

Board of Zoning Appeals

February 5, 2009 - 7:00 p.m.

A. Roll Call

B. Minutes

Minutes – January 8, 2009

Minutes – January 30, 2009 – To be delivered under separate cover.

C. Old Business

ZA-0010-2008. 4092 South Riverside Drive. This case was deferred from January 8, 2009

D. New Business

ZA-0011-2008. 7267 Little Creek Dam Road

ZA-0012-2008. 134 Neighbors Drive

E. Matters of Special Privilege

F. Adjournment

BOARD OF ZONING APPEALS
February 5, 2009

A. Roll Call

Present:

Mr. Mark Wenger
Mr. Marvin Rhodes
Ms. Barbara Moody
Mr. William Watkins
Mr. Jack Fraley

Others Present:

Mr. Adam Kinsman, Deputy County Attorney
Ms. Melissa Brown, Deputy Zoning Administrator
Mr. John Rogerson, Senior Zoning Officer
Ms. Jennifer VanDyke, Administrative Services Coordinator

B. Minutes

Mr. Rhodes made a motion to defer approval of the January 30, 2009 minutes. Ms. Moody seconded the motion. The motion was approved unanimously by voice vote. (5-0)

C. Old Business

ZA-0010-2008 4092 South Riverside Drive

Ms. Brown stated that the applicant is requesting variances to construct a garage with dwelling space. The applicant is requesting a variance to reduce the rear yard setback to 10 feet. This would result in a 25 foot variance.

Mr. Wenger opened the public hearing.

Mr. Aaron Small, with AES Consulting Engineers, represented the applicant. Mr. Small stated that changes had been made to the plans since the last meeting that reflected the Board's suggestions. The plans reflect the structure being moved 10 feet off the side property line so that the side setback is met. The applicant did consider reorienting the building 90 degrees but, there was no way to construct a path for the vehicle access without going across the septic field. Mr. Small pointed out the elevations that were provided within the case materials. There was a correction made to the plans to illustrate the appropriate setbacks of the property. Initially, the plans provided did not take into account the setbacks for a corner lot.

Mr. Fraley thanked Mr. Small for making those modifications reflecting the requests made by the Board members.

Mr. Wenger asked Ms. Brown if staff had received any comments from the public regarding this case.

Ms. Brown stated that no other comments had been received from the public.

Mr. Wenger closed the public hearing.

Mr. Rhodes stated that he feels favorably about the proposed plans. Mr. Rhodes stated he would like to place a condition upon approval. The condition would require a licensed surveyor properly mark the property to ensure accuracy.

Mr. Fraley agreed with the conditional approval.

Mr. Small stated that the applicant would have no issue with this condition.

Mr. Fraley stated that, due to the size, there are few reasonable ways in which to develop the lot, effectively prohibiting utilization of the property. Due to the restrictive nature of the lot, he looks favorably upon the proposed plans.

Mr. Fraley made a motion to approve the variance to Section 24-258(b) of the James City County Zoning Ordinance to reduce the required 35 foot rear yard setback to 10 feet with the condition that the corners of the structure are pinned prior to pouring of the foundation and that no further structural encroachment will occur.

Mr. Rhodes seconded the motion.

The motion was approved by voice vote (5-0).

D. New Business

ZA-0011-2008 7267 Little Creek Dam Road

Mr. Rogerson stated that the applicant, Ms. Sylvia Wallace, has applied for a variance to reduce the minimum lot width from the required 150 feet to 90 feet to accommodate replacement of the existing manufactured home with a new single-family dwelling. Mr. Rogerson stated that there are some topographical issues related to the rear end of the property that would complicate placement of the house closer to the rear property line.

Mr. Rhodes stated that it appears that the location of the house, as seen on the staff provided image, is different from the location of the house on the plat.

Mr. Rogerson stated that the survey map shows the easement to provide access from Little Creek Dam Road approximately 100 feet.

Mr. Rhodes asked how far the easement goes.

Mr. Rogerson stated that the existing lot does not front on Little Creek Dam Road but the surveyor has put in the easement.

Mr. Rhodes stated that the trailer appears to cross the property line.

Mr. Rogerson stated that the staff provided image is not entirely accurate. The trailer does not cross the property line as seen in the image.

Ms. Moody asked for clarification regarding the placement of the proposed house.

Mr. Rogerson stated that the applicant would like to place it just behind the existing trailer.

Ms. Moody asked if this would be right at the edge of the septic field.

Mr. Rogerson stated that according to the letter provided by the applicant, Ms. Wallace, she would place the new house "in the same location or just behind the existing manufactured home." This would still provide the required distance between the septic tank/drain field and distribution box.

Ms. Moody stated that looking at the survey provided there does not appear to be enough room for the required distance.

Mr. Rogerson stated that the rear of the house may be a little beyond the existing house. The proposed house is wider than the existing.

Ms. Moody asked where the well is located.

Mr. Rogerson showed where the well is on the image provided.

Mr. Watkins stated that he went out and viewed the property. It appears that the property behind the house goes into a ravine. Mr. Watkins asked staff if the ravine would greatly complicate the house being built further back on the property.

Mr. Rogerson stated that it would and that there are many contours on the rear of the property. There may also be additional shrink/swell soil composition at the rear of the property.

Mr. Watkins asked how long the existing manufactured home has been on the property.

Mr. Rogerson stated that the existing manufactured home has been there since 1983 according to County documentation. The applicant may have some additional information.

Mr. Watkins asked how long the current setback requirements have been in place.

Mr. Rogerson stated that in 1985 certain requirements were put in place for the A-1 zoning district that established minimum lot width at 150 feet. Mr. Rogerson stated that he believes the house currently on the property replaced an older manufactured house.

Mr. Fraley asked staff if they had heard from any adjacent property owners either for or against the proposed plans.

Mr. Rogerson stated that some of the adjacent property owners are related to the applicant. The original parcel owned by the applicant's mother was 5 acres and had been subdivided at different times. Mr. Rogerson stated that he had not heard from any adjacent property owners.

Mr. Fraley asked if all adjacent property owners had been notified of this request.

Mr. Rogerson stated that they were.

Mr. Wenger opened the public hearing.

Ms. Sylvia Wallace, the applicant, spoke. Ms. Wallace provided some background information on the property. The current property had been inherited from Ms. Sylvia Wallace's mother. Ms. Wallace stated that it would be a great financial hardship for her to place the house anywhere other than the proposed location, particularly due to the ravine in the rear of the yard. Ms. Wallace stated that she has boundary line agreements with the two neighbors on either side of her, whom are both relatives. All the neighbors are agreeable with her plans.

Mr. Rhodes asked the applicant to illustrate where the new house would be located compared to the existing. Mr. Rhodes asked about the width of the proposed house.

Ms. Wallace stated that she intends on placing the new home in the same location as the existing. There would be an overlap going deeper into the rear of the yard since the existing trailer is not as wide as the proposed house. Placing the house in this location would allow the applicant to continue utilizing the existing septic tank and drain field. The proposed house is 48 feet across.

Mr. Wenger stated that the depth of the proposed house would be 1.5 times the existing trailer.

Ms. Moody asked what the width of the lot is where the existing home is placed.

Mr. Wenger, using a scale, made an approximate measurement of the lot width at the location of the existing home at 78 feet.

Mr. Wenger noted that the proposed house is not as long as the existing but, it will be deeper.

Mr. Rhodes asked the applicant how she has come to be certain that there is no shrink/swell soils located where the proposed house will be.

Ms. Wallace stated that she had the soils tested by ECS to confirm that the soil composition at the site of the home is satisfactory.

Mr. Wenger closed the public hearing.

Mr. Fraley stated that there are a number of unique conditions regarding the lot shape and topography, therefore the proposed location seems ideal. Mr. Fraley noted that many trees would be lost if the house was placed further to the rear of the yard.

Mr. Rhodes stated that he supports the proposal, and that replacing the existing home would be an improvement to the community and neighborhood. Mr. Rhodes complimented Ms. Wallace on the thoroughness of the information she provided.

Ms. Moody stated that she supports the proposal. Ms. Moody commented on the complicating factors related to the lot such as: the environmental features, the shape of the lot, and the location of the septic tank and drain field. All factors would prohibit an alternate location.

Mr. Watkins stated he concurs with the comments and opinions provided thus far by other Board members.

Mr. Rhodes stated that he would like to have a condition placed upon approval requiring a certified surveyor place the pins prior to any construction.

Mr. Wenger stated that the parcel does have many extenuating factors to consider while locating the most appropriate placement of the house. Mr. Wenger commended Ms. Wallace in the choices she made regarding the dimensions of the house.

Mr. Fraley made a motion to approve the variance to Section 24-216(c) of the James City County Zoning Ordinance to reduce the minimum lot width and frontage to allow for the replacement of the existing manufactured home with a single family dwelling. The variance reduces the required minimum lot width from 150 feet to 90 feet on the conditions that there will be no further structural encroachment, and the corners of the structure be pinned by a licensed land surveyor in the State of Virginia prior to pouring of the foundation.

Ms. Moody seconded the motion.

The motion was approved by voice vote (5-0).

ZA-0012-2008 134 Neighbors Drive

Mr. Rogerson stated that the applicant has applied for a variance to reduce the front and rear yard setbacks in order to allow the placement of a house that is 36 feet by 25 feet. The front setback would be reduced from 50 feet from the centerline of the right of way to 35 feet from the centerline of the right of way, placing the house 25 feet from the edge of the road. The applicant would also like to reduce the rear yard setback from 35 feet to 15 feet. This will allow the applicant a 30 foot buildable depth on the parcel. The proposed house is 25 feet in depth, the additional 5 feet would accommodate steps and equipment to get around. The lot is non-conforming as are all the lots on Neighbors Drive. It does not

meet current lot width requirements, or minimum area requirements. Staff recommends approval due to the fact that the application of the existing setback requirements creates zero building envelop.

Mr. Rhodes asked for clarification on the proposed footprint. The house is 36 by 25 feet, and is a two story house.

Mr. Rhodes asked staff if the house is compatible with other houses in the community.

Mr. Rogerson stated that it is compatible with surrounding construction. The house is very comparable to other houses along Neighbors Drive. Mr. Rogerson stated that each of the houses on Neighbors Drive, while non-conforming, are all at the same distance from the existing right of way. Should the road be improved there is still adequate room to accommodate greater width.

Mr. Rhodes stated that he commends the efforts of County staff to plan ahead for such improvements.

Mr. Wenger asked staff if there are any other parcels along Neighbors Drive that could potentially require a variance.

Mr. Rogerson stated that there is at least one more.

Mr. Wenger opened the public hearing. There being no members of the public that wanted to comment Mr. Wenger closed the public hearing.

Mr. Fraley made a motion to approve the variance to Section 24-256 setback requirements and to Section 24-258 (b) yard regulations of the James City County Zoning Ordinance to allow for the construction of a new single family dwelling. The variance requested is to reduce the front yard setback from 50 feet from the center of the right of way to 35 feet, and to reduce the rear yard setback from the required 35 feet to 15 feet.

Ms. Moody seconded the motion.

The motion was approved by voice vote (5-0).

E. Matters of Special Privilege

Mr. Fraley stated that at the meeting on January 30th, 2009 he and Mr. Rhodes had been appointed to a committee for the purpose of searching for and recommending to the Board outside counsel to represent the Board within the limits of funds appropriated by the governing body pertaining to the litigation filed that appealed a previous determination of the Board. The committee has been in contact with a number of firms and has identified Struther Law Offices for consideration. Struther Law Offices came highly recommended and are located in Richmond, Virginia. The law firm is experienced in land use and zoning matters. Mr. Phillip Carter Struther is in attendance tonight to provide free initial consultation regarding the litigation filed against the Board.

Mr. Fraley made a motion to employ Mr. Struther this evening for legal consultation.

Ms. Moody seconded the motion.

Mr. Rhodes asked how the Board would pay for the attorney if the Board has no funds at this time.

Mr. Fraley stated that this service comes with no fee.

The motion was approved by voice vote (5-0).

Mr. Fraley made a motion that the Board of Zoning Appeals move into a closed meeting pursuant to Virginia Code 2.23711(a) 7 “consultation with legal counsel and briefing by staff members or consultants pertaining to actual or probable litigation where such litigation or briefing or open meeting would adversely affect the negotiating or litigation posture of the public body”.

Mr. Rhodes seconded the motion.

The motion was approved by voice vote (5-0).

The Board relocated for the closed session portion of the meeting.

The Board returned from closed session.

Mr. Wenger made a motion to reconvene the meeting.

Mr. Fraley stated, now, therefore, be it resolved that the Board of Zoning Appeals of James City County, Virginia certifies that to the best of each member’s knowledge only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this resolution applies and only such public business matters were heard discussed or considered by the Board of Zoning Appeals as identified in the motion made pursuant to Section 2.23711 (a)7 to consider actual or probable litigation.

Mr. Wenger seconded the motion.

The motion was approved by voice vote (5-0).

F. Adjournment

Mr. Fraley motioned to adjourn, Ms. Moody seconded the motion.

Mr. Wenger adjourned the meeting at 7:45 pm.

Mark Wenger
Chairman

Melissa C. Brown
Secretary