

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

1. ROLL CALL

Members Present

Mr. Gerald Mepham, Chairman
Mr. Joseph Abdelnour
Mr. David Hertzler
Ms. Nancy James
Ms. Elizabeth Vaiden

Others Present

Mr. Bernard Farmer
Mr. Richard E. Bain
Mr. Larry Davis
Mr. Frank M. Morton, III

2. MINUTES

The minutes of the June 19, June 28, July 26 and August 14, 1984 meetings were approved with the correction of the last paragraph on page two of the July 26, 1984 minutes to read that Mr. Hertzler made a motion seconded by Mr. Abdelnour. Mr. Abdelnour and Ms. James requested the minutes reflect their not having voted on the minutes of the meetings they had not attended.

3. UNFINISHED BUSINESS

A. CASE NO. ZA-9-84. WILLIAM R. HUTCHENS

Mr. Mepham reopened the public hearing.

Mr. Hutchens spoke on his own behalf. He reviewed the differences between his case and that of Ms. Beatrice Legum. He reviewed the history of the case and the problems he had encountered with County staff, particularly due to conflicting interpretations. He reviewed the various sections of the Zoning Ordinance which had been applied to his case and stated his interpretation of each with relation to his project.

Mr. Bain, who was the Zoning Administrator when this case first came before the Board of Zoning Appeals, explained his interpretation of the issues as he had seen them with regard to this case.

Mr. Hertzler asked if there was more than one road involved.

Mr. Bain replied there was only one road involved. Mr. Bain reviewed the points in the staff memorandum dated July 24, 1984.

Mr. Abdelnour asked whether Section 20-174 applied to lots already in existence as of December 20, 1983 as stated by Mr. Hutchens.

Mr. Farmer noted that the statements being made by Mr. Bain were Mr. Bain's opinions and not the official interpretations of the Zoning Administrator.

Mr. Morton stated that what was intended in this case was not to nonconform every lot under one acre. If too literal an interpretation were made, hazardous wastes could be brought into the Reservoir Protection Overlay District.

Mr. Hertzler stated that it appeared the County staff did not know what they were doing in this case.

Mr. Morton stated it had been a long and torturous process and that efforts had been made to rectify the situation, particularly by separating the rolls of Planning Director and Zoning Administrator into two separate positions. He stated that what is done in the future cannot be justified by a mistake made in the past. Mr. Morton noted that he did not think he had told Mr. Hutchens he was exempt from area requirements. He also noted that what had been done in the Temple case to which Mr. Bain had referred was vastly different than this case. The Legum case in which the Zoning Administrator's decision was upheld was similar to this case.

Mr. Hutchens gave a brief rebuttal to the statements that had been made by Mr. Bain in reviewing the points in the staff memorandum of July 24, 1984. He read stated measures that would be taken to protect renters living in the duplexes from flooding.

The members discussed with Mr. Hutchens the location of Rochambeau, a four-lane highway, in relation to his property.

Mr. Abdelnour asked Mr. Hutchens if he was contending that the Reservoir Protection Overlay District did not apply to his lot.

Mr. Hutchens replied that specific conditions quoted by Mr. Bain did not apply.

Mr. Abdelnour questioned how Mr. Hutchens felt he could interpret the Zoning Ordinance so that he would be allowed to have more than one dwelling unit per acre.

There being no other speakers, Mr. Mephram closed the public hearing.

Mr. Farmer addressed the questions raised by Mr. Abdelnour regarding the application of the Reservoir Protection Zone. He stated it is not the intent of the Zoning Ordinance or any new ordinances that are created to take away from the rights of present property owners; however, for nonconforming uses, lots and structures when additions, improvements or changes are made, all the provisions of the Zoning Ordinance must be brought to bear. His interpretation of the paragraph in Section 20-174 was that it is not applicable to Mr. Hutchens' proposed new work, and therefore, he must comply with all the provisions under the Reservoir Protection Overlay District. He endorsed each of the recommendations of the former Zoning Administrator as they applied to site plan requirements, minimum area requirements, setback requirements, minimum frontage requirements and yard regulations and the Reservoir Protection Zone.

Mr. Hertzler made a motion that since the Zoning Ordinance is there to protect the citizen and since there has been considerable confusion already, Mr. Hutchens be allowed to proceed with the plans he had submitted. The hardship in this case was based on the time that had been involved and the run-around Mr. Hutchens had been given. He stated his interpretation of the Ordinance would be the same as Mr. Hutchens' interpretation. Ms. James seconded the motion.

Ms. James stated that one problem she had was that this case was similar to the Beatrice Legum case and she felt that the Zoning Ordinance should be applied equally to all areas. She said, however, that she could see both sides of the argument and that the interpretations had changed with the different Zoning Administrators. She stated the Ordinance should be more concrete to avoid such gray areas.

Mr. Abdelnour stated he found it difficult to agree with Mr. Hertzler. He noted he had not taken part in the Legum case and so this was all relatively new to him; therefore, he made a motion to table the case until the next regular meeting.

Ms. Vaiden seconded Mr. Abdelnour's motion.

The roll call vote was as follows:

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

The motion was passed by a 4-1 vote.

4. NEW BUSINESS

A. CASE NO. ZA-15-84. BRITISH WOODS

Mr. Farmer made the staff presentation which is appended hereto.

Mr. Mepham opened the public hearing.

Mr. Mepham closed the public hearing because there was no one wishing to speak on this case.

The Board members discussed with Mr. Farmer the developer's request for a variance for additional parking spaces which would provide more spaces than required to meet the zoning ordinance requirements for this project. Mr. Farmer requested that the Board uphold his decision on this case. He further stated he did not know why no one had come to speak on this case.

Mr. Hertzler made a motion, seconded by Ms. James, to defer this case to the next regular Board meeting.

The roll call vote was as follows:

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

The motion was passed by unanimous vote.

B. CASE NO. ZA-16-84. MOLLIE MORTON

Mr. Farmer presented the staff report which is appended hereto. He noted he had received a letter Mr. Brown of the Board of Supervisors stating he had reviewed this case and hoped that the Board would grant this variance.

The Board members discussed with Mr. Farmer the requirements in the Ordinance for decks and accessory structures. Mr. Farmer pointed out that porches and stoops were considered part of the main structure. He noted that Ms. Morton was requesting this variance for a deck.

Mr. Mepham opened the public hearing.

Mr. Craig Nordeman, Rehab Specialist for James City County, noted that Ms. Morton was one of his applicants and this deck was essential for safety reasons. He said the short shallow steps with a guardrail were specially designed for her because of her physical disabilities. He noted that the structure would be attached to the house but that it would not be covered.

Mr. Mepham closed the public hearing.

Ms. Vaiden made a motion, seconded by Ms. James, to grant Ms. Morton's request for a variance.

The roll call vote was as follows:

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

The motion was passed by unanimous vote.

C. CASE NO. ZA-17-84. WILLIAM HART

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

Mr. Mepham opened the public hearing.

Mr. Spearman, applicant on behalf of the petitioner, explained the problems involved with repositioning the house on this particular lot. He stated that having the narrow side of the house toward the river would defeat the purpose of the location and that it would impede the view of the neighbors to the east of this lot and of motorists turning onto Shellbank Drive. He said it was his understanding that lots designed prior to 1979 would not be affected by the Ordinance. The setbacks for this lot are stated on the deed and plat of record recorded in 1955 and that these take precedence over the existing Ordinance. When the Harts bought the property in 1977, they did so with that understanding and had the house designed accordingly. They were also unable to build a two-story house because of Mrs. Hart's health.

Mr. Peter Paluzsay of 128 Shellbank Drive who owns the lot across the street from the Hart's lot spoke in opposition to the requested variance. He objected that the house was too close to the road and that it did not fit the lot.

Mr. Bill Howard of 120 Shellbank Drive whose lot is adjacent to the Hart's lot stated he had no problem with what the Harts wanted to do. He did note, however, that if the variance were granted, it might preclude the State building the road and a 50' right-of-way might cut into his property. He was also concerned about the State's maintaining the road.

Mr. Spearman stated that a fifty-foot right-of-way is not always required and that in many areas forty-foot is acceptable. This street might qualify for the forty-foot right-of-way because it is not a through-street. He noted that on the sketch the 16.5' is from the right-of-way not the paving on Shellbank Drive. It is an additional 12' out to the edge of the paving.

Mr. Mephram closed the public hearing.

Mr. Abdelnour discussed with Mr. Spearman the restrictions on the deed. He asked Mr. Spearman to read the attorney's letter without mentioning any names. Mr. Spearman read the letter. He noted that nonconforming uses apply to the property and not the owner. He showed the Board a copy of the subdivision plat.

Mr. Davis stated that when the property was purchased the Harts were not entitled to a nonconforming use and they would need a variance to build and be in conformity with the Zoning Ordinance.

Ms. James asked about the future adoption of the road into the highway system and restated Mr. Howard's concern about the right-of-way cutting into his property.

Mr. Davis stated that the State would probably require a fifty-foot right-of-way but that sometimes the State did grant variances. He said there was a possibility that the Highway Department might use part of lot no. 8.

Mr. Spearman showed the Board that lot no. 8 is formed by two curves and that to have the road conform to Highway Department requirements for sight distances which would involve straightening the curve lots nos. 7 and 8 would be affected equally.

Another resident of the area suggested abiding by the deed restrictions. He also expressed his approval of the road's being taken into the State Highway System.

Mr. Abdelnour asked if there was a house on lot no. 7.

Mr. Spearman informed him that there was but that he thought it was placed back further on the lot.

Mr. Howard who owns lot no. 7 stated that his house is fairly close to the old restrictions. The house is perpendicular to the river as the Hart's house would be. All the other houses in the area are parallel to the river. It had to be nonconforming to fit the lot. The house was built in 1976 before they purchased it.

Mr. Abdelnour questioned the exact amount of the variance being requested.

Mr. Spearman explained they were requesting a variance of 5' from the other lot line.

Mr. Farmer said it would be a variance of 10'.

Mr. Abdelnour made a motion, seconded by Mr. Hertzler, to grant a 10' variance from the side toward Shellbank Woods which would be 35' from the center line.

The roll call vote was as follows:

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

The motion was passed by a 4-1 vote.

D. CASE NO. ZA-18-84. CHARLES KEYSER

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

Mr. Mepham opened the public hearing.

Mr. Keyser spoke on his own behalf. He said that a real estate agent had told him he could have two mobile homes, a duplex or a house. He was not aware he had to meet frontage and yard requirements for the mobile homes until he constructed a duplex on the property.

There being no other speakers, Mr. Mepham closed the public hearing.

Mr. Mepham asked when the mobile homes would be removed from the property.

Mr. Keyser said they would be gone in three years when he has built a duplex.

Ms. James asked what the mobile homes would be used for.

Mr. Keyser stated that one would be used for the construction workers and the other as a residence.

Mr. Farmer stated this case was similar to others in which the Board had upheld the Zoning Administrator's decision that setback and frontage requirements had to be met individually for each structure on the lot.

Mr. Mephram asked if a special use permit would have to be granted by the Board of Supervisors for each trailer.

Mr. Davis said a special use permit would be required for one and a conditional use permit for the other.

Mr. Abdelnour asked what was presently on the adjoining lots.

Mr. Keyser responded that there was a mobile home on one and an abandoned frame structure on the other. The A. A. Rolin property is unoccupied. He noted that his septic system had already been approved and explained his construction plans.

Ms. James asked if Mr. Keyser would be building the duplex in three years or if it would be completed in three years.

Mr. Keyser said he would just be starting it.

Ms. Vaiden stated her reluctance to grant the variance for a period longer than two years. She noted that a mobile home could be placed on the property now with a special use permit and that a duplex was permitted by right and the lot meets the requirements for such a structure.

Mr. Mephram stated he did not see a hardship in this case.

Mr. Farmer read the section of the Code of Virginia that defined the requirements for a hardship which he felt did not apply in this case.

Ms. James noted the need to be consistent. She made a motion, seconded by Mr. Abdelnour, that the request for a variance be denied, thereby upholding the decision of the Zoning Administrator.

The roll call vote was as follows:

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

The motion was passed by unanimous vote.

E. CASE NO. ZA-19-84. SHIRLEY WALKER

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

Mr. Mepham opened the public hearing.

Mr. Robert E. Walker spoke on behalf of the applicant. He stated the Health Department has informed him that a mobile home could be placed on the property and he had subsequently invested \$3,500 in a septic tank and well.

Ms. Hawkins questioned the setback requirements.

Mr. Farmer noted Ms. Hawkins' interest was based on her having a second illegal structure on her own property.

There being no other speakers, Mr. Mepham closed the public hearing.

Mr. Davis noted that the second mobile home was contrary to County law and would have to be removed. It is presently occupied illegally. A special use permit was required for each mobile home.

Mr. Abdelnour asked if the septic tank was for both trailers.

Mr. Walker replied that it was.

Mr. Farmer pointed out that the Health Department had acted without the knowledge of the Zoning Administrator's decision. Action has been taken to preclude such a situation in the future.

Mr. Abdelnour asked if the mobile homes were on a foundation.

Mr. Walker said they were not.

There being no other speakers, Mr. Mepham closed the public hearing.

Mr. Hertzler asked about the 59' discrepancy.

Mr. Farmer responded that it had resulted from the staff report's having been prepared from the sketch submitted with the application. Further staff investigation revealed the error and now the drawing is correct.

Mr. Hertzler made a motion, seconded by Mr. Abdelnour, not to permit the mobile home to stay on the applicant's lot.

Ms. James noted for the record that there are citizens in the County who are not aware of the Zoning Ordinance and what they can or cannot do. She recommended measures be taken to avoid situations such as had occurred in this case with the Health Department.

Mr. Davis said a time limit should be placed regarding when the mobile home would have to be removed from the property.

Mr. Walker agreed to sixty days.

Mr. Hertzler agreed to incorporate the sixty day limit into his motion and Mr. Abdelnour agreed to second it as amended.

The roll call vote was as follows:

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

The motion was passed by unanimous vote.

5. MATTERS OF SPECIAL PRIVILEGE

Mr. Farmer noted that with regard to Case No. ZA-15-84, the action of the Board would prevent final site plan approval. The developer also would not be able to get a clearing and grading permit.

Mr. Mepham said since neither the applicant or his representative had been present for the public hearing, he had no strong feelings one way or another about the case and that there was no hardship involved in requiring the applicant to eliminate the extra parking spaces.

Mr. Farmer noted it might be a disadvantage to the developer if a decision were postponed to the next meeting.

Ms. Vaiden made a motion to deny the request for a variance. Mr. Hertzler seconded it.

Mr. Abdelnour said he would be willing to rehear the case if the applicant requested the Board to do so.

Mr. Davis said the case could be reopened but that did not have to be included in the motion.

The motion was rescinded and no action taken.

Mr. Farmer expressed his interest in meeting with each of the Board members either individually or in a group to better understand their approach to different zoning issues.

Mr. Mepham asked if it was necessary to hold a worksession to review Mr. Hutchens' case. It was agreed to hold a worksession prior to the September 27th

meeting. The worksession was set for Tuesday, September 5th in the conference room in Building A.

The Board members briefly discussed the problems related to the question of decks. Mr. Farmer explained the BOCA Code interpretation.

Mr. Davis recommended bringing the problem to the attention of the Planning Commission.

6. ADJOURNMENT

There being no further business, the meeting was adjourned at approximately 10:30 p.m.

Joseph A. Abdelnour
Secretary

Gerald H. Mepham

Gerald H. Mepham
Chairman