

BOARD OF ZONING APPEALS

July 5, 2007

A. Roll Call

Present:

Mr. Rhodes
Mr. Wenger
Ms. Moody
Mr. Pennock
Mr. Fraley

Absent:

Others Present:

John Rogerson, Senior Zoning Officer
Cliff Copley, Zoning Officer
Melissa Brown, Deputy Zoning Administrator
Adam Kinsman, Deputy County Attorney
Christy Parrish, Administrative Services Coordinator
Milly Story, Development Management Assistant

B. Minutes

Mr. Wenger made a motion to accept the minutes of the June 7, 2007 meeting with additions. This addition is to include that the deferral requests were made by the applicants. Mr. Fraley seconded the motion. The minutes were approved by voice vote (5-0).

C. New Business

ZA-5-07 7701 Church Lane

Mr. Cliff Copley presented the staff report and background information concerning the case. He stated that Mr. Ron Minick is requesting a variance to Section 24-215(a), Setback requirements for the construction of a new single family dwelling at 7701 Church Lane. The variance requested is to reduce the required front yard setback from 75-feet from the centerline of the Church Lane to 55-feet from the centerline of Church Lane. An undue hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property in a manner that approaches confiscation. Technically, an undue hardship does not exist in this case because there is some buildable area available on the lot. While this request does not meet the strict interpretation of hardship, there is no evidence that approval of this variance will adversely affect any adjacent property owners or adversely affect the character of the district in which it exists. However, strict application of the zoning ordinance does not produce an undue hardship. Therefore, staff cannot support this variance request.

Mr. Pennock asked when the land was subdivided, when the trailer was placed on the property and if the lot was considered legally non-conforming.

Mr. Copley stated the lot was considered to be legally nonconforming because it did not meet the current minimum lot size requirement of three acres in the A-1 zoning district. Staff did not have the date as to when the lot was originally subdivided nor when the trailer was placed on the lot.

Mr. Rhodes opened the public hearing.

Mr. Minick stated that he was removing the existing mobile home and constructing a single family dwelling in its place. He also stated that he was constructing a 24' x 26' two story dwelling which is the smallest footprint for the lot. He also discussed the placement of the dwelling and other various lot constraints such as the location of the drainfield and topography of the lot with the Board.

Seeing no further speakers, Mr. Rhodes closed the public hearing.

Mr. Fraley discussed and stated he supported the variance due to the environmental issues and the irregular shape of the lot. He also commented that removing the existing trailer and replacing it with a single family home would benefit the area.

Ms. Moody stated she also supported the variance and was favor of building the house away from the drainfield.

Mr. Pennock and Mr. Wenger concurred.

Mr. Fraley made a motion to approve resolution ZA-5-07 to grant the variance to Section 24-215(a), Setback requirements to reduce the required front yard setback from 75-feet from the centerline of the Church Lane to 55-feet from the centerline of Church Lane for the construction of a new single family dwelling at 7701 Church Lane with no further structural encroachment.

Mr. Pennock seconded the motion.

Resolution passed (5-0). (Yes – Wenger, Moody, Pennock, Fraley, Rhodes)

ZA-6-07 321 Racefield Drive

Mr. John Rogerson presented the background of the case. He stated that Mr. Mark Laney is requesting a variance to Section 24-216(a), Minimum Lot Width and Frontage, of the James City County Zoning Ordinance to permit the construction of a new single family dwelling at 321 Racefield Drive. The variance requested is to reduce the required minimum lot width from two hundred and fifty feet (250') to one hundred fifty two feet (152'). However, strict application of the Zoning Ordinance does not produce an undue hardship. Therefore, staff cannot support this variance request.

Mr. Rogerson also provided information regarding the resource protection area on the lot, which the applicant would have to cross to gain access to the rectangular portion of the lot. In order for the applicant to be able to build on the rectangular portion of the lot, he would have to obtain waivers to be able to cross the resource protection area from the Chesapeake Bay Board and the Environmental Division. Also, the applicant would have to obtain an impact study from the Army Corps of Engineers for the impact on the stream located on the lower portion of the property.

Mr. Fraley asked if staff had received any inquiries from any adjacent property owners regarding this case.

Mr. Rogerson stated no.

Mr. Rhodes opened the public hearing.

Mr. Mark Laney, applicant, discussed the topography and grading issues and the locations of the drainfield and resource protection area on the property with the Board. He also clarified that the proposed structure was 75' x 75'.

Ms. Moody asked the applicant if he had investigated the resource protection area issues with other environmental agencies such as the Army Corps of Engineers.

Mr. Laney stated that he had not.

Mr. Fraley discussed how lengthy and difficult the process could be from other environmental agencies such as the Chesapeake Bay Review Board and the Army Corps of Engineers if the applicant were to build in or near the resource protection area.

Mr. Rhodes and Mr. Laney discussed the location of the 25% slopes on the property.

Seeing no further speakers, Mr. Rhodes closed the public hearing.

Mr. Wenger stated he supported the variance because of the various environmental issues on the lot and whether or not other approvals from other agencies could even be obtained.

Ms. Moody concurred.

Mr. Fraley also concurred and added that the proposed location is a better environmental solution for protecting our land.

Mr. Rhodes stated that staying out of the 25% slope area is the better solution.

Mr. Fraley made a motion to approve resolution ZA-6-07 to grant the variance to Section 24-216(a), Minimum Lot Width and Frontage, of the James City County Zoning Ordinance to permit the construction of a new single family dwelling at 321 Racefield Drive with no further encroachment.

Ms. Moody seconded the motion.

Resolution Passed (5-0) (Yes- Moody, Fraley, Pennock, Wenger and Rhodes)

ZA-7-07 6153 Centerville Road

Ms. Melissa Brown presented the background of the case. Mr. Paul White, acting as agent for the property owner, is requesting variances to Section 24-217(a), Yard regulations, of the James City County Zoning Ordinance for the construction of a new single family dwelling at 6153 Centerville Road. The variances requested are to reduce the required 15-foot left and right side-yard setbacks to 8.5 feet for the construction of a single-family dwelling. The property is currently zoned A-1, General Agricultural. An undue hardship exists when the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property in a manner approaching confiscation. Technically, an undue hardship does not exist in this case, as there is some buildable area available on the lot. Therefore, staff cannot support this variance request.

Ms. Moody discussed issues with Ms. Brown concerning adjacent property locations and setback reductions.

Mr. Fraley asked if adjacent property owners had been notified and if staff had received any inquiries regarding this case.

Ms. Brown stated that they had received inquiries from two adjacent property owners expressing concerns about the request.

Mr. Rhodes opened the public hearing.

Mr. Paul White, applicant, explained that within the current setbacks, the building envelope would only allow 19.6-foot wide shotgun or townhouse style house which would not be a credit to the neighborhood. He also stated his proposal is to build a 32' wide Cape Cod style house which was more of the Williamsburg style. He also stated concerns about the area currently available for the drainfield.

Mr. Gaffney, a real estate agent working with Mr. White, explained the financial impacts of both dwelling types. He also stated that the house that would fit within the setbacks would encroach into the drainfield area and would require them to install a more expensive septic system.

Mr. White commented on the surrounding property owners and deteriorating dwelling conditions.

Mr. Rhodes asked Mr. White if he owned either of the two properties on either side of the site.

Mr. White stated that he did not.

Mr. Fraley asked if the proposed dwelling was for him.

Mr. White said that the house was not for him and that he was a builder.

Mr. White and Mr. Gaffney discussed issues such as elevations, style and marketability of the proposed dwelling with the Board.

Mr. Wenger asked about the topography of the lot.

Mr. White said the front of the lot was flat and the rear had a slope of less than 25%.

Mr. Jessie Bartlett, 6151 Centerville Road, stated that he was opposed the request because it would be close to his brother's house.

Ms. India Johnson, 6155 Centerville Road, stated she also opposed the request because it would be too close to her home as well. She also added that she would be fixing up her home in the near future.

Mr. White said he was not aware of any opposition and that he had previously spoken with Mr. Bartlett's brother who did not seem to have any concerns with the request.

Mr. White also commented that this house would be affordable, which is an important issue in James City County.

Mr. Fraley asked Ms. Brown if staff knew the setbacks of the homes on either side.

Ms. Brown stated that staff does not have any specific information but thought the dwelling on the left was 25 feet from the property line and the dwelling on the right may be as close as 10 feet to the property line.

Seeing no further speakers, Mr. Rhodes closed the public hearing.

Mr. Fraley asked why the dwelling on the right was to be so close to the property line.

Ms. Brown stated that the property was non-conforming and has been in existence for a very long time. The dwellings were built between the late 1950s to the 1970s.

Mr. Wenger stated he has not been able to find extenuating circumstances regarding the topography or the septic field location and he was not concerned with the style of house. Therefore, he was not inclined to support the variance.

Mr. Pennock stated after seeing both house proposals, he thought the house footprint that could meet the current setbacks was suitable and would not support the variance request.

Mr. Fraley stated that it was a goal in the County to provide affordable housing but not by violating the Zoning Ordinance. He also stated that there was a lack of information being

provided for this case and did not think there was anything in the Code that would support approving the variance request.

Ms. Moody stated that the proposed setback was encroaching on the neighbors and they needed more information on the drainfield concerns.

Mr. Fraley made a motion for denial of the variance request.

Mr. Wenger seconded the motion.

Resolution Denied (5-0) (No – Moody, Fraley, Pennock, Wenger, and Rhodes)

ZA-8-07 Autumn West Villages

Mr. Rhodes stated applicant for ZA-8-07 Autumn West Villages had requested for a continuation of the public hearing.

Ms. Melissa Brown confirmed that the applicant has requested a deferral until the September meeting on the basis of a new conceptual plan submitted to the Planning Division. Approval or denial will determine the continuation of this case.

Mr. Rhodes opened the public hearing and continued the case until the September 6, 2007 meeting.

ZA-9-07 110 Depot Street

Mr. Cliff Copley presented the background of the case. Daniel DeYoung is requesting a variance to Section 24-416(a), Setback requirements, of the James City County Zoning Ordinance to the existing structure at 110 Depot Street to be utilized as an office. The variance requested is to amend the rear yard setback from a previous variance, which required a distance of 20 feet from the rear property line, to 15 feet from the rear property line. The property is zoned M-1, Limited Business/Industrial Zoning District.

Mr. Copley also explained that on July 24, 1986, the James City County Board of Zoning Appeals (BZA) granted a variance that reduced the required setback of 75 feet from the rear property line to 20 feet from the rear property line. The variance allowed the Marston House to be relocated on the property and to be used in conjunction with the other structure on the property as Burnt Ordinary Offices. Importantly, the variance granted by the BZA was subject to the following two conditions: first, the Marston House could only be used as an office, and second, the Marston House must be placed as shown on the DeYoung-Johnson Site Plan dated May 7, 1986. However, the house was incorrectly located resulting in a 1.6 foot encroachment in the rear setback.

Ms. Moody asked if both houses would be used as offices.

Mr. Copley stated that the house in the front would remain residential and only the house in the rear would be used as office space.

Mr. Rhodes opened the public hearing.

Mr. Dan DeYoung, agent for the applicant, stated that variance request is only for the 1.6 foot encroachment. The encroachment was found when a new survey was done when ownership changed hands. Currently, they have submitted a site plan to the Planning Division which is awaiting the resolution of the variance request. If the request is not granted, the owner's options are to remove part of the structure or move the entire structure.

Mr. Hertzler, property owner, stated that they will use the building as office space. He added that this is a pre-Civil War house which they would like to preserve. He was not aware of the encroachment issue prior to sale.

Mr. Rhodes stated concerns of the initial hardship justification which allowed the house to be moved to this current location with reduced setbacks.

Mr. Hertzler explained that the house was originally moved from another location where townhomes were being constructed and the original owner wanted preserve the house.

Seeing no further speakers, Mr. Rhodes closed the public hearing.

Mr. Fraley stated he felt this was a housekeeping issue, the structure has been located on the property for over twenty years without complaint and he would support the variance request.

Ms. Moody, Mr. Wenger and Mr. Pennock stated they concurred.

Mr. Fraley moved to approve an amended resolution for case ZA-9-07 to grant a variance to Section 24-416(a), Setback requirements, of the James City County Zoning Ordinance to reduce the rear setback from 20 feet to 18.4 for the existing structure at 110 Depot Street to be utilized as an office.


Ms. Moody seconded the motion.

Resolution Approved (4-1)(Yes-Moody, Fraley, Pennock, and Wegner; No- Rhodes)


D. ADJOURNMENT

Mr. Fraley made a motion to adjourn the meeting. Mr. Wenger seconded the motion. The motion was approved by voice vote (5-0).

Mr. Rhodes adjourned the meeting.



Marvin Rhodes
Chairman



Allen Murphy
Zoning Administrator