

## Town of Colonial Beach Board of Zoning Appeals Minutes

Date: January 15<sup>th</sup>, 2013 – Town Center, 22 Washington Avenue

Time: 5:00 p.m.

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Present: Dr. Frank Mansfield, Chairman  
Frank Lincoln  
Susan Windland

Absent: Helga Gallahan, Vice Chair

Staff: Gary Mitchell, Director of Planning and Community Development  
Josh Frederick, Planning Manager

Also Present: Mr. Calvin Messenger, Applicant  
Mrs. Victoria Schellin, Applicant

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### **Item 1: Call to Order**

Mr. Mitchell called the meeting to order at 5:20 p.m. Member Gallahan was absent.

### **Item 2: Nomination and Selection of BZA/LBBCA Chair for the 2013 Calendar Year**

Mr. Mitchell informed the Board that this was the first BZA meeting of the year and a new chairperson and vice chairperson were to be selected.

Member Lincoln nominated Member Mansfield as chairman; Member Windland seconded the motion.

Member Mansfield agreed to serve as the chairman. Therefore, it was unanimously resolved:

That Dr. Frank Mansfield will serve as the BZA/LBBCA chairman for the 2013 calendar year.

### **Item 3: Nomination and Selection of BZA/LBBCA Vice Chair for the 2013 Calendar Year**

Chairman Mansfield asked for a motion to nominate the Vice Chair. Member Windland made a motion to nominate the previous chairwoman, Helga Gallahan, as Vice Chair; Member Lincoln seconded the motion.

Chairman Mansfield called for a vote; it was unanimously resolved:

That Helga Gallahan will serve as the BZA/LBBCA vice chair for the 2013 calendar year.

### **Item 4: Adoption of the BZA By-laws for the 2013 Calendar Year**

Chairman Mansfield asked for a motion to approve the BZA by-laws for the 2013 calendar year. Member Lincoln made the motion, which was seconded by Member Windland.

Chairman Mansfield called for a vote; it was unanimously resolved:

That the BZA by-laws be approved for the 2013 calendar year.

**Item 5: Adoption of the LBBCA By-laws for the 2013 Calendar Year**

Chairman Mansfield asked for a motion to approve the LBBCA by-laws for the 2013 calendar year. Member Lincoln made the motion, which was seconded by Member Windland.

Chairman Mansfield called for a vote; it was unanimously resolved:

That the LBBCA by-laws be approved for the 2013 calendar year.

**Item 6: Approval of Minutes from the April 17<sup>th</sup>, 2012 meeting**

Chairman Mansfield asked for a motion to approve the minutes of the April 17<sup>th</sup>, 2012 meeting. Member Lincoln made the motion, which was seconded by Member Windland.

Chairman Mansfield called for a vote. Members Lincoln and Windland voted to approve the minutes; Chairman Mansfield abstained from the voted.

Therefore it was resolved:

That the minutes of the April 17<sup>th</sup>, 2012 meeting be approved, as written.

**Item 7: Public Hearing – To Consider a Variance Request by Mr. and Mrs. Messenger at 516 Lafayette Street (case #ZV-02-2012)**

Chairman Mansfield opened the public hearing and invited the applicant(s) to address the Board.

The applicant, Mr. Calvin Messenger of 516 Lafayette Street, addressed the Board. He spoke to his acquisition of the property in April of 2012 and his understanding that the side of the property facing the water is the front. He added that his home lacks storage space, so he ordered the storage shed to be made, after checking with the next-door neighbors. Shortly after installation of the shed, he received a call from the Planning Department stating that a complaint had been placed regarding the illegal placement of the shed in the front yard.

Chairman Mansfield invited any interested members of the audience to address the Board.

Mr. Blight Walker, representing his aunt and uncle, Robert and Catherine Payne, of 520 Lafayette Street, addressed the Board. He supplied the Board with pictures of current property conditions and read a letter from the Paynes voicing their opposition to the current placement of the shed on Mr. Messenger's property. Their reasons were related to proximity to their house and the blocking of views. Their letter further indicated that they would approve of the shed being located on the opposite side of the property, much closer to the house.

There being no further public comment, Chairman Mansfield closed the public hearing.

Mr. Frederick summarized the Staff Report:

The property, located at 516 Lafayette Street, is within the R-2 Residential General zoning district. The parcel is on the western portion of Lafayette Street, which forms a peninsula

in Monroe Bay. There is a one-story, single-family home on the property of approximately 1,800 ft<sup>2</sup>, which is served by a gravel driveway. The house is setback approximately 135 feet from the front property line, whereas the surrounding properties have front setbacks ranging from 12 feet to 50 feet. In December 2012 the applicant placed a prefabricated storage building on the driveway in the front yard, setback approximately 50 feet from the front property line and 0.5 feet from the right, westernmost property line (shared with 520 Lafayette Street). A permit was not obtained prior to placement of the storage building. When informed of the zoning violation in regards to placement of accessory structures in front yards, the applicant filed for a variance.

**Variance Code Reference:**            **Zoning Ordinance Article 04, Section 4.4 Bulk & Area Regulations  
Table 4.4-2 Accessory Structure Requirements**

**Variance(s) Requested:**            **(\*) A reduction of 2.5 feet in the minimum side yard setback of 3 feet  
(\*) Permission to locate the accessory structure in the front yard**

Mr. Frederick went on to read the portion of the Virginia state code which authorizes the Board to grant a variance:

No variance can be authorized by the Board unless it finds: (a) that the strict application of the provisions of the Zoning Ordinance would produce an undue hardship; (b) that such hardship is not shared generally by other properties in the same vicinity; and (c) that the authorization of this variance will not be a substantial detriment to adjacent properties and that the character of the district will not be changed by granting a variance.

He further highlighted the analysis portion of the Staff Report:

Applying the undue hardship test on this case is unique because it involves an accessory structure, and placement of the primary structure (the house) is unlike those upon surrounding properties. Due to the relatively large front setback, and the presence of both a Chesapeake Bay Act feature (the 100' Resource Protection Area buffer) and a flood plain extending approximately 60 feet into the back yard, the rear yard cannot accommodate any new structures. As the Zoning Ordinance only permits, for the R-2 zoning district, accessory structures in the rear yard, the property effectively has no usable rear yard. Because of this, all accessory uses permitted by-right in the R-2 zoning district are not able to be permitted on this property.

The character of the surrounding properties is also important to this variance request. The place in which the applicant wishes to place the accessory structure is adjacent to the rear yards of both adjoining properties. If the applicant's house was built with a front setback similar to the other homes along the street, the proposed accessory structure would actually be in the rear yard, hypothetically speaking. By this measure, the 3<sup>rd</sup> and 4<sup>th</sup> tests of the "undue hardship test" above are satisfied, as the surrounding properties don't share the same lot layout as the applicant on 516 Lafayette. Similarly, this property has such a unique layout in regards to water access, the surrounding properties and other waterfront properties in this portion of Colonial Beach that Staff feels the 5<sup>th</sup> undue hardship test is also satisfied. The house on the property is addressed off of Lafayette Street, but faces Monroe Bay Avenue, further adding to the unique nature of the property.

**STAFF RECOMMENDATION:**

While the applicant's request does not satisfy every tenet of the undue hardship test, Staff feels that compatibility with surrounding properties is the more important metric in

this particular circumstance. Due to the unique nature in which The Point has developed and the high number of oddly shaped and/or unusually laid-out lots, the granting of a variance such as this should place a high priority on being harmonious with the surrounding properties.

Staff feels that the applicant's request can achieve this and recommends granting the variance. Should the Board grant the variance, Staff also recommends the following conditions:

1. The accessory structure should be located 10 feet from the house, the minimum fire separation distance permitted under the Uniform Statewide Building Code. This is also to provide the smallest visual impact on adjacent properties.
2. The accessory structure should be kept 3 feet from any side property line.
3. The applicant takes the necessary steps to have this variance and its conditions recorded in the County Clerk's Office as part of the deed of the property, and shall provide to Staff a copy of the recorded instrument.

The case exhibits were presented to the Board, the first of which showed the location in which the applicant had placed the shed on the property and in relation to the adjoining properties. The second exhibit was a GIS map clearly showing the placement of the applicant's house on their property and in relation to the other homes nearby.

Member Windland stated her approval of Staff's analysis and the conditions they recommended, should the variance be granted.

Chairman Mansfield indicated he understood the concerns lodged by Mr. Walker, on behalf of the Paynes, and further stated his approval of the variance request with the conditions recommended by Staff.

There being no further discussion, Chairman Mansfield asked for a motion to grant the variance. Member Windland made the motion to approve the variance with the conditions recommended by Staff, which was seconded by Member Lincoln.

Chairman Mansfield called for a vote; it was unanimously resolved:

To grant the variance request by Mr. Messenger and Mrs. Schellin, with the three conditions recommended by Staff.

### **Item 8: Adjournment**

There being no further business, Chairman Mansfield asked for a motion to adjourn. The motion was made by Member Windland and seconded by Member Lincoln. The meeting was ADJOURNED at 5:39 p.m.

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Chairperson, Colonial Beach Board of Zoning Appeals