

**BOARD OF ZONING APPEALS**  
**April 6, 2006**

**A. Roll Call**

|             |          |
|-------------|----------|
| Present:    | Absent:  |
| Mr. Wenger  | Mr. Nice |
| Mr. Rhodes  |          |
| Mr. Fraley  |          |
| Mr. Fischer |          |

Others Present:

John Rogerson, Senior Zoning Officer  
Melissa Brown, Senior Zoning Officer  
Clifton Copley, Zoning Officer

**B. Minutes**

Mr. Rhodes made a motion to accept the minutes of the March 2, 2006 meeting. Mr. Fraley seconded the motion. The minutes were unanimously approved by voice vote.

**C. Old Business**

There was no old business to discuss.

**D. New Business**

**ZA-03-06      8409 Camellia Court**

Mr. Clifton Copley presented the staff report for the variance to Section 24-238 (b), Yard regulations of the James City County Zoning Ordinance to reduce the rear setback from the required 35 feet to 23.5 feet for the construction of a rear deck on property located at 8409 Camellia Court. Following their review of the application, staff was unable to find evidence of an undue hardship approaching confiscation and, therefore, recommended denial of the application.

Mr. Rhodes opened the public hearing.

Mr. Robert Key introduced himself as the property owner and applicant and commented on the reasons for which he requested the variance. Mr. Key cited his wife's health problems as well as the financial impact on resale value of the house as reasons why this situation qualified as a hardship.

Mr. Wenger asked when Mr. Key found out that he could not have the deck that he desired to build. Mr. Key responded that he was made aware of the situation at the foundation stage of construction. Mr. Wenger asked if building permits were obtained prior to commencement of construction. Mr. Key responded that they were obtained prior to construction.

Mike Hosang of 8404 Camellia Court spoke in favor of the requested variance.

Mr. Rhodes closed the public hearing.

Mr. Fraley stated he would like to open Board comments by stating that it appeared that the real estate agent gave bad advice but that resale value cannot be considered a hardship. He stated that he was very sympathetic with the owner.

Mr. Wenger stated that this was the second Wellington variance and that, after walking the neighborhood, it appeared to him that there was the possibility of many more to come. He stated that he had no problem with this variance, but had a real problem with the developer and the real estate agents who are dispensing unethical advice to unaware buyers.

Members of the Board of Zoning Appeals were very upset that a builder or realtor would mislead their client to believe that they could make application to the Board of Zoning Appeals after construction was complete for variances involving decks and other small structural features that do not meet setback requirements. The Board asked that staff draft a letter to builders and realtors working in the Wellington subdivision to inform them that no other variances will be granted in that area and that, in the Board's opinion, to mislead a buyer to believe that they can ask for a variance for a deck encroachment undermines the intent of the Board of Zoning Appeals and indicates a lack of ethical concern on the part of the developer and realtor.

Mr. Rhodes reopened the public hearing.

Mr. Rhodes asked Mr. Key if he had been compensated for the fact that there could be no deck on the house by the builder. Mr. Key responded that he had not.

Mr. Key requested deferral until the matter could be heard by the full board.

#### **ZA-05-06 Hotel Colonial America Canopy Addition**

Mr. Clifton Copley presented the request for a variance to Section 24-416 (a), Setback requirements of the James City County Zoning Ordinance to permit the construction of a canopy addition to the side entrance of the Hotel Colonial America located at 6483 Richmond Road. Following review of the application, staff could find no evidence of hardship and recommended denial.

The board had no questions for staff.

Mr. Rhodes opened the public hearing.

Blair Wilson attended the meeting to speak on behalf of Mr. Patel, the property owner.

Mr. Wilson stated that in the hotel industry canopies are a requirement and not merely a convenience. Many of the franchises require that you have a canopy to participate in their group. Additionally, the canopy provides protection for the customers from the weather.

Mr. Wenger asked if the road was private or public that ran between the outlet mall and the hotel.

Mr. Wilson responded that it was a private right-of-way.

Mr. Rhodes asked what initiated the improvements.

Mr. Blair responded that the hotel was purchased by Mr. Patel about a year ago and the new owner wanted a new look and wanted to comply with the requirements of the Howard Johnson Franchise.

Mr. Rhodes closed the public hearing.

Mr. Fraley called for a resolution.

Mr. Copley read a resolution to grant variance to Section 24-416 (a), Setback requirements of the James City County Zoning Ordinance to reduce the side-yard setback from the required 28 feet to three feet to permit the construction of a canopy addition to the side entrance of the Hotel Colonial America with no further encroachment.

Mr. Wenger seconded the motion.

Motion passed unanimously.

**ZA-06-06      113 Watford Lane**

Mr. John Rogerson presented the requests for variance to Section 24-256, Setback requirements, and Section 24-258 (b), Yard regulations of the James City County Zoning Ordinance to reduce the required front setback from 50 feet from the center of the right-of-way of Watford Lane to 30 feet from the center of the right-of-way of Watford Lane and to reduce the required rear yard setback from 35 feet to 9 feet to permit the construction of a single-family dwelling. Upon review of the application, staff found that

application of the setbacks created a zero building envelop meeting the definition of undue hardship approaching confiscation. Staff recommended approval.

Mr. Rhodes asked questions regarding lot area and nonconforming status. He also inquired about how the granting of this variance would affect the status of other lots in the neighborhood.

Mr. Fisher and Mr. Wenger inquired about the possibility of extinguishing the boundary line and subdividing the new lot to create two conforming lots. Mr. Rogerson responded that the applicant could pursue this option to create two conforming lots. This would not require a variance, however the Office of Housing and Community Development planned to pursue rezoning the property.

Mr. Rogerson commented that future plans for the neighborhood included rezoning the area to a Mixed Use zoning district which has no area requirements.

Mr. Rhodes opened the public hearing.

Ms. Marion Payne of The Office of Housing and Community Development (OHCD) commented on the redevelopment plans for the Ironbound Square area after the neighborhood is rezoned to MU. She commented that the majority of the lots in that neighborhood would be reconfigured through a new subdivision plan along with the rezoning. The OHCD worked in conjunction with Habitat for Humanity to relocate the woman that lived in house on the parcel in question while they build her a new home.

Mr. Wenger and Mr. Fisher stated concerns that they may need variances for other lots in this same neighborhood. Ms. Payne stated that this is a special situation as the woman living in the original home had to be relocated while the house is rebuilt.

Mr. Fraley commented on the rezoning process and how that would affect this neighborhood.

Mr. Rhodes closed the public hearing.

Mr. Rhodes asked Mr. Rogerson for calculations regarding the area of 113 Watford Lane and the adjacent parcel. Mr. Rogerson stated that he did not have the total area for the adjacent parcel and could not guarantee that the two lots could be resubdivided to create two conforming lots.

Mr. Fraley called for a resolution.

Mr. Rogerson read a resolution to grant variance to Section 24-256, Setback requirements, and Section 24-258 (b), Yard regulations of the James City County Zoning Ordinance to reduce the required front setback from 50 feet from the center of the right-of-way of Watford Lane to 30 feet from the center of the right-of-way of Watford Lane

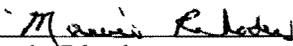
and to reduce the required rear yard setback from 35 feet to 9 feet to permit the construction of a single-family dwelling with no further encroachment.

Mr. Rhodes seconded.

Motion passed unanimously.

Mr. Fraley commented on deferral policy.

The meeting was adjourned.

  
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Marvin Rhodes  
Chairman

  
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Allen J. Murphy  
Secretary