

BOARD OF ZONING APPEALS
January 9, 2014

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.
Mr. William Geib

Others Present:

Mr. Jason Purse, Zoning Administrator
Mr. John Rogerson, Senior Zoning Officer
Mr. Tom Coghill, Director of Building
Safety & Permits

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

B. New Business

ZA-0011-2013 7610 Beechwood Rrive

Mr. Rogerson presented his staff report:

Mr. Edward Pultz of Pultz Builders, Inc. has applied for a variance to Section 24-215(a), Setback requirements, of the Code of James City County to reduce the required front yard setback from 50 feet to approximately 33 feet from the front property line. This proposed variance request is to allow the continued placement of the dwelling that is currently under construction. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1911100042.

Mr. Edward Pultz of Pultz Builders, Inc applied for a building permit on May 28, 2013. The original development plan showed the proposed dwelling as being 51 feet from the front property line. (the minimum setback distance is 50 feet) As a result of the proximity of the house to the setback line, Zoning required a "foundation survey". A foundation survey is a survey that is done after the footing is poured and the blocks for the foundation's crawl space are in place. However, Zoning did not receive the foundation survey until the end of November when the house was already built. If the foundation survey was submitted as requested by Zoning before the second foundation inspection this error would have been caught, but it was not and the builder was allowed to move forward. When the encroachment came to Zoning's attention the house was nearly complete.

The Engineering and Resource Protection Division requested Mr. Pultz provide them with a revised site plan that provided more details, such as elevations, water flow direction, construction entrance and the proposed primary and reserved drain fields. As Mr. Pultz was waiting on his

surveyor to do the revised development plan he received his “clearing permit” which allows him to go forward and clear the lot and dig the footings. Since Mr Pultz did not have the revised development plan he called his land surveyor and asked him what the setbacks were for this lot. Mr. Pultz’s surveyor told him, in error, the house needed to be 50 feet from the edge of pavement. The setbacks are measured from the property line and not the edge of pavement. In this instance the right of way extends 17 feet beyond the edge of pavement to the property line. Therefore; the house encroaches into the required 50 foot front setback by about 17 feet.

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. The strict application of the terms of the Zoning Ordinance does not produce an undue hardship nor does it effectively prohibit or unreasonable restrict the use of the property in this case. Despite the miscommunication between the builder and the surveyor, staff cannot support this request for a variance.

Mr. Rhodes asked for the sequence of events and inspections that take place during the building process.

Mr. Coghill explained how the building and inspection process works.

Mr. Coghill explained that the inspector had rejected the 2nd foundation inspection because the foundation survey had not been received.

Mr. Pultz called Mr. Coghill and said he was in a bind and asked Mr. Coghill if he could move forward with the project and he would get the foundation survey to Mr. Coghill the following week.

Mr. Coghill agreed to allow Mr. Pultz move forward agreeing that the foundation survey would be submitted the following week. The following week came and Mr. Pultz and Mr. Coghill forgot about the foundation survey.

Mr. Coghill stated it was several months later that the foundation survey was submitted and the encroachment was discovered, by that time the house was 95% complete.

Mr. Rhodes inquired about the timing of the 1st footing inspection and at what point the foundations survey should be completed.

Mr. Geib asked about the timeline of events that took place during the building process.

Mr. Rodgers inquired about the timing of events that led up to the discovery of the encroachment.

Mr. Coghill and Mr. Pultz described the inspection process.

Mr. Rogerson stated that no additional inspections should have taken place until the builder has submitted the foundation survey and Zoning has approved it.

Mr. Rogerson explained that it is the builder's responsibility to submit the foundation survey and it is the building inspectors' responsibility to make sure the foundation survey has been approved before moving forward past the 2nd foundation inspection.

Mr. Rhodes stated that there is a shared obligation by the builder and the building inspector to make sure the foundation survey has been submitted and approved before moving forward past the 2nd foundation inspection.

Mr. Geib asked for additional clarity on the timeline of events.

Mr. Geib asked for the dates of all of the inspections.

Mr. Purse explained the series of events that take place during the building process, further explaining that construction continued beyond the 2nd foundation inspection when it should not have continued since the foundation survey was never submitted or approved.

Mr. Rogerson stated that the foundation survey that was submitted and dated in November was actually a physical survey of the property since the house was under roof.

Mr. Geib asked if it is typical that if an error in process is made by staff that the builder is not responsible.

Mr. Purse responded no.

Mr. Otey asked what prompted the issue to come up again.

Mr. Purse explained that it was further along in the process when it was realized that the foundation survey had not been submitted.

Mr. Rogerson stated that it was the first week in December that Mr. Pultz come to the Zoning and stated that he thought he had a problem.

Mr. Rogerson explained to Mr. Pultz that the only way to correct the problem was to apply for a variance from the Board of Zoning Appeals.

Mr. Coghill was able to give a timeline of inspections.

Mr. Rogerson explained that when the 2nd foundation inspection is done the footing has been poured and the block work is in place but no wood has been used yet.

Mr. Rogerson explained that if an error is caught at the time of the foundation survey there are other options to correct the problem, but when the house is under roof it is too late to correct the encroachment.

Mr. Rhodes opened the public hearing

The applicant, Mr. Pultz stated that he has been building in Williamsburg for about 30 years and he has never been in a situation like this.

Mr. Pultz said that he could not blame anyone else and that the mistake was totally his fault and he should know better.

Mr. Pultz stated that there are other houses along the street that are not 50 feet from the front property line so it did not occur to him that there might be a problem.

Mr. Pultz explained that his surveyor was really busy and it took 3 weeks to get the foundation survey, in the meantime he called his surveyor and asked him what the setbacks were and in error the surveyor told him 50 feet from the edge of pavement.

Mr. Pultz explained that he had misinformation from his surveyor which led to the problem.

Mr. Rodgers asked about the clearing permit.

Mr. Rogerson explained that the original site plan did not have enough information on it to issue a clearing permit but it did have enough information for Zoning to approve to site plan.

Mr. Coghill explained that your clearing inspection must be complete before you are authorized excavate to footings and only after to clearing inspection has been complete can the building permit be issued.

Mr. Rhodes stated that one option would be to elevate the house and move it back 17'. However the garage is on a slab which would be hard to move.

Mr. Rhodes stated beyond this house at 7614 Beechwood there is a house that appears closer to the road.

Mr. Rhodes said that there were other homes along Beechwood that do not appear to meet the current setbacks. He stated that some of them were likely built before the County had a Zoning Ordinance.

Mr. Rogerson stated that a long time ago the community consisted of small cottages for weekend retreats and over time people started to improve on the cottages and live in them year round. So, if the structures were built before 1970 we did not have a Zoning Ordinance and there were no setback requirements.

Mr. Geib stated that the building permit was issued on May 29, 2013 and it was not until November 29, 2013 that the foundation survey was submitted. Mr. Geib asked why it took so long for the foundation survey to be submitted.

Mr. Pultz said someone for the County said the house looked too close to the road and it took his surveyor 5-6 weeks to get the foundation survey done.

Mr. Otey said the foundation survey could not have been done until the footing was poured and the foundation blocks were in place.

Mr. Geib had additional questions about the two development plans the original and the revised.

Mr. Rogerson said the revised development plan was dated June 3, 2013

Mr. Coghill said the building permit was issued on July 22, 2013.

Mr. Rhodes closed the public hearing

Mr. Rodgers said he is a little conflicted since the builder had a verbal go ahead from the County.

Mr. Campana inquired about the two different development plans.

Mr. Geib said that he is concerned that now that the building is forward 17 feet the distribution box is closer to the well and he was concerned about the distribution box leaking.

Mr. Geib stated that the process was clearly not followed in regards to the foundation survey requirement and the timing of the inspections.

Mr. Geib said since the process was not followed the process got short circuited.

Mr. Rhodes reopened the public hearing so Mr. Pultz could provide additional information.

Mr. Rhodes asked Mr. Pultz to address the location of the distribution box and whether he has the proper separation distance between the well and the distribution box.

Mr. Pultz said the well is the proper distance and the Health Department has approved the separation distance between the well and the septic system.

Mr. Pultz said the well is supposed to be fifty feet from the house and the gravel ditch was in the way so he moved the ditch two feet. But the well ended up being forty eight feet from the house and the Health Department approved it that way.

Mr. Rhodes closed the public hearing

Mr. Otey said he was conflicted but he was inclined to vote in favor of granting the variance.

Mr. Rhodes said there was plenty of shared responsible and he finds it difficult to lay all of the responsibility on Mr. Pultz.

Mr. Rodgers said there is blame on both sides and the builder could have been more careful, but he was inclined to grant the variance.

Mr. Otey said the way this came about is not technically relevant but there are some unusual circumstances involved in this case.

Mr. Rhodes asked if there was a motion.

Mr Rogerson read a proposed motion to approve the case:

To grant a variance to Section 24-215(a), Setback Requirements, of the Code of James City County to reduce the required front yard setback from 50 feet to 33 feet from the front property line. This proposed variance request is to allow the continued placement of the dwelling that is currently under construction as shown on the plat entitled "Foundation Survey of Lot 42, Section 4, Cypress Point and dated November 25, 2013" which is attached hereto, made part hereof and incorporated into this resolution. This approval comes with the condition that there be no further encroachment into the required setbacks. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1911100042.

Mr. Rhodes made sure there was a statement that there be no further encroachment.

Mr. Geib inquired if the granting of the variance would devalue the adjacent properties.

Mr. Rogerson stated that there are other properties in the area that have manufactured homes and don't meet the setbacks.

Mr. Otey said at the moment this is the nicest house in the area currently and the new house would not diminish the character of the district.

Mr. Rodgers said he does not think the fact that the garage is in the setback would bring down the value of the other properties.

Mr. Rodgers reread the motion.

On a voice vote 5-0 the motion to grant the variance was approved.

C. Minutes

October 3, 2013

Mr. Rhodes asked if there were corrections to the minutes and there were. Mr. Rodgers was referred to as Mr. Rhodes three times during the minutes. The corrections were made and the amended minutes were approved by a unanimous voice vote with Mr. Rhodes abstaining since he was not at the October Meeting.

D. Old Business

Mr. Rhodes inquired about whether we should swear in the applicants.

Mr. Purse stated that research indicated that there is about a 50/50 split on localities that do and do not require the applicant to be sworn in prior to hearing the case.

Mr. Purse stated he would like to Deputy County Attorney to be at the meeting if they would like to move forward with this.

Mr. Purse stated that the Deputy County Attorney had said the only time this would have been beneficial is the cell phone tower that did go to court.

Mr. Rhodes said he had talked to the Deputy County Attorney's office about the matter.

Mr. Geib talked about the potential for lawsuits and was asking if the rest of the board members were interested in swearing in the applicants before the case.

Mr. Rodgers asked if there was some certain certification someone would require to administer the oath.

Mr. Campana asked if the applicants know if the meetings are being recorded.

Mr. Rhodes stated that 95 % of the applicants are homeowners and if they were going to lie to the Board they would likely lie in court also.

Mr. Rhodes said we should swear in the applicant on a case by case basis.

F. Election of Officers

Mr. Purse asked for nominations for Chairman:

Mr. Rhodes nominated Mr. Otey for Chairman

Mr. Rodgers seconded the nomination of Mr. Otey as Chairman.

Mr. Otey accepted the nomination as Chairman

Mr. Otey was elected chairman on a 4-0 voice vote with Mr. Otey abstaining

Mr. Campana made a motion to nominated Mr. Rhodes as Vice Chairman

Mr. Rodgers seconded the motion

Mr. Rhodes was elected Vice Chairman on a 4-0 voice vote with Mr. Rhodes abstaining.

The proposed meeting schedule for 2014 was approved as submitted.

Mr. Purse inquired about moving the meetings to Building A conference room.

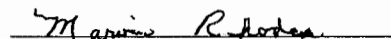
Mr. Geib said he thought meeting in Conference room A diminishes the presence of the Board of Zoning appeals and feels the Boardroom is more formal.

Mr. Rodgers said he prefers the Boardroom.

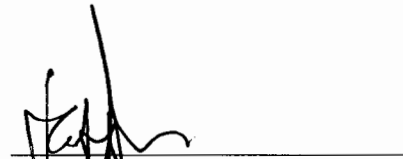
Without consensus it was decided that we would continue to meet in the Boardroom in building F.

G. Adjournment

There being no further business, the meeting was adjourned at 8:15 PM.



Marvin Rhodes
Chairman



Jason Purse
Secretary