



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Town of Kill Devil Hills Zoning Board of Adjustment has scheduled a regular meeting for Monday, November 30, 2020 at 5:00 p.m., in the Meeting Room of the Administration Building, 102 Town Hall Drive, off Colington Road.

In order to maintain the safety of Town residents, Staff, and Zoning Board members, the Board will follow all COVID-19 regulations and requirements currently in place for public meetings; this includes distancing, masks, and the limitation on attendance capacity.

The agenda follows, and the meeting can be accessed by the public by joining the Zoom Meeting:

<https://zoom.us/j/96338346483?pwd=eHRGQmowMnR0U0VZMzIEK1FHYZPOT09>

- Meeting ID: 963 3834 6483. Password: 044880
- Or Dial: 1 312 626 6799 or 1 929 205 6099 US When prompted, enter meeting ID: 963 3834 6483 followed by the (#) sign. Enter password: 044880, followed by the (#) sign.

AGENDA

Call to Order and Roll Call

Approval of the Minutes of February 26, 2019

Old Business

New Business

1. Election of Chairperson and Vice Chairperson
2. Gray, James T. and Debora S. – 307 West Hayman Boulevard, Lot 19, Block 44, Virginia Dare Shores Subdivision; Parcel Number: 000582001; Pin Number: 988517011793 – Variance from Chapter 153, Zoning, 153.121(B)(2) Setbacks
3. Shepherd, Zachary – 2019 Highview Street, Lot 1364, Avalon Beach Annex 2 & 3 Subdivision; Parcel Number: 001490000; Pin Number: 988405089933 – Variance from Chapter 153, Zoning, 153.076(A)(1) and (A)(2) Off-Street Parking and Loading

Adjournment

Posted this 16th day of November 2020.

James Michael O'Dell
Deputy Town Clerk

Copies to: Zoning Board of Adjustment members in their meeting materials; Mayor & Board of Commissioners; Town Manager; all Town bulletin boards; KDH Sunshine List including all local news media; KDH Electronic Distribution List; website, social media; file

Minutes of the February 26 2019, Meeting of the Kill Devil Hills Zoning Board of Adjustment (ZBOA) held at 5:00 p.m. in the Meeting Room of the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Present: Vice Chairperson Michael Lowack, Kevin Cox, Toni Dorn, Ronald Seidman II, and Jason Self

Members Absent: Robert Rollason III, Blake Culpepper, and Natalie Painter

Others Present: Donna Elliott, Zoning Administrator; Jay Wheless, Attorney for the ZBOA; and James Michael O'Dell, ZBOA Clerk

Call to Order and Roll Call

At 5:00 p.m., Vice-Chairperson Michael Lowack called this meeting of the Kill Devil Hills Board of Adjustment to order and welcomed all present. The clerk was called upon to conduct the Roll Call and five members of the Board of Adjustment were present, constituting a quorum.

Approval of the Minutes of February 27, 2018

Ron Seidman moved to approve the minutes of the February 27, 2018 ZBOA meeting, as presented. Kevin Cox seconded the motion and approval was a unanimous, 5-0 vote.

Agenda Approval

Mr. Seidman moved to approve the agenda as presented. Toni Dorn seconded the motion, which was approved by a unanimous, 5-0 vote.

Old Business

New Business

1. Election of Chairperson and Vice Chairperson

Mr. Cox nominated Robert Rollason III for ZBOA Chairperson for the 2019 term. Jason Self seconded the nomination. With no additional nominations, Vice-Chairperson Lowack closed nominations and called for a vote. With a unanimous, 5-0 vote, Robert Rollason III was elected ZBOA Chairperson for the 2019 term.

Mr. Seidman nominated Michael Lowack for ZBOA Vice-Chairperson for the 2019 term. Ms. Dorn seconded the nomination. With no additional nominations presented, nominations were

closed. With a unanimous, 5-0 vote, Michael Lowack was elected ZBOA Vice-Chairperson for the 2019 term.

2. William G. Via and Sylvia V. Via – 2603 Bay Drive, Lot 3, Virginia Dare Shores Subdivision; Parcel Number: 000734003; Pin Number: 987520808674 – Variance from Chapter 153, Zoning, 153.121(B)(3) Setbacks

David Via, representing parents William G. Via and Sylvia V. Via requested a variance from Chapter 153, Zoning, 153.121(B)(3) Setbacks, for property located at 2603 Bay Drive, Lot 3, Virginia Dare Shores Subdivision; Parcel Number: 000734003; Pin Number: 987520808674, Kill Devil Hills, North Carolina. The applicant's intent is to purchase property, recombine lots, and construct a pier.

David Via, Eric Maurer, and Donna Elliott were sworn in by Vice-Chairperson Lowack.

The Town

Zoning Administrator Donna Elliott stated that Mr. Via had requested a variance from the side yard setback requirements. The house is on a 7,432 square foot lot, and the side yard setbacks for this size parcel are eight feet. The house does meet the setback requirements at this time; however, Mr. Via intends to purchase three unimproved lots across the street and combine them with the parcel where the structure is located. As a result, the lot would increase to 8,562 square feet, which would change the side yard setback requirements to 10 feet. Due to those requirements, the recombination plat cannot be approved. If the applicant cannot recombine the parcels, he cannot build the pier, which is an accessory structure. The Town does not permit accessory structures without a primary/principal structure. The definition of accessory structure states that it is a building or other structure, the use of which is clearly incidental to and customarily found in conjunction with the principal structure or use located on the same lot. Additionally, the unimproved lots that the applicant wishes to purchase can only be combined with his parcel, which is directly across the street, per the Town's ordinance requirements. By granting the variance, the unimproved lots will be buildable. Without the variance, the unimproved lots are not buildable.

Mr. Lowack inquired whether any other lots across the street could be combined with the applicant's parcel. Ms. Elliott stated that the ordinance requires in this lot recombination that the lots be directly across the street, not diagonally positioned or further down the street. She directed the members to the survey submitted by the applicant.

Mr. Wheless inquired whether Town Staff had taken a position on the four findings necessary to grant a variance. She replied that Staff would prefer to see the lots be used, rather than remaining vacant. She noted that Planning Department Staff had prepared responses on the application:

1. That there are unnecessary hardships in the manner of carrying out the strict letter of the ordinance. Staff comment, as statement of fact: "By combining the two unbuildable lots west of the structure, the total land area changes the setbacks for the property. However, no improvements are proposed to the primary structure."

Ms. Elliott noted that recombination of the lots would create a non-conformity because it would not meet the setbacks. Without a variance, the Town cannot permit a conforming property to become a non-conformity.

2. That the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit. Staff comment, as statement of fact: "There will be no net change to the property west of Bay Drive."

Ms. Elliott noted that the primary structure would not be changed. Additionally, without a primary structure, no secondary structure can be built.

Mr. Wheless inquired whether there was any limitation to the number of accessory structures that could be built if the variance was granted. Ms. Elliott replied that as long as there was a primary structure, multiple accessory structures could be built.

Mr. Wheless inquired if there were any structures that the Town would not want built on the recombined lots. Ms. Elliott replied in the negative, noting as long as the applicant met all Town zoning and CAMA regulatory requirements, there were no objections to multiple structures.

3. That in granting the variance, the public safety and welfare have been assure and substantial justice has been done. Staff comment, as statement of fact: "In granting this variance, there will be no threat to public safety and welfare."

Ms. Elliott noted that the Planning Department had received several telephone calls from the public, inquiring about the applicant's request for a variance. None of the calls have been in opposition to the applicant's request.

Mr. Lowack inquired that since the northernmost adjoining property considered for recombination was not directly across the street from the applicant's parcel, would that be an issue. Ms. Elliott stated it was not an issue as long as the applicant was combining those adjoining lots. She stated by combining the lots across the street, they would become one parcel.

Ms. Self noted that the majority of the soundside lots appeared to be wetlands and inquired that the applicant wanted to build a pier to provide access to the bay. Ms. Elliott noted that with the limited size of those lots, small accessory structures like a pier are all that can be built. She noted that other properties along Bay Drive have recombined lots, with primary structures on the east of Bay Drive and secondary structures, including piers, on the east side of Bay Drive.

Mr. Wheless inquired whether Ms. Elliott knew of other lots that had been granted a variance in the reduction of the setback because of this kind of issue. Ms. Elliott stated she did not know of any.

Mr. Self inquired about the threshold for requiring eight-foot versus ten-foot setbacks. Ms. Elliott stated under 7,500 square feet requires an eight-foot setback; over 7,500 square feet is a ten-foot setback requirement.

Mr. Lowack inquired if the variance was granted, it would run with the title. Ms. Elliott and Mr. Wheless answered in the affirmative.

Mr. Cox inquired if the variance was granted, what would be the next step for the applicant. Ms. Elliott replied that it would be building and CAMA permits. He further inquired whether a bulkhead would be involved in the process. Ms. Elliott stated that she understood the applicant intended to build a bulkhead, but no application has been made for that accessory structure, which would be permitted under a variance.

Mr. Self inquired that without accessory structures like a pier and bulkhead, the soundside property, and the Town's multi-use path located on a portion of the parcel, could experience erosion damage. Ms. Elliott replied in the affirmative, and noted that erosion was already affecting the multi-use path on the soundside property.

The applicant stated he did not have any questions for Ms. Elliott.

Applicant

Mr. David Via identified himself as representing his parents, William G. Via and Sylvia V. Via, who are the property owners at 2603 Bay Drive. He has requested a variance so unimproved soundside lots across the street from the property can be purchased, and a pier and bulkhead can be built. Mr. Via said that he been trying to purchase the property for 20 years. He stated that he had hired an engineering firm, which had contacted Army Corps of Engineers, CAMA, and Town representatives to identify and address any issues prior to permitting. Upon hiring a surveying firm to develop plans, the applicant stated he was informed about the increased setback requirement that would affect the proposed property recombination. Mr. Via requested a side setback variance enabling the applicant to purchase the lots and construct the pier.

Mr. Cox stated he noticed that several nearby soundside properties have piers, as they are not buildable. Mr. Via concurred.

Mr. Self inquired about the distance anticipated between the multi-use path and the eventual bulkhead. Mr. Via stated he would follow any regulatory requirements, and will reclaim as much land as permitted. He noted that land is eroding under the multi-use path. Mr. Via stated

he was in discussion with the adjoining property owner, Mr. Maurer, about doing more with bulkheads to protect the soundside parcels from erosion.

Ms. Self inquired whether neighboring properties have bulkheads. Mr. Via responded negatively, but noted that several properties further south along the street did have bulkheads in place. He anticipated constructing a substantial pier to withstand storms.

Mr. Wheless stated that the Board of Adjustment must determine whether there would be any unnecessary hardship for the applicant to accomplish his plan under the application of the ordinance. Mr. Wheless inquired of the Town whether the applicant would be required to cut one and one-half feet off the left side of the house to be permitted to build the pier, under the application of the ordinance. Ms. Elliott answered affirmatively. Mr. Wheless inquired whether that was an undue hardship for the applicant. Mr. Via responded affirmatively, noting it would be a financial hardship.

Mr. Wheless inquired whether the lots around the applicant's property of a similar size. Mr. Via replied that most properties appeared to be similar in size, with similarly-sized homes.

Mr. Wheless inquired whether the applicant had constructed the house, knowing that he would eventually plan to construct a pier and knowing that the setback issue would be a problem. Mr. Via stated that the applicant constructed the home, but the soundside lots were owned by other individuals for many years. Mr. Wheless inquired whether the applicant created this alleged unnecessary hardship, knowing that the applicant would approach the Town to resolve it. Mr. Via responded in the negative.

Mr. Lowack asked if there were any further questions for the applicant. There were none.

Adjoining Property Owner

Eric Maurer identified himself as owner of 605 West Arch Street. Mr. Maurer expressed support for the property to be developed with a bulkhead and pier.

Opposition

None.

Mr. Lowack noted Ms. Elliott's earlier statement indicated that no opposition had been communicated to the Town. Mr. Wheless inquired whether any members of the public present believed themselves to have standing to testify. No one present responded.

Mr. Lowack accepted the February 6, 2019 application and accompanying surveys, along with the Town's written responses, photograph exhibits, and public notice into evidence.

Mr. Wheless provided an overview of the decision process: there are four questions set out by the N.C. General Assembly, each of which must be approved by a four-fifths vote. A vote of less than fourth-fifths on any question, will deny the variance. The Board will vote on each question, supporting the decision for that choice.

Board of Adjustment Findings of Fact

The Board of Adjustment established the following findings of fact:

1. It is the Board of Adjustment's CONCLUSION that the hardship of which the Applicant complains **DOES** result from a strict application of the ordinance. This conclusion is based on the following FINDINGS OF FACT: The Board heard testimony indicating that to comply with the ordinance, the applicant would be required to remove 1½ feet off the entire side of his house, which would be an unnecessary financial hardship.
2. It is the Board of Adjustment's CONCLUSION that the hardship of which the Applicant complains **DOES** result from conditions that are peculiar to the property. This conclusion is based on the following FINDINGS OF FACT: the hardship is peculiar to the property due to the geographic location as a soundside parcel, along with its irregular shoreline and ongoing erosion.
3. It is the Board of Adjustment's CONCLUSION that the hardship **DOES NOT** result from the Applicant's own actions. This conclusion is based on the following FINDINGS OF FACT: The applicant's act of purchasing the parcels across the street with the knowledge that it may create a need for a variance is not a self-created hardship. The house meets the setback requirement for the existing property. The hardship arises from the additional square footage of the recombined property, placing the property into a different setback requirement.
4. It is the Board of Adjustment's CONCLUSION that, if granted, the variance **WILL** be consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based upon all of the above FINDINGS OF FACT listed above, as well as the following: The applicant's planned addition of a bulkhead, in conjunction with a pier, will promote public safety in the community by stopping erosion negatively affecting the Town's multi-use path; the Town has conceded this point in favor of the applicant.

Mr. Self moved to approve the variance request for 2603 Bay Drive, as submitted, to include any and all permitted secondary accessory structures on the new additional lot, based on the Findings of Fact. Ms. Dorn seconded the motion, which was approved by a unanimous, 5-0 vote.

Adjournment

There being no further business before the Board of Adjustment at this time, Mr. Cox moved to adjourn. Ms. Dorn seconded the motion, which was approved by a unanimous, 5-0 vote. The meeting adjourned at 5:46 p.m.

Submitted by:

James Michael O'Dell
ZBOA Clerk