

**BOARD OF ZONING APPEALS**  
**August 4, 2005**

**A. ROLL CALL**

<b>PRESENT:</b>	<b>ABSENT:</b>
Mr. Fraley	Mr. Nice
Mr. Rhodes	Mr. Fischer
Mr. Wenger	

**OTHERS PRESENT:**

John Rogerson, Senior Zoning Officer  
Melissa Brown, Senior Zoning Officer  
Clifton Copley, Zoning Officer  
Christy Parrish, Administrative Services Coordinator  
Adam Kinsman, Assistant County Attorney

**B. MINUTES**

On a motion by Mr. Rhodes, seconded by Mr. Wenger, the minutes of the July 7, 2005 meeting were unanimously approved with no corrections.

**C. OLD BUSINESS**

**1. ZA-13-05 135 Neighbor's Drive**

Mr. Rogerson stated that this case was deferred from the July 7, 2005 and reiterated that this case was similar to the past Neighbor's Drive variance cases.

Mr. Fraley stated that the public hearing was open and asked if there was anyone who would like to speak on this case.

Seeing no speakers; Mr. Fraley closed the public hearing.

Mr. Wenger made a motion to grant a variance to Section 24-256, Setback Requirements and Section 24-258 (b) Yard Regulations to reduce the front setback from the centerline of the Neighbor's Drive right-of-way from 50 feet to 35 feet and to reduce the required rear yard setback from 35 feet to 15 feet for the construction of a single family dwelling.

Mr. Rhodes seconded the motion.

The variance was granted unanimously.

## **D. NEW BUSINESS**

### **1. ZA- 17-05 Richardson Addition**

Mr. Fraley stated that the applicant of case ZA-17-05 requested deferral until the September 1, 2005 meeting.

Mr. Fraley asked if staff concurred with the request.

Mr. Rogerson stated that staff concurred with the request.

Mr. Fraley opened the public hearing.

Seeing no speakers; Mr. Fraley continued the case.

### **2. ZA-18-05 Highfield Drive**

Mr. Fraley stated that the applicant of case ZA-18-05 requested deferral until the September 1, 2005 meeting.

Mr. Fraley asked if staff concurred with the request.

Ms. Brown stated that staff concurred with the request.

Mr. Fraley opened the public hearing.

Seeing no speakers; Mr. Fraley continued the case.

### **3. ZA-09-05 1358 Jamestown Road**

Ms. Brown stated that the variance request was to reduce the front and rear setbacks due to actual structural encroachments of the dwelling itself.

Mr. Rhodes asked if anything had been done to correct the error of the foundation survey requirement.

Ms. Brown stated that discussions with the Code Compliance staff were made to ensure that Zoning receives a required foundation survey before the second foundation inspection is approved.

Hearing no further questions from the Board, Mr. Fraley opened the public hearing.

Mr. Ed Fogler, 105 Anthony Wayne Road, stated that he understands that this house was built two feet closer to the road than what it should have been. He stated that he did not understand how a contractor could have missed by that much unless it was deliberate. He

discussed that this was a safety hazard due to Jamestown Road being a thoroughfare with heavy traffic and thought that it may have been cheaper for the contractor to build closer to the road due to slope of the lot. He also discussed concerns with the possible future expansion of Jamestown Road and the owners seeking restitution by putting some commercial use on it. He stated he objected to the variance and hoped that the Board require the contractor to be compliant.

Mr. Lee Mann, applicant, stated he would like to respond to Mr. Fogler's comments. Mr. Mann explained that the blue prints and the site plan had different dimensions by error. These plans were approved by the County. Code Compliance approved the home and Zoning approved the site plan. He discussed that he owned the lot behind this lot and could have put the home anywhere he wanted. He stated that the required foundation survey was not submitted simply because no one had asked for it. He also stated that this was an error on their part and the County because they did not stop construction. Lastly, Mr. Mann stated that he had already sold this house.

Mr. Rhodes asked if the error was determined before the closing.

Mr. Mann stated the error was found when he requested the Certificate of Occupancy.

Mr. Fogler asked if the variance included the back porch.

Ms. Brown stated that the variance request for the rear includes a portion of the house and a portion of the rear deck.

Ms. Mary Lavin, 108 Anthony Wayne Road, stated that it just does not seem right that after something is already done the variance is asked for. She stated that there should be enough checks and balances and inspections as they go along so that these types of mistakes do not happen.

Mr. Fraley stated that it is unfortunate that the process did not work in this case and that staff has pursued new control measures.

Ms. Lavin asked if there were fines for these types of mistakes.

Mr. Fraley stated they only could ask the applicant to either move the house or cut a portion of it off.

Seeing no speakers; Mr. Fraley closed the public hearing.

Mr. Rhodes stated that looking at the building envelope, there is adequate room to build a house and with a different design the contractor could have easily built it within the building envelope.

Mr. Rhodes asked staff if any comments were received from VDOT concerning the safety

issue that was raised.

Ms. Brown stated that staff does not have comments from VDOT regarding this particular case. However during the subdivision process, VDOT and the Fire Department would have had the opportunity to comment on the subdivision. Staff assumes that because the subdivision was allowed to proceed, the subdivision meets the requirements set by VDOT and the Fire Department for safety standards.

Mr. Rhodes asked if staff thought there would be additional safety concerns from VDOT due to the house being 1-1/2 feet closer to the road.

Ms. Brown stated that she could not comment for VDOT, but in staff's opinion the 21 inches in the front is negligible.

Mr. Fraley stated that this situation is regrettable but he could not get worked up over 21 inches. He stated that he accepts that this was a mistake made in good faith and would be supportive of staff's recommendation.

Mr. Fraley reiterated that all three Board Members would have to vote in favor of the variance in order for it to pass. An option for the applicant would be to ask for deferral to the next month's meeting when all five members could be present.

Mr. Mann requested deferral until the September 1, 2005 meeting.

Mr. Fraley reopened the Public Hearing and continued the case.

#### **4. ZA-19-05 Chickahominy Baptist Church**

Mr. Fraley stated that the applicant of case ZA-19-05 requested deferral until the September 1, 2005 meeting.

Mr. Fraley asked if staff concurred with the request.

Mr. Rogerson stated that staff concurred with the request.

Mr. Fraley opened the public hearing.

Seeing no speakers, Mr. Fraley continued the case.

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

## **1. Bylaws**

Mr. Adam Kinsman discussed the previous concerns regarding the proposed Bylaw changes.

- Article II - Membership - 4 - "Members of the Board shall hold no other public office in the County except that one may be a member of the planning commission."

Mr. Kinsman stated that this comes from the State Code and only one member of the Board may be on the Planning Commission.

- Article I - Objectives - "morals"

Mr. Kinsman discussed that this comes from an old Virginia Supreme Court case and recommended that the word "morals" be left in the bylaws.

Mr. Fraley asked Mr. Kinsman to comment on the proposed procedures or process for the Board of Zoning Appeals when reviewing an appeal of the Zoning Administrator's interpretation.

Mr. Kinsman stated that it was his understanding that staff is preparing a procedure for this type of appeal. He also discussed that Virginia Law has said that the Board of Zoning Appeals is to give the Zoning Administrator's decision great weight. However, they have not defined what great weight is and would equate that with a presumption of correctness.

Ms. Brown stated that staff has compiled some information from other local jurisdictions as to how they hear appeals to the Zoning Administrator's interpretation. Staff is in the process of putting the information together.

Mr. Rhodes asked if those procedures should be adopted by the Board formally.

Mr. Kinsman stated they could but it would not be necessary due to the infrequent level of these types of cases.

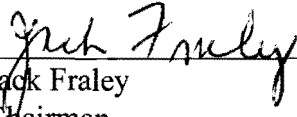
Ms. Brown stated that the Zoning Administrator would like to see the procedures be a policy rather than adopting them into the Bylaws.

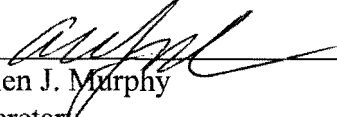
Mr. Fraley agreed.

Ms. Christy Parrish stated that the Bylaw changes will be advertised for the September 1, 2005 meeting so that the Board may vote on the new revised Bylaws.

**F. ADJOURNMENT**

The meeting was adjourned at 7:30 p.m.

  
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Jack Fraley  
Chairman

  
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Allen J. Murphy  
Secretary