

AT A MEETING OF THE GLOUCESTER BOARD OF ZONING APPEALS HELD TUESDAY,  
NOVEMBER 22, 2005, AT 7:00 P.M. LOCATED IN THE COLONIAL COURT HOUSE IN THE  
COURT CIRCLE, GLOUCESTER, VIRGINIA

**THERE WERE PRESENT:** Bonnie Emerson, Vice-Chairperson  
Eric Foell  
Clayton James  
James S. Leigh  
James Newton  
R. Bruce Williams  
James Wayne Horsley, Chairman

**ALSO IN ATTENDANCE:** Ron Peaks, Codes Compliance Director  
Daniel Stuck, County Attorney

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**IN RE: CALL TO ORDER AND ROLL CALL**

James Wayne Horsley, Chairman, called the November 22, 2005 meeting of the Gloucester County Board of Zoning Appeals to order. Roll call established a quorum was present.

Mr. Horsley asked for a motion to move the approval of the May 24, 2005 minutes and election of officers until after the public hearings that are scheduled for tonight.

Ms. Emerson: Motion so made.

Mr. Leigh: Second.

Mr. Horsley called for a voice vote and it was approved unanimously.

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**IN RE: PUBLIC HEARING FORMAT**

Mr. Horsley welcomed those in attendance and advised the public of the two variance applications scheduled for tonight's public hearing and stated the format would be as follows: 1) Codes Compliance staff recommendation; 2) comments by the applicant or his/her representative; 3) entertain public comments-anyone wishing to speak will be given the opportunity; 4) public hearing closed; 5) decision by the Board to act on application or delay for thirty days. All speakers were requested to state their name, addresses, and the district in which they reside on a "sign-in" sheet provided at the speaker's podium.

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**IN RE: PUBLIC HEARING**

Mr. Leigh: Mr. Chairman, could I say something first? I have a possible conflict on this. So, I will not be discussing or voting on this matter.

Mr. Horsley: Okay, Mr. Leigh. Please enter this into the record. I also have a sheet here for the file.

Mr. Peaks: Very good, Mr. Chairman. It's been a while since we've gotten together as life would have it.

In any event, I will make a couple of quick comments that really pertain to both public hearings tonight. They are both variances. As I've said in the past, it's my job to go down the checklist in our book and make judgment calls on these kinds of things, give you my opinion as a zoning administrator and present those to you and at the same time, the process is a democratic process. I am going to be acting in both cases on information that was available to me.

In the case of the first case with Mrs. McComas there was a fairly decent amount of limited time that was available before the filing date for me to discuss the situation with Mrs. McComas.

A little more time on the second case as those folks were getting paperwork together well in advance and having said that there may be factors that I don't know about or did not know about at the time of the report or even right now that could come into play and lastly it doesn't hurt my feelings if you folks a group don't agree with what I say in my recommendations. It's just a job that I try my best at.

I would like to submit my report for the record.

V-05-02

Staff Analysis

**Background:**

The applicant, Mrs. McComas, as contract purchaser, is acting as an agent for the owner. Mrs. McComas is requesting a 25 foot variance from the required 75 feet wide front yard setback for the lot identified as Tax Map 29-145B, on Old Pinetta Road, in the Suburban Countryside (SC-1) zoning district. The purpose of the request is to construct a 3 bedroom, 2 bath residence of approximately 1200 square feet

of heated living space, a 22 feet by 22 feet (484 sq.ft.) attached garage, a 6 feet by 15 feet front porch, and a 14 feet by 10 feet rear deck. The floor plan for the proposed residence is included as an attachment to this report. The applicant states an existing steep ravine that consumes much of the 2.07-acre parcel requires the request for variance for construction of the proposed residence.

Mr. Peaks presented his Power Point presentation at this time.

The staff site inspection confirms the existence of the ravine, and it's location as presented on the applicants plot plan prepared by The Sirine Group. Additionally, the location of the ravine and the approvable drainfield area limits the buildable area on the 2.07-acre site.

**Analysis:**

As the Board is aware, the following four points must all be in the affirmative for granting variances.

**1.) Does the strict application of the ordinance produce undue hardship?**

Staff notes the Zoning Code references to hardship in Section 14-13.4a) stating in part "...where by reason of exceptional topographic conditions..., the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the property, or where the Board is satisfied, upon evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant." Further, Section 14-13.4b) states, "That special conditions or circumstances do not result from the actions of the applicant."

Staff review of the residence's proposed location indicates the ability of the applicant to shift the footprint as is, northerly to abut the sideyard setback as shown on Attachments #2,3,4 and 5 to this report. Attachment #2 would still result in the proposed front porch encroaching 6-7 feet into the front yard setback of 75 feet, but the style and arrangement of the floor plan would be considered by staff as conditions or circumstances resulting from the actions (choices) of the applicant in residence style and floor plan arrangement. Attachment #3 depicts a northerly shift with no front yard encroachment utilizing the applicant's proposed floor plan. Staff also concludes that the attached garage represents a choice of the applicant, with a detached garage an option that would allow placement of the main structure with little or no encroachment in the front yard as indicated on Attachments #4 and #5. Of course detached garages, as accessory structures, can be as close as 5 feet to the side property line.

Therefore, staff concludes the existence of the ravine, albeit a bona fide topographic consideration, does not in this instance demonstrate an undue hardship approaching confiscation.

**2.) Is such a hardship not shared by other properties in the same zoning district and vicinity?**

Staff concludes the 'claimed' hardship of topography is not shared by other properties in the district and vicinity.

**3.) Will the authorization of such variance be of substantial detriment to adjacent property and the character of the district?**

Staff notes several properties in the vicinity, including the mobile home on the northwestern property, exist as non-conforming and encroach no further into the front yard setback than the applicant proposes. Additionally, combined with a single additional non-conforming structure would not result in a substantial detriment.

**4.) Is the condition or situation of the property concerned not so general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance?**

Staff concludes the condition or situation is not so general or recurring.

**Recommendation:**

Staff recommends disapproval of V-05-02, as it does not appear to meet the Standard #1 concerning undue hardship.

Mr. Chairman, that's my report.

Mr. Horsley: Thank you, Mr. Peaks. Would the applicant care to speak at this time? Lights please, Mr. Peaks.

Ms. McComas: You'll have to forgive me. My name is Gwen McComas. The district is Petsworth and what else did you ask me for?

Mr. Chairman: Address.

Ms. McComas: Address. 4124 Hall Oaks Drive in Gloucester.

Okay. A couple of things, I had prepared before today kind of an introduction as to why we are asking for what we trying to do and when I found out this afternoon that Mr. Peaks' suggestion was that denial be made, I kind of rethought everything and I wanted to talk to you about what I felt were undue hardship and I know they are not what you are instructed to think about.

I do want to backtrack just a moment. When I first met with Mr. Peaks in his office we did discuss a couple of alternatives. We were short on time. We had to get it in by the deadline to be able to meet with you today before the holidays and not knowing if you all would be able to meet in December or not.

So rather than go back and have the site plan redrawn we really, really want the house positioned the way it is presented. My thought was let me show you what we are asking for and then if we have to compromise okay. We are willing to listen and maybe do that if that is necessary but if I didn't show you what we were actually asking for you really wouldn't know what we wanted.

I think when I took everything back; Mr. Peaks was not in the office. I did not get to tell him that and I don't think he got the word until today on exactly what the intent was. I think he expected me to come in there with a totally redrawn and the house moved over the left and I think there was a little miscommunication between us and that.

But that being said, a couple of things I would like for you to know. We have lived in the County for 22 years. My children were raised here. They went to preschool through grade school here. They graduated from Gloucester High School. Luckily one of them has been able to purchase a home. I have one more that can't.

I don't know if you know right now about real estate and what it's been doing but you can't buy a home right now for what my son qualifies for and our goal is to purchase a piece of land, build him a house on it, that he can buy back from us at cost and live there and start his life. He lives here. He works in the County. He has chosen to stay here and I would like for him to be able to live here. That's all I am trying to do.

I am not trying to make a lot of money. I won't make anything it will actually probably cost me money in the long run.

But given that, I would like to address the one item that Mr. Peaks' thinks is I guess is the flaw blocking this. I want to talk about this undue hardship and whose they actually are. I think they are everybody's. The neighbors to this property certainly.

If I was the neighbor to the left, the trailer that is closest to Old Pinetta, I don't think I would want a house pushed all the way over to the 30-foot setback looking in my back door and that is where it would be. I don't think they came to the County not to have privacy. They probably didn't buy that thinking that somebody is going to be right on top of them at the 30-foot setback. I don't think that is fair to them. I think that most people want some space. We would like it and I'm sure they would like it as well.

In the event on the examples where Mr. Peaks has asked that we remove the garage so we can move the house closer to that left 30-foot setback. We all know if you move a garage or take it off there is no place for cars that need to be worked on, boats to be stored, trash can, dog pen, all the things. If you've got a project going on it's usually happening in the garage to happen. All that is going to be outside either right next door to the neighbor or in the front yard for all the neighbors to enjoy. Which we all know, that's not going to happen.

Our hardship, there are several. I looked at all of these suggestions and not of them get this house totally out of that ravine. By pushing the house over to the left hand side of the lot, it puts it in the steepest part of that ravine. I know it doesn't matter to you all how much that costs to build a house but in the whole scenario of our desire to get this done, it matters a great deal because there is a dollar amount that we are trying to work with to accomplish this. That's actually the very steepest side of the ravine. I've talked to several people that do this and we are probably looking at a 12-foot tall foundation on that side and that is a lot more money.

Again, with the plans we have already spent money on and drawn up the washer and dryer was moved to the garage to give a little more closet space in the house. If we take of the garage, we've got to redesign the house plan. Which means, now we lose a little living space.

There will be more expenses incurred to do that and we will be left with a plan that we really don't want. We drew the plan that hopefully would be real marketable for somebody young starting out or somebody older maybe wanting to downsize. We have the master bedroom on one side and the other two bedrooms on the other side for privacy but it's small.

It's bigger than my first home. I know don't about you all; I started out in an 800 square foot house. This is actually quite a step up but today you know how kids are. They all think they need more than what we got when we were first going at it.

However, also being forced to locate the house back and to the left, I think infringes upon our privacy. We are kind of being forced to look at the other person's house. That's the back of the person's home and that's where you normally don't pull your blinds, you know your shades, and this type of thing. You're sitting in your kitchen. You're eating your dinner. We would be looking right into their back yard and I just don't think that's fair. We would always feel like we have to keep the blinds closed at our house so they are not looking in our home.

There is noise factor. I think the houses get closer together, somebody's having a party, the other is going to be affected by it. We have a little more space, it would be a little less of a problem and I guess the main thing and a very personal thing is if this doesn't get approved my son doesn't get a house. He cannot afford the new homes that the County is approving that are starting in the \$300,000.00. I don't know how many young people today can and he's one of them that just can't.

The current owner, I think, is definitely going to have some hardships over this. Now she owns a lot that is not reasonable to build on. She's going to lose part of her investment. She's still got taxes to pay on this property, well of course, unless that means since she can't build on it the County is going to lower the taxable value. I don't know how all that works but I kind of doubt that would happen.

I think she probably would be paying the current tax structure and I'm not sure that's fair to her. And the County, I think you all will lose revenue from this. If you put a house on it there's more taxes, more money for the County.

You end up with a property that possibly would just get an abandoned because nothing ever happens to it. Unsightly things being dumped on it, maybe right now the front portion is mowed neatly because it's on the market for sale, but if she can't sell it she may decide it doesn't matter if the lawn is cut. The neighbors will complain. We all know that when something is not taken care of it becomes a problem for someone else in more ways than one.

If the house was forced to be all the way back and up against the property line, I can't imagine anybody driving down that road would go what in the world were they thinking. It just doesn't look aesthetically correct. That is such a wide piece of property. It just doesn't make sense not to center it as much as possible and we are not asking for the house to be totally on the flat part. We are still going to have a back corner.

We are just asking to utilize the least steep part of the ravine and put this house on there so it looks good and it helps the neighbors. Neither one of them are going to want a house on top of them not any more than we want to be on top of the other person and I just don't see how now granting the variance would make anybody happy or anybody would profit from it.

I guess in summarization, I feel like this actually creates a hardship for everybody. I think the County has a responsibility to the community and its citizens to prevent something like this from happening to a piece of property.

Please don't be offended. I really think it's time we all start thinking outside of the box. We need to use the common sense that the good Lord gave us and make a decision that's good, that fits not within that box because it's the right thing to do and that's what I would like you all to do. Consider everything and hopefully we can come up with a compromise that would meet everybody's needs. Thank you.

Mr. Horsley: Would anyone else care to speak for this application? Anyone to speak against this application?

Mr. Horsley: Okay, questions for the staff or applicant by the Board?

Mr. James: Mr. Peaks, the trailer to the north, I assume that is to the north.

Mr. Peaks: Yes.

Mr. James: What is the setback? Give me the setback to the road, the numbers so we can have it from a relative side.

Mr. Peaks: I don't have it exactly. It's approximately 50 feet. Approximately. As I indicated, it's about the same as the applicant's but I can't be totally precise on that 50 feet but it's pretty dag gone close.

Mr. Foell: It's also closer than 30 feet on the side.

Mr. Peaks: Yes it is.

Mr. Foell: This was permitted before zoning.

Ms. Emerson: That's been there for quite a few years.

Mr. Peaks: No doubt that the development to the north is nonconforming to our current Ordinance.

Mr. Horsley: Any other questions?

Mr. Peaks: Mr. James, I can go back to that slide. I think that I have that on a slide in here.

Mr. James: Yes, it shows it.

Mr. Peaks: I tried to... you can see the mobile home in that picture. There it is. As I said, I tried to be as parallel to the road as possible when I took that.

Mr. James: So, you are basically standing on the proposed home site.

Mr. Peaks: Probably just a little bit towards the other property from that but pretty close, pretty close.

Ms. Emerson: On this alternate one, does that include the garage?

Mr. Peaks: Yes. Yes it does.

Ms. Emerson: But it would still fit.

Mr. Peaks: The front porch...porches are not exempt from the zoning regs. The front porch would still be approximately 6-7 feet based on the floor plan that was provided into the front yard.

Ms. Emerson: But that's the only part that would....

Mr. Peaks: On that....

Ms. Emerson: On the whole plan not to...

Mr. Peaks: In projection to the alternate one, that's correct.

Mr. James: And I apologize, but you said porches are exempt or not exempt?

Mr. Peaks: Not exempt. Steps are.

Mr. Foell: Steps are.

Ms. Emerson: Steps are but not porches.

Mr. Peaks: No matter if they are 2 steps or 10. They are actually exempt from the zoning setback.

Mr. Horsley: Mr. Peaks, on that alternate one, I think all of them really would put the house in the deepest part of the ravine. Is that correct when I look over that?

Mr. Peaks: It is certainly as steep in that corner as it is almost anywhere. There are a couple of places in here that appear to be south of the proposed home site that are as steep but they are not quite as wide. But yes, it certainly is about as steep there as it is anywhere. I guess I was approximating it about 2 to 1 on the slope. It could have been a little bit steeper than that.

Mr. James: Mr. Peaks, can you go back to a couple of pictures that show the ravine.

Mr. Peaks: I wish the camera...the camera just doesn't really do these things much justice. If I'm not mistaken, I'm standing...

Mr. James: There was one that I think had looked like cottonwood trees and a gradual slope.

Mr. Peaks: Okay. This is, I believe, fairly south of the or in the vicinity of the proposed home or a little bit south of it. There is kind of like a little draw there was probably a little steeper than anywhere else but smaller.

This is certainly looking out and if I'm not mistaken, I'm actually looking a little bit to the south in that shot. I believe I'm back there right off the drainfield area not very far.

There's a path that goes down to the bottom and this is the area adjacent to the drainfield. If you want to look at your plot plan, the corner that we are talking about is right in here which represents itself right here. Is that one of the trees right there? Did you say something about a cottonwood?

Mr. James: Well...

Mr. Peaks: Go ahead.

Mr. James: You see the three white trees? It looked like a cottonwood.

Mr. Peaks: Okay. This tree is pretty close to that little corner of that ravine.

Ms. Emerson: Mr. Stuck, would it appropriate for me to ask Mr. Leigh some questions?

Mr. Stuck: Well, I think Mr. Leigh has disqualified himself from discussing it.

Ms. Emerson: Okay. Mr. Peaks, have they considered putting the garage under the house?

Mr. Peaks: I haven't spoken with Ms. McComas about that. One of the...and she may want to address that. But one of the problems with it being under the house is actually getting to it. The... and it may not be insurmountable but it certainly looks like it would be a toughie.

They are proposing right here...we talked a little bit about this corner right here. It's certainly as steep right in this section as well as over here as it is in this corner. It's real steep and in order to get down there to get to a garage or anything else would be pretty tough to do as far as direct access.

Mr. Foell: (inaudible)

Mr. Peaks: Well, to cover that amount of...without a doubt there would have to be at a minimum, I would think, some retaining walls put in, in order to get from maybe here or somewhere down in there that 12, 10-12 feet that it would take to access it.

Mr. Foell: Is there topography of this particular piece of land available?

Mr. Peaks: Only potentially the USGS.

Mr. Foell: Okay. Is this an erosional feature or is there a stream at the bottom?

Mr. Peaks: No, it's not. It's, and heck, I wish that Jim could talk to some of this. There, it does not appear to be drainage.

Ms. Emerson: In that area, there are a lot of ravines.

Mr. Peaks: Yes. Once you get to the back, it flattens out and you're not far from marshland.

Ms. Emerson: Caffee Creek runs down a little further down that road and crosses.

Mr. Peaks: That's correct. But the actual start of the ravine here is a very interesting feature but it doesn't appear to be drainage related. In other words, no, I didn't see any evidence of any streams, creeks, or drainways coming down through here and it's not wet.

It's not RPA for example anywhere even remotely close to the areas that we are talking about. Of course, the Resource Protection Areas are generally going to be around perennial springs. We saw no evidence of even an intermittent stream up in here.

Mr. Horsley: Any other questions? Okay, if there are not other questions, I will close the public hearing.

Mr. Peaks: Mr. Chairman, I would like to make one last comment and this is just an informational thing. I believe the Board is of power, and I'm not suggesting this at all or recommending this, it's just a point of, not of order, but a point that should be made.

The Board can grant lesser variances than what's been advertised. You could not grant a greater variance than what you've advertised. If I'm not mistaken, Mr. Stuck, and correct me if I'm wrong, the Board can grant lesser variances and they can place conditions as well on the granting of a variance not that I know of a condition that may be germane but just as a reminder.

Mr. Horsley: Thank you, Mr. Peaks. Any other comments before I close the public hearing. Public hearing closed. Discussion?

Mr. James: I think the first thing that needs to be brought to everyone's attention is though the front porch is not exempt the front porch that we are talking about is a very small structure. So, it's really only a 19-foot variance not a 25-foot variance. The front line of the house is going to be 19 feet

Mr. Foell: In the proposed location, you're saying?

Mr. James: Correct.

Mr. Horsley: Any other discussion?

Mr. Foell: I'm not terribly moved by the idea that the neighbor in the trailer as a problem. I mean, too bad he has to look out and see somebody else's home and in this case a garage and the 22-foot wide of the garage is really not going to impact the noise factor with parties and so on.

I don't like the idea of, you know, forcing people to move a home and add additional costs to the construction. I wasn't clear and I should have asked before, Ms. McComas if she already owns this property. I don't think she does. I think it's a pending sale.

I've got property myself and some of it is unbuildable. That's just too bad. I'm paying taxes on it and it's really can't be used for anything except for nature. I don't see any of these alternatives really rectifying the situation. I think we either go with the proposal or we don't do it at all.

Mr. Williams: I agree.

Mr. James: May I ask a question of Mr. Peaks?

Mr. Stuck: The Board can always ask questions of anyone.

Mr. James: You made the comment that this was and I can't quote what you said but generally speaking this was a textbook purpose for a variance? You sort of lead to me to believe when you really starting writing the variance allowance, it was. Is it considered that?

Mr. Peaks: That's my understanding and you see it under analysis, I quoted part of the Code and certainly it's in the state code and whereby reason of exception of topographic conditions. That's ravines and the river runs through it and those kinds of things. Traditionally and certainly important points to consider and laws that are placed after a property is subdivided before it's developed.

As a remedy to codes that would render something unusable. A hardship approaching confiscation, then you have a variance process and the topographic factors are certainly first on the list and you know without a doubt, the backbone of legislation on variances.

Ms. Emerson: But there are alternatives. It doesn't mean they can't build on it. They may not be able to build that size of house but it doesn't come anywhere near confiscation.

Mr. Horsley: Any other discussions? A motion for or against? Okay, we've got to do something.

Mr. Foell: I don't like setting precedence on this kind of stuff either. I can understand they like this stuff because (inaudible) but there are other homes that can be built there that still meet the restrictions.

Ms. Emerson: Mr. Chairman, I make a motion that we deny V-05-02, adopt staff's findings and recommendations due to the lack of proven hardship.

Mr. Foell: I'll second.

Mr. Horsley: Okay, we have a motion and a second to disapprove V-05-02 or deny V-05-02.

Mr. Horsley called for a voice vote. The voice vote was as follows.

Ms. Emerson: Nay

Mr. Foell: Nay

Mr. James: Yea

Mr. Leigh: Abstained

Mr. Newton: Yea

Mr. Williams: Nay

Mr. Horsley: Nay

Mr. Horsley: V-05-02 is denied as per Section 14-12. The applicant's have 30 days to apply for an appeal to the Circuit Court.

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Mr. Peaks: Okay, we have V-05-03. The applicant, Mr. Kubicki, of Evergreen Development LLC, he has an agent here tonight representing him, Amy VanFossen. Was that actually correct?

Ms. VanFossen: Good enough.

Mr. Peaks: She is here tonight. I would like to submit my report for the record.

Mr. Peaks presented a Power Point presentation at this time.

Mr. Peaks: I did want to indicate also that we did receive correspondence from the Director of Economic Development, which I would like to submit for the record. I will read that if you want me to or if you just want to look over it that would be fine.

V-05-03

#### Staff Analysis

#### Background:

The applicant's agent seeks a variance of one sign from the maximum number of three on-structure signs allowed on a single building in the General Business (B-1) zoning district, for a multi-tenant retail building located at 6822 Walton Lane, in the Fox Mill Centre shopping area. The multi-tenant retail building is located adjacent to the existing Applebee's restaurant, is approximately 5,000 square feet in