Minutes
Northampton County
Board of Zoning Appeals

July 5, 2011

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on July 5, 2011 in conference room #2 in the former Machipongo Middle School located at 7247 Young Street in Machipongo, Virginia.

Members present were Chair Susan Henderson, Vice-Chair Mark Freeze, Bonnie Nottingham, Eugene Bannister and Douglas Coburn.

Also in attendance were Katrina Hickman, Zoning Inspector; and Kay Downing, Administrative Assistant.

The meeting was called to order at 10:42 a.m. and a quorum established.

The scheduled public hearing was called to order and all those wishing to speak at today's meeting were sworn in by the Chair.

Public Hearing:

> Variance 2011-05: John R. Yaros, Sr., has applied for an after-the-fact variance of to allow an irrigation pond and accessory maintenance / access areas to be located in the resource protection area non-tidal wetland and buffer. The property, located on Martins Landing Road, is zoned Agricultural / Rural business District (A) and described as being Tax Map 113, double circle A, parcel 1 containing approximately 62.97 acres of land.

Mr. Yaros was present and stated that the pond was installed to provide irrigation to 40 acres of cultivated fields. He explained that he was unaware that other permits were necessary since he has installed numerous ponds over the years throughout his properties.

Mr. Coburn asked Mr. Yaros if an irrigation well had been considered. He replied no since he did not want a well located in the deep water aquifer. At the time the pond was installed he did not realize that the location contained wetlands and noted that the property had an existing large hole at that location when purchased by him and that he later enlarged it because the area naturally recharges.

Mr. Robert Cole, agent for the United States Army Corps of Engineers (USACE), stated that the farm pond is exempt based on the Corp's regulations so no permit is required. However, the dredge area soils placed within the resource protection area were not exempt and resulted in a violation. He stated that Mr. Yaros was made aware of the violation and the dredge soils have been relocated beyond that restricted area. Therefore, Mr. Yaros has resolved any concerns

that the Corps had. When asked, Mr. Cole explained that he does have authority to regulate tidal areas, but not non-tidal. He added that if there had been any interference with the stream then the Corps would have been involved.

Mr. Freeze stated that the county zoning regulations specifically state that a property owner must obtain a permit for an irrigation pond from the USACE. Mr. Cole stated that the county's regulations are simply that – the county's and not those of the Corps.

Mr. William Shockley, Extension Agent, expressed his opinion that there are several zoning regulation issues that need to be resolved since it is counter-productive to fill in an existing irrigation pond. He added that the county should not try to enforce an erroneous zoning ordinance and that the irrigation pond is needed especially now with this crop growing season.

Ms. Hickman stated that the Department of Conservation & Recreation (DCR) should investigate the property and issues in order to clearly define what is required by existing regulations.

Tina Gerome agent with the National Resources Conservation Services (NRCS) stated that the wetlands delineation was determined by their agency. She noted that ponds should not be located in major aquifer areas and that the wettest soils are the best place to locate ponds. It was her opinion that the location was not a high-quality wetlands site with varying grades of high-quality habitat. This pond acts like a sink to catch nutrients as well. Referring to Section 154.164 of the Bay Act approval of this location met all the criteria in her opinion.

Ms. Hickman noted that the wetlands in this case are the perennial source and it appears that the BMP is in the resource area.

Mr. Shockley noted that the public needs to be informed about how the permitting process works. It was his opinion that NRCS and the USACE should be permitting these types of ponds and not the county.

Ms. Hickman noted that the county does not permit ponds unless there is a resource protection area involved.

Mr. Jerome "Butch" Nottingham stated his opinion that in this situation this is the best use for this acreage given the habitat and soils. Removing acreage from production is not necessary and that the pond was placed in the most appropriate location. He added that irrigation wells are extremely expensive to install and that a permit from the Department of Environmental Quality is required. He added that it was his understanding that the county is trying to promote agriculture activity; therefore, the zoning regulation needs to be amended. He noted that irrigation ponds are a part of farming and without them productivity is decreased along with the local economy.

Mr. Coburn expressed his opinion that the BZA does not want to be in the business of approving irrigation ponds as stipulated by the county zoning ordinance. He added that this case is precedent setting. Mr. Freeze agreed and added that the BZA can only enforce what the Board of Supervisors has approved in the zoning ordinance.

Ms. Hickman stated that this matter may require more mitigation by planting additional vegetation around the pond area where 400 square feet of disturbance has occurred.

Mr. Carl Peacock stated his opinion that Mr. Yaros had acted in good faith by expanding the pond area that already existed in order to increase crop production and that the pond is located in an optimal location.

Mr. Bannister agreed that Mr. Yaros had acted with good intentions; however, the BZA has to uphold its responsibilities as well. He added that it was important that the BZA receive as much information as possible on this matter even if from other agencies.

There being no other public comments, the public portion of the meeting was closed.

The Chair asked staff if the pond could be utilized until a decision is rendered and Ms. Hickman replied yes.

Concurring with Mr. Freeze and Mr. Bannister, Mr. Coburn stated that the BZA would be remiss and acting premature without as much information as possible and that a determination from DCR was in order. He stated that the BZA should be completely assured that no adverse impacts to the neighborhood and the stream have occurred because of this irrigation pond.

Ms. Hickman stated that a request to the Bay Act Division of DCR can be made so that their determination can be submitted to all parties.

Action

Motion to table this matter was made by Mr. Freeze until such time that more information is received from DCR. Second was made by Mr. Bannister and carried unanimously.

Mr. Yaros was assured that the pond could be utilized for irrigation purposes until a decision is made.

Statements from the Public: none.

Old Business: none.

New Business.

Ms. Hickman informed the Board about a situation concerning a prior BZA decision made in 2004. Ms. Nottingham noted that she had received a letter from the Zoning Administrator concerning a variance that was issued several years ago. Ms. Hickman explained that the letter was an official notice to inform the prior property owners and applicants, Bonnie Nottingham and Sara Goffigon; Board members of 2004, and the current property owner, John Salm, about a prior variance decision that was overlooked with the issuance of a zoning clearance to allow construction of an accessory structure. The BZA in December of 2004 granted approval of Variance 2004-03 to Ms. Nottingham and Ms. Goffigon with the condition that no accessory structures would be allowed on the property in the future. However, in 2009 staff approved a

zoning clearance granting the new property owner, John Salm, permission to construct a detached accessory structure. Even though Mr. Salm was aware of the Board's decision in 2004, he applied for a building permit to construct a detached accessory living unit on the property. While zoning clearance for the accessory living unit structure was denied, the Zoning Administrator did approve construction of a detached accessory structure. When a complaint was filed with the county that the BZA's original decision issued in 2004 had been violated staff contacted county counsel. Counsel determined that a written notification of the situation must be sent to all parties involved in the matter and if no one objected or appealed this matter within 30 days then the zoning clearance and building permit could remain in full force and the accessory structure could remain on the property. Ms. Hickman noted that no one has filed an appeal to date.

After Mr. Freeze left the meeting at 11:40 a.m., the Board decided by consensus that the next regular meeting of the BZA would be held in September.

Zoning Administrator's Report: none.

Consideration of minutes:

The minutes of June 7, 2011 were approved unanimously 4 to 0 as submitted upon motion by Mr. Bannister and second by Ms. Nottingham.

Adjournment:

There being no other business, the meeting was adjourned at 11:43 a.m.

_____ _____

Chair Secretary