

BOARD OF ZONING APPEALS

MAY 24, 1990

A. ROLL CALL

Mr. Ripley
Mr. Giedd
Ms. James
Mr. Carr

ABSENT
Mr. Feigley

Others Present:

Carolyn Murphy - Code Compliance Officer

B. MINUTES

The minutes of the March 22, 1990, meeting were approved as presented.

C. OLD BUSINESS

None

D. NEW BUSINESS

Case No. ZA-5-90. C. Lewis Waltrip

Ms. Murphy presented the staff report stating that Sheldon Franck, attorney, had requested on behalf of C. Lewis Waltrip III, and interpretation of the boundary line for a portion of the R-5, Multifamily Zoning District, adjacent to The Mews Townhouse project. The property is located at 5016 Longhill Rd. The parcel in question was involved in rezoning case Z-13-80, at which time the Board of Supervisors rezoned approximately 39 acres of property from R-3, General Residential Zoning District to R-5, Multifamily Residential Zoning District. The application for this rezoning indicated the portion of the tract contained within the Route 199 right of way was not to be included in the rezoning but was to remain R-3. The case was approved and the zoning maps were amended according to the boundary believed at that time to represent the Route 199 corridor. Due to more definite design information and possibly other changes the precise boundary of the proposed Route 199 right of way has moved slightly to the west so the boundary shown on the official zoning map does not coincide with the Route 199 corridor.

In March Mr. Franck, on behalf of his client, requested that staff determine that the location of the district boundary is consistent with the present Route 199 corridor.

Evidently, he had become aware of the discrepancy while preparing documentation for the subdivision of Phase IV of the Mews Townhouses. Site plans have been approved and townhouses built that are on the area shown as R-3 on the official zoning map. Though substantial review was done of these site plans it appears that staff failed to recognize the location of the boundary shown on the official map and assumed the 199 corridor established the boundary.

It also appears the developer proceeded in good faith upon staff approval of these site plans and constructed the townhouses. Mr. Franck was referred to the Board of Zoning Appeals since the lines marked and transferred to the maps were done so accurately, and an interpretive change to the boundary is a matter properly the Board of Zoning Appeals. Staff recommends the Board of Zoning Appeals determine the district boundary between the R-5 and R-3 property is the Route 199 right of way. A review of the record of case Z-13-80 shows the intent was clearly to zone multifamily all that portion of the property not contained in the right of way. Such a determination would be consistent with the intent of that rezoning case and not amount to a substantial change of the district boundary.

Mr. Ripley opened the public hearing.

Mr. Franck spoke on behalf of the owners and concurred with the staff recommendation and stated he was available to answer any questions.

Mr. Ripley asked if Mr. Franck anticipated this to be the last such request.

Mr. Franck stated the buildings are in place and he does not anticipate any further request.

Mr. Carr asked if the present construction was the final phase.

Mr. Franck answered no.

Mr. Ripley closed the public hearing.

Mr. Carr asked if the buildings under construction meet set back requirements.

Ms. Murphy answered yes.

Mr. Carr moved to interpret the district boundary between R-5 and R-3 properties to be the Route 199 right of way.

The vote for approval was unanimous.

Case No. ZA-6-90. Gerald C. Ainsworth

Ms. Murphy presented the staff report stating that M. Anderson Bradshaw, attorney, had applied on behalf of Gerald C. Ainsworth for a fourteen (14) foot variance from the rear yard requirements and a four (4) foot variance from the perimeter landscape requirements of the Zoning Ordinance for a pole shed at Jamestown Feed and Seed. In October 1989, an inspection of the property revealed several violations of the approved site plan and a violation letter was mailed to the owners. One of the violations was the pole shed being erected without building permits or a revised and approved site plan. Ms. Murphy stated she met with the owner in November and informed them a site plan amendment would be necessary to abate some of the violations. Mr. Ainsworth indicated in their meeting that he had discussed erecting a pole barn with Mr. Farmer, the Zoning Administrator, and that Mr. Farmer indicated a permit would not be necessary. Mr. Farmer does not recall any such transaction and states that all buildings erected on commercial property would require both a building permit and an amended site plan. (Only pole sheds for agricultural purposes in agricultural zones would be permitted without building permits.) The Ainsworths agreed to have G. Alan Morledge, AIA revise the approved site plan. Ms. Murphy stated she met with Mr. Ainsworth again in January 1990, to discuss the revised site plan. The revised site plan indicated the pole shed as constructed was in violation of the rear yard setback and landscape requirements of the Zoning Ordinance. Staff recommends denial as no undue hardship has been demonstrated which prevents the beneficial use of the property.

Mr. Bradshaw addressed the Board and explained why the shelter is in use and presented photos to stress his points. He also stated he would be available to answer any questions.

Mr. Ripley asked if the problem in the building is the the fact that it is like a pole shed and not fully enclosed.

Ms. Murphy answered no.

Mr. Ripley closed the public hearing.

Ms. James stated the pole type building was not a problem for her.

Mr. Giedd asked if the intentions of the setback requirements in B-1 are to keep buildings from becoming too large for the property.

Mr. Ripley stated yes.

Mr. Giedd moved to grant a 14 foot rear and 4 foot landscape strip with the condition that any further expansion would necessitate the removal of the pole shed.

The vote for approval of the variance with the condition was unanimous.

Case No. ZA-7-90. HMHB, Investments

Ms. Murphy presented the staff report stating that AES, A Professional Corporation, has applied on behalf of HMHB, Investments, for a 4'4" variance from the rear yard requirements of the Zoning Ordinance for an existing single family dwelling at 5480 Olde Towne Road. In April of 1988 a building permit was issued to HHMB, Investments to construct a single family dwelling on the property in question, a corner lot of a small subdivision on Olde Towne Road. The application was made showing their intent to place the dwelling on the lot in accordance with the recorded setbacks shown on the record plat, which as well as can be determined were shown and approved incorrectly. The permit was mistakenly approved and construction undertaken as shown, resulting in the existing zoning violation of 4.4 feet adjacent to lot 5 (the rear, since the portion facing Logan Place is the shorter of the two sides facing the street and by definition the front). Exhibit 1 shows the current zoning requirements and the location as constructed. Exhibit 2 accompanying the application shows the platted setbacks and the proposed location of the dwelling as submitted with the permit application. It is staff's understanding that the applicant has attempted to obtain property from adjacent owners in order to correct the violation but has not been successful. It is the Staff recommendation that the variance be denied since no undue hardship peculiar to this property has been shown.

Mr. Ripley opened the public hearing.

Mr. Geddy spoke on behalf of the applicant and stated the Logan Place side of the parcel is the shorter and therefore should be the front. He further stated the contract purchaser had made extraordinary efforts to purchase adjoining property to make the dwelling legal as it sits on the parcel but had been unsuccessful and therefore was requesting the variance.

Mr. Ripley closed the public hearing.

Ms. James stated her concern of requiring citizens to appear before the BZA when the error was made in the plan review process.

Mr. Ripley responded the only legal way to abate a zoning violation is with an appeal to the Board.

Mr. Giedd move to grand a 4.4 foot variance to the rear yard requirements.

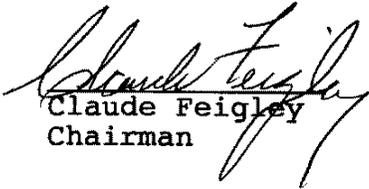
The vote for approval of the variance was unanimous.

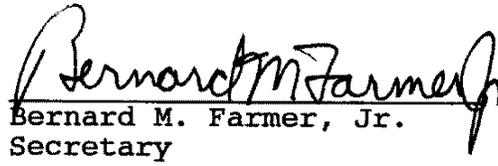
MATTERS OF SPECIAL PRIVILEGE

None

ADJOURNMENT

The meeting was adjourned at 8:00 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary