

BOARD OF ZONING APPEALS

April 4, 2002

A. ROLL CALL

PRESENT:

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

ABSENT:

Mr. Nice

OTHERS PRESENT:

John Rogerson, Zoning Officer
Leah Nelson, Development Management Assistant

B. ELECTION OF OFFICERS

Mr. John Rogerson stated that according to Board of Zoning Appeals by-laws, the Board is to elect officers in January of each year. However, since this was the first Board of Zoning Appeals meeting of the year, election of officers did not take place in January. Mr. Rogerson said that the current Chairman could choose to defer election of officers until a replacement was found for Mr. Fischer, whose term would end after this meeting.

The current Chairman, Mr. Giedd, chose to go forth with the election of officers at this meeting.

Mr. Rogerson opened the nominations for the Chairman of the Board of Zoning Appeals of James City County for the year 2002.

Ms. Wallace nominated Mr. Fraley and Mr. Giedd seconded the nomination.

Mr. Rogerson asked for any more nominations. There being none, Mr. Giedd moved to close the hearing for nominations and elect Mr. Fraley as Chairman.

Ms. Wallace seconded the motion.

Mr. Rogerson read back the motion to elect Mr. Fraley as Chairman of the Board of Zoning Appeals of James City County for the year 2002 and called for a vote.

The motion was approved 4-0.

Mr. Rogerson opened the nominations for the Vice Chairman of the Board of Zoning Appeals of James City County for the year 2002.

Mr. Giedd nominated Ms. Wallace and Mr. Fraley seconded the nomination.

Mr. Rogerson asked for any more nominations. There being none, Mr. Giedd moved to close the hearing for nominations and elect Ms. Wallace as Vice Chairman.

Mr. Rogerson read back the motion to elect Ms. Wallace as Vice Chairman of the Board of Zoning Appeals of James City County for the year 2002 and called for a vote.

The motion was approved 4-0.

C. MINUTES

The minutes of the November 1, 2001 meeting and the December 6, 2001 meeting were approved.

D. OLD BUSINESS

None

E. NEW BUSINESS

Mr. Giedd gave a brief explanation as to the purpose and function of the Board of Zoning Appeals. He stated since this Board is a five-member board, three votes are always required to grant a variance. He then asked Mr. Rogerson to read the staff report.

ZA-01-02 83 Kestrel Court

Mr. Rogerson presented the staff report stating that Mr. Robert McNeil, property owner, was requesting a variance to Section 24-258(b), Yard Regulations, for the continued placement of an existing deck and for a proposed roof to be placed over the deck. The request is to reduce the rear yard setback from thirty-five feet to thirty-four feet. The property is zoned R-2, General Residential, and can be further identified as Parcel No. (8-16) on James City County Real Estate Tax Map (32-2).

Mr. Rogerson then stated that Mr. McNeil had applied for a building permit to place a 14' by 16' roof over the existing deck. It was then that Staff noticed the deck encroached by approximately 2.4 inches. Staff notified Mr. McNeil and told him he needed to apply for a variance for both the existing deck and the proposed roof. There is an encroachment because an amended building permit was approved by Code Compliance without any Zoning review. The amended permit switched the deck from the right rear to the left rear of the house. Additionally, the builder changed the dimensions of the deck without any notice to Code Compliance. The builder built the deck 14' by 16' instead of the approved 12' by 16'.

Mr. Rogerson said Staff acknowledges Mr. McNeil purchased the property in good faith. Staff also notes the lot behind Mr. McNeil's property is owned by the Heron Run Homeowners' Association and is identified as common area protected from development. However, Staff finds that strict application of the James City County code would not effectively prohibit or unreasonably restrict the use of the property. Staff does not feel that a hardship approaching confiscation exists. Therefore, Staff does not recommend that the Board of Zoning Appeals approve the variance request for the continued placement of the existing deck or the construction of a roof over the existing deck.

Mr. Rogerson did note that if the Board wanted to accommodate the existing deck only, a variance of four inches to the rear yard setback would be suggested.

Mr. Rogerson stated that he would be happy to answer any questions from the Board.

Mr. Fischer asked who decided to move the deck from the right side of the house to the left.

Mr. Rogerson replied that Zoning Staff has no record of a Zoning approval to move the deck from one side to the other. There is a record of the Code Compliance Plans Examiner approving the change. However, if the deck was built to the approved dimensions of 12' by 16', the deck would not have encroached, regardless of which side of the house it was on.

Mr. Fischer asked if the encroachment was detected at the time Mr. McNeil purchased the house, because a survey would have been required at that time.

Mr. Rogerson asked Mr. Fischer to defer that question to the applicant during the public hearing.

Mr. Giedd asked if a building inspector looks at deck measurements during inspection.

Mr. Rogerson replied that building inspectors typically would not note the difference between a 12' by 16' deck and a 14' by 16' deck. He mentioned that it is near impossible to know where property lines are when an inspector is in the field, so there is no way for them to note an encroachment from a visual inspection.

Mr. Giedd asked if Zoning requires a foundation survey before building begins.

Mr. Rogerson answered yes, a foundation survey is required.

Mr. Giedd asked if a foundation survey includes a deck.

Mr. Rogerson said no, a foundation survey only measures the corners of the foundation, and decks typically jut out beyond the foundation of the house. He said that current practices require an as-built survey as well as a foundation survey, so both the foundation and any additions that jut out beyond the foundation can be examined. He said this practice has been in effect for approximately three years.

Mr. Fraley asked if there was any input from the homeowners association or any adjacent property owners.

Mr. Rogerson replied no, neither the homeowners association nor any adjacent property owners have spoken to this application. However, all potentially interested parties were notified.

Mr. Giedd asked if the Board had any further questions. There being none, Mr. Giedd opened the public hearing.

Mr. McNeil, property owner, came forward. He stated that he was the original property owner, and that the deck was built as part of the house, not an addition afterwards. He also said he was not involved in the decisions to change the size and location of the deck. He stated that he was asking for a one foot variance because he wanted to accommodate a roof which would extend slightly beyond the edges of the deck. Mr. McNeil also said he desired to add some flower boxes to the side of the deck.

Mr. Giedd asked if Mr. McNeil knew how the deck changed size from 12' by 16' to 14' by 16'.

Mr. McNeil replied that he did not know. He said that when the house construction was completed, he was happy to move in, and did not think to measure anything.

Mr. Fischer asked if the encroachment was detected at the time Mr. McNeil purchased the house, because a survey would have been required at that time.

Mr. McNeil replied that yes, a survey was done when he bought the house. However, the rear setback was not placed on the survey. This error was not discovered until the building permit application for the roof was made. Mr. McNeil said that after the error was discovered, he called the surveyor and asked for a new survey with the rear setback line on it.

Mr. Giedd thanked Mr. McNeil for his statement.

Mr. Giedd then closed the public hearing.

Ms. Wallace said she had no issues with granting a variance for the existing deck.

Mr. Rogerson noted that the building face, which must comply with setbacks, excludes exterior steps, chimneys, and architectural features such as canopies, sills, and eaves

which project no more than three feet into the yard. Therefore, any flower boxes which extended beyond the deck would not need a variance. Any protrusion beyond the deck supports would not need a variance.

Mr. Giedd asked Mr. Rogerson why this variance was not handled administratively.

Mr. Rogerson responded that the Zoning Administrator determined that decks are a convenience and not a hardship, which is why the Board of Zoning Appeals must review variance requests for decks.

Mr. Fraley asked if Mr. McNeil truly needed a one foot variance to accommodate his wishes.

Mr. Rogerson replied no, Mr. McNeil was erring on the side of caution. The survey says the house is "34.8'" from the property line, and Staff interprets that to mean thirty-four feet and two tenths of a foot, which is 2.4 inches. However, the ".8" could mean eight inches. Therefore, Staff recommends a four inch variance for the existing deck to cover both possibilities.

Mr. Giedd stated that he drove by the lot earlier in the day, and noted how isolated it was. He said the deck did not encroach on any other person's lot or into any road right-of-way. Therefore, he felt the spirit of the ordinance would not be broken by leaving the deck the way it currently is. Furthermore, since the deck could remain due to its isolation, he felt a roof would be no more obtrusive. He said he would support a six inch variance for both the existing deck and the proposed roof.

Mr. Fraley agreed with Mr. Giedd.

Mr. Giedd made a motion that in ZA-01-02, 83 Kestrel Court, a new rear yard setback be established at thirty four feet and six inches to allow the continued placement of the existing deck and the proposed construction of a roof over the deck.

Mr. Rogerson asked if Mr. Giedd wanted to establish a condition that the roof would not encroach further into the setback.

Mr. Giedd said he felt the condition was unnecessary.

Ms. Wallace seconded the motion.

Mr. Rogerson read back the resolution and then called for a vote.

The motion was approved 4-0.

Mr. Giedd asked if this would allow Mr. McNeil's building permit to be released.

Mr. Rogerson replied yes, Mr. McNeil could now obtain his building permit.

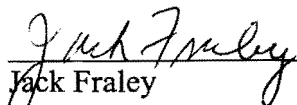
E. MATTERS OF SPECIAL PRIVLEDGE.

Mr. Rogerson said that the Board of Zoning Appeals would need to approve its 2002 meeting calendar. The Board of Zoning Appeals would meet on the first Thursday of every month except July 4, 2002 on an as-needed basis. The July 2002 meeting would be held on Thursday, July 11, 2002 so as not to conflict with the July 4 holiday.


The Board agreed unanimously, by a voice vote, to approve the calendar.

F. ADJOURNMENT

The meeting was adjourned at approximately 8:15 p.m.



Jack Fraley
Chairman



Allen J. Murphy
Secretary