

Board of Zoning Appeals



Minutes of the Thursday, May 12, 2016 Regular Meeting

Members of the Board of Zoning Appeals

Wesley Summers
Chairman

Jim Newman
Kathie Stallworth

Bob Pettit
Lynn Stembridge

1. **Call to Order** –Chairman Wesley Summers called the meeting to order at 7:00 p.m.
2. **Roll Call** – Board members present: Chairman Summers, Jim Newman and Bob Pettit. Board members Kathie Stallworth and Lynn Stembridge were absent. Also in attendance: Scott Sterling, Director of Planning and Development; Christine DeCamp, Planner; Brett Brannon, the applicant; Kelly Zier, City Attorney; Danny L. Crowe, consulting attorney to the BZA; members of the public; and the press. Chairman Summers noted that this was the first regular meeting for newly-appointed member Bob Pettit and welcomed him to the Board of Zoning Appeals.
3. **Approval of Minutes** – The minutes of the November 5, 2015 regular meeting were approved as written.
4. **Confirmation of Agenda** – There were no changes to the agenda.
5. **Application Number ZD 16-001** – An appeal by Brett Brannon from an administrative decision related to the approval requirements for the Cooper's Crossing Minor Site Plan. The appeal is pursuant to Section 18.4.5.4.1 of the North Augusta Development Code and also South Carolina Code 6-29-1150. The appeal affects property located at the southeast corner of East Buena Vista Avenue and Georgia Avenue, Tax Parcel Numbers 007-14-04-003 and 007-14-04-017. Both affected parcels are zoned D, Downtown Mixed Use, and both are located in the Georgia Avenue Overlay District.
 - Chairman Summers read the application summary and asked that all persons planning to present testimony stand to be sworn in. Brett Brannon and Scott Sterling were sworn in at that time. Chairman Summers briefly reviewed the public participation guidelines and opened the public hearing at 7:05 p.m.

Scott Sterling, North Augusta Director of Planning and Development, reviewed the filed appeal and summarized the Cooper's Crossing minor site plan review and approval timeline. He stated that the minor site plans submitted in two different review sets (June 1 and July 8) did not comply with the requirements of the Georgia Avenue Overlay district and could not be approved.

At or around the same time, a proposal was made to amend the North Augusta Development Code to provide a level of discretion to the Director that could facilitate compromise on the non-compliant issues for this and future development applications in the Georgia Avenue Overlay district. The Development Code text amendment was reviewed by the Planning Commission and ultimately tabled by the City Council in January. In the interim, there were discussions and emails among several parties, including the applicant, some Planning Commissioners and City staff, who worked to develop a minor site plan that could be approved. Mr. Sterling stated his understanding that the applicant and the City were in agreement that the text amendment was the best option to achieve an approvable minor site plan. The final version of the minor site plan was approved in January. Subsequent to that approval, the applicant filed his appeal.

Brett Brannon, 7 Indian Rock Court, presented his appeal. Mr. Brannon stated that the Director of Planning and Development failed to review and either approve or deny the Cooper's Crossing Minor Site Plan (Application MSP 15-010) within 60 days of receipt of a complete plan as required by Section 6-29-1150 of the South Carolina Code of Laws (Submission of plan or plat to planning commission; record; appeal). In support of his appeal, Mr. Brannon offered copies of emails by and among staff and City officials to demonstrate that the Director neither approved nor denied his minor site plan within 60 days following July 20, 2015, the date the minor site plan application was determined to be complete. He asked that his appeal be affirmed and also for approval of the July 8 plan submittal.

Kelly Zier, North Augusta City Attorney, asked Mr. Brannon to review the materials provided by the City in its defense and posed questions related to the following: the role of Sean Smith, the project engineer, in the minor site plan preparation and revision process; Mr. Smith's July 8 request for variances in response to several of the noncompliance comments provided by the Planning department on June 25; any supporting paperwork or follow-up from the applicant or the project engineer, Sean Smith, on the variance requests; and the applicant's awareness that his minor site plan did not comply with the existing Georgia Avenue Overlay District standards.

Mr. Zier offered two avenues of defense for the City's actions on this project. Mr. Zier stated that Section 6-29-1150 provides in Section (A) that the sixty-day time limit on review and approval or disapproval "may be extended by mutual

agreement". He offered that actions of the parties along with the exchange of emails and other forms of communication demonstrated a mutual understanding that the plans as submitted did not meet requirements and would have to be either revised or denied. All parties were attempting to resolve the matter to identify changes to be made to the plan that would allow approval. The matter was resolved and revised plans were submitted and approved on January 6, 2016.

For a second defense, Mr. Zier stated that Mr. Brannon, the appellant, did not timely file his appeal (Application ZD 16-001). South Carolina Code 6-29-800 (B) provides that an appeal must be taken within a reasonable time. If no time limit is provided, the appeal must be taken within thirty (30) days from the date the appealing party has received notice of the action from which the appeal is taken. The appellant received an emailed summary of staff compliance comments on July 20, 2015. He filed a request for immediate plan approval on December 17, 2015. His formal appeal to the BZA was received on January 22, 2016.

The following members of the public commented on the appeal:

Fletcher Dickert, 1916 Byrnes Road, spoke in his capacity as a general contractor and provided his perspective on working with planning departments and building inspectors to bring a project to compliance.

Chip Burnett, 963 Campbellton Drive, offered background information on the involvement of members of the Planning Commission in the Cooper's Crossing minor site plan, including the Commission's special meeting on September 3 to consider a text amendment to provide discretion to the Director; alternative text language offered by the Commission; City Council action; and meetings between Mr. Brannon and three or fewer Commissioners.

Todd Glover, City Administrator, 78 Fulton Street, offered his view of the Cooper's Crossing project. The proposed site plan did not meet Development Code requirements and regular efforts were made by the applicant, the City Council, the Planning Commission and City staff to find a way forward that would be satisfactory. The minor site plan approved on January 6 meets the technical requirements of the Code.

Board of Zoning Appeals members commented and asked questions on the following: state code timing requirements for planning project review and approval; the applicant's decision to file his appeal on January 22, 2016; the North Augusta Development Code plan approval process and staff review timelines; whether or not there was a "mutual agreement" between the applicant and City staff to provide for a longer project review period; the differences between the original plans, revised plans and the approved minor site plan; potential impacts of the appeal, if affirmed or denied; current project status; and the variance, minor site plan and text amendment approval processes.

Mr. Brannon, Mr. Sterling and Mr. Zier responded to all comments and questions.

Chairman Summers closed the public hearing at 9:26 p.m.

- **Consideration – Application Number ZD 16-001** Board members reviewed the information before them and considered both arguments. Danny Crowe, attorney for the BZA, suggested that the Board state a finding of fact related to the 30-day limit for filing an appeal. After consideration of the evidence and arguments presented, Chairman Summers offered a finding of fact that Mr. Brannon did not file his appeal from an administrative decision within the 30-day filing period specified by law in Section 6-29-800 (B) of the Code of Laws of South Carolina.

Mr. Newman moved to deny Mr. Brannon’s appeal from an administrative decision related to the review and approval of the Cooper’s Crossing Minor Site Plan because his appeal was not filed within 30 days as required by Section 6-29-800 (B) of the Code of Laws of South Carolina.

Mr. Pettit seconded the motion. The motion carried 3-0.

6. **Adjourn** – With no objection, Chairman Summers adjourned the meeting at 9:37 p.m.

Respectfully Submitted,

Scott Sterling, AICP
Director of Planning and Development
Secretary to the Board