

BOARD OF ZONING APPEALS

March 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
Ms. Terry Costello, Zoning Officer

B. Old Business

There was no old business.

C. New Business

ZA-0002-2013 126 Lake Drive

Ms. Terry Costello stated that Ms. Kensett Teller, Trustee, has applied for a variance to Section 24-238(b), Yard requirements, of the Code of James City County to reduce the required rear yard setback from 35 feet to approximately 29 feet. This proposed variance request is to allow the continued placement of two decks. This property is currently zoned R-1, General Residential and can further be identified as JCC RE Tax Map No. 4740800032.

On June 14, 1988 a building permit application was submitted and approved for a single family residence. On September 8, 1988 a revision was submitted to include the addition of the decks to the home. Staff could not verify whether the decks encroached as part of the original plan or whether the plan was changing during construction.

On May 4, 2011 a boundary line extinguishment was approved for this property and the one adjacent to it. According to the plat at that time it was noted that a portion of the rear and side deck encroached into the rear setback. Staff stated that notices of application were sent to adjacent property owners and one letter was received from the owner at 124 Lake Drive in support of the variance.

An unnecessary hardship exists when the strict application of the term is of the ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff finds no undue hardship in this case and cannot support the variance. Staff acknowledges that the property owners were not aware of the situation and have worked with staff diligently to remedy the issue. Should the Board grant the variance, staff does not feel that the variance would be a detriment to adjoining properties nor alter the character of the area.

Mr. Stephen Rodgers asked about the note in the staff report concerning that no site plan or drawings were submitted as part of the building permit process.

Ms. Costello answered that there were no drawings or site plan on file in the County's Record Department.

Mr. Rodgers asked about the permit building application and parts of the form were blank.

Ms. Costello answered that the building permit itself had the setbacks listed while that portion of the application was blank.

Mr. Rodgers asked about the final inspection process when the home was built.

Ms. Costello answered that there was a final certificate of occupancy issued therefore the inspections would have been completed prior to that.

Mr. Jason Purse answered that the building permitting process is handled by another division within Development Management. Some of the documents are not seen by our office. He is confident that the Zoning Division did their due diligence in reviewing the plans.

Mr. Marvin Rhodes asked if rear setbacks have always been 35 feet.

Ms. Costello answered yes.

Mr. Rhodes noted that there was (Resource Protective Area) RPA on the property. He asked how this affected the application.

Ms. Costello answered that the RPA revisions were approved in 2004 so that this property is grandfathered.

Mr. Rhodes opened the public hearing.

Mr. Sheldon Franck spoke on behalf of the owner of the property. He stated that he is fairly certain that sketches were submitted as part of the original building permit. The Tellers have proceeded from the beginning in good faith. The deck was constructed 24 years ago with no problems. He noted that in 2011 a boundary line adjustment was submitted to the Planning Office and it was noted on the plat at the time there was a setback violation. Mr. Franck stated that it was not brought to the Tellers' attention at that time. He also mentioned that the neighbor most affected by this deck has no objection to the variance. Mr. Franck respectfully requested that the variance be granted.

Mr. Rhodes closed the public hearing.

Mr. David Otey made a motion to grant a variance to Section 24-238 (b), Yard Regulations of the James City County Zoning Ordinance to reduce the required 35' setback to 29 feet to allow for the continued placement of two decks with the condition of no further encroachment.

The motion was seconded by Mr. Campana

On a roll call vote the application was approved (4-0).

D. Minutes

February 7, 2013

Mr. Rhodes made some modifications to the minutes. On a roll call vote, the amended minutes were approved by a vote of 4-0.

E. Matters of Special Privilege

2013 Annual Report

Mr. Purse stated that this report is a state requirement and will be attached as a reading file for the Board of Supervisors.

F. Adjournment

There being no further business, the meeting was adjourned



Marvin Rhodes
Chairman



Jason Purse
Secretary