

**BOARD OF ZONING APPEALS**

**October 8, 2003**

**A. ROLL CALL**

PRESENT:

Mr. Fraley  
Mr. Turnau  
Mr. Rhodes  
Mr. Fischer

ABSENT:

Mr. Nice

OTHERS PRESENT:

Christy Parrish, Zoning Officer  
Melissa Brown, Zoning Officer  
Trey Davis, Development Management Assistant  
Mr. James McReynolds, Applicant  
Mr. Robert Millis, Applicant  
Mr. Bob Ripley, Builder

**B. MINUTES**

On a motion by Mr. Rhodes, seconded by Mr. Turnau, the amended minutes of the July 17, 2003 meeting were unanimously approved.

**D. OLD BUSINESS**

**E. NEW BUSINESS**

**ZA-10-03                    3500 Edward Terrace**

Ms. Parrish stated that Mr. McReynolds brought this issue to staff's attention in good faith as soon as he realized there might be a problem.

Mr. Fischer toured the site previously and stated that the cantilevered items on the house in question conformed to the rest of the neighborhood. Most homes in that area have some sort of cantilevered feature. He added that the land dropped away steeply from the wall on which this feature is located and its presence would not create a visible disturbance.

Mr. Fischer stated that he had decided to vote in opposition to the variance prior to the site visit because it was new construction and part of a commercial venture. But given the layout of the site and the builder's willingness to come forward, he had changed his mind.

Mr. Turnau stated he was confused as to how the plans didn't show the cantilevered item.

Ms. Parrish responded that the surveyor misunderstood the rules pertaining to cantilevering and that the zoning officers only see the foundation survey when determining setbacks. Theoretically, all cantilevered items should be shown to the zoning officers by Code Compliance. In practice, this is not always the case.

Mr. Turnau expressed concern that builders can submit plans and then change them in the field.

Ms. Parrish explained that the applicant submitted the plans correctly but that the cantilevered second story was not listed on the site plan received by zoning. County staff has taken measures to correct this flaw.

Mr. Fischer asked if it would be a hardship to submit an extra full set of plans to the zoning officers to review and file.

Ms Parrish stated that the cooperation of the building official is required in order to request an additional set of building plans, but that plan reviewers generally do bring items in question to the zoning officers' attention.

Mr. Fraley read a definition of the purpose of the Board of Zoning Appeals and opened the meeting to public comment at 7:15 PM.

Mr. James McReynolds, the applicant and owner of Caney Creek Builders, said this was a well-run county and the he tried to obey all of the rules. He has been building here for 25 years and was under the impression that a bay window did not count when measuring setbacks. He was presented with a very small building envelope and invested a lot of time in finding a house that would fit. He said that it might be possible to give a small set of plans to the zoning officers if necessary.

Mr. McReynolds said he stopped work on this house and would not proceed further until this matter was settled. He said he will work with the surveyor in the future to have all cantilevered items shown on the plot plans.

Mr. McReynolds stated that he had already sold the house and that the adjacent property owners called him to say they had no problem with him obtaining a variance.

Mr. Rhodes said that a hardship must be shown according to state law and asked Mr. McReynolds to elaborate on the small building envelope.

Mr. McReynolds said the house had to be at least 1,600 square feet to be approved for the neighborhood. He looked through about 500 house plans and found one that worked. He said the total area of the house was 2,100 square feet including the room over the garage. He noted that even though bay windows and chimneys come out from the house the same distance, chimneys do not count against the setback because they are specifically excluded by the zoning ordinance.

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

Mr. Fischer said he supported granting a variance.

Mr. Rhodes asked Ms. Parrish to read from the staff report.

Ms. Parrish said that since the only part of the building encroaching on the set back was the cantilevered item, it could technically be altered to come in to compliance.

Mr. Rhodes said he would like the BZA to ask staff to review the definition of the building line and to define building face and plane. He said he could concur with the hardship given the square footage requirements from the homeowner's association.

Mr. Fraley asked Ms. Parrish for wording for the variance.

Ms. Parrish 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 32 feet with no further expansion of the structure.

Mr. Turnau moved to grant a variance.

Mr. Rhodes seconded the motion.

Ms. Parrish called for a vote.

The motion was approved 4-0.

Mr. Fraley commented that the existing definition was one of exclusion.

Ms. Parrish said she would compare it with those of other jurisdictions and bring the matter up with the county attorney.

Mr. Fraley suggested that staff look into ways for the zoning officers to get a copy of the house plans to have a full view of what the finished product will look like.

Ms. Parrish said she would discuss this with the building official.

**ZA-09-03                      9422 Richmond Road**

Mr. Turnau said he spoke to Ms. Brown about this case over the phone and that it was more complex than one might think. He said the house is already non-conforming and that expansions of such houses are not possible without prior BZA approval unless the addition meets the current setback requirements.

Ms. Brown mentioned that larger parcels in the same A-1 zoning district have an increased setback of 75 feet. She noted that there have been no objections from adjacent property owners to this variance.

Mr. Turnau thanked Ms. Brown for explaining this case so clearly to him.

Mr. Fischer said the house is already close to the road and nothing could be done about that. He said enlarging the house would only improve the appearance of the whole area and that he had no problem with that.

Mr. Fraley opened the meeting to public comment at 7:40 PM.

Mr. Robert Millis, the homeowner and applicant, introduced himself as a lifelong James City County resident. He said the house has been in his family for 72 years. In the 1950s, Route 60 was widened and greatly reduced the front yard. He has had no complaints from neighbors about the proposed variance and feels this is a unique hardship.

Mr. Bob Ripley, the builder working with Mr. Millis on the expansion, elaborated on the expansion of Route 60 from two lanes to 4. The family did nothing to cause the house be closer to the road and were limited by resource protection areas as to where the expansion could be built.

Mr. Rhodes asked if it was possible to move the house further back. He expressed concern that part of the house was technically over the property line and in VDOT's right-of-way, making it susceptible to a future road expansion.

Mr. Ripley said the owner had considered this option, but it would have cost too much money to level the hill behind the house and move it.

Ms. Brown mentioned that VDOT's property acquisitions today adjust the line to accommodate existing structures, but that they did not do that in the 1950s. She spoke with representatives at VDOT and was assured that they would not take action against the Millis' for the encroachment. They, however, state that they would not support expansion of the front of the house further over the property line.

Mr. Turnau asked if the septic and well systems were sufficient.

Mr. Ripley replied that he had obtained all permits to move the septic field.

Mr. Fraley closed the public comment section of the meeting at 7:50PM.

Mr. Turnau thanks staff for their help and said that he could not deny a variance like this for a property that had been in the family for years.

Mr. Fischer said the home looked very good for a house of its age and he wants to see it utilized.

Mr. Rhodes said he had a much better understanding of the hardship now, including the topography and the RPA.

Mr. Fraley asked for wording for the variance.

Ms. Brown read a RESOLUTION: The board grants a variance to Section 24-215(a) Yard Regulations, of the James City County Zoning Ordinance. This variance reduces the required front yard setback from 75 feet to 25 feet for the expansion of the existing house.

Mr. Rhodes moved to grant a variance.

Mr. Turnau seconded that motion.

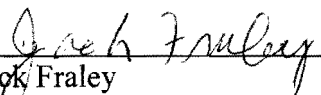
Ms. Brown called for a vote.


The motion was approved 4-0.

**E. MATTERS OF SPECIAL PRIVILEGE**

**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