

**VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
MINUTES**

IN COUNCIL CHAMBERS

December 15, 2004

CALL TO ORDER

Chair Lee Huntington called the meeting to order at 7:02 p.m.

ROLL CALL

Lee Huntington, Ted Donnell, John Butz and Deborah Wilson were present, as was the Planner/Zoning Administrator Phil Hawkey. Andrew Brouard was absent. The Village Solicitor, John Chambers was also present.

PUBLIC HEARING:

- 1. James Shattuck has appealed the decision of the Zoning Administrator to deny his zoning permit application for a nonconforming use status at Shattuck's Garage, 1435 Xenia Avenue.**

Village Solicitor John Chambers swears in all who wish to testify. He then explained the procedure.

Board member Butz asked why was there a change in the process? Chambers explained that this is the procedure that should be followed in regarding a judification of a person's rights.

The attorney for Mr. Shattuck, Richard Boucher challenged Chambers on this change of process. Chambers further explained that the matter before the BZA is pending as a criminal charge in the Xenia Municipal Court.

Hawkey explained that this is an uncommon experience and different than usual. Hawkey has not previously had his decisions appealed.

Boucher gave a brief overview of the appeal and offered some background information regarding Shattuck's Garage. Boucher remarks included, that in 1982 Shattuck had purchased the business through land contract as a gas station. He offered service, repair, towing and sold auto related items such as oil, batteries etc. In 1994 the business dropped its gas service but maintains the other aspects of the business. Boucher stressed that the auto repair part of the businesses has always been a functioning part of Shattuck's.

Boucher suggested that in 1991 junkyards were listed as prohibited under the Village's zoning code and Shattuck's was cited as running a junkyard. Boucher contended that the Village was aware of Shattuck's operation based on a letter from Kent Bristol, former Village Manager. Boucher stated that Bristol had indicated that the vehicles that were being housed on Shattuck's property needed to be surrounded by a privacy fence. Boucher stated that Mr. Shattuck would testify that the use has changed but that he does not run a junkyard. He no longer provides gas service.

Boucher then asked Mr. Shattuck did he operate his business and offer service, repair, towing and sold auto related items? Shattuck answered yes. Did he continue all of these services except for gas service? Shattuck answered yes. What about salvage materials? Shattuck answered, "I don't sell no parts off of nothing". Boucher asked did the Village understand your business? Shattuck said that the Village asked for consideration of other property. Did you fence in your property? Shattuck answered yes.

In closing Boucher stated that because this was a quasi-judicial forum, he would like to have the ability of cross-examine. He added that the Village had his client spend \$6,000 for a fence and that he was cited criminally for doing the business for 22 years. He further added that he felt that this was not right, fair or legal. He asked that the Board vote in favor of his client's request.

Phil Hawkey explained that he had sent Mr. Shattuck a letter explaining that his request was being denied. Hawkey's letter stated "You request recognition of nonconforming status pursuant to ordinance 81-11, passed 7/6/81, by initiating the use in 1982. A use must be legally in existence before adoption of the legislation to enjoy nonconforming status. We have no evidence to indicate that this use was legal prior to enactment of current statutes."

Village Solicitor John Chambers explained that in 1986 Shattuck was cited for having too many cars and running a junkyard, he was found guilty by the court. In 1994, he was again cited for having too many cars and found guilty of operating a junkyard. In 1997, Shattuck was convicted of operating a junkyard. In 1986 prior the 1987 letter from Kent Bristol, in the case of the Village of Yellow Springs versus Shattuck, he was found in violation of 1121.06 and ordered to remove, properly register and/or get dealership tags for the vehicles. In 1996 the court upheld its decision that the business was

operating as a junkyard. In 1997 Shattuck pleaded not guilty but was found guilty of running a junkyard.

Chambers also explained that the business was determined to be a junkyard by the courts, which is legally binding and that a decision by the BZA is also legally binding, this case then comes under "res judicata". Res judicata refers to an issue that is before the court and has already been decided by another court between the same parties. Chambers contends that a decision has already determined that the business is a junkyard.

Comments from members of the audience:

El'girtha Ryder stated that she had owned 4 or 5 of the vehicles that were housed at Shattuck's. She had to remove the vehicles from her property and leave them at Shattuck's until she decided what to do with them. She felt that Shattuck was serving the Village and that this action was not representing the Village.

Arnold Pence has property across from Shattuck's and has no issue with his request. He supported Shattuck adding that he was a businessman trying to make a living.

Cathy LaPalombara stated that Shattuck's has created difficulties for the neighbors.

Becky Campbell stated that this has been going on for 20 to 25 years and that the residents need some relief. She added that it was a bad eyesore.

Return Discussion back to BZA:

Butz asked if a copy of the original land contract was available? Boucher and Shattuck answered no.

The Board took a break at 8:05 p.m. to review the documents submitted by Chambers and to review the language that was stated in the code in 1981. The Board resume its hearing at 8:14 p.m.

Wilson asked El'girtha Ryder if she had cars at the store now? Ryder replied that she "has two cars that are being worked on".

The Clerk pulled the ordinances prior to 1981 for review by Butz.

Boucher explained that Shattuck's other cases were criminal cases and that he had rights under the zoning code. Boucher disagreed with Chambers stating that res judicata does not prevent Shattuck from coming before this Board.

Boucher then restated Shattuck's position. He stressed that if the Board did not approve the request, they would take away Shattuck's livelihood.

Huntington asked that if the BZA grants the nonconforming use would the BZA then be granting a junkyard?

Boucher stated that there are differences in the definition of junkyard and since they still have to return to court there is still a junkyard charge pending.

Chambers explained that the BZA was here in request of Mr. Shattuck. Shattuck has requested a nonconforming use. He added that if Shattuck's business is a nonconforming use the use by the courts has determined it a junkyard.

Hawkey read aloud the 1981 definition of a junkyard as it was written the Village's Codified Ordinances.

Boucher insisted that Shattuck made no money from this part of the business.

Butz asked what did Shattuck want? The court has called it a junkyard. Butz added that the evidence that was heard did not prove that he was operating a junkyard on the date he requested his relief. Butz added in his view the BZA need not reach that issue.

Boucher stated that Shattuck has been operating for 20 years as a junkyard if that is what the BZA would deem it to be and if so then the BZA would have to let him continue and he would be protected against any new personnel, such as a new police chief, planner or village manager.

Huntington explained that it was not a legal nonconforming use in 1981 and that Shattuck contracted the business in 1982.

Chambers added that Shattuck has had three citations in a court of law and has been found guilty each time.

Donnell explained that this was fairly simple because a nonconforming use must be lawful and a junkyard is not lawful.

Donnell MOVED and Wilson SECONDED a MOTION stating that based upon the history of unlawful violations of the junkyard ordinance, in which the zoning code specifies nonconforming use must be lawful, this application to appeal the decision of the Zoning Administrator for a zoning permit application for a nonconforming use status

at Shattuck's Garage has been denied and that this is a confirmation of the decision by the Zoning Administrator.

If Mr. Shattuck were operating a "junkyard," it would not be a permissible non-conforming use. If he is not operating a junkyard as he and his counsel contend, his use is in conformity to the ordinances and he doesn't need the relief requested.

The MOTION PASSED UNANIMOUSLY. The appeal request was denied.

REVIEW OF MINUTES

Minutes from October 6, 2004. Donnell MOVED and Butz SECONDED a MOTION to accept the minutes as submitted. The MOTION PASSED UNANIMOUSLY.

ADDITIONAL BUSINESS

There were no additional items for discussion.

ADJOURNMENT

Having no further business, the Board of Zoning Appeals agreed to adjourn.

Lee Huntington, Chairperson

Deborah Benning, Recorder

December 21, 2004

Mr. James Shattuck
1435 Xenia Avenue
Yellow Springs, OH 45387

Re: Case #1, Board of Zoning Appeals decision December 15, 2004

Dear Mr. Shattuck,

This letter is to serve as formal notice of the decision of the Board of Zoning Appeals on the case you brought before them at their December 15, 2004 meeting. You sought reversal of the decision of the zoning administrator denying your application for recognition of legal nonconforming use for your property at 1435 Xenia Avenue.

Your appeal was denied on a 4-0 vote in favor of a motion by Ted Donnell and seconded by Deborah Wilson stating:

Based upon the history of unlawful violations of the junkyard ordinance, in which the zoning code specifies nonconforming use must be lawful, this application to appeal the decision of the Zoning Administrator for a zoning permit application for a nonconforming use status at Shattuck's Garage has been denied and that this is a confirmation of the decision by the Zoning Administrator.

This action serves as the Board's final decision on your case. The mailing date of this notice serves as the beginning of a 20-day period in which an appeal to Village Council may be filed.

Sincerely,

Deborah Benning, Clerk of Council
Recorder for the BZA

CC: Boucher
file