

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

1. MEMBERS PRESENT

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

OTHERS PRESENT

Mr. Larry Davis, County Attorney
Mr. Bernard M. Farmer, Zoning Administrator

2. MINUTES

The minutes of the August 30, 1984 meeting were postponed until the next meeting.

3. UNFINISHED BUSINESS

B. Case No. ZA-15-84. Brittish Woods

Mr. Mepham asked if there had been any contact with the developer since the last meeting.

Mr. Farmer replied yes, Mr. Paul Small is here tonight to speak to the board.

Mr. Mepham opened the public hearing.

Mr. Small stated he was representing the owner on this matter. Mr. Small presented his request and asked that the board rule favorably.

Mr. Abdelnour asked if Mr. Small could answer a few questions for the Board relating to the hardship that exists. He also asked if there was something unusual about the topography.

Mr. Small replied not really when compared with other sited. But we do have some rolling terrain, and we have tried to stick with the terrain in our land planning efforts to maintain a natural environment.

Mr. Abdelnour stated that since there was only a slight encroachment, the plan could be revised.

Mr. Small stated that it would have resulted in the units being closer together and frankly, we can do without the parking. The hardship would be on the visitors who visited the site. They wouldn't have a place to park, and we would like to provide parking for them.

Mr. Abdelnour went on to say that since there was only a slight encroachment that it seems that you could revise the site plan to get your required setback.

Mr. Small said as a matter of fact, we in order to get on with the project have simply eliminated the spaces. That was our immediate solution, but we were hoping that we could get the Board to see that this is a worthwhile thing to do.

Mr. Hertzler made a comment on setback requirements.

Mr. Small said that is correct that the rule does require a setback of 75 feet adjacent to that particular zoning classification, but that the land was to be used for Route 199 right-of-way.

Mr. Abdelnour commented that Mr. Small had already gone ahead and got site plan approval with the modifications.

Mr. Mephram asked what were the Board's wishes on the matter.

Mr. Abdelnour said I am inclined to deny the request. I think Mr. Small was perfectly frank with us that he could have designed this to meet setback requirements and the variance is for the convenience of the property owner. Therefore, I say we deny the request and I so move.

Mr. Mephram asked if there was a second on the motion. Ms. James stated that since a highway was going there anyway, the Board should reconsider in favor of the request.

Mr. Hertzler replied he would have to agree in favor of the request. The subdivider has gone way beyond the call of duty to try to give extra parking spaces and to be turned down because of guidelines is ridiculous.

Mr. Mephram asked if there was any further discussion, and stated that if there request was denied, it would be an inconvenience to the people.

Mr. Abdelnour stated that at the last meeting the number of required number of parking spaces exceeded the number of spaces by over 100. Therefore, I see no great inconvenience to the people themselves.

Mr. Mephram asked if there was any further discussion.

Mr. Hertzler stated that the denial would knock out available parking space all over the community.

Ms. James said in all probability, the visitors would use the spaces anyway, and call for another motion.

Mr. Mephram seconded the motion to deny the request.

Roll call was as follows:

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

The motion was defeated 3-2, to deny the request for variance.

Mr. Mephram asked if there was a motion to grant Mr. Small's request.

Ms. James made the motion, Mr. Hertzler seconded the motion.

Mr. Mephram stated that the Board needed reasons for granting the request.

Mr. Farmer stated under the Code of Virginia, Section 15.1.495 in order for the Board to grant variance it must be shown that if such variances were not granted it would be undue hardship under the law and not mere inconveniences. Also, it must be shown that such hardships are not shared generally by other properties in the same district.

Mr. Mephram asked if someone would state some reasons for granting the request.

Discussion ensued on the definition of hardship.

Roll call was as follows:

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

Motion passed 4-1, to grant the requested variance.

Mr. Mephram read the next case and opened the public hearing.

A. Case No. ZA-9-84. William R. Hutchens

Ms. Vaiden said if it is appropriate that we agree to let this pass if Mr. Hutchens met site plan committee recommendations.

Ms. James seconded the motion.

Mr. Mephram said if we approve his request, we must state reasons for granting the request.

Mr. Hertzler said the County itself doesn't know the interpretations, therefore, it is a hardship for a private citizen trying to develop. Because of so many unknown areas, this creates another hardship.

Mr. Mephram asked if there was any further discussion.

Mr. Abdelnour said I think this motion is much too general to take into account the ;five specific interpretations that are required of this Board. I realize that Mr. Hertzler is trying to grant some equitable relief for Mr. Hutchens, but I think our job is to address each of the legal problems, and I think this motion is going to create problems for the Site Plan Committee. I recommend that we deny Mr. Hertzler's motion and take these items up one by one.

Mr. Mephram asked if there was any further discussion.

Roll call was as follows:

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

Motion was denied 4-1 to grant all variances and only require site plan review.

Mr. Mephram asked for another motion from the Board.

Mr. Farmer asked to discuss the five points.

Mr. Abdelnour said I want to make a motion on item 1. The owner must submit a site plan. I would vote in favor of the Zoning Administrator's decision.

Mr. Mephram seconded the motion.

Roll call was as follows:

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

Motion passed 5-0 to require owner to submit a site plan.

Mr. Mephram read item 2. Minimum Area Requirement

Mr. Abdelnour said I move that we not sustain the decision of the Zoning Administrator and his interpretation that the minimum area requirement is a two-acre parcel.

Ms. Vaiden seconded the motion.

Mr. Mepham asked if there was any further discussion.

Roll call was as follows:

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

Motion was passed 5-0 to overturn the Zoning Administrator's decision pertaining to area requirement.

Mr. Mepham read item 3, Setback Requirement

Mr. Abdelnour said I think this is a little bit unusual because we don't have a formal site plan. If he intends to build out as described on this particular plan with a 35' setback, I say that he is compiling with the Ordinance. I move we not sustain the decision of the Zoning Administrator.

Mr. Mepham seconded the motion, and asked if there was any further discussion.

Mr. Abdelnour said I think to support my decision, the Zoning Administrator is apparently trying to establish a setback off of the parking lot and I view that setback is from the main road.

Mr. Mepham asked if there was further discussion.

Roll call was as follows:

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

Motion was passed 5-0, to overturn the decision of the Zoning Administrator as it pertained to setback and only require 35' from Rochambeau.

Mr. Mepham read item 4.

Mr. Abdelnour asked that the board table item 4 until the next meeting.

Mr. Mepham replied that time was running out, and a decision must be made.

Mr. Abdelnour stated that he had a problem with this issue and would like to have more time to pursue it.

Mr. Abdelnour made a motion to defer this item, and Ms. Vaiden seconded the motion.

Roll call was as follows:

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

Motion to table item 4 was denied 3-2.

Mr. Mephram asked if there was another motion on item 4.

Mr. Farmer made a statement about the Site Plan Committee.

Ms. Vaiden made a motion to sustain the appeal on item 4, and Ms. James seconded the motion.

Mr. Mephram asked if there was further discussion.

Roll call was as follows:

Mr. Mephram	No
Mr. Abdelnour	Abstained
Mr. Hertzler	Yes
Ms. Vaiden	Yes
Ms. James	No

Mr. Farmer stated that there was a tie vote. Mr. Abdelnour said I will go ahead and vote against the motion.

Motion to sustain the appeal was denied.

Mr. Mephram asked if anyone also had a motion on item 4.

Ms. James made a motion to overrule the decision of the Zoning Administrator, Mr. Mephram seconded the motion.

Roll call was as follows:

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

Mr. Farmer stated that the motion was defeated to overrule the decision of the Zoning Administrator pertaining to frontage.

Mr. Abdelnour asked that the item be tabled until next month, and Mr. Hertzler seconded the motion. Mr. Mephram asked if there was any further discussion on item 4.

Roll call was as follows:

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

Motion carried to table item 4 until the next meeting.

Mr. Mephram read item 5-A; Yard Regulations. He then asked for a motion on 5-A.

Mr. Hertzler asked a question pertaining to side yards.

Mr. Davis explained and clarified meaning for Mr. Hertzler.

Mr. Abdelnour motioned that the Board sustain the decision of the Zoning Administrator on item 5-A. Ms. Vaiden seconded the motion.

Roll call was as follows:

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

Motion was carried 3-2 to uphold the decision of the Zoning Administrator pertaining to side yards.

Mr. Mephram read item 5-B. Rear Yard Regulations.

Mr. Abdelnour stated that he didn't understand the Zoning Administrator's interpretation. Discussion on the on the rear yard occurred.

Mr. Hertzler made a motion to table item 5-B until the next meeting.

Mr. Mephram seconded the motion and asked for further discussion.

Mr. Hertzler said we have never had a case like this before. We are breaking the item apart, and I don't think we can.

Mr. Mephram asked for further discussion.

Roll call was as follows:

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

Motion to table item 5-B was denied 4-1.

Mr. Mephram asked for another motion on item 5-B.

Mr. Abdelnour said I think to apply to this particular project we are going to say if Mr. Hutchens intends to develop the property as he indicated, he must have a minimum of 35 feet behind each main structure to the property line or any other main structure. The point being is that if the side of one main structure lies to the rear of another main structure, he must maintain a combination of 35 feet and 15 feet.

Mr. Mephram asked for a motion.

Mr. Abdelnour said Mr. Hutchens must have 35 feet rear to the property line and so moved.

Ms. James seconded the motion.

Mr. Mephram asked for further discussion.

Roll call was as follows:

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

Motion was carried to uphold the Zoning Administrator's decision 4-1.

4. NEW BUSINESS

Case No. ZA-(21-22-23)-84. Texaco Incorporated.

Mr. Farmer gave the staff presentation.

Mr. Mephram opened the public hearing.

Mr. Horrace Moore, representing Texaco, Inc., stated that what Texaco was trying to do was create a new identity on signs.

Mr. Abdelnour asked if there were different signs on the property.

Mr. Mephram asked for the size of the existing signs.

Mr. Moore said the "hex" sign was 4.5' x 7'.

Mr. Mephram then replied the new sign proposed would be 6' x 7'.

Mr. Moore said yes.

Mr. Mephram asked if that would mean that there would be any other signs scattered on the property.

Mr. Moore replied that there would be only one sign.

Mr. Mephram asked if anyone would like to speak for or against the request.

Mr. Farmer stated that in cases ZA-5-83, and ZA-6-83, we had applications for two Texaco signs. In each of these cases the Board sustained the decision of the Zoning Administrator and the provisions of 20-131 applied, and their sign service area was limited to 32 square feet as well as the height was limited in 20-131.

Further discussion on the existing signs occurred.

Mr. Mephram closed the public hearing.

Mr. Abdelnour asked if there was any indication that the lots have less than 400 feet of frontage.

Mr. Farmer said in Case No. ZA-21-84 there is less than 400 feet of frontage. Case No. ZA-22-84 has less than 400 feet of frontage, and I can't answer the question on ZA-23-84.

Mr. Mephram asked if Mr. Moore was requesting a variance to put a Foodmart and price sign on the same sign at the same height (20 feet).

Mr. Farmer stated that was correct.

Mr. Hertzler made a motion to go along with the Zoning Administrator's decision. Ms. Vaiden seconded the motion.

Mr. Mephram asked for further discussion.

Roll call was as follows:

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

Motion carried to support Zoning Administrator's decision 5-0.

Case No. ZA-24-84. Roger M. Lee

Mr. Farmer gave the staff presentation.

Mr. Mephram opened the public hearing, and asked if anyone would like to speak in favor of the request.

Mr. Roger Lee said he didn't understand the Zoning administrator's decision.

Mr. Mephram explained what the decision meant for Mr. Lee.

Mr. Lee made a statement of the location and what neighbors have said in favor for his garage.

Mr. Hertzler made an alternative solution for the placement of the garage.

Ms. Vaiden asked what size the garage was going to be.

Mr. Mephram asked if anyone also would like to speak and closed the public hearing.

Mr. Farmer read setback requirements.

Mr. Abdelnour said I have to make a motion to deny the request. Ms. Vaiden seconded the motion.

Roll call was as follows:

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

Motion to deny the request for variance was carried 3-2.

Case No. ZA-25-84. David Tuftee

Mr. Farmer gave the staff presentation.

Mr. Mephram opened the public hearing.

Mr. Tuftee stated that he had talked to his neighbor and he was in favor of the building.

Ms. Vaiden asked where the building was located.

Mr. Mephram asked for further discussion.

Mr. Scruggs asked for a definition of a professional office.

Mr. Terrance Field, a resident, spoke in favor of Mr. Tuftee's request.

Mr. Mepham asked if there was any further discussion, and closed the public hearing.

Mr. Abdelnour said he would like to ask Mr. Tuftee a couple of questions.

Mr. Tuftee answered the questions.

Mr. Hertzler asked Mr. Farmer if he had obtained legal advice with the interpretation he made.

Mr. Farmer replied yes, and then explained his interpretation of a professional office.

Mr. Mepham asked if the Board would make a motion.

Ms. Vaiden motioned that the Board grant Mr. Tuftee's request. Mr. Hertzler seconded the motion.

Roll call was as follows:

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

Motion was passed to overturn the Zoning Administrator's decision 5-0.

Case No. ZA-26-84. Mr. & Mrs. Ellis

Mr. Farmer gave the staff presentation.

Mr. Mepham opened the public hearing.

Mr. Bland said I am hear on behalf of Mr. & Mrs. Ellis. Mr. Bland gave history of the property and said he would like to take issue on four points in the recommendation of the Zoning Administrator.

Mr. Mepham asked if anyone also would like to speak on behalf of the request, and closed the public hearing.

Ms. Vaiden motioned that the request be granted. Mr. Hertzler seconded the motion.

Mr. Mepham asked for further discussion.

Roll call was as follows:

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

Motion was passed to grant the request 5-0 for a variance.

Case No. ZA-27-84. G & J Land Co.

Mr. Farmer gave the staff presentation.

Mr. Mepham opened the public hearing.

Mr. Jack Massione, Contractor, said his intention was to explain the creation of a very handsome structure, the design of a Captain George's Restaurant. The question in his mind was what was the side of the building and what was the front of the building.

The architect explained the drawing of the building before and after adding the facade.

Ms. Vaiden asked for the location of the building.

Mr. Mepham closed the public hearing. Discussion on the B-1 Zone then occurred.

Mr. Abdelnour said I move that we grant the variance. Ms. Vaiden seconded the motion.

Roll call was as follows:

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

Mr. Farmer stated that the motion was carried that a variance be granted of 15 feet to Stratford Road side only.

5. MATTERS OF SPECIAL PRIVILEGE

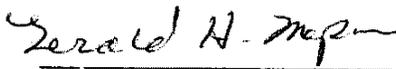
Mr. Abdelnour requested an interpretation of frontage from the County attorney.

Ms. James stated concern over uniformity on decisions.

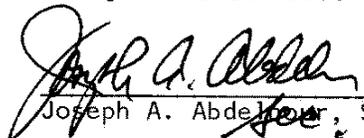
6. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:30 P.M.

0200b



 Gerald H. Mepham



 Joseph A. Abdelnour, Secretary