

Minutes
Regular Meeting of the Florence County Board of Zoning Appeals
Tuesday, February 21, 2023 at 6:30 p.m.
County Complex, Council Chambers, Room 803
180 N. Irby St., Florence, South Carolina 29501

The Florence County Planning Department staff posted the agenda for the meeting on the information boards at the main entrance and lobby of the County Complex and on the information board in the lobby of the Planning and Building Inspection Department building.

The agenda was also mailed to the media.

I. Call to Order

Chairman Brian Casey called the meeting to order at 6:30 p.m.

II. Attendance:

Board Members Present: Chairman Brian Casey
Daniel Jackson
Kenneth E. McAllister
Kenneth Muldrow
Wallace Smith

Board Members Absent: Vice-Chairman Brenda Deas
Bryant Hollowell
James Cooper, Jr.
Craig Floyd

Staff Present: Mr. J. Shawn Brashear, Planning Director
Mr. Ethan Brown, Deputy Director
Derrick Singletary, Senior Planner
Brian Kennedy, Engineer Manager
McKenna McRoy, Planner III
Lisa M. Becoat, Administrative Assistant

Public Attendance: See sign-in sheet on file at the Florence County Planning Department.

III. Review and motion of the minutes:

- Meeting of June 21, 2022.

Motion to approve the minutes as presented - Commissioner Daniel Jackson / **Second** – Commissioner Wallace Smith / Minutes of the June 21, 2022, meeting were unanimously approved 5 to 0.

IV. Public Hearing:

BZA#2023-01 An appeal requested by Michael Lindley, from requirements of the Florence County Code of Ordinances, Chapter 30, ZONING ORDINANCE, ARTICLE VII. – GENERAL AND ANCILLARY REGULATIONS, Sec. 30-249. – Nonconformities for property located at

2537 Heathway Drive, Florence, SC 29501 as shown on Florence County Tax Map No. 00125, Block 01, Parcel 138.

Mr. Ethan Brown presented the staff report to the Board. A copy of the staff report and presentation are available at the Florence County Planning Department and on the Florence County website at: <http://www.florenceco.org/offices/planning/bza/>.

Mr. Brown indicated to the Board that the requested appeal was submitted by Mr. Michael Lindley and that the property was owned by Michael and Stephanie Lindley who resided at 2537 Heathway Drive, Florence, SC in County Council District Nine. The applicant is appealing to the Board that the zoning administrator erred in their interpretation of the zoning ordinance in regards to legally non-conforming structures. The subject property is in a residential neighborhood and the property and adjacent properties are currently unzoned. The neighborhood properties are in the process of being zoned and staff will provide some background to that effect later on in the presentation. Mr. Brown further provided information regarding the accessory structure that was permitted as a pool house and the reason for the appeal that was being presented to the Board.

Mr. Brown stated that Michael Lindley was initially issued a building permit on October 13, 2020 to construct an accessory pool house and a certificate of occupancy was issued on December 23, 2020 for the completed structure of an accessory pool house. On January 25, 2021 the Florence County Code Enforcement Division received a written complaint that a hair salon was being operated at 2537 Heathway Drive, Florence. On January 27, 2021 the Florence County Codes Enforcement staff made a site visit to 2537 Heathway Drive, Florence to confirm that a business was being conducted at the aforementioned location. On February 1, 2021 staff met with Mr. Lindley at 2537 Heathway Drive, Florence and informed him of the requirements to have the structure correctly permitted and the necessary steps to get the permit issued. After Mr. Lindley failed to apply for the necessary permits at a reasonable time he was issued a code violation citation on November 2, 2022. Mr. Lindley after that time contacted staff and informed them that he was still working on getting an Engineer to complete the necessary procedures so that a permit could be issued. Mr. Lindley at that time was provided information that as of January 27, 2022 a moratorium had gone into effect that would prohibit him from being issued a zoning compliance certificate to operate his business even if the necessary building requirement standards were met. The applicant Mr. Lindley had over eleven (11) months to complete the necessary steps to be issued a permit prior to the moratorium going into effect. Additionally, unbeknownst to staff, a retail license from the Department of Revenue was issued for 2537 Heathway Drive, Florence twenty-two (22) days prior to Florence County Planning and Building issuing a certificate of occupancy for the pool house. If the applicant, Mr. Lindley would have informed staff at the time of construction of the pool house that it was their intention to use the pool house for commercial use, staff could have assisted them with ensuring that the building was in compliance with all applicable commercial building codes. The moratorium that was put into place county-wide by Florence County Council and prohibited certain changes of use while staff was tasked with recommending zoning designations for unzoned properties and clusters of properties surrounded by municipal limits. Mr. Lindley was informed that the moratorium would no longer affect the property once the property had been recommended for zoning. However, since Mr. Lindley's property was being recommended for a residential zoning designation (R-1), zoning would still prohibit the commercial use of the building once the moratorium was lifted.

The applicant Mr. Lindley in this case maintains the position that this zoning restriction should not have applied to his particular situation since the structure was being used for a business prior to the moratorium and was legally nonconforming. He maintained the use of the business should have been grandfathered in and staff should have been able to issue the required documents for the work to correct the structure and issue the certificate of occupancy.

The zoning administrator however determined that this use did not meet the requirements of a legally non-conforming structure since the structure was not lawfully being occupied. This determination was based on staff's interpretation of Section 30-249 of the Florence County Code of Ordinances which states "Nonconforming uses, buildings, or structures are declared by this Ordinance to be incompatible with

permitted construction in the districts in which they are located. However, to avoid undue hardship, the lawful use of any such use, building, or structure at the time of the enactment, amendment, or revision of this Ordinance may be continued even though such structure does not conform with the provisions of this Ordinance.” The phrase is what most people consider the grandfather clause for legally non-conforming properties if your use was occurring prior to the zoning. However, it is important to note that the ordinance indicates the lawful use of any such building or structure. In this case staff determined that this structure is and was not currently a lawful use of the structure as the original use of the certificate of zoning compliance was for an accessory pool house, not a commercial use. It was also determined that the structure itself is and was not lawful as it sits today because it does not meet the setback requirements for a commercial structure in an unzoned area. At the time the structure was permitted as a pool house it was unzoned and did meet the setbacks for a pool house in an unzoned area. However there are different setbacks for commercial use in an unzoned area and the structure does not meet those commercial requirements. The zoning ordinance provides that a structure intended for commercial use in an unzoned area to have rear setbacks of twenty (20’) feet. The site plan that was submitted with the original building application for the pool house only showed the structure to have sixteen (16’) foot rear setbacks. To be exempt from this setback requirement under the nonconforming section of the Florence County zoning ordinance, the structure would have had to been constructed prior to the adoption of the current Florence County zoning ordinance, which was adopted in 1999. This structure was constructed in the year of 2020 and thus would not comply with the zoning ordinance.

The present zoning of the property is scheduled to appear before County Council for third reading at the March 2023 meeting. The recommended zoning district designation is for R-1 Single Family Residential. This recommendation was heard by the Planning Commission and forwarded to County Council with an R-1 zoning recommendation. It has had two readings and will have its third and final reading in March 2023. Mr. Lindley was scheduled to appear before the Magistrate Court on January 19, 2023 for the code violation but Codes Enforcement has postponed the trial until Mr. Lindley’s case could appear and be heard before the Board of Zoning Appeals.

It is important for the Board to note that the applicant is not requesting a variance from the requirements. This is because in this situation the applicant would not be eligible for a variance, because it would be considered a use variance which is prohibited by Section 30-293 of the Florence County Code of Ordinances which states: “the board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use or land or to change the zoning district boundaries shown on the official zoning map.” Basically the ordinance does not allow the Board to issue a use variance, if the use is prohibited by zoning the Board cannot overrule that.

Instead the applicant is appealing the zoning administrators decision concerning whether or not the structure is legally nonconforming. The authority for the BZA to hear an appeal such as this comes from Section 30-293 of the Florence County Code of Ordinances which states: “The board of appeals has the following powers: to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrator official in the enforcement of the Zoning Ordinance.

In the event the Board does choose to rule in favor of the applicant’s request, the applicant would still be required to bring the structure into compliance. This would include necessary permitting and renovation to pass a final inspection for a new certificate of occupancy to be issued. The applicant would also need to meet all commercial zoning requirements prior to receiving zoning compliance. This would include having two parking spaces on site and one of those being designated as handicap accessible. A type “B” buffer yard would also be required between the structure and the adjoining residential use which would include a four foot (4’) wood stockade fence and fifteen foot (15’) of separation with appropriate shrubbery in between. Looking at the maps of the property it appears most of the requirements could be met. No buffer yard requirement would be required in the rear of the structure as it appears to be vacant land. Thus the buffer yard requirement would be required on the sides of the property due to the residential use beside a commercial use. Although there would not be a buffer yard requirement for the rear of the property since it is vacant, the structure would still have to meet the minimum setbacks for commercial use, which it presently does not. This means that the

applicant would also need a variance for a reduction of the required setback from the Board prior to being issued zoning compliance. So if the Board ruled that staff erred in their interruption of the Ordinance the structure still does not meet the setbacks for commercial use and a separate variance would have to be given for that and that request would have to be re-advertised for public notice as it was not a part of the appeal request on the agenda for the meeting.

Also to note in this case if the Board finds that the structure is legally non-conforming, the structure would then be eligible for all privileges that come with that status. This includes things such as adding extra salon chairs if the applicant desired to do so. It could also entail future commercial changes of uses outside of a beauty salon. The applicant would also be eligible to apply for a sign permit at this location as well. He further stated to the Board that the case was very detailed and that staff wanted to provide to the Board as much information as possible for their review in making a decision in the case.

Mr. Brown provided a summary of all the information that was presented to the Board for consideration and stated that staff maintains their position that they did not err in the determination, and that there is sufficient evidence to show that the structure does not meet the requirements of a legally nonconforming structure because it was not a legal use at the time of the zoning.

Mr. Brown provided the comments and inquiries received by staff from the public. A copy of the comments and inquiries are maintained at the Florence County Planning and Building Department.

Chairman Brian Casey inquired if there were any questions and discussion by the Board.

There was discussion and questions by the Board.

In response to questions and discussions by the Board Mr. Brown indicated that R-2 residential zoning including all the zoning within Florence County did allow for a residence to have a home occupation. That is an option in this case however, the home based business must be in the primary residential structure and not the accessory structure. Staff cannot answer to the intent of the applicant but can say that a retail license from the Department of Revenue was received prior to the certificate of occupancy for the accessory structure was issued.

Chairman Brian Casey inquired if there was any public in attendance at the meeting who desired to speak in favor of the requested appeal.

Mr. Michael Lindley and his spouse Stephanie Lindley, 2537 Heathway Drive, Florence, SC 29501, the applicant was present in the meeting and spoke in favor of the requested appeal. (Mr. Michael Lindley provided a packet of information to the Board with detailed dates and information including letters of support from their immediate neighbors. A copy of the packet of information is maintained at the Florence County Planning and Building Department.)

Mr. Michael Lindley stated that he and his spouse have been married for twelve (12) years and have resided at 2537 Heathway Drive, Florence since November of 2018. He works in the R & D Department at ACS Technologies in Florence, SC. His spouse Stephanie is a hair stylist. They have three (3) children and love their neighborhood. They remain hopeful regarding their appeal request and wanted the Board to know that they did not keep detailed notes of dates and times of the events so some information is estimated but does reflect what they believe to be fair and accurate to the best of their knowledge and ability. He wanted it noted that the entire time they were working with the Florence County Planning Department it was their understanding that it was confirmed and okay to run the hair salon. The issue was that the building needed to be in code compliance for a commercial building. At no time were they informed that there was a chance and or possibility that their property zoning could be changed and, that was most likely due to his ignorance as this is not an area where he works in or is familiar with. After much effort working with the County to get an Engineer lined up to perform the work it was not until December 5th, 2022 when a yellow and red sign was

placed in their front yard that he became aware that the zoning of their property could be changed. It did come as a shock to them especially since they had many previous conversations with Florence County to get the property into compliance. The basis of their appeal is that they are asking to be grandfathered in with the existing zoning and be able to follow through with the existing work that had already been laid out with Florence County Zoning and Code Enforcement.

On September 2020, they applied for the permit for their pool house but could not remember if the permit was issued at that time. Their intent was to build a pool house as they had discussed it for years as they wanted to host family events and gatherings. Then COVID-19 happened and Stephanie was out of work for several months, he was working from home, all the children were home and they wanted more family time and also wanted the space to have it. He was also thinking about the resale value of their home and decided to add a mother-in-law suite to the accessory building. They added a room in the front of the pool house with a bathroom, shower and small kitchenette area all with the idea that when they went to sell their home they wanted to get the maximum value to be able to make sure that more people would be interested in the property. In October of 1999 his spouse, Stephanie with a partner opened a hair salon in Florence, SC, that partnership went south very badly during COVID and they decided she needed to be pulled out of that. As they discussed their plans going ahead it occurred to them that they could utilize the space they already had. They only wanted a one person space as they did not intend to have any employees and decided that the accessory structure was a great space for it. The clients would love it as they would be in a private place and would not be as exposed to the transmission of COVID, as most people were still concerned about the COVID virus. Due to his ignorance of proper procedures and bad advice of family and friends they did not inform the code inspectors of their intention to have a hair salon. They did apply for a certificate for a retail license ahead of time and did intend to use the accessory structure as a hair salon. What he understood to be true, which he now understands is false, was that if the structure were built and the certificate of occupancy was completed, they could begin to use it, and the zoning ordinances and or zoning compliance would be grandfathered in. Not that they would have to go back and make it commercial. That was a mistake on his part and is something they now regret. If he would have understood he would have had it corrected a long time ago and it would cost them a lot less money. As presently they are now having to retrofit. It is something that they regret and was based on bad advice but it is something they desire to own up to. It was their intention prior to the certificate of occupancy being issued to use the front room of the accessory structure as commercial property.

In December of 2020 the certificate of occupancy was received from Florence County for the accessory structure and on December 29, 2020 was when they received their first client into the hair salon. Sometime around February of 2021 an older gentleman by the name of Edwin, was the first contact from Florence County Codes Enforcement. He looked around and explained to them what they needed to do as he stated it needed to get handled. Jonathan Atkinson also came out and assisted by giving them more detailed information as to what was required. He indicated that they needed engineering plans prior to a permit being requested for the project to identify what changes would be made and a variety of other things. As they had no engineering plans they did not apply for a permit. They also did not know how they were going to complete the renovations as his spouse was out of work during the pandemic and they had used all the credit they could get to build the pool house and could not pay a contractor at that time. They are now in a better position and can afford to pay for the renovations. One of the staff members at Planning and Building when explained about their finances informed them that they had about six months or so to get their permit. They additionally said they could get an inspection every couple of months or at least every six months and could drag the permit out a couple of years. It was never their intention to drag the permit out that long or as long as they have, but it was put into their mind that it was potentially an option as they tried to get the funds together.

In December of 2021 a voicemail was left for the Engineer that had completed the original pool house plans. As he had completed the original plans we felt it would be easiest for him to modify the plans. I left multiple voicemails and text messages for the Engineer as he was extremely difficult to get a hold of and I didn't hear back from him until on or about the end of April 2022. I was out of town and did not receive his call. I called him back in early May of 2022 and left him several messages and I never heard back. I tried calling him again and again letting him know I really needed his assistance. They are not sure why he was so hard to get ahold

of as many contracting people were busy during that time. One of the things they did in the meantime was diligently pay down their debt and now have funds set aside to be able to complete the construction needed to bring the structure up to code as soon as permission has been provided to do so.

In early Spring of 2022 someone from the County visited their residence again inquiring about the commercial business which they were still running out of the pool house. They took some pictures of their home and the pool house and departed. They did not provide a name and or anything regarding a follow-up. A few weeks later Corey from Florence County Code Enforcement came out to their residence and they explained the history of everything regarding the business. At that period of time Florence County looked again and indicated that their property was unzoned and they could have the business but the building had to conform to the zoning standards. Tonight was the first time they had heard anything regarding the commercial setbacks for the property. All they remembered discussing was bringing the building up to code and parking standards. On April 26, 2022 they received a certified letter from Florence County signed by Heather Windham which explained the zoning code violation as they had discussed with Corey. After that they spoke with Corey and Teresa members of the Florence County Planning staff, which indicated that the zoning was still okay as unzoned. He then left a voicemail message for Jonathan Atkinson requesting whom he needed to speak with regarding his project and reached out again to the Engineer requesting his assistance. In early June 2022 he spoke with Heather again and also with Jonathan Atkinson who told him a similar story of what was required to be done including engineered plans prior to a permit being applied for. In early July 2022 he followed up with Corey and kept in touch with Florence County Planning and Building throughout the period of time; and during the entire process he was still trying to get in touch with the Engineer. Finally, July 26, 2022 he finally heard from the Engineer who met with him the next day concerning his project. He informed him at that time that he would get him plans within a week and to date he has not heard back from him. He has kept Corey informed of this and on November 2, 2022 they received a citation. He explained that he knew and understood what was going on but that it had been long enough and something had to be done. He provided me the citation and gave me until the middle of December 2022 to complete things. He provided another list of Engineers to reach out to where we were able to reach Mr. Ken Hayes who has agreed to assist with the project. He was due to come out to their residence on December 6th but Florence County Planning and Building placed a zoning notification sign on the property on December 5th which caused them to again pause any work from the Engineer. They have presently postponed their plans with Mr. Ken Hayes, the Engineer until they have resolved the zoning appeal issue.

They are now ready and able to move forward immediately with their project. They have an Engineer, Mr. Ken Hayes who has been very communicative with them and ready to complete the work. They feel that there are things that they could have handled better throughout this ordeal but at no point attempted to take actions which they thought were wrong or to intentionally delay the process or be in anyway unwilling to work Florence County Planning to move forward. They want to complete the work necessary to correct the zoning and be able to keep the hair salon open. They ask that the hair salon business be grandfathered into any zoning changes currently being considered for the property at 2537 Heathway Drive, Florence, SC. He indicated that attached with the packet of information provided was five (5) separate copies of letters from neighbors of the neighborhood in support of their hair salon business. He indicated that they had the original documents if the Board desired to have and or see them. He further indicated that they felt that their dates aligned closely with staff's information and that they were being as upfront, forthcoming and honest as they could be regarding the complicated matter and thanked the Board for allowing them to speak and for hearing them out.

Chairman Brian Casey inquired if there was any public in attendance at the meeting who desired to speak opposed to the requested appeal.

Mr. Danny Miles 2435 Heathway Drive, Florence, SC was present in the meeting and spoke against the requested appeal. When he heard that a pool house was being built at the residence of 2537 Heathway Drive, Florence, he did not have any concerns with it. He lived at 2526 for approximately thirty (30) years and they had a pool at that residence with a shop. Once it was sold the new owners turned the shop into a pool house. His concerns are a beauty salon in the community even though they have mentioned it would be only one

person working in the salon but there would be nothing preventing them from hiring someone else. There is another hair dresser that lives across the street from the Lindley's and what if they decide to open up a salon, what would stop them. If the community is zoned R-1 residential then it would stop the businesses. He is not an attorney and some of the information presented was above him. As living in a neighborhood community he feels that a business should not be approved to operate at the residence. The Lindley's requested and got approved for a pool house but now they have a retail license for a hair salon and also have to reconstruct the structure due to the setbacks. Everything seems wrong from day one and he is concerned for the Lindley's issues but does not think it appropriate to have a business set up in the neighborhood. He feels that this will open doors for other businesses within the neighborhood. If the neighborhood is zoned residential it should prevent businesses from being development within the neighborhood.

In response to some information from Mr. Miles the Chairman Brian Casey indicated that to his understanding an accessory structure could not be built on the property to house a hair salon. However, it could be operated out of the residential home, but not out of the accessory structure.

There was discussion, comments and questions by the Board.

In response to questions, comments and discussion by the Board, Mr. Brown indicated that once the R-1 residential zoning passed at County Council there would not be an opportunity for the Lindley's to have a commercial structure or hair salon at the location outside of the home.

There was discussion, comments and questions by the Board.

In response to questions, comments discussion by the Board, Mr. Brown stated that if the board decided that staff erred in their decision regarding the appeal, the applicant would still have to come before the Board with a variance request as the structure did and does not meet set back requirements. Staff would not be able to issue any type of zoning compliance for the structure until all set back requirements were met. That would mean that the structure would have to meet the rear setbacks which is twenty (20') feet from the structure to the property line and their site plan shows the structure only having setbacks of sixteen (16') feet. Once the Board reviews and if they decide to approve the appeal request the applicants would have all rights and privileges for their property as any other commercial property. If it were a variance request there could be stipulations placed on it but as it is an appeal of the zoning official's interpretation of the zoning ordinance there is no stipulations to apply. Basically did the zoning official correctly interpret the code or did they not.

There were questions by the Board for Mr. Michael Lindley.

In response to questions by the Board Mr. Lindley stated that he did not remember the exact day that his spouse and another stylist opened up a salon off of Hoffmeyer Road he believed it to be sometime in early 2019. During COVID the partnership soured to the point where they did not see the partnership continuing and made the decision to exit the partnership. That is the time they started looking at other options. The pool house project had already begun and they decided they would use that structure. They are not exactly sure when they applied for the business license. They were in the process of constructing the pool house with the front of the pool house being something of a mother-in-law suite. Then as they looked at other options of whether to go to a different salon, rent somewhere with booth rent, they just decided to use the structure that was already in the process of being constructed as it already had bathroom facilities. Before the pool house was finished and the certificate of occupancy issued they decided to utilize the structure as a hair salon. They regret doing it but they did not intentionally not inform Florence County Planning and Building about their plans. They followed bad advice and a lack of understanding. They understand that staff stated that the Board could put stipulations on variances and he would hope that staff and or the Board could put stipulations on changes of use at selling that indicated they could not do any signs or hire any other employees, if so, they would be willing to agree to those stipulations. They understood that it may not be an option but wanted the Board to know that they are willing to adhere to stipulations.

There was no further questions, comments and or discussion by the Board.

Motion - Commissioner Kenneth Muldrow made a motion that staff did not err in their administrative decision and that the appeal request BZA #2023-01 should not be granted. / The motion was seconded by Commissioners Daniel Jackson and Wallace Smith / Four Board members voted to deny the appeal request. One member (Mr. Kenneth McAllister) was opposed to the motion to deny the appeal request BZA #2023-01. / The motion carried with a vote of 4 to 1 to deny the appeal requested in BZA #2023-01

The Public Hearing was closed.

VI. Other Business

Chairman Brian Casey inquired of the Board if they had reviewed the draft and proposed 2023 Board of Zoning Appeals Meeting Calendar.

Motion – Commissioner Daniel Jackson made a motion that the 2023 Board of Zoning Appeals Meeting Schedule Calendar be approved as presented / **Seconded** – Commissioner Wallace Smith / The board of Zoning Appeals Meeting Schedule Calendar was unanimously approved with a vote of 5 to 0.

Mr. Ethan Brown administered and requested the nominations and votes for election of officers for the 2023 calendar year starting with the Chairman.

Motion - Commissioner Kenneth Muldrow made a motion that Brian Casey remain as the Chairman for the calendar year 2023 Board of Zoning Appeals. / Second Commissioner Wallace Smith. / No other nominations were made. / The motion and vote carried 5 to 0 that Commissioner Brian Casey remain as the Chairman for the calendar year 2023.

Chairman Brian Casey administered and requested nominations and votes for Vice-Chairman.

Motion – Commissioner Wallace Smith made a motion that Commissioner Brenda Deas remain as the Vice-Chairman for the calendar year 2023 Board of Zoning Appeals. / Second Commissioner Daniel Jackson. / No other nominations were made. / The motion and vote carried 5 to 0 that Commissioner Brenda Deas remain as the Vice-Chairman for the calendar year 2023.

VII. Adjournment

There was no further business, discussion or questions by the Board and the Chairman Brian Casey declared the meeting adjourned at 7:22 p.m.

Lisa M. Becoat, Secretary

Approved by:

J. Shawn Brashear, Planning Director

*These minutes reflect only actions taken and do not represent a true verbatim transcript of the meeting.