

# **RICHMOND COUNTY BOARD OF ZONING APPEALS MEETING MINUTES**

**February 25, 2014**

The Richmond County Board of Zoning Appeals (BZA) held its meeting on Tuesday, February 25, 2014 in the Public Meeting Room, County Administrative Building, Warsaw, VA.

The following members were present:

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

Also present: R. Morgan Quicke, County Administrator  
Mercedes Pierce, Secretary, Development Services Admin. Asst.  
Terrell Bowers  
Dave Cordes  
Jeff Howeth  
Bob Hohman  
George Mayhugh  
Jack Pettigrew  
Barbara Satterwhite  
Vicki Satterwhite  
Johnny Whelan  
Keith Whelan

## **Welcome**

Bristow Balderson, Vice Chairman, called the meeting to order at 7:00 p.m. and welcomed members and guests.

Elizabeth Burruss nominated Harry Smith, Jr. for Chairman. S. Louis Thompson seconded this motion and the motion carried.

## **Public Hearing to consider the following:**

**Whelan's Properties, LLC, 3993 Hales Point Road, Farnham, VA 22460, seeks a variance from the provisions of Section 2-6-4 of the Richmond County Zoning Ordinance, which requires a 100 foot buffer establishment between properties zoned Business (B-1) and Residential (R-1). The property is located at 3993 Hales Point Road and is further identified as parcels 69; 70; 70C; 70H&70I on Tax Map 43. This Variance is being considered after the fact.**

R. Morgan Quicke provided background information on this matter. The campground expansion plan was approved administratively in 2011 as a continued use of an existing use. Mr. Quicke pointed out on an aerial a parcel that is zoned R-1 and explained that the property owned by the Whelan's is zoned B-1. Mr. Quicke further explained that the Richmond County Zoning Ordinance reads that when there is a difference between B-1 and R-1 properties, there shall be a 100 foot buffer screened adequately between the two. Mr. Quicke informed everyone that to no one's fault there was a misjudgment back when the plans were initially approved and it was assumed that the B-1 property expanded further down. He also shared that in 2011, the Association of Hales Point brought the issue to the County and again this past August. Mr. Quicke then began working with the Whelan's and Jack Pettigrew to attempt to come to a resolution. The plan was approved by the County, so Mr. Quicke thought it best that the County bring the application to the BZA, rather than it being an application of the Whelan's.

Mr. Quicke pointed out an agreement that all parties have seen and informed everyone that Lot 12 is the main lot in question and is two feet away from the right-of-way. The details of the agreement were explained and are listed below:

1. Relocate existing camper and accessory house located in Lot 12 by approximately 20'-30' inward, towards to interior gravel road.
2. Plant a dense screen that will stretch from the wooded area to the back of Lot 12, around the turn and down to the pine tree at the corner of the dirt road that leads to the Davis property. The screen trees shall be at least 4' in height at the time of planting. All screening shall be adequately maintained by the Whelan's.
3. Construct a privacy fence beginning at the already established fence along the Davis property and continue it down towards the dirt road. This will allow for the continued use of parking boat trailers in this space. Fence will be a minimum of 8' high and made of a high quality material, either a salt treated wood or an attractive composite or vinyl.

It was determined that a variance would need to be granted for Lots 10, 11, and 12, but no changes would need to be made to Lots 10 and 11, only Lot 12.

S. Louis Thompson questioned if the trailer on Lot 12 would be shifted over. Mr. Quicke stated that the trailer would be shifted in closer to the interior road.

Bristow Balderson questioned if anyone had objections to the moving of the trailer. Mr. Quicke informed Mr. Balderson that no one at this time had any objections.

R. Carter Wellford asked Mr. Quicke who within the County Administration approved the original plan. Mr. Quicke replied that it was probably approved by the Director of Planning and Zoning at that time, Robin Markham. Mr. Wellford further asked if the Whelan's were aware of the setback requirements then. Mr. Quicke stated that he is sure they were aware.

Keith Whelan stated that at the time, the Whelan's were aware of an approved plan, but was not aware of anything on the plan that was against any County ordinances.

Mr. Wellford stated that it was unfortunate that the Whelan's were not made aware of the setbacks when the use changed.

Mr. Wellford and Mr. Quicke discussed the 100' buffer on the Davis line.

Mr. Wellford and Jeff Howeth discussed whether or not the fence was the property line. Mr. Howeth felt the fence was inside the property line approximately five feet.

Chairman Harry Smith, Jr. opened the meeting for public comment.

Keith Whelan stated that the Whelan's are willing to agree to put the situation "to rest" and get along with everyone. The Whelan's are in agreement to comply with the actions needing to be performed to satisfy the agreement.

Johnny Whelan stated that the Whelan's have done everything they could to try to settle the problems in the neighborhood and the Whelan's want to do everything in their power to try to make it work.

Dave Cordes stated that he is one of four full-time residents in this area and he nor the other full-time residents have any opposition to the variance being granted. Mr. Cordes shared that the residents and he believe the Whelan's property has been managed well and they have been good neighbors over the years.

Jeff Howeth stated that he was the engineer of record for the site plan and there was a purpose for the 100' buffer/setback not being shown on the original plan. Mr. Howeth explained that Robin Markham and he had a long discussion and the thought at that time was to eliminate the buffer.

Jack Pettigrew stated that he is representing one of six of the adjacent property owners and informed everyone that Dave Cordes and the three other property owners he referenced are not adjacent. Mr. Pettigrew stated that all six of the adjacent property owners are opposed to the variance being granted. Mr. Pettigrew believes the engineering firm the Whelan's hired to construct the plan incorrectly assumed the parcel of land was zoned business when it was actually residential and Robin Markham failed to catch the mistake and incorrectly approved the plan. Mr. Pettigrew informed everyone that the discrepancy was brought to the Whelan's and Ms. Markham's attention a month after the plan was approved. Mr. Pettigrew explained that for the past three years, the community has tried to reach a compromise with the Whelan's to at least move the trailer/camper out of the road easement and install adequate buffering between different land uses. He also shared a statement from the County's Attorney, which stated, "The expansion violates the Zoning Ordinance." Mr. Pettigrew also believes that in addition, structures have been built in the expansion area without building permits and inspections and are being occupied without certificates of occupancy and feels this is a violation of not just local

ordinances, but state and possible federal regulations. Mr. Pettigrew quoted the State code's definition of a variance based off the County's website, which stated, "Under Virginia Code Section 15.2-2201 a 'Variance' is defined as a reasonable deviation from certain zoning requirements such as the size of a parcel of land or the location of a structure; and, that the granting of a variance will alleviate a clearly demonstrated hardship (as distinguished from a special privilege or convenience)." Mr. Pettigrew asked what the hardship was in this instance with the Whelan's.

Mr. Wellford and Mr. Pettigrew discussed the Hundley property and its zoning. Mr. Pettigrew pointed out on the map specific areas of the Hundley property that is zoned B-1 and other pieces zoned R-1.

Mr. Pettigrew commended the Whelan's on controlling the noise on their property and stated that his main concerns are the safety issues and the appearance. He shared a picture of a deck on a trailer taken on this same day as this meeting and explained that the Zoning Ordinance calls for pickets between the rails to be no greater than 4" and feels the pickets in the picture are not acceptable and the County could be held liable for any negligence resulting.

Terrell Bowers stated that the County Attorney stated there is a problem, but feels the problem lies within the County approving the plan and feels the County cannot just go back and change their decision; therefore, he feels the County should honor the legal commitment. Mr. Bowers feels that the County is fortunate to have Whelan's Marina and the Whelan family have been good citizens and good businesspeople and strong supporters of Richmond County for nearly forty years. Mr. Bowers stated that he thinks Richmond County should abide by its agreement and feels the Board of Zoning Appeals should strongly consider and approve the variance.

George Mayhugh stated that he owns the property that is adjacent to the old Lawrence property. His property does not touch the property of issue tonight, but is real close to it. His wife and he support the variance.

Vicki Satterwhite showed pictures of the view from her window. Ms. Satterwhite stated that the Whelan's have been good citizens and good neighbors and they have never had an issue until the expansion of the campground because now the view from her property has changed and she believes her property value has changed as well. Ms. Satterwhite shared her concerns with the variance being granted. She wonders if there will be any maintenance of the items on the agreement and informed everyone of a fence that was built with the initial expansion that has not been maintained. She also questions if the new fence will meet the other fence already on the property to prevent people from driving on residences' properties. Ms. Satterwhite also shared that her family was not notified of the expansion of the campground.

Chairman Harry Smith, Jr. closed the Public Hearing.

Johnny Whelan asked to speak once more and his request was granted. Mr. Whelan wanted to address Mr. Pettigrew's comments. Mr. Whelan stated that they planted twenty-one (21) Leyland Cypress trees and have tried their best to settle the issue. Mr. Whelan informed everyone that they have been there since 1976 and have never had an insurance claim and have had good relationships with their neighbors. He stated his family is willing to comply with the agreement and do whatever needs to be done to settle the issues.

Mr. Wellford shared that the County Attorney has specifically stated that he thinks the County has a problem.

Bristow Balderson stated that there have been times when the County approved projects that were not exactly right and were not discovered until after the fact, but the County always accepted it being passed. In regards to the deck information from Mr. Pettigrew, Mr. Balderson stated that regulation comes under Land Use enforcement, not zoning.

Mr. Quicke went over the agreement once more and stated that if approved, the County would be granting an after the fact variance for Lots 10, 11, and 12 with three conditions (listed on the agreement). The Whelan's will have to provide a completion date for each item on the agreement and it would be enforced by the BZA.

Keith Whelan stated that they will replace the fence already on the property.

Mr. Quicke shared the completion dates for the items on the agreement and they are as follows: #1 to be completed by May 30, 2014; #2 by November 15, 2014; #3 by August 1, 2014.

Mr. Keith Whelan stated they will be removing the existing fence, replacing it and adding the new fence to make sure it all meets and matches.

S. Louis Thompson asked if the dates were acceptable and Chairman Smith asked Mr. Pettigrew if he is okay with the agreement. Mr. Pettigrew stated he is okay with the agreement and the additional fence, which will make a continuous buffer.

Mr. Pettigrew stated again he is representing six other people and he does believe the others will agree to what was said.

Mr. Wellford stated he would like to see all six adjacent property owners sign the agreement so that there is no doubt and thinks the County needs an opinion from the County Attorney to determine if Robin Markham had the authority to make the approval. He also questioned if the County is putting itself in jeopardy regarding building permits, inspections, etc. Mr. Wellford stated he feels this can definitely be resolved.

Mr. Balderson, Mr. Quicke and Mr. Pettigrew discussed whether or not all six adjacent property owners received notification of tonight's meeting. It was concluded that all

adjacent property owners received certified letters in the mail informing them of the Public Hearing.

Mr. Quicke stated that not all projects go before the Planning Commission and the Board of Supervisors and many projects can be approved administratively. He also shared that if the BZA were to approve the variance, it could be approved that all affected property owners have to sign off on the agreement.

Elizabeth Burruss stated that the BZA gathered this evening to decide if they can grant the after the fact variance and if they want to add the agreement to go along with it. From what Ms. Burruss understands, the property has been owned in good faith and the property has been maintained and the only reason the issue is before the BZA now is because the neighbors did not like the approved expansion. Ms. Burruss reminded everyone that the expansion was already approved, so they are not looking at that tonight. The BZA is concerned with the after the fact variance for those three lots.

Chairman Smith stated that he does not think the BZA needs all six signatures on the agreement, but does think the agreement should be included as part of the variance.

Bristow Balderson made a motion to accept the variance with the conditions stated. Elizabeth Burruss seconded the motion. The motion passed with a 4-1 vote (Chairman Harry Smith, Jr., Bristow Balderson, Elizabeth Burruss and S. Louis Thompson were in favor; R. Carter Wellford, III opposed).

**Review of Minutes from the September 25, 2012 Meeting**

Elizabeth Burruss made a motion to accept the minutes from the September 25, 2012 meeting as written. S. Louis Thompson seconded the motion and they approved unanimously.

**General Business**

There being no further business, the meeting was adjourned at 8:22 pm.

Respectfully submitted,

Mercedes Pierce  
Board of Zoning Appeals Secretary