

BOARD OF ZONING APPEALS
February 7, 2013

Mr. Marvin Rhodes called the meeting to order at 7:00 p.m.

A. Roll Call

Present:

Mr. Marvin Rhodes
Mr. David Otey, Jr.
Mr. Stephen Rodgers
Mr. Ron Campana, Jr.

Others Present:

Mr. Jason Purse, Zoning Administrator
Mr. John Rogerson, Senior Zoning Officer

Mr. Rhodes gave information on the purpose of the Board of Zoning Appeals.

B. Old Business

There was no old business.

C. New Business

ZA-0003-2012 3492 Frederick Drive

Mr. Luis Maldonado has applied for a variance to Section 24-258(b), Yard requirements, of the Code of James City County to reduce the required rear yard setback from 35 feet to approximately 20' 6". This proposed variance request is to allow the continued placement of a deck that encroaches approximately 14' 6" into the rear yard setback. This property is currently zoned R-2, General Residential and can further be identified as JCC RE Tax Map No. 1220600054.

Mr. Maldonado constructed a deck on the rear of his residence that encroached approximately 14' 6" into the required 35' rear yard setback. He started the construction of the deck without first obtaining a building permit. Once he was advised of the requirement of a building permit, he proceeded with the necessary paperwork.

Upon reviewing the building permit application, zoning staff realized that the rear of the house was on the 35' rear yard setback line. There was no additional room for the construction of the deck. Staff advised Mr. Maldonado that he did not have room for a deck at the rear of the house. The applicant stated that he had a contract for the construction of the deck and since the job had started, he decided to complete the project without the necessary approvals.

The property is a flag lot and the rear of the house backs up to a common area that is in a Conservation Easement. The property behind his home can never be built on due to the easement. Mr. Maldonado's lot is unusually wide but very shallow so that the front of his house is right on the front

setback line and the rear of the house is right at the rear setback line. Mr. Maldonado attempted to do a boundary line adjustment to accommodate the deck he built. However, the Homeowners' Association would not give their approval.

Staff maintains that an unnecessary hardship exists when the strict application of the terms of the Zoning Ordinance would effectively prohibit or unreasonably restrict the use of the property. The strict application of the terms of the Zoning Ordinance does not produce an undue hardship nor does it effectively prohibit or unreasonably restrict the use of the property in this case. This hardship is entirely self-inflicted therefore staff recommends denial of this application.

Mr. Stephen Rodgers asked about the shape of the lot.

Mr. Rogerson answered that it was a uniquely shaped flag lot. When the subdivision plat was approved, it was determined that the rear lot line was opposite and parallel to the front lot line. As a result the diagonal property line on the back right of the lot was determined to be a side lot line for the purpose of setback application.

Mr. Rodgers asked if everything outside the sliding glass door was effectively in the setback.

Mr. Rogerson stated that was correct.

Mr. Ron Campana asked what was at the sliding glass door before the deck was built.

Mr. Rogerson stated that there was nothing outside of the sliding glass door.

Mr. Marvin Rhodes asked about how much of the deck was complete when staff was aware of the situation.

Mr. Rogerson stated that Mr. Maldonado came to the office and met with Mr. Rogerson and his co-worker to discuss the process. He also provided pictures showing that the deck was already partially constructed.

Mr. Rodgers asked about the boundary line adjustment.

Mr. Rogerson stated that the property adjacent in the rear is owned by the Homeowners' Association and is also a conservation easement. The Homeowner's Association would have the ability to trade a portion of their property for a portion of Mr. Maldonado's property. It would have made his deeper to accommodate the deck. But the parties involved could not make it work. Mr. Rogerson stated that the applicant will be able to provide more information.

Mr. Rhodes opened the public hearing.

Mr. William Holt, of Kaufman and Canoles, was representing the applicant. Mr. Holt thanked Mr. Rogerson for all his help on this case which has evolved over seven or eight months. He showed a diagram of the area showing Mr. Maldonado's lot in comparison to the subdivision. His lot was exactly 30 feet deep. Mr. Holt made the comparison that a mobile home is 28 feet. Mr. Holt also stated that the

home was built with sliding glass doors with a five foot drop off. There was no way to use this exit without constructing something there. He felt that this was a fire and safety issue.

Mr. Holt stated that when his client bought the home he did not understand what a setback was or a variance was. He stated that his client decided to finish the deck and work with the County to correct the problem. On a recommendation from the County, they tried to do a boundary line adjustment and were not able to. Mr. Holt explained how they were trying to work with the Homeowners' Association but they would not approve the adjustment. This was due to an issue with steep slopes on their property and the fact that a walking trail would have to be relocated. Mr. Holt also stated that the Homeowners' Association fined Mr. Maldonado (\$15 per day for 90 days). This is not a hardship that is shared by others, nor is there any detriment to the community. This situation was caused by the shallowness of the lot.

Mr. Rodgers asked about the fine from the Homeowners' Association.

Mr. Holt stated the fine was due to Mr. Maldonado not securing the necessary approvals and permits, as well as not receiving approval from their architectural review board.

Mr. Campana asked about the relocation of the walking trail.

Mr. Holt showed on the diagram where the trail is currently, and where they proposed that it could be moved.

Mr. Campana asked about the steep slopes.

Mr. Holt stated that the Homeowners' Association felt that there would be erosion issues if the trail was relocated. The client hired a contractor to show where it could be done with erosion maps but it still was denied. The Homeowners' Association also wanted to require handrails and a bond in case the trail needed to be repaired or replaced.

Mr. Campana asked how many properties in that area have decks on them.

Mr. Holt did not have the exact figure, but would estimate about half of the properties have decks.

Mr. David Otey asked how the homeowner became aware of the need for a building permit.

Mr. Holt answered that he thought a resident has brought it to the Homeowners' Association that it had not received their approval.

Mr. Otey asked where the homeowner stood with the Homeowners' Association now.

Mr. Holt answered that the Association has fined the homeowner the maximum allowed under the State Code (\$1350). They also received notice of this hearing. He stated that they have not heard of any opposition so he is assuming that they are in agreement with this variance.

Mr. Otey asked about their separate permitting process.

Mr. Holt answered that the plan would need to go before their architectural review board for approval. He stated that there were some concerns about the gazebo on top of the deck.

Mr. Rhodes stated that the variance could be granted but there would still be an issue with the Homeowners' Association to resolve. He stated that the Association may request some changes to the plan.

Mr. Jason Purse stated that the variance could be granted with conditions with a specific distance. The Association could approve something smaller, but they would have to stay within the stated setbacks.

Mr. Otey understands the costs that the homeowner has incurred in trying to resolve this issue. He stated that the property is not being restricted being that it is used as a single family use. He asked what recourse is there against the contractor for working without a permit, and if there is any other access outside besides the front.

Mr. Holt stated that there is the door to the garage, the front and the sliding glass doors. He was unsure as to whether the contractor was licensed. At this time the homeowner has not pursued any action against the builder.

Mr. Rodgers asked how close the trail was to the house.

Mr. Holt answered that the trail was approximately twenty-one feet from the deck, but that the homeowner has plans to put up a fence to shield the view of the deck as well as the trail from his house.

Mr. Nesmith of 3496 Frederick Drive stated that he was in favor of the application and just wanted him to be able to enjoy his property.

Mr. Maldonado stated that he did not mean to build the deck without the proper approvals. This situation has caused him and his family much stress. When he purchased the house there was a fence in front of the sliding glass doors. This is why he wanted to build a deck.

There being no further comments, Mr. Rhodes closed the public hearing.

Mr. Campana stated he could approve this application subject to the approval of the Homeowners' Association.

Mr. Rodgers agreed. He feels that with the sliding glass doors there needs to be something there. The size is very small and does not support anything structure at these doors.

Mr. Rhodes understands that Mr. Maldonado was unaware of the requirements of a building permit, but felt that it is inexcusable for continuing to build the deck without seeking the appropriate approvals. A deck could be constructed on the left side of the house, although less desirable. He felt that a ground level patio could be constructed. The homeowner has reasonable use of the property

therefore a hardship does not exist. Mr. Rhodes stated that he felt any hardship was created by the homeowner. Granting a variance would be giving a special privilege that is not available to other property owners. In looking at other lots in the subdivision there are many instances where the home occupies a substantial portion of the building envelope. Granting a variance runs with the property and in the long term could prove detrimental to the community. Mr. Rhodes suggested that if the BZA grant the variance, the homeowner should be required to obtain a current survey of the property, and make the survey part of the variance.

Mr. Otey stated that he understood the homeowner's situation, but felt that not knowing the law does not excuse you from complying with it. If the application is approved, it needs to have the approval of the Homeowner's Association.

Mr. Rhodes re-opened the public hearing.

Mr. Holt stated that they would be in agreement in obtaining approval from the Association. Any restrictions imposed by the Board would be acceptable. It was his understanding the Association issue was that the County had not approved the permit.

Mr. Otey asked how a certificate of occupancy could be issued with the sliding glass doors five feet off the ground.

Mr. Rhodes stated that other localities issue them; bars are just placed across the doors.

Mr. Campana asked if the deck was in compliance with building code.

Mr. Holt stated that building, safety and permits will not review the permit until it has zoning approval.

Mr. Purse clarified that the consensus of the Board was if this application is approved, it would be with the conditions of obtaining a building permit, and meeting the building code requirements.

Mr. Rhodes also suggested a current and correct survey.

Mr. Holt stated that the survey submitted would capture the deck's location.

Mr. Purse stated that it does not need a special condition; it is done as part of the application.

Mr. Otey clarified that this reasoning is that if the deck does not meet the building code requirements, then the option to correct it or rebuild is not given. He would like to approve the variance if it meets the building code requirement.

Mr. Rhodes closed the public hearing.

Mr. Rodgers stated that he feels that the back of the house needs something outside the sliding glass doors.

The Board then discussed their concern with granting a blanket variance to allow something else to be built on the rear of the house. The Board stated that they would be willing to grant the variance for this deck only and if the deck was removed then nothing else could be rebuild.

The Board agreed that they would be willing to grant a variance for this deck only as shown on the plat titled "Physical survey of lot 54, Section 4, Fenwick Hills for Luis Maldonado & Lizbeth Ortiz provided by LandTech Resources and dated February 2, 2013. The property owner is required to obtain a building permit from Building Safety and Permits and received a final inspection.

Mr. Rogers made a motion to grant a variance to Section 24-258 (b), Yard Regulation of the James City County Zoning Ordinance to reduce the required 35;' setback to 20' 6" to allow the existing deck to remain with the condition that the variance was for the existing deck only as shown on the plat titled "Physical survey of lot 54, Section 4, Fenwick Hills for Luis Maldonado & Lizbeth Ortiz provided by LandTech Resources and dated February 2, 2013. The property owner is required to obtain a building permit from Building Safety and Permits and received a final inspection.

The motion was seconded by Mr. Campana

On a roll call vote the application was approved (3-1) with Mr. Rhodes voting Nay.

ZA-0001-2013 Goodyear Tire Center

Mr. Jason Purse presented the staff report and stated that Mr. Jason Grimes, of AES Consulting Engineers, has applied for a variance to Section 24-57, Parking lot design, to extend the maximum length of the parking bay between landscape islands from 90 feet to approximately 99 feet. This proposed variance request is to allow the continued placement of an open space island that, because of its placement, makes the parking bay more than 90 feet between the next island. This property is located at 4830 Monticello Avenue, is currently zoned MU, Mixed-Use.

He further noted that this open space variance request will not lessen the amount of open space on-site, but will result in the movement of the required open space by nine feet. Staff finds no undue hardship in this case and therefore does not support the application. However should the Board wish to grant the variance, staff feels the variance would not be a detriment to adjoining properties nor alter the character of the area. Furthermore, given the specific issue of the existing guy wire on this parcel and other unique factors associated with this proposal, a decision to approve the variance request would not create precedent for future cases.

Mr. Rhodes opened the public hearing.

Mr. Jason Grimes, of AES Consulting Engineers, spoke on behalf of the applicant. Mr. Grimes explained the circumstances that lead to the variance request. He stated that due to factors associated with Dominion Power policies, placement of the sidewalk, location of the right-of-way, and cost associated with relocation, that moving the pole was not feasible. He stated that he had worked diligently with staff to find a solution to the problem, but the variance was the only recourse. He requested the Board grant the variance to allow more than 90 feet between landscape islands in the

parking bay.

Mr. Rhodes closed the public hearing.

There being no further discussion, Mr. Otey motioned and Mr. Rodgers seconded approval of the variance to section 24-57, Parking lot design, of the James City County Zoning Ordinance to extend the maximum length of the parking bay between landscape islands from 90 feet to approximately 99 feet, as shown on the plan entitled "As Built Survey Goodyear 4830 Monticello Avenue" dated December 17, 2012 which is attached hereto, made part hereof and incorporated into this resolution.

On a roll call vote the application was approved by a vote of 4-0.

D. Minutes

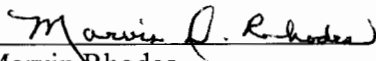
January 20, 2013


Mr. Rhodes made minor modification suggestions for the minutes. On a roll call vote, the amended minutes were approved by a vote of 4-0.

E. Matters of Special Privilege

F. Adjournment

There being no further business, the meeting was adjourned


Marvin Rhodes
Chairman



Jason Purse
Secretary