



*City of Clemson*  
**PLANNING & CODES ADMINISTRATION**

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**BOARD OF ZONING APPEALS**  
**April 16, 2015 – 6:00 P.M.**  
**CITY COUNCIL CHAMBER**

**Members Present:** Jon Silkworth, Brian Roberts, Cynthia Robinson Mindy Spearman, Elaine Richardson and Ray Brown

**Members Absent:** Marvin Dixon

**Staff Present:** Todd Steadman, Zoning and Codes Administrator and Beth Connor, Recording Secretary

1. **Call to order:** Chairman Mindy Spearman called the meeting to order at 6:00 P.M.
2. **Board Business:** Todd Steadman mentioned that the next meeting, if needed, would be on May 21<sup>st</sup> which is the Thursday before Memorial Weekend. At this time, Mr. Steadman said that there are no applicants. Mr. Steadman asked the Board if they would be inclined to leave the meeting date as is or change it. The Board, by show of hands, approved to leave the date of May 21<sup>st</sup>.
3. **Adoption of Minutes: March 19, 2015 Meeting:** Ray Brown moved the Minutes be adopted as presented. Jon Silkworth seconded the motion. Motion approved with show of hands.
4. **Advisory/Action Items:**
  - a. **2015-SE-03:** A Special Exception request to allow a new Bed and Breakfast on a vacant parcel 4043-16-84-6552 which is zoned R-20 and located between 60 Cherry Road and 613 Cherry Road.

Ms. Spearman proceeded to explain the process for the Public Comment section of the meeting including the swearing in for sworn testimony. Ms. Spearman informed the audience that the factual testimony is limited to 10 minutes with the Board members able to extend the time by 5 minute increments. Ms. Spearman also told the audience that the Public Comment portion is limited to 5 minutes with no extension of time. Ms. Spearman asked for a show of hands of those wishing to speak. There was a total of 5 people. Ms. Spearman proceeded to conduct a swearing in ceremony.

**Staff Report:** Todd Steadman reminded the Board that they were rehearing this request due to a procedural error on the part of Staff, for which he apologized.

Mr. Steadman informed the Board that the request was publicized in the newspaper, the site posted with signs and all property owners within 200 feet of the proposed location were notified via first class mail.

Mr. Steadman said his report is the same as it was at the March meeting. Mr. Steadman explained the general guidelines of the BZA as well as the specific Zoning District guidelines that the request will have to follow. Mr. Steadman listed the issues that were brought up at the March meeting.

Mr. Steadman described the motion with conditions. Mr. Steadman reiterated Mr. Dixon's comment last month that a B & B is a more protective use than rental property.

Mr. Steadman share that he had spoken with 3 citizens regarding the project. Mr. Steadman said that one person was concerned about the possible access to Hunnicutt. Mr. Steadman stated that this property would not be accessible from Hunnicutt. One person said they heard there was going to no owner on site. Mr. Steadman said there would be. And one person said they just didn't want a Bed and Breakfast in the neighborhood.

**Applicant:** Regina Sophie Porter, 401 Red Maple Way stressed that the Bed and Breakfast would be run like a business. Ms. Porter also mentioned that there had been letters sent to her house in regards to her intentions and that she found this inappropriate. Ms. Porter said that B&B's are very community oriented and patrons using B & B's are interested in the community, and the history of the surroundings and often photograph and paint the B&B.

Ms. Porter reminded the Board that there is a public golf course across from the lot. Ms. Porter also stated that she doesn't know of a situation where a B&B has negatively affected property values. Ms. Porter addressed the concern expressed regarding occupancy by stating that the City allows 4 bedrooms and the charge would be \$125 per day.

Ms. Ported said that she will be living in the same place, as required, and this will be a gated area for security concerns and no walk-ins will be accepted.

#### **Factual Testimony Session Open:**

John Wells, 107 Mountain Laurel, thanked the Board for the opportunity to address this request. Mr. Wells presented a hand-out entitled South Carolina code of Laws, Section 6-29-1145 – Determining existence of restrictive covenant. ([SEE ATTACHED](#))

Mr. Wells read from the handout stressing that this document is a legal document including Restrictive Covenants for this parcel. This document was signed in March 1953. Mr. Wells pointed out the following covenants:

*First – No building, other than garage or out-house shall be erected on said lot of land which in not in keeping with other residences in the Clemson Heights Subdivision and in the community;*

*Second – No commercial, or business building shall be erected on said lot of land at any time and no noxious or offensive business activity or other nuisance shall be carried on upon said lot, nor shall any cattle, hogs or live stock be kept on said premises.*

Mr. Wells pointed out that there were examples from other Municipalities, including Pickens County, of Restrictive Covenants Affidavit.

Mr. Wells reminded the Board that the covenants go with the land.

Mr. Wells stated that permitting the Special Exception is in violation of the Enabling Act.

Judy Caldwell, 107 Mountain Laurel, stated that she has worked with Ordinances. Ms. Caldwell presented a handout to the Board entitled Summary of Considerations in relation to the Special Exception request. ([SEE ATTACHED](#))

Ms. Caldwell informed the Board that this is an accessory use, not the primary use.

Ms. Caldwell read the document to the Board interjecting her interpretation.

Allowed time expired and Elaine Richardson moved that the Board extend the time by 5 minutes. Ray Brown seconded the motion. Approved unanimously by show of hands.

Ms. Caldwell continued by reading from Codes. Ms. Caldwell expressed that this was not an appropriate use for the neighborhood.

Ms. Caldwell directed the Board to page 4 *Percent Floor Area* section where it states, “The homestay Bed and Breakfast operation *shall not use more than fifty (50%) percent of the floor area of the principal residence. Common areas such as the kitchens are not included in this calculation.*” This language is a recommendation of the American Planning Association (APA) and the American Bed and Breakfast Association (ABBA).

Additional 5 minute extension expired and Jon Silkworth moved that the Board extend the time by 5 minutes. Ray Brown seconded the motion. Motion approved by a 5-1 (Cynthia Robinson was against the extension) by show of hands.

Ms. Caldwell expressed that if the Board chose to approve request it would set a precedent.

#### **Factual Testimony Session closed**

#### **Public Comment Session open**

Mellie Warner, 103 Tamasse Drive informed the Board that she had a petition signed by over 120 people against this request. Petition presented to Beth Connor to be a part of the official record. (SEE ATTACHED)

Ms. Warner said that the golf course is University property and zoning is for recreational use. Ms. Warner pointed out that the golf course has no access from Cherry Road.

Ms. Warner feels that if the Special Exception is granted it will continue to apply into the future and it's not suitable for a single family home.

Ms. Warner feels that this would have a long term adverse effect on the neighborhood.

#### **Public Comment Session closed**

Ms. Porter informed the Board and audience that she teaches Environmental Science – Zoning at Anderson University. Ms. Porter pointed out that there were major changes within communities after WWII. The dependence on cars has changed. Ms. Porter pointed out the change with developments like Patrick Square, Downtown Greenville, etc. She feels that we should look to the past in regards to zoning.

Todd Steadman asked to address comments made, in particular comments by Judy Caldwell. In regards to:

- Item A - there is no one applying for a permit.

- Item B – Violation of deeds and restrictions, the validity of this document needs to be checked into.
- Item C – Statement made that this would be an ‘accessory use’. This structure would be built in accordance of the 2012 International Residential Code, because it will be built as a single family dwelling.
- Item D – Is irrelevant.
- Items E, F, G – The Board should consider

Mr. Steadman said that Item H has an interpretive conflict. This would be open to challenge regarding accessory use. Mr. Steadman said that the language is clear on “owner occupied” which the Ordinance allows.

In regards to the comment that someone other than the owner lives there and runs the B&B, Mr. Steadman said that no one can deny the owner to have a relative operate it.

Mr. Steadman recommended the option to table the request due to a lack of personal knowledge of the covenants presented. Mr. Steadman said that there is no knowledge if the covenants are valid, because we were not aware they existed.

Brian Roberts, referring to the Fair Housing Act, commented on the Third covenant, which states *No person other than of the Caucasian Race shall use or occupy the said lot except domestic servant, or servants domiciled with the owner of the lot.* Mr. Roberts feels that the change in law would supersede this covenant.

Mr. Roberts also pointed out that the document states Oconee County. Staff explained that there was a time when part of the City was in Oconee County.

Ms. Porter stated that her intent is to build the B&B as a house.

Mr. Roberts asked if she would build a home not a B&B would Ms. Porter still do it. Ms. Porter could purchase the property, but she wants to build a Bed and Breakfast.

Ms. Richardson said that Ms. Porter’s purchase of the parcel is contingent on Board’s decision and that she has made clear that she intends to build it as a Bed and Breakfast.

Mindy Spearman said that the City Ordinance does not appear to be in line with State Law.

Mr. Steadman recommended the Board table this request because the Board and Staff do not have enough information to make an accurate decision.

Ms. Spearman told the Board that they have 3 options. The options would be to make a motion without conditions, make a motion with conditions or make a motion to table the request.

Brian Roberts moved that the Special Exception request to allow a Bed and Breakfast be tabled in anticipation of further information. Board requests that Legal counsel review covenants to determine legality. Jon Silkworth seconded the motion. Motion approved unanimously by show of hands.

b. **2015-SE-04:** A Special Exception request to allow a new religious use to be established on vacant parcel 4063-05-28-1097 which is zoned R-20 and located at the intersection of Gordon Lane and Central Road.

**Staff Report:** Mr. Steadman informed the Board that the request was publicized in the newspaper, the site posted with signs and all property owners within 200 feet of the proposed location were notified via first class mail. There were a couple Citizens that called asking for clarification. There were no objections voiced.

Mr. Steadman said that this use is allowed with a Special Exception in R-20 zoning district. Mr. Steadman said that there are 2 sets of Standards that must be met.

**Applicant Report:** No applicant present, which is not a requirement to continue.

**Factual Testimony Session open:** No one wished to comment.

**Factual Testimony Session closed**

**Public Comment Session open:** No one wished to comment.

**Public Comment Session closed**

Elaine Richardson moved that the request for a Special Exception be approved as presented. Cynthia Robinson seconded the motion. Motion granted unanimously by show of hands.

5. **Reports:** None.

6. **Other Items:** None

Elaine Richardson asked Mr. Steadman to look at the Ordinance point by point.

Mr. Steadman explained that there may be weaknesses in the ordinance, but that does not mean that it is necessarily wrong. Mr. Steadman said that the sources for the information the public presented needs to be validated and there needs to be a legal ruling on the covenants.

Jon Silkworth said that the Board can make more restrictive conditions.

Mr. Steadman said that the majority of the items brought up by the public were not relevant to the Board's decision. Mr. Steadman also said that the Board can add additional layers of protection.

Ms. Spearman said that there could be a condition that the Special Exception does not go with land.

Ms. Robinson asked if a member could present research. Mr. Steadman reminded the Board that they are a quasi-judicial Board and it puts the Board at a disadvantage to have the public drop evidence at a meeting. The staff, Board, and process would benefit by receiving the information in a timely fashion to determine the value/appropriateness.

7. **Adjourn – 7:40 p.m.**

Respectfully submitted,

Beth Connor  
Recording Secretary

*Note: Proceedings of this meeting have been recorded.*