

BOARD OF ZONING APPEALS

FEBRUARY 28, 1991

Mr. Feigley
Mr. Ripley
Ms. James

Absent:
Mr. Carr
Mr. Giedd

Others Present:

Bernard M. Farmer, Jr., Zoning Administrator
Leo Rogers, Assistant County Administrator
John Patton, Code Compliance Officer

B. MINUTES

The minutes were deferred due to a correction.

C. OLD BUSINESS

None

Mr. Feigley explained the regulations regarding a quorum and asked if any applicants would like to defer due to the fact that only three members were present. Henry Branscome asked to be deferred until the March 28, 1991, meeting.

D. NEW BUSINESS

ZA-2-91. Henry Branscome 9393 Merrimac Trail
(60-1)(1-3A)

This case was deferred until the March 28, 1991, meeting at the request of the applicant.

ZA-3-91. Roger D. O'Bryant 4052 S. Riverside Dr.
(19-1)(5-57)

Mr. Farmer presented the Staff report stating that Mr. Roger D. O'Bryant had applied for a variance to build a 20 by 21 foot addition on the rear of his house at 4052 S. Riverside Drive in Chickahominy Haven Subdivision. The property is zoned R-2, Limited Residential Zoning District. The applicant desires to place the addition on the rear of the house within 21 feet of the rear property line. Section 20-175 of the James City County Zoning Ordinance requires that each main structure be provided with a rear yard of a minimum of 35 feet. A variance of 14 feet would be required to construct the addition as desired.

No information was provided in the application as to the reasons necessary for this placement, but the drawing does indicate that part of the front yard is dedicated to the septic drain field. The applicant has not cited any unusual or unique characteristics of this property which prevent compliance with the zoning ordinance. It is the Staff recommendation that this variance be denied as no undue hardship has been demonstrated. The applicant has requested the variance as a special privilege which is otherwise denied like zoned properties.

Mr. Feigley asked when the original dwelling was constructed.

Mr. O'Bryant stated the house was constructed in 1986.

Mr. Ripley asked what the side yard distance was on the dwelling.

Mr. O'Bryant answered 9.75 feet.

Mr. Feigley asked Mr. Farmer if the side yard was also in violation.

Mr. Farmer stated yes it was.

Mr. Feigley opened the public hearing.

Mr. O'Bryant addressed the Board and explained that the drain field was in the front and he needed the extra space due to the fact he has a two bedroom house and has two children.

Mr. Feigley asked Mr. O'Bryant if he wanted to amend his application to include the sideyard violation.

Mr. O'Bryant stated he would like the application amended to a 14 foot variance from the rear yard and a 1 foot variance from the side yard requirements.

Mr. Ripley asked if Mr. O'Bryant could use the right side of the dwelling for his addition and if it was possible to add a second floor.

Mr. O'Bryant stated it would not be economically feasible to do either.

Mr. Ripley asked what the proposed room would be used for.

Mr. O'Bryant stated it would be a playroom.

Ms. James asked if he was purchasing lot 58.

Mr. O'Bryant stated he had an option on that lot . He would have to buy two lots to expand his house and it would not be economically feasible.

Mr. Feigley asked Mr. O'Bryant again if the proposed room would be used as a bedroom.

Mr. O'Bryant stated no, it would be a playroom.

Mr. Feigley closed the public hearing.

Mr. Feigley asked the wishes of the Board.

Mr. Ripley asked if the lot in question backs up to the water.

Mr. Farmer stated no.

Ms. James stated her opposition that since the room is proposed for convenience and not for a hardship. The adjacent lot is available for purchase and the room could be located on the side of the available lot. She felt the rear yard variance should be denied.

Mr. Feigley also stated he felt the the room was more for convenience than for relief of a hardship. He stated the rear yard variance should be denied.

Ms. James moved to deny the fourteen foot rear yard variance.

Mr. Farmer reminded the Board at the beginning of the public hearing that the application was amended to include a one foot side yard variance and asked Ms. James if her motion included the side yard variance.

Ms. James answered no.

Mr. Feigley asked Ms. James if she would amend her motion.

Ms. James stated due to the fact that the house is standing she would amend her motion to state the approval of the one foot side yard variance.

Mr. Farmer read the motion at the request of Mr. Feigley.

The vote for denial of the fourteen foot rear yard variance and approval of the one foot side yard variance was unanimous.

ZA-4-91. Thomas L. Hitchens
(59-2)(2-65)

Mr. Farmer presented the Staff report stating that Mr. Thomas Hitchens had applied for a variance from the front and side yard provisions pertaining to a corner lot for an existing dwelling at 105 Massacre Hill Rd. The dwelling on this property was constructed by the applicant's father in 1977. Evidently, the sale-transfer of the property was a cash transaction and no survey was ever done of the property.

The applicant recently constructed a new home and in the process

of selling this one the encroachments were discovered. Staff understands the prospective owners do not desire to close until the matter is resolved.

The original subdivision for this property was recorded in May of 1958 and shows a building line on the street of 30 feet. In accordance with Section 20-194 (c), which allows setbacks platted prior to the adoption of zoning to have precedence, the platted setback requirement of 30 feet applies. The applicant needs a variance of 1.22 and 2.67 feet from the front and side yard requirements respectively, for the dwelling to remain as constructed. No unusual characteristics of the property have been demonstrated which prevent the property's beneficial use. It is the Staff recommendation that this variance be denied as no undue hardship has been demonstrated. Though moving the structure would probably cause a financial burden it doesn't necessarily constitute an undue hardship.

Ms. James asked about the "grandfathering of the lot".

Mr. Farmer stated the subdivision was recorded before there was a zoning ordinance in the County.

Ms. James asked if Mr. Hitchens was in violation of the 30 or 35 foot requirement and if the dwelling was legal in 1958.

Mr. Farmer stated the dwelling would have been legal if built in 1958 but, because the house was not built until 1977 the house was in violation of the 30 foot requirements.

Mr. Feigley opened the public hearing.

Mr. Thomas Hitchens addressed the Board and explained that he did not realize that when he built the house in 1977 he was in violation and he feels that a hardship exists since he is unable to sell the dwelling.

Mr. Feigley closed the public hearing.

Mr Feigley stated he felt a legitimate mistake had been made.

Mr. Feigley moved to approve the variances as requested.

The vote for approval of the variances was unanimous.

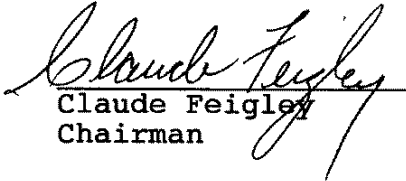
E. MATTERS OF SPECIAL PRIVILEGE

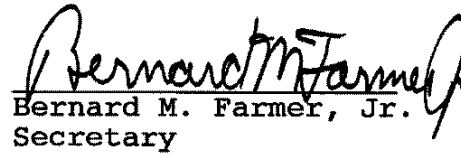
Mr. Farmer updated the Board on the status of the Simonsen case (ZA-12-90.)

Mr. Farmer also, stated that a letter had been sent to the new owners of the Burgess property.(ZA-18-90).

F. ADJOURNMENT

The meeting was adjourned at 8:15 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary