

**Stafford County
BOARD OF ZONING APPEALS**

MINUTES November 28, 2006

The regular meeting of the Stafford County Board of Zoning Appeals on Tuesday, November 28, 2006 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Nick Kopchinsky in the Board of Supervisor's Chambers in the Stafford County Government Center. Mr. Kopchinsky 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.

Mr. Kopchinsky said the By-laws of this Board state that the applicant is allowed up to ten minutes to state their case, the other speakers are allowed up to three minutes to testify, and the applicant is allowed up to three minutes for rebuttal.

Members Present: Nick Kopchinsky, Larry Ingalls, John Overbey, Julie Rutledge, Steven Beach, and Cecelia Kirkman, Angelo Amador (7:03)

Members Absent:

Staff Present: Rachel Hudson, Deputy Zoning Administrator
Melody Friberg, Senior Zoning Technician
Dan Schardein, Director, Code Administration
Wanda Doherty, Recording Secretary
Steve Hubble, Environmental Division Manager
Steve Crosby, County Administrator

Declarations of Disqualification's: Mr. Ingalls said case SE06-03/2600341 Stafford County Board of Supervisors (Rocky Pen Run) he will abstain because his company performs work for the Stafford County Utilities department.

Mr. Kopchinsky said he would like to ask the Board if they could go a little out of order from the agenda taking the Special Exception cases first.

Ms. Kirkman said she would like to know why.

Mr. Kopchinsky said to be quite frank, citizens are here and not paid staff for case SE06-3/2600341 and I am asking if the Board concurs. He said the only reason case SE06-3/2600341 is first is because it was here four months ago.

Ms. Friberg said if we could make note that the Special Exception case SE06-13/2600643 Mount Ararat Baptist Church has requested a postponement.

Mr. Kopchinsky said so noted we did receive the information.

PUBLIC HEARINGS:

Ms. Friberg reviewed the following case for the Board.

SE06-15/2600719 - CHERYL & WAYNE ROUSE - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow additions to an existing nonconforming single family dwelling on Assessor's Parcel 31-33-31. The property is Zoned A-1, Agricultural, located at 71 Hope Springs Lane.

Wayne Rouse applicant stated they are asking for a Special Exception to the Stafford County Code to proceed with a two-story addition to their home. He said the proposed addition would consist of an entryway, living room, home office and utility garage on the first floor with a family room, laundry room and deck on the second floor. He said it would add about 900 square feet of interior space and 300 square feet of exterior deck. He said the structure was originally built by his father-in-law as his retirement home and constructed before the countywide rezoning back in the late 1970's. He said my wife's mother lived there a short time, my father-in-law lived there until his death in 2003, and we moved to the house in 2004 with the idea of expanding the square footage of the house. He said they would like to dress up the presentation of the home to the waterside of the house, which overlooks Aquia Creek. He said they have spent a considerable amount of money for an architect, survey, and county fees to come up with a plan to make our property something to be proud of and something to spend our retirement in a comfortable home. He said they respectfully request this Board to grant them a Special Exception for this addition

Mr. Kopchinsky opened the Public Hearing for other comments.

Mr. Ingalls asked if this was something, they plan to do right away.

Mr. Rouse said they would probably not start until March of next year and have done by this time next year.

Mr. Ingalls said it looks like you are going out to the front a little bit and out to the rear.

Mr. Rouse said they are not going out to the rear at all. He said what shows on the rear is an existing porch. He said they are only going out towards the water about 18 feet and it will not affect the side setback.

Mr. Ingalls said so the sunroom was already there.

Mr. Rouse said yes, it was an open porch when the house was first built and enclosed about 20 years ago.

Mr. Overbey said the water is in front of your house.

Mr. Rouse said that is correct.

Mr. Ingalls said your plat of consolidation shows that the RPA is in front of your house but your new addition would not impact that.

Mr. Rouse said that is correct.

Proponents: None

Opponents: None

Mr. Kopchinsky gave the applicant a final opportunity to speak.

Mr. Kopchinsky closed the public hearing.

Motion:

Mr. Amador made the motion to approve the request for Special Exception.

Mr. Overbey seconded the motion.

Mr. Kopchinsky asked if there would be any discussion.

Mr. Amador said he made the motion because he believes this is what Special Exceptions are for and this is a nonconforming structure built before the Code. He said if the Special Exception was not granted people could not improve their homes.

Mr. Overbey said he seconded the motion for the same reasons and this is not adding to the non-conformity.

Mr. Ingalls said he is supporting the motion because he believes the request meets the requirements in our Ordinance to grant a Special Exception. He said as the motion maker stated it certainly meets the criteria that we so often look for and got with the Ordinance.

Vote:

Motion to approve 7-0

Mr. Ingalls – yes

Mr. Kopchinsky – yes

Mr. Overbey – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Beauch – yes

Mr. Amador – yes

Mr. Kopchinsky reminded the applicant that there is a 30-day appeal time period and you will receive a letter from the Zoning office.

Ms. Friberg reviewed the following case for the Board.

SE06-17/2600721 - DARRYL R. & SENETTIE D. NELSON - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 35-9F. The property is Zoned A-2, Rural Residential, located at 24 Richards Ferry Road.

Mr. Kopchinsky said he has a question. He said the applicant is required to file an application affidavit on owners. He said on the application that both Darryl and Senettie Nelson are listed as property owners but on the affidavit, only one is listed.

Ms. Rutledge said also, Mr. Chairman on the owners consent only Darryl R. Nelson is listed.

Mr. Kopchinsky said only one of the owners would have to sign that.

Mr. Kopchinsky said what he is going to do is ask that if there are no objections the owners just add the name.

Ms. Kirkman asked if the tax record is in the file and what does it say.

Mr. Overbey said the problem is it would not be notarized.

Ms. Hudson said Mr. Chairman are you asking if only Darryl Nelson signed.

Mr. Kopchinsky said he was asking about all equitable owners on page two of the affidavit and I only have one equitable owner listed. He said could we correct that now.

Ms. Hudson said she agrees it is showing only one owner.

Mr. Kopchinsky said is there any objection by the Board if we try to get this listed correctly on the form.

Ms. Hudson said she did not believe the applicant is present. She said only the applicant's representative is present.

Mr. Kopchinsky asked if the Nelsons were in the audience and they were not.

Motion:

Ms. Kirkman made the motion to postpone the case.

Mr. Overbey seconded the motion.

Mr. Kopchinsky said we have a motion to postpone and second because of an apparent error on the application.

Mr. Ingalls said explain the error to me.

Mr. Kopchinsky said on page two of the application affidavit under owners only one is listed.

Ms. Kirkman said the tax records show two owners.

Mr. Overbey said he would contend that even if you did change it you are changing a document that was notarized and I do not think you can do that.

Mr. Kopchinsky said the applicant needs to submit a new affidavit.

Mr. Ingalls said he did not see where that is a problem. He said we all know who the owners are and you are filling in the blanks.

Ms. Kirkman said we have a process to follow.

Mr. Overbey said you are dealing with a notarized document and that is the problem.

Ms. Rutledge called for the vote.

Mr. Kopchinsky said he has a motion and second to postpone case SE06-17/2600721 until the January 2007 meeting.

Vote:

Motion to approve 5-2

- Mr. Ingalls – no
- Mr. Kopchinsky – yes
- Mr. Overbey – yes
- Ms. Rutledge – yes
- Ms. Kirkman – yes
- Mr. Beauch – yes
- Mr. Amador - no

Ms. Kirkman said Ms. Hudson or Ms. Friberg to make sure somebody gets this fixed.

Ms. Friberg reviewed the following case for the Board.

SE06-3/2600341 - STAFFORD COUNTY BOARD OF SUPERVISORS - Requests a Special Exception per Stafford County Code, Section 28-57(h)(3)a, "Flood Hazard Overlay District", to allow construction of a dam across Rocky Pen Run for the purpose of creating a reservoir. The proposed dam will be located on Assessor's Parcels 43-27, 27A, 28, 29, 81 and 51-2. The

property is zoned A-1, Agricultural.

Ms. Kirkman interrupted Ms. Friberg and asked about the Henderson case.

Mr. Kopchinsky said he did move the Henderson case. He said it is a Variance case and he wanted to get the Special Exceptions done.

Ms. Kirkman said she was sorry she thought all the citizens were being put first.

Ms. Friberg introduced Steve Hubble, Environmental Division Manager to go over the staff report.

Mr. Kopchinsky asked if there were any questions from the Board regarding the application before we go forward.

Ms. Kirkman said she had a number of questions about the application she would like to ask staff and if they need to defer to other folks, she would understand. She said this has been on our plate for a number of months and wanted to go over some of the history of this to make sure that I have a correct understanding of the facts. She said this first came before us in May 2006 for the purpose of creating a reservoir on parcel 43-73A and it was postponed from that meeting, is that correct.

Ms. Hudson said she believed that is correct.

Ms. Kirkman said in June 2006 it came before the Board again for creating a reservoir on parcel 43-73A and it had to be postponed again because a member had to disqualify himself and there was no longer a quorum. She said it came before us again in July 2006 for the purpose of construction of a dam to create a reservoir on parcel 43-73A and was postponed again at the applicants request. She asked staff if they recall why the applicant requested the postponement.

Ms. Hudson said she did not have the minutes with her and did not recall.

Ms. Kirkman said in September 2006 the application appears to have changed and became an application for a Special Exception for the construction of a dam to create a reservoir on parcels 43-27, 27A, 28, 29, 81 and 51-2. She asked if a new application was filed at that point.

Ms. Hudson said she would refer to Keith Dayton in Utilities but would look through the file.

Keith Dayton of Stafford County Utilities said there was an updated amended application with some new information that was provided.

Ms. Kirkman said part of the problem she is having is we have six applications, none of them are dated, and I am trying to determine what was filed. She said for September 2006 was a new application filed and it would have had to been filed in July because there is a sixty day waiting period.

Ms. Hudson said that is correct.

Ms. Kirkman said she is trying to run through the history and that was postponed again at the applicants request and it came back to the Board in October 2006 for the same purpose. She said it was again postponed in October 2006 at the applicant's request. She said now it is back again tonight but advertised slightly differently, that was for the purpose of creating a reservoir, and the proposed dam will be located on parcels 43-27, 27A, 28, 29, 81 and 51-2. She asked when the application for today's hearing was filed.

Ms. Rutledge said was the application a reflection of the case that was postponed in September.

Ms. Kirkman said this is for a different advertised purpose so I would like to know when this advertised purpose was filed.

Ms. Hudson asked Mr. Dayton if he had that information as staff has the application that was done by you.

Mr. Dayton said he did not have the date.

Ms. Kirkman said we have affidavits that are signed in October so does that mean it was not filed until October. She said this is an application for a different purpose than anything else that has come before us as stated in the advertisement. She said she is just trying to understand when the application for the purpose of what is before us tonight got filed.

Mr. Dayton said the application and the purpose have never changed. He said the facility, the dam has always been proposed in the same location that is before you this evening. He said he is not sure what you are referring to when you said 43-73A but the dam was always proposed to go on 43-27, 27A, 28, 29, so it is in the same location.

Ms. Kirkman said she understands the dam is in the same location but the request was for different parcels and for a different purpose back in May 2006 than it is now.

Mr. Hubble asked are you speaking of the intake request.

Ms. Kirkman said no that was earlier in the spring.

Ms. Rutledge said maybe we could check to see what the advertisement was for the previous months and for this month.

Ms. Kirkman said she is asking when the application was filed.

Ms. Rutledge asks staff if they had a copy of the advertisements and when they were placed in the paper.

Ms. Kirkman said she is asking when the application was filed.

Ms. Rutledge said we also need to know what was advertised.

Ms. Kirkman said we know what was advertised but when did the application get filed. She said

the stated advertised purpose has changed over the months and I am trying to understand when this application was filed.

Mr. Kopchinsky said instead of having everyone sit while we sort this out I am going to request that we table this case until we get the additional information tonight. He said we will proceed with the last case on our Agenda if there are not objections.

Ms. Friberg reviewed the following case for the Board.

VO6-07/2600771 - LEVERT HENDERSON - Requests a Variance from Stafford County Code, Section 28-38(b) "Corner Lots", for one front yard requirement for construction of a proposed commercial office building on Assessor's Parcel 54F-8C-33. The property is Zoned B-2, Urban Commercial, located at 99 Madison Avenue.

Mr. Kopchinsky asked if there are questions of staff.

Mr. Kopchinsky asked if the tax information is available because according to this affidavit there are no equitable owners of the property. He said he is relatively certain that the property is owned by Levert and Juanita Henderson.

Ms. Friberg said she has the tax record and it is owned by Levert and Juanita Henderson.

Mr. Kopchinsky said he has a notarized affidavit showing none. He said my question to the Board is do we proceed.

Ms. Rutledge made the motion that we postpone this case to January 2007 meeting to have a completed application.

Mr. Overbey seconded the motion.

Mr. Amador said he is opposing the motion again. He said looking at the Ordinance and it does not require that the statement have to be a sworn statement and not a sworn affidavit. He said he read the Ordinance again after the last case. He said the last case we did not have the owner, applicant present but we have the owner, applicant here and if he has other information he can provide and somebody can notarize it right now if that is what is needed.

Ms. Rutledge asked if both owners are present.

Mr. Amador said we do not need both owners. He said since we are not having a meeting in December we take one of the applications and change it.

Mr. Kopchinsky said the problem is we have a notary saying that the application is accurate.

Mr. Amador said he could write at the bottom of the page the sworn statement like "I certify the owners are as follows" and maybe make a copy because we do not need to because we have ownership records and we can proceed.

Ms. Rutledge withdrew the motion.

Ms. Kirkman said she was a little uncomfortable with that because the County has set up policies and procedures and quite frankly, I do not understand why we cannot just get these things straight when the application is accepted.

Ms. Rutledge said mistakes happen.

Mr. Kopchinsky said he did not disagree and I think it is something we need to bring up and maybe Ms. Friberg will help correct that in the future with more technical review. He said it is a combination of applicant/owner and staff in this case. He said he did not believe there was any intent to do anything wrong but lousy administrative oversight.

Mr. Amador said his only statement goes to the fact that regulations, procedures and applications cannot go further than what the law calls for, I just read it again, and it does not call for a sworn statement. He said it was different in the previous case because you did not have the owner here to fix the problem and now we do.

Ms. Kirkman said it does mean the application was incomplete when it was accepted and that creates a whole other set of problems.

Mr. Kopchinsky said as indicated by Mr. Amador we could probably correct that here on the spot and proceed rather than hold up people.

Ms. Rutledge said it is a clerical error and the owner is here and this is fixable and it is in the best interest of the public.

Mr. Overbey said he did not have a problem with a fix for this one but we need to clarify on this form if it is not a required sworn statement that is needed take it out.

Mr. Amador said for the future it needs clarification because it is new procedure but if you look at the old one; let us say even if they printed both names on it, when you look at the sworn statement the notary made the error.

Mr. Overbey said the notary only knows what they are told.

Mr. Amador said the notary wrote his name where the applicant should have written his name.

Motion:

Mr. Amador said he moves that we fix it and get clarification in the future and we decide.

Ms. Rutledge seconded the motion.

Mr. Amador said he made the motion to allow for a correction for the record.

Vote:

Motion to approve 6-1

Mr. Ingalls – yes
Mr. Kopchinsky – yes
Mr. Overbey – yes
Ms. Rutledge – yes
Ms. Kirkman – no
Mr. Beach – yes

Mr. Kopchinsky asked Mr. Henderson or representative of the Henderson's come forward, state your name, address, and state who the owners of the property are.

Mr. Henderson said the owners of the property are Levert Henderson and Juanita E. Henderson of the same address. He said he bought the property in the late 1960's and opened a shop he ran for over thirty years. He said he closed the shop and has a client that would like to buy the building and demolish it and put another building back in the same location.

Ms. Kirkman said excuse me Mr. Chairman the affidavit also requires the disclosure of any contract purchasers.

Mr. Henderson said it is not in a contract but the client said verbally he would like to do this. He said the client may back out but he is an interested party. He said he is requesting a Variance and hopes the Board is generous enough to grant it.

Mr. Ingalls said, as he understands, you plan to tear down this building, which is approximately 30 x 30, and you want to build a building that is 30 x 60. He said the existing building is only 38' feet from the front of Chatham Heights road and you are going to move the new building back so it meets the current setback of 40'. He said on Madison Avenue you want to build 13' off the right of way of Madison Avenue, which is the same as the old building and would leave approximately 7' on the left hand side as you are facing from Chatham Heights road. He said he is concerned about parking, landscaping and everything else all fitting on this site.

Mr. Henderson said he owns the adjacent lot directly behind it, which would give the parking that would be needed.

Ms. Rutledge asked if there is a house located on the adjacent lot.

Mr. Henderson said no, it is a vacant lot.

Ms. Rutledge asked what are the reasons why you cannot use the current structure as it stands.

Mr. Henderson said it does not fit the proposed owner's situation and a new building would bring more taxes than the old building that is there currently.

Ms. Rutledge asked if the existing structure is taken down and you go to a new structure you will be subject to the current Ordinances, have you checked with Code Administration about that.

Mr. Henderson said he was going to let his proposed client take care of that, he is just requesting the Variance.

Mr. Ingalls said since you own the lot in the rear and you are maybe going to park on it, maybe not, the lot is 50' wide and the setback is 40'. He said the lot needs relief but in my mind, how much relief is reasonable. He said since you own the lot in the back you can make the building 20' wide you could actually make it deeper.

Mr. Henderson said the person interested in the property is looking for depth not length. He said the building across the street is going to be setting the same distance from Madison Avenue as mine. He said the whole time I have run a business there for 30 some years, we never had a problem with anything, the County, with traffic, and we never had a problem. He said if the old building just sits there what is the difference of having a new building setting in the same location. He said if we have an old building sitting there 13' from Madison Avenue and we tear it down and put up a new one and it is 13' from Madison Avenue what is the problem, really?

Ms. Rutledge said if you use the current structure and fix that up.

Mr. Henderson said it does not fit in with his client's project.

Ms. Rutledge said you could use the existing building today.

Mr. Henderson said it is in bad need of repair.

Mr. Overbey asked what type of business is going in there.

Mr. Henderson said it would be a model home to sell houses and he would like to have visibility from the main highway.

Ms. Rutledge said what if we granted this Variance and the interested party backs out the Variance runs with the land.

Mr. Henderson said the Variance is for the 13' setback, right. He said if the interested party did not do it, he could do it because I am a builder.

Mr. Overbey asked what type of building?

Mr. Henderson said possibly a two-story office building. He said I don't have the Variance and I can't build on 10'.

Mr. Overbey said the problem is if we grant the Variance you can build anything you want on that property.

Ms. Rutledge said usually when we look at Variances we request to see plans and we vote on a specific structure and we also vote on a specific distance. She said what could happen is that we give you a specific distance in a Variance this evening and for some reason you need more.

Mr. Henderson said he would not come back. He said this is what he is looking for and this would satisfy me.

Mr. Overbey said being that the interested party is planning to build a residential home what happens when is finished with it being a model.

Mr. Henderson said he would just have to use as an office.

Ms. Kirkman said a model home is not an office.

Mr. Henderson said they are using the model home as an office.

Ms. Rutledge said we are talking hypothetical issues and we have to deal with facts.

Mr. Kopchinsky said the Ordinance and the Supreme Court has ruled that if you sold this property and your buyer came in, asks for a Variance, and presented his plan it would not be considered a self-imposed hardship on the property because it is based on the property. He said we do not know what you are going to do with this. He said you tell us it is commercial property but I do not know what kind of parking you are going to need, the landscaping and there is a lot missing. He said the application is very vague.

Ms. Rutledge said we also have to meet certain criteria in order to grant a Variance and what is your hardship concerning this.

Mr. Henderson said his hardship is if I have to have a 40' setback and I only have 10' to build a building on that is quite a hardship.

Ms. Kirkman said you have a building on it now but it is in need of repair.

Mr. Henderson said would a new building create more of a hardship than the one already there. He said that is my question and if there is already one there with a 13' setback.

Ms. Kirkman asked if the building is in use now.

Mr. Henderson said he closed his business and he could have sold it many times but the County changed the zoning and I can only sell as commercial.

Ms. Kirkman said the issue here is it could be repaired but your prospective client does not want to do that.

Mr. Henderson said he does not want to fix up the old building he wants to build a new building and if I need more information, I could bring it back to you and we could postpone this to a later date. He said the Variance is what I am requesting and I feel like the new building is not anymore of a problem than what is currently there.

Mr. Overbey said Mr. Chairman the applicant said if we need to table the case if we need to do that and I think we do need to that to get additional information on exactly what is going on this

piece of property.

Mr. Kopchinsky said he did not think you are going to get that unless Mr. Henderson decides he is going to take the project on and develop whatever he plans to develop.

Ms. Kirkman said before we discuss this shouldn't we close the public hearing.

Ms. Rutledge said no, we are still asking Mr. Henderson questions.

Ms. Rutledge said Mr. Henderson in order to grant a Variance we have to have evidence that the hardship, the use of your building is not viable and to not get the Variance it would be approaching confiscation (like you could not use your land at all) and we are not hearing that this evening.

Mr. Henderson said I have to have a 40' setback.

Ms. Rutledge said you could use the building if it is repaired and you have used it in the past. She said the purpose may not suit a potential buyer but the hardship has to be the fact that you cannot use the property as it stands right now.

Mr. Henderson asked if he was limited as to what he can do with the property. He said can I take and make it 30' x 60'. He said it is only 30' wide now can I add another 30' to it. He said so actually I am being shot down.

Mr. Overbey said what we are saying sir is the existing building as it stands can be used for a purpose and that is what we have to look at. He said if you could not use that building for anything than you would have a case for a Variance.

Mr. Henderson said it would probably cost me as much to renovate as to build a new building. He said we will just have to table this and I will go back to my person and have him do some drawings and paperwork.

Mr. Overbey said if you make that a formal request of the Board for us to consider.

Mr. Amador said he wanted to point out that the requirements for a Variance do not change and I do suggest you look at what the requirements of a Variance versus a Special Exception are. He said we are not here to rewrite the Code; the Board of Supervisors has made some changes for non-conforming so you could expand with a Special Exception and easier to get. He said if it is residential and the Board of Supervisors are the ones that look at this as to what is a Variance and what is a Special Exception. He said in this case you are requiring a Variance, which is much harder to get. He said that the property cannot be used in its current form and basically confiscation but in this case, it can be used and can be repaired and makes it much harder to obtain.

Mr. Kopchinsky said he would like to point out to Mr. Henderson that the biggest problem with the case is we do not know what would go on the property if the Variance were to be granted. He said you come in here with a blank piece of property 50' deep and I require a 40' setback you

probably have a good case for at least some level of Variance and I am not going to tell you what that level would be. He said otherwise you could not use your property in B-2. He said before I would grant the Variance I feel I need to know what is going to be there and that there is some assurance of what is going on the property.

Ms. Kirkman said Mr. Henderson I want to be fair to you and I do not want you leaving here thinking if you make a few changes or get more information you will get the Variance. She said the laws about what is required to get a Variance are very clear. She said if you do not get the Variance you cannot use your property for any other purpose, you cannot get any value out of it. She said we already know you can get value out of it now because you have a building on it if repaired and I know not to the purpose you want but it could be used. She said she is concerned you will leave here thinking if you come back with more information you may get a Variance but from the information you presented so far it is not clear you will be eligible for a Variance.

Mr. Amador said he suggests we stop arguing a case that is not before us and move on.

Mr. Henderson asked that his case be postponed.

Mr. Kopchinsky said we have a request by the applicant to postpone his case, which he can do according to our bylaws. He said the case is postponed.

The Board took a ten-minute recess.

Mr. Kopchinsky said could we reopen the Stafford case and hear that again we are going to pick up where we left off with a question for staff.

Ms. Hudson said she looked through the original case file and looked through the ad file and the advertisement was changed for the particular parcels before you 43-27, 27A, 28, 29, 81 and 51-2 in the October ad for the October and November meetings.

Ms. Kirkman said the wording in the November ad was different from the October ad.

Mr. Kopchinsky said we are at the November meeting, it was advertised early enough, and twice appropriately, so I think we can proceed with the case.

Ms. Kirkman said my question for staff was when the application was received for this particular request. She said she would just like a date.

Ms. Hudson said the parcel numbers were changed on the application in the beginning of October.

Ms. Kirkman said so; we did not receive a new application.

Ms. Hudson said the application was amended.

Ms. Kirkman said thank you.

Mr. Hubble read over the staff report.

Ms. Rutledge said you talk about a significant increase in the hundred-year flood elevation and do you know what that increase is.

Mr. Hubble said it varies from between 108' and 0' and obviously, the biggest increase is at the lower end where the dam is going to be built because that is going to impound the water behind it. He said it tails off as you move up to the end of the lake where it connects back with the upstream creeks and is no longer a reservoir.

Ms. Rutledge said it has been stated that the County has acquired or in the process of acquiring the property in the areas that will be affected by the increase in flood elevation. She said could you tell me if the land has been acquired from all the owners of all the parcels affected by this.

Mr. Hubble said he would let Mr. Dayton address that question.

Ms. Rutledge said your condition number three says obtain property or easements in the location of any increase in the hundred-year flood elevation on off-site properties and where are these located.

Mr. Hubble said he intended that to be the entire lakeshore of the reservoir so when they build the dam and fill it with water it is going to create a lake that will flood upstream properties. He said his intent with that so they would require them to obtain any property that would flood once the reservoir is constructed.

Ms. Rutledge said we have a tax map showing a blue area and is that a proposed area or is that what you see as the area that is significantly affected by this.

Mr. Hubble said I believe what you have there and the applicant can confirm that is it is a picture of where the reservoir would be when and if it was constructed. He said his intent was that any properties or portions of properties that would be within that blue area that the County would acquire out right or obtain an easement from the owner to flood their property.

Mr. Overbey asked we know that the blue are indicated on the map is the maximum it would ever reach or a level everyday.

Mr. Hubble said you could confirm with Mr. Dayton but suspects that is the maximum elevation in addition, generally, on reservoirs they have a normal elevation and up to additional height for storage.

Ms. Rutledge said can you describe the structure they are going to build in order to construct the dam behind it. She said how that structure keeps the water from going into the dam area.

Mr. Hubble said he is going to defer to Mr. Dayton the technical expert on that.

Ms. Kirkman asked if Mr. Dayton is the same person to ask if the dam can be built without this, other structure that is up on the left.

Mr. Hubble said yes.

Ms. Rutledge said the volume of water that is currently coming down Rocky Pen Run.

Mr. Hubble said it may take me a few minutes to look through the appendices so if you want to move foreword.

Ms. Kirkman said she has one more question for Mr. Hubble. She asked Mr. Hubble to explain the only permitted uses in a floodway district are ones that do not lead to an increase in elevations.

Mr. Hubble said that has been a topic of conversation on the BZA for many years. He said his personal interpretation of that section of the zoning ordinance is that it is silent on whether you can increase flood elevation or not. He said he does not believe it addresses it either way.

Ms. Kirkman said when it says the proposed encroachment would not result in any increase in the hundred-year flood elevation.

Mr. Hubble said let me breakdown that section for you, at least my interpretation of it is. He said under H you have four categories, 1. 2., 3., and 4. He said he sees number 2. as allowed uses as long as you meet the conditions that are written. He said number 3. uses allowed by Special Exception number 4. uses that are allowed by administrative exception and 1. as anything not contained under 2., 3., and 4. He said he does not believe the statement under number 1. applies to 2., 3., or 4. because if you think about it on the basic level you cannot do any of those things in 3. or 4. without causing a minimal increase of flood elevation. He said he does not believe the writers of that Ordinance at that time would have intended those uses not to be allowed if you cause no increase.

Ms. Kirkman said actually I think we have established that often you can do them without leading to an increase in elevation it is just to costly for the applicant to consider.

Mr. Hubble said that could be with a bridge but would be more difficult for this type of project.

Mr. Dayton with Stafford County Utilities said the Special Exception before you pertains to our Rocky Pen Run project, which has been studied and determined to be a necessary project to meet water supply requirements for Stafford County out to 2050. He said we identified this in the early 1990's and moved forward to obtain all our environmental permits from the various regulatory agencies at the state and federal level. He said we finally secured all those in 2003 and 2004 and at that point, we began the site plan permit application process, which brings it to the County BZA level. He said they have approval from the Wetlands Board at the County level to construct this reservoir. He said the project consist of numerous phases and the first one is the river intake on the Rappahannock river and the overall project is a side stream storage reservoir where you pump out of the Rappahannock river, feed it into a reservoir for storage and on to a treatment facility and into production for the consumers of the County.

Mr. Dayton said he came to the BZA much earlier this year requesting a Special Exception for

the Rappahannock river pump station portion and you were kind enough to approve and we are

moving forward on that. He said this phase of the project is the actual construction of the dam and the reservoir itself. He said even the dam project is broke down into different facets. He said the first is construction of the dam and on our schedule is to begin early next year and filling of the reservoir is not scheduled until 2009-2010. He said we hope to be up and running online with the water treatment facility providing water in the May 2010 timeframe. He said that is our proposed scheduled. He said they are most concerned about the area around the dam area and why some of the amendment language was changed to identify those parcels where the construction of the dam would be and we now have those. He said we do not own all of the properties around the reservoir as you mentioned but we have until 2009 to acquire those and we are moving forward rapidly on that. He said the Board of Supervisors have authorized the appraisal process and negotiation and in few cases condemnation process as well. He said the County has a commitment to this project and the Board of Supervisors has a commitment to this project. He said they have proceeded with engineering and design work and some of the early construction contracts pertaining to the intake itself.

Mr. Dayton said what you see in blue is actually delineated to 232-elevation contour and the normal full elevation for the reservoir would be 230. He said there is two feet of freeboard and within that two feet this is being designed the worst flood imaginable, probable maximum flood would be contained within that 232 foot contour. He said it would not get higher than that even in the event of precipitation far and excess of the hundred-year storm. He said the County is not looking to obtain easements but buy to the 232 contour and have been doing that since 1994. He said we need a place to put a large volume of water, the reservoir is being designed to hold 5.2 billion gallons and we can't put it in a tank we have to put it in a reservoir. He said reservoir have to go on a stream and area large enough for water storage to do some good. He said when it is up and running and operational the safe yield has been calculated at 13.8 million gallons per day. He said we have with our two facilities or storage reservoirs we have now are 13.2 million gallons per day and the new one will more than double that. He said we cannot avoid a dam or encroachment in an existing waterway in a project of this magnitude and that is why we are before you requesting this Special Exception.

Ms. Rutledge said to clarify you do own (County) the parcels that were advertised for this case this evening.

Mr. Dayton said yes, the County owns the land where the dam is to be constructed upon and that is the immediate contract we are trying to move forward and obtain the balance before the reservoir is filled.

Ms. Kirkman said this application to be heard tonight was due by September 26, 2006 and on September 26, 2006 did the County own those properties.

Mr. Dayton said the County acquired those properties on or about October 16 or 17, 2006.

Ms. Kirkman said so when the County representative signed an affidavit on October 11, 2006 that they owned those properties was that an incorrect statement?

Ms. Kirkman said this owners consent form that was signed for parcels 43-27, 27A, 28, 29, 81,

and 51-2 dated October 11, 2006.

Steve Crosby, County Administrator said he did not know the answer to those specific dates and specifically when the Board acquired the property. He said they authorized a quick take to acquire the properties and in order to get them in a timely fashion so when this was heard by the BZA they would be owned. He said whether or not to address your specific question I do not know the answer to that.

Ms. Kirkman said so the application was accepted on or before September 26, 2006 without the owners consent because the County signed the owners consent form when they did not own the property. She said the County again signed yet another consent form on October 11, 2006 when they did not own the properties because they did not acquire them through quick take until October 19, 2006. She said either we accepted an incomplete application or we accepted an application from someone who did not own the properties, which is it.

Ms. Rutledge said I think that information is factual and that we would have to make that determination and we would need that information.

Ms. Kirkman said we have that information in our packet.

Ms. Rutledge said we would need to see the deeds.

Ms. Kirkman said we have them in our packet.

Ms. Rutledge said no these are checks written.

Ms. Kirkman said we have the certificates of take.

Mr. Dayton said the County acquired the property legally when the certificates of takes were signed.

Mr. Kopchinsky said he thinks we are back in the situation were we have an administrative problem and I do not believe we have a question tonight of who owns the property.

Ms. Kirkman said that is for discussion purposes. She said Mr. Dayton, could this dam be built without the structure called a saddle dyke.

Mr. Dayton said no, not to the elevation that is required.

Ms. Kirkman said that saddle dyke will completely submerge several properties and has the County acquired all those properties.

Mr. Dayton said the County has not acquired all the properties within the body of the reservoir itself to include some areas affected by the saddle dyke.

Ms. Kirkman asked if there are other completely submerged properties that have not yet been acquired by the County.

Mr. Dayton said that is also correct.

Ms. Kirkman said what would keep the County from just waiting until it acquired the properties and in my opinion at best there are a number of irregularities and in my opinion some procedural errors here in terms of the application. She said why is it that the County cannot wait until it owns the properties and then apply for the Special Exception.

Mr. Dayton said the projection right now is in the event of a significant drought comparable to the one in the early 1980's certainly comparable to the one in the early 1960's we would not have enough water supply in the County to supply our citizens. He said that is why they are trying to move forward right now. He said with all the approvals and all the go-ahead we cannot complete this project before 2010 and 2010 is calculated at the edge of the envelope to where we may have problems with a severe drought.

Ms. Kirkman said the County has demonstrated that it has the ability to acquire properties within days and why hasn't the County done that with the other properties.

Mr. Dayton said there are procedures to be followed that precede condemnation, detailed appraisals; good faith effort to negotiate with property owners and that takes quite a bit of time.

Ms. Kirkman said you have been doing this since 1994.

Mr. Dayton said the County was not committed at that time to forcefully acquire property. He said we have been acquiring property when owners came to us. He said recently we hired a new firm to go ahead and start doing appraisals and focusing on the critical properties first but this process will take well into next year.

Ms. Kirkman said let us narrow this. She said since the County did not own the properties when it applied for this request, signed an affidavit when it did not own the properties and what is keeping the County from at least filing a new application that actually meets the requirements.

Mr. Dayton said there would be schedule impacts. He said if we are turned down, tonight that is what we will have to do but there will be impacts to the project schedule.

Ms. Kirkman said if you are turned down tonight, you would have to wait a year. She said you are saying you want the BZA to consider this even though the application was not properly filed.

Mr. Dayton said he was not sure he would necessarily agree with that.

Mr. Kopchinsky said you made a statement that there would be schedule impacts. He said could you tell me what those impacts would be. He said five months ago, four months ago we have to get this done right now and the County has asked for postponement on at least three occasions. He said is it a two-month delay or is it a bigger delay. He asked if the County is signing contracts next week or what impact would we have to basically correct the apparent inaccuracies in the application.

Mr. Dayton said it would be difficult at best to really accurately assess all the potential impacts. He said we have a schedule now for construction that backs us into a winter period for critical

activity. He said a month or two-month delay would push us out of that time frame and into the next winter.

Mr. Kopchinsky said you are talking about the winter of 2009 and 2010.

Mr. Dayton said we have to get a certain amount of work done right now on the foundation prior to letting out the second contract, which is the construction of the dam. He said there is a contract we are hoping to move forward on in January to excavate under the dam, and then there will be a contract in 2008 to build the dam. He said they are now backed in to that 2008 and 2009 winter if we push it any further. He said if we push any further it would have to be done 2009 and 2010.

Mr. Overbey said basically you are saying the construction of the dam could be pushed back a whole year.

Mr. Dayton said that is correct. He said the schedule we are in now is very tight and there are some things that are moving forward.

Ms. Kirkman said if the schedule is so critical why the County asked to postpone this last month.

Mr. Dayton said we felt the project was so critical we wanted the hearing of the whole Board.

Ms. Rutledge said we had three people not voting and that is the applicants right.

Ms. Kirkman said we were not down to four in September why did the County ask to postpone then.

Mr. Dayton said we felt the project was so critical we wanted a hearing of the entire Board.

Mr. Amador said September is not his big concern but he does not understand why the application was signed in October. He said you could not have had a hearing in September anyway. He said why did you sign and submit an application before you owned the properties.

Mr. Dayton said he believes there was a certain feeling that there was a will of the Board to move forward with this project and it would be a matter of a couple of days.

Ms. Kirkman said you submitted this application last spring and that was not a matter of days from October 19.

Mr. Dayton said I believe what the language says is ---

Ms. Kirkman interrupted Mr. Dayton you submitted an owners consent form (not you personally) the County did.

Mr. Dayton said that has the will-acquire for all the properties impacted the project.

Ms. Kirkman said the hundred-year flood event we seem to be experiencing a number of rain

events that are outside the norm and close to one another. She asked if there was any modeling done looking at rainfalls in the last couple of years and how that might raise the flood levels.

Mr. Dayton said we have relied on historical data and it has not been updated for participation events of the last couple of months.

Mr. Overbey said he would assume there would be some type of an overflow on this dam.

Mr. Dayton said the dam is being designed with the use of gates.

Ms. Kirkman said so that will effect the flood elevations downstream is that correct.

Mr. Dayton said it would not impact it any greater than it is right now.

Ms. Kirkman asked if the modeling has been done on that.

Mr. Dayton said the primary source of water for this reservoir is the pumps on the Rappahannock River not what is coming down the stream and we will let the water in. He said you are letting in what is coming in not affecting the hundred-year flood level.

Ms. Rutledge said you are controlling the water in the reservoir at all times and you are utilizing what water is coming downstream at the same time.

Mr. Dayton said we have conditions in our permits where we have to constantly let out a certain amount of water to maintain the water quality downstream. He said in terms of an extreme flood event we are not adding any additional water through our operation of our reservoir but quite likely act as a flood structure. He said that most of the time the reservoir will not be full.

Mr. Amador asked Mr. Chairman if we should have a vote if this case is even before us properly. He said we have some big issues and we should decide.

Ms. Rutledge said could we clarify the issue.

Mr. Kopchinsky said we are not going to close the public hearing but step back a minute and let the board address some concerns they have.

Mr. Amador said his concern like the other cases there is some confusion about the applications. He said in this case the applicant did not have the authority to file the application because they were not the owner at the time.

Ms. Rutledge said we just heard a case last month where the proper owner was not before us so it is a similar issue.

Mr. Amador said the applicant here did not have the proper owner consent.

Mr. Kopchinsky said he has a problem with the application. He said he does not like packages that say it has been sworn to when it was not.

Ms. Rutledge asks Mr. Schardein to address this issue.

Mr. Schardein said when we receive an application we are going to get an owners affidavit and I do not know that we would go back and check the dates that the County purchased the property. He said he assumed the County owned the property when they entered the application affidavit.

Mr. Amador said this is something that is easily fixable by the applicant and he would like to hear the case but inclined to postpone it until we have a proper application.

Mr. Kopchinsky said he believes the Board has two ways of doing this and that is we could have a motion to postpone or table until the application is properly structured or the applicant could request a postponement until they can re-file. He said the applicant has that right at anytime.

Ms. Kirkman said she thinks the applicant needs to withdraw the improperly filed application and submit a new one.

Mr. Dayton said they would re-file the application.

Mr. Kopchinsky said you could not carry this case forward because it should not be here to begin with.

OTHER BUSINESS

Mr. Kopchinsky asked where are we with the Holiday dinner.

Ms. Doherty said there are Board members that have not responded.

Mr. Overbey said he thought he sent an email and they plan on coming.

Ms Rutledge said she is not getting her emails.

Ms. Doherty asked Ms. Rutledge to give her the email she is currently using.

Ms. Rutledge wanted to know the date of the Holiday dinner.

Ms. Doherty said December 14, 2006.

Mr. Kopchinsky said Wanda needs to know the numbers so let her know if you are going and if you are bringing a guest.

Ms. Doherty said in January each member would receive a large and small notebook with his or her meeting packet. She said starting in February members would only receive materials for packet with the dividers.

REPORT BY DEPUTY ZONING ADMINISTRATOR

None

ADOPTION OF MINUTES

October 24, 2006

Ms. Rutledge made the motion to approve the minutes with the amendments stated.

Mr. Ingalls seconded the motion.

Motion:

Vote: 5-0

Motion to approve – 5-0

Mr. Ingalls – yes

Mr. Overbey – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Beach – yes

Mr. Kopchinsky said he noticed the Board had a closed meeting there should be a Resolution to go in and come out of a closed meeting. He said the County Attorney had given another form that was not included in our packets.

Ms. Kirkman said it was done and Ms. Doherty said she would check the file.

September 26, 2006

Mr. Overbey made the motion to approve the September 26, 2006 minutes as amended.

Mr. Beach seconded the motion.

Motion:

Vote: 6-0

Motion to approve – 6-0

Mr. Ingalls – yes

Mr. Kopchinsky – yes

Mr. Overbey – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Beach - yes

Mr. Kopchinsky asked if there was any further business. He asked if the County would purchase the Board map books of the County. He said the maps from Map Quest are not good enough in his opinion.

Mr. Kopchinsky said December 5, 2006 the Board of Supervisors currently has on their agenda a discussion of our request for alternate BZA members. He said he intends to attend the meeting and could speak for the Board or certain members of the Board.

Mr. Overbey said you should plan to speak for the Board and I plan on being there.

Ms. Kirkman said if you do speak, I would feel the need to voice a minority opinion. She said we either need to make the commitment to be here or not be on the Board. She said she did not think the Board should have alternates.

Mr. Overbey said you are always going to have members that are going to miss from time to time and this is for the public to have a hearing by a full Board.

Ms. Rutledge said Mr. Chairman you can speak for me.

Mr. Beach said Mr. Chairman you can speak for me.

Mr. Ingalls asked if it would be an Ordinance or just a discussion.

Mr. Kopchinsky said it is just a discussion at this time, as I understand it.

Mr. Amador said my view is and Ms. Kirkman can speak for me. He said that is why you have rules about quorum and you have a right to come before the Board.

Mr. Kopchinsky said we did not have a major disagreement when we submitted the subject of alternates in our annual report so I thought it was a consensus of the Board and if I was wrong, I do not have a problem with that.

Ms. Rutledge said Mr. Amador you do not think we need alternates.

Ms. Amador said he did not think the Board needs alternates.

Mr. Overbey said the state has already said you can do it. He said the basic concept and I have spoken to a couple different localities that have alternates. He said the localities have two additional members who are alternate members. He said one locality said their alternate members attend every meeting just like regular Board members so they understand the procedures.

Mr. Amador said there are different opinions.

Mr. Overbey said like tonight when Mr. Ingalls had to disqualify himself one of the alternates could step in.

Mr. Beauch said he thinks we owe it to our citizens to give them a full a Board if possible and I do not understand why we would not. He said it is as if you are saying I am not going to be here and I do not want anybody exercising his or her judgment in my place.

Mr. Amador said that is not what we are saying. He said that is equalivant to saying in order to have seven votes we are going to give proxies to other people.

Mr. Ingalls and Ms. Rutledge said they did not understand what Mr. Amador said.

Mr. Amador said you are talking about seven votes and if I am objecting to giving my vote to somebody else to make the judgment, why can't we pick our own proxy. He said there are different opinions of if we should have cameras or not to have cameras and in that I disagree with that.

Ms. Kirkman said Mr. Kopchinsky I think you got the answer to your question.

Mr. Kopchinsky said the annual report is due if anybody has anything please email me so I can start putting something together for your review in January or February.

Ms. Hudson asked about election of officers.

Mr. Kopchinsky said we will do that in January if we have enough people.

ADJOURNMENT

Mr. Overbey made the motion to adjourn. Mr. Amador seconded the motion.

Vote:

Motion carried 7-0

- Mr. Kopchinsky – yes
- Mr. Beauch – yes
- Mr. Overbey – yes
- Mr. Ingalls – yes
- Ms. Rutledge – yes
- Ms. Kirkman – yes
- Mr. Amador - yes

Meeting Adjourned at 8:06 p.m.



WLD

Approved: _____ Date: _____
Rachel T. Hudson, Deputy Zoning Administrator