

The Christiansburg Board of Zoning Appeals met on Thursday, April 28, 2016 at 100 East Main Street, Christiansburg to conduct a Public Hearing. Present : James Kirk, Vice Chairman; Tacy Newell, Secretary; and members Earnest Wade and Karen Drake. Chairman James Stewart was absent. Staff members: Randy Wingfield, Assistant Town Manager and Zoning Administrator; Andrew Warren, Planning Director; Will Drake, Planner I; and Town Attorney Theresa Fontana of Guynn & Dillon PC.

The meeting was called to order at 7:00 pm by Vice Chairman Kirk. Secretary Newell confirmed each member present had conducted a site visit prior to the meeting.

The Public Hearing was opened to receive information on a request dated April 1, 2016 from Hash Investments LLC to appeal the Zoning Administrator's determination that a Conditional Use Permit (CUP) was required to establish a business storing portable toilets and associated vehicles at 350 Industrial Drive, NE (tax parcel 500 - (A) - 5M) in the I-2 General Industrial District.

Subject property is not located within the 100-Year or 500-Year Flood Hazard Area, nor in a Historic District. Within the Town's corporate limits, adjoining properties are zoned I-2 General Industrial. Adjoining properties outside the Town's corporate limit, within Montgomery County, is zoned M-1 Manufacturing. The current use of subject property contain an auto-body repair shop and vacant land. Adjoining properties contain industrial uses and vacant land.

Staff had determined the proposed use met the conditional use listed in Christiansburg Town Code Article XIV - General Industrial I-2, Section 42-397(11)(q) as *"septic storage tanks, aboveground; in conjunction with a commercial septic service for the temporary storage and collection of septic effluent prior to transfer of such effluent to a sanitary disposal facility."*

The two principal sections of the Christiansburg Zoning Ordinance used in making this determination were: (1) sections requiring Conditional Use Permits in general within the Zoning Ordinance, and (2) Statement of Intent (Section 30-113) and Permitted Use (Section 30-114) for the I-2 General Industrial District.

The applicant had submitted a CUP application on March 7, 2016 and the Planning Commission held a Public Hearing on March 28, 2016, at which time no action was taken. The applicant withdrew the CUP application on March 30, 2016.

Board of Zoning Appeal members had been provided with a Conditional Use Permit application from Hash Improvements LLC relative to subject property dated March 7, 2016; copies of above referenced Zoning Ordinance sections; copies of the Planning Commission Public Hearing minutes dated March 28, 2016; two Tidy Services informational brochures; and zoning and aerial maps of subject property in advance of the meeting. Members were provided a suggested Resolution and information relative to Chapter 42-Zoning, Section 42-2 *Districts* and Section 42-8 *Conditional use permits* at the start of the meeting.

Randy Wingfield presented and walked board members through the various reports and documentation provided by staff, detailing the process for making determination requiring a CUP based upon applicant's potential leaseholder business operations. After an initial meeting with the applicant and potential tenant, and reviewing the marketing materials and business process, it was determined the proposed use fell within Section 42-397(11)(q) while noting a zoning review is applicable to any new or proposed land use. He stated this determination was based upon the I-2 Zoning Ordinance, consideration of sections requiring CUPs in general and that section's Statement of Intent and Permitted Uses. Wingfield pointed out these portable toilets were not new units and could have septic effluent in the holding tanks. The potential business use proposed storage of these units at subject property, in addition to pumper and

flat bed trucks. Pumper trucks and the toilets both had holding tanks, Wingfield said. He stated that, based upon this determination, the applicant had filed a CUP request, that the Planning Commission had held a Public Hearing on March 28, and that the request was withdrawn by the applicant on March 30, 2016.

David Hagan, a managing member of Hash Investments LLC, stated he appreciated a long and positive relationship with the Town of Christiansburg and staff, but in this case they "agreed to disagree." He reviewed the history of the Industrial Park and his company's involvement or ownership with the property, and stated the proposed business tenant owned and operated Montgomery Sanitation at 2115 Fairview Street, Christiansburg (near the Park & Ride on Roanoke Street) and Tidy Services in Salem. The tenant was no longer under contract with Hash Investments to lease due to the process thus far, Hagan said. He said Section 42-397(11)(q) was not the proper category because the proposed use did not involve storing, collection, transfer or distribution of effluent; instead it would provide storage for equipment rented out by a business. He noted an adjacent property had commercial travel buses and recreational vehicle storage which had toilets with holding tanks without special requirements. Hagan stated this use should be allowed under Section 42-397(9)(o): *"Contractor's equipment storage yard or plant or rental of equipment commonly used by contractors."* He said he understood this was an emotional issue for some, yet the question before the Board was about a land use determination. He said the process was units were contracted out to a construction site or special event, then the effluent was pumped out by a vacuum into a truck while at that site and treated with approved chemicals, as determined by various state and federal regulatory agencies. Units then returned to contractor where they are washed "like a car" and sanitized, and then stored until the next rental. He pointed out how long Montgomery Sanitation had been operating with zero complaints, although there were residential uses nearby. Hagan said his company always tried to do the right thing for the community and they had been willing to provide an engineering report, site plan, buffers, or concrete pad draining to public sewer system to address possible visual or environmental concerns.

Thom Rutledge, Project Manager for Hash Investments, LLC, stated the town's Zoning Ordinance, Section 30-1 Definitions provided no guidance on "commercial septic service" and reiterated that Tidy Services had withdrawn their lease application. He stated it was important to protect I-2 zoning for the town and resident concerns regardless of use.

Ed Gust of 1110 Crosscreek Drive, said he was against the request for Tidy Services and stated septic was included in Town Code for a reason. He asked if the effluent had been removed why the units were then cleaned after transfer. Gust said the EPA term for a "domestic" system did not minimize the term "septic" and this proposed use was not similar to the bus station across the road. He said Tidy Services should have been required to be present and that government was supposed to protect citizens and the environment.

Sarah Miller of 1015 Brooklyn Avenue gave Vice Chairman Kirk pages from the March 28, 2016 Planning Commission minutes which she had highlighted portions of related to this application with emphasis on the "prepping" process. Miller stated portable toilets were aboveground septic storage tanks. She asked members to review these notated minutes again, and that the Board require a CUP for Tidy Services.

Pat Sorey of 495 Houchins Road stated that a CUP puts requirements into writing and that Montgomery Sanitation is an example of what is done without a CUP. She said the proposed business could not be "clean, sightly and sanitary" as frequently required by CUPs.

Howard Sawyers of Sawyers Bus Sales and Services, 2500 Brammer Lane, asked if anyone knew the number of recreational vehicles located throughout the town. He said all the buses and recreational vehicles had toilets in them and that Christiansburg needed to bring more business to the town. Sawyer stated he owned the adjacent business along with additional property, and that he planned on developing it at some point but wasn't sure what would be allowed.

Thom Rutledge said that Hash Investment had lost its customer and that the property should be able to be "100% as contractor storage yard." He said "residual" was not in the town code or the portable toilets after being pumped out at job sites and that portable toilets were environmentally good.

Randy Wingfield stated that the town had been involved with the Industrial Park since around 1986, possibly around the same time as an annexation. He stated the Industrial Park had been in use well before the county's rezoning for the Walnut Creek subdivision.

Vice Chairman Kirk closed the Public Hearing at 7:50 pm and opened discussion by Board of Zoning Appeals members.

Ms. Drake stated she was inclined to uphold the Zoning Administrator's determination.

Ms. Newell asked the Town Attorney to restate the Board's powers and duties for this appeal.

Ms. Fontana referenced Code of Virginia § 15.2-2309 which indicates a Zoning Administrator's determination is presumed correct. On appeal, the Board is empowered to uphold the decision, requiring the Conditional Use Permit application process based upon category, that being Section 42-397(11)(q); or, reverse this decision based upon that category, but not determine an appropriate category.

Mr. Wade stated that Section 42-397(11)(q) was confusing. Based on its language he could not see where the storage, collection or transfer of effluent would occur on this property, as presented. He said staff, landowners and businesses need to be able to understand clearly what is or is not allowed.

Mr. Kirk stated the request appeared to be for a contractor's storage yard for rental equipment.

Ms. Newell stated that without a definition of "commercial septic service" or "septic service" and the points Mr. Wade had made, she would like this to be returned to the Planning Commission to clarify the language.

Mr. Kirk asked if there was any further discussion and directed members to review the proposed resolution to uphold or reverse the determination.

Mr. Kirk asked for a motion.

Mr. Wade moved to reverse the determination, seconded by Ms. Newell. AYES: Wade, Newell, Kirk. NAYS: Drake. Motion carried 3:1.

There being no further business, Vice Chairman Kirk thanked all in attendance and adjourned the meeting at 8:05 pm.

Respectfully submitted by

T.L. Newell, Secretary
2-May-2016