

BOARD OF ZONING APPEALS
Minutes for the meeting of September 7, 2000

A. ROLL CALL

PRESENT:

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

ABSENT:

Mr. Giedd

OTHERS PRESENT:

Allen Murphy, Zoning Administrator
Jim Breitbeil, Code Compliance Officer
John Patton, Code Compliance Officer
Andy Herrick, Assistant County Attorney
John Rogerson, Development Management Technician

B. MINUTES

The minutes of the August 3, 2000 meeting were approved.

C. OLD BUSINESS

None

D. NEW BUSINESS

Case No. ZA-13-00 1409 Jamestown Road

Mr. Jim Breitbeil presented the staff report stating that Mr. Glendell Haynes has applied for a variance to Section 24-238(b) of the Zoning Ordinance to permit the continued placement of an existing two-story detached garage at 1409 Jamestown Road. On June 29, 1993 Mr. Haynes was issued a building permit to construct a one and one half two story garage at the rear of his property. The property is zoned R-1, Limited Residential and can be further identified as Parcel No. (4-16A) on James City County Real Estate Tax Map (48-1). Section 24-238(b) states that accessory buildings exceeding one story shall have a minimum rear yard setback of 15 feet. Zoning approved the application for the building permit and it indicated that the garage would be setback 16 feet from the rear property line. Foundation surveys were not required at the time of the application and property records for the site do not include a site plan or a survey that would have been submitted with the building permit application at the time of plan review. A current survey, which dated July 17, 2000, shows the garage encroaches into the rear yard setback 2.3 feet. On July 8, 1997 the property was issued a Special Use Permit to operate as a bed and breakfast. Mr. Breitbeil stated that he had received an E-mail from the

property owner who lives in Kentucky. The E-mail stated that while preparing to lay the foundation of the garage it was decided that a small adjustment to the location within the prescribed boundaries would present no problem. Measurements were taken to insure maintenance of the proper setback positions these measurements were done from the then existing survey markers, we presumed that those stakes were correctly positioned and there would be no problem with the angling of the structure, needless to say we would have never allowed an encroachment had we realized it. Having lived in Williamsburg and James City County for about 10 years we did not take the Zoning Rules and Regulations lightly your strict planning has made for a most charming place to live. We regret the infraction of the setback rule and were unaware of it until a week before a scheduled closing on the property. Mr. Haynes closed his E-mail by thanking the Board for their consideration in this matter.

Mr. Breitbeil stated that it is his understanding that the property is currently under contract to be sold.

Mr. Breitbeil stated that the existing placement of the garage does not present a substantial detriment to the property nor does it alter the character of the area. However, staff does not find that the variance request produces an undo hardship to the property under strict application of the Zoning Ordinance, therefore staff cannot support the variance request. As a matter of background history Mr. Breitbeil stated that the current zoning in R-1 an accessory apartment does require a Special Use Permit and must be contained within the primary structure, so this garage could not be used as an accessory apartment. And on this property this garage is considered an accessory structure and no part of the accessory structure can be within 10 feet of the main structure and this does include the decks.

Mr. Fraley ask if the original plan was for a one and one half story detached garage but it turned out to be two stories.

Mr. Breitbeil stated that the Building Code states that anything over eight feet on a second level is considered more then one story or two stories.

Mr. Nice ask if the owner constructed the garage.

Mr. Breitbeil stated that the contractor on the application was the homeowner.

The public hearing was opened and there was not anyone who wanted to speak on the matter.

Public hearing was the closed

Mr. Fraley ask what is the remedy, was it to reconfigure the garage

Mr. Breitbeil stated that that would be an expensive one because the garage cannot be any closer than 10 feet to the main structure, or they could tear down some of the deck.

Mr. Nice stated that it appears that all parties acted in good faith and just a corner of the garage encroacher into the setback. He also noted that the back of the lot is heavily wooded and the garage is not a detriment to the county or the adjacent properties.

Mr. Nice stated that he was in favor of granting the variance.

Mr. Fraley seconded the motion.

Mr. Nice made a motion to grant a variance to section 24-238(b) rear yard regulations to establish the rear yard setback at 12.7 feet for the existing accessory structure, with the condition that the main structure and the accessory structure will not be within 10 feet of each other on any future date.

The motion was granted (4-0)

Case No. ZA-14-00 7641 Beechwood Drive

Mr. Patton read his staff report stating that the property owner Mr. Mihalcoe is requesting a 15-foot reduction to the 50-foot setback requirement of Section 24-215 of the James City County Code. He is requesting the variance in order to construct a new single family dwelling on the property and to be able to use the existing septic system. The property is located in the A-1 zoning district in the Cypress Point Subdivision. The lot is 90 feet wide and approximately 400 feet deep. This is a nonconforming lot due to its size. It had a mobile home placed on the property in the Spring of 1982 under a conditional use permit. It was sited using a 35-foot front setback under the Zoning requirements at that time. The septic, well and power pole were located according to the requirements at that time. In 1989 the setbacks for the A-1 districts were changed and a 50 foot front setback is now required. The mobile home was destroyed by fire and replaced by a new manufactured home in 1993. This replacement was allowed to use the 35-foot front setback under the nonconforming section of the Zoning Ordinance. This mobile home was 70 feet long and had to be placed at an angle on the lot to meet the setbacks and the Health Department requirements for the existing septic tank.

Mr. Patton stated that that mobile home was removed when the property changed hands and there is currently no dwelling on the property. The property is generally level on the first half of the lot and gently slopes in drainage patterns to the North. The septic field extends throughout most of the open area. The septic tank is approximately 66 feet from the front property line with the power pole and meter next to it. The tree line is about 150 feet from the front property line. The proposed 28 by 40 foot dwelling could not be placed at the required setbacks, without violating the Health Departments requirements. The Health Department granted a reduction from their 10-foot setback to a 9-foot setback if the BZA approves this variance. A new septic field could be installed immediately adjacent dwellings are located over 100 feet from the property lines. There was one

adjacent property that called and stated that he would prefer to see the house on the front of the property to keep the houses from “being jammed up”.

Mr. Patton stated that although staff is sympathetic with the applicants desire to save money and continue to use the functioning septic system this economic consideration alone is not adequate to warrant staffs recommendation for approval. No hardship has been demonstrated that is not shared by property in the neighborhood, therefore, staff cannot support the variance application.

Mr. Nice ask if this were another mobile home going on this lot would that make a difference.

Mr. Patton said no it would not.

Mr. Nice noted that when the Zoning Ordinance changes, sometimes property owners are allowed to revert to the previous Ordinances that were in place when they built their dwelling.

Public Hearing

Mr. Mihalcoe spoke on his behalf, stating he hopes to be able to build a home that he can afford on this property. He stated that the house would generate more tax revenue then would a trailer. He was told by the Health Department that he could apply for a variance to allow him to build within the setback, and still use the existing septic system.

Mr. Patton stated that Cypress Point is notorious for not perking,

Mr. Nice agreed

Mr. Nice noted to the Board that he does know Mr. Mihalcoe and would try not to let that interfere with his decision on this case.

Mr. Fraley stated that the variance should be granted

Mr. Nice noted that other dwellings in the area are within 35 feet of the road.

Mr. Patton stated the motion: To reduce the front setback from 50 feet to 35 feet for a proposed home at 7641 Beechwood Drive in the Cypress Point subdivision.

The motion was approved 4-0

Case No. ZA-16-00

5601-5609 Richmond Road

Mr. Murphy stated that the applicant has requested a deferral of this case until January of 2001. To allow the applicant time to study and evaluate the situation to see if he can comply with the Chesapeake Bay Ordinance.

At the applicants verbal and written request the motion to defer was granted.

Mr. Fraley took the opportunity to thank staff for the packet that Mr. Herrick provided.

Open Discussion

Mr. Nice stated that if the Board met the criteria set forth in the packet then the Board would only grant 1% of the variances that came to the Board. Mr. Nice feels that the hardships (as defined in the packet) that must be shown for granting of variances are often not present. However, as Board members there is often other criteria that must be considered such as if it is not a detriment to the neighborhood or if the adjacent property owners do not complain and or even support the application.

Mr. Herrick stated that the purpose of the packet was to update the Board Members on new changes in the Virginia Code, in relation to the Board of Zoning Appeals.

Mr. Nice thanked the County Staff for assisting him in running the meeting

Mr. Nice ask what he should do when friends or neighbors come before the Board as applicants.

Mr. Herrick stated that it was the Board members decision weather or not to vote on the case.

Mr. Nice suggested that the County Staff should have more power to grant variances


Mr. Murphy stated that it was best for the Board as members of the general public to make these decisions.

E. MATTERS OF SPECIAL PRIVILIGE


None.

F. ADJOURNMENT

The meeting was adjourned at approximately 7:53 p.m.



David Nice
Chairman



Allen J. Murphy
Secretary