



Town of Clayton
Board of Adjustment Minutes
Wednesday, November 17, 2021 @ 6:00 PM
Council Chambers

BOARD MEMBERS PRESENT:

Bob Satterfield
Michael Sims
Porter Casey
Jim Perricone
Marty Bizzell
John Saluppo
Thomas Antoine

MEMBERS ABSENT:

N/A

STAFF PRESENT:

Ben Howell, Planning Director
Francis Rasberry, Town Attorney
Chrissy Freeman, Clerk to the Board
Avery Everett, Town Council Member Liaison

1 CALL TO ORDER

- a) The meeting was called to order at 6:00 p.m. All Board Members were present.

2 ADJUSTMENT OF THE AGENDA

3 APPROVAL OF MINUTES

- a) October 20, 2021 DRAFT Minutes

ACTION: Adoption of the October 20, 2021 Draft Minutes

Motion: Board Member Casey
Second: Board Member Sims
Vote: Unanimous

4 PUBLIC HEARINGS

- a) 2021-104-VAR - Riverwood Ranch Ph. 1A - 1B & 2A - 2D - Steep Slope Variance
Tag #: 16102026B
Location: Prichard Road, North of Riverwood Athletic Club Planned Development

Planning Director Ben Howell stated the applicant withdrew the application.

ACTION: Application withdrawn by applicant.

- b) 2021-123-AAI - 214 W. Main Street - Administrative Appeal
Tag #: 05019006
Location: 214 W. Main Street

This was noted as a Public Hearing and Board Member Perricone recused himself from this item due to conflict of interest. Board Member Satterfield stated for the record he was in receipt of the adjacent neighbor letter. He stated he felt he could be completely partial. Board Chair asked if there were any objections and no objections from other board members or anyone in the room were noted.

Those wishing to offer testimony were issued the Oath of Affirmation.

Mr. Howell, presented this item. He stated applicant was appealing staff decision regarding nonconforming use. Mr. Howell provided details and timeline of the item. He stated the planning staff had communicated with the applicant explaining that zoning compliance permit could not be issued as proposed use was not permitted in the B-1 district and the previous nonconforming use had ceased to operate for more than 90 consecutive days or more than 180 calendars days during any 12-month period, this is per UDC Section 155.100. Staff did meet with applicant in person in June and following meeting there was no further contact. Variance request received August 31, 2021 to allow use not permitted in zoning district. Planning Director discussed with BOA attorney concerns about variance being a use variance which is not generally allowed. Following discussion with applicant attorney, Planning Director issued Administrative Decision in September, 2021 stating proposed continuation of previous use had lost nonconforming status an proposed continuation was denied. Applicant submitted Administrative Appeal Application and withdrew variance application.

Council Member Satterfield asked if applicant was ever informed about the 90-day grace period. Mr. Howell stated he did not know that answer. Council Member Satterfield confirmed that with the property owner not knowing this information was not fair.

Council Member Bizzell asked what was currently going on with the property. Mr. Howell stated they currently were not allowed to open. Also asked was if there was a way to re-instate the nonconforming status and Mr. Howell stated there was not.

Mr. Howell reminded this was an Administrative Appeal not a variance.

Board Member Casey asked if it were normal practice to advise people when they might lose conforming status. Mr. Howell stated that was not normal practice as most times it would not even be known unless someone came into the Planning Department.

There was brief discussion regarding types of uses currently allowed in the zoning district. There were no further questions for staff.

The applicant attorney, Markus Burrow, was present. He provided additional details about the timeline including that at the time of the purchase of the property was directly in the middle of COVID and deaths in the family. He also shared timeline of no lapse of utility with the property. He further stated that when the applicant came to town hall to apply, he was told the building was closed and he then applied in June. He also shared additional details about the work that has been done inside the property. He stated they were not asking for any new use but rather keep the same type of business there that has been at this location for years.

Board Member Sims asked what the timeframe would be for the business to be able to be operational. Attorney stated it was just a very short time frame and the tenant was ready to open.

Board Member Satterfield asked for clarification from town attorney regarding administrative appeal and town staff interpretation of the code with regard to same. He shared the options available to the board.

There was discussion regarding previous operation and signage that was in place. There was also discussion regarding the type of equipment. There was also discussion regarding timeline. There were no further questions for the applicant.

Board Member Antoine asked if there were a business that retained all outward appearance of being an operating business but ceased operation for more than 90 days but then again begins business would be they in violation. Mr. Howell stated that would be true. Board Member Antoine if Mr. Howell was aware of any such situation. Mr. Howell stated he was not aware of any. Ms. Bumgarner, Zoning Administrator, stated there was one occurrence that this happened many years ago. Ms. Bumgarner provided additional details about the process and timeline. There was discussion about how folks are informed about continuing nonconformance notification. There was also discussion regarding details about setting up utility accounts and applications. Board Member Antoine stated he felt it was important to consider that this was during COVID and the Code does not allow for this. Board Member Bizzell asked if any permits extensions might be granted based on COVID. Mr. Howell stated that was done via state law which has since expired and further he didn't feel that would apply to this situation.

There were no further questions for staff.

Board Member Sims questioned if the owner of the property was unaware of rules and regulations regarding zoning compliance. Applicant attorney stated that responsibility normally falls to the tenant.

There were no further questions for the applicant.

With there being nothing further the hearing was closed and item turned over to board for deliberation.

Board Member Antoine stated there some very different circumstances involved with this case and discussed them to include signage for tire business that remained as well as COVID. He stated town staff followed code as written, however the code was not designed to handle a pandemic. Board Member Bizzell agreed that staff did what required by code but agreed with pandemic issue. Board Member Casey stated he struggled with the lengthy timeframe.

There was lengthy discussion regarding options.

ACTION: Reverse the Administrative Appeal Order & Allow Non-Conforming Use to Continue

Motion: Board Member Antoine
Second: Board Member Satterfield
Vote: 4-1 (Opposed Board Member Casey)

5 **OLD BUSINESS**

6 **NEW BUSINESS**

Mr. Howell reminded that two of current members of this board were recently elected as Town Council members and offered his congratulations. He also stated the December board meeting may be cancelled due to vacancies at that time.

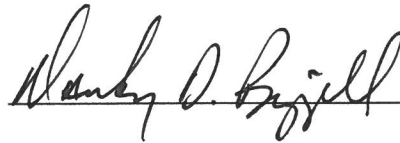
7 **ADJOURNMENT**

With there being nothing further, the meeting was adjourned.

ACTION: Motion to Adjourn

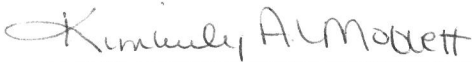
Motion: Board Member Antoine
Second: Board Member Casey
Vote: Unanimous

Duly adopted this the 19th day of January, 2022.



Chair

ATTEST:



Kimberly A. Moffett, CMC, NCCMC
Town Clerk
Clerk to the Board

