

BOARD OF ZONING APPEALS

March 6, 2003

A. ROLL CALL

PRESENT:

Mr. Nice
Mr. Fraley
Mr. Turnau
Mr. Rhodes

ABSENT:

Mr. Fischer

OTHERS PRESENT:

Melissa Brown, Zoning Officer
Christy Parrish, Zoning Officer
Trey Davis, Development Management Assistant
Mr. Burlin Rogers, Applicant
Mr. Mark Berry

B. MINUTES

On a motion by Mr. Rhodes, seconded by Mr. Turnau, the amended minutes of the February 6, 2003 meeting were unanimously approved.

D. OLD BUSINESS

E. NEW BUSINESS

ZA-14-02 4613 Massena Drive

Ms. Parrish informed the Board that she had received a letter from the Ware Creek Manor Homeowners Association regarding this case and that she had distributed it to the Board.

Mr. Fraley stated that he had read the previous case referenced in the staff report and understood the decision of that Board. However, he felt that this case was different.

Ms. Parrish said the applicant had proceeded legally and in good faith with the purchase process.

Mr. Turnau pointed out that there is a shed on the property within the setback.

Ms. Parrish explained that accessory structures under one story high and at least 10 feet from the main building can be placed within 5 feet of the property line. The pool in question is attached to the main structure and must abide by that setback.

The Board had no additional questions for Ms. Parrish and Mr. Fraley opened the meeting to public comment at 7:12PM. He read a portion of the Virginia State Code as it relates to the purpose of the BZA.

Mr. Burlin Rogers, the property owner, stated that he bought the home in April, 2001 as a place to retire. When he applied for a building permit to construct an addition, his builder advised him to get this matter resolved.

Mr. Turnau asked if there was any way to pull the pool back within the setback.

Mr. Rogers replied that it was built into the landscape and could not be moved.

Mr. Rhodes asked if he had purchased title insurance and stated that it was designed to protect the buyer in situations like this.

Mr. Rogers replied that he had.

Mr. Nice asked whether the new addition would encroach on the setbacks.

Mr. Rogers said that it would not as it was on the other side of the building.

Mr. Rhodes asked if the pool was a significant factor in Mr. Rogers' choice of homes.

Mr. Rogers replied that it was not.

Mr. Nice asked whether, theoretically, the pool could be moved elsewhere on the property.

Mr. Rogers replied in the affirmative.

Mr. Turnau said the previous owner should never have allowed this encroachment to happen.

Mr. Fraley closed the public comment section of the meeting at 7:20PM.

Mr. Fraley stated that since the HOA supported Mr. Rogers' application for a variance, there was no reason to make him move the pool.

Mr. Nice agreed that the owners had proceeded at all times with due diligence.

Mr. Rhodes said that it was a little difficult to find a true hardship in this case versus a convenience.

Mr. Fraley responded that the expense of moving the pool was not trivial.

Mr. Nice moved to grant the variance.

Mr. Turnau seconded the motion.

Ms. Parrish read a RESOLUTION: The board grants variance to Section 24-238 (b), Yard Regulations, of the James City County Zoning Ordinance to reduce the required rear yard setback from 35 feet to 32.5 for the continued placement of an existing above ground pool.

Ms. Parrish called for a vote.

The motion was approved 4-0.

ZA-01-03 144 and 148 Tewning Road

Ms. Parrish informed the Board that she had nothing to add to the staff report.

Mr. Fraley asked Mr. Nice to comment on this case.

Mr. Nice explained that the location was near the veterinary clinic where a similar variance has previously been granted. He added that there was already a good buffer between Eastern State Hospital and these lots.

Mr. Fraley asked whether the existing wood buffer extended far past the rear of these lots.

Ms. Parrish responded that it did.

Mr. Rhodes asked whether the buffer being discussed was on Eastern State Hospital's property.

Ms. Parrish replied that it was.

Mr. Fraley said it was in the County's interest to get that area spruced up.

Mr. Rhodes asked what the relationship between the applicant and the land owner was.

Ms. Parrish responded that the two are father and son.

Mr. Rhodes asked if there were any comments from ESH on this case.

Ms. Parrish said there had been none.

Mr. Turnau asked for an explanation of the rationale for granted variances previously to two properties on Tewning Road.

Ms. Parrish said the Board that granted those variances did not see the decreased rear setbacks as a detriment to ESH and that they wanted to encourage business growth on Tewning Road.

Mr. Turnau asked why the BZA did not grant variances to all the properties at once.

Mr. Fraley responded that each owner must request and apply for a variance on their property before one can be granted. He added that the BZA had disallowed a variance for the veterinary clinic to encroach on the front setback.

Mr. Nice asked whether a fence ran the whole length of the ESH property line to the rear of these lots.

Ms. Parrish replied that a fence owned by ESH was in place.

Mr. Rhodes asked whether staff had considered additional screening.

Ms. Parrish replied that those issues would be examined during the site plan review process and when the plans are examined by the Development Review Committee.

Mr. Turnau asked if there was a requirement that trucks be confined to a certain area on the property.

Mr. Fraley countered that that was not pertinent to zoning.

Mr. Rhodes asked if there would be significant additional traffic on Tewning Road as it is very narrow.

Ms. Parrish said she could not speak to that but that she felt it would probably be less traffic than is generated by the County maintenance facility across the street.

The Board had no additional questions for Ms. Parrish and Mr. Fraley opened the meeting to public comment at 7:33PM.

Mr. Mark Berry, the applicant and agent of the property owner, stated that he is trying to construct an office park on the two lots. He added that though he only applied for a setback of 35 feet, he would like to go down to 20 feet if that is what the veterinary clinic did. He felt reducing the setback from 75 feet would allow a more efficient use of the property.

Mr. Nice pointed out that since the BMP on the proposed plans was 35 feet from the rear lot line, he could theoretically build the building further back.

Ms. Parrish stated that the BMP cannot be placed within the buffer and, as drawn, it was right at the setback and could not move any further.

Mr. Rhodes asked if the applicant had any other property in that area.

Mr. Berry replied that he did not.

Mr. Rhodes asked what other building layout options were examined.

Mr. Berry said he had considered turning the building 90 degrees to meet the setbacks, but that approach precluded staging the construction. He added that the original setback would prevent the construction of 3 of his proposed units.

Mr. Rhodes asked whether it was still economically viable without those three.

Mr. Berry responded that it was, but it was not as viable as he would like.

Mr. Turnau asked which lot would be built on first.

Mr. Berry replied that it would be the unused lot while the other remained active as a contractors' yard.

Mr. Turnau said the contractors' yard was a "dump".

Mr. Berry replied that the refuse there comes and goes.

Mr. Turnau asked that the BZA require a proffer stating that the applicant build on the active lot first.

Mr. Greg Dorman, Assistant County Attorney, informed Mr. Turnau that proffers are not applicable to variances and that they are only made voluntarily on the part of the applicant.

Mr. Nice said approval of a 20 foot variance, versus the 35 foot variance applied for, would be consistent with prior approvals. He said he would prefer this for the sake of consistency.

Mr. Fraley agreed.

Mr. Fraley closed the public comment section of the meeting at 7:43 PM.

Mr. Turnau said he would accept a variance but asked that the applicant begin building on the contractors' yard site first.

Mr. Rhodes stated that a setback of 35 feet was acceptable to him as that is what the applicant requested and what was advertised to the public. A 20 foot setback was not requested nor advertised. He said buffers are in place for a reason and that they should be maintained.

Mr. Fraley said there was still plenty of buffer on the ESH property and said the R-2 zoning on that land was a "quirk" in the ordinance.

Mr. Rhodes said it was not in the BZA's purview to make decisions based on whether or not they thought the zoning designation of a particular parcel was a quirk.

Mr. Fraley said it was.

Mr. Nice said that this matter had been discussed in previous cases and that ESH really was not residential despite the zoning designation. Based on the current use of that land by ESH, he felt this made sense.

Mr. Turnau said that the crux of that argument was the word “current”. He explained that he would hate to close off or complicate future uses of the ESH property when the hospital leaves. He stated that he agreed with Mr. Rhodes.

Mr. Fraley said that he chaired the Industrial Review Committee and that one of the recommended actions for the ESH property was to leave it zoned R-2.

Mr. Nice said that the resolution would have to be redrafted to reflect lowering the setback to 20 feet and that it would take 3 votes to pass that variance.

Mr. Fraley said he would be disappointed if the Board chose a different standard for this case than for other businesses in that area. He added that the applicant might come back and apply for a 20 foot setback anyway if he was allowed 35.

Mr. Nice said 35 feet seemed punitive.

Mr. Rhodes pointed out that he could not justify giving the applicant 20 feet this time just because that is what had been done in the past. That amounts to changing the ordinance, a decision that is not up to the BZA.

Mr. Fraley asked why it mattered if the applicant decided to come back later and apply for a 20 foot setback.

Mr. Rhodes asked why the number should be set at 20. He asked why the BZA would be compelled to approve that.

Mr. Fraley responded that if it weren't for the “quirk” of ESH being zoned R-2, the setback would be 20 feet by right. He said he wanted all the other businesses in the area to request that too.

Mr. Rhodes asked if ESH was the only land in the County zoned R-2.

Ms. Parrish replied that it was not.

Mr. Rhodes asked if this was the only case of M-1 property next to R-2.

Ms. Parrish replied that it was not.

Mr. Fraley said the decision was made not to rezone ESH from R-2 so that it could remain open to other residential uses.

Mr. Turnau asked why the applicant did not request a 20 foot setback.

Mr. Fraley said he would make a motion for 20 feet anyway and asked what difference it made.

Mr. Turnau said that doing so would be setting a precedent.

Mr. Nice said it seemed unfair to single out one applicant. He argued that it was the BZA's purview to create consistency.

Mr. Fraley moved to grant the variance.

Mr. Nice seconded the motion.

Ms. Parrish read a RESOLUTION: The board grants variance to Section 24-416, Yard regulations, of the James City County Zoning Ordinance to reduce the rear yard setback from 75 feet to 20 feet for the construction of small office and warehouse spaces at 144 and 148 Tewning Road.

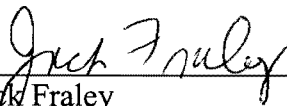
Ms. Parrish called for a vote.

The motion was approved 3-1 with Mr. Rhodes dissenting.


E. MATTERS OF SPECIAL PRIVILEGE

F. ADJOURNMENT

The meeting was adjourned at approximately 8:00 p.m.



Jack Fraley
Chairman



Allen J. Murphy
Secretary