

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-THIRD DAY OF APRIL, NINETEEN HUNDRED AND EIGHTY-SIX.

1. ROLL CALL

Mr. Ronald Rosenberg, Chairman
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 March 27, 1986 minutes were approved as presented.

3. NEW BUSINESS

ZA-6-85. Frederick Hill

Mr. Farmer stated that Mr. Owens, the contractor, had applied on behalf of the owner, Mr. Frederick Hill, for a variance of 3.5 feet from the side yard requirements of Section 20-175. Mr. Hill desires to construct a bedroom addition to his home. The property is located at 707 Jackson Drive. Section 20-175 states that the minimum side yard for each main structure shall be 10 feet and the existing structure was 5.5 feet away from the side lot line. Mr. Farmer stated that the structure was a legally existing, non-conforming structure. Mr. Farmer stated that the applicant had not shown any hardship. The staff recommended denial.

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

Mr. Owens, the contractor, stated that the addition would be a bedroom which was extremely small and he felt that this addition would be very beneficial to the owner.

Mr. Rosenberg asked if a variance of 3.5 feet. Mr. Owens stated that was correct.

Mr. Rosenberg asked if there were any questions.

Ms. James asked if the neighbor had any objections to the proposed addition. Mr. Farmer responded that staff was not aware of any objections.

Mr. Rosenberg asked if there were any questions, and there being none closed the public hearing.

Mr. Feigley stated that he did not have any problem granting Mr. Hill the variance requested and so moved.

Ms. James seconded the motion.

Roll call was as follows:

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

The variance of 3.5 feet was granted 5-0.

4. OLD BUSINESS

ZA-5-86. 64 Associates.

Mr. Farmer stated that 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. Mr. Farmer stated that he had some pictures of the area and presented them to the Board members. The developer requested an extension of final site plan approval. The ordinance provides that a final site plan expires one year after initial approval unless construction has begun. The ordinance also provides that an extension may be requested in writing stating reasons and extenuating circumstances to grant the extension. The applicant requested an extension and his reasons were:

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 first justification, that concerning financing, was not sufficient to warrant a positive consideration. Most projects of this scope require extensive capital investments at their outset. 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. 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. When a developer proceeds with a project without confirmed sources of revenue for known costs he does so at risk. One can only conclude that this project proceeded at risk since at least 1983 when the plan was submitted. It was not appropriate that design approvals be extended to allow further attempts to finance or sell the development.

The second reason cited concerned making an appraisal of adjacent properties in light of the impact of recent rezonings. This justification does not support a positive consideration. Rezoning for the parcels to which Mr. Small refers 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 of Croaker Service Center, by failing to proceed diligently with construction after the approvals were granted, made it an issue. This circumstance was created by the developer's own inaction and is not an appropriate justification for construction plan approval extensions.

The third item concerned submittal of a modified proposal. This is a reason not to extend current approvals. The applicant's desire to build something different, other than what was previously approved, 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 is not good administration of a zoning ordinance.

The fourth reason concerning weather was considered unjustified. Final approval was given on February 12, 1985. An entire construction season elapsed with no construction activity. In summation, each reason cited was given careful consideration in relation to the proposed project. The developer did not proceed in a prompt or diligent manner with construction activity. Accordingly, extension of final plan approval would not be appropriate.

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

Mr. Jim Wood, partner of 64 Associates, discussed Section 20-48, regarding extensions of final site plans, which say in part when the developer submits extenuating circumstances approval may be granted for extensions. What they were asking is that this developer be treated like everyone else in the terms of extensions. Mr. Wood presented definitions of the term "extenuating circumstances" to the Board members. Mr. Wood also had a letter from the Old County at Busch Gardens concerning an extension they requested and the granting of the extension. Mr. Wood also had a copy of a letter sent to Mr. Allen Murphy, Acting Director of Planning, regarding an extension on behalf of the Outlets Mall Limited. Mr. Wood also presented two letters showing extensions granted to 64 Associates. These extensions were all deemed sufficient by the County in the past to show extenuating circumstances. Mr. Wood stated that he and his partners had been to the County offices to find out what the County had done in the past in terms of extenuating circumstances and they were faced with a brick wall. No one in the County was helpful, he stated that there was no filing system in the County to tell someone what site plans had been extended. He had tried to set up a meetings with Mr. Farmer, Mr. Murphy, and Mrs. Gussman but failed to do so. Mr. Wood stated that Mr. Paul Small had told him that the County granted preliminary site plan

extensions regularly and the County had no set of rules on how to grant the extensions. Mr. Wood stated that he had talked to a former Building Inspector for the County who stated that he knew that site plans extensions were granted regularly by the County. He stated that site plans and been extended to people in the past and on a regular basis for practically any reason. Mr. Wood went over the four reasons Mr. Paul submitted to the county for extension of the site plan.

He asked that the board consider these extenuating circumstances.

Mr. Davis asked to respond to Mr. Wood's remarks. Mr. Davis stated that there was a distinction between preliminary site plans and final site plans. He stated that preliminary site plans have been granted extensions and the Planning Department worked to make the best plans possible. This process often lasts beyond six months because of the joint effort in trying to resolve any technical problems that have been raised. Final site plans, however, are different because final site plans occur when all the technical issues in fact all issues regarding the plans themselves, have been resolved. It is a final document which is approved. There are no outstanding issues at all. They are administered by the Zoning Administrator who has the authority to enforce the Zoning Ordinance and make sure that things are done the way they have been approved. Mr. Davis stated that to his knowledge there has never been a final site plan extension. Mr. Davis stated the Board should focus on "whether or not the four reasons submitted by Paul Small, representing 64 Associates are extenuating circumstances." He also stated that even if there were extenuating circumstances, the Zoning Administrator was not bound to extend any final site plan. The ordinance states that if there were any extenuating circumstances the Zoning Administrator may extend the site plan approval.

Mr. Rosenberg asked if there were any speakers in opposition of the project.

Mr. James Hat, President of the Elmwood Civic Association, spoke in opposition to the project for the residents of the Elmwood. He stated that the only reason the project has survived this long was for lack of a definition of what constituted a "truck stop". The Zoning Ordinance lacked this when the site plan was applied for in the beginning. He stated that this type of development should not be permitted so close to a residential neighborhood. Construction would do irreparable damage to property values and the quality of life in the County.

Mr. John Weaver, a resident of the Elmwood Subdivision spoke in opposition to the proposed project. He felt that the four reasons given by 64 Associates were not extenuating circumstances.

Mr. Anthony Malara, a resident in the Elmwood Subdivision, spoke in opposition of the project.

Mr. Henry Tyssen spoke in favor of the project and stated that he would like to see the area develop. He said he didn't like driving to Williamsburg to eat breakfast.

Ms. Barbara Corchran, a resident of Woodland Farms, spoke in opposition of the proposed project. She stated that the proposed project under the current Zoning Ordinance would be a viable project.

Mr. Jim Parker, a resident of Elmwood, stated that he had been a resident for 20 years. He felt that the extenuating circumstances were not justifiable for extending the final site plan for the Croaker Service Center.

Mr. Rosenberg closed the public hearing and asked the Board members for their thoughts.

Ms. Vaiden asked Mr. Davis if he could confirm that no final site plan had never been extended.

Mr. Davis stated that to his knowledge and to the knowledge of the County Administrator, the Planning Director, the Zoning Administrator, there has never been an instance of final site plan being extended.

Ms. Vaiden asked over what period of years. Mr. Davis stated that over ten years to his knowledge.

Mr. Feigley asked Mr. Wood to refer to Mr. Small's letter regarding phasing the project.

Mr. Wood stated that the problem was they were trying to finance the entire project as opposed to phasing it which could not be done. He felt that they could finance the project if they could phase it.

Mr. Feigley asked Mr. Wood if he was coming up with another site plan. Mr. Wood stated no, not another site plan. The same plan with the exception of the on-site utilities as opposed to off-site utilities.

Mr. Feigley asked Mr. Wood if that was a major change in the plan. Mr. Wood stated no it was not.

Mr. Wood stated that he always knew that the off-site utilities was a problem with a million dollar price tag. Mr. Feigley asked Mr. Wood if he did any negotiating about this problem.

Mr. Wood stated that Mrs. Kempton had gone to the County and was told that septic tanks could not be used.

Mr. Davis stated that he had talked to Frank Morton, Wayland Bass, and other people involved in this negotiation and it was their recollection that the County never said that there had to be a public water source provided to 64 Associates. The plans were presented to them with public water and sewer lines running to it. There was never any discussion of a septic tank going in at that location.

Mr. Farmer stated that on December 18, 1985 Ms. Kempton applied for a septic tank permit and December 31, 1985 he responded to her with a letter indicating that since the approved plan called for public water and public sewer that the Code Compliance Office would not process an application for a septic permit at that time. If she desired she could amend that plan under the current zoning ordinance requirements.

Mr. Hertzler stated that public water was out in the area and asked if there were plans for sewer to the site.

Mr. Wood stated that there was a plan to bring the line over from Route 60 and it was a feasible situation.

Mr. Hertzler stated that he felt the County should negotiate with the developer to work out the problem.

Mr. Rosenberg stated that Section 20-48 of the James City County Zoning Ordinance states that a final site plan is valid for one year. The risk of development is on the shoulders of the developer and the developer's inability to secure financing is the developer's risk and not the County's risk.

Mr. Feigley stated that the project had a history of delay. Ms. Vaiden stated that she felt sympathy for the developers due to the many stumbling blocks they had faced.

Ms. James stated that she would have to support Mr. Farmer's decision.

Mr. Feigley moved that the interpretation of the Zoning Administrator be upheld. Ms. James seconded the motion.

Roll call was as follows:

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

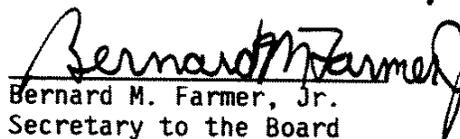
The decision of the Zoning Administrator regarding final site plan extension was upheld 3-2.

5. MATTERS OF SPECIAL PRIVILEGE

6. ADJOURNMENT

The meeting was adjourned at 8:55 p.m.


 Ronald Rosenberg, Chairman


 Bernard M. Farmer, Jr.
 Secretary to the Board