

MINUTES OF A SPECIAL MEETING
OF THE BOARD OF ADJUSTMENT
JULY 11, 2019

The Board of Adjustment held a special meeting on Thursday, July 11, 2019, at 5:30 p.m. in the City Hall council chamber.

Members present: Cleveland Ellison
Diana Biggs
Will Flynt
Hope Gilley
Jackie Hampton
Charles Johnson
Joan Moore
Terry Shelton
Barney Walker

Members absent: David L. Everett*

Staff present: Kelly K. Stultz, Planning Director
Debra M. Madison, Planning Coordinator/Legal Assistant

Others present: Arthur Dick, Applicant
James Dudley Lewis, Appellant
Melissa Fix, Friend of Appellant

*Excused absence.

The meeting was called to order by Board Chairman, Cleveland Ellison. The roll was called and it was determined that a quorum was present.

APPROVAL OF MINUTES OF A REGULAR MEETING ON MARCH 7, 2019.

The minutes of the regular meeting on March 7, 2019, were presented to the Board. Hope Gilley made a motion that the minutes be approved as submitted. Will Flynt seconded the motion. Motion carried unanimously.

UNFINISHED BUSINESS: NONE

ITEMS FROM STAFF: NONE

NEW BUSINESS:

(A) SPECIAL USE PERMIT 201 E. MEADOW ROAD SU-19-01

Consideration of a special use permit for a light industrial use at 201 E. Meadow Road in the space formerly occupied by K-Mart as allowed for in Section 11.26(c)(3)(c)(17) of the special use requirements of the Board of Adjustment section of the City of Eden Zoning Ordinance. Request submitted by Arthur Dick. SPECIAL USE CASE: SU-19-02.

Kelly Stultz explained that this Board hears evidence and not personal opinions from people that speak. We function in a quasi-judicial manner which means that any decision that you make can only be appealed to Superior Court and not to the City Council. They have no involvement in these issues. This is to be sure that we keep politics out of these decisions as much as possible. The City Council recently, upon recommendation from the staff and the Planning Board, agreed to make a special use permit possible in our large big box vacant buildings. I supported that. It is a way to use some buildings that are continuing to deteriorate and perhaps give new life. There are times when things may or may not be appropriate

Kelly presented the Staff Report by reading the Findings of Fact and Staff Analysis. Based on the facts submitted, staff recommended approval of the special use permit. She further stated that we do not want to change the face or look of the existing property. The use will not be loud or have outside structures except for maybe a greenhouse which the former K-mart had one as well. We take this very seriously and most of it is inside storage for distribution.

Cleveland Ellison swore in Kelly Stultz and Arthur Dick.

Barney Walker – How many employees will they have?

Kelly Stultz – Arthur Dick will answer that when he speaks.

Hope Gilley – Is this a processing and distribution business and no personal sales?

Kelly Stultz – Not a retail business.

Charles Johnson – Can they change the outside of the building and grounds?

Kelly Stultz – They can improve the appearance.

Jackie Hampton – Will everything be inside?

Kelly Stultz – Yes. There will trucks loading and unloading but the use of the building will not evident from outside.

Arthur Dick, who resides on Willow Oak Drive, provided the following information:

- There will be 20 full time employees, some with PhD level education, and up to 100 seasonal employees.
- The warehouse people will make between \$15 and \$20 per hour. It is a significant employment opportunity.
- This will be a drying facility. The cannabis plants are grown on my farm and another farm, approximately 200 acres total. There will be growers from across the state bringing their biomass which is the flower that buds. The plants will be brought to this building to dry, run through a manufacturing process and ship out.
- We will operate 24 hours a day up to 300 days a year.
- We do plan to improve the building to clean it up. There are some problems with the building. There is some mold and roof leaks so we fix all that as well as the parking lot so there will be significant capital spent on the building.
- The building has to be a FDA approved facility and has to be really clean and pristine inside and out.

Hope Gilley – What is your time line?

Arthur Dick – We hope to close the first of August. I am waiting on a survey right now. The environmental Phase I has been completed and we have to do some work because of some things that we discovered. We still have some due diligence and title work to do. I need to have that machine in there at the latest in late September or early October.

Charles Johnson – Which way will most of your truck traffic come in?

Arthur Dick – They will access this property from the back using Cox Street off of Highway 14. The greenhouses will be in the back and there will be significant security with fences and cameras. We will work around the common parking and egress for the shopping center.

Charles Johnson – From the diagram that we have the property that you are buying includes the roads into the building. Do you see closing those in the future?

Arthur Dick – Kelly tells me no because of the cross easements.

Charles Johnson – Do you see any other businesses or industries that could be a spin off as a result of this business such as packaging.

Arthur Dick – We will do our own packaging but yes we could go retail in the future but not within the next year.

Kelly Stultz – We need to stay on point with the questions.

Jackie Hampton – Will the fence be all the way around the property?

Arthur Dick – I don't a fence will follow the entire property line in the front. We will need to study the easements and area on what we can and cannot do. The fence will be directly off the back of the building and will be a 8 foot chain link fence with screening.

Kelly Stultz – A buffer will be required between them and the residential area.

Cleveland Ellison asked if anyone wanted to speak in opposition to the application. There was none.

Hope Gilley - With the plans that he has presented he mentioned doing other things that might come up in the future.

Kelly Stultz – He cannot construct another building without coming back to expand the Special Use Permit.

Kelly Stultz – This building has been empty for approximately 25 years and this is an opportunity to reuse the building.

Charles Johnson made a motion to approve the Special Use Permit. Barney Walker seconded the motion and it passed unanimously.

Charles Johnson asked about the status of a Special Use Permit that was approved for a flea market.

Kelly Stultz told the Board that the case to allow a flea market at the mall with a special use permit was approved but no one had made an application to operate a flea market.

(B) Appeal

Carolina Avenue

AP-19-01

Consideration of an Appeal, submitted by James Dudley Lewis, appealing the enforcement action of the Zoning Enforcement Officer for property located on Carolina Avenue, PIN 7090-10-47-9314. APPEAL AP-19-01

1. Ordering the cessation of a contractor's office and storage yard in a Residential-6 district.
2. Occupation and use of property without a zoning compliance permit.

Kelly Stultz presented the Staff Report which included a PowerPoint presentation showing pictures of the property.

Cleveland Ellison swore in James Lewis before he offered evidence. Mr. Lewis resides at 1324 Carolina Avenue.

James Lewis – I do have some equipment on the property and I do have an LLC with that property but I am not running a business. Everything on the property is and has been used for the improvement of the property. (Mr. Lewis presented some pictures showing the property before and after he started making the improvements). We have had to fix some major drainage issues. In Draper the soil has suffered for hundreds of years. It has been amazing of the stuff that we have found. WE have put French drains around the yards so the yards would be useable. Before you could not even mow the yard for up to a month after it rained because the dirt was so saturated with water and there was no drainage. What I am trying to do is make the lot to where it is a good family yard and at the same time I would like to be able to park my personal truck which is shown on one of the pictures with the crane. I was using it to help clean up the yard as I had been asked to do. I just moved up here from South Carolina about a year ago and my girlfriend has been living in this house for about 4 years. We are just trying to improve the yard. I did move the shipping container as I was asked and I did not know that it was against a City Ordinance to have it on that property so I did move it. I do have some other goals. There was a track loader in one of the pictures that I had to move. I had purchased it because we had spent so much money renting equipment to fix the yard up and I wanted to do some of that work with equipment that I had purchased instead of spending money renting equipment and unfortunately that piece of equipment needed more money than I was able to complete so I am going to have to sell it. But, in the future, there is still much work to be done and, in the future, I will need more equipment to park on that property and I would like to be able to do that without feeling like I am running a contractor's yard rather than hiring a contractor. I do not have the ability to run my business that I intend to start at some point because I work as a welder in Greensboro and I cannot work and run the business. The job that I work is temporary and will not last forever and when it does I will be purchasing or leasing another piece of property where I will run a business. That is my goal. The property that I own right now the equipment that appears to be a contractor's storage is stuff that primarily I was using to repair my personal property there.

Will Flynt – All of the equipment on that site is solely on the site because you are utilizing it to improve the yard? You do not use that equipment for any other purpose like a contractor's job? You don't take that dump truck out to spread gravel and come back and park it there at night? You don't use that track hoe to level yards or any other yards other than your own?

James Lewis – That is correct.

Will Flynt – And it has taken you since February of 2019, that long, because of your welding job and back and forth to Greensboro?

Cleveland Ellison – At the rate that you are going, how long will it take you to complete the work?

James Lewis – I think it will probably be between 3 to 6 months.

Kelly Stultz – The question before you is whether or not this is a contractor's storage yard or whether it is a business. I stand by my opinion, that site has been checked numerous times and the equipment is there and then it's not. That sort of stuff is not allowed in a Residential-6 district. You can't even make a parking lot in R-6.

Cleveland Ellison – It is your recommendation, you have it in writing . . . ?

Kelly Stultz – It is not a recommendation. It is an opinion that I have already rendered. A determination to this gentleman and then he wanted to appeal that to you.

Cleveland Ellison – Do you all understand what the problem is?

Kelly Stultz – He hasn't asked us for additional time. You need to make a determination of whether you agree with my opinion or not.

Cleveland Ellison – Do you agree with Mrs. Stultz's decision or not? Is there more discussion?

Joan Moore – He said that he has a business and that the property is used as an address for an LLC. What is the business for the LLC for?

James Lewis – I formed the LLC about a year and a half ago, with my temporary work and trying to work at some point, I would like to be able to operate that dump truck and be able to not have to travel out of town. Again, I have been a traveling welder for 9 years and I would like to not have to leave any more and work out of town. The LLC was formed with that goal but it has never operated up to this point.

Joan Moore – Have you ever used that dump truck for anything other than your yard.

James Lewis – No I had not.

Jackie Hampton – Is this property having problems holding water and you are trying to make a drainage ditch.

James Lewis – Yes sir. Many of the people in the community of Draper have expressed that they are surprised that our yard is dry because they have in the past mowed it and they couldn't mow it because it is so deep in water. Both properties there had this problem so 2 different times I had to dig drains under the yard.

Kelly Stultz – Most of the equipment is on a vacant lot.

Barney Walker – Have the neighbors made complaints about this?

Kelly Stultz – That is not the issue.

Charles Johnson – Since the property is actually owned by Mrs. Carroll, should she not be taking care of this problem and not him?

Kelly Stultz – That's who we sent the letter to.

Charles Johnson – So should she not be handling this?

Kelly Stultz - It's not necessary. He can file the appeal on my determination. We have heard from her and she is aware of it.

Cleveland Ellison – Our question is, are we going to uphold what Mrs. Stultz said to him based on the information that she has given to us. We are going to have to vote. Am I correct on what the issue is?

Hope Gilley – Can we put a time limit on it?

Kelly Stultz – You can't put a time limit on it as to whether it is a zoning violation or not.

Cleveland Ellison – Do you want to vote? You have some rules and regulations. Any questions or comments? You need to vote one way or the other. Uphold what Mrs. Stultz has done or . . .

Dianna Biggs – Correct me if I'm wrong but this kind of like a carport issue. It was not legal to begin and it has not followed the legal trail and it is in a neighborhood and not in a business district.

Kelly Stultz – That is correct.

Cleveland Ellison swore in Melissa Fix before she presented evidence. She resides at 1324 Carolina Avenue.

Melissa Fix – I have resided at this lot beside of Mrs. Carroll's lot for 5 years. The initial plan was never to do anything with this piece of property but at some point the vines and snakes and trash became an issue. Upon meeting Dudley Lewis and getting in a relationship with him, he at some point decided he was going to move in with us knowing that he has experience with equipment and doing lawn care, he had at some point wanted to do something with that in the future and decided to speak to Mrs. Carroll and in turn she agreed to rent him the lot so that in the future we could expand and make one big piece of property out of my house and this land, then it would all be one. In order to do so we would have to clear the land because of the water issue. Coming into this house and being in Draper for 15 years, Draper isn't much to look at so me, myself and I like pretty things so we have spent quite a bit of money restoring this yard and this house on the inside and out. Both of us work full time jobs and we have four children between the two of us. It is a task on a daily basis to do what I do for a living then come home and do it but we have made tremendous amounts of improvements on this house and this property. Like he said, he has a goal. One day he wants to start a business, something that isn't in Rockingham County right now and with that being said that was his intent was to legally get a piece of property for that equipment when the time is right. But I guess to feed himself and to make himself feel better, he went ahead and got the name, got the number but legally by North Carolina standards he is not allowed to operate on North Carolina highways because he has done nothing else with the business but get a name. The dump truck has been used primarily just for that yard personally because I drove it to get 8 loads of sand and dirt. I think it was 5 loads of rock. We have logs for that. We have receipts for all of that and to what property it was going to which is that location. He expanded the driveway with all of that rock and whatever is left that I didn't get to finish moving myself last night was to expand the driveway so that he would have somewhere to his vehicles.

I am a, not a contractor, but I am a remodeler. I work for myself and I also do work for Fleming Real Estate. I do maintenance on a lot of properties so I need my trailer and I need his Dodge pickup truck. The container housed all the tools to work on the vehicle when it broke down and housed all of the material that we would need to fix the yard.

Essentially, it was never an office. It does not have a desk, a computer or a chair. It was basically his little tinker box. Men go home after work every day and find something to do, Some men play golf, some men work on lawnmowers. Dudley would come home and work in the yard and work on his equipment to fix the yard. We need a little bit more time but we will have it looking good.

Dianna Biggs – You just stated that he wanted to get this area in order to put his business there when he got ready to do it?

Melissa Fix – No. He wants to get the property ready for us to expand and add the two together to make it one lot when we purchased it.

Dianna Biggs – I thought you said he wanted it for his business.

Melissa Fix – We have been looking for property that would suffice his business but while we are at the house we have had to do work to the house to get it inspected to get the FHA and in turn do stuff to the yard over there in order to buy it from Mrs. Carroll so we are waiting on her. The business idea has been ok there so that when we purchase the house and the land, then pay somebody to combine the two, then we are going to search for a piece of property because I make good money but he makes better money and I stay broke so his money is supporting all of this which is providing for our family and so Tommy Fleming and Chris at Fleming Real Estate is looking for a piece of property and have been for quite some time that is within our budget. Somewhere to do his work and, if that ever happens, and I told him if he ever went out of town again and decided to travel that he would have to leave because I had a husband that traveled and stayed gone and it didn't work out. We need a man to be home and help take care of the kids with me and we would do it together.

Cleveland Ellison – Mrs. Stultz has made a ruling and this board is supposed to decide whether or not we are going to uphold what she has ruled on or we are going to uphold the gentleman. Am I correct Mrs. Stultz?

Kelly Stultz – Yes sir. As Zoning Administrator one of the duties that I am charged with is making those decisions.

Cleveland Ellison – I don't think we need to have any other conversation. Are you going to uphold the rules and regulations that Mrs. Stultz has outlined?

Kelly Stultz – Actually what you are upholding is my interpretation. You would be deciding about my interpretation of the Zoning Ordinance.

Will Flynt – We are hearing an appeal that he has applied to your office? So we are either denying the appeal or approving the appeal?

Kelly Stultz – He appealed to come before you to convince you that the decision I made was in error and that is provided so that citizens are offered all the protections necessary.

Charles Johnson – Why didn't this go to the City Council?

Kelly Stultz – They don't handle appeals. All appeals from any determination made by a Zoning Officer in the State of North Carolina go the Board of Adjustment and then on to Superior Court.

Cleveland Ellison – Do we have a motion, comments, questions? Are we ready for a vote?

Hope Gilley – I understand the nature of number (1) which states “Ordering the cessation of a contractor’s office and storage yard in a Residential-6 district” but expand on paragraph (2) “Occupation and use of property without a zoning compliance permit” in the letter about zoning confirmation.

Kelly Stultz – Yes. Anybody that is going to use a piece of property or if the use changes, are required to come in and get a zoning compliance permit. Had he come in and gotten one before he moved all the equipment on there, we would have told him that you can’t do that in R-6 or I would have told him ultimately that you can’t do that in R-6.

Hope Gilley – Even for personal use?

Kelly Stultz – We allow contractor’s offices to be in residential districts but the storage of the equipment is where the change is. He is storing some pretty heavy equipment and it is on a residential lot and on a separate lot from the house. It is not going to help if they move it over to the lot with the house but it is an individual lot. When I make that determination I am not required to ask him for business receipts.

Cleveland Ellison – We need to vote on Appeal Case No. 19-01.

Will Flynt made a motion in favor of denial of the appeal, Case No. AP-19-01. Terry Shelton seconded the motion and it passed. 7 voting in favor and 2 against.

Cleveland Ellison – 7 yes and 2 nays. (Mr. Ellison counted the people that had voted and said I voted nay).

Kelly Stultz explained that an appeal requires 4/5 majority to overturn the decision of the Zoning Officer. That would have meant that 8 would have had to vote for the appeal.

Cleveland Ellison – So where we are at now is they have vote to uphold what you have done. Right?

Kelly Stultz – Right.

Will Flynt – 7 yes’s and 2 no’s.

Cleveland Ellison – Correct. All those in favor let it be known by saying “I”

Will Flynt – We’ve already voted.

Cleveland Ellison – That’s already been taken care of.

Will Flynt – 7 to 2, that’s not 8.

Cleveland Ellison – I am going to withdraw my nay and make it a yes.

Kelly Stultz – You can’t do that.

Cleveland Ellison – Yes I can.

Kelly Stultz – No you can do that after the vote.

Cleveland Ellison – Yes I can. I misunderstood the vote.

Kelly Stultz – There are 10 members on the Board of Adjustment.

Cleveland Ellison – So it is still going through.

Kelly Stultz – It is not contingent on how many of you are here, we had to have 8 to have a quorum because that’s how many it would have taken to overturn me. It takes 3 members of the Board of Adjustment to vote against an Zoning Officer’s opinion when it is an appeal

Cleveland Ellison – So we have upheld what Mrs. Stultz had done. Am I correct?

Kelly Stultz – Yes.

ITEMS FROM THE BOARD OF ADJUSTMENT:

Hope Gilley- My only comment would be . . . We said at the last meeting that we were going to have a training session. I just would ask Kelly is we could get on her e-mail schedule or something to do that.

Kelly Stultz – I'm sorry I didn't hear you.

Hope Gilley – At the last meeting, we discussed having a training session. I would just ask that you would either email each of us or somehow get us on your schedule to do that.

Kelly Stultz – Of course. Years ago, we played a zoning game and I dug out some old zoning cases that the Board of Adjustment had heard and some that they did correctly and some that they did not correctly. We divided into teams and you had to decide if you thought the board was right or wrong. I will tell you that the City Council has sued this Board of Adjustment before for not keeping minutes and all kinds of things a long time ago. We are a long way from that. We need to do some of that. Sometimes it's hard to get everyone here. We will probably wait until September or October.

Charles Johnson – This appeal is over. Is there anything they can do?

Kelly Stultz – They can go to Superior Court.

Charles Johnson – No. Is there anything that they can do to come in and work with you to get something done.

Kelly Stultz – I just went back there and told them that I am going to be on vacation next week

Charles Johnson – This isn't a dead end street for them?

Kelly Stultz – It is in a way, but No, I'm not planning to have somebody go and tow all the vehicles tomorrow.

Cleveland Ellison – He will have to follow up on that.

Kelly Stultz – If he doesn't follow through, we will go to Court and have a judge order him to remove it.

ADJOURNMENT:

There being no further business to come before the Board, a motion and a second was made for adjournment. Motion carried unanimously.

Respectfully submitted,

Kelly K. Stultz, Administrative Assistant to
the Board of Adjustment

ATTEST:

Chairman