

**BOARD OF ZONING APPEALS**

**July 6, 2006**

**A. Roll Call**

Present:                      Absent:

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

Others Present:

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

**B. Minutes**

Mr. Fraley made a motion to accept the minutes of the April 6, 2006 meeting. Mr. Fischer seconded the motion. The minutes were unanimously approved by voice vote.

**C. Assistant County Attorney Comment**

Mr. Adam Kinsman commented that he has asked staff to prepare resolutions for each case similar to the resolutions used by the Planning Commission and Board of Supervisors to ensure that the Board's findings regarding each application are clearly stated within the meeting record.

Mr. Rhodes requested the actual vote be included rather than stating "by a majority vote."

**D. New Business**

**ZA-07-06      10127 Sycamore Landing Road**

Ms. Melissa Brown presented the staff report for the variance requests to Section 24-217 (a), Yard regulations of the James City County Zoning Ordinance for the construction of a new single family dwelling at 10127 Sycamore Landing Road. The requests are to reduce the required 15 foot left side-yard setback to 12.5 feet and to reduce the required 15 foot right side-yard setback to 7.5 feet. Following the review of the application, staff was unable to find evidence of an undue hardship approaching confiscation and,

therefore, could not support the application. However, staff recognized that the request did not have a negative impact on adjacent properties or to the neighborhood as a whole.

Mr. Fraley asked how different the proposed house was to the house damaged by hurricane.

Ms. Brown deferred the question to the applicant.

Mr. Rhodes opened the public hearing.

Mr. Charles Mihalcoe, property owner, stated that they are constructing the proposed house for their in-laws. The original house was 30' x 30' and the left setback was 15 feet and the right was 5 feet.

Mr. Fischer asked how badly the house was damaged by the hurricane.

Mr. Mihalcoe stated that two large pine trees fell down the middle of the house. The house was not rebuildable due to the tree and water damage.

Mr. Rhodes asked about the shared well on the plat and the proposed parking behind the house.

Mr. Mihalcoe replied that the well was abandoned and the parking will be in front of the house.

Mr. Fraley asked Ms. Brown if any discussions were made about a boundary line extinguishment considering the property owner owned both lots.

Ms. Brown stated that after a discussion with Mr. Kinsman, it was determined that it was not possible due to the access easement across the property.

Mr. Rhodes closed the public hearing.

Mr. Fisher stated that though confiscation is not present in this case the Zoning Ordinance imposed a hardship to the owner which is more than a resident should have to undergo and would support the variance.

Mr. Wenger asked if the applicant would have to make application to the board again if the proposed deck were to be built.

Ms. Brown stated the deck was not included in the variance request but Mr. Mihalcoe was willing to move the location of the deck to meet setbacks.

Mr. Wenger stated it would be very difficult to develop any kind of single family residence on this lot and would support the variance.

Mr. Fraley referred to item four of the resolution and noted that the exceptional narrowness, shallowness, size and shape of the property would make it difficult to build anything on the lot and he would also support the variance.

Mr. Rhodes called for a resolution in favor of the variance.

Mrs. Brown read a resolution to grant variances to Section 24-217 (a), Yard regulations of the James City County Zoning Ordinance to reduce the required left side yard setback from 15 feet to 12.5 feet and the required right side yard setback from 15 feet to 7.5 feet to permit the construction of a new single-family dwelling with no further encroachment in accordance to resolution to ZA-07-06 with the following two changes: (1) the second "WHEREAS" clause "the Board has considered..." and (2) "NOW THEREFORE" insert actual vote.

Mr. Fraley moved to accept the resolution.

Mr. Fischer seconded the resolution.

Resolution passed unanimously (4-0).

**ZA-08-06      3448 Colony Mills Road**

Mr. John Rogerson presented the staff report for the variance request to Section 24-258 (b), Yard Regulations of the James City County Zoning Ordinance to permit the construction of a single family dwelling at 3448 Colony Mills Road. The request is to reduce the required rear yard setback from 35 feet to 25 feet. Following the review of the application, staff was unable to find evidence of an undue hardship approaching confiscation and, therefore, could not support the application.

Mr. Fraley commented that it appeared that if a dwelling was constructed with the correct application of the setbacks, the dwelling would be an odd shape.

Mr. Rogerson confirmed that it would be out of character for the Fenwick Hills Subdivision.

Mr. Fraley asked if there was an unintended error by staff in the review process that created this issue.

Mr. Rogerson stated yes.

Mr. Wenger asked if there were a number of unbuilt lots within the subdivision and if there was a review of the plat to see if there were any additional errors.

Mr. Rogerson stated that there was not an overall review of the subdivision.

Mr. Rhodes asked how staff determined the length of the side lot lines.

Mr. Rogerson stated that the radius is omitted because that area is shared by both sides. The distances of the side lot lines are called out on the chart in the subdivision plan.

Mr. Rhodes opened the public hearing.

Mr. Tom Sullivan of Abbitt Realty Company stated that they felt there was undue hardship in this case and requested the variance be granted for the following reasons; (1) the covenants and restrictions for the Fenwick Hills Subdivision restricts the minimum square footage of the house to 1,800 for a two story dwelling; (2) the proposed dwelling is just over 1,800 square feet and will be one of the smallest homes in the subdivision; (3) the variance will allow the builder to build a house with the same quality and appearance as the rest of Fenwick Hills; and (4) the lot may not be viable if the variance is not granted.

Mr. Rhodes closed the public hearing.

Mr. Fraley stated he would support the variance due to the fact that the strict application of the setbacks would require an unusually shape house and therefore unreasonably restricts the use of the property.

Mr. Wenger concurred with Mr. Fraley's statement. The shape of the lot with the current setbacks produces a lot that is inappropriate for building a home similar to those surrounding it.

Mr. Fischer stated he was in favor of the variance due to the mistake made by the staff.

Mr. Wenger and Mr. Fraley commented that there may also be some professionals also responsible for the error during the designs and development process.

Mr. Rhodes stated that without granting the variance you would be forcing the builder to build a house out of character of the neighborhood and would support the variance.

Mr. Rogerson read a resolution to grant a variance to section 24-258 (b) of the James City County Zoning Ordinance to reduce the required 35 foot rear yard setback to 25 feet for the construction of a new single family dwelling in accordance to resolution to ZA-08-06 with the following two changes: (1) the second "WHEREAS" clause "the Board has considered..." and (2) "NOW THEREFORE" insert actual vote.

Mr. Fraley moved to accept the resolution.

Mr. Wenger seconded the resolution.

Resolution passed unanimously (4-0).

**E. Old Business**

**ZA-03-06 8409 Camellia Court**

Mr. Clifton Copley stated the applicant for ZA-03-06 has requested deferral of the public hearing until the next regular meeting with a full board.

Mr. Rhodes continued the case until the next regular meeting with full board.

**F. Matters of Special Privilege**


Mr. Adam Kinsman commented and updated the Board on the recent court case.


**G. ADJOURNMENT**

Mr. Fraley motioned to adjourn the meeting.

Mr. Wenger seconded the motion.

Motion passed unanimously (4-0).

  
Marvin Rhodes  
Chairman

  
Allen J. Murphy  
Secretary