BOARD OF ZONING APPEALS MINUTES

The Board of Zoning Appeals conducted a Public Hearing on **Wednesday, October 3, 2012** in the City Council Chambers of the City Hall Building, Municipal Center, Virginia Beach, Virginia.

The Board members' staff briefing, was held at 1:00 p.m. in the City Managers Conference Room as to information pertaining to the agenda of October 3, 2012.

Those members present were Mr. James Wood, Mr. George Alcaraz, Mr. Thomas Holland, Mr. Richard Garriott, Mr. Randy Sutton, and Mr. Steve Draeger who sat in as an alternate.

**REGULAR AGENDA:**

**Case 1: Brad Hering** requests a variance to a 10 foot side yard setback (South side) instead of 20 feet as required (Proposed Detached Garage) on Lot 8, Wishart Cove, **1208 Wishart Lake Drive.** Bayside District #4, ZONING: R-40, RMA/RPA, GPIN: 1478-78-6298

Brad Hering appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:

1. The proposed detached garage shall substantially adhere to the submitted site plan and architectural drawing.
2. The 10’ space between the detached garage and the southern property line shall be substantially landscaped to provide a visual buffer. Retention of existing vegetation is most desirable, if feasible.
3. The existing landscape shall be maintained as much as possible.

**Case 2: Jules & Jean Kluger, Trust** request a variance to a ‘0’ foot rear yard setback (North side) instead of 10 feet as required (Proposed Walkway) on Lot 58, Baylake Beach, **4224 Sandy Bay Drive.** Bayside District #4, ZONING: R-15, RMA/RPA, GPIN: 1570-90-8908

Jules Kluger and Bob Simon of Waterfront Consulting Inc. appeared before the Board.

Jack Bryan, Representative of Trust appeared before the Board in favor of the application.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:

1. The proposed walkway and observation deck shall be constructed in substantial adherence to the submitted site plan and building elevations.
2. The walkway and observation deck shall not be covered or expanded.
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**Case 3:** Thomas Ammons, et al, Trustee requests a variance to a ‘0’ foot side yard setback (South side) instead of 25 feet as required (Proposed Walkway), Baylake Beach **Sandy Bay Drive.** Bayside District #4, ZONING: R-15, RMA/RPA, GPIN: 1570-91-5219

Bob Simon of Waterfront Consulting Inc. and Jack Bryan, Representative of Trust appeared before the Board in favor of the application.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:

1. The proposed walkway and observation deck shall be constructed in substantial adherence to the submitted site plan and building elevations.
2. The walkway and observation deck shall not be covered or expanded.

**Case 4:** Kevin White & Kimberly Votava request a variance to a 13 foot side yard setback (East side) instead of 15 feet as required (Proposed Generator) on Lot 10, Bay Colony, **912 Abingdon Road.** Lynnhaven District #5, ZONING: R-20, RMA, GPIN: 2418-39-8223

Kimberly Votava appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:

1. The proposed Generac Guardian Series 20kW (model# 04759) generator shall be installed in substantial adherence to the submitted site plan.
2. The proposed generator shall be only operated during emergency power outages or in exercise mode for the purpose of maintenance as recommended manufacturer’s specifications.
3. If the existing landscaping along the east property line is ever damaged or removed for any reason, category I landscape screening shall be installed around the generator to adequately screen it from view from the adjoining properties.

**Case 5:** Lee Milteer requests a variance to 39.75 feet in building height instead of 35 feet in building height as allowed (Proposed Single Family Dwelling) on Lot 3, Ocean Park, **3880 Jefferson Boulevard.** Bayside District #4, ZONING: R-5R, RMA, GPIN: 1580-10-9215

Billy Garrington appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:

1. The proposed dwelling shall be constructed in substantial adherence to the submitted site plan and building elevations.
2. The applicant must submit a tree protection plan in effort of preserving as many mature trees as possible.
3. The applicant shall fully comply with all Wetlands regulations as it pertains to the Coastal Primary Sand Dune ordinance.
**Case 6: Patrick Fitzgerald, Jr. & Peggy Fitzgerald** request a variance to a 6 foot setback for side yards adjacent to a street (Coliss Avenue) instead of 30 feet as required and to waive the required Category I Landscaping (Existing 6 foot Fence) on Lots 72 & 74, Fair Meadows, **238 Fair Meadows Road**. Kempsville District #2, ZONING: R-10, RMA, GPIN: 1467-27-9108

Peggy Fitzgerald appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer the application to the December 5, 2012 hearing.

**Case 7: Constance Bowen** requests a variance to an 18 foot rear yard setback (Northwest side) instead of 20 feet as required (Proposed Building Addition) on Lot 41, Charlestowne Woods East, **1781 Barkading Lane**. Centerville District #1, ZONING: R-7.5, GPIN: 1465-21-4014

Constance Bowen and Jerry Edmonds, Contractor appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:

1. The proposed addition shall be constructed in substantial adherence to the submitted site plan and building plans.
2. Building materials and colors used to construct the proposed addition shall be compatible with the existing dwelling.

**Case 8: Amelito Malapira** requests a variance to an 8.3 foot rear yard setback (West side) instead of 20 feet as required (Proposed Roof Over Existing Patio) on Lot 3, Eagles Nest, **3156 Coopers Arch**. Princess Anne District #7, ZONING: R-15 (OP), GPIN: 2403-02-6079

Edward Bourdon, Attorney appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:

1. The proposed roof (rear open porch) structure shall be constructed in substantial adherence to the submitted site plan.
2. The roof (open porch) structure shall not be enclosed.

Edward Bourdon, Attorney and Tim Falon appeared before the Board.

The Board of Zoning Appeals passed a motion by a recorded vote of 5-1 to approve this request subject to the following conditions:
1. The floor area of the existing shall not be increased, including but not limited to enclosing the open porch, without further consideration from the Board of Zoning Appeals.
2. The previous obtained building permit for the pool house shall be amended to reflect the increased floor area within 7 business days of this hearing.

Case 10: James Jones, Jr requests a variance to a 15 foot setback for side yards adjacent to a street (Harris Point Drive) instead of 30 feet as required (Existing 5 Foot Fence) on Lot 7, Haygood Point, 4785 Haygood Point Road. Bayside District #4, ZONING: R-10, RMA, GPIN: 1478-07-9825

James Jones, Jr. appeared before the Board.

John Eason, President of Lake Smith Terrace Civic League appeared before the Board in support of the application.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request.

Case 11: Leslie Prillaman requests a variance to an 8.9 foot side yard setback (North side) instead of 10 feet as required (Proposed Porch Rebuild) on Lot 50, Cavalier Shores, 4206 Ocean Front Avenue. Beach District #6, ZONING: R-7.5, RMA, GPIN: 2418-96-7439

Leslie Prillaman and Brad Martin of Martin Engineering appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:
1. The proposed deck shall be constructed in substantial adherence to the submitted site plan.
2. The proposed second floor deck shall not be enclosed above or below the decking and it shall remain uncovered.
Case 12: Santiago & Sonia Valdizan requests a variance to a 10 foot setback for side yards adjacent to a street (Atlantic Avenue) instead of 20 feet as required (Proposed Deck Replacement), The Hollies, 118 50th Street. Lynnhaven District #5, ZONING: R-5R, RMA, GPIN: 2418-88-6795-0118

Santiago and Sonia Valdizan and a Robert (in audible), Contractor appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:
   1. The proposed deck shall be constructed in substantial adherence to the submitted site plan.
   2. The deck shall be constructed of maintenance-free materials similar to the materials used to construct the deck on the south unit (#120) of this duplex.
   3. The proposed second floor deck shall not be enclosed above or below the decking and it shall remain uncovered.

Case 13: Ocean 2700 requests a variance to a 1.96 foot setback for side yards adjacent to a street (Pacific Avenue) instead of 5 feet as required and to waive the Category I Landscaping (New/Existing Fence) on Lots, 1 thru 4, 2700 Pacific Avenue. Beach District 6, ZONING: RT-3, RMA, GPIN: 2428-00-5850

Edward Bourdon, Attorney appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following conditions:
   1. The variance is approved for the existing open-style vinyl fence only as shown on the submitted site plan.
   2. Landscaping along Pacific Avenue shall remain and be maintained by the applicant.

Case 14: Fluoresco Lighting & Signs requests a variance to allow 106 square feet of wall signage instead of 88 square feet of wall signage as allowed (Proposed Signage), 4625 Virginia Beach Boulevard. Kempsville District #2, ZONING: B-3, RMA, GPIN: 1477-35-9047

Ray LaSalle, General Manager of USAA and Robert Pellerin of Clancy & Theys appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request.
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**Case 15: Wilson Driver Widgeon Revocable Trust** requests a variance to a 7 foot front yard setback (Ansol Lane) instead of 35 feet as required and to a 5 foot setback for side yards adjacent to a street (South Lynnhaven Road) instead of 30 feet as required and to a 15 foot landscape buffer (Southwest side) instead of 20 feet as required (Proposed Office Building and Parking Lot), **101 & 109 S. Lynnhaven Road**. Beach District #6, ZONING: R-5D/O-2, RMA, GPIN: 1497-44-4064; 1497-43-5983

R J Nutter, Attorney appeared before the Board.

Dave Dickerson, Attorney appeared before the Board representing those in opposition.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer the application to December 5, 2012 with a new fee.

**Case 16: Virginia Beach Racquet Club North Associates** requests a variance to allow 2 identification signs totaling 113.3 square feet in size instead of 1 identification sign totaling 32 square feet in size as allowed (Proposed Building Signage), **1950 Thomas Bishop Lane**. Lynnhaven District #5, ZONING: R-40, RPA, GPIN: 1499-56-6287

Edward Bourdon, Attorney appeared before the Board.

Linda Poole resident of Meadow Ridge appeared before the Board in opposition.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to withdraw the application.

**Case 17: Charles Payne, III** requests a variance to a 5 foot side yard setback (West side) instead of 10 feet as required (Proposed Single Family Dwelling) on Lot 24A, Shadowlawn Heights, **720 Delaware Avenue**. Beach District #6, ZONING: R-5S, GPIN: 2417-93-8251

Edward Bourdon, Attorney appeared before the Board.

Steve Murphy of 724 Delaware Avenue and Bill Scott of 713 Virginia Avenue appeared before the Board in opposition.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following condition:

1. The proposed dwelling shall be constructed in substantial adherence to the submitted site plan and building elevations.
Case 18: Gateway Towers Associates LLC; BQTS, LLC; Gateway Investments, LLC request a variance to allow 140 feet in building height instead of 125 feet in building height as allowed (Proposed Hotel) on Lots 3 thru 6, 3305 & 3317 Atlantic Avenue. Beach District #6, ZONING: OR, RMA, GPIN: 2428-03-5050; 2428-03-5107

R J Nutter, Attorney appeared before the Board.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to approve this request subject to the following condition:

1. The hotel shall substantially adhere to the submitted site plan and architectural rendering. The building cross section shall adhere to the submitted concept building elevation.

DEFERRED AGENDA:

Case D-1: Habitat for Humanity of South Hampton Roads requests a variance to a 6 foot front yard setback instead of 30 feet as required (Proposed Dwelling) on Lot 1, Kenley Commons, Kenley Road. Kempsville District #2, ZONING: R-5D, RMA, GPIN: 1477-01-3074

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer this application indefinitely.

Case D-2: Habitat for Humanity of South Hampton Roads requests a variance to a 23 foot front yard setback instead of 30 feet as required (Proposed Dwelling) on Lot 2, Kenley Commons, Kenley Road. Kempsville District #2, ZONING: R-5D, RMA, GPIN: 1477-01-3074

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer this application indefinitely.

Case D-3: Habitat for Humanity of South Hampton Roads requests a variance to a 23 foot front yard setback instead of 30 feet as required (Proposed Dwelling) on Lot 3, Kenley Commons, Kenley Road. Kempsville District #2, ZONING: R-5D, RMA, GPIN: 1477-01-3074

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer this application indefinitely.

Case D-4: Habitat for Humanity of South Hampton Roads requests a variance to a 23 foot front yard setback instead of 30 feet as required (Proposed Dwelling) on Lot 4, Kenley Commons, Kenley Road. Kempsville District #2, ZONING: R-5D, RMA, GPIN: 1477-01-3074

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer this application indefinitely.
Case D-5: Habitat for Humanity of South Hampton Roads requests a variance to a 23 foot front yard setback instead of 30 feet as required (Proposed Dwelling) on Lot 5, Kenley Commons, Kenley Road. Kempsville District #2, ZONING: R-5D, RMA, GPIN: 1477-01-3074

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer this application indefinitely.

Case D-6: Habitat for Humanity of South Hampton Roads requests a variance to a 23 foot front yard setback instead of 30 feet as required (Proposed Dwelling) on Lot 6, Kenley Commons, Kenley Road. Kempsville District #2, ZONING: R-5D, RMA, GPIN: 1477-01-3074

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to defer this application indefinitely.

APPEAL AGENDA:

Case A-1: Mills Robinson, Jr. & Kristen Robinson request an appeal of the Zoning Administrator’s designee’s letter dated May 11, 2012 pertaining to the use of property at 636 10th Street. Beach District #6, ZONING: RT-3, GPIN: 2427-03-0986

Mills and Kristen Robinson appeared before the Board.

Mrs. Kay Wilson, Associate City Attorney appeared before the Board requesting a continuance.

The Board of Zoning Appeals passed a motion unanimously by a recorded vote of 6-0 to continue this application until November 7, 2012.

Respectfully Submitted

James A. Wood
Chairman

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