

BOARD OF ZONING APPEALS

MINUTES

October 26, 1989

A. ROLL CALL

Absent

Mr. Bob Ripley  
Mr. Claude Feigley  
Mr. Ken Giedd  
Ms. Nancy James

Mr. Baxter Carr

Others Present

Mr. Bernard Farmer, Secretary to the Board

B. MINUTES

The September 28, 1989 minutes were approved as presented.

C. OLD BUSINESS

Mr. Feigley requested staff to prepare a memorandum for the next Board meeting regarding the use of platted setbacks for properties recorded prior to zoning changes adopted by James City County.

D. NEW BUSINESS

1. ZA-16-89. William B. Thrall

Mr. Farmer presented the staff report stating that Mr. Thrall requested a 1.5 foot variance from the side yard requirements for a deck. Mr. Farmer further stated that during construction adjustments were made to the building location and that is why the deck encroached into the side yard. Staff recommended the variance be denied.

Mr. Feigley asked if the deck was part of the approved permit.

Mr. Farmer responded that it was.

Mr. Feigley opened the public hearing.

Mr. William Thrall, the applicant, stated that after the building was staked and the property surveyed the builder changed the building location to make room for the septic system

and to save as many trees as possible. Mr. Thrall further stated that when he went to sell the lot and a new survey was done, it was discovered that the deck was not on the plat and he decided to request a variance for it rather than tear it off.

Mr. Feigley asked Mr. Thrall if he knew what the County setback requirements were.

Mr. Thrall responded that he did. Mr. Thrall further stated that it was difficult to locate the house on the lot as he wanted to save as many trees as possible.

As no one else in the audience wished to speak, Mr. Feigley closed the public hearing.

Ms. James made a motion to approve the variance as requested. Mr. Feigley seconded the motion. The motion was carried by unanimous vote.

2. ZA-17-89. Wendy Baker & Grant Healey

Mr. Farmer presented the staff report and stated that the Certificate of Use and Occupancy was issued in May of 1984 for the dwelling located on this lot. Mr. Farmer further stated that at that time the County was not aware that any encroachment existed, however, Mr. Hornsby was the realty agent at that time and due to a misunderstanding no person involved in the original transaction pursued any remedy or variance to correct the situation. Staff recommended the variance be denied.

Mr. Feigley opened the public hearing.

Mr. Robert Hornsby, Hornsby Real Estate, informed the Board that his Uncle's company gained this property through debts owed to their business from Medallion Homes. The survey done in 1984 reflected that setback violations had occurred. The attorney working for Hornsby Real Estate stated that he would take care of the necessary actions to have the variance granted after closing on the property. However, when the present property owners tried to sell this property it was discovered that the variance was never obtained. Mr. Hornsby requested the Board approve the variance.

Mr. Feigley asked if the present owners would have to "hold the bag" if the variance was denied.

Mr. Hornsby responded in the affirmative.

Mr. Ripley inquired whether adjacent property owners were in the audience.

There were no adjacent property owners present.

Mr. Farmer stated that the office had not heard from

Mr. R. Grier, 7 Lavelle Court.

Mr. Paul Boylan, member of the audience, stated that he knew Mr. Grier and felt that if Mr. Grier did not approve of the variance he would have spoken out against it. Mr. Boylan further stated that Mr. Grier owns three lots and has indicated that he does not have plans to build on them.

As no one else in the audience wished to speak, Mr. Feigley closed the public hearing.

Mr. Feigley made a motion to approve the variance as requested. Mr. Ripley seconded the motion. The motion was carried by unanimous vote.

3. ZA-18-89. Miller Oil

Mr. Farmer presented the staff report stating that the property in question is a non-conforming retail gas station and as such may change or expand only in a manner consistent with Article V, Non-conformities. Mr. Farmer further stated that the proposed canopies are not consistent with the requirements of Section 20-89 (special requirements for establishments selling or dispensing vehicular fuels) and Section 20-403(c) (expansion of non-conforming uses). Mr. Farmer informed the Board that an expansion or change would be allowed if the expansion or change itself met current ordinance requirements. Staff recommended the variance be denied.

Mr. Feigley opened the public hearing.

Mr. Joe Phillips, attorney for the applicant, introduced Mr. Hodgson, Vice-President of Miller Oil, and Mr. Jim Anderson, property owner. Mr. Phillips asked Mr. Hodgson to explain to the Board why the pump stations should remain in their present location.

Mr. Hodgson presented the Board with pictures of the existing pump islands and stated that it would be an undue hardship to move the pump islands. Mr. Hodgson informed the Board that if the pumps were moved closer to the building they would conflict with traffic patterns and he felt that trucks would hit the canopies. If the islands were relocated toward the center and pointed toward the drive it would create an inefficient traffic pattern as it would impair ingress, egress and station service traffic. Mr. Hodgson stated that the canopies were needed to modernize the service station and that he felt if the pump islands were relocated the station would not be a viable station. Mr. Hodgson also pointed out that light poles would have to come down if the pump islands were relocated.

Ms. James inquired if the canopies would overlap the concrete pads.

Mr. Hodgson responded that they would not.

Mr. Giedd inquired if the Highway Department had made recommendations and if it would be possible to cover two-thirds of the island.

Mr. Farmer responded that the Virginia Department of Transportation had not made recommendations.

Mr. Hodgson responded that it would destroy the Exxon image as all service stations must conform with Exxon standards. Mr. Hodgson also stated that the public would not use the pumps that were left uncovered.

Mr. Feigley inquired if all Exxon service stations were forced to comply with Exxon standards.

Mr. Hodgson responded that service stations must meet image standards in order to fly the Exxon flag within set time periods. Mr. Hodgson further stated that service stations do get a return on their investment for the improvements that they make.

Mr. Phillips stated that he has been negotiating between the owners and Exxon and Exxon believes very strenuously that their designs must be used or the service station cannot be an Exxon dealer. Mr. Phillips further stated that this was a unique configuration problem in that it was shaped like a triangle. Mr. Phillips informed the Board that from a visual affect, the canopies would set back farther than the County would require and in his opinion the Virginia Department of Transportation would not make any improvements to the road. Mr. Phillips requested the Board approve the variance.

As no one else from the audience wished to speak, Mr. Feigley closed the public hearing.

Mr. Feigley stated that he felt this was an undue hardship and that the service station must modernize in order to remain an Exxon service station.

Mr. Giedd stated that the service station provides a service to cars as well as gas to the upper end of the county and he would prefer a service station there over a convenience store.

Mr. Farmer suggested that the Board place a condition on the variance which would state that if the Virginia Department of Transportation widens adjacent roads and requests the canopies to be removed, they will be removed without cost to the Government.

Mr. Feigley made a motion to approve the variance to install canopies with the condition that if the Virginia

Department of Transportation widens adjacent roads and requests the canopies to be removed, they will be removed without cost to the Government. Ms. James seconded the motion. The motion was carried by unanimous vote.

4. ZA-19-89. Jim & Cynthia Howington

Mr. Farmer presented the staff report stating that the applicant requested a variance from the rear yard requirements for an addition to their dwelling. Mr. Farmer stated that an application was made to construct an attached garage on the property but was denied by the Plans Examiner due to improper side yard requirements shown on the proposed site plan. The contractor amended this item on a later date but failed to show that the rear of the structure was too close to the water of Lake Pasbehegh, which is the rear property line. The Permit Technician failed to follow prescribed procedures and have the amended site plan approved by the Plans Examiner and issued the permit. Based on a complaint received the office discovered the setback violation. Mr. Farmer indicated that the property owners desired to apply for a variance rather than relocate the foundation. Staff recommended the variance be denied.

Mr. Feigley opened the public hearing.

Mr. Jim Howington, property owner, informed the Board that the structure had been moved four feet closer to the front property line than originally planned. Mr. Howington stated that a hardship exists due to the cost of putting in the present foundation and requested the Board approve his variance.

Mr. John Patton, adjacent property owner, stated that when he noticed footings on the adjacent lot he verified that a building permit had been issued for an addition to the dwelling. In reviewing the permit he discovered that a setback violation of the rear property line had occurred. Mr. Patton stated that due to tides and a rough shoreline it was difficult to determine where the rear property line existed on Lake Pasbehegh. Mr. Patton informed the Board that he did not object to the variance.

Mr. Paul Boylan, father-in-law, stated that he physically measured the distance from the proposed addition to Lake Pasbehegh and it measured a little over thirty feet. Mr. Boylan further stated that the adjacent property owner did not object to the variance and requested the Board approve the variance.

As no one else in the audience wished to speak, Mr. Feigley closed the public hearing.

Ms. James made a motion to approve a seven foot variance from the rear setback requirements for construction of

the garage which is currently permitted and not for any other structure.

Mr. Ripley seconded the motion. The motion was carried by unanimous vote.

**E. MATTERS OF SPECIAL PRIVILEGE**

Mr. Farmer informed the Board that the Assistant County Attorney, Larry Davis, had accepted the position of County Attorney for Spotsylvania County. Mr. Davis will leave James City County in December.

Mr. Farmer reminded the Board that the next Board meeting would be held on November 16, 1989.

Mr. Feigley requested staff verify the meeting date for the December meeting.

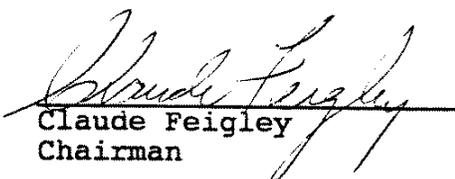
Ms. James requested staff research the possibility of getting identification badges for the Board members.

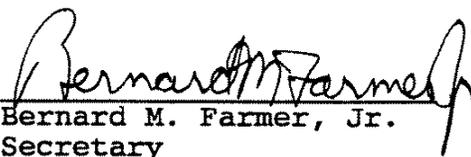
Mr. Ripley requested staff consider making property owners record variances at the clerk of circuit court office.

Mr. Farmer informed the Board that approved variances are permanent records and are filed in the property records in central files.

**F. ADJOURNMENT**

The meeting adjourned at 9:05 p.m.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary