

BOARD OF ZONING APPEALS

MARCH 22, 1990

A. ROLL CALL

Absent

Mr. Feigley
Mr. Ripley
Mr. Giedd

Mr. Carr
Ms. James

Others Present:

Bernard M. Farmer, Jr., Secretary to the Board
Leo Rogers, Assistant County Attorney
Allen Murphy, Principal Planner
John Patten, Code Compliance Officer

B. MINUTES

The minutes of the December 28, 1989 and the February 22, 1990 meeting were approved as presented.

C. OLD BUSINESS

Mr. Farmer stated the case concerning Nuttycomb had been dismissed since the Board of Supervisors passed the Amendment to the Ordinance.

Mr. Feigley requested the December 1990 meeting be changed to the 20th of December.

D. NEW BUSINESS

Case No. ZA-3-90. Almac V Limited Partnership

Mr. Farmer presented the staff report stating that Almac V Limited Partnership had applied to erect a sign larger than otherwise permitted under the Zoning Ordinance. The property is located at 5701 Richmond Rd. in the Berkeley Commons Shopping Center. The property for which the variance has been requested is currently under development as Phase III of the Berkeley Commons Outlet Center. Adjacent to this parcel to the Southeast is Phase I of the development and to the Northwest is Phase II. Construction is complete for Phase I and Phase II and the facilities have been open and in use for approximately one year. Final site plan approval and building permits have been issued for Phase III.

Under existing ordinance provisions, Section 20-448 would allow one freestanding sign of 32 square feet maximum in area, for each parcel of property (three parcels exist so three signs are permitted). Since the parcel for Phase I has more than 400 feet of frontage one additional sign is permitted for that parcel. Two free standing 32 square feet signs presently exist on Phase I and Phase II parcels. The applicant has specifically requested he be allowed to erect what is defined under our ordinance as two signs in lieu of the permissible free standing 32 square foot sign.

Staff must strongly recommend that this variance be denied as there is no legal basis for granting such a request. The following points pertaining to this recommendation must be considered:

1. This request constitutes a special privilege denied other like zoned property and solely for the benefit of this parcel.
2. This situation is general in nature and occurs on many like zoned properties. Variances in such circumstances are illegal, and an improper exercise of authority reserved for the sole legislative body in the jurisdiction. The appropriate remedy would be to amend the ordinance.
3. The application of the ordinance produces no undue hardship unique to this property. No extraordinary circumstances have been claimed and no information has been provided to show that the ordinance requirements unnecessarily or unreasonably restrict the use of the property in any way.
4. Consideration by the Board of Zoning Appeals of the proposal to not erect the other signs would be improper. The Board is charged with providing necessary relief when ordinance requirements constitute a taking or other undue property restrictions. It would be an inappropriate role for the Board to engage in "deal making" to the benefit of one property owner and to the detriment of the integrity of the ordinance.

Mr. Feigley questioned how the size of the sign was calculated.

Mr. Farmer responded that the Zoning Ordinance has been applied taking into consideration the background as well as the lettering. He further stated, that the entire area constitutes a display regardless of the size of the lettering.

Mr. Feigley opened the public hearing.

Mr. Otey addressed the Board and introduced Mr. Kenny Smith, attorney, and Mr. Mike Patten of the Chapman Co.

Mr. Otey presented a site plan and explained the hardship of trying to develop a first class outlet sign which would be compatible with the outlet.

Mr Feigley questioned Mr. Otey regarding his statement on hardship.

Mr. Otey explained the developer is attempting to create an attractive space for visitors and tenants. He also stated if the developer cannot attract the right tenants the mall will not attract the quality visitors.

Mr. Patten further explained how the developer was trying to prevent a hodge podge of signs.

Mr. Patten explained, with the aid of an artist rendering, how considerable planning had been done to preserve the beautiful old tree on the property.

Mr. Murphy, Principal Planner of James City County, spoke in support of Staff's recommendation and asked the Board to focus on the reasons the recommendation was for denial, he further stated the lack of revisions to the Ordinance shows the importance of preserving the size of signs in the County.

Mr. Rogers, Assistant County Attorney, read Section 20-448 of the Zoning Ordinance to the Board to clarify the issues.

Mr. Feigley closed the public hearing.

Mr. Ripley stated he felt the Ordinance relating to sign was a great thing and kept the County from looking like a "Billboard City".

Mr. Giedd asked the size of the letters on the present sign.

Mr. Patton responded approximately 12 inches.

Mr. Feigley moved to deny the variance because no hardship or unique condition had been demonstrated.

Mr. Ripley seconded the motion.

The motion was carried by a two to one vote with Mr. Giedd opposing.

Case No. ZA-4-90. Douglas Bull

Mr. Farmer presented the staff report stating that Spearman and Associates on behalf of the owners, has applied for a one foot variance from the front setback requirements of the Zoning Ordinance for a single family dwelling currently under construction. The property is located at 108 Puffin Lane in the Seasons Trace Subdivision. In January a permit was issued to L.T. Lylerly, Builder to construct a two story single family dwelling on this property. The proposed and approved plat plan showed that the structure was to be placed 42 feet from the right-of way. Evidently, some adjustments were made as the

structure was placed over the setback. It is staff's understanding that the corner was staked by Spearman and Associates, but for unknown reasons the error still occurred. When discovered, the dwelling was framed and substantially under roof. Staff recommends denial as no undue hardship has been demonstrated which prevents beneficial use of the property.

Mr. Feigley opened the public hearing.

Mr. Roger Spearman stated his crew staked the lot as per instruction from Mr. Lylerly and explained how he felt the encroachment occurred.

Mr. Feigley closed the public hearing.

Mr. Ripley stated in the future it would be nice if the surveyors encouraged owners to go at least 6 inches off the set back lines.

Mr. Ripley moved to grant the one foot variance.

Mr. Giedd seconded the motion.

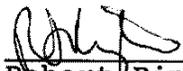
The motion for approval of the one foot variance was unanimous.

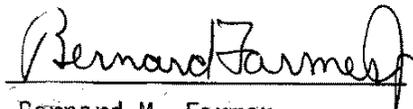
E. MATTERS OF SPECIAL PRIVILEGE

Mr. Feigley remarked on the need to state motions clearly in the future.

D. ADJOURNMENT

The meeting was adjourned at 8:45 P.M.


Robert Ripley
Vice Chairman


Bernard M. Farmer
Secretary