Minutes
Northampton County
Board of Zoning Appeals
July 2, 2013

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on Tuesday, July 2, 2013, in the Board Chambers located at 16404 Courthouse Road in Eastville, Va.

Members present were Chair Susan Henderson, Kevin Kellam, Bonnie Nottingham and Vice-Chair Douglas Coburn. Absent from the meeting was Eugene Bannister. Also in attendance were Melissa Kellam, Zoning Administrator; and Kay Downing, Administrative Assistant.

The Chair called the meeting to order at 9:30 a.m., established a quorum, and then introduced Board members and staff to the public.

Public Hearing

The scheduled hearing was called to order. It is noted for the record that all those wishing to speak at today's hearing were sworn in by the Chair.

> **A. Variance 2013-04: Barbara Thomas** has applied for an after-the-fact variance of 10 feet from the required 10-foot rear yard setback and of 12% increase above the maximum 15% to a total of 26% impervious surfaces on the lot to allow an accessory structure which currently crosses the property line to be moved and located entirely on her property. The property, located at 17095 Courthouse Road, is described as Tax Map 58A1, double circle A, parcel 89. The property is zoned Town Edge-One TE-1 District containing 21,391 square feet of land.

Ms. Kellam read the following portion of the staff report for the record.

As indicated in the highlighted text above (referring to checked criteria)*, although the request doesn't meet all of the criteria, it is staff's opinion that the request does meet, to a lesser degree (1a) (a) through (1a) (d), and completely (1c), (4) and (5). Out of the total five criteria, approximately 2.3 criteria are met overall. Based on their findings, the Board shall be tasked with determining if the degree to which all criteria were met is satisfactory and that the granting of a variance when certain criteria are met, will not be contrary to the public interest, the intended purpose and spirit of the Northampton County Zoning Ordinance was observed and substantial justice done. It is staff's recommendation that the Board may grant a variance for this request but, must first clearly substantiate the findings that provide the basis for which a variance can be granted as part of their discussion*

Ms. Thomas explained that over the last several years negotiations were held to alleviate the unintended encroachment. She tried to purchase a triangular shaped 272 square feet of land from the adjoining property owners, the Robbins family, but no agreement could be reached. Long after its construction it was discovered that the building did not meet setbacks and one

corner actually encroached 26 inches over the property line to the rear. Numerous contractors were asked if they could move the building completely onto her land. Each one was of the opinion that the integrity of the structure would be compromised if moved. The building was constructed in 1997 by her father as a grooming station to use in her sideline of showing pedigree dogs. The rear yard behind the house has little open space to locate an accessory building because the above-ground septic system had to be installed there in order to meet Health Department regulations. She noted that the private driveway behind her property belongs to the Robbins family and is used to access their farmland. She acknowledged that she has used it to access the rear of her property as well, but the shed has never interfered with or prevented vehicles from passing.

The Chair called for public comments.

Ms. Cela Burge, agent for the Robbins family, stated that the encroachment is an unfortunate situation, but her clients are definitely opposed to the granting of a variance. Not only does Ms. Thomas' shed encroach onto their property, but her garden and flowers as well. Ms. Burge stated that the staff evaluation of this application is not completely accurate in her opinion. There is no proven hardship based on the criteria to grant a variance and that this situation falls beyond the scope of the Board of Zoning Appeals.

At this point Ms. Kellam noted that state Code has been amended and variance criteria have changed.

When asked by Ms. Thomas, Ms. Burge explained that a hardship is not associated with the owner but pertains to the land itself.

Ms. Thomas reiterated that the Health Department required her to install a new above-ground septic system which used most of the open space that was left in her rear yard. Now there is no area to put a structure other than where the original one is located. If the variance is granted she can have one corner of the shed trimmed down to eliminate the encroachment over the property line. She explained that the Robbins family wanted $10,000 for a 12-foot wide strip of land in the rear. She offered them $3,500 for 10 feet next to the corner of her building. A new circle driveway has been installed in front of her house plus fencing and she noted that she no longer uses the farm drive-way. She added that she has lived there for over 30 years and simply wants this matter resolved so peace can be restored.

When asked by Mr. Coburn, Ms. Thomas stated that the new septic system was installed in 2004 at a cost of $18,000 when she remodeled her kitchen with a new foundation.

Ms. Burge stated that there has been constant creeping over the property line since Ms. Thomas moved there.

Mr. Edward Robbins stated that his family had to literally stop Ms. Thomas' contractor from installing her new septic system in their field located behind her property. He added that the family does not object to occasional use of the farm access road on the south end but now a garden has been put on their land as well. He noted that he is in the process of removing all vegetation between their farm property line and the residences located along Courthouse Road

in order to reveal all property markers and to prevent any other encroachment. He, too, stated that they wanted to be good neighbors.

When asked if the road was a right-of-way, Ms. Kellam confirmed that the road belonging to the Robbins family is not a platted road and is for private use.

Mr. Robbins added that several others have encroached over the property line, but there has been a great deal of cooperation to rectify the issue. In most cases dog pens and other accessory uses have been removed.

When asked by Mr. Coburn, Mr. Robbins stated that their property contains approximately 40 acres of cultivated land.

There being no other comments, the hearing was closed.

Mr. Coburn noted that this is a difficult situation and to deny this variance would have a significant impact on Ms. Thomas' life. The strict application of the ordinance would reasonably restrict the use of her land. It was his opinion that the request does meet criteria #4 and would not be detrimental to adjoining property or impact the neighborhood as stated in criteria #5.

Action:

Motion was made by Douglas Coburn with second by Bonnie Nottingham to recommend approval of the variance. The Board unanimously approved the request to allow a rear yard setback of zero (0) and to allow an increase in the impervious lot coverage for the following reasons: (1) the property was acquired in good faith; (2) the strict application of the ordinance would induce hardship and unreasonably restrict the use of the property as this is an extraordinary situation and there is no other space available to relocate the structure; (3) the variance will not be of substantial detriment to adjacent property; (4) the character of the district will not be changed; and (5) the condition of the situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to amend the zoning code.

Ms. Kellam noted that there is a 30 day appeal process and instructed the applicant to contact county staff to determine if a renovation permit is required to alter the existing structure.

Statements from the Public: none.

Old Business: none.

New Business: none.

Administrator's Report

Ms. Kellam informed the Board that no new applications have been filed to date.

Consideration of Minutes

The minutes of the June 4, 2013 meeting were unanimously approved as presented upon motion by Mr. Bannister and second by Mr. Kellam

Adjournment

There being no other business the meeting was adjourned at 10:13 a.m. upon motion by Mr. Kellam and second by Mr. Coburn.

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Chair Secretary