

BZA MINUTES

APRIL 18, 2023

Members present: Jason Allen, Don Calhoun, Jim Hufford, Drew Cleveland, Jon Peacock

Members absent: Jason Hawley, Bill Davis

Legal Representation: Jason Welch

Staff present: Debra Johnting, Area Planning Director and Recording Secretary

Others present: Diane Steelman, Jason Sizemore, Bill Allen, Tom Cockerill, John Reece, Ed Thornburg

Acting Chairman Calhoun: It's seven o'clock, April 18, 2023 so we'll get this meeting started. Has everyone had time to look over the minutes of the last meeting? Do I hear a motion to approve?

J. Hufford: I'll make motion to accept minutes as presented.

Acting Chairman Calhoun: It's been moved and seconded to approve the minutes as presented. All those in favor say aye, all those opposed no, motion passes. A little bit of housekeeping, I guess, to start with. Petitioners will have fifteen minutes to present their petition. During this time there will be no interruptions or questions. After the presentation the board may ask questions. After that anyone wanting to speak for or against will have three minutes each, and then the petitioner will have an additional five minutes. First up is BZA2023-11-V, William E. Allen. Mabel Allen estate, presented by Tom Cockerill. You can come up.

T. Cockerill: My name is Tom Cockerill and this is William Beanie Allen, and he is one of the beneficiaries of the estate. I am the executor of the estate. And in handling the estate, Mabel had made a provision in her will that the tower and approximately 8 acres should go to her deceased sons' family and the balance of the acreage, approximately 22 acres would go to William Allen. That's what our petition is all about. We are seeking a variance to approve the proposed split and survey of 8.487 acres which includes a cell phone tower from a 30.9 acre tract of real estate shown and described in our exhibit, and our petition is Exhibit A. In order to make distribution of real estate according to the last will and testament of Mabel Allen. The proposed survey of 8.487 which is attached to the petition was denied as non-conforming as it does not meet the set back requirements for tower regulations under Article XVII of the Unified Zoning Ordinance. That Article stated that the set back is 1.1 times the height of the tower. The tower on the real estate is listed as 320 feet, therefore the set back requirement pursuant to the Unified Zoning Ordinance would be 352 feet. The effected real estate is shown in the circle on the photo attached as Exhibit B. But we filed an amended petition which you should have because it is filed to correctly state that the set back requirement under Article XVII of the Unified Zoning Ordinance is equal to the height of the tower plus 50 feet. The tower on the real estate is listed as 320 feet therefore the height of the tower plus 50 feet is 370 feet. The effected real estate is subject to set back requirement as shown within the circle on the photo attached as Exhibit B1. B was what we thought it was when we filed the original petition. In support of the request for the variance we would state as follows: 1. the

south pole tower that is located on the real estate is considered a collapsible tower. 2. The petition was filed in the Estate of Mabel Allen with the Circuit Court of Randolph County and an order on the same was issued authorizing the estate to make distribution of the 8.487 acres and the remaining 22.459 acres of real estate with a permanent restriction in the deed of conveyance that no building shall be constructed on the real estate within the current set back requirements for tower pursuant to Article XVII of the Randolph County Unified Zoning Ordinance as amended, pending approval of a request for a variance. The copy of the Court Order approving that distribution with the variance if we get it approved is attached to this petition. The permanent restriction in the deed shall read as follows: Recital: No buildings or permanent structures shall be constructed on the real estate described here in that would fall within the current set back requirements for a tower pursuant to Article XVII of the Randolph County Unified Zoning ordinance as amended. The sole property owner affected by the approval of this request for variance is William E. Allen. As a party who shall receive the remaining 22.459 acres of real estate from the estate at the time of distribution. William E. Allen joins in this petition for the request for variance and agrees to the permanent restriction in the Deed of Conveyance. And he filed his consent with the Randolph Circuit Court when the order was made authorizing the filing of this petition and authorizing the distribution of this petition if authorized. So, in effect, the Article XVII will apply as if, but reason of restriction of the deed as it does today. Anybody have any questions? That's pretty much our presentation, thank you.

Acting Chairman Calhoun: Any board members have any questions?

D. Johnting: Just a quick comment on the Subdivision Ordinance. We have not dealt much with that in here and this is if it were written this way a will a judgement would be something that wouldn't come to this board. However, the effort to make it not on the Director to say you can have it, you can't, takes that out of our hands and that's why it comes to you. This is our first one.

T. Cockerill: There was a merger of this tract. The tracts were combined, if it hadn't been combined it would have been grandfathered and we wouldn't have needed this petition but because they weren't and the tracts changed, we need you to approve this settlement that we have negotiated here with the Judge.

J. Welch: Tom, all the owners have agreed to this is that right?

T. Cockerill: Yes, they all signed consents in Randolph Circuit Court when we petitioned for the, and all the consents are attached to the petition.

J. Welch: They have agreed to the variance and they've also agreed to the restriction on the deed, is that right? They did this before the Judge, correct?

T. Cockerill: They did.

J. Welch: So, nothing is going to change.

T. Cockerill: Yes.

Acting Chairman Calhoun: Is there anybody from the audience that would like to speak, either for or against? Seeing none, why...

J. Peacock: I have a question, if Bill would ever sell the property, then what happens?

T. Cockerill: The restriction on the deed--it will follow the real estate.

J. Peacock: How will you make that, or how would it be made clear?

T. Cockerill: It's recorded at the Court House. And anyone that gets title has notice of the restrictions.

J. Welch: It will be a covenant on the deed just like an easement or anything else in our realm of control. Any time you buy something you get a title search on it and this will show up as a restriction. Does that make sense?

J. Peacock: I was involved in one where it was written and recorded at the Court House that a person would have a first right to purchase something surrounding their property. And nobody realized it when I bought the farm land out there. You know it wasn't my fault, it wasn't, I didn't read as clearly as I could have, so I guess I'm just wondering how it's going to be clear to, not to cause any trouble mind you, I'm just kind of wondering how this will work?

T. Cockerill: Restrictions of a parent deed are picked up by title insurance. You can't borrow if you're violating the terms of a restriction. A bank wouldn't lend you money. It's on the deed in a covenant and anyone would enforce that.

J. Welch: Jon, the recording puts any buyer on legal notice that this is a restriction, so if they miss it, it will be on them.

T. Cockerill: The recital was, "no building or permanent construction shall be constructed on the real estate described herein that would fall within the current set back requirements for a tower pursuant to Article XVII". That's going to be right on the deed and recorded and part of the official record for that property. Like an easement or anything else.

D. Johnting: If by chance that were missed or they didn't understand, and folks will say I saw that and I didn't know what it meant, but that will also be marked on the GIS map, that it's non-buildable. So, if it gets to the point that someone would apply for a building permit, they would be stopped.

Acting Chairman Calhoun: Okay, I would entertain a motion to approve this variance.

D. Cleveland: So moved.

J. Peacock: Second.

Acting Chairman Calhoun: Roll call vote?

D. Johnting: Jim Hufford, yes, Jason Allen, yes, Jon Peacock, yes, Drew Cleveland, yes, Don Calhoun, yes, and Jason Hawley and Bill Davis are absent. Motion approved.

Acting Chairman Calhoun: Next on the agenda is a petition for variance for Diane Vinson.

D. Johnting: Her married name is Vinson, she has gone back to Steelman so this has the name that her property is still in but she wanted me to make a note about that at the hearing.

J. Sizemore: I am Jason Sizemore, I'm her fiancé, and she has stage fright.

Acting Chairman Calhoun: So, you're requesting a variance to build a pole barn?

J. Sizemore: Correct, bigger and taller, that's what the variance is for.

D. Johnting: So, in residential the Unified Zoning Ordinance says you can't have a building taller or larger in square footage without a variance. If you remember the building to the south of her, for Todd Green, it's actually another situation like this that was just done last year I think, that the building is quite a bit bigger and taller. He has a very small house there.

J. Sizemore: We are like the house in the big city, where the big corporation has bought everything except to the one person who didn't sell. So, we have industrial, industrial, industrial, and then us.

D. Johnting: What size are you planning?

J. Sizemore: 50 by 100, I have got it drawn here on your GIS

D. Johnting: I didn't know if I had drawn it into scale.

J. Sizemore: Well, your GIS said one inch was 30 feet, so you can see the adjacent property it's about fifteen feet from our house where they built theirs. I just put a guesstimate, ours is actually a little bigger than theirs what I put it on there for. Theirs is about 50 by 60 or 70 and it's like 15 feet from our home so we look out one window and see a pole barn, look across the street there's the back of an industrial building warehouse stocking, and look behind and it's another warehouse.

J. Allen: So, it's not like your blocking anybody's grand view?

J. Sizemore: No, the only view we do have is the north end of our house which is the garage door, there's probably a couple of acres and then the back of some residential area. I have pictures of that as well if you'd like to see that.

Acting Chairman Calhoun: What is going to be the purpose of the building

J. Sizemore: Recreational, I have some collector cars. I build some cars, so why not?

Acting Chairman Calhoun: Anybody else have questions?

D. Cleveland: I forget, what was the height of the building?

J. Sizemore: Fourteen foot sidewalls, or twelve foot, something for a lift.

J. Peacock: Smart guy.

J. Sizemore: It's pretty much useless without it.

J. Allen: Obviously without having very many neighbors around there nobody's probably complained. Or asked about it or said anything negative about it?

D. Johnting: I haven't had any calls. And the letters were sent out on time.

J. Sizemore: The lady with the Green Real Estate said she was trying to buy the alleyway, the twelve foot right away or something, I don't know why she would want to buy twelve feet between our property and somebody else's property but whatever. And that is an abandoned alley, correct?

E. Thornburg: It is a platted alley, it's not been developed, but it's still an alley.

J. Sizemore: That's what it looks like to us on the GIS. Wonder if that could be used again as an alley? If you could just go back to using that. If it abandoned it gets mowed.

Acting Chairman Calhoun: What is it Ed?

E. Thornburg: It is a platted alley. It's not been developed but it is still an alley.

J. Sizemore: So, we can use it as an egress to the original property?

E. Thornburg: There's no reason why not, You and your neighbor each.

J. Sizemore: That's what I thought, I didn't know why I would need to buy it.

J. Welch: No one owns it so you would have to have it abandoned so you would have to go to the town board if you wanted them to abandon it they could do that, vacate it and then put it on both properties.

J. Sizemore: No, it's nothing like that at all, it goes right behind our property. I mean it...

J. Welch: You wouldn't have any legal right to do that if it's a platted alley. The city could stop you if they wanted to I guess is what I'm saying.

J. Sizemore: Stop me from using it as an alley? I'm sorry....

J. Welch: You don't have ownership in that property?

J. Sizemore: No.

J. Welch: Correct.

J. Sizemore: I'm not trying to claim any ownership interest in it, just use it as an alley as city property.

J. Welch: That's none of our business up here what you're doing with that.

J. Sizemore: Right, I was just if it's an alley, it can obviously be used as an alley and that's what he confirmed.

J. Welch: We can't give you permission to do that.

J. Sizemore: Right, right.

E. Thornburg: You're talking about the one on the west side, right?

J. Sizemore: Yes, I just wanted an opinion on the matter. Because to the north of it they have actually paved part of it behind some peoples houses there.

J. Peacock: Can you even use it, drive down it?

J. Sizemore: No, we mow it, it's just like they stopped using it and it's an abandoned access to the property.

J. Allen: How far from that platted alley is the building going to be from?

J. Sizemore: The five foot setback that is required.

J. Allen: I just didn't want someone coming in here saying that it is too close.

D. Johnting: It's behind their house so it would be five feet.

Acting Chairman Calhoun: Is there any other questions? I would entertain a motion to go ahead with the variance.

D. Cleveland: I move that we go ahead and vote.

J. Hufford: Second.

D. Johnting: Don Calhoun, yes, Jim Hufford, yes, Jason Allen, yes, Jon Peacock, yes, Drew Cleveland, yes, and Jason Hawley and Bill Davis are absent. Motion approved.

J. Sizemore: Thank you.

Acting Chairman Calhoun: Any old business to be brought up? New business? Motion to adjourn? We are adjourned.

Acting Chairman Don Calhoun

Debra Johnting, Recording Secretary