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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-EIGHTH DAY OF JUNE, NINETEEN HUNDRED AND EIGHTY-FOUR.

1. MEMBERS PRESENT

Mr. Gerald H. Mepham, Chairman
Mr. Joseph A. Abdelnour
Mr. David L. Hertzler
Ms. Nancy James
Ms. Elizabeth N. Vaiden

OTHERS PRESENT

Mr. Richard E. Bain
Mr. Orlando A. Rintort

2. MINUTES - June 14, 1984 & April 26, 1984

Action on the minutes was postponed until all cases had been heard. At that time it was decided that action would be taken on the minutes at the next meeting which would be the worksession to be held on July 13, 1984.

3. UNFINISHED BUSINESS

A. CASE NO. ZA-4-84. Beatrice Legum

This case had been heard at public hearing at the June 14, 1984 meeting and a decision postponed until this meeting.

Mr. Mepham stated that he felt the conditional use permit issued by the Board of Supervisors had been clear on the requirement that the street be made part of the State system. He noted he had discussed the question of private streets with the County police and they had advised him of the difficulties they encounter because they have only limited jurisdiction on private streets. He pointed out that school buses and postal service are not required to use private streets and that the Fire Department encounters difficulties because of parking on private streets. He felt that a project of this magnitude should be required to have a street in the State system. He felt that the Board of Zoning Appeals should not uphold a loophole of this nature in the Zoning Ordinance.

Mr. Hertzler stated he felt it was not the intent of the Zoning Ordinance for the term lot to be interpreted as it was in this case by the applicant.

Mr. Mepham noted that Mr. Abdelnour was not taking part in the discussion of this case because of a possible conflict of interest.

A motion was made by Mr. Mepham, seconded by Mr. Hertzler, to uphold the decision of the Zoning Administrator.

Mr. Alvin Anderson, attorney for Ms. Legum, requested that the Board address each question in the case individually for the purpose of clarity.

Mr. Mepham amended his motion to state that the Board upheld all of the recommendations of the Zoning Administrator based on the general intent of the Zoning Ordinance. Mr. Hertzler seconded the motion.

The roll call vote was as follows:

Mr. Hertzler	Aye
Mr. Mepham	Aye
Ms. Vaiden	Aye
Mr. Abdelnour	Abstained

The motion carried.

4. NEW BUSINESS

A. CASE NO. ZA-5-84. C & P Telephone Co. of Va.

Mr. Mepham opened the public hearing.

Mr. Jesse Jackson spoke on behalf of C & P Telephone Co. He stated the company's intent to install a subscriber line carrier; however, such structures were not mentioned in the Zoning Ordinance but that substations and other utilities were. He noted that subscriber line carriers already exist throughout the County. The difference in this situation is that sixteen subscriber line carriers were to be contained in a single structure. Mr. Jackson pointed out that subscriber line carriers were either not included in the Zoning Ordinance due to an oversight or because they were considered with other utilities. He stated that until this subscriber line carrier could be built, residents of nearby Raleigh Square Townhouses would not be able to receive their incoming phone calls. He reviewed other advantages of having subscriber line carriers.

Mr. Jackson stated that lot sizes and setbacks would not really apply in the same way to this structure as they would to a residential structure because it would only house telephone equipment. He noted the other persons present who would be able to answer any technical questions the Board members might have. He also noted that the structure would be located on an easement purchased from Dr. Mepham on Neck-O-Land Road.

Mr. Hertzler asked what the difference was between this structure and the one located at the entrance to Kristiansand or others located throughout the County.

Mr. Bain explained that there was an omission in the Ordinance regarding telephone utilities that heretofore had been overlooked. He explained that an amendment to the Zoning Ordinance has been prepared to correct this situation. It would permit telephone utilities by special use permit in some areas and by right in others. It would eliminate the requirement for minimum area for a use of this kind.

Mr. Abdelnour asked what the procedure would be for an electrical utility in this area.

Mr. Bain stated that a special use permit would be required from the Board of Supervisors.

Mr. Abdelnour asked why C&P Telephone Company could not wait until the Ordinance was amended or a special use permit granted.

Mr. Jackson explained that there were people in Raleigh Square Townhouses without telephone service and that if the subscriber line carrier was not installed soon there would be others in this expanding area that would also be without phone service. He explained the difference in the number of people who could be served by this facility as opposed to a cable line.

Mr. Hertzler asked why the facility could not be built underground.

A representative of C&P explained the requirements such as air conditioning that would have to be met to install this facility underground. He also explained the problems that could be encountered such as groundwater seeping into the facility. He also noted that the height of the structure could not be reduced because C&P workers have to be able to get into the structure to service the equipment.

Mr. Hertzler asked if other landowners in the area had been notified. Mr. Jackson noted they had spoken to the person and she had no objection to the construction of this facility. He noted that the structure would be screened by shrubs.

The Board members discussed with Mr. Bain and Mr. Riutort the procedures for overturning the decision of the Zoning Administrator.

Mr. Mephram closed the public hearing.

Mr. Abdelnour stated he had heard nothing to contradict Mr. Jackson's statements and that his only concern was whether or not the Board of Zoning Appeals' action would be considered valid when the Board of Supervisors was requested to issue a special use permit. He said he would support a motion to overturn the decision of the Zoning Administrator because such uses were permitted in the County in the past.

Mr. Abdelnour made a motion, seconded by Ms. Vaiden, to overrule the decision of the Zoning Administrator.

Mr. Hertzler asked if the motion could be amended to require landscaping; however, he withdrew the amendment when Mr. Bain informed him that this would be considered as part of the site plan review process.

The roll call vote was as follows:

Mr. Hertzler	Aye
Mr. Abdelnour	Aye
Ms. James	Aye
Mr. Mephram	Aye
Ms. Vaiden	Aye

The motion carried.

B. CASE NO. ZA-6-84. Robert E. Wilkins, Jr.

Mr. Mepham opened the public hearing.

Mr. Robert Wilkins of 41 Saunders Road, Newport News, Va., spoke on his own behalf. He explained the problems he was encountering because of the interpretation of the Zoning Ordinance with regard to the height of his house and his proposed garage. The Board members discussed with him possible solutions to the problem.

Mr. Hertzler suggested that a builder would be able to change the structure of the building so that the height could be reduced 8" and a variance would not be required.

Mr. Wilkins explained that the height of the structure would be measured from ground level and to meet the requirements of the ordinance, he would still need the variance for the extra height. The 16' to 17' structure would be on top of the foundation which would be 6" to 7" above ground level. He wanted also to be sure the building met the requirements of the ordinance because he did not want to start building it only to find out he would have to tear it down.

Mr. Mepham noted the staff had recommended denial because there was not an undue hardship in this case.

Mr. Bain stated that Mr. Wilkins was appealing the decision of the Zoning Administrator in this case. He was also seeking a clarification of the Zoning Ordinance which Mr. Bain stated clearly indicated that accessory structure could not be higher than the main dwelling and no higher than 35'. Mr. Bain further stated that a variance would be required in this case only if the Board of Zoning Appeals upheld the decision of the Zoning Administrator.

Mr. Mepham noted that Mr. Wilkins wanted ground elevations to be considered in measuring the relative height of the structures and that ground elevations are not mentioned in the Zoning Ordinance.

Mr. Mepham closed the public hearing.

Mr. Abdelnour made a motion, seconded by Mr. Mepham, that the Board of Zoning Appeals uphold the ruling of the Zoning Administrator.

Mr. Abdelnour stated that if this were a case in which there was evidence that the County had not been enforcing the Ordinance, his position might be different; however, Mr. Wilkins had not provided evidence that this was the situation.

Mr. Mepham questioned whether there was uniform enforcement because elevations were being measured differently.

The roll call vote was as follows:

Mr. Abdelnour	Aye
Mr. Hertzler	No
Ms. James	No
Mr. Mephram	No
Ms. Vaiden	No

Mr. Mephram informed the applicant that by voting not to uphold the decision of the Zoning Administrator, the Board had given the applicant permission to build his accessory structure.

C. CASE NO. ZA-7-84. C & S Associates

Mr. Mephram opened the public hearing.

Mr. Jennings, a local architect, spoke on behalf of the applicant whom he was representing. He reviewed the proposed changes for the site which is known as Frank's Truck Stop and the adjacent site known as the Horseless Carriage which is being purchased by C & S Associates. Both sites were indicated in the site plan that Mr. Jennings showed to the Board. He noted the applicant's plan to change Frank's Truck Stop to a family restaurant and lounge type facility. Some of the difficulties being encountered with the site are the result of conditions that existed prior to the enactment of the Zoning Ordinance. He also stated that the unusually wide right-of-way in the area exists because at one time the Virginia Department of Highways and Transportation expected I-64 to follow Rt. 143 in that area. He noted the parking problems in the area in the photos he had distributed to the Board members. He reviewed the different variances that were being requested. He explained how the requested variances would help alleviate the problems of ingress and egress to the site. He stated the project would upgrade the use of the property and enhance property values in the area. The VDH&T has agreed to work with the applicant on a permit basis regarding the use of the right-of-way; however, they would only issue a permit on a final plan and not something as preliminary as the present one. With regard to landscaping he felt that their plan would meet County requirements. It would also improve traffic safety in the area.

Mr. Abdelnour asked what the plans were for the Horseless Carriage building.

Mr. Jennings stated it would only be used as a storage facility but he did not know exactly how it would be treated as the plans had not advanced to that stage yet. The applicant wanted to know the result of the variance requests prior to investing a lot of money in the design plans. He further stated that having two uses on the property would facilitate their meeting parking requirements despite the problem of the wider than normal right-of-way. The present plans show a worst case situation.

Mr. Bain stated that if the storage building were in support of the restaurant, it would then be interpreted as a single use.

Mr. Abdelnour asked what would be done with the metal sided garage on the property.

Mr. Jennings explained that this building belonged to the County and that it would be removed from the site.

Mr. Abdelnour asked Mr. Bain if they were talking of demolishing the Horseless Carriage building and Mr. Bain replied that they were.

Mr. Bain asked if the C & O right-of-way had been included in computing the lot size.

Mr. Jennings said no.

Mr. Mephram asked if they would have adequate property if they used the VDH & T and C & O rights-of-way.

Mr. Jennings said yes. He stated that he had not tried rearranging the plans to show what the site would be like if one building was demolished.

Ms. James asked if this will be a completely new business or if there will be a carry over from the truck stop.

Mr. Jennings stated the existing building will be given a complete face lift and will be expanded. The visual impact will be totally different and the proposed changes will make it impossible for trucks to use the site and the hours of operation will be different.

Mr. Alvin Anderson of Anderson, Emmett & Franck spoke on behalf of Mr. & Mrs. Dan Rosensteel who own the property directly across from Frank's Truck Stop which is the Merrimac Motel. He stated that non-conforming uses are not encouraged and that variances are granted for hardships other than financial or self-inflicted ones. Since the plan, however, is to upgrade the property and eliminate the truck stop, Mr. Rosensteel would not object to the project except for one major proviso that adequate conditions be placed and bonds required where necessary to provide that the conditions are complied with. He quoted Section 15.1-495, Subsection 3 of the Code of Virginia as amended which states in part that in authorizing the variance the Board of Zoning Appeals may impose such conditions regarding the location, character or other features of use as it deems necessary in the public interest. It may require a guarantee or bond to assure that the conditions will be and continue to be complied with.

Mr. Dan Rosensteel stated that if he had more information on the terms of the variances, he might be in favor of the project. He noted that Rt. 143 is an important artery into the Williamsburg area and he would not want to see an eyesore created there.

Mr. Bain stated the project would be an improvement to the area and noted two further conditions that should be placed on the applicant. These were 1.) that the truck stop operation cease in perpetuity and 2.) that the fuel pumps be removed from the site.

Mr. Charlie Morrell, present owner of the property, stated the use would be a Bennegan's type operation and a very attractive facility. He would rather not leave the site as a truck stop which would be his only other alternative.

Mr. Michael Hague stated he had been a guest at the Merrimac Motel and with the truck stop operating across from it, it is impossible to get a night's sleep there because of the noise.

Mr. Mephram closed the public hearing.

Mr. Abdelnour stated that because of the number of variances involved and the possible conditions to be imposed, he would prefer to postpone action on the case.

Mr. Mephram noted that even if the variances were granted, the case would still have to be reviewed by the Site Plan Review Committee and the applicant would have to meet their requirements and also comply with the County's parking regulations.

The members discussed the possible conditions with Mr. Jennings. He noted his need to be kept informed particularly as to whether or not the applicant would be required to demolish the Horseless Carriage building. They also discussed the use of the C & O and VDH&T rights-of-way. Mr. Jennings noted that it might not be necessary to remove the Horseless Carriage building if the rights-of-way were included in the calculations of the lot size.

Mr. Riutort asked if in points 6, 7 & 8, the applicant was requesting variances from the parking and landscaping requirements.

Mr. Bain and Mr. Jennings agreed that the site plan would require the variances.

Mr. Mephram asked if the members would be voting on only four issues tonight and Mr. Bain replied that nos. 6, 7 and 8 would also require the Board's action.

Mr. Jennings noted that they were not requesting variances from the landscaping requirement but only variances from certain required dimensions.

Mr. Abdelnour made a motion, seconded by Mr. Mephram, that a worksession be held to study the requested variances prior to the next regular meeting and that a decision would be made at the July meeting.

The roll call vote was as follows:

Mr. Abdelnour	Abstained
Mr. Hertzler	Aye
Ms. James	Aye
Mr. Mephram	Aye
Ms. Vaiden	Aye

D. CASE NO. ZA-8-84. Seasons Trace Development Company

Mr. Mepham opened the public hearing.

Mr. Tom Sutton of Seasons Trace Development Company took exception to item one regarding the case which stated that the applicant was cognizant of the violation when the building was constructed; however, there was just a human error in this case. They have always made every effort to comply with the County's Ordinance.

Mr. Mepham asked if the applicant knew the requirement was 35 feet.

Mr. Sutton replied that they did but that when they moved the building back on the lot to save the holly tree on the lot, they did not realize that put them in violation of the Ordinance. The person buying this home had requested a solar room option which changed the dimensions and the violation got by them. The 35' requirement had been stipulated by the County and they had made every effort to comply. He noted that there are three other buildings that would be critical on other lots. He explained the location of the buildings in the photos he had distributed to the Board members.

Mr. Mepham closed the public hearing.

Ms. Vaiden made a motion, seconded by Mr. Abdelnour, that the variance be granted.

The roll call vote was as follows:

Mr. Abdelnour	Aye
Mr. Hertzler	Abstained
Ms. James	No
Mr. Mepham	Aye
Ms. Vaiden	Aye

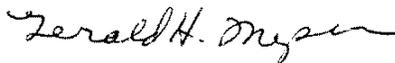
The motion carried.

5. ADJOURNMENT

It was agreed to vote on the minutes at the next regular meeting. There being no further business, the meeting was adjourned at approximately 9:45 p.m.

Joseph A. Abdelnour
Secretary

Gerald H. Mepham
Chairman



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