

RICHMOND COUNTY BOARD OF ZONING APPEALS MEETING MINUTES

January 27, 2015

The Richmond County Board of Zoning Appeals (BZA) held its meeting on Tuesday, January 27, 2015 in the Public Meeting Room, County Administrative Building, Warsaw, VA.

The following members were present:

Harry F. Smith, Jr., Chairman
Bristow Balderson, Vice Chairman
S. Louis Thompson
R. Carter Wellford, III

The following member was absent:

Elizabeth Burruss

Also present: R. Morgan Quicke, County Administrator
Joseph Quesenberry, Planning and Zoning Administrator
Mercedes Pierce, Secretary
A. Davis Bugg, Jr. (Dave), Rhoads' Attorney, Rumsey & Bugg
Virginia Hahn
Andrew McRoberts, County Attorney, Sands Anderson
Mr. and Mrs. Rhoads
Kevin Steinke
Richard E. Thomas, Sr., Vice Chairman, Board of Supervisors

Welcome

R. Morgan Quicke called the meeting to order at 7:00 p.m.

2015 Nomination and Election of Officers

S. Louis Thompson made a motion to keep the same officers as last year, with Harry F. Smith, Jr. serving as Chairman and Bristow Balderson serving as Vice Chairman. The motion carried with a 4-0 vote (*Bristow Balderson – yay; Harry F. Smith, Jr. – yay; S. Louis Thompson – yay; R. Carter Wellford, III – yay*).

S. Louis Thompson made a motion to appoint Mercedes Pierce as Secretary of the Board of Zoning Appeals for another year. Harry F. Smith, Jr. seconded this motion. The motion carried with a 4-0 vote (*Bristow Balderson – yay; Harry F. Smith, Jr. – yay; S. Louis Thompson – yay; R. Carter Wellford, III – yay*).

Review of Minutes from the February 25, 2014 Meeting

Bristow Balderson made a motion to accept the minutes from the February 25, 2014 meeting as written; they were approved unanimously.

Public Hearing to consider the following:

Christopher Meade Rhoads, Jr., Janie L. Rhoads, Edmond Rhoads and Crystal Rhoads, owners of Real Property in Richmond County, located at 1250 Little Florida Road, Farnham, Virginia 22460, also known as tax map 42A-17, currently zoned R-1, have filed an appeal of the decision of the Zoning Administrator of the County regarding the ruling on the height in which an accessory structure was built, based off of Section 2-3-6 of the Richmond County Zoning Ordinance. 2-3-6 of the Richmond County Zoning Ordinance states that an accessory structure may not exceed the height of a primary structure.

R. Morgan Quicke read the notice of Public Hearing and provided a brief summary of the letter, dated January 13, 2015, he provided to all BZA members in their meeting packets. Mr. Quicke stated he worked with Mr. Meade Rhoads in the fall of 2013 on replacing several existing sheds with one main accessory structure at his property in Little Florida. The Rhoads' were required to have a Water Quality Impact Assessment (WQIA) done since the property is within the 100' Resource Protection Area (RPA). Mr. Rhoads applied for his building and zoning permits and they were approved. Mr. Quicke stated he approved a zoning permit that did describe a structure that was to be two-stories in height, but while working with Mr. Rhoads during the entire process, he never heard any indications that the structure would be two-stories; he had assumed it would be a single-story structure. Mr. Quicke stated he had worked so extensively with Mr. Rhoads on the project, that when the zoning permit came across his desk to be approved, he simply signed it without really going through the merits of it. Mr. Quicke informed everyone that about two through three months later, he was notified by an adjacent property owner that the shed was two-stories in height. Sometime during the spring/summer, Mr. Quicke notified Mr. Rhoads of the issue at hand and in September, Mr. Quicke issued a notice of zoning violation to the Rhoads family regarding the height of the structure. In October 2014, the Rhoads family appealed the decision of the Zoning Administrator regarding the zoning violation and this is the reason behind tonight's public hearing.

R. Carter Wellford, III asked Mr. Quicke to provide the BZA with a timeline of when construction began, when he became aware of the structure being two-stories, when the violation notice was sent out and when the neighbors objected.

Mr. Quicke stated the building permit was issued around November 2013, but is not sure when the actual structure was constructed. Mr. Quicke went on to share that he became aware of the height of the structure around April/May 2014 and the structure was standing at that time. Mr. Quicke notified the Rhoads family of the issue and worked with them throughout the spring and summer, but an official notice of zoning violation was not issued until September 2014.

Mr. Wellford asked Mr. Quicke what caused the delay between him first becoming aware of the height of the building and his issuance of the violation. Mr. Quicke stated the County was working to determine the facts of the oversight and he does many other jobs for the County, besides zoning.

Mr. Quicke confirmed Mr. Bugg's letter was received within the thirty-day period of appeal and the letter was dated October 13, 2014.

Mr. Dave Bugg, Rhoads' Attorney, introduced himself to everyone and distributed a packet to all BZA members and asked the packet be made part of the record.

Mr. Bugg stated Mr. McRoberts handed him his brief as he arrived tonight and he would ordinarily answer the brief, but was not able to since he just received and read over it briefly.

Mr. Bugg stated Mr. McRoberts cited several cases that were decided by the Virginia Supreme Court before Virginia Code § 15.2-2311(C) was enacted. Mr. Bugg described the Segaloff case that Mr. McRoberts cited in his brief. Mr. Bugg stated Virginia Code § 15.2-2311(C) as follows:

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

Mr. Bugg pointed out the packet he provided to all BZA members and began going over each page. Page 1 showed that the initial fees for the permits were submitted on November 14, 2013. Page 2 showed that Mr. Rhoads signed off on the application for the zoning permit the next day. The zoning permit was approved on November 18, 2013. Mr. Bugg pointed out the project description listed on the zoning application, which stated, "Construct 32'x14' 2-story all unfinished detached garage on property." The plans for the garage followed. Page 4 showed the WQIA, which Mr. Bugg believes clearly shows a two-story structure. Mr. Bugg went over the last pages of the packet, which encompassed the electrical, building and plumbing permits, an email to Meade Rhoads from Mr. Quicke informing him of the height discrepancy, a spreadsheet showing the costs associated with the construction of the garage and the official notice of zoning violation.

Mr. Bugg summarized Mr. McRoberts' brief by stating that Virginia Code § 15.2-

2311(C) does not apply in this case. Mr. Bugg feels that if the statute does not apply in this case, legislation wasted its time because it would be difficult to imagine a case where it would apply. Mr. Bugg stated a decision was made by an officer who is charged with the administration of the Zoning Ordinance, he approves a plan, the homeowner on reliance of the plan spends \$27,000 and after all that has taken place, the County says the owner is not in compliance. Mr. Bugg stated the statute stands for the proposition that under these circumstances, the owners have a vested right.

Mr. Bugg addressed the Goyonaga case that was cited in Mr. McRoberts' brief. He stated this case is the closest to the current matter at hand. Mr. Bugg pointed out that Mr. McRoberts was right when stating that all the cases that have come up after the statute was enacted have gone in favor of the Board and against the homeowner and this is true in the Goyonaga case as well. Mr. Bugg stated the applicant in this case said he would demolish all but two walls of a building, but ended up demolishing it in its entirety and constructing an entirely new structure. The locality went to the applicants and informed them they were not in compliance and the structure would need to be knocked down. Mr. Bugg stated the case went to the Virginia Supreme Court and the Virginia Supreme Court asked if the locality was on notice that the applicant was going to build a new structure then looked at the plans and saw that the plans showed two walls remaining. Mr. Bugg stated in this case, the locality was not on notice that the walls were not going to remain standing, so the applicant lost the case.

Mr. Bugg believes in the current situation, Richmond County was on notice that the Rhoads were doing exactly what they planned on doing. Mr. Bugg stated it is simply not fair for the County to come in after the fact and inform the landowner that the structure has to be taken down; he believes this is what the statute is for.

Chairman Harry Smith asked Mr. Bugg to show him on the WQIA exactly where it shows the structure to be two-stories. Mr. Bugg stated he misread the document. Chairman Smith stated Mr. Bugg was capable of misreading documents as well.

Mr. Meade Rhoads introduced himself and his wife, Janie, and stated he worked with Mr. Richard English for a majority of the process and submitted all three plans to Mr. English. Mr. Rhoads stated residents in Little Florida have issues with flooding, so he was trying to construct a garage where the finished floor was higher than the house so they would have a place to store belongings when the flood comes. Mr. Rhoads stated they went through a number of revisions to the plan in hopes of abiding by code and meeting setbacks, etc.

Carter Wellford stated the garage looks like more than the replacement of a couple of sheds and has bath and laundry space. Mr. Rhoads stated one of the original sheds had an outside bath and laundry facility.

Mr. Wellford stated the total square footage of the new garage is more than the original sheds. Mr. Rhoads pointed out the site plan and stated several sheds were demolished, so that the impervious area remained the same.

Mr. Wellford asked Mr. Rhoads if he has any intentions for the structure other than storage. Mr. Rhoads replied stating the structure is just a shed to be used for storage.

S. Louis Thompson asked Mr. Rhoads if he built a two-story structure because a one-story structure would not provide adequate space. Mr. Rhoads confirmed and stated that a majority of the first floor is garage space. He also stated if a flood were to occur, he would take the insurance money and build a taller house. Mr. Thompson asked Mr. Rhoads if he could tear his current home down to build a taller primary structure. Mr. Rhoads stated this would be easier to do if he were using insurance money.

Bristow Balderson, Mr. Quicke and Chairman Smith discussed the allowed height of the home, which is 2 ½ stories and not to exceed 35'.

Mr. Balderson pointed out that the Rhoads' neighbor's home is taller than the Rhoads' two-story structure. Mr. Rhoads explained his neighbor's home was rebuilt after the hurricane and provided the height of his structure, which is 21.10'. Chairman Smith stated that according to the Zoning Ordinance, the secondary structure cannot be taller than the main house.

Mr. Andrew McRoberts introduced himself and informed everyone he was present to speak for the Zoning Ordinance. Mr. McRoberts stated in his career of working with localities, he has found that local government officials are not perfect and tend to make mistakes. Mr. McRoberts explained how the Virginia Supreme Court has considered the issue where you weigh the value of the Zoning Ordinance against an individual who has acted in violation of the ordinance because of an error by local government officials and time and time again, the ordinance prevails. Mr. McRoberts feels the Virginia Supreme Court always sides with the ordinance because ordinances are adopted by the elected body representing the people.

Mr. McRoberts questioned if the Rhoads matter was the type of site specific error that Virginia Code § 15.2-2311(C) is intended to address. Mr. McRoberts stated Mr. Bugg believes this is exactly the matter it is intended address, but the County strongly disagrees and believes there is no case that can be cited by Mr. Bugg that says that a plain error somehow vests rights.

Mr. McRoberts stated that Virginia Code § 15.2-2311(C) will vest rights in order to prevent a zoning administrator from changing interpretation of a zoning ordinance and believes this is not the case in this matter. He believes Mr. Quicke was not aware there was a two-story structure being built nor did he discuss the detail with the landowners. Mr. McRoberts stated Mr. Quicke erroneously and without authority from the Board of Supervisors approved the permit. He stated that in these cases, the permit is void and it cannot vest any rights.

Mr. McRoberts apologized for getting his memo/brief to everyone just before the meeting. He stated he cited about half a dozen cases where the Virginia Supreme Court

has said that where a zoning administrator approves a building permit in plain violation of zoning, the approval is void.

Mr. McRoberts discussed what Virginia Code § 15.2-2311(C) is intended to do, which he believes is where a zoning administrator has exercised their power within their authority to make an order or determination (to interpret the zoning ordinance) and then thereafter the zoning administrator changes their mind and the landowner is not aware of the change. Mr. McRoberts believes that in this case with the Rhoads, the landowners knew.

Mr. McRoberts explained that one of his arguments in his memo is that the landowner must rely in good faith and the County submits that the zoning ordinance is so clear that a person can open it up and see what the height requirement is. He does not believe a person can rely in good faith on a simple mistake made by the zoning administrator.

Mr. McRoberts provided an example and explained why the County feels this is not an “order, requirement decision or determination” within the statutory meaning and does not feel Virginia Code § 15.2-2311(C) applies to this matter with the Rhoads. He also explained why the County does not believe this to be a waiver.

Mr. McRoberts explained there is an exception to the 60-day estoppel provision in Virginia Code § 15.2-2311(C) that he believes applies, which he explained to be for clerical errors. Mr. McRoberts believes the approval by the zoning administrator was an error and the underlying question is whether or not the error was “clerical.” Mr. McRoberts provided two descriptions of “clerical errors” held by the Virginia Supreme Court and believes in this case, Mr. Quicke acted without authority when he signed the permit; and therefore, the action should be void.

Mr. McRoberts closed by stating the County believes Virginia Code § 15.2-2311(C) does not apply and if it did, there is an exception. He suggested the Zoning Ordinance prevail.

Mr. Bugg was given permission to respond and he stated that since the statute was enacted, there have not been any cases exactly like this case and that the Virginia Supreme Court was in favor of the locality for other reasons. Mr. Bugg believes a determination and order occur when a zoning administrator receives a zoning application and signs off on a zoning permit. Mr. Bugg explained that Mr. Quicke is not a clerk and that he is given authority to decide whether an application complies with a zoning ordinance.

Chairman Smith opened the Public Hearing.

Ms. Virginia Hahn explained she is 50% owner of the house located next door to the Rhoads family. Ms. Hahn shared a photo that shows her home and the location of her septic and run-off. Ms. Hahn stated at no time were they informed of what was being built. Ms. Hahn stated her daughter and she asked Mr. Quicke to take a look at the structure and he did not. She shared her concerns of the Rhoads family possibly violating the Chesapeake Bay Act by adding soil to their property and raising the ground level. Ms. Hahn requested fairness be exhibited to her family and the other owners of properties

located in Little Florida.

Mr. Kevin Steinke asked if anyone looked into whether or not the Rhoads have violated the Chesapeake Bay Act. Mr. Quicke stated he is not aware of any violations and the WQIA serves the purpose of making sure everything is in regulation with the Chesapeake Bay Act. Mr. Steinke stated he has an understanding that the elevation of the property cannot be raised higher than the neighboring property.

Mr. Steinke believes the Rhoads' structure will be more than a garage, with it eventually becoming living space. Mr. Steinke stated the structure's roofline is almost on top of his family's home's roofline and feels the water from the Rhoads' gutter will run-off onto their roof.

Mr. Steinke shared his concern of the Rhoads' structure being located right next to their septic. He believes when the area does flood, there will not be a good outlet for the water to travel and it will backup onto his property.

Mr. Steinke stated if he were zoning administrator, he would operate differently; he would read over the plans and make sure he understood everything before signing his name.

Chairman Smith closed the Public Hearing.

Mr. Wellford asked if there was a remedy other than stating the zoning ordinance must prevail. Chairman Smith stated if the house went up to the height of the structure, then the current issue would be eliminated. Chairman Smith stated he knows of property owners in Lewisetta who were able to apply for funding to assist with the costs associated with raising their homes.

Mr. Steinke questioned whether or not the garage complies with code. Chairman Smith stated that is not the reason the BZA is meeting tonight; they are meeting to approve or deny the appeal.

S. Louis Thompson made a motion to deny the request for appeal. R. Carter Wellford, III seconded the motion. The motion carried with a 3-0 vote and one abstention (*Bristow Balderson – abstain; Harry F. Smith, Jr. – yay; S. Louis Thompson – yay; R. Carter Wellford, III – yay*).

General Business

There being no further business, the meeting was adjourned at 8:03 pm.

Respectfully submitted,

Mercedes Pierce

Board of Zoning Appeals Secretary