

Minutes
Northampton County
Board of Zoning Appeals

May 3, 2011

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on May 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, Bonnie Nottingham, Eugene Bannister and Douglas Coburn. The member absent was Mark Freeze, Vice-Chair.

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.

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.

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

A. Variance 2011-03: Larry and Mary Emma Adkins have petitioned for a variance of 9-feet from the required 15-foot side building setback (per Section 154.143 (A) of the NHCO Zoning Ordinance) for the purpose of constructing a single-family dwelling. The property is located on at 3386 Seaside Road, State Route 600, and is zoned TE-1, Town Edge - 1. The property is described as Tax Map 10, double circle A, parcel 112.

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

VARIANCE 2011-03 Larry and Mary Emma Adkins

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 2011-03: Larry and Mary Emma Adkins have petitioned for a variance of 9-feet from the required 15-foot side building setback (per Section 154.143 (A) of the NHCO Zoning Ordinance) for the purpose of constructing a single-family dwelling. The property is located on at 3386 Seaside Road, State Route 600, and is zoned TE-1, Town Edge - 1. The property is described as Tax Map 10, double circle A, parcel 112.

Recommendation: The existing dwelling on this lot was recently demolished leaving the lot vacant with an existing septic system and well. The demolished dwelling and the proposed dwelling are both located on the site plan. Although the proposed dwelling is a reasonable request, with a size of 44-feet by 26.33-feet, the applicants do have other options that would not require a variance. First, the applicants could reconstruct within the footprint of the demolished dwelling if done within two years of the demolish date without a variance. Secondly, the proposed dwelling footprint could be reconfigured and / or reduce in size to fit within the allowable building area. Because there are other options a true hardship as defined above does not exist and staff must recommend denial of the variance request.

Ms. Kellam noted that there were several errors in the public notice and that the actual variance being requested was 4 feet instead of 9 feet as listed and the adopted setback in the TE-1 District is actually 10 feet and not 15 feet.

Ms. Adkins noted that the home would be her personal family residence and that they would prefer that the front of the home the road, but was resigned to whatever the Board desired in order to get approval.

No public comments were offered and the hearing was closed by the Chair.

Motion was made by Mr. Coburn to approve the variance as a hardship did exist due to the unusual shape of the lot and the location of the existing drainfield area. Motion to approve was seconded by Ms. Nottingham and carried 4 to 0.

Mrs. Downing informed the applicant that there is a 30 day appeal period so the required building permit cannot be released until that time.

Statements from the Public: none.

Old Business:

The Board approved the 2009 and 2010 Annual Reports that are to be forwarded to the Board of Supervisors. The Board noted that the lower rate of variance activity has occurred for the following reasons: (1) amendments to the shoreline setback requirements; (2) prevailing setback regulations being implemented; and (3) hardship criteria being revised in the Code of Virginia. Motion to approve both reports was made by Mr. Coburn and seconded by Mr. Bannister. The motion carried 4 to 0.

New Business: none.

Zoning Administrator's Report:

Ms. Kellam stated that it is anticipated that public hearings will be scheduled in June for Andy Booy and in July for John Yaros who has constructed a pond in wetlands. Ms. Hickman added that in the Yaros matter the Army Corp of Engineers and the Department of Environmental Quality may be involved as well.

Ms. Hickman explained that there is a possible violation that is being investigated on Picketts Harbor Road and that she will be consulting with the county attorney on this matter.

Consideration of minutes:

The minutes of March 1, 2011 were unanimously approved as submitted upon motion by Mr. Bannister and second by Mr. Coburn.

Adjournment:

There being no other business, the meeting was adjourned at 10:27 a.m.

Chair

Secretary