

**TOWN OF CHARLOTTE COURT HOUSE**  
**BOARD OF ZONING APPEALS**  
**March 16, 2023 – 7:30 pm**  
**SPENCER ZONING APPEAL - PUBLIC HEARING**  
**Minutes**

BZA Members Present: Andy Carwile, Jennifer Jones, Claudia Koch, Stephen Walker

BZA Members Absent: Michael Haskins

Others Present: Robert Hendrick, Zoning Administrator; Tessie Bacon, Attorney; Karen Price, Town Clerk

Chairman Stephen Walker called the Board of Zoning Appeals (BZA) meeting to order and read a list of meeting protocols to be observed.

Andy Carwile motioned to open the public hearing. The motion was seconded by Claudia Koch and carried by roll call vote: Carwile, aye; Koch, aye; Walker, aye; Jones, aye.

Stephen Walker opened the floor for citizens to make comments.

Gary Walker stated that the Town needs all businesses it can get. He stated that Daryl (Spencer) didn't create this situation, but he's dealing with it. He stated that most neighbors are pleased with him being there.

Cheryl Spencer stated that her father put the building there over 30 years ago and that she believes she owns most of the property around the garage. She stated that most trucks are not there 24/7.

Daryl Spencer stated that the shop belongs to both him and his father. He stated that trucks run along the road 24/7. He stated that he checked with his neighbors and was assured that the shop was not a problem. Mr. Spencer stated that his trucks leave at 6:00 a.m. and are back by 10:00 p.m.

Brette Arbogast questioned why the situation was allowed to exist for so long. He stated the need for boundaries and zoning laws but feels that there has to be a way to work with the Spencers.

James Midkiff, Attorney representing Thomas & Daryl Spencer, stated that there were technicalities he wished to point out, such as the fact that the zoning permit was issued by Ms. Price, and that it isn't good to revoke a permit once it is given. He asked if there was a way to mitigate the situation. He stated that Daryl Spencer's other job is in public service and said that there must be a way to get along.

With no further citizen comments, Stephen Walker called upon Town Zoning Administrator, Robert Hendrick to present the Town's position.

Robert Hendrick stated that the property located at 757 Thomas Jefferson Hwy., in Charlotte Court House, VA, tax map ID # 038-A1-A-7, owned by Thomas and Daryl Spencer was violating the Town Zoning Ordinance due to commercial operations taking place in a General Residential zone. Reading from a prepared Staff Report, Mr. Hendrick stated the following:

Mr. Spencer filed for a zoning permit on September 24, 2007, to construct a garage on the property know as Tax Map number 038-A1-A-7, located within the Town of Charlotte Court House, VA.

When Mr. Spencer obtained the zoning permit it was noted with instructions that the property would be used for personal use and be bound by the restrictions within the General Residential Zoning Ordinance.

In 2021, it was brought to the town council attention that the property was being used for commercial use. The log trucks that are being parked on the property and starting up in the early morning hours has become a nuisance.

On June 14, 2021, the Town Attorney, Mr. Elder sent a letter to Mr. Spencer advising him that he was in violation of the Town of Charlotte Court House Zoning Ordinance.

On September 29, 2021, Mr. Spencer was sent another letter advising him that he was still in violation of the zoning ordinance.

On October 12, 2022, Mr. Spencer was sent another letter advising him that he was still in violation of the zoning ordinance. Also, a copy of the ordinance and use matrix was mailed with the letter.

On November 10, 2023, Mr. Spencer file an application to appeal the violation to the Board of Zoning Appeals.

On February 3, 2023, the town received an application from Mr. Spencer to appeal the violation with the town.

Robert Hendrick stated that Article 3-1 of the zoning ordinance that was in place at the time the Spencer zoning application was filed stated that "This district shall be composed of medium density residential areas plus certain open areas where similar development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life, and to prohibit activities of a commercial nature."

Town Clerk, Karen Price, stated that the Spencer zoning application was approved for a shop for personal use, and it was clearly stated that General Residential zone restrictions applied. She also stated that if you "Google" Spencer & Sons Logging, the responses point out that the business is located at 757 Thomas Jefferson Hwy.

Town attorney Tessie Bacon pointed out that though the zoning ordinance changed in 2022; the use of the property remains a violation.

James Midkiff asked if the BZA would hear from witnesses and Ms. Bacon replied that evidence already presented should be adopted.

Pearl Wyatt requested to speak and stated that there are eight (8) men working and that she doesn't hear the trucks in the morning.

James Midkiff argued that "Google" could not be considered an authority. He stated that many small businesses use a home address for the location address. He stated that the word "commercial" hasn't been defined, and that they [the shop] aren't open to the public. Regarding the zoning ordinance change, Mr. Midkiff stated that zoning application was approved, but now the Town wants to "disapprove" it. He stated that no one in attendance has voiced a problem with the issue and that the Town is most likely receiving more revenue than what's received from other houses in the area. He stated that they have been operating for close to 17 years and asked the Board to find the use to be appropriate.

Karen Price stated that no building existed on the property when the zoning application was submitted and that approval was given for the structure, not the commercial use.

Robert Hendrick stated that photos show "Spencer & Sons Logging."

Tessie Bacon stated that the old zoning ordinance spelled out that activities of a commercial nature were prohibited and the use matrix in the new ordinance has no use allowed that would be compatible. With regard to using a home address for a business, Ms. Bacon stated that the property in question does not have a dwelling.

Mr. Midkiff reiterated that there is an approved permit and stated that no one has said anything about dimensions, and that nothing has changed about the building that was approved since 2007. He stated that nothing has been done since 2007, and that they are more than happy to work with the Town.

Jennifer Jones questioned the building dimensions, and Mr. Midkiff responded that it is 40 ft. width x 75 ft. length x 20 ft. height.

Stephen Walker asked Mr. Spencer if he owned all of the trucks, to which Mr. Spencer replied yes. Mr. Walker asked if there were other owner/operators, to which Mr. Spencer replied there is one driver. Mr. Walker stated he'd like to know how we got here and stated that if adjoining land owners do not have an issue... Mr. Spencer stated that Town Council Member Braxton had reported that the neighbors complained. Ms. Wyatt stated that she would have advised the Town if there was a problem.

Andy Carwile stated that the issue is the use of the building.

Addressing Zoning Administrator Robert Hendrick, Jennifer Jones stated that the concern is that the trucks are being parked there, but where does it say that you can't park commercial vehicles at your residence? Mr. Hendrick replied that that there is not a residence on that parcel and that log trucks are being parked on the site and that the zoning ordinance prohibits commercial activities in the General Residential zone. Ms. Jones asked why you can't park your work truck on your property. Mr. Hendrick replied that work trucks and commercial vehicles are two different things and are determined by their weight.

Stephen Walker asked that if he owned a lawncare business and had business equipment, would that be a violation? Mr. Hendrick replied that it would be a violation. Mr. Walker asked Mr. Spencer how many trucks he possessed, to which Mr. Spencer answered five.

Andy Carwile asked if the BZA had the power to rezone? Ms. Bacon replied that the BZA has three (3) options: to uphold the Zoning Administrator's ruling; to not uphold the Zoning Administrator's ruling; or to defer to a later date to allow for further investigation. Mr. Carwile asked what would happen if they voted to uphold the ruling. Ms. Bacon replied that the land owner would either comply or decide to take the matter to court. If the ruling is upheld and the land owner does not comply, the zoning administrator could pursue legal action.

Stephen Walker stated that while he does not disagree with the ruling, they should find a way to work with the Spencers.

Claudia Koch stated that she agreed with Mr. Walker and that a way should be found.

Andy Carwile stated that the Town did require a lawn care business to relocate equipment from a residential zone and also asked people to relocate cows, so it has been done before.

Stephen Walker questioned whether a conditional use permit (CUP) was a viable option. Ms. Bacon replied that it would be possible, provided that it was added to the zoning ordinance.

Andy Carwile reported that according to Appendix A – Use Matrix of the Town zoning ordinance, “Motor Vehicle Uses – Parking Heavy Trucks / Heavy Equipment” is permitted in the Rural Residential zone with a CUP. He stated that a CUP could be written with specific conditions. Mr. Carwile noted that the Spencer property is a dual zoned lot with the back portion located within the Rural Residential zone. He stated that the CUP would stay with the land and not the owner.

Mr. Midkiff stated that if needed, Mr. Spencer will follow through with a CUP or request for re-zoning.

Stephen Walker stated that the issue will need to go back to the Town Council and Planning Commission for a CUP approval.

Andy Carwile suggested that the Town Council should consider reducing the depth of the General Residential zone at Daryl Spencer's parcel.

Tessie Bacon stated that she was not sure that the Town Council would be bound to act on a BZA motion.

Stephen Walker stated: "I move that the Board of Zoning Appeals request that the Charlotte Court House Town Council consider asking the Charlotte Court House Planning Commission to grant a Conditional Use Permit to the Spencers as permitted within the Rural Residential district of the Town Zoning Ordinance and to reduce the depth of the General Residential Zone of their property. The motion was seconded by Andy Carwile and carried by roll call vote: J. Jones, aye; S. Walker, aye; A. Carwile, aye; C. Koch, aye.

Jennifer Jones motioned to close the public hearing. The motion was seconded by Andy Carwile and carried by voice vote: 4 ayes, 0 nays.

Andy Carwile motioned to approve the February 16, 2023 minutes as presented. The motion was seconded by Jennifer Jones and carried by voice vote: 4 ayes, 0 nays.

With no further business, the meeting was adjourned.

Respectfully submitted,



Karen K. Price