

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF JAMES CITY COUNTY, VIRGINIA, IN THE BOARDROOM, 101-C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA, ON THE TWENTY-FOURTH DAY OF OCTOBER, NINETEEN HUNDRED AND EIGHTY-FIVE.

1. ROLL CALL

Mr. Ronald Rosenberg
Mr. David Hertzler
Mr. Claude Feigley
Ms. Nancy James
Ms. Elizabeth Vaiden

Others Present

Mr. Bernard M. Farmer, Jr., Director of Code Compliance
Mr. Larry Davis, Assistant County Attorney

2. MINUTES

The August 22, 1985 minutes were approved as presented.

3. OLD BUSINESS

There being no old business, the Board moved on to new business.

4. NEW BUSINESS

Case No. ZA-16-85. Mark McGettrick.

Mr. Farmer stated that Mr. Powell, on behalf of Mark McGettrick, had requested a variance of .44 feet from the setback provisions of Section 20-199 of the James City County Zoning Ordinance. He also stated that the physical survey given to the Office showed that there was also a violation of the rear yard requirements of Section 20-196 of approximately 1.64 feet. Mr. Farmer stated that in order to grant a variance, the applicant must show a hardship which was not shared by similar properties in the same district and recommended denial for the variance.

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

Mr. Powell stated that Mr. McGettrick had a survey done of his house because he intended to sell it, and that was when he discovered that a mistake had been made on the location, thus causing an encroachment into the setback area. Mr. Powell asked that the Board grant the variance because it would create a hardship for Mr. McGettrick if he could not sell his house. Mr. Powell also stated that the neighbors had no objection to the requested variance.

Mr. Rosenberg asked Mr. Farmer to address the paragraph explaining corner lots.

Mr. Farmer stated that all structures on corner lots were required to be a minimum of 35 feet from any street right-of-way, however there was still an encroachment in the rear yard.

Ms. James asked if the Zoning Ordinance in effect at that time differed from the present Zoning Ordinance concerning corner lots.

Mr. Farmer stated that it was the same in regard to these issues.

Mr. Rosenberg motioned to grant the variances of .44 feet for the front yard and 1.64 for the rear yard; (Section 20-196).

Roll call was as follows:

Mr. Rosenberg	Yes
Ms. James	Yes
Mr. Feigley	Yes
Mr. Hertzler	Yes
Ms. Vaiden	Yes

The variances were granted 5-0.

Case No. ZA-17-85. Patrick Hart.

Mr. Farmer stated that Mr. Hart had requested a variance from the requirements of Section 20-177(d) so that he could build a two-story structure five feet higher than his main structure and within five feet of the side lot line. He then stated that in order to grant a variance, the applicant must show that application of the ordinance would effectively prohibit beneficial use of the property, constituting a hardship not generally shared by other property owners within the same zoning district. Further, granting a variance must not convey a special privilege to the owner for sake of convenience or personal desire. The staff recommendation is that the requested variance be denied.

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

Mr. Hart stated that he wanted to construct the garage for storage space and he wanted to leave access space between his house and the intended structure.

Mr. Rosenberg asked Mr. Hart if he intended to have a second story.

Mr. Hart stated that the upper level was to be used as a loft area.

Mr. Feigley stated that he had been out to the area and saw that most of the structures did not exceed the height of the main structure.

Mr. Rosenberg asked Mr. Hart if he could move his structure five feet closer to the house. Mr. Hart stated that it would be too close.

Mr. Hertzler stated that if the structure were attached to the main structure, there would not be a need for a variance.

Mr. Hart explained that he was attempting to keep the cost as low as possible.

Mr. Rosenberg asked Mr. Hart if it would be possible to attach the structure to the house and eliminate the need for a variance.

Mr. Hart stated that he could build some type of walk way from his house to the structure.

Mr. Hertzler asked Mr. Hart how he determined that the garage was higher. He also asked if the house was built on a slab foundation.

Mr. Hart stated that it was determined from his own measurements and his house was on a slab foundation.

Mr. Feigley asked Mr. Hart if the second story of the proposed garage was intended for living space.

Mr. Hart stated that it would be used for storage.

Mr. Hertzler asked the height of the main structure.

Mr. Hart stated that it was over 14 feet.

Ms. Vaiden asked if that measurement was from the ground to the peak. Mr. Hart stated yes it was.

Ms. James asked if there was a structure on lot 9 (adjacent to Mr. Hart's property).

Mr. Hart stated that there was a house approximately 15 to 20 feet from his lot line.

Ms. Vaiden closed the public hearing and asked for the Board's wishes.

Mr. Feigley stated that he did look at houses in the area and that most of them did conform to the height requirements and stated that not granting the variance would not create a hardship.

Mr. Feigley motioned that the variance be denied.

Ms. James seconded the motion.

Roll call was as follows:

Mr. Rosenberg	No
Ms. James	Yes
Mr. Feigley	Yes
Mr. Hertzler	Yes
Ms. Vaiden	Yes

Motion was carried 4-1 to deny the requested variance.

Case No. ZA-18-85. Eleanor Kish.

Mr. Farmer stated that Mr. William Miller of AES, on behalf of Ms. Eleanor Kish, had requested a variance of 20 feet from the side yard requirements of Section 20-178. The lot for which a variance had been requested is adjacent to a reserved right-of-way. Ms. Kish was the owner of the lot adjacent to the one for which she was requesting a variance. Ms. Kish was given several alternatives, among them; orienting the house in another direction, reconfiguring the house, or combing the two lots. However, Ms. Kish desired to request a variance of 20 feet. Granting a variance, would amount to a special privilege, would be inconsistent with the intent of the Zoning Ordinance and the staff recommendation was that the requested variance be denied.

Ms. Vaiden opened the public hearing and asked if anyone would like to speak in favor of the requested variance.

Mr. Miller explained that Ms. Kish had worked and saved most of her life and now wanted to build a modest ranch-style home. He felt that it was a hardship to reduce the area to build upon to 30 feet and asked that the Board grant the variance. He also stated that there was a great deal of wetlands behind Ms. Kish's lot that made the area unbuildable, so there was little chance of future use of the right-of-way.

Mr. Rosenberg asked if the right-of-way was paved.

Mr. Miller stated that it was not paved.

Mr. Hertzler stated that Ms. Kish could build on the right-of-way if there was never going to be any development beyond her property.

Mr. Farmer explained that there was 64.8 acres behind where Ms. Kish planned on building. He also stated that there was some buildable high ground not wetlands.

Mr. Feigley asked Ms. Kish if she could build on Lot 5 (the adjacent lot). Mr. Miller stated that Ms. Kish wanted to save Lot 5 for security.

Ms. Kish stated that she had written Mr. Otey and he said that he did not plan to develop the property behind her lot.

Mr. Davis stated that there was a procedure to vacate the 50 foot right-of-way, however, no request had been made and it was a viable right-of-way.

Mr. Rosenberg asked what was the likelihood of building on the property.

Mr. Farmer stated that only Mr. Otey would know that.

Ms. Vaiden closed the public hearing.

Mr. Feigley stated that he was confused on the side setbacks requirements.

Mr. Farmer stated that on a corner lot like Ms. Kish's the Ordinance required a 35 foot setback from the right-of-way.

Mr. Rosenberg asked if there was adequate space on the lot for Ms. Kish to build on.

Mr. Hertzler stated that there were many different styles and types of houses to build which would fit on the lot. He motioned that the variance be denied.

Mr. Rosenberg seconded the motion.

Roll call was as follows:

Mr. Rosenberg	Yes
Ms. James	Yes
Mr. Feigley	Yes
Mr. Hertzler	Yes
Ms. Vaiden	Yes

Motion was carried 5-0, requested variance denied.

Case No. ZA-19-85. Randy Coles.

Mr. Farmer stated that Randy Coles, on behalf of Southland Corporation, had requested variances from Sections 20-12 and 20-335 of the James City County Zoning Ordinance for expansion of the 7-11 at 7114 Merrimac Trail. He said that the 7-11 was a legally existing non-conforming structure and the applicant submitted a site plan showing an open space area that the applicant wished to pave. Section 20-12 requires that any expansion of a parking area conform to the requirements of that section. The applicant desired to pave the area for additional parking and not provide landscaped islands or a ten-foot wide perimeter strip adjacent to the property line as required by the chapter. No variance should be granted without demonstration that a legal hardship existed which was unique to the property, and prevented its beneficial use. The staff recommendation is that the variances be denied.

Ms. Vaiden opened the public hearing and asked if anyone would like to speak in favor of the case.

Mr. Bob Halpin, an adjacent property owner, stated that he had lived behind the 7-11 for a quite some time and there had always been a problem of trash clean up at the 7-11, and that there was a great deal of erosion. He

stated that Southland planned to to enhance the 7-11 and that they had already placed a fence behind the store. Mr. Halpin stated that Southland wanted to pave the area, where trash accumulated, and install street lights and asked that the variance be granted.

Mr. Feigley asked Mr. Halpin what his opinion was on large vehicles coming into the 7-11 parking lot.

Mr. Halpin stated that there was only one access, and that would not be a problem.

Mr. Rosenberg stated that he saw the 7-11 as a non-conforming use and structure.

Mr. Farmer stated that the 7-11 structure was non-conforming, but the property is zoned B-1, and hence a permitted use.

Mr. Rosenberg moved to table the case until the next meeting so that a representative from Southland could be present.

Ms. James differed with Mr. Rosenberg. She stated that it was non-conforming, however, this request was an improvement.

Mr. Rosenberg stated that he thought it was best to defer action until the next meeting.

Mr. Feigley seconded the motion.

Mr. Davis stated that the Board could add conditions to any motion.

Ms. James asked how the County could enforce the 7-11 to improve the site as far as cleaning up trash.

Mr. Davis stated that is was hard to enforce but it could be done.

Roll call was as follows:

Mr. Rosenberg	Yes
Ms. James	Yes
Mr. Feigley	Yes
Mr. Hertzler	Yes
Ms. Vaiden	Yes

The motion to table the variance was carried 5-0.

Case No. ZA-20-85. James Barbour.

Mr. Farmer stated that Mr. James Barbour had requested a variance from Section 20-94, in order to place a second single-family dwelling on his property. Mr. Barbour has an existing detached double-car garage with a partially finished area above it. Section 20-94 of the James City County Zoning Ordinance establishes the requirement that placement of more than one

single-family dwelling on a single lot be done so as to provide for future subdivision. Since no hardship has been shown which restricts use of the property, the staff recommendation must be for denial.

Ms. Vaiden opened the public hearing and asked if anyone would like to speak.

Mr. Steve Oliver stated that he was in the process of incorporating with Mr. Barbour and that he was the person who intended to live in this second story single-family dwelling. They intended to use the property for their business and that every neighbor had signed a petition in favor of the requested variance.

Mr. Feigley asked if all the area was primarily all business.

Mr. Oliver stated that adjacent to the property was business.

Mr. Feigley stated that maybe Mr. Oliver should file for a rezoning rather than asking for a variance.

Mr. Oliver stated that it was a possibility, but maybe sometime in the future.

Mr. Hertzler asked Mr. Davis to explain the status of similar cases that were presented before the Board and appealed to court.

Mr. Davis stated that they were still in court, and they were under the old Ordinance.

Mr. Rosenberg asked how large the lot was.

Mr. Oliver stated that it was approximately 90,000 square feet.

Mr. Rosenberg asked what precisely was the variance being asked for.

Mr. Farmer stated that the area requirement for each structure would be 40,000 square feet. However, the owner would not meet the frontage lot width requirement for each main structure (Sections were 20-114, and 20-94.)

Mr. Rosenberg stated that Section 20-94 was unclear.

Mr. Davis explained that Section 20-94 of the Zoning Ordinance was intended specifically for houses being stacked one behind the other. Mr. Davis also stated that the road in these subdivisions had to meet state standards.

Ms. James asked how long had the structure been in existence.

Mr. Barbour stated that the structure had been there for some time.

Ms. Vaiden closed the public hearing.

Ms. James stated that since the structure was already there she had no problem granting the variance.

Mr. Rosenberg seconded the motion.

Mr. Davis suggested that the Board amend the motion for the ownership of Mr. Barbour only.

Ms. James amended her motion to read that the variance be granted for Mr. Barbour's ownership only.

Roll call was as follows:

Mr. Rosenberg	Yes
Ms. James	Yes
Mr. Feigley	No
Mr. Hertzler	Yes
Ms. Vaiden	Yes

Motion to grant the variance 4-1.

5. MATTERS OF SPECIAL PRIVILEGE

The Board had discussion over the bylaws being updated.

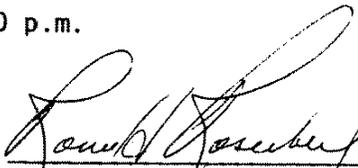
The Board elected Mr. Rosenberg to be acting chairman (until January, then the Board would elect the chairman), and Ms. Vaiden to be vice chairman.

Mr. Farmer was designated as the Secretary to the Board of Zoning Appeals.

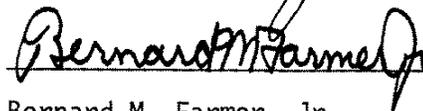
6. ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

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Ronald Rosenberg, Chairman



Bernard M. Farmer, Jr.
Secretary to the Board