

**BOARD OF ZONING APPEALS**  
**March 6, 2008**

**A. Roll Call**

Present:

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

Others Present:

Melissa Brown, Deputy Zoning Administrator  
Jennifer VanDyke, Administrative Services Coordinator  
John Rogerson, Senior Zoning Officer  
Adam Kinsman, Deputy County Attorney

**B. Minutes**

Mr. Wenger made a motion to defer the minutes until the end of the meeting. Mr. Fraley seconded. The discussion of the minutes was moved to the end of the meeting.

**C. Old Business**

**ZA-0011-2007      Anderson-Hughes House**

Ms. Brown presented the staff report and background information concerning the case. Ms. Brown described the applicant's request to reduce front yard setbacks as well as the left and right side yard setbacks. Ms. Brown stated the relocation of the house was a proffered condition related to the rezoning of the property for the development of Walnut Grove.

Mr. Rhodes asked Ms. Brown if the approval was administrative or legislative.

Ms. Brown stated it was legislative for both the rezoning and special use permit.

Mr. Rhodes asked how this was overlooked during the legislative review of the master plan.

Ms. Brown stated that the scale of the plan was small and there were many considerations related to the residential components of the development that could have led to the single commercial component receiving less attention.

Mr. Wenger opened the public hearing.

Mr. Joel Almquist of Health-E Communities came forward to speak. Mr. Almquist stated the house was proffered for relocation to preserve the historic structure. Mr. Almquist stated the house was shown on the master plan and was approved as a part of the rezoning. Mr. Almquist stated it was only after the review of the site plan that the house was noticed to not meet the front and side setback requirements.

Ms. Moody stated she is concerned for the stability of the house during and post transport.

Mr. Almquist stated they will be taking every precaution to preserve the structure and to protect adjacent properties.

Mr. Rhodes asked Mr. Almquist what was meant by the house contributing to the area's historic district.

Mr. Almquist stated that the house itself does not meet the requirements for the National Historic Registry, though it is a contributing component of the Norge District. Mr. Almquist stated it was one of the first homes established in Norge.

Mr. Fraley stated this is a very important consideration for the community. Mr. Fraley stated this was carefully deliberated on by both the Planning Commission as well as the Board of Supervisors. Mr. Fraley stated if the house was not moved the applicant would have to apply to amend the proffers as well as the master plan. Mr. Fraley stated he understood that the applicant is attempting to adhere to the proffers and the master plan.

Mr. Almquist concurred. Mr. Almquist stated that Health-E Communities had considered building a replica of the original 1904 home with more narrow dimensions therefore, meeting the setback requirements. Mr. Almquist stated staff interpreted the proffers to mean that the actual structure that now exists would have to be physically moved. Mr. Almquist stated the only other alternative provided by staff would be to amend the proffers and the master plan.

Mr. Rhodes asked what would happen if there was substantial structural damage to the building.

Mr. Fraley stated the applicant would have to demonstrate that they in fact cannot move the house due to structural damage. Mr. Fraley stated they would then have to amend the proffers and the master plan. Mr. Fraley stated the applicant has been strongly encouraged to move the house.

Mr. Wenger asked if the Board of Supervisors is supportive of this move.

Mr. Fraley stated that county staff has strongly encouraged Health-E Communities to move the home.

Mr. Mike Ware of Health -E Communities came forward to speak. Mr. Ware stated that moving the house became necessary due to the current location's proximity to the school.

Mr. Ware stated it was their intentions to move the larger intersection away from the school. Mr. Ware further stated, due to the proximity to the school, there is evident hardship. Mr. Ware stated access to the subdivision would be compromised should the house not be moved farther from the school.

Mr. Ware stated they will be taking all precautions while moving the house. Mr. Ware stated they will remove the chimneys and build a wooden frame within the house to best offer structural support while transporting.

Mr. Rhodes asked for clarification regarding where the house is currently and where it will be moved to.

Seeing no further public comment, Mr. Wenger closed the public hearing.

Mr. Fraley stated he is in support of the variance. Mr. Fraley stated the case had gone through the legislative process and was approved. Mr. Fraley stated, in his opinion, Health-E Communities has done what they could to uphold the original proffered agreement.

Mr. Rhodes stated the intended location has the community's safety in mind. Mr. Rhodes stated the intended location has been approved by VDOT, and appears to be the safest location for an entrance. Mr. Rhodes stated for this reason he is in support of the variance being granted.

Mr. Pennock stated he is in support of the variance.

Ms. Moody stated she concurred.

Ms. Moody made a motion for approval of the variances to Section 34-393 and Section 24-394 of the James City County Zoning Ordinance to reduce the required 50-foot front setback to 35-feet, to reduce the required 20-foot left side setback to 17 feet and to reduce the required 20-foot right side setback to 12-feet with no further structural encroachment.

Mr. Fraley seconded the motion.

The motion was approved by voice vote (5-0).

**ZA--0017-2007      101 Peninsula Street**

Ms. Brown brought to the board's attention items provided by the applicant for the board's review. The applicant provided petitions to approve the variance request and, a copy of a letter provided to the board from Mr. Bradshaw (the applicant's representative).

Ms. Brown presented the staff report and background information concerning the case. Ms. Brown stated the proposed addition to the house does not qualify as a single-family

detached dwelling in accordance with the permitted uses in the A-1, general agricultural district.

Ms. Brown stated the home owners applied for a building permit in October 2007 for an addition to the existing dwelling. The permit was erroneously approved and the contractor was contacted regarding the error shortly after the approval. Ms. Brown stated during this time the porch was removed and some footings had been dug on the property. Ms. Brown stated upon further review, staff determined the existing dwelling with the proposed addition was arranged and designed with two separate and distinct living, bedroom, bathroom, entrances and kitchens. Ms. Brown stated the only planned connection between these areas is a single access hallway that connects the foyer of the proposed structure to the existing basement and first floor of the existing dwelling.

Ms. Brown stated before formulating this opinion she consulted the Planning Director, the Development Manager, the Assistant County Administrator, and the Deputy County Attorney each supported and concurred with the interpretation made. Ms. Brown stated it is the shared opinion of she and the other officials previously stated that to allow the structure to be approved would compromise the integrity of the zoning ordinance and any district where single-family detached residences are a permitted use. Ms. Brown stated she is concerned for this case creating precedence. Ms. Brown stated this would also change the character, intensity in nature of the existing residential neighborhoods if allowed. Ms. Brown stated it may also place a new burden on home owner associations by having to more stringently enforce any covenant that mandates single-family homes.

Mr. Fraley asked staff if the initial application was approved. Mr. Fraley also asked if the fee for appealing the case had been waived.

Ms. Brown stated yes, the initial application was approved, and yes, the fee was waived.

Mr. Rhodes asked if there is a maximum square footage for an accessory apartment.

Ms. Brown stated there are several requirements for an accessory apartment. Ms. Brown stated that the accessory apartment may not occupy more than 35% of the floor area of the dwelling. Other requirements state that it must be substantially contained within the dwelling, and it must maintain the external appearance of a single-family dwelling. The entrance to the accessory apartment also has to be on the rear of the building.

Mr. Rhodes asked what percentage is the square footage of the new addition.

Ms. Brown stated that the addition is less than 35% though; she did not know the exact percentage.

Mr. Pennock asked staff what was the red flag that indicated an error had been made in regards to the initial approval.

Ms. Brown stated the original construction drawings viewed by staff for approval of the permit showed the foot print, although the person reviewing the plans did not look at the

construction plans associated with the case. Ergo, staff did not pick up on the aspects of design that conflict with the definition of a single-family home.

Mr. Fraley asked staff how many front doors the new addition has.

Ms. Brown stated the house now has two accesses from the outside.

Mr. Fraley asked if the accesses are on the side or the rear.

Ms. Brown indicated that there was one on each side and the front. Ms. Brown offered the plans for the board's review.

Mr. Wenger opened the public hearing.

Mr. Anderson Bradshaw of 8620 Mary Oaks Lane presented himself as the applicant's representative.

Mr. Bradshaw provided a review of the history of the house in relation to how it has been improved upon over the years.

Mr. Bradshaw described the physical hardship the couple has endured, and how the addition would aide the couple in their day- to- day activities. Mr. Bradshaw stated the couple did not want to change the appearance of the house from Peninsula Street.

Mr. Bradshaw provided some images of the project in progress.

Mr. Bradshaw stated functionally, the old and new sections are arranged as a single dwelling unit.

Mr. Bradshaw contended that the area identified as a breezeway by staff integrates the new and existing areas of the home.

Mr. Bradshaw noted how the addition would accommodate the couple's needs even with limited mobility. The foyer was designed to accommodate a ramp for wheel chair access.

Mr. Bradshaw contended that by focusing on the addition alone rather than the dwelling as a whole the staff reached the erroneous opinion that there are two separate and distinct dwelling units.

Mr. Fraley asked Mr. Bradshaw for clarification on the doors.

Mr. Bradshaw stated there is one door on the front of the existing structure, and one on the rear of the proposed addition.

Mr. Pennock asked if the house is a part of a home owner's association.

Mr. Bradshaw stated it is not.

Mr. Jeff Barra, the architect that designed the addition, presented himself to the board.

Mr. Barra described some of the requests Ms. Bradshaw had regarding the addition; primarily to keep intact the original character of the house.

Mr. Michael Hipple of 112 Jolly Pond Road presented himself to the board. Mr. Hipple requested the board approve the variance.

Mr. Oscar Harold of 7422 Richmond Road presented himself to the board. Mr. Harold requested the board approve the variance.

Ms. Nancy Bradshaw, the home owner, presented herself to the board. Ms. Bradshaw stated she was always concerned with maintaining the character of the home while considering the addition.

Seeing no further public comment, Mr. Wenger closed the public hearing.

Ms. Moody stated she was initially concerned with the two kitchens. Ms. Moody asked if there is a way to preserve the future use of the home as a single-family house.

Ms. Brown stated there is no way to apply additional requirements on the home outside of the existing zoning ordinance.

Ms. Moody asked if there is a requirement for two doors accessing the outside.

Ms. Brown stated there may be a requirement for two doors by code's compliance standards, though there is not such a requirement with the zoning ordinance.

Mr. Fraley stated that preserving the community character is a priority to the county. Mr. Fraley stated he views the addition as a successful attempt to preserve the original character of the house. Mr. Fraley stated he saw no intent to create two separate living areas.

Mr. Fraley stated he supports the request to overturn the Zoning Administrator's interpretation.

Mr. Rhodes stated he could not support the Zoning Administrator's interpretation. Mr. Rhodes stated he did not feel the addition would change the character of the residential house. Mr. Rhodes stated he did not feel this would place a new burden on home owners' associations to enforce covenants that mandate single family homes.

Mr. Pennock stated he concurs with the previous comments. Mr. Pennock stated he has some concern for how this would be conveyed in the future.

Mr. Wenger requested a motion to approve, overturning the Zoning Administrator's interpretation of the zoning ordinance.

Mr. Fraley made a motion to overturn the Zoning Administrator's decision that the addition did not constitute a single family detached dwelling.

Ms. Moody seconded the motion.

The motion was approved to overturn the Zoning Administrator's interpretation by voice vote (4-1). (Aye-Moody, Fraley, Pennock and Rhodes; Nay-Wenger)

### **New Business**

#### **ZA-0001-2008      104 Leon Drive**

Mr. Rogerson presented to the board information pertaining to the case, including letters from adjacent property owners.

Mr. Rogerson presented the staff report and background information concerning the case. Mr. Richard White has applied for a variance to the side and rear setbacks and height limits for a continued location of a garage at 104 Leon Drive. The variance request is for a reduction of the right yard setback from 15 feet to 4 feet and to reduce the rear yard setback from 15 feet to 5 feet. The applicant also requested a variance to allow the accessory structure to be taller than the existing single family dwelling.

Mr. Rogerson stated on January 14, 2007 front desk staff improperly approved Mr. White's building permit application for the construction of a two story accessory structure. The front desk made two oversights on the application. The first oversight was failing to take into account that the accessory structure was more than one story. The second failure staff made was failure to take into account that the accessory structure exceeds the height of the main dwelling unit. The accessory structure is 19 feet in height; the primary structure is 16 feet in height. Staff's recommendation is to not support the variance request.

Mr. Rogerson informed the board on a process for building permits that involves the staff error cited on this case. Mr. Rogerson brought to the board's attention two letters that arrived from adjacent property owners.

Mr. Wenger asked staff if the building is complete.

Mr. Rogerson stated it is complete. The structure came to staff's attention by an adjacent property owner at which time the structure was under roof.

Mr. Wenger asked for the applicant's intended use for the shed.

Mr. Rogerson stated it is a storage shed.

Mr. Fraley asked if the variance fee was waived.

Mr. Rogerson stated it was.

Mr. Pennock asked staff if the setbacks would have been correct if the structure was within the height limitations.

Mr. Rogerson stated the setbacks would have been correct except for the fact that the shed was misplaced by about two inch.

Mr. Rhodes asked if the Zoning Administrator can grant administrative variance on the one inch encroachment.

Mr. Rogerson stated that is correct.

Mr. Rhodes asked what constitutes a two story structure.

Mr. Rogerson noted the building plans for this structure includes a second floor. Mr. Rogerson stated the setbacks are increased if the building exceeds one story making the side and rear setbacks 15 feet. Mr. Rogerson provided the definition of a story.

Mr. Rhodes asked if the stairs are taken out of building would it still be considered a two story structure.

Mr. Rogerson stated that he was not certain.

Mr. Fraley stated, irrespective of the building constituting two stories, the structure is still exceeding the permitted height.

Mr. Wenger opened the public hearing.

Mr. White, the applicant, presented himself to the board. Mr. White provided a timeline of his building and application process. Mr. White pointed out that the original plans provided at the time of the application fully disclosed his intentions to build a two story structure.

Seeing no further public comment, Mr. Wenger closed the public hearing.

Ms. Moody stated the building is very prominent off the road. Ms. Moody suggested the applicant could paint the structure and provide some landscaping to blend the structure within its surroundings.

Mr. White requested the public hearing be reopened to address Ms. Moody's comments.

Mr. Wenger reopened the public hearing.

Mr. White responded to Ms. Moody's comments regarding the color of the siding as well as landscaping plans. Mr. White stated his neighbors, Mr. and Mrs. Glaser, picked out



the color of the siding in an attempt to comply with his neighbor's wishes. Mr. White stated the other reason for the chosen color of the shed was his intent to match the color of the siding of the house as well as the roofing shingles.

Ms. Moody stated she could not see moving the structure.

Seeing no further public comment, Mr. Wenger closed the public hearing.

Mr. Rhodes stated that to require the applicant to either take down or remove the structure would be significant hardship in view of the fact that it was staff's error that permitted construction of the building. Mr. Rhodes stated he is in support of approving the variance.

Mr. Pennock stated he is in support of approving the variance since the error was made on the part of staff.

Mr. Fraley asked staff if Mr. Scott Whyte, Senior Landscape Planner, was consulted for potential landscaping solutions to better blend the building in with its surroundings.

Mr. Rogerson stated he had not.

Mr. Wenger asked if he had a motion to approve or to deny the request for the variance.

Ms. Moody made a motion to approve the request for a zoning variance and permit the continued placement of the shed.

Mr. Pennock seconded the motion for approval.

The motion approved by voice vote (5-1).

## **B. Minutes**

Mr. Wenger asked if there is a motion for approval of the January 10<sup>th</sup> minutes with amendments.

Mr. Fraley made a motion to approve the January 10<sup>th</sup> minutes with amendments.

Mr. Pennock seconded the motion for approval.

The January 10<sup>th</sup> minutes with amendments were approved by voice vote (5-0).

Mr. Wenger asked if there was a motion to approve the January 28<sup>th</sup> minutes with amendments.

Mr. Fraley made a motion to approve the January 28<sup>th</sup> minutes with amendments.

Ms. Moody seconded the motion for approval.

The January 28<sup>th</sup> minutes with amendments were approved by voice vote (5-0).

Mr. Wenger asked if there was a motion to approve the February 7<sup>th</sup> minutes with amendments.

Mr. Fraley made a motion to approve the February 7<sup>th</sup> minutes with amendments.

Ms. Moody seconded the motion for approval.

The February 7<sup>th</sup> minutes with amendments were approved by voice vote (5-0).


**E. Matters of Special Privilege**

The board discussed the possibility of an alternate member and, decided it is not necessary at this time.

**F. Adjournment**

At 8:42 pm Mr. Pennock made a motion to adjourn the meeting until April 3, 2008.

Mr. Wenger adjourned the meeting.

  
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Mark Wenger  
Chairman

  
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Melissa C. Brown  
Secretary