

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-SEVENTH DAY OF MARCH, NINETEEN HUNDRED AND EIGHTY-SIX.

1. ROLL CALL

Mr. Ronald Rosenberg, Chairman  
Mr. Claude Feigley  
Ms. Elizabeth Vaiden

Others Present

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

2. MINUTES

The February 27, 1986 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-3-86. Harold Croft.

Mr. Farmer stated that Mr. Harold Croft had requested a variance from the yard requirements of Section 20-178b of the James City County Zoning Ordinance in order to construct a single-family dwelling at 4048 South Riverside Drive in the Chickahominy Haven Subdivision. Mr. Croft originally submitted a sewage disposal construction permit for a similar structure on the same lot and was informed that the original proposed structure could not be constructed because it did not meet the setback requirements. Mr. Croft then withdrew his sewage disposal permit in order to get a survey of the lot so that he would know what building area was available. Mr. Croft later submitted an application that met zoning criteria. The application was then processed and the permit for installation of a well and septic system was issued to Mr. Croft on February 3, 1986. Mr. Croft's property is situated on a corner lot. Section 20-178 of the ordinance requires that a 35-foot setback be maintained from front and side streets. The staff recommendation is that the variance be denied since no legal hardship has been shown peculiar to this property that prevented its beneficial use. Mr. Croft had knowledge of the setback requirements since at least the first week in January, and granting the requested variance would be contrary to the intent of the ordinance since it amounts to a special privilege.

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

Mr. Croft explained that when he received the final plans for his home he discovered that the structure would not fit on the lot, and due to setback only 23 percent of the lot was buildable. He was asking the Board to grant 6.7 foot variance. Mr. Croft stated that when he bought the lot, the setback area from the property line was 30 feet.

Mr. Rosenberg asked Mr. Croft if he had submitted two sets of building drawings.

Mr. Croft stated that the house was the same; the second house was just smaller.

Ms. Vaiden stated that most of the lots out in Chickahominy Haven were very small, and the board had been very generous in granting variances.

Mr. Rosenberg closed the public hearing.

Mr. Feigley stated that this lot was very unusual. Mr. Rosenberg asked where the house faced. Mr. Croft stated that the house faced the Chickahominy River.

Mr. Vaiden motioned to grant the variance and Mr. Feigley seconded the motion.

Roll call was as follows:

Mr. Feigley	Yes
Ms. Vaiden	Yes
Mr. Rosenberg	Yes

The variance (6.7 feet) was granted 3-0.

Case No. ZA-4-86. Guy Carroll.

Mr. Farmer stated that Mr. William Mattox of AES, on behalf of Mr. Guy Carroll, had requested a variance from the lot width requirements of Section 20-114 of the James City County Zoning Ordinance. The applicant desired to add additional area to an existing parcel without increasing the width. The property was located at 100 Sandhill Drive. The lot was non-conforming because of its area (presently 35,002 square feet where one acre is required) and because of its lot width (presently 110 feet where 125 is required (150 feet if the lot area exceeds 40,000 square feet)). The applicant proposes to increase the area of the lot by adding an additional 12,914 square feet to the rear. Development on either side of Mr. Carroll's lot precludes an increase in lot width, making it impossible for the lot to become totally conforming. Though Mr. Carroll's present proposal may be desirable, a strict interpretation of the ordinance requires any resubdivision of the lot to conform completely. That staff recommendation must be for denial.

Mr. Rosenberg asked Mr. Farmer this was a retroactive variance.

Mr. Farmer answered no, it was not. The lot met the Zoning Ordinance requirements when originally subdivided and existed legally.

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

Mr. Carroll explained that the land was given to him and originally the lot width was 100 feet. Most lots in the area were about one acre in size. All neighbors were in favor of the request.

Mr. Rosenberg closed the public hearing.

Mr. Feigley moved to grant the variance, and Ms. Vaiden seconded the motion.

Roll call was as follows:

Ms. Vaiden	Yes
Mr. Feigley	Yes
Mr. Rosenberg	Yes

Case No. ZA-5-86. 64 Associates/Mary Kempton.

Mr. Paul Small, on behalf of 64 Associates, had filed an appeal of the decision of the Zoning Administrator regarding expiration of an approved site plan. The site, concerning Croaker Service Center, was found on parcels (1-31), (1-32), and (1-34) located on James City County Real Estate Tax Map No. (14-3). Mr. Farmer explained that correspondence from Mr. Small to the Planning Department had shown requests for an extension of the final site plan approval for the Croaker Service Center on February 3, 1986; however, it was denied. Four justifications, or extenuating circumstances were cited in Mr. Small's request.

1. The developer was having difficulty financially justifying the entire project and needed to phase construction.
2. The developer was uncertain as to economic conditions and wanted time for negotiation with adjacent developers.
3. The developer needed time to submit a modified proposal which was economically feasible.
4. The developer did not desire to start construction during the winter months.

These reasons were deemed insufficient to justify extension of final site plan approval. The Project was first submitted for approval in March of 1983. Preliminary approval was granted by the Site Plan Review Committee in June of 1983. A first extension was granted to this preliminary approval in November of 1983 with a second extension granted in April 1983. The final plan was submitted in July of 1984 and gained approval in February 1985.

The first justification, that concerning financing, did not seem sufficient to warrant a positive consideration. These investments cover a number of areas including but not limited to design, land acquisition, gaining necessary approvals, off-site utility improvements, on site infrastructure, and feasibility studies. These investments must be made before the first penny's profit is realized from a project. Since the amounts can be generally quantified to a precise degree the amount of "up front" costs are no surprise. A developer would reasonably have these figures as part of any business or development plan.

The second reason cited concerned making an appraisal of adjacent properties in light of the impact of recent rezonings. This justification did not support a positive consideration. Rezoning for the parcels to which Mr. Small referred were not approved until January 16, 1986. Since final site plan approval was given Croaker Service Center a year earlier, this rezoning of adjacent parcels was not an issue. The developer failed to proceed diligently with construction after the approvals were granted and made it an issue. This circumstance was created by the developer's own inaction and was not an appropriate justification for construction plan approval extensions.

The third item concerning submittal of a modified proposal was not a reason to extend current approvals. The applicant's desire to build something different should be reviewed on its own merit under current regulations. Extending the approval, so as to give the existing project vested rights to allow it to be amended later, would not be good administration of a Zoning Ordinance.

The fourth reason concerning weather was considered unjustified since an entire construction season elapsed with no construction activity.

Mr. Farmer stated that each reason cited was given careful consideration in relation to the proposed project and the developer did not proceed in a prompt or diligent manner with construction activity and an extension of final plan approval would not be appropriate.

Mr. Rosenberg opened the public hearing.

Ms. Gussman, Planning Director, explained the provisions of Section 20-48 of the James City County Zoning Ordinance regarding expiration for final site plan approvals. She stated that the Zoning Ordinance had changed during the course of the project and the changes were reflected in the present zoning ordinance. The definition of a truck stop had been defined in the 1985 changes to the Zoning Ordinance and was restricted to the M-1 zone.

Mr. Rosenberg asked Mr. Davis to define truck stop and asked if the project was proposed today, under the current zoning ordinance, would it be approved.

Mr. Davis stated that the property would have to be rezoned for a truck stop and there would also be other requirements.

Mr. Rosenberg motioned to table the case since this was a very controversial case and he thought all members should be present. Ms. Vaiden seconded the motion.

Mr. Davis suggested that the public hearing be opened. Mr. Rosenberg stated he did not object to the public hearing being opened, but he thought it would be repetitious.

Mr. Jim Wood, a partner of 64 Associates, stated that he did not object to the board tabling the meeting since only three members were present.

Mr. James Hat, an adjacent property owner, stated opposition over the proposed project. Ms. Barbara Cockran, an adjacent property owner, asked what assurance could Mr. Rosenberg give her that all members would be present at the next meeting. She also asked if adjacent property owners would be notified.

Mr. Rosenberg stated that they would all make an extra effort to be present at the next meeting, and that the case would be readvertised.

Roll call was as follows:

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

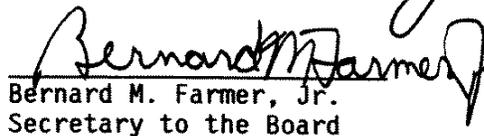
The motion to defer the case until the next board meeting was carried 2-1.

5. MATTERS OF SPECIAL PRIVILEGE

6. ADJOURNMENT

The meeting was adjourned at 8:20 p.m.

  
Ronald Rosenberg, Chairman

  
Bernard M. Farmer, Jr.  
Secretary to the Board