

BOARD OF ZONING APPEALS

JUNE 28, 1990

A. ROLL CALL

Mr. Claude Feigley
Mr. Bob Ripley
Mr. Baxter Carr
Mr. Ken Giedd

ABSENT

Ms. Nancy James

Others Present:

Bernard M. Farmer, Jr. Zoning Administrator
Leo Rogers, Assistant County Attorney

B. Minutes

The minutes of the May 24, 1990, meeting were approved as presented.

C. OLD BUSINESS

None

D. NEW BUSINESS

CASE NO. ZA-8-90. Joel Sheppard - 3013 South Court
Tax Map Number (48-1); Parcel (14-10)

Mr. Farmer presented the staff's report stating that Joel Sheppard had requested a 19.5 foot variance from the front setback requirements of the Zoning Ordinance for a new single family dwelling at 3013 South Court. In October of 1989, Mr. Sheppard applied for and was issued a building permit to construct a single family dwelling on this property. His proposed plan accompanying the application showed placement of the house 160 feet from South Court, which would have provided sufficient lot width in accordance with setback requirements. During construction plans changed and the dwelling was located approximately 104 feet from South Court. As presently located, the lot width is approximately 90 feet, ten feet less than required to establish the necessary lot width (the setback is measured where lot width is met or 35 feet, which ever is further). The house presently violates the setback requirements by approximately 19 feet. It is our understanding that Mr. Sheppard has attempted to buy land from adjacent parcels but has been unsuccessful in reaching any agreements.

Mr. Feigley opened the public hearing.

Mr. Gilbert Bartlett, attorney spoke on behalf of Mr. Sheppard and introduced Mr. Roger Spearman, surveyor, and Ms. Wilkerson, the contracted purchaser. Mr. Bartlett submitted a plat of the property in question and explained with the help of the plat how the house is presently located on the lot.

Mr. Spearman stated he had surveyed all lots in the Springdale Subdivision and all other lots are conforming. He further stated, Langley and McDonald had set set back pegs for lots 9 and 10 at the same time. One of the set back pegs for lot 10 was lost and Mr. Sheppard's layout men used the existing peg which was the peg for lot 9 resulting in the present violation.

Mr. Bartlett stated that Mr. Sheppard is a reputable builder and that this is the first time he has appeared before the Board since 1983.

Ms. Wilkerson stated she considered a hardship existed since she has purchased furniture and window dressing for the dwelling.

Mr. Feigley closed the public hearing.

Mr. Carr asked if any adjacent property owners were present.

Mr. Spearman answered no, but Mr. and Mrs. Cagney have no objections and signed a plat to adjust the boundary.

Mr. Feigley asked who had laid out the subdivision.

Mr. Sheppard answered that Langley and McDonald had originally done the surveying.

Mr. Feigley asked how much would have to be taken off lot 9 to make lot 10 legal.

Mr. Spearman stated that lot 9 is under roof and taking any land from lot 9 would make it non conforming.

Mr. Ripley stated that the house has been placed most attractively on the lot.

Mr. Carr moved to approve the variance of 19.5 feet the from the set back requirements of the Zoning Ordinance.

Mr. Ripley seconded the motion.

The vote for approval of the variance was unanimous.

CASE NO. ZA-10-90. Douglas and Virginia Burgess
3082 Heritage Landing Road
Tax Map Number (45-2); Parcel (7-26)

Mr. Farmer presented the staff's report stating that Mr. Douglas R. Burgess has requested a variance of approximately 10 feet from the rear yard requirements to construct a screened porch on an existing dwelling at 3082 Heritage Landing Road. In May of this year, Mr. Burgess was refused a building permit by this office to construct a screened porch atop an existing deck. The permit was refused as the deck encroached approximately 6 feet into the required 35 foot rear yard. He subsequently was notified that the deck would have to be removed to abate the violation. Though unclear in his application, it appears that Mr. Burgess has requested a variance to retain the deck and build his screened porch on top of it.

While researching records pertaining to this property staff attempted to determine if any error had occurred in the permitting process. A review of the building permit and proposed plans showed no indication of any deck to be constructed. Real Estate Assessment records do not indicate that any deck was present at their last site visit on or about December 1, 1989. Mr. David Boyd, the builder, has indicated the deck was present prior to the Certificate of Occupancy being issued and furnished receipts to show that. Regardless, the existence of the structure constitutes a present violation.

Mr. Feigley spoke regarding the Certificate of Occupancy and asked if the deck was present when the Certificate of Occupancy was issued, and if so does this imply that a variance was granted.

Mr. Farmer stated no, that issuance of the Certificate of Occupancy implies the house is safe to occupy and if issued in error it is void.

Mr. Feigley opened the public hearing.

Mr. Burgess spoke and presented information to the Board regarding his request and stated the deck was present when he first viewed the house in March 1990. He further stated, that he had contacted the adjacent property owners and there were no objections to the deck or the proposed screened porch.

Mr. Ripley asked when the survey was given to Mr. Burgess and if the encroachment was noted on the survey.

Mr. Burgess answered the survey was given to him at closing and the encroachment was not mentioned.

Mr. Giedd asked Mr. Burgess if he felt the builder was responsible for the error.

Mr. Burgess answered yes.

Mr. Feigley closed the public hearing.

Mr. Feigley stated he felt that by approving the variance the Board would be weakening the ordinance.

Mr. Carr made several suggestions regarding alternative locations for the deck and porch.

Mr. Feigley moved to grant a 10 foot variance to allow the deck to remain with the condition no other construction can be made to the deck.

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

CASE NO. ZA-12-90. Robert Simonsen
3305 New Castle Drive
Tax Map Number (47-1); Parcel (6-21)

Mr. Farmer presented the staff's report stating that Mr. Robert Simonsen and Mrs. Frances Simonsen had requested a variance of 7.7 feet from the rear yard requirements for a deck at 3305 New Castle Drive. In May Mr. Earl Irvine, Building Inspector, observed that a deck was being constructed on this property without a permit. Mr. Simonsen was notified of the need to obtain a permit and required to stop work (at that point construction was substantially complete). Upon application for the permit the encroachment was identified, resulting in the present variance request. The deck structure is approximately 16 feet by 20 feet and encroaches 7.7 feet into the required rear yard.

Mr. Feigley asked if the front of the property abuts on Bristol Circle.

Mr. Farmer answered yes.

Mr. Feigley opened the public hearing.

Mr. Simonsen spoke stating the deck is 16 X 20 on what he considers the rear of his house.

Mr. Simonsen asked for suggestions on how to make the deck as it is presently located conform with the ordinance.

Mr. Ripley explained, with the help of the plat, the violation and alternatives.

Mr. Feigley asked if the Civic Association approved the deck.

Mr. Simonsen answered yes, Dr. Henderson had remarked the deck looked O.K.

Ms. Cooperwith of the Civic Association addressed the Board stating that the Association had not received any complaints from other owners.

Mr. Feigley closed the public hearing.

Mr. Giedd asked why the deck could not be moved .

Mr. Simonsen stated he did not want to move the deck.

Mr. Feigley moved for denial of the variance.

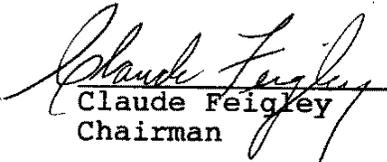
The vote for denial of the variance was unanimous.

E. MATTERS OF SPECIAL PRIVILEGE

None

F. ADJOURNMENT

The meeting was adjourned as 9:00 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary