

**King and Queen County
Board of Zoning Appeals
Minutes
November 18, 2024**

**MINUTES
BOARD OF ZONING APPEALS
November 18, 2024**

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 November 18, 2024, at 6:10 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:

Robert “Robbie” Coleman, Jr.
Robert T. Bland, IV
Bruce Taylor
Ann Marie Voight
Kimberly Sadler

Donna Sprouse, Director of Community Development
Vivan Seay, County Attorney

**IN RE:
CALL TO ORDER**

Chairman, Mr. Bland called the meeting to order. Mr. Bland asked Mrs. Sprouse to take roll call and determine if there is a quorum. Mrs. Sprouse determined that there was a quorum with all five members present.

**IN RE:
APPROVAL OF AGENDA**

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

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

**IN RE:
2024-2025 CHAIR & VICE CHAIR NOMINATIONS**

Mr. Bland asked Mrs. Sprouse to take nominations for BZA Chair and Vice Chair for the remainder of 2024 calendar year & the upcoming 2025 calendar year.

Mrs. Sprouse asked if there were any nominations for Chair for 2024 & 2025 calendar year. Mrs. Sadler nominated Mr. Bland as Chair. Hearing no further nominations, Mrs. Sprouse asked if there was a second. Mr. Taylor seconded Mrs. Sadler's nomination to appoint Mr. Bland as Chair for 2024 & 2025.

Voting For: Bland, Taylor, Coleman, Voight, Sadler

Voting Against: None

Abstain: None

Mrs. Sprouse asked if there were any nominations for Vice-Chair for 2024 & 2025 calendar year. Mr. Bland nominated Mr. Taylor as Vice-Chair. Hearing no further nominations, Mrs. Sprouse asked if there was a second. Mr. Coleman seconded Mr. Bland's nomination to appoint Mr. Taylor as Vice-Chair for 2024 & 2025.

Voting For: Bland, Taylor, Coleman, Voight, Sadler

Voting Against: None

Abstain: None

IN RE:

APPROVAL OF MINUTES

A motion was made by Mr. Taylor to approve the minutes as written, seconded by Mr. Coleman. The August 21, 2023 minutes were approved.

Voting For: Coleman, Bland, Taylor

Voting Against: None

Abstain: Voight & Sadler

IN RE:

NEW BUSINESS

Mr. Bland opened the public hearing for VAR24-01 and asked Mrs. Sprouse to please review the request.

Mrs. Sprouse noted that before they proceed with the public hearing, she wanted to ensure that everyone stayed in compliance of 15.2-2308.1 so she asked each member of the BZA if they have had any communications with the applicant, property owner, agent, or staff about the facts of this case outside of this meeting.

Mr. Coleman stated, "*no communications*".

Mr. Taylor stated, "*no communications*".

Mr. Bland stated, "*no communications*".

Mrs. Voight stated, "*no communications*".

Mrs. Sadler stated, "*no communications*".

Mrs. Sprouse, as non-legal staff, also stated that she had no communications with any of the BZA members nor the applicant/property owner regarding the details of the application.

Mrs. Sprouse thanked the BZA and then presented the following:

VARIANCE

VAR24-01

M & H Investments, LLC, C/o Liliana Gomez – *Applicant/Property Owner*
Nelson Aguilar – *Agent*

Public Hearing Notice provided in the Tidewater Review and Rappahannock Times (October 30th & November 6th). Adjoining land owner notification was provided by certified return receipt and mailed October 25, 2024.

BACKGROUND

The Planning and Zoning Department received an application for consideration by the Board of Zoning Appeals (“BZA”) on October 22, 2024, from Nelson Aguilar on behalf of M & H Investment LLC, C/o Liliana Gomez, requesting a variance from Zoning Ordinance, Article 5, Table 5.1, Minimum Dimensional Regulations for Primary Zoning Districts. The applicant wishes to obtain approval for an after the fact deck structure that has already been built without permits/approval.

GENERAL INFORMATION

LOCATION

The subject property is located at 185 Pond Point Ave., Walkerton, VA 23177, in the Newtown Magisterial District. The property is identified as County Tax Map Parcel No. 32-52X-61C30

PROPOSAL

The property owner requests a variance from Zoning Ordinance, Article 5, Table 5.1, Minimum Dimensional Regulations for Primary Zoning Districts. The request is to receive approval for a 199.29 sq. ft. deck structure, which was constructed without prior approval/permit further within the front building setback/yard than the original home. The owner is seeking approval to allow for a 70.11’ front yard setback for this deck structure. The home, before the deck was constructed, is 83.76’ from the front property line, according to the submitted site sketch.

ZONING ORDINANCE

Pursuant to Zoning Ordinance, Title II, Article 5, Table 5.1 the required front yard setback for primary structures in the agricultural zoning district is 100 feet for a primary structure.

TABLE 5.1 TABLE OF MINIMUM DIMENSIONAL REGULATIONS FOR PRIMARY ZONING DISTRICTS				
(1)	(2)	(3)	(4)	(5)
MINIMUM SETBACKS AND BUILDING BULK REQUIREMENTS				
ZONING DISTRICT	MINIMUM SETBACKS ¹ (in feet)			MAXIMUM HEIGHT OF BUILDINGS
	FROM FRONT PROPERTY LINE	FROM SIDE PROPERTY LINES	FROM REAR PROPERTY LINE	
A Agricultural	100 feet, except that only 20 feet is required for school bus shelters,	40 feet	25 feet	None
R-R Residential Rural	75 feet	25 feet	25 feet	35 feet
R-S Residential Single-family	75 feet	25 feet	25 feet	35 feet
R-G Residential General	75 feet	25 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet. See Article 6, Section 3-111(B).		35 feet
LB Limited Business	75 feet	15 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet.		35 feet
GB1 General Business 1	75 feet	15 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet.		35 feet
GB2 General Business 2	100 feet	15 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet.		60 feet
LI Light Industrial	100 feet	50 feet, except for lots, which abut property in non-industrial districts, then 100 feet.		No more than the distance from the base or foundation of the building or structure to the nearest lot line.
I Industrial	100 feet	50 feet, except for lots, which abut property in non-industrial districts, then 100 feet.		No more than the distance from the base or foundation of the building or structure to the nearest lot line.
Notes: ¹ For any lot located within the Chesapeake Bay RPA, the setback requirements shall be determined by the Chesapeake Bay Regulations, Article 12. ² For front yard requirements for waterfront 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. ³ For Government Offices/Fire/Rescue/Police Stations, setbacks may be reduced for the expansion of or new construction of any fire & rescue building, provided that the proposed building or addition is no less than 50’ from the front property line and 15’ from the side and rear property lines. Otherwise, a variance must be approved by the BZA.				

ZONING

The property is zoned Agricultural (A). This parcel is located in a subdivision known as "The Old Mill Tracts". According to the subdivision plat of record, the subdivision was plated in 1973. When the plat was put to record, the subdivision established a minimum front property line building setback line. For this particular lot (lot 30), the front setback was 100'. The property, even before the construction of the deck, is considered a pre-existing non-conforming lot in acreage, frontage and its house placement/setbacks. The parcel size is 54,575 sq. ft., approximately an acre and a quarter. The road frontage (width) for this parcel is 179.88'.

BOARD OF ZONING APPEALS SUMMARY/COUNTY CODE REFERENCE

Sec. 3-462. - Powers and duties.

Pursuant to Code of Virginia, § 15.2-2309, 1950, as amended, the board of zoning appeals shall have the following powers and duties...

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 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 Code of Virginia, §§ 15.2-2204 and 15.2-2205, 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 RECOMMENDATION

According to Article 17, Nonconforming Uses, in the King & Queen County zoning ordinance, Section 3-385 states, “A *nonconforming building may be enlarged, extended or structurally altered, provided that such enlargement, extension or alteration does not increase the degree or extent of nonconformity in any respect.*”

This deck structure, along with other alternations to the home, were all made without proper permits and/or approvals. Had the applicant/owner applied for a permit prior to construction, they would have been informed that the proposed deck would not have met required minimum setbacks and approval would not have been granted. Instead, the applicant/owner conducted work without permits, creating a self-created hardship, which has now led to this request for approval or forgiveness. The property has an existing single-family dwelling on the property. According to the Commissioner of the Revenue’s real estate records, the single-family home was constructed in 1974. This issue came to light when the property listing was placed on Zillow.com and Realtor.com, as a multi-family dwelling for sale. The images posted on those sites identified several new decks/landings and step structures, including other work that had been done to the home, all without permits. A notice of violation was prepared by both the Building Official and Director of Community Development, identifying the violations and the owner was directed to come into compliance. The agent has been forthcoming through the process and has submitted an application and drawings detailing the work that has been done on the property, exclusive of this deck structure. A permit has been issued by the Building Official for the alterations done within the home, however this deck was a structure in which the Director of Community Development could not consider for approval, which has led to this variance request.

Staff does not recommend approval of the variance request, as this is clearly a self-created hardship and in no way does it render the property as unusable.

Mrs. Sprouse noted that the applicant/property owner is present tonight to speak to the request.

Mr. Bland opened the public hearing and asked the County Attorney, Vivian Seay if she had any comments.

Ms. Seay noted that she was present tonight on behalf of the County and that she has no comments so far.

Mr. Bland asked if the applicant/property owner wished to speak.

Mr. Nelson Aguilar, agent for H&M Investments, who resides at 13405 Dahlgren Road, King George, VA approached the Board and stated that he did not obtain permits for the work that was completed but did not know that he needed permits

for the work completed. He noted that the lot is a non-conforming lot and is small in size. He was hoping that they were able to save the deck structure as there was cost or investment already in the deck structure. He asks that the BZA consider allowing him to keep the deck structure.

Mr. Jose, property owner who resides at 40 Walker Way, Stafford, VA approached the podium and apologized for not obtaining permits prior to completing the work on the home. He stated that he was not aware of permits being required. He was the contractor that had completed the work. He noted that he hired Nelson to help with pulling the permits and correcting the violations.

Mr. Nelson Aguilar stated that they have hired an engineering company that could complete the inspections of the deck footers if the request were to be approved.

Mr. Colman asked Mr. Aguilar if the structure was a single-family structure or a duplex structure. Mr. Aguilar stated that it is a single-family structure.

Mr. Bland opened the public comment period. Hearing none, Mr. Bland closed the public comment period.

Mr. Bland closed the public hearing.

Mr. Bland asked the Board if they had any questions or comments for staff or the applicant/property owner.

Mr. Coleman asked Mrs. Sprouse what did BRL on the subdivision plat mean. Mrs. Sprouse noted that it represents the building restriction line at the time the subdivision was created. Mr. Coleman asked if there was a deck there before this one was created. Mrs. Sprouse noted that she had provided a copy of the 2022 reassessment photo of the home before any renovations or additions were completed. According to those photographs, there was no deck structure there.

Mrs. Voight asked about the stairs along the rear of the property. Mrs. Sprouse explained that all other stairs and decks were existing or replaced existing stairs. This particular deck in question is new and did not replace another deck structure.

Mr. Taylor asked about the design of the home, with two doors, two sets of steps and two deck structures. He asked if it was a single-family dwelling. Mr. Aguilar stated that it is a single-family structure. Mr. Aguilar stated that there were never any intentions of converting the home into two dwelling units.

Mr. Aguilar added that the only reason they constructed the deck was because the existing home had a sliding glass door that was blocked by 2' x 4' lumber. He noted that it wasn't until they further researched the property and discovered that the home already encroached within the front setback.

Mr. Bland asked when the construction was done on the home. Mr. Aguilar replied that the work had been done in 2024. Mr. Bland asked when did he obtain permits

for the work. Mr. Aguilar stated in October. Mr. Taylor stated it was obtained after the work was already completed.

Mr. Taylor asked Mrs. Sprouse if the deck was built to code. Mrs. Sprouse responded that she could not confirm that as inspections were not yet completed on the structure by the Building Official because they have not yet obtained permits from the deck structure, not until we know the outcome of this variance request.

Mr. Taylor asked Mr. Aguilar how was the deck secured to the home. Mr. Aguilar stated that the ledger is connected to the home with galvanized bolts 18" on center. Mr. Taylor noted that it can be disassembled. Mr. Aguilar confirmed Mr. Taylor's comment.

Mr. Bland asked if anyone had any additional questions.

Hearing none, Mr. Bland asked for a motion from the Board. He reminded the Board that should they wish to approve the request, they must make all of the findings. Otherwise, if they wish to deny the request, they must identify at least one of those findings that has not been met.

Mr. Taylor stated that based on the requirements that the BZA is bound to find, the very first one states that any hardship was not created by the applicant or owner for the variance. Further, this variance request is for the applicant creating the problem.

Mrs. Voight added that she finds that the variance shall not be authorized because such hardship is generally shared by other properties in the same zoning district.

Mr. Bland asked if it was Mrs. Voight's motion to deny the request because the hardship is shared by other properties in the same zoning district. Mrs. Voight replied "yes".

Mrs. Voight's motion was seconded by Mrs. Sadler.

Voting For: Taylor, Voight, Sadler, Bland, Coleman

Voting Against: None

Abstain: None

The variance request was denied by a 5 to 0 vote.

IN RE:

BOARD MEMBER COMMENTS

Mr. Bland welcomed Mrs. Sadler to the Board of Zoning Appeals.

IN RE:

STAFF COMMENTS

None

IN RE:
ADJOURN

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

Robert T. Bland, IV, Chair