

The Smithfield Board of Zoning Appeals held its regular meeting on Tuesday, November 15th, 2016. The meeting was called to order at 7:30 p.m. Members present were Ms. Faye Seeley, Chair, Mr. Clem Batten, Vice Chairman; Ms. Catherine Bowden, Mr. Christopher Gwaltney, and Mr. Robert Briggs. Staff members present were Mr. William G. Saunders IV, Planning and Zoning Administrator, Mr. Joseph Reish, Planning Technician and Mr. William H. Riddick III, Town Attorney. There was one (1) citizen present. The media was not represented.

Chair Seeley – I would like to call the November 15th meeting of the Board of Zoning Appeals to order. Our first item is a Special Yard Exception – 505 Jordan Avenue. This falls under Article 12, Section D of the Zoning Ordinance of the Town of Smithfield. Mr. Randolph H. Pack of 505 Jordan Avenue is the applicant and property owner. Do you have any comments by the staff?

Planning Technician – Thank you, Madam Chair. Mr. Pack initially contacted Mr. Saunders to speak about putting the addition on his house at 505 Jordan Avenue. We always try to explore options before sending someone to get a new site plan or a new survey. From what we could tell, we definitely needed to see a new survey. If you want to look at the surveys, the first one is the existing and the second one is the proposed. Once the new site plan or survey was given to us, it was confirmed that the property is currently non-conforming. Also, the property does have a Resource Protection Area (RPA) in the rear. With the proposed garage, Mr. Pack wants it to encroach about 18.83 feet into the front yard. Of course, the current setbacks are thirty five (35) feet front, fifteen (15) feet in the rear. It is limited in the rear by the RPA. Encroaching into the front yard is the route he wanted to go. There is a front porch that will encroach about one (1) foot also. The proposed front porch will not encroach any more than the existing overhang for the proposed garage will. However, the garage will encroach about 18.83 feet. The current non-conformity is no fault of Mr. Pack. The house was built when it was still part of Isle of Wight County back in 1957. So, Mr. Pack is here today seeking a Special Yard Exception to see if his proposed garage can be built. Thank you, Madame Chair.

Chair Seeley – Thank you. Is there anyone to address the Board of Zoning Appeals? Please state your name and address for the record.

Mr. Pack – My name is Randy Pack at 505 Jordan Avenue. I am in front of you folks this evening applying for a Special Yard Exception, specifically, the thirty five (35) foot front yard setback. In the packet that I submitted to you, I wrote you a letter. I listed three (3) specific areas in our Zoning Ordinance that would allow for you to make this exception if you so choose. I feel that we meet most of these; but, specifically, there is one section in here that I would like to read. It is Article 12F, Section 4. It states: ‘if the Board finds that the proposed establishment or use will not adversely affect the health, safety, or welfare of persons residing or working on the premise or in the neighborhood, will not unreasonably impair an adequate supply of light and air to adjacent property, nor increase congestion in the streets, nor increase public danger from fire or otherwise unreasonably affect public safety, nor impair the character of the district or adjacent districts, nor be incompatible with the general plans and objectives of the town’s Comprehensive Plan, nor be likely to reduce or impair the value of buildings or property in surrounding areas, and that such establishment or use will be in substantial accordance with the general purpose and objectives of this ordinance. The Board shall grant the exception and authorize the issue of a Special Exception Permit.’ We feel that we meet all of these requirements. The proposed addition will not adversely affect the health, safety or welfare of neither my family, as occupants, nor the safety or welfare of my neighbors. This addition will not unreasonably impair an adequate supply of light or air to adjacent properties. This addition will not increase congestion in the street. We feel that, if anything, it will reduce congestion as it will allow me to park vehicles inside a garage as opposed to the driveway. It shall not increase public danger from fire nor be incompatible with the town’s Comprehensive Plan. It will not impair the value buildings in surrounding properties and, in our opinion; it should make them more attractive and valuable. With all of these items met, we hope the Board will grant us an exception. I believe that it is pretty clear in the Zoning Ordinance that you have the ability to grant this exception if you so choose. Now, I guess, I really have to convince you as to why you should grant this exception. There are a couple of things that start with this. The first is the layout of the property and how the property is situated. If you look at the plat that I provided in your packet, the most logical place on the property to put the garage is where I have proposed to put it. The other end of the house, while there is certainly

more room, is where the bedrooms are and that is the way the house has always been.

It is very difficult; although I have three (3) acres here. My limited area to build is such that the thirty five (35) foot front yard setback comes in at an angle. The one hundred (100) foot RPA comes in at an angle. It gives me a very small area to build; but still, this is the most logical place to build. You can see how it is proposed in the survey. I am a big fan of zoning. I think there is a time and a place for it. I think it protects neighborhoods. I am not trying to say that this is zoned incorrectly; but rather, this house was built prior to my time and it was prior to being in the town limits. When it came into the town limits, it had to fall into the town's Zoning Ordinance. These particular zoning laws present a hardship through no fault of my own. It makes it very difficult to add. I am not trying to take any more land or cover more land that is allowed by law; but rather, simply the location. I have provided you with some additional pictures here. There are a couple of things in these pictures. When my family and I first moved into this house, we had a concept for the house. We had a plan for the house. It is a 1957 brick rancher. We wanted it to look a little more coastal; that is our particularly flavor. We put an addition on it three (3) or four (4) years ago. In the first picture, you can see the style of the addition. It is coastal. It has Hardie Plank on it. It has white trim. You can see that the roofs move in and out of the building a little bit so you do not get that long, flat front which is one of the things that we like. We hope to be able to put a front porch on it. It would be right here behind this crepe myrtle tree. It will give some in and out on the front of the house and give it some character. Where the carport exists now, we would remove the existing carport and build the garage in its place if we are granted permission to do that. I kind of want to show you some of this layout. This second picture, again, shows the design of the house as is with the new addition. We would continue with this design throughout. You should have an elevation in the packet that was previously submitted to you all. This elevation shows the front porch and then the three (3) car garage. The second part is how it would look from the rear of the property.

Mr. Gwaltney – Do we have a copy of that?

Planning Technician – No sir.

Mr. Pack – Did I not provide elevations?

Planning Technician – You did. They were not included in the packet because we typically just look at the building footprint; so they were not included.

Mr. Pack – No problem. I wanted to show what the whole project would look like. It was part of my intention on showing what we are trying to do and how we are trying to complete the house. If it makes any difference at all, this is the last addition that we plan on for the house. I am married and I cannot promise you it will be the last project if my wife comes back with something else that she wants. It is my intention for this to be the last addition to the house. With the third set of pictures in here, I tried to lay out how this property looks from the street. Yes, I am asking to go eighteen (18) feet into the front setback. It is a little bit misleading. When I first looked at this, in my own error, I thought the setback was twenty five (25) foot which has zero to do with anything today. In addition, where my property line is and where the edge of the asphalt pavement is located, it is about six (6) feet. My driveway is about six (6) feet onto town property before it meets the road. Yes, it is eighteen (18) feet to the property line but then it is an additional six (6) feet to the road. So it is roughly twenty four (24) feet from the front corner of the furthest most encroachment to the road. It is what I had illustrated here. It shows roughly where the front of the building would go. It is about two (2) feet inside the driveway as it is now. The next picture shows how it would be in line with the rest of the house. The setbacks are just coming in at an angle which is what I am asking for as an exception tonight. The next picture is from the other side looking back towards my parent's house. Finally, this last picture tells a lot here because this is a Ford Expedition parked in the driveway. This is where it is parked forever. It sits inside here on the concrete like normal. There is plenty of space behind it. I do not know exactly how much but it is every bit of five (5) or six (6) feet behind this car before you hit the road. The proposed addition is still up here at this post which is two (2) feet off the edge of the concrete. I wanted to kind of show you all how this all fits into my master plan. I took all of these to my neighbors. There are two (2) that are most affected. One is my folks who are next door. They offered to speak on my behalf but I do not think that having my father up here will sway you one way or the other; but I did appreciate his effort. Immediately across the street from me is Alan Casteen. I sat down with them and showed them the plans. I have submitted a letter to you all. I also spoke to additional

neighbors. All of my adjoining property owners have signed off on this letter. The letter reads: 'Dear Ladies and Gentlemen of the Board, I am writing today in support of Randolph H. and Alysia E. Pack's proposed garage addition to their home at 505 Jordan Avenue in Smithfield, Virginia. I am aware that they are requesting a Special Exception to the front yard setback of thirty-five (35) feet as set forth in the Town of Smithfield's Zoning Ordinance. Additionally, I am aware of their request to minimally intrude inside of the Resource Protection Area as set forth in the Chesapeake Bay Protection Act. I certify I am an adjacent property owner to Mr. and Mrs. Pack and am authorized to sign in support of their planned garage addition. We ask that you look favorably upon Mr. and Mrs. Pack's request and grant them the special exceptions they have requested.' It was signed by Mr. Bruce Cobb of 504 Jordan Avenue, Mr. Al Casteen at 506 Jordan Avenue, Mr. Ron Pack at 508 Jordan Avenue, Mr. Ron Koenig at 320 Red Point Drive, and Ms. Catherine Duncan at 319 Red Point Drive. We are not discussing the RPA tonight because if we get through this tonight then I have to bring that to the Planning Commission. While I am intending to build, I am also removing a lot of stuff that is existing in it. There will be a net loss in the RPA of one hundred and twelve (112) square feet if these plans are permitted as requested. There is some reduction in the RPA if that looks favorable. My property is on a dead end street. The road actually ends at the end of my property and then goes into my parent's driveway. I bring that up because it is not as obvious as other potential applications. There is not going to be traffic or site line impediments with this addition. It should not cause any traffic flow disruptions. It is something you will see a little less. With that said, I ask the Board very kindly that you approve this exception as presented; with the understanding that in this particular circumstance the zoning laws present an undue hardship to the property owner due to no fault of their own. I hope my reasoning to you folks is sound and fair and that the members of this Board look favorably upon our request. I am more than happy to answer any questions.

Chair Seeley – Are there any questions?

Vice Chairman Batten – I am looking at the setbacks. It really creates two (2) more that will not have the proper setback. It would be on the porch and the three (3) bay garage. We are going to create two (2) more problems according to the zoning.

They already need a yard exception to build and they are going to, in my opinion, tear our zoning all to pieces if we grant it for the porch and the three (3) bay garage. It is going to encroach in our setback.

Town Attorney – That is not what the test is Mr. Batten. The point is that you have to balance everything. In the old part of town, we deal with this all the time. We tried to put a modern zoning ordinance over top of a subdivision that was created in the 1700's. We deal with yard exceptions all the time. It is not anybody's fault; it is just the way that it is. Zoning did not exist when the Town of Smithfield was laid out. This property was created by Isle of Wight County years and years ago before it was ever part of the Town of Smithfield. The town came along and adopted its Zoning Ordinance. The Zoning Ordinance is one problem. The other problem that is created is the Chesapeake Bay Act. It was created in 1979. If you notice on his site plan, he has a one hundred (100) foot RPA. It is called the Resource Protection Area. They want you to be as far away from the water as you possibly can. When this house was laid out in 1957, nobody had ever even heard of a Chesapeake Bay Act. It had not even been considered. Although he has a very large lot, through no one's fault because they could not foresee this, the government came along and imposed two (2) different laws on this property which restricts the area where he has to build. He does not have anywhere else to go really. Your analysis is to apply the law. Mr. Pack did a good job of explaining the provisions under the code that would give you the authority to do this. The question is if he has made a good case for what he is asking for. You have to take into consideration not only the area but the topography. It has steep slopes. We are lucky to be on the water around here. It is part of the charm of our community but it presents a lot of challenges with respect to building because there is only so much you can do when you have to deal with the setbacks and the Resource Protection Areas.

Vice Chairman Batten – I am just thinking about what kind of stage we are setting for the Board when we cure one (1) and create two (2) more.

Mr. Briggs – Exactly.

Mr. Gwaltney – I agree. Your concern is also my concern. I do see that it appears that we are doing what you just said. I also agree with certain things that Mr. Riddick said and certain things that Mr. Pack said as well. I am having a little bit of trouble

making the decision as well. Right now, I can see myself going in one (1) or two (2) directions. I would like to say that I do agree with Vice Chairman Batten's condition that on the face of it; it appears that we are granting them an exception to allow another exception almost.

Town Attorney – No. He is asking you to grant him an exception. That is the whole basis of this. You are exactly correct. If you approve this, you are granting a yard exception; but that is what he has asked you to do. He is already in violation. He is asking you to grant him more leniency given the factors that apply to his property; the Resource Protection Area and the fact that it is a 1957 house. That is the basis for his request. You are exactly right. He is asking for more than what he has already got. He has given you reasons why you should grant it. It is for you to make a decision about.

Vice Chairman Batten – It looks to me like we will be setting the stage for the Board for somebody else to come and ask for the same thing with an equal amount or even less.

Town Attorney – If this was a brand new lot and there was not a house on it, you would have to treat it differently than that. Every application, Mr. Batten, has to be considered on its own merits. You do not compare one to the other. It is not like the Planning Commission where you dealing with big subdivisions and things like that. The nature of the business before the Board of Zoning Appeals is to consider every little application on its own because if they did not have an unusual situation; they would not be here in the first place. It is not like you are worried about a precedent. Somebody might come and have a similar situation. We had one on the Hall property a few years ago. He wanted to put a great big house on a brand new lot. He was asking for leniency. It was brand new construction. He could not get the relief he wanted because of what he was trying to do. He had a blank slate to work with. You have to take that into consideration. When you have a blank sheet of paper and you can draw anything you want to, that is one thing. When you have something that somebody did years and years ago and they did not have to take into consideration all of these new laws, it is a different story.

Chair Seeley – I have a question. I see that instead of a variance that he is asking for a Special Yard Exception.

Town Attorney – Yes, ma'am. There is a big difference.

Chair Seeley – That is what I am asking. What is the difference?

Town Attorney – The standards that you have to apply are much higher for a variance. If somebody comes and asks for a variance, they have to prove that unless you give it to them that you are basically taking their property away. That is a very high standard to meet. The yard exception is a much lower standard. It does not reach that level of scrutiny. A variance is granted when the Zoning Ordinance just does not permit something. You would be asking to do something that is not otherwise permitted.

Chair Seeley – Well, I thought with the hardship and everything and the shape of the lot with the slope that it would almost fall under a variance.

Town Attorney – It is not a variance. It is a yard exception.

Chair Seeley – That is why I was asking what the difference was because I thought that it would be a variance.

Town Attorney – The yard exception is a much lower hurdle to cross than a variance.

Chair Seeley – Okay. I have it all written in here which is what I was going by. Are there any more questions?

Mr. Briggs – I would like to make the motion to approve the Special Yard Exception as offered.

Ms. Bowden – I would like to second that motion.

Chair Seeley – A motion has been made and properly seconded. All in favor signify by saying aye, opposed say nay.

On call for the vote, five members were present. Chair Seeley voted aye, Vice Chairman Batten voted aye, Ms. Catherine Bowden voted aye, Mr. Christopher Gwaltney voted aye, and Mr. Robert Briggs voted aye. There were no votes against the motion. The motion passed.

Mr. Pack – Thank you. I appreciate it very much.

Chair Seeley – The motion passed. Our next item is Approval of the May 17th, 2016 Meeting Minutes.

Town Attorney – Madam Chair and members of the Board, I recommend the minutes be approved as presented.

Mr. Gwaltney – So moved.

Vice Chairman Batten – Second.

Chair Seeley – A motion has been made and properly seconded to approve the minutes as presented. All in favor signify by saying aye, opposed say nay.

On call for the vote, five members were present. Chair Seeley voted aye, Vice Chairman Batten voted aye, Ms. Catherine Bowden voted aye, Mr. Christopher Gwaltney voted aye, and Mr. Robert Briggs voted aye. There were no votes against the motion. The motion passed.

Chair Seeley – Seeing no further business, this meeting is adjourned.

The meeting adjourned at 7:57 p.m.


Faye M. Seeley
Chair


Joseph Reish
Planning Technician