

AT A REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD IN THE COURTHOUSE, WILLIAMSBURG, VIRGINIA, ON THE THIRTIETH DAY OF MAY, NINETEEN HUNDRED AND SEVENTY NINE.

1. ROLL CALL

Mr. Gerald H. Mepham, Chairman
Mrs. Elizabeth N. Vaiden
Mr. Joseph E. Brown
Mr. George A. Marston
Mr. Warfield Roby, Jr.

OTHERS:

Mr. W. C. Porter
Mr. H. H. Stephens

2. MINUTES

Upon a motion by Mr. Marston, seconded by Mrs. Vaiden, the minutes of March 28, 1979 were approved as presented.

3. CASE NO. ZA-3-79. CONSIDERATION OF AN APPLICATION OF Mr. Alvin P. Anderson on behalf of Mr. Robert Eggleston for a variance from Section 20-34 of the Zoning Ordinance to allow the conversion of a non-conforming accessory building into a residence.

Mr. Mepham asked that the staff present its report.

Mr. Stephens presented the staff report. He stated that in February Mr. Nice, the Eggleston's builder applied for and received a building permit to convert an accessory building into a residence. At the time of the application, Mr. Stephens stated that he had spoken briefly with Mr. Nice. He said he was asked if there would be any problems converting the structure into a residence. He stated he explained the A-1 District use and setback and yard requirements.

Mr. Stephens said Mr. Nice told him that the building to be converted was on a lot over an acre in size and that it was over 150 feet from Route 609 and the same distance from the rear property line. He said Mr. Nice told him that the smallest side yard was 20 feet. Mr. Stephens said that he told Mr. Nice that he didn't foresee any problems. He said that later he discovered the property was a corner lot, and the side yard Mr. Nice had referred to was the distance from the side street. Mr. Stephens said that as soon as he became aware that there was a violation of the setback from the side street he

notified, in writing, the applicant outlining the alternative to correct the problem. He also said that he notified the Building Official who suspended the building permit pending the resolution of this case. The alternatives were:

1. Limit repairs to less than 10% of the value of the structure.
2. Move the structure behind the legal setback.
3. Obtain a variance from the Board of Zoning Appeals.
4. Abandon the project.

Mr. Stephens said that after a careful review of the situation, he recommended moving the structure behind the legal setback. He based this recommendation upon the following:

1. Upgrading and changing to a higher use a non-conforming accessory structure cannot be considered a unique hardship.
2. The building can be physically moved as evidenced by the fact it was moved to the lot from another location.
3. Any investment made can be salvaged by moving the structure to a legal location. The cost of relocation has been a constant in the expenditures necessary to legally upgrade the structure.

Mr. Stephens recommended the application be denied. He asked if there were any questions.

Mr. Marston asked if the Planning Office had access to the Tax Maps.

Mr. Stephens said that they did.

Mr. Marston asked why he had not checked the maps prior to telling Mr. Nice he foresaw no problems.

Mr. Stephens said that he was asked about the project as he was passing by the counter where Mr. Nice was obtaining a building permit. He said that he made the interpretation based on the information available to him at the time. He said that not confirming the information from another source such as the Tax Maps was a mistake.

Mr. Mephram opened the Public Hearing.

Mr. Anderson, the applicant's attorney, spoke in favor of the application. He said that the work had been performed in good faith based on a misunderstanding between Mr. Nice and Mr. Stephens. He said that there would be a severe economic hardship placed upon the applicant by the refusal of the Board to grant a variance. Mr. Anderson

emphasized that the work performed upon the structure in question had been an improvement. He said the improvement did not harm adjacent property. He said the law does not require a useless act and that moving the already improved building would serve no useful purpose. Mr. Anderson also pointed out that the property on which the structure was located also had on it the original farm house. He said that the structure and the farm house were both there before the development of the side street and Elmwood subdivision. He urged the Board to grant the variance so that the remaining 10% of the work on this apartment could be completed.

Mr. William E. Rorer, Jr., 103 Elmwood Lane, spoke in opposition to the variance. He said he lived across the street from the apartment and felt that the apartment would adversely affect the value of his property. He said that he had spoke with Mr. Eggleston before the renovation had been begun and had informed him that the apartment use was against the deed restrictions on the property. He said he had also obtained a copy of the A-1 District regulations and had shown them to Mr. Eggleston to inform him he did not meet the County minimum setback requirements. He said that Mr. Eggleston told him that he had had the project approved by the subdivision developer and the County, and was going to proceed. Mr. Rorer said that he felt Mr. Eggleston had begun the project with the knowledge he may have problems with deed restrictions and the Zoning regulations and that he should not be allowed to use work completed as a justification for a variance. Mr. Rorer asked that the variance be denied.

Mrs. Burlew, a resident of Elmwood subdivision, read the attached statement.

Mr. Carl Moulds, 200 Elmwood Lane, stated his opposition to the variance. He said that he felt it was clear that Mr. Eggleston knew he did not meet the requirements of the deed restrictions or the Zoning regulations when he began the project.

Mr. Anderson, the applicant's attorney, speaking in rebuttal of the opposition's comments reminded the Board that the deed restrictions were not at issue. He emphasized that the renovation involved the improvement of a structure in poor condition and that the improvements would benefit the surrounding property by making the structure much more attractive. He also reminded the Board that the road had been built after the structure had been placed on the property and that if the road had not been built, the structure according to the Zoning Ordinance would conform to the minimum side yard requirements.

Mrs. Webb, 202 Elmwood Lane, spoke in opposition to the variance. She said she was very upset that Mr. Nice, whose family had developed the subdivision, would tell someone they could violate the deed restrictions. She said she could not believe that Mr Nice did not know the setback requirements in a subdivision he had developed.

Mr. Mepham closed the Public Hearing.

Mr. Roby asked if the applicant had known prior to beginning construction that he was not in compliance with the regulations.

Mr. Stephens said that as far as he knew, Mr. Nice had not deliberately lied to him. He said the only response he could make to Mr. Roby's question was that he was not told it was a corner lot and he had not asked if it were a corner lot. He said he assumed it was a case of miscommunication of the situation and resulting miscommunication of the requirements.

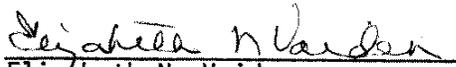
Upon a motion by Mr. Marston, seconded by Mr. Brown, the Board of Zoning Appeals voted two to one with two abstentions to approve the variance requested in Case No. ZA-3-79.*

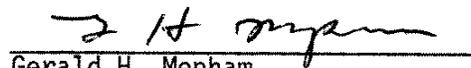
The following is the results of the roll call vote:

Mr. Mephram	No
Mr. Marston	Yes
Mr. Brown	Yes
Mrs. Vaiden	Abstain
Mr. Roby	Abstain

4. ADJOURNMENT

There being no other business, the May 30, 1979 meeting of the James City County Board of Zoning Appeals was adjourned at 8:45 P.M.


Elizabeth N. Vaiden
Secretary


Gerald H. Mephram
Chairman

*Several days after the meeting it was discovered by the County attorney that the State Code requires that any variance issued be approved by a quorum of the Board, which is defined as 3 members. This means the result of this vote was to defeat the variance request for lack of three votes to approve.