Minutes
Northampton County
Board of Zoning Appeals

March 1, 2011

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on March 1, 2011 in conference room #2 in the former Machipongo Middle School located at 7247 Young Street in Machipongo, Virginia.

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

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

Mr. Coburn acting as Chairman Pro-tem called the meeting to order 10:04 a.m. and established a quorum present.

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 was called to order.

All those wishing to address the variance application were sworn in by the Chair Pro-tem.

A. Variance 2011-01: John Hanson, Dawn Hanson and Carol Selby have petitioned for a variance of 22-feet from the required 115-foot shoreline building setback for the purpose of constructing an addition to a single-family dwelling. The property is located on the south side of Parsons Circle, State Route 642, and is zoned TE-1, Town Edge - 1. The property is described as Tax Map 91, double circle 6, parcel A.

Ms. Kellam read the recommendations from the staff report which is included in its entirety as follows.

VARIANCE 2011-01 Hanson / Selby

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: *John Hanson, Dawn Hanson and Carol Selby have petitioned for a variance of 22-feet from the required 115-foot shoreline building setback for the purpose of constructing an addition to a single-family dwelling. The property is located on the south side of Parson Circle, State Route 642, and is zoned TE-1, Town Edge - 1. The property is described as Tax Map 91, double circle 6, parcel A.*

Recommendation: *A dwelling currently exists on the property with a footprint of 756 square feet. Because the existing dwelling lies almost totally within the buffer area, to make any type of reasonable additions to the dwelling would require an encroachment into the shoreline setback and the landward 50-feet of the buffer area. The applicants propose to construct an addition of 760 square foot utilizing the buildable area except for a small portion that connects to the existing dwelling. This lot was created in 2005 with an adequate buildable area. In order for the applicants to fully comply with the shoreline setback, they must abandon the existing dwelling and instead of an addition, a new dwelling would be constructed. Finding that there is an option to comply with the setbacks, therefore a hardship as defined above does not exists, staff must recommends denial of the variance request.*

Ms. Kellam added that the shoreline setback applies to this situation as this property was subdivided in 2005 thereby creating a new lot even though there is an existing dwelling. At the time of the subdivision the shoreline setback was 105 feet and not 115 feet.

During discussion it was noted that a unique situation does exist in this case whereby the following facts were noted: (1) the property has unique topographical conditions limiting the use of the property; (2) the existing 1933 dwelling is located within the 115-foot shoreline

setback that was adopted by the county in October 2009; (3) every effort has been made in order to preserve the 1933 dwelling and to direct new construction out of the 115-foot by encroaching only 22 feet; (4) additional mitigation of 756 square feet will be provided through an approved landscape plan; (5) stormwater runoff would be re-directed away from the shoreline setback area by installing new gutters and downspouts; (6) the applicants already qualify for an administrative buffer waiver; and (7) when the original parcel was subdivided in 2005 the shoreline setback was 105 feet.

The Chair Pro-tem called for public comments. It was also noted that an adjacent property owner, Theresa Douskey, had written a letter of support and that no opposition was presented by other neighboring landowners. Ms. Downing stated that she had a long telephone conversation with Ms. Douskey about the location and size of the proposed addition.

There being no other public comments the hearing was closed.

Ms. Hickman read from the county zoning ordinance a portion of §152.228 B. (1),"… a literal enforcement of the provisions will result in unnecessary hardship."

Motion was made by Ms. Nottingham to approve the variance noting that the applicants intend to preserve the existing home and that they had not subdivided the property which in turn created the need for a variance. Mr. Coburn noted that the property does have exceptional topographic conditions resulting in a unique situation and conditions related to this property. Second was made by Mr. Bannister and the motion carried unanimously by a 3 to 0 vote.

Ms. Kellam advised the applicants that a 30 day appeal period is in effect from the date of this meeting whereby they or any other interested parties can appeal this decision of the Board to the circuit court. She noted that the required building permit cannot be released until the appeal period has expired.

Statements from the Public: none.

Old Business: none**.**

New Business:

By consensus the Board agreed to defer discussion and action on the draft 2009 and 2010 Annual Reports until the entire Board is present.

Zoning Administrator's Report:

Ms. Kellam stated that no new applications have been filed; therefore, there will be no meeting of the Board in April.

Consideration of minutes:

The minutes of June 1, 2010 were unanimously approved as submitted upon motion by Ms. Nottingham and second by Mr. Bannister.

Adjournment:

There being no other business, the meeting was adjourned at 10:23 a.m.

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Chair Secretary