MINUTES
CITY OF BEAUFORT
ZONING BOARD OF APPEALS
November 26, 2012, 5:30 P.M.
City Hall Council Chambers – 1911 Boundary Street
Beaufort, South Carolina

STATEMENT OF MEDIA NOTIFICATION: "In accordance with south Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media were duly notified of the time, date, place, and agenda of this meeting."

Members Present
Brad Hill, Chairman
Rod Mattingly
Eric Powell
Don Starkey
Tim Wood

Staff Present
Libby Anderson, Planning Director
Gail Westerfield, Recorder

FREEDOM OF INFORMATION ACT COMPLIANCE Public Notification of the Zoning Board of Appeals meeting has been published in compliance with the *Freedom of Information Act* requirements.

Chairman Hill led the Pledge of Allegiance and called the meeting to order at 5:30 p.m. He read the Freedom of Information Act and reviewed the procedure for obtaining a variance and the procedures of ZBOA review.

MINUTES
Mr. Mattingly noted that Chairman Hill was incorrectly called "Chairman DeVito" in the beginning of the minutes. **Mr. Mattingly made a motion, second by Mr. Powell, to accept the minutes of the June 25, 2011 meeting as amended. The motion passed unanimously.**

REVIEW OF PROJECTS
1411 Duke Street identified as District 120, Tax Map 4, Parcel 343
Appeal of outdoor storage of carriages
Applicant: Walter Gay d/b/a Sea Island Carriage Co. (ZB12-09)

The applicant is requesting an appeal of the decision of the Zoning Administrator to prohibit outdoor unscreened storage of carriages. Ms. Anderson said this is an appeal in regard to her prohibition of carriage storage in the Northwest Quadrant.

The property is zoned General Commercial District. A vacant / abandoned structure is located on the lot. Section 5.4.c of the Beaufort ordinance stipulates that the storage of equipment is only permitted in two other zoning designations. The applicant is storing carriages there. Staff notified the applicant to remove the carriages, but they were not removed. This lot hasn't been used for General Commercial and the applicants would need a safety permit application if it were, but they have not applied for one. The ordinance will not permit the carriages to be stored outdoors at this location.

The applicant contends that carriages are not "equipment," they are "vehicles"; Ms. Anderson went on to read the Webster's definition of "equipment" and said in this case, vehicles are also equipment.

Public notice was made, and a comment made by email was given to the board members, she said.

Staff asks that the ZBOA affirm the staff decision that the storage of carriages is not permitted and should be removed, Ms. Anderson said. Mr. Powell asked who owns the property; Ms. Anderson said **Jim Moss** owns it and is present. Mr. Powell asked if the horses were ever there, and Ms. Anderson said they tow the carriages pre-storage. Mr. Starkey asked if there were also horse trailers there. Ms. Anderson said she has not observed them since October when the applicant was notified, but earlier this year there was one seen there.

Mr. Moss, the property owner, said Mr. Gay has horse-drawn carriage inspection certificates, which he showed the Board. He mentioned that Mr. Gay is "taxed substantially." The photos that show where the carriages are stored are inaccurate, he said. He showed photos of where they are stored in the evening. He showed a photo of the property across the street and said that the radio station has a big dish out front. Nearby, the utility and phone company is directly across the street and transformers, trucks, digging equipment, etc. are stored there.

In regard to the property, Mr. Moss said he had applied to have the house torn down when he acquired it. The HRB turned down the application because there was a house there from 1924, they said. There was no house on the property, according to a map he showed. He said he wants to use the commercial property, and he wants to get rid of the house. Another part of the property was used for a fish market in the 1960s.

Mr. Moss said he would like to tear down the structures, and Mr. Gay had asked if he could lease it for the storage of the carriages at night, and since it is zoned General Commercial, he didn't feel that it was in violation of any ordinance. Foliage of 6' or more covers the shed well. Mr. Moss showed where the other carriage company's carriages are stored, and it's out in the open. He showed other pictures of where the other company stores their equipment. There is no trailer on his property, Mr. Moss said, only the carriages, which are under cover at night.

Mr. Moss said no one has complained to him, and he's talked to most of the residents. Those he spoke to said they had no problem with the carriages' storage. He showed a similar property

with open storage elsewhere in Beaufort. He said the complaint against Mr. Gay was "a surprise."

Mr. Moss read the section that Ms. Anderson had referred to: "accessory uses." He listed the uses that are prohibited and said none of those are on the property. Mr. Moss said he's had people doing illegal activities on the property and sleeping in the shed. He doesn't believe that the carriage under the shed is a violation of the ordinance, particularly the section that Ms. Anderson cited. Mr. Moss said Ms. Anderson had given him the email that objects to the matter, and the complainants live a block and a half away from his property. He agrees that the property is unsightly, and he would tear it down tomorrow, "but it's considered historical."

Mr. Gay said he owns Sea Island Carriage Co. and has lived in Beaufort his whole life. He said he rented the property to avoid crossing Boundary Street with the horses and buggies. The area was easy to pull in and avoid visibility except for where the gates are. All Mr. Gay has on the property are three carriages, all of which are certified by the city, i.e., they go through an inspection process by the Tour Coordinator, Officer **Hope Able**. He "knew the property was zoned General Commercial" when he leased it.

Mr. Gay has checked on other General Commercial properties in the City of Beaufort. He said people in the neighborhood come to collect the horse manure for their gardens. The neighborhood is very welcoming. Mr. Gay has delivered seafood to the property he leases until the late 1980s. One of the carriages is a back-up if they need it, and he showed a picture of it under the shed at 1409 Duke Street. The house was built in 1948 by a Marine and they lived there. They have verified that with various authorities. The carriage is on one of Mr. Moss's two 66' wide lots that are both zoned General Commercial. He showed views of the property from different angles.

Mr. Gay described the 8-10 minute process of taking the carriages in, hooking or unhooking the horses, and leaving with the trailer. They can replace the gates, which are "the only place you can see anything from." He reiterated what Mr. Moss had said about the competing carriage company's storage practices, including leaving equipment out in the open. These properties are zoned the same way as the property Mr. Gay is leasing. Across the street, at a funeral home, they have hearses in the yard. He showed pictures of other service buildings with parts and a bus on them, a limo, and other commercial vehicles on property that is zoned residential.

Mr. Gay went on to show pictures of various trailers and equipment around Beaufort, some of which is on residential properties. He said this property has been zoned General Commercial for 60+ years. He has made every effort to comply with the ordinance as it applies to General Commercial properties.

Mr. Gay said the letter from Ms. Anderson stated that the carriages were equipment and couldn't be on the property. Mr. Gay's insurance company told him that the carriages are classified as "vehicles." He doesn't have their *equipment* insurance his company offers because the carriages are considered to be *vehicles*. Carriages are considered to be vehicles by the US

Underwriters Association. Mr. Gay quoted the dictionary meaning of "vehicles," which includes "carts." Furthermore, there is a "slow-moving vehicle" sign on the carriages.

Mr. Starkey asked if all three carriages fit in the building. Mr. Gay said one stays in the building because it has no top. Two are outside the shed, usually pushed to the back side of the lot. All three buggies at night sit on the 1409 Duke property. The carriages with tops cannot fit in the building. Chairman Hill asked if all three are pushed to the back on a nightly basis. Mr. Gay said yes.

Mr. Mattingly asked why the application was for 1411 Duke, not 1409 Duke. Mr. Gay said he thought they were all one property. Mr. Mattingly said the actual shed is on 1409 Duke, not 1411 Duke; Mr. Gay said yes. Mr. Starkey asked when Mr. Gay started storing the vehicles on this property. Mr. Moss said March of this year.

Mr. Moss showed the UDO that described the appropriate uses on the overhead again. Mr. Moss reiterated that he owns both 1409 Duke and 1411 Duke. Mr. Wood said the main issue was that this lot on the staff report is abandoned and hasn't been approved for commercial use; to re-occupy the property for commercial activity would require zoning approval. He asked if that was the purpose the applicant coming before the ZBOA. Even though it's in a General Commercial *district*, the city is saying it's not a General Commercial *property*.

Mr. Mattingly said he had looked at the property, and he thought there was a building from 1926 there. Chairman Hill reviewed staff's request for the ZBOA to affirm the zoning administrator's decision. Mr. Wood said the first step might be to address the matter of the property as commercial. Ms. Anderson said it's zoned General Commercial but not for commercial use, and the city couldn't approve it for use as storage. It can be outside in Highway Commercial and Light Industrial. If a building were converted to a storage facility, it could be approved and used, but using it for *outside* storage would not be permitted.

Ms. Anderson said there was more than one complaint, and that's when they decided to investigate this. Mr. Starkey asked, if a carriage was considered a vehicle, then would it be allowed in fenced-in storage on a commercial lot? He thinks that carriage needs to be defined and whether the lot would handle the carriage if it's a vehicle as opposed to equipment. To him, a carriage as a vehicle or not is key to dealing with this matter. Ms. Anderson said in regard to use, the property has not been approved for *any* use. Mr. Starkey said he wanted to get to the next step, i.e., getting it approved for commercial with the following requirements, so he asked if the lot could be considered for approval if the carriages are vehicles. Ms. Anderson said they "would entertain such a request," and also if the building were converted to a use such as an office for the carriage company.

Bill Harvey said Mr. Starkey's question was a good one. A vehicle can also be equipment, he said. Even if it's licensed as a vehicle, that doesn't mean it's *not* equipment. He said the zoning administrator's decision seems like a reasonable, valid one, given the complaints from the neighborhood. He said this is about this property only, not about the other properties that Mr.

Moss and Mr. Gay had shown. He said this is also not an issue of the amount of license fees that Mr. Gay pays. It's about the property's use as determined by the zoning administrator.

Mr. Moss said he's heard about complaints, but he hasn't seen anyone who complained about anything except for the e-mail from a resident of the Northwest Quadrant. He feels that he and Mr. Gay should have the right to hear the complaints made against them, and he has not spoken to any individual in the neighborhood who has a complaint. Mr. Mattingly said they have only one written complaint, and Mr. Moss didn't provide any documentation of the favorable responses he says he got from neighbors.

Mr. Starkey asked what Mr. Moss is "willing to do as a possible fix to this property." The complaint they received implies that attractive and adequate fencing would help, he said. If the Board decided to give a variance for a period of time, Mr. Moss said he and Mr. Gay would do anything within reason.

Mr. Gay agreed that he "would do anything." There hasn't been any discussion beyond the letter he received that he has to get out, he said. They were going to install better gates. When Mr. Gay moved into the property, he said "there were homeless people on the property, wood all over the place, and rodents," and they cleaned all of that up. Everything extra that they have is stored in the sheds. Only the carriages are outside. They have a trash can for manure that the neighborhood has access to. Chairman Hill said they could make adjustments to meet the requirements, and this might involve an additional structure. Mr. Gay said they are willing to work with the city any way they can. The buggies go in the yard and are pushed back as far as they can be, Mr. Gay added.

Mr. Starkey said one of the UDO issues was the sight line from the street. A 6' or 7' fence would prevent seeing into the property. Mr. Gay said "unless you stop and look in the gate, you can't see the carriages" from various angles. Ms. Anderson showed a photo the way the carriages were stored on October 12, and they were highly visible. This property is in the Historic District, Ms. Anderson said, so any changes are in the HRB's purview and will require design review and specific standards, i.e., no chain link fence on the street side. The standards and processes would have to be followed.

Mr. Starkey said he realized that, but he is trying to find an opportunity for the applicant to present something to the HRB "to mitigate this issue." He feels they need an opportunity to come up with plans within a reasonable time limit for the city. He would like the City of Beaufort to determine what would be acceptable and then the applicants would go to HRB. Mr. Mattingly said the Board can't change "all these things," but he said if they table it for 30 days, the applicant can put up a new gate that might be acceptable, such as a gate that screens the property.

Mr. Wood said he goes back to "what is it zoned for." A complaint was lodged, so the city went to the property, and the buggies were parked in the open. It's in a General Commercial district, but it states that they have to go for approval first. Mr. Starkey said it can't be zoned otherwise

without making some changes. Mr. Wood said it's complicated because this is the Northwest Quadrant which "is beginning an evolution." Chairman Hill said he feels "they are close if it's zoned General Commercial."

Regarding what appear to be violations by other businesses elsewhere that were noted, if the board denies Mr. Gay, the city has to go after other violators, so he likes the idea of tabling it and having "30 days to talk about it and possibly come back on the same application." Mr. Mattingly said this began September 10 and no action has been taken. Ms. Anderson said if they table it, everyone needs to know what needs to be done in those 30 days. It cannot be approved now to store the carriages outside because it is not zoned for commercial use.

Mr. Starkey said the applicant has to come back with a plan that is at least an outline of what they would do and present it to the HRB. Also, if it's not going to be stored indoors, there will need to be a time limit by which a building is built or carriages removed. In the meantime, Mr. Starkey said, they have to have fencing as approved by the HRB and then come back for commercial zoning approval. This seems like an opportunity to fix the property up, Mr. Starkey said, and use it for something other than sitting vacant; they could put in a nice building that holds the buggies.

Mr. Mattingly asked Ms. Anderson if they can apply to store the carriages there. Ms. Anderson said the city would say "no, not outside." Mr. Starkey asked if they could build a building and receive approval. Ms. Anderson said there are a lot of "ifs" to approval by the HRB. Mr. Starkey asked if the applicant were willing to look into this; "there's no positive statement that has been made." Mr. Moss said he and Mr. Gay "will do what's reasonable" but he would "need input from staff" as to what they could do. He added that he is filing again with the HRB to have the house torn down. He thinks they could ask HRB about this matter at the same time.

Chairman Hill asked if a temporary band-aid in terms of storage and giving them a year to make the effort to apply to the HRB and get this rezoned was reasonable. If none of it happens or none of it works within a year, the ZBOA would have to agree with the staff decision. Mr. Starkey said they have to agree upon some things that have to be done immediately. "The minute the carriages are parked (where they're visible) in front of the road, it should be one strike and they're out," he feels. Also, the gate looks like its falling apart, and there are immediate things and then long-range things to be done to make sure that it meets commercial district requirements at the end of that time.

Mr. Mattingly said the applicant can demonstrate that he will do the things that need to be done. Of all the pictures, the worst were the way the gates looked, so they could immediately do better screening. They need to demonstrate their plans going forward that they want to be good neighbors, and will apply for proper zoning, etc.

Ms. Anderson reminded the board that the next meeting is December 18. After discussion, it was determined that the applicant would return on the first meeting in January.

Mr. Mattingly made a motion to table the matter until the January ZBOA meeting, during which time the applicants will demonstrate that they will meet the expectation of what the property ultimately will serve as. Additionally, the applicants will demonstrate to the neighborhood that they will properly screen the property to fulfill the wishes of the neighborhood. Mr. Wood seconded the motion. The motion passed unanimously.

ADJOURNMENT

There being no further business to come before the board, Chairman Hill adjourned the meeting at 6:58 p.m.