

BOARD OF ZONING APPEALS

April 1, 2004

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
Mike Drewry, Assistant County Attorney
Mr. and Mrs. Robert Walter, Applicants
Ms. Gladys Hictor, Adjacent Property Owner
Ms. Lydia Green, Adjacent Property Owner

B. MINUTES

On a motion by Mr. Rhodes, seconded by Mr. Fischer, the amended minutes of the January 8, 2004 meeting were unanimously approved.

D. OLD BUSINESS

E. NEW BUSINESS

ZA-03-04 5112 Shoreline Court

Ms. Parrish distributed a letter from the applicants, Robert and Bambi Walters, to the Board. She mentioned that she had spoken with two adjacent property owners and they expressed support for the proposed variance.

Mr. Fischer stated that the 150 foot width at setback required by the ordinance must have a reason.

Ms. Parrish responded that it was intended to create consistency and to ensure that flag lots were properly developed.

Mr. Turnau asked if there were other lots similar to the one in question in the same neighborhood.

Ms. Parrish responded that this lot was the only one over one acre in size and thus the only lot requiring a 150 foot lot width at setback as opposed to the 100 foot width required on smaller lots.

Mr. Rhodes noted that the ordinance places the setback at 35 feet from the right of way, but also states that lots over one acre must have a width at the setback line of 150 feet. He said the lot appeared to be non-conforming in his interpretation of the ordinance.

Mr. Drewry responded that the setback of 35 feet is a minimum and that the setback for this lot is shown on the plat at the spot where the lot is 150 feet wide.

Ms. Parrish said that this lot met the 150 foot width requirement at a setback of 68 feet from the right of way and that the variance would reduce the required lot width at setback.

Mr. Drewry added that the plat reflects the Zoning Administrator's interpretation of the ordinance and what he approves under that ordinance.

Mr. Fraley asked Ms. Parrish to talk to the Zoning Administrator about the matter and report back to the Board.

Mr. Fraley opened the meeting to public comment at 7:23 PM and read a brief description of the purpose of the Board of Zoning Appeals for the audience.

Mr. Robert Walters and Ms. Bambi Walters of 113 Wetherburn Lane, the applicants, rose to speak.

Ms. Walters stated that Boyd Homes still retains ownership of the neighboring lots and that the company supports the variance as evidenced in a letter from Mr. Bill Williams. She noted that the 100 foot RPA line on Lake Powell decreased the building area on the rear of the property.

Mr. Walters said he would like to move the proposed house forward on the property by 15 feet.

Mr. Fraley asked for clarification for the reason for the variance.

Ms. Walters responded that it did not have to do with the size of the house, but with increasing the value of the home and creating a more aesthetically pleasing entrance. She said they purchased the lot without knowing the zoning requirements.

Mr. Rhodes pointed out that the setback is clearly marked on the plat.

Mr. Drewry explained his role in speaking the legal opinion of the County and the Zoning Administrator. He said that the "undue hardship" that must be demonstrated for a variance is a very tight definition and would have to approach the level of confiscation of land. He said variances should not be based on special privilege or convenience.

Mr. Fraley closed the public comment section of the meeting at 7:48PM.

Mr. Rhodes asked whether it was the desire of the County that all homes met the same setback.

Ms. Parrish responded that the developer takes the streetscape into consideration when designing a subdivision, but that the County only looks at the use of the property. She said there was room in the existing building envelope for the Walters' proposed house.

Mr. Rhodes said he could argue either side of this case.

Mr. Turnau said that on a lot this large, moving the house 15 feet should not be a big deal to the Board. Though he saw no hardship, he said he felt the BZA could be flexible.

Mr. Fischer said he thought the value of the house would actually be higher if it were set back further and that the BZA is not supposed to consider financial hardships when granting variances.

Mr. Fraley said he could not comment on the question of property value, but he understands that the applicants wish to keep the lot more in line with the surrounding property.

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

Ms. Parrish read a RESOLUTION: The board grants a variance to Section 24-237(b), Yard Regulations, of the James City County Zoning Ordinance. This variance reduces the required front yard width at setback from 150 feet to 125 feet with no further encroachment into the setback.

Mr. Turnau moved to grant a variance.

Mr. Rhodes seconded the motion.

Mr. Fraley called for a vote.

Mr. Davis read the roll.

The motion was approved 4-0.

ZA-02-04 2697 Lake Powell Road

Ms. Brown said Mr. Smith, the applicant, notified her by phone and email that he would be out of town and would not be attending the meeting. He wrote that he did not wish to defer the case. Ms. Brown had previously forwarded copies of this email to the members of the BZA and brought additional copies to the meeting.

Mr. Fraley asked what was in the attic portion of the garage.

Ms. Brown responded that the area had been sheet-rocked and carpet had been installed. She added that the entire garage was climate controlled by HVAC. Ms. Brown stated that permits were not obtained to finish the second floor, therefore there was no evidence regarding whether the previous owner or the current owner did the work. The realization that a variance was needed arose when Mr. Smith applied for a building permit to install a bathroom and then later applied to attach the garage to the house with a covered walkway. Both permit requests were denied. The zoning officers explained that the accessory apartment being created in the garage would have to physically be contained within the primary residence – as stated in the Zoning Ordinance. Placing a walkway to the garage would not satisfy this requirement and, by making the house and garage a part of the same building footprint, would place the house in violation of the setbacks for primary structures.

Mr. Turnau asked if the garage was served by water presently.

Ms. Brown replied that it was not. She stated that the application for a building permit to install bathroom fixtures was denied because the addition of bathing facilities would have created an apartment in the garage.

Mr. Turnau said that since it appeared the garage was being used as a two story structure, it must be 10 feet from the property line, while a one story structure would only need to be 5 feet from the line.

Ms. Brown said the approved building plans for the garage include a note stating that the upper level could only be used as attic storage space.

Mr. Fraley noted that according to the application, Mr. Smith seemed intent on using the space above the garage as an apartment.

Mr. Fraley opened the meeting to public comment at 8:15 PM.

Ms. Lydia Green, adjacent property owner, stated that the previous owner had finished the upstairs for use as a recreation room. She said Mr. Smith drives busses which are parked at the Gospel Spreading Church Farm, but that he parks the busses on his property too. She said a walkway would make it even easier for him to park busses at his house.

Ms. Gladys Hictor owns the property across the street. She said she was curious why Mr. Smith wanted the variance and shared Ms. Green's concern that the covered walkway would make it even more likely that Mr. Smith would park the busses at his house.

Mr. Rhodes pointed out that while these were viable complaints, they had no bearing on the variance being heard before the board that night. He was sure that the zoning officers would take these into account and keep watch for a possible violation.

Mr. Fraley closed the public comment section of the meeting at 8:25PM.

Mr. Drewry said that the County feels strongly that the garage should not be used as an apartment and asked that if a variance is granted, stipulations be added that it is not to be used as a living space.

Ms. Parrish also said the BZA could stipulate that it would not be used for commercial purposes if they wished.

Mr. Turnau said that if there were wording to preclude more intense uses of the second level of the garage, granting a variance for the breezeway would not be a big deal. However, he noted that there was really very little that could be done to enforce such stipulations.

Mr. Rhodes noted that the former owner was already in violation of the ordinance and that the current owner wished to proceed even further.

Upon a gesture from Ms. Green, Mr. Fraley reopened the meeting to public comment at 8:30PM.

Ms. Green said the covered walkway did not make sense over such a short distance and that Mr. Smith would likely place an office upstairs.

Mr. Fraley noted that the applicant had an opportunity to defer and attend a later meeting, but he did not.

Mr. Fraley closed the meeting to public comment at 8:35PM.

Mr. Fischer moved to deny the request for a variance.

Mr. Rhodes seconded the motion stating that there was no evidence of a hardship and reiterating that what Mr. Smith proposed intensified the use of a structure already in violation of the Zoning Ordinance.

Mr. Turnau said the Board should not read anything else into the request and that the covered walkway would not be a factor in allowing any additional use of the second level of the garage.

Mr. Rhodes noted that this would be a special exception and that it would make the garage and the house one structure under the ordinance.

There being no further discussion, Mr. Fraley called for a vote.

Mr. Davis read the roll.

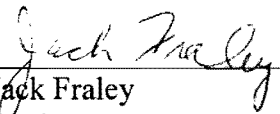
The variance was denied by a vote of 4-0.

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Fraley said he felt it would be beneficial for the Board to review the bylaws and asked the members to review copies prior to the next meeting.

F. ADJOURNMENT

The meeting was adjourned at approximately 8:45PM.



Jack Fraley
Chairman



Allen J. Murphy
Secretary