

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-FOURTH DAY OF JANUARY, NINETEEN HUNDRED AND EIGHTY-FIVE.

1. MEMBERS PRESENT

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

OTHERS PRESENT

Mr. Bernard Farmer, Zoning Administrator

2. MINUTES

Mr. Abdelnour motion that the Zoning Administrators memorandum be incorporated into the minutes.

All board members were in favor of the motion.

3. UNFINISHED BUSINESS

There was no unfinished business for the Board to discuss.

4. NEW BUSINESS

Case No. ZA-39-84. Robert J. Eley

Mr. Farmer explained to the Board that Mr. Eley had applied for a variance of (6) six inches to the sideyard requirements of Section 20-33(a), so that his single-family residence may be considered a legal structure. Mr. Farmer then recommended that even though the six-inch requested encroachment was minor, it was still in violation of the Zoning Ordinance. Mr. Farmer explained that in order for a variance to be granted, the law required that the applicant must show undue hardship not shared by others in the same district. Mr. Farmer then recommended that the decision of the Zoning Administrator be upheld in all respects.

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

Mr. Eley explained that after the initial survey of his property he hired someone to mow the grass and the corner stakes were moved and after the

foundation was dug he discovered that the corner stakes were six-inches too close on the west side of the property. He stated that he had discussed with his neighbor who was affected by this six-inch encroachment and he had no problem with the variance being granted.

Mr. Mepham closed the public hearing and stated that he had received a call from Mr. Eley's neighbor and that he had no opposition with the variance. Mr. Mepham asked for the wishes of the Board.

Ms. James asked Mr. Farmer what would the County do if the Board refused to grant the variance.

Mr. Farmer explained that if the Board were to refuse Mr. Eley's request technically, his structure would be considered an illegal structure (one not built in accordance with the Zoning Ordinance and for which it has no legal standing to remain existing).

Mr. Hertzler motioned that the Board accept Mr. Eley's request for a variance. Ms. James seconded the motion.

Roll call was as follows:

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

Motion carried 5-0 to grant Mr. Eley a variance of six-inches.

Case No. ZA-40-84. Jack L. Massie

Mr. Farmer explained to the Board that Mr. Jack Massie had appealed the decision of the Zoning Administrator as it pertained to permitted uses in the A-1, General Agricultural District. Mr. Farmer stated that the applicant desired to construct a contracting office on a parcel of property located at 3920 Cokes Lane. Mr. Farmer presented a copy of the site plan which Mr. Massie had submitted and recommended that the decision of the Zoning Administrator as it pertained to sand and gravel storage and distribution be upheld in all respects, and that such uses be considered permissible by special use permit only in the M-2, General Industrial District.

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

Mr. Sam Powell, representing Mr. Massie, explained that he had represented Mr. Massie earlier at the James City Site Plan Review Committee meeting. He explained that one of the issues that came up by Mr. Farmer at this meeting was the question of whether or not the storage of gravel on the site would be permissible as an accessory use. Mr. Farmer advised the Site Plan Review Committee at that time, that he thought it was not an accessory, but was something that needed to be addressed. Mr. Powell stated that he wrote

Mr. Farmer and asked his interpretation whether or not the site plan that was proposed with the gravel storage was an accessory use, and on December 27, he received a letter back from Mr. Farmer which stated that all the uses shown on the plat were acceptable with the exception of the storage of the gravel which Mr. Farmer deemed to be not an accessory use. Mr Powell stated that that was why he was here tonight, because he disagreed with Mr. Farmer's interpretation of whether or not the storage of stone on the facility was an accessory use or not. Mr. Powell stated that the property consisted of 35 acres and was located in the A-1 Zoning District.

Mr Gary Massie explained the types of work he did in his business. He explained that the bulk of the stone they used in road construction was aggregate base. Other types of work they did was sewer lines, and water lines, and erosion control work.

Mr. Abdelour asked how many different types of stone did he intend to stockpile.

Mr. Massie explained numbers 68, 78, 26, 2, and rip-rap or five classifications in total.

Mr. Abdelnour asked what, if anything was to be done about pollution control. He stated there was a lot of concern by the neighbors in the area.

Mr. Massie explained that the type of material they were getting was a fully fractured material and there was virtually no dust involved with the stones, and they have been washed at the plant before they get them. He stated that the Number 26's stone did have fine particles involved with them.

Mr. Abdelnour asked if he intended to use bituminous concrete off of his site, and if if the time ever came that you wanted an asphalt plant there would you do it as an accessory use to your road building operation.

Mr. Massie answered no. Mr. Abdelnour asked why not. Mr. Powell asked if he could save that answer until he got down to another section. Mr. Powell stated that they had no intention of putting in an asphalt plant.

Mr. Abdelnour asked if they were planning to install a concrete mixing plant. Mr. Powell answered no.

Mr. Powell explained that he was out on the property and did some work in regards to distances and stated that Mr. Massie has taken some pictures and would like to pass those pictures to the Board to see the distances actually around the site. Mr. Powell then showed pictures of competitors equipment and what type of operation they were running.

Mr. Davis asked to speak in reply to Mr. Powell. He stated that it was the County's position that this was not a subordinate use, the Zoning Ordinance addresses stone and gravel distribution specifically. He stated when the Zoning Ordinance was drawn up this was a use which has a character and nature which made it a substantial use whenever it is in existence. He explained that was why the Zoning Ordinance was written, that it considered it

(stone and gravel use) as only being an appropriate use in the M-2 Industrial District and then only with a special use permit. Mr. Davis asked that the Board look at the Zoning Ordinance and decide whether or not this was a subordinate use. He stated that he felt that the use was a primary use and was addressed by the Zoning Ordinance.

Mr. Mepham asked if there was anyone who would like to speak in opposition of the request.

Mr. Abdelnour asked Mr. Davis if there were rezoning applications filed before to rezone to M-2. Mr. Davis replied yes. Mr. Abdelnour asked why the applications were withdrawn. Mr. Davis explained that there was strong public opposition.

Mr. Farmer stated that since he had read both case file he might explain better what went on. Mr Farmer stated that the first application went to the staff for rezoning, and the staff recommended denial based upon compatibility of uses. The Planning Commission recommended denial, it then went to the Board of Supervisors for an initial hearing and the Board of Supervisors recessed in the meeting, and at that time they decided to defer the matter back to the Planning Commission. Before a hearing by the Board of Supervisors, it was withdrawn by the attorney and the plan was modified. Rather than rezoning the entire site of 34.5 acres, it was modified to only rezone five acres. It came back to the staff, the staff then looked at the compatibility of the uses and recommended denial again.

Mr. Vandriem stated that he was an adjacent property owner and that he had written a letter to Mr. Farmer objecting to Mr. Massie's request. He stated that the stonepile would create two forms of pollution as he saw the matter, with the prevailing winds the dust would always blow in his direction. He stated concern over the noise that the sidespur would create. He then stated that that access road was inadequate for the heavy equipment, and that he was concerned about the value of his property if the stone was placed in the area.

Mrs. Vandriem stated that there were no woods behide her property and she could see the cars from her when they were unloading and they were very noisy.

Mr. Stout stated concern over the environment and health hazards. He stated that he had 30 years experience laying pipes and knew first hand that stone would make a great deal of dust. He then stated that Mr. Massie could place his plant somewhere else.

Mrs. Mildred Taylor Moody stated concern over the real estate property values if the stone and gravel plant was placed there.

Nita Barbor stated concern over the project and the safety of children playing in the streets.

Mr. Gary Massie asked to speak in response to the adjacent property owners statements.

Mr. Mepham closed the public hearing.

Mr. Abdelnour stated that he saw an area on the site plan designated for the stock pile and that it appeared to be about 25% of the land to be improved by Mr. Massie and stated that Mr. Powell represented that it would be 10%. Mr. Abdelnour stated that he had problems with the percentages and asked Mr. Powell if he could enlighten the Board as to what the percentage was for the stockpile as compared to the improved area.

Mr. Mason stated that he could not answer the question exactly because it was not a point they had looked at, but what they did look at was the percentage of the total site, which was 2.4 percent of the total area.

Mr. Powell stated that on the front page of the site plan, it showed the total square footage of the improved area.

Mr. Hertzler stated that the way he interpreted the A-1 district was that it allowed this operation, and it would be an accessory use. Mr. Hertzler then motioned to allow the stockpile.

Ms. James seconded the motion.

Mr. Mepham stated that he had trouble with stockpiling in the M-zoning district. Mr. Mepham asked if there was any further discussion.

Roll call was as follows:

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

Motion denied 4-1. Zoning Administrator's decision upheld.

Case No. ZA-1-85. Larry Cook

Mr. Farmer stated that Mr. Cook had requested a variance of eight feet from the side-yard requirements of Section 20-47 of the James City County Zoning Ordinance. Mr. Farmer then recommend that the decision of the Zoning Administrator be upheld and that the applicant provide the minimum side-yard requirement of fifteen feet as required by Section 20-47 of the James City County Zoning Ordinance.

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

Mr. Cook explained that the lot was of an unusual size and that the owners wanted to build a particular home on the lot and that it would be a nice home.

Mr. Hertzler asked if Mr. Cook could build a house on the lot to meet the setback requirements.

Mr. Cook replied yes he could, but the owners wanted this particular home.

Mr. Mephram asked if anyone would like to speak in opposition of the request.

Mr. Russell Carlton stated that he had lived in the area for more than 39 years. He stated that the County had building requirements and that the owners should abide by them. He stated that he had a petition signed by residents of the subdivision stating disapproval of the request. He also stated that the lots were very large in the subdivision.

Ms. Frances Carlton stated that she had lived in the area for many years and enjoyed the open property.

Mr. Cook stated that if the owners couldn't build this particular house on the lot, they would build a smaller house and the lot would have a house on it.

Mrs. Moore stated that the setbacks should be met.

Mr. Mephram asked for the wishes of the Board.

Mr. Abdelnour motioned that the request be denied. Mr. Hertzler seconded the motion.

Roll call was as follows:

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

Motion to deny the request 5-0.

Case No. ZA-2-85 Richard B. Holt

Mr. Farmer stated that the applicant had requested a variance of three feet from the minimum side-yard requirements of Section 20-55(a). He stated that the applicant wished to place an addition on his home and would place the addition to within seven feet of the side lot line. Mr. Farmer recommended that since no hardship existed, that the Zoning Administrator's decision be upheld in all respects.

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

Mr. Holt explained that the history of the lot, and that the lots were ample in 1958 and were developed primarily as a recreational community. He explained that over the years the community had developed into a permanent residential area. He explained that he wanted to asked for a variance of

five feet instead of the original three feet, and if the Board approved his request, he would build a nicer home and increase the value of his property.

Mr. Mephram closed the public hearing.

Mr. Mephram asked if Mr. Holt had a letter from his neighbor stating he was in approval of the request.

Mr. Holt explained that he had nothing in writing, but he did have verbal approval and Dr. Salade, the adjacent property owner, had no objection.

Ms. Vaiden asked Mr. Holt if he planned to change the side yard from seven feet to five feet from the side property line.

Mr. Holt replied yes he did. He explained that there would be a 38 foot distance between his house and his neighbors house.

Ms. James asked Mr. Holt if he could live with the previous request.

Mr. Holt explained that five feet would be more beneficial to him. He explained that he could make his house a little larger and look more porportial to the community.

Ms. Vaiden motion that the Board accept the request with a requirement that the applicant furnish a letter.

Mr. Mephram seconded the motion. Mr. Mephram stated that because of the narrow size of the lot, he would approve the motion.

Roll call was as follows:

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

Motion to grant the variance upon written consent of neighbor 4-1.

4. MATTERS OF SPECIAL PRIVILEGES

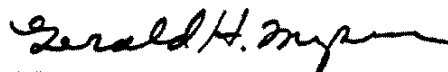
Mr. Mephram suggested that a copy of the application be incorporated into the packages sent out to the Board members.

Mr. Adbelnour resigned from the Board and suggested that the County start looking for his replacement.

5. ADJOURNMENT

Meeting adjouned 9:45 p.m.

0245b


 Gerald Mephram, Chariman