

**BOARD OF ZONING APPEALS**

**July 17, 2003**

**A. ROLL CALL**

PRESENT:

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

ABSENT:

Mr. Fischer

OTHERS PRESENT:

John Rogerson, Zoning Officer  
Trey Davis, Development Management Assistant  
Mr. and Mrs. Kerry Straight, Applicants  
Mr. Mike Finkelstein, Applicant

**B. MINUTES**

On a motion by Mr. Rhodes, seconded by Mr. Nice, the minutes of the June 5, 2003 meeting were unanimously approved.

**D. OLD BUSINESS**

**E. NEW BUSINESS**

**ZA-07-03                    108 Wetherburn Lane**

Mr. Rogerson said the current building footprint is five sided and is allowed under a previous variance. The applicant's proposal would make the building footprint 4-sided and an additional variance would be needed for the expanded portion.

Mr. Nice said the addition seemed to remain in the existing setback.

Mr. Rogerson explained that the previous variance stated that no more encroachment would be allowed. This variance would reduce the setback cross the width of the property, not just to the space occupied by the house.

Mr. Fraley opened the meeting to public comment at 7:15 PM.

Mr. Kerry Straight, the applicant and property owner stated that he plans to retire to this house and that the deck was unusable without a screen. He had the plan reviewed by his neighborhood architectural review board and said he obtained letters of support from neighbors for the project. He decided to square off the enclosure on the advice of his builder.

Mr. Fraley read a description of the purpose of the BZA.

Mr. Nice explained that a tie vote in this case would be a denial of the variance, given that each variance must be supported by at least three BZA members.

Mr. Straight said he wished to proceed.

Mr. Fraley closed the public comment section of the meeting at 7:27PM.

Mr. Nice said Mr. Straight bought his house in good faith and that anyone should be able to assume that they can enclose and improve their property without a public hearing. He pointed to the support of the HOA and the neighbors for this variance.

Mr. Turnau said he did not understand why this did not qualify as a hardship. He said the proposed drawing looked better.

Mr. Rhodes explained that this case does not meet the strict definition of a hardship but that granted a variance in this particular instance does not harm anyone. He said that if the case were more controversial, he would be more wary.

Mr. Nice moved to grant a variance.

Mr. Turnau seconded the motion.

Mr. Fraley asked Mr. Rogerson to read language for a motion setting the rear yard setback at 27 feet.

Mr. Rogerson read a RESOLUTION: The board grants a variance to Section 24-545, Yard Regulations, of the James City County Zoning Ordinance. This variance reduces the required rear yard setback from 35 feet to 27 feet for the expansion and enclosure of the existing deck. There can be no further expansion into the rear yard setback.

Mr. Rogerson called for a vote.

The motion was approved 4-0.

**ZA-08-03                      16 Tempsford Lane**

Mr. Turnau asked for clarification as to whether 35 foot setbacks meant the houses were 70 feet apart.

Mr. Rogerson replied that it did.

Mr. Rhodes asked whether a letter from a neighbor dated July 9<sup>th</sup> had been signed.

Mr. Rogerson said that it had been.

Mr. Fraley opened the meeting to public comment at 7:31 PM.

Mr. Mike Finkelstein, the applicant and property owner, said he was preparing to sell his house when he noticed that the deck encroached into the setback. He said when he purchased the property, neither the lawyer or the builder mentioned the encroachment. He had obtained letters from his neighbors expressing support for the continued placement and maintenance of the deck, but allowing now further expansion.

Mr. Fraley closed the public comment section of the meeting at 7:35PM.

Mr. Turnau said he did not understand why the expansion of the deck should be limited.

Mr. Rogerson explained that the language of the variance must be very clear so that no one would make the deck larger or make it into a sunroom or larger addition to the house at a later time.

Mr. Turnau asked why staff would want to limit that type of expansion in the setback.

Mr. Rogerson replied that otherwise, people could build an addition on the house without coming to a public hearing, and thus without the approval of affected neighbors.

Mr. Fraley said that the variance must be precise so it is not open to other interpretations.

Mr. Rogerson noted that the neighbors who wrote letters of support in this case were very specific about not wanting to grant the property owner carte blanc to build in the setback.

Mr. Rhodes agreed that the wording should prevent a larger expansion.

Mr. Rhodes moved to grant a variance.

Mr. Nice seconded the motion.

Mr. Rogerson read a RESOLUTION: The board grants a variance to Section 24-258(b), Yard Regulations, of the James City County Zoning Ordinance. This variance reduces the required rear yard setback from 35 feet to 29 feet for the continued placement of the existing deck with no further expansion of the deck.

Mr. Rogerson called for a vote.

The motion was approved 4-0.

## **E. MATTERS OF SPECIAL PRIVILEGE**

Mr. Nice asked Mr. Rhodes whether vertical expansion would be subject to review by the BZA in York County.

Mr. Rhodes replied that it was an expansion of use.

Mr. Rogerson explained that by expanding vertically, the deck in question would be subject to more intense use and that having people using the space more frequently might have an impact on the neighbors.

Mr. Turnau asked why these cases come to the BZA for review.

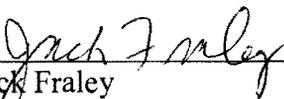
Mr. Rogerson explained that the Zoning Administrator can only grant an administrative variance up to 18 inches. He also noted that decks and pools are conveniences and the restriction of their placement cannot be classified as hardships under the ordinance.

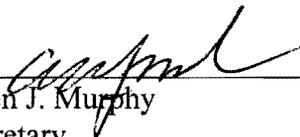
Mr. Nice said that the purpose of being on the BZA was to make the determinations on a case by case basis in situations like these.

Mr. Fraley noted that there would be no August meeting as no cases had been submitted.

#### **F. ADJOURNMENT**

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

  
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Jack Fraley  
Chairman

  
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Allen J. Murphy  
Secretary