

**BOARD OF ZONING APPEALS**

**November 1, 2001**

**A. ROLL CALL**

**PRESENT:**

Mr. Giedd  
Mr. Fischer  
Mr. Fraley  
Mr. Nice

**ABSENT:**

Ms. Wallace

**OTHERS PRESENT:**

Jim Breitbeil, Zoning Officer  
John Rogerson, Zoning Officer  
Christy Parrish, Zoning Officer

**B. MINUTES**

The minutes of the October 4, 2001 meeting were approved.

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

**ZA-12-01            126 John Rolfe Lane**

Mr. Jim Breitbeil presented the staff report stating Mr. and Mrs. Mark J. Valla, property owners, have requested a variance to Section 24-238, Yard Regulations, of the James City County Zoning Ordinance for the continued placement of an existing deck, with a proposal to add a sunroom to the deck on the rear of the dwelling at 126 John Rolfe Lane. The variance request is to reduce the required rear yard setback from 35 feet to 34 feet for the continued placement of the deck, and to add a sunroom on the deck as shown on the attached plan. The property is currently zoned R-1, Limited Residential and can be further identified as Parcel No. (06-0-0005) on James City County Real Estate Tax Map No. (45-2).

A building permit for the construction of single-family dwelling on this parcel was approved on April 6, 1988. The building permit indicates the dwelling would be located 50 feet from the rear property line. There was no indication on the building permit that a deck was to be constructed, nor is there evidence of a permit for the construction of a deck. The current property owners purchased the home in February 2000. One corner of

the deck currently encroaches on the rear setback a distance of approximately seven inches, which requires a variance. The property owners also have a proposal to add a 12 x 22 sunroom on the rear of the dwelling. The attached site plan shows the proposed sunroom to be located approximately three feet inside the southern most side of the deck and extend along the rear of the dwelling. A survey is required to determine if the sunroom, at one corner, would encroach on the rear setback. In addition to the deck, the sunroom would require a variance if it is proposed to be located beyond the 35-foot rear setback.

Staff finds that Mr. and Mrs. Valla acquired this property in good faith. The encroachment from the deck should have been brought to the owners' attention prior to when they purchased the property. To correct the encroachment, approximately seven inches of the existing deck at one end would have to be removed. Staff does not believe the strict enforcement of the ordinance creates a hardship approaching confiscation in this case. In addition, no hardship has been demonstrated for the proposed sunroom. Therefore, staff recommends the Board deny this application

Mr. Nice asked what powers the Zoning Administrator had to grant a variance.

Mr. Breitbeil stated under 18 inches.

Mr. Giedd asked if any consideration was given for a 7" Administrative variance for the deck.

Mr. Breitbeil replied that the Zoning Administrator determined there was no hardship proven in this case, therefore an Administrative variance could not be granted.

Mr. Fraley asked if there was not a 7" encroachment, would there be any issues with the sunroom.

Mr. Breitbeil stated that the proposed sunroom appears to encroach on the rear setback. When a building permit is submitted in this case, it would be requested that the distance from the rear property line to the corner of the sunroom would be drawn on the site plan. If it is within three feet, it is typical practice to require a foundation survey. He also stated that after a conversation with Ms Valla concerning a revised site plan, she has been unsuccessful in several attempts to have the surveyor measure the exact distance from the rear corner of the sunroom to the rear property line.

Mr. Nice stated that it looked like the sunroom would be in compliance if they are only 7" over on that one corner. With careful layout, they could easily comply with the sunroom.

Mr. Nice also stated that did not understand why when there is such a minimal encroachment that staff could not grant the Administrative variance for the 7". He also stated he would like to know why staff used strong language for denial of this application.

Mr. Breitbeil stated that there were two issues to look at:

1. The Zoning Administrator determined that the deck that currently encroaches 7" does not present a hardship because that portion of the deck could easily be removed to abate this violation. This would present a different type of case if the 7" was a portion of the dwelling's brick foundation; and
2. A variance cannot be granted for the sunroom. An Administrative variance can only be granted for existing or partially existing structures.

Staff believes that there has been no evidence presented to prove that a hardship exists for that right corner of the sunroom.

Mr. Nice stated that the Board routinely approves decks that people buy in good faith. He also asked if a variance was being asked for the sunroom if the sunroom is built and it encroaches again.

Mr. Breitbeil replied that from the given drawing it is undetermined if the proposed sunroom would encroach because it is so close to the setback line. He also stated that if a building permit would be issued for the sunroom a foundation survey would be required. If the foundation survey showed that the sunroom encroached they would have to either have to remove part of the sunroom or come back to the board and ask for a variance. Ms. Valla contacted the surveyor and did not get a timely response from the surveyor to draw the thirty-five foot setback line on the plan or indicate the distance of the rear property to the right corner of the proposed sunroom. If staff had the information with the surveyor's stamp and seal, staff could make a determination whether the need to grant a variance for the proposed sunroom is necessary.

Mr. Giedd opened the public hearing.

Ms. Carmen Valla, property owner, stated that she applied for a variance for the sunroom and during that time it was determined that the existing deck was built without a permit and it also encroached 7" over the rear setback. She also stated that she attempted to get with the surveyor and because the survey had already been paid for, it was very difficult to try to get the surveyor to come out and get extra measurements.

She also stated that she took various measurements to try to fit the sunroom within the setback line. The sunroom was moved over three feet from the edge of the deck because if was placed directly on the deck the sunroom would be right in the center of the kitchen window or in the center of the double siding glass doors.

Mr. Giedd asked if looking at the back of the house, how close would the sunroom be to the sliding glass door.

Ms. Valla replied the wall would be about two feet from the edge of the door. She also stated that when she and the sunroom contractor took measurements, it appeared that the sunroom would not encroach much. (0"-7")

Mr. Giedd also asked if she had any feedback from any neighbors.

Ms. Valla replied that all feedback was positive.

Mr. Fraley asked if a plan has been submitted to the HOA and if she got an approval from them.

Ms. Valla replied yes and everything was in compliance.

Mr. Fisher asked what would be the intended use of the open deck in the back that is encroaching.

Ms. Valla replied that she would use that deck to grow peppers and tomatoes in buckets.

Mr. Fraley asked if she could do anything she wanted to do, what would she do?

Ms. Valla stated she would do exactly what has been proposed.

Mr. Giedd closed the public hearing.

Mr. Giedd brought attention to a letter from the Berkeley's Green HOA opposing the variance. However, the absence of representation from the HOA shows that the letter might have been a standard practice.

Mr. Breitbeil stated that prior to the first meeting, Mrs. Vonhatten from the Berkeley's Green HOA submitted a letter opposing this variance. He also stated he tried to call Mrs. Vonhatten at least three times but had been unsuccessful to see whether she would be attending tonight's meeting. She was also informed by mail about the meeting.

Mr. Giedd made a motion to grant a variance to Section 24-238, Yard Regulations, of the James City County Zoning Ordinance to establish the rear yard setback at 34 feet.

Mr. Fraley seconded the motion.

The motion was granted unanimously (4-0).

## **ZA-13-01            114 Lands End Drive**

Mr. John Rogerson presented the staff report stating Mr. Bryan Murphy, on behalf of property owner Suresh Gharse is requesting a variance to section 24-238(a) Side Yard Regulations of the James City County Zoning Ordinance to reduce the East side yard setback from fifteen feet (15') to ten feet (10'). Mr. Bryan Murphy is also requesting a

variance to section 24-238(b) Rear Yard Regulations and section 24-236 Front Setback Requirements of the James City County Zoning Ordinance to reduce the rear and front yard setbacks by a total of fifteen feet (15'). The property is located at 114 Lands End Drive in the R-1, Limited Residential Zoning District and can be further identified as Parcel No. (5-66) on the James City Real Estate Tax Map (47-3).

This lot was originally created in 1976 and is one of the few remaining undeveloped lots in the Powhatan Shores community. This is a pie shaped lot and is located on a cul-de-sac with the North side of the lot bordering on the canal. The current required setbacks in the R-1, Limited Residential District are thirty-five feet (35') from the rear property line, fifteen feet (15') from the side property lines and thirty-five feet (35') from any street right of way that is fifty feet (50') or greater.

The applicant wants to build a two-story home with a deck and an attached two-car garage on this parcel. Although the County does not enforce covenants and restrictions of neighborhoods, Powhatan Shores covenants state that all two-story homes built in the community must have a minimum of 1,050 square feet on the ground floor and a minimum of 1,050 square feet on the second floor. As part of this staff report I have included a copy of the covenants of the Homeowners Association along with letters of support for the variance from the Homeowners Association and the Architectural Review Board.

Staff feels that this lot does not have adequate depth for the reasonable placement of a home with a garage and a deck that meets the Covenants of the Powhatan Shore Homeowners Association. This is probably one of the reasons that the property has not been developed since its creation in the late 70's. In this case, the shape of the lot and its lack of building area depth create a hardship. Therefore, staff recommends that the Board of Zoning Appeals approve a variance of fifteen feet (15') to the required thirty-five foot (35') rear yard setback. The side yard request for a variance should not be necessary if the rear yard variance is granted as suggested. Staff feels that the authorization of such variance listed above will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

Mr. Giedd asked if it was staff's thinking that the placement of the home should be different from what was proposed.

Mr. Rogerson replied that Mr. Murphy submitted a request for variance of a combined total of fifteen (15') for the front and back. Staff position was that if the BZA were to grant a variance it would be preferred that it would be to the rear year setback to keep the overall character of Lands End Drive the same. Staff also feels if a 15' variance granted to the rear year setback, it would allow the applicant enough room to construct a reasonable size dwelling without the need of the side yard setback reduction.

Mr. Nice stated that the front of the proposed home does comply with the current front yard setback. The corners of the deck and a piece of the garage are the only encroaching items.

Mr. Rogerson pointed out that the proposed dwelling drawn on the plat does not meet the required minimum square footage of the covenants. However in the Board's packet, the applicant submitted two additional scenarios and he wished to defer any questions referencing the scenarios to the applicant.

Mr. Giedd opened the public hearing.

Mr. Brian Murphy, on behalf of property owner Suresh Gharse, stated his sale was contingent on a variance. Since the creation of this lot there has not been a bulkhead in place and when comparing surveys from 1978 to present it appears that approximate 10 feet is now in the canal. The HOA feels strongly that the lot should be improved for fear of another 10 years without any improvements may reduce the setbacks even further.

Mr. Murphy stated that due the shape of the lot and the envelope size setbacks, this creates a hardship for the property. Another hardship is the requirements of the square footage by the HOA. In order to satisfy the HOA requirements, he stated he needed relief of the current setbacks.

Mr. Murphy also explained the various scenarios. On both sketches it shows that part of the garage, pieces of the deck will encroach and the front stoop. Mr. Murphy asked whether the stoop would have to be within the current setbacks.

Mr. Rogerson replied that generally speaking staff would permit steps to encroach in required setbacks.

Mr. Giedd asked if staff would allow the steps with an overhang.

Mr. Rogerson replied that staff usually takes this situation case by case. Depending on how large the stoop is and how elaborate it is would decide whether is would be classified as an architectural feature. The code states that architectural features may encroach up to three feet. This would be determined at the building permit application phase.

Mr. Giedd asked Mr. Murphy if staff's recommendation of the 15-foot variance to the rear yard set back would be satisfactory. This would allow the home to be moved 3 feet back to allow the front stoop not to encroach and allow the 12x12 deck.

Mr. Murphy stated he agreed that staff's recommendation is satisfactory.

Mr. Giedd closed the public hearing.

Mr. Nice made a motion to grant a 15-foot variance to the rear yard setback establishing the rear yard setback at 20 feet with no further expansion into the newly established rear yard setbacks.

Mr. Fraley seconded the motion.

The motion was granted unanimously (4-0).

## **ZA-14-01            102 Tewning Road**

Mr. Jim Breitbeil presented the staff report stating Mr. Scott VanVorhees, of Guernsey Tingle Architects, on behalf of Ms. Pam Dumont, property owner, has requested a variance to Section 24-415, Setback Requirements and to Section 24-416, Yard Regulations, of the James City County Zoning Ordinance for the proposed expansion of the Godspeed Animal Care facility at 102 Tewning Road. This variance request is to reduce the required setback from Tewning Road from 50 feet to 20 feet for a building addition and for the construction of a covered porch near the entrance of the facility. The applicant has also requested a variance to reduce the required side or rear yard setback from 75 feet to 20 feet for the expansion of the facility on the north end of the property. This property is currently zoned M-1, Limited Business/Industrial and can be further identified as Parcel No. (01-0-0001) on James City County Real Estate Tax Map No. (39-1).

The animal care facility located on this parcel received site plan approval in February 1978. The setback from Tewning Road for this facility was approved at 30 feet. The current ordinance requires structures be located 50 feet or more from any street right-of-way which is 50 feet or greater in width for properties in an M-1 zoning district. Therefore, the structure is currently nonconforming. The expansion plan for this facility proposes improvements near the entrance including a covered porch that would encroach on the required 50-foot setback from Tewning Road.

The northern-most side of this property abuts Eastern State Hospital, which is currently zoned R-2, General Residential. In an M-1 zoning district, structures shall be located 20 feet or more from side or rear property lines. However, the minimum side and rear yard shall be increased to 75 feet if the side or rear yard adjoins property in a residential district. The animal care facility, as it exists today, is located approximately 60 feet from the Eastern State Hospital property. Therefore, a nonconforming situation also exists on the north side of this facility. The expansion plans for Godspeed Animal Care indicate a proposal for an indoor/outdoor kennel facility constructed on the north side of their property located approximately 20 feet from their property line. There is a strip of wooded Eastern State property approximately 40 feet deep behind the Godspeed Animal Care property. An access road also separates this property from the nearest building in the Eastern State complex. The nearest building on Eastern state property is approximately 250 feet from the animal care facility property line.

The proposed covered porch, if approved, will reduce the setback from the Tewning Road right-of-way to 22 feet. Currently in the zoning ordinance, the required setback from road rights-of-way for residential districts is at least 25 feet. The setback is at least 50 feet in business districts with a possible reduction to 25 feet under special circumstances and 50 feet in industrial zoned districts. No hardship has been identified to

support this proposal, and the reduction to 22 feet would grant the property a setback from a road right-of-way that is less restrictive than any current ordinance requirement. Therefore, staff recommends the Board deny this request.

The proposed addition to square off the building on the Tewning Road side, as shown on the attached plan, does not present a substantial detriment to adjacent property, nor will it alter the character of the area. Unlike the covered porch, this addition does not propose a further encroachment on the required setback from Tewning Road. However, a hardship approaching confiscation has not been proven; therefore, staff cannot support this request.

The expansion on the north side of the property proposes a different use than the current veterinary hospital that exists today. The attached plan indicates a kennel will be operated on the premises, which is a permitted use in the M-1 zoning district. However, the plan indicates the kennel will have outdoor dog runs in addition to indoor dog runs. This is a unique development situation given the zoning of the animal care facility and that of Eastern State. The proposed use of kennels, with its proximity from the property line, will have more of an adverse impact on adjacent property than an indoor veterinary care facility. In addition, there are other requirements for development of the property along this side. Section 24-99, Landscape requirements by zoning districts, requires a 35-foot transitional screening area between properties in an M-1 zoning district adjacent to a residential district. This requirement will have to be met unless the applicant receives approval from the Planning Director for a modification request to the landscape requirements.

Staff realizes the development constraint placed on the property by the 75-foot rear setback. In this case, the strict application of a 75-foot rear setback coupled with a 50-foot front setback creates a hardship for this property given the lack of buildable area depth. Staff recommends a rear 20-foot setback for the enclosed building portion of the planned development. We further recommend a 35-foot setback for the outdoor dog runs to allow for transitional screening.

Mr. Giedd stated that there was a similar case a few months ago where there the BZA granted a variance at the Bobcat-Indoor Welding Shop, which reduced the rear setback from 75 feet to 20 feet. He also asked if anything was ever found out about why Eastern State was zoned the way it was.

Mr. Breitbeil stated Eastern State has always been zoned R-2 and it is still undetermined what will happen with the Eastern State property.

Mr. Nice asked for clarification from staff that staff is recommending the kennels on the rear of the property be located at 35 feet from there property line.

Mr. Breitbeil stated that staff's recommendation is the BZA establish the rear setback for the indoor kennels at 20 feet and the outdoor runs at 35 feet.



Mr. Giedd asked how many of the outdoor dog runs are within 35 feet.

Mr. Breitbeil stated at least a portion of three outdoor dog runs are within the 35 feet.

Mr. Nice asked why is staff requiring 35 feet for the dog runs.

Mr. Breitbeil stated that staff feels that the outdoor dog runs would have a more adverse impact on adjacent properties and there is a special requirement that the applicant would have to request and get approval from the Planning Director to build anything within the 35 foot transitional screening area because it is zoned M-1 and it is next to a residentially zoned area. If the setback would be established today at 20 feet, it would not guarantee the applicant could build their addition as shown on the plan. Prior to submitting the site plan, the applicant must have a modification from the planning director to the 35-foot transitional screening requirement.

Mr. Giedd opened the public hearing.

Mr. Tom Tingle, Guernsey Tingle Architects, stated that the building had multiple limitations despite that fact that the current facility uses a very small portion of the 11/2 – acres property. The building is tight to the 20-foot setback back on the west end and also has the required setback of 75 feet off on Ironbound Road which is the most visible and most valuable portion of the property. Multiple restraints on the property limit the ability to expand the building. The existing building also creates some challenges. The entrance of the building is not visible from the parking lot and that creates some unusual circulation from the parking lot to the facility.

The expansion of the animal care facility is proposed in three phases.

- Phase 1- Alterations to the inside of the current building will begin later this year.
- Phase 2- Expanding or “filling in the L” on current building and adding the covered porch to the front of the building. This expansion is critical because this will expand the waiting area, administrative offices, exam rooms and it reorients the main entry from the parking lot.  
The covered porch extends another 8 feet in the front yard. The porch is a residential character porch and will provide covered protection for the clients and their pets as well as give the building extra character.  
If approved from the board, phase two would immediately go into site plan review and construction would follow the completion of phase 1.
- Phase 3- Construct an additional 4800 square feet interior space and 1850 square feet of outdoor enclosed space (partially covered) for a luxury boarding facility and grooming retailer. This will provide indoor facilities for dogs connected to an outdoor exercise area that is partially covered and partially enclosed.

Proposed construction for Phase 2 would begin in late 2002.

Mr. Tingle stated that the proposed expansion even with the proposed variances would only occupy 40% of the property and would like to encourage the Board to grant the proposed variances.

Mr. Nice asked if the proposed 8 foot porch was reduced to 5 feet, would that be feasible for the facility.

Mr. Tingle replied that when walking with a large animal and with animals passing each other, the 5-foot porch would restrict the entry and existing of the facility.

Ms. Dumont added that the covered porch would actually move the customers closer to the building than the existing walk.

Mr. Giedd stated that he had concerns about establishing precedence for 22-foot setback on Tewning Road.

Mr. Fraley asked Ms. Dumont if she was trying to change the business to be kennels more than a veterinary hospital.

Ms. Dumont stated all veterinary hospitals have some kennels. She stated that she wanted to improve the business so that customers would feel comfortable boarding their dogs. She envisions dog rooms with pictures on the wall, black and white television and Internet access for owners to view their pets.

Ms. Dumont also stated current building limits the ability to work. By squaring off the existing building provides more space for waiting room, quiet room and exam rooms and adding the porch will improve the building appearance.

Mr. Fraley stated that to improve the building appearance did not require constructing out to a 22-foot setback and more than one option to improve the building.

Ms. Dumont stated that the covered porch was intended as an architectural feature because the building was an eyesore.

Mr. Fraley asked Mr. Breitbeil what was staff's position on the covered porch being added as an architectural feature and to increase the appearance of the building.

Mr. Breitbeil replied that staff could not change their opinion based on appearance.

Mr. Nice stated that he feels that the Board should not supersede the opinion of the business owners needs whether it is aesthetics or a dog walk. It is the business in the community that should take precedence.

After discussing the case involving the Celebrity VIP Limousines, Mr. Giedd stated that

the precedent needs to be with the improvement of the property not the setbacks

Mr. Fraley asked Mr. Breitbeil what had staff discussed concerning improving the facility and if staff had any interactions with the applicant to try to accomplish the needs of making the building look more attractive.

Mr. Breitbeil stated that staff does not have any issues with squaring off the building however, staff feels that they need to take a stronger ground on the covered porch because the porch is a structure that is closer to the right-of-way and it will establish the front setback at 22 feet which will be the closest front setback established in the County in the industrial or residential zones. He also stated that staff stays away from making recommendation for a variance based on what is pleasing to the eye. Issues that focus on appearance and landscaping would be addressed at the site plan stage.

Mr. Giedd closed the public hearing.

Mr. Nice stated that because of the non-conforming status, the owner has a right to improve the appearance of the building and walkway.

Mr. Fraley discussed that the covered porch at 22 feet was still awfully close to the right-of-way; however, he would be fine with establishing the setback at 25 feet.

Mr. Fisher stated that by looking at the aesthetic point of view, any improvement would be a good improvement and he felt that the covered walk would not bring the building to any closer to the street because it is just open area with a cover over top of it. He also stated that he noticed on the plat that the covered porch is at 28 feet at the east end and 22 feet at the west end.

Mr. Giedd made a motion that a variance be established to Section 24-416, Yard Regulations to establish the setback at 20 feet from northern most property line with the condition that all outdoor dog kennels must be located at least 35 feet from the northern most property line.

Mr. Fraley seconded the motion.

The motion was granted unanimously (4-0).

Mr. Nice made a motion to establish a variance to Section 24-415, Setback Requirements, to establish the setback from the Tewning Road right-of-way at 25 feet for a covered walk with the condition that the covered walk shall remain open and cannot be closed-in at any time in the future.

Mr. Fisher seconded the motion.

The motion was granted unanimously (4-0).

Mr. Giedd made a motion to amend the second motion to include a variance to Section 24-415, Setback Requirements, for the proposal to square-off the existing building on the Tewning Road side of the existing structure identified as Phase II on the attached plan by Guernsey Tingle Architects dated 7/30/01 and to establish the setback from the Tewning Road right-of-way at 25 feet for a covered walk in front of the existing building and the Phase II building addition with the condition that the covered walk shall remain open and cannot be closed-in at any time in the future.

Mr. Nice seconded the motion.

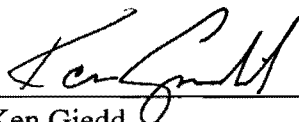
The motion was granted unanimously (4-0).

**E. MATTERS OF SPECIAL PRIVLEDGE.**

None

**F. ADJOURNMENT**

The meeting was adjourned at approximately 9:50 p.m.

  
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Ken Giedd  
Chairman

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Allen J. Murphy  
Secretary