

Minutes
Northampton County
Board of Zoning Appeals
October 1, 2013

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on Tuesday, October 1, 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; and Kay Downing, Administrative Assistant.

The Chair called the meeting to order at 11:02 a.m., established a quorum, and then introduced Board members and staff to the public.

Public Hearings

Field visits to each property scheduled for public hearings were conducted by the Board and Ms. Kellam earlier in the day.

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

The first hearing was called to order.

- A. **Buffer Exception B-EX 2013-01:** Leigh and Pauline Hagan have applied for an exception of 541 square feet and 54 linear feet of encroachment into the required resource protection area buffer to construct an enclosed porch addition and deck to an existing single-family dwelling. The property has frontage on Johnson Cove and is located at 2723 Old Neck Road. The parcel is zoned ESD-RVRR Existing Subdivision District - Rural Village Rural Residential and described as Tax Map 1A, double circle 5, parcel 18.

Ms. Kellam read staff's recommendation for the record as follows.

It is the opinion of staff that the applicant's request for an exception to construct: (1) a 160 square foot enclosed porch and (2) 381 square foot deck onto an existing single family dwelling, does meet the criteria for an exception to be considered by the Board of Zoning Appeals. The subject parcel was recorded May 6, 1983 and a home was constructed three years later in 1986 by prior owners, both taking place prior to adoption of the Bay Act regulations. The applicant will be required to mitigate all work performed in the buffer with 1.35 mitigation units equating to 2 canopy trees, 4 understory trees and 6 small shrubs. Staff would consider the request of 541 square feet for an enclosed porch and deck addition onto an existing single family dwelling to be a reasonable request and recommends approval of these items.

Mr. Luke Kellam, agent for the applicants, stated that the request is reasonable for the property and the type of existing single-family dwelling.

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

Action:

Motion to approve was made by Ms. Nottingham who noted that the request was reasonable as stated in staff comments. Second was made by Mr. Kellam and the motion carried unanimously 5 to 0.

The second hearing was called to order.

- B. **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.

Ms. Kellam noted that additional information has been submitted by the applicant. It is his intent to provide verification that the pond does meet criteria of the Natural Resources & Conservation Service (NRCS) for the installation of ponds.

Staff comments were then read into the record as follows.

*Variance 2013-07
Staff Worksheet*

Request: Variance 2013-07: 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 7, double circle A, parcel 61. Both properties are zoned A/RB – Agricultural/Rural Business District.

The Board of Zoning Appeals shall decide applications for variances from the terms of this chapter. Variances may be approvable when certain criteria are met, when such approval will not be contrary to the public interest, and when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the intended purpose and spirit of this chapter 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 VA Code § 15.2-2204. Consistent with and pursuant to VA Code § 15.2-2308, no variance shall be granted until the Board of Zoning Appeals finds and is satisfied that:

Yes No (1a) The property owner acquired his/her property in good faith but by reason:

Yes No (a) Of the exceptional narrowness, shallowness, size or shape of the specific piece of property at the effective date of this chapter;

Yes No (b) Of exceptional topographic conditions; or

Yes No (c) Of other extraordinary situations or conditions of such piece of property or

Yes No (d) Of the use or development of property immediately adjacent thereto,

Yes No (1b) The strict application of the terms of this chapter would effectively prohibit or

Yes No (1c) The strict application of the terms of this chapter would unreasonably restrict the use of the property, or

Yes No (1d) There exists a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant;

Yes No (2) That the strict application of this chapter would produce undue hardship;

Yes No (3) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

Yes No (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;

Yes No (5) That the condition of the situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.

As indicated on the worksheet above, the applicant's request only meets items (1a) (b), (1a) (c), (4) and (5) that are criteria required as the basis to grant a variance. Based on these findings, the Board shall be tasked with determining if the degree to which all criteria were met is satisfactory and that the granting of a variance when certain criteria are met, will not be contrary to the public interest, the intended purpose and spirit of the Northampton County Zoning Ordinance was observed and substantial justice done. If the Board grants a variance for this request, they must first clearly substantiate the findings that provide the basis for which a

variance can be granted as part of their discussion and action taken on this request. If the Board chooses to grant the request, staff would then recommend that it should be conditioned upon the applicant removing the stock piles and planting an opaque vegetative screen between the pond and the adjacent properties, therefore reducing the impact of the ponds located within the Agricultural Zoning District.

Ms. Kellam reported that there is no verification that the pond was certified by the Natural Resources & Conservation Service (NRCS). If contacted, the NRCS provides engineering specifications to landowners who wish to construct a pond to their standards.

Mr. David Tankard, speaking on behalf of the LLC, stated that he tried to locate the ponds in the lowest part of the fields that were the least productive areas and to also catch water runoff. He admitted that he did not contact NRCS prior to installing the pond because he did not want to hire an engineer. He admitted his mistake of locating the ponds too close to adjacent property lines. He stated that it would take 4,000 truck-loads of sand to remove the spoil areas and it would be better to fill in the ponds and re-dig beside it to meet the County's setbacks. He noted that Betsy Mapp, an adjacent property owner, had informed him that the 100-foot setback had been adopted by the County to prevent impact to shallow wells. He stated that he would offer to replace any wells that were affected by the ponds and offered to reduce the height of the spoils areas down to 10 feet and to "screen" the adjacent property lines. It was his opinion that more irrigation ponds will be needed as the Department of Environmental Quality issues more stringent well standards.

When asked by Mr. Coburn, Mr. Tankard stated that the ponds were installed over the last several years and that the contractor was very experienced. However, the contractor admitted that he did not know about required setbacks from adjoining property lines. Around April or March of 2013 during the installation of the second pond, he was informed about the first complaint.

The Chair called for public comments. It was noted that the Board had received in the agenda packet a letter of opposition from Jean Foster, an adjacent property owner, whose property had reportedly been impacted by one of Mr. Tankard's pond. She had included photos of the pond closest to her property as well as her property where trespass had occurred during the pond installation. It was noted that she does not permanently reside on her property and she had contacted Mr. John Burdiss to represent her during this hearing.

Mr. John Burdiss submitted an official letter of objection for the record on behalf of Ms. Foster which is attached as part of the official record. It was his opinion that any contractor should be informed about local regulations including setbacks and it was not germane that Mr. Tankard's contractor did not know. He then stated that it would appear that the ponds do not meet NRCS setbacks and he then reviewed the staff report findings and disagreed with several key points noting that no justification had been provided by staff. In conclusion, Ms. Foster was requesting that if the Board did grant a variance that the following conditions be included: that spoil stockpiles must be removed; screening must be installed as a buffer along the adjacent property line; a time must be prescribed to comply; the ponds may not be enlarged; and no new stockpiles may be made on the applicant's property. Mr. Burdiss concluded his remarks by stating that the applicant had created this situation and this is a self-imposed hardship; that

costs or money should not be considerations in deciding this matter; there is nothing distinct about this situation; the character of a locality should not be changed with the granting of a variance which has already occurred in this case; and that a precedent would be set if approval is granted especially with no conditions to rectify impacts to neighboring property owners.

Ms. Foster was present and addressed the Board. When asked, she stated that she was not residing at the property when the pond was installed since she now lives in Charlottesville. She was contacted by her neighbor after the pond was started. Until seeing the pond she had no idea how great the impacts were. She had then contacted Melissa Kellam to report the matter and to file a complaint. She stated that it was not her burden to correct setback errors even though Mr. Tankard had offered to purchase a strip of her land. Mr. Burdiss added that the burden of correction is on the landowner and the contractor in his opinion.

When asked, Mr. Burdiss stated that he was not aware that NRCS has the authority to reduce a locality's setbacks but that they do offer engineering standards.

Mr. Bannister suggested that the matter be tabled by the BZA today in order to give counsel more time to investigate how the County zoning code is written. Mr. Coburn agreed noting that more concise information is needed as to how the County code should be interpreted. Ms. Kellam agreed that a legal opinion is warranted in this matter.

Mr. Burdiss noted that NRCS regulations address pond engineering and stockpile standards but do not stipulate that a pond can be installed anywhere.

Mrs. Downing, Secretary to the Board, stated that another adjacent property owner, Sophia Simms, had phoned to ask questions about the variance. She did voice concerns about how the second pond may impact her family's property as well. However, she did not submit any written comments to date.

Action:

Motion was made by Mr. Bannister to table this matter until such time that a legal opinion or interpretation is rendered on zoning code language related to irrigation pond regulations. Second was made by Ms. Nottingham and the motion carried unanimously. It was noted that the Board desired a legal opinion on this case and for any future cases that may arise.

Statements from the Public: none.

Old Business: none.

New Business

The draft zoning code as developed by County staff, legal counsel and the County Administrator was distributed to BZA members. Staff noted that the draft is a working copy only that will be reviewed by the Board of Supervisors at a work session on October 16 at 5:00 p.m. It is anticipated that the Board may wish to edit the document prior to scheduling a public hearing.

Zoning Administrator's Report

It was noted that a new variance application may be filed in time for the regular November meeting.

Ms. Kellam reported that she had attended a Virginia Association of Counties (VACO) conference and there was much discussion about the issues that BZAs are experiencing with previous Code changes related to confiscation language. She stressed that hardship criteria must still be met when considering a variance request.

It was noted that funding is available for those Board members who would like to attend the BZA certification course.

Consideration of Minutes

The minutes of the July 5, 2013 meeting were unanimously approved as presented upon motion by Mr. Coburn and second by Mr. Bannister.

Adjournment

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

Chair

Secretary