AT A MEETING OF THE MIDDLESEX COUNTY BOARD OF ZONING APPEALS HELD
ON MONDAY, JANUARY 27, 2003, IN THE BOARDROOM OF THE WOODWARD
BUILDING, SALUDA, VIRGINIA

Present:  Gene Major - Chairman
Henry Easton - Vice Chairman
Carolyn Moss
William Harris
Martha Oliver

Matthew Higgins, Director of Planning/ Zoning Administrator
Cathy Shiflett, Planning Department Secretary

CALL TO ORDER

Chairman Major called the January 27, 2003 meeting to order at 7:30 P.M.

ORGANIZATIONAL MEETING

A.  Nomination and Election of Chairman

On a motion by Mr. Harris, seconded by Mr. Easton, Mr. Major was nominated and
elected Chairman for calendar year 2003 on a 4-0 vote, with Mr. Major abstaining.

B.  Nomination and Election of Vice-Chairman

On a motion by Mr. Harris, seconded by Mr. Major, Mr. Easton was nominated and
unanimously elected Vice Chairman for calendar year 2003.

C.  Nomination and Election of Secretary

On a motion by Mr. Major, seconded by Mr. Harris, Mr. Higgins was unanimously elected
Secretary for calendar year 2003.

D.  Establishment of Meeting Time & Date

By consensus of the board, the Board of Zoning Appeals unanimously agreed to keep
the monthly meeting date as the third Monday of every month at 7:30 p.m., in the
Boardroom of the Woodward Building, Saluda, Virginia.

APPROVAL OF MINUTES

On a motion by Mrs. Moss, seconded by Mr. Harris, and carried by unanimous vote, the
minutes of the November 18, 2002 meeting were approved as presented.

PUBLIC HEARING

A.  Variance Case #2002-09, Waterview Partnership

Chairman Major introduced Variance Case #2002-09 submitted by Waterview
Partnership requesting authorization of a 54.5 foot variance from the minimum 100 foot
Resource Protection Area (RPA) setback requirement of Zoning Ordinance Section 4A-3-4, Chesapeake Bay Preservation (CBP) District. The purpose of the variance request is to permit the “after-the-fact” construction of a gazebo and deck.

Mr. Higgins stated that the applicant’s attorney, Mr. Jimmy Ward, had requested on behalf of the Waterview Partnership, that the application be continued until the February, 2003 meeting. He further stated that there is a pending case scheduled for February, 2003 appealing Mr. Higgins’ interpretation of the ordinance which states that both the gazebo and deck are not passive recreation facilities, which are exempt from the requirements of the CBP district.

Mrs. Moss commented that the applicant had been granted a continuation for thirty (30) days, and felt the Board had a right to hear the case rather than continue an additional thirty (30) days.

Chairman Major commented that the Board could hear the case without the attendance of the applicant and that the applicant had overstepped boundaries by requesting the Board grant an additional continuance.

Mr. Easton and Mr. Harris expressed agreement that the Board had granted a thirty (30) day continuance and had no obligation to continue the case.

Chairman Major noted that all the Board members were present at the meeting, as opposed to the previous month’s meeting with three (3) members in attendance. He asked if the Board desired to pursue the case, or to grant another continuance.

Mr. Harris asked Mr. Higgins’ opinion.

Mr. Higgins advised that if the Board chose to consider the case, there would be no opportunity to ask the applicant and/or attorney any questions. Additionally, he noted that interested citizens were not in attendance, as these citizens assumed that the case would be continued. Mr. Higgins stated that the reason for the continuance was so the variance and pending appeal could be heard by the BZA on the same night. He observed that the applicant was arguing to two different sides of the case.

Mrs. Moss noted that this case had correspondence as early as July, 2002 and seemed to be prolonged. Mr. Higgins explained that there had been waiting time periods through the stages of the case.

On a motion by Mr. Easton, seconded by Mr. Harris, and carried by unanimous vote, the Board voted to proceed with the public hearing, since a thirty (30) day extension had been given previously.

Chairman Major requested Mr. Higgins to read the staff report relating the case history.

Mr. Higgins read the staff report recommending denial of Variance #2002-09 as presented based on the following Sections of the Zoning Ordinance: (1) Article 20, Section 20-2-B.1: The variance shall not be approved by the Zoning Board of Appeals unless it finds that the strict application of the ordinance will produce undue hardship approaching unconstitutional confiscation without compensation, and (2) Article 20, Section 20-2-B.4: The variance shall not be approved by the Zoning Board of Appeals unless it finds that the hardship claimed is not self-inflicted, either deliberately or ignorantly. If the applicant can substantially satisfy these requirements of the Zoning
Ordinance, the variance may be granted as requested by the Board of Zoning Appeals. Mr. Higgins noted that to date, the applicant had not proved otherwise.

Mrs. Moss asked if the gazebo was portable and could be moved, and if so, why did the applicant oppose moving the gazebo.

Mr. Higgins explained that there was a limited area available for placement, and the intent was to locate the gazebo aligned at the top of the steps to the pier. Mr. Higgins presented photographs of the site, showing the location of the pier, steps and deck.

Chairman Major made the observation that apparently the project had been constructed in phases without the appropriate permits being obtained. Mr. Higgins noted that After-the-Fact permits had been obtained for the pier portion of the project, and that After-the-Fact permits were still required for the steps, deck, and gazebo.

Chairman Major opened the public hearing.

Chairman Major noted that while neither the applicant nor attorney were present to represent the case and answer questions, the Board had granted a thirty (30) day continuance, and had elected to hear the case at this time.

With there being no comment from the public, Chairman Major closed the public hearing.

In review, Chairman Major related that the pier was built with no permits, although an After-the-Fact permit had been obtained and that the steps and gazebo were built without permits or approval to date.

Mrs. Moss noted regardless, as an accessory structure, the gazebo would not be permitted, as no principal structure is located on the lot.

On a motion by Mr. Easton, seconded by Mr. Harris, and carried by unanimous vote, Variance Case #2002-09 was denied based upon the project’s history and analysis that the pier was installed without the appropriate permits, and that the hardship was self-inflicted.

Chairman Major advised that the applicant and/or attorney have thirty (30) days to appeal the Board’s decision to the circuit court.

**NEW BUSINESS**

A. **New Board Member – Martha Oliver**

Mr. Higgins introduced Ms. Martha Oliver, newly appointed Board member. Chairman Major and the Board members welcomed her to the Board.

B. **Virginia Association of Zoning Officials Conference**

Mr. Higgins announced that there was a seminar scheduled for March 13-14, 2003 sponsored by the Virginia Association of Zoning Officials. He requested that anyone interested in attending the conference to be held in Leesburg, VA, let him know as soon as possible.

C. **Chesapeake Bay Preservation Act Educational Workshop**
Mr. Higgins stated that the Middlesex County Planning Department was sponsoring an educational workshop to explain changes to the Chesapeake Bay Act that would take effect on March 1, 2003, and how these changes would impact properties in Middlesex County. The workshop is scheduled for February 19, 2003, and Mr. Higgins encouraged the Board to attend.

Chairman Major, Mr. Harris and Mr. Easton indicated their intention to attend, and Ms. Oliver noted that she had already signed up for the workshop.

**ADJOURNMENT**

With there being no further business, a motion to adjourn was made by Mrs. Moss, seconded by Mr. Harris, and carried by unanimous vote. The meeting adjourned at 8:20 p.m.

Respectfully submitted,

Matthew Higgins, Secretary  

Date