

BOARD OF ZONING APPEALS

MINUTES

June 23, 1988

A. ROLL CALL

Absent

Mr. Bob Ripley
Ms. Nancy James
Ms. Elizabeth Vaiden
Mr. Claude Feigley

Mr. Ronald Rosenberg

Others Present

Mr. Bernard Farmer, Zoning Administrator
Mr. Larry Davis, Assistant County Attorney

B. MINUTES

The May 26, 1988 minutes were approved as presented.

C. OLD BUSINESS

None

D. NEW BUSINESS

1. ZA-14-88 Heritage Development

Mr. Farmer stated Mr. Robert Hornsby of Heritage Development had requested a 10.52 foot variance from the rear setback requirements of the James City County Zoning Ordinance for a single family dwelling. Mr. Farmer further stated that the applicant had been issued a building permit for the construction of a single family dwelling in October of 1986. During the construction two changes were made without prior approval by the Code Compliance Office (addition of a deck and movement of the house site). Mr. Hornsby had stated that the reason for his violation was reliance on the incorrect setbacks shown on the record subdivision plat for Section 15 of Windsor Forest. Technically the setbacks shown on the record plat have no status as any new development would have to adhere to the zoning ordinance requirements in effect at the time of permit issuance, regardless of what shows on the record plat. Sufficient buildable area exists on the lot and it is not unduly restricted by zoning ordinance requirements. Since no legal hardship was demonstrated, staff recommended denial.

Ms. Vaiden opened the public hearing.

Mr. Hornsby stated that the plat was submitted to the planning department with the assumption it was correct. Mr. Hornsby further stated he used this plat as a guideline. Thinking he had enough footage he moved the house slightly to the rear of the property due to sloping of the front of the lot. After the house was completed, a survey was done and the encroachment was discovered.

Mr. Ripley asked why the plat submitted with the house plans differed from the plat submitted to the planning department.

Mr. Hornsby stated that the plat submitted to the planning department was done by AES and the plat submitted with the house plans was estimated. He further stated that for accuracy during construction he used the record plat.

Ms. Vaiden closed the public hearing.

Mr. Feigley stated he had visited the site and the house did look good at the present location, but asked Mr. Hornsby what he would do if the variance was denied.

Mr. Hornsby stated that his only resource would be to try and buy a portion of an adjoining lot and change the property line.

Mr. Ripley motioned to grant the variance as requested by the applicant.

Ms. James seconded the motion.

The motion was carried unanimously.

2. ZA-15-88 Classic Development Corporation

Mr. Farmer stated Mr. Daniel Waltrip of Classic Development Corporation had requested a 1 foot variance from the side yard setback requirements of the James City County Zoning Ordinance for a single family dwelling. He further stated that in May of 1988 a permit had been issued for the construction of a single family dwelling on this lot. The plat plan accompanying this permit showed at least 20 feet clearance to each side lot line. AES confirmed that they had been hired to stake the proposed corners. Soon after the corners had been staked, a former partner with Classic Development arrived at the job site and directed the workers to move the corners several feet to the right, to provide extra room to get into the side loading garage. Mr. Waltrip stated that he was unaware of the problem until the survey had been done prior to closing. Since no legal hardships

have been shown, staff must recommend denial.

Ms. Vaiden opened the public hearing.

Mr. Waltrip stated that he did not find out about the problem until May 12, 1988 when the house was surveyed for the closing. He further stated that he has all of his homes surveyed prior to building to avoid such problems.

Mr. Feigley asked if the home was occupied.

Mr. Farmer stated that he talked with the home owners and felt they would be unduly harmed if not temporarily allowed to move into the home. The owners were issued a temporary certificate of occupancy pending the decision of the board.

Ms. Vaiden closed the public hearing.

Ms. James motioned to grant the variance as requested by the applicant.

Mr. Feigley seconded the motion.

The motion was carried unanimously.

3. ZA-16-88 Parker Piano

Mr. Farmer stated Mr. Theodore Hansen of Bay Design, on behalf of Parker Piano, had requested a 30 foot variance from the side yard setback requirements of the James City County Zoning Ordinance. Mr. Farmer further stated that on December 7, 1987 the property was rezoned from R-3 to B-1, General Business Zoning for the purpose of placing a piano company on the property. The present zoning requires that the side yard be increased to 50 feet when adjacent to residentially zoned property. As the rezoning request only included one parcel, the lots on either side are both still zoned R-3. The submitted site plan shows the structure to be located 20 feet from the eastern side property line, and the proposed structure would be 9000 square feet in size. As permitted within the buildable area, a structure of approximately 7500 square feet could be constructed. The zoning ordinance requirement of increased buffering when businesses abut residential property is a principal of sound planning, and exists to protect existing residential structures. This is a principal which should not be compromised because the developer seeks a particular style building or arrangement for his own personal benefit. In this case, the property owner has failed to show that exceptional or unusual characteristics exist which effectively prohibit use

of the property or that any demonstrable hardship exists. The variance being sought is not one which will alleviate an unusual condition not generally shared by other similar properties. Rather, the variance is one of convenience or special privilege. Staff recommended denial.

Ms. Vaiden opened the public hearing.

Mr. Hansen stated that the building was designed for maximum use, parking spaces, loading dock area and floor area. He further stated that moving the building to meet the zoning requirements means a loss of valuable floor space.

The Board discussed the possibility of moving the driveway and the structure to alleviate the need for a variance request.

Ms. Vaiden closed the public hearing.

Mr. Ripley remarked that the proposed building appeared to be too large for the lot.

Mr. Feigley motioned that the variance be denied. He stated that he agreed with Mr. Ripley.

Ms. James seconded the motion.

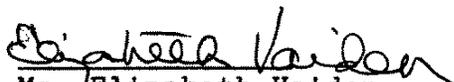
The motion was carried unanimously.

E. MATTERS OF SPECIAL PRIVILEGE

None

F. ADJOURNMENT

The meeting was adjourned at 8:36 p.m.


Ms. Elizabeth Vaiden
Vice-Chairman


Bernard M. Farmer, Jr.
Secretary to the Board