



Nelson County Board of Zoning Appeals Meeting Minutes March 2nd, 2021

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

Staff Present: Dylan Bishop, Director and Emily Hjulstrom, Planner/Secretary

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:

Mr. Childs made a motion to approve the minutes from the Jan 4th, 2021 and Feb 3rd, 2021 meetings. Ms. Jones seconded the motion.

Yes:

Mary Kathryn Allen

Gifford Childs

Carole Saunders

Angela Jones

Shelby Bruguiera

Variance #2020-01 Luscomb:

Ms. Bishop presented the following information:

**Nelson County
Board of Zoning Appeals**

To: Board of Zoning Appeals
From: Dylan M. Bishop, Director of Planning & Zoning *DMB*
Date: March 2nd, 2021
Re: Variance Application #2020-01 – Request for Reduction of Front Setback

APPLICANT/OWNER: Harris and Susan Luscomb

CONTACT INFORMATION: 131 Mimosa Lane, Faber – (757) 254-7700

SUBJECT PROPERTY: Tax Map # 33-7-17R – Mimosa Lane

ACREAGE: 2.4 acres

ZONING: A-1 Agricultural

VARIANCE REQUESTED: Reduction in minimum required front setback of 75 feet from the center of the road, to 50 feet from the center of the road.

PURPOSE OF REQUEST: Construction of a single-family dwelling

LEGISLATION: Article 14, Board of Zoning Appeals, Nelson County Zoning Ordinance

“No such variance shall be authorized by the board unless it finds:

- (a) That the strict application of the ordinance would produce undue hardship;
- (b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- (c) That the authorization of such 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;
- (d) That no rise will be created in the water level during flood conditions in a floodway, as defined in Article 10, as a result of issuing a variance.”

Chair Allen read 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.

Mr. Harris Luscomb lives at 131 Mimosa Ln. He explained that he and his wife are asking to reduce the required setback of 75' from the center of the road to 50' from the center of the road. He noted that the statute provides that the Board must grant a variance to alleviate a hardship due to a physical condition relating to the property. He explained that there are two primary physical conditions that together create the hardship. The first being the increasing slope down the two track lane, which increases as you move away from the lane and sharply increases after 100' at 23-25%+. The second condition being the heavy drainage that is focused on this lot. He explained that drainage flows about 600' down Mimosa Ln and then pools and overflows onto their lot. He noted that drainage flows from the south facing portion of the field and gathers through a culvert and then onto the parcel. He asked if the Board would like to see the video of the rain in January again, the Board noted that they recalled the video. He noted that to disperse the flow and prevent erosion, they would need to build their foundation on the first floor somewhat higher than the level of the two track. Doing this would also help to prevent flooding. He explained that creating a deep enough basement would be problematic and very expensive, as well as exacerbate erosion issues. He added that meeting the setback would require them to push the septic field back 25' where the grade gets to be about 23 -25%. He explained that it is the drainage problem combined with the slope of the lot that provides an issue that the two neighboring lots do not have. He added that Rick Lawrence, their road maintenance supervisor for 30+ years, has told him that the two track by their lot is one of his biggest drainage issues. He noted that with the 75' setback it is more difficult to divert the water around the house effectively during a hard rain, and may not even be possible due to the higher velocity and pressure. He added that the increased volume and velocity of the drainage increases the likelihood of damage and leaking. He explained that a 50' foot setback would (per the builder and the septic systems soils engineer) would significantly alleviate the potential damage from water drainage and allow for a better, safer, more effective and efficient septic system.

Ms. Saunders asked if this would be a permanent residence or a second home. Mr. Luscomb explained that his wife has repeated pneumonia and bronchitis and that with Covid-19 they have been in Virginia all year. He noted that they would like to build this home as a single floor so that they could live there most of the year and then live in Florida for the coldest months of the year. Ms. Saunders asked why he didn't build on the other two vacant lots he owns. He showed that those lots are set up as a horse farm and are very steep, he hopes that someone that keeps horses would want to buy their existing home and the adjoining lots.

Chair Allen opened public hearing at 7:15 PM

Rick Lawrence is the road maintenance supervisor for the New Land subdivision, and lives at 116 Gasp Lane. He was asked to write a letter when Mr. Luscomb applied for the variance. He noted that he was not aware that Mr. Callahan would object to the application at the time. He added that it seemed like a valid idea to build closer to the road where it drops off. He explained that he feels he overstepped in a decision he didn't have anything to do with. He added that he sees the drainage issue as a nightmare. He noted that he lives on Lot 11R and where the top soil meets the clay are little streams. He explained that his grade isn't very steep and he doesn't have a particularly focused drainage issue but that he still had to drain underneath his own garage because of the way the ground water runs along the top of the

clay. He added that he has 50% of the drainage issue that Mr. Luscomb's lot has. He noted that it seemed logical to him for Mr. Luscomb to have a variance but that he didn't check with Mr. Callahan first.

Tom Callahan lives at 353 Mimosa Ln. He explained that it is a part time residence but will likely become their full time residence within a year. He added that he lives and has a business in Florida that he plans on selling so that he can retire and live on Mimosa Ln full time with his wife and dog. He noted that he has had family out to visit him several times and that his nephew is interested in buying one of his adjoining parcels. He noted that his issue is that he doesn't believe the variance would be legal. He noted that the field works company that helped Mr. Luscomb locate the septic, pointed out that there are alternatives down the lot. He added that Charlottesville Builder wrote in his letter that "While drainage can be addressed with grading and other measures, having the home 50' from the road would help with the sheet flow from the slope and the flows from the culvert pipe that crosses under Mimosa Lane onto the parcel." Mr. Callahan showed that his open field across from 17R is about 1700 to 1704 elevation and that it slopes downward as you go away from 17R. He noted that the culvert is on the eastern edge of 17R and that there is plenty of space for the Luscombs to put their house and meet the setback. He noted that he talked to some builders and that they suggested the issue can be addressed with a continuation of the culvert down through the property. He noted that Mr. Luscomb refers to the slope as 23-25% and added that on USGS you can go 300' off Mimosa Ln at 17R and see that from 300' to 400' the slope is still under 15%. He noted that the same elevations can be taken off of Google Earth. He added that the slope is probably 12-15% on lots 1R and 2R where the grass area is. He added that Mr. Luscomb said that it could be used for horses but that they rented the barn to somebody who had horses there 5 years ago for about 3 months but that there have not been horses there since. He explained that he does not think there is a hardship.

Ms. Saunders asked what he meant in his email to Mr. Luscomb when he said "Additionally, there is an issue that would relate to the overall site plan design, layout and construction orientation on the lot relating to utilization and particularly to vehicle ingress, egress, and vehicle turnaround area". Mr. Callahan explained that the sketch he saw of the house being 50' from the center of the road showed that the ROW was 25' from center and that the road is about 9' wide. He explained that the front of the house being 50' from center would be about 45' and that a large rural vehicle like a pickup truck is easily 20-22'. He further explained that a lot of times people park side by side when their houses are closer to the road and that the ordinance doesn't mandate where the parking has to be. He added that this means that cars can be backing out into Mimosa Ln and that it can be an issue. He noted that Mr. Luscomb had said he didn't plan on doing that, but that the variance would carry to the next property owner and he does not know what they will do. He added that Mimosa Ln is a gravel road and that he doesn't know what a two-track lane is.

Ms. Saunders noted that from what she read, it was a 50' ROW with a 7' roadway. Mr. Callahan noted that it was 9'. Ms. Saunders asked what the problem was. Mr. Callahan explained that if his family members bought his adjoining parcels then they would want to get the same variance due to drainage issues and slope on their parcels. He explained that the culvert is not a permanent structure and that it can be moved or lengthened. He noted that he does think that any of these lots can have a house built on them that meets the 75' from the center of the road setback. He added that probably 50% of the

homes in New Land are built with the same or worse topographical conditions and drainage issues. He explained that these issues are regular to every lot. Ms. Saunders noted that the shape of the lot influences their decision as well and that Mr. Luscomb's is more of a triangle where Mr. Callahan's is a rectangle. Mr. Callahan explained that his lots are narrower and have less road frontage. Ms. Saunders noted that a rectangle lot is usually more sought after than a triangle lot. Mr. Callahan noted that the increased slope is the same on his two neighboring lots. Mr. Callahan explained that Mr. Luscomb could make a rectangle out of 17R. Mr. Callahan noted that Mr. Luscomb had two rectangle lots at 1R and 2R. Ms. Saunders noted that they were narrow. Mr. Callahan noted that they were just as narrow as his.

Chair Allen asked that if everyone in the subdivision were responsible for fixing the road. Mr. Lawrence explained that every lot is assessed every year and there is one large fund that he uses to fix all improvements. He added that there are about 50-60 lots in the subdivision.

Mr. Callahan noted that he and Mr. Lawrence have had recent discussion about other culverts, that were placed about 10-15 years ago, that should be extended, moved, or diverted. He noted that one of the roads by his house recently needed to be widened by 3-4' and that they discussed the relocation of the culvert. Mr. Lawrence noted that the road was not actually widened but returned to its original dimension. He explained that the road had narrowed due to erosion. He added that the man that owned 19R before Mr. Callahan had objected to his grass being changed at the lot edge, and so the erosion was allowed to continue until two cars could not pass at a blind point on the road. He explained that they had to move a ditch at the edge which had gone from being a check mark to being a drop-in ditch. He explained that it had to be graded out, closer to where it had originally been. Mr. Callahan noted that he used Google Earth to go back and measure the road and that for the last 15 years and that it was 19' and has now been widened to 23'. He explained that the embankment at the edge of the property was carved out and moved back. He added that the embankment wouldn't have been where it was if there had been that erosion. He added that the water was coming from a higher point down Robert's Mountain Rd and creating a crevice on the side of the road. He noted that he did agree with Mr. Lawrence that it need to be done but that they had a difference of opinion on how wide the road originally was. He added that it was never 23' wide.

Mr. Childs asked Mr. Lawrence where the culvert was. Mr. Lawrence showed that the culvert was in about the center of the road frontage of 17R. He noted that it was the issue between topsoil and clay and that the road was not installed with sufficient mass to the clay layer. He explained that adding gravel to the hole is a temporary fix and that the hole comes back in about a year or two. He verified that the culvert goes across Mimosa Ln, coming from up the road and down the meadow. He explained that it was very close to the proposed house site and that it is a concern of his. He added that he explained to Mr. Luscomb that the builder would need to actively put drainage to get the water past the house. Mr. Childs asked how difficult it would be to route the water away. Mr. Lawrence explained that a builder should answer that question but that in his own experience he has a lesser slope and has had to retrofit drainage into his building. He noted that he doesn't know what technology would be able to fix it. He added that there were buildings built successfully that had gravel and drain lines with the pads poured on top. Mr. Childs asked if the house being further back would make the drainage issue worse. Mr. Lawrence explained that he did not know but that the angle of repose is where the drainage would go.

Chair Allen closed the public hearing at 7:38 PM

Mr. Childs asked what the slope of the parcel actually is. Chair Allen noted that she was under the impression that most of the houses built there are closer to the road than 75' from the center. She asked how many houses in this area are 75' from the center of the road. Ms. Bishop noted that all houses in the area complied with setbacks at the time they were built and that there are houses that do not meet current setback requirements. She noted that the setbacks were changed in 2007. Mr. Childs asked if there had been any variances, Ms. Bishop noted that there had not been.

Ms. Saunders noted that she did not think she saw anything in the covenants and restrictions that spoke of the setbacks. She did note that the setbacks on secondary roads and Route 29 were increased to 75' from the center of the road, and that is why it is difficult to get anything built on Route 29. She indicated that she thinks the primary reason that New Land accepted the setbacks is because they would need to go to the Building Office to receive a permit with the County setbacks. She indicated that New Land could have had a review board to determine the covenants and restrictions regarding the setbacks, and wasn't sure if it could be overridden, but now the County has to make a ruling on this.

Ms. Bruguere noted that she was looking at the plat done by Allen Hale. She questioned whether the road was built as it was originally planned. Mr. Lawrence noted that he believes the original drawing was done in an office but not on site. He explained that he can't confirm if the road matches the plat or not. He explained that they took over the ROWs after they had been mapped and built. He noted that a surveyor would need to look at it. Ms. Bruguere noted that it might be that if the road were built properly then the potential location of the house might meet setbacks. Mr. Lawrence explained that there were no houses built after the 2007 redrawing of the subdivision. He added that there had never been a setback presented to the buyers that he was aware of. He explained that with Mimosa Ln being a dead-end road he had not been concerned about traffic.

Mr. Luscomb invited the Board to measure the width of Mimosa Ln. He noted that it is 7' wide and in some instances up to 8'. He showed a video of how Mimosa Ln drains under heavy rain. He noted that the contractors' stakes were about 25' from the center of Mimosa Ln.

Mr. Luscomb addressed "Slope evaluation approach 2" in the material provided by Mr. Callahan. He added that there is no water going from Mimosa Ln onto Mr. Callahan's lot. He noted that 140' is where the tree line and fence are and that after 15' you get 23.3%. He noted that he went to the USGS and their statements on horizontal accuracy says that they are within 6 meters and that vertical distance is within 3 meters. He also noted that they stated that accuracy varies widely depending on the source information. He noted that it does not have as much accuracy on this scale.

Mr. Luscomb explained that there are roads around the subdivision that are similar to Mimosa Ln and serve as many as 15 homes. He explained that he does not see why Mimosa Ln would have to be widened to have three homes. He added that he calls Mimosa Ln a two track because it has grass between the two tracks and it's only wide enough for one vehicle.

Chair Allen asked why the road and drainage have not been fixed if they are an issue. She noted that she feels it is because the rest of the subdivision would not want to pay for it.

Ms. Saunders noted that the fee is low but that it is a lot of lots that are each paying the fee. She added that it is a lot of road to maintain.

Mr. Childs noted that he agrees with Ms. Saunders and that the road can be improved to reduce the problem but that he is not convinced that the issue would be more or less if the house received a variance. Mr. Childs noted that the drainage issue and the road issue are not relevant to the decision. He added that the other homes were in compliance with the setbacks at the time that they were built. He is hesitant to set a precedent. He noted that finances were not a qualifying hardship for a variance. Ms. Bruguire noted that the waterway at the bottom of the slope can face future water and drainage issues if it is disrupted by a house being built further back on the embankment. Chair Allen noted that a financial hardship is not a hardship. She brought up a situation in which someone built a deck on their home that did not meet setbacks and that the owner still had to take the deck down because it was a hardship on the owner and not the land. Chair Allen noted that the applicant bought this parcel knowing the hardships that come with it. Chair Allen explained that the septic issue is what caused her to vote for approval last time.

Ms. Saunders asked Mr. and Ms. Luscomb if they knew about the new setback requirements that were adopted in 2007 when they bought their lot in 2014. Ms. Luscomb noted that they were not. Ms. Saunders noted that it is up to an HOA or Real Estate Agent to provide this information to new buyers. She noted that the lots had been in land use but were taken out at some point. She noted that it would be an added expense to resurvey an area to build on. She added that they are all still taxed as one parcel although they exist legally as separate parcels.

Ms. Bruguire added that the purpose of having these parcels when the Monroes developed the land was to have buildable lots. She noted that this lot presents a quagmire and that whoever builds on this lot and the neighboring lots will possibly require a variance because of the way the development was laid out. Ms. Saunders noted that she would have asked for the variance if she were in this position. She noted that she can feel one way personally but that the BZA is limited to why they can grant a variance. Ms. Bruguire asked if the parcel would be unbuildable if this variance was not granted. Chair Allen noted that it had to be a hardship on the land, not the owner. Mr. Childs noted that the builder indicated that it was possible that it could be in compliance. Ms. Bruguire added that it could be a hardship on the environment. Mr. Childs noted that there's not going to be any more water depending on where you put the house and septic and that it is how you deal with the water flow.

Ms. Bishop pointed out that the BZA has 90 days to vote on a variance application. Mr. Childs noted that he would like to see if it were possible to build on that slope. Ms. Bruguire noted that she believes she has enough information to vote.

Chair Allen noted that her problem was the letter that was written about the septic and the septic being the hardship on the land. Mr. Childs asked if the County would approve a septic system that was going to fail. Chair Allen noted that the Virginia Department of Health regulated it but that she does not think they would approve a system that is going to fail. Ms. Saunders noted that there was a perk site found 5' down.

Ms. Bruguire made a motion to defer Variance #2020-01 until the BZA meeting on April 6th, 2021. Ms. Saunders seconded the motion.

Yes:

Mary Kathryn Allen

Gifford Childs

Carole Saunders

Angela Jones

Shelby Bruguiera

Chair Allen specifically asked if it can be found out whether the septic can be built on the land without negatively affecting the environment. She also wanted to know whether the neighboring parcels would require the same variance. Ms. Jones added that all of the BZA members should make a trip to the site to see the surrounding area and the drainage issues. She noted it rained the day that she went and that she could see the slope.

Ms. Bishop noted that staff could work on a group visit but that staff would need warning ahead of time so that they could advertise. Chair Allen noted that she would rather go by herself so that she is not influenced in any way and so that it does not cost the County any more money. Ms. Saunders noted that she brought her husband, who is a contractor, and that he agreed that it would probably need a variance.

Mr. Childs asked if the next meeting would also be a public hearing. Chair Allen noted that it would not be.

Ms. Saunders made a motion to adjourn the meeting at 8:32 PM. Ms. Bruguiera seconded the motion.

Yes:

Mary Kathryn Allen

Gifford Childs

Carole Saunders

Shelby Bruguiera

Angela Jones

Respectfully submitted,



Emily Hjulstrom

Planner/Secretary, Planning & Zoning