



MINUTES  
Carbondale Zoning Board of Appeals  
Wednesday, January 10, 2018  
Room 108, 6:30 p.m.  
200 South Illinois Avenue

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MEMBERS PRESENT: Henson, LeBeau, Sheffer, Hamilton, Miller, Burnside, Love, Lilly and Litecky

MEMBERS ABSENT: None

STAFF PRESENT: Taylor, Brightharp

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**1. Call to Order and Roll Call**

Roll call was completed and the determination of a quorum was made.

**2. Approval of Minutes:**

Ms. Lilly moved, seconded by Mr. Love, to approve the minutes of November 29, 2017.

The motion was approved by a unanimous voice vote.

**3. Citizen Comments or Questions:**

None

**4. Hearing:**

**ZBA 18-01** – Kevin Wheatley is requesting an 11.43 foot variance from Section 15-2.9.9 of the Carbondale Revised Code, which outlines the side yard setback requirements in the AG, General Agriculture, Zoning District. This request is being made for property at 39 Salt Life Lane.

Ms. Litecky opened the Public Hearing at 6:52 p.m. and asked Mr. Taylor to read the Legal Notice.

Mr. Taylor, Senior Planner for the City of Carbondale, read the Legal Notice.

Ms. Litecky asked Ms. Brightharp to present the staff report.

Ms. Brightharp, Planner for the City of Carbondale, was sworn in and presented the staff report for ZBA 18-01.

Ms. Litecky asked if the Board had any questions for the staff.

Mr. Henson asked if the parcel had been supplied with water or sewer by the City. Mr. Taylor stated that it had not. Mr. Henson also asked if the agricultural intent had been taken in to consideration when granting the special use permit. Mr. Taylor stated that it had been taken into consideration at the time the special use permit was issued and at that time there were no threats to the conservation of that land.

Dr. Burnside asked if Mr. Wheatley had been compliant since the citation against his property. Mr. Taylor stated that he had not but not necessarily at his own fault. Mr. Taylor stated that Mr. Wheatley came in and paid the citation and then once discussing the location of the building it was found that it was constructed too close to the property line. He stated at that time Planning Staff told Mr. Wheatley not to worry about the development plan because of the issue with the building it would not be approved and he chose to submit a variance request.

Mr. Henson questioned if the building was constructed before the special use permit. Mr. Taylor stated that it had.

Ms. Litecky asked if the applicant was present and would like to step forward and present their case.

Mr. Wheatley came forward and stated that when he constructed the building he thought he was outside of the City limits and was unsure if he would need a permit even though he knew he was within the mile and a half zone. Mr. Wheatley stated that he had talked to his neighbor and stated that he intended to build closer to the property line because he planned to purchase more land at a later time. He stated that his neighbor was fine with where he built the building and that neither of them knew of the required set back.

Ms. Litecky asked if the Board had any questions for the applicant.

Dr. Hamilton asked if Mr. Wheatley had any written agreements with his neighbor as far as the purchase of land in the future and what the time frame might be. Mr. Wheatley stated that at this current time there was no written agreement but his neighbor is willing to do whatever needs to be done, which includes leasing some of the property or if he wants to purchase it could be put in writing. Mr. Henson stated that if that is the case why has Mr. Wheatley not just purchased or lease to avoid this whole situation. Mr. Sheffer also stated that this whole situation could have been fixed if Mr. Wheatley just purchased a portion of the land. Mr. Wheatley stated that he is not prepared financially at this time to purchase the land. It was then discussed about the amount of land that Mr. Wheatley would have to purchase to meet the

setback requirement and that his neighbor would rather sell in five acre increments instead of just the small amount that is needed at this time. Mr. Sheffer expressed that Mr. Wheatley should really look at purchasing a small amount of land instead of asking for the variance but Mr. Wheatley stated he was hoping the variance would give him some more time to be ready financially to purchase the land.

Mr. Sheffer stated that if the Board was to grant the variance it would be indefinite and that Mr. Wheatley was asking a lot for something that he claims to just need a little bit of time for and that is not what he feels variances are granted for. Mr. Wheatley asked if he were to agree to lease a portion of the land if that would work for the set back requirement. Mr. Taylor stated that a lease would not meet the setback requirement, but the actual purchase of land would. Ms. Litecky stated that she was not clear on why Mr. Wheatley built so close to the property line, especially five feet from the property line. Mr. Wheatley stated that he was thinking more towards the future growth of his business.

Mr. Sheffer stated that Mr. Wheatley said he knew that he was within the City mile and a half zone and that it would cause an issue with the requirements. Mr. Wheatley stated that at the time of purchase he was unaware that he was within the mile and a half zone. Dr. Burnside asked if he knew he was within the mile and a half zone before the building was constructed on the property. Mr. Wheatley stated that he had already started construction when he found out that he was within the mile and a half zone and was unsure at that time what that even meant for his property. It was then discussed why he didn't stop construction at that time and take care of the issue before the building was completed.

Dr. Hamilton asked if it was possible to make the purchase and take out a short term loan to purchase that small amount that is needed. Mr. Wheatley stated that he was not sure if his neighbor would sell such a small amount of land at this time. Dr. Hamilton asked if he would know what the cost for purchase and title work would be for the purchase of the land. Mr. Wheatley said he was unsure of the amount at this time.

Mr. Sheffer stated the Board has to look at certain requirements and if they are met before they can approve or deny a variance, he then asked Mr. Wheatley if he had looked over that list of requirements that he must meet. Mr. Wheatley stated that at this time he had not looked over that list. There was then discussion about the different requirements and if Mr. Wheatley even comes close to meeting the first requirement and also what happens if the neighbor sells to someone else and not Mr. Wheatley in the future. Mr. Sheffer then spoke about what it meant if the Board chose to approve or deny the variance and what that meant going forward and looking at future cases brought to the Board.

Ms. Lilly suggested to Mr. Wheatley to wait in asking for the variance and go to the land owner to try to work out a purchase. Mr. Wheatley stated that would be

something that he is willing to try doing. It was then discussed that his only other option would be cutting off a section of the building and making it smaller.

Dr. Hamilton asked if there was a way to table this case until a later date to give Mr. Wheatley time to ask his neighbor about purchasing the land that is needed or if he is wanting to withdrawal his case at this time.

Dr. Burnside asked Mr. Taylor what the time frame was for Mr. Wheatley to get this purchase taken care of because of the City requirements. Mr. Taylor stated the City Planning staff would be willing to meet with Mr. Wheatley and work on a timeline to get this taken care of. Mr. Taylor stated that if Mr. Wheatley were to withdrawal his request at this time he would have to reapply at a later date, but if they were to defer action on the case it could be reopened at a later time. It was then discussed the difference in tabling the case or deferring action until a later date.

Ms. Litecky asked for a motion to defer action on ZBA 18-01 until a later date.

Mr. Sheffer moved to defer action on ZBA 18-01 until February 7, 2018, seconded by Ms. Lilly.

Roll Call Vote

Yes – 9 (Henson, LeBeau, Sheffer, Hamilton, Miller, Burnside, Love, Lilly and Litecky)

No – 0

Mr. Taylor stated that the motion to defer action had passed and that ZBA 18-01 would now be heard at the February 7, 2018 meeting.

**5. Old Business:**

None

**6. New Business:**

None

**7. Adjournment:**

Ms. Litecky adjourned the meeting at 7:24 p.m.