

NELSON COUNTY BOARD OF ZONING APPEALS

April 7, 2014

MEETING MINUTES

Present: Gifford Childs, Linda Russell, Kim Cash, Goffrey Miles, and Ronnie Moyer

Absent: John Bradshaw

Staff: Tim Padalino, Director, Planning & Zoning Director, and Stormy Hopkins, Secretary

Call to Order: Mr. Childs called the meeting to order at 7:32 P. M. in the General District Courtroom, County Courthouse, Lovington. There were five members present to establish a quorum.

Approval of Minutes: Ms. Cash requested the following revisions:

Page 3 – midway down page / paragraph beginning with Ms. Cash and Ms. Russell both stated, 2nd sentence: remove the 2nd “the”.

Page 4 – 2nd paragraph down, beginning with Ms. Cash: replace “the” with “that”.

Ms. Russell made the motion to approve the December 2, 2103 meeting minutes for the Nelson County Board of Zoning Appeals with the two corrections. A second was made by Ms. Cash. The motion passed 5-0.

Election of Officers: Mr. Childs stated since Mr. Bradshaw is not present at this time, it would be done last, unless there were any objections.

I. Variance Request #2013-002 / Appeal of Notice of Violation

Mr. Childs stated this is a continuation from the original meeting dated December 2, 2013.

Mr. Padalino stated the continuation was originally scheduled to be heard again on March 3, 2013, but due to inclement weather it was postponed until tonight’s meeting. This appeal is in conjunction with Tax Map #3-A-100, which is located at 746 Mountain Road, Afton, which is owned by the petitioner, Mrs. Brenda Curro. It is zoned Agricultural (A-1). A survey recently taken shows it to be 0.641 acres.

Mr. Padalino stated the central issue is in regards to the retaining wall that functions as an additional parking area in the front area of the property, next to Mountain Road. He stated that at the previous Board of Zoning Appeals meeting, it was determined that it had to be considered a “structure” pertaining to the Zoning Ordinance as well as the Uniform Statewide Building Code – and therefore subject to the required front yard setback dimensions. Those dimensions are not met by the existing structure. The required front yard setbacks are a minimum of seventy-five feet (75’) from the centerline of the road or fifty feet (50’) from the edge of the right-of-way (ROW), whichever is greater. The side yard setback is a minimum of ten feet (10’) – although the total side yard setbacks must be a minimum of twenty-five feet (25’) when added together. Separately, if this were to be considered an accessory structure, it would be required to be located a minimum of fifteen feet (15’) from any property line, and could not be located within the front yard setback.

Mr. Padalino then stated that during the December meeting, the Board of Zoning Appeals required numerous elements to be depicted on a survey; and that the applicant had since submitted a plat containing virtually all of those required elements, except for the ramp that connects the disputed parking area to the dwelling as well as the actual graphic depiction of the required setback lines.

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Ms. Russell asked if any other information required during the December meeting had recently been submitted, regarding the requirements that were described by Mr. Padalino as having not been met in his February 24th staff report. Mr. Padalino stated that nothing new had been submitted and the survey is the same.

Mr. Childs asked Mr. Padalino if he measured or confirmed the measurements of the centerline or the edge of right-of-way from the road. Mr. Padalino stated he did not. Mr. Childs stated he was having trouble seeing those measurements on the survey. Ms. Russell stated the structure actually encroaches on the Virginia Department of Transportation (VDOT) right-of-way, and therefore does not meet the seventy-five foot (75') setback. Mr. Childs noted if they were to do a variance they would need to know for how much distance.

Ms. Cash said the other issues that she has with this document is that she still does not know what the other setbacks are. She asked what the measurements are of any of the side yards and what the size of the paved driveway is. She noted that it appears from the aerial as though you could park two vehicles there in front of that building, but that the Board members do not know that or know the measurement. The other question Ms. Cash had was whether both owners signed the application, noting all owners are required to sign the applications. Ms. Cash stated she is happy to hear from the applicant although she doesn't have much more information that what was submitted to start with.

Ms. Russell noted it was requested that the dimensions of the driveway be provided to include the turn around area; to determine whether the paved area in front of the building could accommodate what is being parked on the concrete structure. None of that information was provided. Ms. Russell indicated that she is really disturbed that it is located within the public right-of-way. This not only affects this property but other properties along that road.

Mr. Childs asked the Applicant to come forward and present any new or additional information. Mrs. Curro stated that Mr. Tom Shumate would speak on their behalf.

Mr. Tom Shumate:

Mr. Shumate was then sworn in by Mr. Childs and signed the affidavit.

Mr. Shumate indicated he has a surveying and engineering business in Waynesboro. He stated that it appears to him that the concrete structure they have is a driveway or parking place. He stated that the Code of Nelson County says everything that is built is a structure, except for a fence. The purpose of what was built is to serve as a driveway. The concrete structure they built does not have a storage room and it does not have a roof, it's a driveway. They didn't want it to be sloping. He stated that every driveway encroaches on the front setback of VDOT's right-of-way because any driveway that is gravel, pavement or concrete is going to go from where you park your cars to the edge of the road. It is his understanding the petitioners had the construction work done by someone who did not get all the necessary permits that were required. He noted that the Curros had to come in and get the permit themselves. He further stated that it is the petitioners' hope that you see this area is a driveway and serves no other purpose, and would grant a variance to allow the driveway to stand.

Mr. Shumate asked if Mr. Padalino knew of any side yard setbacks of a driveway. Mr. Padalino stated that he believes driveways are not subject to setback requirements. Mr. Padalino noted that all connections to the State right-of-way require an entrance permit from VDOT as well as a Land Use permit if there is going to be any construction activity within the right-of-way.

Ms. Russell asked Mr. Shumate if it's his contention that the Nelson County Code says that a driveway is a structure. Mr. Shumate stated it's his belief that the Nelson County Code says everything that is built is a structure, except a fence. Mr. Padalino read the definition of a structure from the Nelson County Zoning Ordinance.

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Structure: Anything constructed or erected, the use of which require permanent location on the ground, or attachment to something having a permanent location of the ground. Fences are excluded from this definition.

Mr. Padalino noted that he believes this appeals process is not because county staff or anyone else interpreted the driveway to be a structure; but that it's a function of the retaining wall being a structure. He stated that the issue was first brought to the County's attention, and reviewed by both Zoning staff members and the Building Inspections Department staff members. Mr. Padalino then reiterated that the reason this process was set into motion was because of the focus on the retaining wall, which must be considered a structure.

Ms. Cash stated that on the plat submitted by Mr. Shumate the area is called a concrete parking area. She asked Mr. Shumate, how is that a driveway; they are two separate things. Mr. Shumate stated that every driveway has a parking area toward the house. Ms. Cash then stated that it is the landowner's responsibility to make sure their structures are permitted.

Mr. Terry R. Curro, owner of 746 Mountain Road was asked by Mr. Childs to sign the affidavit.

Mr. Curro stated that he just put a 2 room addition on his home and Nelson County required nine inches (9") of footers. Mr. Curro noted that for this parking area, he had to go down two-foot (2') by two-foot (2') wide with footers. Each block had to be six foot (6') apart with a 5-piece of angle line, four inches (4") by half inch (1/2"), five foot (5') tall into the footers all the way up and cinder blocked and filled solid with concrete. The center was filled with fifty-sevens (57) and fifty-eight (58) stones before it had a top cap of concrete. Mr. Curro stated that when he found out the contractor did not have a permit he went down to the Building Inspections office and paid for a permit.

Mr. Curro then stated that at the time that this project was started, the neighbor – the one complaining about the structure – was standing right beside where the work was being done; and she never once said to stop. Mr. Curro noted that his neighbor on the other side has the same parking; the difference is that hers is gravel and mine is concrete. Mr. Curro also stated that all they wanted was to have extra parking in case emergency crews had to come in so the driveway wouldn't be blocked because of health issues. The structure has no window, doors or storage. He then stated that most structures that are built are not built half as strong as this structure.

Mr. Childs opened the public hearing at 7:57 p.m. and the following people spoke:

Martha Eutsler:

Mrs. Eutsler stated that she feels the structure is too close to her land. She also stated that the paper that she got for the building permit states you should be ten feet (10') from people's land before building a structure and this structure is not ten feet (10') from her land.

The public hearing was closed at 7:58 p.m.

Ms. Russell stated she had a real problem with Mr. Shumate's argument. She indicated that this is a 3-dimensional structure; it is not a driveway in her estimation. There is an existing driveway with a handicap ramp to it. The owner is responsible for any construction on his property and responsible for acquiring the correct permits. This obviously was not done or the structure would not have been built to begin with. She then stated that there are new drainage issues; and there is too much impervious building on this property. Mrs. Russell stated that she can't support this request for a variance as it has been submitted.

Ms. Cash agreed with Ms. Russell and stated that she has lots of issues with this variance request. She stated that her issues include that the structure encroaches on the Virginia Department of Transportation's (VDOT) right-of-way; and that it is just one and a half feet (1.5') off the side property line, which would require an enormous

distance for a variance. Ms. Cash then stated that it is not as though the petitioners do not have a driveway or access to their handicap ramp, because they do and that this is a convenience and not a necessity. If it were a necessity, it should have been done by permit and it should have been off of the right-of-way. Ms. Cash noted that the Board still does not have any measurements on the driveway, but can clearly see that at least two cars can be parked in this driveway because it's shown on the aerial photo. She noted that not only is there a request for a huge variance, but that the petitioner has an adjoining landowner who objects to the structure being that close to her property line. Ms. Cash stated that she can't support this request for a variance.

Mr. Miles stated he would like to know how much of a variance is being asked for. Ms. Cash stated that it would be at least eight and a half feet (8.5') off the side yard. That doesn't count the intrusion into VDOT's right-of-way. There is still no measurement on the plat of how far it extends into that right-of-way. Ms. Russell noted that there has to be at least fifty feet (50') or seventy-five feet (75') front yard setback, depending on how it's measured – and the setback here is actually a negative number.

Mr. Childs stated that if the Board did approve a variance for this then they would be going in direct conflict with VDOT where they haven't done anything to get an access permit. It would make this more illegal and the Board doesn't have the authority to do that.

Ms. Russell made a motion as follows:

Brenda Curro of 746 Mountain Road has requested a variance from the Zoning Ordinance requirements in Section 4-3-1a and 4-3-2 pertaining to a structure in the form of a parking area and retaining wall; which is located 1.5 feet from the side lot line, and is further located in the required front yard setback as well as partially in the Virginia Department of Transportation (VDOT) right-of-way. The Board of Zoning Appeals denies any variance having determined that any hardship was created by the property owner, and that the granting of variances would be detrimental to the adjacent property owner and overall character of the area. Therefore, the concrete parking area, structure, and retaining wall and any other material that supports this structure must be removed before July 1, 2014.

A second was offered by Ms. Cash; the vote was 5-0.

After the petitioners initially left, Mr. Curro came back into the courtroom and addressed the Board of Zoning Appeals members. He apologized, and stated that Mrs. Eutsler had stood there and said nothing as the work was being done. He also stated that her other sister has the exact same thing on her property and the difference is, hers is gravel and he made his concrete with block; it's identical. He stated that it goes right to his property line and right to VDOT. He stated that he has \$14,000 in this. He stated that when he found out the contractor didn't get a permit, he came down and got the permit. He also stated that there is a pipe handrail on the structure. Mr. Curro also said that the other four got easements out of their 5.9 acres of land while their 5.9 acres is deadlocked.

Ms. Russell addressed Mr. Curro and said that the Board feels very sorry for the situation that they are in. Mr. Childs added that he hopes Mr. Curro understands that most of the statement is irrelevant, and the Board is not able to use that as evidence. Mr. Childs also noted that in regards to the 5.9 acres of land, if the others are in violation, they could be brought to the attention of Zoning.

Mr. Childs thanked Mr. Curro and stated that the Board had more business that needed to be attended to at this time.

Other Business:

Update on Mr. Artz's case: Mr. Padalino stated at the January 8, 2014 General District Court hearing, Mr. Artz was present; and that Judge Eggleston wanted to check in to see what proceeds had taken place. Mr. Padalino indicated that Mr. Artz decided to not continue with having building plans prepared by his father, but to instead purchase a manufactured home. Mr. Padalino stated that he did clarify for Judge Eggleston that this type of structure is a dwelling that is permissible as a by-right use in the Agricultural District (A-1). This would presumably bring resolution to the issue because it would establish a permissible primary use to which the existing shed could become an accessory use. This could satisfy the November 2012 resolution of the Board of Zoning Appeals. Mr. Padalino stated that he did note to Mr. Eggleston and Mr. Artz that he was unsure if a manufactured home is permissible in Highland on the James with respect to any covenants or restrictions and that it is not the County's responsibility. He noted that Mr. Artz is President of the Highland of the James Homeowners/Property Owners Association. Mr. Artz noted that he was very familiar with the covenants.

Ms. Cash stated that Mr. Artz still has the two sheds on the property; still getting more time; and is still living there. Ms. Russell noted that Mr. Artz seems to wait until about two weeks before he is to appear in court and rushes around and states that he does not have time.

Mr. Miles indicated that he does have the permits. Mr. Moyer indicated that it was the judge's judgment. Ms. Cash agreed.

Mr. Padalino indicated that during the January 8th hearing, Judge Eggleston wanted to know the County's position. Mr. Padalino indicated that the County really needs to see some consequences if there is not going to be some compliance, or all the code enforcement efforts would be useless. This would also undermine future enforcement efforts. He stated that he thinks Judge Eggleston understands and is sympathetic to those concerns, but feels the case before him is reaching a point of being resolved. Mr. Padalino stated a hearing is set for May 7, 2014 but that he would be out of state and is going to work with Rosemary North to get that rescheduled. Ms. Cash stated that would be good since Mr. Padalino has followed this all the way through; and that he should be present at the hearing.

Ms. Cash indicated that this particular case is the most appalling to her of all of them because our (BZA) motion was so clear. He was not to live in the shed. Then the Board finds out that he was living in it and put a second shed on the property. She understands giving him time to figure things out but she hopes that the Board is going to receive some kind of compliance soon. Ms. Russell indicated that it has been over two years since this began. Ms. Cash stated that she would like to be updated as Mr. Padalino knows of things because she eventually wants to see some sort of resolution on this matter. Mr. Padalino indicated that for clarity, the second shed is a temporary, plastic storage area. Ms. Russell indicated that the neighbor had indicated that the two sheds on the property, as they were, did not bother her. She also noted that Mr. Artz originally wanted a Special Use Permit for a cabin.

Ms. Russell asked about the status of getting the "cabin" taken out of the Zoning Ordinance. Mr. Padalino noted that had been removed; it is no longer a listed use or a defined use within the Zoning Ordinance; and that it has been struck. Ms. Russell indicated that her copy of the ordinance does not show that change. She seems to recall an agreement to change the definition of cabin to say such a use should be referred to the Building Official. She stated that her copy of the Zoning Ordinance still shows cabin. She asked that Mr. Padalino check his copy to see when that was struck. Mr. Padalino indicated that it is not in his book per what was signed by the Clerk of the Board of Supervisors. Ms. Russell stated this didn't come to the Planning Commission. Mr. Padalino indicated that it all started with the Planning Commission and the cabin amendment was handled in collaboration with several other amendments at that time, including activity center, banquet hall, and office use in an industrial zoning district. Ms. Cash stated that the process needed to be verified. Mr. Padalino stated that he recalled that this amendment process, and that the Planning Commission did not want to make any amendment recommendations to the Board of Supervisors without seeing the proposed text amendments in the correct format

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(struck, underlined, bold, etc.). He stated that he put that together for the Planning Commission in August and then to the Board of Supervisors in September.

Proposal to amend Articles 2; 3-1; 4-1; 8-1; 8A-1; 8B-1; 9-1; and 11-1. The Code of Nelson County 1989 is amended related generally to Zoning:

Article 2: Cabin – this Definition is deleted

Article 3-1-3a: Cabin - this use is deleted and Reserved for future use.

Ms. Russell stated this still does not explain why this isn't updated in the books. Mr. Padalino thought these updates had been handed out. Ms. Russell indicated that she would go back and look at the minutes from the August meeting and the packet materials.

Election of Officers:

Ms. Russell stated that as a Board, we have been very fortunate to have John Bradshaw as our Chairman for more years than any of us can remember. He has provided guidance and insight, especially to me, as a new member of the County. I have enjoyed hearing the history that he provides on some of these cases that most of us have no knowledge of. As we are aware, his health has been an issue in the past year and I think its time for us to say thank you, to John, for all the years that he has devoted to the Board of Zoning Appeals and to this County. We would ask that he remain on the Board, which I know he can, but I think its time that we move on and give him a break.

Ms. Russell stated she would like to nominate Gifford Childs as the Chair of the Board of Zoning Appeals for the 2014 term. A second was offered by Ms. Cash; the vote was 5-0.

Mr. Childs stated that he talked with Mr. Bradshaw today to see how he was feeling; to see if he needed a ride; and reminded him of the election of officers was tonight. Mr. Childs indicated that Mr. Bradshaw was aware of that. He stated that when he asked Mr. Bradshaw about his thoughts on the election of officers ; he said that he liked being on the Board and liked being the Chairman. Mr. Childs stated that the thought Mr. Bradshaw didn't want to give it up. Ms. Russell added that she feels fortunate to still have Mr. Bradshaw on the Board and when he's able to come, he can contribute to the cases that we are being discussed. Ms. Russell stated that she thinks he doesn't have the time to devote to the Chairmanship that the Board needs. Mr. Moyer added that he thinks the Board has to consider what's good for the Board and what's good for the people of this County. Ms. Cash stated that she doesn't want to add to Mr. Bradshaw's stress.

Mr. Moyer stated he would like to nominate Kim Cash as the Vice-Chair of the Board of Zoning Appeals. A second was offered by Ms. Russell; the vote was 5-0.

There was discussion regarding if the Board has to elect a Secretary. Mr. Childs mentioned Stormy Hopkins as the Secretary. Mr. Moyer stated that as long as the County was paying Mrs. Hopkins salary, the Board doesn't have to elect her. Ms. Russell indicated that she was never comfortable with having a County employee as an elected Secretary. Ms. Cash asked Mr. Padalino if the Board officially has to elect Stormy, as the Secretary. Ms. Cash also asked Mr. Padalino if this would affect the Board's standing in Court, if she was County staff as opposed to the elected Secretary. Ms. Cash indicated that she was asking because the Board's Meeting Minutes could become a part of a court case, and she wouldn't want to risk the Meeting Minutes not being accepted as testimony or record because the Board didn't elect someone. Mr. Padalino stated the safe thing to do would be to designate one of the appointed Board of Zoning Appeals members as Secretary and have Stormy act to provide the secretary roles. Ms. Russell pointed out that the Planning Commission Secretary is the Planning Director. Ms. Russell suggests that we elect Stormy as our Recording Secretary and ask that the Zoning Director research to see if this is the legal procedure. Mr. Padalino stated that he would look into this matter and communicate back to the Board of Zoning Appeals his findings.

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Mr. Moyer made a motion to elect Stormy Hopkins as Recording Secretary. A second was offered by Mr. Miles; the vote was 5-0.

Adjournment:

8:33 PM

Respectfully submitted,

Stormy V. Hopkins
Secretary

DRAFT