

BOARD OF ZONING APPEALS

July 11, 2002

A. ROLL CALL

PRESENT:

ABSENT:

Mr. Fischer
Mr. Fraley
Ms. Wallace
Mr. Turnau

Mr. Nice

OTHERS PRESENT:

Christy Parrish, Zoning Officer
James Breitbeil, Zoning Officer
Matt Arcieri, Development Management Assistant

B. MINUTES

The minutes of the June 26, 2002 meeting were approved.

D. OLD BUSINESS

Mr. Fraley asked staff to provide an updated roster that included telephone numbers, address and e-mail address for all Board Member and staff.

E. NEW BUSINESS

Mr. Fraley 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.

ZA-08-02 4060 Mill Dam Court

Mr. Fraley stated that Mr. Breitbeil has provided the facts and findings of this case and then asked Mr. Breitbeil if he had any additional comments he with to make.

Mr. Breitbeil stated he had nothing to add but will be able to answer any questions the Board may have.

Mr. Turnau asked why this was not caught during the construction period.

Mr. Breitbeil stated that the practice and review of building applications is to require a foundation survey for the dwelling when it is within three (3) feet of a setback line. In

the case of a deck, the same type of procedure is taken. If the deck is within three (3) feet of the setback line, staff requires an "as built" survey to ensure the proper placement of that deck. Staff would only be aware of the deck's encroachment at the time the "as built" survey was done.

Mr. Turnau asked why there was almost a one-year period from the time of the home's construction until now when the encroachment was caught.

Mr. Breitbeil stated there is a representative from Atlantic Homes here tonight that may be able to answer that question.

Mr. Turnau asked if the deck was on the original site plan.

Mr. Breitbeil stated yes and an "as built" survey with the deck was required to see if there was an encroachment. Once the encroachment was found the builder has two choices: (1) remove a portion of the deck or (2) apply to the Board of Zoning Appeals.

Mr. Fraley added that this is not an uncommon situation. In this case, the surveyors believed that the deck was eleven (11) feet from the face of the foundation and the carpenters thought it was from the face of the box bay window.

Mr. Fischer stated that he was disturbed by this situation because it seemed the Board receives this type of case every month. Mr. Fischer asked why a procedure was not set up so that when construction is in progress a County Inspector will make sure that neither a garage, deck nor building will be compromised thus causing this Board to make these types of decisions.

Mr. Turnau also restated his concern of the time frame in which this situation was caught.

Mr. Breitbeil stated that a building permit is valid for a period of six (6) months. Once a building permit has been issued the contractors have a six (6) month period before the first inspection. The deck is usually constructed last and the only way staff will catch this situation before the home is completely finished is to give warning to the contractor letting them know that the structure will be close to the setback line and staff is requiring an "as built" survey to ensure that if someone makes a mistake it is caught right away. In this case, staff caught the encroachment when the "as built" survey was submitted. The Code Compliance staff will not issue the Certificate of Occupancy for the home before this encroachment issue is resolved.

Mr. Turnau asked if any neighbors complained about this case.

Mr. Breitbeil stated that no complaints have been made.

Mr. Turnau asked that because staff does not support this variance, a solution to this case would be to tear down the deck.

Mr. Breitbeil stated that should the Board deny this variance, the alternative would be to remove a portion of the deck.

Mr. Turnau asked is this is a valid way to go.

Mr. Breitbeil stated that from staff's point of view, a deck relative to the dwelling itself could be removed with ease.

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

Mr. Rick Roffinoli from Atlantic Homes and agent for the owners explained that when the original site plan was made, the surveyor thought the deck measurements was made from the face of the foundation and carpenters constructed the deck from the backside of the bay window. He stated he felt that this was unintentional and if they would have know, they would have gone to the owners and explained that they could not either (a) can't have a deck or (b) the deck would have to be constructed smaller.

There being no questions for Mr. Roffinoli, Mr. Fraley thanked him for his statements.

Mr. Michael Lavanti, owner, stated that the home in question and neighboring homes are backed by deep heavy woods and feels that no one's privacy would be compromised if that is an issue. This home was built for his son and his son passed away before the home was completed and that is the reason it is unoccupied.

Mr. Turnau asked if the home is currently for sale because it is not occupied.

Mr. Lavanti stated yes.

There being no further questions for Mr. Lavanti, Mr. Fraley thanked him for his statements.

Mr. Fraley closed the public hearing.

Mr. Fraley asked the Board if anyone had any further questions or comments.

Mr. Fraley stated that he felt this was a not an intentional mistake and would support a motion to grant the variance.

Mr. Turnau made a motion to grant 1.3-foot variance to Section 24-258, Yard Regulations, for the existing deck as shown on the attached survey by Thomas Land Surveying dated 5/11/02 with the condition that any further construction on the premises shall meet the current ordinance requirements.

Ms. Wallace seconded the motion.

Mr. Breitbeil called for a vote.

The motion was approved 4-0.

ZA-09-02 126 Burton Woods Drive

Mr. Fraley stated that Mr. Breitbeil has provided the fact and findings of this case and then asked Mr. Breitbeil if he had any additional comments he with to make.

Mr. Breitbeil stated he had nothing to add but will be able to answer any questions the Board may have.

Mr. Turnau stated that he understood that developers bought the existing Burton Woods, which are dilapidated and in that purchase they were able to obtain a great deal of land in which to build more homes. He asked if this was correct and to provide some background.

Mr. Breitbeil stated that the property requesting the variance today is referred to Powhatan Apartments. The section that is closest to Longhill Road is referred to Burton Woods and it is his understanding that there has been a recent transfer of ownerships and there has been talk of plans to redevelop that property. This property is in the back and was built in the late 70s or early 80s. This variance is not requesting any additional construction. When these buildings were constructed, they encroached slightly on the setback requirements at the time of construction. Due to the encroachment at time of construction, the property does not have non-conforming status.

Mr. Turnau asked if the same developer who owned this property owns the front section.

Mr. Breitbeil replied that he did not think so but was unsure.

Mr. Turnau asked Mr. Breitbeil to explain the statement in that staff report concerning the request for a letter from James City County that would allow the buildings be reconstructed exactly as the buildings are shown on the attached survey should the buildings be impaired to the extent they become uninhabitable.

Mr. Breitbeil stated that staff often receives zoning verification requests when a business or property owner refinances and usually they request this same type of information. This information is very important to the finance companies because they want to know that (1) this property is in compliance and (2) if the building would be damaged by an act of god or causality it could be rebuilt in there exact location.

Ms. Wallace asked if this was the first time staff received knowledge that this property was not in compliance.

Mr. Beitbeil stated that staff was aware of the encroachment sometime last year. There were actually two encroachments found. The property owners were able to do a boundary line adjustment with one adjacent property owner but was unsuccessful with the attempt to the second boundary line adjustment at the back of the property.

Ms. Wallace asked why the property owners are just now applying for the variance.

Mr. Breitbeil stated that the need for a variance was never known.

Mr. Fischer asked if the reference to Mulberry Place in the staff report was just to show that that Mulberry Place was zoned residential.

Mr. Breitbeil stated that Mulberry Place used to be zoned multi-family which is the same as the Powhatan Apartments in the late 70s and early 80s. Different setbacks apply when two multi-family zoned properties abut each other as opposed to abutting to a property zoned general residential. At this date, Mulberry Place is zoned general residential and would have a greater setback if someone would try to develop this property today.

Mr. Turnau asked for clarification on the staff report referencing approaching confiscation.

Mr. Breitbeil explained that if the Board does not grant the variance they would have to remove the buildings.

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

Mr. Robert Margolis, on behalf of Powhatan Limited Partnership, gave a brief description of the property and stated that his investors are requiring a letter stating that if the property burned down, they could rebuild it. He also stated that he is very proud of the accomplishments at the development and he has no connection with the owners of Burton Woods I.

Mr. Fischer asked Mr. Margolis should the apartments be damaged, it is a possibility to build vertically instead in horizontally so that land space could be saved.

Mr. Margolis replied that the insurance requires, if something should happen, to build the buildings where they are today. With the 50-foot setback, it would wipe out half the buildings and could only build on the other side of the parking lot.

There being no further questions for Mr. Margolis, Mr. Fraley thanked him for his statements.

Mr. Fraley closed the public hearing.

Mr. Fraley stated that he is inclined to support staff's recommendation of granting the variance.

Mr. Turnau made a motion to grant a variance to Section 24-311, Yard Regulations, for the continued placement of three existing apartment buildings at 126 Burton Woods Drive. RESOLUTION: 15.3-foot variance to Section 24-311, Yard Regulations, for the three apartment buildings as shown on the attached survey by Peterson Surveys, Inc. with an updated date of 7/8/02. The variance brings the three apartment buildings into compliance.

Ms. Wallace seconded the motion.

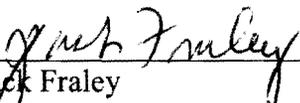
Mr. Breitbeil called for a vote.

The motion was approved 4-0.

E. MATTERS OF SPECIAL PRIVLEDGE.

F. ADJOURNMENT

The meeting was adjourned at approximately 8:45 p.m.



Jack Fraley
Chairman



Allen J. Murphy
Secretary