

BOARD OF ZONING APPEALS

NOVEMBER 21, 1991

A. ROLL CALL

Mr. Feigley  
Mr. Ripley  
Ms. James  
Mr. Carr

ABSENT:

Mr. Giedd

Others Present:

John Patton - Code Compliance Officer  
Leo Rogers - Assistant County Attorney

B. MINUTES

The minutes of the October meeting were deferred until the next meeting.

C. OLD BUSINESS

None

D. NEW BUSINESS

ZA-13-91. Benny Lacks

Mr. Patton presented the staff report stating that Mr. Lacks had requested a variance ranging from eleven foot eight inches (11'8") to eight feet (8') from the side yard requirements for a proposed attached garage to a house located at 119 Pleasant Point Road in the Riverview Plantation subdivision in James City County. Prior to purchasing this property in 1989 Mr. Lacks applied to the Board of Zoning Appeals for, and received, a variance of 0.8 foot from the right side yard set back of the property, see attached memorandum and minutes for case ZA-9-89. The side yard set back in the R-1 zone for main structures is fifteen feet (15'). An attached garage is considered a part of the main structure. The current application is for an attached garage that would extend to within four feet four inches (4'4") of the left side property line. The septic tank and drain field are in front of the existing house. Approximately forty five feet (45') of relatively flat ground exists behind the house. There is presently a deck in the first ten feet of the open area directly behind the house.

It appears that it would be possible to construct a detached garage of approximately the dimensions proposed in the area behind the existing house and be within current zoning regulations. A one story detached garage, one more than ten feet (10') from the main structure, could be as close as five feet (5') to the side yard property line and be within the side yard set back for R-1 zoning.

There are several other existing homes in the neighborhood that do not have garages. It is the staff recommendation that the variance be denied. No undue hardship has been shown and the property has been placed into beneficial use. The use is consistent with the existing zoning law and other properties in the neighborhood. It appears that granting a variance in this case would constitute granting a special privilege for the convenience of the applicant.

Mr. Patton stated that the minutes and the memorandum from the July 29, 1991, meeting when Mr. Lacks was granted a variance for the same property are provided in the packets.

Mr. Feigley opened the public hearing.

Mr. Lacks addressed the Board stating he had well thought out the location of the proposed garage. He also, stated he had tried to purchase the property to the right of his property but was unsuccessful. He stated he wants to put the washer and dryer and the HVAC in the garage and that is why he wanted an attached garage. He stated he had spoken with the adjacent property owners and the developer and all gave their approval.

Mr. Carr asked if the lot was owned by Mr. Lacks or his daughter.

Mr. Lacks stated that he owns the property but that his daughter and her family occupy the dwelling.

Mr. Feigley asked why an accessory building could not be used.

Mr. Lacks again explained the need for new HVAC system and the space for a washer and dryer.

Mr. Ripley asked the length of the house.

Mr. Lacks stated 28 X 36 and to stay within the setbacks he would not be able to construct a garage.

Mr. Ripley suggested the garage be located on the rear of the house.

Mr. Feigley closed the public hearing.

Mr. Carr stated he felt there was a way to "work around" a need for a variance for the lot and felt if there is an option available it should be used instead of requesting a variance.

Mr. Feigley stated he felt that granting the variance would be violating the covenants.

Mr. Ripley stated he had a problem with the letter the developer gave Mr. Lacks in favor of the variance.

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Mr. Ripley stated the lot is very narrow but most lots in the subdivision are narrow therefore it is not a unique situation.

Mr. Feigley moved to deny the variance.

The vote for denial was unanimous.

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Leo Rogers stated that after the October BZA meeting the County Attorney's Office had been notified that University Square Associates has appealed the Board's decision. Mr. Rogers also stated that he had informed the Board at the original hearing that he was there on behalf of the Zoning Administrator and felt there might be a conflict of interest with him representing the BZA at that time. The County Attorney's Office will be representing both the Zoning Administrator and the County in the litigation. Therefore, he doesn't see any present conflict in representing the BZA in this action should the BZA desire to be represented by the County Attorney's office.

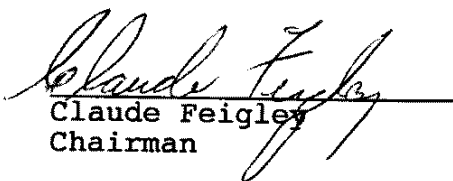
Mr. Feigley move to have Mr. Rogers represent the BZA in this litigation.

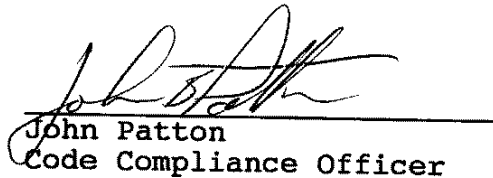
The vote for approval was unanimous.

Mr. Rogers stated he would be proud to represent the BZA.

F. ADJOURNMENT

The meeting was adjourned at 8:10 P.M.

  
Claude Feigley  
Chairman

  
John Patton  
Code Compliance Officer