

MINUTES  
CITY OF ELIZABETH CITY  
BOARD OF ZONING ADJUSTMENT  
REGULAR MEETING  
TUESDAY, JULY 16, 2013  
5:30 PM

**MEMBERS PRESENT**

Ramona Gilbert, Chair  
Odell Harris, Vice-Chair  
Linwood Bennett  
Carlton Etheridge  
Oliver Etheridge  
Lavern Jones

Also present were June Brooks, Planning Director and Angela Cole, Senior Planner.

Chairman Gilbert called the meeting to order and it was noted for the record that the Board had a quorum. The Agenda was approved by a unanimous vote.

At this time the Board held Election of Officers. Mr. C. Etheridge made a motion for Chairman Gilbert to continue as Chairman. Mr. Harris seconded the motion. All were in favor. Mr. C. Etheridge made a motion for Mr. Harris to continue as Vice-Chair. Mr. O. Etheridge seconded the motion. ***ALL IN FAVOR: GILBERT, HARRIS, BENNETT, C. ETHERIDGE, O. ETHERIDGE and JONES. MOTION PASSED.***

Chairman Gilbert asked for a motion to approve the January 15, 2013 minutes. Mr. O. Etheridge made a motion to approve the January 2013 minutes and Mr. C. Etheridge seconded the motion. ***ALL IN FAVOR: GILBERT, HARRIS, BENNETT, C. ETHERIDGE, O. ETHERIDGE and JONES. MOTION PASSED.***

New business was **CASE NO.: V-01-13** is a request from the City of Elizabeth City for a Variance from Article 12-2.4-d-2 Non-Residential Construction within Areas of Special Flood Hazards at 719 Riverside Avenue (Charles Creek Park).

Chairman Gilbert asked for those signed up to speak to come forward and be sworn in. Ms. Cole facilitated the swearing in.

Chairman Gilbert gave the Board members with any conflicts to withdraw from the proceedings. There were no conflicts.

Chairman Gilbert asked if any member of the Board had special knowledge of the case before them. If so, they were to let it be known. No one had special knowledge of the case.

Ms. Cole was asked to give her overview of the case.

## **STAFF REPORT**

As read into the record the case is V-01-13 application by the City of Elizabeth City, Department of Parks and Recreation. The applicant desires to reconstruct a multi-purpose pavilion structure at or below flood level and structurally not in accordance with the Unified Development Ordinance. They are seeking a Variance from the Flood Hazard District Overlay Regulation, Article 12-2.4 Construction within Areas of Special Flood Hazard Restrictions. Specifically, subsection 12-2.4-d-2 Non-Residential Construction, Structure Elevation and Flood Proofing. Staff provided to the Board an extensive report including the history of the property, a summary of various ordinance regulations and studies within the City's Planning Library. Staff also provided photographs of the subject property noting an excerpt from the Flood Map indicating that the property has a flood zone classification of AE with a base flood elevation (BFE) of 5.3. The Board was provided excerpts from the Ordinance. Ms. Cole stated that these were not exhausted, but certainly for the Board to focus on in their deliberation. Ms. Cole stated that she had provided various supportive evidences in terms of maps and excerpts from the Land Use Plan. She stated if the Board has questions or explanations they need of the information for them to let her know. She stated that there are no amendments to report as submitted to the Board. Adjacent property owners were notified and the applicant provided a copy of the Staff Report.

Chairman Gilbert asked if there were any questions from the Board for Staff. Mr. O. Etheridge stated that he had one comment. He stated that this is not the usual type of Variance that the Board has since the applicant and the Staff are one in the same. He stated that they need to remember that as they listen.

Chairman Gilbert asked for those wishing to speak to come forward. Ms. Bobbi White came forward. Ms. White is the Elizabeth City-Pasquotank County Parks and Recreation Department Director. She thanked the Board for allowing herself and Jeff Simpson to come before them on behalf of the City to ask for a Zoning Variance on the Charles Creek Park property located at 719 Riverside Avenue. This property was developed into a park in the 1970's and was the first park located within the City. When the park was developed it had a small picnic shelter as well as a larger picnic shelter with tables, storage area and two small restroom facilities that were antiquated and non-ADA compliant. In later years a playground was installed and an outdoor volleyball court. This pavilion was used on a daily basis for many, many years during the months of April through October, depending on the weather. However, over the years the shelter deteriorated beyond repair. Anticipating that the shelters could be replaced in time, City Council appropriated \$175,000 in the 2012/13 budget to replace these shelters for public use. Staff worked with the Recreation Advisory Board to ensure that the new shelters would complement the Waterfront Park as well as the Museum of the Albemarle. Staff was not aware that the flood plain elevation level around Charles Creek was at 5.3 feet until a flood elevation survey was completed in May by Hyman and Robey. The area where the shelter was located is actually the highest elevation on site. With the recent changes in the North Carolina Building Code the pavilion restrooms should be elevated one foot above flood level. This would put the pavilion three feet above the existing grade and cause additional field, construction of ramps and rails to be added to the project. The change in plans will cost the citizens of Elizabeth City an additional \$40,000 for this project. The City's Flood Hazard District Overlay requirements do allow for public recreation uses—parks and playgrounds—within floodways. The pavilion will be located approximately 110 feet from the Charles Creek and does not even require permitting from CAMA do to the long distance from the creek. Staff believes that the pavilion does in deed qualify for a Variance for the following reasons:

There is no danger that material will be swept into other lands; the restrooms will be brick and cinderblock with only one (inaudible) and either two toilets or one toilet and one urinal per restroom. The pavilion will not be used during inclement weather; so therefore, there is no danger to life. The City has experienced many hurricanes, nor'easters and flooding throughout the years. To date, this property has not been flood up to the pavilion. Jim Overman has worked with the recreation department since 1972 and he has not seen the water rise high enough to reach the restrooms. Ms. White began working with the department in 1979 and she has not witnessed this either. This park and facility is extremely important to the citizens and our community as well as the region. During the year it is used on a daily basis from April through October/November depending on the weather. Many residents use the shelter each day during their lunch break to eat, bring their children to the playground, fish, feed the ducks, etc. It is rented most weekends for family reunions, birthday parties, class reunions and church dinners as well as used for fund raisers such as 5k races and walk-a-thons for the Food Bank, Easter Seals, etc. School systems from the Elizabeth City-Pasquotank, Camden, Dare, Chowan, Bertie, Gates, Perquimans, Terrell and Hyde Counties use this pavilion often when they come to Elizabeth City to visit the Museum of the Albemarle, College of the Albemarle, Arts of the Albemarle and Port Discover. It is a perfect location for the children to eat their lunches, use the restrooms, play and enjoy their trip into downtown Elizabeth City. There is not another pavilion in the City that can handle the large volumes of people that use this pavilion. At this time the City does not have another waterfront location or non-waterfront location available to build a pavilion to handle the large number of people that this location offers. In the Board's package they were provided pictures of the proposed pavilion. They were very compatible with the proposed use with the existing and anticipated development in the neighborhood. The expected height velocity duration (inaudible) and sedimentation transportation of flood waters and effects of rain action at this site are very low. Since 1972 the floodwaters have not raised high enough to reach the shelter that was located at the park. Staff also believes that should the waters rise high enough to reach the restrooms there will be little expense to the City for maintenance and repairs to the public utilities at this facility. The restrooms will have water, sewer and electricity. The toilets will be built two feet above the floor. By raising the pavilion structure three feet it will force the stormwater runoff into the neighbors' properties which will cause them harm. Staff believes the Variance should be granted to the City to construct the new pavilion. It will be built at the same location as the previous shelter and the footprint will be approximately the same size and shape. Failure to grant the Variance will result in an exceptional hardship to the community and to the additional cost to elevate. If it is decided that the cost is too expensive and the shelter is not constructed, the citizens of Elizabeth City and Pasquotank County as well as surrounding areas will not have a facility to use when they come into town for events. Granting a Variance will not result in increased flood heights, additional threats to public safety or create a nuisance or victimize the public and it will not be in conflict with existing local laws. This ended Ms. White's overview.

Chairman Gilbert asked the Board if they had any questions for Ms. White. Mr. C. Etheridge stated for clarification that they are going back into the same area and they will raise it three feet above grade. Ms. White stated that is what they would be required to do. That would make the elevation about 8 feet 3 inches. Mr. O. Etheridge stated that it would cost \$40,000 to do. Ms. White stated yes...additional money. Mr. O. Etheridge stated that Ms. White had made the comment that if the Variance is denied it will harm the adjacent property owner. He asked her where she got that information. Ms. White stated that it would be the runoff. If the City has to elevate to 8 feet 3 inches, all the runoff will go into the creek and into the adjacent property owners. Chairman Gilbert stated that she had noticed in the information that it was mentioned having vents installed. She asked

if that was a requirement in the restrooms. Ms. White stated that she believes that would be required in addition to the elevation. If not elevated it will sit level with no vents.

Chairman Gilbert asked if there were any other questions from the Board.

Chairman Gilbert had one more questions. She asked if everything is closed in with flood doors is it possible to include the special doors if the pavilion is not elevated. Ms. White stated that the doors and the vents would cost an extra \$18,000 to \$20,000 each (men and women's restrooms). Mr. Jeff Simpson came forward and stated the flood doors are designed to hold back flood waters to up to 36 inches high. Once it gets above 36" it would possibly let water into the building. He stated that the doors are \$12,000 to \$18,000 each.

Chairman Gilbert asked to hear statements from those that would like to speak. Ms. Cole stated that there was one attendee in favor of the application.

Ms. Griffin came forward and stated that she had one question. She stated that the Griffins are all in favor of anything that will help the City out. But, they will have a problem. They will be flooded and she asked how that problem would be addressed. She asked why they don't match the museum with the building. It would look so much better.

There were no other speakers.

Ms. Cole reminded the Board of their Variance criteria. In addition to what is normally considered, the Board has to give consideration to the Flood Overlay Variance criteria as well. That starts on page 15 and continuing on page 16 of the Board's Staff Report. The Board has to have Findings of Facts to support the decision to approve or deny. The Board is able to attach conditions to any approval given.

Chairman Gilbert wanted to clarify that the variance has been requested on two issues: the elevation and the flood proof doors.

Chairman Gilbert closed the public hearing. She asked for any discussion from the Board. Mr. O. Etheridge stated that he would like to make it clear to Ms. Griffin if the Board approves this variance she will not have a problem with water drainage compared to them raising the height three feet. He stated that he feels that it would be more of a waste of tax payer money to spend the money for the flood proof doors than the risk of not spending.

(Inaudible discussion)

Chairman Gilbert asked for a motion. Mr. O. Etheridge stated that he fills the hardship is not created by the applicant but the land itself. He made a motion to APPROVE the Variance as requested with the stipulation that it must meet all City, State and Federal criteria. Mr. C. Etheridge seconded motion. ***ALL IN FAVOR: GILBERT, HARRIS, BENNETT, C. ETHERIDGE, O. ETHERIDGE and JONES. MOTION PASSED.***

Chairman Gilbert adjourned the meeting.

*Respectfully Submitted,  
Dawn Harris, Secretary of the Board*