

MINUTES
JAMES CITY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
James City County Government Center, Building F Board Room
101 Mounts Bay Road, Williamsburg VA 23185
December 6, 2018
5:00 PM

A. CALL TO ORDER

Mr. William Geib called the meeting to order at 5:00 p.m.

B. ROLL CALL

Mr. Geib asked Ms. Parrish to call the roll.

Present:

Mr. William Geib
Mr. Stephen Rodgers
Mr. Mark Jakobowski
Mr. David Otey, Jr.
Mr. Ron Campana

Others Present:

Mr. John Rogerson, Senior Zoning Officer
Ms. Christy Parrish, Zoning Administrator
Ms. Liz Parman, Assistant County Attorney

C. OLD BUSINESS

Ms. Parman made a presentation to the Board regarding its authority to add conditions to variances when approved. She referred to Section 24-650 of the Code of James City County "Powers and duties; granting of variances". She stated that the Board has the authority to add conditions to variances but the conditions should be related to the impacts of granting that variance.

D. NEW BUSINESS

Mr. Geib presented the mission statement of the Board of Zoning Appeals (BZA) for those present in the audience. He stated that the BZA is a five-member Board consisting of James City County residents. It has the power to hear and decide appeals to decisions of the zoning administrator and applications for special exceptions, such as yard and setback variances. A favorable vote of three members of the Board is always required to pass a motion. Variances are not granted unless 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 and the variance is not contrary to the purpose of the Ordinance. Variances are not granted as a special privilege or convenience. If the variance is requested because the physical condition of the property or improvements thereon restrict the utilization of the property, the following additional requirements must be met: (i) the property must have been acquired in good faith and any hardship cannot be created by the applicant; (ii) the granting of the variance cannot be substantially detrimental to nearby properties; and (iii) the condition or situation cannot be so general or recurring as to make the formulation of an amendment to the Ordinance reasonably practicable to address the condition or situation. If the Board does authorize a variance, it may impose conditions regarding the location, character or any other features it may deem necessary in the public interest.

1. Case No. BZA-18-0009. Granting a Variance on James City County Real Estate Tax Map Parcel No. 3221200039 - 5124 West Grace Court

Mr. Rogerson presented the staff report.

Mr. Rogerson stated that Kenneth R. Trustee & Jane Armstrong, property owners, have applied for a variance to Section 24-258(b) Yard requirements to reduce the required 35 foot rear yard setback to 26 feet to allow for the construction of a deck, sunroom and placement of a hot tub. He stated that the property is currently located in the R-2, General Residential Zoning District and can be further identified as Parcel No. (12-0-0039) on the James City County Real Estate Tax Map No. (32-2).

Mr. Rogerson stated that the property was located at 5124 West Grace Court in the Scott's Pond subdivision and that the lot was 0.28 acres in size which contained an existing single-family dwelling approximately 2,708 square feet in size. He stated that the existing dwelling was constructed in 2001 and the current owner purchased the property in July of 2003.

Mr. Rogerson explained that Mr. Armstrong contacted staff regarding the possibility of adding a sunroom, deck and hot tub on the rear of the property. He stated that after reviewing the existing as-built survey of the lot that was done during the original construction of the house, staff discovered that there was only approximately 2.5 feet from the left rear of the house to the required 35 foot rear yard setback line. He stated that staff informed Mr. Armstrong that there was not enough room at the rear of his house to construct the proposed sunroom, deck and hot tub without encroaching into the rear setback. He stated that staff advised Mr. Armstrong that the hot tub could be placed in the rear yard as an accessory structure as long as the hot tub was located more than 10 feet from the rear of the house.

Mr. Rogerson stated that 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 had been met (that the strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for a variance was not shared generally by other properties, the variance was not contrary to the purpose of the Ordinance, and the variance did not result in a change of use), and that the following criteria were satisfied:

1. The strict application of Chapter 24 of the Code of James City County (the "County Code") would unreasonably restrict the 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
 - 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;
 - The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
 - 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;
 - 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
 - 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.

Mr. Rogerson stated that the applicant has provided a narrative and other information

explaining his case for meeting the requirements for granting a variance and those documents have been included in your packet as an attachment.

Mr. Rogerson concluded by stating that staff cannot support the variance request as the strict application of the terms of the Zoning Ordinance does not unreasonably restrict the utilization of the property, as the property has been put to use by the existence of a single-family residence. Mr. Rogerson stated that staff recommended denial.

Mr. Rogers stated that he went through the neighborhood and noticed that there were a lot of cul-de-sacs. He stated he counted as many as 11.

Mr. Geib stated he has looked at the aerial map of the neighborhood and it did not appear that there were many homes with additions on the rear of the houses.

Mr. Rogerson used the County's website and aerial photographs to try to show houses that had additions on the rear of the houses.

Mr. Geib stated he thought most of those additions were patios and decks.

Mr. Jakobowski stated it was his understanding as well that most of the additions were decks and patios and not added living space.

Ms. Parrish stated that decks have to meet setbacks if they are within 10 feet of the house and patios do not have to meet setbacks if they are flush with the ground.

Mr. Geib stated he thought that additions on the rear of the houses in Scott's Pond subdivision are not as common as decks and patios.

Mr. Otey asked if the property behind 5124 West Grace Court was common area owned by the Homeowner's Association (HOA).

Mr. Rogerson stated yes.

Mr. Otey asked if there was development potential on the common area properties.

Mr. Rogerson stated he did not think the property had development potential.

Ms. Parrish stated that the property behind 5124 West Grace Court was in an open space easement.

Hearing no further question from the Board, Mr. Geib opened the public hearing.

Mr. Ken Armstrong introduced himself as the applicant to the Board. He stated that if the variance was granted, he would have a contractor work up construction drawings and submit them to the homeowner's association.

Mr. Armstrong stated that his lot on the cul-de-sac was 20% smaller in depth and 35% smaller in building depth even though the lot had more square footage than other lots not located on a cul-de-sac. He stated that creating a sunroom on the rear of the house would allow them to remove the rear steps as his wife has a hard time with due to her sciatic nerve problem. He stated that the proposed hot tub was partially therapeutic.

Mr. Armstrong stated that there was open space behind his house and the variance would not negatively affect the adjacent property owners. He stated the proposed addition would be over 40 feet from his neighbor on the right and there was common space between his lot and

his neighbor on the left.

Mr. Armstrong stated that he has received signatures of approval from his five neighbors that live in the cul-de-sac. He stated two of the five neighbors have sunrooms on the rear of their homes and two of them have decks. He also stated that several neighbors down the street have sunrooms and decks on the rear of their houses.

Mr. Armstrong explained the proposed addition would be built on the existing patio with little additional impervious needed. He stated that the cul-de-sac lot has larger than normal setbacks on the sides and the proposed plans are not unusual.

Mr. Armstrong concluded there would not be any negative impact on anyone and that he would appreciate the Board's consideration on this reasonable variance request which will allow them to age in place.

Mr. Jakobowski asked when Mr. Armstrong purchased the property.

Mr. Armstrong stated that they purchased the property in 2003. He also stated they had a survey done soon after moving in to the house.

Mr. Jakobowski asked if they were aware of the setback line at the back of the house when the survey was done.

Mr. Armstrong stated that they had not considered the setback line since they had no plans on adding an addition to the rear of the dwelling at that time.

Mr. Jakobowski asked if the concrete slab was there when they purchased the house.

Mr. Armstrong stated that half of the slab was there and they expanded it after they moved in.

Mr. Geib stated that looking at the pictures he saw a table and four chairs and asked how much of the concrete slab was expanded.

Mr. Armstrong stated that the patio was in the middle of the rear of the house and they extended the patio all the way to the left side of the house.

Mr. Rodgers asked where the setback line was in relation to the existing stairs.

Mr. Armstrong explained that they would need about a 4-foot variance for the right side and a 9-foot variance on the left side to create the addition as shown on the drawings. He also explained that nine feet would be the maximum amount of variance needed.

Mr. Jakobowski stated the survey shows the steps coming out the back of the house ending at the setback line.

Mr. Armstrong explained that he built new steps with a landing on the rear of the house.

Mr. Geib asked about the number of dwellings in the neighborhood that have additions added to the rear of the house.

Mr. Armstrong stated he was only familiar with West Grace Court. He stated that there were three houses on the cul-de-sac and one had a deck and another had a patio. He also added that there were houses on West Grace Court that have constructed additions or decks on the rear.

Mr. Campana asked where the exterior stairs would be located.

Mr. Armstrong explained that the sunroom would be flush with the existing first floor elevation and there would be four or five steps extending from the sunroom down to the deck which would be about 18 inches to two feet off the ground and then a couple of steps leading from the deck to ground level.

After hearing no further questions, Mr. Geib closed the public hearing.

Mr. Rodgers stated that this request was what he like to call the Fernbrook syndrome. He stated that builders build houses as far back on the lots as possible with no room for expansion. He stated that the Board needs to be careful about opening the door for variances on cul-de-sac lots especially when this neighborhood has 11 cul-de-sacs.

Mr. Otey stated that he agreed, but asked how many of those lots back up to Conservation Area that no one can build on.

Mr. Geib reopened the public hearing to allow the applicant to add a comment.

Mr. Armstrong stated that he believed that his lot has the smallest buildable depth of all the lots in his cul-de-sac.

Mr. Geib closed the public hearing.

Mr. Jakobowski stated that it looked like the applicant could build an addition to his house on the back right where the bay window is located without the need for a variance.

Mr. Campana asked if all other options have been exhausted as the hot tub could be placed without a variance and wondered if the location of the sunroom was a self-imposed hardship.

Mr. Geib stated that he was having a hard time establishing a hardship. He stated that he understands that the cul-de-sac lots are very common and having a building envelope of that sort was not an unusual situation.

Mr. Geib sated that Mr. Jakobowski pointed out that it appeared that an addition could be situated on the lot without a variance; therefore, he is not inclined to vote in favor of the variance request.

Mr. Otey stated that the setbacks are required to protect owners of property so the houses do not back up too close to each other. He stated that he wondered why the Zoning Ordinance did not take this into consideration and allow reduced rear yard setbacks. He also stated that it appeared that there was a penalty for these cul-de-sac lots under the current Ordinance and he could vote for the granting of the variance though this case might not meet the requirements for the granting of the variance.

Mr. Rodgers asked if setbacks existed to protect adjoining property owners or were there other reasons for the setbacks such as environmental reasons or emergency vehicle access.

Mr. Rogerson stated that setbacks provide for orderly development and provide for maximum lot coverage limits.

Mr. Otey made a motion to approve the variance as submitted.

Mr. Campana seconded the motion.

On a roll call vote, the motion failed 2-3. (Yes: Otey, Campana; No: Jakobowski, Rodgers, Geib)

After the previous motion failed, Mr. Geib made a motion to deny the variance.

Mr. Rodgers seconded the motion.

On a roll call vote, the motion was approved 3-2. (Yes: Jakobowski, Rodgers, Geib; No: Otey, Campana) The variance request was denied.

E. MINUTES

1. November 1, 2018 Meeting Minutes

Mr. Geib asked if there were any corrections to the November 1, 2018 meeting minutes.

Mr. Otey stated he thought that a line in the minutes was repeated twice but could not find it.

Ms. Parrish stated she would check to be sure before they were signed.

Mr. Otey motioned to approved the minutes from the November 1, 2018.

Mr. Rodgers seconded the motion. On a voice vote, the motion was approved 5-0.

F. MATTERS OF SPECIAL PRIVILEGE

None

G. ADJOURNMENT

There being no further business Mr. Geib adjourned the meeting at 5:47 p.m.



William Geib, Chairman



Christy H. Parrish, Secretary