

**AT A MEETING OF THE MONTGOMERY COUNTY BOARD OF ZONING APPEALS HELD ON
NOVEMBER 13, 2018, AT 5:00 PM IN THE MULTIPURPOSE ROOM, SECOND FLOOR,
MONTGOMERY COUNTY GOVERNMENT CENTER, CHRISTIANSBURG, VIRGINIA:**

CALL TO ORDER

Mr. Reilly called the meeting to order at 5:00 p.m.

Present: Michael Reilly, Vice-Chair
Charles (Chuck) Shorter, Member
David Moore, Member
Bob Miller, Alternate Member
Dari Jenkins, Planning & Zoning Administrator
Emily Gibson, Director of Planning
Marty McMahan, County Attorney
Catherine Clifton, Planning Technician

Absent: Richard DiSalvo, Chair
Zach Milton, Member

Mr. Reilly established the presence of a quorum.

APPROVAL OF MINUTES

On a motion made by Mr. Shorter and seconded by Mr. Moore and unanimously carried, the minutes of the September 4, 2018 meeting were approved.

OLD BUSINESS

Mr. Reilly introduced the meeting as a continuation of the previous meeting from September, in which Little River, LLC appealed the decision of the Zoning Administrator, whose notice of violation letter was dated June 4, 2018.

Ms. Jenkins gave a brief presentation to elaborate that the Board continued the September 4, 2018 public hearing to allow the appellant time to work with staff in order to resolve some of the site violations. She provided a timeline of correspondence received from Mr. Mosser, as well as Mr. Charles Baker with FEMA on October 5, 2018. In his correspondence, Mr. Mosser indicated he had hired an engineer to conduct a no-rise study. On October 26, 2018, staff met with Mr. James Cowan, an attorney hired by Mr. Mosser and provided copies of case information to Mr. Cowan. Since the email correspondence on October 5, 2018, she stated that staff had not received any additional information from the applicant or his engineer nor had staff received any information from Mr. Cowan since their meeting on October 26, 2018. She referenced the email correspondence from Mr. Jarrett M. Smith, Senior Engineer at Potesta & Associates, Inc. provided to members and staff just before the November 13, 2018 meeting began.

Ms. Jenkins reiterated that the purpose of the meeting was to determine whether she had erred in her decisions regarding the Notice of Violation. She confirmed that no inquiries had been received from the public since the Board's first meeting on September 4, 2018. Mr. Reilly asked Ms. Jenkins to confirm whether or not staff had received any response from the applicant about responding to his violations. Ms.

Jenkins responded that staff had asked for updates and additional information by October 29, 2018, but received none. Mr. Reilly then asked how long the issues with this property have been going on, to which Ms. Jenkins responded two (2) years. Mr. Miller then asked the appellant to provide a compelling reason as to why there was no additional information provided by the deadline.

Mr. Mosser claimed that he had no information to work off of and referenced a stop work order for the retaining wall. He stated that other than the retaining wall, there was nothing provided for him to address. He stated that the two (2) year timeframe suggested by Ms. Jenkins was longer than he was aware of, stating that it was not straightforward to say the violations have been there for two years because many of the violations have been there for fifteen years. He reiterated that since October 5, 2018, he retained an engineer and an attorney, but stated they are working on their own timeline. He also referenced the printed email he provided copies of to staff and the BZA members at their places prior to the start of this meeting. The email was from his engineer which stated that the calculations have been run and that a no-rise certification will be provided. He confirmed that Mr. Cowan, attorney, had met with Ms. Jenkins and had relayed to him that something could be worked out. Ms. Jenkins added that she gave Mr. Cowan the same information that was detailed in letters sent to Mr. Mosser.

Mr. Mosser reiterated that his engineer will be providing a no-rise certification letter and stated the four (4) parking spaces there were already existing, that he had only repaved and reconstructed a new wall when the other fell. He believes the no-rise certification letter will address that issue. Mr. Miller asked when the new retaining wall was built and Mr. Mosser replied that it was when the stop-work order was received. Mrs. Gibson provided a date of August 2016.

Mr. Miller then asked about the email provided prior to the start of the meeting. Mr. Mosser stated it was his understanding that the engineers would be working on the no-rise report and would provide the calculations used to come to the conclusion. He stated that his engineer was based in West Virginia and would be working with their company's Virginia office to produce the final document in order to utilize a Virginia license.

Mr. Moore stated that it appeared that none of the material circumstances have changed on the remaining violations and that it was his understanding that the Board of Zoning Appeal's job was to decide if the violation was justified and to vote to either uphold the violations or not. He stated that he has not heard any evidence that the violations were unjustified. Mr. Moore then moved that the Board of Zoning Appeals uphold the remaining findings of the Zoning Administrator other than those violations put aside at the last meeting.

Mr. Marty McMahon, County Attorney, added that the applicant has provided information on how he will remedy issues, but has not provided information on whether or not the violations were correct. The next steps is to ask Mr. Mosser when the violations will be fixed because the County's next action is to go to Court. The no-rise certificate will be helpful in remedying the situation.

Mr. Reilly stated that the Board had previously allowed sixty (60) days to correct violations and would have liked to have the information prior to the start of the meeting. Mr. Mosser claimed that he could not have had the information any earlier.

Mr. Miller seconded the motion put forth by Mr. Moore. Mr. Moore stated it seemed like there is a good case for remedying some of the violations. Mr. McMahon reminded the Board that they would be upholding violation numbers one (1) through four (4) and seven (7) through nine (9). Violations five (5), six (6), and ten (10) were determined to be violations under Virginia Department of Transportation's (VDOT) purview. Mr. Reilly concurred.

Mr. Shorter added that he supposes the motion is correct, but stated that he felt some of the issues had been corrected, such as the gate. He added that all of the vehicles have been moved due to recent flood events. He supported Mr. Mosser, stating that he believes Mr. Mosser is doing the best he can to resolve the other issues, but is at the mercy of other people. Mr. Shorter concluded that the County should be working with him rather than against him.

Mrs. Gibson reminded the Board that the vote to uphold the Zoning Administrator's decision does not mean the County stops working with the property owner. If the issues are remedied, then the violations go away. Only what is not remedied will go to Court. Mr. Moore asked to clarify that anything resolved will be removed from the violation list. Ms. Jenkins concurred.

Mr. Reilly called for any more discussion from the Board. Without any, he called for the vote.

On a motion made by Mr. Moore and seconded by Mr. Miller, the Board of Zoning Appeals voted (3-0-1, with Mr. Shorter abstaining) to uphold the Zoning Administrator's decision.

Mr. Reilly asked that Ms. Jenkins work with the appellant to move forward. Ms. Jenkins offered to come out on site and inspect those things that have been remedied. Mr. Shorter asked about the issue of unlicensed vehicles and trailers, particularly those that are considered to not be road ready, and why they are the responsibility of the property owner, not the responsibility of the vehicle owner. Ms. Jenkins confirmed that it is the responsibility of the property owner to ensure the vehicles on site are licensed and road ready. Mr. McMahon added that both parties had responsibility to ensure all ordinances are met. Ms. Jenkins stated that Mr. Mosser has the SUP for the property and the SUP stipulates that all recreational vehicles must be road ready and limits their length of stay so he bears responsibility in ensuring his SUP conditions are met.

With no additional business, Mr. Reilly adjourned the meeting at 5:24 PM.