

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-EIGHTH DAY OF AUGUST, NINETEEN HUNDRED AND EIGHTY-SIX.

1. ROLL CALL

Members Present

Mr. Ronald Rosenberg, Chairman
Mr. David Hertzler
Mr. Claude Feigley
Ms. Nancy James

Others Present

Mr. Bernard M. Farmer, Jr., Zoning Administrator
Mr. Larry Davis, Assistant County Attorney

2. MINUTES

Adoption of the June minutes was tabled until the next meeting.

3. OLD BUSINESS

4. NEW BUSINESS

Case No. ZA-17-86. Gladys Jones

Mr. Farmer presented the staff recommendation. He stated that Mrs. Gladys Jones had appealed an administrative decision of the Zoning Administrator concerning whether or not a shelter home was a use permitted in the A-1, General Agricultural Zoning District.

A zoning determination was requested by Helene Ward on behalf of the Task Force Board of Directors in a letter dated June 19, 1986. The proposed location of the "Central Headquarters" for the task force is A-1. Located on the parcel is a three bedroom residential structure and another structure housing two apartments. The task force has proposed using the three bedroom structure for a temporary lodging facility to provide shelter for three to four women plus their children. One apartment is to be used for their office functions and the other is proposed to house a staff member servicing their 24 hour hot line. The Task Force operates a phone helpline, provides temporary lodging facilities, has staff to provide referrals and information and may provide limited counseling to the clients and limited care for children of residents clients. They do not propose to operate a "day care facility" as defined by the ordinance. An examination of the proposed use show its primary characteristics to be those of:

1. A business or professional office.
2. A residential facility.
3. A limited childcare center.

Though their proposal is to group the clients at one location it appears from an examination of the way they operate that grouping is not required nor is it necessary for provision of lodging to battered women. The grouping is a matter of convenience for the operators because of the availability of the facility and is not a requirement of the clients.

In examining the proposed use other staff members were questioned about previous interpretations issued concerning this shelter home. A previous zoning administrator allowed the shelter to be placed in its present location. The property was then zoned A-2.

The ordinance provides that land used in the A-1 or structures to be erected shall be for uses either permitted by right or require a special use permit. Uses permitted by right include one and two family dwellings, retreat facilities, rental of up to three rooms, tourist homes, professional offices, and day care centers. Although the proposed shelter has characteristics of several of these uses, the proposed use most closely resembles a retreat facility. Though not defined in the zoning ordinance, three different dictionaries all define retreat as a private place of refuge or a shelter.

It is the staff recommendation that the decision of the Zoning Administrator classifying a battered women's shelter as a use permitted by right in the A-1 zoning district be upheld.

Mr. Rosenberg asked if the date on the application of August 1, 1986 was correct. Mr. Farmer stated that it was correct.

Mr. Rosenberg opened the public hearing.

Kristi Vanaudenhove, Executive Director of the Williamsburg Task Force Board on Battered Women, explained that the task force had been operating a shelter for battered women since March 1983. As of July 31, 1986, 413 women and children have stayed at the shelter for periods ranging from 24-hours to 4-months. In addition, the task force has an office which is presently located at 1300 Jamestown Road. The task force contracted to purchase the property on John Tyler Highway with the intent of relocating both the shelter and the office to the building on the property. They immediately contacted the Office of Code Compliance to find out if their operation would be considered a permitted use within the A-1 zoning district. They received a letter, dated July 3, 1986, from the Zoning Administrator stating they would be in compliance and no special use permit was necessary. Based upon this letter, they entered into a binding contract to purchase the home.

Specific activities that would take place at the location were the operation of a 24-hour hotline and operation of a residential shelter for battered women and their children. The task force has established guidelines

for the maintenance of the home and client responsibility for their families during their at the shelter. The task force would also operate on a 24-hour basis, an administrative office, peer counseling for women and children and crises prevention service. The task force has thought to keep the location of the existing shelter and the new property confidential to ensure the privacy of the client's stay there. They asked that no one come to the house or the office without first calling. This includes family, friends, social workers, and battered women. Even the Sherriff's office has respected this request. The shelter is intended to be a retreat for battered women and it is the role of the criminal justice system to provide protection. The role of the task force is to give women an alternative to remaining in the abusive situation.

Vincent Sutlive asked the board of Zoning Appeals to sustain the opinion of the County Attorney and the recommendation of Mr. Farmer that the shelter for battered women be permitted in the A-1 zoning district where he was purchasing a house. He discussed the question of the interpretation of the shelter and emphasized that the shelter was not a group home by conditions specified under any zoning ordinance or in any sense at all. His profession was anthropology and he had studied groups for over 25 years. He explained that a group was first organized, second homogeneous, third identifiable and fourth continuing. Battered women do not constitute a group. First, battered women are demonstrably isolated. The traditional way of dealing with spouse abuse as been to keep it a secret thereby precluding opportunities for organization. Second, battered women are notoriously heterogeneous, they are victims from every ethnic group and from every social and economic class. Third, battered women are not identifiable. Fourth, groups must have some continuity, some longer, some shorter. Battered women's stay in the shelter is discontinuous and transient. A shelter by contrast is something that covers for protection, something that provide refuge or defense, a retreat. He wanted the board to be aware that the task force offered a contingency with the contract on the house under discussion. Subsequently, we sought the opinion of the Zoning Administrator and he in turn of the County Attorney concerning the use of the house as a shelter for battered women. We were informed by Mr. Farmer that the A-1 zoning permits use of the house as a shelter and on that basis offered a firm contract on the house.

David Ankney, a former investigator with the County police, commented on his knowledge of what he experienced as being a member of the task force as well as a police office. He had answered many calls on spouse abuse. There was only one minor confrontation where a client violated a rule of the shelter and contacted a husband. He asked that the board to go along with Mr. Farmer's recommendation.

Nancy Bolach, Assistant Commonwealth Attorney for York County and member of the Board of Directors of the Williamsburg Task Force for Battered Women explained that she dealt with the problem at least once a week in the court system. The shelter offered moral support and assistance as well as a temporary refuge from violence. She asked the board to focus on the issue "of whether the shelter is a permitted use within the A-1 zoning district." It was the criminal justice systems that offers any physical protection of these battered women. The shelter functions solely as a retreat.

Alvin Anderson, Attorney, spoke representing two families in the area; Mrs. Gladys Jones, and Dr. Raymond Ricardo. On behalf of his clients, he wanted to make it clear that they applauded the efforts of the task force in providing the needed shelter for battered women. The legal issue that was before the board could be broken into three component parts. One, what is a retreat facility. Two, was the facility proposed a retreat facility. Three, was there some other appropriate alternative under the James City County Zoning Ordinance. First of all under item number one the James City County Zoning Ordinance does not define what a retreat facility is or is not. He examined other ordinances of other municipalities in the Commonwealth of Virginia. Unfortunately, he met with no success in finding a definition of a retreat. He then turned to the fifth addition of Black's Law Dictionary and it defined a retreat as "a place for contemplation, especially for a religious nature." Under number two, He said that by the definition found in Black's Law Dictionary that the facility proposed was not a place for contemplation of a religious nature. The facility proposed gives temporary lodging as shelter for battered or sexually assaulted women. The third item before you tonight concerned whether some other appropriate alternative under the James City County Zoning Ordinance existed. He submitted the definition of "group home". A group home was defined as a residential facility for the care of four or more persons who are physically handicapped, mentally retarded, developmentally disabled or who for other reasons require protection of a supervised group setting. A group home is permitted in the Zoning Ordinance only with a special use permit. The James City County Board of Supervisors can examine the particular facility and determine whether or not the facility proposed has any significant the impacts which are different from the impacts of general type families living at the facility. He asked the board to reverse the decision of the Zoning Administrator.

Robert Jones III, stated he was a resident at 2983 John Tyler Highway. He wanted to know why the shelter for battered been turned down three times in the City of Williamsburg, City of Hampton, and the City of Newport News, and why a special use permit is required there and not here.

John E. Carroll a neighbor stated a use permit would ensure the security of the neighbors and the security of the Task Force. When he first found out the Task Force was buying the house he went to where they were operating. He talked to the neighbors. It was a facility where no one would want to live next to it. There was garbage scattered all over the place, discarded furniture in the yard. He ask the board to think about this facility as if they were the neighbors.

Steve Montgomery representative of the Community Hospital wanted to stress the point of view and need for the facility. There had to be an adequate place for battered women to go to. He had dealt with battered women and there was a desperate need for this facility.

Jane Carroll stated she didn't hear anyone say they didn't want the facility or that it wasn't necessary but she heard a lot of people say the facility was necessary. The Task Force had not been doing a good job keeping up the facility. They did not do a good job at the facility that they had before. When she heard them say "it wasn't a good job because it was a rental facility rather than something they owned". She was turned off by that comment. She wanted to require the task force to get a use permit to put some sort of structure to this so that there are rules and regulations.

Kristi Vanaudenhove addressed Ms. Carroll statements. She stated the issue was not that they did not want a special use permit. It was their understanding that they found a parcel of the property which was suitable for having a shelter for battered women.

Steve Commings dealt with the task force before he was on the Board of Directors and stated that he had worked with the staff and found them accommodating. He stated that there was a definite need for the facility.

R. H. Jones, Jr., 2981 John Tyler Highway, said he lived about 200 feet from where this facility was going. He was concerned with a sewage problem. The land would not perk. Raw sewage at times could be found running in the ditch.

Betinia Jones stated that the neighbors wanted to work with the Task Force. She stated a special use permit should be required.

Larry Davis stated that there was no legislative definition of retreat facility for the board to rely on. Mr. Anderson has given a few dictionary definitions. He had three definitions which should be part of the record and gave them to the board. One, American Heritage Dictionary of the English language, which showed a definition of retreat as being a quiet, private, secure place for a refuge. Second, Webster New Collegiate Dictionary, defines a retreat as a place of privacy or safety or refuge. Lastly, the Random House College Dictionary defines a retreat as a place of refuge, seclusion or privacy.

John Carroll III, stated the responsibility was with the community and not to debate over definitions. He felt the Task Force should be restricted by a special use permit.

Mr. Rosenberg closed the public hearing.

Mr. Hertzler stated that the A-1 Zone permits just about anything. The people in the country did not want zoning or controls, they wanted freedom.

Mr. Feigley said he would like to ask how much supervision was given to existing operation for the clients.

Kristi Vanaudenhove stated a handout was given to the clients as they entered the facility covering everything from safety to housecleaning. They were asked to read and sign a resident agreement. Outside maintenance is covered by the landlord. The only supervision was then a daily walkthru to make sure residents were abiding by the rules.

Mr. Feigley asked if the Task Force owned the facility would they assume all responsibilities. Ms. Vanaudenhove stated yes they would be responsible.

Mr. Feigley asked how they determined the maximum occupancy of the building. Ms. Vanaudenhove stated by the number of beds they had.

Mr. Feigley asked if the Task Force would get protection under a special use permit. Mr. Davis stated that would be hard to say because the conditions of a special use permit would be determined by the Board of Supervisors.

Mr. Hertzler stated that the board could implement restrictions, if needed.

Mr. Rosenberg stated that the question was on the interpretation of the Zoning Administrator under Section 20-110 of the Zoning Ordinance.

Mr. Rosenberg asked the board if they had any discussion.

Mr. Hertzler made a motion to uphold the interpretation of the Zoning Administrator. Mr. Feigley seconded the motion.

Roll call was as follows:

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

The Zoning Administrator's interpretation was upheld 3-1.

Case No. ZA-18-86. Messrs. Peter and Ernest Roberts

Mr. Farmer stated that Messrs. Peter and Ernest Roberts had requested a variance from Section 20-94 of the James City County Zoning Ordinance in order to place a second structure on property located at 2874 John Tyler Highway. Mr. Roberts was granted a special use permit and at the time told the Board of Supervisors that his intention was to use the mobile home as housing for his parents. No objection was made regarding the placement of the two structures on the parcel. The intentions of Mr. Roberts was to build a home for himself and put a mobile home on the property for his parents. Unfortunately, no consideration was made for the provisions of Section 20-94 which effectively prohibit multiple structures on a parcel with no frontage on a public road.

The staff recommends a variance be granted subject to the following conditions:

1. That the variance applies only to the use of the mobile home and house by Messrs. Peter and Ernest Roberts (plus wives and dependent children).
2. That the variance is void should the property every be subdivided or transferred in ownership.

Mr. Feigley moved that the variance be granted subject to the conditions of the staff. Ms. James seconded the motion.

Roll call was as follows:

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

The variance was granted 4-0.

Case No. ZA-19-86. The Muffler Doctor

Mr. Farmer stated that Dr. Sternberg had requested a variance of 44-feet from the requirements of Section 20-333 in order to expand a non-conforming structure located at 7106 Merrimac Trail. The property in question contains an older non-conforming building presently in use as a muffler shop. When residential property abuts business property the ordinance provides for a yard requirement of 50 feet from adjacent property. Sometime on or about June 1, application was made for a building permit to construct a 12' x 16' addition. The applicant was informed that a site plan approval would be required and the application was withdrawn. No site plan was ever submitted.

On or about June 27, an illegal unpermitted addition was constructed on the rear of the property. A stop work order was posted and the owner was informed not to continue work. Unfortunately, the addition was approximately 90% complete.

The staff recommends that the variance be denied. The owner, or his representative knew they were committing an illegal act. To grant a variance in this case is solely to give a special privilege to a property owner.

Mr. Rosenberg opened the public hearing. There being no speakers, the public hearing was closed.

Mr. Hertzler moved to deny the requested variance. Ms. James seconded the motion.

Roll call was as follows:

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

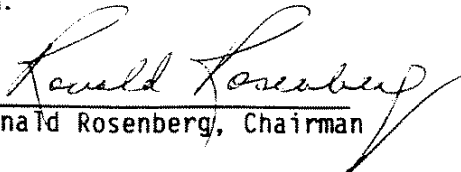
Variance was denied 4-0.

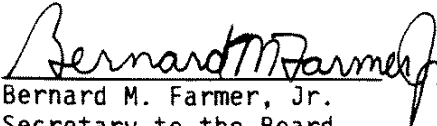
5. MATTERS OF SPECIAL PRIVILEGE

Mr. Rosenberg asked that the board reschedule their September meeting date.

6. ADJOURNMENT

The meeting was adjourned at 9:00 p.m.


Ronald Rosenberg, Chairman


Bernard M. Farmer, Jr.
Secretary to the Board

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1986 BOARD OF ZONING APPEALS CASE

TAX MAP (45-1)	PARCEL (01-0-0008)	ADDRESS 2968 John Tyler Highway	ZONE A-1, General Agricultura
PROPERTY OWNER Jones, Gladys		OWNER'S ADDRESS 2968 John Tyler Highway	CITY STATE ZIPCODE Williamsburg, Va. 2318
SALUTATION: Ms. Jones		NAME OF BUSINESS:	
FILE NUMBER ZA-17-86	APPL DATE 8/1/86	BZA PUBLIC MTG 8/28/86	BZA DECISION Upheld ZA Decision

MODIFICATIONS

APPLICATION TYPE CASE Appeal Decision
 Zoning Administrator decision that classified a battered women's shelter as a permitted use in the A-1, General Agricultural was upheld.