



Oconee County Board of Zoning Appeals

415 S. Pine Street, Walhalla, SC 29691

Telephone: 864-638-4218

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Minutes

6:00 P.M., Thursday, June 27, 2013

Oconee County Council Chambers

Members Present:

Mr. Lee, Chairman
Mr. Nichols
Mr. Medford
Mr. Hughes
Mr. Littlefield
Mr. Reckert

Mr. Josh Stephens, Zoning Administrator
Mr. David Stokes, Community Development Director
Mr. Matthew Anspach, Planner I

Media present: None

Item 1. Call to Order

Mr. Lee called the meeting to order.

Item 2. Approval of Minutes – May 30, 2013

Mr. Hughes made a motion to approve the minutes. Mr. Medford seconded the motion. The minutes were approved 6-0.

Item 3. Public Comment

None

Item 4. Special Exception Hearing Regarding the Height of an Industrial Building 268-00-02-008

Mr. Nichols recused himself from this hearing before the Board. (See attached)

Mr. Stephens stated the matter before the Board. Specifically, that the matter arose from the standards contained within Ch. 32 Article 9 of Oconee County's Code of Ordinances.

Mr. Frank Lamson-Scribner spoke on behalf of BASF. Mr. Lamson-Scribner described the history around the project. He also stated the location of the proposed

building, and heights of surrounding buildings and grading related to the building. In addition, he elaborated on a variety of pictures that show the site and the building. He asked the Board to consider BASF's request.

Mr. Hughes asked if the applicant had a picture of the finished building.

Mr. Lamson-Scribner stated that the permits for structure had been obtained; however, there was a misunderstanding whether or not permits were required for this project. He stated that once they became aware of the 65' limit they contacted the Community Development Office.

Mr. Medford asked if this was the only facility like this for BASF. Mr. Lamson-Scribner said the Seneca site was the only one in the United States.

Mr. Rechert asked how much acreage BASF owned. Mr. Lamson-Scriber described the property boundary to the Board.

Mr. Littlefield asked if this expanded a current operation or was it a new operation. Mr. Lamson-Scribner described how the structure fit into plant operations.

Mr. Stephens verified the information that Mr. Lamson-Scribner presented.

No member of the audience spoke regarding this matter.

Mr. Hughes commented that there was limited residential development around the site.

Mr. Lee asked if all permits had been obtained at this point. Mr. Stephens stated that BASF was working through the permitting process for this project and an additional project. Mr. Stephens stated that the project before the Board was currently in the plan review phase of the permitting process and the issuance of the permit depended on the decision of the Board regarding the Special Exception hearing.

Mr. Stephens stated that staff would make every effort to reach out to industrial partners to discuss what requires a permit. Mr. Stokes addressed permitting requirements as well.

Mr. Hughes made a motion that: based on the evidence presented to the Board, the proposed Special Exception does meet the standards put forth in the Oconee County Unified Performance Standards Ordinance. Mr. Reckert seconded the motion. The motion passed 5-0.

Mr. Littlefield made a motion that: based on the evidence presented to the Board, the proposed Special Exception is compatible with current and known planned land uses in the district and will not substantially diminish the value of adjacent property in the district. Mr. Medford seconded the motion. The motion passed 5-0.

Mr. Rechert made a motion that: based on the evidence presented to the Board, the proposed Special Exception will have a positive impact upon the general health, safety, and welfare of the residents of Oconee. Mr. Hughes seconded the motion. The motion passed 5-0.

Mr. Medford made a motion to approve the Special Exception. Mr. Littlefield seconded. The motion passed 5-0.

Mr. Lee called for a period of recess of 3 minutes.

Mr. Hughes made a motion to approve the Board Order for the Special Exception. Mr. Medford seconded the motion. The motion passed 5-0.

Item 5. Variance Request 123-00-02-024

Mr. Stephens stated the matter before the Board. Specifically, that the matter arose from the standards contained within Sec. 38-10.8 of Oconee's Code of Ordinances, particularly the setback requirements contained therein.

Mr. Paul Hughes spoke as the agent of the property owners. Mr. Hughes described the layout of the lot and the relation of the setbacks to the proposed addition. Mr. Hughes stated that the right of way had been recorded in the wrong position thus creating a unique situation.

Mr. Hughes asked when the house was built. Mr. Hughes did not have an exact date.

Mr. Nichols stated that he believed the house to have been built between 2000 – 2005.

Mr. Lee stated that it appeared as though the entrance was moved and the plat was never corrected to reflect the new location.

No one from the audience commented on this matter.

Mr. Reckert made a motion that there are extraordinary and exceptional conditions pertaining to the particular piece of property. Mr. Littlefield seconded the motion. The motion passed 6-0.

Mr. Hughes made a motion that these conditions do not generally apply to other property in the vicinity. Mr. Littlefield seconded the motion. Mr. Nichols questioned if other properties in the subdivision could be affected in a similar manner. Mr. Stephens stated that few properties, if any, would be affected in a similar manner. Mr. Lee stated that if this came up again then someone would need to apply for a variance. Mr. Littlefield asked if this was a private road and that this should be corrected in the future. Mr. Stephens stated that he believed it was a private road. The motion passed 6-0.

Mr. Littlefield made a motion that because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. Mr. Hughes seconded the motion. The motion passed 6-0.

Mr. Littlefield made a motion that the authorization of a variance will not be of substantial detriment to adjacent uses or the public good, and the character of the district will not be harmed by granting the variance. Mr. Reckert seconded the motion. The motion passed 6-0.

Mr. Nichols made a motion to approve the variance. Mr. Hughes seconded the motion. The motion passed 6-0.

Mr. Lee called for a 2 minute recess to prepare the order.

Mr. Reckert made a motion to approve the Board Order. Mr. Littlefield seconded the motion. The motion passed 6-0.

Item 6. Old Business

Mr. Stephens introduced Mr. Anspach. Mr. Anspach said he was looking forward to working with the Board and the citizens of Oconee County.

Item 7. New Business

Mr. Nichols presented the idea that the members of the Board should have some type of identification that states the member's position as a Board member. Mr. Stephens stated the staff would present options to the Board at the next meeting. Mr. Lee stated that would be a good idea to explore.

Mr. Stephens stated, based on comments from the Board, that, if it be the pleasure of the Board, staff could prepare an amendment to the Board's Rules of Procedure to require that an applicant request, in person, for a hearing to be postponed. Mr. Stephens also stated staff would look at other ways to update the Rules. The members of the Board stated that this would be a good project to work on.

The Board agreed that, in order to review any proposed amendments, the Board will meet on July 25 of this year.

Mr. Nichols asked about permitting requirements for industrial projects. Mr. Stephens stated it depended on the specifics of the project and detailed the permitting process. Mr. Stephens also reiterated comments previously made and referred Mr. Nichols to comments made earlier regarding permitting questions related to the matter that came before the Board for BASF Special Exception.

Mr. Nichols stated that he recused himself because, during a site visit, he had contact with the applicant for the BASF Special Exception. Mr. Nichols stated that the

applicant only pointed out where the structure was. Mr. Nichols also stated that the members of the Board should keep this in mind.

Item 8. Adjourn

Mr. Nichols made a motion to adjourn and Mr. Hughes seconded the motion. The motion passed 6-0.

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OCONEE COUNTY BOARD OF ZONING APPEALS ABSTENTION FORM

Board Member Name: Berry Nichols
[Please Print]

Board Member Signature: Berry Nichols

Meeting Date: 27-Jun-13

Item for Discussion/Vote: Item 4: Special Exception Hearing Regarding the Height of an Industrial Building 268-00-02-008

Reason for Absention: I was not present for original meeting/discussion

I have a personal/familial interest in the issue.

Other: Prior familiarity with the project/applicant.


Joshua A. Stephens
Staff Liason
Zoning Administrator
Oconee County

[This form to be filed as part of the permanent record of the meeting.]

Oconee County Board of Zoning Appeals Rules of Procedure

Article I Organization

Section 1. Rules

These rules of procedure are adopted pursuant to S.C. Code § 6-29-790 for the Oconee County Board of Zoning Appeals which consists of seven (7) members appointed by the Oconee County Council.

Section 2. Officers

The officers of the Board shall be a chairman and vice-chairman for one (1) year terms at the first meeting of the Board in each calendar year. The Board shall appoint a member of the staff of the Oconee County Community Development Department as secretary of the Board.

Section 3. Chairman

The chairman shall be a voting member of the Board and shall:

- a. Call meetings of the Board;
- b. Preside at meetings and hearings; and swear in witnesses;
- c. Act as spokesperson for the Board;
- d. Sign documents for the Board;
- e. Have orders of the Board served on parties; and
- f. Perform other duties approved by the Board.

Section 4. Vice-Chairman

The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, an acting chairman shall be elected by the members present.

Section 5. Secretary

The secretary shall:

- a. Provide and publish notice of appeals and meetings;
- b. Assist the chairman in preparation of agenda;
- c. See that property involved in appeals for variances or special exceptions is properly posted;

- d. Keep recordings and minutes of meetings and hearings;
- e. Maintain Board records as public records;
- f. Serve Board decisions on parties;
- g. Attend to Board correspondence; and
- h. Perform other duties normally carried out by a secretary.

Article II Meetings

Section 1. Time and Place

An annual schedule of regular meetings shall be adopted, published and posted at the Oconee County Planning Department office in December of each year. Special meetings may be called by the chairman upon twenty four (24) hours notice, posted and delivered to all members and local news media. Meetings shall be held at the place stated in the notices, and shall be open to the public.

Section 2. Agenda

A written agenda shall be furnished by the secretary to each member of the Board and the news media, and shall be posted at least five (5) days prior to each regular meeting, and at least twenty four (24) hours prior to a special meeting. Items may be removed from the agenda or postponed at a meeting by majority vote.

Section 3. Quorum

A majority of the members of the Board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Section 4. Rules of Order

Robert's Rules of Order shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

Section 5. Attendance

Members shall make every reasonable effort to attend all Board meetings. In the event that a member is absent from more than one third (1/4) of the regularly scheduled meetings within any one-year period, or is absent from more than 3 consecutive meetings, the Secretary shall inform the Chairman of the attendance record. If the Chairman deems the member's chronic absences unjustified, or does not find sufficient evidence that the member's attendance will improve, the Board shall, upon a simple majority vote, recommend the member's removal by the County Council.

Article III Appeals Procedure

Section 1. Form of Appeal

Appeals from administrative decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and provided to applicants by the secretary. The Board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

Section 2. Time for Appeal

An appeal from an administrative decision must be filed within fifteen (15) days after actual notice of the decision by delivery of the approved appeal form to the secretary of the Board who shall notify the official appealed from.

Section 3. Calendar

Appeals and applications shall be marked with the date of receipt and placed on the hearing calendar in the order in which received. Appeals shall be heard in the order on the calendar unless otherwise set by the Board for good cause shown.

Section 4. Withdrawal of Appeal

Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal from an administrative decision which is withdrawn may not be refilled after the fifteen (15) day time for appeal has expired. Withdrawn applications for variances and special exceptions may be re-filed after six (6) months and shall be placed on the calendar according to the date re-filed.

Section 5. Continuances

The hearing of an appeal or application may be continued one time by the Board for good cause shown. **Should an applicant request that the hearing date be rescheduled, said request shall be made by written notice, which shall state the reasons for the request to reschedule, delivered to the secretary 24 hours prior to action by the Board.**

Also, the applicant shall make said request to reschedule in person before the Board.

Any deviation from the procedures contained within this section can only be approved by a majority vote at a meeting.

Section 6. Notice

Public notice of a hearing of the Board shall be published in a local newspaper and posted on or adjacent to the property affected at least fifteen (15) days prior to the hearing. The notice shall contain a description of each matter to be heard and identify the applicant and property affected.

**Article IV
Hearing Procedure**

Section 1. Appearances

The applicant or any party in interest may appear in person or by agent or attorney. The Board may postpone or proceed to dispose of a matter on the records before it in the absence of an appearance on behalf of an applicant.

Section 2. Witnesses

Parties in interest may present testimony under oath. Witnesses may be compelled to attend by subpoena requested at least ten (10) days prior to a hearing and signed by the chairman. The Board may call its own witnesses when deemed appropriate.

Section 3. Cross-examination

No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended when conducted in an orderly manner. Intimidation of witnesses will not be allowed.

Section 4. Evidence

Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

Section 5. Conduct of Hearing

The normal order of hearing, subject to modification by the chairman, shall be:

- a. Statement of matter to be heard (chairman or secretary);
- b. Presentation by applicant (5-minute limit);
- c. Presentation by official appealed (5-minute limit);
- d. Presentation by opponents (5-minute limit);
- e. Rebuttal by applicant (3-minute limit);

- f. Unsworn public comment when appropriate;
- g. The Board may question participants at any point in the hearing;
- h. Matters in which additional time is granted may be moved to the end of the agenda.

Section 6. Disposition

The Board may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote; provided that not less than a quorum are qualified to vote. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which the member has not heard. Deliberations shall be conducted and voting shall be in public.

Section 7. Form of Order

An order shall be issued disposing of a matter by granting or denying relief with such conditions may be deemed necessary; or affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in an order.

Section 8. Service of Order

The secretary shall deliver a copy of an order to each party in interest by certified mail immediately upon execution of the order by the chairman.

Section 9. Rehearing

The Board may grant a rehearing of an application which has been dismissed or denied upon written request filed with the secretary within fifteen (15) days after delivery of the order accompanied by new evidence which could not reasonably have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.

Section 10. Voting Procedure

The following shall be the normal procedure for conducting votes on Special Exceptions to the Oconee County Unified Performance Standards Ordinance.

1. Following the conclusion of the presentation of evidence and the Board's discussion, the Chairman shall call for further questions or comments from the Board regarding the matter at hand. Hearing none, the Chairman shall order the vote to proceed.
2. There shall be separate votes clearly delineating the evidence-based conclusions of each Board member based on the following guidelines:

- A. Based on the evidence presented to the Board, the proposed Special Exception does or does not meet the standards put forth in the Oconee County Unified Performance Standards Ordinance.
 - B. Based on the evidence presented to the Board, the proposed Special Exception is or is not compatible with current and known planned land uses in the district, and will or will not substantially diminish the value of adjacent property of property in the district.
 - C. Based on the evidence presented to the Board, the proposed Special Exception will or will not have a positive impact upon the general health, safety, and welfare of the residents of Oconee County.
3. Following the statement of the Board’s conclusions, the Chairman shall call for a vote approving or denying the proposed Special Exception.
 4. The Board may, by simple majority vote, modify any of the guidelines and/or attach conditions to the approval of any Special Exception.

Except as otherwise provided by this section of the Rules of Procedure, all votes shall meet the standards put forth by Robert’s Rules of Order.

Section 11. Equal Consideration

The Board shall make every effort to afford equal treatment to all appearing before it. Board members shall accord each person appearing before it, as well as other Board members, with all due respect. It shall be the standard to address all males with the title “Mr.”, and all females with the title “Ms.”. All evidence presented to the Board shall be given due consideration when weighing conclusions.

**Article V
Ethical Conduct**

Section 1. Conflict of Interest

All Board members shall at the earliest opportunity notify the Chairman of any conflict of interest regarding any issue to come before the Board. Any member with a conflict of interest shall seek abstention or recusal from all matters regarding the issue. An abstaining member shall not be required to leave his/her seat during the vote. Abstention by a member in one matter shall not limit said member’s full participation in other Board matters.

Section 2. Ex Parte Contact

Any ex parte contacts with applicants, opponents, or other parties of interest in a matter to come before the Board shall be reported at the earliest opportunity to the Chairman. It shall be considered to the duty of each Board member to conduct himself/herself in a manner that will discourage such contact.

Section 3. Expressions of Bias

Members shall avoid all situations and circumstances that may lead to bias or prejudice in matters presented to the Board. No member shall offer expressions of individual opinion regarding any matter of consideration by the Board prior to the hearing.

Section 4. Violation of Ethical Standards

Violation of any of the ethical standards put forth in Article 5 shall be considered cause for removal from the Board. In the event that a member is found to have violated any of the stated ethical standards, the remaining members of the Board shall, subject to a simple majority vote, recommend the removal of the aforementioned member to the County Council.

**Article VI
Records**

Section 1. Minutes

The secretary shall record all meetings and hearings of the Board on tape which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the Board the next regular meeting. Minutes shall be maintained as public records.

Section 2. Orders and Documents

The secretary shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

**Article VII
Adoption and Amendment**

Section 1. Adoption

These rules were adopted by vote of a majority of the members of the Board at a regular public meeting on September 14, 2000, and amended on June 14, 2001.

Section 2. Amendment

These rules may be amended at any regular meeting of the Board by majority vote of the members of the Board at least seven (7) days after the written amendment is delivered to all members.

