

BOARD OF ZONING APPEALS

MINUTES

February 25, 1988

1. ROLL CALL

Mr. Robert Ripley  
Mr. Ronald Rosenberg  
Ms. Elizabeth Vaiden  
Mr. Claude Feigley  
Ms. Nancy James

Others Present

Mr. Bernard Farmer, Code Compliance  
Mr. Larry Davis, Assistant County Attorney

2. MINUTES

The minutes of the December 16, 1987 meeting were approved as presented.

3. OLD BUSINESS - None

4. NEW BUSINESS

1. ZA-1-88 Pecan Shoppe of Williamsburg, Inc., (Stuckey's)

Mr. Farmer presented the staff report stating that Mr. Vernon Geddy, Jr., Attorney, on behalf of Robert L. Groom, President, Pecan Shoppe of Williamsburg, Inc. had requested a variance from the Sign Ordinance Provisions of the James City County Zoning Ordinance in order to erect a 100 foot tall sign. The variance was requested for a commercial business located at 9220 Old Stage Road. Mr. Farmer further stated that staff recommended denial of this variance since there is no legal means to grant the applicants's request other than through an amendment of the ordinance, and the applicant had not shown any hardship.

Mr. Rosenberg opened the public hearing.

Mr. Geddy, Attorney, stated that Stuckey's had received it's first variance for a rooftop sign due to topography and pine trees. Now that the trees have grown to hide the sign from the east side of the interstate they feel that this variance allowing them to raise the sign would help regain the business they have lost in the last two years.

Mr. Groom stated that 80% of their business comes from the Richmond traffic traveling eastward.

Photos and blueprints of the proposed sign were presented to the Board.

Mr. Groom stated that the business was started 11 years ago, and that business was very good until 1974 when the pine trees started blocking the structure's view from the interstate. That was when he applied for the rooftop sign variance. It was granted along with a logo sign located on the interstate to help in alerting travelers on the east side to the business. Mr. Groom further stated that within the last three years his business revenue had dropped 25% each year; stating that they rely mostly on tourists and only 15% to 18% of revenue comes from regular customers.

Larry Davis stated that the Section 20-453 provisions allow waivers only for four things:

1. One free-standing sign not to exceed 75 square feet per face
2. One building face sign not to exceed an area equal to 15% of the area of the first story of the front facade of the building, such signs to be mounted flat against the building
3. One free-standing sign not to exceed 32 square feet per face and not to exceed 30 feet in height
4. One sign to be placed on the roof of the building not to exceed 15% of the area of the first story of the front facade of the building

Mr. Farmer stated that Mr. Groom had originally requested a waiver for the 100 foot sign which he denied since he had no authority to grant the request.

Mr. Rosenberg asked if the State or Federal Departments had been contacted regarding the sign dimensions since it faces the right-of-way to I-64.

Mr. Geddy stated that the State Highway Department had no objection to the sign dimensions.

Ms. Vaiden stated that if the State Highway Department controls the placing of the logo signs that maybe they could be asked to place the logo sign in a more noticeable area.

Mr. Rosenberg closed the public hearing.

Mr. Feigley motioned to deny the variance, Ms. James seconded the motion.

Discussion followed concerning the possibility of giving the applicant a letter from the Secretary of the Board to take to the State Highway Department with the Board's findings, either to trim the trees or to relocate the logo sign. Mr. Feigley agreed to amend his motion to adopt a resolution urging action by VDOT.

The motion was carried unanimously.

2. ZA-2-88 William Welter

Mr. Farmer presented the staff report stating that Mr. Welter, the owner, has requested a 23 foot variance from Section 20-153 of the James City County Zoning Ordinance to locate a structure closer than 35 feet from a street right-of-way. The property is located at 105 Overlook Drive. Mr. Farmer further stated that the staff recommended denial of this variance since granting this request would amount to a special privilege otherwise denied similar properties in the same district. No hardship has been demonstrated as the property has been placed into beneficial use. Sufficient buildable area exists as a remedy to the applicant's situation.

Mr. Rosenberg opened the public hearing.

Mr. Welter presented the Board a letter from a property owner Deborah Vick, of 103 Overlook Drive, stating that she has no objection to the garage placement. Mr. Welter also presented the board with pictures of his property to explain his reasons for the placement of the garage.

Mr. Welter stated that he has no alternative but to put the garage where he has proposed because of a 10 foot drop off and the placement of trees that he has been growing. He stated that there is a double line of trees that would block the view of the garage from the street. He felt that leaving his cars and yard maintenance material sitting in the yard would be an eyesore. He also stated that the dimensions of the garage have been changed from 24 x 24 to 22 x 24. When the project was first started, he was told by the builder he would have no problems because he only had to be 5 feet from the property line. He did not find out differently until he applied for the permit.

Mr. Ripley stated that he had gone out to the property and talked with Mrs. Welter about other areas to put the garage and found there is not another suitable area. Behind the house there is a septic field and on the side a row of trees that would have to be removed in order to place the garage.

Mr. Jim Evans, who resides in Kingspoint asked how tall the garage would be and if the trees would ever be removed. Mr. Farmer gave Mr. Evans a copy of the building plans for him to review.

Mr. Warren Chapel, President, Kingspoint Architectural Review Committee, stated that the review committee had approved the drawings but not the location of the garage.

It was asked if the Board granted the variance whether Mr. Welter would have to present the committee with a plan showing the position of the garage for their approval?

Mr. Chapel stated that Mr. Welter would have to present the proposed site to the committee for their approval.

Mr. Jack Hull, Past President, Kingspoint Architectural Review Committee stated that they were concerned with the property value and whether the structure would be an eyesore to the subdivision. He also stated that money should not be the subject but the real concern was what this structure would do to the subdivision.

Mr. Larry Davis, stated that the Board can attach conditions to the variance stating specific things be done and inspected for approval by the County, such as landscaping.

Mr. Rosenberg closed the public hearing and motioned continuance of this case until the next meeting. Mr. Rosenberg stated he wanted Mr. Welter and the Kingspoint Architectural Review Committee to get together and present a proposal that was agreeable to both parties.

Mr. Welter opposed this decision based on the contractors schedule and the delay waiting for the Board to meet again.

Ms. Vaiden seconded the motion to continue the case until the next meeting. The motion was carried unanimously.

### 3. ZA-3-88 Noah's Ark Veterinary Hospital

Mr. Farmer presented the staff report stating that Dr. Dale H. Sprinkel, DVM, owner of Noah's Ark Veterinary Hospital had requested a 10 foot variance from the side yard provisions of the James City County Zoning Ordinance to locate a structure closer than 20 feet to the side yard. The variance is requested for an addition to a commercial business located at 7297 Richmond Road. Mr. Farmer further stated that the applicant had failed to show that any hardship existed, or that any reason existed to construct the addition in the setback, other than his own personal preference. It is the intent of the ordinance to require that new development be done consistent with the present ordinance requirements. Substantial changes have been made to the non-conforming provisions to allow expansions as long as the expansions don't increase the existing non-conformity. In this case, Dr. Sprinkel would be increasing the amount of the building not in compliance with the ordinance. Thus, staff recommended denial.

Mr. Rosenberg opened the public hearing.

Dr. Sprinkel presented the Board photos and a letter from Ms. Dutton, neighbor, stating that she has not had any problems with the building and does not object to a new addition.

Mr. Sprinkel stated the new addition is primarily a kennel

and it has been placed away from the main structure for health reasons.

There was a discussion on the proposed section being moved perpendicular to the existing structure. Mr. Feigley stated that he had been to the site and if this were done there would be no easy access between the main structure and the shed that exists to the rear of the main structure.

Dr. Sprinkel stated that he had considered moving the structure but found that it created more problems. The shed and main structure would be so close that nothing could come between the two structures and that is why he proposed the structure where it is now.

Mr. Rosenberg closed the public hearing.

Mr. Feigley motioned to grant the variance. Ms. James seconded the motion. The motion was carried and a ten foot variance from the side yard requirements was granted.

4. ZA-4-88 Robert Vermillion

Mr. Farmer presented the staff report stating that Mr. Gregory Davis, Attorney, on behalf of Mr. Robert Vermillion has appealed a decision of the Zoning Administrator concerning property at 7259 Pocahontas Trail. The Administrator has ruled that the applicant does not have a lawful non-conforming multi-family use of the property. Mr. Farmer further stated it is the staff's recommendation that this appeal be denied. The applicant is a local business person familiar with the development process who knowingly began a major construction project without the proper permits and authority. Since being informed by the Code Compliance Office of the illegality of his actions, his claims to specific rights and his claims to facts to support these rights have frequently changed. Two witnesses who were originally involved in the demolition work and were questioned in great detail concerning the structure have now changed their testimony. The burden of proof regarding a claim to rights for a non-conformity rests with the applicant. It is the administrators determination that there is not factual evidence to support any claims regarding rights to a "multi-family" activity or structure at this location. Staff strongly recommends that the administrator's decision be upheld.

Mr. Rosenberg asked Mr. Davis, Assistant County Attorney, what is to be established under the ordinance for a multi-family definition?

Mr. Davis stated the applicant must prove that since 1969, the date the Zoning Ordinance was adopted, without any two year interruption, the structure was used as a multi-family dwelling. This means that more than two families resided in structure with separate living facilities and with separate entrance and exit

areas.

Mr. Rosenberg opened the public hearing.

Mr. Gregory Davis stated that he had several witnesses that could prove that the structure had indeed been used as a multi-family dwelling since 1969, and that there were indeed separate entrance as well as living, eating and sleeping quarters within the structure. Mr. Davis further stated that this was the first case of non-conformity before the Board and the purpose for this meeting is to prove or disprove the continued use as a multi-family dwelling.

Mr. Gregory Davis and Mr. Vermillion presented the board with several photos to show that the structure had two separate entrances as well as separate living quarters for multi-family use. Nine photos were shown:

1. A pipe running up side of the house
2. An upstairs worn area where the sink and stove were located
3. A close up of same area in picture number two
4. An upstairs bath area where a four inch drain ran to the toilet
5. An upstairs bath area where a two inch drain ran to sink and bathtub
6. The same area in picture number five from the first floor
7. Another picture as shown in picture number six
8. The passageway from the foyer to upstairs where a panel and bolted doorway prevented entrance into first floor living areas
9. What was left of the partition separating structure

Mr. Vermillion stated that since he had purchased the structure in 1987 no one has occupied the structure.

Mr. Rosenberg asked if existing utility service was for upstairs and down and if the services were separate.

Mr. Vermillion stated that two meters existed prior to his purchasing the structure, supplying two panels on the back porch.

Ms. James asked when Mr. Vermillion took possession of home and when was the last date the home had been occupied.

Mr. Vermillion stated that October 9, 1987 was the last date the structure was occupied and the date he took possession of the structure.

Mr. Larry Davis asked Mr. Vermillion from 1969 to 1979 if he had the opportunity to see the structure and if so how did the structure look?

Mr. Vermillion stated he had not seen the structure until 1975 when he became interested in the structure. He stated the reason he became interested in the structure was because of his motorcycle business and he wanted to see what type of traffic pattern existed and that his only contact then was by driving by.

Mrs. Billy Neese, the former owner, was brought before the Board to testify as to the use.

Mr. Larry Davis asked Mrs. Neese if she owned the property in 1954 and if the house had always been occupied.

Mrs. Neese stated she had been the owner since the 1950's and that she lived there with her daughter and her children. Mrs. Neese stated that when she moved to the brick house her daughter was living upstairs. Mrs. Neese could not remember any dates as to when individuals had moved in or out and that if the house was not occupied it was only vacant for a few months at a time.

Mrs. Neese was asked several questions.

She was asked if her daughter paid rent and her own utilities, to which she said yes.

She responded that there was a wall between the two separate living quarters and that the door was always bolted.

She stated that she did not build the house and that it was built prior to her purchase in 1954.

She was asked if other families lived upstairs prior to her daughter and if there were separate keys, to which she responded yes.

She was asked if she had any photos of the house showing the two separate doors and she stated her grandson may have some.

She was asked if she had any utility bills or rental receipts and she said no.

Mr. Larry Davis asked Mrs. Neese several questions:

1. When did you move into the brick house?  
Mrs. Neese stated maybe 1968, just guessing, because she does not remember the exact time.
2. Did you rent to relatives?  
"Yes"
3. Did you ever tell the County about the dwelling being multi-family?  
"No, I did not think I had to"

4. Did you report the rental income on your taxes?  
"Yes, but most of the time relatives lived there and I did not charge them"

5. Do you have tax records to uphold your claim?  
"No"

Mrs. Neese stated she could not remember dates or names of persons that occupied the house and was not positive how many times or how long the structure remained unoccupied.

Mr. Gregory Davis objected to the questioning of Mrs. Neese. Mr. Larry Davis apologized stating he was only attempting to clearly understand the facts. The cleanup crew and contractor were asked to come up and answer questions from the Board.

All of the crew members agreed that there were two front doors and that the doors were destroyed. They said there were two electrical panel boxes, two keys for the front doors and that there was a kitchen, bathroom and living quarters upstairs and downstairs.

There being no further speakers Mr. Rosenberg closed the public hearing and motioned to continue the case until the next meeting pending a site visit by the Board members and Mr. Davis and Mr. Farmer.

Mr. Rosenberg asked Mrs. Neese if she could provide pictures, keys, bills, receipts and whatever other material she could find at the next meeting.

Mr. Feigley seconded the motion to continue the case until next meeting. The motion was approved.

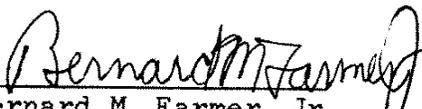
The Board scheduled a site visit, March 17th at 4:30 P.M.

5. MATTERS OF SPECIAL PRIVILEGE - None

6. ADJOURNMENT

The meeting was adjourned at 11:00 p.m.

  
Prof. Ronald Rosenberg  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary to the Board