

BOARD OF ZONING APPEALS

January 8, 2004

A. ROLL CALL

PRESENT:

ABSENT:

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

OTHERS PRESENT:

Christy Parrish, Zoning Officer
John Rogerson, Zoning Officer
Trey Davis, Development Management Assistant
Mike Drewry, Assistant County Attorney
Mr. Daniel Jackson, Jr., Applicant
Ms. Maime Scmute, Applicant's Representative

B. MINUTES

On a motion by Mr. Fraley, seconded by Mr. Rhodes, the amended minutes of the October 8, 2003 meeting were unanimously approved.

D. OLD BUSINESS

E. NEW BUSINESS

ZA-15-03 109 Selby Lane

Mr. Rogerson noted that two other variances had previously been granted for lots on Selby Lane and that the lots are relatively shallow.

Mr. Fraley opened the meeting to public comment at 7:07 PM.

Mr. Daniel Jackson, Jr., the applicant, stated that the home he wished to build was only 28 feet x 40 feet. He said he had gotten a variance before for a different property and felt that \$250 was a lot to pay, especially when existing houses did not comply with the ordinance.

Mr. Nice asked whether applicants had to pay in such cases.

Mr. Rogerson replied in the affirmative, explaining that the intent of the Zoning Ordinance is to end non-conforming uses. He said he had never heard of instance where blanket variances were issued to an entire neighborhood.

Mr. Nice agreed that there was no easy solution.

Mr. Turnau asked how long Mr. Jackson had owned the property.

Mr. Jackson replied that it had been in his possession for 10 years and that he was told at the time of purchase it was a developable lot.

Mr. Rogerson said that section of the ordinance had been updated three times since its adoption, but that the setback requirements had not changed in that time. He added that construction must be consistent with the current Zoning Ordinance at the time of development.

Mr. Fischer asked if a lawyer wrote the deed.

Mr. Jackson replied in the affirmative and said it showed a building envelope.

Mr. Rogerson stated that the deed stated the lot was 91 feet deep, while a plat from as early as 1975 showed it to be only 81 feet deep.

In response to a question from Mr. Turnau about the purpose of hearing this request, Mr. Fraley noted that the Zoning Ordinance is a living document and that the BZA is responsible for determining whether non-compliant lots can be granted a variance and still meet the intent of the ordinance.

Mr. Nice said this seemed like a routine variance and that it was warranted.

Mr. Fraley closed the public comment section of the meeting at 7:17PM.

Mr. Fraley asked Mr. Rogerson for wording for the variance.

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 front yard setback from 50 feet to 43 feet and the rear yard setback from 35 feet to 26 feet with no further encroachments.

Mr. Nice moved to grant a variance.

Mr. Fischer seconded the motion.

Mr. Rogerson called for a vote.

The motion was approved 5-0.

Mr. Nice asked that these two cases be heard jointly.

Ms. Parrish responded to an earlier question about the fee for variance applications by stating that this money helps to defray the expenses of legally required advertising and mailings related to the case.

Ms. Parrish stated that according to Real Estate Assessments, the applicant, and the Assistant County Attorney, the property line which the existing house straddles still exists and is valid. She added that the property description covers both lots and all records show the property as two lots.

Mr. Rhodes asked if when a house was built over a property line under common ownership, whether there was a time factor in which to vacate that line.

Mr. Drewry responded that the boundary was established in 1959 and the two lots each under common ownership remained legal. While this situation could not happen under the current ordinance, it was relatively common earlier in the century.

Mr. Rhodes asked whether a denial of a variance by the BZA would be considered a taking.

Mr. Drewry replied that it was possible.

Mr. Rhodes asked when the home came to its current owner.

Ms. Parrish replied that the applicant bought it in September of 2003.

Mr. Fischer asked whether the two lots would be built and sold once the existing house was demolished.

Ms. Parrish replied that they would and that each lot would be 70 feet by 70 feet.

Mr. Fischer asked whether the line could be extinguished.

Ms. Parrish replied that it could, but that the lot created would still be non-conforming and the existing house was not livable.

Mr. Fischer said he didn't like the size of the lots.

Ms. Parrish replied that the lots already existed.

Mr. Fischer said he knew 10,000 square feet was the minimum lot size in that district and that a commercial builder should have known that too.

Mr. Fraley opened the meeting to public comment at 7:30 PM.

Ms. Maime Scmute of Season's Trace Development represented the applicant. She stated that it was the goal of her company to bring up the appearance of Neighbors Drive. She said that without a variance they might be able to renovate the existing home but there was not much that could be done.

Mr. Nice showed the BZA a drawing of the lots on the street. He noted that the two lots in question were exactly the same size as the other existing lots. He said that he likes the work that has already taken place on Neighbors Drive and hopes to see more of it.

Mr. Turnau agreed with Mr. Fischer. He said the applicant knew the lots were non-conforming and he was troubled by their request for a variance. He asked where this would stop.

Ms. Scmute replied that a variance would still be needed, even if only one house was built.

Mr. Turnau said the Zoning Ordinance requirements were put in place to stop people from building on small lots.

Ms. Parrish reminded the BZA that no new lots were being created.

Mr. Turnau said the applicant's request would increase density.

Mr. Rhodes said he was not sure if the request stood up to the hardship test and that the primary reason for the application seemed to be profit. He asked what the hardship of building one house versus two would be.

Ms. Scmute replied that there were two existing, separate lots.

Ms. Parrish said she was not sure if the County could legally force the applicant to extinguish a lot line to build a house. She added that without a variance, both lots would be unusable.

Mr. Nice said that just because a builder applied for the variance, it did not make them different from any other applicant. He said the builder bought two existing, non-conforming lots legally and asked why the BZA would not approve these variances when it had already set precedent by approving many similar ones. He asked what made this case any different than the one on Selby Lane where the BZA agreed that granting the variance was a benefit to the neighborhood.

Mr. Rhodes said each case had to stand on its own merit.

Mr. Nice said that the BZA compares cases on a regular basis.

Mr. Turnau said the applicant knew the lot was non-conforming when it was purchased and took a chance that the BZA would approve building for two homes when one existed.

Ms. Scmute replied that there was no way to build large houses on big lots and still sell them at an affordable price.

Mr. Drewry cautioned the BZA that it must examine the applications as two cases and two lots. He added that the time of the purchase was not important and that as long as the lots were created legally, they are buildable.

Mr. Turnau asked whether that meant there were two buildable lots.

Mr. Drewry replied that there were.

Mr. Rhodes said that the Board of Supervisors wanted low density development in R-2 districts.

Mr. Drewry said that was correct, but that only applies to subdivisions being created in the present time, not those lots drawn in 1959.

Mr. Fraley noted that Mr. Drewry has the County's best interests in mind. He said the area in question has not always been desirable and that while the lots are small, it is to the County's benefit to allow redevelopment by granting these variances. He agreed with staff that the BZA should approve both requests.

Mr. Fraley closed the public comment section of the meeting at 7:49PM.

Mr. Rhodes said he was inclined to deny both requests and let the applicant investigate other options.

Mr. Turnau said promoting small houses on small lots for low-income residents does nothing to fix the neighborhood.

Mr. Nice said the applicant has two, existing legal lots and that the BZA has no right to base their decision on whether the applicant will make a profit. He said he was embarrassed by the behavior of his colleagues on the Board and asked why the other applicant was not put through such intense scrutiny. He said this was no different in character from the previous case.

Mr. Fischer said he understood now that the lots were created in 1959 and that the Zoning Ordinance cannot be applied retroactively. He supported a variance.

Mr. Fraley asked for wording for the variance for ZA-12-03.

Ms. Parrish read a RESOLUTION: The board grants a variance to Section 24-256 Yard Regulations, of the James City County Zoning Ordinance. This variance reduces the required front yard setback to 35 feet from the centerline of Neighbors Drive and the rear yard setback to 15 feet with the condition that the existing dwelling be demolished.

Mr. Fraley moved to grant a variance.

Mr. Nice seconded that motion.

Ms. Parrish called for a vote.

The motion was approved 3-1 with Mr. Turnau abstaining.

Mr. Fraley asked for wording for the variance for ZA-13-03.

Ms. Parrish read a RESOLUTION: The board grants a variance to Section 24-256 Yard Regulations, of the James City County Zoning Ordinance. This variance reduces the required front yard setback to 35 feet from the centerline of Neighbors Drive and the rear yard setback to 15 feet with the condition that the existing dwelling be demolished.

Mr. Fraley moved to grant a variance.

Mr. Nice seconded that motion.

Ms. Parrish called for a vote.

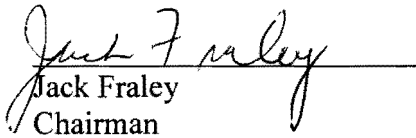
The motion was approved 3-1 with Mr. Turnau abstaining.

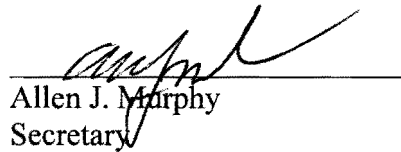
E. MATTERS OF SPECIAL PRIVILEGE

Mr. Fischer moved that the officers for 2004 remain the same as in 2003. Mr. Nice seconded this motion and it was approved 5-0.

F. ADJOURNMENT

The meeting was adjourned at approximately 8:00PM.


Jack Fraley
Chairman


Allen J. Murphy
Secretary