

At a meeting of the Accomack County Board of Zoning Appeals held on the 4th day of January, 2023 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:

Mrs. Elizabeth Kernss, Chairman
Mr. Harvey A. Drewer, II, Vice Chairman
Mr. Lynn P. Gayle
Ms. Gracie Milbourne
Mr. W. Richard Bull, Jr.

Board of Zoning Appeals Members Absent:

Others Present:

Mr. Paul Seltzer, Deputy Director
Ms. Maxie Brown, Interim Zoning Administrator
Mr. Chris Daley, Code Enforcement Officer II
Ms. Shawnta McCain, Administrative Assistant II

B. DETERMINATION OF A QUORUM

There being a quorum, Chairwoman Kernss called the meeting to order at 10:00 a.m.

2. ELECTION OF OFFICERS

Mr. Chris Daley opened the floor for nominations for a Chairman. Ms. Milbourne nominated Mrs. Kerns who accepted, no other nominations were made.

On a motion made by Ms. Milbourne and seconded by Mr. Bull, the Board of Zoning Appeals voted unanimously to elect Mrs. Kernss to remain the Chairwoman for 2023.

Mr. Bull nominated Mr. Drewer as Vice Chairman, who accepted, no other nominations were made.

On a motion made by Ms. Milbourne and seconded by Mr. Bull, the Board of Zoning Appeals voted unanimously to elect Mr. Drewer to remain the Vice Chairman for 2023.

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 amended agenda with corrections.

4. MINUTES

On a motion made by Ms. Kerns and Mr. Drewer, the Board of Zoning Appeals voted unanimously to approve the December 7, 2022 meeting minutes with corrections.

5. OLD BUSINESS

There is no old business.

6. NEW BUSINESS (PUBLIC HEARINGS)

A. SUSE-000428-2022: Willie Taylor – Tax Map #75D-3-33

A hearing initiated by Willie Taylor to request a Special Use Permit pursuant to Accomack County Code Section 106-78(5) which permits Docks and areas for the receipt, storage and shipment of waterborne commerce. The applicant wants to use his improved parcel for the occasional receipt and storage of waterborne commerce and equipment. This parcel is located at 20392 Canvasback Lane Onancock. It is Tax Map #75D-3-33 and zoned Residential.

Mr. Chris Daley gave an overview of the parcel. The applicant wants to use the parcel, on which his residence is located, for the occasional receipt of seafood that he harvests from the Chesapeake Bay. Earlier during the year (2022), Staff was contacted by someone from the HOA of Schooner Bay about someone operating a commercial seafood operation from this location. Staff conducted a research of the parcel and discovered that this subdivision has covenants that were updated and recorded in 2014. Since the staff report was written, Staff has received numerous emails in opposition to the application. These letters indicated that the applicant is using the parcel on a regular basis for the receipt of waterborne commerce, as well as the maintenance of a commercial fishing vessel.

Mr. Bull questioned his concerns about subdivisions having their own covenants that each resident is aware of when they purchase their property. Mr. Bull stated his uncertainty on whether the Board of Zoning Appeals has the jurisdiction to start granting Variances for their covenants. Mr. Bull feels that the HOA should determine by vote on whether or whether not Mr. Taylor should be allotted to use his parcel to harvest seafood occasionally. Mrs. Kerns spoke to her understanding that, yes it is part of their covenants, but they cannot go to the Sheriff's department to have them enforced. Therefore, the applicant assumed the only way they could do it was to have a Special Use Permit and ask for approval of it so that they would be legally able to under the County law. Ms. Milbourne spoke and stated that she knows the County is unable to enforce covenants, meaning the parties involved enforce the covenants. Ms. Maxie Brown spoke and stated that covenants' s are relevant but that is not zoning, they are two different things. Covenants are to be enforced by property owners and not the County's Zoning officers.

Mrs. Kathy Windisch, was called up and sworn in. Mrs. Windisch stated that she and her husband live in close proximity to the reference parcel and that they purchased their home in Schooner Bay 2014. They purchased with the full knowledge that the community was protected by restricted covenants and reservations. Mrs. Windisch stated she respects that Mr. Taylor is a hard worker that is providing for his family, however his commercial seafood operation is not permissible within Schooner Bay and that they are adamantly opposed to any Special Use Permit that would allow him to continue this nonconforming operation. Mrs. Windisch stated that they have been awoken by his diesel powered equipment during the early hours of the morning. There are employees that enter into the community almost daily for employment purposes, there has been commercial vehicles that have entered the community to pick up seafood from his property, and there has been numerous complaints over the years and the Board of Directors has sent multiple

letters to which he has ignored and has continued his operation. Mrs. Windisch stated that the boat should also not be permitted as it is a commercial piece of equipment which is also against the restrictive covenants and reservations. Mrs. Windisch also stated that Mr. Taylor has been operating his seafood business in the community while knowing he is in violation of the governing documents and has no regards for the “No wake zone” in the community. There has been video and audio of Mr. Taylor proclaiming his disregard for the community, the covenants and the Board of Directors. Mrs. Windisch stated that every day that he is operating his seafood commercial business, he is demonstrating his disregard for the covenants.

Mrs. Nancy Kippenhan, was called and sworn in. Mrs. Kippenhan stated that she lives in on the other side of the channel of water, so that when the loads are coming in and out they are throwing wake and that they are ruining her dock and her bulkhead. Mrs. Kippenhan stated that the general character and the nature of this residential neighborhood as well as the nature of the waterborne commercial business that Mr. Taylor is operating, actually provides or generates two sources of noise and nuisance and potential property damage to the neighborhood. One being the road from the traffic, employees and trucks coming in and out, and the other is the water, which is a part of the general nature of the community. The location of the lot relative to the rest of the community is relatively close to the road entrance to the community. Therefore, while truck and employment traffic are not as bad as they might be, water traffic is constant, goes out to the channel, and goes out to open water is more of a nuisance. During crabbing season, the boats go through the channel once a day, so two passes through the channel, one out and then back in. However, during this time of the year when they are doing oysters, the boats have been going out and in more than once a day. Mrs. Kippenhan stated that this is more than occasional use and more than residential traffic that the residents of the community would be doing using their own boats or trucks. Mrs. Kippenhan seconded Mr. Windisch comments to the lack of respect Mr. Taylor has for the community/neighborhood.

Mr. Bruce Dembofsky was called and sworn in. Mr. Dembofsky stated that he is the president of the Schooner Bay association and that a letter was submitted from the association opposing the approval of the Special Use Permit. Mr. Dembofsky stated that he and the association would prefer that Mr. Taylor continue using the public landing for the offloading of the catch and the movement of the waterborne commerce, rather than using the residence since the public landing is right at the entrance when coming from the bay into the neighborhood. There was a general agreement between the association and the owners that the public landing would be for the business work and to use the home for the residential purposes. But, it seems that this issue has been going back in forth for a couple of years, since 2019, asking the family to keep the business stuff at the public landing and boats parked at the home should be off-duty when they come and go. Mr. Dembofsky stated that they would like to see the zoning kept the way it is and to keep that restriction in place helps as a nice guardrail for the association because then there would not be a need to pursue covenants enforcement. Mr. Dembofsky also stated that if a Special Use Permit was granted that the association would have to proceed to try to enforce the covenant part of it.

Mr. Richard J. Ocenasek was called up and sworn. Mr. Ocenasek stated that others who were sworn in to speak covered most of his concerns previously. Mr. Ocenasek stated that he has had numerous conversations with Mrs. Moore (Mr. Taylor’s mother in-law) and conversations with

Mr. Taylor that didn't go the way he would have like the conversation to have gone. Mr. Ocenasek stated that only issue he has with Mr. Taylor is that him acting contrary to a zoning ruling that only benefits him and puts the rest of the community of a downslope. There are property values to worry about and bulkheads to worry about and when people come in to buy a house or a piece of property and they see crab pots being unloaded they might start to wonder if they are moving next to a commercial fishery.

Mr. Willie Taylor was called up and sworn in. Mr. Taylor stated that he has been a resident of the Eastern Shore for 39 years and is from Onancock. He stated that he has worked on the water all his life and that he is a second-generation waterman. Mr. Taylor stated that he does not go out more than one time a day; he comes into his dock, picks his truck up and takes it to the state docks and then comes back to dock his boat. Mr. Taylor stated that he does not prefer to unload his stuff at his dock and that is not the reason for the Special Use Permit. The reason Mr. Taylor is requesting a Special Use Permit is because whenever his boat breaks down he has to unload his catch at his residence because he is not always aware of mechanical issues right away. In addition, riding his boat with a mechanical issue just to unload at the state docks would cause him to pollute the water with oil or other chemicals leaking from the boat; which has happened before and Environmental was called on him. Mr. Taylor stated that most of the time his boat is at Davis Wharf that is the main port where he keeps his boat. The only time the dock at his residence is used is during Oyster season because the rocks are closer to his house than Davis Wharf. Mr. Taylor stated that he has no intentions on unloading his catch at his home because it is easier to unload at the state docks. Mr. Taylor commented on the issue of trucks coming in and out of the neighborhood and stated that is was one time and that was when his truck was messed up and he was unable to haul his oysters that day and that any other time they are meeting him at the state dock. Mr. Taylor stated that only reason he wants the Special Use Permit is for whenever he has an issue with his boat or in the case of an emergency with his daughter, who has respiratory issues. Mr. Taylor stated that during those times his loads or crab pots are never in the yard for longer than 24 hours. Mr. Taylor stated that he does not have a commercial boat at his dock and that it is a normal private boat. He also stated that he has no intentions on unloading his catch at his residence and that he figured if he got the Special Use Permit it would stop the neighbors from giving him a hard time when he has to unload because of emergency or mechanical issues. Mr. Taylor stated that everybody labeled him from the beginning because he is a fisherman and never tried to come and get to know him. He stated that people in the community picks and choose whom they are going to file complaints on because there are several others who run businesses from their homes.

Mr. Gayle asked the question if a Special Use Permit is required if the boat that is coming in and out does not warrant the use of dock space and boat traffic. Mr. Gayle stated that if he lived in the neighborhood he would welcome the use of the canal on a daily basis because it would keep it open. Mr. Paul Seltzer stated that Mr. Taylor's application is for a Special Use Permit for occasional use of offloading.

Mrs. Moore asked to come up and sworn in. Mrs. Moore, Mr. Taylor's mother in-law, stated that she also has a residence down there since 2010. She stated that she and the past President of the association, Mr. Richard Ocenasek, spoke and have had multiple conversations concerning the issue and that she has received multiple letters in the past and has gone to meetings to address the

concerns and issues that they had. Most of the issues were about the ownership of the boat and the presence of the boat. She addressed the issues brought up during the meeting and stated that he only does them out of necessity and out of respect he (Mr. Taylor) gives her call and lets her know that something is occurring and that he would have to offload at his property. Flooding, mechanical issues, medical emergencies are the types of occurrences Mr. Taylor is referring to when he is saying 'occasional use' to offload. Mrs. Moore stated that she also spoke with Mr. Dembofsky, who is the current President of the association and he said it was good to know and that if communication took place when these situations did arise there was not an issue. Mrs. Moore stated that she doesn't want trucks in her yard or any clutter in her yard, she wants it to be kept as a residence and only unload there when it is a necessity or an emergency.

On a motion made by Ms. Milbourne and seconded by Mr. Bull, the Board of Zoning Appeals voted unanimously to table the request for Special Use Permit for docks and areas for the receipt, storage and shipment of waterborne commerce, as authorized by Section 106-78(5) of the Zoning Ordinance for Tax Map #75D-3-33.

This request was tabled with the following:

- 1. With hopes, that Mr. Taylor can communicate with the HOA and they come up with some type of solution.***
- 2. If some type of solution has been figured out, Mr. Taylor can call the Zoning Board office and ask to withdraw the application.***

B. SUSE-000431-2022: Betty Sewell – Tax Map #26C-4-4

A hearing initiated by Betty Sewell to request a Special Use Permit pursuant to Accomack County Code Section 106-403(7) which permits Residential uses, including single-family dwellings, not as an accessory to an approved use. The applicant requests to install a modular home to use as a dwelling. This parcel is located at 8067 Lankford Hwy, Oak Hall. It is Tax Map #26C-4-4 and zoned General Business.

Mr. Chris Daley gave an overview of the parcel. The parcel was previously used as a car dealership and Staff is unsure when the business was discontinued, but there is currently an old office trailer located on the parcel. The applicant intends to remove the trailer and replace it with a new modular home from Clayton homes. This parcel is zoned General Business but based on the aerial photos, the predominate use of the surrounding area is primarily residential.

Ms. Betty Sewell was called up and sworn in. Ms. Betty Sewell stated that the parcel was originally a used car lot and is kind of an eyesore for the area. Mrs. Dana Webster, the original applicant, wants to put a new home there because her husband has dementia. Ms. Sewell stated that there are several doublewides and singlewides down Lankford Highway, so Mrs. Webster wants to replace the current office trailer with a new home.

Ms. Milbourne stated that she was very familiar with that business trailer that is currently there and that it was used as an car sales facility for many years. Ms. Milbourne asked if she (Betty Sewell) was asking for approval to place a single-family dwelling, whether it be modular or manufactured and that a Special Use Permit is requested because the zoning is General Business, Ms. Sewell stated that was correct.

On a motion made by Ms. Milbourne and seconded by Mr. Drewer, the Board of Zoning Appeals voted unanimously to approve the Special Use Permit, SUSE-000431-2022, which allows Residential uses, including single-family dwellings, not as an accessory to an approved use, as authorized by Section 106-403(7) of the Zoning Ordinance for Tax Map #26C-4-4.

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

- 1. The applicant apply for and obtain all the required permits for the placement of the modular home on this parcel with removal of the office trailer.***
- 2. The site plan used for this application be used for the building permit application.***

7. OTHER MATTERS

There are no other matters.

8. NEXT MEETING

The next regular Board of Zoning Appeals meeting is scheduled for Wednesday, February 8, 2023 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac.

9. ADJOURNMENT

On a motion made by Mr. Bull and seconded by Mr. Gayle, the Board of Zoning Appeals voted unanimously to adjourn the meeting 10:56 a.m.

Mrs. Elizabeth Kernss, Chairwoman

Prepared by
Planning & Zoning County of Accomack