

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on October 9, 2012 at 4:00 p.m. in the Commissioners Meeting Room of the Vance County Administrative Building at 122 Young Street in Henderson, NC.

MEMBERS PRESENT

Ruth Brummitt – Chairperson
Blake Haley – Vice Chairperson
Agnes Harvin
Phyllis Stainback
Alvin Johnson, Jr.
Thomas Shaw

MEMBERS ABSENT

Rev. Roosevelt Alston – Late to meeting; was replaced by Alternate #1 for both cases

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney

ALTERNATES PRESENT

Ruxtin Bobbitt – Alternate #1 – replaced
Rev. Roosevelt Alston
Darrell Mullinix – Alternate #2

Chairperson Brummitt called the meeting of the Board of Adjustment to Order and asked for a review of the minutes from the March 8, 2012 meeting. It was noted that the March 8, 2012 meeting did not involve any cases but included appointment of the chair and vice chair as well as approval of the previous meetings minutes.

Ms. Stainback made a motion to approve the minutes as written. Mr. Shaw seconded said motion and all present were in favor. VOTES: 7-0.

Chairperson Brummitt introduced the first case explaining the order of business, gave an opportunity for board members to express any conflicts, hearing none and then declared the public hearing open.

BOA CASE NO. 20120913-1 Andrew Scott Jones (owner), Andrew Scott Jones and Kelly Marie Jones (applicants) – Conditional Use Permit

Chairperson Brummitt asked Mr. McMillen to present the staff report. Mr. McMillen presented the staff report:

The applicant is requesting a conditional use permit to allow a Home Occupation Business of a commercial nature involving gun sales, service and smithing. The proposed home occupation business would be located within a residence within the R-30 Zoning District.

Exhibits as follows:

- Exhibit 1.** Application
- Exhibit 2.** Site Sketches and residence floor plan sketch
- Exhibit 3.** Adjoining Owners, Zoning and 2010 Aerial Map
- Exhibit 4.** Conditional Use Permit check sheet

Findings

1. Andrew Scott Jones is the property owner.
2. The request is for a conditional use permit to allow a home occupation business involving gun sales, service and smithing on a parcel zoned (R-30) Residential Low Density.
3. The property is located at 187 Ridge Circle Road, Henderson, NC; more specifically identified as tax parcel 0536B01006.
4. The lot consists of 1.296 acres and includes an existing single family dwelling.
5. The lot is currently zoned (R-30) Residential Low Density.
6. There are no wetlands, floodplains, or streams that interfere with the property.

7. The application requesting a conditional use permit was filed on 07/28/2012.
8. The adjoining property owners were notified on August 27 and September 24, 2012.
9. The property was posted on August 30, and September 28, 2012.
10. The legal notice was run on September 27, 2012 and October 4, 2012.

Staff Comments

Mr. McMillen reviewed the staff comments as follows. The applicant is applying to operate a predominantly internet based home occupation business of a commercial nature including gun sales, service and smithing. An initial question to be answered is whether the business would be considered a home occupation by definition. By ordinance, if the business meets such definition then it is only allowed in the R-30 zoning area through issuance of a conditional use permit. Also by ordinance, if the business does not meet the definition of a home business then it would not be permitted in an R-30 zoning district. Attached are the definitions of Home Occupation and Home Occupation of an Industrial or Commercial Nature.

The property is located in a residential neighborhood and is surrounded by R-30 zoning on three sides with Agricultural Residential zoning to the rear. Before determining whether to consider granting a conditional use permit the determination must be made as to whether the proposed use meets the definition of a Home Occupation. In reviewing the request, talking with the applicant and considering the definition of home occupation one of the main concerns in need of answering and addressing appears to be the potential traffic generated. Once the Home Occupation definition issue is determined the Board can begin consideration of the Conditional Use Permit Check List as included in the case materials.

Mr. McMillen presented the Board with a petition that was supplied by the applicant with signatures from property owners within the same subdivision supporting the business opening. Mr. McMillen informed the Board that several property owners within the subdivision signed the petition.

Ms. Harvin questioned the definitions of Home Occupation and Home Occupation of a Commercial or Industrial Nature from the Zoning Ordinance. She questioned whether the ordinance defines the term "rural" as referenced in the latter definition. Mr. McMillen responded that there is no such definition in the ordinance and therefore would be up to the board to determine whether the area in question could be considered rural.

Ms. Harvin further questioned whether the business should be permitted being that it would include retail sales and therefore did not meet the definition of a home occupation. She mentioned that if the request did not meet the definition of a home occupation than it most likely would fall into a category that is unpermitted within the R-30 zoning. Mr. McMillen reminded the board that that burden of proof was on the applicant to present the information associated with the request and to provide the necessary information for the board to make such a decision.

THOSE SPEAKING FOR THE REQUEST

Mr. Andrew Jones addressed the board and asked the board if they had any questions that he could address. Ms. Harvin questioned whether he had a current internet site for his business. Mr. Jones responded that he does have a site, but it is not set up for business at this point. Chair Brummitt questioned the hours of operation for the proposed business. Mr. Jones responded that they would be Monday-Thursday by appointment only with Saturday and Sunday from 12 PM to 6 PM. Chair Brummitt asked whether the business would be operated under a Federal Firearms License. Mr. Jones responded that an application has been made with the ATF and that a decision is forthcoming following zoning approval. Mr. Jones reviewed the procedure for attaining the firearm license, as well as the role of the local sheriff in granting him permission to operate. Chair Brummitt questioned if the applicant had looked at opening the business in a commercial area. Mr. Jones mentioned that he had looked into that, but looks to start the business out of his house initially. Mr. Bobbitt questioned whether the applicant would be satisfied if the board put a 12 month limit on the permit until he was able to operate within a commercial area. Mr. Jones responded that his plan is closer to 5 years and financially he would have

difficulty meeting a 12 month requirement. Mr. Bobbitt questioned how soon the business could be opened if approved by the ATF. Mr. Jones responded that it could be opened within 2 months.

Ms. Harvin questioned why the applicant mentioned on the application that the use meets the definition of Home Occupation if retail sales are involved. Mr. Jones responded that he wasn't totally sure on that question, but he is also trying to find out the definition of home occupation himself. He mentioned that he was unsure how much of the business would be retail sales. Ms. Harvin responded that the amount of retail sales is not specified in the ordinance, but simply having it constitutes having retail sales.

Ms. Harvin questioned whether any specialized tools are necessary for the gun smithing operation. Mr. Jones responded that most tools would be hand tools and eventually he would plan to make his own equipment and ammunitions, but that is not the plan within his house currently. Chair Brummitt questioned the safety measures of his home. Mr. Jones responded that his personal guns would be in a separate gun safe from the ones associated with the business. He further mentioned that he has a security system and plans to add video surveillance and potentially replace certain windows with bullet proof glass.

Mr. Bobbitt questioned how the business would be operated in regard to handling internet based sales vs. door sales potentially increasing traffic in the neighborhood. Mr. Jones responded that the majority would be firearm transfers essentially meaning the gun would be purchased from someone else and then shipped to his business to complete the paperwork and act as the broker. Ms. Harvin questioned whether every sale would include traffic to his residence. Mr. Jones confirmed that this was accurate.

Mr. Haley questioned whether a home owners association was present in the neighborhood. Mr. Jones mentioned that he was not aware of a HOA, but that a good bit of the area was developed and is maintained by family. Mr. Haley asked for a recap of the exact operation that is planned in the home. Mr. Jones mentioned that it would be gun smithing, internet transfers, and sale of ammunition and firearms. Mr. Haley questioned how the guns are fired when they are repaired. Mr. Jones mentioned that he has a target set up in his back yard that could be used if needed for firing. Mr. Bobbitt questioned whether there were any restrictive covenants against this type of business in the neighborhood. Mr. Jones responded that he was not aware of any.

Ms. Harvin questioned whether the applicant felt that this business would enhance or maintain the value of surrounding property. The applicant responded that it may not enhance property values, but should not have a negative effect on the values therefore maintaining the values within the neighborhood.

THOSE SPEAKING AGAINST THE REQUEST

Ms. Angeletta Scott Bullock from Foxfire Drive in close proximity to the property addressed the board. She mentioned that gunfire is a constant concern within her neighborhood and the proposed business would not be good for the neighborhood.

RESPONSE TO THOSE SPEAKING AGAINST THE REQUEST

Mr. Jones responded by saying that he is certain that the firing is coming from another location. He mentioned that he has done minimal firing and is not intending to open a shooting range on his property. If necessary, Mr. Jones mentioned that he would use dry shot bullets to prevent any safety issues.

The Board reviewed the conditional use permit check sheet as follows:

1. The use requested is among those listed as an eligible conditional use in the district in which the subject property is located. *Ms. Harvin mentioned that the request does not meet the definition of a home occupation and that the area does not meet what she would consider rural to meet the definition of a home occupation of a commercial nature.*
2. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health or safety.

3. The use or development complies with all required regulations of the Zoning Ordinance and all applicable specific conditions and specifications.
4. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of adjoining or abutting property, or that the use is a public necessity;
5. The use or development will be in harmony with the area in which it is to be located and will be in general conformity with the plan of development of the County.

FURTHER DISCUSSION BY BOARD

Mr. Johnson questioned whether the business would involve retail sales or whether internet transfers would be the predominant activity. Mr. Johnson questioned whether the applicant could operate without doing any retail sales. Mr. Jones mentioned that he would have some retail with the transfers.

Mr. Jonathan Care (County Attorney) reminded the board that they are only to consider the evidence that has been presented and not opinions. Additionally the board should consider exactly what the zoning ordinance requires the board to do in making the decision.

DECISION:

Ms. Harvin made a motion to deny the application based upon the fact that the applicant has stated that gun sales will be provided and retail sales are prohibited from home occupations. Ms. Stainback seconded said motion. *Discussion:* Mr. Bobbitt stated that he felt the board should allow the business to get started with conditions to limit retail sales. A roll call vote was taken: *Bobbitt – No, Brummitt – Yes, Haley – No, Harvin – Yes, Johnson - -No, Shaw – No, Stainback – Yes.* VOTES: 3-4 – motion defeated.

Mr. Bobbitt made a motion to approve the application with the following conditions: (1) that no retail sales be permitted for the home occupation (2) that no gun range would be allowed (3) the permit would be temporary for 3 years for the home occupation. Mr. Haley seconded the motion and asked for amendments to the motion to include hours (Monday-Thursday by appointment only and Saturday – Sunday from 12 PM to 6 PM). Mr. Bobbitt accepted the conditions and restated the motion. A roll call vote was taken: *Bobbitt – Yes, Brummitt – No, Haley – Yes, Harvin – No, Johnson - -Yes, Shaw – Yes, Stainback – No.* VOTES: 4-3 – motion defeated.

Ms. Harvin stated with agreement from Ms. Stainback and Ms. Brummitt that their reason for dissent is premised on the idea that retail sales would be involved and is not allowed for a home occupation. Further the business is within a subdivision and not within a rural area therefore not meeting the definition of a home occupation business.

Chairperson Brummitt declared the public hearing closed.

Chairperson Brummitt introduced the second case explaining the order of business and declared the public hearing open.

BOA CASE NO. 20120913-2; Edward C. Spicer, Jr. (owner and applicant) - Variance

Chairperson Brummitt asked Mr. McMillen to present the staff report. Mr. McMillen presented the Staff Report:

The applicant is requesting a variance from the minimum setback (section 3.2.3) requirement to allow a 5 foot setback on the south and east side of the property. The west and northern side is surrounded by Corps. of Engineer property and currently is allowed a 0 foot setback as per zoning regulations. In addition to the setback variance the applicant is requesting a variance from the separation requirement of 100 feet between the well and septic system as per section 3.2 D 4 of the zoning ordinance. Based upon a designed system and concurrence from the Health Department the applicant is requesting a variance from 100 feet to 50 feet of required separation.

Exhibits as follows:

- Exhibit 1.** Application
- Exhibit 2.** Septic permit and approved system designs
- Exhibit 3.** Survey and property description
- Exhibit 4.** Adjoining owners map, surrounding zoning and 2010 Aerial
- Exhibit 5.** Variance check sheet

Findings

1. The property is owned by Edward C. Spicer, Jr.
2. The request is for a variance from the minimum setback requirement of a 30 foot front setback and 20 foot side setback as per section 3.2.3 of the zoning ordinance to allow a 5 foot setback on the front and side.
3. The lot is currently vacant and consists of 0.183 acres as per Deed 321 Page 411.
4. The property is located off of Rev. Henderson Road and is accessed from Merle Jones Lane. The property is identified as tax parcel 0305A01017.
5. Legal access is obtained through an existing 10 foot easement along the properties leading to the subject property. The easement is of record and referenced in deed 321 page 411.
6. The lot is currently zoned R-30 (Residential Low Density).
7. The lot is a substandard lot of record as per section 4.5 and 4.25 E of the zoning ordinance.
8. The application requesting the variance was filed on August 14, 2012.
9. The adjoining property owners were notified on August 27, and September 24, 2012.
10. The property was posted on August 30, and September 28, 2012
11. The legal notice was run on September 27, 2012 and October 4, 2012

Staff Comments

The applicant is proposing to utilize an existing lot that is 0.183 acres or 7,971 square feet. While greatly smaller than the 30,000 minimum lot size for areas zoned R-30 the parcel was created and was a lot of record prior to the implementation of zoning on November 1, 2011. In addressing substandard lots of record in section 4.5 (see also section 4.24 E 2), the zoning ordinance states that, "when a substandard lot can be used in conformity with all other regulations applicable to its intended use, except that the lot is smaller than the required minimum size for its zoning category, then the lot may be used as proposed as if it were conforming." For this reason the lot size can be overlooked in this situation, however the other regulations such as setbacks and septic/well separation may be considered. In order to make a reasonable use of the property, the applicant has requested a variance from the setback and well/septic separation requirements.

The hardship does not appear to be a result of the applicant's own actions and appears to result from unique circumstances related to the property. It would be recommended to consider a fair setback that would allow for reasonable use of the property. Additionally because of the involvement of a soil scientist and the Health Department, a septic system has been designed and permitted that would accommodate the limited lot size. With this design it may be permissible to reduce the well/septic separation to 50 feet as proposed.

THOSE SPEAKING FOR THE REQUEST

Mr. Edward Spicer, Jr. addressed the board. He explained that the lot is rather small, but has been that way ever since it has been passed down in the family to him. He is requesting a variance to allow the well and septic to be 50 feet apart and to allow the setback to be 5 feet on the south property line and on the east property line. Based upon the size of the lot and prior approval from the Health Department there is no possible way for the well/septic separation to remain at 100 feet as that would not allow both to be located within the boundaries of the lot. He explained that a 10 feet easement provides access to the property and the runs within the property along the southern property boundary. Because of this easement and the requested 5 foot setback, the structure will not be located within 15 feet of the southern property line. He explained without the variance the lot could not be built upon and utilized and that it would fit within the character of the neighborhood as the other lots are similar sized and situated.

Ms. Harvin questioned whether the well will be shared with another property. Mr. Spicer introduced Mr. Ed Reeves who will be assisting with the design of the lot. Mr. Reeves approached the board and pointed out the proposed well location within the property. Mr. Reeves also mentioned that existing portable sheds are on the property and will be removed.

Mr. Bobbitt questioned whether there were plans for a structure at this time and whether there was any room for adjusting the setbacks. Mr. Ed Reeves mentioned that they have a general idea, but have not settled on an exact plan. Based upon the area available, there will be minimal space available for the home and may involve building upward to the 35 foot maximum to allow it to fit adequately.

Mr. Haley questioned whether there was any public water available. Mr. Spicer mentioned that there was not currently, but the area is within Phase 2B of the county water project. If enough signups are present there are plans to have public water available at this location. Mr. Haley questioned the access to the property. Mr. Reeves explained that an existing 10 foot access easement is in place and has been there since at least 1955 as referenced in the deed.

Mr. Reeves mentioned to the board that they have met with the surrounding property owners and that there is no issue with the current plans for utilizing the 10 foot easement. Mr. Reeves referenced an email from the neighboring property owners to the south that was forwarded to the Planning Director prior to the hearing. Mr. McMillen confirmed receipt of this email.

THOSE SPEAKING AGAINST THE REQUEST

None

The Board reviewed the variance check sheet as follows:

1. If the applicant complies with the provisions of the Ordinance, he or she can make no reasonable use of their property.
2. The hardship of which the applicant complains results from unique circumstances related to the applicant's property.
3. The hardship is not the result of the applicant's own actions.
4. The variance will be in harmony with the general purpose and intent of the Ordinance and preserves the spirit of the Ordinance.
5. The granting of the variance assures the public safety and welfare and will not be injurious to the property or improvements in the neighborhood.

DECISION:

Mr. Bobbitt made a motion to approve the variance request based upon the items as referenced on the variance check sheet. Mr. Thomas Shaw seconded said motion and all present were in favor. VOTES: 7-0. *Chairperson Brummitt declared the public hearing closed.*

ADJOURNMENT: There being no further business, Chairperson Brummitt declared the meeting adjourned.