

**BOARD OF ZONING APPEALS AGENDA**  
**GOVERNMENT CENTER BOARD ROOM**  
**SEPTEMBER 5, 2002 - 7:30 P.M.**

**A. Roll Call**

**B. Minutes - Meeting of August 1, 2002**

**C. Old Business**

**D. New Business**

1. ZA-04-02. 110A Archers Hope Road
2. ZA-12-02. 2227 Flowerdew Court

**E. Matters of Special Privilege**

**F. Adjournment**

**BOARD OF ZONING APPEALS**

**September 5, 2002**

**A. ROLL CALL**

PRESENT:

ABSENT:

Mr. Nice  
Mr. Fraley  
Ms. Wallace  
Mr. Turnau

OTHERS PRESENT:

Christy Parrish, Zoning Officer  
John Rogerson, Zoning Officer  
Trey Davis, Development Management Assistant

**B. MINUTES**

The minutes of the July 11, 2002 meeting were approved.

**D. OLD BUSINESS**

Mr. Fraley informed the board that a change to the meeting time of the Board of Zoning Appeals can be discussed in December in accordance with the bylaws.

**E. NEW BUSINESS**

**ZA-04-01                    110 A Archers Hope Road**

Mr. Turnau asked why there was a septic field shown for this property if it is on public water and sewer.

Mr. Fraley said that applicant could explain in his comments.

Mr. Fraley opened the public comment section of the hearing at 7:50PM.

Mr. Tim Caviness, the owner, stated that if he were to abide by all setback requirements, the unique shape of his lot would force him to place the garage he wishes to construct on a 30% or greater slope. The only acceptable slope, he said, was in the RPA and thus also unbuildable. He responded to Mr. Turnau explaining that his home is still on a septic system.

Mr. Turnau asked the applicant to show on a plat the current dwelling which Mr. Caviness did. Mr. Turnau then inquired whether a garage could be attached to the house.

Mr. Caviness responded that the slopes to the sides and back of the house were too steep to build on and that the area is also off limits to building due to the Chesapeake Bay Act.

Mr. Roger Gurnsey, the project architect, stated in response to a question by Mr. Fraley that it would be possible “engineering-wise” to build the garage further up the driveway to meet setback requirements but that a waiver for the earth-moving required in that area of the lot is not likely.

Mr. Nice asked if the shaded yellow area on the applicant’s map represented a 25% slope to which the applicant responded in the affirmative.

Mr. Fraley asked if this structure was more than a garage.

Mr. Gurnsey responded that a studio and workshop would be included in this garage and that it would replace current outdoor storage of Mr. Caviness’s boats and trailers.

Mr. Turnau visited the site and expressed his concern that the building site is too close to the neighbor’s property. He worried that it might be used as a dwelling.

Mr. Caviness responded that the garage will not be hooked up to water or sewer and will only have electricity.

Mr. Nice asked why the garage was not further back along the driveway.

Mr. Caviness responded that this was the flattest piece of land for building on the property.

Mr. Fraley closed the public comment section of the hearing at 8:00PM.

Mr. Nice said he had no objection since the neighbors said it was ok with them and because the applicant could not feasibly build elsewhere on his lot.

Ms. Parrish stated that the garage is a luxury item as opposed to a necessity and therefore not being able to build it did not represent a hardship.

Mr. Nice disagreed and said the owners’ should be allowed to do what they wished on their land.

Ms. Wallace said she was in favor of granting a variance for the garage because she felt it would improve aesthetics in the long run by hiding the equipment currently stored in the open.

Mr. Turnau said he had no objection

Mr. Fraley asked if there were any restrictions needed in the motion.

Ms. Parrish responded that current zoning regulations would prevent the garage from becoming a living unit and thus no special restrictions would have to be included when granting the variance.

At the request of Mr. Fraley, Ms. Parrish read text for the variance.

Mr. Nice moved to grant the variance for a garage at the front of the property.

Ms. Wallace seconded the motion.

Ms. Parrish read a RESOLUTION: The board grants a variance to section 24-237, Minimum lot width, of the James City County Zoning Ordinance to reduce the minimum lot width requirement from 150 feet to approximately 50 feet for the construction of a detached garage at 110 A Archers Hope Road.

Ms. Parrish called for a vote.

The motion was approved 4-0.

**ZA-12-02                      2227 Flowerdew Court**

Mr. John Rogerson read the staff report for this case along with a letter submitted one day prior to the meeting by an adjacent homeowner. He also provided aerial photographs to show the location of neighboring homes.

Mr. Nice summarized the issues in the case by stating that the cantilevered breakfast nook of the house in question encroaches 13 inches into the 35 foot buffer zone at the rear of the lot. He asked if bay windows would extend farther and be exempt.

Mr. Rogerson responded that bay windows might extend farther than the nook, but that they would be considered to be the vertical face of the building and would thus be subject to the same regulations.

Mr. Turnau said he sees this case as an emotional issue and asked what the neighborhood covenants were regarding home construction.

Mr. Fraley informed him that he would have to defer that question to a neighborhood representative during the public comment section of the hearing.

Mr. Fraley asked how this problem got so far in the first place.

Mr. Rogerson responded that a foundation survey is conducted whenever a building is to be built within 3 feet of a required setback. This is used by staff to make sure that the building is properly located and does not encroach on any buffer zones prior to further construction. He stated that one of these surveys was done and that the foundation was within acceptable limits. Then a member of staff making a site visit during construction noted that the box of the house extended beyond the foundation and into the buffer zone by 13 inches. At this time, a second foundation survey was conducted showing the cantilevered section of the breakfast nook and he builder was told he needed to apply for a variance.

Mr. Fraley opened the meeting to public comment at 8:20PM.

Mr. Don Volz, president of the neighborhood homeowner's association stated that the minimum square-footage for one story homes in his neighborhood is 1,800 square feet. He added that if the builder is not allowed to have the cantilevered breakfast nook, the home would fall below the minimum and this make it a problem for his association.

Mr. Turnau asked what the homeowner's association's view was and whether this was a spec. home.

Mr. Volz responded that it was a spec. home and that residents were worried that it might be a tract home only meeting the minimal community standards.

Mr. Fraley asked how we got into the situation where it took a violation of setbacks to reach the size requirements of the association.

Mr. Volz agreed that it was a Catch-22.

Mr. Bill Bartlett represents the builder, Mr. Don Kiser. He stated that the building plan as approved by the County shows a cantilever. He added that existing greenery serves as a screen from other property owners. He demonstrated that by its configuration, lot 66 has 2 rear setbacks of 35 feet and that this represented a hardship to the builder in fitting an acceptable home on the property. The builder only discovered he needed a variance after inspectors came out to the site. He said the neighbor on lot 72, who had complained about the house, is well-buffered from lot 66. He asked the board to apply a rule of reason in this case.

Mr. Fraley asked why the builder went ahead with construction knowing this.

Mr. Rogerson responded that Mr. Kiser misinterpreted the ordinance and did not know that a cantilevered wall counted as the vertical face of the building when measuring for setbacks.

Mr. Nice suggested that had the cantilever been on a higher level of the house, it would not have come into consideration on the foundation survey.

Mr. Fraley applauded the builder for designing a home that could fit into such a restrictive lot.

Mr. Kiser made himself available for questions.

Mr. Fraley asked if Mr. Kiser was confused as to how a cantilevered wall would be categorized.

Mr. Kiser responded that he was not aware that the living space would be counted as the vertical wall surface while the fireplace, which extends 1.7 feet into the buffer zone, is exempt from this ordinance. He said that homebuilders would need further education on these technical issues both here and in other counties.

Ms. Shan Malone of lot 72 said her husband had submitted one of the letters arguing against granting a variance for lot 66. She said the vegetative screen is actually not on lot 66, but on a neighbor's lot and that it would be ineffective in the winter. She asked how the builder could keep building after the 2<sup>nd</sup> foundation survey when he was told he would need a variance. She asked how a large builder could not know what the law was.

Mr. Fraley asked Ms. Malone what her real issue with the house on lot 66 was.

Ms. Malone responded that the house is being built on an extremely small lot and that the builder chose not to stop construction.

Ms. Wallace asked whether the builder was required to stop construction.

Mr. Rogerson responded that he was not because the foundation was approved.

Mr. Fraley closed the public comment section of the meeting at 8:50PM.

Mr. Fraley stated that the letters of objection were built on hard feelings from a previous case involving the Malone's property and the small size of lot 66.

Mr. Turnau said that people may not like the look of the house but that those are decisions the board cannot make. He said that the 13 inch encroachment was not the real issue among the neighbors to this lot.

Mr. Fraley asked if the builder exercised proper diligence.

Mr. Rogerson responded that he had.

Mr. Nice said that there is no villain in this case and that the 13 inch encroachment is not a visual impact.

Ms. Wallace noted that this is the first case she has heard in which neighbors have objected to a variance. She said that neighbors have a right to enjoy their property and be heard.

Mr. Fraley asked what would happen without a variance in this case.

Mr. Rogerson responded that the nook would have to be removed.

Mr. Nice said the intent of this ordinance was to prevent certain visual impacts and that in this case there was no major visual impact.

At the request of Mr. Turnau, Mr. Fraley reopened the meeting to public comment at 9:00PM.

Mr. Turnau asked if the homeowners' association had approved plans for this house.

Mr. Volz replied in the affirmative.

Mr. Fraley then closed the meeting to public comment.

Mr. Nice motioned for a vote on the resolution.

Mr. Turnau seconded the motion.

Mr. Fraley asked Mr. Rogerson to read language to grant a variance.

RESOLUTION: The board grants a variance to Section 24-238, Yard Regulations, of the James City County Zoning Ordinance for the continued placement of a dwelling currently under construction at 2227 Flowerdew Court. The rear yard setback shall be reduced from 35 feet to 33.5 feet with no further encroachment onto the buffer.

Mr. Rogerson called for a vote.

The motion was approved 3-1 with Ms. Wallace dissenting.

**E. MATTERS OF SPECIAL PRIVLEDGE.**

**F. ADJOURNMENT**

The meeting was adjourned at approximately 9:10 p.m.

---

Jack Fraley  
Chairman

---

Allen J. Murphy  
Secretary