

**BOARD OF ZONING APPEALS**  
**August 7, 2008**

**A. Roll Call**

Present:

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

Others Present:

Jennifer VanDyke, Administrative Services Coordinator  
John Rogerson, Senior Zoning Officer  
Adam Kinsman, Deputy County Attorney  
Brian Elmore, Development Management Assistant  
Melissa Brown, Deputy Zoning Administrator  
Keith Denny, Housing Rehab Specialist

**B. Minutes**

Mr. Wenger called the meeting to order at 7:00.

Mr. Pennock moved to approve the minutes from July 10, 2008 with amendments.

Mr. Fraley seconded the motion for approval.

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

**C. Old Business**

There was no old business to discuss.

**D. New Business**

**ZA-0006-2008**                      **2714 Chickahominy Road**

Ms. Brown provided her staff report. Ms. Brown stated the Office of Housing and Community Development, acting as agent for the property owner, is requesting a variance to yard regulations to permit the continued construction of a new home at 2714 Chickahominy Road. The variance requested is to reduce the left side yard setbacks from 15 feet to 3.5 feet.

Mr. Rhodes asked how the survey error occurred.

Ms. Brown stated that there were two different building permits with two different survey companies, one for 2714 Chickahominy Road and another for 2710 Chickahominy Road. There was a boundary line agreement established and recorded in the court house fifteen years ago that neither survey company hired by the two residences were initially aware of. This agreement places the property line further to the right, which made the central property line closer to 2714 Chickahominy Road.

Mr. Rhodes asked for a summary of the actions taken in January on this case.

Ms. Brown stated that in January the Office of Housing and Community Development was approached to help the applicant in getting an upgraded home. Due to the location of the septic tank the house could only be built in the existing building envelope, which meant that the applicant needed a one foot variance on each side to meet setbacks. It was unknown at that time that the location of the property line was inaccurate.

Mr. Wenger asked how the error in the location of the property line was found.

Ms. Brown stated she would defer to Mr. Denny with the Office of Housing and Community Development. Ms. Brown stated the error was brought to the attention of the Zoning Office once construction was two thirds of the way complete.

Mr. Rhodes asked at what stage is the construction at this time.

Ms. Brown stated that it is two-thirds to three-quarters complete, it requires only interior work at this time.

Mr. Fraley asked at what proximity is the adjacent property owner to the right of the house.

Ms. Brown stated that there is a considerable distance between the two houses. Ms. Brown described a land swap that occurred between 2714 Chickahominy Road and 2710 Chickahominy Road. Neither lot got any larger or smaller, the boundary line was adjusted further from the house at 2714 Chickahominy. Approval of the land swap is contingent upon the granting of this variance.

Mr. Fraley asked for clarification regarding the location of the boundary line in question as seen on the image provided.

Ms. Brown indicated the boundary line on the image. Ms. Brown stated the adjacent property owner meets all area requirements for their own house.

Mr. Fraley asked if the owner of 2710 Chickahominy Road had offered their opinion of the variance in question.

Ms. Brown deferred the question to the Office of Housing and Community Development.

Mr. Fraley asked staff if there is a way to address the problem of flawed surveys.

Mr. Kinsman, Deputy County Attorney, stated that this is a very confusing case. Mr. Kinsman stated there may have been an error in how a previous agreement had been recorded. Mr. Kinsman speculated that the error in recording property information was the cause of the confusion and resulted in the surveyor mismarking the property line between the two lots. Mr. Kinsman stated the variance before the board is the most appropriate way, in his opinion, to fix the error constituting as the property line between the two lots and, the building envelope at 2714 Chickahominy Road.

Mr. Fraley asked why the staff recommendation as presented by Ms. Brown was to deny the applicant. Mr. Fraley stated he was uncertain how the financial burden to reconstruct a house that is near completion did not qualify as financial hardship.

Ms. Brown stated that the precedent followed by staff in establishing financial hardship is such that unless the property is deemed unusable it does not qualify.

Mr. Fraley stated that, in his opinion, this case would constitute as financial hardship.

Mr. Wenger opened the public hearing.

Mr. Keith Denny, representing the Office of Housing and Community Development as well as the applicant asked if he could answer any questions for the board. Mr. Denny stated funding for the project is fronted by the state though the applicant will be responsible for paying the amount back to the state. Mr. Denny stated that if the house, presently under construction, is torn down there would not be funds available to rebuild.

Mr. Wenger asked for clarification on this case regarding the circumstances in which it was seen by the board back in January of 2008.

Mr. Denny stated that the state is providing \$50,000 for materials. Mr. Denny stated that there are a number of volunteers offering their time to help construct the house at no cost. Mr. Denny stated that in 1986 there had been a disagreement between the two property owners regarding the ownership of the driveway initially attributed to 2714 Chickahominy Road. Mr. Denny stated Ms. Walker then, improperly counseled, signed a boundary line agreement that stated that the driveway is owned by the adjacent property owner at 2710 Chickahominy Road. Ms. Walker improperly thought that the boundary line agreement would provide joint ownership of the driveway. The corrected property line is a few inches from the house under construction. With the pending land swap the driveway will return to the ownership of Ms. Walker and property in the back of the house will be granted to the adjacent property owner, creating an even exchange.

Mr. Fraley asked at what stage is the pending sale of the adjacent property.

Mr. Denny stated that it is not sold.

Mr. Rhodes asked if there are other homes within the community with greatly reduced setbacks.

Mr. Denny stated that he is not aware of any. Mr. Denny stated that if you look at information available on GIS it is apparent that some exist, but he cannot verify that information.

Mr. Wenger closed the public hearing.

Mr. Fraley stated he is inclined to favor the variance as a means to aide Ms. Walker as she would otherwise be unable to afford rebuilding the house. Mr. Fraley stated that it seems the adjacent property owner is behaving commendably in an effort to aide his neighbor in this process.

Mr. Pennock stated he supports the variance and concurs with the comments provided by Mr. Fraley.

Ms. Moody stated she supports the variance.

Mr. Rhodes stated he supports the variance. Mr. Rhodes stated that since the lot is already nonconforming the applicant would have a difficult time creating an appropriate building envelop while maintaining the required setbacks. Mr. Rhodes stated that this appears to be the best compromise that could be reached under the circumstances.

Mr. Wenger stated that the board is going to look less favorably on any case that requires returning to the board for a second variance. Mr. Wenger stated that he had some difficulty in understanding how such an error could have gone unnoticed earlier in construction especially at the point when the foundation lines were staked.

Mr. Fraley moved to approve the variance.

Ms. Moody seconded the motion to approve the variance.

Resolution Approved (4-1) (Aye-Moody, Fraley, Pennock and Rhodes; Nay-Wenger)

**ZA-0007-2008**

**120 Forest Heights**

Mr. John Rogerson presented his staff report. The applicant is seeking two variances, a variance to setback requirements and yard regulations. The applicant is seeking to reduce the front yard setback from 50 feet from the center of the right of way to 30 feet and to reduce the rear yard setback from 35 feet to 20 feet for the construction of a new single family dwelling. The existing setbacks overlap creating a negative building envelope of five feet. There have been seven approved zoning variance applications on Forest Heights Road since 1994.

Mr. Rhodes asked how many other nonconforming lots on Forest Heights and Neighbors Road have yet to be built on.

Mr. Rogerson stated that there are two more on Forest Heights.

Mr. Rhodes then stated and confirmed that there are few remaining lots that could potentially be seen by the board for a zoning variance.

Mr. Rogerson stated that lots are not so nonconforming in nature as to require the Board of Supervisors to revisit the R-2 section of the Zoning Ordinance. Mr. Rogerson stated that Neighbors Drive and Forest Heights are unique in nature as compared to other areas zoned R-2.

Mr. Rhodes asked if there is an existing dwelling on the parcel.

Mr. Rogerson stated that the lot is vacant.

Mr. Fraley asked if Mr. White owns the two remaining lots.

Mr. Rogerson stated that he is uncertain if the two lots are buildable due to steep slopes and an existing RPA. Mr. Rogerson stated that David Hertzler may own the other nonconforming parcels in the area.

Mr. Fraley asked for Mr. Rogerson to confirm that a variance application requires a \$500 fee.

Mr. Rogerson stated that it does. Mr. Rogerson stated that it was within the last twelve months that the fee went from \$250 to \$500.

Mr. Fraley stated that he objected to raising the fee and, voted against it when it came before the Planning Commission. Mr. Fraley stated that the Board of Supervisors accepted it. Mr. Fraley asked Mr. Rogerson to confirm that the homes being built in this area would qualify as *Affordable Housing*.

Mr. Rogerson stated that the houses would qualify as *Workforce Housing*.

Mr. Fraley stated that by requiring a \$500 fee for the application the asking price of the property would become inflated. Mr. Fraley asked Mr. Kinsman if there is a way to defer or waive the cost for those applicants selling homes that qualify as *Affordable* and/or *Workforce Housing*.

Mr. Rogerson stated he would consult Mr. Kinsman the next time there is an application submitted that meet this criteria.

Mr. Fraley stated that *Affordable Housing* within the County is a concern of his as well as a number of outspoken citizens that are active with the Comprehensive Plan update underway now.

Ms. Moody stated since she has been on the board she has seen two other lots in the same area seeking a variance. Ms. Moody stated that it is unfortunate that all the lots in the area could not be viewed at the same time, also to alleviate the burden of cost.

Mr. Rogerson stated that Mr. Paul White, the applicant, was unable to attend this evening; in his stead Mr. Marshall Tony is in attendance to answer any questions.

Mr. Wenger opened the public hearing.

Mr. Marshall Tony, representing Mr. Paul White, presented himself to the board to answer any questions.

The board had no questions for Mr. Tony.

Mr. Wenger closed the public hearing.

Mr. Fraley stated it is not often that staff recommends approval of a variance. Mr. Fraley stated that he has taken that under due consideration. Mr. Fraley made a motion to approve the variance.

Ms. Moody seconded the motion.

Resolution Approved (5-0)

### **E. Matters of Special Privilege**

Mr. Wenger stated that he would like more information provided by staff within the packets provided.

Mr. Pennock asked for clarification regarding the date of the September meeting.

Mr. Rogerson stated he would inform the board at a later date due to the applicant's plans being uncertain.

Mr. Wenger asked that staff would brief the board on the upcoming case related to the controversial cell tower application submitted for the Kingsmill location.

Mr. Kinsman did not anticipate a supplement being required though staff will be certain to provide detailed information in the staff report.

Mr. Pennock asked staff if it is unusual to have someone other than an applicant to appeal the decision of the Planning Director.

Mr. Kinsman stated that he could not determine if it is usual or unusual.

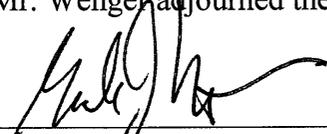
Mr. Fraley stated that with disputes among surrounding property owners staff and/or applicants can be appealed.

### **F. Adjournment**

At 7:45 Ms. Moody made a motion to adjourn.

Mr. Pennock seconded the motion to adjourn.

Mr. Wenger adjourned the meeting.

  
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Mark Wenger

Chairman

  
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Melissa C. Brown  
Secretary