

BOARD OF ZONING APPEALS
September 3, 2009

A. Roll Call

Present:

Mr. William Watkins
Ms. Barbara Moody
Mr. Jack Fraley
Mr. Marvin Rhodes

Absent:

Mr. Mark Wenger

Others Present:

Mr. John Rogerson, Senior Zoning Officer
Mr. Brian Elmore, Development Management Assistant

Mr. Barbara Moody called the meeting to order at 7 p.m.

B. Minutes

July 24, 2009

Mr. Marvin Rhodes stated that on page 2, under Old Business, the correct name of the firm representing the Board of Zoning Appeals is "Patten, Wornom, Hatten & Diamondstein, LLC." Further down page 2, the lawyer's name is correctly spelled "Patten." At the bottom of page two, where Ms. Brown made a motion, it would be improper for Ms. Brown to make the motion. Mr. Wenger moved the resolution with a second from Mr. Jack Fraley. On page 3, the Matters of Special Privilege section should be deleted.

Mr. Rhodes moved for adoption of the minutes as amended, with a second from Mr. Fraley.

In a unanimous voice vote, the minutes were approved as amended (4-0; Absent: Wenger).

C. Old Business

Mr. Fraley stated he had received a letter from Donald Patten, of the law firm of Patten, Wornom, Hatten & Diamondstein," addressed to Mr. Mark Wenger. The letter reads "...as you are aware, Douglas E. Miller, a partner in my law firm, has agreed to serve as co-counsel with me in this case. Doug and I understand that the Board of Zoning Appeals is without funds to pay for the legal representation and we have both agreed to represent the interests of the BZA on a pro bono basis in the Gloucester County Circuit Court. We are taking this action because of our strong belief that the BZA

needs and is entitled to legal counsel on this matter. Upon review of the record, we believe the BZA conducted itself properly during the hearing on this matter and fairly rendered its decision based on its interpretations of the facts that were presented. There has been some question as to whether or not Doug and I would accept compensation from an outside source. As stated above, we have agreed to work without compensation and will not accept a fee from any individual citizen or citizen group. We will not be responsible to anyone but the BZA and will report directly to you as the case proceeds to trial.”

Mr. Fraley stated the letter should be enclosed in the minutes as well.

D. New Business

ZA-0002-2009 4900 Westmoreland Drive

Mr. John Rogerson stated that Mr. Brian Murer, 4900 Westmoreland Drive, has applied for a variance to permit construction of a one and one-half story garage at the property. The variance requests reduced setbacks for an accessory structure exceeding one story from ten feet to five feet. The property is zoned R-2, General Residential. Mr. Murer plans to use the reduced side and rear yard setbacks to allow for easier entrance and exit from the garage and driveway. Mr. Murer stated backing onto the main road presents a safety hazard. The reduced setbacks will allow the owner to perform a three-point turn on the property and exit in a forward position.

Mr. Rogerson stated that if the garage was one story or less, there would be no need for a variance. The ordinance allows a one-story structure five feet from the side and rear property lines.

Mr. Rhodes asked if Mr. Murer was aware that he needed three votes for approval, and that one member was absent.

Mr. Rogerson stated that Mr. Murer was aware. He said an accessory structure is secondary and incidental to the main use. Accessory structures must also be placed ten feet away from the main structure and anything attached to it. The proposed garage is more than ten feet from the home.

Mr. Rhodes stated that the Board had received a letter from adjacent property owners with no issues regarding a variance.

Mr. Rogerson stated that the undeveloped large adjacent parcel to the rear was also zoned R-2, General Residential. All adjacent property owners were notified, except for one parcel owned by James City County. No adjacent property owners expressed any concern. All adjacent property owner letters were returned to the County.

Mr. Rogerson stated that he did not believe a set of outside steps depicted on the proposed garage would be included. If included, they will face away from the property line. He said the Ordinance allows step to encroach a setback by three feet.

Ms. Moody opened the public hearing.

Mr. Brian Murer, 4900 Westmoreland Drive, stated that he was applying for a variance for several reasons. The first reason was safety. Second, his wife has medical problems that limit her turning her neck and a knee replacement that makes it difficult for her to back the car out of the property. Third, the larger garage lines up better with the house aesthetics. The stairway will not encroach the setback. The difference between the proposed garage and a one-story garage is an attached deck between floors. The larger size also maintains the architectural integrity of the area. The reduced setback would allow his wife to make K-turns out of the garage. He said he had met with the owner of the large rear lot who said he was not able to develop his land.

Mr. Fraley stated that Mr. Murer could create the needed turning radius and stay consistent with the Ordinance placing a one-story garage. He said the issue was the additional half-story, not medical concerns. He said it would be difficult to support a variance when a one-story garage would be a solution. There is no emergency or crucial need for the additional half-story.

Mr. Murer stated a single-story garage would not architecturally match the rest of the property. He said his Homeowners' Association requires he maintain the architectural aesthetics. Neighboring garages are custom built. He did not know of other single story garages. The driveway will be brought up, and the roofline of the proposed garage will be a little higher than the main house.

Mr. Rogerson stated that due to the way Staff calculates height from grade, the accessory structure will not exceed the main structure.

Mr. Rhodes stated if the garage was repositioned on the property, it would be placed within setbacks.

Mr. Murer stated he would have to remove trees to reposition the proposed garage. He stated he would be unable to remove larger trees.

Ms. Moody stated that the rear of the property was heavily wooded.

Mr. Murer stated the main trees in the property rear had trunks 14 or 15 inches in diameter, and were 70 to 80 feet tall. He said he would have to remove three or four trees to reposition the garage.

Ms. Moody asked how the Homeowner's Association would react to the Board's decision.

Mr. Fraley stated that neighborhood covenants and restrictions do not apply to the Board.

Mr. Rogerson stated a majority of homes in the neighborhood have attached garages. He did not know of any homes with unattached garages. He knew of no accessory structures in violation of the Ordinance setback in the neighborhood.

Mr. Murer stated there is a greenspace between the proposed garage and the road. He said he did not have the large parcel owner's intent to not develop in writing.

Mr. Rogerson stated the proposed structure would have a knee-wall towards the eaves, which would provide most of the usable space's depth. From a zoning perspective, he would consider the half-

story an attic. A half story is under a sloped roof where less than two-thirds of the floor space is usable. Mr. Murer's plan would include ten feet of usable area.

Mr. Murer stated the proposed garage roof sloop matches the main house roof sloop.

Ms. Moody closed the public hearing.

Mr. William Watkins stated that he inspected the neighborhood and property. All garages he saw were attached or included a breezeway. A one-story garage would not maintain the architectural integrity of the area. The ability to safety egress the property is also important. He said he would favor the variance.

Mr. Rhodes stated that he did not want to design his property, but a relocation of the garage would avoid the need for a variance. He said there are other options that should be considered. He said he would not support the variance.

Mr. Fraley stated he would like to request a deferral to allow the application to consider other options and return. He said otherwise, he would have difficulty in supporting the variance.

Ms. Moody stated that backing out of the property is difficult. She said a one-story building at that location would not blend in with the neighborhood. If there is another option, she would like to view it. She asked for the applicant to look at another option and reappear before the Board.

Mr. Fraley stated that Mr. Murer would have another possible vote if he deferred the case.

Mr. Rhodes stated if the variance request gets less three votes, the applicant must wait a year to reapply.

Ms. Moody reopened the public hearing.

Mr. Murer stated he would defer the variance request until a future meeting. He said he would modify the architectural design and reappear.

Ms. Moody closed the public hearing.

Mr. Rogerson stated that the applicant requested deferral.

Ms. Moody stated that the Board accepted deferral.


Ms. Moody reopened the public hearing. The public hearing will remain open until the case returns.

There were no matters of special privilege.

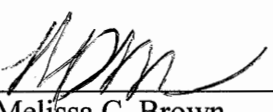
F. Adjournment

Mr. Fraley made a motion to adjourn, with a second from Mr. Rhodes.

The meeting was adjourned at 7:55p.m.



Mark Wenger
Chairman



Melissa C. Brown
Secretary