

ESSEX COUNTY BOARD OF ZONING APPEALS
MEETING OF APRIL 24, 2025, AT 7:00 P.M.
109 CROSS STREET
TAPPAHANNOCK, VIRGINIA 22560
MINUTES

Present:

Steven Laffoon- Chairman
Stephen Walters – Vice Chairman
Edward Haile
Ned Stephenson

Absent:

Gam Rose

Also Present:

Kelly McKnight - Building and Zoning Office Manager
Brian Barnes - Director of Building and Zoning
April Rounds - County Administrator

Call to Order

Chairman Steven Laffoon called the April 24, 2025, meeting of the Essex County Board of Zoning Appeals to order at 7:00 PM.

Roll Call

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

Meeting Agenda

Mr. Ed Haile asked if he could make a request to move the Wood case before the VanHuss case because he would have to recuse himself from the VanHuss case because they are neighbors and friends of his? He said that we would still have a quorum.

Mr. Brian Barnes came forward and said he has two things to say about that. The applicant for the Wood/Moore case requested to go second and it would be nice to honor their wishes. In reference to the recusal, Mr. Barnes said just remember that you would have to have a positive vote of three members for any request to pass because you are down one person. Three is still a quorum, but if it is a two to one vote it will still be a failure of that motion. Mr. Barnes said his recommendation of that nature with parliamentary procedure is you're not necessarily

allowed to take test votes, but I have always recommended to boards and commissions over the years, if you feel something is about to be denied then go ahead and table it then that way this person has a chance at a prevailing vote.

Mr. Haile said with that he will withdraw and wait elsewhere, and someone notify him when he can come back in.

Chairman Laffoon asked the board if they had any comments on tabling the matter? No comments made.

Approval of Minutes

Chairman Laffoon asked if there were any changes or modifications to the December 12, 2024, minutes? Mr. Haile made a motion to accept the minutes as presented. Mr. Stephen Walters seconded the motion. AYES: 4 NAYES: 0 ABSENT: 1

Application #V2500003 – Timothy D. VanHuss

Mr. Brian Barnes came forward and presented the first case. Application for Bay Act Exception and Variance #V2500003 submitted by Timothy D. Vanhuss c/o J.L. Howeth P.C. for an exception and a variance on a property located off Greenfield Rd, Tax Map# 20-8A, consisting of ± 3.45 acres. The property is zoned A-1, Agriculture and Forestry, Preservation, and within the Agricultural Preservation District. The request is for an exception from the 100' Resource Protection Area requirement as required by Article IV, Division 5, *Chesapeake Bay Preservation Area Overlay District*, Section 36.276 of the Essex County Zoning Ordinance and a variance for encroachment in the 30' side yard setback as required by Article IV, Section 36.221 of the Essex County Zoning Ordinance in order to permit the construction of an above ground pool with steps and filter with 908 square feet of proposed impervious cover encroachment in the RPA buffer with the required mitigation.

Mr. Jeff Howeth, the agent for Mr. VanHuss came forward and said he didn't have anything to add to what Mr. Barnes presented.

Mr. Timothy VanHuss came forward and said that they are just trying to replace a pool that they have had established for about fifteen years. They want a pool to use for his daughter and wife.

Mr. Ned Stephenson asked Mr. Barnes if he has made a decision on this as to whether it is compliant or not?

Mr. Barnes said that it is consistent with the mitigation required and it's sealed. He said that we have several right now that are going back and forth with us at staff level and a lot of them don't want to have it engineered and they don't want to have the components that you see here. If you look in our Bay Act ordinance it will show you what is required.

Mr. Stephenson asked Mr. Barnes why did you bring it here and not approve it? He said he was under the impression that it would come to the board if the decision that Mr. Barnes made was not satisfactory. That the applicants would be appealing Mr. Barnes's decision.

Mr. Barnes said that in ordinance you can declare that the BZA will handle that job just like you all handle appeals for flood zone regulations. Your body is tasks with those certain responsibilities because you are appointed by the Circuit Court Judge. Mr. Barnes said that there is just one paragraph in the Bay Act regulations where it says exceptions . Those exceptions regarding Chesapeake Bay Act exceptions shall be heard by the Board of Zoning Appeals. Yes, you do hear appeals from Zoning Administrators' decisions, but you also will issue waivers, variances and some exceptions.

Mr. Stephenson asked Mr. Barnes to cite to him the reference and the ordinance that describes that because everything that he is reading in the ordinance says that the appeal comes to us when you made a decision that the applicant is aggrieved with.

Mr. Barnes read section 36.276.

Section 36.276. — Exceptions (Variances). Exceptions Affecting RPA. Any exception or variance to the requirements those exceptions dealing with RPA issues, shall be reviewed and considered by the Board of Zoning Appeals of Essex County. The request for an exception shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a WQIA which complies with Section 36.272.

Mr. Barnes said that when you read section 36.272 it talks about having a stamped, sealed plan by a Class B surveyor or professional engineer. Mr. Barnes said that it is one paragraph and that is why you are here.

The other question that Mr. Stephenson had was whether or not there is space available on the parcel to place the swimming pool without having it in the buffer?

Mr. Barnes said that is a decision that he doesn't have to make because he is not the property owner. That is up to the applicant and the applicant's agent to prove to you why it goes where it goes.

Chairman Laffoon asked if the adjacent property owners were notified?

Mr. Barnes said yes, they were.

Mr. Stephenson wanted to know if there was any response to the letter.

Building and Zoning Office manager Kelly McKnight said that Todd Thompson called and wanted the application and plans. He didn't say anything about being against it.

Chairman Laffoon opened up the hearing for the public to speak. No one commented.

Chairman Laffoon closed the public hearing portion.

Motion 1: Vice Chairman Walters made the motion to approve the variance to the side setback 30' to 10'. Seconded by Mr. Stephenson. AYES: 3 NAYES: 0 ABSENT: 1 RECUSAL: 1

Motion 2: Vice Chairman Walters made the motion to approve the CBPA exception, contingent on placement of the vegetative mitigation more spread within the RPA. Seconded by Mr. Stephenson. AYES: 3 NAYES: 0 ABSENT: 1 RECUSAL: 1

Application #V2500002 – Cathy Wood and Stanley Moore

Mr. Barnes came forward and introduced the next case. Application for Bay Act Exception #V2500002 submitted by Cathy Wood and Stanley Moore c/o J.L. Howeth P.C. for an exception on a property located off Iris Ln, Tax Map# 61-28, consisting of ± 1.80 acres. The property is zoned A-2, Agriculture and Forestry, General, and within the Countryside District. The request is for an exception from the 100' Resource Protection Area requirement as required by Article IV, Division 5, *Chesapeake Bay Preservation Area Overlay District*, Section 36.276 of the Essex County Zoning Ordinance in order to permit the use of a drainage pipe in the RPA buffer as a part of the Stormwater Best Management Practice Plan.

Mr. Barnes said that there are certain things with the Chesapeake Bay Act that can be approved administratively in the office. If you have existing structures that you need to move around in the 100' buffer if they meet certain requirements, they don't need to come to the BZA. Completely new structures that are hard and permanent that are within the 100' buffer, they come to the BZA. That is why you will be hearing this case. This particular plan offers the use of offsite compliance, and I know there will be several questions about that. Mr. Barnes read to the BZA state regulations found in 9VAC25-830-140, which is the criteria that the applicant needs to meet.

- (i) The local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location;
- (ii) The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;
- (iii) The facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-875-660;
- (iv) All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission;

- (v) Approval must be received from the local government prior to construction; and
- (vi) Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

Mr. Barnes said the last requirement, which is number six, is why you have to have a hearing on this particular issue because this is not necessarily a neighborhood although one could argue that there is drainage coming from other lots going through it. But technically this is to serve this one lot and is not allowed administratively.

Mr. Howeth came forward and spoke on behalf of Cathy Wood and Stanley Moore. He spoke of a SEAS letter that was written to Stanley Moore.

THAVIS A. VOYCE
Secretary of Natural and Historic Resources

Matthew S. Wells
Director

Andrew W. Smith
Chief Deputy Director



COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

FRANK N. STOVALL
*Deputy Director
for Operations*

Darryl Glover
*Deputy Director for
Dam Safety,
Floodplain Management and
Soil and Water Conservation*

Laura Ellis
*Deputy Director for
Administration and Finance*

REPLY TO:
Tappahannock Regional Office
P. O. Box 1425
Tappahannock, VA 22560
Telephone: (804) 443-1494
FAX: (804) 443-4534

November 13, 2024

Mr. Stanley Moore
43 Fomalhaut Ave.
Turnerville, NJ 08012-2418

RE: SEAS# T25005

Dear Mr. Moore:

On November 6, 2024, I met with you and Jeff Howeth, at your property, on the Rappahannock River in Essex County. The site visit was in response to your request for advisory assistance concerning a shoreline erosion problem.

The Shoreline Studies Program, at the Virginia Institute of Marine Science, has created a Shoreline Evolution Map for tidal localities in Virginia. The map was created using aerial photography from 1937 to 2017. The map shows shoreline change over time. Based upon that map, the historical erosion rate for your area is less than 1 foot per year. The erosion on your property appears to be caused by elevated water levels and waves associated with storms. The following recommendations are made as a result of the site visit and subsequent analysis of the problem:

1. The trees and shrubs growing on the bank and within 60 feet of the bank edge should be selectively cut or trimmed. Trees undermined by erosion displace large amounts of soil when they fall. Tree removal should decrease the weight on the bank and reduce the chance of sloughing. The additional sunlight exposure should stimulate growth of the upland ground cover. Before cutting any trees, please contact Essex County at (804) 443-4331 for information concerning tree removal restrictions under the Chesapeake Bay Preservation Act.
2. Bank grading may not be practical due to the bank height, location of the house and depth of the lot. Although grading the entire bank may be impractical or cost prohibitive, portions of the bank may be selectively graded. In conjunction with or as an alternative to bank grading, a properly designed and constructed retaining wall system may be installed.
3. After tree removal or bank grading, a vegetative cover should be established. We

600 East Main Street, 24th Floor | Richmond, Virginia 23219 | 804-786-6124

*State Parks • Soil and Water Conservation • Planning and Recreation Resources
Natural Heritage • Dam Safety and Floodplain Management • Land Conservation*

Mr. Stanley Moore
Page 2
November 13, 2024

recommend a mixture of native grasses or other low-growing vegetation. For further details about the establishment of vegetation and soil tests, contact the Virginia Cooperative Extension Agent for Essex County at (804) 443-3551.

4. Stormwater should be directed away from the bank. If that is not possible, the stormwater should be collected via a pipe system and conveyed to the base of the bank. The pipe outlet should have sufficient outlet protection to prevent erosion.
5. To prevent further bank erosion, we recommend a properly designed and constructed riprap (large rock) revetment. The structure should be installed to minimize encroachment beyond the mean high water position. The riprap should be constructed on a 2:1 (horizontal/vertical) slope or flatter. A minimum of two layers of armor rock should be used. Each armor rock should weigh a minimum of 300 pounds. The toe of the riprap should be buried a minimum of 4 feet below the mean low water elevation. An alternative to the buried toe is a riprap apron. The apron consists of 2 layers of armor rock extending a minimum of 8 feet onto the bottom. A layer of filter cloth should be used under and behind the riprap. The riprap should be extended inland or properly connected to neighboring structures to prevent erosional flanking. Lists of filter cloth and riprap suppliers have been enclosed. See the enclosed cross-sectional view of a typical riprap revetment.
6. During the site visit, we discussed setting benchmarks along the top of the bank to measure changes in the bank over time. A benchmark can be as simple as setting stakes, pipes or posts in the ground and measuring from fixed points to the benchmarks and recording the results. These results can be used to determine if the bank is moving and if further action is required to stabilize the bank.

The above recommendations are made in my capacity as an advisory agent in shoreline erosion control matters. The suggestions should not be considered as binding you to any particular course of action, as they are intended to indicate what we think would be the best solution in terms of cost and effectiveness. Our examination of the site or this report does not constitute permission by the Commonwealth, or its agencies, to proceed with implementation of control measures. Permits from State and Federal agencies are generally required for shoreline modification.

You should also be aware that success in shoreline erosion control cannot be guaranteed, as there are many variables involved. In this regard, we suggest care in selecting a contractor. Our comments concerning construction are intended as guidelines developed from our experience in viewing structures that have been successful or have failed.

If you decide to construct a control measure, an assessment of the impacts of the project on the environment will be given by the regulatory agencies. Our advice is given with the idea of reducing environmental impacts associated with our recommendations. Although this has been considered in our recommendations, the permit reviewing agencies may desire additional information or measures.

Mr. Stanley Moore
Page 3
November 13, 2024

Services available through this office include: review of the permit application; review of design and construction plans; and inspection of structures under construction when plans have been reviewed by this office. We recommend that a copy of this report be attached to the permit application.

If we may be of further assistance or if you have any questions, please let me know.

Sincerely,



Michael L. Vanlandingham
Shoreline Engineer

Mr. Stephenson asked Mr. Barnes if there was a WQIA in the file then he began reading from the ordinance. Upon the completed review of a major WQIA, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Section 36.273. He wants to know if Mr. Barnes has made that finding?

Mr. Barnes said no because it is an item that goes to you. You have had the WQIA before but that is not germane to what you are looking at now. You are looking at an exception for the structure itself.

Mr. Stephenson then read again "the Zoning Administrator will determine if the proposed development is consistent and will make a finding" and he is interested in his finding.

Mr. Barnes asked Mr. Stephenson what section are you reading from?

Mr. Stephenson said the bottom of page 59.

Mr. Barnes said that is for administrative approval. This is not an administrative approval.

Mr. Stephenson said that it does not say that. Mr. Stephenson said it is his understanding that we hear your finding and it's up to us to decide whether it is correct or not.

Mr. Barnes said in cases of appeals of the Zoning Administrator's decision that is true.

Mr. Stephenson said that he was reading in his letter from back in July about the WQIA and he recited it is the formal determination of staff that the impact this project proposes within the 100' buffer fails to meet the criteria and Mr. Stephenson said that he is taking that as his finding.

Mr. Barnes said that the criteria for administrative approval and that if you continue reading that letter it directed the applicant to come to the BZA for a Bay Act Special exception so that staff could then approve the Erosion and Sediment Control portion and then allow the building permits to be issued.

Mr. Stephenson said that he is still hung up on the fact that Mr. Barnes is supposed to tell them what his finding is.

Mr. Barnes said I believe that I told you that back in July and the applicant has come to you in that direction. The part that you do will be to take that WQIA and the engineered plan and make a decision with the section E that I just read about where you look at what is the structure doing, what is the drainage doing, what is the whole plan for the site, is it necessary and then try to make your decision based on that. Mr. Barnes said in this case you are doing my job because this is no longer an administrative function, it is much higher than that.

Mr. Stephenson said that he is struggling with another paragraph. "A decision or interpretation of the Zoning Administrator shall be presumed correct and may not be reversed or modified unless there is evidence in the record that the decision is incorrect."

Mr. Barnes said and that is true as well.

Mr. Stephenson said that what he is seeing here is that you have reviewed this and have determined that it doesn't pass? That it is not sufficient.

Mr. Barnes said "no, I have determined that it would not be able to be administratively approved." Mr. Barnes said in general it is stamped engineer plans and is supposed to be generally correct. He said to Mr. Stephenson that he is correct that the Zoning Administrator's determination was done and made, and enough time has passed that is set. However, it was a decision based on whether we could administratively approve it or not.

Mr. Stephenson then asked, "is it your finding that this is consistent with the regulations?" "Yes or no?"

Mr. Barnes said as your staff person who looks at this stuff day in and day out you look for elements. You have structural elements, you have vegetative elements, you have distance from the resource, you have proposed development on a property. You cannot have a taking without compensation so private property that somebody owns they are allowed to develop it within reasonable parameters. The fact that it is on the water, this parcel was created long ago. The purpose of the regulations is to allow them to do that in a way that it doesn't adversely impact water quality because the water belongs to everyone. The idea is that those calculations prove that there is no net detriment to the water quality. If that is shown and stamped and sealed then that's meeting the Bay Act requirements.

Mr. Stephenson asked, "is that your finding?"

Mr. Barnes said, "that is my finding." It has to meet the bullet points which it does. It does meet the ordinance.

Mr. Haile said to him it seems like this is major because a pipe is in the 50' easement, that's a permanent structure in the 50' RPA. Mr. Haile wanted to know what was the hang up with installing a pipe?

Chairman Laffoon opened the hearing to public comment.

An adjacent property owner, Mrs. Brown, came forward and she said that her concern was the drainage pipe. She wanted to know where that was in relation to her property line? Is it a setback from our property line? She came forward and looked at the plan.

Mr. Walters showed her the plans and said that if he had to guess it would be about 20' from her property line.

Mr. Howeth came forward to explain to Ms. Brown also and he said that it is probably 26' or 27' from the property line.

Chairman Laffoon closed the public comment portion of the hearing.

Mr. Stephenson made a motion to approve an exception to the requirements to the RPA as requested by Mrs. Wood according to the plans that she presented.

Chairman Laffoon wanted to add an amendment to the motion.

Mr. Stephenson said we would need a second before adding the amendment.

Mr. Haile seconded Mr. Stephenson's motion.

Chairman Laffoon said that he would like to now add an amendment. He wanted to have some of the figures checked a little bit and that it take no longer than ten days. He would like to have that put into the motion and that way since it is the first time doing one like this, it can set a precedent.

Mr. Stepheson added that we have a professional engineer who has provided this and if there is any lack of trust what he has done. Mr. Stephenson said that he trusts the engineering work on his face, and I am happy to move along with it "checked."

Chairman Laffoon said that he will withdraw his part of it.

Mr. Stephenson said that he will accept the amendment.

Mr. Walters said that he will offer up a second amendment which is that the final plans for the actual structure be compliant with the current A-2 zoning.

Mr. Stephenson said that he understands that and said that is not before us today. The only thing before us is the encroachment in the buffer and we need to say yes or no.

Ms. April Rounds, County Administrator, said that the second amendment that was seconded is still open. You can either call for a second or withdraw that, then it will fall back to the one that Mr. Laffoon made.

Vice Chairman Walters withdrew his amendment about the A-2.

Ms. Rounds told Mr. Laffoon that it is up to the board and that there is still a motion on the floor that you can now discuss, vote on or withdraw.

Chairman Laffoon called for a vote on the amendment of having it checked. AYES: 2 NAYES: 2 ABSENT: 0. The motion failed.

Mr. Stephenson made a motion to approve an exception to the requirements of the RPA as requested by Mrs. Wood and Mr. Moore according to the plans they presented. The motion was already seconded by Mr. Haile previously. AYES: 4 NAYES: 0 ABSENT: 0

Adjournment

Chairman Laffoon adjourned the meeting at 9:39 PM.

Steven Laffoon - Chairman