

Minutes

CHARLOTTESVILLE BOARD OF ZONING APPEALS
Thursday, January 16, 2020
Basement Conference Room, City Hall

Members Present: Kevin O'Halloran, Lisa Green, Justin Ritter, Genevieve Keller, J. Addison Barnhart

Staff Present: Craig Fabio, Patrick Cory

I. CALL TO ORDER

The Meeting was called to order at 4:12 PM by the Chairman

II. PUBLIC HEARINGS

BZA 20-01-001

Mr. Steven Equi, the Property owner of 804 Rives Street, has filed an appeal of a zoning determination made by the Zoning Administrator on November 8, 2019. The Applicant contends that the Property is comprised of 4 lots of record that were never vacated though any legal course of action and are therefore valid. The Zoning Administrator believes that the lots were vacated and therefore any development rights have been lost.

Report by Craig A. Fabio, Asst. Zoning Administrator

Mr. Barnhart did recuse himself from this public hearing due to knowing the applicant.

Staff Report

Craig Fabio, Asst. Zoning Administrator –

LOCATION:	804 Rives Street
TAX MAP & PARCEL:	Tax Map 6, Parcel 87
APPLICANT:	Mr. Steven Equi (Owner)
PROPERTY ZONING/USE:	R-2/Vacant Parcel

APPEAL:

The Applicant is appealing the Zoning Administrator's November 8, 2019 determination regarding the 804 Rives Street, hereby referred to as the Property. The Zoning Administrator determined that the Property is comprised of one lot, Lot B, Block 21 Carlton. The Applicant contends that the Property is instead comprised of four (4) lots originally platted in 1891.

ANALYSIS:

The Carlton property was subdivided in 1891 (Exhibit A). Block 21 contained thirty-two (32) lots, each with approximately thirty (30) feet of frontage on Hampton Street. Lots 1 through 4 were located between Hampton Street to the North and a natural

creek bed to the South. In 1943, Lots 1 through 4 were combined and divided perpendicularly to create Lot A and Lot B (Exhibit B) fronting on Rives Street. This process vacated the original lots. The Applicant has provided an October 1943 plat of subdivision (Exhibit B) and a January 1985 physical survey (Exhibit C) of the Property as evidence of the continued existence of the original lots due to references to Lots 1 through 4. The April 23, 2018 Deed (Exhibit D) designates the Property as “a Division of Lots 1 through 4, Block 21, Carlton”. The City of Charlottesville Tax Assessor’s legal description of the Property is Lot B, Block 21 Carlton. The Zoning Administrator determined that Lots 1 through 4 are shown on Exhibit B, Exhibit C and Exhibit D solely as reference to the original subdivision.

Regardless of the determination on the vacation of Lots 1 through 4, the Applicant is not the property owner or agent for Lot A, and is seeking to reestablish Lots 1 through 4 for Parcel B only. As the Applicant does not control the entirety of the original four lots there is no means to reestablish them.

Supplemental Information from City Attorney’s Office

The Zoning Administrator’s verification letter of November 8, 2019 constitutes an interpretation of the City of Charlottesville’s zoning ordinance. The City’s ordinance defines a “lot” as “a parcel of land that is either shown on a recorded subdivision plat or described by metes and bounds or other legal description.” *See* City Code § 34-1200. Moreover, the zoning ordinance defines a “nonconforming lot” as a “lawful lot of record existing on the effective date of the zoning regulations applicable to the district in which the lot is located, that does not comply with the minimum applicable lot size or other lot requirements of that district.” *See* City Code § 34-1141(b). Accordingly, the ZA’s letter merely indicates that Lot B is a lawful, nonconforming lot and that there are no other pre-existing or usable lots on the parcel in question because Lots 1, 2, 3, and 4 do not appear on a recorded subdivision plat and cannot be recognized as lots of record with respect to application of requirements contained in the zoning ordinance.

The ZA’s letter cannot, however, resolve the underlying question of whether the recorded subdivision plat or other recorded documents actually establish the existence of any lot, including Lots 1, 2, 3, or 4. The recorded plat does suggest that Lots 1, 2, 3, and 4 were vacated and replaced by Lots A and B, with the residual lot lines drawn merely for reference, as distinguished from a plat that creates eight new lots, i.e., four lots each *within* Lot A *and within* Lot B. Nevertheless, whether that is a correct interpretation of the property interests created by the recorded documents is a question that can only be determined by the subdivision agent for the City or by a court of law. Thus, the Board of Zoning Appeals should decline to hear this appeal until the underlying legal question is resolved. If the BZA chooses to consider the appeal, it should make clear to all parties involved that any decision is pertinent only to interpretation of the zoning ordinance and does not constitute an adjudication of the underlying property interests.

Board Discussion and Motion

Mr. O'Halloran – The City Attorney is the staff's attorney, and the City Attorney does not work for the Board of Zoning Appeals. The staff does raise a point that we need to consider. How we feel about that will determine whether we hear the case this evening or not. Who is the subdivision agent for the city?

Mr. Fabio – The Director of NDS or the Planning Commission.

Ms. Keller – Why did they not enter into this prior to this point?

Mr. O'Halloran – It may not belong here.

Mr. Fabio – It is merely process. The supplemental information from the city attorney's office came to staff yesterday.

Ms. Green – So it hasn't had an opportunity to be scheduled for subdivision?

Mr. Fabio – This question came up early in the week from staff, who generally deal with subdivisions. Does the BZA even have merit here? It then went to the city attorney's office, and we received the determination yesterday.

Ms. Keller – It may be one of those of director or designee.

Mr. Fabio – It's essentially the Planning Commission if there is an appeal from the director.

Ms. Green – If the director makes a decision, the appeal would go to the Planning Commission.

Mr. O'Halloran – It really isn't questioning the zoning administrator's letter because the zoning administrator really didn't get to the question that's at issue.

Mr. Fabio – The zoning administrator can't speak to the legal question. It is not a zoning matter. The appeal is here because the appeal of a determination is the zoning process must go through the BZA.

Ms. Keller – At this point, I don't see how we can determine the underlying legal question.

Mr. O'Halloran – I agree.

Mr. Ritter – It sounds like a cloud of title issue. I have dealt with this issue in the city before.

Mr. O'Halloran – I don't think that it belongs here.

Mr. Fabio – The determination that was given to staff is that this is a matter that can be heard by the board because of the determination made by the zoning administrator. It will not solve the underlying question.

Ms. Keller – We usually hear from applicants. Are we going to determine if we are going to do that?

Mr. O'Halloran – That's the question that we are discussing right now.

Ms. Green – Is it our role to say that the zoning administrator should not have made the determination?

Mr. O'Halloran – I think that the city attorney is saying that zoning administrator determined that Lot B is an appropriate lot and didn't address the question of the underlying four lots. It really isn't appropriate for us to look into whether or not his determination was correct. That matter of the underlying lots has to be addressed by somebody else. I am inclined to agree with that. The city attorney does say that there no lots of record.

Mr. Fabio – That would be the determination that the board would make. It would have no bearing on the subdivisions.

Ms. Keller – I think that we have the right to decline to hear this without making a determination about whether the zoning administrator should have ruled or his ruling was correct. I don't see the reason for us to muddy it. It would be another decision to appeal.

Mr. Fabio – There has been no zoning ordinance violated or anything challenged at this point. It's just a question of how many lots.

Mr. O'Halloran – That is the question. A number of us believe that this is not the appropriate body to answer that question.

Ms. Keller – It seems that it is a subdivision question or a legal question.

Motion: Ms. Keller – I move that we decline to hear this case (Seconded by Mr. Ritter). Motion passed 4-0 with one abstention.

BZA 20-01-002

Mr. Mike Brown, the Property owner of 1218 Avon Street, has filed an appeal of a Notice of Violation sent to the property owner on November 26, 2019. Section 34-1032 of the Zoning Ordinance states that the total amount of signage shall not exceed 75 square feet. Three logos were installed to a gas station canopy without sign permits. There are five (5) signs on the property, but only three (3) signs are permitted. The applicant contends that he was given permission by the City to have all five (5) signs

Report by Craig A. Fabio: Asst. Zoning Administrator

Staff Report

Craig Fabio, Asst. Zoning Administrator –

LOCATION: 1218 Avon Street
 TAX MAP & PARCEL: Tax Map 59, Parcel 149
 APPLICANT: Mr. Mike Brown, Owner (Genesis Management Corp)
 PROPERTY ZONING/USE: B-2/Convenience Store and Gas Station

APPEAL:

The Applicant is appealing the November 26, 2019 Notice of Violation/Order of Correction, issued by the City of Charlottesville Zoning Administrator, regarding the allowable number of signs at 1218 Avon Street, hereby referred to as the Property. The appeal letter states that the Applicant believes that they received approval for all of the signage on the Property.

BACKGROUND:

The Applicant operates the convenience store (Brown's Market) and gas pumps located on the Property. The gas operation was recently expanded with the addition of a canopy and new pumps. As part of the project, three (3) signs were installed on the new canopy and one (1) new freestanding sign was installed at the corner of Avon Street and Druid Avenue. There is one (1) existing "Brown's" sign on the building that brings the total number of signs on the property to five (5). In accordance with the City of Charlottesville Zoning Ordinance the maximum allowable number of signs for the Property is three (3). The Applicant was issued a Notice of Violation/Order of Correction for exceeding the allowable number of signs on the Property.

ANALYSIS:

The Property is located within the B-2 Zoning District with an Entrance Corridor Overlay. In accordance with the City of Charlottesville Zoning Ordinance the Property is eligible for a maximum of (3) signs. The Entrance Corridor Overlay restricts the allowable aggregate area of all signs to seventy-five (75) square feet (Sec. 34-1032(a)). City Staff is unable to locate a permit for the existing "Brown's" sign that has been in place for a number of years. A permit for the new freestanding sign was submitted July 11, 2019 and approved August 7, 2019. The City of Charlottesville has not received permit applications for the three (3) signs on the new gas canopy. A permit submitted for the canopy signage would be denied as the total number of signs would violate the allowances for the Property. The Applicant has submitted a July 29, 2019 email (Exhibit A - page 4) from Jeffrey Werner, City of Charlottesville Historic Preservation and Design Planner, as evidence of approval for the five (5) total signs. Mr. Werner reviews and approves sign permits wholly on the basis of compliance with Entrance Corridor or Historic District regulations. Zoning Staff reviews and approves sign permits for zoning compliance. Regardless of any

perceived approvals from Mr. Werner's email(s), permits are required prior to installation of signage. No such permits exist. The canopy signage has been installed in violation of the Zoning Ordinance.

EXHIBIT A:

Exhibit A (attached) is the Applicant's appeal submittal.

Applicant

Mike Brown, Applicant – We had no intention of violating city rules or regulations. I met with Mr. Werner and we went over the signage. My understanding was that we could have the three logos. The Brown sign could remain. At that particular time, I didn't know that I had to apply for separate sign permits for the canopy. My understanding was that Mr. Werner was the designer. He was going to approve the canopy. He also approved the freestanding sign. I don't think that it's fair for a city employee or designer to give us the go ahead. It comes back and we get notified that we were in violation. I don't think that's fair. That's what Mr. Werner does every day. That's his department. We were just relying on the information that we got from him. I got a rough estimate to take it down. It's going to be \$3,000 or \$4,000 to get that redone. We can't afford to do these jobs twice. I looked at the other BP gas stations in Charlottesville. They all have three signs, and they have a sign on the building. The only difference is that they are illuminated and we are not. Staff said that the other BP gas stations are in violation. They are going to have to cut their lights off as well. We met with the designer and he gave us the go ahead for the canopy. If staff had told us that we couldn't have it, we wouldn't be in this predicament.

Mr. Barnhart – Did the number of signs come up in your meeting with Mr. Werner?

Mr. Brown – No sir. We talked mostly about the square footage.

Mr. Barnhart – You did have to apply for the signs?

Mr. Brown – I didn't know that I had to apply for signs on the canopy. I wasn't aware of that. I didn't realize that we needed separate sign permits for that.

Mr. O'Halloran – It is required, but you didn't know at the time.

Ms. Keller – Did Mr. Werner mention that you needed any other permits?

Mr. Brown – No ma'am.

Ms. Keller – Did Mr. Werner indicate that the application was complete? Did you receive a signed certificate of appropriateness from him?

Mr. Brown – I have not received that with any sign.

Ms. Keller – Did Mr. Werner verbally tell you that you could do this?

Mr. Brown – Yes. He also gave it to me in writing.

Ms. Green – I have questions for staff. We have three issues. We have a canopy with logos, we have a freestanding sign that's double-sided and lit, and we have a sign on the store, which we can't find a permit. We have a permit for the freestanding sign. This goes before Entrance Corridor, which was done administratively. During that application, does that canopy also have to be approved?

Mr. Fabio – I don't believe so. I don't have the approval. In the initial pre-construction meeting for this project, I spoke to signage, had concerns about the aggregate, and the number of signs. Based on the size of the Brown's sign, in my estimation, knowing of the 75 square feet, there are multiple times in the correspondence that was quite lengthy with Mr. Werner, where he references the requirement for a sign permit. I do fully believe that this was a misunderstanding. There are plenty of references to the sign permit. Mr. Brown was dealing with several third party vendors on behalf of BP. There was quite a bit of communication with sign companies. There were a lot of things lost in translation. Mr. Brown and I did speak to what their allowance was because there were issues on approval with the freestanding sign. Several submittals were that it was too large. It was a miscommunication. There was continued misinformation.

Ms. Green – The allowance for the sign cannot exceed 75 square feet on the property. Based on the staff report, you are saying that the pole sign, the wall sign, and the logos all equal 75 square feet?

Mr. Fabio – I am uncertain of that. The numbers that were provided to Mr. Werner for the square footage for the logos was approximately 1.1 square feet, and they are significantly larger. We are unclear on the total commutative signage on the property. Currently, the staff does not have a physical record of the Brown's sign, and this is problematic. It's a record keeping problem that the city has. I am certain that Mr. Brown received a permit for that. I know that he got a permit for that. We just don't have the physical record of it. Staff contends that there were two signs applied for: the Brown's sign on the building and the freestanding sign. We do have the permit for the freestanding sign. The area and size of that sign is in compliance. It is essentially the number of signs on the canopy and the compliance with the COA.

Mr. O'Halloran – What is the issue with the illumination?

Mr. Fabio – The illumination is also an issue. The canopy was specifically not to be illuminated per the Entrance Corridor COA.

Mr. O'Halloran – And the other gas stations are not in entrance corridors?

Mr. Fabio – They are not in entrance corridors. Staff has a list of 16 gas stations that are within city limits that we are actively researching to determine the number of signs.

The closest BP to Mr. Brown does have five signs with three on the canopy. We have not been able to find any sign permits. They were installed without staff's knowledge in violation. We are now aware of them, and they are in violation. We will be treating them the same as Mr. Brown. The lighting is purely based on the entrance corridor requirements and the administrative certificate of appropriateness that stated that it may not be illuminated.

Ms. Green – I would like to see that COA and the submitted application.

Mr. Fabio did step out of the meeting to retrieve the COA and the submitted application

Ms. Keller – Usually, you don't get your building permit until you get your certificate of appropriateness. With any kind of design control district, entrance corridor, or conservation district, you get those approvals. I don't know how that happens within city government. If I have received my certificate of appropriateness, I would feel that I had the "go ahead."

Ms. Green – It's about documentation.

Ms. Keller – I am not clear about the chronology. The applicant is caught in the middle of this.

Mr. Fabio did return to the meeting with the COA and the submitted application.

Mr. O'Halloran – Here is the certificate of appropriateness. It has been signed off on. There is a picture of the canopy with three logos on it.

Ms. Keller – There is a condition at the bottom that says that canopy lighting over pumps to be shielded and recessed into the canopy.

Ms. Green – At the very bottom, "approval conditions: canopy lighting over pumps should be shielded." It says that you have to have a permit, but I am approving it.

Mr. O'Halloran – Mr. Werner is saying that they're appropriate for the entrance corridor, but you need to get a sign permit.

Mr. Fabio – Mr. Werner's email, which is in the application, is also copied with Clint Shiflett with Timmons. In November, 2017 project meeting with Mr. Shiflett, Mr. Brown, and Mary Jo Skyla, the notes from that meeting state a total number of 3 signs are allowed. I have many emails, and they all reference in different places permit requirements. These are just emails and thus not in the packet. He does have plenty of room in the aggregate.

Mr. Barnhart – The zoning code says that he can only have three.

Mr. Fabio – He can have two plus the one in the corner.

Mr. Barnhart – And that’s the case for other gas stations in the area?

Mr. Fabio – That’s correct. Just like any other business, we go in and we don’t know about it. We have determined that Mr. Brown is correct. Many of the gas stations are in violation. We have 16 gas stations, and we are documenting each of them.

Ms. Keller – Will you be citing their owners?

Mr. Fabio – The property owner receives the violation. In this case, Mr. Brown is the applicant and the property owner.

Ms. Green – Is there any waiver requirement in the ordinance that would allow a variance to allow more signage in keeping under the square footage?

Mr. Fabio – There is not a bonus of any kind in the ordinance.

Mr. O’Halloran – The question before us is whether Mr. Brodhead was correct in determining that Mr. Brown’s property was out of conformity with the ordinance. That’s what we need to focus on. We have spent a lot of time talking about whether Mr. Werner’s communication with Mr. Brown. I think that we need to focus on that first question.

Ms. Keller – Should we be considering the signs and the illumination separately?

Mr. Fabio – The illumination is not part of this case. The illumination is a separate piece. Mr. Brown is going to work with staff to bring the property into compliance. The signage on the canopy has been turned off. The illumination under the canopy remains. The canopy cornice that was restricted by the COA has been turned off. The overall lighting of the sight is not in compliance, and staff is working on the issue separately.

Mr. O’Halloran – In order to conform with Mr. Brodhead’s letter, he would need to get rid of two signs?

Ms. Keller – Was there any letter that accompanied this certificate of appropriateness or is this the only thing? Is that the standard practice?

Mr. Fabio – I am unclear of Mr. Werner’s standard practice.

Ms. Green – Here is the problem that I have with it. I feel that there is so much unclear communication on here.

Ms. Keller – I think that you could read this to interpret that if you are going to want any additional signage, you would require a special permit. I can see it both ways. I can certainly see that an applicant believing that they have been approved.

Mr. O’Halloran – The picture here does look like what he now has.

Ms. Keller – What would a motion for this look like?

Mr. O'Halloran – Mr. Brown is trying to overturn Mr. Brodhead's determination. We either overturn the determination or we don't. We either agree with Mr. Brodhead or we disagree.

Public Comments

Mr. Fabio read an email from Mr. Jeffery Stricker and Ms. Jenna Horn at 700 Druid Avenue addressed to Mr. Brodhead, the zoning administrator. Email was against overturning the determination of Mr. Brodhead.

Board Discussion and Discussion

Mr. Barnhart – I am struggling with getting on board with that. The states that three signs are required. We have more than three signs. It seems black and white in that sense. I know that this does grey the issue. I am thinking about the next applicants. Are they going to be able to come and point to a stack of emails and certificates and say that it was confusing and I didn't understand? It also seems to me that all of the other signs , not in compliance, are going to be violated and fined. It doesn't seem fair to give an exception to me, when the law seems very clear. I do have sympathy for the applicant. I wish that the applicant would have understood what we are reading here, which is the law. I am open to other options. It seems to me that it is an easy issue. It's 2 signs too many.

Mr. O'Halloran – I am in line with what you are thinking. Honestly, this document is so confusing. For me, that tips the balance. The city ought to have done a better job with this. I am very much on the fence as well. I agree with everything that you are saying. This body is here to make exceptions. This is one that I would make an exception.

Ms. Keller – You are not clear what the standard operating procedure is.

Mr. Fabio – The certificate of appropriateness is purely for what is appropriate for the district per entrance corridor.

Ms. Keller – What is the standard procedure about the order that those are issued? Are they issued independently?

Mr. Fabio – They are independent. You normally don't apply for building permits until after you receive your COA.

Mr. O'Halloran – Mr. Barnhart raises another point. What about these other 15 gas station?

Mr. Ritter – It seems like a vested rights issue.

Ms. Green – I am on the fence with this as well. Reading the ordinance is black and white with me. The last sentence on the application is what gives me pause. It's very clear in the ordinance. We shouldn't need a land use attorney to fill out sign permit application. This should be simple. This does not give permission to add the logos.

Ms. Keller – Do we know if an entrance corridor application sign was placed on the property?

Ms. Green – I believe it was.

Motion: Ms. Keller – I move that we overturn the determination on the basis that the issued Certificate of Appropriateness is confusing and misleading to the applicant (Seconded by Mr. Ritter). Motion passed 4-1

The Board of Zoning Appeals overturned the determination that Mr. Brodhead made.

Mr. Barnhart – Can I talk about the case with members after the case?

Mr. O'Halloran – It could potentially come back. I don't think that there is a prohibition if you are having a private conversation.

Mr. Fabio – Staff is seeking a training for the board to have clarity on the rules

III. ADJOURNMENT

Meeting was adjourned at 5:05 PM