

Board of Zoning Appeals
September 2, 2004

A. **ROLL CALL**

PRESENT: ABSENT

Mr. Fraley Mr. Nice
Mr. Rhodes
Mr. Fischer
Mr. Wenger

OTHERS PRESENT

John Rogerson, Senior Zoning Officer
Christy Parrish, Senior Zoning Officer
Mike Drewry, Assistant County Attorney

B. **MINUTES**

On a motion by Mr. Rhodes, seconded by Mr. Fischer, the minutes of the July 1, 2004 meeting were unanimously approved with one correction.

C. **OLD BUSINESS**

Mr. Fraley suggested that the two old business items be discussed after New Business due to the number of individuals from the public present.

D. **NEW BUSINESS**

Mr. Fraley read a summary of the roles, powers and duties of the Board of Zoning Appeals.

ZA-10-04 5681 and 5691 Mooretown Road

Mrs. Christy Parrish stated that staff has not received any inquiries concerning this case but would be happy to answer any questions the Board may have at this time.

Mr. Rhodes inquired if the side yard setback between 5681 and 5691 Mooretown Road was part of the variance as shown on the boundary line adjustment conceptual plan.

Mrs. Christy Parrish responded that Section 24-443 of the Zoning Ordinance allows the Development Review Committee to grant the side yard setback shown on the conceptual plan during site plan review.

Hearing no further questions from the Board, Mr. Fraley opened the public hearing at approximately 7:07 p.m.

Mr. Greg Davis of Kaufman and Conoles, stated that he was representing Shirley Pewter, Inc. in this case. Mr. Davis gave a brief overview of the case and stated that the metal building 10-feet from the rear line was built in 1979 when the rear setback requirement was 10-feet. The lot in need of the variance has a small building envelope created by the imposition of the M-1 front, side and rear setback lines. The shape of the lot and its shallowness produces a building envelope nine feet at the narrowest point and only 33-feet at its widest point. The uses permitted in the M-1 District are manufacturing, warehouse and storage, which would necessarily involve larger

buildings and accommodation of truck traffic. Mr. Davis stated that it was their position that the ordinance unreasonably restricts the use of this smaller lot with the smaller building envelope. Under the new plan, the intent would be to first obtain a variance permitting the 10-foot setback to be applied to the existing building that is now nonconforming and then to obtain a variance allowing a 10-foot setback for the proposed building along the common boundary with the C&O railroad tracks. The side setbacks are not at issue because under the M-1 Ordinance, the Planning Commission can permit reduction in the yard requirements based on presentation of a cohesive plan. Lastly, Mr. Davis stated their position would be that strict application of the Zoning Ordinance to the existing smaller lot would create a hardship not generally shared with other properties in the area or other properties within the M-1 District and there is no detriment to adjoining property owners from this minor adjustment. Mr. Davis thanked the Board and stated he would be happy to answer any questions.

There being no additional public comment, Mr. Fraley closed the public hearing at approximately 7:11 p.m.

Mr. Fraley asked for any comments from the Board.

Mr. Rhodes asked if Mr. Davis wanted the variance to include a five-foot setback for the existing building.

Mr. Fraley stated no.

Mr. Fraley asked Mrs. Parrish for a motion for the Board to consider.

Mrs. Parrish gave the following language: A motion to grant a variance to Section 24-416 (a), Yard Regulation of the James City County Zoning Ordinance to reduce the rear yard setback from 20-feet to 10-feet for the construction of the new warehouse located at 5681 and 5691 Mooretown Road.

Mr. Rhodes moved to grant the variance.

Mr. Fischer seconded the motion.

Mr. Fraley called for a vote.

Mrs. Parrish read the roll.

The motion was approved 4-0.

ZA-11-04 96 and 98 Constance Avenue

Mr. John Rogerson stated that he had some additional information he would like to share with the Board. Mr. Rogerson showed the Board a series of photographs of both 96 and 98 Constance Avenue before any improvements were made to the property. The improvements were not only to build the garage but also to improve existing dwellings on the property. He also stated that there were no visible height differences between the garage and the dwellings when looking from the street.

Mr. Rhodes asked if condominiums were permitted by right in the R-8 Zoning District.

Mr. Rogerson stated no.

Mr. Rhodes then asked how we have this condominium in the R-8 Zoning District.

Mr. Rogerson stated that there were two types of condominiums. This is a condominium in the form of ownership but would like to refer this question to the Assistant County Attorney, Mike Drewry.

Mr. Drewry stated this is a concept of common ownership. He referred to 24-33 of the JCC Ordinance.

Mr. Rhodes asked if the garage was the common element.

Mr. Drewry stated the garage was a common element but thought that the applicant could better answer the question.

Mr. John Rogerson displayed the site plan and showed that the garage was identified as the common element.

Hearing no further questions from the Board, Mr. Fraley opened the public hearing at approximately 7:19 p.m.

Ms. Paige Hewlett stated she owned 516 Neck-O-Land Road which was across the street from 96 and 98 Constance Avenue. She stated that 96 and 98 Constance Avenue were one story, single-family dwellings on single lots and zoned R-8. These properties are nonconforming because they should have three acres of land. At some point, it was decided that the lot line could be dissolved to make room for this two-story / three-car garage that is called a common building. She stated the according to the Declaration that was filed in the James City County Courthouse, this garage is a limited common element and that only the owner of unit one has use of this garage and storage. The Declaration also stated that there would be a business office on the property but James City County has stated that a business office would not be permitted within the garage.

Ms. Hewlett also stated she was mainly concerned that the garage would be used for a business office. She was concerned with trailers, storage of building materials, traffic from subcontractors coming to and from the building etc. She felt that if the garage were lowered by seven feet, this would discourage the use of an office or apartment.

Lastly, Ms. Hewlett stated that the other owners along Neck-O-Land Road had to abide by height limitations when constructing outbuildings and the Board should honor their compliance. This would send a message that Neck-O-Land Road is a residential area and not attract this type of business.

Mr. Fraley stated that this garage having been approved as an accessory structure could not be used by law for commercial or residential purposes. A Special Use Permit would be required for commercial purposes.

Ms. Hewlett stated that she wanted to see residential property maintained on Neck-O-Land.

Mr. Fraley stated that it was his understanding that unit one had 55% interest and unit two had 45% interest in this common element.

Mr. Drewry suggested the applicant could explain the ownership of the common element.

Mr. Skip Campana, applicant, stated that the purpose of creating a condominium was simply to align the garage between the two homes. However, the real underlying purpose was to improve the blighted home on the corner and make it presentable. The garage is simply a garage. It cannot be a residence or business. He stated that he owned the condominium, both single-family homes and the garage.

Mr. Campana also stated that he was here tonight for a variance request of four feet. He received a building permit and a final certificate of occupancy for the garage. The roof design was to fit with the property in a very stylish fashion, but it would have been cheaper if he had constructed a flat roof. Lastly, he stated he lived roughly twelve houses from this site and is very mindful of his neighbors. He had wished that they came to him so that he could explain the situation.

Mr. Fischer asked for clarification of CW.

Mr. Campana replied CW Condominium was just the name given to the condominium. The structure is a garage which stores his antique cars and books on the second floor.

Mr. Bill Barnes, 509 Neck-O-Land Road, stated he owned the property directly behind the garage. He wished to go on recorded stating that he had spoken with Mr. Campana and he had ensured him that the garage would not be used for rental property or commercial activities.

Mr. Fraley stated to the members of the public that this structure could not be used for residential or business purposes as per the Zoning Ordinance.

There being no additional public comment, Mr. Fraley closed the public hearing at approximately 7:27 p.m.

Mr. Fraley stated that he would be in favor of the four-foot height variance. It would create a severe financial hardship for the applicant if the Board were to require that the second floor be torn down, especially since it had already been approved by the County.

Mr. Rhodes asked staff that if the dwellings at 96 and 98 Constance Avenue are on the same lot, why is staff asking the variance to be four feet as opposed to 19 ½ inches. Can the larger of the two structures be identified as the main structure?

Mr. John Rogerson stated the common boundary line that originally ran approximately through the center of the common element or garage had been eliminated and is now all one parcel with two main dwellings. The variance request is to bring the garage in line with the shorter of the two main dwellings.

Mr. Fraley asked Mr. Rogerson for a motion for the Board to consider.

Mr. Rogerson gave the following language: A motion to grant a variance of four-feet to Section 24-354 (3), Height Limits of the James City County Zoning Ordinance to allow the continued placement of the garage located at 96 and 98 Constance Avenue.

Mr. Fischer moved to grant the variance.

Mr. Wenger seconded the motion.

Mr. Fraley called for a vote.

Mr. Rogerson read the roll.

The motion was approved 4-0.

E. OLD BUSINESS (Cont.)

Mr. Fraley stated that at the last meeting the Board had some discussions regarding nonconforming lot variances and blanket variances. Mr. Rhodes met with the Zoning Administrator and was asked to report on their discussions.

Mr. Rhodes stated that he spoke with Mr. Murphy to discuss that issue as well as some others. Mr. Rhodes told Mr. Murphy that the Board wanted to make him aware that they had received variances in a similar nature and did not want to effectively change the Ordinance by continuing to grant these variances. Mr. Murphy indicated that he did not think it was worthwhile to take this issue to the Board of Supervisors. These variances should be handled on an individual basis and the Board should determine whether or not the granting of the variance is warranted.

Review of the By-Laws

Mr. Fraley brought attention to the Board Article VI - Voting. He read, "No member shall abstain from voting on a roll call vote unless such member has a conflict of interest in the matter being voted upon and so states for the record." He stated that there had been situations in the past where members abstained from a vote for a different reason other than what is allowed.

Mr. Rhodes gave the following suggested changes to the By-Laws:

Objective:

Change second sentence to be parallel with Sec 24-650 of the Ordinance (underlined text copied directly from sec 24-650), Recommended Change- To authorize and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the zoning ordinance and further, to authorize upon appeal or original application in specific cases such variance from the terms of the zoning ordinance as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided, that the spirit of the zoning ordinance shall be observed and substantial justice done.

The above change is recommended because Mr. Rhodes does not feel that the purpose of the BZA is to vary specific terms of the zoning ordinance or to rule on the morals of the public, both of which are included in the current sentence.

Membership

Has any consideration been given to the appointment of alternate members for the Board? With the number of vacancies that we have had recently, perhaps this should be given some consideration.

Article V Hearings

I would recommend that a quorum for a meeting be defined.

Is there an adopted procedure to handle an appeal of the Zoning Administrator's decision as authorized in Sec. 24-650 (3) of the Ordinance?

Is there an adopted procedure to hear and decide an application for interpretation of the district map where there is an uncertainty of a district boundary, as authorized by Sec 24-650 (4) of the Ordinance?

Voting

Would it be advisable to include under the voting section that an applicant will be given the option to continue a hearing if only three members are present?

Should we address the situation that may occur if a member is disqualified resulting in only, or less than, three voting members to decide the case? This is an additional justification to have an alternate board member.

Secretary

One of the duties of the secretary should be to provide notification of a hearing to all adjacent property owners. It is not currently listed.

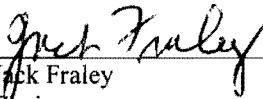
Mr. Drewry stated he would look at the proposed suggested changes and report to the Board.

F. MATTERS OF SPECIAL PRIVILEGE

Mr. Drewry brought to the Board's attention and discussed a recent Virginia Supreme Court ruling on the standard of review for a Board of Zoning Appeals.

G. ADJOURMENT

The meeting was adjourned at approximately 8:30 a.m.



Jack Fraley
Chairman



Allen J. Murphy
Secretary