

# **Board of Zoning Appeals**

## **James City County Government Complex**

### **Board Room, Building F**

**April 1, 2010 - 7:00 p.m.**

**A. Election of Officers**

**B. Roll Call**

**C. Minutes**

1. November 5, 2009
2. December 12, 2009

**D. Old Business**

**E. New Business**

1. 108 and 110 Chesapeake Avenue

**F. Matters of Special Privilege**

**G. Adjournment**

**BOARD OF ZONING APPEALS**  
**November 5, 2009**

**A. Roll Call**

Present:

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

Absent:

Mr. Marvin Rhodes

Others Present:

Mr. John Rogerson, Senior Zoning Officer  
Mr. Brian Elmore, Development Management Assistant

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

**B. Minutes – August 28, 2009 & September 3, 2009**

**1) August 28, 2009**

Mr. Jack Fraley moved for adoption of the minutes, with a second from Ms. Barbara Moody.

In a unanimous voice vote, the minutes were approved (4-0; Absent: Rhodes).

**2) September 3, 2009**

Ms. Moody stated that on page 2, a reference to ‘Mr. Brown’ should be changed to ‘Ms. Brown’. She stated that on page 3, directly before Mr. Fraley makes his statement that neighborhood covenants and homeowners’ associations do not apply to the Board of Zoning Appeals, include the sentence “Ms. Moody asked what would happen with HOA covenants if the variance were approved.’

Mr. Fraley moved for adoption of the minutes as amended, with a second from Mr. William Watkins.

In a unanimous voice vote, the minutes were approved as amended (4-0; Absent: Rhodes).

### **C. Old Business**

There is no old business.

### **D. New Business**

#### **ZA-0005-2009, 3012 North Riverside Drive**

Mr. John Rogerson stated that Mr. Joe Swanenberg and Mr. Dave Alger of Osprey Builders have applied for a variance at 3012 North Riverside Drive. The applicants request a variance to demolish the existing home and rebuild it on the existing foundation, while raising the foundation four feet from the flood zone. The existing house is 4 feet from the right property line. R-2 zoning requires 10-foot side yard setbacks. As a nonconforming structure, the home can only be maintained through routine upkeep. Expansion of existing homes must meet current setbacks. If the structure were destroyed by an act of God, the applicant would require a variance to rebuild. Staff recognizes the home may encroach in to the septic system. The Environmental Health Department would require all current Health Department Regulations be met. Staff does not support the variance due to it technically not being a hardship situation. If the variance is passed, Staff recommends language preventing further encroachment of the right side setback.

Mr. Rogerson stated that no adjacent property owners objected to the variance. He stated that two neighbors wrote letters in support, one who lives directly across the street and one from a nearby cul-de-sac.

Mr. Rogerson stated the new home would have the same footprint as the existing one. He stated that Chickahominy Haven is a unique neighborhood with many older, nonconforming structures. As properties in Chickahominy Haven are redeveloped, encroachment will be a reoccurring issue.

Mr. Wenger opened the public hearing.

Mr. Joe Swanenberg stated that he had spoken with the the right-side adjacent property owner, Mr. Jones, on at least three occasions. He stated Mr. Jones voiced no objections, but did not respond to the letter given him. The new home will have a larger climate-controlled area, by incorporating the porch and most of the garage. There were several reasons for raising the home: to increase floor space by 35 sq. ft; to raise the house out of the floodplain; and to move storage from outbuildings to a portion of the garage area. The final new home will be 1120 sq. ft.

Mr. Fraley asked how the raised home will fit aesthetically into the neighborhood.

Mr. Swanenberg stated that one adjacent property owner's entire first floor served as a garage. Several homes down, another home's first level is all garage. Mr. Jones, right-side adjacent property owner, had asked the applicant to cover up exposed cinderblock on the new foundation. The applicant's house was raised in 2006 without a variance being required. The current house was built in 1959. The new house will meet all current building codes. Mr. Swanenberg argued that a hardship exists because of the age of the home.

Mr. Wenger asked the applicant to address the septic system issue.

Mr. Swanenberg stated that the septic tank is two feet from the front of the house. If the house is moved within the property, a permit must be issued by the Health Department. The house would be required to be at least 10 ft. from the septic tank, although any move towards the rear of the property would encroach into the Chesapeake Bay ordinance setbacks. The house is also within the current 50 ft. buffer between a house and its well. No additional land will be disturbed.

Ms. Moody asked about the ownership of a small adjacent parcel to the left of the applicant.

Mr. Swanenberg stated that Mr. Boyce owned both the small adjacent left parcel and the home directly across the street. The small parcel is used for river access. The home is currently 16 to 18 ft. from the left property line. There is 19 ft. between the applicant house and the Jones house. The new home will also have required fireproofing improvements. He noted several other nonconforming structures on the street and the new home would improve property values and create jobs.

Mr. Fraley asked if Osprey Builders was pursuing additional redevelopment opportunities in Chickahominy Haven.

Mr. Swanenberg stated he was not, although he did live in the community.

Ms. Moody asked if Ms. Valerie Jordan with the Health Department expressed her opinion on the variance.

Mr. Swanenberg stated that due to the lot size, moving the septic field was impossible. He stated he received a letter from Ms. Jordan stating that any new excavation would be required to meet current Health Department setbacks and regulations. Mr. Swanenberg stated the Zoning Ordinance allows lots with private water and sewer of less than 30,000 sq. ft. if the lot existed prior to 1985. The Ordinance does not automatically allow reduced setbacks for grandfathered lots that do not meet minimum lot size.

Mr. Wenger closed the public hearing.

Mr. Rogerson stated that if the house were destroyed by natural disaster, the applicant would be able to rebuild without a variance. He stated that if the house were destroyed, Staff would not have an issue with raising the foundation and converting the porch and garage into the main home, as long as the footprint remained the same. When the house was raised in 2006, Staff judged that the house was only being raised, and not rebuilt. About a dozen homes in Chickahominy Haven were raised using Federal Emergency Management Agency grants.

Mr. Watkins asked if the only reason the variance was required was due to the applicant voluntarily raising the home.

Mr. Rogerson stated that was correct.

Mr. Fraley stated the variance met the common sense test. He stated reconstruction is good for the neighborhood in terms of safety, property values, and ambiance. Construction on the current footprint is better from an environmental standpoint. He would support the variance request.

Ms. Moody stated the variance would improve the neighborhood, as long as current footprints are observed. She said the raised foundation should be camouflaged.

Mr. Watkins stated he saw no reason not to grant the variance.

Mr. Fraley moved for approval of the variance, with a second from Ms. Moody.

In a roll call vote, the variance was approved (4-0; Absent: Rhodes).

#### **E. Matters of Special Privilege**

Mr. Rogerson stated that the Board had received the proposed 2010 meeting calendar.

Mr. Fraley moved for approval of the 2010 calendar, with a second from Ms. Moody.

In a voice vote, the calendar was approved (4-0; Absent: Rhodes).

Mr. Rogerson stated there was no scheduled December meeting.

#### **F. Adjournment**

Mr. Fraley moved to adjourn, with a second from Ms. Moody.

The meeting was adjourned at 7:40 p.m.

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Mark Wenger  
Chairman

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Melissa C. Brown  
Secretary

**BOARD OF ZONING APPEALS**  
**December 16, 2009**

**A. Roll Call**

Present:

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

Others present:

Ms. Melissa Brown, Zoning Administrator

**B. Minutes**

**C. Old Business**

**D. New Business**

**Discussion of Current Legal Matters**

Mr. Wenger stated that pursuant to Virginia Code Section 2.2-3711(A)(7), *Consultation with Legal Counsel*, a public body may hold closed meetings for the purpose of consultation with legal counsel, by briefings by staff members, or consultants pertaining to actual or probable litigation where such consultation or briefing in open meeting would adversely affect negotiating or litigating position of the public body and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of the legal advice by such counsel. Mr. Fraley made a motion to recess to a closed session at 5:05PM for the purpose of consultation with legal counsel pertaining to litigation that has been filed against the board referencing ZA-0008-2008. Ms. Moody seconded the motion.

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

After going into closed session the Board reconvened at 5:45PM.

Mr. Wenger called for a resolution certifying the closed session as compliant with state code.

Ms. Brown read resolution 20091216.

Ms. Brown stated now, therefore be it resolved that the Board of Zoning Appeals of James City County, Virginia, hereby certifies that, to the best of each member's knowledge; (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, made pursuant to Section 2.2-3711 (A)(7), to receive legal counsel.

Mr. Fraley made a motion to approve the resolution. Ms. Moody seconded the motion.

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

Mr. Wenger motioned to take no further action regarding the case ZA-008-2008.

Mr. Fraley seconded the motion.

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

Mr. Fraley seconded the motion.

## **F. Adjournment**

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

Mr. Wenger adjourned the meeting at 6:12 pm.

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Mark Wenger  
Chairman

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Melissa C. Brown  
Secretary