

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

**MINUTES
BOARD OF ZONING APPEALS
AUGUST 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 August 17, 2009, 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 BZA meeting was not called to order until 6:30 p.m. when a quorum was established.* The following Board members and staff were present:

James Dabney
Robert Taylor
Leland Wyatt

Donna Sprouse, Assistant Zoning Administrator

**IN RE:
CALL TO ORDER**

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

**IN RE:
APPROVAL OF AGENDA**

Approval of the agenda was ratified by all saying "Aye".

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

**IN RE:
APPROVAL OF MINUTES**

A motion was made by Mr. Wyatt and seconded by Mr. Dabney to approve the June 15, 2009 minutes as written.

Voting For: Dabney, Taylor, Wyatt

Voting Against: None

Abstain: None

VARIANCE
VAR09-04, Greg Pettit & Laura E. L. Perkins

Applicant: Greg Pettit

Subject: The Planning and Zoning Department received an application to the Board of Zoning Appeals (“BZA”) on July 15, 2009 from Greg Pettit, requesting a variance from Zoning Ordinance, Article 5, Table 5.1, Minimum Dimensional Regulations for Primary Zoning Districts.

Premises: The subject property is located off of State Route 690, Dudley Ferry Road, in the Buena Vista Magisterial District. The property is identified as County Tax Map Parcel No. 1623-165X-30. The property is zoned Residential Single-Family.

Mrs. Sprouse provided the following background information: Mr. Pettit requests a variance from Zoning Ordinance, Article 5, Table 5.1, Table of Minimum Dimensional Regulations for Primary Zoning Districts to meet the waterfront front yard setback for an accessory structure of 50 feet. Mr. Pettit is requesting the following: (1) a 35-foot variance to allow for a front yard setback of 15 feet.

She informed the board that Zoning Ordinance, Title II, Article 5, Table 5.1, Note 4, states the following: *“For front yard requirements for water front lots, the front yard setback for accessory buildings is fifty (50) feet from the road frontage. A front yard buffer may be required unless waived by the Zoning administrator as not necessary. The site drawing and accessory building architecture must be approved by the Zoning Administrator to ensure that the proposed accessory structure is compatible and consistent with other buildings in the area.”*

Mrs. Sprouse stated that during her research of the parcel, she found that the plat for this property dates back to June 16, 2003, therefore in order for the family subdivision to have been created and approved, the new lot was required to have a minimum of 150’ of road frontage. Such frontage requirement produced the need for the creation of the easement for ingress and egress and ultimately required in order to approve the family division request submitted in 2003.

Mrs. Sprouse also read aloud the following County Ordinance sections...

According to 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.”*

Per 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.”*

She also noted that according to the applicants application, the reason for the request is to minimize the number of trees to cut down, avoid moving a shed and avoid being close to power lines. Mrs. Sprouse also read from the application *“Since, the private easement serves as access to my interior lot, which is great than 125 feet from the public road (Dudley Ferry), there is no public purpose served by requiring a larger setback.”*

Mr. Taylor asked if there was anyone in the audience to speak either for or against the project.

Property Owner, Mr. Greg Pettit introduced himself and stated that Mrs. Sprouse had pretty much covered everything. He added that he has a copy of the letters that was sent to the adjoining property owners with their signature of approval.

Mr. Wyatt asked if they were family members. Mr. Pettit stated that 2 of the three neighbors are family members. He noted that he has an interior lot and that the easement is actually a grassy area and the closest distance to the state maintained road is greater than 125 feet.

Mr. Taylor asked how large is the proposed building. Mr. Pettit replied that the garage will be 32' x 80'. Mr. Taylor asked Mr. Pettit to please tell the board again why he wants the garage so far from the house and why he cannot maintain the 50' front setback. Mr. Pettit stated that there are trees there and because of the overhead power lines. He also stated that the septic system is in the area behind the house. Mr. Taylor noted that it is not provided on the site plan.

Mr. Wyatt asked if because of the fact that the lot in that area is closed in, is that the reason that he must build so close to the front property line. Mr. Pettit stated that that was correct. Mr. Dabney stated that was not correct, that there was more room in the front yard than the easement. Mr. Pettit stated that he misunderstood the question.

Mr. Taylor asked if he was using the easement for access. Mr. Pettit replied that he is using the easement for access on the left hand side of the lot.

Mr. Taylor opened the public hearing, having no one in the audience to speak for or against the project other than the applicant/owner earlier in the meeting; Mr. Taylor closed the public hearing.

Mr. Taylor stated that he would like to read a set of minutes from a few years back from the Planning Commission regular meetings and joint public hearings with the Board of Supervisors. He stated that during the December 6, 2004, regular monthly Planning Commission meeting there was discussion among the previous Planning Commission members to add a footnote to Table 5.1 to allow accessory structures on tidal waterfront lots to be 25' from the front property line. Then on January 3, 2005, the previous Assistant County Attorney, Andrea Erard had prepared a proposed zoning text amendment that stated within Table 5.1 accessory buildings for tidal waterfront lots shall have a 25' front setback from the road frontage and again addressed in Article 6, Section 3-114 (c). On February 14, 2005 the Planning Commission and Board of Supervisors held a joint public hearing and there were several citizens that spoke against the idea of allowing tidal waterfront lots to have a less restrictive front setback requirement. It was evident that most felt that all lots should be treated equal. A motion was made and seconded by the Board to deny the text amendment as written. On March 7, 2005, the Planning Commission voted to amend the request to allow for accessory structures on tidal waterfront parcels to be 50' from the front property line. On April 11, 2005 the Planning Commission and Board of Supervisors held a joint public hearing and it was proposed to allow a 50' front setback for accessory structures on tidal waterfront lots. There were a few citizens present to speak both for and against the proposed zoning text amendment. The Board approved the text amendment to allow for accessory structures to be 50' from the from the road frontage of a tidal waterfront lot.

Mr. Taylor also noted that this parcel was created as part of a family subdivision in 2003 and one of the items for a variance is that the properties exceptional size or shape existed when the ordinance was in effect in 1986. He also stated that the variance is not necessary because the physical conditions would not restrict the use of the property, but may require him to cut down a few trees. Mr. Taylor stated that this was not a taking of the property as well. Mr. Taylor stated that he feels that it is more a convenience for him then a necessity. Mr. Dabney stated that he agrees and feels that the applicant does not meet the criteria for approval of a variance. Mr. Dabney also stated that the BZA is to adhere to the Ordinance and must grant request according to the guidelines within that Ordinance.

Mr. Taylor stated that the BZA's role is to allow exceptions for those who have a hardship and have a lot or condition that they absolutely cannot do anything about and cannot do anything with the lot. Here with this lot, Mr. Taylor stated he has other options. Mr. Taylor stated that there is no evidence to show the location of the drainfield and septic tank.

Mr. Dabney stated that the applicant can add on to the existing building or could build around the existing building and cut the trees. Mr. Pettit stated that he could not locate the garage in the location as described by Mr. Dabney because of the location of the overhead power lines. Mr. Taylor stated that power lines can be moved.

Mr. Wyatt asked if the request because there is a power line running through the property. Mr. Wyatt stated that we are talking about an out building and not a residence and wanted to know if it could be built under the power line. Mrs. Sprouse stated that there are required easements/setbacks that structures must be from the power lines depending on the phase of the service.

Mr. Taylor asked if the applicant could change the size of the building and why does he need such a large garage. Mr. Pettit stated that he works for home and most of it is for storage.

Mr. Dabney stated that he would make a motion to deny the request because the applicant has not demonstrated a hardship, seconded by Mr. Wyatt.

Voting For: None

Voting Against: Dabney, Wyatt, Taylor

The request was denied by a unanimous vote.

**IN RE:
BOARD MEMBER COMMENTS**

Mr. Wyatt stated that it is hard to say no when someone wants to do something on their own property, however they have a set of rules to abide by.

**IN RE:
ADJOURN**

Mr. Taylor stated he would entertain a motion to adjourn the meeting. A motion was made by Mr. Dabney, seconded by Mr. Wyatt.

Voting For: Dabney, Wyatt, Taylor

Voting Against: None

Robert Taylor, Chairman