

BOARD OF ZONING APPEALS

MINUTES

March 24, 1988

A. ROLL CALL

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

Others Present

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

B. MINUTES

The minutes of the February 24, 1988 meeting were approved with an amendment to be made on page five.

C. DETERMINATION OF SCHEDULE/ELECTION OF OFFICERS

1. Election of Officers

Mr. Feigley motioned that Mr. Rosenberg be made Chairman.  
Ms. Vaiden seconded the motion.

The motion was carried unanimously.

Ms. James motioned that all positions of the Board remain the same as in 1987.

Mr. Feigley seconded the motion.

The motion was carried unanimously.

2. Determination of Schedule

Ms. James motioned the schedule remain the same as in 1987, with the meeting date being the fourth Thursday of each month; the exception being in November and December due to the holidays. The meeting date for November and December will be the third Thursday of the month.

Mr. Rosenberg seconded the motion.

The motion was carried unanimously.  
(See copy of 1988 meeting schedule)

D. OLD BUSINESS

1. ZA-4-88 Robert Vermillion

Mr. Rosenberg asked the Board which members had been able to visit the site on March 17, 1988.

Mr. Feigley, Ms. Vaiden, and Mr. Ripely responded that they had visited the site.

Mr. Rosenberg asked these board members if they had questions regarding their site visit.

Mr. Ripley stated he would like the names of renters of the dwelling.

Mr. Feigley stated that he wanted to see proof provided that would indicate a multi family use prior to the zoning change made in 1969.

Ms. Vaiden stated that her questions had been presented by Mr. Ripley and Mr. Feigley.

Mr. Rosenberg stated that the Board needed to make their decision based on the following sections of the Zoning Ordinance:

1. Section 20-399 Non-conforming uses.
2. Section 20-400 Continuation of non-conforming uses.
3. Section 20-401 Permitted changes of non-conforming uses.

Mr. Rosenberg asked Mr. Farmer and Mr. Larry Davis if they had any comments at this time. They responded they did not.

Mr. Rosenberg stated that the issue at hand was whether the house had been consistently used as a multi-family dwelling since 1969 without a two-year interruption.

Mr. Rosenberg opened the public hearing.

Mr. Gregory Davis, attorney for the applicant, reviewed material that was presented to the Board at their last meeting. Mr. Davis had been unable to provide any receipts, keys, pictures or tax return papers that the Board had requested. Mr. Davis stated that Mrs. Neese had refused to work with him after the last meeting as she had been intimidated by the Board in their manner of questioning and did not want to be involved with the case any longer.

Discussion followed between Mr. Gregory Davis and Mr. Rosenberg regarding non-conforming uses.

Mr. Gregory Davis was questioned by the Board regarding the fact that no evidence had been provided as proof that the house had been used as a multi-family dwelling. Mr. Davis kept referring to the testimonies of his witnesses as evidence

Mr. Larry Davis stated the issue was very narrow. He stated that evidence had not been presented showing that there was ever a multi-family dwelling. He further stated that little, if any, evidence had been submitted to indicate continuous residency since 1969. Mr. Davis stated that no one had personal knowledge of the dwelling other than Mrs. Neese. In Mrs. Neese's testimony she could not recall dates, times or persons that rented from her.

Mr. Rosenberg asked if anyone else wished to speak on the case.

No one wished to speak.

Mr. Rosenberg closed the public hearing.

Mr. Rosenberg stated the Board now needed to sort through all of the evidence that had been presented and provide a motion. Mr. Rosenberg felt separating the issues would help the Board with the decision of a motion.

The first issue concerned the nature of the use since 1969.

Mr. Rosenberg felt that the use was residential since 1969. All members were in agreement.

The second issue concerned the type of dwelling. Mr. Rosenberg reviewed the definitions.

a. Residence - Any structure which is designed for use for residential purposes, except hotels, motels, boarding houses, lodging houses, tourist cabins, apartments, and travel trailers.

b. Single Family - A structure arranged or designed to be occupied by one family, the structure having only one dwelling unit.

c. Two-Family - A structure containing two dwelling units separated from one another by a solid wall or floor. For the propose of this chapter, the term "two-family dwelling" shall not apply to a single-family dwelling containing an accessory apartment.

There was discussion between the Board as to what was seen on the site visit. The members that were able to visit the site agreed that there were separate facilities, but the partitions (the wall and door) were hard to distinguish if they did exist. If they did exist, there were questions whether they were a solid partition as stated in the two-family dwelling definition. Since there was mention of a locked door and a bookcase made of plywood, several members were uncertain if these constituted a solid partition as referred to in the definition.

Mr. Farmer stated that the Board need only to confirm or over turn the Zoning Administrator's decision that Mr. Vermillion does not have a lawful non-conforming multi-family use of the property.

Mr. Rosenberg motioned in favor of the Zoning Administrator's decision.

Ms. James seconded the motion.

The motion was carried four to one.

2. ZA-2-88 William Welter

Mr. Farmer notified the Board that Mr. Welter no longer needed a variances as a suitable location for his garage had been found at 105 Overlook Drive in the Kingspoint Subdivision.

E. NEW BUSINESS

1. ZA-5-88 R.H. Smith

Mr. Farmer stated Mr. R. H. Smith had requested a 5.3 foot variance from the side yard provisions of the James City County Zoning Ordinance in order to erect an addition to his dwelling. Mr. Farmer further stated it is the staff's recommendation that the variance be denied as no legal hardship had been demonstrated to justify granting the variance. Granting such a variance would afford a special privilege to the applicant, otherwise denied similar properties in the same district.

Mr. Rosenberg opened the public hearing.

1. Mr. Smith, the applicant, stated he purchased the home in February, 1987, with the plans of retirement. He stated he planned to work on the addition during his retirement. He further stated that his existing garage shields the addition from the front view of the property. Both of his neighbors are close if not right up to the property lines.

Mr. Rosenberg closed the public hearing.

3. ZA-6-88 Jack Travelstead

Mr. Farmer stated Mr. Travelstead had requested a 6 foot variance from the rear yard provisions of the James City County Zoning Ordinance in order to erect a single family residence. Mr. Farmer further stated it is the staff's recommendation that the request be denied. Apparently the contractor is willing and able to provide a remedy which would not require a variance. The owner's desire for a variance has prevented this. No hardship has been shown. There are no unusual characteristics of this property requiring the terms of the ordinance be varied. Granting this request would clearly be a special privilege otherwise denied similar properties in the same zoning district.

Mr. Rosenberg opened the public hearing.

Mr. Travelstead, the applicant, stated that he designed his own building plans. He said he was not aware of any setback requirements. He said there were several reasons for the location of the structure:

1. He and his wife own several horses and they want to use most of the land for pasture.
2. The only trees on the property are to the rear.
3. He wanted to stay away from neighbors.
4. The Health Department told him to stay away from the well because of treated materials.

Mr. Rosenberg inquired as to the status of the construction on the house.

Mr. Travelstead responded that the last thing that had been done was the foundation. He presented the Board with several drawings showing the lot size and location to adjacent lots and the Reservoir. He felt that the Code Compliance Office had been at fault when the permit was issued for not noticing that the wrong corner of the house had been used for footage to the property line. He also had been talking with the City of Newport News regarding the variance request. The City of Newport News had no objection to his request since they have no intention of building by the Reservoir. The property along the Reservoir is to be used as a buffer.

Mr. Batton, the contractor, stated he had helped stake out the house but had failed to notice the setback encroachment. The encroachment was not noticed until after a survey had been done.

Mr. Rosenberg asked why a survey had been conducted when most surveys are conducted after the construction is complete.

Mr. Travelstead responded that he did the survey at his attorney's request.

Mr. Rosenberg closed the public hearing.

Mr. Rosenberg motioned to grant the variance.

Mr. Ripley seconded the motion.

The motion was carried unanimously.

4. ZA-7-88 David Jones

Mr. Farmer stated Mr. Jones had requested a 2-foot, 3-inch variance from the side yard provisions of the James City County Zoning Ordinance in order to construct a detached accessory structure. Mr. Farmer further stated it is the staff's recommendation that the variance be denied. No unusual characteristics peculiar to the property have been shown and no legal hardship has been justified. The applicant's desire to construct the parking shelter is solely for convenience, as plenty of other suitable building area is available on the property.

Mr. Rosenberg opened the public hearing.

1. Mr. Jones, the applicant, stated he has lived in the house for 20 years. He stated that none of his neighbors object to the proposed structure. The landscaping of the yard will make the structure barely visible from the street. There is also a fence directly behind the proposed structure. The area where the proposed structure is to be placed is graveled and presently being used.

Mr. Rosenberg closed the public hearing.

Ms. James motioned to grant the variance.

Mr. Ripley seconded the motion.

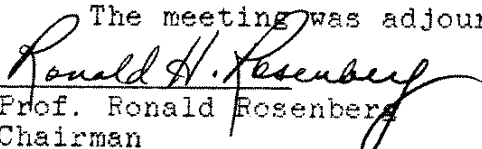
The motion was carried unanimously.


F. MATTERS OF SPECIAL PRIVILEGE

None

G. ADJOURNMENT

The meeting was adjourned at 9:30 p.m.

  
Prof. Ronald Rosenberg  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary to the Board