

**King and Queen County
Board of Zoning Appeals
Minutes
January 17, 2012**

**MINUTES
BOARD OF ZONING APPEALS
JANUARY 17, 2012**

The Board of Zoning Appeals (BZA) of King and Queen County met in the King and Queen County Courts and Administration Building on January 17, 2012, at 6:00 P.M., with public notice having been published in the *Tidewater Review* and *Rappahannock Times* and written notice mailed to interested parties, as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended. The following Board members and staff were present:

Pamela Ashley
Leland Wyatt
Bruce Taylor

Donna Sprouse, Assistant Zoning Administrator

**IN RE:
CALL TO ORDER**

Chair, Pamela Ashley called the meeting to order. Mrs. Sprouse determined that there was a quorum present with three members. (Pamela Ashley, Bruce Taylor and Leland Wyatt were present)

**IN RE:
APPROVAL OF AGENDA**

Mrs. Ashley stated she would entertain a motion to approve the agenda. A motion was made by Mr. Bruce Taylor to approve the agenda as presented, seconded by Mr. Wyatt.

Voting For: Ashley, Wyatt, B. Taylor

Voting Against: None

Abstain: None

**IN RE:
APPROVAL OF MINUTES**

A motion was made by Mr. Bruce Taylor to approve the minutes as written, seconded by Mr. Wyatt. Approval of the December 19, 2011 minutes was approved.

Voting For: Ashley, Wyatt, B. Taylor
Voting Against: None
Abstain: None

**IN RE:
NEW BUSINESS**

**VARIANCE
VAR11-03, Ronald E. Varboncoeur & Tammy R. Poston**

Applicant: Ronald E. Varboncoeur
Owner: Ronald E. Varboncoeur & Tammy R. Poston

Subject: The Planning and Zoning Department received an application to the Board of Zoning Appeals (“BZA”) on December 16, 2011, requesting a variance from Zoning Ordinance, Article 5, Table 5.1, Minimum Dimensional Regulations for Primary Zoning Districts.

Premises: The property is located at 6070 Lewis B. Puller Memorial Hwy., in the Buena Vista Magisterial District. The property is identified as County Tax Map Parcel No. 1623-165X-794. The property is presently zoned Agricultural (A) & Residential Single-Family (RS) however, the owner wishes to thereafter apply for a rezoning request to be placed before the Planning Commission to rezone the property to General Business (GB).

Mrs. Sprouse noted that Mr. Varboncoeur & Mrs. Poston are requesting a Variance (a rezoning request to change the zoning from Agricultural/Residential Single-Family to General Business is also forthcoming) from Zoning Ordinance, Article 5, Table 5.1, “Table of Minimum Dimensional Regulations for Primary Zoning Districts,” to (1) allow a 36.8-foot side yard setback vs. the required 50-foot side yard setback and (2) allow a 28-foot side yard setback vs. the required 50-foot side yard setback for existing structures in the General Business zoning district.

Pursuant to Zoning Ordinance, Title II, Article 5, Table 5.1, there must be at least a 100-foot front yard setback and a 50-foot side yard setback in the General Business zoning district when an adjacent property’s zoning district permits residential uses.

Mrs. Sprouse read the following code sections from Article 20, Appeals...

“Section 3-462(B)(2) of the Zoning Ordinance, a variance may be granted when the property owner demonstrates the property was acquired in good faith and (a) the exceptional size or shape of the property existed when the Zoning Ordinance became effective [8-12-1986]; (b) due to physical conditions of the property, or the use or development of an adjoining property, strict application of the terms of the Ordinance effectively would prohibit or unreasonably restrict use of the property; or (c) where the BZA finds that granting the variance would alleviate a clearly demonstrable hardship approaching a “taking,” as opposed to the applicant seeking a special privilege or convenience.”

“Section 3-462(B)(3), the BZA may grant the variance if it finds that (a) strict application of the Ordinance would produce an undue hardship; (b) the hardship is not shared generally by adjoining properties; and (c) granting the variance will not be substantially detrimental to adjoining properties, and the character of the district will not be changed by granting the variance.”

Mrs. Ashley opened the public hearing and asked if there was anyone in the audience that would like to speak.

Mr. James Milby, agent for Aubrey Milby, adjoining property owner, approached the board. He stated that the property as is fits nicely in the community. His concern is that once you go through this process, there are many types of businesses that could go in General Business zoned property. One example is the property where F&M Marine is currently located, in Mattaponi. He stated that at one time that property was zoned Agricultural and was owned by Mr. Sturtz of Mechanicsville. At the time when Mr. Sturtz owned the property he stated that it was going to be a restaurant. Mr. Sturtz went through the process and was rezoned, but later decided not to make it a restaurant. The business then became a boat dealership and car dealership. He noted that not everyone in the community is pleased with the appearance of the property today. He stated in reference to the property in question tonight, it is his understanding that once the property owner goes through this process; there is a number of businesses that could be placed there on the property under our current zoning ordinance. Some of those businesses, in his opinion, would not fit well in the community. He added that because of the potential problem and potential conflict with the surrounding community we asked that the request be denied.

Mr. Varboncoeur, property owner, approached the board. He stated that this property has been a business of some kind for as long as he can remember. He stated that he wasn't aware of all the types of businesses that were once there, until he saw the mail that was being sent to the property. He stated that his intentions are to maintain the business as an antique shop. He added that he has worked with Mr. Swartzwelder and Mrs. Sprouse and knows that his use presently is a “grandfathered use”. He noted that if you have a business corridor, then it has got to be open for businesses. Mr. Varboncoeur stated that is why you have a zoning ordinance; it is to determine what fits and what doesn't. Mr. Varboncoeur stated that he will rezone this property and because he is grandfathered, there are some things he can do there as a grandfathered use, then there are others that he

cannot do, unless rezoned. Mr. Varboncoeur stated that what is before this board tonight is the variance request, and not the rezoning issues that will be later presented to the Planning Commission and Board of Supervisors.

Hearing no further comments, Mrs. Ashley closed public comment period.

Mr. Wyatt asked if the way that property is presently zoned, could that then be a hardship in itself.

Mrs. Sprouse explained that the current property as it is presently zoned, meets the required setbacks. She stated that because the property owners want to rezone to another district, their rezoning request is cause for their variance request. She added that she hoped she answered the question that was being asked.

Mr. Bruce Taylor asked staff what is the current zoning of the property. Mrs. Sprouse explained that this property has split zoning. The property is zoned Residential Single-Family in the front where the structures are located and Agricultural in the rear. Mr. Taylor asked if he meets the setbacks presently, why is he before the BZA with this request before the applicant has requested the rezoning request. Mrs. Sprouse explained that if the BZA denies the request before them tonight, there will be no need for the property owner to move forward with the request for rezoning the property to General Business. She added that if the BZA approved the request for variance, the applicant will still need to go through the rezoning request before the Planning Commission and Board of Supervisors.

A motion was made by Mr. Wyatt to approve the variance request as submitted, seconded by Mrs. Ashley.

Voting For: Ashley, Wyatt, B. Taylor

Voting Against: None

Abstain: None

**IN RE:
BZA REVIEW/TRAINING SESSION**

Mrs. Sprouse stated that she hoped that the BZA received a booklet that she put together for the board to use as a quick reference, should they need to reference a section pertaining to the BZA within the State code of Virginia, Article 20 of the Zoning Ordinance relating to Appeals and the current BZA bylaws. Mrs. Sprouse then introduced Mr. Swartzwelder, County Attorney for King & Queen County.

Mr. Swartzwelder reviewed and discussed the following items...

- Supreme Court cases pertaining to hardships and appeals.
- The role of the BZA
- The findings that the board must determine when approving a variance request.
- Things that are not defined as a hardship, includes but are not limited to (expense, convenience, wants, etc.)

- Appeals against the BZA and the process of an appeal.

Mr. Swartzwelder reminded the board that they must review their findings and determine if each case or request meets those findings and put them on the record. He also noted that he does not mind conducting this type of review or training with the BZA when they need it. He also encouraged the board to contact staff if they ever have any questions or concerns before the meeting so staff could address them before the meeting.

Mrs. Ashley thanked Mr. Swartzwelder for his presentation and stated that she feels that this type of training would be good to do again in the future as a refresher.

**IN RE:
BOARD MEMBER COMMENTS**

Hearing no comments, Mrs. Ashley asked if staff had any comments. Mrs. Sprouse stated that the BZA will not meet next month because there are no applications pending. Mrs. Sprouse also thanked Mr. Swartzwelder for his presentation tonight.

**IN RE:
ADJOURN**

Hearing no further comments, Mrs. Ashley stated she would entertain a motion to adjourn the meeting. A motion was made by Mr. Bruce Taylor, seconded by Mr. Wyatt to adjourn the meeting.

Pamela Ashley, Chair