

BOARD OF ZONING APPEALS

SEPTEMBER 26, 1991

A. ROLL CALL

Mr. Feigley  
Mr. Ripley  
Mr. Carr

ABSENT

Ms. James  
Mr. Giedd

Others Present:

John Patton, Code Compliance Officer  
Jackie White, Code Compliance Officer

B. Minutes

The minutes of the August 1991, meeting were approved as presented.

C. OLD BUSINESS

ZA-7-91. John & Maria Schisa - 1 Michelle Court  
(22-2)(5-18)

Mr. Feigley asked if Mr. Patton would present the staff report, after which he asked Mr. Nachman to address the Board.

Mr. Nachman addressed the Board and stated that his company was willing to do what ever was necessary to abate the encroachment. Mr. Nachman also stated that the encroachment was incurred by accident and that the deck was sited on the lot and not surveyed. Mr. Nachman apologized for not attending the August meeting and agreed to answer any question the Board might have.

Mr. Ripley asked if he (Mr. Nachman) ever acts as a General Contractor for single family construction.

Mr. Nachman answered yes.

Mr. Ripley asked if he uses surveyors.

Mr. Nachman stated yes, but not for decks.

Mr. Feigley asked if the deck was part of original construction plans.

Mr. Nachman stated he was unaware if the deck was included in the permit application but it was originally planned.

Mr. Carr stated decks are a continuing problem.

Mr. Feigley stated that Mr. Nachman should have made himself aware of the Zoning Ordinances in James City County if he was building in the County.

Mr. Feigley asked Mr. Nachman if he could construct a deck on this residence that would meet setback requirements.

Mr. Nachman answered yes, but felt that a deck which would meet setbacks would not satisfy Ms. Schisa.

Mr. Feigley closed the public hearing.

Mr. Carr moved to approve the 4.5 foot variance.

Mr. Ripley stated he felt the only person who would be hurt if the variance were not granted would be Ms. Schisa due to no fault of her own.

Mr. Feigley stated that any actions should be against the contractor not Ms. Schisa since she purchased the house in good faith.

The vote for approval of the variance was unanimous.

D. NEW BUSINESS

ZA-08-91. Ronda Kay Warren - 9450 Richmond Rd

Mr. Patton presented the staff report stating that Ronda Kay Warren had requested a variance of 1.4 feet from the side yard requirements of the zoning ordinance for an existing manufactured home at 9450 Richmond Road. The Code Compliance Office first became aware of a possible encroachment at this site in May of this year when they received a complaint. Since they were unable to determine the location of the structure without a precise survey no further action was taken at that time. In June an accurate survey of the adjacent parcel with the manufactured home location precisely noted was furnished. At that time the owner, Mrs. Shirley Burcham, who is the mother of the applicant, Ronda Warren, was sited for the encroachment and told that her two options were to relocate the home or obtain a variance. She subsequently filed for the variance.

Records show that the present manufactured home was put on this parcel in 1988 to replace a previous home on the parcel. Records show the home was intended to be located fifteen feet from the side line. An addition was permitted in 1989 to add a sunroom on the rear of the home. The applicant has stated that the reason the home was placed on the parcel in violation was because they assumed the side property line was at a right angle to the front line. This would have resulted in approximately a 5 foot difference in the location of the side line at the point where the manufactured home was placed. It is the staff recommendation that the variance be denied as no undue hardship has been demonstrated. The property has been placed into beneficial use and it would be possible for the applicant to comply with the ordinance provisions. The applicant has stated that there would be some financial burden if required to relocate the home, but this reason alone is not

sufficient to grant a variance. No unique condition has been demonstrated which is not shared by like zoned properties.

Mr. Feigley asked how the violation came to the attention of the Code Compliance Department.

Mr. Patton explained that Mr. Greenlee, the adjacent property owner, complained resulting in Mr. Greenlee providing a survey of his property which showed the violation. Mr. Patton also, stated that the mobile home in question was granted a Special Use Permit.

Mr. Ripley asked for clarification of the complaint from Mr. Greenlee.

Mr. Patton gave an indepth explanation.

Mr. Feigley opened the public hearing.

Ronda Warren addressed the Board and explained how they came to the conclusion they were in compliance. She also presented a copy of her survey to the Board.

Mr. Feigley asked if she found any discrepancies in the surveys.

Ms. Warren stated there was a 1 inch discrepancy.

Roger Spearman addressed the Board and asked when the mobile home was placed on the lot.

Mr. Patton stated the home was placed on the lot in March of 1988.

Mr. Feigley asked if Mr. Spearman had read the original deed.

Mr. Spearman stated he had read the original deed and had not found the stone marker but he had found the iron pipe. He also, stated that in his opinion it would be most difficult to site the angles stated on the original deed.

Mr. Greenlee addressed the Board and presented information concerning his view of the violation and presented pictures to the Board.

Mr. Carr asked Mr. Greenlee what exactly his complaint was.

Mr. Greenlee stated he wanted his privacy and he feels people should comply with codes.

Ms. Burcham addressed the Board and stated that her parents owned the land since 1926 and she was always told where the line was located. In 1970 the location of the trailer was approved and in 1988 the new trailer and sunroom was approved and placed in the

same exact location.

Mr. Patton stated that the Code Compliance Office relies on the information provided by the applicants.

Ms. Burcham stated that she and her mother many years earlier had constructed a fence on what they thought was there property and it happens to be in the location of Mr. Greenlee's fence.

Tammy Greenlee presented the Board with a copy of the original deed of conveyance.

Ronda Warren stated that when she inherited the land in January she was not aware of the problems.

Mr. Feigley asked Ms. Warren if she had any problem with the surveys now since all information on the old deed is out dated and hard to verify.

Ms. Warren answered no.

Ms. Burcham stated she was 18 feet off line in 1988 when the SUP was issued and the adjacent property owner did not disagree.

Mr. Feigley closed the public hearing.

Mr. Ripley referred to survey of 1963 and stated the Burcham's were not aware of pins and therefore the error was not malicious. He also, stated that until the Greenlee's purchased the adjacent property all parties were happy therefore, he feels the encroachment was an honest mistake.

Mr. Ripley moved to approve variance of 1.5 feet from side yard requirements.

The vote for approval was unanimous.

ZA-09-91. George and Judith Ewart - 117 Kingspoint Dr.

Mr. Patton presented the staff report stating that George and Judith Ewart had requested a variance of 8 feet 10 inches from the side yard requirements of the zoning ordinance to construct a carport addition to their existing home at 117 Kingspoint Drive. The existing home was built around 1972 and is approximately a 3300 square foot colonial dwelling with a single car attached garage. The owners have requested the variance to construct a carport which they intend to place 6 feet 2 inches from the side property line. Section 20-155 of the James City County Zoning Ordinance requires a side yard of 15 feet.

Though the applicant has furnished several pages of reasoning and facts for the Board's consideration, the critical determination for the Board to make is whether or not lack of having the carport constitutes an undue or unreasonable restriction of the property. The Board must also make a finding that the need for the variance, and the circumstances in relation to the property causing the need for the variance, are unique to this property and not generally shared by similar properties. An examination of the other lots in the neighborhood reveals that steeply sloping heavily wooded lots which are restricted in building area due to drainfield limitations are not unique in this neighborhood. It is the staff recommendation that the variance be denied as no undue hardship has been demonstrated and the property has been placed into beneficial use. No unique condition has been shown which is not shared by like zoned properties. Application of the zoning ordinance restrictions do not unnecessarily or unreasonably restrict the use of the property. Mr. Patton stated that the Code Compliance Office had received five recommendations for denial from members of the neighborhood.

Mr. Feigley opened the public hearing.

Ms. Ewart addressed the Board and explained why the variance was requested and stated she wants to construct carport now because the shingles on the roof of the house need to be replaced and she would like all to match. The carport was necessary because of her mothers deteriorating health and anticipated moving in with her. She offered to answer any questions.

Mr. Feigley asked how the carport would alleviate the problem since the existing garage should be usable.

Ms. Ewart explained that the fireplace protrudes into the garage.

Mr. Feigley asked if roof of the proposed carport would blend with the roof of the garage.

Ms. Ewart stated the roof over the proposed carport would be identical to the den roof.

Mr. Ripley asked if the proposed carport would be larger than the existing garage.

Ms. Ewart stated no, but since it would be open sided it would be more usable.

Mr. Feigley closed the public hearing.

Mr. Feigley stated he was uncomfortable granting a variance in anticipation of a problem.

Mr. Ripley stated he had a problem granting this variance since the intent of the ordinance is to limit overbuilding.

Ms. Ewart requested the case be deferred until the October 24, 1991, meeting.

Mr. Feigley polled the Board and granted the requested deferral until the October meeting of the BZA.

ZA-10-91. William Clairborne Fuqua - 104 Acacia Ct.

Mr. Patton presented the staff report stating that Mr. Roger Spearman on behalf of Dr. William Fuqua had requested a variance of 4.5 feet from the side yard requirements of the zoning ordinance to construct a detached carport at 104 Acacia Court. The structure for which the variance is requested was begun about six years ago and not completed. Apparently at that time some confusion existed regarding who was to take responsibility for obtaining the required permit. The work was abandoned when the owner discovered no permit had been obtained and one was required. Only the columns and beam supports presently exist.

The application only requested a variance of 3.42 feet from the five foot side yard required by Section 20-155. An additional variance from the 35 foot front setback requirement of Section 20-153 would also be required to construct the carport as shown on the accompanying plat. The owner has proposed placing the structure 29.95 feet from the front property line. There is sufficient buildable area inside of the setback lines and above the steeper sloped portion of the lot to construct the desired structure. It is the staff recommendation that the variance be denied as no undue hardship has been demonstrated. The applicant has placed the property into beneficial use and still has sufficient area to construct the proposed structure in accordance with all ordinance requirements. No unique condition has been demonstrated which is not shared by like zoned properties. Granting this variance would amount to a special privilege which is otherwise denied similar properties. Mr. Patton stated that five members of the neighborhood had contacted the Code Compliance Office stating their opposition to the variance.

Mr. Feigley asked how long the county would allow a structure such as is standing at this address to exist without proper authority.

Mr. Patton explained.

Mr. Feigley opened the public hearing.

Mr. Spearman addressed the Board and stated that Dr. Fuqua does not have a garage and when complete it will be unseen from the road.

He also, asked to amend his request to include the front setback encroachment. He stressed the fact that the structure will be a carport and would match the house architecturally. He stated the carport is located on the lot so as to lessen its impact on the lot.

Mr. Ripley stated the area is noted as a drainage area, is it not being used for drainage.

Mr. Spearman stated all lots in Kingspoint have a 5 foot drainage easement. He also stated that a phone poll of the Architectural Committee was 4 to 1 for approval.

Dr. Fuqua explained how the structure was erected without a permit and stated he just wanted to do the right thing.

Mr. Carr and Mr. Ripley asked if there was any other alternative.

Mr. Spearman stated in his opinion no, and referred to the topo of the lot on the plat.

Mr. Feigley closed the public hearing.

Mr. Ripley moved to approve a variance of 8.5 feet from the front setback requirements and 4.6 feet from the side yard requirements with the following conditions:

1. Only a carport may be constructed
2. The plans must be approved by the Kingspoint Architectural Review Committee
3. The carport must be constructed in a similar design and of similar material as the residence

The vote for approval was unanimous.

ZA-11-91. W. Bond Carter - 3052 N. Riverside

Mr. Patton presented the staff report stating that Mr. W. Bond Carter has requested a variance of 23 feet from the front setback requirements of the zoning ordinance to construct a detached garage at 3052 N. Riverside Drive. The applicant has proposed placing a garage at the front of his lot and indicated he wants to use it to keep his cars and boats. The property presently contains an existing residence and a septic system and drainfield serving the home. Their locations are approximately detailed on the drawing prepared by Edward L. Blanks, Architect, and seem to partly restrict the use of the lot. There does appear to be sufficient space on the property to construct a smaller structure, or perhaps an attached garage, consistent with the ordinance requirements.

Section 20-173 of the Zoning Ordinance requires a front setback of 35 feet and Section 20-175 would require a side yard of 5 feet for a detached accessory structure. The applicant has requested that he be allowed to place the garage 12 feet from the front property line. It is the staff recommendation that the variance be denied as no undue hardship has been demonstrated and the property has been placed into beneficial use. No unusual topographic conditions or other unique characteristics exist pertaining to this property which unusually restrict its use. Sufficient area exists for a structure to be built in a different location which would meet the ordinance requirements.

Mr. Ripley asked about the proposed location and if it is over the drainfield.

Mr. Patton stated that the proposed structure is not located over the existing drainfield but the proposed driveway is over the drainfield and that the Health Department will not take action nor would they have approved the driveway as it is constructed at this time.

Mr. Feigley asked if the Board can act on this request.

Mr. Patton explained that a variance does not guarantee a Building Permit would be issued.

Mr. Feigley opened the public hearing.

Mr. Carter stated he would do what was necessary to have a garage where he proposed it for scenic reasons and stated that there are other garages on N. Riverside Dr., which are closer to the road than the one he proposes.

Mr. Ripley asked Mr. Carter if he has plans for a future addition.

Mr. Carter answered that he plans to add two bedrooms in the future.

Mr. Ripley reminded Mr. Carter that an addition of two bedrooms would most likely necessitate a larger tank or drainfield.

Mr. Carr asked Mr. Carter if he felt he could work out the drainfield problems.

Mr. Carter answered yes.

Mr. Feigley closed the public hearing.

Mr. Carr moved to grant a variance of 23 feet from the front setback requirements with the following condition:

1. The variance is contingent upon owner receiving approval of the State Health Department for the septic system

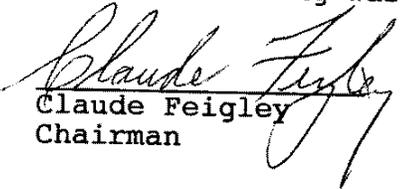
The vote for approval was unanimous.

**E. MATTERS OF SPECIAL PRIVILEGE**

None

**F. ADJOURNMENT**

The meeting was adjourned at 10:35 P.M.

  
Claude Feigley  
Chairman

  
John Patton  
Code Compliance Officer