

**A G E N D A**  
**JAMES CITY COUNTY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
**101 A Mounts Bay Road Williamsburg VA 23185**  
**101 Mounts Bay Road, Williamsburg, VA 23185**  
**January 7, 2016**  
**7:00 PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. OLD BUSINESS**

**D. NEW BUSINESS**

1. BZA Schedule 2016
2. Novus Agenda

**E. MINUTES**

1. July 16, 2015 Minutes
2. Historical Minutes 1969-2010

**F. MATTERS OF SPECIAL PRIVILEGE**

1. Election of Officers

**G. ADJOURNMENT**

**ITEM SUMMARY**

DATE: 1/7/2016

TO:

FROM:

SUBJECT:

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**ATTACHMENTS:**

	Description	Type
▣	2016 Schedule	Backup Material

**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Purse, Jason	Approved	1/5/2016 - 4:08 PM
Publication Management	Boles, Amy	Approved	1/5/2016 - 4:50 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/6/2016 - 10:33 AM

### BZA 2016 Schedule

Meeting Dates	Application Deadlines	Ad to the Press	Display Dates	APO/Applicant Letters	Packets Delivered
Jan 7	Dec 3	Dec 18	Dec 23 & Dec 30	Dec 18	Dec 31
Feb 4	Dec 31	Jan 15	Jan 20 & 27	Jan 15	Jan 29
Mar 3	Jan 28	Feb 12	Feb 17 & 24	Feb 12	Feb 26
Apr 7	Mar 3	Mar 18	Mar 23 & 30	Mar 18	Apr 1
May 5	Mar 31	Apr 15	Apr 20 & 27	Apr 15	Apr 29
June 2	Apr 28	May 13	May 18 & 25	May 13	May 27
July 7	June 2	Jun 17	Jun 22 & June 29	June 17	July 1
Aug 4	July 2	Jul 15	Jul 20 & 27	Jul 15	Jul 29
Sept 1	July 28	Aug 12	Aug 17 & 24	Aug 12	Aug 26
Oct 6	Sept 1	Sept 16	Sep 21 & 28	Sep 16	Sep 30
Nov 3	Sept 29	Oct 14	Oct 19 & 26	Oct 14	Oct 28
Dec 1	Oct 27	Nov 10	Nov 16 & 23	Nov 10	Nov 23

**ITEM SUMMARY**

DATE: 1/7/2016

TO:

FROM:

SUBJECT:

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**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Purse, Jason	Approved	1/5/2016 - 4:09 PM
Publication Management	Burcham, Nan	Approved	1/6/2016 - 11:14 AM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/6/2016 - 11:29 AM

**ITEM SUMMARY**

DATE: 1/7/2016

TO: Board of Zoning Appeals

FROM: Jason Purse, Zoning Administrator

SUBJECT: July 16, 2015 Minutes

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**ATTACHMENTS:**

	Description	Type
▣	July 16, 2015 Mins	Minutes

**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals Secretary	Purse, Jason	Approved	1/5/2016 - 9:58 AM
Publication Management	Boles, Amy	Approved	1/5/2016 - 4:47 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/6/2016 - 10:33 AM

**MINUTES**  
**BOARD OF ZONING APPEALS**  
**OF JAMES CITY COUNTY**  
**101-D Mounts Bay Road, Williamsburg, VA 23185**  
**July 16, 2015**  
**7:00 PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

Mr. Marvin Rhodes  
Mr. Ron Campana Jr.  
Mr. William Geib  
Mr. Stephen Rodgers  
Mr. David Otey – **ABSENT**

Also Present:

Mr. Jason Purse, Zoning Administrator  
Mr. John Rogerson, Zoning Officer  
Ms. Terry Costello, Zoning Officer  
Mr. Maxwell Hlavin, Assistant County Attorney

Mr. Purse explained that Mr. Rhodes is the vice chairman of the Board of Zoning Appeals (BZA) and he will be conducting the meeting in the absence of Mr. Otey.

At 7 p.m., Mr. Rhodes called the meeting to order.

Mr. Purse called the roll.

**C. OLD BUSINESS**

Mr. Purse stated that the recent State Code changes have come into effect as of July 1, 2015. Mr. Purse noted that the definition of a “variance” has changed and that the standard for granting a variance has changed since the new State Code changes went into effect. Mr. Purse stated that the burden of proof is on the applicant to prove that they meet the new criteria laid out in the State Code.

**D. NEW BUSINESS**

1. ZA-0002-20145 4800 Riverview Road

Mr. Rhodes spoke about the public hearing process and procedures for the BZA.

Mr. Rogerson presented his staff report:

Darryl and Cecile Liechti, property owners, have applied for a variance to Section 24-215 (a), Setback Requirements, to reduce the required front setback from 100 feet from the centerline of Riverview Road to 80 feet. Riverview Road is currently a 30-foot right-of-way. This proposed variance request is to allow for the construction of an addition to the existing dwelling. This property is currently zoned A-1, General Agriculture, and can further be identified as James City County Real Estate Tax Map No. 1420100029A.

This parcel is currently 3.02 acres in size; the existing house was built in 1956 and is 1,402 square feet in size. Darryl and Cecile Liechti have applied for a variance to construct an addition on the right side of the existing dwelling, the proposed addition will also project forward approximately 8 feet towards Riverview Road lining up with the

proposed covered front porch. In 2006 a boundary line adjustment was submitted and approved by James City County (JCC) Planning Division to increase the lot size from .82 acres to 3.03 acres. When this boundary line adjustment was approved the front setback changed from 75 feet from the center of the right-of-way to 100 feet from the center of the right-of-way, causing a portion of the front of the existing dwelling to encroach into the required front setback. Nothing prevented the structure from remaining in its existing location after the boundary line adjustment, however, the new setback requirement made the structure nonconforming. Therefore, any further encroachments would be prohibited.

The applicants purchased the property in August 2010. At the time of the purchase, the applicants were unaware of the existing encroachment of the dwelling into the front setback. In May 2015 the property owners submitted a building permit application to build an addition to the existing dwelling. The addition consists of a master bedroom with a bathroom and walk-in closet on the right side of the dwelling and the construction of a covered porch along the front of the house. Health Department records show the existing septic tank and drain field are located behind the dwelling off the right rear corner of the existing dwelling, which may prevent expansion in that direction.

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 has been met (that 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, the variance is not contrary to the purpose of the ordinance and the variance does not result in a change of use) and that the following criteria are satisfied:

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

The applicant provided a narrative explaining their case for meeting the requirements for granting a variance, and that document has been included in your packet as Attachment No. 2. The applicant has stated that the house cannot be expanded to the rear of the property due to the existing location of the septic tank and drain field. Staff realizes that the septic tank and drain field are located directly behind the house.

The applicant has also stated that due to the existence of non-tidal wetlands it is not possible to relocate the septic tank and drain field on the property. No specific studies or

documentation was submitted providing evidence that the soils located elsewhere on the property are unsuitable for a drain field.

Finally, the applicant has stated that granting the variance will not be a detriment to the surrounding area, out of the first eight homes on Riverview Road their house (4800 Riverview Rd.) is setback the farthest and out of the first 13 homes only one other home is setback further. Staff recognizes that there are homes in this area that are nonconforming in regards to front setback requirements.

In this case, staff believes the strict application of the Zoning Ordinance would not unreasonably restrict utilization of the property, as the property has been put to use by the existence of a single-family residence. Furthermore, the physical conditions of this property are similar to other parcels in the A-1 zoning district. There are no distinguishing environmental features or shape/size restrictions that constitute a hardship. However, there are other adjacent parcels, which are legally nonconforming in terms of lot size and setback requirements.

The strict application of the terms of the Zoning Ordinance does not unreasonably restrict utilization of the property. The property has been put to use by the existence of a single-family dwelling. Therefore, staff cannot support this application; however, should the Board wish to grant the variance to reduce the front setback for the construction of the proposed addition, staff feels the variance would not be a detriment to adjoining properties nor alter the character of the area.

Mr. Rogerson stated that he would be happy to answer any questions the Board might have.

Mr. Rhodes asked for clarity on what happened when the boundary adjustment took place.

Mr. Rogerson stated that there were three different pieces of property and the property lines were adjusted to make this piece of property just over three acres in size.

Mr. Rogerson explained that when the property lines were adjusted to make this parcel 3+ acres that changed the front setback requirement from 75 feet from the center of the right-of-way to 100 feet from the center of the right-of-way.

Mr. Rogerson explained that the boundary line adjustment was done prior to the applicant purchasing the property and that they were not aware of the setback issue at the time they purchased the property.

Mr. Rodgers noted that the plats show the setback line going through the front of the house and was curious if the applicants noticed that when they purchased the property.

Mr. Rogerson said he would defer to the applicant for the answer to that question.

Mr. Rhodes stated that when the boundary line adjustment took place it made the lot conforming in regards to the area requirements, but made the structure nonconforming in regards to the new setback requirements.

Mr. Rhodes asked if the proposed addition would make the structure more nonconforming.

Mr. Rogerson stated that it would since it would add square footage in the setback.

Mr. Geib asked if the applicant's addition was constructed behind the new setback line would that be allowed.

Mr. Rogerson stated that the nonconforming structure could be expanded as long as the new construction meet the current setback requirements.

Mr. Geib asked about the other homes along Riverview Road and if they were also nonconforming.

Mr. Rogerson explained that some of the houses were built before there was a Zoning Ordinance in JCC and he also noted that over time the Zoning Ordinance setback requirements have changed as well.

Mr. Rhodes opened the public hearing.

The applicant, Darryl Liechti, stated that he was the property owner and he was here to request a variance for the addition to the existing house. He stated that the home was purchased in good faith and they were quickly outgrowing the existing home. Mr. Liechti stated that denying the variance would unreasonable restrict the use of the property. Mr. Liechti further stated that the septic system located at the rear of the house prevented them from doing the addition on the rear of the existing house. Mr. Liechti said the boundary line adjustment making the lot just over three acres is what created this issue since that changed the front setback requirement. He stated that when the house was originally built there was not a Zoning Ordinance in effect and granting the variance would not be a detriment to the area since other houses in the area do not meet current setback requirements. Mr. Liechti said that if the variance is not granted his family will have to move since they are expecting another child and have outgrown the existing house. Mr. Liechti said based on the new language in the State Code he feels that the variance should be granted.

Mr. Campana asked if they were provided a plat showing the house in the setback when they closed on the property.

Mr. Liechti said he was provided a plat, but since it was his first time buying a house he did not know what the setback line was.

Mr. Campana asked how many bedrooms the house currently has.

Mr. Liechti stated the current house was three bedrooms.

Mr. Rhodes asked if they had a soil test to determine the limitations on relocating the septic tank and drain field.

Mr. Liechti said they had someone come to his house and he was told that because of the non-tidal wetlands on the property if they were to relocate the septic tank and drain field they would have to install an alternative septic system and it would cost upward of \$25,000 to make that change.

Mr. Rhodes asked if they had a reserve drain field.

Mr. Liechti said he did not think so.

Mr. Geib said he had questions for the architect.

Mr. Keith Sobczak the architect for the project came to the podium.

Mr. Geib asked if the addition could be constructed and still meet the required setback.

Mr. Sobczak said he had looked at a couple of options and the overall design would not work that well without matching the front of the existing house and the addition.

Mr. Rhodes made sure the applicant understood that they needed three votes in favor of granting the variance and the Board was missing a member tonight.

Mr. Liechti said he understood.

Mr. Rhodes asked if there was anyone else that wanted to speak.

Ms. Cecile Liechti stated she was the co-applicant and her husband failed to mention that several years ago there was a variance granted just down the road from their house.

Mr. Purse made sure the applicant understood that they could request a deferral until a full Board could hear the case.

Mr. Rhodes asked if staff had any inquiries from the adjacent property owners regarding the application.

Mr. Rhodes closed the public hearing.

Mr. Campana said he would like to see more research done to make sure all other options have been explored before granting the variance.

Mr. Geib stated that he thought the idea was that over time the houses in the area would come into compliance. He suggested rezoning the area so the houses would be in compliance with the setbacks. He said he understood what the architect was trying to achieve, but there are still other options without encroaching into the setback. Mr. Geib said he did not feel that this is an undue hardship.

Mr. Rhodes recalled that in the past there was a similar situation with setbacks along Neighbors Drive and the County decided not to rezone the area. As a result some of the individual homeowners came before the Board requesting variances and they got approved one by one.

Mr. Rhodes asked about the likelihood of rezoning the area.

Mr. Purse explained that these properties along Riverview Road are currently zoned A-1, General Agriculture, located outside the Primary Service Area and designated Rural Lands on the Comprehensive Plan therefore; it is unlikely that staff would support a rezoning of the area.

Mr. Geib asked about the variance that was granted a few years ago in the area.

Mr. Rogerson stated that it was his case and explained that the house was being rehabilitated and most of the house was in the setback. The variance was granted to allow the owner to make improvements to the house.

Mr. Rodgers pointed out that the Board can only approve a variance if it meets the new state code requirements. He said you do not look at precedence, but the facts before you. He stated that the property has a house on it and it is common for families to outgrow their house and have to move. He said it is a three bedroom house with an office after all. He said he cannot find anything that would make him comfortable approving the variance.

Mr. Campana asked if the applicants should have an option to defer the case until a full Board is available.

Mr. Rhodes reopened the public hearing to allow the applicants a chance to defer the case.

Mr. Sobczak stated that when the house was built there were no setbacks, then the setback was 35 feet then it changed to 50 feet and changed again to 100 feet. He said the zoning has changed over time and the problem is that some existing properties do not meet the current requirements and those property owners are stuck. He said it is not fair to the applicants for them to have to move just because they cannot expand their house. He said he feels that when the rules keep changing it is not fair to the property owners who are in this situation.

Mr. Rhodes stated that was a good point.

Mr. Campana said the problem is that when the applicants bought the property the rules were the same as they are today and the setbacks were shown on the plat going through the front of the house.

Mr. Rhodes asked the applicants if they wanted to defer the case.

Ms. Liechti stated that if their lot was nonconforming, under three acres then they would not need the variance since the front setback would be 75 feet from the center of the right-of-way and she feels like it is not fair that making the lot conforming prevents them from moving forward with their plans for expansion.

Ms. Liechti said she wanted to stay in JCC and does not want to move. She said most of the other lots in the area are nonconforming and their front setback is 75 feet instead of 100 feet.

Ms. Liechti said she is pregnant and cannot wait for a full Board to hear the case, so she said they would like to go forward with the vote.

Mr. Rhodes closed the public hearing.

The Board discussed the merits of the case among themselves.

Mr. Geib made a motion to support staffs recommendation which is to deny the variance.

Mr. Rodgers seconded the motion.

Mr. Purse stated for clarity that a yes vote is to deny the variance request.

Mr. Purse proceeded with a roll call vote and the variance request was denied 3-1 with Mr. Rhodes in favor of granting the variance and the other three member's present voted to deny the variance request.

## 2. ZA-0002-20145 4800 Riverview Road

Ms. Costello presented her staff report:

Mr. Raymond Johnson Jr., property owner, has applied for a variance to Section 24-258 (b), Yard Requirements, to reduce the rear yard setback to 22 feet to allow for the continued placement of an existing screen porch. This property is currently zoned R-2, General Residential, and can further be identified as JCC RE Tax Map No. 3240500003.

Mr. Johnson and his mother, Alice Johnson, purchased the home in 1989. The deck was built on the rear of the property in 1990 which encroached into the required 25-foot rear setback in R-3. Mr. Johnson stated that the contractor did not obtain a permit for the deck. The deck was later converted into a screened porch between 2000-2001, which was after the rezoning to R-2. There was also no permit obtained for the conversion. The screened porch is not classified as nonconforming because it was constructed after the rezoning and neither permits nor zoning approvals were given. Mr. Johnson is listed as the sole owner as of 2002. A survey was done on May 21, 2015, as part of an impending sale, and it was at this time that the encroachment was found.

There is also a small shed on the current survey that is shown over the rear property line. That shed was moved and shown in the pictures presented.

The applicant stated to staff that his mother occupied the home while he has resided in North Carolina and he was not aware of this situation until the survey was done in May 2015. The applicant estimates it will cost approximately \$6,000 to remove part of the

screened porch to adhere to the rear setback regulations. He believes that the removal of the porch would prohibit the pending sale and would reduce the value of the home.

Finally, the applicant stated that granting the variance does not appear to be a detriment to the surrounding area. He also feels that due to the recent upgrades it would benefit the surrounding properties.

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 has been met (that 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, the variance is not contrary to the purpose of the ordinance and the variance does not result in a change of use) and that the following criteria are satisfied:

1. The strict application of Chapter 24 of the Code of JCC (the “County Code”) would unreasonably restrict 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
  - a. 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; and
  - b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and
  - c. 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; and
  - d. 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
  - e. 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.

In this case, staff believes the strict application of the Zoning Ordinance would not unreasonably restrict utilization of the property, as the property has been put to use by the existence of a single-family residence. Furthermore, the deck and the screened in porch were built without obtaining permits or County approval and this hardship is viewed as being self-inflicted.

Ms. Costello stated that she will answer any questions that the Board may have.

Mr. Geib noted that the two site plans, one from when the residence was built, and the other from 2015 shows different footprints of the building. There appears to be an extension on the right side of the house. He asked if there was a permit obtained for the change.

Ms. Costello answered the only permit she could locate was the one when the house was originally built.

Mr. Campana mentioned that the survey shows the shed is over the property line.

Ms. Costello stated that the shed has been moved to 5.5 feet off the property line and it is 11 feet from the house, so it meets current zoning regulations.

Mr. Rodgers asked who is responsible for obtaining the proper permits when work is being done on residential properties, the owner or contractor.

Mr. Purse answered that the owner is ultimately responsible in making sure proper permits are obtained.

Mr. Geib mentioned that there are normal procedures for when structures are built without permits, such as safety inspections and having the correct square footage for real estate assessments.

Mr. Purse stated that is why the owner is ultimately responsible since they would be notified of the violation.

Mr. Rhodes opened the public hearing.

Mr. Johnson spoke as the property owner. He felt that the variance he was requesting was reasonable and not extreme. He felt that he is experiencing a hardship in that he is unable to sell this residence with the current circumstances. Other property owners are able to do so. However he did not feel that the strict application of the County Ordinance would unreasonably restrict use of his property.

Mr. Johnson stated that at the time the deck was built he was residing in North Carolina. His mother hired a contractor to do the work and he was under the assumption that the contractor would take care of necessary permits. He has put much work and money into this home in order to sell it. He even chose to do things that were not required to be done. Mr. Johnson has used this contractor for other work on other properties. He showed documentation where the contractor obtained the necessary permits. Therefore he was under the assumption that was his normal procedure and would have obtained them in this case as well.

Mr. Johnson requests that the Board grant his variance with the idea that he is accountable for all the work done and that he will go through the necessary steps to correct everything. He stated that a contractor informed him that in order to correct the setback issue one would need to remove the entire deck and porch since the roof was extended when the porch was done.

Mr. Geib asked Mr. Johnson about the right extension.

Mr. Johnson stated that alterations were done that extended the right portion of the house by the individuals who sold him the property in 1989.

Mr. Campana asked if the contractor was still in business.

Mr. Johnson answered that this individual has passed away.

Mr. Campana asked if any permit was obtained for this extension.

Ms. Costello answered she could not locate any permit in the County files.

Mr. Geib asked if the administrative variance is available for the applicant to obtain.

Mr. Purse answered that the Zoning Administrator has the ability to grant a variance for up to 18 inches, so in this case it would not be available.

Mr. Rodgers noted that the applicant stated that it would cost \$6,000 to correct this, he asked how much the listing price was for the property.

Mr. Johnson stated that the property was listed for \$219,000. He stated that he has had two sales that did not go through because of this situation.

Mr. Rhodes closed the public hearing.

The Board discussed the matter with Mr. Geib initiating the discussion. He stated that he felt that this condition was self-inflicted, although he understood the circumstances surrounding it. He had a conflict in that this application, in that it was for a porch, as opposed to part of the dwelling itself. Mr. Geib felt as though he could not grant a variance.

Mr. Campana appreciated that the applicant has improved the property as well as the applicant not residing at the residence. He felt that it was not the Board's purview to consider the financial implications. Work was performed twice without permits.

Mr. Rodgers stated that there is guidance from a previous zoning that whether a hardship was created intentionally or inadvertently created, ultimately permits are the responsibility of the owner.

Mr. Rhodes felt that the hardship was self-imposed and it occurred twice.

Mr. Rhodes opened the public hearing at the request of Mr. Johnson.

Mr. Johnson stated that he felt that the contractor had some responsibility in obtaining the necessary permits. He felt that this was an open question since he believed the hardship was inadvertently created.

Mr. Rhodes asked Mr. Johnson if he would like to defer the case.

Mr. Johnson appreciated the offer but he would like a decision so that he could move on with the sale of the property.

Mr. Geib stated that he appreciated the narrative that Mr. Johnson gave the Board with definitions of hardship and other terms applicable. He did state however, that some of the legal definitions are different than the definitions presented.

Mr. Geib made a motion to support staff's recommendation which is to deny the variance.

Mr. Campana seconded the motion.

Mr. Purse stated for clarity that a yes vote is to deny the variance request.

Mr. Purse proceeded with a roll call vote and the variance request was denied 4-0.

#### **E. MINUTES - May 7, 2015**

Mr. Rodgers had one grammatical correction.

Mr. Rhodes moved to approve the minutes of the May 7, 2015, meeting as amended.

On a voice vote the minutes for the May 7, 2015, BZA meeting, as amended, were approved 4-0.

**F. OTHER DISCUSSION**

Mr. Purse stated that the new criteria for variances will be included in the Zoning Ordinance. He stated that he will email the Board to let them know when the Policy Committee will begin discussions on it. They are not required to attend, but they can if they want to add to the discussion.

Mr. Geib inquired as to whether the appeal application will be changed to reflect the new criteria. Also he made the suggestion to counsel applicants as to what would be expected of them should they request a variance.

Mr. Purse stated that the application will be changed to add the information so as to better inform applicants and potential applicants.

**G. ADJOURNMENT**

There being no further business Mr. Otey adjourned the meeting at 9 p.m.

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Marvin Rhodes, Vice-Chairman

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Jason Purse, Secretary

**ITEM SUMMARY**

DATE: 1/7/2016

TO:

FROM:

SUBJECT:

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**ATTACHMENTS:**

	Description	Type
▣	Cover Memo	Cover Memo
▣	Minutes 1969	Minutes
▣	Minutes 1970	Minutes
▣	Minutes 1974	Minutes
▣	Minutes 1979	Minutes
▣	Minutes 1982	Minutes
▣	Minutes 1982	Minutes
▣	Minutes 1984	Minutes
▣	Minutes 1985	Minutes
▣	Minutes 1988	Minutes
▣	Minutes 1989	Minutes
▣	Minutes 1991	Minutes
▣	Minutes 1993	Minutes
▣	Minutes 1996	Minutes
▣	Minutes 1997	Minutes
▣	Minutes 1999	Minutes
▣	Minutes 2009	Minutes


**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Purse, Jason	Approved	1/5/2016 - 4:09 PM
Publication Management	Boles, Amy	Approved	1/5/2016 - 4:44 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/6/2016 - 10:33 AM

## MEMORANDUM

DATE: January 7, 2016

TO: The Board of Zoning Appeals

FROM: John Rogerson, Senior Zoning Officer 

SUBJECT: Historic Minutes – Approval

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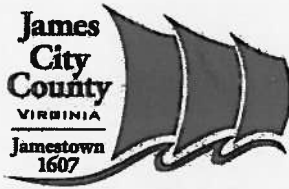
The Records Management Division is in the process of building a public website for all of the historic Board of Zoning Appeals Meeting Minutes. As staff was going through records and minute books, the following meeting minutes (attached for your reference) were found to be missing some of the necessary approvals:

- 06/02/1969, 08/20/1969, 09/03/1969/09/24/1969- Missing an approval date
- 08/05/1970, 10/20/1970, 10/28/1970- Missing an approval date
- 02/06/1974, 04/19/1974, 06/19/1974- Missing an approval date
- 04/04/1979- Missing an approval date
- 11/28/1979- Missing and cannot be reproduced at this time
- 01/28/1982- Typographical error
- 01/28/1982- Missing an approval date
- 01/26/1984- Typographical error
- 06/14/1984- 06/19/1984- Missing and cannot be reproduced at this time
- 08/30/1984- 12/27/1984- Missing an approval date
- 01/24/1985- Missing an approval date
- 02/28/1985- Missing and cannot be reproduced at this time
- 04/28/1988- Missing an approval date
- 07/06/1989- Missing an approval date
- 10/24/1991- Missing an approval date
- 03/25/1993- Missing an approval date
- 09/12/1996- Missing an approval date
- 10/10/1996- Typographical error
- 10/09/1997- Typographical error
- 06/03/1999- Missing an approval date
- 07/01/1999- Typographical error
- 02/05/2009- 08/28/2009, 09/03/2009- Missing an approval date
- 11/05/2009- 12/16/2009- Missing approval signatures

These minutes were either never voted on or presented for approval in the months surrounding those meeting dates, contained a typographical error or are missing and cannot be reproduced at this time. These minutes, to the best of staff's knowledge, are the official minutes of those meetings.

**Recommendation**

Staff recommends the Board of Zoning Appeals adopt the attached minutes into the official record.



## **MEMORANDUM**

**To: Records Management**

**From: Zoning**

**Date: January 7, 2016**

**Re: Board of Zoning Appeals Minutes: June 2, 1969; August 20, 1969;  
September 3, 1969; September 24, 1969**

The following minutes for the Board of Zoning Appeals of James City County dated June 2, 1969; August 20, 1969; September 3, 1969; and September 24, 1969 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the June 2, 1969; August 20, 1969; September 3, 1969; and September 24, 1969 Board of Zoning Appeals meetings. They were **APPROVED** by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for June 2, 1969; August 20, 1969; September 3, 1969; and September 24, 1969.

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

At a public hearing of the James City County Board of Zoning Appeals, held thereof in the Courthouse, in Williamsburg, Virginia, on the second day of June, nineteen hundred and sixty-nine, there were present: MR. GEORGE A. MARSTON, Chairman, MR. MAYO W. WALTRIP,, Vice-Chairman, MR. GERALD H. MEPHAM, Secretary, MR. JOSEPH E. BROWN, and MR. WARFIELD ROBY, JR.

Mr. L. N. Sterling, of Sterling Development Corporation, presented his appeal for a variance stating the following facts:

1. Proposed house to be a model home.
2. Proposed location was designed in 1966 prior to Zoning in James City County.
3. Farmville Estates Subdivision recorded prior to enactment of Subdivision Ordinance which caused undersized lot.
4. Proposed house to sell for approximately \$16,200.
5. The proposed location is the most feasible due to the narrow width of the lot.

Mr. John W. Watkins, Zoning Administrator for James City County, stated Mr. Sterling could not be issued a permit to build without a variance for the following reasons:

1. Mr. Sterling's proposed front setback is 30'. Residential 2 requires 35'.
2. Mr. Sterling's proposed rear yard is 20'. Residential 2 zoning requires 35'.

The following interested citizens presented their views concerning the variance request.

Mrs. Kenneth Bick: "Nice house, but he did not have a building permit."

Mrs. Belle Everett: "The front is in the front and that is that."

Mr. M. W. Bryant: "The house is not in keeping with the area. Variances should be kept at a minimum."

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Mr. Sterling reaffirmed his position and requested the variance be granted.

The Board informed Mr. Sterling they would reach their decision within thirty (30) days.

The Board adjourned the public hearing and went into Executive session.

After a lengthy discussion, a roll call vote was taken to grant the variances to Mr. Sterling. The following vote is recorded:

Mr. Marston	-	Yea
Mr. Waltrip	-	Nay
Mr. Mephram	-	Nay
Mr. Brown	-	Yea
Mr. Roby	-	Yea

The following reasons were given for granting the variance:

1. The 30' front setback was not a serious violation as existing dwellings in area have a 30' setback.
2. The proposed location of the dwelling on the lot in question was best suited for both the dwelling and the lot.

There being no further business, the meeting was adjourned.

Gerald H. Mephram  
Gerald H. Mephram, Secretary

George A. Marston  
George A. Marston, Chairman

At a Public Hearing of the James City County Board of Zoning Appeals, held thereof in the Courthouse, Williamsburg, Virginia, on the twentieth day of August, nineteen hundred and sixty-nine, there were present: MR. GEORGE A. MARSTON, Chairman, MR. MAYO W. WALTRIP, Vice-Chairman, MR. GERALD H. MEPHAM, Secretary, MR. JOSEPH E. BROWN, AND MR. WARFIELD ROBY, JR.

Mr. Hooker of Winston Corporation, presented his appeal for a variance stating the following facts:

1. Due to Health Department requirements for a septic tank, the proposed single family dwelling, to be located on lot 54 would have to be placed in part of the rear yard, therefore, violating the Zoning Ordinance.
2. Even though the proposed dwelling would be near the rear property line, the closest dwelling which it would be located near would be 85' distance.
3. As all of the dwellings adjoining this lot are owned by the Winston Corporation, no citizen would be encroached upon without prior knowledge of the location of this dwelling.

Mr. John W. Watkins, Zoning Administrator for James City County stated Winston Corporation could not be issued a permit to build without a variance for the following reason:

1. Winston Corporations proposed rear yard is 20'.

Residential 2 zoning requires 35'.

Further, Mr. Watkins stated that the property line of the lot in question was the center of a open storm sewer with an open ditch of at least 15'. This would cause the

proposed dwelling to be 15' or less from the top of the ditch.

Mr. Hooker reaffirmed the position of Winston Corporation and requested the variance be granted.

The Board informed Mr. Hooker they would reach their decision within thirty (30) days.

The Board adjourned the Public Hearing and went into Executive Session.

After a general discussion, a roll call vote was taken to grant the variance to Winston Corporation. The following vote is recorded:

Mr. Marston	-	Yea
Mr. Waltrip	-	Yea
Mr. Mephram	-	Yea
Mr. Brown	-	Yea
Mr. Roby	-	Yea

The following reasons were given for granting the variance:

1. A hardship does exist due to the required location of the septic lines.
2. The Health Department apparently had no objection to the dwelling being located near the open storm sewer.
3. All adjoining property is owned by Winston Corporation, thus causing no hardships to other citizens at this time.

There being no further business, the meeting was adjourned.

G. H. Mephram  
Mr. Gerald H. Mephram, Secretary

G. A. Marston  
Mr. George A. Marston, Chairman

At a Public Hearing of the James City County Board of Zoning Appeals, held there of in the Courthouse, Williamsburg, Virginia, on the third day of September, nineteen hundred and sixty-nine, there were present: MR. GEORGE A MARSTON, Chairman, MR. MAYO W. WALTRIP, Vice-Chairman, MR. GERALD H. MEPHAM, Secretary, MR. JOSEPH E. BROWN, and MR. WARFIELD ROBY, JR.

There was no representative from Ewell Hall Corporation. However, Mr. David J. Morrison, the proposed owner of the lot and dwelling in question stated the following:

1. He has had a contract on the dwelling since November, 1968, but due to unforeseen problems has been unable until now to begin construction.

2. His concern for the location of the dwelling in violation of the Zoning Ordinance was because of dwellings already located in the area in the same fashion.

3. He hopes to begin construction as soon as possible.

Mr. John W. Watkins, Zoning Administrator for James City County stated Ewell Hall Corporation could not be issued a permit to build without a variance for the following reason:

1. Ewell Hall Corporation's proposed rear yard is 12': Residential 3 Zoning requires 25'.

Mr. Morrison reaffirmed his position.

The Board informed Mr. Morrison, they would reach their decision within the week.

The Board adjourned the hearing and went into Executive Session.

After a general discussion, a roll call vote was taken to grant the variance to Ewell Hall Corporation. The following vote is recorded:

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Mr. Marston - Yea  
Mr. Waltrip - Yea  
Mr. Mephram - Yea  
Mr. Brown - Yea  
Mr. Roby - Nay

The following reasons were given for granting the variance:

1. The proposed location does conform to the area.
2. The owners of adjacent property had no complaints.

There being no further business, the meeting was adjourned.

G. H. Mephram  
Gerald H. Mephram, Secretary

G. A. Marston  
George A. Marston, Chairman

At a Public Hearing of the James City County Board of Zoning Appeals, held thereof in the Courthouse, Williamsburg, on the twenty-fourth day of September, nineteen hundred and sixty-nine, there were present: MR. GEORGE A. MARSTON, Chairman, MR. MAYO W. WALTRIP, Vice-Chairman, MR. GERALD H. MEPHAM, Secretary, and MR. WARFIELD ROBY, JR.

Mr. K. W. Godsey, owner of Lot 25, Section 1, Chickahominy Haven, stated the following:

1. It was his desire to construct a single family dwelling comparable to others adjacent to his lot. Due to the narrow width of his lot, a variance is necessary to allow construction.
2. He had received signed statements from adjacent property owners reflecting their feelings that they approved of his request.

After a general discussion, a roll call vote was taken to grant the variance to Mr. Godsey: the following vote is recorded:

Mr. Marston	-	Yea
Mr. Waltrip	-	Yea
Mr. Mepham	-	Yea
Mr. Roby	-	Yea

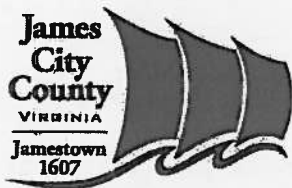
The following reasons were given for granting the variance:

1. A hardship exists due to the narrow width.
2. There were no objections to granting the variance.

There being no further business, the meeting was adjourned.

Gerald H. Mepham  
Gerald H. Mepham, Secretary

George A. Marston  
George A. Marston, Chairman



## **MEMORANDUM**

**To: Records Management**

**From: Zoning**

**Date: January 7, 2016**

**Re: Board of Zoning Appeals Minutes: August 5, 1970; October 20, 1970; and October 28, 1970**

The following minutes for the Board of Zoning Appeals of James City County dated August 5, 1970; October 20, 1970; and October 28, 1970 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the August 5, 1970; October 20, 1970; and October 28, 1970 Board of Zoning Appeals meetings. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for August 5, 1970; October 20, 1970; and October 28, 1970

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

At a public hearing of the James City County Board of Zoning Appeals, held thereof in the Courthouse, Williamsburg, Virginia, on the fifth day of August, nineteen hundred and seventy, there were present: MR. GEORGE A. MARSTON, Chairman, MR. MAYO W. WALTRIP, Vice-Chairman, MR. GERALD H. MEPHAM, Secretary and MR. JOSEPH E. BROWN.

The minutes of the previous meeting were read and approved.

RE: PUBLIC HEARING - GRACE BAPTIST CHURCH

Mr. Roy Caua, representing the owners stated the following:

1. The size of the proposed addition would violate the required front yard.
2. Due to shape of existing lot and location of existing building the only proper plan of development necessitates violating front yard requirements.
3. Additional land has been purchased to serve as parking area. One of the existing parking areas is where the proposed addition would be located.

Mr. Watkins, Zoning Administrator, advised that a variance is needed due to front yard requirements if the proposed addition is located where shown on site plan submitted.

After a general discussion the following motion was presented:

On a motion by Mr. Mepham, Seconded by Mr. Brown and passed by a unanimous vote, the Board of Zoning Appeals of James City County, hereby grants a variance of seven (7) feet from the front yard requirement of thirty-five (35) feet, to allow Grace Baptist Church to add an addition to an existing church at 701 Coleman Drive.

Further, the following reasons are given for granting the variance:

1. A hardship exists due to shape of existing lot and location of existing building.
2. No public objections.
3. Ample parking will be provided for existing and proposed structure.

RE: ELECTION OF OFFICERS

Following a general discussion the following motion was presented:

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On a motion by Mr. Waltrip, seconded by Mr. Brown, the Board of Zoning Appeals of James City County, hereby tables the election of officers until the first meeting all members are present.

RE: APPEAL OF ADMINISTRATIVE DECISION - THE CEDARS ESTATES

A public hearing date was set for August 26, 1970 at 8:00 P. M.

There being no further business, the meeting was adjourned.

Gerald H. Mephah  
Gerald H. Mephah, Secretary

George A. Marston  
George A. Marston, Chairman

At a special meeting of the James City County Board of Zoning Appeals, held thereof in the Courthouse, Williamsburg, Virginia, on the twentieth day of October, nineteen hundred and seventy, there were present: MR. GEORGE A. MARSTON, Chairman, MR. MAYO W. WALTRIP, Vice-Chairman, MR. GERALD H. MEPHAM, Secretary, MR. JOSEPH E. BROWN, and MR. WARFIELD ROBY, JR.

Minutes of the August 26, 1970, meeting were read and approved.

There being no further business, the meeting was adjourned.

Gerald H. Mepham  
Gerald H. Mepham, Secretary

George A. Marston  
George A. Marston, Chairman

At a public hearing of the James City County Board of Zoning Appeals, held thereof in the Courthouse, Williamsburg, Virginia, on the twenty-eighth of October, nineteen hundred and seventy, there were present: MR. GEORGE A. MARSTON, Chairman, MR. MAYO W. WALTRIP, VICE-Chairman, MR. GERALD H. MEPHAM, Secretary, and MR. WARFIELD ROBY, JR.  
RE: PUBLIC HEARING - J. P. YANCEY

Mr. Russell Carneal, representing the applicant, advised that a building permit had been issued to Mr. Yancey for construction of a single family dwelling on Lot 88 Section D, Druid Hills Subdivision on May 26, 1970, and that upon completion of the dwelling, Mr. Yancey's engineer surveyed the house on the lot and found it to be 6.6 feet in violation of Section 4-3 of the James City Zoning Ordinance. Mr. Carneal further stated that this violation was due to an error in initial field layout of the dwelling.

Mr. Watkins, Zoning Administrator, concurred with Mr. Carneal's statements.

Mr. George Douglas stated that not only was the dwelling in violation of setback regulations, it was started without a permit and was not built in the best interest of good construction.

Mr. Emerick Fisher stated that a variance was being sought after the fact and that a law breaker should not come to the law for a variance. Mr. Fisher stated he felt Mr. Yancey had disregard for the law and should be familiar with local requirements.

Mr. Watkins informed the Board that Mr. Yancey had begun construction without having first obtaining a permit, but upon being informed of the Zoning requirement, applied for and obtained a permit the day after verbal warning had been rendered.

Mr. Kenton Patrick, engineer for Yancey, stated that his office had a copy of the County's Zoning Ordinance, but that when his crew laid out the dwelling they did not have the Ordinance with them on the site.

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Mr. Marston directed a short recess.

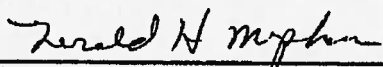
Upon reconvening the meeting the following was presented:


On a motion by Mr. Waltrip, seconded by Mr. Roby and passed by a unanimous vote, the Board of Zoning Appeals of James City County hereby defers action on the appeal of J. P. Yancey until a full membership can be present to vote.

RE: MINUTES

The minutes of the previous meeting were read and approved.

There being no further business, the meeting was recessed to reconvene: at the call of the Chairman.

  
- Gerald H. Mepham, Secretary

  
George A. Marston, Chairman



## **MEMORANDUM**

**To: Records Management**

**From: Zoning**

**Date: January 7, 2016**

**Re: Board of Zoning Appeals Minutes: February 6, 1974; April 19, 1974; and June 19, 1974**

The following minutes for the Board of Zoning Appeals of James City County dated February 6, 1974; April 19, 1974; and June 19, 1974 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the February 6, 1974; April 19, 1974; and June 19, 1974 Board of Zoning Appeals meetings. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for February 6, 1974; April 19, 1974; and June 19, 1974.

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

At a regular meeting of the Board of Zoning Appeals held thereof in the Courthouse, Williamsburg, Virginia, on the sixth day of February, nineteen hundred and seventy-four, there were present: MR. GEORGE MARSTON, Chairman, MRS. ELIZABETH VAIDEN, Secretary; MR. GERALD MEPHAM and MR. WARFIELD ROBY, JR.

RE: MINUTES

The minutes of the meeting of October 24, 1973, were read and approved.

RE: UNFINISHED BUSINESS

None

RE: HEARING OF CASES

RE: CASE #ZA-1-74--CARL ASHE

Mrs. Ashe spoke for this variance explaining that after having had a survey done of the property, the variance required amounted to 2½ feet rather than 5 feet as previously requested.

RE: CASE #ZA-2-74--LUCY ANN TAYLOR

Mrs. Taylor explained that she and her husband owned an acre and a quarter of land, however, it was too narrow for the house they proposed to build. A variance was requested for 1'8" to allow a forty foot house to be built on the lot which is 63'4" wide.

RE: CASE #ZA-3-74--BETTER BUY BUILDERS

Mr. J.R. Zepkin presented the plans for the proposed use of the building in Toano. He explained that with the current restrictions of the B-1 zone and the manner in which the property is situated, his client had very little

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property to develop. It was also noted that when additional right-of-way had been secured for Route 60, this property had lost over one-half of the total area.

RE: CASE #ZA-4-74--BONANZA SIRLOIN PIT

Mr. Tom Wood explained that the sign for Bonanza measured 33.69 square feet and a variance would be needed for 1.69 square feet. Mr. Wood also explained that to cast a new mold for a 32 square foot sign would cost approximately \$5,000.

RE: NEW BUSINESS

RE: CONSIDERATION OF CASE #ZA-1-74

Upon motion by Mr. Mephram, seconded by Mrs. Vaiden and passed unanimously a variance is hereby granted Carl P. Ashe to allow construction of a dwelling into the required side yard of his property.

RE: CONSIDERATION OF CASE #ZA-2-74

Upon motion by Mr. Mephram, seconded by Mr. Roby and passed unanimously, a variance is hereby granted to Lucy Ann Taylor to allow construction of a dwelling into the required side yard of her property.

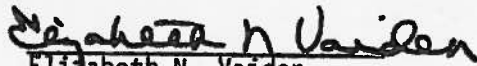
RE: CONSIDERATION OF CASE #ZA-3-74

Upon motion by Mr. Mephram, seconded by Mrs. Vaiden and passed unanimously a variance is granted for parking spaces, open space requirements and setback regulations provided the site is developed in accordance with an approved site plan.

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RE: CONSIDERATION OF CASE #ZA-4-74

After general discussion and comments as to whether a precedent would be set which allowed oversize signs, Mr. Mephram moved that the variance be granted. This was seconded by Mrs. Vaiden and passed unanimously.

  
Elizabeth N. Vaiden  
Secretary

  
George A. Marston  
Chairman

At a regular meeting of the Board of Zoning Appeals of James City County held in the Courthouse, Williamsburg, Virginia on the third day of April, nineteen hundred and seventy-four, there were present: MR. GEORGE MARSTON, Chairman; MR. GERALD MEPHAM and MR. WARFIELD ROBY, JR.

RE: MINUTES

The minutes of the meeting of March 27, 1974, were approved as read.

RE: UNFINISHED BUSINESS

None

RE: HEARING OF CASES

RE: CASE #ZA-6-74--D.S. WALTRIP

Mr. Neil Frank presented the case for Mr. Waltrip, explaining that there now exist 85 lots in the Green Springs Mobile Home Park and Mr. Waltrip is proposing an addition of 65 lots for a total of 150. The 85 lots are now on septic tanks.

Mr. Frank indicated he had spoken with Mr. Johnson of the Service Authority in November about the possibility of getting public sewerage for the park. Mr. Johnson told Mr. Frank that the property was outside the project area and that if they ever got approval to expand the area he would then consider the possibility. As it is now, the population is too sparse to justify a sewer line along Rt. 614.

Mr. Frank told the Board that he had asked Mr. Johnson if they could connect to the First Colony Interceptor if they ran a line to get to it. Mr. Johnson then told Mr. Frank that the trailer park would be using all of the diameter of the interceptor and no one else could hook up. Since the Service Authority hadn't anticipated extra connections, this would not be possible.

Mr. Frank indicated it would cost approximately \$97,000 for septic tanks for 65 lots.

Mr. Marston said he felt this would be a waste of \$100,000 that could be used to defray the cost of building the sewer line.

Mr. Frank replied that Mr. Johnson and Mr. Bazzle of the Health Department had discussed the matter and concluded that septic tanks would be better for this area at the present time.

Mr. Mephram said that he didn't think it was in the Board's jurisdiction to grant a variance in this case.

Mr. Frank asked what his next step would be if the Board did not act on this matter.

Mr. Marston replied that he should try and renegotiate with Mr. Johnson to see if they might be able to come up with something and when they needed an answer, to come before the Board and the Board would act upon the request.

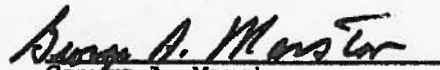
Mr. Mephram added that the legal step would be to take it to court and have the judge decide.

Mr. Marston asked Miss Sturgeon to check with the County Attorney regarding this appeal to see if it was, in his opinion, a legitimate case for the Board of Zoning Appeals.

Mr. Mephram moved that a decision be deferred on this matter until the next meeting in hopes that more information would be available. This was seconded by Mr. Roby and passed unanimously.

RE: ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned.

  
George A. Marston  
Chairman

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At a special meeting of the Board of Zoning Appeals held in the Courthouse, Williamsburg, Virginia on the twelfth day of June, nineteen hundred and seventy-four, there were present: MR. JOSEPH BROWN, Vice chairman; MRS. ELIZABETH VAIDEN, Secretary; MR. GERALD MEPHAM and MR. WARFIELD ROBY, JR.

RE: OLD BUSINESS

CASE #ZA-6-74--D.S. WALTRIP

Mr. Joseph Phillips explained Mr. Waltrip's request restating that the Health Department has assured Mr. Waltrip that septic tanks can be adequately used in this area.

Mr. Phillips also told the Board that a 1.5 mile sewer line and the pumping station that would have to be built would cost approximately \$300,000 whereas the septic system would cost approximately \$30,000. Mr. Phillips also stated that Mr. Waltrip knows he will have to hook up to the public sewer line when it is available and is willing to risk taking the chance that it will not be available for some time.

Mr. Phillips explained that the front half of the property being developed as a mobile home park leaves the back half virtually useless. There are steep ravines on either side of the property that discourages adjacent property owners from buying the property.

Mr. Phillips also indicated that the development of the rear portion would not be detrimental to adjacent property as all additional development would be in the rear and thus be no more obvious than what currently exists.

Mr. Mephram moved to deny the requested variance because it is not a hardship on the property owner not shared by adjacent property owners proposing the same development and because denying the variance does not amount to confiscation. This was seconded by Mr. Roby.

Discussion on the motion followed with Mr. Phillips contending that the confiscation was occurring by disallowing the use, not by the government coming in and taking the land. He further explained that at the present time 58% of the land has been developed with approximately 25% being developed before the zoning amendment.

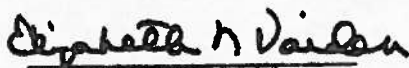
The question was called for resulting in the passage of the motion by a vote of two for the motion and one abstention. The acting chairman did not vote.

RE: ELECTION OF OFFICERS

Mr. Mephram moved that the same slate of officers be kept for another year. This was seconded by Mr. Brown and passed unanimously.

RE: ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned.

  
Elizabeth N. Vaiden  
Secretary

  
Joseph E. Brown  
Vice Chairman



## **MEMORANDUM**

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: November 28, 1979

The following minutes for the Board of Zoning Appeals of James City County dated November 28, 1979 are acknowledged to be missing and cannot be reproduced at this time.

It is also acknowledged that the November 28, 1979 minutes, were voted on and approved and may be mentioned in later dated minutes of Board of Zoning Appeals.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*



## **MEMORANDUM**

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: April 4, 1979

The following minutes for the Board of Zoning Appeals of James City County dated April 4, 1979 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the April 4, 1979 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for April 4, 1979.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

AT A RECONVENED MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD IN THE COURTHOUSE, WILLIAMSBURG, VIRGINIA, ON THE FOURTH DAY OF APRIL, NINETEEN HUNDRED AND SEVENTY-NINE.

1. ROLL CALL

Mr. George A. Marston, Chairman  
Mr. Joseph E. Brown  
Mr. Gerald H. Mephram  
Mrs. Elizabeth N. Vaiden

OTHERS:

Mr. W. C. Porter, Jr.  
Mr. H. H. Stephens

2. CASE NO. ZA-2-79. CONSIDERATION OF AN APPLICATION OF Mr. Key Compton and Mr. Mark Shields for variances of Section 20-38 and 20-40, Paragraph B of the Zoning Ordinance to allow the relocation of the dwelling on a nonconforming lot.

Mr. Stephens explained that Mr. Compton had informed the staff that he felt he could locate the dwelling on the lot by turning it sideways. Such a location would not require variances and the applicant had requested that his application be withdrawn.

The Board accepted Mr. Compton's request to withdraw his application.

3. ELECTION OF OFFICERS

Mr. Marston turned the chair over to Mr. Stephens for the election of officers.

Mr. Stephens called for nominations for Chairman.

Upon a motion by Mr. Marston, seconded by Mr. Brown, Mr. Mephram was nominated for Chairman of the Board of Zoning Appeals.

Upon a motion by Mr. Marston, seconded by Mrs. Vaiden, the nominations for Chairman were closed and Mr. Mephram was elected by acclamation.

Mr. Stephens called for nominations for Vice-chairman.

Upon a motion by Mr. Mephram, seconded by Mr. Marston, Mr. Brown was nominated for Vice-chairman.

Upon a motion by Mr. Mephram, seconded by Mr. Marston, the nominations were closed for Vice-chairman and Mr. Brown was elected by acclamation.

Mr. Stephens opened the floor for nominations for Secretary.

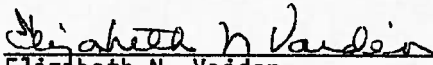
Upon a motion by Mr. Mephram, seconded by Mr. Marston, Mrs. Vaiden was renominated for Secretary.

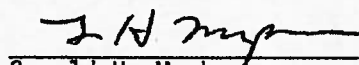
Upon a motion by Mr. Marston, seconded by Mr. Mephram, the nominations for secretary were closed and Mrs. Vaiden was re-elected by acclamation.

Mr. Stephens turned the chair over to the Chairman, Mr. Mephram.

4. ADJOURNMENT

Upon a motion by Mr. Brown, seconded by Mr. Marston, the Board of Zoning Appeals was adjourned at 8:30 P.M.

  
Elizabeth N. Vaiden  
Secretary

  
Gerald H. Mephram  
Chairman

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD IN THE COURTHOUSE, WILLIAMSBURG, VIRGINIA, ON THE FIFTH DAY OF MARCH, NINETEEN HUNDRED AND EIGHTY.

1. ROLL CALL

Mr. Gerald H. Mephram, Chairman  
Mrs. Elizabeth Vaiden  
Mr. Joseph E. Brown  
Mr. Warfield Roby, Jr.  
Mr. George A. Marston

OTHERS:

Mr. William Porter, Jr.  
Mr. Michael Tompkins

2. MINUTES

Upon a motion by Mr. Marston, seconded by Mr. Roby, the minutes of the November 28, 1979 meeting were approved as presented.

3. CASE NO. ZA-1-80. CONSIDERATION OF AN APPLICATION of Mr. A. W. Durant for a variance to Section 20, Paragraph 2 of the Zoning Ordinance to allow placing a mobile home on property presently occupied by four nonconforming mobile homes.

Mr. Tompkins presented the staff report which is appended hereto.

Mr. Mephram opened the public hearing for Case No. ZA-1-80. There being no one wishing to speak, the public hearing was closed.

Upon a motion by Mr. Marston, seconded by Mrs. Vaiden, the Board of Zoning Appeals voted unanimously to approve Case No. ZA-1-80.

4. CASE NO. ZA-2-80. CONSIDERATION OF AN APPLICATION of Mr. Nelson G. Ellis, on behalf of Newport News Savings and Loan Association, for a variance to Section 20, Paragraph 133a of the Zoning Ordinance to allow an intermittent illuminated sign displaying time and temperature.

Mr. Tompkins presented the staff report which is appended hereto.

Mr. Porter explained that this is the first test of the Sign Ordinance inasmuch as this type of sign does not neatly fit the definition of a flashing sign. He further stated that the Board's decision would serve as a precedent for similar future cases.

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Mr. Mephram opened the public hearing for Case No. ZA-2-80.

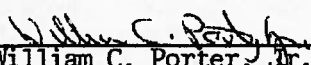
Mr. Jerry Hogge spoke in support of the request stating that such a sign would be a community service by making passers-by aware of the time and temperature. He also stated that C & P Telephone Company informed him that they have received over one million calls during 1979 for time and temperature.


There being no one else wishing to speak, the public hearing was closed.

Upon a motion by Mr. Marston, seconded by Mr. Brown, the Board of Zoning Appeals voted unanimously to approve Case No. ZA-2-80.

5. ADJOURNMENT

There being no further business, the March 5, 1980 meeting of the James City County Board of Zoning Appeals was adjourned at 7:50 P.M.

  
\_\_\_\_\_  
William C. Porter, Jr.  
Secretary to the Board of Zoning Appeals

  
\_\_\_\_\_  
Gerald H. Mephram, Chairman



## **MEMORANDUM**

**To: Records Management**  
**From: Zoning**  
**Date: January 7, 2016**  
**Re: Board of Zoning Appeals Minutes: January 28, 1982**

The following minutes for the Board of Zoning Appeals of James City County dated January 28, 1982 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the January 28, 1982 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

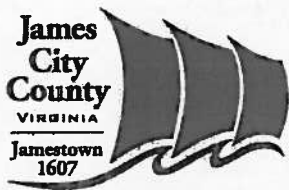
Please accept these minutes as the official record for January 28, 1982.

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**David Otey**  
*Chairman*

---

**Jason Purse**  
*Secretary*



## **MEMORANDUM**

**To:** Records Management

**From:** Zoning

**Date:** January 7, 2016

**Re:** Board of Zoning Appeals Minutes: January 28, 1982 approving November 25, 1981

This memo serves to acknowledge a typo in the January 28, 1982 Board of Zoning Appeal minutes of James City County.

**Section 2. Minutes.**

The date of minutes listed for approval is November 25, 1982. These minutes should actually be November 25, 1981.

Please accept this correction into the official record with the minutes.

---

David Otey  
*Chairman*

---

Jason Purse  
*Secretary*

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD IN THE COURTHOUSE, WILLIAMSBURG, VIRGINIA, ON THE TWENTY-EIGHTH DAY OF JANUARY, NINETEEN HUNDRED AND EIGHTY-TWO.

1. ROLL CALL

Mr. Gerald H. Mephram, Chairman  
Mr. Joseph E. Brown  
Mr. Warfield Roby, Jr.  
Ms. Elizabeth N. Vaiden

OTHERS:

Mr. William C. Porter, Jr.  
Mr. Allen J. Murphy, Jr.

2. MINUTES

Upon a motion by Mr. Brown, seconded by Ms. Vaiden, the minutes of the November 25, 1982 meeting were approved as presented.

5. CASE NO. ZA-14-81. A PUBLIC HEARING TO CONSIDER AN APPLICATION  
of Mr. James T. Wood, on behalf of Mr. James R. Deal, for a variance from Section 20-56(d), Height Limits, of the Zoning Ordinance. The purpose of this variance is to allow an accessory building which exceeds the main structure in height, and which exceeds the maximum one story height limit to remain.

Mr. Murphy presented the staff report.

Mr. Porter emphasized that during the time that the permit was issued the Planning Department and Building Inspections Department were not as coordinated as they are now.

Mr. Mephram opened the public hearing on Case No. ZA-14-81.

Mr. John R. Fletcho of Toano spoke in support of Mr. Deal's request.

Mr. Dwight Dansby standing in for Mr. James T. Wood, spoke on behalf of Mr. Deal. Mr. Dansby emphasized that Mr. Deal did everything possible to seek guidance and to comply with the Building Inspections codes. He also stated that this was not a self inflicted hardship.

Mr. Mel Bryant stated that he had no objections to the structure remaining.

Mr. Creek spoke in support of Mr. Deal's request.

Mr. Jim Deal spoke in reference to his request.

There being no further speakers, Mr. Mephram closed the public hearing on Case No. ZA-14-81.

Upon a motion by Mr. Brown, seconded by Mrs. Vaiden, the request for a variance for Case No. ZA-14-81 was granted.

6. CASE NO. ZA-15-81. A PUBLIC HEARING TO CONSIDER AN APPLICATION of Mr. Jesse M. Hilton, Jr., for a variance from Section 20-65(d), Height Limits, of the Zoning Ordinance. The purpose of this variance is to allow an accessory building which exceeds the main structure in height, and which exceeds the maximum one story height limit to remain.

Mr. Murphy presented the staff report which is appended hereto.

Mr. Mephram opened the public hearing for Case No. ZA-15-81.

Mr. Hilton spoke in reference to his request.

There being no further speakers, Mr. Mephram closed the public hearing on Case No. ZA-15-81.

Upon a motion by Mr. Roby, seconded by Mr. Brown, the request for a variance for Case No. ZA-15-81 was granted.

3. CASE NO. ZA-12-81. A PUBLIC HEARING TO CONSIDER AN APPLICATION of Mr. Philip O. Richardson for a variance to Section 20-84 of the Zoning Ordinance to allow the construction of additions to the Sheraton Patriot Inn within the required 50' setback from Patriot Lane.

Mr. Porter presented the staff report which is appended hereto.

Mr. Brown asked why was this case a hardship.

Mr. Porter stated that Mr. Richardson did not bring this situation upon himself.

Mr. Mephram opened the public hearing on Case No. ZA-12-81.

There being no speakers, Mr. Mephram closed the public hearing on Case No. ZA-12-81.

Upon a motion by Mr. Brown, seconded by Mr. Roby, the variance for Case No. ZA-12-81 was granted.

4. CASE NO. ZA-13-81. MR. SAMUEL POWELL, ON BEHALF OF MOUNT Pleasant Associates, has requested that the above referenced case be deferred for a ninety (90) day period.

Mr. Porter presented the staff memorandum.

Mr. Mephram asked whether or not the case would have to be re-advertised if the deferral was granted.

Mr. Porter replied that it would, and the adjacent property owners would also be notified again.

Mr. Mephram asked if Mr. Powell would be required to pay an additional fee.

Mr. Porter stated that he would not.

Mr. Porter also stated that the first deferral is usually approved.

Mr. Porter stated that the staff has notified Mr. Powell that the staff has recommended denial of this case, and that Mr. Powell was looking for other ways to handle the situation.

Mr. Murphy stated that Mr. Powell's request is to subdivide a development which he has an approved site plan for.

Mr. Brown asked whether Mr. Powell is still building while negotiating.

Mr. Porter stated that he was and at his own risk.

Mr. Mephram asked what would happen if he came back after 90 days with a violation. He also stated that it seemed that Mr. Powell is in strict violation by continuing his construction.

Mr. Mephram requested that this discussion be recorded in the minutes.

Mr. Porter stated that he would inform Mr. Powell of this discussion.

7. MATTERS OF SPECIAL PRIVILEGE

Mr. Mephram asked Mr. Porter if he felt that the Building Inspections Department is geared now such that there would be fewer of these violations.

Mr. Porter stated that the department was doing two things now; one: at the time of the footings, the yard requirements are checked to insure compliance with the Zoning Ordinance; and second: the building inspectors are looking at the plans to make sure that it is a one story building and it is not a verbal okay for a second story building being constructed.

Mr. Mephram stated that the building inspectors should be more careful.

8. ADJOURNMENT

There being no further business, the January 28, 1982 meeting of the Board of Zoning Appeals was adjourned at 8:30 P.M.

Elizabeth N. Vaiden  
Elizabeth N. Vaiden  
Secretary

Gerald H. Mephan  
Gerald H. Mephan  
Chairman



## **MEMORANDUM**

**To: Records Management**  
**From: Zoning**  
**Date: January 7, 2016**  
**Re: Board of Zoning Appeals Minutes: January 28, 1982**

The following minutes for the Board of Zoning Appeals of James City County dated January 28, 1982 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the January 28, 1982 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for January 28, 1982.

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**David Otey**  
*Chairman*

---

**Jason Purse**  
*Secretary*



## **MEMORANDUM**

**To:** Records Management

**From:** Zoning

**Date:** January 7, 2016

**Re:** Board of Zoning Appeals Minutes: January 28, 1982 approving November 25, 1981

This memo serves to acknowledge a typo in the January 28, 1982 Board of Zoning Appeal minutes of James City County.

**Section 2. Minutes.**

The date of minutes listed for approval is November 25, 1982. These minutes should actually be November 25, 1981.

Please accept this correction into the official record with the minutes.

---

David Otey  
*Chairman*

---

Jason Purse  
*Secretary*

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD IN THE COURTHOUSE, WILLIAMSBURG, VIRGINIA, ON THE TWENTY-EIGHTH DAY OF JANUARY, NINETEEN HUNDRED AND EIGHTY-TWO.

1. ROLL CALL

Mr. Gerald H. Mephram, Chairman  
Mr. Joseph E. Brown  
Mr. Warfield Roby, Jr.  
Ms. Elizabeth N. Vaiden

OTHERS:

Mr. William C. Porter, Jr.  
Mr. Allen J. Murphy, Jr.

2. MINUTES

Upon a motion by Mr. Brown, seconded by Ms. Vaiden, the minutes of the November 25, 1982 meeting were approved as presented.

5. CASE NO. ZA-14-81. A PUBLIC HEARING TO CONSIDER AN APPLICATION  
of Mr. James T. Wood, on behalf of Mr. James R. Deal, for a variance from Section 20-56(d), Height Limits, of the Zoning Ordinance. The purpose of this variance is to allow an accessory building which exceeds the main structure in height, and which exceeds the maximum one story height limit to remain.

Mr. Murphy presented the staff report.

Mr. Porter emphasized that during the time that the permit was issued the Planning Department and Building Inspections Department were not as coordinated as they are now.

Mr. Mephram opened the public hearing on Case No. ZA-14-81.

Mr. John R. Fletcho of Toano spoke in support of Mr. Deal's request.

Mr. Dwight Dansby standing in for Mr. James T. Wood, spoke on behalf of Mr. Deal. Mr. Dansby emphasized that Mr. Deal did everything possible to seek guidance and to comply with the Building Inspections codes. He also stated that this was not a self inflicted hardship.

Mr. Mel Bryant stated that he had no objections to the structure remaining.

Mr. Creek spoke in support of Mr. Deal's request.

Mr. Jim Deal spoke in reference to his request.

There being no further speakers, Mr. Mephram closed the public hearing on Case No. ZA-14-81.

Upon a motion by Mr. Brown, seconded by Mrs. Vaiden, the request for a variance for Case No. ZA-14-81 was granted.

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Mr. Murphy presented the staff report which is appended hereto.

Mr. Mephram opened the public hearing for Case No. ZA-15-81.

Mr. Hilton spoke in reference to his request.

There being no further speakers, Mr. Mephram closed the public hearing on Case No. ZA-15-81.

Upon a motion by Mr. Roby, seconded by Mr. Brown, the request for a variance for Case No. ZA-15-81 was granted.

3. CASE NO. ZA-12-81. A PUBLIC HEARING TO CONSIDER AN APPLICATION of Mr. Philip O. Richardson for a variance to Section 20-84 of the Zoning Ordinance to allow the construction of additions to the Sheraton Patriot Inn within the required 50' setback from Patriot Lane.

Mr. Porter presented the staff report which is appended hereto.

Mr. Brown asked why was this case a hardship.

Mr. Porter stated that Mr. Richardson did not bring this situation upon himself.

Mr. Mephram opened the public hearing on Case No. ZA-12-81.

There being no speakers, Mr. Mephram closed the public hearing on Case No. ZA-12-81.

Upon a motion by Mr. Brown, seconded by Mr. Roby, the variance for Case No. ZA-12-81 was granted.

4. CASE NO. ZA-13-81. MR. SAMUEL POWELL, ON BEHALF OF MOUNT Pleasant Associates, has requested that the above referenced case be deferred for a ninety (90) day period.

Mr. Porter presented the staff memorandum.

Mr. Mephram asked whether or not the case would have to be re-advertised if the deferral was granted.

Mr. Porter replied that it would, and the adjacent property owners would also be notified again.

Mr. Mephram asked if Mr. Powell would be required to pay an additional fee.

Mr. Porter stated that he would not.

Mr. Porter also stated that the first deferral is usually approved.

Mr. Porter stated that the staff has notified Mr. Powell that the staff has recommended denial of this case, and that Mr. Powell was looking for other ways to handle the situation.

Mr. Murphy stated that Mr. Powell's request is to subdivide a development which he has an approved site plan for.

Mr. Brown asked whether Mr. Powell is still building while negotiating.

Mr. Porter stated that he was and at his own risk.

Mr. Mephram asked what would happen if he came back after 90 days with a violation. He also stated that it seemed that Mr. Powell is in strict violation by continuing his construction.

Mr. Mephram requested that this discussion be recorded in the minutes.

Mr. Porter stated that he would inform Mr. Powell of this discussion.

7. MATTERS OF SPECIAL PRIVILEGE

Mr. Mephram asked Mr. Porter if he felt that the Building Inspections Department is geared now such that there would be fewer of these violations.

Mr. Porter stated that the department was doing two things now; one: at the time of the footings, the yard requirements are checked to insure compliance with the Zoning Ordinance; and second: the building inspectors are looking at the plans to make sure that it is a one story building and it is not a verbal okay for a second story building being constructed.

Mr. Mephram stated that the building inspectors should be more careful.

8. ADJOURNMENT

There being no further business, the January 28, 1982 meeting of the Board of Zoning Appeals was adjourned at 8:30 P.M.

Elizabeth N. Vaiden  
Elizabeth N. Vaiden  
Secretary

Gerald H. Mephan  
Gerald H. Mephan  
Chairman



## **MEMORANDUM**

To: Records Management

From: Zoning

Date: January 7, 2016

Re: Board of Zoning Appeals Minutes: June 14, 1984 and June 19, 1984

The following minutes for the Board of Zoning Appeals of James City County dated June 14, 1984 and June 19, 1984 are acknowledged to be missing and cannot be reproduced at this time.

It is also acknowledged that the June 14, 1984 and June 19, 1984 minutes, were voted on and approved and may be mentioned in later dated minutes of Board of Zoning Appeals.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*



## **MEMORANDUM**

To: Records Management

From: Zoning

Date: January 7, 2016

Re: Board of Zoning Appeals Minutes: January 26, 1984 approving October 26, 1983

This memo serves to acknowledge a typo in the January 26, 1984 Board of Zoning Appeal minutes of James City County.

### **Section 2. Minutes.**

The date of minutes listed for approval is October 26, 1983. These minutes should actually be October 27, 1983.

Please accept this correction into the official record with the minutes.

---

David Otey  
*Chairman*

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Jason Purse  
*Secretary*

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER BOARDROOM, 101C MOUNTS BAY ROAD, AT 7:30 P. M. ON THE TWENTY-SIXTH DAY OF JANUARY, NINETEEN HUNDRED AND EIGHTY-FOUR.

1. ROLL CALL

Mr. Gerald Mephram, Chairman  
Mr. Joseph Abdelnour  
Mr. David Hertzler  
Ms. Elizabeth Vaiden

2. MINUTES

The minutes of the October 26, 1983 meeting were accepted as presented.

3. CASE NO. ZA-15.83. THOMAS R. ROSCHE

Mr. Murphy presented the staff report, stating that Mr. Thomas R. Rosche applied for a variance from Section 20-55(a), Yard Regulations, of the Zoning Ordinance. The purpose of the request was to allow an attached garage addition to remain within the required sideyard setback.

Mr. Murphy explained that the addition had been constructed 7'-3" from the side property line, a violation of the 10 foot requirement of the R-2 zone. The plat submitted with the building permit application indicated a sideyard setback of 8'±. The building inspector approved the footing inspection following a "string out" check of the side property line that indicated a distance of only 7'-3". The garage addition has been completed.

Mr. Murphy further stated that this is a unique case in that there are extenuating circumstances due to errors made on the part of the Building Inspections Department. However, because a clear hardship does not exist in this case, the staff does not recommend approval.

Mr. Mephram opened the public hearing.

Mr. Larry Davis, attorney for the Rosches, spoke on their behalf, stating that not only the Rosches but their contractor, Mr. Kirtpatrick, were told by the City that the setback was 5 feet. Mr. Davis stated that there was a financial hardship and that the property would be damaged if the garage was torn down. He asked that the variance be granted.

There being no other speakers, the public hearing was closed. Upon a motion by Mr. Abdelnour and seconded, the board voted unanimously to approve the variance.

4. CASE NO. ZA-1-84. WILLIAM A. PETERSON

Mr. Gilbert A. Bartlett, attorney for the applicant, requested by letter that this case be deferred until March in order to pursue a negotiated adjustment of the property line that would bring Mr. Peterson's building into conformance.

Because the case had been advertised for public hearing, Mr. Murphy presented the staff report, which recommended denial, and the public hearing was opened.

Mr. Joseph Phillips spoke on behalf of the applicant in Mr. Bartlett's absence, confirming that an effort was being made to resolve the matter.

The Board agreed to defer the case until the March meeting.

5. MATTERS OF SPECIAL PRIVILEGE

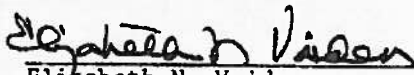
Mr. Murphy informed the Board that the Lonnie Logue case had been deferred until the February meeting.

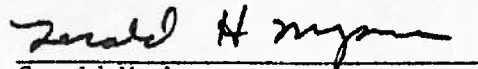
Mr. Mephram expressed his concern regarding the errors that are occurring that bring cases before the Board. Mr. Riutort informed the Board that measures had been taken to prevent these situations in the future, i.e. inspector instructed not to perform inspection if setbacks are not clear and to compare permit information with subdivision plat.

Mr. Mephram asked if the County could request that an applicant sign a form stating that he will be responsible for a structure being within the setback lines. Mr. Riutort said that he would check with the County Attorney. A brief discussion followed regarding the requirement of a survey and the contractors' responsibility.

6. ADJOURNMENT

Upon a motion by Mr. Abdelnour, seconded by Mr. Hertzler, the meeting was adjourned.

  
Elizabeth N. Vaiden  
Secretary

  
Gerald Mephram  
Chairman

1 /

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA IN THE COUNTY GOVERNMENT CENTER, 101C MOUNTS BAY ROAD, BOARDROOM, AT 7:30 P.M. ON THE TWENTY-EIGHTH DAY OF JUNE, NINETEEN HUNDRED AND EIGHTY-FOUR.

1. MEMBERS PRESENT

Mr. Gerald H. Mepham, Chairman  
Mr. Joseph A. Abdelnour  
Mr. David L. Hertzler  
Ms. Nancy James  
Ms. Elizabeth N. Vaiden

OTHERS PRESENT

Mr. Richard E. Bain  
Mr. Orlando A. Rintort

2. MINUTES - June 14, 1984 & April 26, 1984

Action on the minutes was postponed until all cases had been heard. At that time it was decided that action would be taken on the minutes at the next meeting which would be the worksession to be held on July 13, 1984.

3. UNFINISHED BUSINESS

A. CASE NO. ZA-4-84. Beatrice Legum

This case had been heard at public hearing at the June 14, 1984 meeting and a decision postponed until this meeting.

Mr. Mepham stated that he felt the conditional use permit issued by the Board of Supervisors had been clear on the requirement that the street be made part of the State system. He noted he had discussed the question of private streets with the County police and they had advised him of the difficulties they encounter because they have only limited jurisdiction on private streets. He pointed out that school buses and postal service are not required to use private streets and that the Fire Department encounters difficulties because of parking on private streets. He felt that a project of this magnitude should be required to have a street in the State system. He felt that the Board of Zoning Appeals should not uphold a loophole of this nature in the Zoning Ordinance.

Mr. Hertzler stated he felt it was not the intent of the Zoning Ordinance for the term lot to be interpreted as it was in this case by the applicant.

Mr. Mepham noted that Mr. Abdelnour was not taking part in the discussion of this case because of a possible conflict of interest.

A motion was made by Mr. Mepham, seconded by Mr. Hertzler, to uphold the decision of the Zoning Administrator.

Mr. Alvin Anderson, attorney for Ms. Legum, requested that the Board address each question in the case individually for the purpose of clarity.

Mr. Mepham amended his motion to state that the Board upheld all of the recommendations of the Zoning Administrator based on the general intent of the Zoning Ordinance. Mr. Hertzler seconded the motion.

The roll call vote was as follows:

Mr. Hertzler	Aye
Mr. Mepham	Aye
Ms. Vaiden	Aye
Mr. Abdelnour	Abstained

The motion carried.

4. NEW BUSINESS

A. CASE NO. ZA-5-84. C & P Telephone Co. of Va.

Mr. Mepham opened the public hearing.

Mr. Jesse Jackson spoke on behalf of C & P Telephone Co. He stated the company's intent to install a subscriber line carrier; however, such structures were not mentioned in the Zoning Ordinance but that substations and other utilities were. He noted that subscriber line carriers already exist throughout the County. The difference in this situation is that sixteen subscriber line carriers were to be contained in a single structure. Mr. Jackson pointed out that subscriber line carriers were either not included in the Zoning Ordinance due to an oversight or because they were considered with other utilities. He stated that until this subscriber line carrier could be built, residents of nearby Raleigh Square Townhouses would not be able to receive their incoming phone calls. He reviewed other advantages of having subscriber line carriers.

Mr. Jackson stated that lot sizes and setbacks would not really apply in the same way to this structure as they would to a residential structure because it would only house telephone equipment. He noted the other persons present who would be able to answer any technical questions the Board members might have. He also noted that the structure would be located on an easement purchased from Dr. Mepham on Neck-O-Land Road.

Mr. Hertzler asked what the difference was between this structure and the one located at the entrance to Kristiansand or others located throughout the County.

Mr. Bain explained that there was an omission in the Ordinance regarding telephone utilities that heretofore had been overlooked. He explained that an amendment to the Zoning Ordinance has been prepared to correct this situation. It would permit telephone utilities by special use permit in some areas and by right in others. It would eliminate the requirement for minimum area for a use of this kind.

Mr. Abdelnour asked what the procedure would be for an electrical utility in this area.

Mr. Bain stated that a special use permit would be required from the Board of Supervisors.

Mr. Abdelnour asked why C&P Telephone Company could not wait until the Ordinance was amended or a special use permit granted.

Mr. Jackson explained that there were people in Raleigh Square Townhouses without telephone service and that if the subscriber line carrier was not installed soon there would be others in this expanding area that would also be without phone service. He explained the difference in the number of people who could be served by this facility as opposed to a cable line.

Mr. Hertzler asked why the facility could not be built underground.

A representative of C&P explained the requirements such as air conditioning that would have to be met to install this facility underground. He also explained the problems that could be encountered such as groundwater seeping into the facility. He also noted that the height of the structure could not be reduced because C&P workers have to be able to get into the structure to service the equipment.

Mr. Hertzler asked if other landowners in the area had been notified. Mr. Jackson noted they had spoken to the person and she had no objection to the construction of this facility. He noted that the structure would be screened by shrubs.

The Board members discussed with Mr. Bain and Mr. Riutort the procedures for overturning the decision of the Zoning Administrator.

Mr. Mephram closed the public hearing.

Mr. Abdelnour stated he had heard nothing to contradict Mr. Jackson's statements and that his only concern was whether or not the Board of Zoning Appeals' action would be considered valid when the Board of Supervisors was requested to issue a special use permit. He said he would support a motion to overturn the decision of the Zoning Administrator because such uses were permitted in the County in the past.

Mr. Abdelnour made a motion, seconded by Ms. Vaiden, to overrule the decision of the Zoning Administrator.

Mr. Hertzler asked if the motion could be amended to require landscaping; however, he withdrew the amendment when Mr. Bain informed him that this would be considered as part of the site plan review process.

The roll call vote was as follows:

Mr. Hertzler	Aye
Mr. Abdelnour	Aye
Ms. James	Aye
Mr. Mephram	Aye
Ms. Vaiden	Aye

The motion carried.

B. CASE NO. ZA-6-84. Robert E. Wilkins, Jr.

Mr. Mephram opened the public hearing.

Mr. Robert Wilkins of 41 Saunders Road, Newport News, Va., spoke on his own behalf. He explained the problems he was encountering because of the interpretation of the Zoning Ordinance with regard to the height of his house and his proposed garage. The Board members discussed with him possible solutions to the problem.

Mr. Hertzler suggested that a builder would be able to change the structure of the building so that the height could be reduced 8" and a variance would not be required.

Mr. Wilkins explained that the height of the structure would be measured from ground level and to meet the requirements of the ordinance, he would still need the variance for the extra height. The 16' to 17' structure would be on top of the foundation which would be 6" to 7" above ground level. He wanted also to be sure the building met the requirements of the ordinance because he did not want to start building it only to find out he would have to tear it down.

Mr. Mephram noted the staff had recommended denial because there was not an undue hardship in this case.

Mr. Bain stated that Mr. Wilkins was appealing the decision of the Zoning Administrator in this case. He was also seeking a clarification of the Zoning Ordinance which Mr. Bain stated clearly indicated that accessory structure could not be higher than the main dwelling and no higher than 35'. Mr. Bain further stated that a variance would be required in this case only if the Board of Zoning Appeals upheld the decision of the Zoning Administrator.

Mr. Mephram noted that Mr. Wilkins wanted ground elevations to be considered in measuring the relative height of the structures and that ground elevations are not mentioned in the Zoning Ordinance.

Mr. Mephram closed the public hearing.

Mr. Abdelnour made a motion, seconded by Mr. Mephram, that the Board of Zoning Appeals uphold the ruling of the Zoning Administrator.

Mr. Abdelnour stated that if this were a case in which there was evidence that the County had not been enforcing the Ordinance, his position might be different; however, Mr. Wilkins had not provided evidence that this was the situation.

Mr. Mephram questioned whether there was uniform enforcement because elevations were being measured differently.

The roll call vote was as follows:

Mr. Abdelnour	Aye
Mr. Hertzler	No
Ms. James	No
Mr. Mephram	No
Ms. Vaiden	No

Mr. Mephram informed the applicant that by voting not to uphold the decision of the Zoning Administrator, the Board had given the applicant permission to build his accessory structure.

C. CASE NO. ZA-7-84. C & S Associates

Mr. Mephram opened the public hearing.

Mr. Jennings, a local architect, spoke on behalf of the applicant whom he was representing. He reviewed the proposed changes for the site which is known as Frank's Truck Stop and the adjacent site known as the Horseless Carriage which is being purchased by C & S Associates. Both sites were indicated in the site plan that Mr. Jennings showed to the Board. He noted the applicant's plan to change Frank's Truck Stop to a family restaurant and lounge type facility. Some of the difficulties being encountered with the site are the result of conditions that existed prior to the enactment of the Zoning Ordinance. He also stated that the unusually wide right-of-way in the area exists because at one time the Virginia Department of Highways and Transportation expected I-64 to follow Rt. 143 in that area. He noted the parking problems in the area in the photos he had distributed to the Board members. He reviewed the different variances that were being requested. He explained how the requested variances would help alleviate the problems of ingress and egress to the site. He stated the project would upgrade the use of the property and enhance property values in the area. The VDH&T has agreed to work with the applicant on a permit basis regarding the use of the right-of-way; however, they would only issue a permit on a final plan and not something as preliminary as the present one. With regard to landscaping he felt that their plan would meet County requirements. It would also improve traffic safety in the area.

Mr. Abdelnour asked what the plans were for the Horseless Carriage building.

Mr. Jennings stated it would only be used as a storage facility but he did not know exactly how it would be treated as the plans had not advanced to that stage yet. The applicant wanted to know the result of the variance requests prior to investing a lot of money in the design plans. He further stated that having two uses on the property would facilitate their meeting parking requirements despite the problem of the wider than normal right-of-way. The present plans show a worst case situation.

Mr. Bain stated that if the storage building were in support of the restaurant, it would then be interpreted as a single use.

Mr. Abdelnour asked what would be done with the metal sided garage on the property.

Mr. Jennings explained that this building belonged to the County and that it would be removed from the site.

Mr. Abdelnour asked Mr. Bain if they were talking of demolishing the Horseless Carriage building and Mr. Bain replied that they were.

Mr. Bain asked if the C & O right-of-way had been included in computing the lot size.

Mr. Jennings said no.

Mr. Mephram asked if they would have adequate property if they used the VDH&T and C & O rights-of-way.

Mr. Jennings said yes. He stated that he had not tried rearranging the plans to show what the site would be like if one building was demolished.

Ms. James asked if this will be a completely new business or if there will be a carry over from the truck stop.

Mr. Jennings stated the existing building will be given a complete face lift and will be expanded. The visual impact will be totally different and the proposed changes will make it impossible for trucks to use the site and the hours of operation will be different.

Mr. Alvin Anderson of Anderson, Emmett & Franck spoke on behalf of Mr. & Mrs. Dan Rosensteel who own the property directly across from Frank's Truck Stop which is the Merrimac Motel. He stated that non-conforming uses are not encouraged and that variances are granted for hardships other than financial or self-inflicted ones. Since the plan, however, is to upgrade the property and eliminate the truck stop, Mr. Rosensteel would not object to the project except for one major proviso that adequate conditions be placed and bonds required where necessary to provide that the conditions are complied with. He quoted Section 15.1-495, Subsection 3 of the Code of Virginia as amended which states in part that in authorizing the variance the Board of Zoning Appeals may impose such conditions regarding the location, character or other features of use as it deems necessary in the public interest. It may require a guarantee or bond to assure that the conditions will be and continue to be complied with.

Mr. Dan Rosensteel stated that if he had more information on the terms of the variances, he might be in favor of the project. He noted that Rt. 143 is an important artery into the Williamsburg area and he would not want to see an eyesore created there.

Mr. Bain stated the project would be an improvement to the area and noted two further conditions that should be placed on the applicant. These were 1.) that the truck stop operation cease in perpetuity and 2.) that the fuel pumps be removed from the site.

Mr. Charlie Morrell, present owner of the property, stated the use would be a Bennegan's type operation and a very attractive facility. He would rather not leave the site as a truck stop which would be his only other alternative.

Mr. Michael Hague stated he had been a guest at the Merrimac Motel and with the truck stop operating across from it, it is impossible to get a night's sleep there because of the noise.

Mr. Mephram closed the public hearing.

Mr. Abdelnour stated that because of the number of variances involved and the possible conditions to be imposed, he would prefer to postpone action on the case.

Mr. Mephram noted that even if the variances were granted, the case would still have to be reviewed by the Site Plan Review Committee and the applicant would have to meet their requirements and also comply with the County's parking regulations.

The members discussed the possible conditions with Mr. Jennings. He noted his need to be kept informed particularly as to whether or not the applicant would be required to demolish the Horseless Carriage building. They also discussed the use of the C & O and VDH&T rights-of-way. Mr. Jennings noted that it might not be necessary to remove the Horseless Carriage building if the rights-of-way were included in the calculations of the lot size.

Mr. Riutort asked if in points 6, 7 & 8, the applicant was requesting variances from the parking and landscaping requirements.

Mr. Bain and Mr. Jennings agreed that the site plan would require the variances.

Mr. Mephram asked if the members would be voting on only four issues tonight and Mr. Bain replied that nos. 6, 7 and 8 would also require the Board's action.

Mr. Jennings noted that they were not requesting variances from the landscaping requirement but only variances from certain required dimensions.

Mr. Abdelnour made a motion, seconded by Mr. Mephram, that a worksession be held to study the requested variances prior to the next regular meeting and that a decision would be made at the July meeting.

The roll call vote was as follows:

Mr. Abdelnour	Abstained
Mr. Hertzler	Aye
Ms. James	Aye
Mr. Mephram	Aye
Ms. Vaiden	Aye

D. CASE NO. ZA-8-84. Seasons Trace Development Company

Mr. Mephram opened the public hearing.

Mr. Tom Sutton of Seasons Trace Development Company took exception to item one regarding the case which stated that the applicant was cognizant of the violation when the building was constructed; however, there was just a human error in this case. They have always made every effort to comply with the County's Ordinance.

Mr. Mephram asked if the applicant knew the requirement was 35 feet.

Mr. Sutton replied that they did but that when they moved the building back on the lot to save the holly tree on the lot, they did not realize that put them in violation of the Ordinance. The person buying this home had requested a solar room option which changed the dimensions and the violation got by them. The 35' requirement had been stipulated by the County and they had made every effort to comply. He noted that there are three other buildings that would be critical on other lots. He explained the location of the buildings in the photos he had distributed to the Board members.

Mr. Mephram closed the public hearing.

Ms. Vaiden made a motion, seconded by Mr. Abdelnour, that the variance be granted.

The roll call vote was as follows:

Mr. Abdelnour	Aye
Mr. Hertzler	Abstained
Ms. James	No
Mr. Mephram	Aye
Ms. Vaiden	Aye

The motion carried.

5. ADJOURNMENT

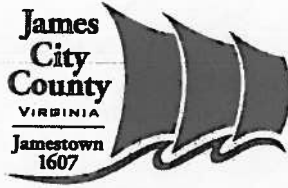
It was agreed to vote on the minutes at the next regular meeting. There being no further business, the meeting was adjourned at approximately 9:45 p.m.

Joseph A. Abdelnour  
Secretary

Gerald H. Mephram  
Chairman

*Gerald H. Mephram*

MC01



## **MEMORANDUM**

**To: Records Management**

**From: Zoning**

**Date: January 7, 2016**

**Re: Board of Zoning Appeals Minutes: August 30, 1984 and December 27, 1984**

The following minutes for the Board of Zoning Appeals of James City County dated August 30, 1984 and December 27, 1984 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the August 30, 1984 and December 27, 1984 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for August 30, 1984 and December 27, 1984.

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA IN THE COUNTY GOVERNMENT CENTER BOARDROOM, 101C MOUNTS BAY ROAD, AT 7:30 P.M. ON THE THIRTIETH DAY OF AUGUST, NINETEEN HUNDRED AND EIGHTY-FOUR.

**1. ROLL CALL**

**Members Present**

Mr. Gerald Mephram, Chairman  
Mr. Joseph Abdelnour  
Mr. David Hertzler  
Ms. Nancy James  
Ms. Elizabeth Vaiden

**Others Present**

Mr. Bernard Farmer  
Mr. Richard E. Bain  
Mr. Larry Davis  
Mr. Frank M. Morton, III

**2. MINUTES**

The minutes of the June 19, June 28, July 26 and August 14, 1984 meetings were approved with the correction of the last paragraph on page two of the July 26, 1984 minutes to read that Mr. Hertzler made a motion seconded by Mr. Abdelnour. Mr. Abdelnour and Ms. James requested the minutes reflect their not having voted on the minutes of the meetings they had not attended.

**3. UNFINISHED BUSINESS**

**A. CASE NO. ZA-9-84. WILLIAM R. HUTCHENS**

Mr. Mephram reopened the public hearing.

Mr. Hutchens spoke on his own behalf. He reviewed the differences between his case and that of Ms. Beatrice Legum. He reviewed the history of the case and the problems he had encountered with County staff, particularly due to conflicting interpretations. He reviewed the various sections of the Zoning Ordinance which had been applied to his case and stated his interpretation of each with relation to his project.

Mr. Bain, who was the Zoning Administrator when this case first came before the Board of Zoning Appeals, explained his interpretation of the issues as he had seen them with regard to this case.

Mr. Hertzler asked if there was more than one road involved.

Mr. Bain replied there was only one road involved. Mr. Bain reviewed the points in the staff memorandum dated July 24, 1984.

Mr. Abdelnour asked whether Section 20-174 applied to lots already in existence as of December 20, 1983 as stated by Mr. Hutchens.

Mr. Farmer noted that the statements being made by Mr. Bain were Mr. Bain's opinions and not the official interpretations of the Zoning Administrator.

Mr. Morton stated that what was intended in this case was not to nonconform every lot under one acre. If too literal an interpretation were made, hazardous wastes could be brought into the Reservoir Protection Overlay District.

Mr. Hertzler stated that it appeared the County staff did not know what they were doing in this case.

Mr. Morton stated it had been a long and torturous process and that efforts had been made to rectify the situation, particularly by separating the rolls of Planning Director and Zoning Administrator into two separate positions. He stated that what is done in the future cannot be justified by a mistake made in the past. Mr. Morton noted that he did not think he had told Mr. Hutchens he was exempt from area requirements. He also noted that what had been done in the Temple case to which Mr. Bain had referred was vastly different than this case. The Legum case in which the Zoning Administrator's decision was upheld was similar to this case.

Mr. Hutchens gave a brief rebuttal to the statements that had been made by Mr. Bain in reviewing the points in the staff memorandum of July 24, 1984. He read stated measures that would be taken to protect renters living in the duplexes from flooding.

The members discussed with Mr. Hutchens the location of Rochambeau, a four-lane highway, in relation to his property.

Mr. Abdelnour asked Mr. Hutchens if he was contending that the Reservoir Protection Overlay District did not apply to his lot.

Mr. Hutchens replied that specific conditions quoted by Mr. Bain did not apply.

Mr. Abdelnour questioned how Mr. Hutchens felt he could interpret the Zoning Ordinance so that he would be allowed to have more than one dwelling unit per acre.

There being no other speakers, Mr. Mephram closed the public hearing.

Mr. Farmer addressed the questions raised by Mr. Abdelnour regarding the application of the Reservoir Protection Zone. He stated it is not the intent of the Zoning Ordinance or any new ordinances that are created to take away from the rights of present property owners; however, for nonconforming uses, lots and structures when additions, improvements or changes are made, all the provisions of the Zoning Ordinance must be brought to bear. His interpretation of the paragraph in Section 20-174 was that it is not applicable to Mr. Hutchens' proposed new work, and therefore, he must comply with all the provisions under the Reservoir Protection Overlay District. He endorsed each of the recommendations of the former Zoning Administrator as they applied to site plan requirements, minimum area requirements, setback requirements, minimum frontage requirements and yard regulations and the Reservoir Protection Zone.

Mr. Hertzler made a motion that since the Zoning Ordinance is there to protect the citizen and since there has been considerable confusion already, Mr. Hutchens be allowed to proceed with the plans he had submitted. The hardship in this case was based on the time that had been involved and the run-around Mr. Hutchens had been given. He stated his interpretation of the Ordinance would be the same as Mr. Hutchens' interpretation. Ms. James seconded the motion.

Ms. James stated that one problem she had was that this case was similar to the Beatrice Legum case and she felt that the Zoning Ordinance should be applied equally to all areas. She said, however, that she could see both sides of the argument and that the interpretations had changed with the different Zoning Administrators. She stated the Ordinance should be more concrete to avoid such gray areas.

Mr. Abdelnour stated he found it difficult to agree with Mr. Hertzler. He noted he had not taken part in the Legum case and so this was all relatively new to him; therefore, he made a motion to table the case until the next regular meeting.

Ms. Vaiden seconded Mr. Abdelnour's motion.

The roll call vote was as follows:

Mr. Mephram	Aye
Ms. Vaiden	Aye
Ms. James	Aye
Mr. Abdelnour	Aye
Mr. Hertzler	No

The motion was passed by a 4-1 vote.

#### **4. NEW BUSINESS**

##### **A. CASE NO. ZA-15-84. BRITISH WOODS**

Mr. Farmer made the staff presentation which is appended hereto.

Mr. Mephram opened the public hearing.

Mr. Mephram closed the public hearing because there was no one wishing to speak on this case.

The Board members discussed with Mr. Farmer the developer's request for a variance for additional parking spaces which would provide more spaces than required to meet the zoning ordinance requirements for this project. Mr. Farmer requested that the Board uphold his decision on this case. He further stated he did not know why no one had come to speak on this case.

Mr. Hertzler made a motion, seconded by Ms. James, to defer this case to the next regular Board meeting.

The roll call vote was as follows:

Mr. Mephram	Aye
Ms. Vaiden	Aye
Ms. James	Aye
Mr. Abdelnour	Aye
Mr. Hertzler	Aye

The motion was passed by unanimous vote.

**B. CASE NO. ZA-16-84. MOLLIE MORTON**

Mr. Farmer presented the staff report which is appended hereto. He noted he had received a letter Mr. Brown of the Board of Supervisors stating he had reviewed this case and hoped that the Board would grant this variance.

The Board members discussed with Mr. Farmer the requirements in the Ordinance for decks and accessory structures. Mr. Farmer pointed out that porches and stoops were considered part of the main structure. He noted that Ms. Morton was requesting this variance for a deck.

Mr. Mephram opened the public hearing.

Mr. Craig Nordeman, Rehab Specialist for James City County, noted that Ms. Morton was one of his applicants and this deck was essential for safety reasons. He said the short shallow steps with a guardrail were specially designed for her because of her physical disabilities. He noted that the structure would be attached to the house but that it would not be covered.

Mr. Mephram closed the public hearing.

Ms. Vaiden made a motion, seconded by Ms. James, to grant Ms. Morton's request for a variance.

The roll call vote was as follows:

Mr. Mephram	Aye
Ms. Vaiden	Aye
Ms. James	Aye
Mr. Abdelnour	Aye
Mr. Hertzler	Aye

The motion was passed by unanimous vote.

**C. CASE NO. ZA-17-84. WILLIAM HART**

Mr. Farmer presented the staff report which is appended hereto.

Mr. Mephram opened the public hearing.

Mr. Spearman, applicant on behalf of the petitioner, explained the problems involved with repositioning the house on this particular lot. He stated that having the narrow side of the house toward the river would defeat the purpose of the location and that it would impede the view of the neighbors to the east of this lot and of motorists turning onto Shellbank Drive. He said it was his understanding that lots designed prior to 1979 would not be affected by the Ordinance. The setbacks for this lot are stated on the deed and plat of record recorded in 1955 and that these take precedence over the existing Ordinance. When the Harts bought the property in 1977, they did so with that understanding and had the house designed accordingly. They were also unable to build a two-story house because of Mrs. Hart's health.

Mr. Peter Paluzsay of 128 Shellbank Drive who owns the lot across the street from the Hart's lot spoke in opposition to the requested variance. He objected that the house was too close to the road and that it did not fit the lot.

Mr. Bill Howard of 120 Shellbank Drive whose lot is adjacent to the Hart's lot stated he had no problem with what the Harts wanted to do. He did note, however, that if the variance were granted, it might preclude the State building the road and a 50' right-of-way might cut into his property. He was also concerned about the State's maintaining the road.

Mr. Spearman stated that a fifty-foot right-of-way is not always required and that in many areas forty-foot is acceptable. This street might qualify for the forty-foot right-of-way because it is not a through-street. He noted that on the sketch the 16.5' is from the right-of-way not the paving on Shellbank Drive. It is an additional 12' out to the edge of the paving.

Mr. Mephram closed the public hearing.

Mr. Abdelnour discussed with Mr. Spearman the restrictions on the deed. He asked Mr. Spearman to read the attorney's letter without mentioning any names. Mr. Spearman read the letter. He noted that nonconforming uses apply to the property and not the owner. He showed the Board a copy of the subdivision plat.

Mr. Davis stated that when the property was purchased the Harts were not entitled to a nonconforming use and they would need a variance to build and be in conformity with the Zoning Ordinance.

Ms. James asked about the future adoption of the road into the highway system and restated Mr. Howard's concern about the right-of-way cutting into his property.

Mr. Davis stated that the State would probably require a fifty-foot right-of-way but that sometimes the State did grant variances. He said there was a possibility that the Highway Department might use part of lot no. 8.

Mr. Spearman showed the Board that lot no. 8 is formed by two curves and that to have the road conform to Highway Department requirements for sight distances which would involve straightening the curve lots nos. 7 and 8 would be affected equally.

Another resident of the area suggested abiding by the deed restrictions. He also expressed his approval of the road's being taken into the State Highway System.

Mr. Abdelnour asked if there was a house on lot no. 7.

Mr. Spearman informed him that there was but that he thought it was placed back further on the lot.

Mr. Howard who owns lot no. 7 stated that his house is fairly close to the old restrictions. The house is perpendicular to the river as the Hart's house would be. All the other houses in the area are parallel to the river. It had to be nonconforming to fit the lot. The house was built in 1976 before they purchased it.

Mr. Abdelnour questioned the exact amount of the variance being requested.

Mr. Spearman explained they were requesting a variance of 5' from the other lot line.

Mr. Farmer said it would be a variance of 10'.

Mr. Abdelnour made a motion, seconded by Mr. Hertzler, to grant a 10' variance from the side toward Shellbank Woods which would be 35' from the center line.

The roll call vote was as follows:

Mr. Mephram	Aye
Ms. Vaiden	Aye
Ms. James	No
Mr. Abdelnour	Aye
Mr. Hertzler	Aye

The motion was passed by a 4-1 vote.

#### **D. CASE NO. ZA-18-84. CHARLES KEYSER**

Mr. Farmer presented the staff report which is appended hereto.

Mr. Mephram opened the public hearing.

Mr. Keyser spoke on his own behalf. He said that a real estate agent had told him he could have two mobile homes, a duplex or a house. He was not aware he had to meet frontage and yard requirements for the mobile homes until he constructed a duplex on the property.

There being no other speakers, Mr. Mephram closed the public hearing.

Mr. Mephram asked when the mobile homes would be removed from the property.

Mr. Keyser said they would be gone in three years when he has built a duplex.

Ms. James asked what the mobile homes would be used for.

Mr. Keyser stated that one would be used for the construction workers and the other as a residence.

Mr. Farmer stated this case was similar to others in which the Board had upheld the Zoning Administrator's decision that setback and frontage requirements had to be met individually for each structure on the lot.

Mr. Mephram asked if a special use permit would have to be granted by the Board of Supervisors for each trailer.

Mr. Davis said a special use permit would be required for one and a conditional use permit for the other.

Mr. Abdelnour asked what was presently on the adjoining lots.

Mr. Keyser responded that there was a mobile home on one and an abandoned frame structure on the other. The A. A. Rolin property is unoccupied. He noted that his septic system had already been approved and explained his construction plans.

Ms. James asked if Mr. Keyser would be building the duplex in three years or if it would be completed in three years.

Mr. Keyser said he would just be starting it.

Ms. Vaiden stated her reluctance to grant the variance for a period longer than two years. She noted that a mobile home could be placed on the property now with a special use permit and that a duplex was permitted by right and the lot meets the requirements for such a structure.

Mr. Mephram stated he did not see a hardship in this case.

Mr. Farmer read the section of the Code of Virginia that defined the requirements for a hardship which he felt did not apply in this case.

Ms. James noted the need to be consistent. She made a motion, seconded by Mr. Abdelnour, that the request for a variance be denied, thereby upholding the decision of the Zoning Administrator.

The roll call vote was as follows:

Mr. Mephram	Aye
Ms. Vaiden	Aye
Ms. James	Aye
Mr. Abdelnour	Aye
Mr. Hertzler	Aye

The motion was passed by unanimous vote.

**E. CASE NO. ZA-19-84. SHIRLEY WALKER**

Mr. Farmer presented the staff report which is appended hereto.

Mr. Mephram opened the public hearing.

Mr. Robert E. Walker spoke on behalf of the applicant. He stated the Health Department has informed him that a mobile home could be placed on the property and he had subsequently invested \$3,500 in a septic tank and well.

Ms. Hawkins questioned the setback requirements.

Mr. Farmer noted Ms. Hawkins' interest was based on her having a second illegal structure on her own property.

There being no other speakers, Mr. Mephram closed the public hearing.

Mr. Davis noted that the second mobile home was contrary to County law and would have to be removed. It is presently occupied illegally. A special use permit was required for each mobile home.

Mr. Abdelnour asked if the septic tank was for both trailers.

Mr. Walker replied that it was.

Mr. Farmer pointed out that the Health Department had acted without the knowledge of the Zoning Administrator's decision. Action has been taken to preclude such a situation in the future.

Mr. Abdelnour asked if the mobile homes were on a foundation.

Mr. Walker said they were not.

There being no other speakers, Mr. Mephram closed the public hearing.

Mr. Hertzler asked about the 59' discrepancy.

Mr. Farmer responded that it had resulted from the staff report's having been prepared from the sketch submitted with the application. Further staff investigation revealed the error and now the drawing is correct.

Mr. Hertzler made a motion, seconded by Mr. Abdelnour, not to permit the mobile home to stay on the applicant's lot.

Ms. James noted for the record that there are citizens in the County who are not aware of the Zoning Ordinance and what they can or cannot do. She recommended measures be taken to avoid situations such as had occurred in this case with the Health Department.

Mr. Davis said a time limit should be placed regarding when the mobile home would have to be removed from the property.

Mr. Walker agreed to sixty days.

Mr. Hertzler agreed to incorporate the sixty day limit into his motion and Mr. Abdelnour agreed to second it as amended.

The roll call vote was as follows:

Mr. Mephram	Aye
Ms. Vaiden	Aye
Ms. James	Aye
Mr. Abdelnour	Aye
Mr. Hertzler	Aye

The motion was passed by unanimous vote.

##### **5. MATTERS OF SPECIAL PRIVILEGE**

Mr. Farmer noted that with regard to Case No. ZA-15-84, the action of the Board would prevent final site plan approval. The developer also would not be able to get a clearing and grading permit.

Mr. Mephram said since neither the applicant or his representative had been present for the public hearing, he had no strong feelings one way or another about the case and that there was no hardship involved in requiring the applicant to eliminate the extra parking spaces.

Mr. Farmer noted it might be a disadvantage to the developer if a decision were postponed to the next meeting.

Ms. Vaiden made a motion to deny the request for a variance. Mr. Hertzler seconded it.

Mr. Abdelnour said he would be willing to rehear the case if the applicant requested the Board to do so.

Mr. Davis said the case could be reopened but that did not have to be included in the motion.

The motion was rescinded and no action taken.

Mr. Farmer expressed his interest in meeting with each of the Board members either individually or in a group to better understand their approach to different zoning issues.

Mr. Mephram asked if it was necessary to hold a worksession to review Mr. Hutchens' case. It was agreed to hold a worksession prior to the September 27th

meeting. The worksession was set for Tuesday, September 5th in the conference room in Building A.

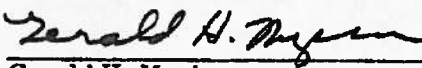
The Board members briefly discussed the problems related to the question of decks. Mr. Farmer explained the BOCA Code interpretation.

Mr. Davis recommended bringing the problem to the attention of the Planning Commission.

**6. ADJOURNMENT**

There being no further business, the meeting was adjourned at approximately 10:30 p.m.

\_\_\_\_\_  
Joseph A. Abdelnour  
Secretary

  
\_\_\_\_\_  
Gerald H. Mephram  
Chairman

MIN01

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER BOARDROOM 101-C MOUNTS BAY ROAD, AT 7:30 P.M. ON THE TWENTY-SEVENTH DAY OF DECEMBER, NINETEEN HUNDRED AND EIGHTY-FOUR.

1. MEMBERS PRESENT

Mr. Gerald Mephram, Chairman  
Mr. Joseph Abdelnour  
Mr. David Hertzler  
Mrs. Nancy James

OTHERS PRESENT

Mr. Bernard M. Farmer, Zoning Administrator  
Mr. Larry Davis, County Attorney

2. MINUTES

The minutes of September 27, 1984 and November 15, 1984 were approved with added corrections.

3. UNFINISHED BUSINESS

There was no unfinished business for the Board to discuss.

4. NEW BUSINESS

ZA-28-84. Lacy Batton

Mr. Farmer gave the staff presentation and recommended that since no unnecessary hardship existed the decision of the Zoning Administrator as it pertains to Section 20-107 should be upheld in all respects.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Lacy Batton stated that he had intended to build a storage room due to the fact that the old storeroom was inadequate because of its size and it was an unsafe structure. He stated that the present building did not conform to start with, and an existing slab was already there. He also stated that the new storage room would be a nice building.

Mr. Abdelnour asked Mr. Batton if he knew the distance from the paved surface to the structure.

Mr. Farmer replied that distance would be about 60 feet.

Mr. Hertzler asked Mr. Batton if his proposal for the addition would match the existing structure.

Mr. Batton explained that he was planning to build a wood framed structure with vinyl siding and an A-framed roof.

Mrs. James asked if any part of the proposed building would be visible from the road.

Mr. Batton replied yes, however, the only part visible would be the side.

Mr. Abdelnour asked Mr. Batton if he was the owner of the building.

Mr. Batton said that he was not the owner of the building, however, he was renting the building with an option of buy.

Mr. Abdelnour asked Mr. Batton if he had the owners permission to build the structure.

Mr. Batton said yes he did.

Mr. Abdelnour motioned that the Board grant the variance provided:

1. That the exterior of the building be brick to match the existing structure.
2. The pitch of the roof be brought in conformance with the roof of the main structure.

Mr. Mephram asked if there was any discussion on the motion and there being none, asked that the roll be called.

Roll call was as follows:

Mr. Abdelnour	Yes
Mr. Mephram	Yes
Mr. Hertzler	Yes
Mrs. James	Yes

Motion to grant the variance with stipulations that the exterior be of brick construction and the pitch of the roof be the same as the existing structure.

ZA-35-84. Bill Howard

Mr. Farmer gave the staff presentation and recommended that since no unusual characteristics pertaining to the lot existed, granting a variance would be giving the property owner a special privilege which would otherwise

be denied to people in the same district. However, a variance was granted in a previous case to Mr. William Hart in order to construct a structure directly across the street.

Mr. Abdelnour and Mr. Farmer had discussion over the Hart case and the distance which the Hart's structure would be from the right.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Howard spoke on his behalf. He explained that due to surgery and medical recommendation he elected to enclose an existing deck. He stated that when he applied for a building permit he was told that he had a non-conforming structure and that if he enclosed his deck, he would be in violation of the setback requirements. Granting him a variance would allow him to increase the value of his property. He also stated that he had collected signatures from his neighbors on Shellbank Drive and they had no problems with the screening of his existing deck.

Mr. Abdelnour asked Mr. Howard if he had plans for the design of the enclosure.

Mr. Howard replied yes he did.

Mr. Hart asked if any of the Board members had looked at the property in question.

Mr. Mephram stated that he had personally looked at the property on Shellbank Drive.

Mr. Hart stated that Mr. Howard had bought his home in good faith and he saw no harm in letting him enclose the existing deck.

Mr. Mephram closed the public hearing. He then stated that he did not envision the State ever requesting a wider right-of-way.

Mrs. James moved that the variance be granted.

Mr. Hertzler seconded the motion.

Mr. Mephram asked if there was any discussion on the motion and there being none asked that the roll be called.

Roll call was as follows:

Mr. Abdelnour	Yes
Mr. Mephram	Yes
Mr. Hertzler	Yes
Mrs. James	Yes

Motion was carried to grant the variance.

ZA-36-84. Mac Stolarski

Mr. Farmer gave the staff presentation and recommended that the decision of the Zoning Administrator be upheld and that Mr. Stolarski be required to adhere to the yard requirements and setbacks.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Stolarski discussed a map that showed the lot and the surrounding streets. He explained that his lot was on the corner and there was conflict over what part of the lot would be considered the side and front. He then stated that the narrow part of the lot would be considered the front of the lot due to regulation in the Zoning Ordinance.

Mr. Mephram asked if there were any neighbors next to the lot.

Mr. Stolarski replied that there was a house on Hermitage Drive.

Mr Mephram closed the public hearing.

Mr. Hertzler asked Mr. Stolarski if he had thought about building the house in a different configuration.

Mr. Stolarski answered no.

Mr. Mephram asked if there was a motion from the Board.

Mr. Abdelnour stated that since he had represented Mr. Stolarski, he would abstain from voting.

Mr. Hertzler stated that since the house was not built and the house could be built in a different configuration he would motion to deny the request.

Mrs. James seconded the motion.

Roll call was as follows:

Mr. Abdelnour	Abstained
Mr. Hertzler	Yes
Mr. Mephram	Yes
Mrs. James	Yes

Motion was made and carried to deny the request for a variance.

ZA-37-84. Ronald Delaney

Mr. Farmer gave the staff presentation and recommended that since no hardship existed and the land was presently being placed into beneficial use by the presence of a single-family dwelling that the decision of the Zoning Administrator be upheld.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Delaney spoke on his behalf. He stated that several mobile homes had been on the property before and existing mobile homes were on adjoining lots. He saw no reason why he could not place his mobile home on the property.

Mr. Mephram asked Mr. Delaney if he was planning to place the mobile home on the same location as previous owners had.

Mr. Delaney replied no he did not.

Mr. Mephram asked when was the last mobile home taken off the property.

Mr. Delaney replied 1972.

Mr. Abdelnour asked if the property in question was owned by Mr. Delaney.

Mr. Delaney stated that the property belonged to his mother.

Mr. Hertzler asked about the measurements from Centerville Road back to the proposed mobile home site.

Mr. Delaney stated that it was about 100 feet.

Mr. Mephram asked about the time limit for replacing a mobile home within the Zoning Ordinance.

Mr. Davis stated that there was a two year time limit.

Mr. Mephram closed the public hearing.

Mr. Abdelnour asked Mr. Farmer if he was sure about the width of the property in question.

Mr. Farmer replied that the measurements were scaled off the County Tax Map and were correct.

Mr. Abdelnour suggested to Mr. Delaney that he would allow him time to get the property surveyed.

Mrs. James asked if a lot was in existence prior to the ordinance, would setbacks apply.

Mr. Abdelnour asked if the property did not have anything on it, would the lot be totally unusable.

Mr. Farmer replied that the interpretations in previous cases allowed an initial structure to be placed on the lot if it were less in width or area. However, provisions do cover non-conforming lots. If a lot itself is non-conforming in width and area then you cannot allow unrestricted development to occur after the initial use.

Mr. Abdelnour motioned to deny the request.

Mr. Mephram seconded the motion and asked if there was any discussion on the motion.

Mr. Hertzler stated that he did not think it was right to deny Mr. Delaney the use of the property.

Mrs. James stated she had problems with the owner paying taxes on property and not be able to use it.

Mr. Farmer stated that the interpretations has been to allow the lot to be placed into use and to allow unrestricted development to occur would be inappropriate.

Roll call was as follows:

Mr. Abdelnour	Yes
Mr. Hertzler	No
Mr. Mephram	Yes
Mrs. James	No

Motion to deny the requested variance was tie; therefore, the decision of the Zoning Administrator was upheld to deny the request for a variance.

ZA-38-84. Valerie Wallace

Mr. Farmer gave the staff presentation and recommended that since no unusual characteristics which are peculiar to the lot exists, granting a variance would be giving a special privilege.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. William Bland, representing Mrs. Wallace, explained the history of the property and stated that the property had been in the family for four generations. Mr. Bland explained that in 1979 all of the heirs sold their interests in the 4.84 acres to three of the heirs. After the three remaining heirs acquired title to the property, the owners made attempts to subdivide the property. Mrs. Wallace wishes to build a home on the property depending on whether or not she can get a lot to build it on. The problem is she has enough land and not enough frontage.

Mr. Hertzler asked what section was Mrs. Wallace was intending to build on.

Mr. Bland explained that Mrs. Wallace would acquire title to one section of the property and he did not know what section it was.

Mrs. James stated that the problem was not the acreage that Mrs. Wallace wished to build on, but the lot that Mrs. Berkeley's home was on.

Mr. Hertzler made a motion to grant the variance and Mrs. James seconded the motion.

Mr. Mephram asked if there was any further discussion and there being none, the roll was called.

Roll call was as follows:

Mr. Mephram	Yes
Mr. Hertzler	Yes
Mr. Abdelnour	Yes
Mrs. James	Yes

Motion was carried to grant the variance

5. MATTERS OF SPECIAL PRIVILEGE

There were no matters of special privilege to discuss.

6. ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

0185b

*Joseph H. Mephram*

*Joseph A. Abdelnour*  
*Sec.*



## MEMORANDUM

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: January 24, 1985

The following minutes for the Board of Zoning Appeals of James City County dated January 24, 1985 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the January 24, 1985 Board of Zoning Appeals meeting. They were **APPROVED** by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for January 24, 1985.

---

David Otey  
*Chairman*

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Jason Purse  
*Secretary*

AT A REGULAR MEETING OF THE BORAD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER BOARDROOM 101-C MOUNTS BAY ROAD, AT 7:30 P.M. ON THE TWENTY-FOURTH DAY OF JANUARY, NINETEEN HUNDRED AND EIGHTY-FIVE.

1. MEMBERS PRESENT

Mr. Gerald Mephram, Chairman  
Mr. Joseph Abdelnour  
Mr. David Hertzler  
Ms. Elizabeth Vaiden  
Ms. Nancy James

OTHERS PRESENT

Mr. Bernard Farmer, Zoning Administrator

2. MINUTES

Mr. Abdelnour motion that the Zoning Administrators memorandum be incorporated into the minutes.

All board members were in favor of the motion.

3. UNFINISHED BUSINESS

There was no unfinished business for the Board to discuss.

4. NEW BUSINESS

Case No. ZA-39-84. Robert J. Eley

Mr. Farmer explained to the Board that Mr. Eley had applied for a variance of (6) six inches to the sideyard requirements of Section 20-33(a), so that his single-family residence may be considered a legal structure. Mr. Farmer then recommended that even though the six-inch requested encroachment was minor, it was still in violation of the Zoning Ordinance. Mr. Farmer explained that in order for a variance to be granted, the law required that the applicant must show undue hardship not shared by others in the same district. Mr. Farmer then recommended that the decision of the Zoning Administrator be upheld in all respects.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Eley explained that after the initial survey of his property he hired someone to mow the grass and the corner stakes were moved and after the

foundation was dug he discovered that the corner stakes were six-inches too close on the west side of the property. He stated that he had discussed with his neighbor who was affected by this six-inch encroachment and he had no problem with the variance being granted.

Mr. Mephram closed the public hearing and stated that he had received a call from Mr. Eley's neighbor and that he had no opposition with the variance. Mr. Mephram asked for the wishes of the Board.

Ms. James asked Mr. Farmer what would the County do if the Board refused to grant the variance.

Mr. Farmer explained that if the Board were to refuse Mr. Eley's request technically, his structure would be considered an illegal structure (one not built in accordance with the Zoning Ordinance and for which it has no legal standing to remain existing).

Mr. Hertzler motioned that the Board accept Mr. Eley's request for a variance. Ms. James seconded the motion.

Roll call was as follows:

Mr. Abdelnour	Yes
Mr. Hertzler	Yes
Ms. James	Yes
Ms. Vaiden	Yes
Mr. Mephram	Yes

Motion carried 5-0 to grant Mr. Eley a variance of six-inches.

Case No. ZA-40-84. Jack L. Massie

Mr. Farmer explained to the Board that Mr. Jack Massie had appealed the decision of the Zoning Administrator as it pertained to permitted uses in the A-1, General Agricultural District. Mr. Farmer stated that the applicant desired to construct a contracting office on a parcel of property located at 3920 Cokes Lane. Mr. Farmer presented a copy of the site plan which Mr. Massie had submitted and recommended that the decision of the Zoning Administrator as it pertained to sand and gravel storage and distribution be upheld in all respects, and that such uses be considered permissible by special use permit only in the M-2, General Industrial District.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Sam Powell, representing Mr. Massie, explained that he had represented Mr. Massie earlier at the James City Site Plan Review Committee meeting. He explained that one of the issues that came up by Mr. Farmer at this meeting was the question of whether or not the storage of gravel on the site would be permissible as an accessory use. Mr. Farmer advised the Site Plan Review Committee at that time, that he thought it was not an accessory, but was something that needed to be addressed. Mr. Powell stated that he wrote

Mr. Farmer and asked his interpretation whether or not the site plan that was proposed with the gravel storage was an accessory use, and on December 27, he received a letter back from Mr. Farmer which stated that all the uses shown on the plat were acceptable with the exception of the storage of the gravel which Mr. Farmer deemed to be not an accessory use. Mr. Powell stated that that was why he was here tonight, because he disagreed with Mr. Farmer's interpretation of whether or not the storage of stone on the facility was an accessory use or not. Mr. Powell stated that the property consisted of 35 acres and was located in the A-1 Zoning District.

Mr. Gary Massie explained the types of work he did in his business. He explained that the bulk of the stone they used in road construction was aggregate base. Other types of work they did was sewer lines, and water lines, and erosion control work.

Mr. Abdelour asked how many different types of stone did he intend to stockpile.

Mr. Massie explained numbers 68, 78, 26, 2, and rip-rap or five classifications in total.

Mr. Abdelnour asked what, if anything was to be done about pollution control. He stated there was a lot of concern by the neighbors in the area.

Mr. Massie explained that the type of material they were getting was a fully fractured material and there was virtually no dust involved with the stones, and they have been washed at the plant before they get them. He stated that the Number 26's stone did have fine particles involved with them.

Mr. Abdelnour asked if he intended to use bituminous concrete off of his site, and if if the time ever came that you wanted an asphalt plant there would you do it as an accessory use to your road building operation.

Mr. Massie answered no. Mr. Abdelnour asked why not. Mr. Powell asked if he could save that answer until he got down to another section. Mr. Powell stated that they had no intention of putting in an asphalt plant.

Mr. Abdelnour asked if they were planning to install a concrete mixing plant. Mr. Powell answered no.

Mr. Powell explained that he was out on the property and did some work in regards to distances and stated that Mr. Massie has taken some pictures and would like to pass those pictures to the Board to see the distances actually around the site. Mr. Powell then showed pictures of competitors equipment and what type of operation they were running.

Mr. Davis asked to speak in reply to Mr. Powell. He stated that it was the County's position that this was not a subordinate use, the Zoning Ordinance addresses stone and gravel distribution specifically. He stated when the Zoning Ordinance was drawn up this was a use which has a character and nature which made it a substantial use whenever it is in existence. He explained that was why the Zoning Ordinance was written, that it considered it

(stone and gravel use) as only being an appropriate use in the M-2 Industrial District and then only with a special use permit. Mr. Davis asked that the Board look at the Zoning Ordinance and decide whether or not this was a subordinate use. He stated that he felt that the use was a primary use and was addressed by the Zoning Ordinance.

Mr. Mephram asked if there was anyone who would like to speak in opposition of the request.

Mr. Abdelnour asked Mr. Davis if there were rezoning applications filed before to rezone to M-2. Mr. Davis replied yes. Mr. Abdelnour asked why the applications were withdrawn. Mr. Davis explained that there was strong public opposition.

Mr. Farmer stated that since he had read both case file he might explain better what went on. Mr. Farmer stated that the first application went to the staff for rezoning, and the staff recommended denial based upon compatibility of uses. The Planning Commission recommended denial, it then went to the Board of Supervisors for an initial hearing and the Board of Supervisors recessed in the meeting, and at that time they decided to defer the matter back to the Planning Commission. Before a hearing by the Board of Supervisors, it was withdrawn by the attorney and the plan was modified. Rather than rezoning the entire site of 34.5 acres, it was modified to only rezone five acres. It came back to the staff, the staff then looked at the compatibility of the uses and recommended denial again.

Mr. Vandriem stated that he was an adjacent property owner and that he had written a letter to Mr. Farmer objecting to Mr. Massie's request. He stated that the stonepile would create two forms of pollution as he saw the matter, with the prevailing winds the dust would always blow in his direction. He stated concern over the noise that the sidespur would create. He then stated that that access road was inadequate for the heavy equipment, and that he was concerned about the value of his property if the stone was placed in the area.

Mrs. Vandriem stated that there were no woods behide her property and she could see the cars from her when they were unloading and they were very noisy.

Mr. Stout stated concern over the environment and health hazards. He stated that he had 30 years experience laying pipes and knew first hand that stone would make a great deal of dust. He then stated that Mr. Massie could place his plant somewhere else.

Mrs. Mildred Taylor Moody stated concern over the real estate property values if the stone and gravel plant was placed there.

Nita Barbor stated concern over the project and the safety of children playing in the streets.

Mr. Gary Massie asked to speak in response to the adjacent property owners statements.

Mr. Mephram closed the public hearing.

Mr. Abdelnour stated that he saw an area on the site plan designated for the stock pile and that it appeared to be about 25% of the land to be improved by Mr. Massie and stated that Mr. Powell represented that it would be 10%. Mr. Abdelnour stated that he had problems with the percentages and asked Mr. Powell if he could enlighten the Board as to what the percentage was for the stockpile as compared to the improved area.

Mr. Mason stated that he could not answer the question exactly because it was not a point they had looked at, but what they did look at was the percentage of the total site, which was 2.4 percent of the total area.

Mr. Powell stated that on the front page of the site plan, it showed the total square footage of the improved area.

Mr. Hertzler stated that the way he interpreted the A-1 district was that it allowed this operation, and it would be an accessory use. Mr. Hertzler then motioned to allow the stockpile.

Ms. James seconded the motion.

Mr. Mephram stated that he had trouble with stockpiling in the M-zoning district. Mr. Mephram asked if there was any further discussion.

Roll call was as follows:

Mr. Abdelnour	No
Mr. Hertzler	Yes
Ms. James	No
Mr. Mephram	No
Ms. Vaiden	No

Motion denied 4-1. Zoning Administrator's decision upheld.

Case No. ZA-1-85. Larry Cook

Mr. Farmer stated that Mr. Cook had requested a variance of eight feet from the side-yard requirements of Section 20-47 of the James City County Zoning Ordinance. Mr. Farmer then recommend that the decision of the Zoning Administrator be upheld and that the applicant provide the minimum side-yard requirement of fifteen feet as required by Section 20-47 of the James City County Zoning Ordinance.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Cook explained that the lot was of an unusual size and that the owners wanted to build a particular home on the lot and that it would be a nice home.

Mr. Hertzler asked if Mr. Cook could build a house on the lot to meet the setback requirements.

Mr. Cook replied yes he could, but the owners wanted this particular home.

Mr. Mephram asked if anyone would like to speak in opposition of the request.

Mr. Russell Carlton stated that he had lived in the area for more than 39 years. He stated that the County had building requirements and that the owners should abide by them. He stated that he had a petition signed by residents of the subdivision stating disapproval of the request. He also stated that the lots were very large in the subdivision.

Ms. Frances Carlton stated that she had lived in the area for many years and enjoyed the open property.

Mr. Cook stated that if the owners couldn't build this particular house on the lot, they would build a smaller house and the lot would have a house on it.

Mrs. Moore stated that the setbacks should be met.

Mr. Mephram asked for the wishes of the Board.

Mr. Abdelnour motioned that the request be denied. Mr. Hertzler seconded the motion.

Roll call was as follows:

Mr. Abdelnour	Yes
Mr. Hertzler	Yes
Ms. James	Yes
Mr. Mephram	Yes
Ms. Vaiden	Yes

Motion to deny the request 5-0.

Case No. ZA-2-85 Richard B. Holt

Mr. Farmer stated that the applicant had requested a variance of three feet from the minimum side-yard requirements of Section 20-55(a). He stated that the applicant wished to place an addition on his home and would place the addition to within seven feet of the side lot line. Mr. Farmer recommended that since no hardship existed, that the Zoning Administrator's decision be upheld in all respects.

Mr. Mephram opened the public hearing and asked if anyone would like to speak in favor of the request.

Mr. Holt explained that the history of the lot, and that the lots were ample in 1958 and were developed primarily as a recreational community. He explained that over the years the community had developed into a permanent residential area. He explained that he wanted to asked for a variance of

five feet instead of the original three feet, and if the Board approved his request, he would build a nicer home and increase the value of his property.

Mr. Mephram closed the public hearing.

Mr. Mephram asked if Mr. Holt had a letter from his neighbor stating he was in approval of the request.

Mr. Holt explained that he had nothing in writing, but he did have verbal approval and Dr. Salade, the adjacent property owner, had no objection.

Ms. Vaiden asked Mr. Holt if he planned to change the side yard from seven feet to five feet from the side property line.

Mr. Holt replied yes he did. He explained that there would be a 38 foot distance between his house and his neighbors house.

Ms. James asked Mr. Holt if he could live with the previous request.

Mr. Holt explained that five feet would be more beneficial to him. He explained that he could make his house a little larger and look more porportial to the community.

Ms. Vaiden motion that the Board accept the request with a requirement that the applicant furnish a letter.

Mr. Mephram seconded the motion. Mr. Mephram stated that because of the narrow size of the lot, he would approve the motion.

Roll call was as follows:

Mr. Abdelnour	Yes
Mr. Hertzler	Yes
Ms. James	No
Mr. Mephram	Yes
Ms. Vaiden	Yes

Motion to grant the variance upon written consent of neighbor 4-1.

4. MATTERS OF SPECIAL PRIVILEGES

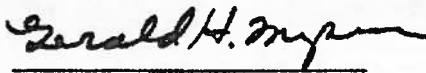
Mr. Mephram suggested that a copy of the application be incorporated into the packages sent out to the Board members.

Mr. Adbelnour resigned from the Board and suggested that the County start looking for his replacement.

5. ADJOURNMENT

Meeting adjourned 9:45 p.m.

0245b

  
Gerald Mephram, Chariman



## **MEMORANDUM**

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: February 28, 1985

The following minutes for the Board of Zoning Appeals of James City County dated February 28, 1985 are acknowledged to be missing and cannot be reproduced at this time.

It is also acknowledged that the February 28, 1985 minutes, were voted on and approved and may be mentioned in later dated minutes of Board of Zoning Appeals.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER BOARDROOM 101-C MOUNTS BAY ROAD, AT 7:30 P.M. ON TWENTY-EIGHTH DAY OF MARCH, NINETEEN HUNDRED AND EIGHTY-FIVE.

1 ROLL CALL

MEMBERS PRESENT

Mr. Gerald Mephram, Chairman  
Mr. David Hertzler  
Mr. Ronald Rosenberg  
Ms. Nancy James  
Ms. Elizabeth Vaiden

2. MINUTES

The February 28, 1985 minutes were approved as presented.

3. OLD BUSINESS

Mr. Farmer stated that he was asked by the County Attorney to indicate what was going on concerning the Ribock and Hutchens cases, which had been appealed to the District Court. Mr. Farmer stated that hearings would be conducted on Tuesday, April 2, 1985, on non-substantive matters. In the Ribock case the judge was to determine if additional evidence would be admitted. In the Hutchens case the matter to be determined was whether or not the first four of the five items could be heard or whether the statute of limitations would prevent their appeal. Mr. Farmer said he would provide further information to the Board after the hearings.

Mr. Mephram inquired about the Leggum case. Mr. Farmer replied that the case had gone before Judge Carneal and he had determined not to admit any additional evidence.

4. NEW BUSINESS

Case ZA-4-85. Neill P. Watson

Mr. Farmer stated that Mr. Neill Watson had applied for a variance from Section 20-55 of the James City County Zoning Ordinance to construct a carport which is adjacent to his single family resident on Chestnut Drive. Mr. Watson

had indicated in an application for building permit that he desired to construct his carport as an accessory structure and separate the carport 6 inches from his main structure, however, the carport would still have extended to within 2-1/2 feet of the side lot line. Mr. Farmer stated that in order to justify granting the variance a hardship must be demonstrated which otherwise prevented use of the land. Granting a variance would be conferring a special privilege to the applicant. Mr. Farmer recommended that the decision of the Zoning Administrator be upheld.

Mr. Mephram opened the public hearing and asked if anyone would like to speak.

Mr. Watson stated that before making this appeal to the Board he had talked to his neighbors and they had no objection to the carport. Mr. Watson stated that because of the placement of his house to the neighbors house there is no restriction of light or air to the house.

Mr. Hertzler asked Mr. Watson if he had a drawing of the carport.

Mr. Farmer stated that he had a partial drawing and indicated that he did receive a letter from the adjacent property owner to Mr. Watson and the property owner did indicate that they had no objection to the placement of the structure within 2-1/2 feet of the lot line.

Mr. Rosenberg asked Mr. Farmer if there was any other easement other than the sanitary easement on the back of the lot.

Mr. Farmer stated that the drawing was accurate to his knowledge there was no easement running down the side lot line.

Mr. Hertzler asked Mr. Farmer how far would the carport have to be detached before it would be considered detached.

Mr. Farmer replied that he could not answer for every case with a single answer, and said he must look at each case based upon its own merit to make such a determination. Mr. Farmer stated that in this case, placing the carport six inches away was clearly an attempt to circumvent to Ordinance requirements. Mr. Farmer considered this carport part of the main structure.

Mr. Rosenberg noticed on Mr. Watson's application that there was an area for storing combustible materials (gasoline) and asked if there was any concern about the safety of the structure.

Mr. Farmer answered that in a single-family residence if a homeowner were to attach a garage or carport, separation requirement would only be a one hour fire wall from the living space.

Ms. Vaiden asked if the house was bricked. Mr. Farmer answered that it was a brick house.

Mr. Hertzler stated that the owner could easily reduce the size of the carport.

Mr. Watson replied that he wanted a carport large enough to hold two cars.

Mr. Rosenberg asked what was the normal size of a two-car garage. Mr. Hertzler replied that a normal size would be 20 x 20 feet.

Mr. Mephram closed the public hearing.

Ms. James asked Mr. Watson how close this structure would be the next structure.

Mr. Watson replied 26 feet.

Mr. Rosenberg asked if this was 10 feet from the side lot line.

Mr. Farmer explained the closest point of the two structures would be the front corner of the carport Mr. Watson is building.

Mr. Rosenberg asked if there were similar carports in the neighborhood.

Mr. Watson replied that there were similar carports in the area.

Ms. James asked if there were any trees between the Mr. Watson's property and his neighbors.

Mr. Watson replied that there were a few trees right down the property line.

Mr. Mephram asked the wishes of the Board.

Ms. James motioned that the request be granted. Mr. Rosenberg seconded the motion and asked Mr. Farmer what alternatives he suggested to Mr. Watson.

Mr. Farmer said he discussed the possibility of placing the drive around to the rear of the property and creating a free standing garage, but because of trees and the property dropping off behind the house Mr. Watson choose not the take this route.

Mr. Hertzler said he would like to change the motion to state that the carport be placed five (5) feet away from the property line. Mr. Rosenberg asked if the carport would have a uniform width.

Mr. Farmer answered that as designed it would be, but the amendment would cause the carport to be narrower in the rear.

Mr. Rosenberg asked if this structure was being designed as a rectangle 19.5 feet in the front and back and 25 feet on both sides. Mr. Farmer stated that there was about six (6) feet of the structure to the rear that will be a storage shed and the front portion will be the open carport.

Ms. James amended her last motion to place the carport five (5) feet away from the property line.

Roll call was as follows:

Mr. Hertzler	Yes
Ms. James	Yes
Mr. Mephram	Yes
Mr. Rosenberg	Yes
Ms. Vaiden	Yes

The vote was 5-0 to accept the application as an accessory structure and to allow it to come within five (5) feet away from the lot line.

5. MATTERS OF SPECIAL PRIVILEGE

Mr. Rosenberg stated that there was much litigation over the question of what is an accessory structure, and asked that in the future that drawings of any proposed structure be presented to the Board members.

6. ADJOURNMENT

The meeting was adjourned at 8:10 p.m.

0280b

Gerald H. Mephram  
Gerald Mephram, Chairman

Bernard Farmer  
Secretary



## **MEMORANDUM**

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: April 28, 1988

The following minutes for the Board of Zoning Appeals of James City County dated April 28, 1988 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the April 28, 1988 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for April 28, 1988.

---

David Otey  
*Chairman*

---

Jason Purse  
*Secretary*

BOARD OF ZONING APPEALS

MINUTES

April 28, 1988

A. ROLL CALL

Mr. Robert Ripley  
Mr. Ronald Rosenberg  
Ms. Elizabeth Vaiden  
Mr. Claude Feigley

Absent  
Ms. Nancy James

Others Present

Mr. Bernard Farmer, Zoning Administrator  
Mr. Larry Davis, Assistant County Attorney

B. MINUTES

The February 24, 1988 minutes were revised and approved.  
The March 24, 1988 minutes will be reviewed at the next meeting for approval.

C. OLD BUSINESS

None

D. NEW BUSINESS

1. ZA-8-88 Marv V. Johnson

Mr. Farmer stated Ms. Mary V. Johnson had requested a 5 foot variance from the front setback requirements of the James City County Zoning Ordinance to construct an addition to her single family dwelling. Mr. Farmer further stated that the applicant may have some extenuating circumstances requiring use of the setback area but no legal hardship had been demonstrated. Staff recommends denial as the property is presently placed in use, and granting the variance would amount to a special privilege otherwise denied similar properties in the same district.

Mr. Ripley asked Mr. Farmer about the location of the house in regard to the well.

Mr. Farmer stated that the well is located in the rear of the property and is not in use.

Mr. Rosenberg opened the public hearing.

Mr. Johnson stated that he needed 12 to 10 feet for the

addition.

Mr. Rosenberg closed the public hearing.

Mr. Rosenberg asked whether adjacent property owner letters had been mailed as the applicant had not listed any adjacent property owners on the application.

Mr. Farmer stated that there are copies of the adjacent property owner letters in the file and that one letter had been returned marked undeliverable to Jehovah's Witness.

Mr. Rosenberg and Mr. Feigley discussed the house and its dimensions in regards to the location to Route 60. They agreed that the home would not be affected if future widening occurred.

Mr. Feigley motioned to grant the variance as requested.

Ms. Vaiden seconded the motion.

Mr. Rosenberg stated that only the 5 foot variance is granted and that all other codes and requirements stand as required by the County.

The motion was carried unanimously.

## 2. ZA-9-88 Leonard Greenwood

Mr. Farmer stated Mr. Leonard Greenwood had requested a 25 foot variance from the front setback requirements of the James City County Zoning Ordinance in order to construct a single family dwelling. Mr. Farmer further stated that characteristics exist which make the property slightly more difficult on which to build but there is nothing unique which would distinguish this property from others within the subdivision. The topographic characteristics are not so severe as to render this property unusable as a result of the zoning setbacks. Staff recommends the variance be denied.

Mr. Rosenberg opened the public hearing.

Mr. Feigley stated that upon his inspection of the property, he took approximately 5 paces on the property and saw a 6 foot drop.

Mr. Greenwood stated that he planned on putting in a basement where the property slopes down. He further stated that the front of the house is approximately 50 feet long and will be aligned with adjacent property homes.

Mr. Rosenberg asked Mr. Greenwood if he had a plan showing the location of the house on the lot.

Mr. Greenwood stated he had a rough sketch, which he showed.

Ms. McGrann, neighbor, stated that she approved of the requested variance.

Mr. Feigley motioned that the variance be granted as requested.

Ms. Vaiden seconded the motion.

The motion was carried unanimously.

3. ZA-10-88 R.J. Campbell and John Mullenex

Mr. Farmer stated Mr. Joseph A. Abdelnour, attorney for the applicant, had requested a variance of 1.7 feet from the side yard setback requirements of the James City County Zoning Ordinance for a single family dwelling. Mr. Farmer further stated substantial financial hardship would result from having to move the structure but no legal hardship had been shown. Staff recommends the variance be denied.

Mr. Rosenberg opened the public hearing.

Mr. Abdelnour, attorney for the applicant, stated that Mr. Richard Smith, closing attorney, had requested that a survey be done. It was with this survey that the encroachment was found. Mr. Abdelnour further stated that the house is presently unoccupied and that a loan application is pending with FHA depending on the results of this meeting. Mr. Abdelnour also stated that there is approximately 50 feet between lots 12 and 13 and that those property owners have stated their approval of the requested variance.

Mr. R.J. Campbell stated that he realizes that he should have had the property surveyed and he takes full responsibility of the encroachment violation.

Mr. Rosenberg closed the public hearing.

Mr. Ripley motioned to grant the variance as requested.

Ms. Vaiden seconded the motion.

Mr. Feigley stated that he would like to know how the contractors could be notified about having surveys done. There was brief discussion among the Board concerning spreading the word to contractors.

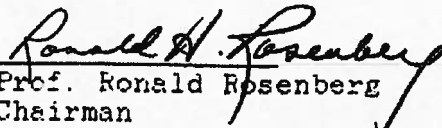
The motion was carried unanimously.

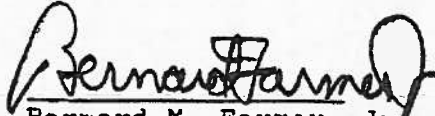
E. MATTERS OF SPECIAL PRIVILEGE

None

F ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

  
Prof. Ronald Rosenberg  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary to the Board



## **MEMORANDUM**

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: July 6, 1989

The following minutes for the Board of Zoning Appeals of James City County dated July 6, 1989 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the July 6, 1989 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for July 6, 1989.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

**BOARD OF ZONING APPEALS**

**Special Meeting  
MINUTES**

**July 6, 1989**

**A. ROLL CALL**

**Absent**

Mr. Bob Ripley  
Mr. Claude Feigley  
Mr. Ken Giedd  
Mr. Baxter Carr

Ms. Nancy James

**Others Present**

Mr. Bernard Farmer, Secretary to the Board

**B. MINUTES**

None

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

**1. ZA-7-89 BASF Corporation**

Mr. Farmer stated that BASF Corporation had requested variances from the zoning provisions related to side yard, landscape perimeter, parking landscaping, setback, and connection to public utilities. The purpose of the variance request was to allow for a legal subdivision of existing property at 8961 Pocahontas Trail.

Mr. Farmer further stated that BASF Corporation had proposed a subdivision of their 700 acre parcel into four parcels, dividing out parcels 1, 2, and 3, with remaining property (residue) being the fourth for the purpose of selling their acrylic fibers production plants. This subdivision is considered new development and may be approved only if the property is arranged so as to meet the requirements of the Zoning Ordinance. This is a unique situation in the sense that the facilities presently exist and make it difficult to divide the property in such a manner that the lines do not present yard or setback violations.

Mr. Farmer further stated that the staff recommended that a variance from Section 20-386 regarding sewer service

for existing facilities on proposed Parcels 1, 2 and Residue be granted subject the following conditions:

1. That any new construction of buildings or structures connect to public sewer.
2. That this variance is void should the private treatment plant be declared an environmental or technical problem by the State Water Control Board necessitating the requirement to connect to public sewer.

The staff further recommended that all other variances be denied since no legal hardship had been demonstrated nor claimed.

Mr. Feigley stated that the purpose of the meeting was to consider the variances and not the actual subdivision. Mr. Feigley asked Mr. Farmer for clarification on the water situation. He wanted to know the staff position regarding public water and why wasn't a recommendation whether they should or should not be served.

Mr. Farmer responded that presently he does not consider BASF as being served by public water and in order for a subdivision to be approved without connecting into public water facilities, a variance would need to be granted from Section 20-386. Mr. Farmer further stated that practical reasons for continuing well water use exist, it is not efficient to transfer water from Chickahominy to the treatment center and back just to use at BASF. Since there was no legal hardship however, Mr. Farmer was unable to recommend a variance, but that it made good practical sense to allow continued well water use by BASF.

Mr. Ripley asked if this case was a one of a kind situation or were there other places in the county with the same problem realizing there is not a lot of industrial development in the area.

Mr. Farmer stated that there are a number of irrigation wells and other production facilities. Anheuser Busch brewery is connected to Newport News public water and Owens Illinois Bottling Plant is connected to public water.

Mr. Feigley asked if there were any other questions and opened the public hearing.

There were four representatives of BASF to speak. Mr. Victor Woodson, a surveyor, engineer, and planner showed exactly what was being proposed from a drawing with respect

to the subdivision. Mr. Woodson pointed out the landscaped perimeter areas and areas where variances would be required due to side yard requirements. Relative to Parcel 1, Mr. Woodson stated that the requirement for 10' landscaped area was met but they had four acres of a wooded, undeveloped area. A problem was noted with an existing parking lot that presently accommodates 70 people since the ordinance requires islands in parking areas. The perimeter green strip was addressed and Mr. Woodson stated that BASF realizes that the ordinance requires one tree per 50 feet. They have a tree line that generally follows the outside of the fence and the area around the building has well maintained grass. Mr. Woodson informed the Board members further about the other parcels under consideration.

Mr. Woodrow Pusey, an Attorney, and Mr. Prosant Aikat, Plant Manager, gave the Board members background information about BASF and its future plans. They emphasized it was the BASF desire to continue operation of the plant but the subdivision was absolutely necessary to do so.

Mr. John Keele, local textile union representative, stated his interest in attending the meeting and stressed he would like for the Board to consider the people who have been working at BASF all of their lives and were afraid of losing their jobs. He stated he supported the variance requests.

Mr. Feigley closed the public hearing.

The Board discussed the case further and decided the parcels would have to be considered separately as opposed to one variance being granted for all of the parcels.

Mr. Feigley moved to grant variances for Parcel One from the requirements for connection to public water and sewer and from the interior landscaping requirements pertaining to parking areas with the following conditions attached to the variances:

1. That any new buildings or structures must be served by public water and sewer.
2. That the variance related to sewer is void should the State Water Control Board require connection to an alternate sewer system.

Mr. Ripley seconded the motion.

The motion was carried unanimously.

Mr. Feigley moved to grant a variance for Parcel 2 from the requirements pertaining to Landscaped Perimeter Strips with the exception of the property line from Building 235 to the South end of building 223, and further variances from the requirements pertaining to landscaping in parking areas, connection to public water and sewer, side yard requirements, and front setback requirements with the following conditions attached to the variances:

1. That any new buildings or structures must be served by public water and sewer.
2. That the variance related to sewer is void should the State Water Control Board require connection to an alternate sewer system.

The motion was seconded.

The motion was carried unanimously.

Mr. Feigley moved that the Residue Parcel be granted variances from the landscape perimeter strip requirements where the residue parcel abuts the easterly side of parcel 2 and along the portion adjacent to the fuel oil storage tank, and further variances from the side yard requirements for buildings 27, 228, and 218, and from the requirements for connections to public water and sewer with the following conditions attached to the variances:

1. That any new building or structures must be served by public water and sewer.
2. That the variance related to sewer is void should the State Water Control Board require connection to an alternate sewer system.

The motion was seconded.

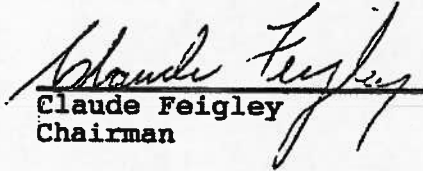
The motion was carried unanimously.

#### **E. MATTERS OF SPECIAL PRIVILEGE**

None

F. ADJOURNMENT

The meeting was adjourned at 9:00 P.M.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary



## MEMORANDUM

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: October 24, 1991

The following minutes for the Board of Zoning Appeals of James City County dated October 24, 1991 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the October 24, 1991 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for October 24, 1991.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

BOARD OF ZONING APPEALS

OCTOBER 24, 1991

A. ROLL CALL

Mr. Feigley  
Mr. Ripley  
Ms. James  
Mr. Carr  
Mr. Giedd

Others Present:

John Patton - Code Compliance Officer  
Leo Rogers - Assistant County Attorney

B. MINUTES

The minutes of the September 26, 1991 meeting were deferred.

C. OLD BUSINESS

ZA-9-91. George and Judith Ewart

Mr. Farmer presented the staff report stating that George and Judith Ewart have requested a variance of 8 feet 10 inches from the side yard requirements of the zoning ordinance to construct a carport addition to their existing home at 117 Kingspoint Drive. Mr. Farmer stated that the Board had deferred a decision on this case at the last meeting due to a question concerning the decision of the Kingspoint Architectural Review Committee. The Board does at this time have a letter from the Committee which addresses these questions.

Mr. Giedd asked for clarification of the issues that the Board had questions on.

Mr. Feigley clarified the issues for those members who were absent at the previous meeting.

Mr. Carr asked about the letter from the York County Physicians Association.

Mr. Feigley explained that Ms. Ewart has a chronic back problem which makes it difficult for her to use the attached one car garage which is presently on the property.

Mr. Sheldon Franck, attorney, requested and received permission to address the Board.

Mr. Franck spoke and explained Ms. Ewart's medical problem and

presented a letter form the Kingspoint Community Association which gave support to the variance request. He also stated that the variance request was not a matter of convenience but that a hardship exist with Ms. Ewart's problem and the possibility of the elderly parent coming to live at the house. He stated that the Ewart's were willing to construct an enclosed garage rather than the requested carport as originally requested.

Mr. Feigley stated that the variance request was for a carport and that is what the Board must address.

Ms. James asked for clarification of the drainfield in relationship to the proposed location.

Mr. Feigley explained the location.

Mr. Feigley stated in his opinion the requested variance is for the convenience of the applicant and no evidence has been presented which proves a legal hardship.

Mr. Giedd ask if the reason for requesting the variance at this time was related to the new roof which is being placed on the house.

Mr. Feigley explained that the Ewart's had hoped to construct the carport and have it roofed at the same time.

Mr. Feigley moved to deny the variance as requested.

The vote for denial of the variance was four to one.

D. NEW BUSINESS

ZA-12-91. University Square Associates

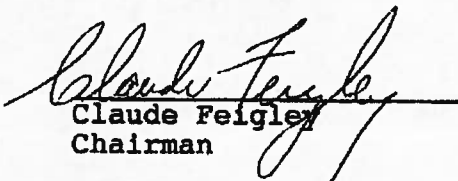
{NOTE: The verbatim account of this case as transcribed by a court reporter is on file in the Code Compliance Office with the case record and constitutes minutes of this case.}


E. MATTERS OF SPECIAL PRIVILEGE

None

F. ADJOURNMENT

The meeting was adjourned at 10:00 P.M.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary



## **MEMORANDUM**

**To:** Records Management  
**From:** Zoning  
**Date:** January 7, 2016  
**Re:** Board of Zoning Appeals Minutes: March 25, 1993

The following minutes for the Board of Zoning Appeals of James City County dated March 25, 1993 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the March 25, 1993 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at January 7, 2016 meeting.

Please accept these minutes as the official record for March 25, 1993.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

## **MINUTES**

### **BOARD OF ZONING APPEALS**

**March 25, 1993**

#### **A. ROLL CALL**

**ABSENT**

Mr. Giedd  
Mr. Ripley  
Ms. James  
Mr. Feigley

Mr. Carr

#### **OTHERS PRESENT**

Bernard Farmer

#### **B. MINUTES**

Minutes of November 19, 1992 and February 25, 1993 were approved and adopted.

#### **C. OLD BUSINESS**

None.

#### **D. NEW BUSINESS**

ZA-03-93; John and Teresa Ancellotti

Mr. Farmer presented staff report stating that Mr. Joseph Abdelnour, on behalf of Mr. and Mrs. Novogratz and Mr. and Mrs. Ancellotti, applied for a three inch variance to the side yard requirements for an existing single family dwelling located at 105 Cooley Road.

Mr. Farmer stated that a building permit was issued in December of 1988 to construct the single family dwelling at this location. The application at that time showed the home to be within setbacks. A Certificate of Occupancy was issued June 14, 1989. In May of 1989 the Novogratz purchased the house under construction and were made aware of a side yard encroachment as shown on a survey dated May 15, 1989. A survey for the conveyance of the property to Mr. and Mrs. Ancellotti dated January 18, 1993 once again showed the encroachment. The Code Compliance office did not become aware of the encroachment until receipt of this variance. Mr. Abdelnour approached the adjacent property owner, Mr. Marshall, with an offer to purchase enough of his property to make the necessary boundary line adjustment to meet the fifteen foot setback requirement. Mr. Marshall was unwilling to sell, but was in favor of granting the variance.

**BOARD OF ZONING APPEALS  
MINUTES  
MARCH 25, 1993  
PAGE 2**

Mr. Farmer stated that since no undue hardship has been demonstrated, and the house as it exists could be placed on the lot within the established set back requirements, staff must recommend that the variance be denied.

Mr. Feigley opened the public hearing.

Mr. Joseph Abdelnour, representative Mr. and Mrs. Novogratz and Mr. and Mrs. Ancellotti stated a brief history of the property. He also stated that he had contacted Mr. Marshall, whom resides next door to the property in question about selling approximately 164 sq. feet of his property. Mr. Abdelnour stated that the Novogratz were aware of the encroachment, but were under the impression that they were covered for it under their Lawyer's Title Insurance. The problem of the encroachment did not surface again until the Novogratz's opted to sell the property.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that due to this being a minute request that he is in favor of granting the variance.

Mr. Ripley stated that he is also in favor of granting the variance because all of the adjacent property owners showed full support.

Mr. Feigley motioned to grant a three inch variance to side yard requirements.

Ms. James seconded the motion.

The variance was granted with a unanimous vote.

**ZA-04-93; William and Helen Hart**

Mr. Farmer presented staff report stating that Mr. and Mrs. Hart have applied for a one foot variance to the side yard requirements for an existing single family dwelling at 113 Shellbank Drive.

Mr. Farmer stated that in 1984 Mr. Hart was granted a variance by the board of Zoning Appeals reducing the side yard setback requirement to ten feet in order to construct a home on this property. The single family dwelling was constructed in 1985.

BOARD OF ZONING APPEALS  
MINUTES  
MARCH 25, 1993  
PAGE 3

Spearman and Associates re-surveyed the property on June 7, 1988 and noted an encroachment on the eastern side of the property. The building encroaches from 0.5 foot to .92 foot into the side yard. The Hart's stated that they were unaware of the survey and encroachment until a prospective buyer showed it to them last February. Since no undue hard ship has been demonstrated and the property has already been granted a variance to allow its use, staff must recommend denial of the variance.

Mr. Alvin Anderson, representative for the Harts, spoke briefly on the history of the property.

Mr. Ripley stated that the encroachment was first noted in 1988.

The Harts stated that they were refinancing their home and were not made aware of the new survey and the encroachment.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he felt that there should have been more restrictions placed on the original variance.

Mr. Feigley motioned to grant a further one foot variance on side yard requirements based on the unique size, shape and narrowness of the lot with the following condition:

1. That this variance apply only to the existing dwelling.

Mr. Giedd seconded the motion.

The variance was granted with a unanimous vote.

ZA-05-93; Julia Canestrari and Roland Wallace, Jr.

Mr. Farmer presented staff report stating that Ms. Canestrari and Mr. Wallace have applied for a ten foot variance to the rear setback requirement in order to build an addition to an existing single family addition at 103 Woodside Drive in James City county.

Mr. Farmer stated that when this house was built in 1989 the property was zoned R-3, General Residential, and was required to have a thirty-five foot front and twenty-five foot rear building setback. In 1991 the zoning ordinance was changed, eliminating the R-3 zoning district and redesignating R-3 zoned properties to R-2.

**BOARD OF ZONING APPEALS  
MINUTES  
MARCH 25, 1993  
PAGE 4**

At the same time the front setback requirement became twenty-five feet and the rear yard requirement became thirty-five feet. This resulted in making the home nonconforming. Under current zoning requirements almost all of the deck and a portion of the house encroaches in the rear yard. He stated that although Mr. Wallace's problems were not of his doing, the redesignation and change of setback requirements are shared by all other property previously zoned R-3. Even though the shape of the lot makes it difficult to expand the home, it is possible to enlarge the home without requiring a variance. For this reason the staff cannot recommend approval of the variance.

Mr. Feigley opened the public hearing.

Ms. Canestrari and Roland Wallace, Jr. stated to the board the need for the proposed addition to their home.

Mr. Feigley closed the public hearing.

Mr. Feigley noted measurement discrepancies on the drawings.

Mr. Feigley motioned to grant a ten foot variance to establish a twenty-five foot rear setback.

Ms. James seconded the motion.

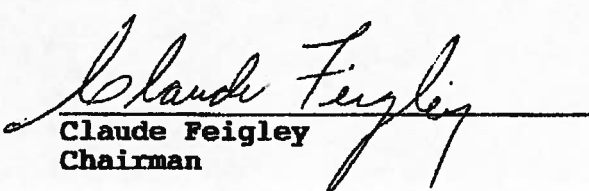
The variance was granted with a unanimous vote.

**E. MATTERS OF SPECIAL PRIVILEGE**

Pertaining to the University Square case, Mr. Farmer stated that the Supreme Court granted a Writ.

**F. ADJOURNMENT**

Mr. Feigley adjourned the meeting at 8:50pm.

  
Claude Feigley  
Chairman

\_\_\_\_\_  
Bernard M. Farmer, Jr.  
Secretary



## **MEMORANDUM**

To: Records Management  
From: Zoning  
Date: January 7, 2016  
Re: Board of Zoning Appeals Minutes: September 12, 1996

The following minutes for the Board of Zoning Appeals of James City County dated September 12, 1996 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the September 12, 1996 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for September 12, 1996.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

**BOARD OF ZONING APPEALS**

**September 12, 1996**

**A. ROLL CALL**

**PRESENT:**

Mr. Feigley  
Mr. Ripley  
Mr. Giedd  
Mr. Nice  
Ms. Wallace

**ABSENT:**

**Others Present:**

Bernard Farmer, Zoning Administrator  
Steven Grant, Staff

**B. MINUTES**

The minutes of the August 8, 1996 were deferred until the next scheduled meeting for approval.

**C. OLD BUSINESS**

**ZA-07-96; Tommy Hilfiger Retail, Inc.**

Mr. Feigley commented that at the June, 1996 meeting the Board denied the request for a variance. Mr. Feigley asked Mr. Farmer if the case had been published again.

Mr. Farmer stated that the case had been readvertised by direction of the Board at the August meeting. Mr. Farmer stated that the Board will need to reopen the case and make a new decision based on the case presented to them.

Mr. Farmer presented the case stating that Tommy Hilfiger Stores had applied for a variance to allow an additional sign to be placed at the end of the building, in which they are located in the Berkeley Commons Outlet Center. The store is located in the center of a row of stores, not one of the end units. Mr. Farmer further commented that each of the end stores have been allowed a certain amount of building face signage on the front of their building. Mr. Farmer commented that those that are end units, that have stores facing a parking lot or an entrance on that side are allowed the additional signage. In this case, the store at the end of the row that Tommy Hilfiger is located has already placed the maximum amount of allowable signage on the building face, as stated in the zoning ordinance. Mr. Farmer further reported that Tommy Hilfiger has requested that they be allowed to exceed that signage by placing an additional sign. A discussion of the ordinance took place.

Mr. Feigley asked if Reebok had a smaller sign, would Tommy Hilfiger be allowed to place their sign on the same building face.

Mr. Farmer stated yes as long as the signs do not exceed the maximum size allowed by the sign ordinance.

Mr. Feigley opened the public hearing and with no one wishing to speak, closed it.

Mr. Feigley moved that the variance request be denied. Mr. Giedd seconded the motion.

The motion was approved unanimously.

#### **D. NEW BUSINESS**

##### **ZA-18-96; Williamsburg Landing**

Mr. Farmer stated that at the August meeting the Board agreed to defer the case generally. Mr. Alvin Anderson, attorney, on behalf of Williamsburg Landing, Inc. had requested the case be deferred for the September and October meetings. Mr. Anderson stated that he will contact staff sometime in October as to a hearing or deferral for November's meeting.

##### **ZA-19-96; Janice M. Ortalan**

Mr. Farmer presented the case stating that Ms. Janice M. Ortalan, owner, had applied for a variance for the property located at 109 Indigo Dam Road, in the R-2, General Residential, zoning district. The property is further identified as parcel (10-4-B) found on James City County Real Estate Tax Map (38-4).

This lot was created in November of 1995 through the subdivision of the original parcel into two separate parcels. The lot is roughly 100 by 105 feet and the buildable area is roughly 40 by 80 feet. A building permit was obtained on December 14, 1995 to relocate a one and a half story wood frame house onto the property. A survey that was subsequently completed found that the house was encroaching into the front setback by approximately three inches. A final certificate of occupancy has not been issued yet for the house pending resolution of the setback violation.

In explanation of the error in placing the house, the applicant has stated in her application that she staked the house site off on an iron rod that she located in the yard.

Mr. Feigley opened the public hearing and with no one wishing to speak, closed it.

Mr. Feigley asked for clarification as to how the request for a 3 inch variance would bring the request back to the building line and would steps be allowed.

Mr. Farmer stated that steps are generally exempt.

A discussion of the ordinance occurred in reference to the steps.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that the applicant should be granted the variance, but to be safe, moved that a variance of 6 inches be granted from the front setback. Mr. Ripley seconded the motion.

The motion was approved unanimously.

**ZA-20-96; G.T. Wilson, AES Consulting Engineers, agent for Jimmy & Susan Edwards**

Mr. Farmer presented the case stating that Mr. Wilson, AES Consulting Engineers, on behalf of Jimmy & Susan Edwards, property owners, had requested a variance to the front setback requirement for an existing porch. The property is zoned R-8, rural residential, and is further identified as parcel (4-36) found on the James City County real Estate Tax Map (47-1).

The lot is located at the end of a cul-de-sac. The house, constructed in 1986, is a one and a half story structure approximately 1200 square feet in size. The house, with the attached front porch, is about 31.6 feet from the property line. Without the porch the house itself meets front setback requirements. Mr. Wilson, on behalf of the property owners, is requesting a 3.4 foot variance to the front setback for the existing porch.

Given the above definitions the variance needed to allow the front porch and the exterior steps (in excess of three feet) is actually approximately 7.4 feet, 4 feet of exterior steps and 3.4 feet of porch.

Records indicate that the house was not placed on the lot as originally approved in 1986. The house appears to have been placed as a mirror image of the original plans. There was no accurate survey submitted with the building permits but rather a sketch indicating the proposed location of the house and the distances from the property lines. The original plans indicated that the house was to meet setback requirements. It is unclear whether the porch was a part of the original construction. The porch could be changed to a patio, flush with the ground, and meet zoning ordinance requirements.

A discussion of the two provided site plans and shape of the building took place.

Mr. Feigley opened the public hearing.

Mr. Eric Scalise, original buyer of the property, stated that he bought the property in 1986 and sold it in 1991. Mr. Scalise further stated that his title survey showed the structure within the setback lines and it was not until a title survey was required as part of the closing of the 1991 sale, that the encroachment was noted and an agreement at closing stated that Mr. Scalise and Rickman Engineering, the original surveyor, would apply to the Board for a variance. Mr.

Scalise commented that he was unable to have Rickman Engineering bring the variance request to the Board. Mr. Scalise stated he finally went to AES Consulting, at his attorney's suggestion, and they have fulfilled his closing requirement from 1991.

A discussion on how the porch encroached the setback lines took place.

Mr. Wilson, AES Consulting, stated that Rickman Engineering did the original survey of the property and showed the house and porch within the setback lines. Mr. Wilson also stated that Rickman Engineering did the survey in 1991 for the sale of the home and that showed the porch encroaching.

A discussion on surveys took place.

Mr. Feigley closed the public hearing.

Mr. Ripley commended Mr. Sclaise's diligence in getting this issue resolved.

Mr. Nice moved that a variance of 3.4 feet be granted in case ZA-20-96. Mr. Feigley seconded the motion.

The motion was approved unanimously.

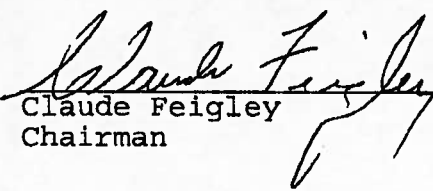
**E. MATTERS OF SPECIAL PRIVILEGE**


Mr. Farmer advised the Board of his new position, as Capital Projects Administrator, for the County and thanked the Board for their support and service while he's been the Zoning Administrator.

Mr. Feigley, on behalf of the Board, thanked Mr. Farmer for assistance and support to the Board.

**F. ADJOURNMENT**

The meeting was adjourned at 8:35 P.M.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary



## MEMORANDUM

To: Records Management

From: Zoning

Date: January 7, 2016

Re: Board of Zoning Appeals Minutes: October 10, 1996 approving September 8, 1996

This memo serves to acknowledge a typo in the October 10, 1996 Board of Zoning Appeal minutes of James City County.

**Section B. Minutes.**

The date of minutes listed for approval is September 8, 1996. These minutes should actually be September 12, 1996.

Please accept this correction into the official record with the minutes.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

**BOARD OF ZONING APPEALS**

**October 10, 1996**

**A. ROLL CALL**

**PRESENT:**

Mr. Feigley  
Mr. Giedd  
Mr. Nice  
Ms. Wallace

**ABSENT:**

Mr. Ripley

**Others Present:**

Jacqueline White, Zoning Officer  
Steve Grant, Staff  
Doug Murrow, Plans Examiner

**B. MINUTES**

The minutes of the August 8, 1996 and September 8, 1996 were approved as submitted.

**C. OLD BUSINESS**

**ZA-21-96; Gregory R. Davis, Attorney for Colonial Construction and Charles & Mary Crone.**

Mr. Gregory Davis, attorney for the developer and the owners, has applied for a variance from the rear setback requirements for the property located at 122 Indigo Dam Road. The property is further identified as parcel (10-9A) located on Real Estate Tax Map (38-4) in the R-2, General Residential zoning district.

The applicant is requesting a 4.9 foot variance from the rear yard requirement. The property owners, Charles and Mary Crone, subdivided the original property in 1995 (S-109-94), creating parcels (10-9) and (10-9A). In the subdivision process, a five foot strip of land across the front of the parcels was dedicated to Virginia Department of Transportation (VDOT). Site drawings of the parcels immediately across the street also indicate that a five foot strip was dedicated to VDOT, creating a fifty foot right of way for this portion of Indigo Dam Road.

Colonial Construction received a building permit for construction of a single family dwelling on this property in April 1996. The original site plan submitted with the building permit indicated that a 1-story, L-shaped structure was to be thirty feet from the front property line and 35 feet from the rear property line. The approved building permit stated that a deck was not permitted and requested that, due to the proximity of the structure to the property lines, a foundation survey be provided to the Code Compliance office.

The post construction survey submitted with the variance request indicates that the house has been constructed at an angle. As built the structure appears to encroach into the rear yard requirement by approximately 6 feet at the north corner and 4.9 feet at the other corner. The applicant needs a 6 foot variance to the rear yard requirement to meet zoning ordinance requirements. The final certificate of occupancy has not yet been issued.

The applicant has indicated that the surveyor's error in setting the house created the encroachment. The contractor failed to obtain a foundation survey to assure compliance with the zoning ordinance prior to completion of the structure.

Mr. Feigley asked Ms. White for clarification of the amount of a variance requested by the applicant and the county.

Mr. Feigley opened the public hearing.

Mr. Greg Davis, attorney for the applicant, stated that the error in the placement of the house was due to surveyor error. He further commented that his client thought that the survey required by the Code Compliance office was due at completion not at foundation.

Mr. Giedd asked if the house would fit in the building envelope. Mr. Davis stated yes, however he felt that the envelope was a hardship.

A discussion of surveys and surveyors took place.

Mr. Crone stated that he hired the surveyor after checking into his background and on the advice of other builders in the area.

Ms. Wallace asked for clarification as to how much of a variance is being requested.

A discussion of the amount of a variance requested took place.

Mr. Feigley closed the public hearing.

Mr. Nice stated that he was in favor of granting the variance because the building contractor hired what he thought was a reputable surveyor, and that it would be reasonable for him to expect the houses to be placed on the property correctly.

Mr. Giedd stated that he would like to continue the case until a correct survey could be obtained, since information is lacking to make a decision and that there is a question between staff and the client as to how much of a variance is required.

A discussion to continue the hearing took place.

Mr. Feigley reopened the public hearing.

Mr. Feigley stated that it was the consensus of the Board to defer case ZA-21-96 for the purpose of obtaining a correct survey of the property at 122 Indigo Dam Road, to the next scheduled meeting of the Board.

**ZA-22-96; Gregory R. Davis, Attorney for Colonial Construction and Charles & Mary Crone.**

Mr. Gregory Davis, attorney for the developer and the owners, has applied for a variance from the rear setback requirements for the property located at 121 Indigo Dam Road. The property is further identified as parcel (10-10A) located on Real Estate Tax Map (38-4) in the R-2, General Residential zoning district.

The property owners, Charles and Mary Crone, subdivided the original property in 1995 (S-35-95), creating parcels (10-10) and (10-10A). In the subdivision process, a five foot strip of land across the front of the parcels was dedicated to Virginia Department of Transportation (VDOT). Site drawings of the parcels immediately across the street also indicate that a five foot strip was dedicated to VDOT, creating a fifty foot right of way for this portion of Indigo Dam Road.

Colonial Construction received a building permit for construction of a single family dwelling on this property in April 1996. The original site plan submitted with the building permit indicated that the L-shaped, 1-story house was to be 30 feet from the front property line and 35 feet from the rear property line, meeting zoning ordinance requirements. The approved building permit requested that due to the proximity of the structure to the rear property line a foundation survey be provided to the Code Compliance office. The building plans and permit also specifically indicate that no deck is to be constructed on the house. The post construction survey submitted with the variance request indicated that the house, as built, is only 22 feet from the front property line and that a deck has been constructed onto the rear of the house resulting in a distance of only 30.4 feet from the rear property line. The applicant is now requesting a 3 foot variance from the front setback requirement and a 4.6 foot variance to the rear yard requirement. The final certificate of occupancy has not yet been issued.

The applicant has indicated that the surveyor that they hired, incorrectly set the foundation points for the house. The contractor failed to obtain a foundation survey to assure compliance with the zoning ordinance prior to completion of the structure. The rear deck, approximately 17 feet x 10 feet, was constructed without building permit approval. The applicant can eliminate the deck and meet the 35 foot rear yard requirement.

Mr. Feigley asked what does Code Compliance do when a structure has been built without a permit.

Ms. White stated that a permit would have to be issued, but in this case the building permit requirement is pending the decision of the Board.

Mr. Nice commented that the building permit application states he would be building a deck.

Ms. White stated that it was noted on the application by the plans examiner that a deck was not allowed because it did not meet setback

requirements.

Ms. Wallace asked if this type of discrepancy happens, frequently, or seldom. Ms. White stated seldom.

A discussion of the size of the deck and the building envelope took place.

Mr. Feigley opened the public hearing.

Mr. Davis stated there are two issues for this application. He further stated that the 3 foot variance requests results from the fact that the surveyor improperly located the front of the house. Mr. Davis stated the second issue is that of the deck and that the blueprints submitted to the county showed the deck. Mr. Davis further stated that the site plan did not show the deck and this resulted in the deck being improperly placed. Mr. Davis stated the hardship issues were as those stated in the previously heard case ZA-21-96.

Mr. Giedd asked if there was any proof that could be given that after the surveyor set the points the contractor used the points to construct the building.

Mr. Davis responded with an offer of Mr. Crone's sworn testimony.

Mr. Nice asked staff how code compliance handles notes on permits in reference to foundation surveys being required.

Doug Murrow responded that the note is placed on the computer primarily because it is a good point at construction to verify setbacks. Mr. Murrow further stated that we advise the contractor at the time of permit that the survey is required. Mr. Murrow did state that the current system does not have any alarms to advise that no further construction should proceed until the survey is supplied. Mr. Murrow commented that we ask for the surveys whenever minimum setbacks is an issue and code compliance has had very few problems with this survey being completed in the past.

Mr. Feigley asked what responsibility do the inspectors have when the survey is required.

Ms. White stated that it is difficult for the inspector to verify setbacks when out in the field. Ms. White further stated that as a result of the Boards' request in the past, surveys became a requirement at foundations to avoid this type of error.

A discussion of the ordinance and the deck took place.

Mr. Giedd commented that the applicant has a 47.3 foot structure he's trying to place in a 40 building envelope and it appears no attempt was made to meet the setbacks.

Mr. Feigley stated that he is having problems with all three applications, because the applicant was forewarned of the need for a foundation survey because the setbacks were tight and he appears to have ignored this fact.

Mr. Crone stated that he was at the site when the house was laid out on the property, but then went in to the hospital and it was the framer who went ahead and placed the deck on the site.

Mr. Feigley closed the public hearing.

Mr. Feigley stated his position saying that he was willing to consider granting a variance to the front setback, but not granting the rear setback variance.

Mr. Giedd stated that he agreed.

Mr. Nice agreed with the other members because it was clearly noted that the deck was not to be allowed.

Ms. Wallace stated that she would go along with the board, but stated that she keeps hearing that the fault always lies with someone other than the contractor.

Mr. Feigley stated that the reason he's willing to be lenient because this house sets back further than all of the other houses on the block.

Mr. Giedd commented that if the applicant had requested a variance from the front setback prior to building, this application would never have had to go before this board.

Mr. Feigley moved that a 3 foot variance be granted for the front setback and that the request for a variance to the rear setback be denied. Ms. Wallace seconded the motion.

The variance for the front setback was approved unanimously and the variance for the rear setback was denied unanimously.

**ZA-23-96; Gregory R. Davis, Attorney for Colonial Construction and Charles & Mary Crone.**

Mr. Gregory Davis, attorney for the developer and the owners, has applied for a variance from the rear setback requirements for the property located at 119 Indigo Dam Road. The property is further identified as parcel (10-10) located on Real Estate Tax Map (38-4) in the R-2, General Residential zoning district.

The property owners, Charles and Mary Crone, subdivided the original property in 1995 (S-35-95), creating parcels (10-10) and (10-10A). In the subdivision process, a five foot strip of land across the front of the parcels was dedicated to Virginia Department of Transportation (VDOT). Site drawings of the parcels immediately across the street also indicate that a five foot strip was dedicated to VDOT, creating a fifty foot right of way for this portion of Indigo Dam Road.

Colonial Construction received a building permit for construction of a single family dwelling on this property in March 1996. The original site plan submitted with the building permit indicated that the 2-

story structure was to be 30 feet from the front property line and 42 feet from the rear property line. The approved building permit requested that due to the proximity of the structure to the property lines a foundation survey be provided to the Code Compliance office. The building permit application indicated square footage for a deck but did not show a deck on the site drawings. Prior to the issuance of the building permit the applicant was requested to show on the site drawings the location of the deck and a correct rear setback. The applicant indicated a deck location at 34 feet from the rear but was informed that it needed to be 35 feet from the rear to meet setback requirements. The post construction survey submitted with the variance request indicates that the house, as built, is only 21.9 feet from the property line and 33.8 feet from the rear property line. The applicant needs a 3.1 foot variance from the front setback requirement and 1.2 foot variance to the rear yard requirement to meet zoning ordinance requirements. The final certificate of use and occupancy has not yet been issued.

The applicant has indicated that the error in the location of the house was self inflicted, stating that the dwelling was improperly located by mistake. The contractor failed to obtain a foundation survey to assure compliance with the zoning ordinance prior to completion of the structure. The rear deck is approximately 8 feet x 20 feet. The applicant can eliminate or reduce the size of the deck and meet zoning ordinance requirements, for where the house currently sits on the lot, to meet the 35 foot rear yard requirement.

Mr. Feigley asked why a certificate of occupancy had been issued.

Ms. White explained that it was a temporary certificate of occupancy and that the final certificate of occupancy was pending the outcome of this variance request. Ms. White also noted that a temporary certificate can only be issued if there are no hazardous or safety issues that are outstanding.

Mr. Feigley asked why the county would issue a temporary certificate of occupancy if it was decided that the house would have to be moved.

Ms. White stated that the county and the contractor and the homeowner understand all of the ramifications if the variance is not approved. The county will not issue a temporary certificate of occupancy unless the contractor and the homeowner are fully aware of these ramifications.

Mr. Feigley opened the public hearing.

Mr. Davis stated that he would like to revise the request to reflect a 3.1 foot encroachment to the front of the house. Mr. Davis further stated that this is a custom house that is now complete and the owner will not close on the property until this variance issue is resolved. Mr. Davis commented that the porch corners were set by the surveyor and was done erroneously. Mr. Davis further commented that in regards to the deck it was shown on a site plan and the surveyor advised Mr. Crone that there was only 9 feet available for a deck and that is why an 8 foot deck was placed.

Mr. Nice asked if there was a possibility that the surveyor was unaware of this 5 foot setback.

Mr. Davis commented that it was possible, but no matter how you calculate the setback it will come out the same.

A discussion of why the deck encroaches took place.

Ms. Wallace asked if Mr. Crone looked at the permits when they were issued to him, since they clearly state that a deck was not allowed.

Mr. Crone stated that he did not look at them, that he filed them away.

Mr. Feigley closed the public hearing.

Mr. Nice stated that he was willing to grant the variance of the front setback but not the rear setback.

Mr. Feigley agreed with Mr. Nice to grant the request for the front setback.

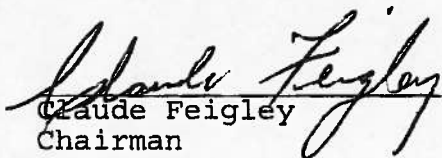
Mr. Feigley moved that a 3 foot variance be granted for the front setback and that the request for a variance to the rear setback be denied. Mr. Nice seconded the motion.

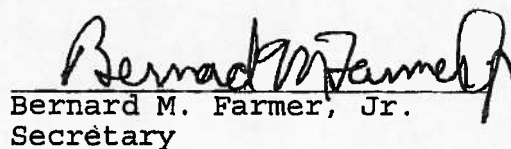
The variance for the front setback was approved unanimously and the variance for the rear setback was denied unanimously.

**E. MATTERS OF SPECIAL PRIVILEGE**

**F. ADJOURNMENT**

The meeting was adjourned at 9:30 P.M.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary



## **MEMORANDUM**

**To: Records Management**

**From: Zoning**

**Date: January 7, 2016**

**Re: Board of Zoning Appeals Minutes: October 9, 1997 approving September 6, 1997**

This memo serves to acknowledge a typo in the October 9, 1997 Board of Zoning Appeal minutes of James City County.

**Section B. Minutes.**

The date of minutes listed for approval is September 6, 1997. These minutes should actually be September 4, 1997.

Please accept this correction into the official record with the minutes.

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

## **BOARD OF ZONING APPEALS**

**OCTOBER 9, 1997**

### **A. ROLLCALL**

#### **PRESENT:**

Ms. Wallace  
Mr. Nice  
Mr. Feigley

#### **ABSENT:**

Mr. Giedd  
Mr. Fischer

#### **OTHERS PRESENT:**

Allen J. Murphy, Jr., Zoning Administrator  
Scott Denny, Code Compliance Officer

### **B. MINUTES**

The minutes of the September 6, 1997 meeting were approved with a correction being noted for Case ZA-10-97 to show the actual vote of each member on a split vote.

### **C. OLD BUSINESS**

None

### **D. NEW BUSINESS**

ZA-11-97. Paul B. Tubach, Jr.

Scott Denny presented the staff report saying that Mr. Paul B. Tubach, Jr., property owner, has requested a fourteen foot variance to the front setback requirement for his property located at 7511 Mellssa Lane in the A-1, General Agricultural, zoning district. The property is further identified as parcel (2-1A) on James City County Real Estate Tax Map No. (25-2).

The variance request stems from the applicants desire to construct a 22' by 27' garage attached to the existing house. Other additions are planned but meet current setback requirements. Although the garage would be in line with the primary structure, the garage would encroach fourteen feet into the current front setback requirement for this property.

The house was constructed in 1987 and met the setback requirement from the street right of way of 35 feet. Setback requirements were changed in 1989 to 50 feet from any street right of way. The ordinance change made the house non-conforming. Any addition to a non-conforming home must meet current ordinance requirements.

Staff felt that the proposal would not have a greater impact on adjoining property than the existing building and that the variance would not be a detriment to adjacent property. A clearly demonstrable hardship as defined by the Zoning Ordinance does not exist; therefore, staff could not support this application.

Mr. Nice asked for clarification about whether or not the original setback requirement would allow this proposed addition.

Mr. Denny responded that the original setback requirements would allow the proposed addition.

Mr. Nice questioned the measurements shown on the plat for the property.

Mr. Allen Murphy clarified that the front setback measurement was made from the edge of the front porch stoop.

Mr. Feigley opened the public hearing.

Mr. Paul B. Tubach, Jr., property owner, explained his proposed additions to the Board, noting that his proposal makes best use of the property from a site planning standpoint. The front corner of the garage would not encroach into the setback any further than the rest of the existing house.

Mr. Feigley closed the public hearing.

Mr. Nice said that he would have no objection to granting a variance given that the proposed additions would not be a detriment to adjacent property.

Ms. Wallace stated that she had no objections.

Mr. Feigley made a motion to establish the front setback at 36 feet.

Ms. Wallace seconded the notion.

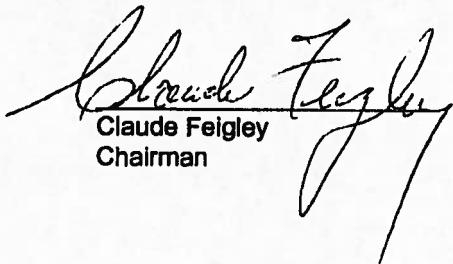
The motion was granted with a unanimous vote of 3-0.

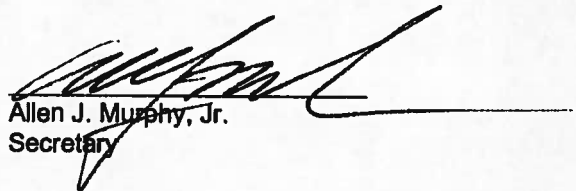
**E. MATTERS OF SPECIAL PRIVILEGE**

None

**F. ADJOURNMENT**

The meeting was adjourned at 7:50 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy, Jr.  
Secretary

## **BOARD OF ZONING APPEALS**

**SEPTEMBER 4, 1997**

### **A. ROLL CALL**

#### **PRESENT:**

Mr. Nice  
Ms. Wallace  
Mr. Giedd  
Mr. Feigley

#### **ABSENT:**

Mr. Fischer

#### **OTHERS PRESENT:**

Allen J. Murphy, Jr., Zoning Administrator  
Scott Denny, Code Compliance Officer

### **B. MINUTES**

The minutes of the August 7, 1997 meeting were approved as submitted.

### **C. OLD BUSINESS**

None

### **D. NEW BUSINESS**

ZA-10-97      Lowe's Home Centers

Mr. Denny gave the staff report stating that Marc Millis, on behalf of the Lowe's Company, Inc., has requested a variance to Section 20-68, Exterior Signs, of the James City County Zoning Ordinance. The ordinance permits a building face sign that is a maximum of 60 square feet, regardless of the size of the building. The variance application requests a 144 square foot building face sign. The location of the Lowe's will be behind and adjacent to the Zion Baptist Church at the corner of Centerville Road and Richmond Road.

Staff opinion showed that compliance with the Zoning Ordinance would not prohibit or unreasonably restrict the use of the property or cause demonstrable hardship approaching confiscation. The applicant has stated that visibility is a hardship. Staff believes that this project in its entirety will have adequate visibility. The parcel in question is comprised of over 24 acres, 18 of which will be cleared to accommodate the structure itself, parking and the necessary utilities. In addition to the building face sign, two freestanding signs can serve the site: one on Centerville Road and one on Richmond Road.

Representatives of Lowe's have stated that the Ordinance fails to address structures with greater frontage than 400 feet. Section 20-73 states that an additional free standing sign may be erected with the Zoning Administrators authorization provided that the parcel has greater than 400 feet of frontage, more than one entrance, and is not a corner lot. This parcel is eligible for consideration for an additional freestanding sign.

Staff believes that Lowe's would be visible, particularly through the 150-foot wide entrance along Centerville Road. The situation facing the applicant, large-scale buildings setback hundreds of feet from the road, is shared by other properties and developments in the James City County. Examples given

included Williamsburg Crossing Shopping Center off of Route Five, Farm Fresh off of Richmond Road, and the proposed Ukrop's and Target off of Monticello Avenue. The applicant has mentioned that the architectural features of the sign would not be to scale to the building itself.

The facts surrounding this application fail to exhibit a demonstrable hardship approaching confiscation or unreasonably restrict use of the property. Additionally, the facts fail to show that such a hardship is not shared by others properties in the same zoning district in the vicinity, therefore, staff does not support the granting of a variance in this case.

Mr. Feigley raised a question of the location of any proposed roadside signs on the map of the site issued to all Board members.

Mr. Denny stated that on the site plans submitted to staff for the proposed site, one sign was proposed for Centerville Road. A second sign is possible on Richmond Road.

Mr. Feigley asked whether a site plan had been submitted for the site and whether or not any signage was noted on the site plan.

Mr. Murphy replied that a building face sign is not typically shown on a site plan drawing and that the applicant was aware of the need to meet Ordinance requirements and that there would be an application in front of the Board of Zoning Appeals for the building face sign. There were no problems raised with the proposed signage at the Development Review Committee meeting regarding this case.

Mr. Feigley asked whether the Ordinance requirement for building face signs not to exceed 60 square feet applied to the total building face signage or was to be applied to each individual sign if more than one was proposed.

Mr. Murphy responded by stating that if there were units or departments within a single store that individual signage was allowable provided that each complied with Ordinance requirements.

Mr. Nice questioned the whether the Ordinance differentiated between buildings with greater than 400 feet of frontage and those with less than 400 feet of frontage and asked for clarification of the Ordinance language on this issue.

Mr. Denny stated that the Ordinance does address frontage of greater than 400 feet but that it only addresses the freestanding sign, not building face signs.

Mr. Nice asked whether or not Lowe's could display multiple building face signs for each department within the store such as electrical, plumbing, lumber etc. much in the same manner that grocery stores do with signage for meats, delis, etc.

Mr. Murphy responded that Lowe's could sectionalize the building and use multiple building face signs, each in compliance with the Ordinance requirements.

Mr. Feigley opened the public hearing.

Mr. Marc Millis, representing Lowe's Home Centers, stated that there were a number of factors that would warrant a larger building face sign in this case. He stated that the Ordinance does not adequately address buildings of this size and that they could ask for multiple signs for each individual department but were choosing instead to call for a single sign. He proceeded to state that a standard sign for Lowe's is 286 square feet and they are proposing a sign roughly half that size. Visibility would be greatly reduced given the required proffered buffers.

Mr. Feigley asked what the greatest area of concern or problem was given the 60 square foot requirement.

Mr. Millis replied that both visibility and aesthetics were of great concern to Lowe's given the distance to all access roads into the site from the store front and the amount of landscaping required by the County. Architecturally, the design would have to be altered given the Ordinance requirements.

Mr. Giedd asked what criteria was used to come up with a proposed sign of 144 square feet.

Mr. Millis responded that the facade was altered from the standard used in prototype stores and the proposed sign was reflective of this alteration.

Mr. Giedd asked whether the size of the lettering on the proposed sign have any bearing on the distance to the access roads into the site.

Mr. Millis stated that existing trees on the site prevented him from presenting views from the proposed access roads.

Mr. Giedd wondered whether the size of the sign truly mattered given the proposed landscaping preventing a view of the sign until you were in the parking lot.

Mr. Millis replied that certainly the size of the frontage sign would have a measurable effect on views from the access streets.

Mr. Feigley asked whether the proposed sign was internally illuminated.

Mr. Millis replied that they were internally illuminated.

Mr. Nice asked what hardship would be raised if the variance request were to be denied in terms of redesign time and proposed opening of the store.

Mr. Millis stated that the redesign would be a major undertaking.

Mr. Murphy stated that staff firmly believes that there is no hardship as defined by the Ordinance in this case and that the proposed landscaping gaps and large entrances in addition to the building colors being called for will create more than adequate visibility for the store. Staff understands that the size of the building warrants a certain degree of attention given current Ordinance requirements but precedent has been set by the Board in years past to set a threshold of 60 square feet and the Board should view this variance request solely on the basis of hardship issues and leave the Ordinance review to the attention of the Board of Supervisors.

Mr. Millis responded to Mr. Murphy's statement by bringing attention to the site plan in terms of the reduced visibility created by landscaping requirements and the required buffers along both Centerville Road and Richmond Road. He also stated that Lowe's has made a conscious effort in recent years to be a retail facility, not a destination facility.

Mr. Feigley closed the public hearing.

Ms. Wallace stated that the people who live in the County will know where the store is and the building face sign will have little if any effect on attracting people to this store, therefore she could not support this request for a variance.

Mr. Nice called for attention to be focused on the business and its vested interests in this case as well as the various other opinions being lobbied. Based on the aesthetics of the store and its meeting many county ordinance requirements, common sense dictates that if the substance of the appeal is good enough to be

presented after the fact to the Board of Supervisors to change the Ordinance to reflect current development it is good enough for this Board to approve the variance request.

Ms. Wallace questioned how granting a variance in his case would invite similar cases to come before the Board given the precedent it would set.

Mr. Giedd called for the Board to interpret the Ordinance as it exists, not attempt to rewrite the Ordinance with each interpretation, case by case.

Mr. Feigley pointed out cases from the past, which were reflective of what members of the Board were discussing tonight and how the Boards actions led to changes in the Ordinance.

Mr. Feigley then made a motion to deny this variance request.

Ms. Wallace seconded the notion.

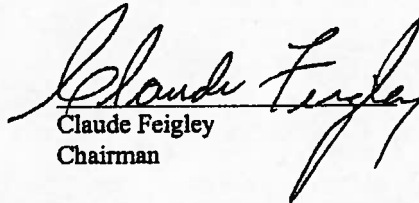
The variance was denied by a vote of 3-1. AYE: Feigley, Wallace, Giedd NAY: Nice

**E. MATTERS OF SPECIAL PRIVILEGE**

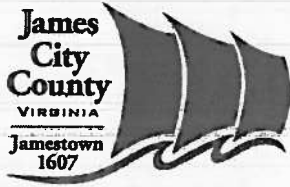
None

**F. ADJOURNMENT**

The meeting was adjourned at 8:30 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy, Jr.  
Secretary



## **MEMORANDUM**

**To: Records Management**  
**From: Zoning**  
**Date: January 7, 2016**  
**Re: Board of Zoning Appeals Minutes: June 3, 1999**

The following minutes for the Board of Zoning Appeals of James City County dated June 3, 1999 are missing an approval date and were either never voted on or never presented for approval in the year surrounding this meeting.

These minutes, to the best of my knowledge, are the official minutes for the June 3, 1999 Board of Zoning Appeals meeting. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for June 3, 1999.

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

## BOARD OF ZONING APPEALS

June 3, 1999

### A. ROLL CALL

#### PRESENT:

Mr. Feigley  
Mr. Fischer  
Mr. Giedd  
Mr. Nice

#### ABSENT:

Ms. Wallace

#### OTHERS PRESENT:

Scott Denny, Code Compliance Officer  
Jim Breitbeil, Development Management Technician  
Andy Herrick, Assistant County Attorney

### B. MINUTES

The minutes of the December 3, 1998 meeting were approved as submitted.

### C. OLD BUSINESS

None

### D. NEW BUSINESS

**ZA-1-99          7144 Church Lane**

Scott Denny presented the staff report stating that Ms. Ethel Barnhill, property owner, has applied for a 17-½ foot variance to the rear 35-foot setback to permit an existing deck to remain in its present location. The property is located at 7144 Church Lane and can be further identified as Parcel (5-20) on the James City County Tax Map No. (22-1). This property is zoned R-1, Limited Residential.

Section 24-237(b) of the James City County Zoning Ordinance requires a rear setback of 35 feet. The house was constructed in 1986. The setbacks for the R-1 zoning district have not changed since the construction of this house. The original building permit, 86-0278-B, identified the distance to the rear property line as 36 feet. Ms. Barnhill has stated that the portion of the deck that currently encroaches in the rear setback already existed in 1995 when she purchased the property. However, her attorney did not bring the encroachment to her attention.

Staff recognizes that the continued presence of this deck would not create a detriment to the adjacent property and it would not change the character of the surrounding area. Staff also recognizes that no complaints have ever been received regarding this deck and the property backs up to the property of Newport News Waterworks. The strict application of the ordinance would not produce an undue hardship in this instance. Therefore staff cannot support this application.

Mr. Feigley stated he noticed a note on the survey that stated the garage encroaches the side building setback line. However, it does not encroach the accessory building setback line. He stated that the garage appears to be a problem with the side setback. Mr. Feigley stated he measured the distance between the house and the garage and that the closest point is approximately 5 feet and the farthest point is approximately 8 ½ feet. On that basis it is less than 10 feet away from the main structure and therefore should conform to the building setbacks and not to the accessory building setback. He stated the applicant might want to ask for that variance at the same time.

Mr. Feigley stated that the garage appears to encroach the side 15-foot setback by 2.6 feet.

Mr. Holland, attorney for Ms. Barnhill, asked to amend the application to also include a variance request of 2.6 feet to the east-side setback for the existing garage.

Mr. Nice asked if the garage was constructed at the same time as the house.

Mr. Denny stated yes.

Mr. Feigley opened the public hearing.

Mr. Holland stated he does not have much to add but would like to state that Ms. Barnhill is an innocent party. The house was built in 1986. She purchased it in 1995 and her attorney at that time did not mention to her that the deck was encroaching the rear setback, not to mention the garage as well. Ms. Barnhill has sold the property and the new owner, who is present, and her neighbor to the right-hand side is also present in support of Ms. Barnhill. Mr. Holland stated that he received two estimates to move and reconfigure the deck and they were \$9460 and \$8650.

Mr. Feigley asked if Ms. Barnhill is present.

Mr. Holland stated yes.

Mr. Feigley asked Ms. Barnhill whom she bought the house from.

Ms. Barnhill stated Ms. Jeanne Rich in 1995.

Mr. Feigley asked if she was the original owner of the house.

Ms. Barnhill stated no. She bought it from the person who built the house. She bought the house as is with the garage and the deck in the position they are in today.

Mr. Feigley asked if Ms. Barnhill had the property surveyed when she purchased the house.

Ms. Barnhill stated yes and that nobody indicated that there existed a problem at that time.

Mr. Benjamin Morris, resident at 7140 Church Lane, stated that the original owner added the garage and part of the deck after the construction of the house. He stated that he would like to see the deck stay where it is in its present location and has no objection to the variance requests.

Mr. David Wilburn, current resident at 7144 Church Lane, stated he has a copy of an email from other neighbors stating they are happy with the deck and have no problems with the house. He stated his wife is handicapped and is in a wheelchair. He also has three children. Part of the lure in buying the house was the deck. Any change in the deck would cause more of a problem for the neighbors than leaving it as is. He also stated that this is the first time he was aware of the garage encroaching the side setback.

Mr. Feigley asked if Mr. Wilburn bought the house in good faith.

Mr. Wilburn stated yes.

Mr. Andy Herrick, Assistant County Attorney, introduced himself to the Board. He stated that James City County is required to publish a notice for each separate variance. If the Board were inclined to proceed with the variance for the garage, they would have to do so in the form of a single variance rather than two separate variances.

Mr. Feigley asked if the Board could rule on the variance on the garage since it was not advertised.

Mr. Herrick stated that a variance on the garage could not be passed as a separate variance. It would have to be put together as a single variance. If the variance for the garage is to be considered separately, the County Code would be require public advertisement.

Mr. Feigley asked if the Board could legally make a motion that would include both of the variances.

Mr. Herrick stated yes and that is what he is suggesting.

Mr. Feigley closed the public hearing.

Mr. Nice stated the homeowner is innocent in this situation, there are no objections from neighbors and feels that this case does not effect the intent of the ordinance. He then stated he would be in favor of supporting the variance.

Mr. Feigley stated that since the house, with the deck, has passed through at least two other transactions, he could not keep Mr. Wilburn at fault and that he bought the home in good faith. He is in favor of supporting a variance for the back yard setback and the side yard setback.

Mr. Geldd stated that he does not have a problem with the variance but does with a contractor putting up structures without building permits. He also stated that the contractor is wrong and should be the one in front of the Board explaining his case.

Mr. Nice stated he would like to acknowledge Mr. Feigley for being so astute in the zoning ordinance. He was able to help the applicant today and eliminate another inconvenience that may have occurred in the future.

Mr. Feigley made a motion to establish the rear setback at seventeen (17) feet and establish the East Side setback at twelve (12) feet.

The motion was granted unanimously (4-0).

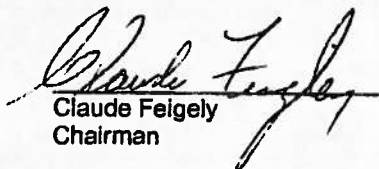
**E. MATTERS OF SPECIAL PRIVLEDGE.**

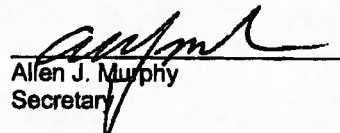
Being the first scheduled meeting of the year, the Board members nominated officers for the remainder of the year 1999.

Chairman – Mr. Feigley  
Vice-Chairman – Mr. Nice  
Secretary – Mr. Allen Murphy

**F. ADJOURNMENT**

The meeting was adjourned at approximately 8:10 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy  
Secretary



## **MEMORANDUM**

**To:** Records Management

**From:** Zoning

**Date:** January 7, 2016

**Re:** Board of Zoning Appeals Minutes: July 1, 1999 approving June 7, 1999

This memo serves to acknowledge a typo in the July 1, 1999 Board of Zoning Appeal minutes of James City County.

**Section B. Minutes.**

The date of minutes listed for approval is June 7, 1999. These minutes should actually be June 3, 1999.

Please accept this correction into the official record with the minutes.

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David Otey  
*Chairman*

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Jason Purse  
*Secretary*

## **BOARD OF ZONING APPEALS**

**July 1, 1999**

### **A. ROLL CALL**

#### **PRESENT:**

Mr. Feigley  
Mr. Fischer  
Mr. Giedd  
Ms. Wallace

#### **ABSENT:**

Mr. Nice

#### **OTHERS PRESENT:**

Allen Murphy, Zoning Administrator  
Scott Denny, Code Compliance Officer  
Jim Breitbell, Development Management Technician  
Andy Herrick, Assistant County Attorney

### **B. MINUTES**

The minutes of the June 7, 1999 meeting were approved as amended.

### **C. OLD BUSINESS**

None

### **D. NEW BUSINESS**

**ZA-3-99**

**137 Howard Drive**

Mr. Feigley asked the applicant, Mr. Robert Kidd, if he has ever been before the Board.

Mr. Kidd stated he has been here about ten years ago.

Mr. Feigley explained that the James City County Board has five members and one is absent tonight. To conduct a meeting, there needs to be a quorum of three. Four are present tonight and there is a possibility of a tie vote. The State has mandated that a variance will not be granted in the case of a tie vote.

Mr. Feigley asked Mr. Kidd if he knew why James City County has a Board that you can apply for a variance to if you feel the Ordinance created a unique hardship to you.

Mr. Kidd stated yes.

Mr. Scott Denny presented the staff report stating that Mr. Robert Kidd of Longhouse Village Associates, on behalf of Reather Ann Johnson, property owner, has applied for a variance to reduce the rear setback at 137 Howard Drive to permit the construction of a ten-foot by twelve foot deck. This deck, if built, would encroach 7.05 feet into the rear thirty five-foot (35') setback. This property is also identified as parcel (01-0-0059) on the James City County Tax Map (52-3) and in the R-2, General Residential Zoning District.

Upon examination of the application, original building permit and subdivision plat, staff discovered that the existing structure was also 1.79' feet too close to Howard Drive. Mr. Kidd, President of Longhouse Village Associates, was notified of the front encroachment and staff recommended inclusion of a variance request

to reestablish the front setback at twenty-eight feet. Mr. Kidd agreed that this issue should be addressed now in hopes that it would prevent any future problems with the sale of the property.

Section 24-258(b) of the James City County Zoning Ordinance establishes the rear setback in the R-2, General Residential Zoning District, at thirty-five feet (35'). Currently, the existing structure is located 37.95' from the rear property line. Therefore, the structure is not encroaching. However, the applicant has requested a variance to permit the future construction of a rear deck.

The second issue concerns the placement of the existing structure on the property. Section 24-256 of the James City County Zoning Ordinance states in part "Structures shall be located a minimum of 25 feet from any street right of way which is 50 feet or greater in width. Where the street right of way is less than 50 feet in width, structures shall be located a minimum of 50 feet from the centerline of the street." Howard Drive, a public street, currently has a right of way width of thirty feet (30'). The subdivision plat also identifies a ten-foot (10') strip that is to be dedicated to the Virginia Department of Transportation for future road widening. This will give the right of way a width of forty feet (40') and require that all structures be located at least fifty feet (50') from the centerline of Howard Drive.

The survey provided by the applicant identifies the structure as being 28.21 feet from the front property line. In order to meet the required fifty feet (50') from the centerline the structure would have had to been placed at least thirty feet (30') from the front property line. Further examination of the records revealed that the setbacks shown on the building permit matched the setbacks on the subdivision plat. These setbacks were incorrect. This error was not detected by staff throughout the subdivision or building permit process.

Since this variance request is comprised to two separate issues, staff has two separate recommendations. The application requested a reduction of the rear setback that would permit the construction of a ten foot by twelve foot (10'x12') rear deck. This deck would reduce the rear setback to twenty-seven point nine five feet (27.95'). Although the authorization of such a variance would not be of substantial detriment to the adjacent property, it would be a matter of special privilege. The property owner could construct a patio with steps that would meet ordinance requirements. In this case staff believes that a demonstrable hardship has not been demonstrated. Therefore, staff cannot support this aspect of the variance.

The second issue involves the current placement of the existing structure on the property. Since the property was purchased in good faith by Ms. Johnson, and the placement of the house was a result of an error that was not detected by staff during the review of both the subdivision plat and the building permit process, staff supports this request to establish the front setback at 137 Howard Drive at twenty eight feet.

Mr. Feigley asked, for clarity, if the Board will be considering a variance to both the rear and to the front setbacks.

Mr. Denny stated that was correct.

Mr. Feigley noted that the front property line indicated on the application for a building permit is incorrect and asked if the error occurred as a result of approving the application as submitted.

Mr. Denny stated that the error was created by assuming that Howard Drive had a 50-foot right of way. The right of way was not noted on the site drawing and that assumption should not have been made. If Howard Drive did have a 50-foot right of way, then the required setback for the house would have been 25 feet. Since the right of way is 30 feet, the house should have been placed further back.

Mr. Feigley asked if the applicant actually places the numbers on the application for a building permit.

Mr. Denny stated no – Code Compliance Officers place the numbers there, and in this case he wrote them in.

Mr. Feigley asked if the number "28.39" for the Front Property Line on the application for a building permit does not conform to the zoning ordinance.

Mr. Denny stated that is correct.

Mr. Feigley asked why a deck of 120 square-feet is indicated on the application for a building permit and it is not shown on a drawing or elsewhere.

Mr. Denny stated that was another error by staff.

Mr. Feigley asked if staff is approving a 120 square-foot deck since it is indicated on the application.

Mr. Denny stated that staff reviews the site drawing and not noticing the discrepancy between the application and the site drawing was an oversight.

Mr. Feigley asked if this means the applicant receives permission to construct a 120 square-foot deck.

Mr. Denny stated that the application was approved and that he has requested a 120 square-foot deck. Normally, if it were noted that the deck was not on the site drawing, staff would contact the applicant and ask him to revise the site drawing to indicate the deck. In this case, Mr. Denny failed to notice it was on the application and therefore he was not contacted.

Mr. Feigley stated he knows that the deck was not built and that he wanted to ask the applicant why he did not build the deck. He then asked Mr. Denny why the application has a note that reads: "same as 97-2 or permit # 98-1346B."

Mr. Denny stated that when an applicant is submitting more than one application and construction plans are pretty much the same, staff normally puts same as numbers to reduce the amount of paper work.

Mr. Feigley asked whose actual writing is on the application; Mr. Denny's or the applicant's.

Mr. Denny stated it is the County's Senior Permit Technician with the exception of the signature.

Mr. Feigley opened the public hearing.

Mr. Robert Kidd, the builder of the houses in the subdivision, thanked the Board for hearing his case. He stated he feels that the County is vastly overworked and understands any error that may occur. He said he was unaware that the house did not meet the front setback until about three weeks ago. He stated they donated ten feet to the highway department when he re-developed the subdivision and felt they still met the front setback requirements.

Mr. Denny stated that after a ten-foot dedication to VDOT, the right-of-way is forty feet. The centerline of the street is twenty feet to one side and the house is twenty-eight feet from the property line. This put the house shy of the required fifty feet from the centerline when the right-of-way is less than fifty feet.

Mr. Kidd stated that he was unaware, until about three weeks prior to the completion of the house, that the deck was nonconforming and that he might have observed that if he paid closer attention. He handed out to the Board three pieces of paper and explained that the first one is of the subdivision as it has been on the County's books for thirty years. The front three lots were very small and nonconforming. He reconfigured and took about 100 feet from the rear lots and pushed the front lots back to make it conforming. The sheet marked "B" is the first submission he made to the County and noted that all the houses face inward which was his intention. He stated that it was noted to him that the Code requires all houses to face toward the hard surface road if the thirty-foot right-of-way is not a hard surface. The lots were re-configured again and then the houses on them. Sheet "C" is how it was finally approved and all four houses are facing Howard Drive. The County allowed for the two houses in the rear-facing center, but the two at the front have to face Howard Drive. From the original conception, the lot was not deep enough for a house and a deck on the rear.

Mr. Kidd stated that after turning the houses around and the lack of the ability to build a deck represents a hardship for the homeowner. He did contract to build her a deck and the homeowner wanted a deck. The placement of the house facing Howard Drive precluded the possibility of having a deck, which he found out about by the County several weeks before the completion of the house. He stated he was not going to argue with the County or the Planning Department - they know their job and it was his error. But it was not the error of the homeowner. There are seven houses in that community. They take great pride in that area and the other six houses have decks, all of which are conforming. He suggested that the homeowner, not being able to have a deck would create a bit of a hardship. He stated that, perhaps in legalistic fashion, if the building permit stated the homeowner could have a deck then she can have a deck, but he will not take that position.

Ms. Wallace asked if the deck was in the original plan.

Mr. Kidd stated yes.

Mr. Feigley stated he does not see how anyone could put a 10' x 12' deck on to this house and conform to the zoning ordinance regardless what happened.

Mr. Kidd stated that if the house were to facing inward, there is ample room to meet the setbacks.

Mr. Feigley stated that with the configuration of the house as constructed, there is no way it would fit. He stated there is hardly room for anything but fortunately you could at least have some steps off the back door since they are not considered.

Mr. Kidd stated he spoke with the woman next door, the only person who would be adversely affected by a deck, and she has no problems with a deck going on the house - the deck would face the side of her garage.

Mr. Feigley asked what was planned for the new 30-foot right-of-way between 135 and 137 Howard Drive.

Mr. Kidd stated that is a utility easement and the right-of-way was shifted over to make more room for the lot we are looking at. The road would not have been permitted if he suggested they go in with a gravel road, but the right-of-way was there and grandfathered from thirty years back. It has been a subdivision on the county map for thirty or forty years. It was just re-configured and he purchased all the lots.

Mr. Fischer stated that a 120 square-foot deck is being applied for, but it is not mentioned on the building permit. He then asked if only what is on the permit is approved, or is the whole application approved.

Mr. Kidd stated he would accept that it would only approve what the permit shows. He could apply for anything, but may only get approval on some things. He mentioned that there is no deck shown on the plat and it should have been on there.

Mr. Fischer stated that the problem here is that we don't have a hardship - the way the word is used in the zoning ordinance. It is a great deprivation, but it doesn't meet the terminology required for a hardship.

Mr. Kidd stated he would argue that the Code, by not permitting the house to face inward which would permit a deck on the rear of the house, does pose a hardship.

Mr. Giedd asked what were the dimensions of the buildable space.

Mr. Kidd stated there would be thirty-one additional feet and he is only requesting a variance of seven feet.

Mr. Allen Murphy stated that there may have been a problem with the width of the house.

Mr. Kidd stated that Mr. Murphy was correct and that the house would have to be narrower.

Mr. Giedd asked what would be wrong with building a patio.

Mr. Kidd stated the homeowner wants what the others have and what he contracted to give her. He did suggest that idea and she was quite adamant about wanting a deck.

Mr. Giedd asked what will happen if she doesn't get the deck.

Mr. Kidd stated he would refund the money for the deck and build a patio with steps.

Mr. Giedd asked if she would get out of the contract.

Mr. Kidd stated she has been living there for three months – they closed and escrowed.

Mr. Giedd stated the neighborhood doesn't fit the concept of the zoning ordinance where there are setbacks to provide privacy and separation of property. The houses there now exist without privacy and separation. It looks like a nonconforming neighborhood – not in the sense of the law, but in the way they were built. He stated it looks like very effective use of the land which appears to be economical where people may have gotten into houses where otherwise they wouldn't be able to.

Mr. Kidd stated that to find a lot in James City County where you can buy a lot and a house for the \$75,000 range is almost impossible.

Mr. Giedd stated that the people bought into this neighborhood, saw the neighborhood before they bought the house and wanted a deck there which is almost a standard today. This is not the type of neighborhood where this deck would depreciate the value of their neighbors, which is his main concern. He stated that, with no good reason, he would not turn down the variance.

Mr. Feigley closed the public hearing.

Ms. Wallace stated that she, like Mr. Fischer, fails to see a hardship.

Mr. Feigley stated he has visited the site twice and tried to rationalize the effective use of property. He then stated that Mr. Giedd made an important point in noting that decks are important to people. He pondered if the County's strict enforcement of the zoning ordinance caused this hodge podge arrangement of the way the houses face so the landowner can use his land to the best of his ability. He stated he did not know if these things should be factored into the decision or not.

Mr. Giedd stated he does not disagree with the way the County allowed for the neighborhood to be planned. He thinks it is value engineering that meets the requirements of the County and using property that gets people into housing. He stated he agrees that no hardship exists.

Mr. Feigley stated that, with the requirement that the house has to face Howard Drive, he cannot think of a configuration of a reasonable size building that could go on this property with a deck on it.

Mr. Giedd stated that it is a tiny lot and the house is the biggest size house that could be built on it. The lot is very efficiently used and it is a modest home at just over 1,000 square feet.

Mr. Giedd made a motion to establish the front setback at 28 feet and the rear setback at 27 feet.

Mr. Fischer seconded the motion.

The motion was denied (2-2).

Aye: Mr. Giedd, Mr. Fischer

Nay: Ms. Wallace, Mr. Feigley

Mr. Feigley stated he thinks this motion would grant an unusual privilege to set the rear setback at 27 feet. He noted that the variance couldn't be granted with tie vote, as mentioned at the beginning of the meeting.

Mr. Allen Murphy stated that the Board could, if it so desires, make a motion to consider only the front setback variance request.

Mr. Feigley made a motion to establish the front setback at 28 feet.

Ms. Wallace seconded the motion.

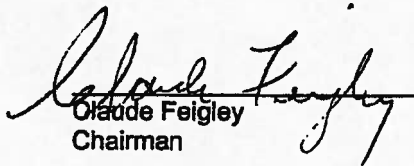
The motion was granted unanimously (4-0).

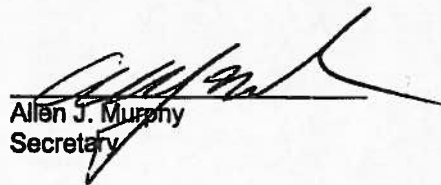
**E. MATTERS OF SPECIAL PRIVLEDGE.**

None

**F. ADJOURNMENT**

The meeting was adjourned at approximately 8:20 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy  
Secretary



## **MEMORANDUM**

**To: Records Management**

**From: Zoning**

**Date: January 7, 2016**

**Re: Board of Zoning Appeals Minutes: February 5, 2009; August 28, 2009; and September 3, 2009**

The following minutes for the Board of Zoning Appeals of James City County dated February 5, 2009; August 28, 2009; and September 3, 2009 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the February 5, 2009; August 28, 2009; and September 3, 2009 Board of Zoning Appeals meetings. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting.

Please accept these minutes as the official record for February 5, 2009; August 28, 2009; and September 3, 2009.

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

**MEMORANDUM**

**DATE:** October 29, 2013

**TO:** Records Management

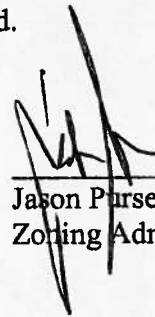
**FROM:** Jason Purse, Zoning Administrator

**SUBJECT:** Board of Zoning Appeals Minutes-February 5, 2009

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The following minutes for the Board of Zoning Appeals dated February 5, 2009 are missing the signature for Melissa Brown, Secretary. Ms. Brown is no longer an employee of James City County.

These minutes, to the best of my knowledge, are the official minutes for the February 5, 2009 Board of Zoning Appeals meeting. They were approved by the Board of Zoning Appeals at the March 5, 2009 meeting. Please accept these into the official record.



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Jason Purse  
Zoning Administrator

**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 30<sup>th</sup>, 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.

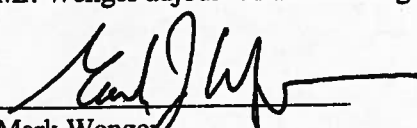
Mr. Wenger seconded the motion.

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

## **BOARD OF ZONING APPEALS**

**August 28, 2009**

### **A. Roll Call**

#### **Present:**

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

#### **Absent:**

Mr. Mark Wenger

#### **Others present:**

Mr. John Rogerson, Senior Zoning Officer

### **B. Minutes**

### **C. Old Business**

### **D. New Business**

#### **Discussion of Current Legal Matters**

Ms. Moody 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 in a closed session for the purpose of consultation with legal counsel pertaining to litigation that has been filed against the board referencing ZA-0008-2008. Mr. Rhodes seconded the motion.

The motion was passed unanimously by voice vote (4-0).

After going into closed session the Board reconvened at 6:15 pm.

Ms. Moody requested Mr. Rogerson read the resolution.

☐ Mr. Rogerson 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 seconded the motion.

The motion was passed unanimously by voice vote (4-0).

Once returning to the public hearing Mr. Fraley made a motion to have the law firm of Hatten, Wornom, Patten, and Diamonstein represent the Board of Zoning Appeals in an upcoming court case "pro bono".

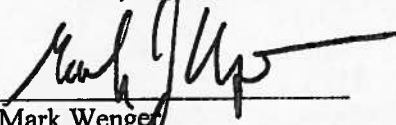
Mr. Rhodes seconded the motion.


The motion was passed unanimously by a roll call vote of (4-0).

#### **F. Adjournment**

Mr. Rhodes motioned to adjourn, Mr. Fraley seconded the motion.

☐ Ms. Moody adjourned the meeting at 6:22 pm.

  
Mark Wenger  
Chairman

  
Melissa C. Brown  
Secretary

**BOARD OF ZONING APPEALS**  
**September 3, 2009**

**A. Roll Call**

**Present:**

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

**Absent:**

Mr. Mark Wenger

**Others Present:**

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

Mr. Barbara Moody called the meeting to order at 7 p.m.

**B. Minutes**

**July 24, 2009**

Mr. Marvin Rhodes stated that on page 2, under Old Business, the correct name of the firm representing the Board of Zoning Appeals is "Patten, Wornom, Hatten & Diamondstein, LLC." Further down page 2, the lawyer's name is correctly spelled "Patten." At the bottom of page two, where Ms. Brown made a motion, it would be improper for Ms. Brown to make the motion. Mr. Wenger moved the resolution with a second from Mr. Jack Fraley. On page 3, the Matters of Special Privilege section should be deleted.

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

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

**C. Old Business**

Mr. Fraley stated he had received a letter from Donald Patten, of the law firm of Patten, Wornom, Hatten & Diamondstein, addressed to Mr. Mark Wenger. The letter reads "...as you are aware, Douglas E. Miller, a partner in my law firm, has agreed to serve as co-counsel with me in this case. Doug and I understand that the Board of Zoning Appeals is without funds to pay for the legal representation and we have both agreed to represent the interests of the BZA on a pro bono basis in the Gloucester County Circuit Court. We are taking this action because of our strong belief that the BZA

needs and is entitled to legal counsel on this matter. Upon review of the record, we believe the BZA conducted itself properly during the hearing on this matter and fairly rendered its decision based on its interpretations of the facts that were presented. There has been some question as to whether or not Doug and I would accept compensation from an outside source. As stated above, we have agreed to work without compensation and will not accept a fee from any individual citizen or citizen group. We will not be responsible to anyone but the BZA and will report directly to you as the case proceeds to trial."

Mr. Fraley stated the letter should be enclosed in the minutes as well.

#### **D. New Business**

#### **ZA-0002-2009 4900 Westmoreland Drive**

Mr. John Rogerson stated that Mr. Brian Murer, 4900 Westmoreland Drive, has applied for a variance to permit construction of a one and one-half story garage at the property. The variance requests reduced setbacks for an accessory structure exceeding one story from ten feet to five feet. The property is zoned R-2, General Residential. Mr. Murer plans to use the reduced side and rear yard setbacks to allow for easier entrance and exit from the garage and driveway. Mr. Murer stated backing onto the main road presents a safety hazard. The reduced setbacks will allow the owner to perform a three-point turn on the property and exit in a forward position.

Mr. Rogerson stated that if the garage was one story or less, there would be no need for a variance. The ordinance allows a one-story structure five feet from the side and rear property lines.

Mr. Rhodes asked if Mr. Murer was aware that he needed three votes for approval, and that one member was absent.

Mr. Rogerson stated that Mr. Murer was aware. He said an accessory structure is secondary and incidental to the main use. Accessory structures must also be placed ten feet away from the main structure and anything attached to it. The proposed garage is more than ten feet from the home.

Mr. Rhodes stated that the Board had received a letter from adjacent property owners with no issues regarding a variance.

Mr. Rogerson stated that the undeveloped large adjacent parcel to the rear was also zoned R-2, General Residential. All adjacent property owners were notified, except for one parcel owned by James City County. No adjacent property owners expressed any concern. All adjacent property owner letters were returned to the County.

Mr. Rogerson stated that he did not believe a set of outside steps depicted on the proposed garage would be included. If included, they will face away from the property line. He said the Ordinance allows step to encroach a setback by three feet.

Ms. Moody opened the public hearing.

Mr. Brian Murer, 4900 Westmoreland Drive, stated that he was applying for a variance for several reasons. The first reason was safety. Second, his wife has medical problems that limit her turning her neck and a knee replacement that makes it difficult for her to back the car out of the property. Third, the larger garage lines up better with the house aesthetics. The stairway will not encroach the setback. The difference between the proposed garage and a one-story garage is an attached deck between floors. The larger size also maintains the architectural integrity of the area. The reduced setback would allow his wife to make K-turns out of the garage. He said he had met with the owner of the large rear lot who said he was not able to develop his land.

Mr. Fraley stated that Mr. Murer could create the needed turning radius and stay consistent with the Ordinance placing a one-story garage. He said the issue was the additional half-story, not medical concerns. He said it would be difficult to support a variance when a one-story garage would be a solution. There is no emergency or crucial need for the additional half-story.

Mr. Murer stated a single-story garage would not architecturally match the rest of the property. He said his Homeowners' Association requires he maintain the architectural aesthetics. Neighboring garages are custom built. He did not know of other single story garages. The driveway will be brought up, and the roofline of the proposed garage will be a little higher than the main house.

Mr. Rogerson stated that due to the way Staff calculates height from grade, the accessory structure will not exceed the main structure.

Mr. Rhodes stated if the garage was repositioned on the property, it would be placed within setbacks.

Mr. Murer stated he would have to remove trees to reposition the proposed garage. He stated he would be unable to remove larger trees.

Ms. Moody stated that the rear of the property was heavily wooded.

Mr. Murer stated the main trees in the property rear had trunks 14 or 15 inches in diameter, and were 70 to 80 feet tall. He said he would have to remove three or four trees to reposition the garage.

Ms. Moody asked how the Homeowner's Association would react to the Board's decision.

Mr. Fraley stated that neighborhood covenants and restrictions do not apply to the Board.

Mr. Rogerson stated a majority of homes in the neighborhood have attached garages. He did not know of any homes with unattached garages. He knew of no accessory structures in violation of the Ordinance setback in the neighborhood.

Mr. Murer stated there is a greenspace between the proposed garage and the road. He said he did not have the large parcel owner's intent to not develop in writing.

Mr. Rogerson stated the proposed structure would have a knee-wall towards the eaves, which would provide most of the usable space's depth. From a zoning perspective, he would consider the half-

story an attic. A half story is under a sloped roof where less than two-thirds of the floor space is usable. Mr. Murer's plan would include ten feet of usable area.

Mr. Murer stated the proposed garage roof sloop matches the main house roof sloop.

Ms. Moody closed the public hearing.

Mr. William Watkins stated that he inspected the neighborhood and property. All garages he saw were attached or included a breezeway. A one-story garage would not maintain the architectural integrity of the area. The ability to safely egress the property is also important. He said he would favor the variance.

Mr. Rhodes stated that he did not want to design his property, but a relocation of the garage would avoid the need for a variance. He said there are other options that should be considered. He said he would not support the variance.

Mr. Fraley stated he would like to request a deferral to allow the application to consider other options and return. He said otherwise, he would have difficulty in supporting the variance.

Ms. Moody stated that backing out of the property is difficult. She said a one-story building at that location would not blend in with the neighborhood. If there is another option, she would like to view it. She asked for the applicant to look at another option and reappear before the Board.

Mr. Fraley stated that Mr. Murer would have another possible vote if he deferred the case.

Mr. Rhodes stated if the variance request gets less three votes, the applicant must wait a year to reapply.

Ms. Moody reopened the public hearing.

Mr. Murer stated he would defer the variance request until a future meeting. He said he would modify the architectural design and reappear.

Ms. Moody closed the public hearing.

Mr. Rogerson stated that the applicant requested deferral.

Ms. Moody stated that the Board accepted deferral.

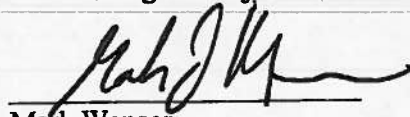
Ms. Moody reopened the public hearing. The public hearing will remain open until the case returns.

☐ There were no matters of special privilege.

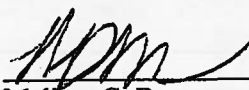
**F. Adjournment**

Mr. Fraley made a motion to adjourn, with a second from Mr. Rhodes.

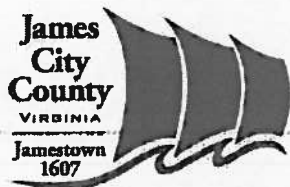
The meeting was adjourned at 7:55p.m.



Mark Wenger  
Chairman



Melissa C. Brown  
Secretary



## **MEMORANDUM**

**To: Records Management**

**From: Zoning**

**Date: January 7, 2016**

**Re: Board of Zoning Appeals Minutes: November 5, 2009 and December 16, 2009**

The following minutes for the Board of Zoning Appeals of James City County dated November 5, 2009 and December 16, 2009 were never signed.

These minutes, to the best of my knowledge, are the official minutes for the November 5, 2009 and December 16, 2009 Board of Zoning Appeals meetings. They were APPROVED by the current Zoning Board at the January 7, 2016 meeting

Please accept these minutes as the official record for the November 5, 2009; and December 16, 2009

It is also acknowledged that the November 5, 2009 and December 16, 2009 minutes, were voted on and approved on April 1, 2010 by the Board of Zoning Appeals. These are the minutes to the best of staffs' knowledge.

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**David Otey**  
*Chairman*

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**Jason Purse**  
*Secretary*

**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

## **BOARD OF ZONING APPEALS**

**April 1, 2010**

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

### **A. Election of Officers – 2010 Calendar Year**

Mr. Rhodes moved to discuss new officer elections after the Board's new business, with a second from Ms. Moody.

In a unanimous voice vote, the Board moved officer elections until after new business (5-0).

### **B. Roll Call**

#### **Present:**

Mr. Mark Wenger  
Ms. Barbara Moody  
Mr. William Watkins  
Mr. Marvin Rhodes  
Mr. David Otey

#### **Others Present:**

Mr. John Rogerson, Senior Zoning Officer  
Mr. Brian Elmore, Dev. Mgt. Assistant

### **C. Minutes – November 5, 2009 & December 16, 2009**

#### **1) November 5, 2009**

Ms. Moody moved for approval of the minutes, with a second from Mr. Watkins.

In a unanimous voice vote, the minutes were approved (3-0; Abstain: Rhodes, Otey).

#### **2) December 16, 2009**

Ms. Moody moved for approval of the minutes, with a second from Mr. Watkins.

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

### **D. Old Business**

There was no old business.

### **E. New Business**

#### **ZA-0001-2010 108 & 100 Chesapeake Avenue**

Mr. Rogerson presented the staff report and stated that the applicant intends to combine the two lots through a Boundary Line Extinguishment (BLE). He stated a home would be constructed on the combined lot. Staff did not believe any issues would result from the BLE. Staff would like the variance

setbacks recorded with the subdivision plat at the courthouse. The applicant is not the property owner, but will purchase the property if a variance is granted. After sending out adjacent property owner notices, staff heard from the owner of several neighboring, similar-sized parcels. The owner was concerned about protecting the character of the area, although he did not object. The owner was provided with case materials and will meet with the applicant. Property hardships were caused by adoption of the Zoning Ordinance. The lots were subdivided approximately 50 years ago.

Mr. Wenger opened the public hearing.

Mr. Robert Wiltshire, the applicant, stated that the home's dimensions would be 38.10' deep by 46' wide.

Mr. Rogerson stated that if the two lots were combined, the by-right building envelope would be 26' by 38'.

Mr. Rhodes asked why the applicant was not asking for a 12' variance from Chesapeake Avenue.

Mr. Rogerson stated that as a corner lot, the School Lane side would require another 10' setback, as the shorter of the two sides becomes the front. The requested variance is 2 ½-3' larger than the home to allow the applicant margin of error.

Mr. Wiltshire stated he would be willing to relocate the existing gravel drive if a neighbor requested.

Mr. Wenger stated that no deck could extend beyond the granted variance.

Mr. Wiltshire stated that the home would only include a patio. He stated he had heard of no objections from the owner of 106 Chesapeake Avenue.

Mr. Wenger closed the public hearing.

Mr. Watkins stated he would be inclined to grant the variance.

Ms. Moody stated she would also be inclined to grant the variance.

Mr. Rhodes stated a hardship exists due to the building envelope. He stated the variance request was overly generous but he could support it.

Mr. Rogerson stated the variance grants a reduction of the setback from the School Lane Right-Of-Way (ROW) from 50' to 40', a reduction of the rear yard setback from 35' to 25', and a reduction of the side street setback from 25' to 12' for the two properties, contingent on the boundary line extinguishment.

Mr. Watkins moved to grant the variance, with a second from Ms. Moody.

In a unanimous roll call vote, the variance was approved (5-0).

## **F. Matters of Special Privilege**

Mr. Rogerson stated the General Assembly approved removal of the hardship language from the BZA's powers and duties. The wording change loosens the minimum standard the BZA can use. Hardships no longer have to approach levels of confiscation.

Mr. Wenger stated the General Assembly had also approved language that BZA members conducting their official duty are no longer subject to lawsuits.

Mr. Rhodes stated the BZA was considering meeting with a judge to determine when the BZA could seek legal guidance.

The BZA discussed possible meeting times with Judge Powell.

Mr. Rogerson stated he would consult the County Attorney regarding the swearing-in of BZA members.

## **A. Election of Officers (Continued)**

Mr. Rogerson opened the floor for nominations for Chair.

Ms. Moody moved to nominate Mr. Wenger for Chair, with a second from Mr. Watkins.

Mr. Rhodes moved to close the floor for nominations and elect for Mr. Wenger, with a second from Ms. Moody.

In a unanimous voice vote, Mr. Wenger was re-elected Chair (5-0).

Mr. Rogerson opened the floor for nominations for Vice-Chair.

Mr. Rhodes moved to nominate Ms. Moody for Vice-Chair, with a second from Mr. Watkins.

Mr. Otey moved to close the floor for nominations and elect Ms. Moody, with a second from Mr. Wenger.

In a unanimous voice vote, Ms. Moody was re-elected Vice-Chair (5-0).

## **G. Adjournment**

The meeting was adjourned at 7:45p.m.

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Mark Wenger  
Chairman

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Melissa C. Brown  
Secretary

**ITEM SUMMARY**

DATE: 1/7/2016

TO:

FROM:

SUBJECT:

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**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Purse, Jason	Approved	1/5/2016 - 4:08 PM
Publication Management	Burcham, Nan	Approved	1/6/2016 - 11:15 AM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/6/2016 - 11:29 AM