

Minutes
Northampton County
Board of Zoning Appeals

September 6, 2011

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on September 6, 2011 in conference room #2 located in the former Machipongo Middle School 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 Melissa Kellam, Zoning Administrator; Katrina Hickman, Zoning Inspector; and Kay Downing, Administrative Assistant.

The Chair called the meeting to order at 10:00 a.m., established a quorum, and then identified Board members and staff to the public.

Public Hearing:

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

It is noted for the record that the Board members and Ms. Hickman had visited the Vargas property this day prior to the meeting.

A. Variance 2011-06 and Exception 2011-02: Honesto B. and Juanita T. Vargas have applied for a variance of 10-feet from the required 60-foot front yard setback and an exception of 6,750 square feet and 65 linear feet of encroachment into required resource protection area buffer to construct a dwelling with a porch, deck, attached garage, driveway, parking area, sidewalk, septic system and well. The property, located on Swan Drive, is zoned Existing Subdivision District – Rural Village Residential (ESD-RVR) and described as being Tax Map 38A1, double circle 1, parcel 86.

Ms. Hickman read the staff recommendation for the record taken from the staff report as follows.

Staff Report

Request:

Honesto B. and Juanita T. Vargas have applied for a variance of 10-feet from the required 60-foot front yard setback and an exception of 6,750 square feet of encroachment into required resource protection area buffer to construct a dwelling with a porch, a deck and attached garage, driveway, parking area, sidewalk, septic system and well. The property, located on

Swan Drive, is zoned Existing Subdivision District – Rural Village Residential (ESD-RVR) and described as being Tax Map 38A1, double circle 1, parcel 86.

Recommendation:

The subject lot was recorded on August 29, 1972, prior to the adoption of the Bay Act regulations. The applicants propose to develop their lot to be used for a single family residence with the necessary improvements that go along with that use. The total footprint of the proposed dwelling which includes a porch, deck and attached garage will be 2,802 square feet which is entirely within the 100-foot buffer area. The septic tank and drain field and only a portion of the driveway and parking are outside of the 100-foot buffer area. When the front setback is located on the site drawing it overlaps the 100-foot buffer area line leaving no building envelope. Although a hardship does exist and the applicants have made a reasonable request, there does exist one opportunity to decrease the encroachment into the buffer by pushing the dwelling toward Swan Drive 10-feet. Although the location of pushing the dwelling 10-feet forward is not shown on the submitted site drawing, the applicants have requested this variance of 10-feet from the front setback to allow the Board the option to move the dwelling forward a maximum of 10-feet if they feel the encroachment into the front setback reduces the impact of develop overall, more than pushing the dwelling into the buffer an additional 10-feet. Staff recommends approval of the variance from the front setback if warranted and the exception from the buffer with the condition that the Board locates the dwelling within the parameter of the public notice requests to reduce the impacts of the development overall to the minimum necessary.

Ms. Kellam arrived at 10:04 a.m. and was also introduced by the Chair.

The applicants were present to answer questions posed by the Board or general public. Mrs. Vargas stated that they had purchased this property in 1973.

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

Action:

Since a hardship was established due to the exceptional shallowness of the lot and mandatory front yard location of the septic system, motion was made by Mr. Coburn to approve the variance of 10 feet from the required 60-foot front yard setback and to approve the exception from the buffer with the condition that the building footprint be moved landward ten feet as allowed by the front yard variance. Second was made by Mr. Bannister and carried unanimously.

Mrs. Downing informed the applicants that there is a 30 day appeal period and that the required building permit can be issued after that period expires.

Statements from the Public: none presented.

Old Business.

The Board continued discussion of Variance 2011-05 as filed by John R. Yaros, Sr., for an after-the-fact variance 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/RB) and described as being Tax Map 113, double circle A, parcel 1 containing approximately 62.97 acres of land.

After reviewing the findings of the Department of Conservation & Recreation (DCR), the Board agreed by consensus that no variance was required in this case.

Discussion was held on the process that had led to this variance. Ms. Kellam noted that all agriculture ponds require an approved county zoning clearance. It was her opinion that in the case of Mr. Yaros an exception would have been a better tool to achieve what was needed and not a variance. She stated that farmers are required to get an approved plan from the Natural Resource & Conservation Service (NRCS) but have not always contacted the county about any other approvals. She explained that the first 50 feet of intrusion into the 100-foot resource protection area buffer can be approved through an administrative waiver by staff when certain criteria are met. However, any intrusion beyond the first 50 feet must be handled differently and requires a variance or exception. In the Yaros case the area was designated as isolated wetlands by the Department of Conservation and Recreation. Ms. Kellam explained that NRCS does provide copies of pond plans to the county for information purposes and that the Army Corps of Engineers is involved whenever a pond is located in a wetlands area.

New Business.

Following discussion on Variance 2011-05 the Board suggested by consensus that a zoning text amendment be addressed through the Planning Commission and Director of Planning & Zoning to alleviate this issue in the future. The Board asked Ms. Kellam to draft a memo recommending draft zoning amendment language to the Director and commission on behalf of the BZA.

Zoning Administrator's Report.

Ms. Kellam reported that no new variances are pending; therefore, there is no need to meet in October.

Prior to adjourning Mr. Freeze asked about the status of the John Salm matter involving an accessory structure that was prohibited as a condition of a previous variance approval. Ms. Kellam explained that no appeals were filed concerning the matter and that Mr. Salm may keep his accessory structure. Mr. Freeze questioned the interpretation of the Code given by counsel as perhaps setting a precedent to disregard Board decisions in the future. Ms. Kellam stated that while reviewing the case it was determined that the decision of the BZA could be interpreted two different ways: (1) that no type of accessory building is allowed; or (2) that no accessory living unit is allowed. Ms. Nottingham expressed her opinion that the structure was perhaps being used as an apartment. Ms. Kellam assured the Board that the structure is not being used as a living unit which would be a zoning violation. She noted that Mr. Salm had originally wanted an accessory living unit in the structure which was denied and only a regular accessory structure was permitted. She also disclosed that the application was not properly vetted when she issued zoning approval for the accessory structure.

Consideration of Minutes

The minutes of the July 5, 2011 meeting were unanimously approved as submitted upon proper motion by Mr. Bannister and second by Ms. Nottingham.

Adjourn

There being no other business the meeting was adjourned at 10:28 a.m.

Chair

Secretary