

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER BOARDROOM 101-C MOUNTS BAY ROAD, AT 7:30 P.M. ON THE FIFTEENTH DAY OF NOVEMBER NINETEEN HUNDRED AND EIGHTY-FOUR.

1. MEMBERS PRESENT

Mr. Gerald Mepham, Chairman
Mr. Joseph Abdelnour
Mr. David Hertzler
Ms. Nancy James (arrived after the vote on first case)

OTHERS PRESENT

Mr. Bernard M. Farmer, Zoning Administrator
Mr. Larry Davis

2. MINUTES

The minutes of the September 27, 1984 meeting were postponed until the next meeting.

3. UNFINISHED BUSINESS

ZA-9-84. William Hutchens.

Mr. Abdelnour stated that the board's decision on this case can be related to case nos. ZA-18-84 and ZA-19-84 when minimum frontage was the issue, and then motioned that the board not sustain the zoning administrator's decision.

Mr. Mepham seconded the motion and then asked if there was any discussion.

Mr. Farmer spoke about provisions for frontage so that necessary light, air, and road frontage would be available for a particular structure. However, to allow development to occur without the sufficient amount of road frontage would not be serve to public interest.

Roll call was as follows:

Mr. Mepham	No
Mr. Hertzler	Yes
Mr. Abdelnour	Yes

Motion not to sustain Zoning Administrators decision was because the lack of a third vote.

4. NEW BUSINESS

ZA-29-84. Kenneth Maynard.

Mr. Farmer gave a staff presentation and recommended that the decision of the zoning administrator be upheld. Pursuant to this case, he received several phone calls, and felt obligated to indicate information that came from the public. One phone call indicated that the neighbors were not disturbed at all by the business activity; however, they had very strong objections to the commercialization of that area of Jamestown Road. The second phone call was from a resident that had lived there some twenty-seven years, and they did not even know that Mr. Maynard was operating a business. They felt much safer and appreciated Mr. Maynard's presence there. A third phone call stated that commercial activity was not appropriate for that residential neighborhood.

Mr. Abdelnour asked what kind of business Mr. Maynard was operating.

Mr. Farmer explained that Mr. Maynard was operating a security business.

Mr. Abdelnour asked if home occupation meant that the only person to operate the business was the owner.

Mr. Farmer replied that the ordinance requires six specific tests to be met. 1. The occupation of activity is conducted entirely within the dwelling. 2. Not more than 25 percent of the floor area is used throughout the structure for such occupation or activity. 3. The occupation or activity requires no external alterations of the use of machinery or equipment not customary for domestic household purposes. 4. That no exterior evidence of the secondary use exists with the exception of one sign not to exceed four square feet. 5. That no articles are displayed or otherwise offered for sale upon the premises. 6. That no equipment or process is used that may disrupt the dwellings. Within the definition of a home occupation it does also state that the use of the premises is for dwelling purposes and conducted solely by residents of the dwelling.

Mr. Hertzler asked what item Mr. Maynard had violated.

Mr. Farmer replied that the occupation is not conducted solely by residents of the dwelling and the occupation is not conducted entirely within the dwelling, and also by virtue of the complaints that the office has received he was in violation by disrupting neighboring dwellings.

Mr. Mepham opened the public hearing.

Mr. Mahone stated that he was the representative of the individuals who reside in the Jamestown district, and in that capacity, a citizen of Jamestown district approached him and expressed concern over this situation. He said he had talked to other citizens in the neighborhood and has determined that some are strongly in favor of Mr. Maynard's activities and having him there, and there are others who are concerned with the commercial activities.

Mr. K. Maynard explained that he was in business in the city, and explained that he operated his business in his home due to his handicapped condition.

Mr. R. H. Longstreet, neighbor, spoke about the heavy amount of traffic that comes from the Maynard residence, and expressed his concern about future commercial activity in the residential area.

Mr. Hertzler asked what type of equipment Mr. Maynard has at his resident.

Mr. Longstreet replied Mr. Maynard has jeeps, cars with logos, and a building below his house.

Mrs. Katherine Maynard explained that she and Mr. Maynard were partners who had been in business for nine years, during that time a person from the Code Compliance Office came and visited the house. Mrs. Maynard then explained the vehicles that Mr. Longstreet had mentioned were a jeep, a pickup truck, and the outbuilding is a workshop not an office. The vehicles Mr. Longstreet spoke of coming in and out can either be herself or one man who comes in, leaves his car, gets the pick-up truck, and goes out.

Mrs. Peggy Dotson, neighbor, stated that she had lived in the neighborhood for over twenty-seven years, and she heard no noise.

Mr. Mepham closed the public hearing.

Mr. Abdelnour asked how many full-time employees Mr. Maynard has, and how were the employees paid. He also asked how many vehicles does Old Colonial Security own?

Mr. Maynard replied that he had over thirty full-time employees, and they were paid through the mail, and that he owned one jeep, and one car.

Ms. James asked Mr. Maynard about the exterior modification he was planning to do to his home.

Mr. Maynard replied that he was planning to install ramps.

Mr. Hertzler made a motion to allow Mr. Maynard to continue his business.

Mr. James seconded the motion.

Roll call was as follows:

Mr. Mepham	Yes
Mr. Abdelnour	No
Mr. Hertzler	Yes
Mr. James	Yes

Appeal sustained. The business is considered a permissible home occupation.

ZA-30-84. K. W. Godsey.

Mr. Farmer gave a staff presentation and recommended that the zoning administrator's decision be upheld because no special condition peculiar to the land exists which would present reason for requirement of a variance, and no hardship exists which would not be shared by other persons within the same district.

Mr. Mepham opened that public hearing.

Mr Godsey explained that he had built the house in 1969 and went before the board and requested a variance and the addition will not go beyond the eight foot that has been granted previously. Also, that he has letters from adjacent property owners who do not object to the request for a variance.

Mr. Abdelnour asked the size of the building.

Mr Godsey replied that it would be 17' X 26'.

Mr Hertzler asked if Mr. Godsey had a drawing of what is being purposed.

The board went over drawings of the property.

Mr. Mepham closed the public hearing.

Mr. Abdelnour made a motion to grant the request.

Mr. Hertzler seconded the motion.

Roll call was as follows:

Mr. Mepham	Yes
Mr. Abdelnour	Yes
Mr. Hertzler	Yes
Ms. James	Yes

Motion was carried to grant variance of 2 feet to the side yard requirement.

ZA-31-84. William & Norene Kassing.

Mr. Farmer gave a staff presentation and recommended that Mr. & Mrs. Kassing be required to remove their mobile home from the property. Such action does not constitute undue hardship since their mobile home could be relocated.

Mr. Mepham opened the public hearing.

Mr. Bill Kassing stated that he had bought the structure as a modular home, and the variance was granted in May 1978. He said he didn't have money to build a house and the property has been taxed as real estate not as personal property.

Mrs. Norene Kassing stated that she had done a lot of research and that she had papers from the previous owner to get permission to put this modular on the property. Therefore, she doesn't feel she has any business being here for a variance, because it was already settled in 1978.

Mr. Farmer stated that he and the building official had been out to look at the property. Within the Uniform Statewide Building Code, there are presently two different definitions of mobile homes as well as a third definition that was adopted by the past General Assembly in the State of Virginia. In this particular instance, the definition that was appropriate was found in the zoning ordinance. That definition is that a mobile home is a single family dwelling designed for transportation after fabrication on streets and highways on its own wheels or on a flatbed arriving at the site where it is occupied as a dwelling unit ready for occupancy.

Mr. Mephram asked if there was any distinction between modular homes and mobile homes.

Mr. Farmer replied that the distinction are quite subtle, and not always easily defined.

Mr. Hertzler asked what brought this matter up to the attention of the county.

Mr. Farmer replied that sometime back during the springtime either by virtue of a complaint or through some manner it became knowledge of the zoning administrator.

Ms. Libby Bloxom Smith, realtor, stated the home was in the Williamsburg Multiple Listing listed by another firm, and was listed as a modular home. One of her agents sold it as a modular home. The Kassings got a VA loan on the property and it would appear that the Kassings are victims of circumstances. They paid for what they thought was a modular home, and they have a mortgage on what they thought was a modular, and was being taxed as modular home. She stated it would be a tremendous hardship if they had to move the trailer and still have the mortgage on the property.

Mr. Mephram closed the public hearing.

Mr. Hertzler made a motion to grant the variance.

Ms. James seconded the motion.

Roll call was as follows:

Mr. Mephram	Yes
Mr. Abdelnour	Yes
Mr. Hertzler	Yes
Ms. James	Yes

Motion carried 4-0. Variance granted for this mobile home to be considered a permitted use.

ZA-32-84. Edward A. Ribock/Betty Whitt.

Mr. Farmer gave a staff presentation and recommended that allowing the proposed development to take place would create a development of greater density than that prescribed by the area requirements with Section 20-37 for the A-2, Limited Agricultural District.

Mr. Mephram opened the public hearing.

Andy Bradshaw, attorney, for the applicant asked that he be allowed to give some important facts of the case.

The applicants purchased the property on April of this year and before they purchased it they did receive written assurance from Planning and Development that an additional duplex could be constructed on the lot, and that did take into consideration only the County code provisions at the date of the letter, March 2. One change in the County code has been made since that time. The property is zoned A-2 in a neighborhood consisting of single-family dwellings. The original subdivision Neck-0-Land Hundred was put to record in 1948 and the subdivision consisted of 33 lots. At that time each of the lots were designed to be at least 100 feet in width and 400 feet in depth, some were a few feet larger, but none smaller. At the time the subdivision was created lot 9 block b, was 100 feet wide and 400 in depth a single family dwelling was constructed prior to 1958. That single family dwelling has now been converted to a two family dwelling. In 1958 it was discovered that a dwelling constructed on the adjacent lot, lot number 8, encroached approximately one foot on lot 9. As an accommodation to the owner of the adjacent lot the owner of the property, lot 9, did convey 7.5 feet to lot number 8, so that home would no longer encroach onto the lot. The lengthwise dimensions have been reduced. The property is served by public sewer but does have its own private well. What the applicants wish to do is construct a 30 x 60 foot duplex on this lot behind the current residence. Taking those deminsions into consideration, which show on the current survey there is sufficient room for the proposed duplex to have side yards of greater than 30 feet on either side being 120 feet from the rear and 120 from the current dwelling. He then went over provisions of the code that apply:

1. Section 20-37 area requirements. The second paragraph states requirements of a lot size of at least 20,000 square feet. We have 37,000 square feet.

2. The fourth paragraph states that the minimal sizes shall not apply to lots recorded or legally in existance prior to January 1977. Recall the two plats in question, one was recorded in 1946 and the second in 1958. Our lot by either survey does predate the January 1977 date.

3. Section 20-37.1 is the code section that has been adopted since his client first purchased the lot and received assurances from the County. Note that code section does not make any specific reference or change the language of 20-37 the exemption clause.

4. Section 20-39, indicates that we should have an 100 foot frontage, and originally the lot did, but its accomodation was reduced by 7.5 feet. He directed attention especially to code 20-108. Non-conforming lot areas which states that any lot or record on that date in 1976 less in area or width in the minimal required by the chapter may be used when the requirements of the Board of Zoning Appeals regarding setbacks side and rear yards are met.

Although this comes before the board as an appeal for a variance, he thought that the case more properly falls under the provisions of code section 20-108. He requested that the board establish the setback side and rear yards at the same size of the entire rest of the A-2 zoning.

Steve Swartz stated that regardless of what was conveyed in past years, if properties don't have square footage for the A-2 zone to have two dwellings with 40,000 square feet he said he didn't see any question because there wasn't enough room. He stated that the major concerns about increased numbers of multi-family rental housing. The reasons being the congestion on Neck-O-Land road, what will happen to property values, will it be safe for children to walk on Neck-O-Land road. He asked if the County was prepared to put side walks and street lights in.

Tina Packer stated that in the seven years that Powhatan Shores has existed there have been several attempts of start a Homeowners Association all have failed. People are scared. Duplexes are coming up and people have a lot of money invested in property and plan on raising their families there. That land is important to them. They do not want to say that this is okay and more duplexes. There are approximately 55 home in Powhatan Shores and have a petition stating that the homeowners don't want duplexes.

Barbara Kensey stated that the reason she bought her home in Powhatan Shores was due to the natural environment and stated that more duplexes are going to create problems.

Delores Shook stated that she was one of the original people to move to the area, and at that time was assured that it was single family residential area. She stated that she was concerned about the congestion created by duplexes.

Charles Malhony stated that he was the adjacent property owner to the property in question. He stated that his concern was what will this do to the nature of his property as well as the nature of the surrounding properties. The area has a definite rural, residential atmosphere and he was concerned about the property.

Mr. Mephram closed the public hearing.

Mr. Abdelnour stated that since he had represented the applicant before he would not participate in this case.

Mr. Davis replied that 20-108 did not apply to this case.

Mr. Hertzler asked if any other duplex owners have this problem before.

Mr. Mepham made a motion to deny the request for a variance.

Ms. James seconded the motion.

Roll call was as follows:

Mr. Mepham	Yes
Mr. Abdelnour	Abstained
Mr. Hertzler	No
Ms. James	No

Zoning administrator's decision upheld to deny the variance.

ZA-33-84. Dr. William C. Sutherland.

Mr. Farmer gave staff presentation and recommended that the request for variance be denied. No unusual hardship exists relative to the property or to the situation that is not generally shared by others.

Mr. Mepham opened the public hearing.

Dr. Sutherland spoke on his own behalf. He stated that he had been practicing business for fifteen years. During this time he built a second office in 1983. He stated that the architect told him at that time that the County would not permit two signs. He said that in the meantime he hired a public relations persons to help develop marketing techniques. He spoke to various individuals in the County, and told Mr. Sutherland they made application to the County for another sign in April 1983, and if this did not work out they would have to appeal to the board. He said that within a four week period he received a letter from James City County stating that the application had been approved and the only thing he needed to tell them the exact location of the sign. With that information he then contacted a sign company and contracted them to make a sign at the cost of almost \$2,000. When the sign was complete the sign maker tried to get the permit for the sign and was refused because of the code. Dr. Sutherland stated that he then became involved and discovered that the County did not have on record his sign application nor plat of the property. But later he did receive the application in the mail. Dr. Sutherland stated that he was unable to find the letter that the County had sent.

Mr. Hertzler asked Dr. Sutherland if he had tried to zoning the lot into two separate lots.

Dr. Sutherland replied that he had not.

Ms. James asked the size of the other sign.

Dr. Sutherland stated that the proposed sign is smaller.

Mr. Mephram closed the public hearing.

Mr. Mephram motioned that the board grant the request.

Mr. Abdelnour seconded the motion and move to amend the motion so long as the sign be kept and maintained in good condition until time for its replacement.

Roll call was as follows:

Mr. Mephram	Yes
Mr. Abdelnour	Yes
Mr. Hertzler	No
Ms. James	No

Zoning administrators decision upheld to deny the variance.

ZA-34-84. Old Town Farms, Inc.

Mr. Farmer gave staff presentation and recommended that the intent and desire of the code is to provide a buffer between lower density residential uses and higher density townhouses. Additionally, the perimeter setbacks provide a bit of greenspace where not as much would exist in yards. A strict interpretation of the code would not allow justification of a variance since any hardship has been created by the applicant.

Mr. Mephram opened the public hearing.

Mr. Hertzler made a motion to grant the variance.

Mr. Abdelnour seconded the motion.

Roll call was as follows:

Mr. Mephram	Yes
Mr. Abdelnour	Yes
Mr. Hertzler	Yes
Ms. James	Yes

Variance granted 4-0. Zoning administrator's decision overturned.

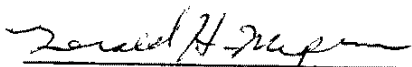
5. MATTERS OF SPECIAL PRIVILEGE

Mr Abdelnour asked that the staff prepare a request for the BZA to budget funds for legal counsel. He stated that often the county attorney's office found itself in a conflicting role of providing support to the zoning administrator as well as the BZA, which on occasion did not agree.

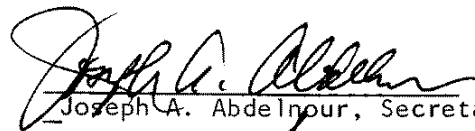
6. ADJOURNMENT

Meeting adjourned at 10:30 p.m.

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 Gerald H. Mephram, Chairman



 Joseph A. Abdelnour, Secretary
 Sec.