

**MINUTES OF THE
BOARD OF ZONING APPEALS
AUGUST 11, 2022 AT 7:00 P.M.**

Members Present:

Robert Cherrix, Chairman
Jack Gillis
David Landsberger
Donald Thornton
Mike McGee
Ernest W. Smith, Jr.
Eddie Moran

Members Absent:

Call to Order

Chairman Cherrix called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Chairman Cherrix led in the Pledge of Allegiance.

Roll Call

Building and Zoning Administrator Bowden conducted the roll call. All were present.

Approval of the Minutes of the February 10, 2022, meeting.

Mr. Thornton motioned, seconded by Mr. Landsberger to approve the minutes of the February 10, 2022, meeting. Unanimously approved.

Chairman Cherrix advised they must have a majority of affirmative the votes regardless of the number of Board Members present for the appeal to be approved. He added that they have the right to appeal any decision of this Board to the Circuit Court within 30 days.

Appeal A220713-1

Building and Zoning Administrator Bowden read the appeal:

Appeal #A220713-1: A hearing initiated by Ms. Susan Merritt to request an appeal of decision of the Zoning Administrator pursuant to Article III, Section 8.4 of the Zoning Ordinance of the Town of Chincoteague. Ms. Merritt is appealing the decision that the boundary line adjustment of parcels 030A2-4-140A & 030A2-4-140 creates a nonconforming mobile home park. The property is zoned R-3 Resort Residential.

Public Hearing/Public Participation

Chairman Cherrix opened the public hearing.

Ms. Susan Merritt, 7308 King Fisher Lane, advised she has lived on King Fisher Lane since 1986 when she and her husband at that time built their home. The land where her house sits belonged to her parents, Mr. & Mrs. Ray Walker, Jr. when it was then considered Accomack County, prior to the annexation of Chincoteague. She thanked the Board for the opportunity to present the appeal of Building and Zoning Administrator Bowden's decision. She stated she appreciates the time

Building and Zoning Administrator Bowden has spent with her discussing her land situation. Her request of the Board is to allow her a property line adjustment for 2 small pieces of land onto her property and to eliminate nonconformities of 3 lots and the transfer of 5,000 square feet of property which is in her front yard from her mother, Mrs. Nora Walker. She feels that the grounds for her appeal are simple. The Town Code contains an error regarding the reference to King Fisher Lane property. Under the present Town Code taking 5,000 square feet from King Fisher Lane Mobile Home Park would increase the nonconforming status. Her family utilizes parcel 30A-4-140 referenced in the letter of denial by Building and Zoning Administrator Bowden for the purpose of providing vacation rental properties since 1973. Article 11, Section D, Mobile Home Parks includes a reference to King Fisher Court Mobile Home Park. Please be aware that her family was unaware until recently that such a specific reference of their property existed in the Town Code. She is aware that King Fisher Court Mobile Home Park caused Building and Zoning Administrator Bowden to consider parcel 30A-4-140 as a mobile home park and as such he was forced to deny her request.

She continued, Building and Zoning Administrator Bowden explained that he did not have the authority to approve the request that would increase the nonconforming status of the property. She contends that the Town Code contains an incorrect reference to the King Fisher Court Mobile Home Park. The Code defines a mobile home park as a property used for permanent residency, while vacation rental cottages are defined as structures used for transient and temporary occupancy. Parcel 30A-4-140 has been used exclusively for vacation rental cottages since 1973 and has never been utilized as a mobile home park for permanent residents. 5 structures currently exist on this parcel, 1 of which will soon be removed and not replaced. A mobile home park is required to be a minimum of 5 acres while vacation rental cottages are allowed by right on lots greater than 10,500 square feet. She requested that the Board of Zoning Appeals consider the information in the PowerPoint slide of drawings she has provided and the applicable Code section. It is her hope that the BZA will find that Article 11, contains an error and as such overturns the Town's position to deny her request to reconfigure the property lines as originally presented to Building and Zoning Administrator Bowden. Her request will eliminate several nonconforming parcels of her property while not affecting the nonconforming status of her family's vacation rental cottage property. She isn't requesting special permission and she is attempting to correct an error that until recently she was unaware. She thanked the Board for allowing her the opportunity to resolve this issue. If this isn't cleared up now, it may never be cleared up.

Chairman Cherrix asked if any Board Members had any questions or comments.

Mr. Landsberger asked why Ms. Merritt wants to do this.

Ms. Merritt responded she wants to clean up some property lines that run through her house. She has the original track that was given to her by her parents. They gave her an additional piece of land when she built garage and when a survey was done, she discovered that part of her garage was on someone else's property. She then purchased a part of land, so her house and garage were sitting on her property. She wants to combine this. Other than that, the piece that is 5,000 square feet across her front yard, a survey was done about 2 years ago. They were unaware where the exact property lines were. The property lines are about 5' from her sidewalk. She thought it was much further. She has no front yard, and she doesn't own where her septic tank sits.

Mr. Landsberger understands what it accomplishes, but lots of people have septic tanks that sit on separate parcels and lots of people have structures that cross 2 lots. He understands that this doesn't accomplish anything except that it would make her feel better to own all on one property. He asked if there was an actual reason other to make herself feel better.

Ms. Merritt stated that it was the wish of her parents to give her more land.

Mr. Landsberger stated that she has the land, and he understands that. He added that she won't get more land by doing this.

Ms. Merritt responded that she would get 5,000 more square feet from her mother if the determination is made that it is vacation rental cottages which requires less square footage than the mobile home park.

Mr. Landsberger stated that if the front yard is deeded to Ms. Merritt and becomes part of the parcel that her house is on, then the mobile home park becomes nonconforming.

Building and Zoning Administrator Bowden referred to the plat showing the current status.

Mr. Landsberger asked that with the granting of the 5,000 square feet if it would make her property able to support other accessory structures.

Ms. Merritt advised it would not.

Building and Zoning Administrator Bowden it would not, and he again referred to the plat.

Ms. Merritt stated that there would be no change to the land, and she has been cutting it for 36 years. She added that it will stay the same and look the same.

Building and Zoning Administrator Bowden stated that if you add the 5,000 square feet it increases her acreage so she could add to the house or somewhere else.

Mr. Landsberger stated that if they get sewers or a new different type of septic system it would free up some of the land to build on.

Ms. Merritt added that it meets the front yard setback making it more conforming.

Mr. McGee asked if it was a trailer park or cottage.

Ms. Merritt stated that her mother owns 2 of the trailers. She explained to her mother if they want to go this way. If it's a mobile home park it alters her residence, and if it's vacation rental cottages, short-term, which is what she's been doing all along. Her mother did not want permanent residents living in the trailer park. Ms. Merritt stated that her mother is clear to what this does, and she is fine with it. She added that her mother is currently renting a couple of lots. One of the trailers will be demolished and nothing will go in its place. The owners use them and come whenever they want. The places don't have washers or dryers, and one of the places does not have a stove.

Mr. Landsberger asked if she rents the lot and someone else has a trailer on it.

Ms. Merritt stated she rents the lot.

Mr. Landsberger stated that they don't control when they stay in it year around or not.

Ms. Merritt responded that the traditional use of the property for the past 50 years has not been permanent long-term residents.

Mr. Smith asked Building and Zoning Administrator Bowden if the parcels were combined, would this change or make any other property lots nonconforming.

Building and Zoning Administrator Bowden stated that if she combines them, there is no nonconformity.

Mr. Landsberger asked if this would reduce the trailer park square footage.

Building and Zoning Administrator Bowden stated that is separate.

Mr. Smith stated concerning the 5,000 square feet could be done and it doesn't create more nonconformity. He asked Ms. Merritt if her mother owned the lots shown in red on the plat, and 2 of the lots are not leased and the trailers on them are owned by Mrs. Walker and the other 2 trailers are owned by other people. He also asked if they could come and go as they please.

Ms. Merritt advised this was correct.

Mr. Smith then stated that if they wanted to stay there, they could.

Ms. Merritt interjected that they haven't.

Mr. Smith stated that they own the trailer and could be there all day every day if they wanted. He asked about the septic tank adjacent to the existing trailer and if it was Ms. Merritt's septic.

Ms. Merritt advised it was not her septic. She added that she believes it is a cesspool.

Mr. Smith commented that there is an easement, and she has access to her septic tank and drain fields, so there is no hardship.

Mr. Moran asked for clarification. He stated that as it is right now, there are 4 nonconforming lots.

Building and Zoning Administrator Bowden stated this is a nonconforming trailer park.

Mr. Moran stated that this would make Ms. Merritt's lot conforming, and her mother's lot will still be nonconforming.

Building and Zoning Administrator Bowden advised that Ms. Merritt would still have a nonconforming lot.

Mr. Thornton asked why it would be conforming.

Building and Zoning Administrator Bowden stated that she still has setback issues. It gives her more room, but it still doesn't make it conform.

Mr. Smith referred to the plat and the area in red asked Building and Zoning Administrator Bowden if it was still nonconforming to the Code. He stated that when the Town was annexed it was grandfathered. He added that there is technically no active violation unless there is a change.

Mr. Landsberger gave a scenario that you want to own a mobile home park and you own a mobile home and want to convert it to vacation rentals and asked how you do this.

Building and Zoning Administrator Bowden advised he would have to check the setbacks and the area regulations.

There was brief discussion about changing the use from mobile home park to vacation cottage rental would make all the structures conform.

Mr. Landsberger stated they didn't change the use. According to the Ms. Merritt it was classified incorrectly. This should have been a vacation cottage rental. He doesn't feel it is true if they're renting lots.

Ms. Merritt advised that in the beginning, the trailers that were there were all rented by her mother. Her mother will be 90 years old in 2 weeks.

Mr. Landsberger stated that they have to deal with what is now. They are renting lots now, with someone else's mobile home. However, if Mrs. Walker had her own mobile homes on the lots and requested vacation rentals it would be allowed.

Building and Zoning Administrator Bowden interjected that it would have to meet all the setbacks.

Mr. Landsberger added that this is a change of use.

Mr. McGee asked if the trailer park is currently nonconforming.

Building and Zoning Administrator Bowden stated that the trailer park is grandfathered. He added that today a mobile home park requires 5 acres in the Code. They don't have 5 acres, so this is a nonconforming grandfathered trailer park. He stated he contacted Mr. Brent Hurdle, the County's Assessor, and his cards only go back to 1982. He added that this is a nonconforming mobile home park.

Mr. Thornton stated that it was done when the County had it, and you could fill it with whatever you wanted to do at that time.

Building and Zoning Administrator Bowden advised that was correct.

Chairman Cherrix closed the public hearing. He asked if Building and Zoning Administrator Bowden had any correspondence.

Building and Zoning Administrator Bowden advised he had none.

Chairman Cherrix asked the Board if they had any discussion.

Mr. Smith stated that it's a mobile home park and that's how they're operating it and that's how he sees it. There are 2 trailers that have the ability to come in and stay there 24/7, 365. He doesn't believe the trailers are moving in and out, weekly, monthly, seasonally, or in a transient status. They have the ability to operate as a mobile home park.

Mr. McGee asked if she gets this what it changes.

Building and Zoning Administrator Bowden stated that what it changes is you're taking something that is nonconforming and making it more nonconforming.

Mr. Landsberger interjected that it's not making her house more nonconforming.

Building and Zoning Administrator Bowden advised it wasn't.

Mr. Thornton stated that her house is nonconforming also and the only way to make this go away is vote in favor of what she is requesting. He also stated that there are so many places on the Island that are nonconforming, and families have owned them all their lives. He believes she should be approved.

Chairman Cherrix stated that you have the same thing, the mobile home park isn't going anywhere and not getting any larger.

Mr. Landsberger stated that there is no reason not to just give her permission to vacate those property lines which is one discussion. The problem he is having is the way it is constructed is when her mother sells the property or someone else gets the property, there can be 4 new mobile homes put in there. They would have to be higher but wouldn't have to conform because you can replace a structure within the same footprint.

Mr. Thornton added they would have to have new septic systems as well.

Building and Zoning Administrator Bowden added they would have to have the Health Department approval. He stated that if it's a cesspool they would have to have a new system.

Mr. Landsberger stated that the Health Department can't deny septic if they have a cesspool for an active residence. He added that if they do this, they are creating the ability of someone somewhere down the line to have a permanent mobile home park with permanent residence.

Mr. Thornton asked if they allow this if the mobile homes are only used for that specific use.

Mr. Landsberger stated that if they could somehow get the property classified to what they want it to be, a vacation rental, they would be all for it.

Mr. Thornton stated that this is why they have to board, to solve problems like this.

Mr. Landsberger asked if they could grant a variance where they approve if they're only used as vacation rentals.

Building and Zoning Administrator Bowden stated he could advertise it and they could go through with that. This would have to be a separate request. He added that they cannot vacate the property lines on this Board. Council approves the vacation of property lines. The Board can do a boundary line adjustment. This request is for a boundary line adjustment.

Mr. Gillis stated that the people who own the mobile homes are leasing the property to use their mobile homes on. He asked how long the leases are.

Ms. Merritt advised it is month to month with no lease and if they choose, they can sell the mobile home back to her mother.

Mr. Landsberger stated that her mother sold them the trailers and rents the lots.

Mr. Smith asked what the hardship was. This is one of the Board's main functions, which is to relieve a hardship from a citizen. He advised that when asked about a hardship her response was none. She has access to her septic system and tank which is deemed from an easement from her mother. They're not supposed to decide based on whether they're sorry about the situation. It is supposed to be if there is a hardship they're alleviating. He feels for Ms. Merritt, that she doesn't have control of the entire property.

Mr. Landsberger stated that this isn't for the Board to decide, that would be for Council.

Mr. Smith advised the means it's for the hardship.

Mr. Gillis asked about the septic and drain field. He stated that if it changed hands, they would have to conform to the Town's regulations regarding septic.

Mr. Landsberger advised that if the existing property was sold as is, and people could still live there.

Building and Zoning Administrator Bowden agreed and added that only if they replace the mobile homes would they be required to conform. If someone purchased the mobile home park and sold it to someone who wanted a mobile home park they would be allowed because nothing changes. If one gets replaced, the Health Department requires an upgrade or improvement.

Mr. McGee advised that the Health Department wouldn't let him use the septic tank that went with the store he bought, and he put a septic tank on the hill.

Mr. Thornton added that this would be a hardship.

Mr. Smith stated that at that point, the appeal would be brought back to the BZA.

There was discussion about Mrs. Walker making the owners vacate the lots and at that time it wouldn't be a mobile home park.

Mr. Landsberger stated that right now this is a mobile home park. Ms. Merritt's mother is renting the land for someone to put their mobile home on it and nothing is stopping the tenants from living there all year around. He originally was all for this, because he thought all of the trailers were Mrs. Walkers and she rented them out part-time. He was then going to have the Planning Commission to change the zoning because it's not a mobile home park. But the way it is being used, it's a mobile home park because she doesn't own all 4 units. She is renting the land.

There was lengthy discussion about the mobile home park verses vacation rentals and Mrs. Walker changing form a mobile home park to vacation rentals.

Mr. Landsberger advised that this has nothing to do with what they have to decide in the case before them.

Mr. Thornton stated that they are there to clear up a mess. He advised they've done it before.

Mr. Landsberger stated that if they keep everything the way it is, they can keep doing what they're doing, and nothing will change.

Mr. Thornton added that Ms. Merritt doesn't have her septic on her land.

Mr. Smith stated she has an easement which gives her the right to do whatever is necessary to properly use the septic system. He added that if she does nothing, then nothing changes. He stated that this board addresses hardships and there is no hardship here.

Mr. Landsberger stated she can continue to rent the lots, she can continue to rent the mobile homes and Mrs. Merritt can continue to use the lots for her septic or she can go to Council to vacate the property lines, which is what the Board should recommend. He added that nothing changes. There is no reason to do this.

Mr. Smith stated that Mrs. Merritt takes care of the property in front of hers. He was advising that nothing changes if the Board does nothing. He understands that everyone wants to do what is nice. But what their role is to be compliant with the Codes unless there is a hardship.

Mr. Landsberger stated that there is no reason that her mother couldn't rent her the adjacent area for \$1 for the next 100 years. He added that this would solve it.

Mr. Thornton stated they can solve it too.

Mr. Cherrix advised that Mrs. Walker wrote a letter that states she is giving the property to her daughter.

Mr. Landsberger stated if her mother would buy back the trailers and rent them as vacation cottages, he would be all for it.

Mr. Smith added she could remove them.

Mr. Landsberger stated that the consideration is what the owner is entitled to do, regardless of what she will do. She is entitled to put 5 new mobile homes there if they approve this.

Mr. Gillis stated that everything was fine at that time because there was no Virginia Code. All the streets on the Island and all the houses on the sidewalks. Now, what your mother has done for all these years is wrong.

Mr. Landsberger stated that this is why this Board is here to alleviate the hardship. He is waiting for the hardship. If she does nothing, nothing changes, her mother can keep renting the lots and the mobile homes, she can replace the mobile homes.

Mr. Thornton interjected that her mother could do the same thing if they approve it.

Mr. Smith stated if they approve it, they are creating more nonconformance.

Mr. Thornton stated that Ms. Merritt's house doesn't have a 25' front yard which is nonconformance. He added that this is because they made mistakes.

Mr. Landsberger understands, but their job isn't to give someone a nice front lawn.

Mr. Cherrix stated that maybe it's their job to prevent Mrs. Walker from giving Ms. Merritt the property she wants her to have.

Board Action on Appeal:

Mr. McGee motioned, seconded by Mr. Gillis to approve the request. The motion was carried.

Ayes: Gillis, Thornton, McGee, Moran

Nays: Landsberger, Smith

Abstain: None

Absent: None

Adjourn

Mr. McGee motioned, seconded by Mr. Landsberger to adjourn. Unanimously approved.