reconvened the meeting.

Mr. Feigley stated that the testimony heard was somewhat conflicting. He stated that he was confused by the documentation Mr. Wyatt presented to substantiate his testimony. He stated that he had never seen a receipt book so uniform with the same ink, etc. and that he is disappointed that the relationship between Mr. Wyatt and Mr. Wood wasn't made clear.

Mr. Ripley then stated that the operation, in reference to reporting and paying sales tax was unusual.

Mr. Feigley then referred to the Knowlton v. Browning Ferris Ind. case, and stated that the burden of proof was on the applicant. He thought the board must now weigh the evidence. He stated that he had some doubts.

Mr. Carr stated that he had some questions about the receipt book. He stated that the receipt book was too clean, uniform, and too new for him to believe that it was used by someone in a salvage operation. He stated he has a problem with this being used as sufficient evidence for him to believe that business had in fact been conducted.

Mr. Carr stated that additional evidence was requested as to the continuation of business after June or July, 1990, but none was given.

Mr. Giedd stated that he felt some effort was given to make it appear that business had been conducted, but didn't understand why cars were allowed to be removed from the parcel if they had plans to continue conducting business. He stated that there is a big difference between appearance of conducting business and

actually conducting business. He felt that the receipt book presented as evidence only made it appear as if business had been conducted.

Mrs. James stated "the book bothers me." She stated that when obtaining a receipt, she has never received the carbon copy for her records, only the original. She stated that Mr. Wyatt mentioned employees, but there were none here to substantiate his testimony. She also said that without a business telephone there was no way of making contact at the place of business.

Mrs. James made a motion to uphold the Zoning Administrators decision. Mr. Carr seconded the motion.

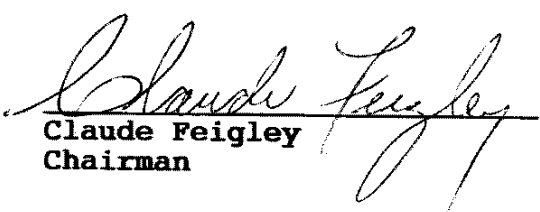
The motion was carried a unanimous vote.

**E. MATTERS OF SPECIAL PRIVILEGE**

None.

**F. ADJOURNMENT**

The meeting was adjourned at approximately 11:30.

  
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Claude Feigley  
Chairman

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Bernard M. Farmer, Jr.  
Secretary