

BOARD OF ZONING APPEALS

MINUTES

JULY 22, 1993

A. ROLL CALL:

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

ABSENT:

OTHERS PRESENT:

Bernard M. Farmer, Jr. Zoning Administrator

B. MINUTES

The minutes of the April 22, 1993 meeting were approved as presented.

C. OLD BUSINESS

Mr. Farmer stated to the board that oral arguments did occur for the University Square case. Staff could possibly have more information on this case by the end of August.

D. NEW BUSINESS

ZA-7-93; Thomas M. Marshall

Mr. Farmer presented the staff report stating that Mr. William Bland, attorney, on behalf of Thomas Marshall, has applied for a six foot variance from the side yard requirements for an existing carport attached to the dwelling at 107 Cooley Road. The property is further identified as Parcel (2-6-4B) found on James City County Real Estate Tax Map (47-2) and is located in the R-1, Limited Residential, zoning district.

Mr. Farmer further stated that a building permit was issued in October of 1991 to construct a single family dwelling with a carport at this location. A review of the site plan submitted with the building permit application showed the carport to be fifteen feet from the property line. It appears that the structure was not built in accordance with the approved site plan. The Board of Zoning Appeals application for this case states that the adjacent property owner is unwilling to sell enough of his land to make the necessary boundary line adjustment to meet the fifteen foot setback requirement. Since no undue hardship has been shown, and the house

can exist within the setback requirements without the carport, staff must recommend that the variance be denied.

Mr. Farmer stated to the board that staff now requires a foundation survey if a structure is to be constructed adjacent to a required setback.

Mr. Feigley opened the public hearing.

Mr. William Bland, attorney on behalf of Mr. Marshall stated that Mr. Marshall acquired the property in February of 1992 from Tommy Louke, Inc. Mr. Marshall had a survey prepared at the time of closing which showed the encroachment, but closing transpired without any mishap and Mr. Marshall was unaware of any encroachment on his property. The encroachment did not come to site until Mr. Marshall received a letter dated March 26, 1993 from James City County building office advising him of the encroachment. He further stated that Mr. Marshall had made an attempt to purchase the required amount of property from the adjacent property owner.

Mr. Thomas Marshall, owner of the property located at 107 Cooley Road stated that he had spoken to the adjacent property owners that would be most affected by this variance request and they did not wish to stand against the variance proceeding.

Mr. Bland presented two letters to the board which he had received from adjacent property owners stating that they had no objection with the granting of the requested variance.

Mr. Tommy Louke, builder stated that the previous owners of the property in question, Mr. and Mrs. McHenry had the property subdivided. At this time they pointed out one property pin and had the other three staked out by a surveyor. He stated that he positioned the location of the house based on the location of those pins.

Mr. Feigley closed the public hearing.

There was brief discussion between the board members and the Zoning Administrator as to the responsibilities of the county inspectors staking out property lines for the construction of new homes.

Mr. Carr motioned that the variance be granted as requested.

Mr. Ripley seconded the motion.

The motion was carried 3 to 2 with Mrs. James and Mr. Feigley dissenting.

ZA-9-93; Thaddeus F. and Cathy C. Zychowski

Mr. Farmer presented the staff report stating that Mr. and Mrs. Zychowski have requested a twelve foot variance to the side yard requirements for undeveloped property they own at 123 Argall Town Lane, in the First Colony Subdivision. The property is zoned R-1. The side yard requirement in the R-1 zoning district is fifteen feet. The property is further identified as parcel (2-100) found on James City County Real Estate Tax Map (45-4).

Mr. Farmer further stated that the Zychowski's purchased the property in 1978 with the intent to build a home sometime in the future. In preparation for building this year, they had the property surveyed and found that a portion of what they thought was their property was a separate parcel that is not shown on either the First Colony subdivision plat or the County's tax maps. This parcel is triangular in shape and only two feet wide at Argall Town Lane widening out to approximately thirty-five feet on Lake Pasbehegh. It is approximately fifteen feet wide adjacent to the location where the Zychowski's desire to build their home. The Zychowski's lot is approximately 0.85 acre in size. As shown on the survey plat, there is adequate area within the established setbacks to build the desired home, though not where the Zychowski's had intended to build when they purchased the property. They have attempted to purchase the adjacent triangular parcel but have so far been unable to obtain it. He further stated that no undue hardship has been shown to exist on the Zychowski's property. The existence of a small adjacent parcel is unique, but it does not limit the use of the Zychowski's property and therefore does not constitute an undue hardship as defined under Section 20-419. Staff recommends the variance be denied, as none of the findings required to authorize a variance may be made.

Mr. Feigley opened the public hearing.

Mr. Thaddeus Zychowski owner of the property in question stated that he and his wife purchased this lot in 1978. It wasn't until this February, after retiring from the military he and his wife decided to build on the property and discovered through county records, etc. that a small sliver of lot 100 had been deeded prior to his purchase of the property. He stated that with this small piece of property not being included in lot 100 that he and his wife cannot locate the house on the property where they had

originally planned.

Mr. Zychowski presented a drawing to the board showing where he would have originally located the house on the property and where he would have to locate it if the variance were denied.

Mr. Zychowski stated that he had located the heirs to the small sliver of property. He is in the process of talking with them about negotiating terms on the piece of property. He is seeking a variance just in case they do not sell this small piece of property to him.

Ms. James stated that she feels that it is in his best interest to wait for a response from the heirs of the property.

Ms. James further questioned Mr. Zychowski about the taxes he had been paying on lot 100.

Mr. Zychowski stated that he has been paying taxes on all of lot 100. The county records show lot 100 as originally recorded, including the small sliver of land.

Mr. Warren Savold stated that he lives adjacent to lot 100 on lot 88. He stated that he objects to the granting the proposed variance because it will adversely affect the real estate value of his property. The proposed construction will be within 100 feet of his house.

There was brief discussion of tabling the decision of the board to the next hearing.

Ms. Martha Savold stated that she lives adjacent to lot 100 on lot 88. She stated that she doesn't feel as if the Zychowski's would regret building the house closer to the front property line.

Mr. David Holland, attorney stated that he did the title search on behalf of Mr. Zychowski. He stated that Mr. Hooker purchased lot 100 from the developer of First Colony. Mr. Hooker then conveyed the strip of land to himself.

Mr. Farmer showed Mr. and Mrs. Savold, adjacent property owners the three proposals for the construction of the new single family dwelling on lot 100.

Mr. Feigley closed the public hearing.

Mr. Ripley questioned any use of this small sliver of property if it remained to exist.

Mr. Farmer stated that application of the zoning regulations shouldn't prohibit all reasonable use of the property.

Mr. Feigley stated that the property Mr. Zychowski owns is what is described in the deed and the board should only be faced with whether they want to grant a variance from that property line and not pay too much attention to the slice of property involved.

Mr. Giedd stated that he does not see this sliver of land as a buildable lot.

Ms. James stated that she has a problem granting a variance on an undeveloped piece of property when the structure could be built in a different location on the piece of property.

Mr. Feigley motioned to deny the variance.

Ms. James seconded the motion.

The motion was carried 3 to 2 with Mr. Giedd and Mr. Ripley dissenting.

ZA-10-93; Michael and Sharon Rodgers

Mr. Farmer presented the staff report stating that Michael and Sharon Rodgers have applied for a five foot variance to the fifteen foot side yard requirement for a single family dwelling to be built at 99 Shellbank Drive in the First Colony subdivision. The property is further identified as Parcel (2-17) on James City County Real Estate Tax Map (45-3) and is located in the R-1, Limited Residential, zoning district.

Mr. Farmer further stated that building plans to construct a single family dwelling have been submitted. The site plan submitted with the building plans show the single family dwelling to be constructed ten feet from the side property line. Section 20-155 of the Zoning Ordinance requires a side yard of fifteen feet. The lot is seventy feet wide, relatively narrow compared to other lots in the area and is situated on the James River. Under the Chesapeake Bay Preservation Regulations a buffer for the RPA (resource protection area) of 100 feet is required. The eastern side of the lot has a natural drainage way about the middle of the lot. It appears the architects, JFH Designs, have designed the

structure to take advantage of the contours of the land by placing the garage/driveway into the lower elevation of the lot. In doing so they have not taken into account the required side yard. A different design could be constructed and meet all setback and RPA requirements.

Mr. Farmer further stated that the applicants have shown that the seventy foot width of the lot is unusual in relation to most properties in this subdivision but is not unique. In examining the information presented in this case, the variance requested is more of a matter of convenience than a matter of necessity. Staff recommends the variance be denied.

Mr. Feigley opened the public hearing.

Mr. Michael Rogers stated that he is requesting a variance due to a natural depression that exists on the lot which makes it nearly impossible to position the house, as designed on the lot without a variance. He stated that he has spoken with adjacent property owners and has received no objections to the variance request. He stated that the deed stated that his setback requirement was five feet, therefore he requested that the architect which prepared his house plans place the house at a ten foot setback being unaware of the fifteen foot requirement.

Mr. John Ryland stated that he resides at 97 Shellbank Drive. He spoke on behalf of granting the variance because he does not wish to see the house pushed back closer to the river. He feels that this will take away from the aesthetic appearance of the neighborhood as well as the property values.

Mr. Earl Croft, builder stated that he met with Mr. John Patton out at the site and his recommendation was to move the house back. Mr. Croft further stated that he felt moving the house back would cause extensive erosion damage to the lot.

Mr. Michael Rogers stated that if they did move the house back they would still require a variance for the turning pad on the driveway.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he has a problem with a house being intentionally designed in violation of the setbacks.

Ms. James stated that she has a problem with creating situations which are in violation of the code when the property is undeveloped.

Mr. Giedd stated that when each individual purchases a lot they are made aware of the property setbacks and they should be aware that adjacent property owners have to abide by the property setbacks.

Ms. James motioned to deny the variance.

Mr. Giedd seconded the motion.

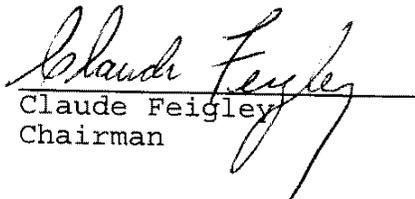
The motion was carried 4 to 1 with Mr. Carr dissenting.

E. MATTERS OF SPECIAL PRIVILEGE

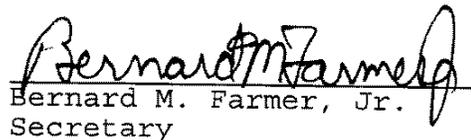
Mr. Carr related a matter involving a neighbor and actions of a building inspector. He indicated his strong objection regarding actions of the Code Compliance Office that created problems for citizens "after the fact". There was brief discussion about the duties of the Office of Code Compliance.

F. ADJOURNMENT

The meeting was adjourned at about 10:00 P.M.



Claude Feigley
Chairman



Bernard M. Farmer, Jr.
Secretary