

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
January 12, 2016

Members Present

City:

Mr. Ed Wilson, Chairman
Mr. Mike Gee, Vice-Chairman
Mrs. Joyce Lance
Mr. Todd Smith
Mr. Robert Giles II (Alt.)*

Members Absent

City:

Mr. Eric Grant (Alt.)

ETJ:

Mr. David McDevitt (Alt. ETJ)

ETJ:

Mrs. Sylvia Greeson (Alt. ETJ)

*Not voting

Also present was Mr. Joey Lea, Zoning Administrator and Mr. Chris Marland, Zoning Enforcement Officer.

Chairman Mr. Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Chairman Mr. Ed Wilson stated, the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the Board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupt, disturb, or disrupt to leave; failure to comply with this order is punishable by imprisonment up to 60 days, a fine of up to \$1000.00 or both. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to grant a Special Use Permit or to determine an appeal.

DUE PUBLICATION

Mr. Chris Marland, Zoning Enforcement Officer with the City of Burlington stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all contiguous property owners were mailed a notice advising of this meeting.

SWORN TESTIMONY

Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

MEETING MINUTES

Board Member Mrs. Joyce Lance made a motion to approve the minutes as corrected. Board Member Mr. Todd Smith seconded the motion. The Board voted unanimously to approve the December 8, 2015 Meeting Minutes.

ITEM NO. 1:

CASE NO. 01-16 SPECIAL USE PERMIT (City)

Robert F. McCormick Jr.

104 N. Church St.

Alamance County Tax Map number 011-32-44

§ Section 32.13.K

Outdoor storage in an I-2 zone.

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, the case before you today is Case No. 01-16. It is for 104 N. Church St. Mr. Robert F. McCormick Jr. is applying for a Special Use Permit for an outdoor storage area. This case was brought to our attention from a complaint we received through our Code Enforcement Department for a cleanup of junk or, trash and debris as they call it. Chairman Mr. Ed Wilson asked, which department was that? Zoning Enforcement Officer Mr. Chris Marland stated, we received it through our Code Enforcement Department for trash and debris scattered around the property. We met with Mr. McCormick on the property. We explained to him what he needed to do to come into compliance. We gave him ample time to do so, and one of his avenues of compliance is to get a Special Use Permit for the outdoor storage area for him to move the items scattered around the property into the storage area to be screened in. If you should approve this, it will help him to get to that stage of compliance that he needs to be in for the City and for himself. If you choose not to approve this, we need to let you know that the other avenue of compliance is that the City will go into the property and do the cleanup themselves and he will be charged for that. Chairman Mr. Ed Wilson asked, it's ok to keep them there as long as the fence is there and the proper requirements are made? Zoning Enforcement Officer Mr. Chris Marland stated, with a Special Use Permit he can keep them in an outdoor storage area that you approve, that is to be screened in with opaque screening. He can keep the items in there yes. Board Member Mrs. Joyce Lance asked, so he is planning to do exactly what you recommended? Zoning Enforcement Officer Mr. Chris Marland stated, yes. Code Enforcement worked with Mr. McCormick to try and get him to remove the items himself or get them stored. There is a building on the property, you can see it in your packet. From what I understand from Mr. McCormick, the building is pretty full and there is not a lot of room left in there for more items. Board Member Mrs. Joyce Lance asked, now without naming the person or business but who made the complaint? Was it an adjacent property owner? Zoning Enforcement Officer Mr. Chris Marland stated, that, I don't know. Board Member Mr. Todd Smith asked, what kind of items are they? Not an inventory, but are they papers or tires? Zoning Enforcement Officer Mr. Chris Marland stated, it's pretty much a mix of everything on the property. As you see here on the screen there is a vehicle, he also has a trailer full of items like pallets, wood, desks, and items like that. Chairman Mr. Ed Wilson asked, is this an ongoing business? Zoning Enforcement Officer Mr. Chris Marland stated, you would have to ask Mr. McCormick that. Chairman Mr. Ed Wilson asked, has this been through the technical review committee? Zoning Enforcement Officer Mr. Chris Marland stated, no it doesn't need to. Chairman Mr. Ed Wilson asked, it doesn't need to go? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, how long has this been there? Zoning Enforcement Officer Mr. Chris Marland stated, it's been there for quite a while. Mr. McCormick can testify better to that. I know that when we met with him one time he had told us he's had this stuff for quite a few years.

Board Member Mrs. Joyce Lance asked, I guess you would want me to ask Mr. McCormick since the existing use of the warehouse, it's what it is; he is warehousing right? You would have the questions go to him? Zoning Enforcement Officer Mr. Chris Marland stated, yes ma'am. As you would notice on your monitors there are more pictures there from the items that were being stored. Board Member Mrs. Joyce Lance asked, it's a junkyard? Zoning Administrator Mr. Joey Lea stated, it can be perceived that way. The cars are a different story. We are working with him now on a different level. As you can see all this stuff that is on the property, he can explain what his business is, this is the stuff that will have to be removed and put into a screened area or the City will clean it up for him. Board Member Mrs. Joyce Lance asked, I imagine that is costly? Zoning Administrator Mr. Joey Lea stated, this will be. Board Member Mr. Todd Smith asked, you guys know if the complaint would have been about the odor, if it had rats or what the specific complaint was? Zoning Enforcement Officer Mr. Chris Marland stated, I do know part of the complaint was rats coming from the back of the area across the street from the residential homes. As far as the odor part of your question, I'm not sure. Chairman Mr. Ed Wilson Stated, ok, Mr. McCormick please come forward.

Mr. Robert F. McCormick Jr., stated, I'm Robert McCormick and I affirm I will tell the truth. Chairman Mr. Ed Wilson stated, so tell us a little bit about your business and what's going on here. Mr. Robert F. McCormick Jr., stated, I've been trying to sell antiques since back in the 80's, I've been doing this all my life. I bought the land at auction from the City back in '95. I've always bought and sold antiques. Basically the stuff that is sitting outside is stuff to take to the flea market; its chairs and things. I do a lot of recycling and I up-cycle a lot of lamps and things. What the City is allowing me to do is to consolidate that stuff and put it in a storage area. Whenever you recycle something it always looks like junk until you take it apart and try to make the best out of it. Board Member Mrs. Joyce Lance asked, were you surprised to hear that rats were going in to the residential section? Mr. Robert F. McCormick Jr., stated, my property borders the railroad and they never mow it and the grass gets high and there's briars, and then there's feral cats that go in and out of there and you have the Hawks that fly around. I can't do anything about the railroad but I can at least try and clean up my property. Board Member Mrs. Joyce Lance stated, I noticed that you shook your head when I asked if it was a junkyard. Mr. Robert F. McCormick Jr., stated, no ma'am I don't consider it to be. I've got a car out there that's a '62 Pontiac covered up but I'm going to put it on eBay and I know it will bring in \$3,500. One of the tires went bad and I pulled the hubcaps off so nobody could take them. I covered it up and all you have to do is put the hubcaps on and pump the tires up and boom you have a great car. Chairman Mr. Ed Wilson asked, you are in the industrial area is that correct? Mr. Robert F. McCormick Jr., stated, yes sir. Chairman Mr. Ed Wilson asked, I-2 is that what I see Mr. Marland? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. Chairman Mr. Ed Wilson asked, if the screening is approved for his outdoor storage area then he is compliant with the industrial district that he is in? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. Chairman Mr. Ed Wilson asked, he has a little more work to do from what I understand? Zoning Enforcement Officer Mr. Chris Marland stated, yes, like Mr. Lea stated we are working with him on a separate issue with the vehicles but right now he is trying to get compliance with the Code Enforcement action that can be taken upon him. And to do so, he needs to get this fenced in storage area or everything will have to be removed from the property. Chairman Mr. Ed Wilson asked, he is working with you? He indicates that he is working with you and you are all working together? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. Board Member Mrs. Joyce Lance asked, you said that you have been there since '95? Mr. Robert F. McCormick Jr., stated, yes ma'am. Board Member Mrs. Joyce Lance asked, is this your first complaint from somebody to Code Enforcement? Mr. Robert F. McCormick Jr., stated, it's not my neighbors because I've talked to them. I've talked with Wesley Sharpe and my neighbor Mr. Jones who lives beside of me. I've known him for years too, but I don't know anyone that's unhappy. Chairman Mr. Ed Wilson asked, do you live in the area, did I hear you say that? Mr. Robert F. McCormick Jr., stated, I've got an apartment in the area. Chairman Mr. Ed Wilson stated, ok.

Board Member Mrs. Joyce Lance asked, of the 20 years you've been there, this is the first time this has come up? Mr. Robert F. McCormick Jr., stated, yes ma'am. Board Member Mrs. Joyce Lance stated, ok. Chairman Mr. Ed Wilson stated, tell us about the screened in area. Where do you want to put that? Mr. Robert F. McCormick Jr., stated, it would be on the railroad side, if you go out there in the middle. Chairman Mr. Ed Wilson asked, is that the red box there on the screen? Mr. Robert F. McCormick Jr., stated, yes. Chairman Mr. Ed Wilson asked, how do you plan on constructing that? Mr. Robert F. McCormick Jr., stated, using simple chain link fence of an opaque style. Chairman Mr. Ed Wilson asked, so in looking at the aerial photo on the screen what on the property is going to go in there? The 25X25 area proposed seems kind of small. Mr. Robert F. McCormick Jr., stated, it's going to be a 40X40 and I've gotten rid of a lot of stuff and there will be a lot more gone. It will be more small stuff. Board Member Mrs. Joyce Lance asked, so we pay attention to detail, right here it says proposed 25X25 and now you are saying a 40X40. Zoning Administrator Mr. Joey Lea stated, he decided at the last minute to increase the size. Board Member Mrs. Joyce Lance stated, ok. Board Member Mr. David McDevitt asked, you don't store anything that is food stuff, you don't have any seeds or anything like that? Mr. Robert F. McCormick Jr., stated, no sir. Zoning Administrator Mr. Joey Lea stated, as a requirement of the Special Use Permit it's the storage of any product or material. That's basically everything out there. Chairman Mr. Ed Wilson stated, now say that again. Zoning Administrator Mr. Joey Lea stated, the ordinance says the storage of any product or material. Board Member Mrs. Joyce Lance asked, wow, so you can store food items out there? The way it's written I mean? Zoning Administrator Mr. Joey Lea stated, probably. Board Member Mrs. Joyce Lance stated, Mr. McCormick, the Committee has to look at several things in order to approve a Special Use Permit. We have to know that what you are going to do is not going to endanger the public health or create any type of safety hazards and you need to talk to us about that. Do you think that what you are going to do is going to endanger the public? Mr. Robert F. McCormick Jr., stated, no, I've worked there all these years I don't see any dangers. Board Member Mrs. Joyce Lance stated, ok, and it's not the flea market being questioned here, I think it's the stuff that is strewn about the lot. Board Member Mrs. Joyce Lance asked, ok, do you think what you are doing is a public necessity? Mr. Robert F. McCormick Jr., stated, it's always been a need in the antiques, if there wasn't I wouldn't be doing it for 20 years. Board Member Mrs. Joyce Lance asked, ok do you think that with the improvements that you are proposing, and the City has suggested, that when you complete these changes to the City's satisfaction, do you feel like what you are going to do is going to injure the adjacent property? Is it going to cause their property values to go down in that general area? Mr. Robert F. McCormick Jr., stated, no ma'am I've talked to my neighbors, they were all happy with the changes I'm doing. Board Member Mrs. Joyce Lance asked, do you feel like what you are wanting to do is in harmony with that general area? Mr. Robert F. McCormick Jr., stated, yes ma'am. It'll help the property values to have everything in one screened area. Board Member Mrs. Joyce Lance asked, you're paying for improvements? Mr. Robert F. McCormick Jr., stated, right, and I expect it to improve. Chairman Mr. Ed Wilson stated, tell me about vehicle circulation on your property, parking and loading. The vehicles coming on to your property, we have a few questions here to ask about that. Mr. Robert F. McCormick Jr., stated, I have access with three cutouts on Church St. and when you come up Graves St. I've got 60 ft. of street right there, and coming in on the backside on Stag St. by the railroad, I have about 60 ft. there. Chairman Mr. Ed Wilson asked, do you have a lot of drive ups on your property? Mr. Robert F. McCormick Jr., stated, yes sir. I put a lot of things on Craig's List because I don't like putting things right on the street, so I can keep an eye on everything. Board Member Mr. David McDevitt asked do you still operate an auction in there? Mr. Robert F. McCormick Jr., stated, no, but that is something I would like to start back up this year, that's why I'm getting everything organized. Chairman Mr. Ed Wilson asked, when people come to your place do you have enough parking and offloading for them all on your property? Mr. Robert F. McCormick Jr., stated, yes sir. I can bring in tractor trailers and have plenty of room.

Chairman Mr. Ed Wilson asked, is there noise, glare, and lights, and if so is everything contained in your property? Mr. Robert F. McCormick Jr., stated, I have regular street lights. I have one on Stagg St. and one on Graves St. Chairman Mr. Ed Wilson asked, is that the one from the power company? Mr. Robert F. McCormick Jr., stated, yes sir. Board Member Mrs. Joyce Lance asked, prior to the person that made this complaint, had the neighbors or anybody around there come to you personally to talk with you about their concerns? Mr. Robert F. McCormick Jr., stated, I'm out there every day, I'm usually walking down the railroad and down to North Park. The people in the boarding house pretty much mind to themselves. The people in the rental house think I'm good and the other house is a boarding house and they stay in their area depending on if they have a job or not. The house down below is an empty home and it's been empty for the last few years. Wesley Sharpe has that rental house there and I've always gotten along with him so if he had anything to say he has had plenty of opportunity to tell me. Board Member Mrs. Joyce Lance asked, well you heard Mr. Marland and Mr. Lea say that the notice is up about this hearing and I don't see anyone here to complain. Mr. Robert F. McCormick Jr., stated, well I've talked to them and explained. Board Member Mrs. Joyce Lance stated, It's hard to complain about improvements. Chairman Mr. Ed Wilson asked, is there any more questions for Mr. McCormick? Zoning Enforcement Officer Mr. Chris Marland stated, we would just like to ask that should you choose to approve the Special Use Permit, that you place a time frame on the time that he does need to comply with the Special Use Permit and that time frame shall be 60 days. Chairman Mr. Ed Wilson asked, 60 days? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. Chairman Mr. Ed Wilson asked, Mr. McCormick do you think you can comply with the 60 days? Mr. Robert F. McCormick Jr., stated, yes sir. Chairman Mr. Ed Wilson stated, ok I think that is fair. Board Member Mrs. Joyce Lance asked, is your compliance in 60 days creating any kind of hardship, bad feelings anything? Mr. Robert F. McCormick Jr., stated, just more sweat. Board Member Mrs. Joyce Lance asked, so it's done in good faith and good will? Mr. Robert F. McCormick Jr., stated, yes ma'am. Board Member Mrs. Joyce Lance asked there's not any antagonizing feelings? Mr. Robert F. McCormick Jr., stated, no ma'am. Zoning Administrator Mr. Joey Lea stated, just so you will understand, we have been working with Mr. McCormick probably longer than we should have to get the property cleaned up. As you know, a Special Use Permit is good for 2 years, which means he don't have to do anything for 2 years. We want the restriction on there to make sure that he complies as soon as possible, because if he does not have a storage area up, and the stuff within it in 60 days, the City will be out there on the 61st day to clean it up. Board Member Mr. David McDevitt asked, how long have you been working this situation? Zoning Enforcement Officer Mr. Chris Marland stated, we received the complaint in August of last year, 2015. Vice-Chairman Mr. Mike Gee asked, so over a year? Zoning Enforcement Officer Chris Marland stated, no August 2015, it's been 6 months. Zoning Administrator Mr. Joey Lea stated, normally you're talking a couple weeks, it'll be 30 days at the most. We try to work with everybody. He has made some improvement not enough to keep him in compliance. This was an avenue, that based on the language of the ordinance, does help him in which he can comply. Board Member Mrs. Joyce Lance asked, and that was basically the question, are you able to do this if you are issued a Special Use Permit, are you able to do this in 60 days, in every possible way? Sweat, finances, I mean every way, you can do that? Mr. Robert F. McCormick Jr., stated, yes ma'am. Chairman Mr. Ed Wilson asked, any other questions for Mr. McCormick or the City from the Board? Anyone here from the public that would like to speak? No one from the public in attendance so we will now close for deliberation.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, I understand we are here from a neighbor's complaint which I think we all take seriously. That person is not here; there does seem to be some improvement, be it slower than what the City would like to be, some avenue of some compliance and this appears to be a solution for everybody that everybody is willing to do. After we asked the questions of the ordinance, it does seem like he will be in compliance with the entire ordinance. Specific and general conditions as the only one here he has testified about the health and safety of the public and he has indicated he is in harmony and none of those things should be a hindrance to come in compliance with this section. Board Member Mr. Todd Smith stated, we all remember when this place was the old dog food factory and it was a horrible place full of rats. I think it's great that Mr. McCormick is using it for something helpful and if we got a screen up there that helps the neighbors and the people driving by, I think it's a good idea and I recommend that we allow it with a 60 day timeframe on this.

DECISION: Board Member Mrs. Joyce Lance stated, I would like to make a motion that the four required conditions for issuing a Special Use Permit in accordance to Section 32.13.B(1)(a) are met due to the following Finding of Fact:

1. **the use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved;**
the findings of fact are, Mr. McCormick is well aware of the complaints made about the rodents in the residential area. He has also explained some other conditions surrounding his property that probably adds to that.
2. **the use meets all required conditions and specifications;**
the findings of fact are, I believe that through my motion and through testimony from Mr. Marland and Mr. Lea that Mr. McCormick has been working with them since August of 2015 to learn what it is that he has to do to meet the City's conditions and specifications. Mr. McCormick's testimony is that he is willing to do that, and that it is not creating any type of hardship for him.
3. **the use will not substantially injure the value of adjoining property or that the use is a public necessity;**
the findings of fact are, he has been there since 1995 running his business and there is no realtor or expert to testify that in any way, he is substantially injuring the value of adjoining properties.
4. **The location and character of the use if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Burlington and its environs;**
the findings of fact are, this is an industrial area and he has been there for 20 years and by looking at all of the evidence provided it is definitely in harmony with the area.

Vice-Chairman Mr. Mike Gee seconded the motion.

AYES: Lance, Gee, Wilson, Smith, McDevitt

NOES:

Board Member Mrs. Joyce Lance stated I would like to make a motion to approve the Special Use Permit for an Outdoor storage lot for Robert F. McCormick, Jr. , to be located at 104 North Church Street, for a 40x40 6 ft. screened chain link fence that is to be completed by March 12th, 2016, which is on a Saturday, due to the previously stated finding of facts, and the applicant shall be required to have all this completed in 60 days which is that date of March 12, 2016 on a Saturday. If any of the conditions affixed here to or any part therefore shall be held invalid or void then this permit shall be void and of no affect. This maybe a good time to mention one more time that if this is not done in the required 60 days, then on the 61st day, which would be Sunday so it would probably be the 62nd day, the City will be there to remove the offending materials from the lot.

Board Member Mr. Todd Smith seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Lance, Gee, Wilson, Smith, McDevitt

NOES:

NEW BUSINESS: None

MEETING ADJOURNED

H.E. Wilson III, Chairman

Kelly Peele, Secretary