

BOARD OF ZONING APPEALS
October 2, 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. 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.

B. New Business

ZA-0004-2014, 9441 Richmond Road

Mr. John Rogerson presented his staff report:

Mr. M. Anderson Bradshaw has applied on behalf of the property owner William B. Jones, Trustee, for a variance to Section 24-215(a), Setback requirements, and to Section 24-217(a) Yard regulations of the Code of James City County. The specific variances requested are: to reduce the front setback from 50 feet to 38.7 feet and to reduce the side yard on the west side from 15 feet to 11.1 feet to allow the continued placement of the existing manufactured home that is currently on the lot. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 0240100049.

There was a house and a garage located on the property at 9441 Richmond Road that was destroyed by fire in June of 2012. Over the course of the next two years staff had received several complaints and had visited the property several times to see about possible zoning violations. The complaints were a result of a camper being moved onto the property and the burning of trash and debris on site. Staff was able to conclude that there was no one living in the camper and the Fire Marshal's office was made aware of the burning taking place on the property.

During the spring of 2014 staff was in contact with the property owner regarding the possibility of placing a manufactured home on the property. Staff explained that manufactured homes were a permitted use and would be allowed. Zoning staff made several site visits over the next month or two to meet the property owner to discuss the clearing taking place and the abundance of material located on the property.

While meeting with the property owner, Mr. Jones, and the proposed tenant, Mr. Larry Aguilar, on site, staff discussed the placement of the proposed manufactured home on the property. Staff advised them that the proposed manufactured home had to be a minimum of 50 feet from the front property line and a minimum of 15 feet from the side property lines.

During this site visit that it came to staff's attention that both Mr. Jones and Mr. Aguilar wear hearing aids. Mr. Jones said that his hearing aid does not work that well and he sometimes turns it off; and Mr. Aguilar is deaf and cannot understand anyone unless he is looking at them when they speak. The property owner and Mr. Aguilar said that they thought the manufactured home had to be 50 feet from the edge of pavement from Richmond Road, so they placed the manufactured home on the concrete slab where the old house had been located, they even pointed out that they moved the manufactured home back two feet from where the house was previously located.

On July 8, 2014 a building permit application was submitted to Building Safety and Permits by Mr. Larry Aguilar for the placement of a manufactured home on the property. A site plan showing the proposed manufactured home on the property was submitted, but it was not drawn to scale. Staff approved the application anyway, thinking that the discussions they had with the owner and applicant on site were sufficient and that the property owner and applicant were aware of the required setbacks. After the manufactured home was placed on the lot, staff received a complaint about the location of the manufactured home in regards to the setbacks.

A site visit by staff revealed that the new manufactured home did not meet the current setback requirements of 50 feet from the front property line and had doubts about it meeting the side yard setbacks as well. It was at that time that staff required the property owner to get the property surveyed so w any encroachments into the required setbacks could be identified. A new survey was done by LandTech Resources on August 21, 2014. The most recent survey showed that the manufactured home encroached into the required front yard setback of 50 feet by approximately 11.3 feet. Additionally, it showed the manufactured home encroached into the required side yard setback of 15 feet by approximately 3.9 feet. The proposed variance would result in a front setback of 38.7 feet and a side setback of 11.1 feet.

Steps will be required at the doors on the front to allow for entry and exit. These steps, along with a landing, are not considered a part of the building line and may encroach an additional three feet into the setback.

Please note that the most recent survey was different from a previous survey done by the same surveying company on February 5, 2007. The most recent survey showed a possible "overlap" of the adjoining property. The most recent survey was also different from the deed description in the attached package. This potential property line dispute will need to be settled between the owners' of the properties and is a private matter. The variance takes into account the more restrictive property lines, so regardless of the property line dispute; the location of the manufactured home will meet the variance as requested

Staff recognizes that the initial approval of the building permit should not have happened since the site plan was not to scale and understands there may have been issues with communication,

since both gentlemen have hearing aids. However, 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 is one half-acre in size and could support a single family dwelling and meet all existing setbacks. Therefore, staff cannot support this application. However, should the Board wish to grant the variance to reduce the front and side yard setback to allow the continued placement of the manufactured home, staff believes the variance would not alter the character of the area, as the previous house was located two feet closer to the front property line and two adjacent properties have structures on them that are also located closer than 50 feet from the front property line.

Mr. Rogerson informed the Board that he would be happy to answer any questions.

Mr. Ron Campana Jr. asked if the setback requirements were fully explained to the applicant.

Mr. John Rogerson replied yes.

Mr. Campana asked Mr. Rogerson if it was his understanding that the setbacks were going to be adhered to.

Mr. Rogerson confirmed and stated that a pin located on the front left corner of the property was identified as the property line.

Mr. Marvin Rhodes asked what the difficulty would be with moving the manufactured home back to meet the front setback.

Mr. Rogerson said the manufactured home could be moved, but it was just a matter of expense.

Mr. Rhodes asked about the location of the septic field.

Mr. Rogerson stated that the septic tank was located on the back left corner of the trailer and he did not feel that the manufactured home could be moved back and remain parallel to the front property line due to the conflicting surveys on the right side property line.

Mr. Rogerson stated that the manufactured home could be placed on the lot perpendicular to Richmond Road and meet all of the setback requirements.

Mr. Rhodes asked about the conflicting surveys and why the County felt that issue may never be resolved.

Mr. Rogerson stated that from the County's standpoint, the conflicting surveys, with regard to the correct location of the right side property line was a private matter.

Mr. William Geib asked Mr. Rogerson to explain the nature of the complaint about the location of the manufactured home in regards to the setbacks.

Mr. Rogerson replied that someone called and said they thought the manufactured home was too

close to the Richmond Road. Mr. Rogerson pointed out that the original house that burned down was built before the county had a zoning ordinance and did not meet the current setback requirements. Mr. Rogerson explained that once the original structure burned down, any new structure would have to meet current setbacks.

Mr. Geib asked when the current setbacks were put in place.

Mr. Rogerson said he did not know what the setbacks in the A-1, General Agriculture zoning district were when the first zoning ordinance was approved in 1970, but the current setbacks in A-1, General Agriculture zoning district have been in place for at least 15 years.

Mr. Geib asked about the diagram that was on the septic permit application from the Health Department and why it was dated August of 1987.

Mr. Rogerson explained that this was an old application that came from the Health Department and the applicant used it as his site plan.

Mr. Geib confirmed that the applicant used the old septic permit application, which was not to scale, as his site plan. Mr. Geib stated that he wanted to be sure he was clear that the applicant thought the setback requirement was 50 feet from the road.

Mr. Rogerson stated that the front left corner of the manufactured home is currently 75 feet from the edge of pavement of the east bound lane of Richmond Road, and explained that the edge of the pavement and the edge of the right of way are different.

Mr. Geib asked if there was a requirement that the structure be parallel or perpendicular to the road.

Mr. Rogerson stated that the only requirement in regards to placement on the lot is that the structure meets the required setbacks.

Mr. Geib suggested pivoting the structure on the lot to meet the setback requirements.

Mr. Rogerson said the placement would have to be exact since the manufactured home is 65 feet long, and the required setbacks on each side are 15 feet, which would equal the lot width of 95 feet exactly.

Mr. Rhodes asked for clarity regarding the several site visits zoning had made to the property and the comment that there was an abundance of materials on the property.

Mr. Rogerson stated that they were clearing trees and moving trailers around on the property and the abundance of stuff on the property was a borderline zoning violation for trash and debris.

Mr. Rhodes asked if there was a zoning violation on the property.

Mr. Rogerson said a zoning violation was issued for trash and debris.

Mr. Geib asked if there was an existing violation on the property, because he did notice a lot of stuff on the property.

Mr. Rogerson said there is not a current zoning violation on the property.

Mr. Otey commented that the structure on the property to the right was clearly closer to the right of way than the existing manufactured home, and asked about the rules for replacing a nonconforming structure.

Mr. Rogerson replied that the Zoning Ordinance allows a nonconforming structure that is destroyed by casualty, which shall mean by fire or other cause beyond the control of the owner or by an act of God, to be restored as long as a permit for the restoration is issued within 12 months of the casualty and the work is completed within 24 months of the casualty. Mr. Rogerson stated that if they had obtained a permit and completed the work within this timeframe, they could have replaced the burned down structure with another in the same footprint. Mr. Rogerson noted that this house was burned down, and the person that did it was convicted of arson.

Mr. Otey asked by how much time they had missed the 12 month deadline to obtain a building permit.

Mr. Rogerson said that the building permit application was submitted on July 8, 2014, which was well beyond the 12 months they had to apply for a building permit to replace the nonconforming structure since the house burned down in June of 2012.

Mr. Otey asked when they first started talking to staff about replacing the structure.

Mr. Rogerson stated it may have been in the spring of 2013, but at that time the remnants of the burnt down structure were still on site.

Mr. Otey opened the public hearing

Mr. M. Anderson Bradshaw introduced himself and stated that he resides at 8620 Merry Oaks Lane and has an office located at 7884 Richmond Road.

Mr. Bradshaw stated that he represents Mr. William Jones who lives in Chickahominy Haven and is the property owner of 9441 Richmond Road.

Mr. Bradshaw stated that Mr. & Mrs. Aguilar were present and that they were the applicants for the building permit.

Mr. Bradshaw stated that the Aguilar's have an agreement with Mr. Jones to live in the manufactured home located at 9441 Richmond Road.

Mr. Bradshaw thanked the Board for their service and thanked staff for working with the applicants during this process.

Mr. Bradshaw said that the Aguilar's understand that the manufactured home is unsightly and have a plan to power wash it and put vinyl siding on the home.

Mr. Bradshaw said the lot was created in 1963 when it was subdivided off from the adjacent property to the east and is described in the deed as being 95 feet wide and 225 feet deep.

Mr. Bradshaw stated that the house that was originally built on the property was nonconforming in regards to location, as it was built before the existence of the Zoning Ordinance.

Mr. Bradshaw stated that in 1987, a permit was issued to construct a new septic tank and drain field to replace the old one which had failed.

Mr. Bradshaw stated that Mr. Jones purchased the property in 1990.

Mr. Bradshaw said that in the summer of 2012, the shed and house were destroyed by arson.

Mr. Bradshaw stated when the house burned down it could have been rebuilt in the same footprint in accordance with Section 24-634 of the Code of James City County, but Mr. Jones did not have the time or the resources to rebuild the house within the required time frame.

Mr. Bradshaw stated that Mr. Jones agreed to allow the Aguilar's to live on the property, and Mr. Larry Aguilar and his wife, Devina Aguilar, purchased a manufactured home and applied for a permit to place the manufactured home on the property.

Mr. Bradshaw further said that Mrs. Aguilar was not familiar with the building permit application process, and the application was completed with the help of staff.

Mr. Bradshaw pointed out that the building permit application states that the manufactured home would be placed in the same location as the house that had burned down, which was the language suggested by staff and three other staff members called Mrs. Aguilar to confirm the location.

Mr. Bradshaw stated that the building permit was issued with some erroneous descriptions of the setbacks and noted that the lot description was 92 feet wide and 250 feet deep, which does not add up.

Mr. Bradshaw further stated that if the lot was 95 feet wide, the 65 foot manufactured home would fit on the lot with 2 side yard setbacks of exactly 15 feet.

Mr. Bradshaw went on to describe possible scenarios as to what happened.

Mr. Bradshaw stated that it is possible that staff had in mind the restoration provision in the Ordinance but did not know the dates of causality, and also suggested that staff was unaware of the location of the former dwelling and the nonconforming status of the former dwelling.

Mr. Bradshaw went on to suggest that staff did not require a survey for the placement of the manufactured home because staff was aware of the limited resources of the applicant.

Mr. Bradshaw stated that it is also likely that when staff said the manufactured home needed to be 50 feet from the front property line, that the applicant heard that it needed to be 50 feet from the road.

Mr. Bradshaw stated that the permit was issued, and the manufactured home was installed; however, when the setback issue came to light, the work was stopped, and a survey of the property was requested.

Mr. Bradshaw stated that in the new survey the side property lines were not perpendicular to Richmond Road, thus 95 feet of road frontage does not constitute 95 feet of continuous lot width from the front of the lot to the back of the lot.

Mr. Bradshaw offered a few illustrations to the Board showing how the lot gets narrower as you go back, and if the lot gets smaller the further back you go the manufactured home will no longer fit on the lot and meet the required setbacks.

Mr. Bradshaw went on to suggest that moving the manufactured home toward the rear creates more of an encroachment into the right side setback because the lot gets narrower the further back you go.

Mr. Bradshaw stated that the exceptional narrowness of the lot lends itself to the granting of the variance, as there may not be any other location on the property that the manufactured home could fit.

Mr. Bradshaw then pointed out the location of the septic tank, which is about 10 feet behind the current location of the manufactured home.

Mr. Bradshaw explained that the separation distance requirement between the septic tank and the manufactured home is 10 feet. He suggested that if you move the manufactured home back it would no longer meet those separation distance requirements.

Mr. Bradshaw discussed the possibility of turning the manufactured home sideways on the lot and suggested that it would cause a problem with the required 50 foot separation distance between the manufactured home and the well.

Mr. Bradshaw pointed out that there is a well on the property in question, and there is another well located on the adjacent property.

Mr. Bradshaw went on to illustrate possible locations for the manufactured home in relation to required separation distances from the drain field, septic tank and wells.

Mr. Bradshaw said that in new subdivisions a reserve drain field is required, and suggested that relocating the manufactured home would prevent the property owner from having another location for a reserve drain field in case one was ever needed.

Mr. Bradshaw also stated that if the manufactured home were placed perpendicular to the front property line, all of the accessory structures would be exposed to the Richmond Road.

Mr. Bradshaw stated that he thought the best place for the manufactured home was its current location.

Mr. Bradshaw stated that it would not change the character of the district because the old house was located there, and there are other structures in the area that do not meet the current setbacks, including the structure on the property immediately to the west.

Mr. Bradshaw suggested that to allow the manufactured home to remain in its current location would be in the spirit of the Zoning Ordinance since Section 24-634 allows for nonconforming structures to be rebuilt in the same location if done so in the specified amount of time.

Mr. Bradshaw suggested that the variance be granted to allow the continued placement of the manufactured home and that he would be happy to answer any questions.

Mr. Campana asked if the identified options Mr. Bradshaw presented were Mr. Bradshaw's options or options identified by a professional.

Mr. Bradshaw replied that options were his, in accordance with required separation distances required by the Health Department.

Mr. Campana asked if there was a place on the lot to place the manufactured home and still meet Zoning Ordinance requirements.

Mr. Bradshaw stated there were places on the lot the manufactured home could be located and meet ordinance requirements but that it is a good idea to have a possible location for a reserve drain field.

Mr. Rhodes asked where the reserve drain field could be located.

Mr. Bradshaw said that he was trying to show the places that the reserve drain field could not be located.

Mr. Geib asked Mr. Bradshaw to show where the proposed reserve drain field could be located.

Mr. Bradshaw identified a possible location for a reserve drain field, and stated said that the manufactured home was placed in good faith and in a location where a house had been for 50 years.

Mr. Otey thanked Mr. Bradshaw for his time, and asked if there was anyone else present that wanted to speak on behalf of the property owner/applicant.

Mr. Bradshaw replied that there was not.

Mr. Otey asked if there was anyone else that wanted to speak.

Mr. Everette Mann, 181 Burr Oak Road, Lynchburg, Virginia, spoke on behalf of his father, who owns the property immediately to the west of the property in question.

Mr. Mann stated that there was a concrete pad, approximately 25 ft. by 25 ft., located in the back of the lot, and the applicant wants to have the dwelling in order to have an accessory structure to use as an automobile repair shop.

Mr. Mann suggested that an accessory building of that size did not seem to be accessory since it is so big.

Mr. Mann presented copies of Mr. Aguilar's Facebook page, which suggested that they wanted a dwelling on the property so they could construct the accessory structure and start working on cars.

Mr. Mann said that the case is not about a residence, but an automobile repair shop that would require a special use permit approved by the Planning Commission and the Board of Supervisors.

Mr. Mann then said the concrete pad was added on to in April 2014, making it 50 feet long.

Mr. Mann then presented pictures of all the stuff on the property, and pointed out that there was wood stacked on his father's property by the pump house, where Mr. Aguilar had cut down his father's pine tree to get the manufactured home on the property.

Mr. Mann said there has been consistent use of his father's property by Mr. Jones and Mr. Aguilar.

Mr. Mann then requested that the Board of Zoning Appeals deny the variance request and put a condition on the property that any accessory building would require a Special Use Permit approved by the Board of Supervisors.

Mr. Otey asked if there was any else that wished to speak.

Mr. Tyssen, 4194 Rose Lane, stated the property to the east belongs to his wife and her mother.

Mr. Tyssen stated that the documents they have show the sides of the property as parallel, and he would like to know which property pin is correct.

Mr. Tyssen stated that he is concerned about losing some of his property due to the conflicting surveys presented in this case.

Mr. Bradshaw stated that he recognizes that the outstanding issues between the adjoining property owners, but the Board of Zoning Appeals is here to rule on the placement of the manufactured home, not the potential uses of the property in the future.

Mr. Mann stated the primary goal of the application is to build the accessory building.

Mr. Geib asked Mr. Rogerson about reserving land for a possible reserve drain field.

Mr. Rogerson stated that the current Subdivision Ordinance requires you to show a primary and reserve drain field on any new subdivision of land.

Mr. Geib asked about alternative septic systems and if those would apply in this case.

Mr. Rogerson and Mr. Jason Purse responded that the Health Department is ultimately responsible for approving both the traditional septic systems and the alternative systems and the alternative systems have to be designed for that specific piece of property.

Mr. Rhodes asked about the Restoration/Replacement of Nonconforming structures in Section 24-634 of the Zoning Ordinance.

Mr. Rogerson explained that the structure has to be destroyed by casualty, such as an act of god beyond the owner's control.

Mr. Rhodes asked if the nonconforming use could be expanded.

Mr. Rhodes asked if it would still be considered replacement if the manufactured home was a different type of structure and had a different footprint.

Mr. Rogerson clarified that to rebuild in accordance with Section 24-634 the property owner would have to utilize the exact same footprint, and stated that the manufactured home was placed two feet further from the road than the original house was, but is much longer.

Mr. Otey closed the public hearing

Mr. Otey said that the Board does not have the power to address some of the concerns mentioned during the hearing and that the Board's responsibility is only to address the setbacks in this case.

Mr. Rhodes stated that Mr. Bradshaw has done a good job of identifying the options by illustrating separation distances from the wells, septic tanks and drain fields.

Mr. Geib stated that he was concerned that people were affected by the setbacks encroachment, and noticed that there were other dwellings or structures that appeared to be closer to the road when he drove through the area.

Mr. Geib asked other members of the Board if the cost associated with moving the manufactured home should be part of the Boards consideration in this case and stated that he is concerned with all of the errors presented in this case that contributed to it coming before the Board.

Mr. Geib asked if this Board has the authority to grant a variance when there is a reasonable solution to the problem.

Mr. Campana replied that the Board must separate the financial aspect from the other issues and if there is a piece of land that can be used and meet the Ordinance requirements, then that is what should be done. Mr. Campana also noted that having a reserve drain field is a good idea but not a requirement in this case.

Mr. Otey stated that he did not think a reserve drain field is required in this case, although he recognized that having a reserve drain field is the best practice.

Mr. Bradshaw said that because there are some outstanding questions that have not been answered, and the Board is missing one member, he would like to defer until the next month so that a full Board can be present. Mr. Bradshaw stated that this would give him time to gather more information regarding alternative septic systems and answer other questions that have come up in this meeting.

Mr. Otey reopened to public hearing to accept the request for deferral from Mr. Bradshaw.

The Board accepted the request from Mr. Bradshaw for deferral.

Mr. Mann asked if there would be an additional public hearing before the full Board.

Mr. Otey confirmed.

Mr. Otey reclosed the public hearing to entertain a motion to defer.

Mr. Rhodes made a motion to defer the meeting until December 4, 2014 when a full Board is likely to be present.

Mr. Geib seconded the motion.

Mr. Purse said that a "yes" vote is a vote to defer until a full Board can be present.

The motion past 4-0 on a roll call vote to defer the meeting until December 4, 2014, or until a full Board can be present.

C. Minutes

September 11, 2014

Minor corrections were made to the September 11, 2014 meeting minutes.

Mr. Geib moved to adopt the minutes as amended.

Mr. Campana seconded the motion.

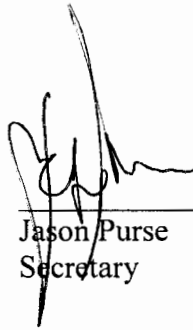
On a voice vote the minutes from the September 11, 2014 Board of Zoning Appeals were approved as amended 4-0.

D. Adjournment

There being no further business Mr. Otey adjourned the meeting at 8:25 p.m.



David Otey
Chairman



Jason Purse
Secretary