

**King and Queen County
Board of Zoning Appeals
Minutes
December 19, 2011**

**MINUTES
BOARD OF ZONING APPEALS
DECEMBER 19, 2011
(TABLED MEETING FROM NOVEMBER 12, 2011)**

The Board of Zoning Appeals (BZA) of King and Queen County met in the King and Queen County Courts and Administration Building on December 19, 2011, at 6:00 P.M. The following Board members and staff were present:

Pamela Ashley
James Dabney
Bruce Taylor
Robert Taylor
Leland Wyatt

Donna Sprouse, Assistant Zoning Administrator

**IN RE:
CALL TO ORDER**

Mr. Robert Taylor called the meeting to order. Mrs. Sprouse determined that there was a quorum present with all five members in attendance. (Pamela Ashley, Bruce Taylor, Robert Taylor, Leland Wyatt and James Dabney were present)

**IN RE:
ELECTION OF OFFICERS FOR 2012 CALENDAR YEAR**

Mr. Taylor stated that he will open the floor for a motion/nomination for this year's Chair. A motion was made by Mr. Dabney and seconded by Mr. Robert Taylor to nominate Mrs. Ashley as Chair of the BZA.

Voting For: R. Taylor, B. Taylor, Wyatt, Dabney

Voting Against: None

Abstain: Ashley

Mr. Taylor then opened the floor for nominations for Vice-Chair. A motion was made by Mr. Dabney to nominate Mr. Bruce Taylor for Vice-Chair. Mr. Bruce Taylor stated that he did not feel comfortable serving as Vice-Chair and declined the motion. A motion

was then made by Mrs. Ashley to nominate Mr. Dabney for Vice-Chair, seconded by Mr. R. Taylor.

Voting For: Ashley, B. Taylor, R. Taylor, Dabney, Wyatt

Voting Against: None

**IN RE:
APPROVAL OF AGENDA**

Mr. Taylor stated that he will entertain a motion to approve the agenda. A motion was made by Mr. Dabney to approve the agenda as presented; the vote was ratified by all present members stating “Aye”.

Voting For: Ashley, Dabney, B. Taylor, R. Taylor, Wyatt

Voting Against: None

Abstain: None

**IN RE:
APPROVAL OF MINUTES**

A motion was made by Mrs. Ashley to approve the minutes as written; the vote was ratified by all members present stating “Aye”, Mr. R. Taylor then stated he wished to abstain. Approval of the November 21, 2011 minutes was approved.

Voting For: Ashley, Dabney, B. Taylor, Wyatt

Voting Against: None

Abstain: R. Taylor

**IN RE:
OLD BUSINESS**
(Tabled Public Hearing)

VARIANCE
VAR11-02, Jeffrey G. & Susan P. Fudala

Applicant: Jeffrey G. Fudala
Owner: Jeffrey G. & Susan P. Fudala

Subject: The Planning and Zoning Department received an application to the Board of Zoning Appeals (“BZA”) on September 26, 2011 from Jeffrey G. Fudala, requesting a variance from Zoning Ordinance, Article 5, Table 5.1, Minimum Dimensional Regulations for Primary Zoning Districts.

Premises: The subject property is located off of State Route 666, on Bell Road, located in the Cricket Shores Subdivision, in the Buena Vista Magisterial District. The property is identified as County Tax Map Parcel No. 1623-131L-396A-2. The parcel is zoned Residential Single-Family (RS) and consists of 1/3 of an acre.

Mrs. Sprouse noted that Mr. Fudala requests a variance from Zoning Ordinance, Article 5, Table 5.1, "Table of Minimum Dimensional Regulations for Primary Zoning Districts" to allow for the proposed addition of an attached garage and utility room to the existing 2 story home. Presently the current home is 74' from the front property line with the exception of the 2nd floor deck that is 5.79' deep. Mr. Fudala is requesting a 39-foot variance to allow for a front yard setback of 35 feet.

Pursuant to Zoning Ordinance, Title II, Article 5, Table 5.1, the minimum front yard setback for primary structures located in the Residential Single-Family zoning district is 75'. She noted that presently Mr. Fudala's home is 74' from the front property line with the exception of the 2nd floor deck that is 5.79'.

Mrs. Sprouse read the following code sections from Article 20, Appeals...

"Section 3-462(B)(2) of the Zoning Ordinance, a variance may be granted when the property owner demonstrates the property was acquired in good faith and (a) the exceptional size or shape of the property existed when the Zoning Ordinance became effective [8-12-1986]; (b) due to physical conditions of the property, or the use or development of an adjoining property, strict application of the terms of the Ordinance effectively would prohibit or unreasonably restrict use of the property; or (c) where the BZA finds that granting the variance would alleviate a clearly demonstrable hardship approaching a "taking," as opposed to the applicant seeking a special privilege or convenience."

"Section 3-462(B)(3), the BZA may grant the variance if it finds that (a) strict application of the Ordinance would produce an undue hardship; (b) the hardship is not shared generally by adjoining properties; and (c) granting the variance will not be substantially detrimental to adjoining properties, and the character of the district will not be changed by granting the variance."

Mrs. Sprouse also reminded the Board of Section 3-467, should they approve Mr. Fudala's request, which reads as follows...

"Section 3-467, A special exception or variance granted by the Board of Zoning Appeals shall lapse and be of no effect if, after the expiration of one (1) year from the date of such action by the BZA, no construction or change in use pursuant to such special exception or variance has taken place; provided that the BZA may, for good cause shown, specify a longer period of time in conjunction with its action to grant a special exception or variance."

Mr. R. Taylor opened the public hearing and asked if there was anyone in the audience that would like to speak.

Mr. Jeffrey Fudala was present to answer any questions that the BZA may have. Also in attendance was Mr. Gove, adjoining property owner and site plan engineer, Blair Wilson.

Mr. Taylor noted that he visited the property just before the meeting and noticed that there are a lot of homes in that subdivision that are constructed close to the road frontage. Mr. Taylor stated that he does however have a problem with folks who purchase property and do not do their “homework” before purchasing property. He stated that he had to have known that it was a possibility that what he wanted to do, he couldn’t do.

Mr. Fudala stated that there was another recent approval granted administratively that allowed Mr. Jackson & Ms. Taylor the approval to build close to the front property line. After reading the letter of approval granted by Mr. Paul Koll, Mrs. Sprouse stated that there are several different circumstances. She noted that this parcel in question is zoned Agricultural, is not a waterfront lot, at the time did not have a dwelling on the property and has road frontage on the front and rear of the property. She then stated that there are administrative approvals that the Zoning Administrator may grant, however must meet certain requirements as prescribed in the Ordinances. She stated that Mr. Fudala’s property is zoned Residential Single-Family, is a waterfront lot and already has a home established on the property, therefore is required to have approval granted by the BZA and not administratively for his encroachment into the front property line.

Mr. Taylor asked if the Board had any comments, Mr. Wyatt asked if Mr. Fudala had paid his taxes on the property. Mr. Fudala replied that he has paid his taxes.

Mr. Taylor stated that he would entertain a motion to approve, deny or table the request. He reminded the BZA that if they wish to deny, they must state why they wish to deny the request. A motion was made by Mrs. Ashley to approve the variance as presented, seconded by Mr. Dabney.

Voting For: Ashley, Dabney, B. Taylor, R. Taylor, Wyatt

Voting Against: None

Abstain: None

Mr. Fudala stated that he is not ready to start construction for at least another 5 years or so. Mr. R. Taylor stated that the approval is good for one year. After some discussion about the definition of “start of construction”, Mrs. Sprouse pointed out the definition in the Zoning Ordinance and it states... *“The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory*

buildings, such as garages or sheds not occupied as dwelling units, or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.”

It was agreed that if he were to pull permits and install the foundation of the addition, it would have met the requirement of starting construction within one year. If the foundation is not installed by the end of one year, he must reapply for the variance when ready to construction the addition.

*At this time, members of the audience (Jeffery Fudala, Blair Wilson & John Gove) left the court room.

**IN RE:
BOARD MEMBER COMMENTS**

Mr. R. Taylor stated that he hopes they did not grant something that would come back and haunt them later. However, considering there are many homes in this subdivision that are close to the road frontage, he felt they did the right thing. Mrs. Ashley echoed Mr. R. Taylor’s comments.

Hearing no further comments, Mr. R. Taylor asked if staff had any comments.

**IN RE:
STAFF COMMENTS**

Mrs. Sprouse stated that the BZA will have a public hearing during their January meeting. She also noted that staff will be providing a training session for the BZA after the public hearing in January. She encouraged everyone to attend.

**IN RE:
ADJOURN**

Mr. R. Taylor stated he would entertain a motion to adjourn the meeting, a motion was made by Mr. B. Taylor, and the vote was ratified by all members stating “Aye”. The meeting was adjourned.

Robert Taylor, Chairmna