

ESSEX COUNTY BOARD OF ZONING APPEALS
MEETING OF APRIL 27, 2023, AT 7:00 P.M.
109 CROSS STREET
TAPPAHANNOCK, VIRGINIA 22560
MINUTES

Present:

Steven Laffoon –Chairman
Stephen Walters
Edward Haile
Gamaliel Rose
Ned Stephenson

Also Present:

Kelly McKnight – Planning and Zoning Office Manager

Absent

Call to Order

Chairman Laffoon called the April 27, 2023, meeting of the Essex County Board of Zoning Appeals to order.

Roll Call

Ms. McKnight called the roll. A quorum was met.

Approval of Minutes

Chairman Laffoon asked if there were questions on the minutes from the January 26, 2023, Board of Zoning Appeals. The motion was made and seconded. AYES: 5 NAYES: 0 ABSENT: 0

Public Comments

None.

Public Hearings

V2300002 – Mark Chinn

Mr. Hodges stated they have an application for 145 Cold Cheer Dr to allow for a 4' right interior-side setback variance. The purpose of this variance is to replace an existing 36' x 12' deck with a 36' x 15' sunporch. The sun porch will increase the existing footprint by approximately 108 sf. The variance is for a 4' interior-side variance to the 25' interior-side setback requirement for the primary structure. The staff recommendation is to approve of the variance request.

Mr. Chinn stated that just so you know the Cold Cheer Subdivision when it was originally established the road leading it was Cold Cheer Drive. He does not live on Cold Cheer Drive, He lives on Cold Cheer Point Drive which is adjacent to this large subdivision and contains 6 or 7 homes, one of which is his. If the police have to come and are told Cold Cheer Drive, they never find Cold Cheer Point Drive. He and his wife built this home in 1999-2000 and they had a deck constructed on the back. What they found out in the past 20 years is that in the summer months you don't use the deck because of the heat. We decided that we would like to construct a screen porch and extend the width by three feet because it will make the whole area more livable. He was told he would need a variance because of the proximity to the property line between he and his neighbor.

Mr. Rose asked if there was any problem with the neighbor registering a complaint? Mrs. McKnight stated she sent out letters to the adjacent property owner and did not get anything back.

Mr. Rose also asked if the deck would have originally been about a foot over the original setback and this is an extension of that but when you enclose an open deck it feels smaller. So, the experience of the surface of the deck that would be enclosed would be comparable. Without any objection from the neighbors, I think it is a reasonable request.

Mr. Walters stated he would just like the documentation to have the correct address.

Mr. Haile stated that this requires a 25' setback, that's the new ordinance. If he had come here a year ago it would have been 15'. He feels in these subdivision lots when they are laid out generally, they have the setbacks built into these lots. He doesn't think any of them have a 25' setback. He has no problem approving this at all.

Mr. Chinn has a plat that was drawn, as you face my house the left side one corner is 35' from the property line and the other is 30.5' from it. He is not sure why they didn't make them the same.

Mr. Chinn stated that the width up front is 125'. And the property slopes downward slightly.

Mr. Haile asked if the screen is being put up, so they don't get eaten up by mosquitos.

Mr. Chinn stated they use the deck in the fall and spring but do not get eaten up by bugs in the summer. What's unbearable is sitting out there and the sun setting, and it is so hot.

The motion was made to accept the variance and seconded. AYES: 5 NAYES: 0 ABSENT: 0

Mr. Chinn asked if he would be receiving a letter from the county stating that this has been approved?

Mr. Hodges stated that in 10 days he will receive the zoning permit that has been signed.

New Business

The only new business is the pamphlet that was handed out for the VCU schooling for BZA. Mr. Hodges will need to know who would like to attend.

Mr. Haile asked if this was optional or a requirement to be on the board.

Mr. Walters said it is in the bylaws.

Chairman Laffoon said you go for a weekend then you work at home and go back for a final.

Mr. Walters stated that in the bylaws it is recommended to have training within 2 years of appointment.

Mr. Hodges stated he copied that information from the VCU website yesterday. He thought all the training was on weekends but will go back and verify.

Mr. Walters stated that he has been appointed to the planning commission. It is in the bylaws that if you are on the BZA you cannot be on another board except one member can be on the Planning Commission. He has talked with David Jones who is the Chairman of the Planning Commission, and he is looking for him to help foster communication to get inputs from what the BZA is doing verses what the planning commission is doing. The planning commission is more strategic, in control of the comprehensive plan and from that flows down to the actual ordinance that we enforce or grant variances. A lot of the questions we have about why things are the way they are come out of that comprehensive plan. He thought he could take some time when they meet to get them up to speed on what the planning commission is doing. In particular there is something coming up on Tuesday, they meet the first Tuesday of every month. They talked a while back about LaGrange and auto recycling. On Tuesday, they will be hearing about Lot 11 in LaGrange that they want to rezone it from an I-1 to an I-2. After that they will probably come to the BZA for a variance. They are also looking at the comprehensive plan.

Mr. Rose asked the question whether when someone applies for a variance and the setback is changed is that some form of taking? If a property is bought and predicated the purchase and the value of the purchase on some sort of elbow room and then that is subsequently reduced by official action, by authority changing the zoning. If that action results in a reduction in the ability to enjoy the property in the future that would seem to be uncompensated. How is it possible to change the zoning in something that adversely affects the value of the property? It's just something he would like to learn more about.

Mr. Haile stated how could he deny someone the ability to do something now that he could have done a year ago anyway.

Chairman Laffoon stated we are here to look at and made a decision that is both agreeable to the County and the individual.

Mr. Rose stated that by virtue of some of these incremental decisions at the local and sometimes at the national level. This is a taking for which you are not compensated for it.

Mr. Walters stated he thinks how that is handled is typically, if he would have not done anything he would have still had his house, even though the setback changed, he would be in violation of the new ordinance. However, there is the Grandfathering, where we are not going to take it away from anyone. You built it the right way at the time, and you can continue to live in that envelope as long as you wish to but if you want to expand to a larger envelope you have to get the variance.

Mr. Hodges stated that in the case of Mr. Chinn the old ordinance was a 25' setback which did not change in the new ordinance. Because he was rebuilding, and we had no record of a previous variance he had to apply for the variance.

Mr. Haile stated that this was not a case where a smaller setback allowed him to do what he wanted under an earlier ordinance and now he can't because he waited too long.

Mr. Hodges stated that was accurate.

Mr. Haile stated that the other factor in these major subdivisions and how they are laid out is they put in building restriction lines.

Mr. Hodges asked if they wanted all of this in the minutes.

Chairman Laffoon stated we did not need it in the minutes.

Mr. Hodges stated he is happy to continue the discussion but would like them to end the meeting since someone has to transcribe all of this.

Chairman Laffoon asked if there was a motion to end the meeting.

Mr. Haile stated, "let's all go home."

Mr. Hodges stated that in the new zoning ordinance in the A1 and A2 they did change the location of an accessory buildings. In the old ordinance an accessory building could be 5' from a side setback. Now it has to meet the same setback as the primary structure. In the old ordinance in A1 or A2 and accessory building had to be at the side or the rear of the primary structure, now it just has to meet the same setback.

Chairman Laffoon asked since we keep talking about the old ordinance was that ordinance in effect in '99?

Mr. Hodges stated he believes the original ordinance was in effect in '81 or '82.

Mr. Stephenson said he thinks it happens all the time when zoning ordinances are changed, and it results in a large S for lots of people. All of a sudden lots of people's property value is worth more. Now the lines moved so everyone can do more. So, it goes both ways.

Mr. Walters asked if a motion needed to be made to strike the hypothetical discussion from the minutes.

Mr. Rose stated that it was in reference to the Chinn case, but he understands it is a little far field if we need to strike it from the record.

Mr. Walters stated that they are also supposed to approve the bylaws.

Mr. Rose stated he thought they already had.

Mr. Hodges apologized stating he thought they were done.

Old Business

Continuation of review of Bylaws

Mr. Rose asked, 'So we have not approved them?'

Mr. Walters stated that last time we had the discussion about whether or not we wanted to add something to it.

Mr. Rose stated of course and then we decided there was nothing to add so we probably still need to approve them.

Mr. Rose made a motion to approve the bylaws. Mr. Haile seconded. AYES: 5 NAYES: 0 ABSENT: 0

2023 BYLAWS OF THE ESSEX COUNTY BOARD OF ZONING APPEALS

ARTICLE 1 – OBJECTIVES

1. The official title of this body shall be the “Essex County Board of Zoning Appeals” (hereinafter “Board”)

ARTICLE 2 – MEMBERS

1. This Board shall consist of five (5) members, hereinafter referred to as appointed/regular members who shall be residents of the County, and may be increased as provided by law.
2. The regular members are appointed for terms of five (5) years by the Essex County Circuit Court. Any vacancy in membership shall be filled by appointment by the Essex County Circuit Court and shall be for an unexpired term only. Any appointed member may be removed by the Essex County Circuit Court for inefficiency, neglect of duty, or malfeasance of office.
3. The Board of Supervisors may provide for the payment of expenses incurred by any regular members in the performance of his or her official duties or for required educational or training activities.
4. Any new member of the Board is encouraged to take the necessary courses within two (2) years of their appointment to the Board to become a certified Board of Zoning Appeals’ member.
5. The term of a regular Board member shall expire on December 30, at which time his/her successor’s term shall begin. However, until such time a new regular member is appointed and sworn the existing member continues to serve.
6. Pursuant to 15.2.-2308-A, of the Code of Virginia, 1950 as amended, at the request of the governing body the Court may appoint up to three (3) alternate members to the Board.
 - a. If a regular member knows that he/she will not be present or must abstain he/she shall notify the secretary at least 24 hours before the scheduled meeting.
 - b. The secretary shall contact an alternate member to serve in the place of the absent or abstaining member.

7. Regular members may be removed for malfeasance in office. Notwithstanding the foregoing provisions, a member of a Board of Zoning appeals may be removed from office by the Essex County Circuit Court upon the request of the local governing body without limitation in the event that the regular board member is absent from any three (3) consecutive meeting of the board, or is absent from a four (4) meetings of the board within any 12-month period. In either such event, a successor shall be appointed by the Essex County Circuit Court for the unexpired portion of the term of the regular member who has been removed.
8. Pursuant to 15.2.-2308-A, of the Code of Virginia, 1950 as amended, regular members of the Board shall hold no other office in the locality other than one (1) member may be a member of the local planning commission.

ARTICLE 3 – OFFICERS AND THEIR SELECTIONS

1. The officers of the Board shall consist of a Chairman, a Vice-Chairman, and a Secretary-Treasurer (hereinafter "Secretary"). The Secretary is the only non-elected officer and shall be appointed by the Board.
2. Nominations of officers shall be made from the floor at the organizational meeting in January or at the first regular meeting of the year. Election of officers shall follow immediately.
3. A candidate receiving a majority vote of the membership present shall be declared elected. He/she shall take office immediately by regular election procedures.
4. Vacancies in office shall be filled immediately by regular election procedures.

ARTICLE 4 – DUTIES OF OFFICERS

1. The Chairman shall be a citizen member of the Board and shall:
 - a. Preside at all meetings.
 - b. Appoint committees, special and/or standing.
 - c. Rule on all procedural questions (subject to a reversal by a two-thirds (2/3) majority vote by the member present and voting).

- d. Be informed immediately of any official communication and report same at the next regular meeting.
 - e. If staff requests a postponement or cancellation of a board meeting due to pending inclement weather conditions or in such case as when a quorum cannot be established and if the Chairman approves staff's request, staff shall contact each regular member of the board by phone or electronic communications, post signs on the entry door of board meeting room and notify the media.
 - f. Carry out other duties as assigned by the Board.
2. The Vice-Chairman shall be a citizen member of the Board and shall:
- a. Act in the absence or inability of the Chairman to act.
 - b. Have the power to function in the same capacity as the Chairman in cases of the Chairman's inability to act.
3. The Secretary shall:
- a. Keep a written record of all business transacted by the Board.
 - b. Notify all members of all meetings.
 - c. Keep a file of all official records and reports of the Board.
 - d. Certify all maps, records, and reports of the Board.
 - e. Give notice of all hearing and public meetings.
 - f. Attend to the correspondence of the Board.

ARTICLE 5 – LEGAL COUNSEL

1. Upon a request to the Zoning Administrator the Board may request separate legal counsel to advise them at any hearing.

ARTICLE 6 – MEETINGS

1. The Board shall meet each January to hold its organizational meeting. At this meeting the Board shall elect officers, re-adopt by-laws and consider amendments thereto and adopt its meeting schedule for the upcoming year.
2. Each June meeting shall include a training session conducted by the Zoning Administrator or designee to update the Board on actions of the General Assembly or other significant changes in the law or its application via Court decisions within the Commonwealth of Virginia.
3. Parliamentary procedures in Board meetings shall constitute a quorum. The number of votes necessary to transact business shall be by roll call, in which case a record shall be kept as part of the minutes.

ARTICLE 7 – ORDER OF BUSINESS

1. The order of business for a regular meeting shall generally be:
 - a. Call to order by the Chairman
 - b. Roll Call and Determination of Quorum
 - c. Minutes from prior meeting (s)
 - d. Public Comments
 - e. Public Hearing(s)
 - f. Unfinished business
 - g. New business
 - h. Reports/Closing Comments
 - i. Adjournment
2. Parliamentary procedures in Board meetings shall be governed by Robert's Rules of Order.

3. The Board shall keep a set of minutes for all meetings, and these minutes are the public record of its proceedings. The Chairman or the presiding officer of the meeting shall sign all minutes of the meetings after approval by the Board at a succeeding meeting and shall certify that the minutes are a true and correct copy.
4. Approved minutes shall be kept in an official meeting book produced by Wilson Jones minute book or similar official minute book.

ARTICLE 9 – PUBLIC COMMENT PERIOD

1. The purpose of the citizen comment period is to allow any citizen of the County to make statements to the Essex County Board of Zoning Appeals related to any matter under the auspices of the Board of Zoning Appeals, which are not scheduled for discussion on the agenda.
2. Each citizen of the County is allotted three minutes to address the Board.
3. The Board will listen to and consider the position and opinion of the citizens of the County; however, the Board shall not respond or ask staff to respond to issues identified by the public that may require additional research or investigation.

ARTICLE 10 – ESSEX COUNTY – PUBLIC HEARING PROTOCOL

1. The purpose of the public hearing is for the Board to listen to and consider the position and opinion of the citizens of the County.
2. Public hearings are not question and answer sessions or debates and all statements should be pertinent to the issue being considered and addressed to the Chair. Citizens are expected to obtain information and discuss the subject with public officials prior to the public hearing.
3. All public hearings are advertised weeks prior to the scheduled hearings and the notices indicate where citizens can obtain information pertinent to matters scheduled for public hearings.

4. When members of the public offer comment, they need to clearly state their name and address prior to making their comments.
5. County staff (Zoning Administrator or designee) shall present a summary of the issue and staff report first.
6. Applicants, or representatives of the applicant, will be allowed fifteen (15) minutes to introduce information regarding the matter advertised for public hearing. Additional time may be granted at the discretion of the Chairman.
7. Persons speaking at public hearings are respectfully requested to keep comments brief, not to exceed three (3) minutes, and to address only those issues pertinent to the matters advertised for public hearing.
8. After the public hearing has been closed, the applicant or representatives of the applicant will be allowed ten (10) minutes to address any issues identified by the public. Additional time may be granted at the discretion of the Chairman.
9. Written copies of statements made at public hearings are requested but not required.

ARTICLE 11 – CORRESPONDENCE

1. It shall be the duty of the Secretary or as delegated to the Zoning Administrator to draft and sign all correspondence necessary for the execution of the duties and functions of the Board.
2. It shall be the duty of the Secretary or as delegated by the Zoning Administrator to communicate by telephone or electronically when necessary to make communications that cannot be carried out as required through direct correspondence.
3. All official papers and plans involving the authority of the Board shall bear the signature of the Chairman together with the certification signed by the Zoning Administrator or designee.

ARTICLE 12 – CONTINUATION OF PUBLIC HEARING

1. If a regularly scheduled meeting, specially called meeting, and/or work session meeting of the Board continues to 10:00 PM, the Board may, at its discretion, adjourn the

meeting until the next business day provided the motion of adjournment states the hour and location that the adjourned meeting is to be reconvened.

ARTICLE 13 – AMENDMENTS

These bylaws may be amended by a recorded two-thirds vote of the entire membership after thirty (30) days prior written notice. A summary of the text of the proposed amendments shall be included in the notice.

CERTIFICATION

These bylaws are hereby adopted by the Essex County Board of Zoning Appeals on the 27th of April 2023, and repeal all bylaws and their amendments previously enacted by the Board.

_____ Date: _____

Chairman

_____ Date: _____

Secretary

Miscellaneous

None.

Adjourn

Having no further business, the meeting of April 27, 2023, was adjourned by Chairman Laffoon.

Steven Laffoon, Chairman