

BOARD OF ZONING APPEALS

March 5, 2009

A. Roll Call

Present:

Mr. William Watkins

Ms. Barbara Moody

Mr. Mark Wenger

Mr. Jack Fraley

Mr. Marvin Rhodes

Others Present:

Mr. John Rogerson, Senior Zoning Officer

Mr. Brian Elmore, Development Management Assistant

Mr. Wenger called the meeting to order at 7p.m.

B. Minutes

Mr. Rhodes stated there were corrections on the last page, where: "Mr. Fraley stated, now, therefore, be it resolved that the Board of Zoning Appeals of James City County, Virginia certifies that to the best of each member's knowledge only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and only such public business matters were heard discussed or considered by the Board of Zoning Appeals were identified in the motion..." the word 'certification' should be struck and 'were identified' changed to 'as identified.'

Ms. Moody moved for approval of the minutes as amended, with a second from Mr. Watkins.

In a unanimous voice vote, the minutes were approved (5-0).

Ms. Moody stated there were minutes not approved.

Mr. Rogerson stated previous minutes were not included in Board member packets from December 18th, January 18th, and January 30th. He said Staff recommended reviewing those minutes at another time, although there were copies present if members wished to comment or vote on minutes.

Mr. Wenger asked if the Board was prepared to discuss and approve the December 18th minutes.

Mr. Rhodes moved for discussion of the December 18th minutes, with a second from Mr. Watkins.

Mr. Rhodes stated that on page two of the minutes, where after: "By voice vote, the Board of Zoning Appeals unanimously approved the motion (5-0)" it should note Mr. Wenger opened the public hearing. In the next paragraph, where it states: "Mr. Blackwell, appellant attorney, stated his client was appealing the Zoning Administrator's decision.." Zoning Administrator should be replaced with Planning Director. On page three, where "Mr. Rogers requested the Board motion to strike the case," strike 'motion to.' Later in the same paragraph, where "federal laws require the Board..." it should be changed to 'stated laws.'

Mr. Fraley asked the Board to reconsider reviewing the minutes at this meeting. He said these minutes would become part of the public record when a *writ of certiorari* is issued. The Board will be required to prepare the public record for the circuit court. He said the minutes need to be absolutely correct and should be further reviewed. He asked Mr. Rogerson to review the minutes as well.

Mr. Rogerson agreed with Mr. Fraley's recommendations, especially with the absence of a County attorney at the meeting.

Mr. Wenger stated the motion for approval of the December 18th minutes could be voted down, withdrawn, or deferred.

Ms. Moody moved to withdraw the motion, with a second from Mr. Watkins.

In a unanimous voice vote, the motion to consider the December 18th minutes was withdrawn (5-0).

Mr. Wenger asked if the Board wished to consider the January 8th and January 30th minutes.

Mr. Rhodes stated there were a few minor corrections on the January 8th minutes. On page 2, where "With the assistance of the Health Department, Mr. Danuser reviewed all plausible solutions to upgrade the septic system. There were a number of mitigating factors in locating the septic system on Lot 38," 'Lot 38' should be changed to 'Lot 28.' On page 4, where it reads "State and Health Department," 'State and' should be struck. On page 6, where "Mr. Danuser stated that he will accommodate the delay," it should read "Mr. Danuser stated the delay is acceptable." On page six, where "The public hearing was left open until the February 5, 2009," it should read 'hearing was continued.'

Mr. Fraley moved for approval of the minutes as amended, with a second from Ms. Moody.

In a unanimous voice vote, the minutes were approved. (5-0.)

Mr. Rogerson stated the January 30th minutes were related to the tower case, and should be deferred until consulting with the County attorney.

C. Old Business

There was no old business.

D. New Business

ZA-0001-2009 116 Carriage Road

Mr. Rogerson stated Ms. Carolyn Russell Tucker and Mr. Collins F. Tucker, Jr. have applied for a variance to permit the construction of a single family home at 116 Carriage Road. The variance requests reducing rear yard setbacks to 13 feet. The lot is 0.3 acres, zoned R-2, and triangular in shape. A previous house in the property burned down, and the lot has since been cleaned and fenced. Many nearby properties have been recently rezoned to Mixed Use through the Virginia Housing and Development Authority, with reduced lot sizes and setbacks. Staff feels the current setbacks unreasonably restrict the lot's development, with an average building envelope of 27 feet. Staff recommends approval of the variance for the proposed dwelling. Staff cannot recommend approval for the proposed deck through the Zoning Ordinance, since a patio could be substituted.

Mr. Rogerson stated there are no setbacks in Mixed Use zoning except for the subdivision plat. He stated the rezoning was a County government initiative. Setbacks for the nearby rezoned Ironbound Square Phase I have setbacks of front – 20 ft., sides – 10 ft., and rear – 5 ft. He said there were no trees on the rear of the property.

Mr. Fraley stated that under Mixed Use ordinances, there were several avenues for changing setbacks providing trees can be preserved.

Mr. Rogerson stated the County did not use eminent domain on the parcels that were not sold to the VHDA project.

Mr. Fraley stated the County could begin eminent domain but fail to cease the property due to public or agency pressure. He said the Planning Commission had sided with property owners, and requested the County negotiate. He noted the controversy involved in the taking. The Development Review Committee heard cases on reduced setbacks for the development and approved them.

Mr. Rogerson stated Staff had concurred with the DRC's approval of reduced setbacks. He said setbacks on adjacent lots were front – 20, sides – 10, rear – 5. He said three lots to the left and one to the right have existing homes on them, with another under construction.

Mr. Wenger asked if the proposed house and deck would meet Mixed Use zoning requirements.

Mr. Rogerson stated that they would.

Mr. Wenger opened the public hearing.

Ms. Carolyn Tucker, owner of 116 Carriage Rd, stated she wanted to rebuild her home and deck. She said she had moved to Hampton after the fire.

Mr. Gardener Voight, the applicant's brother, stated Ms. Tucker was staying with family in Hampton since the fire. He stated the variance rear property line would allow the house to be rebuilt to previous standards.

Mr. Wenger closed the public hearing.

Mr. Fraley stated 3 property owners had refused the County's offers to buy. He said the requested setback integrates the property with nearby properties and preserves existing topography. He said he would support the applicant's request.

Mr. Rhodes asked about the need for a deck versus a patio. He said, however, based on Mr. Fraley's comment, the request was consistent with area development.

Ms. Moody stated that after viewing the property, she saw no reason to oppose the applicant's request.

Mr. Watkins stated that after inspecting the area, it was common sense to let the home be compatible with the neighborhood.

Mr. Rogerson suggested moving the rear setback variance to ten feet, in order to avoid pinning the property.

Mr. Wenger stated there was a consistency between the applicant and the rest of the neighborhood. He said he would be amenable to granting the setback.

Mr. Rogerson stated Board members could strike '24ft' and replace it with '10ft' on their resolutions. He stated he would still require a foundation survey.

Mr. Fraley moved for approval of the variance, as amended, with a second from Ms. Moody.

In a unanimous voice vote, the variance was granted (5-0).

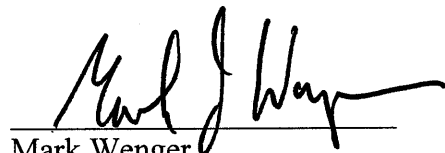
E. Matters of Special Privilege

There were no matters of special privilege.

F. Adjournment

Mr. Rhodes moved for adjournment, with a second from Mr. Watkins.

The meeting was adjourned at 7:45pm.



Mark Wenger
Chairman



Melissa C. Brown
Secretary