

**BOARD OF ZONING APPEALS**  
**September 11, 2014**

Mr. David Otey Jr. 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. Maxwell Hlavin, Assistant County  
Attorney

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

Mr. Jason Purse introduced the new Assistant County Attorney, Maxwell Hlavin.

**B. New Business**

**ZA-0003-2014, 15 Waterford Court**

Mr. John Rogerson presented his staff report:

Mr. John Nichols 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 adjacent to lot #17 to the East from 35 feet to 25 feet. This proposed variance request is to allow the construction of a screened-in porch. Mr. Nichols property can be identified as lot #6 on the attached subdivision plat. This property is currently zoned R-2, General Residential and can further be identified as JCC RE Tax Map No. 3231700006.

Mr. Nichols has applied for a variance to construct a screened-in porch on the back left of his house. The manner in which Mr. Nichols house was placed on the lot, the back left corner of his house is currently about 1.3 feet from an existing rear yard setback line of 35 feet located to the East, adjacent to lot #17. Mr. Nichols also has another rear yard setback of 35 feet to the South (behind his house).

Construction of the screened-in porch on the back left of the existing house would encroach into the 35 foot rear yard setback to the East by about 10 feet. The adjacent lot # 17, to the East, currently has a 35 foot setback from the shared property line between lots #6 and #17.

Mr. Nichols has applied for the variance to construct a screened-in porch because a member of his family has a medical condition called *pilomatricoma*. This medical condition can result in calcium deposit build up under the skin from bug bites which may require surgery to remove. The addition of the screened-in porch would allow the resident of the dwelling to enjoy the

outside.

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 unreasonably restrict the use of the property. The property has been put to use by the existence of a single family dwelling. Therefore; staff cannot support this application, however; should the Board wish to grant the variance to reduce the rear yard setback for the construction of the screened-in porch, staff feels the variance would not be a detriment to adjoining properties nor alter the character of the area.

Mr. Marvin Rhodes noted that there are several lots in the neighborhood that are shaped the same as Mr. Nichols'. Mr. Rhodes asked if the other lots in the area have been developed in the same manner, with the houses placed further back on the lot than the required 35 feet.

Mr. Rogerson stated that the lots at the end of the cul-de-sac are unique in that they are larger, and due to their shape, some of these lots do have two rear yard setbacks. Mr. Rogerson provided the definition of "lot line rear" which is: the lot line opposite and most distant from the front lot line; or in the case of a triangular or otherwise irregularly shaped lot, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

Mr. Rhodes stated that he wanted to establish that this is not the only lot in the community that has two rear yard setbacks.

Mr. William Geib pointed out that the house on the adjacent lot is placed in an unusual location on that lot, skewed further to the left of center. Mr. Geib also pointed out that the rear yard abutting Ford's Colony has a 30 foot drainage and utility easement on it.

Mr. Stephen Rodgers asked if staff knew the width of the existing deck on the rear of the house.

Mr. Rogerson responded that he did not.

Mr. Stephen Rodgers asked if staff knew the square footage of the proposed screened-in porch that would encroach into the setback.

Mr. Rogerson responded that he did not.

Mr. David Otey asked if the notice of the proceeding was sent to the adjacent property owners, in particular lot number seventeen.

Mr. Rogerson stated that adjacent property owners were notified, including the owner of lot number seventeen.

Mr. Rhodes asked if staff had received any feedback from lot seventeen.

Mr. Rogerson said that he had not received any inquiries from any of the adjacent property

owners, and that the applicant had had some discussions with the owner of lot seventeen.

Mr. Geib asked if Windsor Forest has an active homeowners association or an architectural review board.

Mr. Rogerson responded that he did not know.

Mr. Otey stated that the property has been put to use by the existence of a single family dwelling.

**Mr. Otey opened the public hearing.**

Mr. Nichols stated his name and address as being 15 Waterford Court for the Board.

Mr. Nicholas provided the Board with additional information regarding his daughter's medical condition and a copy of an email in support of the variance from the owner of lot seventeen. Mr. Nichols explained that the ways that they help protect their daughter from insect bites include insect repellent, proper clothing and not going outside at certain times of the day. Mr. Nichols stated that approximately one year after his daughter was diagnosed, he and his wife began looking for other ways that his daughter could be outside, and they began considering the addition of a screened-in porch. Mr. Nichols stated that all of his neighbors have screened-in porches and explained the thought process he went through while considering the addition of a screened-in porch. Mr. Nichols noted that he did not want to significantly alter the overall architecture of the house and that the proposed location of the new screened-in porch was, in his opinion, the best location taking into consideration the overall layout of the house. Mr. Nichols further stated that he had contacted all of the neighbors to let them know about his plans to construct the screened-in porch, noting that he had talked to his neighbor at 24 Somerset Court (lot seventeen), and they do not have a problem with the proposal as long as it does not reduce the green space between the two houses.

Mr. Rodgers asked about the size of the existing deck and if they considered constructing the screened-in porch on the existing deck.

Mr. Nichols explained that if they built a screened-in porch on the existing deck it would block the natural sunlight that comes in through the sliding glass doors in his living room and obstruct the view of the backyard.

Mr. Rodgers asked if Mr. Nichols and his family would have to go outside on the deck to get to the screened-in porch if it was constructed as shown.

Mr. Nichols confirmed that they would.

Mr. Rhodes asked if the applicant has a set of plans for this project.

Mr. Nichols said he did have a set of plans, but they were not with him.

Mr. Geib asked if Mr. Nichols had been working with a contractor for this project.

Mr. Nichols confirmed that he has.

Mr. Geib asked about some of the specific dimensions and layout of the deck and the house.

Mr. Nichols explained the layout of the existing deck and the proposed screened-in porch, stating that approximately 13 percent of the new screened-in porch would extend into the setback.

Mr. Rhodes asked if the applicant had considered screening in the existing deck by tying in the new roofline with the existing roofline.

Mr. Nichols replied that they did not want the entrance to the screened-in porch to be through the master bedroom, and if he placed the screened-in porch elsewhere on the deck it would block the natural sunlight that comes in through the two sliding glass doors into his living room and the view of the backyard.

Mr. Geib asked where the existing entrance to the deck is.

Mr. Nichols said the entrance to the deck is through the two sliding glass doors off of the living room.

Mr. Rodgers asked what is off the master bedroom.

Mr. Nichols said that that was another sliding glass door.

Mr. Rhodes asked if Mr. Nichols has provided the County with proof of his daughter's medical condition.

Mr. Purse said that is not something staff took into consideration when preparing the staff report. He said our recommendation is based on the criteria of granting a variance.

Mr. Ron Campana asked if there were plans to have a separate entrance/exit to the screened-in porch from the ground below.

Mr. Nichols said that is not part of the plan. Mr. Nichols noted that there is a voluntary Home Owners Association for the community, of which they are members, but there is not an architectural review board.

Mr. Rodgers asked for clarity on the measurements of the house and the layout of the existing deck.

**Mr. Otey closed the public hearing**

Mr. Geib said the variance application appears to be one of convenience or cost savings as opposed to a true hardship and that there is a more reasonable solution available to the applicant than granting the variance.

Mr. Rodgers added that alterations to the existing deck could be made to achieve the applicant's goals without granting the variance.

Mr. Campana asked if there was a study done to place the screened-in porch on the garage side of the house, and that he was not sure that the applicant had considered all other option before applying for the variance.

Mr. Rhodes agreed that he was not sure the existing proposal was the best option, and stated that the application seemed to be more of a convenience than a necessity.

Mr. Otey said that the staff report and recommendation were correct in that the property has been put to use by the existing of a single family dwelling, and that is where the Board of Zoning Appeals' analysis ends. Mr. Otey continued that the applicant is asking the Board to approve a use that the applicant wants, as opposed to pursuing other alternatives that seem to be available. Mr. Otey stated he does not think the law as written now gives the Board the discretion to approve the variance. Mr. Otey apologized to the applicant and reassured him that nobody likes to say no but in this case that is what the Board has to do. Mr. Otey asked the other members of the Board for a motion.

Mr. Geib made a motion that the Board concur with staffs' recommendation that a variance is not warranted in this case because there is no hardship and not to approve the variance.

Mr. Rodgers seconded the motion.

The motion to deny the applicant's request was approved on a 5-0 vote.

### **C. Minutes**

**July 10, 2014**

Minor corrections were made to the July 10, 2014 meeting minutes.

Mr. Rodgers moved to adopt the minutes as amended.

Mr. Campana seconded the motion.

On a voice vote the minutes from the July 10, 2014 Board of Zoning Appeals were approved as amended 5-0.

### **D. Adjournment**

There being no further business Mr. Otey adjourned the meeting at 7:56 p.m.



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David Otey  
Chairman



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Jason Purse  
Secretary