

MINUTES
PAGE COUNTY BOARD OF ZONING APPEALS
March 17, 2020

MEMBERS PRESENT:

Phillip Mims, District 1
Kevin Moyer, District 3
Dale Karnes, District 5

John Coleman, District 2
Danny Comer, District 4

STAFF PRESENT:

Tracy Clatterbuck
Kelly Butler

CALL TO ORDER:

Board member Danny Comer called the meeting to order of the Page County Board of Zoning Appeals at 10:00 a.m., in the Board of Supervisors Room located at the Page County Government Center, 103 S Court Street, Luray, Virginia.

ADOPTION OF AGENDA:

Mr. Comer made a motion to adopt the agenda as presented. The motion was seconded by Mr. Mims. The motion passed unanimously.

PUBLIC HEARING:

A. Charles E. Petree – Variance Request

Mr. Comer opened the public hearing at 10:01 a.m. Ms. Clatterbuck presented the following staff report: Charles E. Petree has filed a variance application for property located at 536 River Road, Rileyville, VA, and further identified by tax map # 7B1-1-13. This property contains 0.63992 of an acre and is zoned as Residential (R). Pursuant to § 125-11.E of the Page County Zoning Ordinance, the required front setback is 35 feet. The applicant is requesting a reduction in the front setback to 20 feet. Also, pursuant to § 125-16.A(3)(c) of the Page County Zoning Ordinance, the required side setback is 15 feet. The applicant is requesting a reduction in the side setback to 5 feet. If granted, the variance would allow for a 12x16 accessory shed.

Tracy Clatterbuck stated that the County advises the Board to allow the variance. If the shed is moved back meet the front setback, the shed would then be in the floodplain and would have to apply for a variance for that. The well is located on the side and therefore, the applicant is requesting the side setback to be varied as well.

The applicant has reached out to Don Williams, Page County Building Official, and David Atwood, with the Virginia Department of Transportation, both of whom have returned no objections to the variance request. The applicant has also reached out to Gerald Dovel at the Page County Health Department who also has no objections to the variance request.

Pursuant to § 15.2-2204 of the Code of Virginia, adjoining and adjacent property owners have been notified. Staff did not receive any phone calls or comments from adjacent property owners.

Property owner, Mrs. Petree, stated that they wish to keep the shed out of the floodplain because they live about 3 hours away. And they don't want the contents to sustain any damage.

The public hearing was closed at 10:03 a.m.

Mr. Mims made a motion to approve the variance request as requested. The motion was seconded by Mr. Moyer. The motion passed unanimously (5-0).

B. Turner Sod Farms, LLC – Variance Request

Chairman Coleman opened the public hearing at 10:05 a.m. Ms. Butler presented the following staff report: Turner Sod Farms, LLC has filed an application for a variance for property located on Longs Road, Luray, VA, approximately 1.0 mile south of US Hwy 211W, and further identified by tax map # 49-A-17C. The property contains 25.0 acres and is zoned as Agriculture (A-1). Pursuant to § 125-27.D(6) of the Page County Zoning Ordinance, new non-residential structures in the Special Flood Hazard Area (SFHA) shall have the lowest floor elevated to or above the base flood level plus one foot. Buildings located in FEMA designated A zones may be floodproofed in lieu of being elevated, provided that all areas of the building components below the elevation corresponding to the Base Flood Elevation (BFE) plus one foot are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. The applicant is requesting that a variance be granted to allow measures be applied to the proposed accessory structure (pole barn/farm building) that prevent or provide resistance to damage from flooding while allowing floodwaters to enter the structure or area.

Ms. Butler stated that the applicant is requesting a variance to allow the structure to be wet flood-proofed, instead of dry flood-proofed. About 6 acres of the parcel is in the SFHA and the applicant wishes to place the structure just inside the SFHA. The property slopes up from there up to about 15 acres of cropland on that parcel. Wet flood-proofing measures would still require him to use flood resistant materials in construction. It allows for water to flow through the structure, rather than the structure be water tight. Ms. Butler stated that a variance may be issued only if the structure is used solely for agricultural purposes in which the use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities. The applicant plans on using it for equipment for the sod farming operation.

Ms. Butler stated 44 CFR § 60.6(a)(1-4) states procedures for the granting of variances by a community are as follows:

1. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;
2. Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance of paragraphs (a) (3), (4), (5), and (6) of the referenced section;
3. Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Ms. Butler stated FEMA Publication-993 further explains the following:

- Good and sufficient cause [44 CFR § 60.6(a)(3)(i)]
 - A "good and sufficient" cause for a variance occurs when a parcel of land possesses physical characteristics so unusual that complying with NFIP regulations in a local ordinance would create an exceptional hardship related to the property, the surrounding property owners, or the community in general.

- The unusual physical characteristics must be unique to the property and not be shared by adjacent parcels or be typical of other lots in the community.
- Exceptional hardship [44 CFR § 60.6(a)(3)(ii)]
 - An exceptional hardship related to the property such as unique physical and topographical conditions of the property; this is not related to the individual personal circumstances of the applicant.
 - The hardship related to the property was not caused by the applicant or is shared by adjacent parcels.
 - A variance is required for the applicant to make reasonable use of the property.

Ms. Butler stated pursuant to § 125-27.F(1) of the Page County Zoning Ordinance, upon passing applications for flood plain conservation variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the Zoning Ordinance and consider the following additional factors:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development or activity within any Floodway District that will cause any increase in the one-hundred-year flood elevation.
2. The danger that materials may be swept on to other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and anticipated development in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and the floodplain management program for the area.
10. The safety of access by ordinary and emergency vehicles to the property in the time of flood.
11. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
12. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
13. Such other factors which are relevant to the purposes of this section.

Ms. Butler stated FEMA Technical Bulletin 7-93 Wet Floodproofing Requirements states the following requirements, at a minimum, must be attached to the variance for an accessory/agricultural structure:

1. it must be attached to resist flotation, collapse, and lateral movement;
2. the portions of these structures located below the BFE must be constructed of flood-resistant materials;
3. it must be designed to allow for the automatic entry of flood waters;
4. mechanical and utility equipment must be elevated or floodproofed to or above the BFE;
5. it must comply with the floodway encroachment provisions of the NFIP Regulations; and
6. its use must be limited to agricultural purposes.

Ms. Butler stated the applicant has reached out to Gerald Dovel at the Page County Health Department, Don Williams, Page County Building Official, and Jeff Nicely, with the Virginia Department of Transportation, all of whom have returned no objections to the variance request. Pursuant to § 15.2-2204 of the Code of Virginia, adjoining and adjacent property owners have been notified. The only comment received was from Charles Burner in which he had no objections to the request.

Ms. Butler reminded the board that should the request be denied, the applicant would be required to elevate the structure or dry flood-proof it. The board could request that the structure be moved out of the SFHA. Should the request be approved, the structure may be wet flood-proofed, but still must adhere to NFIP regulations. Staff suggests approving the request will set a precedent for agricultural or accessory structures to be placed in the SFHA when alternative locations are available. It is staff's opinion that good and sufficient cause has not been established as the physical characteristics of this lot are not unique or site specific. The three adjoining parcels are much the same, as well as many other locations in the county. Exceptional hardship has not been established as the hardship relates to the property owner, the hardship was caused by the property owner and the property owner will maintain reasonable use of the property. Further, alternative locations are available to the property owner. Staff is recommending that the request be denied based on the ordinance requirements.

Mr. Coleman opened the hearing up to public comment. Danny Turner of Turner Sod Farms stated that there aren't as many alternate locations available as one would think because there is an irrigation pivot on the property and the pivot takes up a lot of the otherwise available space. Mr. Coleman closed the public comment period at 10:15 a.m.

Mr. Coleman opened the hearing up to discussion among the board members. Mr. Comer asked for any historical flooding accounts from Mr. Turner. Mr. Turner has only owned the property for approximately 2-3 years, but has not witnessed any flooding. Mr. Coleman clarified the location of the irrigation pivot on the property. He asked how it would create a precedence. Setting aside the irrigation pivot, there are many properties characterized much like this property within the county. Mr. Coleman asked Mr. Moyer to clarify what the state said concerning this type of request. Mr. Moyer said it was a gray area. The pivot caused the area to be useful, but at the same time they are using the area as best they can. Mr. Moyer reminded the applicant that it can only be used for agricultural equipment storage and not for storage of chemicals. Mr. Coleman stated he comes from the stance of self-regulation, but knows the board has to adhere to the regulation that has been placed by higher authority. Mr. Coleman closed the discussion among the board members.

Mr. Coleman requested a motion to approve or deny the variance request. Mr. Moyer made a motion to approve the variance request. Mr. Comer seconded the motion. Roll call vote as follows: Mr. Moyer – Yes, Mr. Karnes – Yes, Mr. Mims – Yes, Mr. Comer – Yes, Mr. Coleman – Yes. The vote was unanimous (5-0).

Unfinished Business

None

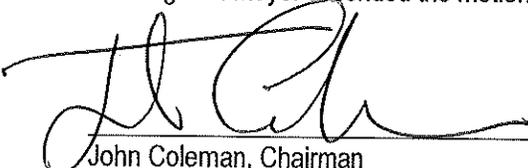
New Business

A. Approval of Minutes- January 21, 2020

Chairman Coleman requested a motion to approve the January 21, 2020 minutes as presented. A motion was made to approve the minutes as presented by Mr. Moyer. The motion was seconded by Mr. Comer. The motion passed unanimously (4-0).

Adjourn

Chairman Coleman requested a motion to adjourn the meeting. Mr. Comer made a motion to adjourn the meeting. Mr. Moyer seconded the motion. Meeting was adjourned at 10:29 a.m.



John Coleman, Chairman