

Minutes
Northampton County
Board of Zoning Appeals

May 4, 2010

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on Tuesday, May 4, 2010 at 9:50 a.m. in the former Circuit Courtroom located at 16404 Courthouse Road in Eastville, Virginia.

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

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

The Chair called the meeting to order, established a quorum, and introduced Board members and staff.

The first scheduled hearing was called to order. All those wishing to speak were sworn in.

Public Hearing:

Variance 09-07: Kathryn Barger has applied for a variance of 7-feet from the required 15-foot side yard setback on property zoned A (Agricultural/Rural Business District) and C (Conservation). The property, located on Ellen's Lane, is described as being parcel 5 of Tax Map 66, double circle 5, with frontage on the Chesapeake Bay.

It is noted for the record that all members present and Katrina Hickman, Zoning Inspector, had conducted a field visit this day to the Barger property.

Ms. Kellam read recommendations from the staff report which follows in its entirety as part of the official record.

VARIANCE 09-07 Barger

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: Kathryn Barger has applied for a variance of 7-feet from the required 15-foot side yard setback on property zoned A (Agricultural / Rural Business District) and C (Conservation). The property, located on Ellen's Lane, is described as being parcel 5 of Tax Map 66, double circle 5, with frontage on the Chesapeake Bay.

Recommendation: When all setbacks are placed on this property, a large buildable area still exists. The property is currently undeveloped and the applicant proposes to place a reasonably sized dwelling on the property a minimum distance of 8-feet from the side property line. Because of the large buildable area, the proposed dwelling can be easily moved 7-feet to the south in order to meet the required setback of 15-feet. Staff finds no hardship and recommends denial of the variance request.

Mr. M. E. Duff, agent for the applicant, stated that conditions of the deed to the property stipulates that the property owner must seek permission to locate any structure 8 feet the side property line due to the specific topography and mature trees. He also explained that the well and septic system was installed prior to the purchase of the property by the seller. He noted that if the proposed home is not moved closer to the adjacent property line it may infringe on the required setback to the septic system. When asked Mr. Duff stated that relocating the home closer to the north property line would cause only a minimum amount of tree disturbance. He also noted that the objective of the variance request is to comply with the deed requirements as well. It was his opinion that relocating the home would also preserve the existing viewshed and mature oak tree.

Ms. Nottingham asked about the two large dunes located on the property and the impact of a variance approval. Ms. Kellam noted that only the primary dune is protected by law and not the secondary. She added that an engineered house plan is required due to the soil types and topography. Also, Mr. Duff stated that any home placed on the property will destroy the dune.

The Chair called for public comments.

Ms. Arial Meakin, the prior property owner, stated that the deed condition was to preserve very mature trees and to create low-impact development on the parcel. She also noted that the subdivision area is very communal in nature and noted that the Virginia Outdoor Foundation has not objected to the proposal. When asked why she put such conditions into the deed Ms. Meakin explained that she was going to build there and had installed the septic system and well at that time to accommodate the fragility of the trees, to preserve the secondary dune and to preserve her privacy.

Mr. Freeze stated explicitly that the Board's responsibility is to determine if hardship criteria is met.

Ms. Meakin mentioned that the tiger beetle is doing well in the area and that should be considered as well.

Mr. Freeze noted that it was presumptuous to put such conditions in a deed both on the seller's part and the buyer's. However, Ms. Meakin replied that the condition was not a self-serving effort but to protect the environment.

Ms. Kellam noted that dwelling plans can be altered to meet the required setbacks on this property and if the homeowner wished to be environmentally friendly then a future home can be designed to meet that concern.

Ms. Meakin stated that the proposed home would be 70 feet wide which is not a huge footprint for the Eastern Shore in her opinion. She added that if the required setback is maintained then one of the dunes would probably be impacted.

Ms. Downing noted that the Virginia Outdoor Foundation does not own adjacent property according to the land records of the Commissioner of the Revenue which are the required source of data to locate adjacent property owners for notification purposes.

Ms. Kellam explained that the Foundation has an easement on the property, but does not own the property.

There being no other comments the public hearing was closed.

Mr. Freeze stated that the parcel is 200 feet in width and does not require a variance of any type to build within the required setbacks. He added that buyers should do their homework before accepting unreasonable and presumptuous deed conditions and infrastructure that is already installed.

Ms. Nottingham stated that the interpretation of hardship criteria must be followed.

Mr. Bannister stated that the seven foot variance is not necessary to build even though wanted by the seller and the current owner.

Action

Motion was made by Mr. Freeze to deny the application as no hardship has been established and that the owner has the option to redesign building plans to suit their environmental concerns. Second was made by Mr. Bannister and carried unanimously.

Statements from the Public.

Ms. Meakin took this opportunity to express how disappointed she was with the Board's decision to deny the Barger variance noting that the environment will suffer even though the strict interpretation of the law was upheld according to the Board.

Mr. Coburn stated his opinion that the Board was being coerced to approve a pre-planned variance written into a personal deed that would suit the seller's desire.

Ms. Meakin stated that she had installed the septic system when she was going to build on the lot. However, Ms. Kellam noted that only a five-foot setback is required from a septic system which is not an issue when considering the facts of the Barger application.

Old Business: None.

New Business: None.

Zoning Administrator's Report.

Ms. Kellam stated that one appeal will be scheduled for the May meeting and to date no other applications have been filed.

At this time Mr. Coburn mentioned that Mr. Granville Hogg has taken the BZA to task at several public meetings criticizing the approval of a variance for location of the ice facility near Cape Charles on U.S. 13.

Ms. Kellam noted that a local news channel had contacted her office for information concerning this matter. Once it was explained, the reporter understood why the BZA had made that decision and had dealt with setback issues only as authorized.

Discussion followed and Mr. Freeze and Mr. Coburn noted that the BZA had discussed the intersection during the field visit to the property that day. They had noted their concerns about existing safety issues at the intersection whether the ice facility was allowed to be there or not. By consensus the BZA agreed that they have no jurisdiction over state controlled road intersections. It was then decided by consensus that staff draft a memo to the Board of Supervisors relaying the BZA's concern about the ingress and egress of the total intersection at that location since the Supervisors should approach the Department of Transportation and not the BZA.

Consideration of minutes.

The minutes of the February 2, 2010 meeting were discussed and unanimously approved with one correction to page 4, the third paragraph, by adding the following sentence, "It was noted that during the field visit the Board had discussed issues of ingress and egress through the existing intersection." Motion to approve as corrected was made by Mr. Freeze and seconded by Mr. Coburn.

Adjournment

There being no other business, a motion to adjourn was made at 10:30 a.m.

Chairman

Secretary