

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER, 101C MOUNTS BAY ROAD, BOARDROOM, AT 7:30 P. M. ON THE TWENTY-FIFTH DAY OF AUGUST, NINETEEN HUNDRED AND EIGHTY-THREE.

1. ROLL CALL

Mr. Gerald H. Mephram, Chairman  
Mr. Joseph A. Abdelnour  
Mr. Warfield Roby, Jr.  
Ms. Elizabeth N. Vaiden

OTHERS

Mr. Orlando A. Riutort  
Mr. Allen J. Murphy, Jr.  
Mr. Frank M. Morton, III

2. MINUTES

The minutes of the July 28, 1983 and August 4, 1983 meetings were approved as presented.

3. CASE NO. ZA-8-83. SHIRLEY PEWTER SHOP/J.B. VIOLETTE  
CONSTRUCTION COMPANY, INC.

Mr. Allen J. Murphy, Jr. presented the staff report which is appended hereto. He also reviewed the study which had been conducted since the May meeting with regard to this case which indicated that a sewer line does exist along Mooretown Road about 500 ft. away; access along Mooretown Road is blocked but it may be available along the C & O Railroad may be a possibility. The availability of sewer for this property supports the staff's position that a hardship does not exist.

Mr. Abdelnour asked about the cost of the sewer connection.

Mr. Riutort advised him that Public Works had estimated the cost to be \$4,000.

Mr. Millner spoke on behalf of his client. He noted the advantages of allowing his client to build and he noted that if the property were not changing hands, it would be possible for a building to be constructed on the property without obtaining a variance. He noted that sewer lines would be extended to this property in two or three years according to the County's present plans and the cost of connecting to sewer now is not a viable alternative. He advised the Board that his clients were not interested in circumventing the problem by leasing the property.

He stated the building would not be constructed unless a variance was granted. He also reviewed the factors for the granting of a variance as a hardship. He said that if the variance was granted he and his clients would be willing to take their chances in court if the decision was appealed.

Ms. Vaiden made a motion that the variance be granted provisioned upon the applicant's connecting to public sewer when it is available. She noted that the project is in the spirit of County development in that other conditions have been met; it broadens the tax base, and provides employment. Mr. Abdelnour seconded the motion because of the uniqueness of the parcel which creates a hardship.

The roll call vote was as follows:

Mr. Abdelnour - Yes  
Mr. Roby - Yes  
Ms. Vaiden - Yes  
Mr. Mephram - Yes

The motion was approved.

4. CASE NO. ZA-11-83. JAMES SQUARE TOWNHOUSES

Mr. Murphy presented the staff report which is appended hereto.

Mr. Mephram opened the public hearing.

Mr. Samuel T. Powell, attorney for Shellis, Inc., spoke on behalf of his client. He showed the Board a new site plan for the project. He reviewed the setback requirements and outlined the problem created by the zoning of the property on which Conway Gardens is located. This is the only area for which the requested variance is necessary because they would withdraw their request for the second variance which is along the property line with Birchwood which is no longer necessary because of the changes made in the plan.

Mr. David Stanford, 127 Shore Drive expressed concern about the access roads to the townhouses.

Mr. Mephram noted that access to the project was not the question being considered by the Board. He noted that a traffic study was going to be done. Mr. Riutort added that he would be willing to talk to Mr. Stanford about the traffic study.

Mr. Mephram explained the zoning of Conway Gardens and how its present zoning came to be R-2 rather than R-5.

Mr. Stanford stated he was interested in seeing the area remain low density.

Mr. Jerry Smith, 209 Colony Point Road, also expressed concern about the traffic in the area.

Mr. Riutort advised him that this issue would be discussed at the Site Plan Review Committee meeting on the second Tuesday in September. He stated that the meeting is open to the public but there would not be a public hearing. The traffic study should also be ready at that time.

Mr. Samuel T. Powell advised the members of the audience who were interested in the project that he would be willing to review the site plan with them.

Mr. Didier Devulpillieres, 223 Colony Point Road, expressed concern about the effects of the granting of the variance on Berchwood Subdivision, in particular the preservation of its quiet atmosphere. He was concerned that the residents of Birchwood be informed of the developer's intent with regard to any new roads in the area.

Mr. John Johnson, 220 Colony Point Road, stated his concern that the variance's being granted would dilute the original intent of those who had established the standards for this area.

Mr. Mephram explained that if Conway Gardens was zoned R-5 instead of R-2, the variance would not even be necessary. It was zoned R-2 before an R-5 zone existed and when the R-5 zone was created for this type development it remained R-2.

Mr. Kelley Shaver, 126 Shore Drive, expressed concern about the large open area currently zoned R-1. If it is argued that the R-5 zoning of the property in question is consistent with the zoning of Conway Gardens, then might it not also be argued that it would also be consistent with that zoning to at some time in the future rezone the area presently zoned R-1 to R-5 and disregard the setback requirements to remain consistent with setbacks that he expects will be granted at this meeting. To prevent such an occurrence, he proposed that the wording of the motion to grant the variance include some statement of the special status of the property on which Conway Gardens is located.

Mrs. Wolf, 211 Colony Point Road, stated that she lives on property directly behind this project and no amount of screening will block this new development from view. It has taken years for the trees to finally block the view of Conway Gardens.

Mr. Jerry Smith proposed that Conway Gardens be rezoned to R-5 which would eliminate the need for a variance.

Mr. Samuel T. Powell commented that while the property in question is zoned R-5 and is situated next to Conway Gardens which should be zoned R-5 but is zoned R-2 which creates the need for a variance, the R-1 property near it is adjacent to R-1 property; therefore, the granting of the variance would not set a precedent with regard to the R-1 property.

There being no other speakers, the public hearing was closed.

Mr. Abdelnour made a motion, seconded by Ms. Vaiden, that the variance be granted based on Conway Gardens being zoned R-2 rather than R-5 thus creating a hardship for the applicant.

The roll call vote was as follows:

Mr. Abdelnour - Aye  
Mr. Roby - No  
Ms. Vaiden - Aye  
Mr. Mephram - Aye

The motion carried.

5. CASE NO. ZA-12-83. LONNIE & PENNY LOGUE

Mr. Allen J. Murphy, Jr. presented the staff report which is appended hereto.

Mr. Abdelnour asked if there was any difficulty in adjusting the property lines to bring Mr. Logue's house into compliance with the ordinance and Mr. Murphy advised him there was not.

Mr. Mephram opened the public hearing.

Mr. Logue, the property owner, advised the Board that he had been unsuccessful in contacting the owner of Lot #4. He also stated he has a construction loan that he must convert to permanent financing and he can do that; however, he cannot get legal title without clearing up the problem of the drainfield and the easement. He has not even received a response to letters he has sent to the owner of lot #4 by registered mail. If the variance was not granted, he would lose his permanent financing on October 15th. He reviewed the circumstances that had caused his house to be built within the setback. He had assumed that his house was properly situated and that he was misled by the County because he had not been advised that his house was incorrectly situated on the lot.

Mr. Mephram closed the public hearing.

There was a brief discussion of the cost of moving the house and the fact that Mr. Logue could be liable for suit because he had encroached on someone's property.

Mr. Morton said he did not think this would be so if a variance was properly issued; however, he was speaking only to the Zoning Ordinance.

Mr. Abdelnour asked if the staff could propose any other solutions.

Mr. Morton noted that in other jurisdictions houses had been moved.

Mr. Abdelnour asked what Mr. Logue's deadline was for permanent financing.

Mr. Logue said that something would have to be done in October because extending the construction loan after the house had been completed would not be well accepted by the financial institutions.

There was further discussion of efforts to contact the owner of lot #4. Mr. Abdelnour noted that if the owner were in the service as his address indicated, Mr. Logue should be able to contact him through the service, and therefore, it would be best to defer this case.

Mr. Abdelnour made a motion, seconded by Ms. Vaiden, to defer the case for three months because he had demonstrated good cause and that this time could be extended if necessary.

Mr. Mepham stated that <sup>Mr. Logue</sup> ~~Mr. Mepham~~ should come back at the next meeting before which the Board has business.

6. ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 8:45 p.m.

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Elizabeth N. Vaiden  
Secretary

Gerald H. Mepham  
Gerald H. Mepham  
Chairman