

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT



A public meeting of the Franklin County Board of Zoning Appeals was held on May 4th, 2021 at 6:00 PM. In the Franklin County Board of Supervisors meeting room located in the Franklin County Government Center.

THOSE PRESENT:

William Lee, Chairman
Eric Ferguson, Vice-Chairman
Kevin Hunt
Wayne Worley
Billy Kingery
Pamela Washington
William Cooper

OTHERS PRESENT:

Steven Sandy, Director/Zoning Administrator
Lisa Cooper, Principal Planner
Tina Franklin, Clerk
David Furrow, Attorney for the Applicant
Chris Ambrose - citizen
Thad Montgomery - citizen

The meeting was called to order by Chairman Lee at 6:00 PM. Chairman Lee announced the first item on the agenda and asked for the staff report.

APPLICATION for VARIANCE: Steve Sandy continued to the report regarding Mr. Kenneth Hurt's application for variance for the storage of vehicles on his property. Steve discussed the packet that was provided by the landowner's attorney and the memorandum from the county attorney. The discussion included the need to have a special use permit from the Board of Supervisors to be in compliance due to expanding the automobile graveyard.

Slides of the property were presented to zoning board of appeal members.

Mr. David Furrow, attorney for the applicant stated he agrees that the property did originally have inoperable vehicles from 1999 and before. There are two parcels across the road, one to David Hurt and one to Kenneth Hurt. When zoning was enacted, the property did not become two parcels until 2012. The attorney stated the owners had always used the entire property as they wished.

Otha Hurt filed an appeal in 2005 and then withdrew the application. The attorney stated that once there is a non-conforming use, the owner could not expand it, or you would lose the non-conforming use. He stated his argument was not the number of vehicles or the area of coverage that is being used for the vehicles. He stated the county could not restrict the use in 1988, therefore how could it be restricted now. He stated the applicant's position is that the parcel is being used as a non-conforming use and sometimes there were more or less vehicles depending on how the area was being used.

Kenneth Hurt, landowner, stated that he has lived on the land all his life and his father had cars, but he did not know how many. He stated he and his father liked antique cars and further stated the public cannot see the cars as they are behind the house. He stated he is paying taxes on thirty-six antique cars, and they can be taken out of use during the winter. He further stated that in 2005, a gentleman named Otha Hurt, his father, talked very badly to him and some of the neighbors signed a paper that they knew the antique cars were there. He stated they installed a picket fence so that nobody could see the cars and all of the vehicles are in running order.

Mr. Cooper asked about the division of the property into two parcels. Mr. Furrow did not know why the property was divided in 2012.

Mr. Hurt reported that his dad had given him the property given that he had built a building on it.

Mr. Cooper asked how many inoperable vehicles were on the property and Mr. Hurt replied there were approximately twenty-five.

Mr. Cooper and Mr. Furrow determined there were 25 acres of land, and the smaller parcel had a house. Per Mr. Hurt, there are a total of 75-80 cars and all are operable. Mr. Cooper stated this per Mr. Sandy, this did meet the definition of non-conforming.

Further discussion between board of appeal members, the attorney for the applicant, and the applicant:

1. Mr. Hurt stated all are antique classic cars.
2. Kevin Hunt stated that prior to 1988, Mr. Hurt's father owned all of the property.
3. Mr. Ferguson stated that if there is non-conformance on part of a parcel, then it applies to the entire parcel.
4. Mr. Hurt stated that in 1989 there were more cars there than any other time. He further explained this was a hobby and he has never sold anything from his property.
5. The county attorney stated that zoning follows the parcel, not the owner. If you are using part of a parcel for non-conforming, as long as you do not stop for two years you can continue the use, but it does not mean you can use the entire parcel.
6. Mr. Kingery asked if the non-conformance in 1988 was for the entire parcel.
7. The county attorney stated the owner needs to show evidence of what was there in 1988.
8. Mr. Cooper asked if the parcel is divided, does the non-conforming use apply to the land even though it is a new piece of property? The county attorney stated that yes, that is correct. It follows the extent of the use.

Public Comments:

Mr. Chris Ambrose stated he felt there was nothing wrong with what Mr. Hurt is doing.

Mr. Thad Montgomery stated that his property is behind Mr. Hurt's and in 1990 there were vehicles on Mr. Hurt's property. He stated it appears that Mr. Hurt gathers parts, they go into his shop, and come out as masterpieces. After all the parts are used, any left-over parts are taken to the scrap yard. He feels it is discrimination if you try to classify what someone has on their property.

Further discussion by board members:

Steve Sandy explained the grandfathered area and stated one cannot go beyond that area. He further explained that if the landowner wants a larger area, they must apply for a special permit. The outlined area is a footprint of the use and what we believe existed in 1988, and use cannot expand or change without the supervision of the Board of Supervisors. No automobile graveyard license was ever obtained from the Commissioner of Revenue. A graveyard license has been required since 1974 and the county does not have any licensure on file for this parcel. He further reported that we have several ariel photographs, but they pulled on the ones that were clearly showing what was on the property.

Mr. Furrow reported that the zoning appeal decision has to be based on what the county can pull from its records. There must be some proof that shows the entire property was used.

Mr. Montgomery expressed confusion about the zoning ordinance.

Mr. Lee stated he does not feel we have all the facts. Mr. Kingery asked Mr. Hurt to clearly define how many cars were there in 1988.

Mr. Cooper stated that the land and cars have been there since the early 1990's and he has to assume they were there in the 1980's and it appears to him that the landowner can continue the use of the land as an automobile graveyard.

Ms. Washington stated that after review of the ariel photos, she is in agreement with Mr. Sandy.

Mr. Ferguson stated that regarding the year 1988, the 2.5- and 5-acre tracts, one tract had an auto graveyard on it. The only evidence was from Mr. Hurt, who states that there were cards in the back of the property. Mr. Ferguson feels the definition should be the character of the use, not the quantity of automobiles. He believes the entire seven-acre parcel is grandfathered.

A motion was made by Mr. Eric Ferguson stating there was one tract of land in 1988 that had cars on it, and it's the character of the parcel. He motioned that a non-conforming use applies to all seven acres, as evidenced in 1988.

Mr. William Cooper - second the motion.

Vote:

Mr. Kingery - Aye

William Cooper - Aye

Kevin Hunt - Aye

Eric Ferguson - Aye

William Lee - Nay

Pamela Washington - Nay

Wayne Worley - Nay

The motion was carried.

