



BOARD OF ZONING APPEALS STAFF REPORT

DEPARTMENT CONTACT:

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DOCKET NUMBER:

APL-19-1

APPELLANT:

Jeff Townsend

PUBLIC HEARING DATE:

March 27, 2019

PROPERTY ADDRESS/LOCATION:

10117 Lantern Road

SPECIFIC REQUEST: Appeal of a decision to grandfather ten (10) beehives on a property located at 10117 Lantern Road. The property is owned by Jon and Catherine Hunt.

SIZE OF PROPERTY:

6.14 Acres

EXISTING ZONING:

R2

EXISTING LAND USE:

Single-Family Residence

PROJECT SUMMARY:

On October 26, 2018, the Director of Planning & Zoning made a determination to grandfather the use of bee keeping with a maximum of ten (10) bee hives on the subject property.

In accordance with Sec. 10.2.3. Appeal of Administrative Decision, Mr. Townsend filed an appeal of the determination to the Board of Zoning Appeals.

LOCATION MAP:



STAFF RECOMMENDATION

<input type="checkbox"/> UPHOLD DECISION	<input checked="" type="checkbox"/> MODIFY DECISION	<input type="checkbox"/> OVERRULE DECISION	<input type="checkbox"/> CONTINUE
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ATTACHMENTS

- SUBMITTED PLANS
- PUBLIC COMMENTS

- AGENCY COMMENTS
- OTHER

PETITION OVERVIEW:

The property located at 10117 Lantern Road is unincorporated and falls within the Delaware Township. Staff received a complaint about beekeeping taking place at the subject property in 2018. In reviewing the Unified Development Ordinance (UDO), the Director determined that beekeeping was not an allowed use within any Residential Zoning District. This determination was made since the UDO does not provide for any beekeeping in Residential Zoning Districts, and that the UDO states any “only uses indicated as Permitted Uses shall be undertaken in that zoning district”. A Notice of Violation was issued on July 13, 2018 for *of 5.114 US-03: Use-Specific Standards; Keeping of Animals*; the property owner was cited for beekeeping.

After the Notice of Violation was issued, the property owners filed an appeal claiming: 1) that the City of Fishers did not have jurisdiction over their property since it was unincorporated, and 2) that the UDO did not address beekeeping, therefore it should be an allowed use. The BZA held a public hearing on August 22, 2018 to review the matter. During the hearing, the property owner and neighbor, Jerry Gibbs, explained that the beekeeping use has been on the property since the late 90’s when Noblesville had zoning jurisdiction. Noblesville allows beekeeping and the property owner stated that they should be grandfathered.

Since the appeal by the property owner was based on the claim that the City did not have jurisdiction over the property, and that beekeeping should be allowed under the Fishers UDO, grandfathering the use was not part of the evidence for the appeal. After the public hearing, and discussion by the BZA, the appeal was denied at the Administrative Decision was upheld. Staff informed the property owner to submit all their information for grandfathering to the Director for review and a separate Administrative Decision.

After the BZA meeting, the property owner provided all the documentation outlining the case for grandfathering the beekeeping use. The Director reviewed all the material and determined that ten (10) beehives could be grandfathered as a legal non-conforming use. On October 26, 2018, a letter of the Administrative Decision confirming the grandfathering use was mailed to the property owner and the adjacent neighbors that were noticed for the appeal in August.

After the letter was mailed, staff received an email from Jeff Townsend who lives next to the Hunt’s property. He reviewed the material that was given to the Director and asked several questions. After reviewing the material, he informed the Director that he would file an appeal of the decision. On November 26, 2018, the formal appeal from Mr. Townsend was received via email. The appeal letter (attached) from Mr. Townsend concludes that the Administrative Decision should be modified to provide for the continued legal non-conforming use of six (6) beehives (instead of 10), and that the bee hive boxes are structures that need to be placed in the original location before they were moved closer to Mr. Gibbs property. Mr. Townsend’s appeal letter and several court cases related to non-conforming uses and structures are provided as part of the staff report.

PUBLIC COMMENTS:

As of writing this staff report, staff received an email from Mr. Gibbs questioning the timing of the appeal letter and that it was not filed within the 30-day appeal period as required by the UDO. Staff received the appeal letter 31 days after the Administrative Decision was made and documented in the letter dated October 26, 2018. In reviewing this matter with legal counsel, it was determined that while the email was technically submitted 31 days after the Administrative Decision, the appeal is permissible under Section 1.3.4.F. of the UDO. This section provides that “if a time frame ends on a Saturday, Sunday, or holiday when City offices are closed, then the time frame will be extended to the end of the next business day.” Mr. Townsend’s appeal was filed before the end of the day on Monday, November 26, 2018 in a timely

manner.

STAFF COMMENTS:

In reviewing all the material for the appeal and the grandfathering of the bee hives, the Director agrees that the number of bee hives should be reduced to six (6). However, the Director does not consider the bee hives a structure as defined in the UDO, and would require them to be relocated to the original location prior to them being moved.

If the Board of Zoning Appeals agrees with Mr. Townsend's statement that the bee hives are deemed a structure, then the bee hives would have to be moved back to the original location.

ATTACHMENTS:

- 1) Letter - Appeal of Administrative Decision Regarding the Keeping of Bees
- 2) Court Cases provided by Mr. Townsend
- 3) Letter- Administrative Decision, dated October 26, 2018
- 4) Hunt's grandfathering documents