

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
October 23, 2012

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, October 23, 2012, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers.

Mr. Gibbons explained the Bylaws of the Board and stated the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three additional minutes for rebuttal.

Members Present: Robert Gibbons, Robert Grimes, Heather Stefl, Dean Larson, Larry Ingalls, Ray Davis, Danny Kim, and Steven Apicella

Members Absent: Ernest Ackermann

Staff Present: Susan Blackburn, Zoning Administrator
Melody Musante, Zoning Manager
Andrekia Magwood, Recording Secretary

DECLARATIONS AND DISQUALIFICATIONS

Mr. Gibbons asked if there were any declarations of disqualifications. Mr. Ingalls stated on the cases presented tonight, V12-01/1200325 and V12-02/1200326, having read the material it appeared that the former company that he worked for before retiring, Sullivan, Donahoe, and Ingalls worked with the applicant and prepared the plats for this case. Although he did not receive any compensation or benefits from Sullivan, Donahoe, and Ingalls based on his former conversations with the former County Commonwealth Attorney, Mr. Dan Chichester, he always advised him of sometimes perception was more than the real technical definition of what was a conflict of interest. He did not feel he had a real conflict of interest, but perception may be there, so he would abstain from the discussion and vote of those 2 cases.

Mr. Gibbons asked Mr. Apicella to substitute for those 2 cases. He proceeded to briefly inform everyone on the purpose of the meeting and the Board of Zoning Appeal's role. He introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

PUBLIC HEARINGS

1. V12-01/1200325 - WALTER WAYNE SURLES AND MARY ELLEN BALL - Request variances from Stafford County Code, Section 28-35, Table 3.1 "District Uses and Standards" R-1 Suburban Residential Zoning, (d)(2) Requirements, Minimum front yard and (d)(4) Minimum lot width in order to legally subdivide Tax Map 45 parcels 176 and 176B. The front yard and minimum lot width will not be met. This request is to correct a lot split due to stipulations in a will. The property is located at 164 Truslow Road.

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2. V12-02/1200326 - WALTER WAYNE SURLES AND MARY ELLEN BALL -

Request variances from Stafford County Code, Section 28-35, Table 3.1 "District Uses and Standards" R-1 Suburban Residential Zoning, (d)(2) Requirements, Minimum side yard and (d)(4) Minimum lot width in order to legally subdivide Tax Map 45 parcels 176 and 176B. The side yard and minimum lot width will not be met. This request is to correct a lot split due to stipulations in a will. The property is located at 162 Truslow Road.

Mr. Gibbons stated both cases would be presented together for consideration of the public hearing, but voted upon separately.

Mrs. Musante read the description of both cases. Applicants Walter Wayne Surles and Mary Ellen Ball request variances from Stafford County Code, Section 28-35, Table 3.1 "District Uses and Standards" R-1 Suburban Residential Zoning, Requirements (d)(2), Minimum front yard and (d)(4) Minimum lot width in order to legally subdivide Tax Map 45 parcels 176 and 176B. The front yard and minimum lot width will not be met. This request was to correct a lot split due to stipulations in a will. The property was located at 164 Truslow Road. Case V12-02/1200326 applicants Walter Wayne Surles and Mary Ellen Ball request variances from Stafford County Code, Section 28-35, Table 3.1 "District Uses and Standards" R-1 Suburban Residential Zoning, Requirements (d)(2), Minimum side yard and (d)(4) Minimum lot width in order to legally subdivide Tax Map 45 parcels 176 and 176B. The side yard and minimum lot width will not be met. This request was to correct a lot split due to stipulations in a will. The property was located at 162 Truslow Road. In both cases, you have the application, the application affidavit, exhibit plat prepared by Sullivan, Donahoe, and Ingalls dated September 24, 2012. In case, V12-01/1200325, the Board of Zoning Appeals was to consider a request for the front yard setback and lot width requirement for Tax Map 45 Parcel 176 to comply with the zoning ordinance in order to legally subdivide. The applicant requested a variance of 17.5 feet of the required 30 foot front yard setback. The Stafford County Subdivision Ordinance, Section 22-167 (a) and (b) required that additional right-of-way be dedicated at the time of subdivision recordation, if the comprehensive plan required it or if the existing road bed did not meet the 50 foot width. In this case, both were applicable. Therefore, an additional 8 feet would be required for right-of-way dedication. The exhibit plat prepared by Sullivan, Donahoe and Ingalls shows the required additional 8 feet of proposed right-of-way making the front setback at twelve and a half feet therefore requiring a variance of seventeen and a half feet. The applicant also requested a variance of 2.59 feet of lot width. The lot width for this parcel was 77.41. The required lot width is 80 feet. The existing single family dwelling was built in 1938. Per the Will of Mary Jane Powell Surles, the original owner, Parcel A, also known as Tax Map 45 Parcel 176 was deeded to Joseph Edward Surles and Parcel B, also known as Tax Map 45 Parcel 176B, was deeded to Mary Ellen Ball and Walter Wayne Surles. This will was executed December 28, 2000 and these 2 parcels were recorded in the Circuit Court Clerk's Office without being legally subdivided. The applicants wished to bring the properties into conformance so they may receive clear title. If the Board of Zoning Appeals granted these variances, a subdivision plat may be filed for approval in the Planning and Zoning Office and recorded in the Circuit Court Clerk's Office.

In case V12-02/1200326, the applicant requested a variance for the side yard setback and lot width requirement for Tax Map 45 Parcel 176B to comply with the zoning ordinance in order to legally subdivide. The applicant requested a variance of 1'4" of the required 10 foot side yard setback. Currently, the side yard was 8.6 feet. Additional right-of-way for the widening of

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Truslow Road would be required but would not affect the front yard setback therefore no variance would be requested. The applicant also requested a variance of 29.32 feet of lot width. The lot width for this parcel was 50.68 feet. The required lot width was 80 feet. The existing single family dwelling was built in 1981. Per the Will of Mary Jane Powell Surles, the original owner, Parcel A, also known as Tax Map 45 Parcel 176 was deeded to Joseph Edward Surles and Parcel B, also known as Tax Map 45 Parcel 176B, was deeded to Mary Ellen Ball and Walter Wayne Surles.

Mr. Gibbons asked if there were any questions for staff. Mr. Davis asked if County sewage was available. Mrs. Musante stated she was unsure and he should defer his question to the applicant. Mr. Surles stated County Sewage was available. Mr. Larson asked if this was the first application for variance for this property. Mrs. Musante replied yes it was. Mr. Apicella asked if there were homes on both lots. Mrs. Musante stated that was correct. Mr. Apicella asked if they were conforming at one point in time. Mrs. Musante asked for a second to research that information. Mr. Gibbons stated he believed one was built before the Zoning Ordinance was ever established in the state. Mrs. Musante stated she was unsure but it appeared that they could have possibly met the setback at one point until VDOT came and took right-of-way, which a copy was provided to the Board members. In the 80s, VDOT took the first portion of right-of-way, but as far as lot width it did not appear that they were conforming, but setback possibly. Mr. Apicella asked if a boundary line adjustment would help solve some of the issues. Mrs. Musante stated staff went over that with the applicant and it did not appear that they could do a boundary line on either side to fix the lot width issue, but the setback issue it would not correct. Mr. Gibbons asked the applicant to come forward.

Walter Wayne Surles stated he would speak in favor of the application. He gave compliments to Mrs. Musante on her assistance, guidance, and willingness to help him with the process. Simply stated, 2 houses were built on this property. The first one was built in 1938 and the second was built over a period of time completed in 1981. Building permits were approved at that time and an occupancy permit was granted, so if that had any relevance on the cause of error it would suggest that they possibly were, but the properties were conjoined and in the will of his mother, she willed the 2 properties to 2 separate owners. Mary Ball & Wayne Surles for Parcel B and the primary house to Joseph Edward Surles, with the constraints that he must reside on the property and maintain it for 20 years at which time the property would become his. As overseers of this property and executives of the will, he would like to make life a little simpler and separate the two properties in order to establish 2 clean deeds.

Mrs. Stefl asked if there was a reason the applicant's brother, Joseph was not on the application as one of the 3 owners of this parcel. Mr. Surles stated he was not the owner of the parcel. Parcel A was still in the estate of Mary Jane Powell-Surles, the executor. The requirement was he would not become the owner until he has resided on that property for 20 years. Mrs. Stefl stated Mr. Surles mothers' will stated in 2000, that Joseph was the immediate owner along with Mr. Surles and his sister. Mr. Surles asked what the date of the will was. Mrs. Stefl stated December 22, 2002 was the date of the listed heirs and real estate affidavit. She questioned if Mr. Surles had not closed out his mothers' estate after 12 years. Mr. Surles stated he was surprised at that statement because the family closed the estate out properly and his recollection of the will was that it clearly stated that parcel B would be deeded to Wayne Surles and Mary Ball and parcel A would be deeded to Joseph Surles under the requirements that reside on the

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property for 20 years. After a discussion, it was determined that Joseph Surles was not considered the owner of the property until he had resided on the property for 20 years.

Peggy Curtis, sister of Walter Wayne Surles, stated their home on 176 Truslow Road was destroyed after 43 years, and they had no place to live. She asked the Board of Zoning Appeal members to approve the application so that she would be able to receive a loan. She was currently unable to get a loan because the title was not clear.

Mrs. Stefl made a motion to approve application V12-01/1200325. Mr. Davis seconded the motion. Dr. Larson stated he was scratching his head on this because for one there was a situation where it was not the typography or the nature of the property that was causing the need for a variance, but on the other hand, without the variance the family could not sell the property. He recommended more discussion about what other people concerns where.

Mr. Davis stated the boundaries were there, the houses were there, the houses would not be moved so the Board would have to do something.

Mr. Kim stated he agreed. VDOT took away some of the land in the 80s and this was the one time that BZA should take action and approve the variance.

Mr. Apicella stated he had the same concerns as Dr. Larson. BZA was bound by confides of the statue that stated a variance could only be granted primarily when it was the result of the conditions of the property itself. He agreed that the fact that VDOT took part of the property caused this problem. He expressed that he was struggling to figure out what the right path would be. There should be another avenue outside of the variance process to give people relief since it was so narrowly defined. He stated he would like to find a reason to approve the application because he felt like it was a hardship, but it may not rise to a hardship under the conditions of a variance.

Mr. Grimes stated VDOT created the problem with the set back. It probably was not in compliance to the new zoning code before VDOT took the extra 8 to 12 feet, but in his mind the owner did not create this hardship. The owner simply wanted to subdivide their lot so that they could use it as they wish. They built 2 homes on the property that were approved, permitted, and given occupancy permits based on their location and the zoning available at the time. From his perspective he did not feel that the owners created this hardship and they would lose the value of the ability to sell the property as 2 separate lots in the future.

Mr. Gibbons called the vote. The motion passed 7 to 0 (Mr. Ingalls abstained).

Mrs. Stefl made a motion to approve application V12-02/1200326. Mr. Davis seconded the motion. The motion passed 7 to 0 (Mr. Ingalls abstained).

The applicant gave thanks to Mrs. Musante for her guidance and willingness to help him through the process.

UNFINISHED BUSINESS

Mr. Gibbons announced that the Board of Zoning Appeals did not have any applications so the next meeting would be in January. Mr. Ingalls made a motion to cancel the November and December 2012 meeting. Mr. Davis seconded the motion. The motion passed 7 to 0. Mr.

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Gibbons stepped down as Chairman and turned the Chairman position over to Dr. Larson, for discussion of item number 3.

OTHER BUSINESS

3. Bylaw Amendment

Dr. Larson asked if everyone received a copy of the relevant part of the Code of Virginia that referred to dual membership on the Planning Commission and the Board of Zoning Appeals. He opened the floor to discussion of the issue that by law members of the BZA could not serve in another public office, with the exception that 1 member of the BZA may be a member of the Planning Commission and Board of Zoning Appeals at the same time. There were 2 current members of the BZA that also serve on the Planning Commission. The request was to make changes to the Bylaws to address the issue.

Mr. Apicella provided the members with a copy of the Code of Virginia, Stafford County Ordinance, and a letter he wrote to the County Attorney regarding this matter, and several legal opinions on this matter, one from the County Attorney, one from an independent counsel provided by the County Attorney, and a letter where Mr. Cord Sterling pursued to look at this matter from his perspective. Mr. Apicella read his statement. Mr. Gibbons asked if he could make a point of order. He stated that on April 16, 2012 the Board of Supervisors met and suggested the Board of Zoning Appeals address Section 15.2-2308 and that was the only thing that was forwarded by the Board of Supervisors to the members, not the other issues that were being introduced. Mr. Apicella stated he did not understand Mr. Gibbons point because this was an investigative body and they should have every right to pass on additional information that was pertinent to the issue. He stated one of the things found in the documentation presented that it clearly stated in Section 15.2-2308 that alternate members were equivalent to, and there was no distinction between alternate and regular members as it seemed to be implied in the discussion about amending the Bylaws. He proceeded to read the letter he wrote to the Stafford County Attorney on April 3, 2012 and a letter from the Stafford County Attorney to the Board of Supervisors dated March 30, 2012. He stated Supervisor Sterling obtained a legal opinion in this matter from Leming and Healy Law Firm. He proceeded to read the County Attorney's opinion and reviews. He stated there was a third opinion by an Attorney who was previously a County Attorney for another jurisdiction and worked for Greehan, Taves, Pandak and Stoner Law Firm. Mr. Stoner came to the same conclusions as those issued by Mr. Shumate. He proceeded to read a statement provided by him. Mr. Apicella stated that the statements he read and the opinions that he cited support the conclusion that he did nothing wrong in this matter and that he was properly serving on both the BZA and Planning Commission and was the first person involved in this situation. He stated Mr. Gibbons term would expire in December 2012, if a decision was not reached tonight time itself would resolve this issue within 2 months, and there would not be any meetings between now and January. The BZA was bound by the State Code to advise the court that Mr. Gibbon's term was expiring by November 31st. If the BZA did decide to pursue a resolution to this matter, it should be vetted with the County Attorney's office or appropriate legal authorities to determine whether or not they were proceeding in the proper manner within the confines of what the BZA was allowed to do under the circumstances.

Mr. Larson asked Mr. Sterling to come forward.

Mr. Sterling, Supervisor for Rock Hill District, stated he appointed Mr. Gibbons to both the BZA and Planning Commission. He addressed the legal opinions mention by Mr. Apicella and stated those documents were attorney client privileged and were not supposed to be distributed unless it

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was determined by a Board or the client that it could be done. The distribution of those documents violated that and he was very disappointed in Mr. Apicella. Mr. Apicella stated that the documents were provided to Mr. Gibbons before they were provided to him. Mr. Sterling stated they should not be distributed as Mr. Apicella had done. When the Board of Supervisors hired Mr. Shumate, he was very clear that attorneys including the Attorney General were just an attorney, which included the County Attorney. He rendered an opinion that others disagreed with. He was not the attorney for this Board he was the attorney for the Stafford County Board of Supervisors. This was a matter for the BZA to decide. In terms of how the law applied, Mr. Gibbons was appointed to the BZA before Mr. Apicella. This law governs the BZA not the Planning Commission. Mr. Gibbons was on the BZA first, therefore he should have primacy. This law talked about members being both and Mr. Gibbons was a member. Mr. Apicella was an alternate member. The question the BZA had before them was a Quazi-judicial Authority because this was a matter before them and the court to make the final decision. As a citizen of the Rock Hill District, he asked the Board to respect his member of the Rock Hill district because he was there to represent the concerns of the citizens. It would be a gross miscarriage of justice to consider one attorneys decision or opinion, which was in opposition to other attorney's positions and set aside the member who had primacy. Mrs. Stefl asked Mr. Sterling if he only voted when there were Rock Hill issues. He stated no but the Board voted on all issues that were placed before them. When members represent a certain district, they were given a certain amount of latitude primacy on certain measures. When the Board of Supervisors deal with subjects that was specific to the district that member was given primacy and courtesy to make the motion. Mrs. Stefl stated that was a courtesy not a requirement or law. Mr. Sterling stated correct and he was asking for that courtesy. Mrs. Stefl stated ultimately once you vote you put the motion before the Board for discussion, but ultimately when voting you vote for what would be best in Stafford County. Mr. Sterling stated that was correct. Mrs. Stefl stated so when a member came before the BZA, whether a member or alternate, they vote for the best interest of Stafford County. Mr. Sterling stated he believed Mr. Gibbons was in full compliance with the law. He questioned whether the County Attorney was correct, when stating all members were the same whether an alternate or non-alternate or was a full member, a district representative considered the member for purposes of the law versus an alternate member. An alternate member did not vote unless there was a vacancy for some purpose. Alternate members were not the same as full board members because full board members were appointed by district. Mr. Apicella stated he believed Mt. Sterling was supporting the at large Chairman position. He asked Mr. Sterling if he could explain the difference of an at large Chairman position compared to the current seven districts. Mr. Sterling stated in the case of an at large Chairman, whether elected by the voters of the County at large, there was a vastly different position because there would be roughly 130,000 people participating not just a few. Mr. Apicella asked if he was stating that the seven board members did not represent the 130,000 people that reside in Stafford County. Mr. Sterling voiced his opinion of primacy and rendered opinions of the BZA members. He was in disagreement with Mr. Apicella's conclusion that he was the person that could serve on both committees. This was a matter for the BZA to determine what their member was and what qualified. Mr. Apicella stated he was trying to understand the benefit of having this discussion when Mr. Gibbon's term was to expire at the end of December and the BZA would not have any more cases before January. Mr. Sterling stated that was his questions when the issue was raised to the Board of Supervisors.

Mr. Ingalls stated he viewed this issue fairly simple. He read the State Code as a Board of Zoning Appeals should consist of either five or seven residents. Seven are members of the Board according to State Code. Then the Code stated members of the Board shall hold no public office in their locality except that one member of the Board for a local Planning Commission.

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The State Legislature decided only one member of the BZA should be on two bodies. The State Code stated alternate members may vote on any application in which a regular member abstained, and that was the function of the alternate member. He stated if one member of the Board was going to be on the Planning Commission it should be within the seven members so that person was present at every meeting and could provide necessary information. That member would have the benefit to provide information on Planning Commission level that the other BZA members were not privileged to. The BZA members would not benefit as much as it would be if that person was a BZA member not alternate. This Board has seven members and those seven members should be the ones making the Bylaws there should not be a nine member Board, so if they were going to have a member serve on the BZA and Planning Commission it should be a member of the Board who was present on a regular basis.

Mr. Apicella stated it was not distinguished between what was considered a regular member and an alternate in the State Code.

Mr. Gibbons stated the issue was the BZA Bylaws were not in compliance with the State Code. He suggested the BZA forward a letter to the Attorney General stating the issues discussed to receive input on the matter.

Mr. Gibbons made a motion to forward a letter to the Attorney General with the issue BZA's issues and concerns. Mr. Apicella seconded the motion. The motion passed 8 to 0.

Mr. Grimes made a motion that only one sitting member that serves on both the BZA and Planning Commission could vote for the next hearing. Mr. Kim seconded the motion. The motion passed 7 to 0 (Mr. Apicella abstained).

ADOPTION OF MINUTES

4. June 26, 2012

Mr. Ingalls made a motion to approve the June 26, 2012 minutes. Mr. Grimes seconded the motion. The motion passed 7 to 0 (Dr. Larson abstained).

ZONING ADMINISTRATOR REPORT

Mrs. Blackburn stated she had no report at the time.

ADJOURNMENT

Before official adjournment, Mr. Gibbons stated since this would be the last meeting they would need to work on the Board of Zoning Appeals annual report to present at the BZA meeting in January. He also questioned Mrs. Musante about the dinner that would be provided to the BZA members in December on behalf of the Board of Supervisors. Mrs. Musante stated she was unaware, but she would get the information and send an email out to the members.

With no further business to discuss, the meeting was adjourned at 8:46 p.m.