

BOARD OF ZONING APPEALS
Minutes for the meeting of June 1, 2000

A. ROLL CALL

PRESENT:

ABSENT:

Mr. Fischer
Mr. Fraley
Mr. Giedd
Mr. Nice
Ms. Wallace

OTHERS PRESENT:

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

B. MINUTES

The minutes of the February 3, 2000 meeting were approved as submitted.

C. OLD BUSINESS

None

D. NEW BUSINESS

Case No. ZA-9-00 135 Allyson Drive

Mr. John Patton presented the staff report stating Mr. and Mrs. Culley are requesting a 7-foot variance for an existing dwelling at 135 Allyson Drive in James City County. Currently, the dwelling encroaches into the yard requirements that require all structures to be a minimum of 35 feet from the boundary of the cluster development. The Raintree Villas' cluster subdivision is "grandfathered" and falls under the ordinance in affect at the time of construction of this dwelling. Section 24-546(b) of the ordinance at that time stated:

No building in a residential cluster development in the R-1, R-2, or R-5 district shall be closer than 35 feet to property outside the residential cluster development.

The building extends into this setback approximately 7 feet at the south east corner of the house. In investigating this case Mr. Patton stated he found the following:

The county failed to insure that the required 35 foot building setback was properly shown on the recorded Subdivision Plat, S-74-94, for a cluster subdivision. It was shown on three sides of the subdivision but not on the east side that abuts the original Raintree Subdivision.

- 1) The developer submitted a building application and site plan for this parcel for a 2-story single family dwelling with a significantly different footprint than the single family dwelling that was constructed. The submitted plan should not have been approved since even the narrower footprint still encroached into the required setback.
- 2) During the review process the plans examiner failed to take into account that the rear and one side of the parcel required a 35-foot setback from the exterior of the subdivision. The required setbacks were not shown on the plat submitted for the building permit.
- 3) During the construction phase, none of the building inspectors noted that the structure did not match the one on the application or the approved plans, it was one of several models offered by the developer and previously approved for other lots and assumed to be the correct model.
- 4) The irregular shape of the "common space" made it impossible to determine the setback distances without a survey.
- 5) Neither the title insurance company nor the closing attorney for the original buyer noted the discrepancies.

The current zoning ordinance offers no relief, Section 24-547(b) states:

No building in a residential cluster development shall be closer than 35 feet to the internal edge of the perimeter buffers.

This particular lot is unique in its shape and location in relationship to the outer perimeter of the cluster development in that it has two sides affected by the 35-foot setback requirement. The dwelling was purchased in good faith and the purchaser appears to be blameless. In order to meet the required setbacks a substantial portion of the home would have to be demolished, the current home as designed could not be built within the required building setback lines of the property. Staff has received no complaints from adjacent property owners regarding this encroachment.

Although oversights and omissions in the site plan review or building permit and inspection processes do not by themselves constitute grounds to grant a variance, it is the staff's opinion that this particular case has a combination of factors as noted above that make it unique. It is the staff's opinion that it would be a substantial hardship to require a significant portion of the dwelling to be destroyed to conform to the setbacks that were in force at the time of construction. Therefore it is the staff's recommendation that a

variance be granted up to a maximum of seven feet for the existing structure as it is shown on the survey by Roger D. Spearman dated April 24, 2000 and titled "Physical Survey of property to be conveyed to Jacquelin C. Stieffen being Lot 23, Phase I, Raintree Villas".

Mr. Patton showed the Board members an aerial view of the property and surrounding subdivision of Raintree Villas.

Mr. Fraley asked what accountability the builder has to build what was submitted.

Mr. Patton stated had the error been caught, the builder would have to resubmit a plat for the new building footprint.

Mr. Fraley asked if the developer is subject for sanctions for building a structure that was different than the one approved.

Mr. Patton stated realistically, the developer is not subject to sanctions.

Mr. Giedd asked if the process has been changed so this does not occur again.

Mr. Patton stated that a Zoning Officer now reviews all site plans for single-family dwellings when submitted. Plans are also required to be on-site during construction for building inspectors to review.

Mr. Nice opened the public hearing.

Mr. William Culley, property owner, stated he has purchased other homes in the past and has purchased his current home in good faith. He had all appropriate paper work together for the purchase and no one ever mentioned a problem with the setbacks on the property.

Mr. Nice asked if Mr. Culley was the original homeowner.

Mr. Culley stated yes.

Mr. Nice asked if Mr. Culley had title insurance.

Mr. Culley stated yes and that he is currently trying to sell the house.

Ms. Wallace asked Mr. Culley if it was noted during construction that the house is different than the one that was approved.

Mr. Culley stated the builder built the house and then he purchased the home. The plans he received were the plans that the builder used in constructing the home.

Mr. Nice closed the public hearing.

Mr. Fraley made a motion to grant a variance up to a maximum of seven feet for the existing structure as it is shown on the survey by Roger D. Spearman dated April 24, 2000 and titled "Physical Survey of property to be conveyed to Jacquelin C. Stieffen being Lot 23, Phase I, Raintree Villas".

Mr. Fischer seconded the motion.

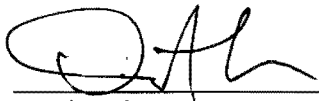
The motion was granted unanimously (5-0).

E. MATTERS OF SPECIAL PRIVILEGE

None.

F. ADJOURNMENT

The meeting was adjourned at approximately 7:55 p.m.



David Nice
Chairman



Allen J. Murphy
Secretary