Minutes
Northampton County
Board of Zoning Appeals
June 4, 2013

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on Tuesday, June 4, 2013, in the Board Chambers located at 16404 Courthouse Road in Eastville, Va.

Members present were Chair Susan Henderson, Kevin Kellam and Eugene Bannister. Absent from the meeting were Bonnie Nottingham and Douglas Coburn.

Also in attendance were Charles McSwain, Development Department Director; Melissa Kellam, Zoning Administrator; and Kay Downing, Administrative Assistant.

The Chair called the meeting to order at 10:30 a.m., established a quorum, and then introduced Board members and staff to the public.

Public Hearings

A. Variance 2013-02: Marian Schweighofer has applied for an after-the-fact variance of 41-feet from the required 60-foot front yard setback in order to construct a porch for a single-family residence. The property, zoned A/RB Agriculture/Rural Business, is located at 6533 Occohannock Neck Road and is described as Tax Map 7, double circle 6, parcel 1 containing approximately .55 acres of land.

Ms. Kellam noted that staff reports have a new format taken directly from the zoning ordinance. She then read the following portion of the staff report for the record.

Yes ☒ No ☐ (1) The property owner acquired his/her property in good faith but by reason:

Yes ☐ No ☒ (a) Of the exceptional narrowness, shallowness, size or shape of the specific piece of property at the effective date of this chapter;

Yes ☐ No ☒ (b) Of exceptional topographic conditions; or

Yes ☒ No ☐ (c) Of other extraordinary situations or conditions of such piece of property or

Yes ☐ No ☒ (d) Of the use or development of property immediately adjacent thereto,

Yes ☐ No ☒ *The strict application of the terms of this chapter would effectively prohibit or*

Yes ☒ No ☐ *The strict application of the terms of this chapter would unreasonably restrict the use of the property, or*

Yes ☐ No ☒ *There exists a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant;*

Yes ☐ No ☒ (2) *That the strict application of this chapter would produce undue hardship;*

Yes ☒ No ☐ (3) *That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;*

Yes ☒ No ☐ (4) *That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance;*

Yes ☒ No ☐ (5) *That 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 be adopted as an amendment to this chapter.*

As indicated in the highlighted text above, although the request doesn't meet all of the criteria, it is staff's opinion that the request does meet, to a lesser degree, one of the four sub-criteria for criteria number one and four out of the total five criteria 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 before taking action on this request.

Ms. Schweighofer was sworn in and stated that she had acquired the property in good faith and started repairing the structure noting that a valid building permit had been issued to the former owner. She noted that she did not intentionally try to violate any county regulations when she added the front porch to the existing home. The house was basically abandoned and she was now trying to restore the structure so she can live there. She also explained that a 5.5' by 10' concrete pad had been discovered while constructing the new porch. She noted that the house was constructed around 1939 and was enlarged in the 1950s prior to the adoption of county zoning regulations. She also explained that the parcel is one of two lots located side-by-side that were subdivided out of the Webb family farm when it was zoned RVR. Later the property was down-zoned by the county to A Agriculture. She noted that there are other similar older homes with front porches in the immediate area and her house resembles the one next door. The applicant also explained that she and her mother who is handicap had purchased the house which has no air conditioning. She noted that the porch is needed to accommodate her mother's needs and provides additional living space especially on hot days. She then distributed a photo of the house and noted that the county only had a record of a 4' by 4' stoop

that was on the front of the house but it is obvious that a larger structure was there in the past. She also noted that the porch adds to the curb appeal and enhances the façade of the structure. She then stated that Mr. Thomas Webb, the adjoining property owner who grew up in the house, was present to provide additional information. Before concluding her comments she asked that the county waive the $600.00 processing fee she paid for the after-the-fact variance. She also noted that the county had attempted to contact her 4 times about the possible violation but that the mailing address used was incorrect.

Mr. Bannister noted that he grew up in the area and verified that the two adjacent houses did have identical front porches at one time decades ago. He suggested that a guardrail be installed for safety reasons.

Mr. Tommy Webb was sworn in and stated that the house did have a concrete front porch with metal railings and a metal aluminum awnings. The family subdivided the property where the two homes were located and had to increase the yard area to meet subdivision acreage requirements at the time. He noted that the original purchaser of the property had started renovations but never completed the project and the house was left vacant. He expressed his opinion that the county should do everything possible to encourage the refurbishing of older structures throughout the county.

The Chair called for public comments, none were received and the hearing was closed.

The Chair complimented the applicant for all of the information that was furnished to the Board.

Action:

Upon motion by Mr. Bannister and second by Mr. Kellam the Board unanimously approved the application submitted noting that the variance would basically allow reconstruction of what existed in prior years, would not be a detriment to the character of the existing area and would provide enhanced accessibility and use of the existing home for family members with limited mobility.

The second hearing was called to order.

B. Variance 2013-03: Victor and Geraline Simpson have applied for variances of 43-feet from the required 80-foot front yard setback, to allow 16.157% lot coverage which is above the 15% maximum and to allow the construction of an accessory structure (shed) within the resource protection area buffer in order to construct a single-family residence, shed, driveway and parking area. The property is zoned WV-1 Waterfront Village -1 is located at 12483 Ballard Drive and is described as Tax Map 11A, double circle A, parcel 121 containing .5 acres of land.

Ms. Kellam reviewed the following information from her staff report. She also noted that the single-family (primary) structure is allowed to be located in the first 50 feet of the landward portion of the buffer area which is handled administratively.

Yes ☒ No ☐ (1) The property owner acquired his/her property in good faith but by reason:

Yes ☒ No ☐ (a) Of the exceptional narrowness, shallowness, size or shape of the specific piece of property at the effective date of this chapter;

Yes ☒ No ☐ (b) Of exceptional topographic conditions; or

Yes ☒ No ☐ (c) Of other extraordinary situations or conditions of such piece of property or

Yes ☐ No ☒ (d) Of the use or development of property immediately adjacent thereto,

Yes ☒ No ☐ The strict application of the terms of this chapter would effectively prohibit or

Yes ☒ No ☐ The strict application of the terms of this chapter would unreasonably restrict the use of the property, or

Yes ☒ No ☐ There exists a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant;

Yes ☒ No ☐ (2) That the strict application of this chapter would produce undue hardship;

Yes ☒ No ☐ (3) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

Yes ☒ No ☐ (4) That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance;

Yes ☒ No ☐ (5) That 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 be adopted as an amendment to this chapter.

As indicated in the highlighted text above, although the request doesn't meet all of the criteria, it is staff's opinion that the request does meet, to a high degree, three of the four sub-criteria for criteria number one and five out of the total five criteria overall. The highlighted text above only relates to the requests to reduce the front setback and allow greater lot coverage than what is permitted in WV-1 zoning district. It does not address the location and construction of an accessory structure in the resource protection area buffer.

Based on their findings for the requests to reduce the front setback and allow greater lot coverage, 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 these two requests satisfy to a high degree the standards for granting a variance.

Because the ability to locate and construct an accessory structure on a lot is not guaranteed by zoning ordinance and because there existences other options to the applicant to locate the subject accessory structure outside of the resource protection area buffer, no criteria were met and the Board does not have adequate findings to grant a variance for this specific request.

Ms. Kellam added that regulations prohibit the placement of accessory structures in the buffer.

All those wishing to speak were sworn in by the Chair.

Mr. Simpson, the applicant, stated that they wished to demolish the derelict structure and replace it with a new two-story single-family home which will improve the neighborhood.

The Chair asked Mr. Simpson if other options were available to locate the shed outside the buffer area.

Mr. Simpson stated that there is a shed already in that location and they wished to replace it.

It was noted that Health Department requirements will need to be met and that information has not yet been received. One shed was relocated to be outside the buffer and it was suggested that the second shed be relocated behind the first one so that it is outside the buffer as well.

The Chair called for public comments. There being none the hearing was closed.

The Board discussed the site plan as proposed. Ms. Kellam noted that a legal nonconforming building can be replaced within 2 years once removed but it must be the same exact footprint size and location. She did not know when the shed was damaged or removed. Mr. Simpson noted that the base of the former shed is still in its original location.

After further review of the site plan it was determined that there was another option for location of the shed out of the buffer.

<u>Action</u>:

Upon motion by Mr. Bannister and second by Mr. Kellam the Board unanimously approved the reduced front yard setback and the increase in the impervious lot coverage, but did not approve the location of an accessory structure (shed) within the resource protection buffer area. The Board noted that due to the unique topographic characteristics of the property the request should be granted for the primary structure placement; however, the Board determined that other options were available to locate the accessory shed out of the buffer area.

Statements from the Public – none.

Old Business – none.

New Business

The Board reviewed the draft 2012 Annual Report to the Board of Supervisors which was approved by consensus.

Zoning Administrator's Report

Ms. Kellam informed the Board that one application is scheduled for public hearing in July.

Consideration of Minutes

The minutes of the Feb 5, 2013 meeting were unanimously approved as presented upon motion by Mr. Bannister and second by Mr. Kellam

Prior to adjourning Mr. McSwain was officially introduced to those Board members present.

Adjournment

There being no other business the meeting was adjourned at 11:14 a.m.

_____ _____

Chair Secretary