

**BOARD OF ZONING APPEALS**

**July 16, 2015**

Mr. Marvin Rhodes called the meeting to order at 7:00 p.m.

Mr. Jason Purse called the roll

**A. Roll Call**

Present:

Mr. Marvin Rhodes  
Mr. Ron Campana Jr.  
Mr. William Geib  
Mr. Stephen Rodgers

Others Present:

Mr. Jason Purse, Zoning Administrator  
Mr. John Rogerson, Zoning Officer  
Ms. Terry Costello, Zoning Officer  
Mr. Maxwell Hlavin, Assistant County Attorney

Absent:

Mr. David Otey, Jr.

Mr. Purse explained that Mr. Rhodes is the Vice Chairman of the BZA and he will conducting the meeting in the absence of Mr. Otey

**B. Old Business**

Mr. Purse stated that the recent State Code changes have come into effect as of July 1, 2015. Mr. Purse noted that the definition of a “variance” has changed and that the standard for granting a variance has changed since the new State Code changes went into effect. Mr. Purse stated that the burden of proof is on the applicant to prove that they meet the new criteria laid out in the State Code.

**C. New Business**

**1. ZA-0002-2015 4800 Riverview Road**

Mr. Rhodes spoke about the public hearing process and procedures for the Board of Zoning Appeals.

Mr. Rogerson presented his staff report:

Darryl and Cecile Liechti, property owners, have applied for a variance to Section 24-215 (a), Setback Requirements, to reduce the required front setback from 100 feet from the centerline of Riverview Road to 80 feet. Riverview Road is currently a 30 foot right of way. This proposed variance request is to allow for the construction of an addition to the existing dwelling. This property is currently zoned A-1, General Agriculture, and can further be identified as JCC RE Tax Map No. 1420100029A.

This parcel is currently 3.02 acres in size; the existing house was built in 1956 and is 1,402 square

feet in size. Darryl and Cecile Liechti, have applied for a variance to construct an addition on the right side of the existing dwelling, the proposed addition will also project forward approximately 8 feet towards Riverview Road lining up with the proposed covered front porch. In 2006 a boundary line adjustment was submitted and approved by James City County Planning Division to increase the lot size from .82 acres to 3.03 acres. When this boundary line adjustment was approved the front setback changed from 75 feet from the center of the right-of-way to 100 feet from the center of the right-of-way, causing a portion of the front of the existing dwelling to encroach into the required front setback. Nothing prevented the structure from remaining in its existing location after the boundary line adjustment, however, the new setback requirement made the structure non-conforming. Therefore, any further encroachments would be prohibited.

The applicants purchased the property in August of 2010. At the time of the purchase, the applicants were unaware of the existing encroachment of the dwelling into the front setback. In May of 2015 the property owners submitted a building permit application to build an addition to the existing dwelling. The addition consists of a master bedroom with a bathroom and walk-in closet on the right side of the dwelling and the construction of a covered porch along the front of the house. Health Department records show the existing septic tank and drain field are located behind the dwelling off the right rear corner of the existing dwelling, which may prevent expansion in that direction.

In order to have a variance granted, the applicant must prove by a preponderance of the evidence that the standard for a variance as defined in Virginia Code § 15.2-2201 has been met (that the strict application of the ordinance would unreasonably restrict the utilization of the property, the need for a variance is not shared generally by other properties, the variance is not contrary to the purpose of the ordinance, and the variance does not result in a change of use) and that the following criteria are satisfied:

1. The strict application of Chapter 24 of the Code of James City County (the "County Code") would unreasonably restrict utilization of the property; or
2. The granting of a variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and
  - a. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
  - b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
  - c. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
  - d. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

- e. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

The applicant provided a narrative explaining their case for meeting the requirements for granting a variance, and that document has been included in your packet as attachment #2. The applicant has stated that the house cannot be expanded to the rear of the property due to the existing location of the septic tank and drain field. Staff realizes that the septic tank and drain field are located directly behind the house.

The applicant has also stated that due to the existence of non-tidal wetlands it is not possible to relocate the septic tank and drain field on the property. No specific studies or documentation was submitted providing evidence that the soils located elsewhere on the property are unsuitable for a drain field.

Finally, the applicant has stated that granting the variance will not be a detriment to the surrounding area, out of the first eight homes on Riverview Road their house (4800 Riverview Road) is setback the farthest and out of the first 13 homes only one other is setback further. Staff recognizes that there are homes in this area that are nonconforming in regards to front setback requirements.

In this case, staff believes the strict application of the Zoning Ordinance would not unreasonably restrict utilization of the property, as the property has been put to use by the existence of a single-family residence. Furthermore, the physical conditions of this property are similar to other parcels in the A-1 zoning district. There are no distinguishing environmental features, or shape/size restrictions that constitute a hardship. However, there are other adjacent parcels, which are legally non-conforming in terms of lot size and setback requirements.

The strict application of the terms of the Zoning Ordinance does not unreasonably restrict utilization 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 front setback for the construction of the proposed addition, staff feels the variance would not be a detriment to adjoining properties nor alter the character of the area.

Mr. Rogerson stated that he would be happy to answer any questions the Board might have.

Mr. Rhodes asked for clarity on what happened when the boundary adjustment took place.

Mr. Rogerson stated that there were three different pieces of property and the property lines were adjusted to make this piece of property just over three acres in size.

Mr. Rogerson explained that when the property lines were adjusted to make this parcel 3+ acres that changed the front setback requirement from seventy five feet (75') from the center of the right of way to one hundred feet (100') from the center of the right of way.

Mr. Rogerson explained that the boundary line adjustment was done prior to the applicant

purchasing the property and that they were not aware of the setback issue at the time they purchased the property.

Mr. Rodgers noted that the plats show the setback line going through the front of the house and was curious if the applicants noticed that when they purchased the property.

Mr. Rogerson said he would defer to the applicant for the answer to that question.

Mr. Rhodes stated that when the boundary line adjustment took place it made the lot conforming in regards to the area requirements but made the structure nonconforming in regards to the new setback requirements.

Mr. Rhodes asked if the proposed addition would make the structure more nonconforming.

Mr. Rogerson stated that it would, since it would add square footage in the setback.

Mr. Geib asked if the applicant's addition was constructed behind the new setback line would that be allowed.

Mr. Rogerson stated that the nonconforming structure could be expanded as long as the new construction meet the current setback requirements.

Mr. Geib asked about the other homes along Riverview Road and if they were also nonconforming.

Mr. Rogerson explained that some of the houses were built before there was a Zoning Ordinance in James City County and he also noted that over time the Zoning Ordinance setback requirements have changed as well.

Mr. Rhodes opened the public hearing.

The applicant, Darryl Liechti stated that he was the property owner and he was here to request a variance for the addition to the existing house. He stated that the home was purchased in good faith and they were quickly outgrowing the existing home. Mr. Liechti stated that denying the variance would unreasonable restrict the use of the property. Mr. Liechti further stated that the septic system located at the rear of the house prevented them from doing the addition on the rear of the existing house. Mr. Liechti said the boundary line adjustment making the lot just over three acres is what created this issue since that changed the front setback requirement. He stated that when the house was originally built there was not a Zoning Ordinance in effect and granting the variance would not be a detriment to the area since other houses in the area do not meet current setback requirements. Mr. Liechti said that if the variance is not granted his family will have to move since they are expecting another child and have outgrown the existing house. Mr. Liechti said based on the new language in the State Code he feels that the variance should be granted.

Mr. Campana asked if they were provided a plat showing the house in the setback when they closed on the property.

Mr. Liechti said he was provided a plat, but since it was his first time buying a house he did not know what the setback line was.

Mr. Campana asked how many bedrooms the house currently has.

Mr. Liechti stated the current house was three bedrooms.

Mr. Campana asked if the office was going to replace an existing bedroom.

Mr. Liechti said the office is currently being used as an office.

Mr. Rhodes asked if they had a soil test to determine the limitations on relocating the septic tank and drain field.

Mr. Liechti said they had someone come to the house and he was told that because of the non-tidal wetlands on the property if they were to relocate the septic tank and drain field they would have to install an alternative septic system and it would cost upward of \$25,000 to make that change.

Mr. Rhodes asked if they had a reserve drain field.

Mr. Liechti said he did not think so.

Mr. Geib said he had questions for the architect.

Mr. Keith Sobczak the architect for the project came to the podium.

Mr. Geib asked if the addition could be constructed and still meet the required setback.

Mr. Sobczak said he had looked at a couple options and the overall design would not work that well without matching the front of the existing house and the addition.

Mr. Rhodes made sure the applicant understood that they needed three votes in favor of granting the variance and the Board was missing a member tonight.

Mr. Liechti said he did understand.

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

Ms. Cecile Liechti stated she was the co-applicant and her husband failed to mention that several years ago there was a variance granted just down the road from their house.

Mr. Purse made sure the applicant understood that they could request a deferral until a full Board could hear the case.

Mr. Rhodes asked if staff had any inquiries from the adjacent property owners regarding the application.

Mr. Rhodes closed the public hearing.

Mr. Campana said he would like to see more research done to make sure all other options have been explored before granting the variance.

Mr. Geib stated that he thought the idea was that over time the houses in the area would come into compliance. He suggested rezoning the area so the houses would be in compliance with the setbacks. He said he understood what the architect was trying to achieve but there are still other options without encroaching into the setback. Mr. Geib said he did not feel that this is an undue hardship.

Mr. Rhodes recalled that in the past there was a similar situation with setbacks along Neighbors Drive and the County decided not to rezone the area. As a result some of the individual homeowners came before the Board requesting variances and they got approved one by one.

Mr. Rhodes asked about the likelihood of rezoning the area.

Mr. Purse explained that these properties along Riverview Road are currently zoned A-1, General Agriculture and located outside the Primary Service Area and designated Rural Lands on the Comprehensive Plan therefore; it is unlikely that staff would support a rezoning of the area.

Mr. Geib asked about the variance that was granted a few years ago in the area.

Mr. Rogerson stated that it was his case and explained that the house was being rehabilitated and most of the house was in the setback. The variance was granted to allow the owner to make improvements to the house.

Mr. Rodgers pointed out that the Board can only approve a variance if it meets the new state code requirements. He said you do not look at precedence but the facts before you. He stated that the property has a house on it and it is common for families to outgrow their house and have to move. He said it is a three bedroom house with an office after all. He said he cannot find any factors that would make him and the Board comfortable approving the variance.

Mr. Campana asked if the applicants should have an option to defer the case until a full Board is available.

Mr. Rhodes reopened the public hearing to allow the applicants a chance to defer the case.

Mr. Sobczak stated that when the house was built there were no setbacks, then the setback was thirty-five feet (35') then it changed to fifty feet (50') and changed again to one hundred feet (100'). He said the zoning has changed over time and the problem we have is existing properties that do not meet the current requirements and those property owners are stuck. He said it is not fair to the applicants for them to have to move just because they cannot expand their house. He

said he feels that when the rules keep changing it is not fair to the property owners that are in this situation.

Mr. Rhodes stated that that was a good point.

Mr. Campana said the problem is that when they bought the property the rules are the same as they are today and the setbacks were shown on the plat going through the front of the house.

Mr. Rhodes asked to applicants if they wanted to defer to case.

Ms. Liechti stated that if their lot was nonconforming, under three acres then they would not need the variance since the front setback would be seventy five feet (75') from the center of the right of way and she feels like it is not fair that making the lot conforming in area prevents them from moving forward with their plans for expansion.

Ms. Liechti said she wanted to stay in James City County and does not want to move. She said most of the other lots in the area are nonconforming and their front setback is seventy five feet (75') instead of one hundred feet (100').

Ms. Liechti said she is pregnant and cannot wait for a full Board to hear the case, so she said they would like to go forward with the vote.

**Mr. Rhodes closed the public hearing**

The Board discussed the merits of the case among themselves.

Mr. Geib made a motion to support staffs recommendation which is to deny the variance.

Mr. Rodgers seconded the motion.

Mr. Purse stated for clarity that a yes vote is to deny the variance request.

Mr. Purse proceeded with a roll call vote and the variance request was denied 3-1 with Mr. Rhodes in favor of granting the variance and the other three member's present voted to deny the variance request.

**2. ZA-0002-20145 4800 Riverview Road**

Ms. Costello presented her staff report:

Mr. Raymond Johnson Jr., property owner, has applied for a variance to Section 24-258 (b), Yard Requirements, to reduce the rear yard setback to 22 feet to allow for the continued placement of an existing screen porch. This property is currently zoned R-2, General Residential, and can further be identified as JCC RE Tax Map No. 3240500003.

Mr. Johnson and his mother, Alice Johnson, purchased the home in 1989. The deck was built on

the rear of the property in 1990 which encroached into the required 25 foot rear setback in the R-3 zoning district. Mr. Johnson stated that the contractor did not obtain a permit for the deck. The deck was later converted into a screened porch around 2000 or 2001 which was after the rezoning to the R-2, zoning district. There was also no permit obtained for the conversion. The screened porch is not classified as nonconforming because it was constructed after the rezoning and neither permits nor zoning approvals were given. Mr. Johnson is listed as the sole owner as of 2002. A survey was done on May 21, 2015 as part of an impending sale, and it was at this time that the encroachment was found.

There is also a small shed on the current survey that is shown over the rear property line. That shed was moved and shown in the pictures presented.

The applicant stated to staff that his mother occupied the home while he has resided in North Carolina and he was not aware of this situation until the survey was done in May 2015. The applicant estimates it will cost approximately \$6,000.00 to remove part of the screened porch to adhere to the rear setback regulations. He believes that the removal of the porch would prohibit the pending sale and would reduce the value of the home.

Finally, the applicant stated that granting the variance does not appear to be a detriment to the surrounding area. He also feels that due to the recent upgrades it would benefit the surrounding properties.

In order to have a variance granted, the applicant must prove by a preponderance of the evidence that the standard for a variance as defined in Virginia Code § 15.2-2201 has been met (that the strict application of the ordinance would unreasonably restrict the utilization of the property, the need for a variance is not shared generally by other properties, the variance is not contrary to the purpose of the ordinance, and the variance does not result in a change of use) and that the following criteria are satisfied:

1. The strict application of Chapter 24 of the Code of James City County (the “County Code”) would unreasonably restrict utilization of the property; or
2. The granting of a variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and
  - a. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
  - b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
  - c. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;



- d. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
- e. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

In this case, staff believes the strict application of the Zoning Ordinance would not unreasonably restrict utilization of the property, as the property has been put to use by the existence of a single-family residence. Furthermore, the deck and the screened in porch were built without obtaining permits or County approval and this hardship is viewed as being self-inflicted.

Ms. Costello stated that she will answer any questions that the Board may have.

Mr. Geib noted that the two site plans, one from when the residence was built, and the other from 2015 shows different footprints of the building. There appears to be an extension on the right side of the house. He asked if there was a permit obtained for the change.

Ms. Costello answered the only permit she could locate was the one when the house was originally built.

Mr. Campana mentioned that the survey shows the shed is over the property line.

Ms. Costello stated that the shed has been moved to 5 ½ feet off of the property line, and it is eleven feet from the house, so it meets current zoning regulations.

Mr. Rodgers asked who is responsible for obtaining the proper permits when work is being done on residential properties, the owner or contractor.

Mr. Purse answered that the owner is ultimately responsible in making sure proper permits are obtained.

Mr. Geib asked; what are the normal procedures when structures are built or expanded without permits. He asked if there are safety inspections, and inspections to make sure of the correct square footage for real estate assessments.

Mr. Purse stated that is why the owner is ultimately responsible for those inspections since they would be notified of the violation.

Mr. Rhodes opened the public hearing.

Mr. Johnson spoke as the property owner. He felt that he was the variance he was requesting was reasonable and not extreme. He felt that he is experiencing a hardship in that he is unable to sell this residence with the current circumstances. Other property owners are able to do so. However he did not feel that the strict application of the County Ordinance would unreasonably restrict use

of his property.

Mr. Johnson stated that at the time the deck was built he was residing in North Carolina. His mother hired a contractor to do the work and he was under the assumption that the contractor would take care of necessary permits. He has put much work and money into this home in order to sell it. He even chose to do things that were not required to be done. Mr. Johnson has used this contractor for other work on other properties. He showed documentation where the contractor obtained the necessary permits. Therefore he was under the assumption that was his normal procedure and would have obtained them in this case as well.

Mr. Johnson requests that the Board grant his variance with the idea that he is accountable for all the work done, and that he will go through the necessary steps to correct everything. He stated that a contractor informed him that in order to correct the setback issue one would need to remove the entire deck and porch since the roof was extended when the porch was done.

Mr. Geib asked Mr. Johnson about the right extension.

Mr. Johnson stated that alterations were done that extended the right portion of the house by the individuals who sold him the property in 1989.

Mr. Campana asked if the contractor was still in business.

Mr. Johnson answered that this individual has passed away.

Mr. Campana asked if any permit was obtained for this extension.

Ms. Costello answered she could not locate any permit in the County files.

Mr. Geib asked if an administrative variance was available for the applicant to obtain.

Mr. Purse answered that the Zoning Administrator has the ability to grant a variance for up to 18 inches, so in this case it would not be available.

Mr. Rodgers noted that the applicant stated that it would cost \$6,000 to correct this, he asked how much the listing price was for the property.

Mr. Johnson stated that the property was listed for \$219,000. He stated that he has had two sales that did not go through because of this situation.

Mr. Rhodes closed the public hearing.

The Board discussed the matter with Mr. Geib initiating the discussion. He stated that he felt that this condition was self-inflicted, although he understood the circumstances surrounding it. He had a conflict in that this application, was for a porch, as opposed to part of the dwelling itself. Mr. Geib felt as though he could not grant a variance.

Mr. Campana appreciated that the applicant has improved the property as well as the applicant not residing at the residence. He felt that it was not the Board's purview to consider the financial implications. Work was performed twice without permits.

Mr. Rodgers stated that there is guidance from a previous zoning decision that a recognized hardship cannot be created intentionally or inadvertently by the owner. Ultimately permits are the responsibly of the owner.

Mr. Rhodes felt that the hardship was self-imposed and it occurred twice.

Mr. Rhodes opened the public hearing at the request of Mr. Johnson.

Mr. Johnson stated that he felt that the contractor had some responsibility in obtaining the necessary permits. He felt that this was an open question since he believed the hardship was inadvertently created.

Mr. Rhodes asked Mr. Johnson if he would like to defer the case.

Mr. Johnson appreciated the offer but he would like a decision so that he could move on with the sale of the property.

Mr. Geib stated that he appreciated the narrative that Mr. Johnson gave the Board with definitions of hardship and other terms applicable. He did state however, that some of the legal definitions are different than the definitions presented.

Mr. Geib made a motion to support staffs recommendation which is to deny the variance.

Mr. Campana seconded the motion.

Mr. Purse stated for clarity that a yes vote is to deny the variance request.

Mr. Purse proceeded with a roll call vote and the variance request was denied 4-0.

#### **D. Minutes – May 7, 2015**

Mr. Rodgers had one grammatical correction.

Mr. Rhodes moved to approve the minutes of the May 7, 2015 meeting as amended.

On a voice vote the minutes for the May 7, 2015 Board of Zoning Appeals meeting as amended were approved 4-0.

#### **E. Other Discussion**

Mr. Purse stated that the new criteria for variances will be included in the Zoning Ordinance. He stated that he will email the Board to let them know when the Policy Committee will begin

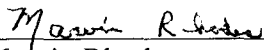
discussions on it. They are not required to attend but they can if they want to add to the discussion.


Mr. Geib inquired as to whether the appeal application will be changed to reflect the new criteria. Also he made the suggestion to counsel applicants as to what would be expected of them should they request a variance.

Mr. Purse stated that the application will be changed to add the information so as to better inform applicants and potential applicants.

**F. Adjournment**

There being no further business Mr. Rhodes adjourned the meeting at 9:00 p.m.

  
\_\_\_\_\_  
Marvin Rhodes  
Vice- Chairman

  
\_\_\_\_\_  
Jason Purse  
Secretary