

PLANNING AND ZONING COMMISSION
TOWN OF BRIDGEVILLE

May 24, 2016

Commissioners of Bridgeville
101 North Main Street
Bridgeville, Delaware 19933

Dear Commissioners:

The Planning and Zoning Commission of the Town of Bridgeville met on Tuesday, May 17, 2016 to consider the following application:

A Zoning Change Application by Mrs. Virginia Kefauver of 500 S. Railroad Ave. to change the zoning of the above-mentioned property from Residential (R-1) to Commercial (C-1) zoning.

The Planning and Zoning Commission evaluated the application on two levels. First, the physical condition of the property and excessive number of code violations and secondly, the request to change zoning from R-1 to C-1 for an auto repair shop.

The Planning and Zoning Commission voted 4 votes to 1 (5 members attending) to deny this application and instructed the Bridgeville Code Enforcement Officer to continue with enforcement of code violations on the Kefauver property.

The Planning and Zoning Commission therefore sends a recommendation to the Commissioners of Bridgeville for their denial of the application at their upcoming June 13th monthly Commission meeting.

The Minutes of the May 17th Planning and Zoning Commission meeting are attached for your review. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,



Bill Atwood, Chairman
Planning and Zoning Commission

BA/ps
Enclosure

**TOWN OF BRIDGEVILLE
PLANNING AND ZONING COMMISSION
MAY 17, 2016 – TOWN HALL**

I. CALL TO ORDER

The meeting was called to order by Chairman Bill Atwood at 7:00 P.M. Present: Planning and Zoning Commission (P&Z) members Eleanor Bennett, Jack Cannon, Steve Dell, Sandie Rementer, ex-officio member Code Enforcement Officer (CEO) Jerry Butler, Town Solicitor Dennis Schrader and Town Secretary Peggy Smith. The applicant was represented by Mrs. Virginia Kefauver, her sister, Ms. Sandy Smith and her daughter, Ms. Vanessa Carter.

II. QUORUM PRESENT

Chairman Atwood advised a quorum was present to conduct the business of the P&Z, despite the absence of member Ed Lewandowski.

III. ZONING CHANGE APPLICATION – Mrs. Virginia Kefauver R-1 to C-1

A. Consideration of Application

Chairman Atwood advised the P&Z has received an application for a zoning change from Residential R-1 to Commercial C-1 and is conducting a Public Hearing concerning the property of Mrs. Virginia Kefauver at 500 S. Railroad Ave. in Bridgeville. A public notice was placed in the Seaford Star concerning this meeting and property owners in the vicinity received a notice by mail of tonight's meeting.

P&Z's objective is to consider this request in accordance with the Town Code and Comprehensive Plan, to receive input from the public and to make a recommendation to the Town Commission.

Mrs. Kefauver advised she and her husband have had a body shop on the property since 1981. After his death she closed the shop and now rents the building to Mr. Rolando Rivas, operating as "Auto Repair Rivas LLC" as an auto repair shop. She presented the current renter's license and insurance for review.

Mrs. Kefauver's original application was for a Conditional Use (CU) renewal on R-1 property. The Town did not allow for a CU of this type in the district in which it currently exists and a change to Commercial zoning was chosen.

The business license, valid through December 2016 per Mrs. Kefauver, was entered into the record; however, the insurance submitted was an application only, not a Certificate of Insurance. The applicant was questioned concerning the list of violations on the property.

- Mrs. Kefauver submitted a valid business license for Mr. Rivas tonight. The insurance issue is outstanding until an actual Certificate of Insurance is presented.
- Solicitor Schrader asked if Mrs. Kefauver or someone else has untagged vehicles on the property. She advised the tenant has untagged vehicles on the property, including cars being worked on and bought for parts. He asked how long the vehicles will remain. She did not know. He asked if there are any junked vehicles stored on the site. She answered "not really". She has told the tenant that un-useable parts/vehicles must be taken away.
- Solicitor Schrader asked if there are any vehicles, engines, transmissions, auto parts, etc. stored outside.

Mrs. Kefauver answered – “There have been. The tenant is supposed clean-up the area and place everything inside.” Mr. Schrader asked when she last saw parts outside. She answered “I didn’t go out there today or yesterday”. Did she see any last week? She answered “yes”.

- Solicitor Schrader asked if there were wrecked, dismantled or inoperable vehicles on site. Mrs. Kefauver answered “yes, they are stored outside in a fenced-in area with a locked gate.”
- Solicitor Schrader asked if there is any erosion resistant material in the parking lot or driveway. Mrs. Kefauver answered “no”.
- Per Solicitor Schrader, this is not considered a home-based business. He questioned her licensure. Mrs. Kefauver rents the building only. The tenant has a business license.

Chairman Atwood questioned whether the R-1 zoning allows the business to operate. Solicitor Schrader advised it does not. Per Chairman Atwood, since this property is zoned R-1, only home-based businesses can conduct work in this zone. Solicitor Schrader advised this business violates the zoning code.

The acreage is 4.72 and the business occupies approximately 2-1/2 acres, using only the rear building. It was clarified that Mr. Rivas has been working there since before Mr. Kefauver passed away and intends to continue the same type of work in the future. There is no written lease.

It was clarified that Mrs. Kefauver does not have Town services (water/sewer). She advised the tenant does not store petroleum products on-site. They do oil changes and take the old oil away themselves; however, she does not know if they are complying with state law concerning the storage/removal of waste oil.

Mrs. Bennett expressed concern about cars in the back and suggested placing a fence around them.

Solicitor Schrader advised, if approved, the renter would still need to present a development plan that shows the location of all structures, as well as other technical requirements of the Town Code.

It was clarified that this property does not abut Heritage Shores (H.S.). There is a substation and driveway between Mrs. Kefauver and H.S. It is believed the property line is the driveway and it is uncertain who owns it. It is close to the proposed Bike Path to the Library; however, the Path does not go over this roadway, as it is a right-of-way to the property behind it. The pathway is adjacent to it. Per Mr. Larry Skala from 108 Whistling Duck Dr., part of H.S. property is being used for the Bike Path and deeded to the Town. [It has been determined subsequent to this meeting that, in fact, the Kefauver property does abut the Heritage Shores Property.]

Chairman Atwood has seen untagged vehicles/engines lying in the grass. He asked Mrs. Kefauver about the clean-up. The wrecked vehicles with tree limbs/grass growing through them do not belong to her or to her renter. She asked the owners to move them last year to no avail. She will have them removed herself.

Chairman Atwood advised he is personally against spot rezoning. He drove around Town and found a number of garages and accessory buildings that could potentially come before this Commission to request a change of zone to start a business and he is not anxious to open that door.

Chairman Atwood asked about oil/anti-freeze being dumped on the property. Mrs. Kefauver responded the current renters know that is not allowed.

B. Public Hearing

The floor was opened for comment from the audience at 7:22 P.M.

Ms. Sandy Smith lives on the Lindenmere property. She questioned how a property gets annexed and what happened to warrant these new regulations, since the business has been there since 1981.

Chairman Atwood advised if a property ceases to be used as a Conditional Use for a year, the permitted use terminates. The body shop was closed when Mr. Kefauver died, but the repair portion has never closed.

CEO Butler reported the body shop's license expired and they have been operating illegally for five years. Mrs. Kefauver asked why the Town didn't pursue the issue five years ago. CEO Butler assumed Mrs. Kefauver was continuing her husband's business and did not know that Mr. Rivas was operating on his own.

Mr. Larry Skala does not object to an auto repair facility there, but not a junk yard, which it has become. He is afraid it will continue as is.

Mr. Tom Leewee from 11 Whistling Duck Drive agreed with Mr. Skala's comment.

Ms. Smith asked if it would be satisfactory for Mrs. Kefauver to put ribbon through the fencing so that cars and automotive parts could not be seen. Solicitor Schrader advised Mrs. Kefauver would first need to be re-zoned to C-1 Commercial and second, undergo a Site Plan Review. The clean-up of the site is imperative.

The Public Hearing was closed at 7:25 P.M.

The discussion continued. CEO Butler was asked to comment on the application. His attention was drawn to the business and he began to investigate when he received phone calls from clients who shared that Mr. Rivas was operating on a cash basis only and did not give receipts. CEO Butler had assumed the mechanics were working for Mrs. Kefauver and the business, as originally licensed, was continuing; however, that was not true. He believes 9 of the 10 violations on the list of problems still exist. The issue boils down to what local residents want to look at. He passed around pictures of the property which show how the business has been run for the past 5 years. There are over 20 untagged, junk cars on the property. There are cars that have been there so long they have trees growing through them. The property has not been maintained properly and he doesn't believe it will change. He believes the owner is incompetent for running the business for five years without a license.

CEO Butler has heard from another Town resident who advised if Mrs. Kefauver received C-1 status, he would be right in line behind her to make a similar zoning change request for his property in-Town. (Pictures were presented of other property structures which could realistically request C-1 zoning as Mrs. Kefauver has). This would be setting a precedent.

CEO Butler's Concerns:

- Allowing spot zoning in the Town of Bridgeville.
- Mrs. Kefauver's liability for injury or death due to faulty brakes, etc. that were repaired at this facility.
- The unknown status of Mr. Rivas' insurance's application.
- Mr. Rivas is stripping parts from old vehicles, while giving no warranties or receipts. His business ethics are questionable.
- The business should be closed down immediately for working on vehicles outside.

- CEO Butler should call the EPA/DNREC, which would likely close down the shop.
- Oil and antifreeze leaking into the ground from working outdoors (which is illegal) has the potential to first harm Mrs. Kefauver's own well water.

Commissioner Dell questioned the best way for CEO Butler to enforce our current regulations on this property. Is it through rezoning or leaving it as it is? What is the best leverage to use concerning this situation? CEO Butler has given Mrs. Kefauver a temporary C.O. to stay open as the issues are being resolved. He believes the Bridgeville Police must tag the abandoned and inoperable vehicles and have them hauled away.

Solicitor Schrader's Concerns:

- Believes, as landowner, Mrs. Kefauver has potential liability concerning the business.
- Our Code requires all parts to be stored indoors and pictures have been shown of parts all over the yard.
- Questions whether this site is appropriate for a C-1 commercial use.
- There is no precedent concerning land use planning. Each property is deemed to be different than any other. That should be considered as future applications are submitted. The Town is not bound by the decision on this application concerning any further application.

Chairman Atwood's Concerns:

- Effects of C-1 change of zone for other "garage-type" buildings in Bridgeville residential areas. He talked with one individual who believes he could add value to his property by re-zoning R-1 to C-1.
- Has reviewed the Code, Comprehensive Plan and Master Plan looking for guidance on this application. It would be helpful to Mrs. Kefauver to know some of the possibilities if her request moves ahead: A Development Plan Review, paving, lighting and fencing would be a significant expense.

C. Recommendation of Planning & Zoning Commission

This application has changed over time; originally it was to be a Conditional Use application. It was also clarified that this new list of violations was only received by Mrs. Kefauver two days ago. CEO Butler advised when he gave Mrs. Kefauver her temporary Certificate of Occupancy on October 30, 2015, he advised she was not to have more than 4-5 cars on her property. She responded that the property would be cleaned up.

Commissioner Dell leaned toward letting the enforcement process carry-out to its conclusion and recommending denial of the C-1 zoning application. His suggestion was to re-zone the property Industrial. The sub-station nearby is essentially industrial use and he believes it would be the appropriate zoning; however, he doesn't believe any change should take place until all code violations have been addressed.

Commissioner Bennett questioned the adjacent land belonging to Lynette Kovack's estate, which is passed along to her three nieces and will be sold. Commissioner Dell advised he wouldn't re-zone that property, as it is on the edge of R-1. T.G. Adams and the scrapple plant are close and both are industrial zoning. Commissioner Dell also commented that the Town is doing its best to build up the downtown commercial area and he would not want to dilute that effort by putting commercial zoning on the Kefauver property. He would rather have commercial businesses come to Market St.

Commissioner Dell made a motion to deny the C-1 application and instruct the Code Enforcement Officer to continue with enforcement procedures on the Kefauver property.

Solicitor Schrader added the Commissioners may approve, deny or defer this motion.

Commissioner Rementer questioned Industrial zoning. It is a type of zoning like commercial, residential, etc. She questioned if Mrs. Kefauver doesn't get the commercial zoning tonight, how does she move forward? If the Town re-zoned it industrial, would she still be allowed to have her Auto Repair Shop? Commissioner Dell believes the existing code allows for automotive repair in an industrial zone, but wouldn't recommend doing any re-zoning until the property is cleaned up.

Commissioner Rementer does not wish to see the business close and believes we need to keep our businesses and add more. A growing population means a greater need for auto repair shops.

Chairman Atwood re-iterated Commissioner Dell's motion to deny the C-1 application, address the code infractions and help Mrs. Kefauver come into compliance to continue her business.

Solicitor Schrader advised the P&Z Commissioners can only recommend, deny or defer the application.

Solicitor Schrader advised the discussion concerning Industrial zoning cannot be considered as it is not a part of the application as originally written. Should the Town Commission deny the application for C-1 zoning, Mrs. Kefauver would need to re-apply for a change of zone to M-1.

Chairman Atwood, in response to Mr. Schrader's comments said, his sense in what Solicitor Schrader said was that the P&Z would suggest another review totally along Railroad Ave. and we can certainly recommend to the Commission, as different from the motion that we made with respect to this application, that they investigate other things that would help our business environment as well as perhaps when the code issues are address, Mrs. Kefauver could continue to do that work."

CEO Butler wanted the P&Z members and Town Commission to see how the business has been operated before tagging and removing vehicles.

Mrs. Kefauver asked how much time she will have to get the site cleaned up before CEO Butler returns.

Solicitor Schrader reminded the audience that the only thing the P&Z Commission can do is to approve, deny or defer this application for C-1 commercial. Final action will not be taken until the June 13th Commission meeting. The Commissioners could agree or disagree with the P&Z members' recommendation. He suggested Mrs. Kefauver call CEO Butler during office hours and start working on resolving the violations. The Kefauver family hopes the Town will be understanding of weather and other unexpected issues that could arise. It was reiterated the clean-up must take place whether or not the property receives C-1 zoning.

The Commissioners were reminded of the motion by Commissioner Dell to recommend to the Commissioners of Bridgeville denial of the C-1 application and instructing the Code Enforcement Officer to continue with enforcement procedures on the Kefauver property. Commissioner Cannon seconded the motion.

Chairman Atwood re-iterated the motion will recommend denial of this application to the Town Commission and P&Z may add their comments concerning fixing the current Code violations.

The votes were recorded as follows: Commissioner Bennett – yes; Commissioner Rementer – no; Commissioner Cannon – yes; Commissioner Dell – yes; Chairman Atwood – yes. The vote was 4 in favor of denying the application and 1 against denying the application. The vote to deny passed.

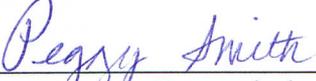
IV. ADJOURNMENT

Commissioner Dell made a motion to adjourn the meeting. Commissioner Cannon seconded the motion; motion carried. The meeting was adjourned at 7:52 P.M.

Respectfully submitted,



Bill Atwood, Chairman



Peggy Smith, Transcriptionist