



Nelson County Board of Zoning Appeals Meeting Minutes April 6th, 2021

Present: Chair Mary Kathryn Allen and Board Members: Gifford Childs, Carole Saunders, Shelby Bruguiera, and Angela Jones

Staff Present: Emily Hjulstrom, Planner/Secretary and Phillip D. Payne, County Attorney

Staff Absent: Dylan Bishop, Director

Call to Order: Chair Allen called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovingston.

Review of meeting minutes:

Ms. Saunders added that she would like to clarify her comment on the last page "Ms. Saunders noted that she brought her husband, who is a contractor, and that he agreed that it would probably need a variance." She clarified that he is a retired water/sewer contractor for municipalities and not a builder.

Mr. Childs made a motion to approve the minutes from the March 2nd, 2021 meeting. Ms. Saunders seconded the motion.

Yes:

Mary Kathryn Allen

Gifford Childs

Carole Saunders

Angela Jones

Shelby Bruguiera

Public Hearings

Appeal by Brandon Stark of Zoning Violation #2020-06

Ms. Hjulstrom reviewed the following information:

**Nelson County
Board of Zoning Appeals**

To: Board of Zoning Appeals
From: Emily Hjulstrom, Planner
Date: April 6, 2021
Re: Appeal by Brandon Stark of Zoning Violation #2020-06

The Planning and Zoning Department received a complaint in March of 2020 that there may be a junkyard on property located at 904 Farrar Bridge Ln. At the time no action could be taken due to courts being closed. On August 18th, 2020, I observed an accumulation of materials constituting a junkyard at the property.

On August 28th, 2020 I sent a Letter of Violation to the owners, Billy & Brenda Stark, with a deadline of October 16th, 2020.

I spoke with Brenda Stark on October 19th, 2020 and gave an extension to October 31st, 2020. She then called again and said her son was having surgery and they needed more time. I granted an extension to November 25th, 2020.

On November 12th, 2020 Brandon Stark called and asked for extension. I did not grant him an extension.

On December 2nd, 2020, I respected and observed a junkyard remained on the property.

I then attempted to send a letter directly to the occupant, Brandon Stark, on December 7th, 2020. The letter came back as undeliverable, I then had letter hand delivered on January 23rd, 2021. In the letter I requested that action be taken by February 22nd, 2021 and that no further extensions would be granted.

On March 3rd, 2021 Brandon Stark applied to appeal the violation to the Board of Zoning Appeals.

Chair Allen reviewed the following Public Hearing Guidelines:

NELSON COUNTY BOARD OF ZONING APPEALS

PUBLIC HEARING GUIDELINES

1. The Presentation by the Petitioner's representative(s) will be limited to fifteen (15) minutes. If it is difficult to fully explain a complex proposal orally within the time limit, it is recommended that the petitioner submit in advance to the Zoning Office written information that can be mailed to the Board of Zoning Appeals prior to their respective meetings.
2. A sign in sheet will be available and anyone desiring to speak must sign in.
3. Speakers representing a group will be allowed five (5) minutes to speak if their presentation will reduce the number of persons to make public comment.
4. Subsequent speakers will be allowed a maximum of three (3) minutes each and cannot allocate their time to another individual.
5. Speakers must come to the podium, give their name and address before making their remarks.
6. Speakers will be timed by a staff assistant and given notice when they have one (1) minute left and when their time has expired. Upon notification the speaker shall relinquish the podium and return to their seat.
7. Speakers are asked to not be repetitive and to insure their remarks are relevant to the request at hand.
8. When the public hearing is closed the Board of Zoning Appeals will deliberate on the agenda item, during which the public may remain present but will not be allowed to speak. Members of the Board of Zoning Appeals may ask questions of anyone in the audience in order to seek clarification of issues that were brought out at the hearing.
9. Abusive and inappropriate language will not be tolerated.
10. The Chair will fairly enforce the above rules.

Chair Allen opened the public hearing at 7:06 PM

Chair Allen closed the public hearing at 7:06 PM

William Stark lives at 910 Farrar Bridge Lane and is a neighbor of his brother Brandon Stark. He is here to represent him. He noted that he was made aware of the violation a while back and that they have been working with Brandon to try to clean up the property but that he understands that it is not enough for the county at this time. He added that his brother is somewhat of a hoarder and that he has taken junk

away from the property for him. He noted that Brandon does have some mental health issues and that he lives next door with his family and that Brandon's actions impact him as well. He noted that he is just here to see what action needs to be taken. He noted that he is here to speak more for his parents Billy and Brenda Stark, the owners of the property.

Mr. Childs asked what Mr. William Stark recommended. He recommended communicating directly with Billy and Brenda Stark to work on cleaning up the property. Ms. Hjulstrom explained that staff had contacted Billy and Brenda Stark initially but that they were out of state. Staff then decided to contact Brandon Stark directly as he had stated his ownership of the violation.

Mr. William Stark explained that his parents allow him to live in the property next door and that if he pushes for his brother to clean up the violation then it might negatively affect him. He noted that his parents would be able to travel here to deal with the property issues and that they would likely prefer that to Brandon being the main contact.

Mr. Childs noted that it didn't seem like it would be that much stuff and asked if they could rent a dumpster. Mr. Stark noted that if the county gave them a hard deadline then they would step in. He noted that his parents have already visited to try to clean up the property but that they are older and that his dad has some health complications.

Ms. Saunders asked when the last clean up occurred. Mr. Stark noted that about two weeks ago, they hauled some stuff off and moved some things back from the road to sort them out. They also helped Brandon create an area behind his house where he can sort everything. He explained that Brandon does have a compulsive hoarding issue and that you can't force him to do anything.

Ms. Bruguere asked what had been done in the past two weeks. Mr. Stark noted that Brandon and his girlfriend have been hauling some stuff away. Ms. Bruguere asked Mr. Stark how long it would take to clean it up. Mr. Stark noted that the county would have to tell them what would be acceptable. Ms. Hjulstrom clarified that the Board of Zoning Appeals is deciding whether or not to uphold county staff's decision that the property was in violation of a junkyard. She added that actions on the property now would not affect the decision being made by the Board of Zoning Appeals.

Ms. Bruguere asked if the Board of Zoning Appeals could defer their decision to allow for more time. Ms. Bruguere asked how much of the property had been cleaned up. Mr. Stark noted that at least 40% of the original trash has been removed. Ms. Bruguere asked if 30 more days would allow them to finish cleaning up the property. Mr. Stark noted that he could try to get his brother to speed the process up but that he doesn't want to hurt his feelings.

Mr. Childs added that staff had made the right decision but that he would like to avoid seeing this go to court if it doesn't need to. Mr. Stark noted that he can press the issue with Brandon and his parents but that he has his own responsibilities to take care of. Mr. Stark noted that he thought the property had been brought into compliance until his brother called him and asked him to go to the hearing for him.

Ms. Saunders asked if a court date has been set. Ms. Hjulstrom noted that no court date has been set, she explained that staff is currently at the point where they would turn it over to the County Attorney to be brought to court.

Ms. Hjulstrom asked if the parents would need to be notified again. Mr. Payne explained that this hearing is for Brandon Stark and that there will be no more letters aside from the decision made by the Board of Zoning Appeals.

Ms. Allen asked how Brandon Stark was able to appeal the violation on a property that he doesn't own. Ms. Hjulstrom explained staff started contacting Brandon Stark directly when he showed that he was responsible for the violation. Ms. Allen asked what would happen when it goes to court.

Mr. Payne explained that either Mr. Stark could appeal the Board of Zoning Appeals's decision to circuit court, or the county will seek injunctive relief. Ms. Hjulstrom quoted from the Zoning Ordinance:

"15-2 Any person, firm, or corporation, whether as principal, agent, employed or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, may be fined not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00). If the violation is uncollected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the Zoning Ordinance within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding thirty (30) day period shall constitute a separate misdemeanor offense for each ten (10) day period punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand, five hundred dollars (\$1,500.00). "

Mr. Payne clarified that there would be one of two remedies, criminal or civil. He explained that the county has traditionally pursued the civil remedy.

Ms. Allen noted that it has been a year and that it looks like it will be a continuous problem. Ms. Bruguere noted that she would be in full support of giving them an extension by deferring their vote. Ms. Allen asked if they would be able to get pictures of the property to see if work had been done.

Ms. Hjulstrom reminded the Board that their decision is not whether or not the violation deserves an extension but whether or not staff made the right decision that the property is in violation. Ms. Allen asked if the Board could grant an extension. Mr. Payne noted that he can't give the Board advice but that they are a quasi-judicial body and that they can probably do what they want to do. Mr. Childs added that he thinks staff has made the right decision. Ms. Hjulstrom added that she would be afraid of setting a precedence of granting an extension when it isn't going to change the outcome of their decision.

Ms. Bruguere noted that she is still unsure how communications began with Brandon Stark as opposed to the property owners. She asked if the letter that had been delivered via Sheriff's Deputy had been sent to the property owners as well. Ms. Hjulstrom explained that staff decided to start contacting Brandon directly when it got to the point that they would need to bring the owners to court. It would have been harder to pursue due to them being out of state, staff chose to send notifications to Brandon Stark directly after he claimed that the violation was his.

Mr. William Stark asked if this would be against the property or directly against Mr. Stark. Ms. Allen noted that the Board would be unable to answer that.

Mr. Childs made a motion to uphold the decision made by Planning and Zoning staff on Violation 2020-06. Chair Allen seconded the motion.

Yes:

Mary Kathryn Allen

Gifford Childs

Carole Saunders

Angela Jones

No:

Shelby Bruguere

Other Business

Variance #2020-01 Luscomb:

Ms. Hjulstrom reviewed the following:

Nelson County Board of Zoning Appeals

To: Board of Zoning Appeals
From: Dylan M. Bishop, Director of Planning & Zoning *DMB*
Date: April 6, 2021
Re: Variance Information

Several questions arose at the last hearing. After research and consultation with counsel, these are Planning's positions:

1. **Question: Is it proper to grant a variance when, from an environmental perspective, the variance would allow a more environmentally sound use of the land?**

VA Code 15.2-2309: "... a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon..."

Based on this code section, the hardship to be alleviated is the landowner's hardship in using his land. An environmental problem could be a hardship for a landowner as it relates to "the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure." However, if the environmental concern is not creating the restriction or hardship to the landowner, then the environmental concern is not a ground under the statute to grant a variance.

2. **Hearing Procedure: VA Code 15.2-2308: "the [BZA] shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under 15.2-2314, and the staff of the local governing body."**

The BZA is not required to allow speakers to speak at a subsequent meeting on the matter, but if the applicant or his experts are allowed to speak, then persons aggrieved must also be allowed equal time

3. **Notice Requirement: The BZA had no authority to act at the initial hearing because no notice was provided to an adjoining landowner. It should be read into the record that "without notice to an adjoining lot owner, the Supreme Court has ruled that the BZA does not have the authority to grant a requested variance. Therefore, the initial decision of this Board on the application is void."**

4. It should also be noted that Mr. Payne, in his capacity as the County's Attorney, does not represent and cannot advise the BZA.

Ms. Allen asked if the Board would like to hear from either party. Mr. Childs noted that they should give both parties the opportunity to present any new information. Ms. Saunders noted that she had a concern with the minutes that Mr. Callahan produced. Mr. Callahan had stated that before the public hearing she had said the land was narrow. Ms. Saunders explained that she never said that and that she had discussed that the two lots were merged due to land use and that they would have to be divided again if he built on it, and that it is not a narrow lot by any means.

Mr. Childs noted that he spent about half a day at the property and that he was surprised that they did not withdraw after the meeting because the situation looked typical for Nelson County. Ms. Saunders noted that it was raining when she went out the first time and that she saw the pool of water that was streaming aside the road and that it was not doing the job it was supposed to. She noted that she used a wheel to measure and that it seemed to her that there was plenty of room to build even with the 75' setback. Mr. Childs noted that the footprint of the house they plan to build is very large and that they could be more creative with the footprint. He noted that there will be more water coming from the roof for a one story building than from the road. Ms. Saunders noted that a lot of subdivisions can run into this concern due to the setbacks having changed. She noted that New Land shouldn't have accepted the new setbacks when the ordinance changed in 2007.

Mr. Childs asked if there had been any new information on the septic. Ms. Hjulstrom noted that they had received new information from the Callahans but had not received anything new from the Luscombs. She added that both parties were here if the BZA had any questions for them.

Mr. Childs noted that the more he looked at the site the more he is convinced that a variance is not needed. He noted that with new information he is not able to support it. Ms. Bruguiera noted that she went out to the property and she agreed that a variance is not necessary.

Mr. Childs made a motion to deny Variance 2020-01 for the reason that it does not meet the definition of a hardship. Chair Allen seconded the motion.

Yes:

Mary Kathryn Allen

Gifford Childs

Carole Saunders

Angela Jones

Shelby Bruguiera

Ms. Saunders made a motion to adjourn the meeting at 7:52 PM. Ms. Bruguiera seconded the motion.

Yes:

Mary Kathryn Allen

Gifford Childs

Carole Saunders

Shelby Bruguiera

Angela Jones

Respectfully submitted,

A handwritten signature in black ink that reads "Emily Hjulstrom". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Emily Hjulstrom

Planner/Secretary, Planning & Zoning