

At a meeting of the Accomack County Board of Zoning Appeals held on the 5th day of January, 2022 in the Accomack County Administration Building Board Chambers, Room #104, in Accomac, Virginia.

1. CALL TO ORDER

A. MEMBERS PRESENT AND ABSENT

Board of Zoning Appeals Members Present:

Mr. Robert L. Nock, Chair
Mrs. Elizabeth Kerns, Vice Chair
Mr. Lynn P. Gayle
Mr. Harvey A. Drewer, II

Board of Zoning Appeals Members Absent:

Mr. W. Richard Bull, Jr.

Others Present:

Mr. Rich Morrison, Deputy County Administrator
Mrs. Stephanie Woods, Administrative Assistant of Building, Planning & Economic Dev.
Mr. Paul Seltzer, Deputy Director
Mr. Chris Daley, Zoning Code Enforcement Officer

B. DETERMINATION OF A QUORUM

There being a quorum, Mr. Morrison called the meeting to order at 10:01 a.m.

2. ELECTION OF OFFICERS

Mr. Morrison opened the floor for nominations for a Chairman. Mrs. Kerns nominated Mr. Nock who accepted, no other nominations were made.

On a motion made by Mrs. Kerns and seconded by Mr. Drewer the Board of Zoning Appeals voted unanimously to elect Mr. Nock as Chairman for 2022.

Chairman Nock nominated Mrs. Kerns as Vice Chairman, who accepted, no other nominations were made.

On a motion made by Mr. Nock and seconded by Mr. Drewer the Board of Zoning Appeals voted unanimously to elect Mrs. Kerns as Vice Chairman for 2022.

3. ADOPTION OF AGENDA

On a motion made by Mr. Gayle and seconded by Mr. Drewer, the Board of Zoning Appeals voted unanimously to adopt the agenda as presented.

4. MINUTES

November 3, 2021: *On a motion made by Mr. Drewer and seconded by Mr. Gayle, the Board of Zoning Appeals voted unanimously to approve the November 3, 2021 meeting minutes as presented.*

5. OLD BUSINESS

A. VAR-000226-2021: Payne Poultry, LLC. – Tax Map # 42-A-27

A continued request for variances from the requirements outlined in Section 106-232 of the Accomack County Poultry Ordinance, to use the property as a confined poultry operation in accordance with Ordinance Section 106-232. The confined poultry operation has not produced chickens since June 2018 and is no longer a non-conforming use. Variances or relief from the Board of Zoning Appeals are needed for the re-use of the property as a confined poultry operation. The property is located at Tax Map # 42-A-27 located at 32080 Nocks Landing Road, Atlantic, VA and is zoned Agricultural.

Mr. Morrison gave a history of the request and informed the Board of updated items since the previous meeting. Mr. Morrison informed the Board that this will require a DEQ permit and that there is a significant time frame for a DEQ approval. Mr. Morrison stated that the public hearing will still need to be closed at the end of public comment.

Chairman Nock inquired if there were any members of the public in attendance requesting to speak. Mrs. Patricia DeMarco was invited up and sworn in. Mrs. Demarco stated she lives in the Southwind subdivision on Southwind Lane, and that if the fans on the houses are facing a dwelling they should be the maximum of 600 feet away. Mrs. Demarco stated she moved to the County from Pennsylvania approximately 30 years ago, and when she moved into her house the chicken houses weren't there. Mrs. Demarco stated that since the chicken houses have been built that she is unable to be outside due to the smell. She is requesting that if the houses are to be operational again that they be moved to the required 500-600 foot setback.

Chairman Nock invited the applicant Mr. Payne up to speak and swore him in. Mr. Payne gave a history of the property and stated that when he purchased the poultry farm two of the poultry houses were already built. Mr. Payne proposed another option to the Board. Mr. Payne stated if he were to remove the two chicken houses closest to the Southwind subdivision from the equation stating he would not put chickens in those houses, effectively making the closest house 400 feet from the subdivision.

Chairman Nock stated he needs to hear from the community. Chairman Nock inquired what happens administratively if the proposal changes from six (6) to four (4) houses. Mr. Gayle stated that the list of required items from Mountaire is extensive and that there are several expensive and time consuming items, especially the DEQ approval. Mr. Gayle inquired as to the state of the manure shed. Mr. Payne stated it is currently used only for storage. Mr. Gayle verified that Mr. Payne measured from house to house when determining the distance from chicken house to dwelling and Mr. Payne stated he did.

Mrs. Kerns requested verification of which two houses Mr. Payne was proposing to withdraw from the application, and if there was any additional information that the Board would need to know. Chairman Nock stated that with a variance the Board is always looking for a hardship and an improvement. Mr. Payne stated that the houses he is suggesting not to be included would not be torn down but used for storage instead. Mrs. Kerns stated that the Board still needs additional information, especially concerning the

list from Mountaire, knowing what is completed and what is not, and the DEQ application.

Mrs. DeMarco requested to come back up and speak, and stated that Mr. Payne does not live on site with the Poultry houses, and therefore does not have to deal with the day to day of those that do. Mrs. DeMarco stated that it is so much more than the smell and she would really like the Board to take into consideration what those in the Southwind Development have to deal with.

The Board requested to have Mr. Morrison come back up to speak. Mr. Morrison informed the Board that if staff had been aware of the four (4) house proposal, staff could have brought it before the Board at this meeting. Mr. Morrison stated he would like to know from the Board if they are interested in four (4) house proposal, that the information would be needed on paper, and updated site plan would be required, as well as other additional information, and that it will still likely need a DEQ Permit. Mr. Morrison stated that having the houses on site but un-operational is going to require stiff regulations.

Chairman Nock stated that the four (4) house proposal is a way to mitigate it, but is worried about what happens in five (5) years. Mr. Gayle stated that this is a significant change in the proposal and that staff needs time to review it. Mr. Morrison stated that if it is of interest to the Board, staff will get the information together for the next meeting. The Board collectively stated that it is something of interest and requested staff to present at the next meeting. Mr. Drewer inquired as to how the Board is supposed to know of other issued that may arise in the next four (4) to five (5) years as things keep evolving. Mrs. Kerns inquired if the potential buyer is aware of the cost and timeframe of the DEQ requirement.

On a motion made by Mr. Gayle and seconded by Mrs. Kerns the Board of Zoning Appeals voted unanimously to allow staff to review the new proposal by Mr. Payne to go from six (6) chicken houses to four (4) chicken houses and bring it back to the Board at its February 2, 2022 meeting.

Mr. Payne requested to readdress the Board and gave some additional information.

On a motion made by Mr. Gayle and seconded by Mr. Drewer the Board of Zoning Appeals voted unanimously to close the public hearing for application VAR-000226-2021.

6. NEW BUSINESS (PUBLIC HEARINGS)

A. SUSE-000243-2021: James James Elder – Tax Map # 91-A-106

A hearing initiated by James Elder pursuant to Accomack County Code Section 106-53(14) which allows for the use of travel trailers, located outside of travel trailer parks, which are to be occupied for habitation. Mr. Elder would like to use a travel trailer for habitation on the property while a residence is being built. The parcel is at Tax Map # 91-A-106 located at 26409 Mount Nebo Road, Onancock, and is zoned Agricultural.

Mr. Morrison gave a brief overview of the request to the Board, stating it is a pretty straight forward request. Mr. Elder was invited up to speak and sworn in. Mr. Elder stated his plan is to build a single bedroom home, and that he has had two inspections completed by the County. Mr. Elder informed the Board that the lumber for the house has been ordered and that he is waiting for the weather to cooperate before putting up the framing. Chairman Nock inquired as to his timeframe for the build. Mr. Elder stated that his goal is to have it completed in six (6) months barring any inclement weather. Mr. Gayle inquired if the duration to occupy the trailer is strictly during the build of the house. Mr. Elder stated yes, and that the foundation for the house has been completed. Chairman Nock inquired as to how many people would be staying in the house. Mr. Elder stated that it would just be him, his wife, and their two kids, and that his kids like the woods and hunting. Mrs. Kerns inquired if he would be comfortable with a six (6) month time limit, and Mr. Elder stated he would.

On a motion made by Mrs. Kerns and seconded by Mr. Gayle the Board of Zoning Appeals voted unanimously to grant a Special Use Permit for the temporary use of a travel trailer during construction as authorized by Section 106-53(14) of the zoning ordinance for Tax Map #91-A-106.

The Special Use Permit (SUP) is issued with the following conditions:

- 1. The SUP is granted based upon the application, site plan, and supporting information by James Elder.***
- 2. The travel trailer is permitted to be occupied for six (6) months, beginning on 12/01/2021 and ending on 6/04/2022.***
- 3. Contact our Department should an extension be needed, at least 6 weeks prior to the 06/04/2022 end date.***

B. VAR-000247-2021: David & Phil Hickman – Tax Map # 28-A-4

A hearing initiated by David & Phil Hickman to request seven (7) variances in order to split a 273.85 acre parcel into three (3) parcels. This will create Lot 1 at 2.88 acres and Lot 2 at 3.24 acres, leaving the remaining 267.73 acres as farm land. The variances requested are as follows:

Newly Created Lot 1:

- 2.18 acre variance from 106-55(a) which states the minimum lots area shall be 5 acres.
- 150 feet variance from 106-57 which states the minimum frontage for permitted uses shall be 150 feet at the setback line.
- 4.23 feet variance from 106-58(a) which states the minimum side yard for accessory structures shall be five feet or more.

Newly Created Lot 2:

- 1.76 acres variance from 106-55(a) which states the minimum lots area shall be 5 acres.
- 150 feet variance from 106-57 which states the minimum frontage for permitted uses shall be 150 feet at the setback line.

Remainder of Parcel 28-A-4:

- On the Western side, a variance of 4 feet from 106-58(a) which states The minimum side yard for accessory structures shall be five feet or more.

On the Eastern side, a variance of 2.76 feet from 106-58(a) which states The minimum side yard for accessory structures shall be five feet or more.

Mr. Morrison gave a brief overview of the request to the Board. Mr. Dave Hickman was invited up to speak and sworn in. Mr. Hickman informed the Board of when the houses that are on the property were built, stating it was prior to 1980. Mr. Hickman stated that they would like to split the lots apart so that each family member owns their own house while preserving as much of the farm land as possible. Mr. Gayle inquired as to how many years the Hickman Family has been in the Agricultural business. Mr. Hickman stated that his family has owned and run Hickman Farms since the 1800's, and that for at least the last 100 years there have been potatoes grown on the field where they houses are located.

On a motion made by Mr. Gayle and seconded by Mr. Drewer the Board of Zoning Appeals voted unanimously to approve the variances as noticed for application VAR-000247-2021, a request from David & Phil Hickman at Tax Map # 28-A-4.

C. VAR-000272-2021: Kenneth and Kimberly Irvine – Tax Map # 80A-2-30

A hearing initiated by the Irvine's to request a division of lot 30 of the Gargatha Landing Subdivision. Currently there are two (2) homes located on the property. The applicants wish to create two (2) parcels containing three (3) acres each. Section 106-55 (a) of the Zoning Ordinance requires that lots in the Agriculture Zoning District be five (5) acres in size. A variance of two (2) acres is being sought for each lot. The parcel is at Tax Map # 80A-2-30 located at 18730 Seaside Circle, Parksley, and is zoned Agricultural.

Mr. Morrison gave a brief overview of the request to the Board. Mr. Morrison informed the Board that the subdivision covenants for Gargatha Landing call for the split of the 6 acre lot to make two 3 acre lots. Mrs. Kimberly Irvine was invited up to speak and sworn in. Mrs. Irvine stated they are requesting to split the property, to allow for her house and her mother's house to be on two separate properties as they are now on one parcel. Chairman Nock inquired as to how long the property has been owned. Mrs. Irvine stated that they purchased the property in either 1994 or 1995 and built in 1996.

On a motion made by Mrs. Kerns and seconded by Mr. Drewer the Board of Zoning Appeals voted unanimously to approve case VAR-000272-2021 for Tax Map # 80-2-30 for two variances of two acres each to create two lots pursuant to Accomack County Code Section 106-55(a).

D. SUPV-000277-2021: Amber Davis – Tax Map # 79D-1-6

Two (2) hearings are required as a Special Use and variances are required. Hearings initiated by Amber Davis to place a 56x14 mobile home on the property for the care of her father. Section 106-53 (22) of the County Zoning Ordinance allows accessory dwellings in the Ag Zoning District by Special Use Permit.

The following variances are being requested:

1. Section 106-53(22) of the Zoning Ordinance requires that accessory dwellings have a minimum area of 60,000 square feet. The existing lot is approximately 20,000 square feet in size. A variance of 40,000 square feet is requested.

2. A variance of 61 feet is being requested from Section 106-238 which requires dwellings on a single lot to be separated by 140 feet. The proposed mobile home will be placed approximately 79 feet from the existing residence.

The parcel is at Tax Map # 79D-1-6 located at 28101 Whites Neck Road, Parksley, and is zoned Agricultural.

Mr. Morrison gave a brief overview of the request to the Board stating it is for a Special Use Permit and a variance. Mr. Morrison stated that part of the state code is clear about medical hardships for a variances, but that doesn't carry over to Special Use Permits. Mr. Morrison stated that there is a commitment from the applicant that that once the accessory dwelling is no longer needed it will be removed.

Ms. Amber Davis was invited up to speak and sworn in. Ms. Davis stated that she is requesting the Special Use Permit and variances for her father, stating that he is currently living along on a property owned by family but is steadily declining. Ms. Davis informed the Board that she is an only child and that the care of her father falls to her. Chairman Nock inquired if the singlewide will ever be rented, and Ms. Davis stated no and that her intention is to remove it in the future.

Chairman Nock opened the public hearing for the Special Use Permit. There was no one signed up to speak.

On a motion made by Mr. Gayle and seconded by Mrs. Kerns the Board of Zoning Appeals voted unanimously to approve SUPV-000277-2021 for a Special Use Permit pursuant to Accomack County Code Section 106-53(22) allows accessory dwellings in the Agricultural Zoning District by Special Use Permit.

This SUP is granted with the following conditions:

1. ***The SUP is valid for three (3) years from the date of approval.***
2. ***Apply for and obtain a building permit for the accessory dwelling.***
3. ***The accessory dwellings must be removed prior to the expiration of the 3 year approval period unless additional time is approved by the BZA.***
4. ***In the event that the medical hardship is no longer required before the 3 year approval timeframe expires, the applicant will notify staff; and the accessory dwelling will be removed within 4 months from notification.***

Chairman Nock closed the public hearing for the Special Use Permit. Chairman Nock opened the public hearing for the variances. There was no one signed up to speak.

On a motion made by Mr. Gayle and seconded by Mrs. Kerns the Board of Zoning Appeals voted unanimously to approve SUPV-000277-2021 for a variance of 40,000

square feet pursuant to Accomack County Code Section 106-53(22), and for a variance of 61 feet from Accomack County Code Section 106-238 due to medical necessity.

Chairman Nock closed the public hearing for the variances.

7. OTHER MATTERS

A. Review and approve the proposed 2022 Meeting Schedule.

This item was not discussed due to time constraints.

8. NEXT MEETING

The next regular Board of Zoning Appeals meeting is scheduled for Wednesday, February 2, 2022 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac.

9. ADJOURNMENT

On a motion made by Mr. Gayle and seconded by Mr. Drewer the Board of Zoning Appeals voted unanimously to adjourn the meeting.

The meeting was adjourned at 11:23 a.m.

Mr. Robert Nock, Chairman

Prepared by Stephanie Woods
Planning & Zoning County of Accomack