

Minutes
Northampton County
Board of Zoning Appeals

October 6, 2009

This was a regular meeting of the Northampton County Board of Zoning Appeals (BZA) held on Tuesday, October 6, 2009, at 10:00 a.m. in the former Circuit Courtroom located at 16404 Courthouse Road in Eastville, Virginia.

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

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

The Chairman called the meeting to order and established a quorum. Members and staff were then introduced.

It is noted for the record that those Board members present and Ms. Hickman had conducted a field visit to the Williams property this day prior to the public hearing.

Public Hearings:

It was noted for the record that Variance 09-07 as filed by Kathryn Barger had been postponed at the request of the applicant and would be rescheduled at a later time.

A. **Variance 09-06:** Bennie L. Williams has applied for variances of 33-feet from the required 60-foot front setback, of 49-feet from the required 60-foot railroad right-of-way setback and of 4-feet from the required 15-foot side setback to construct a residence on property zoned RVR Rural Village Residential. The property is described as parcel 42 of Tax Map 84, double circle A, with frontage on Cull Drive (SR 641).

Ms. Kellam presented comments from the staff report which is contained in its entirety as follows.

VARIANCE 09-06 Williams

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 approaching confiscation, 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: *Bennie L. Williams has applied for variances of 33-feet from the required 60-foot front setback, of 49-feet from the required 60-foot railroad right-of-way setback and of 4-feet from the required 15-foot side setback to construct a residence on property zoned RVR Rural Village Residential. The property is described as parcel 42 of Tax Map 84, double circle A, with frontage on Culls Drive (SR 641).*

Recommendation: *When all setbacks are placed on this property, a small triangular shaped buildable area exists. The property is currently undeveloped and the applicant proposes to place a reasonably sized 26-foot by 52-foot dwelling on the property in approximately the same alignment as the other dwellings on Culls Drive. Because of the size, unusual shape and the fact that a front setback is imposed on two sides leaving an extremely small building envelope, staff believes a hardship exists and would recommend approval of a reasonable variance request.*

Mr. Charles Williams, agent for the applicant, stated that they wished to place a new dwelling on the property that is irregularly shaped. He noted that without a variance the property could not be used for residential purposes.

Mr. Coburn asked Mr. Williams if he had considered the comments made by the Planning Commission about rotating the proposed home 45 degrees on the lot which may reduce the variance being requested.

Mr. Williams was unaware of the commission's recommendation to the Board. Discussion followed and Mr. Williams stated his opinion that due to the location of the septic system it would be better to locate the home as proposed.

The Chairman called for public comments.

Jacqueline Weathersby, the adjoining property owner, stated that she was not opposed to the home being placed on the property. However, she was concerned about potential impacts that may interfere with the use of her adjoining property. It was her understanding that the Williams land was never approved for a well and septic system; therefore, the former single-wide home was never used as a residence.

Mr. Williams stated that the well on the adjoining property was shared. Ms. Weathersby disagreed.

Ms. Downing stated that in situations where there is a shared well or septic system a legal agreement approved by the Health Department must be recorded in the office of the Clerk of Court.

It was noted by Ms. Kellam that no building permit would be issued without Health Department permit for the well and septic system.

There being no other public comments, the public hearing was closed and the Board continued its discussion.

Action:

Motion was made by Mr. Coburn that the Board condition its approval that no building permit shall be issued without an approved Health Department permit for the necessary well and septic system to serve the proposed single-family dwelling. Second was made by Mr. Bannister and carried unanimously. The Board found that a hardship did exist due to the odd-shaped and limited dimensions of the recorded lot that afford insufficient buildable area because of the railroad right-of-way setback and the state road right-of-way setback.

Statements from the Public

No statements were received.

Old Business

There was no old business for consideration.

New Business

Ms. Kellam noted that the Board will probably meet in December to consider a variance filed for property in Oyster. However, there will be no meeting in November.

Zoning Administrator's Report

Ms. Kellam noted that the Commission will meet tonight to consider the final amendments to the county's zoning ordinance.

When asked, Ms. Kellam explained that the Planning Commission is a recommendation entity only and that there is no policy to involve applicants in the review of variances conducted by the commission. She stated that the Code of Virginia stipulates that planning commissions are to review all variances and to make recommendations to the BZA if a commission desires to do so. To her knowledge Northampton County is the only local governing body that follows this code requirement.

Ms. Kellam also informed the Board that one of the proposed amendments to the county's zoning ordinance will eliminate the railroad right-of-way setback.

Consideration of Minutes

The minutes of August 4, 2009 were approved upon proper motion and second made by Mr. Bannister and second by Ms. Nottingham.

Adjournment

Motion to adjourn was made at 10:30 a.m.

Chairman

Secretary