Board of Zoning Appeals James City County Government Complex Board Room, Building A

January 9, 2014 - 7 p.m.

- A. Roll Call
- **B. Old Business**
- C. New Business
 - 1. ZA-0011-2013 7610 Beechwood Drive
- **D. Minutes** October 3, 2013 ZA-0008-2013 3506 Fieldcrest Court
- E. Matters of Special Privilege
 - 1. Election of Officers
 - 2. 2014 Meeting Schedule
- F. Adjournment

BOARD OF ZONING APPEALS January 9, 2014

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

A. Roll Call

Present: Others Present:

Mr. Marvin Rhodes
Mr. Jason Purse, Zoning Administrator
Mr. David Otey, Jr.
Mr. John Rogerson, Senior Zoning Officer

Mr. Stephen Rodgers

Mr. Tom Coghill, Director of Building

Mr. Ron Campana, Jr. Safety & Permits

Mr. William Geib

Mr. Rhodes gave information on the purpose of the Board of Zoning Appeals.

B. New Business

ZA-0011-2013 7610 Beechwood Rrive

Mr. Rogerson presented his staff report:

Mr. Edward Pultz of Pultz Builders, Inc. has applied for a variance to Section 24-215(a), Setback requirements, of the Code of James City County to reduce the required front yard setback from 50 feet to approximately 33 feet from the front property line. This proposed variance request is to allow the continued placement of the dwelling that is currently under construction. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1911100042.

Mr. Edward Pultz of Pultz Builders, Inc applied for a building permit on May 28, 2013. The original development plan showed the proposed dwelling as being 51 feet from the front property line. (the minimum setback distance is 50 feet) As a result of the proximity of the house to the setback line, Zoning required a "foundation survey". A foundation survey is a survey that is done after the footing is poured and the blocks for the foundation's crawl space are in place. However, Zoning did not receive the foundation survey until the end of November when the house was already built. If the foundation survey was submitted as requested by Zoning before the second foundation inspection this error would have been caught, but it was not and the builder was allowed to move forward. When the encroachment came to Zoning's attention the house was nearly complete.

The Engineering and Resource Protection Division requested Mr. Pultz provide them with a revised site plan that provided more details, such as elevations, water flow direction, construction entrance and the proposed primary and reserved drain fields. As Mr. Pultz was waiting on his

surveyor to do the revised development plan he received his "clearing permit" which allows him to go forward and clear the lot and dig the footings. Since Mr Pultz did not have the revised development plan he called his land surveyor and asked him what the setbacks were for this lot. Mr. Pultz's surveyor told him, in error, the house needed to be 50 feet from the edge of pavement. The setbacks are measured from the property line and not the edge of pavement. In this instance the right of way extends 17 feet beyond the edge of pavement to the property line. Therefore; the house encroaches into the required 50 foot front setback by about 17 feet.

An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. The strict application of the terms of the Zoning Ordinance does not produce an undue hardship nor does it effectively prohibit or unreasonable restrict the use of the property in this case. Despite the miscommunication between the builder and the surveyor, staff cannot support this request for a variance.

Mr. Rhodes asked for the sequence of events and inspections that take place during the building process.

Mr. Coghill explained how the building and inspection process works.

Mr. Coghill explained that the inspector had rejected the 2nd foundation inspection because the foundation survey had not been received.

Mr. Pultz called Mr. Coghill and said he was in a bind and asked Mr. Coghill if he could move forward with the project and he would get the foundation survey to Mr. Coghill the following week.

Mr. Coghill agreed to allow Mr. Pultz move forward agreeing that the foundation survey would be submitted the following week. The following week came and Mr. Pultz and Mr. Coghill forgot about the foundation survey.

Mr. Coghill stated it was several months later that the foundation survey was submitted and the encroachment was discovered, by that time the house was 95% complete.

Mr. Rhodes inquired about the timing of the 1st footing inspection and at what point the foundations survey should be completed.

Mr. Geib asked about the timeline of events that took place during the building process.

Mr. Rodgers inquired about the timing of events that led up to the discovery of the encroachment.

Mr. Coghill and Mr. Pultz described the inspection process.

Mr. Rogerson stated that no additional inspections should have taken place until the builder has submitted the foundation survey and Zoning has approved it.

Mr .Rogerson explained that it is the builder's responsibility to submit the foundation survey and it is the building inspectors' responsibility to make sure the foundation survey has been approved before moving forward past the 2nd foundation inspection.

Mr. Rhodes stated that there is a shared obligation by the builder and the building inspector to make sure the foundation survey has been submitted and approved before moving forward past the 2nd foundation inspection.

Mr. Geib asked for additional clarity on the timeline of events.

Mr. Geib asked for the dates of all of the inspections.

Mr. Purse explained the series of events that take place during the building process, further explaining that construction continued beyond the 2^{nd} foundation inspection when it should not have continued since the foundation survey was never submitted or approved.

Mr. Rogerson stated that the foundation survey that was submitted and dated in November was actually a physical survey of the property since the house was under roof.

Mr. Geib asked if it is typical that if an error in process is made by staff that the builder is not responsible.

Mr. Purse responded no.

Mr. Otey asked what prompted the issue to come up again.

Mr. Purse explained that it was further along in the process when it was realized that the foundation survey had not been submitted.

Mr. Rogerson stated that it was the first week in December that Mr. Pultz come to the Zoning and stated that he thought he had a problem.

Mr. Rogerson explained to Mr. Pultz that the only way to correct the problem was to apply for a variance from the Board of Zoning Appeals.

Mr. Coghill was able to give a timeline of inspections.

Mr. Rogerson explained that when the 2^{nd} foundation inspection is done the footing has been poured and the block work is in place but no wood has been used yet.

Mr. Rogerson explained that if an error is caught at the time of the foundation survey there are other options to correct the problem, but when the house is under roof it is too late to correct the encroachment.

Mr. Rhodes opened the public hearing

The applicant, Mr. Pultz stated that he has been building in Williamsburg for about 30 years and he has never been in a situation like this.

Mr. Pultz said that he could not blame anyone else and that the mistake was totally his fault and he should know better.

Mr. Pultz stated that there are other houses along the street that are not 50 feet from the front property line so it did not occur to him that there might be a problem.

Mr. Pultz explained that his surveyor was really busy and it took 3 weeks to get the foundation survey, in the meantime he called his surveyor and asked him what the setbacks were and in error the surveyor told him 50 feet from the edge of pavement.

Mr. Pultz explained that he had misinformation from his surveyor which led to the problem.

Mr. Rodgers asked about the clearing permit.

Mr. Rogerson explained that the original site plan did not have enough information on it to issue a clearing permit but it did have enough information for Zoning to approve to site plan.

Mr. Coghill explained that your clearing inspection must be complete before you are authorized excavate to footings and only after to clearing inspection has been complete can the building permit be issued.

Mr. Rhodes stated that one option would be to elevate the house and move it back 17'. However the garage is on a slab which would be hard to move.

Mr. Rhodes stated beyond this house at 7614 Beechwood there is a house that appears closer to the road.

Mr. Rhodes said that there were other homes along Beechwood that do not appear to meet the current setbacks. He stated that some of them were likely build before the County had a Zoning Ordinance.

Mr. Rogerson stated that a long time ago the community consisted of small cottages for weekend retreats and over time people started to improve on the cottages and live in them year round. So, if the structures were built before 1970 we did not have a Zoning Ordinance and there were no setback requirements.

Mr. Geib stated that the building permit was issued on May 29, 2013 and it was not until November 29, 2013 that the foundation survey was submitted. Mr. Geib asked why it took so long for the foundation survey to be submitted.

Mr. Pultz said someone for the County said the house looked too close to the road and it took his surveyor 5-6 weeks to get the foundation survey done.

- Mr. Otey said the foundation survey could not have been done until the footing was poured and the foundation blocks were in place.
- Mr. Geib had additional questions about the two development plans the original and the revised.
- Mr. Rogerson said the revised development plan was dated June 3, 2013
- Mr. Coghill said the building permit was issued on July 22, 2013.

Mr. Rhodes closed the public hearing

- Mr. Rodgers said he is a little conflicted since the builder had a verbal go ahead from the County.
- Mr. Campana inquired about the two different development plans.
- Mr. Geib said that he is concerned that now that the building is forward 17 feet now the distribution box is closer to the well and he was concerned about the distribution box leaking.
- Mr. Geid stated that the process was clearly not followed in regards to the foundation survey requirement and the timing of the inspections.
- Mr. Geib said since to process was not followed the process got short curcited.
- **Mr. Rhodes reopened the public hearing** so Mr. Pultz could provide additional information.
- Mr. Rhodes asked Mr. Pultz to address the location of the distribution box and weather he has the proper separation distance between the well and the distribution box.
- Mr. Pultz said the well is the proper distance and the Health Department has approved the separation distance between the well and the septic system.
- Mr. Pultz said the well is supposed to be fifty feet from the house and the gravel ditch was in the way so he moved the ditch two feet. But the well ended up being forty eight feet from the house and the Health Department approved it that way.

Mr. Rhodes closed the public hearing

- Mr. Otey said he was conflicted but he was inclined to vote in favor of granting the variance.
- Mr. Rhodes said there was plenty of shared responsible and he finds it difficult to lay all of the responsibility on Mr. Pultz.
- Mr. Rodgers said there is blame on both sides and the builder could have been more careful, but he was inclined to grant the variance.

Mr. Otey said the way this came about is not technically relevant but there are some unusual circumstances involved in this case.

Mr. Rhodes asked if there was a motion.

Mr Rogerson read a proposed motion to approve the case:

To grant a variance to Section 24-215(a), Setback Requirements, of the Code of James City County to reduce the required front yard setback from 50 feet to 33 feet from the front property line. This proposed variance request is to allow the continued placement of the dwelling that is currently under construction as shown on the plat entitled "Foundation Survey of Lot 42, Section 4, Cypress Point and dated November 25, 2013" which is attached hereto, made part hereof and incorporated into this resolution. This approval comes with the condition that there be no further encroachment into the required setbacks. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1911100042.

Mr. Rhodes made sure there was a statement that there be no further encroachment.

Mr. Geib inquired if the granting of the variance would devalue the adjacent properties.

Mr. Rogerson stated that there are other properties in the area that have manufactured homes and don't meet the setbacks.

Mr. Otey said at the moment this is the nicest house in the area currently and the new house would not diminish the character of the district.

Mr. Rodgers said he does not think the fact that the garage is in the setback would bring down the value of the other properties.

Mr. Rodgers reread the motion.

On a voice vote 5-0 the motion to grant the variance was approved.

C. Minutes

October 3, 2013

Mr. Rhodes asked if there were corrections to the minutes and there were. Mr. Rodgers was referred to as Mr. Rhodes three times during the minutes. The corrections were made and the amended minutes were approved by a unanimous voice vote with Mr. Rhodes abstaining since he was not at the October Meeting.

D. Old Business

Mr. Rhodes inquired about whether we should swear in the applicants.

Mr. Purse sated that research indicated that there is about a 50/50 split on localities that do and do not require the applicant to be sworn in prior to hearing the case.

Mr. Purse stated he would like to Deputy County Attorney to be at the meeting if they would like to move forward with this.

Mr. Purse stated that the Deputy County Attorney had said the only time this would have been beneficial is the cell phone tower that did go to court.

Mr. Rhodes said he had talked to the Deputy County Attorney's office about the matter.

Mr. Geib talked about the potential for law suites and was asking if the rest of the board members were interested in swearing in the applicants before the case.

Mr. Rodgers asked if there was some certain certification someone would require to administer the oath.

Mr. Campana asked if the applicants know if the meetings are being recorded.

Mr. Rhodes stated that 95 % of the applicants are homeowners and if they were going to lie to the Board they would likely lie in court also.

Mr. Rhodes said we should swear in the applicant on a case by case basis.

E. Election of Officers

Mr. Purse asked for nominations for Chairman:

Mr. Rhodes nominated Mr. Otey for Chairman

Mr. Rodgers seconded the nomination of Mr. Otey as Chairman.

Mr. Otey accepted the nomination as Chairman

Mr. Otey was elected chairman on a 4-0 voice vote with Mr. Otey abstaining

Mr. Campana made a motion to nominated Mr. Rhodes as Vice Chairman

Mr. Rodgers seconded the motion

Mr. Rhodes was elected Vice Chairman on a 4-0 voice vote with Mr. Rhodes abstaining.

The proposed meeting schedule for 2014 was approved as submitted.

Mr. Purse inquired about moving the meetings to Building A conference room.

Mr. Geib said he thought meeting in Conference room A diminishes the presence of the Board of Zoning appeals and feels the Boardroom is more formal.

Mr. Rodgers said he prefers the Boardroom.

Without consensus it was decided that we would continue to meet in the Boardroom in building F.

F. Adjournment

T1		1	. :		C	1	1	41			- 1		- 4	ο.	1 5	DI	Æ
1 ľ	nere	De	eing	no	Turt	ner	business	. tne	meeting	was	aa	iournea	at	8:	כו	PN	Ί.

Marvin Rhodes	Jason Purse
Chairman	Secretary

MEMORANDUM

TO: Honorable Chairman and Members of the Board of Zoning Appeals

FROM: John Rogerson, Senior Zoning Officer

DATE: January 9, 2014

SUBJECT: ZA-0011-2013 7610 Beechwood Drive

FACTS:

Mr. Edward Pultz of Pultz Builders, Inc. has applied for a variance to Section 24-215(a), Setback requirements, of the Code of James City County to reduce the required front yard setback from 50 feet to approximately 33 feet from the front property line. This proposed variance request is to allow the continued placement of the dwelling that is currently under construction. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1911100042.

FINDINGS:

Mr. Edward Pultz of Pultz Builders, Inc applied for a building permit on May 28, 2013. The original development plan showed the proposed dwelling as being 51 feet from the front property line. (the minimum setback distance is 50 feet) As a result of the proximity of the house to the setback line, Zoning required a "foundation survey". A foundation survey is a survey that is done after the footing is poured and the blocks for the foundation's crawl space are in place. However, Zoning did not receive the foundation survey until the end of November when the house was already built. If the foundation survey was submitted as requested by Zoning before the second foundation inspection this error would have been caught, but it was not and the builder was allowed to move forward. When the encroachment came to Zoning's attention the house was nearly complete.

The Engineering and Resource Protection Division requested Mr. Pultz provide them with a revised site plan that provided more details, such as elevations, water flow direction, construction entrance and the proposed primary and reserved drain fields. As Mr. Pultz was waiting on his surveyor to do the revised development plan he received his "clearing permit" which allows him to go forward and clear the lot and dig the footings. Since Mr Pultz did not have the revised development plan he called his land surveyor and asked him what the setbacks were for this lot. Mr. Pultz's surveyor told him, in error, the house needed to be 50 feet from the edge of pavement. The setbacks are measured from the property line and not the edge of pavement. In this instance the right of way extends 17 feet beyond the edge of pavement to the property line. Therefore the house encroaches into the required 50 foot front setback by about 17 feet.

RECOMMENDATION:

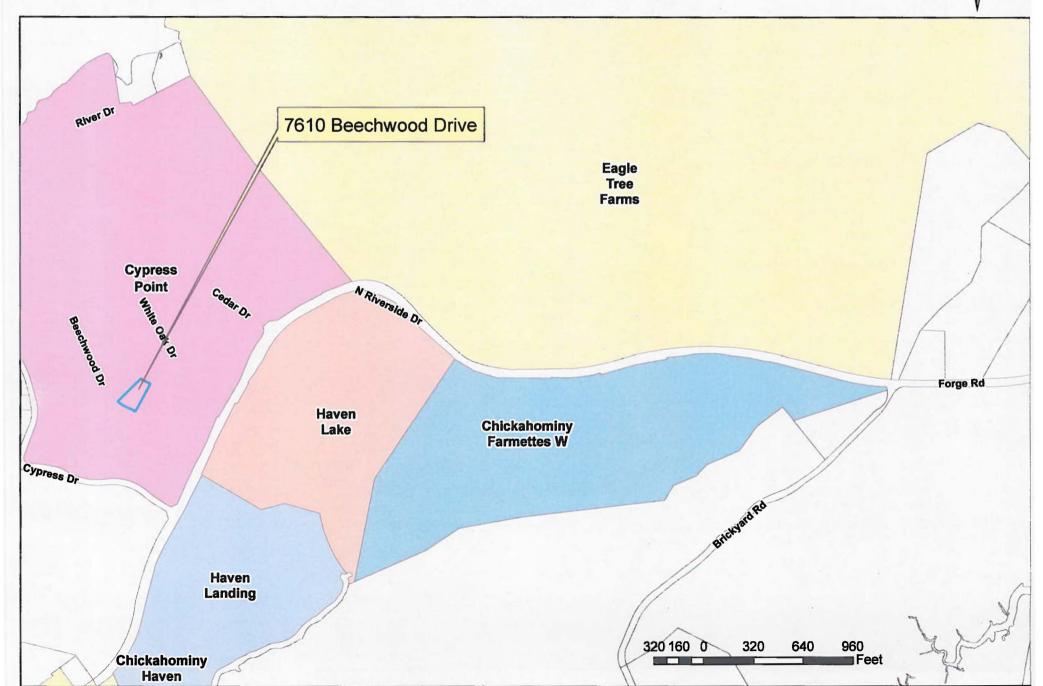
An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. The strict application of the terms of the Zoning Ordinance does not produce an undue hardship nor does it effectively prohibit or unreasonable restrict the use of the property in this case. Despite the miscommunication between the builder and the surveyor, staff cannot support this request for a variance.

Attachments

Survey Original development plan Revised Development plan Location map Resolution Pictures Application

ZA-0011-2013 7610 Beechwood Drive JCC RE Tax Map #1911100042





RESOLUTION ZA-0011-2013

GRANTING A VARIANCE ON JCC RE TAX PARCEL NO. (19-1-11-0-0042)

WHEREAS, Edward Pultz applicant for the property owner has appeared before the Board of Zoning Appeals of James City County (the "Board") on January 9, 2014 to request a variance on a parcel of property identified as JCC RE Tax Parcel No. (1911100042) and further identified as 7610 Beechwood Drive (the "Property") as set forth in the application ZA-0011-2013; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record and discussed a motion to grant a variance to Section 24-215(a), Setback Requirements, of the Code of James City County to reduce the required front yard setback from 50 feet to 33 feet from the front property line. This proposed variance request is to allow the continued placement of the dwelling that is currently under construction as shown on the plat entitled "Foundation Survey of Lot 42, Section 4, Cypress Point and dated November 25, 2013" which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1911100042.

NOW THEREFORE, the Board of Zoning Appeals of James City County by a majority vote of its members FINDS that:

- 1. The strict application of Chapter 24 of the Code of James City County (the "County Code") would produce undue hardship.
- 2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 3. Authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- 4. By reason of the exceptional narrowness, shallowness, size or shape of the Property, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the Property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of Chapter 24 of the Code of James City County (the "County Code") would effectively prohibit or unreasonably restrict the utilization of the property.
- 5. Granting the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant.
 - 6. The variance will be in harmony with the intended spirit and purpose of Chapter 24 of the County Code.
- 7. The condition or situation of the Property 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.

WHEREUPON, THE BOARD OF ZONING APPEALS OF JAMES CITY COUNTY ADOPTS THE FOLLOWING RESOLUTION:

To grant a variance to Section 24-215(a), Setback Requirements, of the Code of James City County to reduce the required front yard setback from 50 feet to 33 feet from the front property line. This proposed variance request is to allow the continued placement of the dwelling that is currently under construction as shown on the plat entitled "Foundation Survey of Lot 42, Section 4, Cypress Point and dated November 25,

2013" which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 1911100042.

	Chair, Board of Zoning Appeals January 9, 2014						
ATTEST:	Rhodes	Aye	Votes Nay	Abstain			
	Otey						
Secretary	Rodgers Campana Geib						

File:

ZA-0011-2013 1911100042

7610 Beechwood Drive ZA-0011-2013









House under construction across the street from 7610 Beechwood Drive



PLANNING DIVISION

DEC 1'3 2013





BOARD OF ZONING APPEALS APPLICATION

Date: 12/13/13 ZA: 011-2013 Receipt No.: 0433 Please complete all sections of the application. Call (757) 253-6685 if you have any questions, or go online to www.jccEgov.com/resources/devmgmt/div_devmgmt_planning.html The applicant must provide the following information to support this application: 1. A plat of the property drawn to scale showing dimensions and locations of all structures, wells, septic systems, and easements associated with the property. 2. A location sketch of the property showing all adjacent roads or right-of ways and showing the nearest road intersection. 3. Building elevation drawings and/or topographical map if appropriate to request. **Project Information:** Project Name: Spec House in Cupress Point Address: 7610 Beech wood Drive Zoning: James City County, VA Is Site Inside PSA? Yes___ No__ Tax Map & Parcel ID: **Applicant/Contact Information:** Company: Pultz builders INC. Phone: 757-880-5077 Address: PO.Box 3148 Miansberg, VA 23185 E-mail: pultzbuilders@aol.com **Property Owner(s) Information:**

Continue on separate page if additional owners

E-mail:

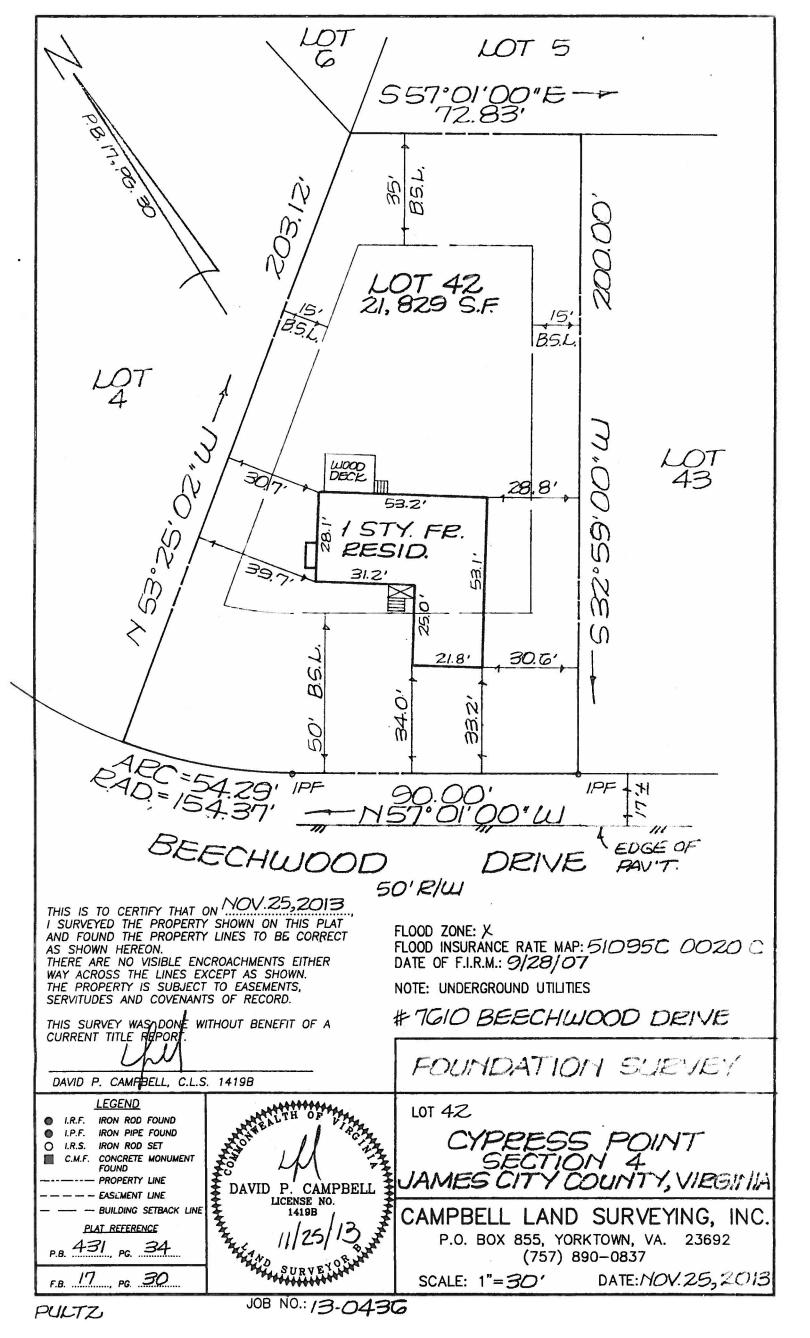
Phone:

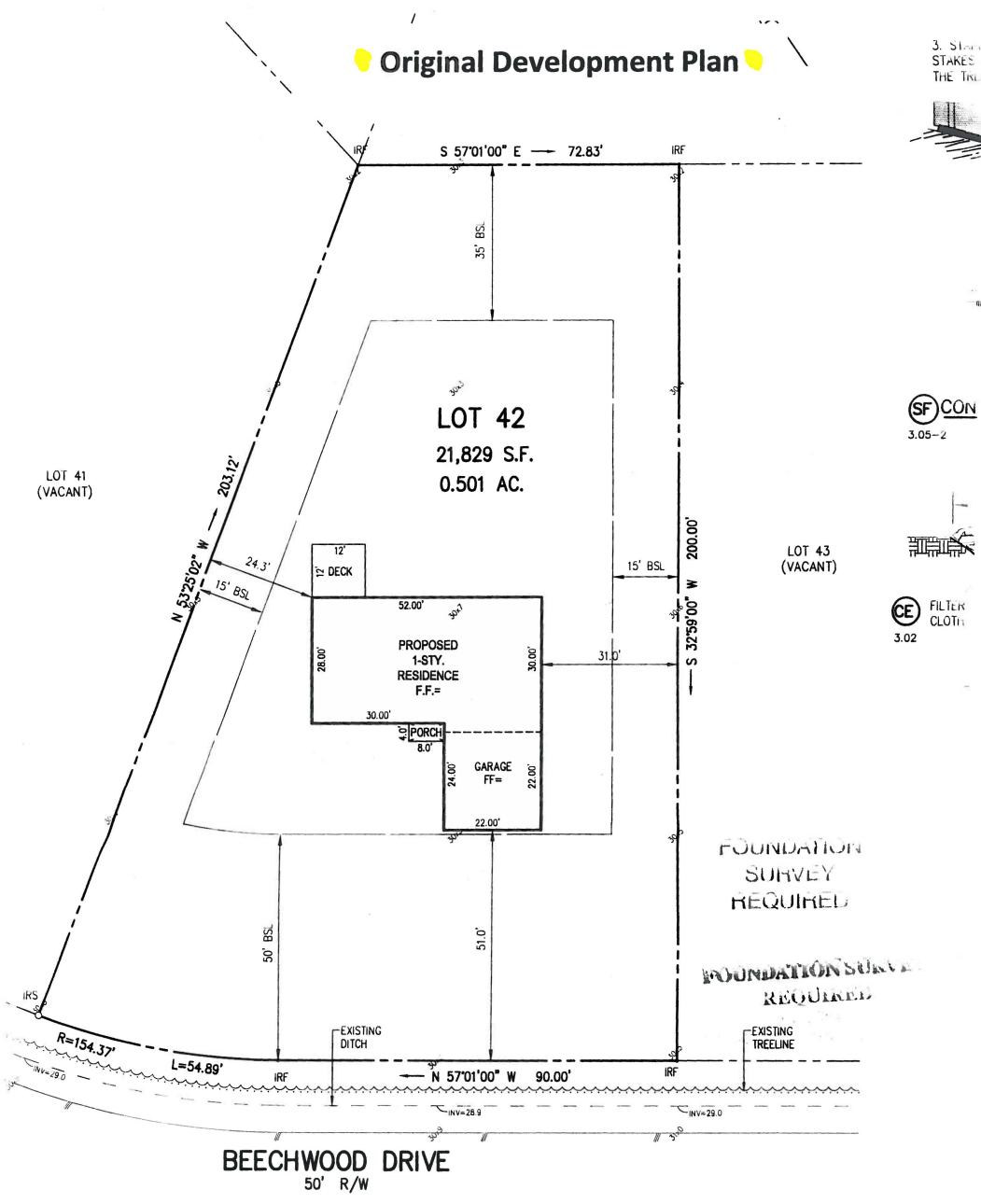
Name: _____ Company: __

Address:

4. Variance

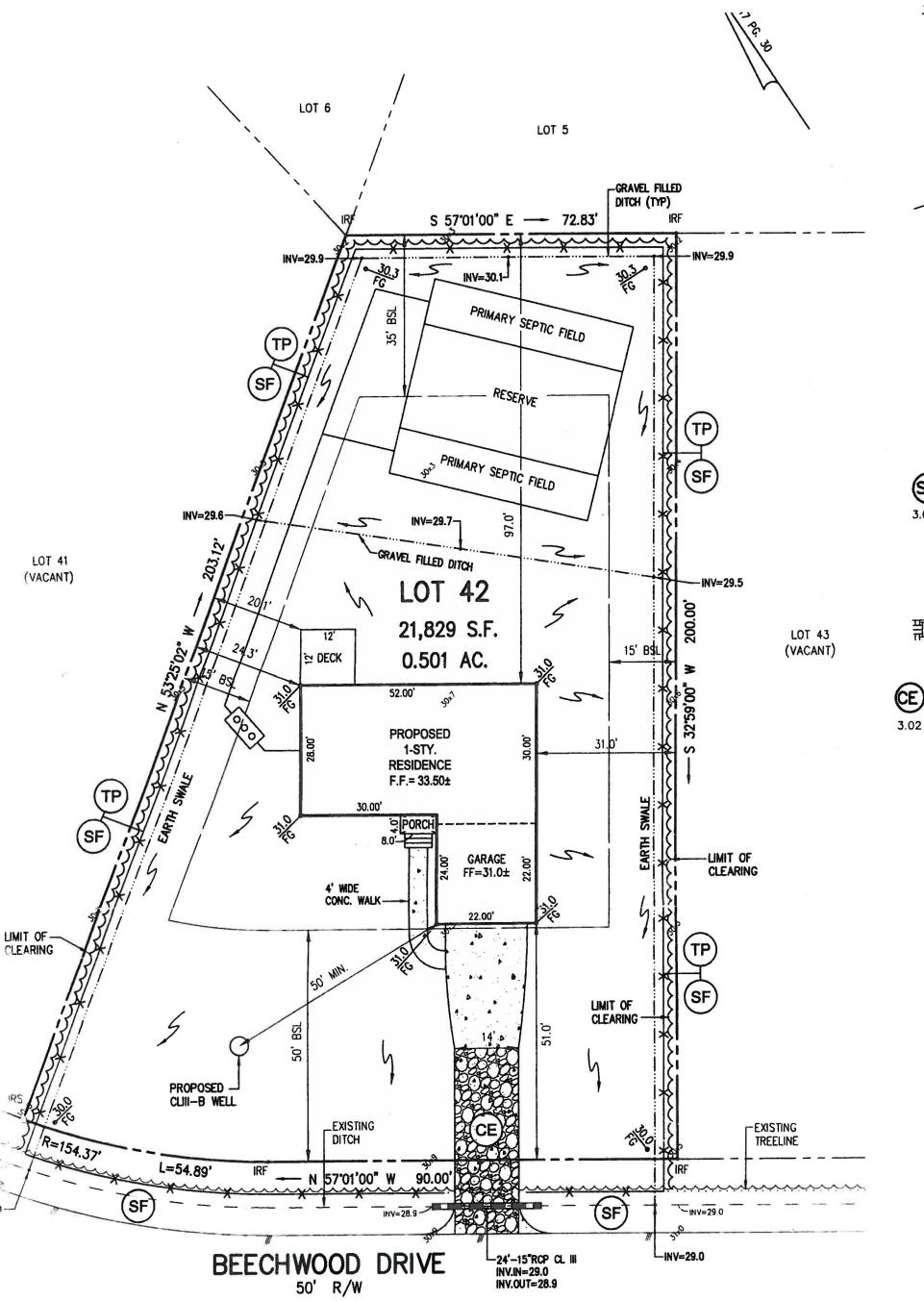
The above applicant respectively requests that the Board of Zoning Appeals grant a variance to Section 24-215 of the Zoning Ordinance.
The specific variance(s) requested are: To reduce the required front
Setbook from 50 to 33 to allow for the continued
planent of the existing doubles that is currently under
Constitution
Continue on separate page if necessary
The variance is requested for the following reasons:
Continue on separate page if necessary
5. Appeal
The above applicant respectively requests that the Board of Zoning Appeals review the decision made on(date).
The following action is requested:
an interpretation of Section 24 of the Zoning Ordinance.
an interpretation of the Zoning Ordinance map.
an appeal of an administrative decision.
Explanation of appeal:
Has the applicant previously filed an appeal in connection with the property? (If yes give
date of appeal) (date).
Explanation of purpose to which property will be put:
6. The undersigned declares that the above statements and those contained in any exhibits transmitted to the Board of Zoning Appeals are true.
A DIA
Signature of Applicant: Aller Date: 12/13/13
Signature of Owner: Mary Cour Benthal Date: 12/13/13
Signature of Strike





FL Dz

Revised Development Plan



3. STAKE THE T









BZA 2015 Schedule								
Meeting Dates	Application Deadlines	Ad to the Press	Display Dates	APO/Applicant Letters	Packets Delivered			
Jan 8	Dec 4	Dec 20	Dec 24 & Dec 31	Dec 20	Jan 2			
Feb 5	Jan 2	Jan 16	Jan 21 & 28	Jan 16	Jan 30			
Mar 5	Jan 29	Feb 13	Feb 18 & 25	Feb 13	Feb 27			
Apr 2	Feb 26	Mar 13	Mar 18 & 25	Mar 13	Mar 27			
May 7	Apr 2	Apr 17	Apr 22 & 29	Apr 17	May 1			
June 4	Apr 30	May 15	May 20 & 27	May 15	May 29			
July 9	June 4	Jun 19	Jun 24 & July 1	June 19	July 2			
Aug 6	July 2	Jul 17	Jul 22 & 29	Jul 17	Jul 31			
Sept 3	July 30	Aug 14	Aug 19 & 26	Aug 14	Aug 28			
Oct 1	Aug 27	Sep 11	Sep 16 & 23	Sep 11	Sep 25			
Nov 5	Oct 1	Oct 16	Oct 21 & 28	Oct 16	Oct 30			
Dec 3	Oct 29	Nov 13	Nov 18 & 25	Nov 13	Nov 25			