

Town of Onancock  
Town Council Special Meeting  
June 12, 2018  
6:30 PM

Call to Order and Roll Call:

Vice-Mayor Fosque called the meeting to order at 6:30 PM and roll was called. Vice-Mayor Fletcher Fosque and Councilmembers, Robert Bloxom, T. Lee Byrd, Ray Burger and Joshua Bundick were present. Mayor Russell Jones and Councilmember Catherine Krause were absent. A majority of members were present and a quorum was established.

The Pledge of Allegiance was recited.

Public Business:

- a. Reconsideration of the Special Use Permit request by Ms. Linda Copper – Town Manager William Kerbin: Vice-Mayor Fosque explained that Mayor Jones called this Special Meeting for the reconsideration of the Special Use Permit request for a homestay by Ms. Linda Copper at 13 Liberty Street. Mr. Kerbin explained to Council that in their agenda packet there is a memorandum from the Town Attorney, John Custis, as well as the original building permit application that was approved by the Town of Onancock for the garage. Mr. Kerbin explained that Mr. Custis felt that since there was not a clearly defined definition of attached in the Town Code that Council would need to rely on the building code. Generally, the definition of attached acknowledges a common wall, shared roof or something that would not be able to maintain its structural integrity if detached from each other. Vice-Mayor Fosque asked if the applicant would like to address the Council.

Mrs. Nancy James, on behalf of Ms. Copper, explained that at Council's request she was able to ascertain that Accomack County was not approving Onancock building permits in 2005, that the Town was handling them at that time. Mr. Ben Askew approved the building permit for the garage which acknowledged a room above the first-floor garage. Mrs. James shared that per Council request she also spoke with the Town Attorney as well as a third-party party and both suggested that due to building permit approval the property that Ms. Copper purchase has vested rights and therefore the Special Use Permit request for a homestay should be approved by Council. Vested rights meaning that since the Town approved the building permit it acknowledged the variance for a living space in an accessory building.

Vice-Mayor Fosque explained that to live in an accessory building in the residential 1 zone would be a non-conforming use and not legal based on the residential 1 zone's intent. If it was used as a non-conforming use previously it would not make it grandfathered due to its legality. Vice-Mayor Fosque stated that in his view the issue comes down to whether the accessory building is attached to the main structure and the deck would not qualify as the attachment. Mrs. James asked why a roof would make the attachment legal when no other methods would make it attached. Vice-Mayor Fosque explained to Ms. James that while he understands the applicant's frustration, they are only viewing this one case when it is Council's job to protect the rights of all those living in Town.

Mrs. James questioned Council's resolve to deny this permit when the Town appears to want tourism but offers the tourists no place to stay. Mrs. James asked, for arguments sake, if it is decided that the deck does not make it attached then does Ms. Copper need a variance. Vice-Mayor Fosque and Councilmember Burger stated that it is not attached and due to the current zoning rules for that area accessory buildings cannot be lived in. Mrs. James shared that the Town Manager reviewed the application and inspected the area in question and recommended that the space was suitable for this use. Mrs. James expressed her concern that the Town is not welcoming Ms. Copper who went through this process in good faith. Mrs. James also stressed that she obtained a legal opinion, at the request of the Town Council, which stated that Ms. Copper has vested rights due to the approved building permit by the Town in 2005 which Council appears to be dismissing. Vice-Mayor Fosque explained that it is a violation of the Town's Zoning Ordinances and that he suggested that she install a roof so that the two structures can be considered attached.

Councilmember Byrd asked about Ms. Copper's willingness to rent a room in the main structure. Mrs. James explained that it is not a viable option. Mrs. James also stressed that the homeowner's insurance policy does acknowledge the deck as the attachment of the two structures.

Vice-Mayor Fosque explained that there have been others in Town that have wanted to rent their accessory structures but due to the Town's Zoning Ordinance said they were denied or did not even ask, knowing that it was not an option.

Councilmember Bundick stated that Council does need to address the definition of attached so that Council will have clearer guidelines for approvals or denials.

Vice-Mayor Fosque shared that his concern is not with this particular application but the precedence that Council would be setting if it is approved.

Mrs. James asked if Council could approve this permit and then update the definition later for future applications.

Mr. Alan Silverman, Parker Street, shared that the legal definition states that attached means two structures which are connected and not able to move without ruining the structural integrity of the structures. Detached is two buildings not reliant on each other for support.

Councilmember Bloxom shared that his research results mimicked Mr. Silverman's explanation of attached and detached. Councilmember further shared that he is concerned about making an exception for this application when the Town's current code strictly prohibits this use. Councilmember Bloxom suggested that Council review the Town Code and possibly amend it to allow accessory buildings to be livable structures.

Councilmember Byrd shared that he feels for Ms. Copper's situation but that his opinion of the application has not changed since the last Council Meeting.

Councilmember Burger stressed that the garage is detached and therefore not eligible for this use.

Mrs. James asked what the next steps would be for Ms. Copper to get a favorable vote for her application. Vice-Mayor Fosque explained that the zoning rules would need to be changed to allow accessory buildings to be livable structures.

Ms. Copper expressed her dismay with Council's hesitancy with approving her application for a homestay. Ms. Copper stressed that the previous owners were granted a permit to use the room above the garage as an addendum to the house so why is she being denied the same right. Ms. Copper shared that not being able to use the room over the garage as a homestay is creating an extreme hardship on her ability to supplement her income with that additional revenue. Ms. Copper finished by stating that this process has made her feel unwelcomed in Town.

Mrs. James asked if the next steps would be for her to hire another attorney to redraft the entire Zoning Ordinance or do we need to review a change specific for this property. Vice-Mayor Fosque stated that she could hire an attorney and or have a Councilmember propose Zoning Ordinance changes on her behalf. Councilmember Bloxom stated that he would be in favor of proposing a change to the Town's Zoning Ordinances which would allow detached structures to be livable spaces by right.

Mrs. Maphis Oswald, Sturgis Street, asked if detached structures are only not considered livable spaces in the situations like a homestay or does it extend to allowing family and friends utilize the space while visiting Town. Councilmember Bloxom stated that the code clearly states no one can live in a detached structure.

Mrs. James suggested that Council clarify the homestay definition so that it would allow short-term rentals to use detached structures.

Vice-Mayor Fosque asked if the applicant would like to pull the request for Council's consideration for the time being. Mrs. James stated she would like to remove the application from consideration at this time.

Public Comment:

None.

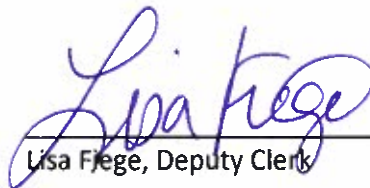
Adjourn:

*Councilmember Bundick made a motion to adjourn. Councilmember Byrd seconded the motion. The motion passed any unanimous voice vote.*

The meeting adjourned at 7:18 PM.



Fletcher Fosque, Vice-Mayor



Lisa Flege, Deputy Clerk