

BOARD OF ZONING APPEALS

MINUTES

July 28, 1988

A. ROLL CALL Absent

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

Others Present

Mr. Bernard Farmer, Secretary to the Board

Mr. Farmer stated to the public in attendance that recently one Board of Zoning Appeals member had resigned because of appointment to another commission. He stated that if any applicant desired a full board of five members to hear their case they could request the board continue their case to the next meeting.

B. MINUTES

The June 23, 1988 minutes were approved as presented.

C. OLD BUSINESS

None

D. NEW BUSINESS

1. ZA-17-88 Tom Trimble

Mr. Farmer stated Mr. & Mrs. Tom Trimble had requested a 5 foot variance from the side yard setback requirements of the James City County Zoning Ordinance for an attached garage. Mr. Farmer further stated that the third garage was to be used to store a boat, presently being parked in the open in violation of the subdivision covenants. Since no legal hardship has been demonstrated staff recommends denial.

Ms. Vaiden opened the public hearing.

Mrs. Trimble stated that at the time they moved into

the house in November of 1987 they were renting. In June of 1988 they had discussions with the Realtor on purchasing the house. They stated that there was no discussion regarding any covenants or association dues and that after closing they had a survey done and found the property lines were not the same as shown by the Realtor. They also stated that they had informed the Realtor that they had a boat which they wanted to bring into the subdivision, the Realtor stated that this would be perfectly alright.

Mrs. Trimble also stated they did not want to park their boat at any of the marina's in the area because of vandalism. Mrs. Trimble further stated that just a corner of the garage would be encroaching into the setback. Mrs. Trimble stated that she feels there is a hardship being shown in this case since they were unaware of any covenants at the time they purchased the house.

Mrs. Trimble presented the Board members a letter from several neighbors stating that they had no objection to the construction of the garage. She also presented several pictures of the house, boat, a van (which had been damaged by a brick), and a copy of the covenants for their subdivision.

There was a discussion among board members regarding the many cases involving after-the-fact violations and that homeowners need to make themselves aware of what rules and regulations are associated with the area they are interested in moving to prior to purchasing property.

Ms. Vaiden closed the public hearing.

Mr. Feigley motioned to deny the variance request.

Ms. James seconded the motion.

The motion was carried unanimously.

## 2. ZA-18-88 Thomas and Patricia McCormick

Mr. Farmer stated Mr. & Mrs. Thomas McCormick had requested a 6 foot variance from the front setback requirements of the James City County Zoning Ordinance for an existing structure. He further stated that the house on this lot was allowed to be placed in accordance with the setbacks shown on the record plat, since that plat was recorded prior to the adoption of the Zoning Ordinance (this provision is still part of the ordinance). Evidently the home was constructed even closer to the front property line and a variance was requested and granted at that time.

Also, a portion of property was reserved along the side of the home for a future right-of-way. Since the Raintree Subdivision has now developed and there is no use for the right-of-way, the homeowners want to request a vacation of the right-of-way so that each adjacent parcel may acquire half. When this action takes place, a new plat will be required which will subject the house to a 35 foot setback. The McCormick's house may remain exactly where it now stands, but will be considered a "non-conforming" structure, and their right to expand within the setback line will not be affected. Since no hardship has been demonstrated and the variance would amount to a special privilege otherwise denied like zoned property, staff recommends denial.

Ms. Vaiden opened the public hearing.

Mr. Joe Phillips, Attorney, on behalf of Mr. & Mrs. McCormick, stated the reason for the variance request is for the future marketable value on the house and property. Without the variance the only other choice would be to move the house on the property so that it would meet the requirements once the new plat is recorded. Mr. Phillips also stated that the McCormicks do feel their case is a unique situation not shared by other property owners in the subdivision.

Ms. Vaiden closed the public hearing.

Ms. James motioned to grant the variance as requested.

Mr. Ripley seconded the motion.

The motion was carried unanimously.

3. ZA-19-88 Joann Shearin-Walker

Mr. Farmer stated Ms. Walker had requested that the setback provision be determined for a small non-conforming lot. Mr. Farmer further stated that the property is a vacant non-conforming legal lot only 70 feet deep and 140 feet wide. The lot fronts on Neighbor's Drive, an unpaved right-of-way. Section 20-404 of the Zoning Ordinance provides that the Board of Zoning Appeals may establish the requirements for setbacks and yards when it is impossible to place the property into use by adhering to the ordinance. The applicant desires to place a 28 foot deep home on the property. The proposed use is permitted in that zone and a hardship not shared by like zoned property, staff recommends that the front and rear yard requirements be set at 20 feet.

Ms. Vaiden opened the public hearing.

Ms. Walker stated that she wants to put a 28' x 56' modular home on the property. Ms. Walker provided the Board with a copy of the blueprints for review.

Mr. Robert Jones, neighbor, stated he had no objection to the placement of the home.

Ms. Vaiden closed the public hearing.

Mr. Feigley motioned to grant the variance with staff's recommendation.

Ms. James seconded the motion.

The motion was carried unanimously.

#### 4. ZA-20-88 C.L. Waltrip

Mr. Farmer stated that AES, on behalf of C.L. Waltrip, had requested a variance of 5.5 feet from the side yard setback requirements of the James City County Zoning Ordinance for a townhouse. Mr. Farmer further stated that the approved site plan shows this particular building adjacent to the 35 foot setback line. The site plan apparently had been prepared and approved without the architectural plans, which showed a side entrance for the dwelling. The main portion of the dwelling was placed 35.5 feet from the property line, with the side entrance projecting 5.5 feet into the setback. The removal of the porch and deck would require substantial effort and expense. Staff must recommend denial since no legal hardship has been shown.

Ms. Vaiden opened the public hearing.

Mr. Jim Bennet of AES, stated that the architectural plans only show the entrance elevated, with no foundation and open. The property was staked assuming the entrance would be to the front of the property and not to the side. Mr. Bennet stated that in future development all end unit plans (will be noted), if they have side entrances or decks they can only be used on certain end units, so that this encroachment will not happen again. Mr. Bennet also stated that the entrance could be removed but that they would have to put up a stoop which would encroach the setback by at least 3 feet.

Mr. Bennet informed the Board that there is a contract on this unit and that the buyers are aware of the situation.

Ms. Vaiden asked to see the floor plan.

The Board reviewed the plan with the possibilities of moving the entryway to another area.

Ms. Vaiden closed the public hearing.

Mr. Farmer advised the Board that if they decided to grant this variance request, they could attach a condition or conditions.

Mr. Ripley motioned to grant the variance as requested with the added condition that the porch/entryway never be enclosed.

Ms. James seconded the motion.

Mr. Feigley stated that he had mixed feelings about the structure and the distance to the flood plains and motioned to deny the variance. No member seconded the motion.

The main motion was carried 3 to 1 to grant the variance with the added condition.

5. ZA-21-88 Chuck Nuttycombe

Mr. Farmer stated the Mr. Joseph Abdelnour, Attorney on behalf of Chuck Nuttycombe, had requested a one foot variance from the side yard requirements of the James City County Zoning Ordinance for a single family dwelling. Mr. Farmer further stated that a building permit was issued to Chuck Nuttycombe to construct a dwelling on this parcel. He believed that the builder was aware the chimney would encroach into the side yard, but based on Mr. Nuttycombe's experience in other jurisdictions Mr. Nuttycombe thought that such encroachments were allowed. The James City County Zoning Ordinance does allow some minor architectural features such as trim, cornice work and overhangs to encroach up to 3 feet, but prohibits ground supported structures such as chimneys, decks, etc from being placed into the required yard. Since no legal hardship has been demonstrated staff recommends denial.

Ms. Vaiden opened the public hearing.

Mr. Nuttycombe stated he has used an engineer for the last four years and has built in all areas in the Peninsula, but that this is only his third house in James City County. He also stated that he and his engineer were unaware of the zoning regulations in James City County on fireplaces being considered a part of the building face. He also stated that the house has been sold and the owners are very happy with

their house. Mr. Nuttycombe stated that he always used an engineer to lay out his houses, and even that doesn't prevent such mistakes. He stated he still felt the chimney was an architectural feature and should not be considered part of the building face.

Mr. Richard Dana, of 5544 Rolling Woods Drive, stated he noticed that the string used to outline the house was very close to his property line. Mr. Dana submitted pictures to the board. He measured the distance and found the chimney to be only nine feet from his property line. He talked with some of the framers and also with Mr. Nuttycombe in regard to what he felt was an error. Mr. Dana stated that when he talked with Mr. Nuttycombe, Mr. Nuttycombe told him that there was no problem because chimneys, steps, etc. are considered architectural features and are not part of the building face. Therefore, he could allow up to a 3 foot encroachment.

Mr. Dana presented three letters to the Board from other property owners which felt that Mr. Nuttycombe was fully aware of the encroachment and still proceeded with the work. Mr. Dana also presented the Board with pictures that were taken from his property.

Mr. Gerry Hensley, of 5559 Rolling Woods Drive, stated he feels that if the variance is granted it would be giving the builders the opportunity to do as they wish. Mr. Hensley further stated that the rules and regulations were made to apply equally to all and that if violations were allowed to occur there was no use in having the regulations at all. Mr. Hensley was concerned that a precedent would be set in his neighborhood if Mr. Nuttycombe was granted the variance. Mr. Hensley asked the board to deny the variance.

Mr. Joseph Abdelnour presented the Board with pictures showing the house. Mr. Abdelnour stated he had asked the Board to consider two things in his application. They were

1. To render an interpretation in regard to whether the Board would consider a chimney as part of the building face and subject to setbacks or an architectural feature and not subject to them.
2. If they decide a chimney is part of the building face, then he requested a variance of one foot to allow Mr. Nuttycombe's chimney to remain.

Mr. Abdelnour stated that Newport News and Hampton consider the chimney as an architectural feature and allow up to a 3 foot encroachment. Mr. Nuttycombe came to his office after receiving a field correction notice from the

Code Compliance Office. Mr. Abdelnour stated he reviewed the ordinance and met with Mr. Farmer, but felt Mr. Nuttycombe was caught unaware.

Mr. Abdelnour presented the Board a letter from Atlantic Homes which stated they have no objection to the chimney remaining. Atlantic Homes owns about 40% of the lots in that section. Mr. Abdelnour said he hoped the board would agree that the chimney was an architectural feature and allow it to remain. If not he hoped the board would look favorably on granting a variance.

Mr. Farmer stated that Mr. Abdelnour had correctly stated the two things he requested the board to do. He also said that the board had recently ruled on variances in at least two other cases regarding chimney encroachments in Westray Downs. He said that ruling a chimney was not subject to setbacks would be inconsistent with previous cases.

Ms. Vaiden closed the public hearing.

Mr. Feigley asked Mr. Nuttycombe if he and Mr. Dana had any conversations about the fireplace.

Mr. Nuttycombe stated he could not remember any specific conversations with Mr. Dana concerning the chimney, but did recall speaking with him.

Mr. Feigley motioned to deny the variance. He stated that the builder had been made aware, continued in violation, and had shown no grounds for a hardship.

Mr. Ripley seconded the motion.

Mr. Farmer stated to the Chairman that they needed to make a motion on the interpretation of whether the chimney is an architectural feature or part of the building face as well as to the variance request.

Mr. Feigley stated that he feels that chimneys are a part of the building face and that the Board has always made their decision on this basis. He said they are supported on the ground the same as the main structure, and are part of the main structure.

Mr. Feigley motioned that the chimney be considered a part of the building as determined by the Zoning Administrator.

Mr. Ripley seconded the motion.

The motion upholding the Zoning Administrator's interpretation carried unanimously.

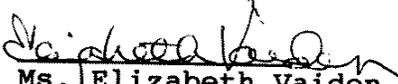
The motion denying the variance carried 3 to 1, with Ms. Vaiden indissent.

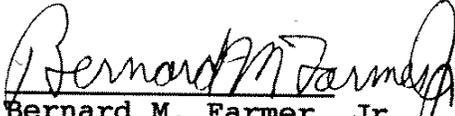
**E. MATTERS OF SPECIAL PRIVILEGE**

None

**F. ADJOURNMENT**

The meeting was adjourned at 9:45 p.m.

  
Ms. Elizabeth Vaiden  
Vice-Chairman

  
Bernard M. Farmer, Jr.  
Secretary to the Board