

REGULAR MEETING  
TOWN OF WAYNESVILLE  
BOARD OF ADJUSTMENT  
APRIL 6, 2010  
TUESDAY, 5:30 P.M.  
TOWN HALL

The Board of Adjustment held a regular meeting Tuesday, April 6, 2010. Members present were Neal Ensley, Mack Noland, Mike Erwin, John Richardson and Ken Stahl. Also present at the meeting were Land Development Administrator Byron Hickox and Deputy Town Clerk Freida Rhinehart. Chairperson Mike Erwin called the meeting to order at 5:30 p.m.

Approval of Minutes of July 7, 2009

Neal Ensley moved, seconded by John Richardson to approve the minutes of the July 7, 2009 meeting as presented. The motion carried unanimously.

Appeal of Administrative Decision – Forestry Activity – Sulphur Springs Neighborhood District – (SS-ND)

Jack Kersten representing Richard McCotter stated that the Sulphur Springs Neighborhood District has many permitted uses but nothing about forestry. If a use is not permitted, it is prohibited by virtue of not being included in permitted uses. Mr. Kersten referred to North Carolina General Statute 168-458.5 which restricts prohibiting certain types of forestry. He continued that “forestry” is defined as “the professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products”. The statute also states: “A city shall not adopt or enforce any ordinance, rule, regulation or resolution that regulates either:

- (1) Forestry activity on forestland that is taxed on the basis of its present use value. . .
- (2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester. . .

This section shall not be construed to limit, expand, or otherwise alter the authority of the city to:

- (1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:
  - (a) Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected. . .
- Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.
- Exercise its planning or zoning authority. . .”

Mr. Kersten said forestry is not allowed in Waynesville because it is not permitted, not because it is prohibited. He presented a Forestry Management Plan prepared by John Culp, a North Carolina registered forester who was also present at the meeting. Mr. Kersten said that Mr. Culp’s intention is not to clear cut, but to remove only dead trees, dying trees, and underbrush. The plan calls for removal of 40% of the trees, leaving 60% in place. He expressed concern about the potential for fire in the area and the ability of firefighting equipment to get to a fire.

It was pointed out by Mr. Kersten that the plan recommends “that a limited harvest be done with forest health and safety being the primary objective. Over-mature, diseased, damaged, and hazardous trees should be selected for harvest. Small saw-timber and pole-sized timber that is healthy should be left. The harvest should create some small open area that should be quite beneficial in re-establishing new saplings and increasing diversity. Dead trees should be salvaged, provided they are merchantable. Because the property is in close proximity to residential properties, special attention should be given to fuel reduction and emergency equipment access. If it is possible additional entrances should be established and a woods road system should be established to facilitate emergency vehicle access.”

Mr. Kersten said he had been told that the Public Works Director is very much in favor of additional accessibility. He continued that if his client were developing this property, no thought would be given to clearing certain areas of the property. It would not occur to anyone to consider such action as forestry. Town staff was presented with the forestry management plan and discovered that forestry was not listed as a permitted use. Mr. Kersten stated he realizes the difficulty of drafting an ordinance dealing with forestry but he feels Mr. McCotter should be allowed to remove some of his trees.

John Culp, a North Carolina Registered Forester who developed the Forestry Management Plan prepared for Mr. McCotter’s property, stated that he has a degree in biology from Marietta College and a degree in Forestry from the University of Michigan. He has been a professional forester for 29 years.

Mr. Culp said this will be a low intensity project. He considers anything to do with trees as forestry. If this were a high intensity project it would mean clear cutting all the trees. The intent in this case is the taking out of unhealthy trees and old trees with dead limbs that are likely to fall such as locust and poplar trees. Wind and ice create problems with these trees as well. With children playing up there it becomes dangerous. Mr. Culp shared photos showing some of the leaning, broken and downed trees on the property. He described the property as being in an unhealthy condition.

Mr. Kersten pointed out that a tree fell off this property onto a home located on an adjoining property this past winter.

Mr. Culp agreed with Mr. Kersten the undergrowth could present a potential fire hazard. Trucks might have problems getting onto the property.

Byron Hickox said the first person to call him about the property was the person planning to do the work. At that time he asked him about tree thinning. He said he would put together a forestry management plan and send it in. Mr. Hickox began reviewing the plan and sought some guidance from Mr. Benson the Planning Director. The State’s definition of forestry is rather vague and as Mr. Culp stated most anything to do with trees can be considered forestry. After review of the plan, Mr. Hickox and Mr. Benson came to the conclusion that this project is indeed forestry which is not a permitted use in any district.

Mr. Hickox reminded the Board of Adjustment members this is an appeal of an administrative decision. This is actually an appeal that the staff's determination of this activity as forestry is incorrect. The Board's decision is to determine (1)if the planning staff's decision to call this forestry is correct or (2)if it is another agricultural use or a secondary activity which might take place on any property in any district.

John Richardson asked if this were a smaller piece of property could it be considered landscaping. Mr. Hickox replied that planning staff determined that it would still be called forestry. Mr. Richardson asked about consideration of land maintenance. Mr. Hickox responded that there is no such category.

Mr. Kersten requested that the Board determine this proposal is not forestry as planning staff has interpreted it. He requested that they consider this only as the landowner trying to clean up his property and abate a fire hazard.

Mike Erwin inquired as to what could be done if the landowner were developing the property. Mr. Hickox responded that if the owner hypothetically were going to develop three multifamily units to maximize the density of the property, it would be considered clearing the area for construction.

Mr. Kersten added that if this decision were overturned, it would give the landowner and opportunity to go ahead and thin out some of the trees before developing the property. If the property is left as it is, a fire hazard is being created.

Ken Stahl wanted to know who would oversee removal of trees should the appeal rule in favor of Mr. McCotter. Mr. Hickox said that since the forestry management plan deals with erosion and sedimentation control, the land development office would enforce this issue with an erosion control permit. Also, public works would be concerned regarding possible damage to roads or streets.

Mike Erwin asked how long our current land development standards have been in place. Mr. Hickox replied since April, 2003. Mr. Erwin added that at that time, the economic downturn was not anticipated and this property possibly might have already been developed.

Neal Ensley said that regardless of the Board's decision, he felt a definition for forestry should be established. He would like to see a means of thinning trees that have fallen or are dangerous. Mr. Hickox responded that a formal recommendation by the Board of Adjustment would be appropriate to address such situations.

Mr. Erwin is on the committee that is reviewing the Land Development Standards. They are looking toward completing their review in the next few weeks. He said that now would be a good time to make recommendations for any changes.

Mack Noland reminded the Board of Adjustment of some of the guidelines that must be used in making interpretations of zoning ordinances. He quoted, "In exercising this power, the basic

principle for the Board to keep in mind is that it must not vary the ordinance. Its function here is to interpret and apply what the governing body has written, not to vary that legislative pronouncement to fit its own ideas.”

Mr. Noland feels the appeal of the administrative decision should be withdrawn to allow the Board of Adjustment to ask the Planning Department to study the issue not just for this district but all districts.

Mr. Hickox reminded the Board of Adjustment that their job is to determine whether Mr. McCotter’s proposal is or is not “forestry”. Mr. Kersten said it is not. It is merely clearing property to eliminate dead trees.

Ken Stahl moved, seconded by John Richardson, to repeal the administrative decision regarding the interpretation of clearing dead trees from property as forestry.

John Richardson asked if the trees that are harvested will be sellable and if it would cover the cost of having it done for the owner. Mr. Culp responded that it will depend on other factors. He is going to suggest to the owner that after the trees are harvested that machinery be brought in to mulch additional limbs for fire prevention. It will most likely be a break-even situation.

Mr. Noland stated there was a similar situation on the Fitzgerald property on Pigeon Street which has not had a positive result. Mr. Kersten assured Mr. Noland such an occurrence would not be repeated on Mr. McCotter’s property.

Ken Stahl, John Richardson, and Neal Ensley voted to approve the appeal of the administrative decision. Mack Noland and Mike Erwin voted nay. Motion failed due to the lack of a four-fifths majority. Staff interpretation affirmed.

Neal Ensley moved, seconded by Mack Noland that the Board of Adjustment recommend to the Land Development Standards Review Committee the terminology for forestry be evaluated to encompass all aspects forestry in all districts. The motion carried unanimously.

### Adjournment

With no further business, Mack Noland moved, seconded by Neal Ensley that the meeting be adjourned at 6:35 p.m.

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Mike Erwin  
Chairperson

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Freida F. Rhinehart  
Secretary





































Adjournment

With no further business, Neal Ensley moved, seconded by John Richardson that the meeting be adjourned at 5:58 p.m. The motion carried unanimously.

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Mack Noland  
Acting Chairperson

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Freida F. Rhinehart  
Secretary

