

BOARD OF ZONING APPEALS

MINUTES

SEPTEMBER 23, 1993

A. ROLL CALL:

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

ABSENT:

Ms. James

OTHERS PRESENT:

Bernard M. Farmer, Jr., Zoning Administrator

B. MINUTES

The minutes of the July 22, 1993 and August 26, 1993 meeting were approved.

C. NEW BUSINESS

ZA-12-93; James and Donna Temple

Mr. Farmer presented the staff report stating that Mr. and Mrs. James Temple have applied for a ten foot variance from the side yard requirement and a twenty-one foot variance from the rear yard requirement for an existing garage at 7261 Osprey Drive in the Chickahominy Haven Subdivision. The property is in the R-2, General Residential Zoning district. The rear yard setback requirement is, and was at the time of construction, 35 feet for an attached garage. The side yard requirement is 15 feet for an attached garage. Accessory structures exceeding one story require minimum side and rear yards of 10 feet.

Mr. Farmer gave the board a brief history of the property related to the construction of the garage.

Mr. Farmer further stated that the Temple's acted in good faith in attempting to put their property into legal beneficial use. They did err in the construction of their garage by building 3.25 feet too close to the main dwelling.

Mr. Farmer clarified, several notes on the plats for the Board.

Mr. Feigley opened the public hearing.

Donna Temple spoke and stated that she lives at 7261 Osprey Drive in Chickahominy Haven. It was not their intent to build the garage this close to the property line. She said she felt that they did

everything necessary in obtaining the proper building permits to build the garage.

Mr. Feigley asked if the drain field would preclude locating the garage anywhere else.

Mrs. Temple said she felt that it restricted the property.

Mr. Feigley asked several questions for clarification.

Mr. Ripley asked questions pertaining to the location of the garage from the original dwelling.

Mr. Carr asked Mrs. Temple if there were any other surveys made besides the one just completed.

Mrs. Temple said no.

Mr. Feigley stated that this is where many problems occur. When the home is sold or when a home is refinanced, a survey is required at that time.

Mr. Giedd stated his confusion of the minimum setback of 15 feet for the Chickahominy Haven subdivision.

Mr. Feigley said that was in their subdivision covenants.

Mr. Farmer clarified for the board that this was considered a two story garage.

There was discussion among the board members as to how Virginia Power, the cable company and the telephone company placed their utilities on the property.

Mr. Gerald Otey stated that he owns the lot adjacent to the lot in question. He stated his opposition to the granting of the variance to allow the garage to remain on the lot line.

Mr. Carr clarified with Mr. Otey that A.E.S. placed iron pipes at the corners of the property.

Mr. Otey said yes, they placed those pipes.

Mr. Carr asked Mr. Farmer what the code stated about overhanging eaves?

Mr. Leo Rogers, Assistant County Attorney stated that property rights are three dimensional. If there is an overhang over property line, it is an encroachment. This is a dispute between property owners. If the building hangs over the property line, that may be something the property owners need to work out.

Mr. Giedd asked if Mr. Otey represented to Mr. Temple the pipe that was marked in the field?

Mr. Otey said he probably did.

Mr. Giedd stated that Mr. and Mrs. Temple could have acted in good faith when measuring for the location of their garage from that marker.

Mr. Temple spoke and gave a brief history of his contact with the developer prior to the purchase of the property.

Mr. Feigley asked about the pin pointed out on the picture and asked if that was the pin he was shown by the developer or was put there by someone else.

Mr. Temple stated that what they were actually seeing on the photograph was a marker placed in the actual hole where Mr. Otey had pulled out the original pin.

Mr. Feigley stated that in other words to take these photographs you had to insert something into the hole?

Mr. Temple said yes.

It was stated that a police report was filed when Mr. Otey changed the location of the property pin.

Mr. Ripley asked if the pin was relocated before or after the garage was built?

Mr. Temple said approximately 5 years or so after the garage was built.

Mr. Carr stated that based on the document which was provided by Virginia Power that Mr. Otey, the developer had provided the power company monumentation for the placement of utilities.

No one else wishing to speak, Mr. Feigley closed the public hearing.

There was discussion among the board members of the placement of the utilities and the actual distance from the original property marker.

Mr. Carr said that they had received many letters from adjacent property owners, none of which opposed to the granting of the variance. He moved that the variance be granted on the basis that the Temples would remove the shed and remove the deck on the back of the house.

Mr. Feigley asked if he would clarify the motion stating a variance of ten feet on the side and 21 foot on the rear for the garage?

Mr. Carr motioned that a variance of ten feet on the side and 21 feet in the rear for the garage be granted for the existing garage.

Mr. Feigley seconded the motion.

The motion passed unanimously.

D. OLD BUSINESS

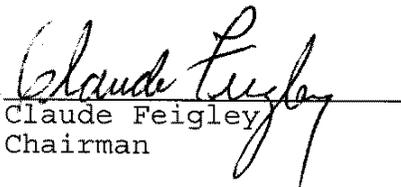
Leo Rogers, Assistant County Attorney reported to the Board that the Supreme Court, in reviewing the record found substantial evidence to uphold the decision of the Board of Zoning Appeals University Square Case.

E. MATTERS OF SPECIAL PRIVILEGE

None.

F. ADJOURNMENT

The meeting was adjourned at (9:30) P.M.



Claude Feigley
Chairman

Bernard M. Farmer, Jr.
Secretary