

Planning Commission Report

File #: C-10-1
Applicant: Mr. Tony Huang
Property Address: 25610 Walkers Landing Court, Walkers Landing, Petersburg
Tax Map Parcel #: 9J-1-8
Magisterial District: Rohoic
Property Size: Approximately 0.39 acre
Current Zoning: Residential, Limited, R-1
P.C. Hearing Date: March 10, 2010

CASE OVERVIEW

The applicant, Tony Huang is seeking a conditional use permit to utilize the following described property to keep up to 50 companion birds (pigeons) outdoors in a shelter(s). The property is located at 25610 Walkers Landing Court, Petersburg, VA 23803. The property is designated as Tax Map Parcel No. 9J-1-8 and is zoned Residential, Limited, R-1, which allows such use upon receiving a conditional use permit. The County Comprehensive Land Use Plan places this property within the Urban Planning Area which allows single-family residential development at the Ordinance defined density.

CASE BACKGROUND

On March 6, 2008, the Codes Compliance Officer, Mr. Harris, observed a zoning violation occurring at 25610 Walkers Landing Court further defined by the Commissioner of Revenue's office as tax map parcel 9J-1-8. Mr. Harris sent a zoning violation letter citing that the Dinwiddie County ordinance does not allow the keeping of livestock associated with agriculture within the Residential, Limited, R-1 zoning district.

The property owners, Qi and Xiu Xia Huang, requested a zoning violation determination from the Zoning Administrator, Ms. Greene, stating that the pigeons kept on the property were not for agricultural purposes but rather were companion birds.

In the letter dated April 15, 2008, the Zoning Administrator found that "agriculture" is not a permitted use in the R-1 zoning district. Section 22-1 of the Zoning Ordinance defines "agriculture" as "the tilling of the soil, the raising of crops, horticulture, forestry and gardening, including the keeping of animals and fowls, and including any agriculture industry or business, such as fruit packing plants, dairies or similar uses." By definition, the current activities on the subject property constituted an agriculture use. Agriculture is not a permitted use in the R-1 zoning district.

The applicants were told they could apply for an amendment to the Zoning Ordinance in order to provide for the keeping of companion birds. The property owner filed an Ordinance amendment application and fee and proposed the Ordinance amendments to Chapter 22, Zoning of the Dinwiddie County Code. On October 20, 2009, the Board of Supervisors adopted the Ordinance amendments to include companion birds as a conditional use in the R-1 zoning district along with certain requirements for housing up to 50 companion birds outdoors.

RELATED ATTACHMENTS

- A. CUP Application
- B. GIS Location Map
- C. Pictures of Subject Property

LAND USE AND ZONING ANALYSIS

The subject property includes the single-family residence, and the bird (pigeon) related shelters that are located in the rear of the residence. The surrounding land uses include single-family residential uses, and these surrounding properties are zoned R-1, Residential, Limited.

As designated by the Comprehensive Land Use Plan, the subject property is within the Urban Planning Area which allows for single-family residential development. The R-1, Zoning District allows for the keeping of companion birds outdoors with a conditional use permit with the following Ordinance defined requirements:

- a) It shall be unlawful for any person to keep or cause to be kept any kind of companion bird outdoors within 50 feet of any structure owned by another person and used for human habitation, occupation, or assemblage.
- b) The aggregate number of companion birds kept by persons within the dwelling and on the premises owned by such persons shall not exceed 50.
- c) Persons who keep companion birds shall not permit them to run at large on the premises, in the streets, public places, or anywhere outside of an enclosed structure.
- d) Persons who keep companion birds shall not permit them to depredate the property of any other person.
- e) Persons who keep companion birds outdoors shall provide them with a house or shelter. Such house shall be shielded from the right-of-way or public view, shall be kept dry and well-ventilated, and shall be cleaned at least once a week, between November 1 and May 1, and at least twice a week, between May 1 and November 1, of each year, and more often if necessary or required.
- f) Persons who keep companion birds shall keep their property clean and free from all decaying feathers, feces or vegetable matter or odors.

OVERVIEW OF IMPACTS

Public Utilities, & Public Safety Impacts

The existing residence utilizes public sewer and water. Considering the use, the impact on public safety services is negligible.

Transportation Impacts

With the housing of companion birds, there are no impacts on the subdivision's transportation network.

SITE AND USE ANALYSIS

The outdoor shelters for the pigeons are located in the rear yard of the residence and are the appropriate distance from the neighboring residences and staff has not received any complaints involving the pigeons depredate neighboring properties. Given the surrounding stable single-family residential land uses and low density residential zoning pattern the applicant needs to address the number and condition of the pigeon shelters. The shelters should be modified to ensure compliance with the Building Code and to be complimentary to the applicant's principal structure.

Planning Staff Recommendation:

The Planning Staff reviewed the conditional use permit and is concerned that the applicant needs to address the number of individual shelters on the subject property, and if the current number of pigeons housed on the property requires that the current number of shelters be maintained then there needs to be a limit on the number of pigeons kept on the subject property.

Staff's recommendation of APPROVAL WITH CONDITIONS of the request for a conditional use permit to allow for the keeping of companion birds (pigeons) outdoors is conditioned on there being a limit on the number of shelters allowed on the subject property and a limitation on the number of pigeons based on the amount of space needed within a shelter to house each pigeon. The approval of the conditional use permit is subject to the following conditions:

1. The shelters utilized as part of the outdoor housing of the companion birds (pigeons) shall be modified as needed to meet the Building Code requirements for the applicable use group as set forth in the Building Code, and the exterior walls and roofs of the shelters shall be complimentary to the applicant's principal dwelling. Additionally, the travel trailer shall not be used as a shelter to house pigeons.
2. Any additional outdoor site lighting installed shall be directed downward and inward to the site and shall not directly cast light onto the adjoining properties.
3. The conditional use permit will be reviewed by the Planning Department on an annual basis on the anniversary date that the permit is approved by the Board of Supervisors of Dinwiddie County for compliance with the stated conditions.
4. The keeping of the companion birds (pigeons) shall comply with all applicable federal, state, and local codes and regulations.

PLANNING COMMISSION RECOMMENDATION

At their March 10, 2010 meeting, the Planning Commission heard comments from the applicant, Mr. Huang, through the County's interpreter. Mr. Huang stated that he started raising pigeons at the age of eight and has been raising them now for the last ten years. He said they are his life. He said he wakes up and looks at them as companions. He said he wants to keep them because to him they are like family. He also said his pigeons are certified by the American Racing Union. Mr. Huang also indicated to the Planning Commission that he is aware and comfortable with the conditions that the Planning staff recommended and that he is even willing to reduce the number of the pigeons and the number of shelters if the Commission requests him to do so. Additionally, Mr. Huang stated that each shelter can hold twenty pigeons and he keeps the males separate from the females. Mr. Huang told the Commission that he does not raise the pigeons for selling or eating. He indicated that he gives the excess pigeons to the American Racing Union. He indicated that this is something he has done before.

During the Public Hearing portion of the case, a neighbor of Mr. Huang, Mr. Eric King of 25611 Walkers Landing Court Petersburg, VA said he had a concern about a tractor trailer truck that delivers feed to the applicant for the pigeons at his home. He said his other concern is the regulation of the number of birds. He said he was not sure who would do that. He added that in the summer months there is, at any given time, 10 to 30 birds flying in a circular pattern around his house. He said during this time the birds leave waste on his mailbox, vehicles, driveway and roof. He said the pigeons have also attracted predator birds and because of that he has found on several occasions dead birds in his yard. Mr. King said he has witnessed the tractor trailer coming to the property three or four times in a year and he added that there is no noise associated with the birds that he could speak of. Mr. King said there has been only one occasion where a bird didn't want to fly. He said he contacted someone from the applicant's home and they came to retrieve the bird from underneath one of his vehicles. He added that there is no smell coming from the applicant's area. Mr. King said it is a nuisance more than anything. He said after washing the cars and cleaning the area around the home finding waste back on things annoys him. Mr. King said he sees them several times during the day. He said they group up then fly in a big large circle for about an hour before returning to the applicant's property.

The Planning Commissioners concluded the Public Hearing and their questions of Mr. King, and began to focus on the Conditions related to the CUP request. Planning Commissioner Lee stated Mr. King did a good job on giving a synopsis of someone living next door to the applicant. He said the last thing Mr. King said was the most important thing of all which was this property is not agricultural. He said it is a residential neighborhood. He also said that we need to ensure that we are okay with the number of birds and that the applicant understands his buildings must pass building code.

After lengthy discussion and interaction with the applicant concerning the area needed to house pigeons; the number of pigeons to be housed in each shelter; the number of shelters allowed; the number of pigeons allowed to be out of the shelters at any point in time; and the cleanliness of the shelters and area around the shelters as well as any associated

health concerns with the keeping of pigeons, the Planning Commission drafted the following five additional Conditions:

1. The applicant shall purchase all feed and supplies in a manner to prevent delivery of said feed and supplies from being transported to his residence in a vehicle with more than two axles.
2. The applicant shall keep no more than forty adult pigeons at one time.
3. The applicant shall keep all pigeons housed in two separate structures with dimensions at approximately one cubic meter per pair of pigeons.
4. The applicant shall not permit more than eight pigeons to leave the structures and fly at one time.
5. The applicant shall comply with all conditions of this permit within 90 days of the granting of this Conditional Use Permit.

After additional discussion and questions for the applicant related to the proposed Conditions, the Planning Commission voted by a vote of 4-3 to recommend approval of conditional use permit, C-10-1, with the Planning staff recommended Conditions and with the five additional Conditions developed by the Planning Commission to the Board of Supervisors.

BOARD OF SUPERVISORS' ACTION

Since this is a zoning matter, the standard statement regarding Board action on this zoning matter must be read. In order to assist in this matter, staff prepared the following statement:

BE IT RESOLVED, that in order to assure compliance with Virginia Code Section 15.2-2286(A) (7) it is stated that the public purpose for which this Resolution is initiated is to fulfill the requirements of public necessity, convenience, general welfare and good zoning practice, I move that conditional use permit, C-10-1, be (approved, approved with conditions, OR disapproved) by the Board of Supervisors.