

BOARD OF ZONING APPEALS

December 3, 1998

A. ROLL CALL

PRESENT:

ABSENT:

Mr. Feigley
Mr. Fischer
Mr. Nice
Mr. Giedd
Ms. Wallace

OTHERS PRESENT:

John Horne, Manager of Development Management
Leo Rogers, Deputy County Attorney
Allen Murphy, Zoning Administrator
Scott Denny, Code Compliance Officer
John Patton, Code Compliance Officer
Jim Breitbeil, Development Management Technician

B. MINUTES

The minutes of the November 5, 1998 meeting were approved as submitted.

C. OLD BUSINESS

None

D. NEW BUSINESS

Case Number ZA-10-98; Dr. Dale Sprenkel

John Patton presented the staff report stating that Dr. Sprenkel, owner of Noah's Ark Veterinary Hospital at 7297 Richmond Road, is requesting a variance in order to expand his existing veterinary hospital. The requested variance would reduce the required 20-foot side yard setback for commercial buildings to 10 feet. The property is in the B-1, General Business, zoning district.

In 1983 Dr. Sprenkel converted an existing single story house into a veterinary hospital. The house was only 10 feet from the left side property line. In 1988 Dr. Sprenkel expanded the hospital. He added a new addition to the left of the original building that met all current requirements. He was also granted a side yard variance of 10 feet by the BZA, case number ZA-3-88, to expand to the rear of the original building. The current request is similar to that variance except now he desires to expand the

original building toward the front by approximately 10 feet to add additional treatment rooms. The veterinary structure is nonconforming due to the side yard encroachment. Nonconforming uses may expand provided all current zoning requirements applicable to the expansion are met. Since this request does not meet current zoning requirements for side yard setbacks, it is not permitted under the nonconforming section of the ordinance. Therefore in order to expand to the front, a variance to the side yard would have to be given for the underlying zoning district which is B-1. Dr. Sprenkel has stated a need for improved efficiency and appearance as justification for granting the variance. He is requesting the variance to keep the patient treatment rooms in the same general location as the existing treatment rooms to facilitate the doctors and patients moving between treatment rooms. However, there appears to be adequate room for expansion of the new addition to the left of the old building. This would not require a variance but would be less convenient to both doctors and patients.

The applicant has failed to show that any hardship exists. There is adequate area to expand the hospital without requiring a variance. Staff cannot recommend granting a variance solely for convenience or aesthetics. As demonstrated by the nonconforming section of the zoning ordinance, it is the intent of the zoning ordinance to limit the expansion of nonconforming buildings to only what would meet current zoning requirements and not expand the nonconformity, even though the use is permitted.

Mr. Feigley stated the requested variance would reduce the required side yard setback, yet it appears that the applicant is asking for a variance for the front setback.

Mr. Patton said the building will meet the required front setback. It is the same problem the applicant had in 1988.

Mr. Nice stated the applicant is not encroaching on the side yard setback any more than the existing nonconforming building already is. The applicant is not asking to go any further to the side, just moving forward.

Mr. Patton stated that the side yard setback in B-1 is twenty feet and there already is an 8 ½-foot encroachment.

Mr. Geidd asked if the case in 1988 established the side yard setback or was the variance only for the building addition at that time.

Mr. Patton stated that it did not establish a new side yard setback which is what the BZA typically does under normal conditions – grant a variance for an existing building or for a particular expansion, not a blanket coverage.

Mr. Nice asked if the language was clear from the case in 1988 that it did not establish a side yard setback.

Mr. Patton stated yes.

Mr. Feigley opened the public hearing.

Dr. Dale Sprenkel stated he bought the building in 1983 and it was a three-bedroom home. This application is to improve the aesthetics of the building as done in the 1988 case. This is a request to improve the overall appeal of the property and address the problem of traffic flow inside the building. Dogs with owners are coming and leaving at the same time. Children are also present in many cases. Expansion of the building will facilitate a counterclockwise flow and get rid of the bottleneck problem at the front counter. Other veterinarians have agreed that this seems to be the best solution and the neighbors have no objection. The house, when purchased, was on a crawl space. The expansion in 1988, by necessity, was put at ground level which is currently a problem. People are coming into the building using steps up and steps down to enter the property. In the future, there are aspirations to add a grooming room that would best located at ground level. It would be expensive to make rooms; one on ground level and the other on the crawl space. There is also the impact of the public going up and down steps and the liability of people getting injured.

Mr. Feigley asked if there is an elevation of the building.

Brian Harris showed an elevation of the building with the kennel remaining on ground level and stated the addition will conform to the existing building structure.

Brian Harris stated this design was a last resort and the way to get an accessible elevation. There was an effort made to build the addition without having to apply for a variance.

Mr. Geidd asked in what way was the building going to look better.

Mr. Harris stated the home is a 1960s-plain home and he intends extend part of that for the reception area and put on a hip roof with some landscaping. Overall, giving it a good facelift.

Mr. Feigley closed the public hearing

Mr. Nice stated this is a common sense approach case. The applicant is not asking to extend into an already established side yard setback by a previous variance. It has the necessary zoning requirement to meet the setback from the road. Visually, the building fits in with the neighborhood and is setback a good distance from the road compared to adjacent buildings. It is in the owner's best interest to improve the aesthetics of the building. The hardship would be found in the access to the patients and the location of the animals and the rooms that are necessary. It would be an undue hardship to ask the applicant to move additions to the rear and stated he would be in favor of granting the variance.

Mr. Feigley stated he was on the Board of Zoning Appeals when the case was approved in 1988. He looked at the property and feels the addition will not spoil the aesthetics of the community, but may improve it. The building is setback considerably farther than

the neighbor from the road. The addition does not appear to create a problem with parking in the front of the building and will only come out to approximately where the flowerbeds are. He stated he would look kindly in granting a variance in this case.

Mr. Geidd stated this is already nonconforming and the addition will not make it more nonconforming as long as it is in-line with the original building. The side yard can be built on up to where it meets the front yard setback. He stated has no problem with granting the variance.

Ms. Wallace stated she does not have a problem with it either. In addition to the convenience and the aesthetic issue, the safety issue needs to be considered as well. Sometimes the safety issue is overlooked and reiterated her support in granting the variance.

Mr. Feigly made a motion to grant a variance reducing the side yard setback to ten feet with the condition that any new additions conform to existing building lines.

Ms. Wallace seconded the motion.

The motion was granted unanimously (5-0).

Case Number ZA-11-98; Blockbuster Entertainment

Mr. Allen Murphy presented the staff report stating that Mr. Will Sherrod of Anchor Sign, Inc., on behalf of Blockbuster Entertainment, has appealed the Zoning administrator's interpretation of Section 24-68(c) of the Zoning Ordinance in order to place two additional wall mounted signs on unit 6 in Monticello Marketplace Shopping Center. The appeal is made to allow an additional 50 square-foot sign on the side of this unit and an additional 50 square-foot sign on the rear of this unit.

In order to better explain the interpretation of the sign ordinance, as it relates to this particular case, Mr. Murphy stated he needs to walk the board through the pertinent sections for building face or wall mounted signs.

Section 24-68(b) states *In zones where business or manufacturing is permitted a building face sign shall also be permitted. The area devoted to such signs shall not exceed ten percent of the area of the first story face of the unit or 60 square feet whichever is smaller. Such signs shall be mounted flat against the building on the side measured above.*

This section is intended to allow building face signs on the front of buildings. The words *face of the unit* supports that and the requirement that the sign be mounted on the side of the building one measures, i.e. the first story face of the unit supports that. In applying this section one must then decide what the face of the unit is and then mount it on that side. In this case a sign permit was granted for the front of unit six and this is shown in the photograph contained in your packet.

Section 24-68(c) reads as follows: *When the same building, the same one talked about in section (b) faces onto a public right of way or parking lot on the rear or side of the building, an additional sign may be erected at the entrance on that side.* The key words here are *at the entrance on that side.*

Mr. Murphy read both these sections and believes you have to read both to see how they fit together. Section (b) applies to front building face signs and section (c) applies to wall mounted signs on that same building that are allowed at the entrances on the side or rear of that same building. In this case there is no entrance on the side of the unit. There is a service door on the rear of the unit similar to service doors on all other units in the center. Since there is no public entrance at the side or rear, it is MR. Murphy's interpretation that the applicant is not allowed signs on the side or rear, as this unit is not in compliance with Section 24-68(c). Generally, in shopping centers he believes the intent of section (c) is to allow additional wall mounted signs to help direct patrons or customers within a parking lot or in close proximity to the business to secondary public entrances on a given building or unit. He does not believe this section was written to allow a business to cover all sides of a building with signage for maximum exposure. Hence the provision that these signs be erected at the entrance on that side. He believes the intent was that a building had to be designed with multiple public entrances in order to take advantage of that sign ordinance section of the ordinance. He would add that he has worked on these sections of the ordinance in the past. The latest revision to body of the text of section (b) and (c) occurred in October of 1998. A staff planner under Mr. Murphy's supervision and he, worked on this language and has some confidence about intent with these two sections. This is not a case where he is interpreting language that he did not participate in drafting.

The applicant has stated that he was given verbal approval by staff. This is not correct as noted in the staff report. Mr. Matt Maxwell did not give any approval to these signs and that is not his area of responsibility. Scott Denny did review the conceptual plans but did not give formal approval of the location or placement of these signs, and questions about what transpired between the applicant and him should be deferred to Mr. Denny.

Draft revisions to the entire sign ordinance are currently in front of the Board of Supervisors for consideration. The draft ordinance, which has the support of the Planning Commission, continues Mr. Murphy's interpretation of Section 24-68(c) and includes stronger clearer language that supports additional wall mounted signs on the rear or side of buildings only where public entrances are located.

Two options are available in the ordinance for the applicant as mentioned in the staff report. Both involve consideration for the unique signage systems for the shopping center by the Planning Commission or a unique signage system for the entire planned community – all of Powhatan by the Planning Commission and the Board of Supervisors. Those options have been taken advantage of in other planned communities. That option for shopping centers has been taken advantage of in, what was Berkeley Commons, and is now Prime Outlets. In particular those green staple

signs that are in front of, but are not actually attached to the building. It should be noted that Shackelford's restaurant intends to pursue one of those options and has chosen to withdraw their BZA application.

The applicant has stated the need for additional visibility for his business. Staff believes that this business has adequate visibility with the sign already approved and that the shopping center as a whole has adequate visibility. Signs on the side and rear, directed at Old News Road, would seem to staff to have little benefit given the now limited traffic on this road, since the main entrances to the center for people other than residents along Old News Road are off of Monticello Avenue and Powhatan Parkway. Staff anticipates very few customers to the center using the entrance of Old News Road closest to this unit. Some adjacent property owners have objected to the placement of these signs or other signs on the back and/or side of this center. Those property owners were notified through the normal process for notifying adjacent property owners.

As part of making this formal interpretation of Section 68(c) Mr. Murphy consulted the County Attorneys, the Planning Director and the Development Manager. Each agrees with his interpretation.

Mr. Murphy recommends the Board uphold this interpretation. He believes to do otherwise would allow a proliferation of signs on this center and other areas of the County that would not be in keeping with the overall intent of the ordinance or the County's development policies.

Mr. Nice stated he drove out to the shopping center today and that ordinances can be read in many different ways. This particular building has a storefront system that extends to the side where they are requesting the additional sign. He asked that with the addition of a door on the side a sign would be permitted if this is the way the ordinance is interpreted.

Mr. Murphy stated that if there were a public entrance on the side, it would qualify for the placement of a wall-mounted sign in accordance with Section 24-68 (c). That side does face a parking lot and a public right of way.

Mr. Nice said he rode around the county and, at Prime Outlets, all of the corner units have signs on the side of the stores. The corner units pay a premium for that location and pay the premium for the visibility of their retail unit. In this case he does not think it is reasonable for this unit to place a sign on the rear of the unit due to limited access to News Road. He does think it is reasonable to place a sign on the side where the storefront continues around the side. In this case, because the design of the building, where there is visibility from the side of the building. Mr. Nice stated that if you enter from the road that is behind the center, you can see signs all the way down to the left on the front of the buildings and it would be natural for a business man to want a sign placed on the side, which in essence, would fit in with every thing else that you see there. He thinks that it is splitting hairs over if that is an entrance in his opinion. He agrees with the Zoning Administrator about placing a sign on the rear. A sign on the

rear does not serve any purpose. He would, however, have a hard time not giving the business the permission of placing a sign on the side.

Mr. Fischer stated he went to Monticello Marketplace today and said that he doesn't think anyone who goes out there does not know that Blockbuster is there. Blockbuster is one of the four biggest stores in the shopping center. He does not see the particular business advantage of placing a sign on the side that would spoil the brick building. And most people will park in the front, not in the back.

Mr. Geidd asked Mr. Mr. Murphy what is the intent, since he was involved in the origin language, of limiting signs on the side where there is not a public entrance. He also asked why are we limiting signage at all when there may be a business advantage involved.

Allen Murphy stated that historically in James City County, one thing that keeps our county unique is the nature of our sign ordinance. Compared to other jurisdictions, we are very conservative and restrictive. Our Board, in approving the ordinance has made a statement about the aesthetic qualities and the quality of life issues that have been reflected in the Comprehensive Plan. He drafted some of the language regarding the face of the unit and how it is measured. The part about there being an entrance on the side, that has been in there as long as he can remember – at least twenty years. He has spoken to Bernie Farmer, and it is a difference in interpretation.

Mr. Geidd asked if that is the reason that at Berkeley Commons there is signs on the side units.

Allen Murphy stated they were permitted. He added that the draft ordinance is currently in front of the Board. The draft ordinance allows a business owner to swap the location of a building face sign. For instance, if a business owner had an internal sign but would rather have that sign on another end of the building, facing the road or the parking lot, that option would be available. That provides more flexibility on the location of the sign but does not provide for an additional sign.

Mr. Geidd asked that in relation to businesses having a larger expense for occupying a corner unit, does the county do a good job in communicating the sign ordinance to the people while they are leasing the unit and if the people know that they are only permitted to have one sign.

Allen Murphy stated that it depends on the developer. Some developers are more familiar with our ordinance as well as some contractors. We make an effort when development plans come in to talk about that if it is a large development. He stated that staff did do that when dealing with the proposal for Lowe's and that it varies.

Mr. Feigley opened the public hearing.

Mr. Will Sherrod, of Anchor Signs, stated Anchor signs do all the signs for Blockbuster in the southeast and portions of the northeast. When Blockbuster wants to develop a new site they will ask Anchor Signs to conduct a sign survey and find out what they are allowed by the landlord and the ordinance based on elevation drawings from the developer so they can give them a good sign package so they know exactly what they can have when they develop the site. They use the drawings provided to them and, nine times out of ten, they incorporate them into the lease. The signage issue is a big one for Blockbuster – they are very adamant about having adequate signage so they can be identified. Because they care so much about the signage, we like to send copies of the drawing based on the ordinances; in this case it is James City County, to have them review it. We understand that it is very preliminary because we originally did this in November of last year when the entire project was still dirt and we based the drawing on a preliminary rendering on what the development was going to look like. It had News Road continuing along the back of the building, so ideally, we did need signage on the side – potentially on the rear, as well as on the front of the building. The ordinances he got were based out of Charleston, SC so a lot of it is done over the phone. The ordinances he got, over the phone, from Mr. Maxwell and Mr. Denny as well, said he was allowed a front wall sign at a maximum of 60 square feet and if the side or rear had a public right of way, or face a parking lot, we were allowed an additional sign there. The terms of the entrance did not come up when he was discussing it over the phone, which may or may not have been a misunderstanding on the part of Mr. Sherrod or by someone else.

Once the drawings were compiled in a sign package for Blockbuster, they were sent to Mr. Maxwell for preliminary review. This was to give him an idea as to what they were allowed or not allowed so there would be no problems down the road when it came time to get a permit. The drawings were sent to Mr. Maxwell on the nineteenth of November last year and ended up getting a verbal approval for the size of the signs. They were all shown on the same elevations that were submitted for the permits. Mr. Sherrod received a verbal approval and comments would be faxed as soon as possible. It was December 22 and Christmas rolled around, and for whatever reason, the comments were not sent down to him, and he kind of passed it along because he got verbal approval.

He based the signage on the fact that the store frontage does extend down the right hand side. There is visibility on News Road. He was trying to get visibility from the parking lot in the rear and have signs on the front of the building. The sign on the rear of the building is an added sign. It is not exactly a necessary sign and he would be willing to drop that if it causes any problems between having all of it denied or all of it granted. He would be willing to drop the rear sign on the building because there is no storefront there that actually sees the sign.

Blockbuster committed themselves to an end space, and probably paid a little more money than some of the in-line tenants there so they could have this added visibility. Also, based on the sign package that was presented to them which received somewhat of an approval, a verbal approval from the county, saying this is allowed. He left it

there. When he applied for the sign permit, he received a call from Mr. Murphy saying the signs on the side and on the rear would not be permitted unless there was a public entrance.

He did not want to put Mr. Denny or Mr. Maxwell on the spot and say they gave him verbal approval and that he should get the signs no matter what, but from all the communication he had with the county, that was the interpretation he got – that the signs on the side and on the rear would be allowed under the ordinance.

Mr. Feigley asked what is unique about Blockbuster that would not apply to any other corner.

Mr. Sherrod stated that, to his knowledge, he was not aware that other units would not be allowed a sign on the side. There is nothing unique but the additional visibility on the road. In most places corner units are allowed to have signs on the side of the building. This is one of the unique places where he has been told they are not allowed to have signs on the side.

Mr. Feigley called to the attention the ruling of the Supreme Court of Virginia that states that wherever you have a problem with an ordinance that is a general or a reoccurring problem, the best solution for this is to change the ordinance, or seek other means and not have to continuously ask for a variance. They ruled against the BZA in Virginia Beach in a case just like this.

Mr. Sherrod stated that this is a first and they do not typically ask for a variance everywhere. This just popped up when he was applying for a sign permit.

Mr. Feigley asked if this was not a unique hardship for Blockbuster.

Mr. Sherrod stated that it is unique at this point because of the new interpretation of the Zoning Administrator and it is unique to the end units in the shopping center.

Mr. Feigley asked that this could be a common problem for any corner lot.

Mr. Sherrod stated yes. Apparently there are changes to the ordinance on the docket that would clarify things.

Mr. Feigley stated that there are other avenues that Blockbuster could approach as recommended by the Zoning Administrator.

Mr. Sherrod stated that they could do a planned development change, but Blockbuster was told that they could have the sign based on the ordinance, and now for whatever reason, they are not allowed. Blockbuster asked Mr. Sherrod to do what he can for the situation.

Mr. Fischer stated that cause or hardship has to be shown grant a variance. Every one who enters the shopping center knows that Blockbuster is there. He stated that if an addition sign can be shown to increase the amount of business, he would be willing to grant the variance, but does not see the business purpose behind it.

Mr. Sherrod stated they are not applying for a variance, but are appealing the interpretation of the Zoning Administrator.

Mr. Feigley asked if they did not agree with the Zoning Administrator's interpretation, what would be the next plan of action.

Mr. Sherrod stated he would just ask for a sign on the side of the building as submitted for. There is significant visibility on the side of the building from News Road that is still a public road and it is essential that Blockbuster has a little bit of identification on that side. When looking up the other row of buildings, along the storefront, you can see all the signs and then you have a storefront on the side of Blockbuster that is void of any sign. The sign drawing submitted on the side of the building shows the torn ticket on that brick facade. He would be willing to put it on the storefront façade as it is on the front of the building.

Mr. Geidd stated that the storefront facade faces right into the facade right across from it and that cannot be seen from out there. The only cars that parked in that back lot came by Blockbuster and went through the two buildings and parked in that lot to go in to the stores. They did not come off of News Road. News Road is an appendix and has been made obsolete. There is no traffic except for the six houses on it.

Mr. Feigley stated he could not see the side of the Blockbuster building until he turned into the shopping center and could not see it from the road. He sat there for one hour and saw four cars come in that entrance. The purpose of a building sign is not to advertise the building for someone passing by on the road, but to locate the store once they have gone to the shopping center. He does not have much faith in the high visibility from News Road or any other road. He stated his opinion that a building face sign in a shopping center is for to find the entrance to that building. He asked if a sign is there to find an entrance and there is no entrance on the side of the building, what is the purpose of the sign.

Mr. Sherrod stated they are not trying to create visibility for an entrance, but visibility for the business.

Mr. Feigley stated that putting a sign there would have very little appeal to people passing by on News Road.

Mr. Sherrod stated the impact would not be a great as on the front of the building, but it will have some sort of impact. If Blockbuster Entertainment thought it would not be beneficial to their business they would have no problem and do not bother with it.

Blockbuster asked him to do please do what he can to get a sign on the side of the building.

Ms. Wallace asked if there was a Blockbuster recently opened in Kiln Creek.

Mr. Sherrod stated yes.

Ms. Wallace asked if that there is something unique to Blockbuster that they must have more than one sign.

Mr. Sherrod stated that it is not unique to Blockbuster. Blockbuster tends to have end spaces in shopping centers and typically likes to have visibility on both elevations.

Ms. Wallace asked if it is customary for Blockbuster to have more than one sign because they are in an end unit.

Mr. Sherrod stated that it is not customary because of different ordinances for different jurisdictions, but if it were permitted, then there would be more than one sign.

Ms. Wallace stated that Blockbuster is well known in the area and an additional sign would not produce additional customers. In addition, the sign would not be very visible on the side of the building.

Mr. Sherrod stated that Blockbuster believes that if a sign attracts more customers, than it is better than attracting none. They are big advocates of signage and try to get additional signs whenever they can. When they are under the impression that an additional sign is permitted, and plan on installing the sign, they will pursue trying to have permission to place the sign.

Mr. Nice asked how confident were that your verbal approval was legitimate.

Mr. Sherrod stated that he did not expect it to hold any legal wait and normally takes it on people's word when drawings are submitted that there is a good understanding of what is permitted in accordance with the ordinance. When verbal permission was granted, it was left at that.

Mr. Giedd asked if there was any written check-off or any fax received to confirm permission.

Mr. Sherrod stated no. He received verbal approval on December 2, 1997, the holidays rolled around and the issue just sat without action with understanding that there would be no problems.

Mr. Giedd stated that misunderstandings can happen when talking over the phone, and can happen on both sides.

Mr. Fischer asked if Mr. Sherrod recorded any conversation.

Mr. Sherrod stated he logged the conversation in the computer, but did not record it. They do not try to use it as legal weight against someone. In fact, the letter he submits with it says your approval does not allow us to build or install this, but does say that it is allowed under the current ordinance.

Mr. Leo Rogers, Deputy County Attorney for James City County, stated he would like to clarify the procedural nature of this appeal. This is a unique case for the Board of Zoning Appeals. Ordinarily you have variances that come before the BZA that are property specific and have to deal with unique circumstances with a property or deal with an owner or business or how the topography of the property might affect the application of the law. In this case there is the Zoning Administrator's interpretation of the ordinance. That will have a global impact. The issue in this case is whether the Zoning Administrator's interpretation of the ordinance adopted by the Board of Supervisors is or is not correct, County-wide. Whether we have a Blockbuster stores that ordinarily puts signs either on the side or the back is really not the issue. It is the Zoning Administrator's interpretation of the ordinance adopted by the Board of Supervisors. The real focus should be on the Zoning Administrator's opinion.

Mr. Fischer asked what is the purpose of the phrase; *an additional sign may be erected at the entrance of that side*, if no entrance is required. He stated that the interpretation does not seem so outlandish – it says *entrance*. It seems that they are asking for a variance and not a determination of the interpretation of the ordinance.

Mr. Rogers stated that there was originally a request for a variance and this is not an item that can receive a variance. They are not asking for a size alteration for a structure, but for an additional sign. This does not qualify under the definition of what was permitted under a variance. The only possible procedure for this to get to the BZA is the interpretation of an administrative decision.

Mr. Jim Etchberger, resident at 101 Jestors Lane, stated he lives across the street from where the Blockbuster sign will be directed at and he does not rent videos. He was not thrilled with the idea of a shopping center going in directly across from his property and spoke against it at a public hearing. He stated the developer has done a good job as far as lighting and making the back of the center aesthetically pleasing. He does not want to look through his bay window and see a sign. The reason the center is aesthetically pleasing is because there are no signs and the lights are pointed downward. Old News Road is going to be a dead end. The only people who would see that sign are the ones who drive on that street every day. The side of the store has glass on it and he can see there are videos in the store – it is the video store in Monticello Marketplace. If you come off of New News Road and come behind Target, you drive about 1/10 of a mile before clearing Target. There are about 75 Leyland Cypress trees put up for screening. The trees are 8 to 10 feet tall and grow about 3 feet a year. The rear of the building will be screened so a sign placed on the back of the building will not be seen any way. Another 1/10 of a mile on News Road there is another entrance. The only users of this

entrance are tractor-trailers for deliveries. Very seldom do other people use the back entrance. The only way to see a side sign is to go through Monticello Marketplace, in which you would see all of the front store signs anyway, go to Old News Road and go in the side entrance. The common sense approach says there is no need for that sign. Aesthetically for the homeowners, signs would take away from the efforts put into making a nice shopping center. The sign would be a bright blue and yellow sign that would show into his back yard. He does not see any reason for a side or rear sign. The residents know where Blockbuster is located and the signs will serve no purpose.

Mr. Lawrence Beamer, former landowner at Monticello Marketplace, stated he sold the land to Nusbaum to build the shopping center. Powhatan Secondary is zoned R-4 and this zoning designation is exempt from county constraints. The county has no requirements for an R-4 zoned area. He demanded that the buildings be made of brick. He spent a lot of time speaking to Nusbaum and working with county staff over control of the shopping center. The county did not have to have control because everyone can be proud of the shopping center that exists there today. Jim Etchberger, the speaker before Mr. Beamer, was the only one who spoke against the shopping center when he just started to build his house. Mr. Beamer owned the land since 1978, but was still sensitive that residents were going to be on the corner of the shopping center. He was sensitive because the residents would have to look at the back of the shopping center. The shopping center, unlike others, backs up to a residential area. Initially there was a cream color that did not look good. It was re-painted to a more appealing color. There are slate roofs, even on the back of the center. Lights in the back were another item that was corrected to help please the neighbors in the back. He feels they did everything possible to give the county a shopping center of good looks and quality. The request by Blockbuster for the signs is unusual. There is nobody coming down News Road looking for Blockbuster. He does not think Blockbuster has a need for a sign on the side either – there is no hardship. At some future time when business may be poor, Blockbuster may be able to convince others that a hardship exists and that a sign is necessary, but that is not the case now. There was four years of planning going into that shopping center, and he has not heard one complaint about it. Not to hear one complaint about a shopping center is unheard of. Anyone who is in the shopping center parking lot can see that there is a Blockbuster there. This is a case where there is no hardship, and therefore no variance should be given. He does not think someone from out of town talking on the telephone should go to the bank on what was thought to be said on the phone. The person better get it in writing.

Mr. John Horne, Manager of Development Management, stated he is present to verify what Mr. Murphy stated earlier in terms of the intent of the ordinance. He manages the department that has planning, zoning administration, and code compliance. The people who write the ordinance, review it, and enforce it are under Mr. Horne's managerial direction. The intent is clear to him. The intent of the sign ordinance is that only where there is a need for the public to be directed to a public entrance, in a very unusual circumstance on these corner lots, should there be additional signage. In terms of the sign ordinance in general, he thinks it is multi-faceted. One important objective of the sign ordinance is to allow businesses operate very profitably in the county. He thinks

James City County has a very good record of that and very profitable stores in the county. One thing that can be done to continue to be an unusually profitable place is to maintain a different ambiance and appearance than all the other retail locations around the county and Virginia. This type of shopping center, with the efforts they put in place, will make businesses more profitable in the long run than a short-term solution of additional signage for additional visibility. In terms of the intent of the sign ordinance, the intent is to balance the need for reasonable signage or good profitable businesses with the long term goal that we all profit from – the appearance to the county that makes us something different. In the long run, it makes us somewhat more profitable to our businesses, if we can be different than other locations. He agrees with Mr. Murphy's interpretation of the intent of the ordinance in this case - to allow very profitable businesses to operate in the county, as we are certain that Blockbuster will be in this location.

Mr. Nice stated he thinks it is interesting that all of the heavy hitters are present tonight. This is not an ordinance change. He asked where were the heavy hitters from the county in 1991 when the ordinance was last reviewed. Since 1991 and before we have been operating under this same ordinance. We have been operating and allowing businesses to do what this business wants to do. The hardship is that we want to bring businesses into the county, and they operate under a method of a zoning ordinance being interpreted one way, then another day there is a new zoning administrator and not a new law. Now there is a new interpretation of the same ordinance we have been operating under forever. Businesses have the right to assume that they can expect a reasonable interpretation of the ordinance that has been in place for ten years. He asked why are we discussing the ordinance many years after it has been in effect. He also asked why have you not come out in the past against this ordinance to say there will be absolutely no signs on the corner of buildings that do not have a doorway on the side.

Mr. Horne stated that ordinance are interpreted by people. You cannot write an ordinance that covers every conceivable circumstance that may come forth. They are interpreted by reasonable people trying to do the best they can. As you go through the years, we learn certain things. One thing we recently learned is that, in our opinion, two things have been taking place. One being that previous interpretation was incorrect – we understood that what we have been doing, and now we understand that was incorrect. In the draft ordinance, we are placing language in there that makes it crystal clear, so there is no further confusion once that new draft ordinance goes through. Clearly, there has been some confusion. We do not think that the current interpretation is incorrect, but we do not want to confuse people. The language in the new ordinance makes it crystal clear, in our opinion, as to what this section means. Therefore, if there is a turnover in the zoning administrator position, the new zoning administrator has better language so they will not have to interpret the past. This is what we hope will take place is that the zoning administrator does not have to come back to the Board of Zoning Appeals because it will be so clear in the ordinance.

Mr. Fischer asked how many corner stores were permitted to put up signs without an entrance in the past eight years.

Mr. Horne stated he does not have that information.

Mr. Fischer asked if there have been any.

Mr. Horne stated yes, there have been some.

Mr. Geidd stated that in re-writing the ordinance you had the opportunity to make a decision as to whether you like the other interpretation and could have taken the word *entrance* out if you felt that was appropriate. He asked if Mr. Horne has deemed that inappropriate to have a sign without the entrance and are sending that to the Board of Supervisors, who can if they like take it out.

Mr. Horne stated yes.

Mr. Geidd stated the Board of Supervisors makes the decisions and he does not have a problem with that.

Mr. Nice stated that as a businessman, it is unfair to change the rules in the middle of the game and thinks that is what is happening.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that what we are ruling here tonight is whether we agree if the interpretation of the zoning administrator should be upheld or not. It is section 24-68 (c).

Mr. Geidd stated he does not want to put himself in the position of whether he agrees or disagrees with the ordinance. The question is whether we agree or disagree with the enforcement of what is written in the ordinance. He does not have a problem with reading the ordinance and agreeing with what he said. We will be in big trouble if we start to put ourselves in a position in making decisions based on whether the decision encourages or discourages businesses coming into the area – that is for the Board of Supervisors. The Board has the opportunity to decide if they can put up a sign or not if they think that it appropriate for the county.

Mr. Nice stated this is not a unique situation. There are hundreds of buildings with signs on the side exactly like this case and what the county has supported until tonight.

Mr. Feigley made a motion that the interpretation, rendered by the zoning administrator, in section 24-68 (c) of the zoning ordinance be upheld.

Ms. Wallace seconded the motion.

The motion was approved (4-1)

Aye: Fischer, Geidd, Wallace, Feigley

Nay: Nice

Case No. ZA-12-98; Shackleford's Restaurant

The applicant withdrew this case prior to the meeting.

Case No. ZA-13-98; 102 Oxford Road

John Patton presented the staff report stating that Mr. & Mrs. Bounds are requesting a variance in order to build an addition to their single family dwelling at 102 Oxford Road in James City County. The Bounds desire to add a 33.5-foot addition to the left side of their home to add a downstairs bedroom and bath to accommodate their need to avoid having to climb stairs. Although the house faces Oxford Road, the front, as defined in the ordinance, is along Dover Road. Thus the addition would be to the rear of the property for set back purposes. The proposed addition would require a variance from the required 35-foot rear setback to a rear setback of 25 feet.

The Bounds property is in the Kingswood Subdivision and they constructed the house prior to zoning being adopted by James City County. At the time the house was built in the 1960's only the Restrictions of the Kingswood Subdivision were the determining factors for the placement of the house.

As shown on the plat dated June 30, 1966, the building setback line appears to be 50 feet from Oxford Road and 60 feet from Dover Road. The house to the left of the Bounds house also faces Oxford Road and is also a corner lot with the right side of that house being the "rear" under the current zoning ordinance. The two houses are in excess of 125 feet apart.

The setback requirements by covenants are greater for front setbacks and less for the rear and side setbacks than under the current zoning ordinance. This had a direct impact on the placement of the house when built.

Staff is sympathetic with the applicants' request in this case. In staff's opinion the granting of this variance, where the physical separation between adjacent buildings exceeds current zoning requirements, would not materially effect the character of the neighborhood or adjoining property. However no clear hardship approaching confiscation can be shown. Therefore staff cannot recommend approval of the application.

Mr. Nice asked if Oxford Road was deemed to be the front of the house, would there be an encroachment.

Mr. Patton stated that it would not even be close.

Mr. Fischer asked why is there a question of which side is the front of the house.

Mr. Patton stated that the shorter of the two sides for homes on corner lots is determined to be the front lot. In this case, there is not a big difference between the frontage along the roads – only a fraction of a foot. But it does make a difference under the current zoning ordinance. This particular addition is on the rear of the house even though it appears to be on the side of the house from Oxford Road.

Mr. Feigley opened the public hearing

Mr. Bounds stated the front of the house has always been 102 Oxford Road as assigned by James City County. He stated his wife broke her ankle this past year and had trouble using the stairs. They did not want to sell the house and decided to build a bedroom downstairs for convenience since they are both in the seventies. He never anticipated that there would be a problem with what was determined to be the front or the rear of the house and was surprised to hear that there was a problem with the building plans. He stated that there was one line in the ordinance that stated what side of the house should be considered the front lot when on a corner of two streets. That was the first time that has been noted in almost thirty-three years. He feels that as they get older, they will need a downstairs bedroom and if they cannot, then the hardship is selling your house and building a new one at seventy-two years old.

Mr. Feigley closed the public hearing

Mr. Giedd stated that the adjoining homes will still remain far enough apart and the addition will not fringe on the privacy of the adjacent homeowners.

Mr. Feigley made a motion to grant a variance to reduce the rear yard setback from 35 feet to 25 feet.

Mr. Nice seconded the motion.

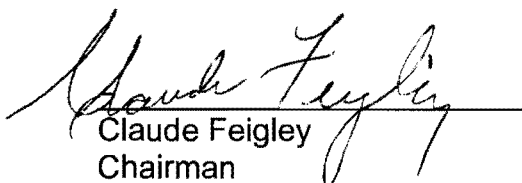
The motion was granted unanimously (5-0).

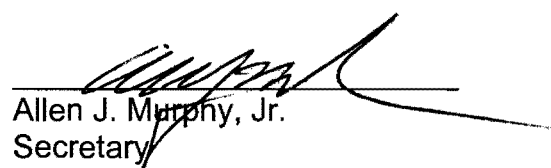
E. MATTERS OF SPECIAL PRIVLEDGE

None

F. ADJOURNMENT

The meeting was adjourned at approximately 9:20 p.m.


Claude Feigley
Chairman


Allen J. Murphy, Jr.
Secretary