

Minutes
Northampton County
Board of Zoning Appeals

June 7, 2011

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on June 3, 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, Eugene Bannister and Douglas Coburn. The member absent was Bonnie Nottingham.

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

The meeting was called to order at 10:08 a.m. and a quorum established.

The scheduled public hearing was called to order and it was noted that Ms. Kellam would be late to the meeting.

Public Hearing:

It is noted for the record that those members present and Ms. Hickman had conducted a field inspection of the property this day before the meeting.

Variance 2011-04: Andrew Booy has applied for a variance of 30-feet from the required front yard setback of 60-feet in order to enlarge an existing porch. The property, located at 29057 Harmony Road, is zoned H Hamlet District in the Magotha area and is described as being Tax Map 113, double circle A, parcel 30 containing 0.75 acres of land.

All those wishing to comment on the variance application were sworn in by the Chair.

Ms. Hickman read the recommendations portion of the staff report that is included in its entirety as follows.

VARIANCE 2011-04 ANDREW BOOY

Board of Zoning Appeals Criteria

The Board of Zoning Appeals may grant upon appeal or original application in specific cases such variance from the terms of the Northampton County Ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this Ordinance shall be observed and substantial justice done. In authorizing a variance, the Board of Zoning Appeals may impose such conditions regarding the location, character and other features of the proposed structure or

use as it may deem necessary in the public interest and may require a guarantee or bond to insure that conditions imposed are being and will continue to be complied with. No variance shall be granted until the Board of Zoning Appeals has held a public hearing and given public notice in accordance with Section 15.2-2204 of the Code of Virginia. Pursuant to Section 15.2-2309 of the Code of Virginia, no variance shall be granted until the Board of Zoning Appeals finds and is satisfied that:

1. The property owner acquired his property in good faith but by reason of the exceptional narrowness, shallowness, size or shape of the specific piece of property at the effective date of this Ordinance; by reason of exceptional topographic conditions; or by reason of other extraordinary situations or conditions of such piece of the property or of the use or development of property immediately adjacent thereto, the strict application of the terms of this Ordinance would effectively prohibit or unreasonably restrict the use of the property, or there exists a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant.;
2. That the strict application of this Ordinance would produce undue hardship;
3. That such hardship is not shared generally by other properties in the same zoning district and same vicinity;
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; and
5. That the condition of the situation of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

Staff Report

Request: Variance 2011-04: Andrew Booy has applied for a variance of 30-feet from the required front yard setback of 60-feet in order to enlarge an existing porch. The property, located at 29057 Harmony Road, is zoned H Hamlet District near Magotha and is described as being Tax Map 113, double circle A, parcel 30 containing 0.75 acres of land.

Recommendation: The applicant proposes to replace an existing access with a larger footprint, but this larger footprint would be placed 3-feet less within the required front setback. The existing access is in bad condition and does need to be repaired or replaced. Although the proposed project is a reasonable request because it would encroach less linear feet into the setback, but increase the square footage within the setback, the applicant does have other options that would not require a variance. First, the applicant could reconstruct within the same or smaller footprint of the existing access if done within two years of the demolish date without a variance. Secondly, the existing access could be replaced with an access that only meets minimum building code requirements and dimensions without a variance. Because there are other options a true hardship as defined above does not exist and staff must recommend denial of the variance request.

Mr. Booy explained that he would like to enlarge the footprint of the front entry area lengthwise and change the design to include steps off both sides of the decking resulting in less encroachment into the front yard setback even though the footprint would be larger.

The Chair called for public comments.

Mr. Charles Graham, an across-the-street property owner, stated his support of the variance.

When asked, Mr. Booy stated that the home was built about 100 years ago and has since been renovated and enlarged. He noted that the house originally had no elevated foundation. Over the years a bedroom was added and the roof and over-hang area enlarged.

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

Ms. Hickman explained that current zoning regulations allow an uncovered, unenclosed landing to protrude ten feet into the front yard setback area or the applicant can replace what is already there but is prohibited from enlarging the square footage.

Mr. Freeze expressed his opinion that no hardship has been established since the applicant can replace or repair the existing front entry with no variance required. Mr. Coburn concurred.

Mr. Booy stated his opinion that the existing home on the corner of the street is located closer to the street than his house; therefore, he should be allowed to construct a wider and larger front porch or entry area. He explained again that he wishes to extend the front entrance lengthwise and reduce the structure's intrusion into the front yard by relocating the steps from the front to each side.

Mr. Coburn expressed his opinion that the applicant has not established that the strict application of the zoning ordinance would produce undue hardship to the homeowner in this case.

Action:

Motion was made by Mr. Freeze to deny the request as no undue hardship has been established. Second was made by Mr. Bannister and the motion carried unanimously.

Statements from the Public: none.

Old Business: none.

New Business:

Ms. Hickman noted that an after-the-fact variance has been filed for an irrigation pond constructed within the wetlands. It was reported that such ponds must receive Army Corp of Engineers' (ACOE) approval and approval from the BZA. Ms. Hickman stated that a perennial stream is involved. She then read §154.111 Standards for Ponds (D) (3) from the zoning ordinance as follows, "Impoundment ponds require submittal of a site plan, including a water quality impact assessment and an Erosion and Sediment Control Plan. If such a pond is proposed to be located in a Chesapeake Bay Preservation Area buffer, a variance submitted in accordance with read §154.226 se seq. herein and a wetlands permit from the U.S. Army Corps of Engineers are also required."

Ms. Kellam arrived to the meeting at 10:22 a.m.

Returning to the Booy case, Mr. Coburn questioned how the 60 foot or prevailing front setback is interpreted. Ms. Kellam explained that staff investigates a specific area in the immediate homeowner's neighborhood to determine the prevailing existing front yard setbacks. In the case of Mr. Booy, the prevailing setback was not less than the existing front entry setback measurement. Therefore, the prevailing setback did not help in this case.

Returning to the irrigation pond discussion, Ms. Kellam stated that it was her impression that the ACOE would approve the pond especially if approval is obtained from the BZA. Ms. Hickman added that the ACOE representative, Robert Cole, has been told to follow the lead of the locality in such cases.

Ms. Kellam added that the applicant, John Yaros, located the pond in the wetter Nimmo soils to irrigate his cropland in the Bojac soils. She expressed her opinion that a zoning text amendment may be in order to placate the farming community when such situations as this exist. She added that the BZA is to consider only the local zoning regulations when deciding such cases noting that state and federal regulations would be enforced by other designated agencies such as the Department of Environmental Quality and the ACOE. It was also noted that the local National Resources Conservation Service (NRCS) designs such ponds and had approved the location and design of this one installed by Mr. Yaros.

Ms. Hickman added that there is a perennial stream on two sides of the pond and any impacts to the hydrology of the stream and wetlands should be documented.

Zoning Administrator's Report: none.

Consideration of minutes:

The minutes of May 3, 2011 were approved unanimously as submitted upon motion by Mr. Bannister and second by Mr. Coburn.

Adjournment:

There being no other business, the meeting was adjourned at 10:38 a.m.

Chair

Secretary