

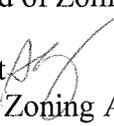


County of Fairfax, Virginia

MEMORANDUM

DATE: October 7, 2016

TO: John F. Ribble, III, Chairman
Members, Board of Zoning Appeals

FROM: Suzanne Gilbert 
Assistant to the Zoning Administrator

SUBJECT: Status Update

REFERENCE: Appeal A 2016-SP-008 and Appeal A 2016-SP-012
William Wiehe, Jr.
6224 Colchester Road, Fairfax, VA 22030
Tax Map: 76-1 ((7)) 5
Zoning District: R-C, WS

The public hearing for Appeal A 2016-SP-008 and Appeal A 2016-SP-012 was held on September 21, 2016. A copy of the staff report is attached.

During the public hearing, the Board of Zoning Appeals (BZA) continued the public hearing to October 19, 2016. The purpose of this memorandum is to provide the BZA with additional information regarding the violations that exist on the subject property.

Appeal A 2016-SP-008 is an appeal of a determination that the appellant is allowing a prohibited commercial vehicle, a dump truck, to be parked on property in the R-C District in violation of Zoning Ordinance provisions. At the September 21st public hearing, the appellant stated that the dump truck in question is a private vehicle that is operated for personal purposes and is not being used in conjunction with a business. The appellant also presented a Department of Motor Vehicles registration that had been modified to reflect a lower gross vehicle weight than what was previously available. However, Par. 16A of Sect. 10-102 of the Zoning Ordinance very clearly states that a dump truck is specifically prohibited from being parked on a residentially-zoned property, regardless of its size, weight, carrying capacity, or how it is being used. In enumerating the distinguishing characteristics from other vehicle types, the Zoning Ordinance definition of "commercial vehicle" does not stipulate that a commercial vehicle must be used for commercial purposes. Rather, the characteristics serve to identify vehicles that are deemed to be of a specific class, which may include their class by size or by use. A dump truck, like the other prohibited commercial vehicles listed in Par. 16 of Sect. 10-102, has been classified as being of a higher impact, which is not in keeping with and

negatively affects the character of residentially-zoned districts. It was for these reasons that on October 30, 1979, the Board of Supervisors approved Zoning Ordinance Amendment ZO-78-3, which deemed dump trucks and other similar commercial vehicles as prohibited from being parked in residential districts. Since that time, the Zoning Administrator has consistently interpreted the Zoning Ordinance as rendering dump trucks to be prohibited from parking on residential property. Furthermore, the BZA has repeatedly upheld the administrator's determination with regard to the definition of commercial vehicles as it applies to dump trucks that are not permitted on residentially-zoned property in the following appeal cases:

- Appeal A 2010-SP-019 – Roger J. Tedd, upheld on April 6, 2011, included a dump truck parked on property consisting of approximately 5.06 acres. Appellant asserted that the dump truck was used exclusively for property's horse farm operation.
- Appeal A 2008-SP-031 – Brian L. Kelly, September 28, 2008, included a dump truck parked on property consisting of approximately 5.05 acres.
- Appeal A 2008-SP-023 – Edilberto Vasquez, upheld on August 8, 2008, included dump trucks parked on property consisting of approximately 3.89 acres.
- Appeal A 2001-MA-012 – Kris S. Hansen, Isabel Dalsimer, and Melanie J. Dalsimer, upheld on July 31, 2001, included a dump truck. The dump truck in question was a pick-up truck with a hydraulically-operated dump unit (E-Z Dumper) inserted into the regular truck bed that allowed the contents to be off-loaded. The hydraulic insert rendered the pick-up truck a dump truck, which is a prohibited vehicle.
- Appeal A 1997-DR-013 – Raymond L. Wolfe and James B. Wolfe, upheld on September 9, 1997, included dump trucks.
- Appeal A 95-S-055 – Daniel T. Horseman, upheld on December 30, 1995, included dump trucks.
- Appeal A 95-V-046 – Kathy Patterson, upheld on April 2, 1996, included a dump truck.
- Appeal A 95-L-007 – Lewis C. Meyers, upheld July 11, 1995, included a dump truck parked on property consisting of approximately 2.01 acres.
- Appeal A 90-S-023 – Kenneth L. Lester, upheld on March 19, 1991, included dump trucks parked on property consisting of approximately 7 acres.
- Appeal A 89-C-014 – Robert J. Bee, upheld December 7, 1999, included a dump truck.

Despite the fact that a dump truck is not permitted in a residential district, the appellant has suggested in his testimony that the dump truck is being used principally for the maintenance of the subject property. The BZA also inquired whether the vehicle may, therefore, constitute as being used as a farm vehicle. While the definition of commercial vehicle does preclude farm vehicles, it also stipulates that the "farm" vehicles must be used for agricultural purposes. There is no evidence to suggest that the subject property is being used for agricultural purposes. In addition, though the subject dump truck is prohibited, it should also be noted that Par. 16B of Sect. 10-104 requires that any commercial vehicle parked in a residential district must be owned and/or operated only by the occupant of the dwelling unit at which it is parked. The appellant is the owner of the dump truck and the property upon which it is parked, but his

domicile of record is located approximately a mile away and he is not the occupant of the dwelling unit on the subject property. Therefore, the dump truck is in violation of Par. 16 of Sect. 10-104 in its entirety.

Appeal A 2016-SP-008 is an appeal of a determination that the appellant is maintaining a storage yard on property in the R-C District in violation of Zoning Ordinance provisions. As noted in the staff report, inspections made from the street adjacent to the subject property revealed items and equipment being stored in various locations on the lot. While most of the items were uncovered, visible and identifiable from a distance, other items were stacked or covered with tarps. The visible items included scaffolding, floor joists, multiple ladders, wooden pallets, stacks of lumber, concrete pipe, concrete blocks, and an equipment trailer, as evidenced in the photographs included with the staff report. After evaluating the nature of the items, which are not objects commonly found on residential property, combined with the presence of a prohibited commercial vehicle parked on the property and the fact that the appellant owns and operates a construction company (Vice Versa Builders) that is registered to the appellant's home address located a mile away, the Department of Code Compliance (DCC) Investigator determined that the violation constituted a storage yard and not simply excessive outdoor storage.

The appellant has claimed that the materials are being used for the continued residing of the barn. However, the structure received final inspection approval on June 2, 2014, and there is no record of a current active building permit. In addition, the exterior of the barn appears to be constructed of cinder block and the roof appears to be clad in material similar to rib steel panels.

At the September 21, 2016, public hearing, the DCC Investigator reported that as of the previous day the storage yard violation still existed on the subject property based on an inspection and presented photographs to that effect. The BZA subsequently requested that the appellant work with the DCC Investigator to clear the storage yard violation on the property. The appellant agreed to the request and to reduce the total area of outdoor storage to no more than 100 square feet and to screen it from view, in accordance with Par. 24 of Sect. 10-102 of the Zoning Ordinance. However, though the appellant claimed in a September 26, 2016, email to the DCC Investigator to have cleared the violation, the appellant would not allow the DCC Investigator access to the property in order to inspect and verify whether or not the violation had been cleared. As such, staff is unable to report to the Board that the issue has been resolved. Further, the appellant has made it clear to DCC that no inspection of the property will be allowed.

Staff maintains that the appellant is maintaining a storage yard consisting of building materials and is allowing a prohibited commercial vehicle, a dump truck, to be parked on property in the R-C District in violation of Zoning Ordinance provisions. Staff, therefore, respectfully recommends that the BZA uphold the determinations of the Zoning Administrator as set forth in the Notices of Violation dated April 27, 2016.

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Attachment: A/S

cc: Pat Herrity, Supervisor, Springfield District
Leslie B. Johnson, Zoning Administrator
Cathy S. Belgin, Deputy Zoning Administrator for Appeals
Elizabeth Perry, Senior Deputy Zoning Administrator for Zoning Enforcement/Property
Maintenance, DCC
Karen McClellan, Operations Manager, DCC
Ronald Gibson, Code Compliance Investigator, DCC
Molly Bramble, Appeals Coordinator
William Wiehe, Jr., 12321 Popes Head Road, Fairfax, VA 22030