



BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commissioner's Meeting Room
November 14, 2017

Call to Order

Chair Marvin Smith called the Board meeting to order at 7:30 p.m. on Tuesday, November 14, 2017, in the Commons Meeting Room. The Chair asked the Clerk to call the roll.

Roll Call

Board Members Presiding

Jim Starnes
Devron Furr
David Dulin
Cynthia Fish
Marvin Smith

Absent

Houston B. Clark, II
Billy Franklin Lee
Jennifer Lisk
Michael D. Efird

Staff Attending

Bob Remsburg, Planner, I
Tim Swaringen, Code Enforcement Officer

Chair Smith indicated that this was the first meeting of the Board of Adjustment in 2017, so the first order of business was to elect a chair. Mr. Smith was elected as chair in 2016 and Michael Efird was elected as vice-chair. Chair Smith opened the floor for nominations for chair. David Dulin and Marvin Smith were nominated. The Board elected Marvin Smith as chair. Nominations were requested for vice-chair. David Dulin was nominated and elected to be vice-chair.

Chair Smith then called on the Board to review the minutes of the last meeting, October 11, 2016.

Motion: David Dulin made a Motion to approve the minutes of October 11, 2016, as written.

Second: Cindy Fish seconded the motion.

Action: The Board voted unanimously to approve the minutes of October 11, 2016, as written.

Chair Smith explained that the purpose of the meeting was to consider the Case #SUP 17-01, a request by Heather Burris for a Special Use Permit. The Chair explained that this is a quasi-judicial hearing and will be conducted in accordance with special due process safeguards.

Chair Smith outlined the statutory requirements that restrict the board to base its decisions only on testimony given under oath. Any person who swears falsely is guilty of a Class 1 misdemeanor.

Chair Smith asked those testifying to come forward to be sworn in. Kenneth Carter, Jeff Chandler, Larry Carter, Heather Burris, Bradley Burris, Sid Smith, David Gathings, Tim Swaringen and Bob Remsburg were sworn in by the Chair.

Chair Smith asked if any board member had any possible conflicts and needed to withdraw from the case. Each indicated that they believed they could rule fairly based upon the facts to be presented in the case.

Chair Smith opened the hearing and indicated that the order of business would be that first, we will hear from the Planning Department staff, then we will hear from the Applicant and their witnesses, and lastly we will hear from opponents to the request.

Chair Smith asked the Clerk to present the case, SUP 17-01.

Bob Remsburg, Clerk, stated that Heather Burris requests a Special Use Permit to allow up to two horses per acre of pasture on her property, located at 39267-C Holly Ridge Road, New London (Tax Record #3505). The property is comprised of 1.6 acres. The property is zoned RA-Residential Agricultural. In Section 601.1, the Stanly County Zoning Ordinance allows for horses to be kept with the following stipulation, “the tract must contain at least one (1) acre of fenced pasture area for every horse kept thereon”. Ms. Burris currently has two horses which are stable fed in approximately one (1) acre of fenced pasture.

Ms. Burris has indicated that the horses are accustomed to being together and she would not want to separate them. She has indicated that the horses are stable (hay) fed and do not need the pasture in order to feed. No existing home other than the owner is within 150 feet of the stable as required by Section 601.1 of the Stanly County Zoning Ordinance. The nearest neighbor’s home is approximately 188 feet from the stable location.

The property is located on Holly Ridge Road which is a small private road located off Mountain Creek Road north of Albemarle. There are three homes located along this easement off Holly Ridge Road. All property in the immediate area is zoned RA and is either residential or agricultural in use.

Section 601.2 of the Zoning Ordinance authorizes the Board of Adjustment to issue a Special Use Permit for the “raising of domestic animals that exceed density or setbacks as specified in Section 601.1”. The Board of Adjustments should make certain the following standards are met in order to approve the Special Use Permit.

- a) That the project will not materially endanger public health or safety if located where proposed, and if developed and operated according to the plan submitted.
- b) That the project will not substantially injure the value of adjoining property
- c) That the project will be in harmony with or compatible with its neighbors and generally consistent with the current Stanly County Land-Use Plan.
- d) That the project meets all other required conditions and specifications for the keeping of horses in the RA zoning district.

Chair Smith called on the applicant to come forward and present their case to the Board.

Heather Burris, 39267-C Holly Ridge Road, came forward and indicated that her goal was to keep the horses together. They have been together for around 5 years. These are herd

animals and would be best to remain together. She presented a stack of photos which show the horses (Jasper and Lorenzo). The pictures were accepted as evidence and passed through the board members. Ms. Burris also presented the health records of the horses. Mr. Dulin asked Ms. Burris from where had she acquired the horses. Ms. Burris explained that she had gotten Jasper around 6 years ago, paying \$100. The original owner had surrendered the horse due to not being able to care for him. Lorenzo was purchased about a year later from a sale. Lorenzo was skinny and in need of care. In both cases, Ms. Burris felt compelled to get the horses due to their conditions. Mrs. Fish asked if the horses had a shed or barn. Ms. Burris responded that there was a shed and they had removed the siding, so it just had a roof at present. Mr. Smith asked if there was a grassy area. Ms. Burris replied that the horses were stall fed using hay and alfalfa and that the horses were healthy and shots up-to-date, but there was little grassy area on the lot. Mrs. Fish asked if there was an acre available for exercise of the horses. Ms. Burris indicated that what was there was sufficient for exercise. She was unable to work with them during her recent pregnancy but was now able to spend more time exercising and working with the horses. She also had more time now because her job is 3-days per week. Tim Swaringen came forward and presented a copy of the survey of the property showing the fenced area. This was submitted as evidence. Mr. Furr asked if she took the horses off-site to ride. Ms. Burris said that she would be doing more of that since the pregnancy. She has taken the horses to numerous charity rides throughout the region. Mr. Dulin asked when she had acquired the horses. Ms. Burris responded that Jasper had been purchased in September 2011 and Lorenzo was purchased in September 2012. Mrs. Fish asked about waste removal. Ms. Burris replied that the manure was to be removed once per week by hauling in a dump truck.

Chair Smith asked if there were others to speak in favor of the Special Use Permit.

Sidney Smith, 44803 Ledbetter Road, came forward. Mr. Smith indicated that he is the boyfriend of Heather's mother. He told that he makes many hay runs and knows that the horses are well fed. He gladly helps Ms. Burris take care of her "babies". She is a good mother to both her children and her horses. He furnishes the equipment to maintain the pasture area.

Daniel Gathings, 39267-C Holly Ridge Road, came forward. Mr. Gathings is Heather Burris' boyfriend. He stated that he had worked to clear trees and cut away brush to make more pasture for the horses. The lot is entirely fenced in except about ¼ acre.

Bradley Burris, 36425-B Short Road, came forward. Mr. Burris is Heather Burris' brother. Mr. Burris stated that he also helped out a lot to clear land and put up additional fencing. Ms. Burris cares for the horses. The horses were there when the property was still owned by their father.

Chair Smith asked if there were any to speak in opposition to the Special Use Permit.

Kenneth Carter, 39267-A Holly Ridge Road, came forward. Mr. Carter indicated that he and his wife live next door. They have no problem with how Ms. Burris takes care of the horses.

Their primary complaint is about the odor. They like to open their windows in the summer, but cannot do that anymore due to the smell from the horses. They had complained to the county and are disappointed that this has taken so long to remedy. There were recently some complaints to the county about his property including an old community trash pile. He had worked to remove three to four dump truck loads of debris. The cooler weather has meant that the smell is better, but their home is only 65 feet from the pasture fence. In the summer, the hood on his pickup truck was covered with flies. You could not mow the grass without having flies all around you. He was concerned that Ms. Burris had only done the minimum to comply with other requests of the county. If he wanted to sell his home, he could not due to the odor. He emphasized that Ms. Burris had four horses on the property at one time. The county had him move his carport and shed to comply with the ordinance and Ms. Burris should comply as well. He sees this as a double standard. His property value is destroyed. Mr. Carter had a petition that had collected names in the neighborhood. Chair Smith indicated that the Board could not accept that as evidence due to not all being present to testify. Mr. Carter presented two photos as evidence. One showed a manure pile which he estimated would take about 6 truckloads to haul away and the other showed trees which he indicated had their bark removed by the horses. The photographs were accepted as evidence and passed to the Board members for viewing.

Jeff Chandler, 39285 Holly Ridge Road, spoke next. Mr. Chandler shared that he lives about 350' from the pasture. Ms. Burris does take care of the horses, but the odor is terrible and the flies are bad. Mr. Chandler shared that he was opposed to the Special Use Permit. He indicated that the family may have had the option to purchase additional land.

Larry Carter, 40212 Mountain Creek Road came forward. Mr. Carter shared that he thought the zoning rule of one horse per acre was a good law. The odors are terrible and that they are ashamed to bring folks to their house. The situation was not desirable and the laws have been broken.

Tim Swaringen, Zoning Office addressed the board. He indicated that notices had been sent to request compliance. He had made numerous trips to the property. Ms. Burris had kept doing some work to bring things into compliance including enlarging the pasture size. Procedures had been followed but some delays were incurred due to Ms. Burris' father's passing and her pregnancy. Mr. Swaringen gave a timeline of his activities related to the property. Asked whether there was much odor, Mr. Swaringen replied that there was a livestock odor that was as expected given the presence of horses. He counted up his visits and reported that he had been to the property seven times including yesterday. The smell is more potent in summer.

Chair Smith asked if there were any more wanting to speak and asked if there were any questions from the board. Hearing none, he declared that the hearing portion of the meeting was over.

The Board considered the conditions suggested by the Planning Department that would need to be met/maintained if the Special Use Permit was approved. There were no changes to the

proposed conditions which included, keeping no more than two horses on the property, keeping at least one acre in pasture and not composting manure within 50 feet of the pasture fence.

He shared that the board would now consider the four standards that need to be met in order to approve the Special Use Permit.

1. That the project will not materially endanger public health or safety... The board cited that flies and other health concerns were a problem. The board voted unanimously to find this false.
2. That the project will not substantially injure the value of adjoining property... The board voted unanimously to find this false.
3. That the project will be in harmony with or compatible with its neighbors and the land-use plan. The board voted unanimously to find this false.
4. That the project meets all other required conditions for keeping horses in the RA District. The board voted unanimously to find this false.

Chair Smith asked if there was a motion to approve or deny the request for the Special Use Permit.

Motion: David Dulin made a Motion to deny the request for the Special Use Permit based on the standards reviewed.

Second: Cindy Fish seconded the motion.

Action: The Board voted unanimously to deny the request for the Special Use Permit, SUP 17-01.

Chair Smith shared that there was one more piece of business which involved adopting the 2018 meeting dates for the Board of Adjustment. Mr. Remsburg shared the proposed dates for 2018 which were reviewed by the board members.

Motion: Devron Furr made a motion to approve the dates as recommended.

Second: Cindy Fish seconded the motion.

Action: The Board voted unanimously to approve the 2018 meeting dates for the Board of Adjustment.

There being no further business, Chair Smith asked for a motion to adjourn. Cindy Fish made a motion to adjourn the meeting, seconded by David Dulin. The meeting was adjourned at 8:15 p.m.

Michael Efird, Vice-Chair

Robert Remsburg, Clerk