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*Clayton County*  
*Planning & Zoning + Sustainability*  
*Department*  
*121 S. McDonough St. Annex 2*  
*Jonesboro, Ga. 30236*



KIMBERLY SMITH  
ZONING ADMINISTRATION

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Board of Zoning Appeals  
Meeting Minutes of May 18, 2017

The regular meeting of the Clayton County Board of Zoning Appeals was held this date of May 18, 2017 in the Commissioner' Board Room, Administration Building, 112 Smith Street, Jonesboro, Georgia.

Members present were: Chairman Don McMillian, Jr., Vice Chairman William Hill, Board Member DeMont Davis, Board Member Raymond Baggarly, and Board Member Frances Solomon. Present from Community Development Department were Kimberly Smith, Lenise Lyons, and Linda Willis.

Members absent was: Board Member Jon Derek Young. No representation from Legal was present.

The Pledge of Allegiance was said in unison.

The motion to approve the agenda was made by Board Member Frances Solomon and seconded by Vice Chairman William Hill. The vote was unanimous.

The motion to approve the minutes of April 12, 2017 Special Call was made by Board Member Vice Chairman William Hill and seconded by Board Member Frances Solomon. The vote was unanimous.

**Chairman Don McMillian, Jr.** stated that there were no persons having business with the Board of Zoning Appeals; no report of Officers and Committees and no old business with the Board of Zoning Appeals.

The Procedures for the Clayton County Board of Zoning Appeals' Public Hearings was given by Ms. Linda Willis.

**Chairman Don McMillian, Jr.** called for New Business.

**1. Case Number: BZA-17/04-100**

The Applicant, *Electric Guard Dog, LLC*, on behalf of Huong H. Nguyen, is requesting a variance from Article 6, Section 6.30 Fence and Wall Standards, to erect a ten (10) foot, electrified wire fence in all yards. The subject property is located at 3996 Church Street, Conley, Georgia and otherwise known as parcel number 12241A B002. The subject property is approximately 3.8+/- acres of land and has a Light Industrial (LI) zoning classification.

**Commissioner District #1– Sonna Singleton Gregory**

The Staff Report for case BZA-17/04-100 was given by Kimberly Smith of Planning and Zoning.

**Kimberly Smith:** Based on the analysis provided, Planning & Zoning Staff recommends Approval with Condition of the variance to allow an increased fence height to ten (10) feet in all yards, with the following condition:

1. Along Church Street, applicant must submit a detailed screening and landscaping plan to the Office of Planning and Zoning to be approved prior to submitting a fence permit application.

Planning and Zoning Staff recommends Approval with Condition of the variance for an electrified fence, with the following condition:

1. Applicant submit a fence application with an approved fence type, other than a wire fence.

Planning and Zoning Staff recommended denial of the variance to allow a wire fence, but after further discussion it has been made apparent to us that the wire is part of the electric fence. Approval with conditions or denial is at the discretion of the Board.

**Chairman Don McMillian, Jr.** called for the petitioner to present their case.

The Applicant was represented by Cindy Williams-Electric Guard Dog, LLC, located 550 Assembly Road, Columbia, SC, on behalf of Huong H. Nguyen.

**Cindy Williams:** We are here to request the installation of this security system along the perimeter that has a component of a 10 feet tall electric fence. We have put these systems in your city with approval before. We are requesting relief from the 10 foot standard, because we need something taller than the non-electric chain link fence. The electric fence consist of 20 single strings of electric wire. The County's code is a 4 foot fence within the front yard, we are willing to increase that non-electrified 4 foot fence to 6 or 8 feet whichever is your preference within the front yard in lieu of doing the landscaping. Because on that dead in street and they are the last business on that street and the residence of the church would not come that way to get to their place. There is not enough room to do a lot of landscaping. The business owner is here to answer any questions you may have.

**Chairman Don McMillian, Jr.** stated to the Board Members, you all are aware we have done this same type of fence for a landscape company. We heard the safety data on that fence, it's a pulsing electric, so it doesn't kill.

**Chairman Don McMillian, Jr.** asked the business owner, Mr. Nguygn to come up and speak.

**Huonk Nguygn**, located at 3996 Church Street, Conley, GA: Mr. Nguygn stated he was in the trucking business which consist of transportation of freight (furniture, electronics, etc.). He stated that he has had a lot of break-ins, even though he has cameras and a gate they still break-in and take his trailers. Just a few days ago someone was stabbed on his property.

**Chairman Don McMillian, Jr.** called for any public concerns/comments. There were none.

**Chairman Don McMillian, Jr.** asked the Board Members if they had any questions/concerns.

**Board Member Raymond Baggarly:** If we increase the fence height will it be electrified? **Cindy Williams:** No. The primary fence is never electrified.

**Board Member DeMont Davis:** Looking at these pictures, what are these running along the road? **Cindy Williams:** No. The primary fence is never electrified.

The motion to **approve with conditions** case number BZA-17/04-100 to allow a ten (10) feet electrified wire fence with an eight (8) feet chain link fence, and no additional landscaping required, was made by Board Member Raymond Baggarly and seconded by Board Member DeMont Davis. The vote was unanimous.

**2. Case Number: BZA-17/04-101**

The Applicant, *New Image Towing and Recovery, Inc.*, on behalf of Steven Poole, is appealing the administrative decision of an administrative officer in regards to the requirements of Article 6, Section 6.2 Expansion or Modification of Existing Uses and Structures, and Section 6.32 Parking Standards. The subject property is located at 1010 Citizens Parkway, Morrow, Georgia and otherwise known as parcel number 13176C A001. The subject property is approximately 11.30+/- acres of land and has a Heavy Industrial (HI) zoning classification.

**Commissioner District #4– Michael Edmondson**

The Staff Report for case BZA-17/04-101 was given by Kimberly Smith of Planning and Zoning.

**Kimberly Smith:** This application came before Planning & Zoning Office by way of submission of a Business License Permit to allow for a Tow and Recovery business to be located at 1010 Citizens Parkway. During the approval process, Planning & Zoning has to make determinations on whether the properties are permitted under the zoning classifications, and in that process we require site plans in certain instances and this is one of those instances where we are requiring site plans to be submitted along with the business license application. The Applicant is opposed to that decision.

**Vice Chairman William Hills** asked Kimberly Smith for clarity on her last statement by asking whether the Applicant was refusing to submit the site plan. Mrs. Smith stated, yes.

**Chairman Don McMillian, Jr.** called for the petitioner to present their case.

The Applicant was represented by Steve Fincher, located 8024 Fair Oaks Court, Jonesboro, GA., on behalf of New Image Towing and Recovery, Inc.

**Steve Fincher** stated he appreciated the opportunity to speak with the Board. He said his client Mr. Steve Poole was with him tonight and that Mr. Poole owns the property that is currently located in Forest Park and was trying to sell it. In October of last year they came in to get a business license for a towing service and here we are in May and they don't have a business license, because they want a site plan. We are here because Zoning wants us to tender a site plan, but there is no rule in my research to tender a site plan. The only thing they need to do is sign off on the application that says this is zoned as a permitted use. (Mr. Fincher asked if he could approach and proceeded to pass out to the Board Members a handout that included emails and aerials of the site and its use). When this issue came up, I went to the Zoning Office in January 2017 to find out what the problem was, and again I was told, they needed to pave this property and there is absolutely no rule that says you have to pave this property. He stated he was pointed to Article 6, Section 6.2 of the Zoning Ordinance, which states: *No structure, parking area, or other site feature regulated by this ordinance shall be enlarged, altered, or expanded unless the minimum improvements required by this Article are provided to the property to the extent of its alteration or expansion. In the case of a substantial expansion, the portion of the site affected must meet the requirements of this Article. An alteration or expansion to an existing property is substantial when the area or square footage of the expanded or altered land (including property used for building space, parking, or storage) or structure, respectively, exceeds twenty (25) percent of the area or*

*square footage of the existing land or structure, exclusive of the alteration or expansion.* According to the standards my client has no intention to alter or improve this site, and this rule does not apply to my client. One user want to move out and another user want to move in and nobody poses to improve or alter the site. I sent a letter to the Zoning Administrator to answer this one simple question on January 18, 2017 must a proposed user intending to engage in a business allowed as a permitted use, who will occupy an existing conforming site upon which no structure, parking area, or other site feature shall be enlarged, altered, or expanded, comply with PK-03 of section 6.32. Finally, on March 16<sup>th</sup> she answered that question by saying give me a site plan, and that was a day too late for me to appeal, so here I am 45 days later. I am asking you to rule the issuance of a business license.

**Vice Chairman William Hills** asked if the owner (Earl Millirons) of the property in Forest Park was paved.  
**Earl Millirons:** No.

**Vice Chairman William Hills** asked Kimberly Smith about the email that Mr. Finch provided dated March 16<sup>th</sup> that stated during the Technical Review Committee meeting a site plan was required to be provided. Were there any concerns Staff may have had in regard to the site plan being submitted with the understanding or foreknowledge that they would not be paving the parking? **Kimberly Smith:** Our Ordinance requires that the parking lots to be paved under Article 6, Section 6.32. This would have been a health, safety, general welfare instance, which is in the County's right to require that an Applicant submit a site plan showing how they intend to adhere to our Ordinance (such as Article 6, Section 6.32) which should show us how they will use the property as well as adhering to those parking standards. And to just let you know we did seek legal counsel and we are within our rights to require that site plan to review how the land will be used, how the cars will be placed on the land, and how they will account for the development standards.

**Chairman Don McMillian, Jr.:** There will seem that might be particular concerns about environmental runoff (gas, oil, and antifreeze) with Jester creek being right there. I look at the site and say how does that all add up? **Steve Fincher:** My client is creating an environmental hazard and it's all through the report, but it is not a Zoning issue to correct. **Chairman Don McMillian, Jr.:** Is there a process to prohibit that in a non-paved area? **Steve Fincher:** This is not in the Zoning Ordinance. This a Zoning viewer, not an environmental viewer.

**Board Member Raymond Baggary:** I attended a seminar last fall given by the Clayton County Water Authority about environmental issues and I don't know if any of this will affect this project or not. He asked Kimberly Smith if her staff had spoken with the Water Authority. **Kimberly Smith:** No. The Applicant was in attendance at the Pre-Meeting with the Water Authority, Transportation & Development, Fire Department, and Planning & Zoning and none of those entities spoke on any environmental issues because we were not presented with anything.

**Board Member DeMont Davis:** Correct me if I am wrong, but environmental is outside the scope of what we are discussing based on what's in front of me about the site plan. I understand the impact potential impact of the environmental factors, but as far as this goes it comes down to their business license to they pay or not, or do they modify the ground.

**Chairman Don McMillian, Jr.:** No. It is already zoned industrial, they do not want to change the zoning category or change the property. It is a change of use, from wire on the ground to wrecked cars.

**Kimberly Smith:** In order for us to do further review and determination as to how they plan on using the property for safety, welfare, and environmental all those factors will play into the decision how Zoning will make a decision and a site plan is needed to that.

**Board Member DeMont Davis:** What was the last use on this property? **Lenise Lyons:** Fencing and accessories (nails, wire). They currently have a license to operate there.

**Board Member DeMont Davis** stated he wanted to ask the purchaser Mr. Millirons a question: When these vehicles are towed to this property is there any kind drainage of fluids or are they taken as is?

**Earl Millirons, located at 4780 Old Dixie Hwy, Forest Park, GA:** Most of them are taken as is, but if it gets out of hand we are certified to take of it, and that's why the Forest Park location is not paved. If the fluids falls on the ground we dig the soil up.

**Chairman Don McMillian, Jr.:** What is the monitoring process for watching it when it rain. **Earl Millirons:** We usually have two (2) people on the yard all the time moving cars and watching the yard. If the wrecked car continue to link (fuel, oil), it then sucked out.

**Chairman Don McMillian, Jr.:** Do you deal with Clayton County storm water. **Earl Millirons:** No, in the City of Forest Park.

The discussion continued about the storm water runoff system and how the drainage would be contained.

**Board Member DeMont Davis** asked whether any of the salvage yard were paved. **Earl Millirons:** No.

**Board Member Raymond Baggarly** stated he was confused/puzzle about the two different of opinions of Steve Fincher and Staff about the legality of requiring a site plan. He asked Staff for more clarity.

**Kimberly Smith:** As the Zoning Administrator it is within my right as a representative of Clayton County to require that a site plan be submitted, and that is what your decision is going to be based on.

**Board Member Raymond Baggarly:** Once the site plan is received, someone reviews it and let you know so you will have a better understanding on what the site is going to do. **Kimberly Smith:** Exactly. Whatever they are planning for the property it should be laid out in a platform. It would go through the Technical Review Committee (TRC) process which include Transportation & Development, Clayton County Water Authority and the Fire Department.

**Steve Fincher:** She just admitted she's making that up. We are a company of laws. The Zoning book has a lots of rules, but none that would obligate my client to a site plan. There are rules that prohibit grease in a creek, that's not a Zoning Ordinance that would be addressed under other codes. We are in the very first step and are we entitled to use the property the way we want to.

**Vice Chairman William Hills** asked if this could come back before us in the future if a site plan was submitted. **Lenis Lyons:** We have nothing to go by. A variance would change the type of industrial use, but we went from you laying wire to where we are laying down any number of vehicles. Although it is an industrial use, it is a change in use and Section 6.32 standards addresses those different uses by the intensity of the use. That is why we are asking how will the cars be arranged, how the cars will get in and out. These are all life safety issues. It is our duty as Planners and Mrs. Smith duty as the Zoning Administrator is enforce the code we have.

**Vice Chairman William Hills** asked why the comments just made, were not included in this timeline of communication. **Kimberly Smith:** We had a Pre-Application meeting, and during this meeting the Applicant stated they were not at liberty to submit a site plan. As we treat any applicant that comes in for a Pre-Application meeting, we state what codes we are looking at, and what issues we may find during our

review. As we would do for anyone coming in, is to request a site plan. The conversation with the Applicant just didn't go anywhere, the Applicant was unwilling to provide a site plan.

**Mr. Earl Milliron** stated that this was the first time hearing a site plan was required.

The motion to **uphold** the Planning and Zoning Administrator decision that Article 6, Section 6.2 Expansion or Modification of Existing Uses and Structures, and Section 6.32 Parking Standards must be met was made by Chairman Don McMillian, Jr. and seconded by Board Member DeMont Davis. The vote was unanimous. Vice Chairman William Hill abstained from voting.

There being no further business the motion to adjourn was made by Chairman Don McMillian, Jr. and seconded by Board Member Frances Solomon. The vote was unanimously.

The meeting was adjourned at 8:00 p.m.



Linda Willis, Assisting Secretary  
Zoning Board of Appeals  
Clayton County, Georgia



Don McMillian., Chairman  
Zoning Board of Appeals  
Clayton County, Georgia