

Minutes
Northampton County
Board of Zoning Appeals
November 12, 2013

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on Tuesday, November 12, 2013, in the Board Chambers located at 16404 Courthouse Road in Eastville, Va.

Members present were Chair Susan Henderson, Eugene Bannister, Kevin Kellam, Bonnie Nottingham and Vice-Chair Douglas Coburn. Also in attendance were Melissa Kellam, Zoning Administrator; Kelley Lewis, Development Inspector; and Kay Downing, Administrative Assistant.

The Chair called the meeting to order at 9:32 a.m., established a quorum, and then introduced Board members and staff to the public.

It is noted for the record that all those wishing to speak at today's hearing were sworn in by the Chair.

Public Hearings

- A. **Continuance of Tabled Item Variance 2013-05:** David's Nursery has applied for an after-the-fact variance of 50 feet from the required 100-foot property line setback and of 65 feet from the required 100-foot property line setback to allow two agricultural irrigation ponds to be located within 50-feet and 35-feet of a property line. The first pond is located on property fronting on Old Neck Road and identified as Northampton County tax map 8, double circle A, parcel 1. The second pond is located on property fronting on Occohannock Neck Road and identified as Northampton County tax map 7, double circle A, parcel 61. Both properties are zoned A/RB – Agricultural/Rural Business District.

The Chair asked if there was a motion to take Variance 2013-05 off the table. Motion was made by Mr. Coburn to continue consideration of Variance 2013-05 by taking the matter off the table with a second by Mr. Bannister. The motion carried unanimously.

Ms. Kellam had provided an additional memo to the Board and the applicant related to her interpretation of Northampton County Zoning Code §154.111 Standards for Ponds and the variance being requested. Her findings were presented in detail with the following summary offered.

In Summary, from my interpretation of §154.111, the two ponds subject of VAR 2013-07 are not exempt from the requirements of this section and are not able to seek an exemption through NRCS, therefore; subsection (A), specific to the variances requested, does apply and any relief from the 100-foot setback can only be granted by the Board of Zoning Appeals if it determines that a hardship exists.

Mr. Tankard was present and stated the following, *"I am sorry Mrs. Foster can't sell her property, but I believe that the economy is to blame and not these ponds. I pointed out my reasons at your last meeting for locating these ponds where I did. I am sure this 100' set back was written with the best of intentions but it does not help farmers which the county says it wants to support. Betsy Mapp, a former supervisor, said it was done to protect shallow wells. I offered then to replace any shallow well that was impacted due to the location of my ponds with a deep well. As a farmer I certainly hate to give up approximately three acres (1 ½ acres for each pond) of open farm land because of this set back."*

He noted that his two sons mainly operate the business and they would have to agree to any conditions that may be offered by the Board.

Mr. Coburn asked if the stockpiles could be smoothed out. Mr. Tankard noted that one pond is an acre in size and ten (10) feet deep. It would be very difficult to find a suitable place to relocate the stockpiles since fine white sand is the majority of the piles which is not good to use as fill material.

Mr. John Burdiss was present to represent Ms. Jean Foster, a neighboring property owner. He had presented additional written comments to the Board members which they received today prior to the meeting. He noted that case law is about hardships and this is a self-imposed situation created by the applicant. However, he noted that Ms. Foster had offered specific recommendations as noted on page 3 to help alleviate the impact of the existing ponds on neighboring properties. Those recommendations were: (1) the existing stock piles must be removed; (2) no new stockpiles are to be visible from adjacent properties; (3) fast-growing opaque vegetative buffers must be installed to screen adjoining properties from the ponds; and (4) the ponds may not be enlarged. Commenting on Mr. Tankard's earlier statements, Mr. Burdiss noted that the selling of Ms. Foster's property is not relevant in this case. Rules are the rules and those rules are in place for specific reasons. He added that the NRCS offers rules about how a pond is constructed, not where a pond is placed. In fact, NRCS was never involved in this matter from the beginning nor is it involved now.

Mr. Burdiss added that the applicant had also intruded into neighboring ditches during the construction of the ponds. However, Ms. Kellam noted that if there are trespassing issues involved between the property owners it would be a civil matter. Erosion and sedimentation control work done in association with farming operations are exempt.

Ms. Foster stated that prior to October 1, 2013 she and Mr. Tankard had two private meetings and had suggested the creation of a fast growing vegetated buffer between her property and the pond. They also discussed removal of the sand piles at that time. Mr. Tankard confirmed that the two had met and discussed those issues. However, there was nothing offered in writing so he did not pursue.

Mr. Bannister and Ms. Nottingham recommended that a compromise be reached between Ms. Foster and Mr. Tankard.

Motion was made by Mr. Coburn to deny Variance 20-13-05 which was seconded by Mr. Bannister.

Ms. Kellam stated that a compromise cannot be part of a variance, but the Board can grant approval with specific conditions.

At this time, motion was made by Mr. Bannister to withdraw his second to the motion.

Action:

Mr. Coburn amended his motion that the variance be approved with the following conditions: 1) the existing stock piles must be removed; (2) no new stockpiles are to be visible from adjacent properties; (3) fast-growing opaque vegetative buffers must be installed to screen adjoining properties from the ponds; and (4) the ponds may not be enlarged. Mr. Bannister seconded the motion.

At this time, the Chairman stated that she would abstain from voting due to a possible conflict of interest.

The motion carried with 4 “yes” votes and 1 abstention.

Ms. Nottingham suggested that the fill be used to replenish eroding beach areas. However, Mr. Tankard and Ms. Kellam noted that this fill sand would not match the grain size of beach sand nor would it support the tiger beetle habitat.

Discussion followed on a deadline for Mr. Tankard to meet the conditions of the approval. Mr. Coburn amended the motion to set a deadline of April 30, 2014. Mr. Kellam seconded the amended motion which was approved by a majority vote of 4 “yes” and 1 abstention from the Chairman.

Statements from the Public: none.

Old Business: none.

New Business: none.

Zoning Administrator’s Report

Kelley Lewis, the County Development Inspector, was introduced as the newest staff member who would be working with the BZA and the Wetlands Board.

Ms. Kellam reported that Barbara Thomas has not yet met the conditions of her variance approval related to her shed.

Consideration of Minutes

The minutes of the October 1, 2013 meeting were unanimously approved after 2 corrections were made to page 4. Motion to approve as amended was made by Mr. Bannister with second by Ms. Nottingham.

Adjournment

There being no other business the meeting was adjourned at 11:48 a.m.

Chair

Secretary