

**MINUTES OF THE MEETING OF THE
FRANKLIN BOARD OF ZONING APPEALS
APRIL 3, 2014**

The Franklin Board of Zoning Appeals held a regular meeting on Thursday, April 3, 2014 at 6:00 p.m. in the **City Hall Boardroom**.

Members present: Frank Jones
 Greg Caesar
 Dave Rittenberry
 Gillian Fischbach

Staff present: Emily Hunter, Planning & Sustainability
 Susan Coleman, Planning & Sustainability
 Kristen Corn, Law Department
 Chris Bridgewater, BNS Department
 Molly Pike, BNS Department

The agenda read as follows:

Minutes, February 6, 2014

An **Appeal of Administrative Decision** by William Caldwell on behalf of the Windsor Park at Fieldstone Farms Townhouse Corp. for a review of the decision on the type of use (nonresidential or residential) of an open space lot, located at approximately 64 Alton Park along Spencer Creek Road.

Chair Jones called the meeting to order at 6:00 pm.

Chair Jones requested to know if there were any non-agenda items.

Staff stated there were no non-agenda items to be heard.

Minutes, February 6, 2014

Mr. Rittenberry moved to approve the minutes from February 6, 2014 as submitted. Ms. Fischbach seconded the motion and the motion passed unanimously.

- 1. An Appeal of Administrative Decision by William Caldwell on behalf of the Windsor Park at Fieldstone Farms Townhouse Corp. for a review of the decision on the type of use (nonresidential or residential) of an open space lot, located at approximately 64 Alton Park along Spencer Creek Road.**

Chair Jones stated this item was an Appeal of Administrative Decision by William Caldwell on behalf of the Windsor Park at Fieldstone Farms Townhouse Corp. for a review of the decision on the type of use (nonresidential or residential) of an open space lot, located at approximately 64 Alton Park along Spencer Creek Road.

Mr. Bridgewater stated he would read the Background information from the staff report and stated the following:

On March 26, 2013, the management company for the Windsor Park at Fieldstone Farms Townhouse Corporation was notified of a violation concerning a newly constructed fence in an open space lot along Spencer Creek Road by the Building and Neighborhood Services Department. The notice stated that the fence was required to have masonry columns installed every 50 feet on-center or less, in addition to being a completely opaque fence or having a single row of evergreen shrubs with maximum on-center spacing of five feet on both sides of the fence. This standard is provided in Section 5.6.4(d) of the *Franklin Zoning Ordinance* and applies only to fences serving a non-residential use.

The appellant contends that the fence serves a residential use since the open space lot is a part of a residential subdivision, and, therefore, this particular fence standard should not apply to the open space lot. The applicant notes in his letter to the Board that the HOA covenants state that the open space is for uses incidental to residential uses. Staff would argue that uses incidental to ownership, use, and enjoyment do not make the open space lot residential. The use table in the Zoning Ordinance lists passive parks and open space as a civic and institutional use. Uses incidental to residential uses are likely recreational or for passive enjoyment, which align more closely with a civic use than a residential/habitable use. When this development was originally approved, the open space lot was created to meet open space requirements and was not a lot identified for development of a residential dwelling. Since this property was not planned to accommodate a residential unit, it would not be considered residential, per the definition of net developable area in the Zoning Ordinance.

The City has determined that, per the definitions and use tables in the Zoning Ordinance, the open space lot is not included as part of the developed residential area and that the open space lot is considered a civic and institutional use, i.e. a nonresidential use. The definitions provided above for “net density,” “net developable area,” and “open space, common” support staff’s determination. A copy of the use table has also been included above for reference.

The property owners have chosen to appeal the staff decision that open space is land held in common for the use of the specific residential community and is, therefore, a civic use of the land, not residential. The BZA may uphold or overturn the staff determination dependent upon the Board’s interpretation of the applicable Zoning Ordinance standards and definitions.

Chair Jones opened the floor to public comment.

Mr. Caldwell was present to represent this item and began by passing around additional photograph of the fence. Mr. Caldwell stated the issue is if the fence serves as a non-residential use and if this board finds that this not serve as non-residential use we request the decision by BNS be reversed. Mr. Caldwell stated the zoning ordinance section 5.6.4 states there are design standards for fences and subsection 1(d) creates an exception for these design standards. Mr. Caldwell stated the key language to consider here is “non-residential use” and its definition. Mr. Caldwell stated the definition reads, a non-residential use of land by a civic, commercial office, industrial or institutional enterprise, it doesn’t say it is a specific use of land, but a use of land by the named various groups. Mr. Caldwell stated the residents at Windsor Park do not fit in any of the said mentioned groups, but are residents and they are the ones using this area. Mr. Caldwell stated this fences is a privacy fence in the common area of Windsor Park maintained by the HOA. Mr. Caldwell read from the Windsor Park declaration explained the use of the common area for residential uses only. Mr. Caldwell stated in addition this would be a very expensive fix of \$60,000.

Mr. Caesar requested to know from Mr. Bridgewater if the fence met material/make-up criteria.

Mr. Bridgewater stated the materials are non-compliant.

Mr. Caesar questioned who owned the property that the fence sits on.

Mr. Caldwell stated each resident owns a percentage of the common area.

Chair Jones opened the floor to public comment and no one requested to speak, so Chair Jones closed the public comment portion.

Mr. Bridgewater stated an HOA is a civic enterprise and an open space lot is a non-residential use.

Ms. Pike, Zoning Administrator, presented a recorded plat showing the open space lot use.

Mr. Caesar requested clarification on the property homes to the fence.

Ms. Pike went to the bench and pointed out the homes and the fence.

Commission deliberated.

Mr. Caesar moved to disagree with staff's determination stating the open space should be classified as a residential use and not as a non-residential use since each property owner owns a percentage of the open space property using it as residential uses. Mr. Rittenberry seconded the motion and the motion passed unanimously.

Other Business.

No other business was discussed.

Adjourn.

With there being no further business Ms. Fischbach moved to adjourn the meeting at 6:45 pm. Mr. Rittenberry seconded the motion and the motion carried unanimously.

Chair