

**King and Queen County
Board of Zoning Appeals
Minutes
August 17, 2020**

**MINUTES
BOARD OF ZONING APPEALS
AUGUST 17, 2020**

The Board of Zoning Appeals (BZA) of King and Queen County met in the King and Queen County Courts and Administration Building, in the General District Courtroom on August 17, 2020, 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:

Ann Marie Voight
Robert Bland, IV
Bruce Taylor
Robert Coleman, Jr.

Donna Sprouse, Director of Community Development
Thomas J. Swartzwelder, County Attorney

**IN RE:
CALL TO ORDER**

In the absence of Chair, Pamela Ashley, Vice-Chair Bruce Taylor called the meeting to order. Mrs. Sprouse determined that there was a quorum present with four members. (Ann Marie Voight, Bruce Taylor, Robert Bland, IV and Robert Coleman, Jr. were present)

**IN RE:
APPROVAL OF AGENDA**

Mr. Taylor stated he would entertain a motion to approve the agenda. A motion was made by Mr. Bland to approve the agenda as presented, seconded by Mr. Coleman.

*Voting For: Voight, Bland, Taylor, Coleman
Voting Against: None
Abstain: None*

**IN RE:
2020 CHAIR & VICE CHAIR NOMINATIONS**

A motion was made by Mr. Coleman to nominate Mr. Taylor as Vice-Chair, seconded by Mr. Bland.

Voting For: Voight, Bland, Taylor, Coleman
Voting Against: None
Abstain: None

A motion was made by Mr. Coleman to nominate Mr. Bland as Chair, seconded by Mrs. Voight.

Voting For: Voight, Bland, Taylor, Coleman
Voting Against: None
Abstain: None

At this time, Mr. Bland led the meeting as the newly elected Chair.

**IN RE:
APPROVAL OF MINUTES**

A motion was made by Mr. Taylor to approve the minutes as written, seconded by Mr. Coleman. The September 18, 2017 minutes were approved.

Voting For: Coleman, Bland, Taylor
Voting Against: None
Abstain: Voight

**IN RE:
NEW BUSINESS**

Mr. Bland asked Mrs. Sprouse to please review the request.

Mr. Swartzwelder noted that before they start the public hearing, he had to ask a few questions for the record. Mr. Swartzwelder stated that he wanted to ensure that everyone stayed in compliance of 15.2-2308.1 so he asked the members of the BZA if they have any communications with the applicant or any representative of the applicant about the facts of law of this case outside of this meeting.

Mr. Bland stated “*not to my knowledge*”.

Mr. Taylor asked “*about the law?*” Mr. Swartzwelder said “*yes surrounding this case*”. Mr. Taylor replied “*no nothing about the law*”. Mr. Swartzwelder stated “*Mr. Coleman*”. Mr. Coleman replied, “*The only discussion that I have had with the applicant was in the parking lot after the meeting of the Planning Commission in which I sit on. I*

had a discussion with him about the events of the Planning Commission, which was prior to him filing a zoning appeal.”

Mr. Swartzwelder further noted, *“Same question as it relates to Mrs. Sprouse. Did any of you all have conversations with Mrs. Sprouse about the facts of the law, where she didn’t tell you that she couldn’t speak with you?”*

Mr. Bland replied, *“no she said that I had to talk to you (Mr. Swartzwelder, County Attorney)”*. Mr. Swartzwelder noted that it was fine to talk with him as County Attorney. Mr. Swartzwelder thanked the BZA and stated that he wanted to make sure that he had a clean record.

Mrs. Sprouse presented the following:

VARIANCE
VAR20-01, Tribble Properties, LLC – C/o David Tribble

Applicant: David Tribble

Owner: Tribble Properties, LLC

Agent: Jeffrey L. Howeth, P.E., L.S., C.F.M.

Public Hearing Notice provided in the Tidewater Review and Rappahannock Times (July 29th & August 5th). Adjoining land owner notification was provided by certified return receipt on July 24, 2020.

Subject: The Planning and Zoning Department received an application packet with site plan on March 26, 2020 from Mr. Jeffrey L. Howeth, on behalf of David Tribble of Tribble Properties, LLC, requesting a Chesapeake Bay Exception as found in the King & Queen Zoning Ordinance, Article 12, Section 3-277, Exceptions. Approval of the Chesapeake Bay Exception request was required in order for Mr. Tribble to preserve the after the fact pole barn in the 100’ RPA buffer that he built without zoning and building permits. During the July 6, 2020 Planning Commission public hearing, the Commission did not find the findings to grant the approval, therefore the request was denied by a tie vote (4-4). The property owner has applied for a Variance after the Planning Commission rendered a denied vote regarding the Chesapeake Bay Exception request.

Premises: The subject property is County Tax Map Parcel #1632-54L-301, a 223.75-acre parcel, located at 1834 Pea Ridge Road, in the Newtown Magisterial District. The property is zoned Agricultural (A).

Mr. Tribble is requesting a variance from the Chesapeake Bay Overlay District Zoning Ordinance, found in Article 12, Section 3-277, Exceptions for a 30’ x 36’ pole barn in which he constructed on his property without prior approvals or permit.

Mr. Tribble has also submitted a Minor Water Quality Impact Assessment that has been reviewed by King & Queen County Environmental Codes and Compliance Officer, David McIntire (Please see attached WQIA application & email for comments

from Mr. McIntire regarding the request). As indicated on the site plan prepared by Jeffrey L. Howeth, P.E., 350 sq. ft. of the 1,080 sq. ft. pole barn encroaches into the RPA buffer. The pole barn has an encroachment depth of 17 feet into the RPA (83 feet to the resource feature).

Pursuant to Zoning Ordinance, Title II, Article 12, Section 3-277, Exceptions states...

- A. *A request for an exception to the requirements of the Chesapeake Bay Preservation Area Overlay District shall be made in writing to the Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of this Article.*
- B. *The county shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.*
- C. *The Planning Commission shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Planning Commission finds:*
 - (1) *Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Chesapeake Bay Preservation Area Overlay District;*
 - (2) *The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;*
 - (3) *The exception request is the minimum necessary to afford relief;*
 - (4) *The exception request will be in harmony with the purpose and intent of the Chesapeake Bay Preservation Area Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality; and*
 - (5) *Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.*
- D. *Once the exception is granted, the exception will become null and void if a valid building permit has not been obtained within twelve (12) months of the approval date.*

- E. *If the Planning Commission cannot make the required findings or refuses to grant the exception, the Planning Commission shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant, with a copy to the Board of Zoning Appeals. The applicant may then apply to the Board of Zoning Appeals for a variance as provided in Article 20 of this Ordinance.*
- F. *The Board of Zoning Appeals shall consider the water quality impact assessment and the findings and rationale of the Zoning Administrator in determining harmony with the intended spirit and purpose of this Article.*
- G. *A request for an exception to the requirements of provisions of this Article other than Sections 3-267.B., 3-271 and 3-272 shall be made in writing to the Zoning Administrator. The Zoning Administrator may grant these exceptions provided that*
 - a. *Exceptions to the requirements are the minimum necessary to afford relief; and*
 - b. *Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved.*
- H. *Exceptions under Sections 3-270.B may be made provided that the findings noted in Sections 3-277.C. 1-5 are made.*

Pursuant to Zoning Ordinance, Title II, Article 20, Section 3-462B, Powers and Duties states...

B. Variances

The BZA may authorize, upon appeal in specific cases, variances from the terms of this Zoning Ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this Zoning Ordinance shall be observed and substantial justice done according to the following:

- (1) *Variance Defined¹: A variance is a reasonable deviation from the provisions of this Zoning Ordinance regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of this Zoning Ordinance would result in unnecessary or unreasonable hardship to the property owner; provided, however, that:*
 - (a) *such need for a variance would not be shared generally by other*

¹From the Code of Virginia, Section 15.2-2201.

properties;

- (b) *the variance is not contrary to the intended spirit and purpose of this Zoning Ordinance; and*
- (c) *the variance would result in substantial justice being done.*

A variance shall not include a change in the use of property, which shall be accomplished by rezoning the property.

(2) *Grounds for Variance: The BZA may grant a variance when the property owner can show that the property was acquired in good faith, and:*

- (a) *where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of this Zoning Ordinance;*
- (b) *where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of terms of this Zoning Ordinance would effectively prohibit or unreasonably restrict the use of the property; or*
- (c) *where the BZA is satisfied, upon the evidence heard by it that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant. Every variance shall be in harmony with the intended spirit and purpose of this Zoning Ordinance.*

(3) *No variance shall be authorized by the BZA unless it finds:*

- (a) *that the strict application of this Zoning 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; and*
- (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.*

(4) *No such variance shall be authorized except after public notice and public hearings as required by Section 15.2-2204 and 15.2-2205, Code of Virginia, 1950, as amended.*

(5) *No variance shall be authorized unless the BZA finds that the condition or*

situation of the property is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this Zoning Ordinance.

- (6) *In authorizing a variance, the BZA may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.*

Staff Summary: The King & Queen County Building and Zoning Department was notified by the Commissioner of the Revenue's Office that there was a structure built without permits on property, according to the Commissioner's records, owned by Tribble Properties, LLC. The King & Queen County Building and Zoning Department followed up with a notice of violation, advising the owner that an after the fact permit was required for the pole barn, as it was already built without approvals/permits.

Mr. Tribble submitted an after the fact building and zoning permit on February 24, 2020. A site visit was conducted the same evening by Environmental Codes Compliance Officer, David McIntire. Mr. McIntire observed (with Mr. Tribble on site) that the structure was constructed within the 100' RPA buffer. Photos were taken of the structure and the tape measurement of such for the file. A denial letter was issued to Mr. Tribble on February 25, 2020, noting that the structure was built within the 100' Resource Protection Area unlawfully. In the notice, the owner was advised that he must remove the structure from the 100' Resource Protection Area buffer.

Rather than removing the structure or a portion thereof out of the RPA buffer, the owner applied for a Chesapeake Bay Exception request to leave the structure in its current location and install the required plantings as noted in his submitted Water Quality Impact Assessment (WQIA).

I have attached a copy of the Planning Commission meeting minutes for review. You will see that the Commission was not able to find the required findings for approval of a Chesapeake Bay Exception.

The applicant now has applied for a variance as noted in Article 12, Section 3-277, Exceptions, which may occur when the Commission does not make the required findings or does not grant the request.

The required findings that the BZA should find if approval is granted per Article 20, Section 3-462B is as follows:

*The BZA may grant a variance when the property owner can show that the property was acquired in good faith, **and:***

- (a) *where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of this Zoning Ordinance;*
- (b) *where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of terms of this Zoning Ordinance would effectively prohibit or unreasonably restrict the use of the property; or*
- (c) *where the BZA is satisfied, upon the evidence heard by it that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant. Every variance shall be in harmony with the intended spirit and purpose of this Zoning Ordinance.*

No variance shall be authorized by the BZA unless it finds:

- (a) *that the strict application of this Zoning 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; and*
- (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.*

Staff reminded the BZA to be sure to site the above mentioned findings when making a motion to approve or deny the applicant's request.

Mr. Bland asked if Mrs. Sprouse was done. She replied, "yes".

Mr. Bland opened the public hearing and asked if the applicant wished to speak.

Mr. Jeff Howeth, Engineer for Mr. Tribble, introduced himself and property owner, Mr. David Tribble. Mr. Howeth noted that he was not going to be long with his points and that Mrs. Sprouse has done a fine job as usual but this particular case has a few interesting nuances' to it that was pointed out to the Planning Commission and that if the BZA could bear with him, he would go through them again. He noted that Mr. Tribble bought a piece of property a few years ago that has a pond on it and the pond is known by the locals as Richard's pond. He believed that that pond dates back at least 60 years. He noted that he took measurement of the structure that was built and measured to the closest point of the pond and found a portion of the building encroached within the 100 ft. buffer. The 100 ft. buffer wrapped around the water surface of that pond. We found that the structure was 83' feet to the pond or 17' within the RPA buffer. What makes the pond

situation more interesting is that pond looks like any other stormwater pond and they don't necessarily have 100 ft. buffers to them. What makes this one different is that this one has a perennial stream that runs through the middle at the bottom that feeds the pond. In that case it cases there to be a 100 ft. buffer. What was even more remarkable about the pond is that the pond actually is taking up 38 and a half pounds of pollutant a year. Now that is not required by anybody, it's just been done by having that pond and maintaining the pond. By contrast, the 17' encroachment or 350 sq. ft. is contributable to 0.09 pounds per year. Therefore, that pond is capable of doing 3800 percent more pollutant removal than what would be required for Mr. Tribble corner of his pole barn to be in the buffer. So instead of relying on the pond, he included a bioretention basin or rain garden to capture the rainwater from the roof and the water is treated in that little area before it is released. He added, as Mrs. Sprouse read earlier, there is a need to find that it is in keeping with the spirit of the zoning ordinance. Looking at the findings of the planning commission and she actually wishes that you find these findings when making your motion either way, that the exception would not confer any special privilege and most people wouldn't even show up here if they didn't want to do whatever the granting of that is. So if someone comes in to ask a question, there has to be some kind of a conversation to be had because if there is no way to deal with it, then there is no reason to be here. If it's self-inflicted or self-imposed, everyone can choose if it's not going to do whatever their request is, again no need to be here. As far as the minimum necessary to afford relief, and the harmony and purpose or intent of the Bay Act, and reasonable conditions set to prevent degradation to water quality, all 3 of these are tied to the pollutant removal features of the Bay Act. Mr. Howeth asked if anyone has any questions at this point.

Mrs. Voight asked if someone could tell her the difference between a BMP pond that doesn't have RPA and this pond that does have RPA.

Mr. Swartzwelder noted that he could not answer her question because he represents the County, as the BZA is a quasi-judicial branch but he would pose to you that it is irrelevant to the question that is posed to you because the standards you are to consider is for granting a variance, not that for a Chesapeake Bay Exception. Therefore, if it's conceded that there is RPA there, it really doesn't make a difference because again your standard is that for a variance not for a Chesapeake Bay Exception. The RPA buffer line is no different than a building setback when considering a variance.

Mr. Howeth said to add to Mr. Swartzwelder's thoughts, the interesting part is that if took that pond and we drained it. The 100' buffer would move back to where the perennial stream is. There is nothing here tonight that says any land owner that has a pond has to keep their pond. It was a man-made pond at some point in time when created.

Mrs. Sprouse noted that the RPA buffer is more than just the 100 ft. distance from the waters edges. RPA and its buffers are also determined by soil types and wetland vegetation.

Mr. Jeff Howeth, added that though true, if the water level is lowered, the soils would dry out and cause of wetlands plants to eventually die.

Mrs. Voight noted that well it may or may not, but we do not have to worry about the RPA anyway, correct.

Mrs. Sprouse noted that like Mr. Swartzwelder said, act as though the RPA buffer is a building setback. You must find in your findings that the requested encroachment meets those findings for a variance request.

Mrs. Voight noted that in her packet Mr. Tribble had noted during the Planning Commission meeting that he was not aware of the RPA and that he needed to get any permits. She wanted to say that this is not a new law. She remembers discussing it in 1988 when she moved to King & Queen and believes it went into law in 1989 or 1990. According to the paperwork, it appears that Mr. Tribble lives in an area that is covered by the Bay Act as well. Therefore, he must have heard of the Chesapeake Bay Act and should have consulted with the County even though he thought he did not need a building permit. Mrs. Voight noted that she has land similar to Mr. Tribble and she cannot do certain things with her land or as she may like even though she pays the mortgage, taxes and insurance, because of the Chesapeake Bay Act. Like it or not we have rules and if you don't like the rules you go the General Assembly and ask that the rules are changed. Unfortunately, there are laws and we have to abide by them.

Mrs. Voight noted that she read that the purpose of the building was to store a tractor, why do you need 3 bays if you have one tractor. Couldn't the owner remove one bay to remove the structure out of the buffer? What else is to be stored there, couldn't it be smaller?

Mr. David Tribble, property owner, noted that he really couldn't remove a section because of how the joists are up in the roof. Removing 17' would affect the joists and he would have to remove both bays.

Mrs. Voight added well all you need is one bay for one tractor correct? Mr. Tribble replied "basically".

Mrs. Voight noted that the whole tract of land is over 200 acres. Mr. Tribble confirmed that she was correct.

Mr. Jeff Howeth, Engineer for Mr. Tribble, stated that he agreed with Mrs. Voight that the Bay Act was adopted in 1989. He added that there as part of this request procedure can look at situations and determine if there is more merit to that situation then there is detriment.

Mrs. Voight noted that she was not sure what the pollutant removal had to do with the request. She noted that if the pole shed was not there, is the dam going to go away and pond going to be empty. That is apples and oranges here.

Mr. Howeth noted that the maintenance of the dam and pond requires money and someone to take care of it. Because there is no obligation that the landowner to keep the

pond or replace the pond should it be destroyed in a storm. However, having that pond there in place by choice for that long has helped water quality.

Mrs. Voight noted that regardless the owner had over 200 acres to place the structure elsewhere. Mr. Howeth agreed that it is a big tract of land and he should have gone to the County first, all of that is true as to what is there.

Mr. Coleman asked if the building is moved 17 feet further away from the pond. Where would the water run? Mr. Howeth replied that the water would run to the same location, to the perennial stream. The shed roof is tilted backwards and runs to the stream that that is why the bioretention basin is shown. Mr. Coleman noted that the way it is presented, the water that runs off the entire roof structure will be collected and treated rather than just the portion that is within the RPA buffer. Mr. Howeth added that it will be collected and treated as if the pond was not even there.

Mr. Taylor stated that not one drop of water from that roof will go into the pond. Mr. Howeth noted that the water from the roof will not make it to the pond.

Mr. Bland opened public comment period and asked if there was anyone in the audience that would like to speak.

Mrs. Allison Stoneham, adjacent landowner to Mr. Tribble's property noted that she had no objection to the pole barn being there because it does not affect her property if the building was moved or not.

Hearing no further public comments, Mr. Bland closed the public comment period.

Mr. Bland closed the public hearing and asked the Board if they had any questions for the applicant or staff.

Mr. Bland asked Mr. Tribble did he have to remove any trees to build the pole barn. Mr. Tribble replied that he did not. Mr. Bland asked if the pole barn was moved back 17 feet would he have to remove any trees. Mr. Tribble answered that he would have to remove trees.

Mrs. Sprouse noted that before the BZA makes a motion to approve or deny the request to please be sure they find the required findings and also note in their motion that they considered the Water Quality Impact Assessment as part of their decision.

A motion was made by Mr. Taylor to approved VAR20-01, Tribble Properties, LLC:
“Based on the findings that the piece of property which I know very well is adjacent to my farm and I have walked over the entire property all my life hunting. I have actually maintained the dam for Mr. Gwathmey for years cutting trees off the back side. Knowing the piece of property when you drive into it, it’s all rolling off from the road going down to the gullies until you get back to where the dam is and the dam is probably in the center where the creek runs through 35 to 40 feet deep, I’m guessing. But the only flat spot to build something on in the area without disturbing land is the place he put the pole barn.”

So, there is no land disturbance. Based on the topographical conditions leading to that one flat spot, I feel that the variance is within the finding.”

Mr. Bland asked Mrs. Sprouse did she need him to read everything on that sheet. Mrs. Sprouse noted that the findings must be made.

Mr. Taylor began to read the findings from the motion sheet.

Mr. Swartzwelder advised the Board of Zoning Appeals that they actually have to make the finding and not just read the required findings. Reading the findings from the paper is not making the findings. So beyond that and given that this case could be appealed, you guys need to make the findings. For the record you need to state what your findings are.

Mr. Taylor noted that he thought he had done that. Mr. Swartzwelder noted that one of the findings is an either or and that he had read them both.

Mr. Taylor noted that he is no lawyer and he is just trying to use some common sense in the situation.

Mr. Swartzwelder noted that he understands that but the BZA also has to understand that this is a strictly legal proceeding and the BZA members are sitting as a judicial body and given the fact that there is a high likelihood that we may end up in Circuit Court, it would be in your best interest to make the findings whichever you want to make the findings so they are preserved in the record. So if there is an or, he needs to make one or the other.

Mr. Taylor revised his motion as follows: *“The finding is that the exceptional topographical conditions of this piece of property require the variance to alleviate from a demonstrateable hardship approaching confiscation and distinguishable from a privilege, special privilege or convenience sought by the applicant. That the strict application of the zoning ordinance would produce undue hardship. That such hardship is not shared generally by other properties in the same zoning district in the same vicinity and that the authorization of such variance will not be substantially detriment to adjacent properties and the character of the district will not change by granting the variance. The variance is in harmony with the intended spirit and purpose of the zoning ordinance including the Chesapeake Bay Act. The water from that roof will not impact that pond in any way whatsoever. Water does not run up hill.”*

The motion was seconded by Mr. Coleman. Mrs. Voight noted that she cannot support the motion because she cannot make the findings.

Voting For: Coleman, Bland, Taylor

Voting Against: Voight

Abstain: None

**IN RE:
BOARD MEMBER COMMENTS**

None

**IN RE:
STAFF COMMENTS**

None

**IN RE:
ADJOURN**

Hearing no further comments, a motion was made by Mr. Taylor, seconded by Mr. Coleman to adjourn the meeting. The motion was ratified by all present members stating "Aye".

Robert Bland, IV, Chair