

BOARD OF ZONING APPEALS
September 5, 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
Ms. Christy Parrish, Proffer Administrator

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-0007-2013 8251 Croaker Road

Mr. Otey stated that he has a business relationship with the applicant and that he intend on abstaining from the discussion and vote.

Mr. Rogerson presented his staff report:

Mr. Michael J. Hipple has applied for variances to: (1) Section 24-217(a), Yard Regulations, to reduce the left side setback from 15' to 10' to allow the continued placement of the existing dwelling; and (2) Section 24-215(a), Setback Requirements, to reduce the required front yard setback from 50' to 30' to allow the construction of a 510 square foot addition to the front of the existing dwelling. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1430100021.

According to James City County Real Estate records the existing dwelling has one bedroom, it was built in 1951, it is 680 square feet in size and the lot is .25 acres. Mr. Hipple would like to put an addition on the existing house. He is not able to put the addition on the rear of the house because of the location of the septic tank and drain field so his only other option is to add the addition to the front of the house. The existing house currently encroaches into the required 15' side yard setback by 5' and the existing house encroaches into the required 50' front yard setback by 1.9'.

The parcel is located at the convergence of the Cedar Point Lane and Croaker Road rights-of-way. The

right-of-way extends approximately 41 feet from the existing edge of pavement to the property line. The 2009 Comprehensive Plan recommends widening Croaker Road between Richmond Road and Rose Lane (in front of the JCC Library); however, no improvements are envisioned for this portion of the road. The well shown on the survey dated May 21, 2013 is right on the front property line. However, there is an additional 41' from the well in the front yard to the edge of Croaker Road. So, when looking at the attached photographs it appears that almost half of the maintained front yard is within VDOT's right of way.

An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff finds, because of the extensive right-of-way that limits the development of the front of this property, there is an undue hardship in this case. This hardship is not generally shared by other properties in the A-1, General Agriculture zoning district since this lot is .25 acres in size and the minimum lot area currently in the A-1, General Agriculture zoning district is 3 acres. Staff acknowledges that the property owner acquired this lot in good faith and the authorization of this variance will not be of substantial detriment to the adjacent property and the character of the district will not be changed by the granting of the variance. Staff recommends the Board of Zoning Appeals approved both variance requests for this case.

Mr. Rodgers asked if the existing septic field could be moved.

Mr. Rogerson said that the septic field could be moved at some expense.

Mr. Rodgers asked about the location of the existing overhead wires and if there was any issue with the distance from the overhead wires and the proposed addition to the front of the house.

Mr. Rogerson stated that that the addition would be close to the overhead power lines but if the power company wanted to upgrade the overhead wires it would be the County's preference to put the wires underground.

Mr. Rodgers asked about the relationship of the adjacent dwellings and the distance to the edge of pavement. He stated that the dwellings to the right were currently even with the existing dwelling located at 8251 Croaker Road and once the addition was built on the house it would be closer to the road than the other houses in the area.

Mr. Rodgers asked if there was any concern by the adjacent property owner about this situation.

Mr. Rogerson said that all adjacent property owners were notified and none of them had called with additional questions or concerns.

Mr. Rhodes asked if the applicant was the owner of the property.

Mr. Rogerson stated yes.

Mr. Rhodes asked if the side yard setback was grandfathered since the house was built in 1951.

Mr. Rogerson stated yes and then explained that since we were coming before the Board for the variance

to the front setback that he included the side yard setback into the variance request.

Mr. Rhodes then asked about the shed and why that was not included into the variance application.

Mr. Rogerson said that he did not notice that the shed did not meet setbacks until after the public hearing as had went to the paper.

Mr. Rhodes asked if the shed was movable since it does not meet the current setback requirements.

Mr. Rhodes stated that the GIS map does not match up with the survey.

Mr. Rogerson explained that GIS was only a tool and the survey is likely more correct.

Mr. Rhodes asked about the usage of the right side of the property by the adjacent property owners and if there was an issue with eminent domain.

Mr. Rogerson asked if Mr. Rhodes was talking about adverse possession.

Mr. Otey stated that he did not think adverse possession was an issue here.

Mr. Rhodes asked if staff had a map of where the existing drain field was located.

Mr. Rogerson stated that he did not but maybe the applicant did.

Mr. Rhodes said he did not have any further questions.

Mr. Rhodes opened the public hearing

Mr. Hipple the property owner introduced himself.

Mr. Hipple explained that the septic tank and drain field was directly behind the house and near the shed. He said there is not enough room to relocate the drain field on the lot.

Mr. Hipple explained that he wants to put the addition on the house and sell it to his pastor's daughter and her new husband. But the house is too small to start a family in.

Mr. Hipple explained that the perspective owners had been to the adjacent property owner to discuss their plans and there were no objections from any of them.

Mr. Hipple said the shed is 4'8" from the property line and is an original structure it has a concrete and cinder block base. He would have to look at whether or not it could be move. He said that the drain field is located very close to the shed so the Health Department might not let him move it over to meet the required setbacks because of the septic lines.

Mr. Rodgers asked about the power lines again.

Mr. Hipple said he was not sure about the power line but would look into it before he starts construction.

Mr. Hipple again explained that he did not even know that half of the front yard was in the right of way until he got the survey done. He said that once he submitted the plans to the County that is when he realized that there might be a problem.

Mr. Rhodes suggested we include the shed in the variance request to clear all of the issues up while we are here.

Mr Purse stated that as the Zoning Administrator we could bring the shed into compliance with an Administrative Variance since the shed was not included in the public hearing ad. That would keep us from re-advertising for the public hearing.

Mr. Rhodes asked if there was anyone else that would like to speak.

Mr. Ben Rothwell introduced himself and said he and his wife are the ones that will be moving into the house. He stated that he spoke to the neighbors and got some of them to sign a letter saying that they did not have any objection to the proposed addition. Mr. Rhodes suggested that Mr. Rothwell provide to staff the letters that he got signed by the adjacent property owners so staff could include them in the case file.

Mr. Rhodes closed the public hearing

Mr. Campana stated that since the house was an original structure he had no objection to granting the variance.

Mr. Rhodes said he could support the variance.

Mr Rodgers made a motion to approve the variances as requested.

Mr. Campana seconded to motion.

On a roll call vote the variance requests were approved 3-0 in favor with Mr. Otey abstaining from the vote.

D. Minutes

June 6, 2013

Mr. Rhodes asked if there were any corrections need for the minute from the June 6, 2013 meeting.

Mr. Campana said the minutes from the June 6, 2013 meeting seemed accurate.

Mr. Otey made a motion to approve the minutes.

Mr. Rodgers seconded the motion.

The minutes were approved by a voice vote 4-0.

E. Matters of Special Privilege

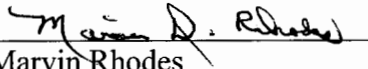
Mr. Rhodes asked what the status of the County email accounts for the Board members was.


Ms. Parrish explained that the Board members now have email accounts and that she would go over the procedure for activating those accounts after the closes of the meeting.

Ms. Parrish said since Mr. Geib was not present the Board would discuss having applicants sworn in at the next meeting.

F. Adjournment

There being no further business, the meeting was adjourned


Marvin Rhodes
Chairman


Jason Purse
Secretary