

BOARD OF ZONING APPEALS
Minutes for the meeting of February 3, 2000

A. ROLL CALL

PRESENT:

ABSENT:

Mr. Feigley
Mr. Fischer
Mr. Giedd
Mr. Nice

Ms. Wallace

OTHERS PRESENT:

Scott Denny, Code Compliance Officer
John Patton, Code Compliance Officer
Andy Herrick, Assistant County Attorney
Jim Breitbeil, Development Management Technician

B. ELECTION OF OFFICERS

Being the first meeting of the year, the Board members elected officers to serve for the remainder of the year.

Chairman – Mr. David Nice
Vice-Chairman – Mr. Ken Giedd
Secretary – Mr. Allen Murphy, Zoning Administrator

C. MINUTES

The minutes of the September 2, 1999 meeting were approved as submitted.

D. OLD BUSINESS

None

E. NEW BUSINESS

Case No. ZA-1-00 122 Ware Road

Mr. John Patton presented the staff report stating Mr. and Mrs. Sutlive are requesting a five-foot variance to the left side yard setback requirement for an existing dwelling and a proposed addition to the dwelling they own at 122 Ware Road. This parcel was one of two that were subdivided out of a large parcel standing in the name of Robert T. Armistead in 1981. At the time of the subdivision the Armistead parcel was in the R-1 zoning district. The correct setbacks at that time, as they are now, were 60 feet from the centerline of the street (the street right-of-way is only 40 feet wide, this places the front

building set back line at 40 feet from the front property line), 35 feet from the rear property line and 15 feet from the side property line. The subdivision plat approved by the county on January 1, 1981 showed a 35-foot front setback, a 25-foot rear setback, a 10-foot left side yard setback and a 15-foot right side yard setback. On July 10, 1981 a boundary line adjustment to the property was approved by the county, this time the setbacks shown on the plat were 35 feet from the front and rear property lines and again 10 feet from the left property line and 15 feet from the right property line. In 1981 the house was constructed 10.4 feet from the left property line.

On August 5, 1997 the county approved a rear property line adjustment for the property. The plat provided and later approved, shows the same incorrect building setback lines as on the previous plats and the existing home 10.4 feet from the left side property line. The setback error was not detected with that submittal.

On December 1, 1999 in the process of reviewing building site plans, John Patton rejected a building permit application for an addition to the dwelling because it was proposed to be built 10.6 feet from the left side property line. He notified the builder, Bob Ripley, of the encroachment and told him that the setbacks had been improperly shown on the plat. The only remedy seemed to be to seek a variance for the building and the addition.

County officials erred in approving a plat with incorrect building setback lines. Although this does not constitute authorization to construct in violation of the zoning ordinance, it is clear how an individual homeowner or builder could make an honest mistake in constructing a home on the property based on the plats approved. Based on the plats approved a possible reason for the mistake is that at the time both the R-2 and R-3 zoning districts had the following wording for yard regulations:

"(a) Side. The minimum side yard for each main structure shall be ten (10) feet, and the minimum total width of the two (2) required side yards shall be twenty-five (25) feet."

In addition, the R-3 zoning district only required a twenty-five foot rear yard setback. From that it can be assumed that the county thought that the property was in the R-3 zoning district instead of the R-1 and failed to note that Ware Road was only a forty (40) foot wide right-of-way and these mistakes were carried forward.

This dwelling has existed for nineteen years with the incorrect left side yard setback without complaints from the neighbors or notice from officials. Staff believes applying the 15-foot setback to the existing dwelling would constitute a hardship. In the absence of adverse comments from the adjacent property owners and recognizing the culpability of the county, staff recommends approval granting a five-foot variance to the left side yard setback and recommends that the Board establish the left side yard setback at ten (10) feet for the existing dwelling and the proposed addition.

Mr. Feigley opened the public hearing.

Mr. Bob Ripley, contractor for the Sutlives, stated he has been working with the Sutlives on extending the dwelling. They used the approved plats for planning and during that time Mr. Sutlive purchased some extra property at the rear of his parcel. Then, they began the construction of the project. This is when Mr. Patton caught the left side yard encroachment.

Mr. Feigley stated that the he realizes the problem is not with the new construction, but lies with the old building. Any new construction would have to meet the current ordinance requirements.

Mr. Feigley closed the public hearing.

Mr. Nice stated that this is a case where errors are made by surveyors or plan reviewers and done in good faith. He stated he would be in favor of granting the variance.

Mr. Nice made a motion to establish the south side setback at 10 feet for the existing dwelling and the proposed addition.

Mr. Giedd seconded the motion.

The variance was granted unanimously.

Case No. ZA-2-00 114 Winter East

Mr. Scott Denny presented the staff report stating Mr. & Mrs. Lewis, property owners, applied for a variance to reduce the rear setback at 114 Winter East to permit the construction of a twelve foot by twelve foot sunroom over an existing deck. This sunroom, if built according to plan, would encroach three feet (3') into the rear thirty-five foot (35') setback. This property is also identified as parcel (05-0-0018) on the James City County Tax Map (32-1) and in the R-2, General Residential Zoning District.

Staff received an application for a building permit to construct a sunroom over an existing deck on December 9, 1999. The permit was denied due to the fact that the proposed sunroom, although it was to be constructed over an existing deck, would encroach three feet (3') into the rear setback. Upon examination of the application, original building permit and subdivision plat, staff discovered that the existing structure met the original setbacks. The house was originally constructed in 1984. At the time of the original construction the subdivision was zoned R-3. The R-3 zoning designation required a front setback of thirty five feet (35'), a rear setback of twenty five feet (25') and a combined side yard of twenty five feet (25') with neither side being less than ten feet (10').

The deck was not indicated on the original building permit. On February 18, 1992 the Board of Supervisors approved zoning amendment 31A-138 which changed all R-3 zoned property to R-2, General Residential. Presently, Section 24-258(b) of the James

City County Zoning Ordinance establishes the rear setback in the R-2, General Residential Zoning District, at thirty-five feet (35').

The strict application of the zoning ordinance would not produce an undue hardship. However, the current residents purchased the home in 1999 in good faith with the existing deck in place. Staff acknowledges that the approval of this variance would not create a larger building footprint than what is already there. Staff further acknowledges that the approval of this variance would not be of substantial detriment to adjacent property owners nor would the character of the district be changed. However, an undue hardship has not been demonstrated and a smaller sunroom addition could be constructed that meets current requirements, therefore staff cannot support this application. If the Board does not grant a variance for the addition, the Board needs to make a decision about a variance for the existing deck.

Mr. Feigley stated this case is similar to the one they just heard. The house was built in 1984 and the land has been rezoned. When the applicant applied for additional construction, it was identified that the house is actually nonconforming and encroaches into the setbacks. This application requires two considerations; the existing deck that is nonconforming and the additional structure that is proposed to be built on the deck.

Mr. Denny stated the applicants could not attend the meeting due to health reasons and there were no objections from adjacent property owners.

Mr. Feigley opened the public hearing.

Mr. Benjamin Azito of Milani Brothers stated he is the contractor for the construction of the deck. Mr. and Mrs. Lewis asked if Mr. Azito could come to the meeting and speak and their behalf. He stated Mr. Lewis is a stroke victim and the sunroom will allow him to enjoy his home since he is in a wheelchair.

Mr. Giedd asked if the location of the deck makes a big difference on the location of the sunroom.

Mr. Azito stated the cost of constructing the sunroom would increase approximately \$3700 if the deck were not already there.

Mr. Feigley closed the public hearing.

Mr. Feigley stated this is another case where the error probably would have never have been caught if the applicant did not want to make improvements to the house. The house has been there since 1984 and the footprint will not change with the sunroom. He then stated that he would be in favor of granting the variance.

Mr. Fischer stated he too would be in favor of granting the variance – nothing really changes on the property.

Mr. Feigley made a motion to grant a variance to establish the rear setback at 32 feet for the construction of a sunroom over the existing deck.

Mr. Nice seconded the motion.

The variance was granted unanimously.

Case No. ZA-3-00 113 Selby Lane

Mr. John Patton presented the staff report stating Mr. John Butler has requested a 5.5-foot variance to the front and a 10.7-foot variance to rear setback requirement in order to construct a single-family dwelling. The property is located in the R-2, General Residential, zoning district, at 113 Selby Lane.

The required front setback is 50 feet measured from the centerline of the 40-foot right-of-way of Selby Lane. The required rear setback is 35 feet from the rear property line. The required side yard setback is 10 feet. The property is currently nonconforming due to its size, approximately 6000 sq. ft. vs. a minimum requirement of 10,000 sq. ft. and a lot width of 70 feet vs. a minimum required of 75 feet.

The subdivision predates the adoption of a zoning ordinance by James City County and has legal nonconforming status. The dimensions of the buildable area are approximately 16.8 feet in depth by 50 feet in width or 840 square feet. There are other homes in the general area that are less than 1000 square feet in size. The requested variances would add 810 square feet to the buildable footprint. The requested front and rear setbacks would be consistent with other homes on Selby Lane. The zoning ordinance empowers the Board of Zoning Appeals to establish setbacks in Section 24-636:

“Any unimproved lot of record existing on the effective date of this chapter located in any district that is nonconforming as to the lot area, lot width or lot depth, or combination thereof, required in the zoning district in which the lot is located may be used for any permitted use in such zoning district, unless specifically prohibited, provided all other requirements of the zoning district are met or the board of zoning appeals establishes setbacks, side, and rear yards in accordance with section 24-650”

Staff finds that application of current zoning requirements would impose a hardship on the property owner, as the lot would not have sufficient building area depth. The requested variance would permit the construction of a modest size home that is compatible with the rest of the neighborhood. Although other properties on Selby Lane suffer from the same limitations they are not common to the R-2, General Residential, district in general. Since the authorization of the variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance, staff recommends approval of a variance of five (5) feet to the front setback or 45 feet from the center line of Selby Lane right-of-way, and an eleven (11) foot variance to the rear setback creating a twenty-four (24) foot building set back line from the rear property line.

Mr. Nice stated he would like to applaud James City County staff for assisting the applicant in establishing a fair and prudent use of the property for the proposed dwelling. The proposal is definitely consistent with the rest of the neighborhood.

Mr. Feigley opened the public hearing.

Mr. John Butler, property owner and builder, stated he believes he is not asking for much since there is not a whole lot that can be done on the property.

Mr. Feigley asked Mr. Butler if he purchased these lots for development.

Mr. Butler stated yes.

Mr. Feigley asked if the minimum lot width is 75 feet.

Mr. Patton stated that this lot has legal nonconforming status. This size lot would not be permitted if the property would be subdivided under the current ordinance.

Mr. Feigley closed the public hearing.

Mr. Nice stated the proposal is a good solution considering the dimensions of the lot and would be in favor of granting a variance.

Mr. Feigley made a motion to establish the front setback at 45 feet from the centerline of the Selby Lane right-of-way and establish the rear setback at 24 feet from the rear property line.

Mr. Fischer seconded the motion.

The motion was granted unanimously.

Case No. ZA-4-00 217 The Maine

Mr. Scott Denny presented the staff report stating Mr. & Mrs. Wolfe, property owners, have applied for a variance to reduce the rear setback at 217 The Maine to permit the construction of a deck. This deck, if built, would encroach seven and a half feet (7.5') into the rear thirty-five foot (35') setback. This property is also identified as parcel (02-0-0084) on the James City County Real Estate Tax Map (45-4) and is located in the R-1, Limited Residential Zoning District.

Staff received an application for a building permit to construct a deck on December 8, 1999. The permit was denied due to the fact that the proposed deck would encroach into the rear setback. According to the original subdivision plat the rear property line for lots fronting on Lake Pasebehegh is the high water mark. The dwelling was originally constructed in 1980, however no copy of the original building permit exists. The property does have a wooden bulkhead. It is this bulkhead that was used by staff as the rear

property line during the building permit review and subsequent denial. It appears that an enclosed sunroom was built over the original deck.

Section 24-238(b) of the James City County Zoning Ordinance states that the minimum rear yard setback is thirty-five feet (35'). The drawings submitted by the applicant indicate that the proposed deck would encroach seven and a half feet (7.5') into this setback.

Staff recognizes that this property fronts on Lake Pasbehegh and the existence of a deck would not be detrimental to the character of the immediate vicinity. However, in this case the strict application of the zoning ordinance would not produce an undue hardship. Therefore staff cannot support this variance application.

Mr. Feigley confirmed that the applicant is proposing to construct the deck around the rear of the house and the variance is for the 7 1/2 –foot section that comes off the sunroom. He then asked if everything else would be in compliance with the Zoning Ordinance.

Mr. Denny stated yes.

Mr. Nice asked how the County determined that the rear property line is the bulkhead.

Mr. Denny stated the subdivision plat stated that the high water mark of the lake is the rear property line and the water goes up to the bulkhead.

Mr. Nice asked if the high water mark is the same location as the bulkhead.

Mr. Denny stated yes.

Mr. Giedd asked if construction of the deck started without a building permit.

Mr. Denny stated the applicant hired an out-of-state contractor and he began construction prior to final approval of the permit. The contractor was notified once the encroachment was found.

Mr. Giedd asked if the deck was going to be built without a permit.

Mr. Denny stated the contractor did not think there was going to be any problems with the permit and began construction.

Mr. Feigley opened the public hearing.

Mr. Richard Wolfe, the applicant, stated he is a new resident to James City County. He stated the contractor did complete the deck. The contractor told Mr. Wolfe that there should be no problems with the construction of the deck in relation to where the lake is located. Mr. Wolfe contacted the community association and the building and

restrictions chairman for the neighborhood and nobody objected. He has spent approximately \$17,000 for the construction of the deck so far.

Mr. Giedd asked why the deck was constructed without the permit.

Mr. Wolfe stated he thought the permit would be granted without any problems.

Mr. Feigley asked what is the hardship the zoning ordinance has created.

Mr. Wolfe stated he would like to access to the deck from his driveway.

Mr. Feigley stated that the portion of the deck in question is for convenience only.

Mr. Wolfe stated yes.

Mr. Giedd asked Mr. Wolfe is he thought to ask the County if there were any problems with the proposed deck or if he considered the risk of having the deck removed since it was constructed without an approved building permit.

Mr. Wolfe stated that he should have asked the County for their opinion.

Mr. Fischer stated he believes the Zoning Ordinance is for land – to keep property owners apart. He cannot see the Zoning Ordinance setbacks to apply to a body of water. Anything bounded by land must conform to the setbacks. No trash or nuisances can be stored in the water, so the body of water is different than land. For that reason, Mr. Fischer stated the Zoning Ordinance should be overlooked. The ordinance should be interpreted in this matter.

Mr. John Farher stated he lives across the lake from Mr. Wolfe and is currently the President of the homeowner's association. He stated that as a neighbor and as president, he has no objections. The deck was discussed at their homeowner association board meeting and made a recommendation that the deck be given the opportunity to be heard at the Board of Zoning Appeals.

Mr. Gordon Hunt, current resident a 215 The Maine, stated he is the only neighbor sharing a lot line with Mr. Wolfe. He is the new chair of the building and restrictions committee of the homeowner's association. He has received no complaints about the deck and would like the Board to approve the deck.

Mr. John Patton, as a resident of First Colony, stated he disagrees with Mr. Fischer on the concept of the lake. He stated the lake is community property. It is a parcel of land identified in our tax records and belongs to the association for all of the homeowners. It needs its setbacks for people who use the lake for recreation and adds to the ambiance of greater First Colony. He stated there are good reasons to have setbacks on a body of water. His concern with the application is that at some point the property will change hands and the new owners may want to build on the deck. Mr. Patton recommended if

the variance were to be granted, it would be for the deck as built without establishing a new setback for the property.

Mr. Feigley closed the public hearing.

Mr. Giedd stated he has already voice his concerns and the Board has approved some other variance requests around this lake.

Mr. Nice stated the applicant has the support of the homeowner's association and he would be in favor of granting the variance. He also wants to include the condition that there be no additional construction on the section of the deck in question.

Mr. Feigley stated that in the past, he has voted in favor for granting variances around the lake that had a demonstrated hardship. This case is different. The applicant wants the variance purely for convenience – to get to the deck without going through the house. If the variance were to be granted, it would be for convenience reasons only. Therefore, Mr. Feigley would not vote for the variance, in addition to the fact that the deck did not have an approved building permit.

Mr. Giedd made a motion to grant a 7 ½-foot variance for the portion of the deck that encroaches into the rear yard setback with the condition that no further improvements to the 7 ½-foot rear portion of the deck are covered under this variance.

Mr. Fischer seconded the motion.

The motion was approved (3-1)

Aye: Nice, Giedd, Fischer

Nay: Feigley

Case No. ZA-5-00

116 Selby Lane

Mr. John Patton presented the staff report stating this case is similar to ZA-03-2000 that the board heard earlier this evening. Mr. Daniel J. Jackson is requesting a five-foot variance to the front and rear setback requirements of the zoning ordinance in order to construct a single family dwelling at 116 Selby Lane. The property is located in the R-2, General Residential, zoning district. The property is currently nonconforming due to its size, approximately 5892 sq. ft. vs. a minimum requirement of 10,000 sq. ft. and a lot width of 70 feet vs. a minimum required of 75 feet.

The subdivision predates the adoption of a zoning ordinance by James City County and has legal nonconforming status. The dimensions of the buildable area are approximately 19.2 feet in depth by 50 feet in width or 960 square feet. There are other homes in the general area that less than 1000 square feet in size. The requested variances would add 600 square feet to the buildable footprint. The requested front and rear setbacks would be consistent with other homes on Selby Lane.

Staff finds that the application of current zoning requirements would impose a hardship on the property owner, as the lot would not have sufficient building area depth. The requested variance would permit the construction of a modest size home that is compatible with the rest of the neighborhood. Since the authorization of the variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance staff recommends approval of the requested variance.

Staff recommends approval of a variance of five (5) feet to the front building setback line, or 45 forty-five feet from the centerline of Selby Lane right-of-way, and a variance of five (5) feet to the rear setback creating a thirty (30) foot building setback line from the rear property line.

Mr. Feigley opened the public hearing.

Mr. Daniel Jackson, property owner, stated he agrees with the recommendation of staff and just wants to build a modest home compatible with the rest of the houses in the neighborhood.

Mr. Feigley closed the public hearing.

Mr. Nice made a motion to establish the front building setback line at 45 feet from the centerline of the Selby Lane right-of-way, and establish the rear setback as a 30-foot building setback from the rear property line.

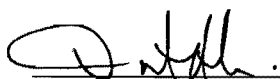
The motion was granted unanimously (4-0).

F. MATTERS OF SPECIAL PRIVILEGE

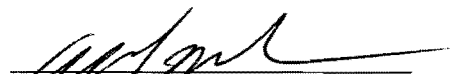
The meeting date calendar for the year 2000 was approved as submitted.

G. ADJOURNMENT

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



David Nice
Chairman



Allen J. Murphy
Secretary