

**King and Queen County  
Board of Zoning Appeals  
Minutes  
February 17, 2009**

**MINUTES  
BOARD OF ZONING APPEALS  
FEBRUARY 17, 2009**

The Board of Zoning Appeals (BZA) of King and Queen County met in the King and Queen County Courts and Administration Building on February 17, 2009, at 7:00 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:

James Dabney – came in 15 minutes late  
Pam Ashley  
Robert Taylor  
Leland Wyatt

Donna Sprouse, Assistant Zoning Administrator

**IN RE:  
CALL TO ORDER**

Mrs. Sprouse called the meeting to order. Mrs. Sprouse determined that there was a quorum present with three members. (Pam Ashley, Robert Taylor and Leland Wyatt were present; James Dabney came in later in the meeting.)

**IN RE:  
INTRODUCTION OF NEW BZA MEMBERS AND COUNTY STAFF**

Mrs. Sprouse noted that since there are new members appointed to the board since the BZA meeting held in late 2007, she asked each member to give a quick introduction of themselves and what district they represent.

**IN RE:  
ELECTION OF 2009 OFFICERS**

Mrs. Sprouse stated that she will open the floor for a motion/nomination for this year's Chairman. A motion was made by Mr. Wyatt and seconded by Mrs. Ashley to nominate Mr. Taylor as Chairman of the BZA. After taking votes and receiving 2 votes for yes and Mr. Taylor abstaining, it was determined that the by-laws require a vote of 3 members for election of officers. Mrs. Sprouse asked the members once more for their vote.

*Voting For: Ashley, Taylor, Wyatt*  
*Voting Against: None*

Mrs. Sprouse then turned the meeting over to Mr. Taylor, Chairman of the BZA.

Mr. Taylor thanked the BZA members and then opened the floor for nominations for Vice-Chair. A motion was made by Mr. Taylor to nominate Mrs. Ashley for Vice-Chair, seconded by Mr. Wyatt.

*Voting For: Ashley, Taylor, Wyatt*  
*Voting Against: None*

**IN RE:  
APPROVAL OF AGENDA**

A motion was made by Mr. Wyatt and seconded by Mr. Taylor to approve the agenda as presented.

*Voting For: Ashley, Taylor, Wyatt*  
*Voting Against: None*

**IN RE:  
APPROVAL OF MINUTES**

A motion was made by Mr. Wyatt and seconded by Mr. Taylor to approve the November 20, 2007; minutes as written.

*Voting For: Ashley, Taylor, Wyatt*  
*Voting Against: None*  
*Note: Mr. Dabney arrives.*

**VARIANCE  
VAR09-01, KING & QUEEN COUNTY HISTORICAL SOCIETY**

**Applicant: Jack Spain on behalf of the King & Queen County Historical Society**

**Subject:** The Planning and Zoning Department received an application to the Board of Zoning Appeals (“BZA”) on January 23, 2009 from Jack Spain on behalf of the King & Queen County Historical Society, requesting a variance from Zoning Ordinance, Article 5, Table 5.1, “Table of Minimum Dimensional Regulations for Primary Zoning Districts.”

**Premises:** The subject property is located on State Route 681, Allen's Circle in the Stevensville Magisterial District. The property is identified as County Tax Map Parcel No. 1624-54R-36.

Mr. Taylor opened the public hearing.

Mrs. Sprouse provided the following background information: The King & Queen County Historical Society requests a variance from Zoning Ordinance, Article 5, Table 5.1, Table of Minimum Dimensional Regulations for Primary Zoning Districts to meet the front yard setback of 100' feet for primary structures in the General Business Zoning District. They are requesting the following: (1) a 70.5-foot variance to allow for a front yard setback of 29.5 feet. She then noted that a new site plan had been provided by Mr. Spain wishing to change the proposed front setback distance from 29.5 feet to 35 feet, in attempting to place the proposed new structure more in line with the old school house that was previously approved for a 36.95' front setback by the BZA a few years ago.

Mr. Taylor noted that at this time, he would entertain comments from the public pertaining to this particular case.

Jack Spain was present to answer any questions from the BZA. He also explained that the proposed structure will house the interior wall of the old Stevensville Post Office and will also house a carriage that was provided to the Historical Society that was used by several families within the Walkerton area many years ago. He also indicated that the structure is to be constructed by the Amish and plan to have it to look similar to the school house in exterior color and roof material and color. Mr. Spain had indicated that in the rear of the proposed carriage house, topography of the land slopes towards the wetland and that there is a 50' easement through the property for utilities that prohibits the structure to be placed where they had originally wanted to.

Mr. Taylor asked if anyone on the board had any questions for Mr. Spain.

Mr. Wyatt asked if the structure will be set back off the road along the lines of the old school house as shown on the latest plan submitted by Mr. Spain.

Mr. Spain stated yes that the school house is 36.95' from the road and he is proposing a 35' front setback for the proposed carriage house.

Mr. Wyatt asked if there is a well within the area where he is proposing to place the structure.

Mr. Spain stated no however, there are a few septic tanks located in the rear and a few septic fields, however does not cause an issue with this proposed site.

Mr. Taylor then asked the board members if there were any other questions or comments. Hearing none, Mr. Taylor closed the public hearing and stated that the board will now deliberate the request.

Mr. Taylor stated that since there is no further discussion, he would entertain a motion to approve or deny the request.

Mr. Dabney stated that he would make a motion that the board approves the request as stated within the newly submitted plan at 35 feet.

Mr. Taylor seconded the Mr. Dabney's motion.

*Voting For: Ashley, Taylor, Wyatt, Dabney*

*Voting Against: None*

**VARIANCE  
VAR09-02, ROBERT J. SEARS**

**Applicant: Robert J. Sears**

**Subject:** The Planning and Zoning Department received an application to the Board of Zoning Appeals ("BZA") on January 21, 2009 from Robert J. Sears, requesting a variance from Zoning Ordinance, Article 5, Table 5.1, "Table of Minimum Dimensional Regulations for Primary Zoning Districts."

**Premises:** The subject property is located on State Route 605, Chain Ferry Road in the Buena Vista Magisterial District. The property is identified as County Tax Map Parcel No. 1623-165X-817E.

Mr. Taylor opened the public hearing.

Mrs. Sprouse provided the following background information: Mr. Robert Sears requests a variance from Zoning Ordinance, Article 5, Table 5.1, Table of Minimum Dimensional Regulations for Primary Zoning Districts to meet the front yard setback of 100' feet for primary structures in the Agricultural Zoning District. He is requesting the following: (1) a 40-foot variance to allow for a front yard setback of 60 feet so he may locate a manufactured home on the said parcel.

Mr. Taylor noted that at this time, he would entertain comments from the public pertaining to this particular case.

Mr. Sears approached the board, thanked the board for meeting tonight, and stated that he needs this approval in order to place a manufactured home on this parcel and that the lot is not very deep and he is placing the structure at the deepest part of the lot possible. He noted that there was once a manufactured home there before and he wishes to utilize the existing septic and well located on the parcel. He also noted that many of the homes that current exist on the road are much closer than 60' from the front property line.

Mr. Taylor stated that the hardship is that fact that you don't have enough property to meet this front setback.

Mr. Wyatt asked if there was anywhere else on the parcel that the home may be placed. Mr. Sears stated that he cannot.

Mr. Dabney stated that based on the aerial that was provided within their packets, he notices that the existing homes are very close to the road. He stated that there was a mobile home there before and he is simply requests to place another mobile home back on the parcel and what Mr. Sears is requesting will be constant with what is already within the neighborhood.

Mr. Taylor asked if anyone had any questions for Mr. Sears, hearing none, he then asked the audience if there was anyone present that would like to speak for or against the request. Hearing none, Mr. Taylor closed the public hearing and stated that board will now deliberate the request.

Mr. Wyatt stated that he didn't have an issue with Mr. Sears request as long as the home is replaced within the same location as the removed home and is no closer to the front than the 60' that is requested.

Mr. Taylor stated that he agrees with the members of the board in that it is a true hardship for the simple fact that he cannot get the home on the property because there is just not enough room on the parcel. Mr. Taylor stated that if the board doesn't have any more comments, he would entertain a motion to either deny or approve Mr. Sears's request.

Mr. Dabney made a motion that the BZA approve the request as submitted. Mrs. Ashley seconded Mr. Dabney's motion.

*Voting For: Ashley, Taylor, Wyatt, Dabney*

*Voting Against: None*

**ADMINISTRATIVE APPEAL  
AA08-01, EDWARD & MARILYN VILLANUEVA**

**Applicant: Edward & Marilyn Villanueva**

**Agent: John R. Walk, Attorney with Hirschler, Fleischer, P.C.**

**Subject:** The Planning and Zoning Department received an application to the Board of Zoning Appeals ("BZA") on November 24, 2008 from John R. Walk with Hirschler, Fleisher, P.C. on behalf of Edward and Marilyn Villanueva requesting an administrative appeal of the interpretation of the response to a number of questions presented by Mr. Walk on behalf of the applicants Mr. & Mrs. Villanueva.

Mr. Taylor opened the public hearing and stated that he would now open the floor for those who would like to speak.

Mr. John Walk, agent and attorney for the applicants Mr. & Mrs. Villanueva, approached the podium. Mr. Walk presented a brief background of the case starting with August of 2007 when Bennett Mineral started mining on the Walker property next door. Mr. Walk stated that they filed a complaint with Zoning Administrator, Holly Lewis which started a number of correspondences back and forth between the county and the Villanueva's. He also stated that these correspondences have continued to the present among county attorney's and previous Zoning Administrators. Mr. Walk stated that the Walker property is uncontested that it is not properly zoned for mining and in order to be in compliance with the zoning ordinance, a rezoning would be required and an approved conditional use shall be granted. Mr. Walk stated that he had this interpretation from a previous Zoning Administrator from 2005, who was Veronica Sheppard, and included that within the package when he applied for the appeal with the County. He states that a similar issue had arisen in 2005, in that the Bennett's had a lease to mine on the Villanueva's property. Ms. Veronica Sheppard had determined that in order for mining to take place on the Villanueva's property, their property would need to be rezoned and a conditional use permit must be granted. He also stated that is no question that the Bennett's received DMME mining permit back in 1981 to mine in the area and in connection with researching that permit, it was found that they did not answer the question concerning the distance that the mining will be from the nearest residence. Mr. Walk stated that the Bennett's stated ¼ a mile when it is actually a couple hundred feet.

He stated that the specific issues before the Board of Zoning Appeals is the Zoning Administrators ruling that the mining on the Walker property is a nonconforming use under section 15.2 2307 of the Virginia Code and it is unquestioned that if you have an established use prior to a change in the zoning ordinance then you are permitted under state law to continue. However, under the state code it is required that the use be continued and if the use is ever discontinued for a period of 2 years then your rights to continue outside of the conformance of the zoning ordinance are terminated and at that point you must come into compliance with the zoning ordinance. The specific issue placed before the Zoning Administrator in this case was in this particular instance where you have mining long ago on the Walker property; however that use was completely terminated long ago and now have come in and recommenced mining subsequent to the adoption of the King & Queen Zoning Ordinance that now regulates mining. Back in 1981 there was no zoning, so there was no issue about compliance with the zoning ordinance but, because the mining was suspended for such a long period of time, they feel that any status as a nonconforming use was forfeited and they must come into compliance of the zoning ordinance.

Mr. Walk then handed out a copy of a newsletter to the board members pertaining to the reclamation of the mining site located on the Walker property. He then wanted to point out in the news article that "After all mining is completed; the pit will be allowed to fill with water creating an aesthetically pleasing lake. One such water impoundment has already been created on the Walker property located to the west of the current mining

area. It was released from the state mining permit in 1993.” Mr. Walk stated that according to the newsletter, the mining has been completed and the reclamation has been completed and this property was released from the state mining permit in 1993, therefore needing to meet today’s standards in order to continue mining on the said property.

Mr. Walk then mentioned that in 2005 when Veronica Sheppard prepared her interpretation of the code, he noted that her interpretation was not appealed within the 30 days allowed by state law. In that letter Mrs. Sheppard stated that a conditional use permit and rezoning of the parcel would be required in order to mine the Villanueva’s property.

Mr. Walk then stated that should the board have any questions, he would be happy to answer those questions and thanked them for their time.

Mr. Hayes then introduced himself as the attorney representing Bennett Mineral Company in this appeal. Mr. Hayes handed out to each board member and one for the record, a packet which contains exhibits pertaining to the appeal of the Administrator’s decision. Mr. Hayes then stated that he would like to move to strike the Villanueva’s case on the grounds that they had failed to prove that they were grieved by the decision of the administrator. The Virginia code and County code is very clear in saying that the person seeking to appeal the Zoning Administrator’s decision must show that they have been grieved by the decision. He then stated that in Mr. Walk’s own testimony, he stated that the Villanueva’s do not live on the property and he doesn’t feel that they even have the ability to bring the appeal. Mr. Hayes then gave the background information pertaining to the business of Bennett Mineral and dating back to 1981 when a lease was entered into with the property owner Carroll Lee Walker. He then directed the boards’ attention to the affidavit signed by Mr. Bennett and Mr. Walker. Mr. Hayes also noted that in exhibit D, the board will find a copy of a letter to Bennett Mineral Company indicating that the Bennett’s mining permit for the Walker property had been in existence and continuous since October of 1981. In exhibit 3, Mr. Hayes stated that in the affidavit signed by Mr. Rapp, a retired DMME employee, that Bennett Mineral actively renewed their mining permit each year and was in effect when he retired in 2001. He also stated that the Walker property is a large tract of line permitted under the mining permit in 1981 and that only a small area at a time may be mined, not the entire tract all at once. He noted that the Bennett’s have a vested right to mine the property.

Mr. Hayes then explained, as shown in exhibit 5, the letter that Mr. Walk had previously mentioned that was prepared by a previous Zoning Administrator, Veronica Sheppard; she specifically speaks of the Villanueva’s property requiring rezoning and a Conditional Use Permit. He also noted that as shown in the letter, Mrs. Sheppard including a tax map number and physical address of the Villanueva’s property within the letter and does not mention the Walker piece at all; therefore, there was nothing stated within the letter to appeal as Mr. Walk had suggested.

Mr. Villanueva then approached the board and stated that he felt that Bennett should have been held accountable in that when he completed the application for the mining permit in

1981, he stated that nearest dwelling to the mining area is  $\frac{1}{4}$  of a mile, when in reality it is within a few hundred feet. He noted that the Bennett's should be  $\frac{1}{4}$  of a mile from his residence as stated in the application for the mining permit. He also noted that the mining activities had left the Walker property, went to the Draine property and now back to the Walker property therefore mining had stopped on that parcel so they could mine the Draine parcel.

Mrs. Dori Chappell approached the board and stated that there are about 15 homes within 1 mile of the mining site and there are 35 on the road in which the mining is taking place. She noted that in the 1980's the Walker property was mined, then in the 1990's the Draine property was mined and now back to the Walker property thereafter in 2007. Mrs. Chappell presented a written letter for the record that highlighted the following concerns/affects of the mining...lowered property values, dust, air, and noise pollution, well replacement and groundwater issues, possible structural damages and safety concerns. She then read a letter on behalf of Mrs. Ann Duval that outlined issues consisting of dust, truck traffic, noise, lowered property values, and poor visibility on the road in which the trucks travel. Mrs. Duvall's letter was also submitted for the record.

Mr. Hayes objected to Mrs. Duvall's letter stating it was irrelevant.

Mr. Matthew Villanueva, son of Mr. & Mrs. Villanueva stated to the members of the board that he and his family live in the home of his parents and stated that there are shells and particles within the dust that may be dangerous for his children. He also noted that he doesn't believe the Walker parcel is sued to assist the Draine property as far as the pond is concerned. He asked why Bennett Mineral Company hadn't finished mining on the Walker property instead of going back and forth between properties.

Ms. Pegg Babyak stated her concerns with the mining as well, stating that she was not an attorney and noted that she wanted the board to see the personal face of this case.

Mr. Taylor then noted that the board will take a 5 minute break and will begin after a quick recess.

Mr. Taylor then called the meeting to order after the recess.

Mr. Walk then stated that he would like to respond to Mr. Hayes in what he had claimed. Mr. Walk noted that the mining of the Walker property is a non-conforming use and as stated in the county and state code, you cannot expand a nonconforming use. He noted that there is no continuous operation of mining on the site as stated in the newsletter because as stated there is no run off and no need for the sediment pond. Mr. Walk then wanted to bring attention to the bottom of the first page of the newsletter that the mining started in 1981 concluded in 1989 and was reclaimed in 1993. Mr. Walk stated that all he is asking is that Bennett Mineral Company comply with the Zoning Ordinance and obtain proper zoning and Conditional Use Permit so that the county may impose conditions so there is less impact on the property owners.



Mr. Taylor then closed the public hearing.

Mr. Taylor stated that it is the duty of the BZA to rule if the interpretation of the Zoning Administrator was correct when answering the questions submitted by Mr. Walk on behalf of the Villanueva's. He noted that he is aware that the county has the authority to regulate new mining operations, however in this case, is it continued use of the land with the Walker property. DMME permit issued in 1981 was renewed annually and asked if the annual renewal of the permit, continued renewal of the lease, installation and maintenance of the pond apart of the operation and continuity of operation. He also noted that the discussion pertaining to the ¼ miles distance to the nearest residence is an issue that is not before the county but is a DMME issue.

Mr. Wyatt stated that there were excellent comments and information provided however, the BZA cannot rule on all of the information given tonight. He noted that they are to determine if the Zoning Administrator's answers were correct.

Mr. Dabney stated that he understands where the property owners are coming from when they speak of the noise, shakes and trimmers, rattles of the windows, etc. because he has the same issue living in Newtown with the closeness of AP Hill. He asked if any of the concerns addressed tonight were ever expressed to the Bennett's and that just maybe they may be able to assist in some of their concerns. Mr. Dabney added that this is an operation that has been continuous for over 30 years and is not like it is new to the community. Mr. Dabney noted that he has to make his decision based on the facts provided and specifically the questions asked and response given by the Zoning Administrator.

Mrs. Ashley stated that she had no comments.

Mr. Taylor again stated that it is the duty of the BZA to determine if the Interim Zoning Administrator answered the questions correctly. There are two motions that the BZA could make, they could make a motion that the Zoning Administrator was correct or can find the decision was incorrect and must state why. Hearing no more comments, a motion was made by Mr. Wyatt to uphold the Zoning Administrator's decision in that the answers provided were correct, seconded by Mr. Dabney.

*Voting For: Ashley, Taylor, Wyatt, Dabney*

*Voting Against: None*

*Note: During the hearing the tape recorder failed to work so the minutes were taken from what was presented, notes taken at the meeting and memory of the meeting. After the vote was taken, the audience started to leave the courtroom and Mr. Taylor had to inform the public that they are welcome to leave but to do so quietly for the meeting has not been adjourned.*

**IN RE:  
BOARD MEMBER COMMENTS**

Mr. Wyatt stated that he would like to have meetings more regularly for it had been more than a year since their last meeting. Mr. Dabney then explained that there is only a BZA meeting when there is a case to be heard, he stated that there had not been any appeals, variances, etc. so there was no meeting.

Mr. Dabney stated that he was sorry for being late to the meeting.

Mr. Taylor stated that Tuesday nights are a bad night for him to meet and asked if the board would consider moving their meetings to either Monday, Wednesday or Thursday of the same week. He also asked if the fellow board members had an issue with starting their meetings at 6 p.m. instead of 7 p.m. Hearing no further comments, a motion was made by Mr. Taylor to move the BZA meetings to the 3<sup>rd</sup> Monday of every month at 6 p.m. and to amend the by-laws accordingly, seconded by Mrs. Ashely.

*Voting For: Ashley, Taylor, Wyatt, Dabney*

*Voting Against: None*

Mrs. Ashley had no comment.

**IN RE:  
ADJOURN**

Mr. Taylor stated he would entertain a motion to adjourn the meeting. A motion was made by Mr. Wyatt; the vote was ratified by all saying "Aye".

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Robert Taylor, Chairman