

**PLANNING AND ZONING COMMITTEE
MEETING MINUTES
November 29, 2006**

The Planning and Zoning Committee of the DeKalb County Board met on November 29, 2006 at 7:00 p.m. in the East Conference Room located in the DeKalb County Administrative Building. In attendance were Committee Members Roger Steimel, Marlene Allen, Eileen Dubin, Vince Faivre, Howard Lyle, Steve Slack, and Pat Vary, and staff members Paul Miller and Marcellus Anderson. Audience members included Stanley Todd, Rodney Beuhler, Lonnie Beuhler, Clem Stiely, Jim Quinn, and Kelsey Quinn.

Mr. Steimel, Planning and Zoning Committee Chairman, called the meeting to order, and noted that all members from the Committee were present except for Steve Slack.

APPROVAL OF AGENDA

Mr. Lyle moved to approve the amended agenda, seconded by Ms. Vary, and the motion carried unanimously.

APPROVAL OF MINUTES

Mrs. Dubin moved to approve the minutes of the October 25, 2006 meeting of the Planning and Zoning Committee, seconded by Mrs. Vary, and the motion carried unanimously.

At this time Steve Slack joined the meeting.

NONCONFORMING VARIATION -- Request of Stanley Todd for approval of re-occupation and use of a discontinued nonconforming house and lot in the A-1 District, on the north side of Shabbona Grove Road in Shabbona Township, Petition SH-06-19

Mr. Miller explained that Mr. Todd, the property owner, had filed an application for a Variation to waive the restriction of Section 8.03.D. of the DeKalb County Zoning Ordinance that restricts the re-establishment of a nonconforming use that has discontinued for a period of one year or more. The 0.75-acre subject property being located on the north side of Shabbona Grove Road, approximately 2,460 feet east of Todd Road in Shabbona Township, and is zoned A-1, Agricultural District. A public hearing on the requested Use Variance was held by DeKalb County Hearing Officer Ron Klein on October 26, 2006, at which the petitioner explained that he had acquired the property as a result of inheritance, and that the property includes a former school house building that had been converted to a residence. The house has been vacant for approximately six years, in part due to a court proceeding, and it is the petitioner's intent to remove the old structure and build a new house on the 3/4-acre parcel. Mr. Miller noted that the site does not have its own well and would need a new septic system, and also related that the regulations governing nonconforming uses are intended to allow such uses to remain only so long as they are maintained, and when a nonconforming use discontinues for more than one year, they are not to be re-established. It was noted that one member of the public spoke in favor of the request, and none spoke in opposition. The Hearing Officer has submitted his Findings and Recommendation, in which he recommended denial based on failure to

demonstrate that there is a particular hardship for the property owner if the Variation is not granted; no money was paid for the property, it has been vacant for six years, and the petitioner has an existing house on the surrounding property. Mr. Miller then informed the Planning and Zoning Committee that they can forward an ordinance for approval to the full County Board, and may recommend approval, conditional approval or denial of the proposal; and that if the Committee recommends approval, evaluation of the criteria for granting a Variation would have to be drafted, as the Committee would not be able to rely on the evaluation by the Hearing Officer.

Mr. Steimel noted that other, similar applications had brought before the Committee in the past.

Mr. Faivre agreed, noting that those past applications had been approved. He added that he had personally visited the property and saw no other viable uses for the property than as a residence. He also noted that the neighboring property owners were in support of the application and that he could see no harm in approving the application.

Ms. Vary stated that she was against the application, noting that she felt it was a violation of the "40-acre rule". She also asserted that no hardship had been proven and that it was not the same as the previous cases.

Mrs. Allen asked as to the condition of the existing house. Mr. Faivre responded that the house did not appear to be in good shape, and would need to be replaced with a new house, but that doing so would not really be adding anything not already present on the property. Ms. Vary also noted that the house had been gutted and would need to be torn down.

Mr. Faivre moved that the Non-Conforming Use Variation be approved, seconded by Mrs. Allen. A roll-call vote was called. Mrs. Allen, Mrs. Dubin, Mr. Faivre, Mr. Lyle, and Mr. Steimel voted to approve the motion; Mr. Slack and Ms. Vary voted to deny the motion. The Motion was approved.

Mr. Miller explained that since the Committee had opted not to follow the Hearing Officer's recommendation, that he would craft the Finding-of-Fact of Committee's decision to include into the proposed ordinance to forward to the full County Board. Mr. Miller noted that if the full County Board should not agree with the Committee's recommendation and fail to approve the ordinance, that the County Board would still need to act upon the application. The Committee directed that a second ordinance, denying the application, should be prepared in case the ordinance to approve failed.

SPECIAL USE PERMIT AMENDMENT -- Request of Stientunt Vineyards and Winery, Inc. on Waterman Road in Clinton Township for approval of a change in name to Waterman Winery and Vineyards, and approval of a change in ownership, Petition CL-06-20

Mr. Miller explained that Stientunt Vineyards and Winery, Inc. had filed a petition for an Amendment to a Special Use Permit to allow changes to conditions of approval related to the

production of wine and the tasting and sale thereof at wholesale or retail. The vineyard consists of 10 acres of a 123-acre farm located at 11582 Waterman Road and zoned A-1, Agricultural District. The subject property being located on the east side of Waterman Road, approximately 2,400 feet south of Miller Road, in Clinton Township. A public hearing was conducted on November 3, 2006 by DeKalb County Hearing Officer Ron Klein. The ordinance approving the Special Use Permit specifically granted approval to the name "Stiengtunt Vineyards and Winery, Inc.", and further includes a condition of approval to the effect that the Special Use would be in force only so long as the business was owned and operated Clem Stiely, Terry and Alexa Tuntland, and Larry Englesman.

Any changes to these elements of the approving Ordinance requires an Amendment to the Special Use Permit. The petitioners explained that Larry Englesman has sold his shares of the business to the wives of the other two partners, and that the partners want to change the name of the business to "Waterman Winery and Vineyards, Inc." To accommodate these changes, and assure there would be no future conflict should ownership or name change in the future, the petitioners requested that the Special Use be granted to run with the subject property without being tied to a property owner or specific business name. No members of the public spoke in favor of or in opposition to the request. Mr. Miller noted that the Hearing Officer had forwarded his report of findings and had recommended approval of the Amendment to a Special Use Permit.

Ms. Vary moved that the Special Use Amendment be approved, seconded by Mr. Lyle.

Ms. Vary inquired as to how often the County Board has linked a Special Use Permit to a specific owner. Mr. Miller responded that although such conditions had been traditionally applied by the County Board in the past, such conditions were not really necessary, and even potentially hard to sustain in court.

Mr. Faivre inquired as to what it would take to change the Zoning Ordinance to remove this type of condition from future Special Use Permits. Mr. Miller responded that this type of condition was not actually something enumerated in the Zoning Ordinance. He noted that it is the County Board's decision as to what, if any, conditions would be applied to a particular Special Use Permit. A change from assigning Special Uses to particular entities would simply be a change in the County Board's policy; no changes would need to be made the Zoning Ordinance.

Following further discussion, the motion was carried unanimously.

SPECIAL USE PERMIT -- Request of Rodney Buehler for approval of a home occupation in the form of a coral-farming and aquarium supplies business on property located at 15100 State Rte. 23 in Afton Township, Petition AF-06-21

Mr. Miller stated that Rodney Buehler, part owner, had filed a petition for a Special Use Permit to allow a home occupation business on property located at 15100 Illinois State Route 23 in Afton Township. The 0.8-acre parcel being located approximately 550 feet north of the intersection of Perry Road and State Rte. 23. The property is zoned PD-R, Planned Development - Residential

District. A public hearing was conducted on November 9, 2006 by DeKalb County Hearing Officer Ron Klein, wherein the petitioner explained that the business operates out of a detached building behind the house, and consists of providing maintenance and supplies for aquariums. The petitioner had also noted that there would be adequate room for the required parking spaces on the existing driveway, and few customers came to, or deliveries were made to, the residence. Mr. Miller noted that five members of the public spoke in favor of the request and none in opposition. The petitioner testified that he did not reside in the house, but rather that it was the residence of his parents. Mr. Miller then explained that the Zoning Ordinance regulations related to home occupations restrict such uses to members of the family residing in the dwelling, which would disqualify the petitioner from being granted a home occupation Special Use Permit. However, Mr. Miller also noted that the Hearing Officer had submitted his findings, and had recommends approval of the Special Use Permit. The Hearing Officer had noted the technical issue of residency, but had noted that the petitioner spends considerable time at the subject property. Mr. Miller added that the Planning and Zoning Committee should consider not only the restriction of the Zoning Ordinance, but the fact that the County Board has not vested itself with the authority to waive the Zoning Ordinance regulations.

Mrs. Dubin inquired as to what would happened if the business was to extend its days of operation to more than once a week. Mr. Miller responded that there is no practical method for staff to regulate the use on such a day to day basis. He noted that such a change in use would only be an issue if staff began to receive complaints about how the use was operating.

Ms. Vary stated her concerns as to whether the County Board actually had the authority to grant this Special Use or not, and about the technicality used by the Hearing Officer to justify his recommendation for approval. She did however point out that she did not see any harm in granting the Special Use Permit.

Mr. Steimel elaborated the Hearing Officer's reasoning for recommending approval of the Special Use. He added that he also saw no harm in granting this Special Use, and that he felt the County should be trying to help people, such as the petitioner, who are trying to make a living.

Mr. Lyle inquired after further elaboration as to whether or not the County Board could vote to approve the petition or not. Mr. Miller explained that the County Board can not, on a case by case basis, choose to ignore its regulations, however, what the Hearing Officer had offered was an interpretation of the existing text whereby the County Board could vote to approve this. Mr. Lyle added that he agreed with Mr. Steimel's comments.

Mr. Lyle moved to approve the Special Use, seconded by Mrs. Allen, and the motion carried unanimously.

Mr. Faivre stated that he felt other applications, similar to the one previously discussed, would be coming forth in the future, and he wondered whether the County Board could add a clause to the Zoning Ordinance whereby they would have the discretion to change some of the regulations. Mr.

Miller responded that such a mechanism does exist in the form of the Zoning Text Amendment, which allows the County Board to make changes in the Zoning Ordinance. He further elaborated that to add a clause into the Zoning Ordinance which would allow the County Board to just ignore regulations on a case-by-case basis would be ill advised, as this could leave the County Board open to being accused of being arbitrary and capricious in their decisions. The better solution, to the case in point, would be to amend the regulations that govern home occupations to allow that they can be conducted by members of the family but remove the requirement that such members live at the residence.

SIGN REGULATIONS AMENDMENT -- Presentation by staff of a possible amendment to the Sign Regulations of the Zoning Ordinance regarding off-premises signs

Mr. Miller noted that over the last two months, the Planning and Zoning Committee had discussed possible changes to the Sign Regulations of the Zoning Ordinance regarding the following topics:

1. On-site signs associated with seasonal uses. Mr. Miller explained that per the direction of the Committee, staff drafted a possible Zoning Text Amendment which would add a new regulation to Section 7.07.A, allowable signs in the Agricultural District that would accommodate multiple on-site signs associated with permitted seasonal uses, each sign to be up for not more than nine months of each year;
2. On-site signs announcing construction projects that are approved but not constructed ("coming soon" or "future home of"-type signs). Mr. Miller explained that per the direction of the Committee, staff drafted a possible Zoning Text Amendment to Section 7.07.A for "coming soon"-type signs in the Agricultural, Commercial and Manufacturing Districts;
3. Temporary off-premises signs advertising and directing traffic to seasonal uses. Mr. Miller explained that per the direction of the Committee, staff drafted a possible amendment to Section 7.10.B. regarding Special Displays and Other Temporary Signs (new language is underlined) that would allow permitted and special uses to have off-premises signs, with restrictions related to size and separation between such signs. Mr. Miller repeated that its is staff's strong recommendation that off-premises signs not be permitted;
4. Permanent off-premises identification and directional signs. Mr. Miller explained that the Committee requested that staff give consideration to a change to the Sign Regulations which would allow uses to have directional signs permanently located on other properties. He noted that, currently, such off-premise signs are prohibited by the Zoning Ordinance, and that including this provision would allow a proliferation of signs throughout rural, unincorporated DeKalb County. This would be contrary to the County's consist policy of restricting the number and location of signs. Further, he noted that it seems that there are certain uses for which permanent, directional signs the County Board would find unoffensive (such as churches), but others which may be considered nuisances or inappropriate (such as

retail commercial or restaurant uses). He noted that this type of distinction is difficult to regulate and that such discrimination may be subject to being overturned by a court if challenged. He pointed out to the Committee that it should also be borne in mind that directional signs installed on private properties is not the only option for uses; directional signs may be installed within the public right-of-way at intersections at the discretion of the authority that governs the street (the Township, County or State). Such directional signs are typically green in color, indicate the type of use and provide a directional arrow or approximate mileage. Such discrete but effective signs should meet the need for providing identification and direction without crossing the line to advertisement. Mr. Miller added that if the name of a use is considered to be very important, it is possible that the County Board could adopt a policy, following consideration by the Highway Committee, of permitted names to be included on the green directional signs on a case-by-case basis.

Mr. Miller finished by requesting that the Committee review the recommendations and provide direction to staff regarding the filing of a Zoning Text Amendments application.

Mr. Faivre stated that he had an objection to item #4. Mr. Miller responded by restating staff's recommendation against changing the current prohibition against off-premises signs.

Mr. Slack inquired as to the possibility of discriminating between promotional and directional signs. Mr. Miller responded that it is possible, and that such was the argument that the proposed regulation changes is trying to make. Mr. Miller further elaborated on his concerns as to whether the proposed changes would be upheld if challenged in court.

Mr. Steimel inquired whether directional signs erected within the right-of-way of township roads would still be under the County Board's jurisdiction. Mr. Miller responded that it would be the Township Road Commissioner's jurisdiction, but that they have a good working relationship with the County.

Ms. Vary suggested that the Committee go with the alternate plan suggested under item #4, instead of changing the zoning language.

Mr. Steimel inquired whether, given the proposed language listed under item #3, if seasonal signs would require a Special Use Permit. Mr. Miller informed him that the proposed changes would only require that they apply for a sign permit, to be renewed every year.

Ms. Vary inquired as to the differences between item #3.3 and item #3.4, why not have them combined into one item. Mr. Miller pointed out that item #3.3 addresses temporary signage, which could be erected for up to 30 days, whereas item #3.4 address seasonal signage, which could be erected for up to nine months.

Ms. Vary indicated that she supported items #1 - #3, but asked if Mr. Miller was recommending against item #3.4 also. Mr. Miller indicated that he did recommend against that item also, and reiterated that staff that any off premise signage is difficult policy, and that the current approach is the better approach.

Mr. Steimel stated that he supports that idea of the temporary, off-premise signage for seasonal uses, as would be covered under item #3.4, but for a shorter period of time than nine months. Mr. Miller explained that the nine month time period was chosen because a number of the seasonal uses, such as farm stands, are allowed to remain operate for up to a nine month time period. Mr. Miller further explained that just because the signage was allowable for up to nine months, he did not expect most petitioners would seek to have signage up that long. Ms. Vary stated that she felt that the alternative signage option, list under item #4, would be a better solution to this issue instead of item #3.4.

Mr. Faivre indicated his support of the proposed regulations crafted by Mr. Miller.

Ms. Vary suggested approving items #1 - #3, but excluding item #4 for another month for further discussion. Mr. Steimel responded that they should give item #4 a try also.

Mr. Lyle moved to direct staff to submit a Zoning Text Amendment application to adopt items #1 - #3 of the proposed changes to the signage regulations, seconded by Mr. Faivre, and the motion carried unanimously.

The Committee also directed staff to work with the County Engineer to bring the issue of directional signs within road rights-of-way before the Highway Committee of the County Board.

DECEMBER MEETING -- Discussion on cancelling the December meeting of the P&Z Committee

Mr. Miller informed that Committee that only one item would appear on the agenda for the December 27, 2006 meeting, and that the petitioner for that item was agreeable with the idea of postponing the Committee's review of his item until their January 24, 2007 meeting. Mr. Miller, therefore, suggested that the December 27, 2006 meeting be cancelling, and all pending items be postpones until the January 24, 2007 meeting.

The Committee agreed with Mr. Miller's suggestion.

ADJOURNMENT - *Ms. Vary moved to adjourn, seconded by Mr. Lyle, and the motion carried unanimously.*

Respectfully submitted,

Roger Steimel
Planning and Zoning Committee Chairman

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