

BOARD OF ZONING APPEALS

DECEMBER 28, 1989

A. ROLL CALL

ABSENT

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

Mr. Baxter Carr

B. MINUTES

The minutes of the November 16, 1989 meeting were approved as presented.

C. OLD BUSINESS

Mr. Farmer referred to the memo he sent to the Board Members regarding the Nuttycombe case. He stated Allen Murphy was drafting an Ordinance Amendment to be presented to the Planning Commission in January or February.

D. NEW BUSINESS

1. Case No. ZA-24-89. Daniel Waltrip

Mr. Farmer presented the staff report stating that Daniel Waltrip had requested a five foot variance from the side yard requirements for an existing single family dwelling. Evidently, during the layout of the foundation a mistake was made and the rear corner pin of lot 15, a lot abutting this property to the rear, was used to determine the side property line. This resulted in a shift of approximately five feet in the location of the line believed to be the side property line. Staff recommends denial since no unique or unusual conditions exist related to the property which prevent its use or are sufficient to justify an undue hardship.

Mr. Giedd questioned what the actual encroachment and was told encroachment is 10.3 feet.

Mr. Feigley asked the amount of the variance requested and was told variance of 4.7 feet would be required for the home to be legal.

Mr. Feigley opened the public hearing.

Mr. Waltrip submitted a copy of the plat he used to lay out the house. He, also stated the house is sold but not closed and that he had contacted Dr. Henderson, the adjacent property owner, and offered to buy the 5 feet required to make the dwelling legal as it sits but at this time no agreement has been reached.

Mr. Farmer asked if Mr. Waltrip would be able to afford the property if Dr. Henderson agreed to sell.

Mr. Waltrip stated he would not be able to purchase the required land at this time due to his finances.

Mr. Feigley made reference to the previous variance request Mr. Waltrip had before the Board, and explained the issue to other members.

A discussion followed concerning repeat variance requests and ways to avoid repeat mistakes.

Mr. Feigley closed the public hearing.

Mr. Ripley moved to grant a 4.7 foot variance from the side yard requirements.

Ms. James seconded the motion.

The motion for approval of the variance was carried unanimously.

Case No. ZA-25-89. Lucille Delaney

Mr. Farmer presented the staff report stating that Lucille Delaney had requested an eight foot variance from the front setback provisions and a fifteen foot variance from the side yard provisions for a proposed manufactured home. There is presently an existing frame dwelling on the property which the applicant desires to demolish and replace with a mobile home. The existing structure has been surveyed by the Community Development Agency and found to be in such a state of disrepair that it cannot be renovated. Their proposal is to place a 69' by 14' mobile home on the property and use the existing septic system.

As presently existing the lot's buildable area is confined by the existing septic system. It is staff's understanding that the drainfield is located on the only suitable area and cannot be relocated. The property is not served by public sewer so any development must depend on the use of the septic system. This creates a condition on this non-conforming lot unique to the property and not generally shared by like zoned properties in the district and limits the distance any structure may be set back from Chickahominy Road. In regard to the side yard, the adjacent 25' wide parcel of land, which appears to be usable in its

present form, is in Lucille Delaney's ownership. It is entirely possible to vacate the property line and increase the size of the developed lot. Such an action would do away with any need to seek a side yard variance and provide a simple remedy to help locate a manufactured home on the property.

Staff recommends a variance be granted as requested for the front setback, but that the side yard variance be denied as an easy remedy exists.

Mr. Feigley opened the public hearing.

There being no one present to speak the public hearing was closed.

Ms. James asked if Ms. Delaney had stated a reason why she did not vacate the side yard property line.

Mr. Farmer stated he had not heard from Ms. Delaney and had no answer.

Mr. Giedd asked if the mobile home could be placed on top of the drain field.

Mr. Ripley answered no, that the drain field must be clear.

Ms. James asked if the home could be placed further back on the lot and was told no, due to the septic field.

Mr. Feigley stated he would be hesitant to grant a variance for the side yard due to Ms. Delaney owning the adjacent property.

Ms. James asked if the Board only grants the front variance would she have to conform to the ordinances and was told yes.

Ms. James moved to grant the front setback variance but to deny the side yard variance.

Mr. Feigley seconded the motion.

The motion to grant the variance was carried unanimously.

Case ZA-26-89. Menno Development

Mr. Farmer presented the staff's report stating that Menno Development has requested a 9.76 foot variance from the rear yard requirements for an existing single family dwelling. In August of 1987 a construction permit was issued to Menno development to build a single family dwelling on this lot. As proposed the home could have been placed on the lot within the setbacks. Evidently, during construction some changes were made which resulted in rear yard violations.

A deck encroaches approximately 10 feet into the rear yard and the entire rear of the dwelling encroaches by approximately two feet. No explanation regarding how this occurred has been offered. Staff recommends the variance be denied since no unique or unusual conditions exist relative to the property sufficient to constitute a hardship. It is possible to place the property into beneficial use while meeting all ordinance requirements.

Mr. Feigley opened the public hearing.

Mr. Leroy Blosser, president of Menno Development, stated the house presently on the lot is different from the original sketch in that it is more narrow and a deck was added prior to closing. He offered a letter from adjacent property owners which did not oppose the variance. He stated Mr. Roger Spearman has been retained to do further surveys to help eliminate this type of problem.

Mr. Sam Brunk, superintendent for Menno, explained how the house was laid off.

Ms. James questioned if Mr. Brunk was aware of the encroachment before the deck was added.

Mr. Brunk stated he was not aware of the encroachment until closing.

Mr. Giedd asked Mr. Farmer if a building permit was issued for the deck.

Mr. Farmer stated there was no permit for the deck.

Ms. James asked if the house did not encroach if the deck would be legal if there were no encroachment by the house, Mr. Farmer said no.

Mr. Feigley asked if the house was sold and if people were residing in it and was told yes.

Mr. Feigley closed the public hearing.

Mr. Feigley moved to grant a 10 foot variance from the rear yard requirements.

Ms. James indicated she felt it was time to take a stand, that by allowing encroachments by decks it would only make the problem worse in the future.

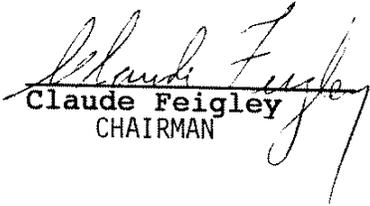
The motion to grant the variance was carried by a vote of three to one, with Ms. James opposing.

Ms. James was the opposing vote.

E. MATTERS OF SPECIAL PRIVILEGE
None

F. ADJOURNMENT

The meeting was adjourned at 8:45 PM


Claude Feigley
CHAIRMAN


Bernard M. Farmer, Jr.
SECRETARY