

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD IN THE COURTHOUSE, WILLIAMSBURG, VIRGINIA, ON THE NINTH DAY OF MARCH, NINETEEN HUNDRED AND SEVENTY-SEVEN.

1. ROLL CALL

Mr. George A. Marston, Chairman  
Mr. Warfield Roby, Jr.  
Mr. Gerald Mephram

OTHERS:

Mr. William F. Brown  
Mr. Henry H. Stephens

2. MINUTES

Upon a motion by Mr. Mephram, seconded by Mr. Roby, the reading of the minutes of August 11, 1976, were dispensed, and they were approved as presented.

3. APPEAL CASE NO. ZA-1-76. Application of Jerry Morning for a variance from Sections 20-61 and 20-63(a) of the Zoning Ordinance so that a single-family residence may be built up to 3.5 feet from the side property line and 27.39 feet from Carriage Road. The property is located on Carriage Road and is identified as parcel 128E on James City County Estate Tax Map 26.

Mr. Brown explained the staff memo on this case. He stated that the applicant had submitted plans for the partially completed structure to be used as a single-family residence. The Board had refused to grant the variance for the structure when the proposed use was commercial. Mr. Brown stated that the site plans showed substantial landscaping. The plans had been shown to the Site Plan Review Committee which was generally favorable toward granting the variances if the landscaping and site work were completed as shown.

Mr. Marston opened the public hearing of Case No. ZA-1-76.

Mr. Morning indicated that he was present, but made no comments. No one else chose to speak.

Mr. Marston closed the public hearing of Case No. ZA-1-76.

Mr. Marston asked Mr. Brown if the staff had any means to assure that the structure would be finished as shown including the landscaping.

Mr. Brown stated that if the Board made their approval subject to all work, including the site work to be done according to the site plan presented, that the staff would not issue a Certificate of Occupancy for the structure until their conditions were met.

Upon a motion by Mr. Roby, seconded by Mr. Mepham, variances were granted from Sections 20-61 and 20-63(a) of the Zoning Ordinance, so that a single-family residence may be completed 3.5 feet from the side property line and 27.39 feet from Carriage Road. These variances were approved subject to all work, including landscaping and site work being done as shown on the plans submitted by the applicant in support of the application. The motion passed unanimously.

4. APPEAL CASE NO. ZA-1-77. Application of Greyhound Enterprises, Ltd. for a variance from Section 20-86.4(1) of the Zoning Ordinance, to allow the installation of self-service gasoline pumps at the Short-Stop Grocery on Route 143, which does not have the required 20,000 square feet of lot area.

Mr. Marston opened the public hearing of Case No. ZA-1-77.

Mr. David Holland, Attorney, spoke on behalf of the applicant. He stated that the variance was requested so that they could install gasoline pumps at the Short-Stop Grocery. He stated that the property was not the required 20,000 square feet; however, the property had once contained a gasoline station. He emphasized that he felt that the 20,000 square feet requirement was arbitrary and did not account for unusual shaped property. The site in question is triangular. Mr. Holland stated that the applicant had orally informed the County of his intentions in July of 1976, and was told that the gasoline pumps were a permitted use on his property. No mention was made of area requirements at that time.

Mr. White, the applicant, spoke in favor of the request. He emphasized that adequate parking was available. He also related to a July meeting in which he was told that his proposed store and gasoline pumps were permitted uses on this property. He stated that the triangular shape and the wide right-of-way of Route 143 made this property unique.

Mr. Marston asked the applicant about parking and traffic flow. He stated that from the site plan presented, there were some problems.

Mr. White described the site. He stated that there was now a sign post where he proposed to put the pumps, and that there had been no problems from people backing into it. He stated that the dumpster had been moved from the area shown on the plan to the other side of the site.

Mr. Marston asked if angle parking had been considered.

Mr. Holland stated that they would consider it if the variance was granted.

Mr. Brown presented the staff memorandum on Case No. ZA-1-77 to the Board. He explained that the property for which the variance is requested is located on Route 143 and now contains the Short-Stop Grocery. The property is zoned B-1 (General Business). The lot is only 10,000 square feet in area and is a triangular shape. He agreed with the applicant that the structure, now in use as the grocery, was originally a gasoline station. However, he emphasized that it had not been used as such for approximately 15 years and that it had not been used as a convenience store. Mr. Brown stated that any use of the property as a gasoline station had taken place prior to any Zoning Ordinance in the County.

Mr. Brown stated that several problems would be caused by the installation of self-service pumps on this site. A major concern is parking. The conversion of the building on the site to a convenience store has created a substantial demand for parking. Mr. Brown stated that the Parking Ordinance requires that 8 parking spaces be provided for a building of this size and use. He said that when the plan submitted with the variance application is corrected for errors in scale, only 8 parking spaces are provided on the site. One of these spaces protrudes into the traffic flow of the east entrance. Mr. Brown emphasized that this space created a dangerous situation which should be corrected by eliminating this space. No loading space is provided. According to Mr. Brown, the site barely provides the minimum parking for a convenience store. The addition of the gasoline pumps would cause the loss of several parking spaces which would create a violation of the Parking Ordinance. Mr. Brown stated that traffic around the gasoline pumps would make two spaces in front of the store unusable. He stated that automobiles could not physically get in and out of these two spaces while cars stopped at the pumps to be serviced. The Fire Marshal, according to Mr. Brown, had reviewed the plan and determined that these same two spaces were in violation of the National Fire Code. This Code prevents the parking of automobiles in the line of sight of the attendant in the store and the gasoline pumps. If the spaces are allowed to remain, Mr. Brown stated, then congestion around the pumps would create unsafe conditions. He emphasized that these spaces would hinder the proper monitoring of the self-service pumps by the store clerk and that this was a violation of the National Fire Code.

Mr. Brown addressed the questions risen by the applicant concerning a July, 1976 meeting with Mr. Stephens of the Planning Department. Mr. Brown related that he was informed that in this meeting Mr. White was checking the particular zoning of this property. In the meeting, Mr. White was told that the zoning classification was B-1 (General Business) and that the

uses he wished to place on the property were permitted uses in the B-1 District. Mr. Brown stated that he understood that Mr. White was also told that so long as he did not expand the existing building, erect any other structures, or expand the parking lot no site plan would be required. Mr. White was told that the installation of gasoline pumps would be considered erecting a structure, and a site plan would be required. Mr. Brown stated that Mr. Stephens had told him that the size of the property had not been raised in this meeting.

Although the County was aware that work was being done on the interior of the building, no site plan was ever submitted for expansion of the building or new structures on the site. On October 11, 1976, the Board of Supervisors amended the B-1 District. This amendment was made in accordance with State law after public hearings and advertising by both the Planning Commission and the Board of Supervisors. Mr. Brown stated that during this time between July and October no further communications were received from the applicant concerning the installation of gasoline pumps on the site. Finally in November, Mr. William Mershon brought a site plan of the property to the County Offices to find out what would be necessary to install gasoline pumps at the Short-Stop Grocery. Mr. Brown stated that upon review of this plan Mr. Stephens informed Mr. Mershon that the property did not have sufficient area for the installation of gasoline pumps.

Mr. Brown explained that he recommended denial of the variance. He based his recommendation on several points. The first point, he stated, was public safety. He said that on-site traffic congestion would be dangerous. He emphasized that if the variance was granted and the site layout allowed to remain as shown on the plan then the variance would create a violation of the National Fire Code. Secondly, Mr. Brown sited the parking situation. He stated that the grocery was barely in compliance with the County Parking Ordinance. In fact, the use of the site as a convenience store is only possible because of recent amendments to the Parking Ordinance which reduced by one-half the number of parking spaces required. He stated that he felt the introduction of the gasoline pumps on the site would create an intolerable situation. Mr. Brown stated that another reason for his negative recommendation was that the applicant had not shown hardship. He said that no deprivation of the economic use of the property had been demonstrated. Mr. Brown stated that the property was too small for the particular combination of uses the applicant desired. The size and shape of the property do not allow for the safe combination of gasoline sales and the convenience store. Mr. Brown closed by stating that the plans submitted with the variance request were shown to the Site Plan Review Committee. The Committee unanimously recommended denial of the variance.

Mr. Mephram commented that he was opposed to the variance. He stated that he could see no hardship under the definition which the Board had been given. He also cited safety as a reason for his opposition.

Mr. Marston said that he felt that a man should be given every opportunity to use his property as he saw fit. He stated that more business was good for the County. He recommended the application be tabled to allow the applicant time to adjust his plans to try to overcome the problem with parking and safety. Mr. Marston asked the applicant if tabling the application until the next meeting was acceptable. He stated that the Board would not schedule a special meeting just for his application and that it may be some time before the next meeting.

Mr. Holland stated that a tabling was acceptable to his client.

Mr. Roby moved that the application of Greyhound Enterprises for a variance from Section 20-86.4(1) be tabled until the next regular meeting.

Mr. Marston stepped down as Chairman to second the motion. He passed the Chairmanship to Mr. Mephram until a vote was taken on the motion.

The motion by Mr. Roby passed by majority vote. Mr. Mephram voted no.

5. APPEAL CASE NO. ZA-2-77. Application of Harold W. Ayres for a variance from Section 20-55(a) of the Zoning Ordinance, to allow an addition to a residence on lot 16 of Chickahominy Haven to be built up to five feet from the side property line.

Mr. Marston opened the public hearing of Case No. ZA-2-77.

Mr. Ayres spoke on behalf of his application. He stated that he owned a summer cottage in Chickahominy Haven which he wished to convert into his permanent residence. He stated that the addition he proposed to build would encroach upon the required 10-foot side yard by 5 feet. The total of the two side yards would be the required 25 feet. He stated that he had the written approval from all adjacent property owners.

Mr. Brown stated that he did not oppose the variance. However, he explained that he was not in full agreement with the reasoning behind this and previous variances in Chickahominy Haven. He said that he did not want to be unfair to Mr. Ayres by opposing the variance in an area where past precedence had been so firmly established.

Upon a motion by Mr. Roby, seconded by Mr. Mepham, a variance from Section 20-55(a) to allow a single-family home to be built within five feet of the side property line on lot 16 in Chickahominy Haven was granted. The motion passed unanimously.

6. APPEAL CASE NO. ZA-3-77. Application by Exxon, Incorporated for a variance from Section 20-84 of the Zoning Ordinance to allow the construction of self-service gasoline station at the intersection of Route 143 and Route 642 which will violate the fifty-foot setback requirement from Route 143.

Mr. Marston opened the public hearing of Case No. ZA-3-77.

Mr. Howard Sipler, representing Exxon Corporation, spoke in favor of the variance request. Mr. Sipler explained that although the site in question had over 24,000 square feet of area, the triangular shape of property prevented maintenance of the required fifty-foot setback from Route 143. He demonstrated on a site plan which had received preliminary approval from the Site Plan Review Committee, that the setback on this property left very little developable area. He explained that to some degree the situation had been aggravated by condemnation of part of the property by the Virginia Department of Highways and Transportation for the relocation of Route 642.

Mr. Brown stated that the staff supported the variance request. He explained that enforcement of the setbacks would amount to a taking of the property. According to Mr. Brown both VDHT and the Site Plan Review Committee had reviewed and approved the plan, and both recommended approval of the variance.

Mr. Stanley Randall, a resident of Route 642, asked to speak. He was concerned about the impact of the gasoline station on the neighborhood. Particularly he wished to review the proposed plan of the site.

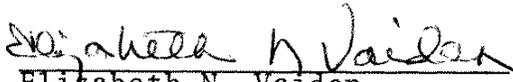
Mr. Sipler explained that Exxon proposed substantial landscaping along the rear of the property. He explained that the Site Plan Review Committee, as a condition for approval of final plans, would require about a half dozen major trees to be planted along this property line to act as a buffer. He emphasized that noise would be kept to a minimum and that this station was solely for the sale of gasoline. It would not become a general store or "hang out".

Upon a motion by Mr. Mepham, seconded by Mr. Roby, a variance to Section 20-84 was granted for a self-service

gasoline station to be built to within 22 feet of the right-of-way of Route 143. The motion passed unanimously.

7. ADJOURNMENT

Upon a motion by Mr. Mepham, seconded by Mr. Roby, the meeting of the James City County Board of Zoning Appeals was adjourned.

  
Elizabeth N. Vaiden  
Secretary

  
George A. Marston  
Chairman