

At a regular meeting of the Southampton County Board of Zoning Appeals (BZA) held in the Board Room of the Southampton County Office Center at 26022 Administration Center Drive, Courtland, Virginia on November 17, 2003, at 7:30 PM.

COMMISSIONERS PRESENT

Douglas A. Chesson, Chairman
James Bradshaw, Vice Chairman
Elma A. Brown
Peter F. Copeland
Thomas Daisey
Marie Sykes

COMMISSIONERS ABSENT

None

OTHERS PRESENT

Robert L. Barnett, Building Official (Secretary)
Richard E. Railey, Jr., County Attorney
Susan H. Wright, County Administration Executive Secretary

Chairman Chesson called the meeting to order at 7:30 PM and welcomed everyone.

(Note: Commissioners Brown and Sykes arrived just after the meeting was called to order.)

Chairman Chesson sought approval of the minutes of the July 21, 2003 regular meeting. He pointed out that at the top of page 8, Mr. Copeland's statement, "If Mr. Barnett's decision was overwritten, it would eventually lead to the closing of the park", should have stated "If Mr. Barnett's decision was *overridden . . .*" **Chairman Bradshaw moved, seconded by Commissioner Sykes, to approve the minutes with Chairman Chesson's suggested revision. All were in favor.**

Chairman Chesson announced that the first and only public hearing was to consider the following:

The application of Dennis Whitfield, requesting a Variance to Section 18-40 (a) of the Southampton County Zoning Ordinance, "Minimum Lot Frontage". Said Variance is requested on property identified as Tax Map 71, Parcel 35A, of the Southampton County Zoning Map, and located at 26213 Clarksbury Road, Boykins, Virginia, Capron Magisterial District.

Secretary Barnett advised that the said property was an existing nonconforming lot due to the road frontage requirement, as it had 120 feet and the requirement in an Agricultural District was 150 feet. He informed that there was presently a residential mobile structure on the property. Mr. Whitfield wanted to remove that structure from the property and replace it with a doublewide mobile home. He advised that the existing nonconforming lot was ok as long as the existing residential structure remained on the property. However, once that structure was damaged or removed from the property, it had to comply with the existing zoning ordinance; thus the need for the variance.

Vice-Chairman Bradshaw mentioned that Mr. Whitfield stated on the application that due to the road frontage requirement, he could not replace his inhabitable home. He asked if it had been condemned? Secretary Barnett replied no and added that it was his understanding that the structure was occupied.

Commissioner Brown noted that Mr. Whitfield also stated on the application that his home had hail damage. Commissioner Daisey advised that he had made two trips there and did not see any broken windows or dents. There might be some there but he did not see any.

Secretary Barnett and Chairman Chesson advised Commissioner Brown of the code section that explained the reason why the variance was needed.

Mrs. Vivian Whitfield and Rev. Dennis Whitfield, owners/applicants, approached the podium. Mrs. Whitfield advised that they had been in their dwelling for at least 18 years. She explained that her sister moved from Omaha, Nebraska and they gave her a little over an acre of their land so that she could put a mobile home on it. When they did so, they were not told that the law had changed and if they ever decided to replace their home, they could not do so without a variance. She informed that their home had \$5,000 in damage due to the hailstorm. They had roof damage and all the windows were broken out, but they had that repaired so they could stay there. So when Mr. Daisey came, he did not see any exterior damage. She stated that there was still extensive damage inside the house they had not repaired. They did not want to spend the money to repair it if they were going to buy a new home if the variance was granted.

Commissioner Daisey asked the Whitfield's if they could purchase some land beside their property in order to meet the frontage requirement? Mrs. Whitfield replied that they had talked to their neighbor, Mr. Joe Claude, and he was not interested in selling them any of his land. Mr. Claude, who was present in the audience, confirmed that.

Commissioner Copeland remarked that this was a self-inflicting hardship and thought that was the problem the BZA was faced with. Chairman Chesson advised that if they go strictly by the guidelines for granting a variance, hardships were not supposed to be self-inflicting.

Rev. Whitfield advised that he had looked to God, and whatever happened, he would be ok. He had spoken with his neighbor, Mr. Joe Claude, and if he did not want to sell him any of his land, that was ok, and whether or not the variance was granted, he would be ok.

Commissioner Bradshaw asked Attorney Railey if the BZA had granted these types of variances before? Commissioner Brown replied yes, all the time, especially at Dockside. Attorney Railey advised that a hardship was not supposed to be self-imposed. On the other hand, the Whitfield's say they were not told that they would be in this situation if they sold the acreage to her sister. He advised that in a strict legal sense, they were not entitled to a variance as a matter of right, but agreed that what Commissioner Brown stated was correct.

Vice-Chairman Bradshaw stated that it surprised him that the County allowed the subdivision to occur knowing that it would take away from the frontage of the existing structure. Attorney Railey agreed, but noted that this took place before Mr. Johnson (County Administrator), Mr. Coggsdale (Assistant County Administrator), Secretary Barnett, or himself were working for the County. He added that you would certainly think that if somebody was going to sell off that lot, there would have been a "red flag" all over it. Especially since you were not talking about a stick built house, but a structure that was not going to last as long as the land and would have to be replaced at some point. He advised that the Whitfield's stated that they were not told and he thought he and Mr. Barnett would probably have to take that as the gospel.

Vice-Chairman Bradshaw advised that before he voted on any item, he always thought about not wanted to set precedence. However, in this situation, several things had occurred. 1) A subdivision was allowed that made it so a family could not develop their property, which he thought was wrong, and 2) precedence had been set in other areas of the county where existing structures had been damaged by storms and were allowed variances. He stated that if this were just a piece of property, it would be a “no brainer” to not allow it, but this was an existing structure that had been lived in by the Whitfield’s on that property for 18 years. So, in this case, he felt they had a right for the variance.

Commissioner Brown moved, seconded by Vice-Chairman Bradshaw, to grant the variance.

Commissioner Daisey disagreed. He advised that he sympathized with the Whitfield’s, but the court had ruled that a self-imposed hardship offered no basis for granting of a variance. Commissioner Brown asked what court? Commissioner Daisey replied the court in *Spence v. Board of BZA of Virginia Beach*. 223 Va.116 (1998). Commissioner Brown asked, then why are we (the BZA) here?

Chairman Chesson called for a vote. Commissioner Daisey was the only one voting in opposition to the motion, thus the motion passed and the variance was granted.

Chairman Chesson advised that Secretary Barnett had distributed some information to them in regards to placement of signs at recreational fields. Secretary Barnett announced that Mr. Waverly Coggsdale, Assistant County Administrator, had contacted him regarding the placement of signs on fences or walls around recreational fields such as baseball fields. He informed Mr. Coggsdale that they were not allowed per the existing zoning ordinance. Mr. Coggsdale has requested that the BZA issue an interpretation and recommendation per Section 18-423 (8) which reads as follows: *Applications for unusual signs or displays which give rise to questions of interpretation of these regulations may be referred by the administrator to the board of zoning appeals for the purpose of interpretation by the board and recommendation for action on the application by the administrator. If, in the opinion of the board, the application is not adequately covered by these regulations, the board may make recommendations for amendment of this chapter.*

Vice-Chairman Brashaw stated that this was an issue in localities all across the country and asked if the County could do some research, highlight what they think is pertinent for this County, and then present it to them for their review and comment? Secretary Barnett replied yes.

Commissioner Brown moved, seconded by Vice-Chairman Bradshaw, to review the information once it is received from the County, and provide comments back to Secretary Barnett. All were in favor.

Mr. David Holland, who was recommended to the Circuit Court to be appointed to succeed Mrs. Barbara Ellsworth on the BZA, was in the audience. The BZA members welcomed him. Secretary Barnett advised that Mrs. Ellsworth was appointed last October to fill the unexpired term of Trent Fox and did not wish to be reappointed. Mr. Holland had not been officially appointed yet, but the paperwork was in the hands of the Court.

There being no further business, the meeting was adjourned at 8:25 PM.

Douglas A. Chesson, Chairman

Robert L. Barnett, Secretary