

**CITY OF ELIZABETH CITY
BOARD OF ZONING ADJUSTMENT
REGULAR MEETING
TUESDAY, JANUARY 20, 2015
5:30 PM**

MEMBERS PRESENT

Carlton Etheridge
Joda Bollard
Peggy Davenport
David Harris
Lemuel Lamb
C. Lee Gutman
Bill Hiemer

Also present were June Brooks, Planning Director and Kaitlen Alcock, Planner.

Chairman Etheridge opened the meeting with a roll call and determination of a quorum.

The first item was the Adoption of the Agenda. Mr. Harris made a motion to adopt the January 20, 2015 agenda as presented. Ms. Davenport seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN and LAMB. NONE OPPOSED. MOTION PASSED.***

Next item on the agenda was the adoption of the December 16, 2014 minutes. Mr. Harris made a motion to **APPROVE** the December minutes subject to the minor corrections previously noted, including correcting the spelling of Mr. Hiemer's name. Mr. Hiemer seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN and LAMB. NONE OPPOSED. MOTION PASSED.***

Ms. Brooks then read the following Statement of Disclosure:

Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial and responsible to the public; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for the public record, as per City of Elizabeth City Code of Ordinances Section 2-113. Any member of the Board of Adjustment who has an interest, as defined in Section 2-111 of the City of Elizabeth City Code of Ordinances, in any official act or action before the Board shall publicly disclose on the record of the Board the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the Board pursuant to G.S. 160A-75.

The next item on the agenda was CASE NO: SUP 02-14 Special Use Permit filed by Kenneth Wayne Smith for property located at 811 Jones Avenue. This property is zoned Residential (R-8). The applicant is proposing to utilize an existing 900 square foot addition to the home as a bed and breakfast. Ms. Smith came forward and was sworn in by Ms. Brooks.

Before opening the hearing, Chairman Etheridge gave the Board members a chance to reveal any possible conflicts and withdraw from the proceedings. Mr. Hiemer stated that he does not have any conflicts, but did want to make the Board aware that he had driven out to the property today. Chairman Etheridge stated that any Board members who have any information or special knowledge about the case that may not come out at the hearing tonight, please describe that information for the record so that persons will know and can respond. There were none.

Mr. Etheridge opened up the hearing for CASE NO: SUP 02-14 Special Use Permit and asked for Staff testimony. Ms. Alcock gave the following report.

The case before you tonight is Special Use Permit request 02-14 made by Mr. Smith to operate a one-bedroom bed and breakfast at his residence. The physical address of the property is 811 Jones Avenue; it is approximately a quarter of an acre located on the corner of Jones Avenue and Agawam Street.

The property is zoned R-8 Residential which according to Table 9-3-1 of the Unified Development Ordinance allows bed and breakfast operations in the R-8 zoning district dependent upon the approval of a special use permit by the Board of Adjustment. To be granted approval the bed and breakfast must meet the following development standards listed in Article 11-4.14:

- It must be owned and operated by a resident owner
- It must be located within a structure that was originally constructed as a dwelling
- Meals served on the premises of a bed and breakfast located in a residential district shall only be for guests of the facility
- A sign permit shall be obtained from the Zoning Administrator prior to erecting any sign on the premise, in a residential zone, only 1 freestanding sign is permitted
- All parking lots are required to be screened from adjoining single-family residential uses by a buffer yard in accordance with Section 11-3.1(B) of the UDO

According to the Pasquotank County Tax Assessment Online Database, the current one-story bungalow was built in 1939 and later remodeled in 1960. The applicant, who purchased the home in 2006, added a 930 square foot addition in September 2013. It is this portion of the home that he wishes to utilize for the bed and breakfast. The home has a total of 3 bedrooms, only one of which will be used for the bed and breakfast, 2 and a half baths and a combined living space of 2,108 square feet. It is Mr. Smith's belief that a bed and breakfast would help address a need for temporary lodging within the City, specifically within the Riverside area. Along with a basic breakfast, Mr. Smith plans to provide guests with access to bicycles, kayaks and a canoe. He intends to utilize the driveway off of Jones Avenue to provide the necessary parking for the bed and breakfast and will reserve the driveway off of Agawam Street for personal use.

The request was heard by the Technical Review Committee at their November meeting and the Planning Commission in their meeting earlier this month, both of whom recommended approval of the request with the 7 conditions recommended by Staff. Staff has determined the property and the applicant satisfy the UDO requirements for bed and breakfast operations mentioned earlier and has not received any objections from adjacent property owners or other community members. Staff reminds BZA members to consider the UDO requirements for Special Use Permits as well as the recommended conditions listed on pages 9 and 10 respectively in the staff report. The conditions are as follows:

1. The Bed and Breakfast **MUST** be owned and operated by a resident owner
2. Any meals served on the premise shall **ONLY** be for guests of the bed and breakfast
3. Any future addition or renovation beyond those that are purely cosmetic, such as painting or flooring, **WILL** require a building permit
4. Use-permit related activities **CANNOT** generate traffic, noise, vibration, glares, fumes, odors or electrical interference beyond what normally occurs in the zoning district in which it is located
5. A separate sign permit **WILL** be required
6. The applicant **MUST** obtain a privilege license which is to be annually renewed
7. The applicant **MUST** secure a permit from the Albemarle Regional Health Services prior to commencing business

This concludes my presentation. Thank you.

Mr. Etheridge then called Ms. Smith up to give her testimony in favor of the request. Ms. Smith stated that she has resided at 811 Jones Avenue since 2007. She and her husband are trying to start a bed and breakfast in an addition they had original constructed in 2013 for her mother-in-law who has since passed. They are now looking to generate a new use for the addition. This concluded Ms. Smith's presentation; she noted she would be happy to answer questions from the Board.

Mr. Hiemer: Do you plan on putting a sign up?

Ms. Smith: Definitely yes. It would be where the front porch is, in the white space between where the porch and the right window is. We are going to put it on the side of the house and up-light it.

Ms. Davenport: Do you plan to follow the recommendations of the Fire Department and add additional fire alarms and backup lights?

Ms. Smith: I don't believe we do. They said that it wasn't required. It was just built, it is brand new and has new fire alarms in it. I believe it is adequate. And we have motion detector lights at the back door. It is a well-lit area so I don't think any improvements need to be made.

Ms. Davenport: Question for staff, is this a requirement or just a recommendation?

Ms. Alcock: It was a recommendation. Based on the size and number of bedrooms, there were not any requirements from the Fire Department.

Mr. Etheridge asked if there were any more questions. There being none, he asked that the Board make a motion. Ms. Davenport made a motion to **APPROVE** SUP 02-14 for a bed and breakfast at 811 Jones Avenue with the recommendations as presented by Staff. Mr. Gutman seconded the motion. **ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN and LAMB. NONE OPPOSED. MOTION PASSED.**

The next item on the agenda was CASE NO: SUP 03-14 filed by the City of Elizabeth City on behalf of Visions of Hope Emergency Shelter and Outreach Center. The applicant is proposing a homeless shelter to be located at 709 Herrington Road. Zoning Classification for this property is Residential R-6. City Manager, Rich Olson came forward and was sworn in by Ms. Brooks.

Before opening the hearing, Chairman Etheridge gave the Board members a chance to reveal any possible conflicts and withdraw from the proceedings. There were none. Chairman Etheridge asked for testimony from Staff. Ms. Brooks gave the following report.

The City of Elizabeth City purchased 709 Herrington Road in 2006 with Community Development Block Grant funds. The 1,500 square foot, two-story residential structure sits on a 0.095 acre parcel and is zoned R-6 Residential. Because this property was purchased with Community Development Block Grant funds, it has to be used to serve low and moderate-income individuals. A Special Use Permit was issued in 2006 to operate a homeless shelter for women and children. Over the past several years, non-profit groups have operated the homeless shelter; however, the economy forced the shelter to close almost two years ago. Now the City has identified a new sub-recipient to occupy the building and a new special use permit is being required. Under the previous special use permit, the shelter had a maximum occupancy of eight persons, one full-time staff member, volunteers and on-site parking. Staff has received comments from City Departments and all indicate they do not have any concerns about the building resuming as a homeless shelter. The Fire Department has set a maximum occupancy of eight individuals. The proposed request is consistent with the Joint Pasquotank County Elizabeth City Land Use Plan and the Elizabeth City Thoroughfare Plan. Planning Commission reviewed this at their January meeting and recommend approval. Staff recommends approval with the conditions that they comply with the development standards of the Unified Development Ordinance and the occupancy be limited to eight individuals. That concludes my staff presentation.

Mr. Etheridge called for testimony from the applicant. Mr. Olson came forward as the City's representative. He gave the following report.

For the record, my name is Richard Olson; I am the City Manager for the City of Elizabeth City. The City of Elizabeth City is the owner on record of 709 Herrington Road. Staff's memo and write-up does reflect and the City agrees with all the terms and conditions included in their staff write-up. I'd be happy to answer any questions from the Board.

Mr. Hiemer: The staff recommendation says staff is of the understanding that there will be a full-time caretaker.

Mr. Olson: That is correct. That is a requirement we put on the sub-recipient to have a full-time caretaker. The shelter will not be successful unless it has someone that does the intake and watches the shelter for us. The City previously had another non-profit agency that had a volunteer, full-time individual who did the intake of those individuals.

Mr. Etheridge asked for other questions. There were none. Mr. Etheridge then closed the public hearing and called for Board discussion and deliberation. There being no further discussion or comments, Mr. Etheridge called for a motion. Mr. Harris made a motion to APPROVE SUP 03-14 for a homeless shelter at 709 Herrington Road with the conditions set forth by Staff. Mr. Gutman seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN and LAMB. NONE OPPOSED. MOTION PASSED.***

Mr. Etheridge then called for any Staff report. Ms. Brooks informed the Board that the Williams, who owns property at 908 Raleigh Street, have appealed the Board's decision to Superior Court. Ben Gallop is putting together the legal information to move the case forward. I am strongly recommending, and that's why Mr. Olson is here because the City and he was named as the person in the suit, do not have any discussions of the case until we get through with the court proceedings.

Mr. Olson added that in 2011 the State Law changed, previously the Board of Zoning Adjustment was the body that would be sued in Superior Court, that was changed so now it is the City of Elizabeth City as the defendant. The only time the Board of Adjustment is the defendant is if the City sued you because we were not happy with your decision, which very rarely happens. But that is the one nuance in the State Law that was adopted in 2011. We have retained the services of Ben Gallop with second chair as Bill Morgan to represent us in the writ of certiorari. State Law is very clear on what needs to be done; we are in the process of developing the record to present to the Court.

There being no further business for the Board, the meeting was adjourned.

**Minutes were approve at the May 19, 2015 Board of Adjustment meeting.*