

MINUTES

Unified Land Management

Board of Appeals

March 28, 2006

4:30 p.m.

Members

Gerald Lawson, Chairman

Present:

Craig Sims

Ronnie Culbreth

Ray Morris

Gerald Noe

Kyle Atkins

Absent:

Jackie Moss

Kerry O'Brien

Roy Pinckney

Staff

Emory Price

Joan Holliday

Present:

Laurie Horton

Albert Lee

Savannah Sabo

Freelance Reporting Services, Transcriptions

1. Call to Order

Gerald Lawson, Chairman, called the meeting to order.

2. Approval of Minutes of February 28, 2006

Craig Sims made a motion to approve the February 28, 2006 minutes. Gerald Noe seconded the motion. The vote carried unanimously.

3. Old Business

None

4. **All for the Paws Pet Resort** – Laurie Horton, Land Use Inspector, was sworn in. She presented the findings of fact to the Board:

Mr. Will Hammond is proposing to build a kennel on his property at 145 Vanderbilt Road, Spartanburg. This area is unincorporated, but is surrounded by the City of Spartanburg.

Mr. Hammond is requesting a variance from the Unified Land Management Ordinance, Section 3.08, Commercial Kennels, Veterinary Services, and Certain Agricultural Uses and Crematories and Table 3 Setbacks. The proposed kennel (structure) must be set back 1000 feet from the nearest property line any residential subdivision and 500 feet from any adjacent residence.

Mr. Hammond's request is to be allowed to build the kennel 350 feet from a subdivision and 175 feet from an adjacent residence, variances of 650 feet and 325 feet, respectively.

Mr. Ken Anthony, attorney representing Will Hammond, was sworn in. Mr. Anthony gave the Board a brief presentation of the new proposed pet resort. He stated that this would be a great location for the pet resort. He presented to the Board a diagram from the Designed Learned specialist from Colorado, which was entered into the record as Exhibit #4. This sound proof device would be equivalent to the sound proof recording studios use where no noise would be heard outside of the studio. He stated that the waste treatment would be better than most residential areas and everything would be handled internally. Mr. Hammond has resubmitted a new revised site plan to allow for more space.

Gerald Lawson asked about the cost of the project. Mr. Anthony estimated the cost of the new proposed pet resort to be around one million dollars.

Craig Sims asked if they had applied for a permit to cross the creek. He stated that the Core of Engineers may run into a problem with this. Mr. Anthony stated that they did plan to bridge the creek.

Wilton Kanode, representing the Vanderbilt Hill Subdivision, was sworn in. He presented to the Board Exhibit #1 which was entered into the record. This was a letter from the Vanderbilt Hills Subdivision and surrounding nearby residents expressing concern with the new proposed development. Mr. Kanode had the residents of Vanderbilt Hills, who were in opposition of the variance request, stand and show their support. He also presented to the Board a petition from the residents of the Vanderbilt Hills, which was entered into the record as Exhibit #2. Mr. Kanode addressed the Board with a quote from the Vanderbilt Hills residents, which was "If we have a Land Use

Regulation requiring certain minimum standards, why would the Commission diminish the benefits, that the standards provide to the community, by allowing a variance”. In addition, Mr. Kanode expressed concern with the physical relationship of the homes in the subdivision to the proposed new development. He stated that the proposed new development was on a slope of a valley. There were approximately 80 to 250 single-family homes on the slope and 45 were within the 1000 feet buffer radius. The sound would amplify over the roofs of the structures that were lower on the hillside, impacting directly on the higher elevated homes. Mr. Kanode concluded that a buffer would not be sufficient to serve the purpose intended and requested for the variance to be denied. Mr. Kanode also stated that they were not aware until tonight that the building would be sound proof and were still in opposition of the variance request.

Dr. Gaines Hammond, father of Will Hammond, was sworn in. Mr. Hammond stated that he was proud of his son’s decision to build the new proposed pet resort and he would be financially backing his son on this project. He stated that this project would make the community proud. Mr. Hammond also stated that he had given his son 13 acres, which adjoined the 7 acres, his son already owned. In addition, his son planned to reside in the existing house on the 7 acres. The 13 acres would be used as the drive for the pet resort.

Alvin E. Martin, nearby property owner, was sworn in and stated his concern with the traffic and noise on Vanderbilt Road. He stated that the traffic was already heavy on this particular road. Mr. Anthony responded to Mr. Martin and stated that a traffic study had not been done. Mr. Anthony felt that the traffic and noise would not create a problem for residents off Vanderbilt Road.

The Board asked how many dogs would the pet resort board at a time. Will Hammond responded that they would board approximately 50 dogs, which would vary from day to day. Mr. Anthony informed the Board that they would not offer veterinary services at this facility and traffic would not be heavy entering an exiting the project. The only traffic the owners anticipated would be from customers boarding a pet at different times of the day.

Gail Shook, nearby property owner, was sworn in. She asked Dr. Hammond what was currently on his 13 acres and could his son build on that parcel of land. Dr. Hammond Responded that the pet resort would be on the combined 20 acres of land between him and his son. In addition, Mrs. Shook also voiced concern with the property value of the area going down.

Gerald Lawson closed the public hearing.

Gerald Noe made a motion to go into executive session to seek advice from the County

Attorney. Craig Sims seconded the motion. The vote carried unanimously.

Kyle Atkins entered the Land Management Board of Appeals meeting at 5:25 p.m.

Gerald Noe made a motion to come out of executive session. Ronnie Culbreth seconded the motion. The vote carried unanimously.

The Board discussed the four criteria for granting a variance and how this project would apply to each criteria in order to grant the variance. The Board agreed that the location of the pet resort did not create extraordinary and exceptional conditions pertaining to this particular piece of property. They agreed that if this variance were granted it would affect the surrounding properties. This property could also be used for other projects that may come along and would not be unreasonably restricted. The Board concluded that there was a large number of adjoining property owners present at the meeting who were against the variance request.

Craig Sims made a motion to deny the variance as requested. The project did not meet the four criteria for granting variances. Gerald Noe seconded the motion. The vote carried unanimously with Kyle Atkins abstaining from the vote due to late entry.

Highway 11 Storage – Gerald Lawson recommended to the Board to move this hearing to last on the agenda since the applicant was not present at the meeting.

Craig Sims made a motion to take Highway 11 Storage out of order and move to last on the agenda. Gerald Noe seconded the motion. The vote carried unanimously.

Doug Angeli Home Occupation - Laurie Horton, Land Use Inspector, still under oath. She presented the findings of fact to the Board:

Doug Angeli is requesting a variance from the Unified Land Management Ordinance, Section 3.06, Home Occupation #2.

Mr. Angeli currently gives private batting lessons in his garage beside his home. According to the Ordinance, a home occupation must be conducted entirely within the residence except where the residence is located on two or more acres. Mr. Angeli has 1.5 acres of land.

Mr. Angeli's request is to be allowed to operate his business in his garage; a 1/2-acre reduction in the 2-acres required allowing a home occupation to be conducted in a building outside the house.

Staff did not have any recommendations.

Mrs. Horton read a notarized letter from the Neighborhood association of Fox Hunt Subdivision to the Board. The neighbors expressed concern in the letter with the use of this property for commercial purposes. They were concerned with traffic congestion that would interfere with neighbors retrieving their mail and small children playing in the neighborhood. They also expressed concern that if this variance were granted other neighbors would try to open the neighborhood up to further commercial development.

Gerald Lawson questioned the County Attorney about the use of a notarized letter. The County Attorney advised the Board not to enter a notarized letter into the record. The letter could not answer any questions that the Board may have or give further explanation of what it was asking for.

The Board stated that since it was already read into the record they would keep it in the records. They agreed that they would consider this on any future notarized letters that may be brought to the Land Management Board of Appeals meetings.

Mr. Lawson asked if the private lessons would be conducted in the garage. Mrs. Horton stated that Mr. Angeli would conduct private lessons in his garage. This would only be one car at a time entering and exiting the property. She stated that the ordinance considered this a home-based business and not a commercial business.

The County Attorney also further advised the Board not to read the copy of the neighborhood covenants into the record.

Gerald Lawson opened the public hearing.

Doug and Gwen Angeli, property owners, were sworn in. They stated that the garage was originally built for storage and ball practice. Mrs. Angeli stated that there would be no more than four cars on the property only one night a week for two hours. They were unaware of the traffic problems that this would create in the neighborhood. They have several trees surrounding their home and along the drive way. Mr. Angeli stated that they were in the process of planting shrubs and trees around their home. Again, they were unaware that they were creating a noise or traffic problem in the neighborhood. Mr. Angeli stated that on the closing of his home, he was unaware of any restrictions in the neighborhood.

Staff asked Mr. Angeli about the distance was between his garage and his home. Mr. Angeli stated that it was anywhere between eight to ten feet. Emory Price informed Mr. Angeli that if he had attached a breezeway between his home and the garage, he would not need a variance.

John C. Phillips, representing the Fox Hunt Subdivision, was sworn in. He stated that they had several meetings on this issue and he had 35 letters from residents of the Fox Hunt Subdivision. He presented to the Board a flyer advertising Mr. Angeli's business, which was entered into the record as Exhibit #2. In addition, he presented to the Board a photo of a typical evening at the Angeli's home, which was entered into the record as Exhibit #3. He stated that the Angelis purchased the home in March of 2004. The lot was originally sloped and the Angelis leveled it out with the intension of putting a building on this lot. The garage appears to be approximately 50 x 30 feet. Mr. Phillips stated that Mr. Angeli had run a baseball training school for the last eight months. Mr. Phillips read a copy of the County Ordinance Section 3.06 on Home Occupations and the acreage needed to run a home based business. Mr. Phillips presented to the Board a copy of the restrictive covenants of the Fox Hunt Subdivision. Mr. Phillips stated that the binging of the aluminum baseball bats could be heard up to four lots away. He restated that in the subdivision restrictions that no lot should be used except for residential purposes. Mr. Phillips stated that Mr. Angeli had signed the deed with the restrictions dated on March 30, 2004. He also obtained a permit from the Building Codes Office for residential use only and not for commercial. Mr. Phillips stated that if a variance were granted, the Fox Hunt Subdivision Home Owners Association would take legal action to make all residents conform to the restriction covenants of Fox Hunt Subdivision.

Alfred Stellar, of 1267 Shadowood Drive, was sworn in. He stated that he was present at the meeting to represent the Shadow Lakes Subdivision. His property backs up to the rear of Mr. Angeli's property. He stated that Mr. Angeli did not have any trees to the rear of his property. This structure sits within five feet off the back of Mr. Stellar's property line and the back of his home was about 150 feet from the back of Mr. Angeli's lot. Mr. Stellar voiced concern with the noise coming from Mr. Angeli's private lessons and stated that the noise was not confined within the inside of the building. Mr. Stellar read a letter stating that they were opposed to the variance request and joined with the Fox Hunt Subdivision to voice their opposition on the variance request.

Mrs. Angeli stated that the noise heard after 9:00 or 10:00 was strictly family and friends. She stated that they would be willing to upgrade the building so that no noise would be heard outside of the building. She also stated that they would be willing to plant trees behind the building.

Mr. Sims stated that the Board could not get involved with the fact that the Angeli's were hitting balls outside and creating a noise problem. They had the right to have family and friends play baseball in the garage or yard. The Boards concern would be the commercial use of the property. Mr. Sims requested to see a copy of the Fox Hunt Subdivision restrictions, which was entered into the record as Exhibit #4.

Gerald Lawson closed the public hearing.

Mr. Atkins brought to the Boards attention that the Angeli's were willing to upgrade the building to buffer the noise coming from the baseball bats. He also stated that the Angeli's had an option to build a breezeway between the two buildings and become a legal home-based occupation. He stated that the Angeli' still had the right to have family and friends over for baseball in the yard, as long as this was not being used for commercial use purposes.

Ray Morris made a motion to deny the variance as requested. He stated that this did not meet the four criteria and that this was not a transitional area. Gerald Noe seconded the motion. The vote carried unanimously.

The Board recommended the two parties to get together and come up with a reasonable solution.

Care Bridge Adult Day Care – Laurie Horton, Land Use Inspector, still under oath. She presented the findings of fact to the Board:

Joanne M. Rogers is proposing to add a canopy to an existing building at 230 Giles Drive, Boiling Springs. Ms. Rogers will be operating an adult day care. Ms. Rogers is requesting a variance from the Unified Land Management Ordinance, Section 2.02 Dimensional Standards, Table 3 Minimum Setback-Front Lot line on a minor street. Presnell Drive is classified as a minor street requiring a 30-foot setback. The front setback variance requested on Presnell Drive is 10 feet.

Staff did not have any recommendations.

The Board asked about the hours of operation for the adult day care. Mrs. Horton stated that this would be similar the normal operational hours of a child's day care.

Mrs. Horton informed the Board that she had a statement from the owner of the property allowing Mr. Phillips to represent her at the meeting.

Gerald Lawson opened the public hearing.

Ryan L. Phillips, representing the owner of the property, was sworn in. He stated that the owner intended to remodel and up fit he building that had been vacant for a number of years. The building had previously been a fish camp that had fire damage. He stated that the owner planned to landscape the property and pull up some of the existing asphalt. They also plan to plant the required buffers to make the building appealing on the outside. The properties to the front and next to Ms. Rogers's property were already

commercial. They plan to add a drive thru canopy on the upper side off Presnell Drive for hospital buses to drop off adults. The variance request is for the awning to allow buses to pull under and drop the adults off in bad weather. The Spartanburg County EMS is requesting a 20-foot canopy to hang over to give adequate room for opening and closing the doors.

There was no one present to speak for or against the variance request.

Gerald Lawson closed the public hearing.

Mr. Lawson stated that this was a transitional area.

Craig Sims made a motion to grant the variance as requested. He stated that Presnell Drive was a minor street with minimal traffic. Ray Morris seconded the motion. The vote carried unanimously.

Steve Elkins Job – Laurie Horton, Land Use Inspector, still under oath. She presented the findings of fact to the Board:

Steve Elkins, owner of the property at 2522 Highway 101 South in Greer, is requesting a variance from the Unified Land Management Ordinance, Section 2.02-2 Buffer Yards and Table 3 Setbacks.

Mr. Elkins is proposing to build an archery shop at this location. According to the Ordinance, a retail business is classified as a medium intensity use. Table 4 (Buffer Yard Requirements) requires medium intensity uses that will adjoin single-family residential uses to install a class 5 buffer. Table 3 requires a commercial building to be set back 20 feet from the rear property line.

Mr. Elkins is requesting two variances. The first is to reduce the required class 5 buffer to a class 1a along the rear property line. The second is to reduce the rear setback from 20 feet to 9 feet—a variance of 11 feet.

All other setback and bufferyard requirements will be met.

Staff did not have any recommendations.

Gerald Lawson opened the public hearing.

Sonny Justice, representing the owner of the property, was sworn in. He stated that Mr. Elkins property was located off Highway 101 in a transitional area. The house adjacent to the rear of the property was a single-family home with a pool. The new proposed

building would be an archery supply store considered as low intensity. He is requesting to set his new proposed building back further on the property. They plan to plant Leyland Cypress trees as a buffer against the rear adjacent single family home. They feel they can utilize the property further by requiring customers to park to the front of the property. If they set the new proposed building back further on the property then they will not be able to plant a class 5 buffer.

Margaret D. Beam, adjacent property owner, was sworn in. She resides at 111 Bert Ct. She stated that the area was becoming more transitional with the exception of Bert Court. She stated that she was against the Leyland Cypress Trees as a buffer, which would be nine foot off her property line. The Leyland Cypress Trees would eventually grow to be 25-feet in diameter encroaching onto her property. She also stated that she was not aware until tonight how large the new proposed building would be. She would like to see the building moved further up to the front of the property. Ms. Beam showed the Board a photo of the Leyland Cypress Trees and how large they grow to be. She does not want to see her property affected by the new proposed business.

Craig Sims informed Mrs. Beam stated that if the new building were moved forward then parking would be to the rear of the property. This would cause the lights to shine onto the Beam's property.

The Board discussed alternatives to the Leyland Cypress Trees.

Mr. Justice stated he would be willing to place a six-foot high wooden fence along the rear property line. He stated that the building would be approximately 40 X 120 wide with three open porches surrounding the building on three sides.

Gerald Lawson closed the public hearing.

Gerald Noe expressed concern with the Board going from a class 5 buffer to a class 1 buffer. The Board discussed alternative buffers that could replace the Leland Cypress Trees. The Board concluded that Ms. Beam may not remain at this location and they needed to base their decision on long-term future residential owners. After discussion among the Board members, the Board agreed to change the buffer yard from a class 5 to class 2 d, instead of the 1a.

Kyle Atkins made a motion to grant the second variance to reduce the rear setback to 11 feet. The first motion was amended to reduce the rear buffer yard from a class 5 to a class 2d with a six foot fence. Craig Sims seconded the motion. The vote was four to one in favor of granting the two-variance request. The following members voted to grant the variance: Craig Sims, Ronnie Culbreth, Kyle Atkins, and Ray Morris.

Gerry Noe voted to deny the variance. The Board concluded that the request met the four criteria and the location was in a transitional area.

Croft Baptist Church – Albert Lee, Land Use Inspector, was sworn in. He presented the findings of fact to the Board:

The Croft Baptist Church, which is located at 4190 East Croft Circle, Spartanburg, is requesting a variance from the Unified Land Management Ordinance, Section 2-02.02 Bufferyards.

The Croft Baptist Church is proposing to construct a new Family Center, which will be to the left of the existing Church. The Church has an existing playground where the Class 4 buffer is required to be placed. Therefore, the Croft Baptist Church is requesting a reduction of the bufferyard from a Class 4 buffer (25-foot wide area) to a Class 2 buffer (10-foot wide area).

The Croft Baptist Church will be able to meet all other requirements of the Unified Land Management Ordinance.

Staff did not have any recommendations.

Albert Lee presented to the Board two letters from adjoining property owners, which was entered into the record as Exhibit #1. The letters were from adjoining property owners who were in favor of the variance request.

Gerald Lawson opened the public hearing.

Joe Dempsey, representing Croft Baptist Church, was sworn in. He stated that the church had been there for 50 years. There is already 10 to 12 Leland Cypress trees on the property. In addition, there is a chain link fence on the right property line. This addition will be an enhancement to the community.

There was no one present to speak for or against the variance request.

Gerald Lawson closed the public hearing.

Craig Sims made a motion to grant the variances as requested. The board agreed that this met the four criteria. Ronnie Culbreth seconded the motion. The vote carried unanimously.

David's Transmission - Albert Lee, Land Use Inspector, still under oath. He presented the findings of fact to the Board:

Mr. David Inman, of 1578 Old Pacolet Road, Cowpens, is requesting a variance from the Unified Land Management Ordinance, Article 2, Design and Development Standards, Section 2-02.1 Minimum front lot line, side lot line.

Mr. Inman constructed a building for personal use and has now converted it to commercial use which does not meet the set backs required by the Unified Land Management Ordinance. The use is now a garage.

The existing buildings left side faces the Old Pacolet Road, which according to the Unified Land Management Ordinance, must have a set back of 40 feet from the state road right of way. The set back now is 20 feet from the right of way. The back of the building, which would be the side set back according to the Unified Land Management Ordinance must have a 15 foot set back from the property line. The set back is 7 feet from the property line.

Mr. Inman is requesting the following variances:

- A variance on a side set back of 8 feet.
- A variance on the front set back from right-of-way of 20 feet.

Staff did not have any recommendations.

Albert Lee presented to the Board Exhibit #1, #2, #3, and #4, which was entered into the record. Exhibit #1 was an agent authorization for David Inman to represent the owner of the property. Exhibit #2 was a letter from the owner of the property in favor of the variance request; Exhibit #3 and Exhibit #4 were photos of the building and surrounding properties.

Gerald Lawson opened the public hearing.

David Inman was sworn in. He stated that he originally constructed the building for personal use and would like to change the use to commercial. He stated that he is in the process of getting an easement from the property owner to the left. Due to the gully on the left property line, he feels that there are extraordinary and exceptional conditions to this piece of property. There are no problems with traffic entering and exiting his property.

There was no one present to speak for or against the variance.

Gerald Lawson closed the public hearing.

Kyle Atkins made a motion to grant the variance as requested. He stated that this did

meet the four criteria, because the property could not be developed due to the gully to the side of the property. In addition, there was no one present at the meeting in opposition of this variance request. This would not be a detriment to adjoining property owners. Craig Sims seconded the motion. The vote carried unanimously with Gerald Noe abstaining from the vote.

OnSite Realtors - Laurie Horton, Land Use Inspector, still under oath. She presented the findings of fact to the Board:

On December 27, 2005 a building permit was issued to move a modular unit and set it up for residential use at 1395 Meadow Farm Road. On March 1, 2006 another permit was issued to change it from residential to commercial with out approval from the Planning Department. On March 9, 2006 a final inspection was requested. Planning Staff inspected the site and found the office to be too close to the right-of-way on Meadow Farm Road.

Billy Burnett, owner of Onsite Realtors, is requesting a variance from the Unified Land Management Ordinance, Table 3 Setbacks. Meadow Farm Road is classified as a collector street requiring a 40-foot setback. The modular office is 36 feet from the road right of way on Meadow Farm Road. Mr. Burnett will need a 4-foot variance.

Staff did not have any recommendations.

Gerald Lawson opened the public hearing.

Billy Burnett with OnSite Realtors was sworn in. He stated that there was commercial on both sides of the property and a subdivision to the rear of the property. In addition, they wanted to set the building where it would utilize maximum space from the subdivision and prevent storm water run off onto other properties.

Staff did not have any recommendations.

There was no one present to speak for or against the variance request.

Gerald Lawson closed the public hearing.

Kyle Atkins made a motion to grant the variance as requested. The Board agreed that this met the four criteria for granting variances. Ronnie Culbreth seconded the motion. The vote carried unanimously.

Highway 11 Storage - Albert Lee, Land Use Inspector, still under oath, was sworn in.

He presented the findings of fact to the Board:

Mr. John Edwards, the owner of property located at 1320 Highway 11 West in Chesnee, is requesting a variance from the Unified Land Management Ordinance, Article 2 Design and Development Standards, Section 2.02-1 Dimensional Standards Table 3 rear lot set back.

Mr. Edwards has an existing building on property and is proposing to construct mini-storage units at the rear of this existing building.

The Unified Land Management Ordinance requires that the rear set back from the property line be 20 feet. Mr. Edwards is requesting to place the warehouses 5 feet from the rear property line--a variance of 15 feet. The property at the rear is agriculture vacant and will not require a buffer. The parcel to the left side of the proposed building is vacant. On the right side of the property, there is a 68-foot power line right of way.

Mr. Edwards will be able to meet all other requirements of the Unified Land Management Ordinance.

Mr. John Edwards, the property owner, was not present at the meeting. There was no one present to represent Highway 11 Storage.

The County Attorney advised the Board that they could legally hear the case without anyone present to represent the case.

Gerald Lawson opened the public hearing.

Lynn Thompson King, adjoining property owner, was sworn in. Mrs. King stated that she was against the variance request and was concerned with water runoff from Mr. Edwards property. She was also concerned with the distance between his new proposed storage buildings and her property. She owns a beauty salon on her property and would like Mr. Edwards to keep his property neat and clean.

Gerald Lawson closed the public hearing.

The County Attorney advised the Board to make a motion to table this variance request over until the April meeting.

Craig Sims made a motion to table Highway 11 Storage over until the April meeting. Ronnie Culbreth seconded the motion. The vote carried unanimously.

Adjourn

Craig Sims made a motion to adjourn. Ronnie Culbreth seconded the motion. The vote carried unanimously. The meeting adjourned at 6:54 pm.