

BOARD OF ZONING APPEALS

MINUTES

APRIL 28, 1994

A. ROLL CALL:

Mr. Feigley
Mr. Ripley
Mr. Giedd
Mr. Carr

ABSENT:

Ms. James

OTHERS PRESENT:

John Patton, Zoning Officer

B. MINUTES

September 23, 1993 minutes approved with changes.
January 27, 1994 minutes approved.
February 24, 1994 minutes approved.
March 24, 1994 minutes approved with changes.

C. OLD BUSINESS

Mr. Patton updated the Board on the Otey vs. Temple case.

D. NEW BUSINESS

ZA-5-94; James and Judith Hale

Mr. Patton presented the staff report stating that Mr. and Mrs. James Hale have requested a 1.7 foot variance to the side yard requirements for an existing single family dwelling at 3045 N. Riverside Drive in the Chickahominy Haven subdivision. The house, built in 1973, sits at an angle on the lot; the left rear corner of the house, according to the survey plat, is 8.34 feet from the side property line. The Hales are currently selling the property and are seeking to obtain a variance for an existing encroachment into the required side yard in order for clear title to be issued. Since no undue hardship has been demonstrated, staff recommends that the variance be denied.

Mr. Feigley opened the public hearing.

Mr. James Hale made himself available to answer questions from the Board members

and stated that his neighbor was unwilling to sell him any property in order to meet the setbacks. He was unaware of the violation until their realtor brought it to his attention.

Mr. Feigley closed the public hearing

The Board members discussed the case and concluded that this problem had been in existence for twenty-one years and no one had been bothered by it. Only the rear corner of the building was in violation and this had occurred because the builder had not squared off the building with the lot when he built it.

Mr. Carr moved that the 1.7 foot variance request be granted.

Mr. Ripley seconded the motion.

The motion passed unanimously.

ZA-6-94; Lester and Evelyn Parkin

Mr. Patton presented the staff report stating that Mr. and Mrs. Lester Parkin have requested a 12 foot variance to the rear yard setback requirement to construct an enclosed porch on an existing single family dwelling at 135 Ferncliff Drive in the Canterbury Hills subdivision. The house was built in 1965 and is currently nonconforming, not meeting current setback requirements for portions of the front and rear yard. Since no undue hardship has been demonstrated and the desired structure could be built within established setbacks, staff must recommend that the variance be denied.

Mr. Patton presented to the Board a copy of the plat in question annotating the buildable area under the current zoning ordinance and pointing out that the lot was almost unbuildable under the ordinance as adopted after the house was built.

Mr. Feigley opened the public hearing.

Mr. and Mrs. Parkin spoke on behalf of their application for a variance and pointed out that the new porch would not encroach as much as the majority of the house already did.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he was in favor of granting the requested variance due to the limitations on this property under the current zoning ordinance. The shape of the lot and the way the house had legally been constructed before adoption of zoning made this a unique situation suitable for the granting of the variance.

Mr. Carr concurred.

Mr. Carr motioned to grant the 12 foot variance as requested.

Mr. Giedd seconded the motion.

The motion passed unanimously.

ZA-7-94; Helmut Frey

Mr. Patton presented the staff report stating that Tony D. Collins of Custom Design Works, Inc., on behalf of Mr. Helmut Frey, requested a 3.5 foot variance to the side yard requirement for a carport at 2817 Starling Drive in Rolling Woods subdivision. A building permit, submitted by Custom Design Works, Inc., was obtained on April 2, 1993 to construct a carport on the west side of this single family dwelling. The survey plat submitted with the building plans indicated that the northwest corner of the carport would be 10 feet from the side property line, meeting the minimum side yard setback requirement. Because the plans called for construction to take place so close to the setback line, an additional survey was required once the footing was in place to assure that the structure actually met setback requirements. The second survey was not done until the carport was completed. It showed that as constructed the carport encroached 3.5 feet into the side yard setback. The certificate of occupancy for this structure was denied. Staff recommends that the variance be denied. The builder was adequately warned as to the requirements and the permit was conditioned on meeting them.

Mr. Feigley clarified the sequence of events with staff.

Mr. Ripley asked staff if it was the practice of the office of code compliance to bring any notations on the building permit to the applicants attention. He was told that is the normal procedure when the permits are issued.

Mr. Feigley opened the public hearing.

Mr. Arthur McKinley, with Custom Design Works, Inc. spoke on behalf of the

application. A letter was offered from the adjacent property owner stating that they had no problem with the encroachment.

Mr. Feigley asked why Mr. Calvin Collins with Custom Design Works, Inc. was unavailable to attend the meeting.

Mr. McKinley stated that he had a previous engagement and could not make it.

Mr. Feigley asked for an explanation as to what happened during the construction of this carport.

Mr. McKinley clarified the sequence of events for the Board.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he felt that the office of Code Compliance gave adequate notice to the contractor to be aware of the potential encroachment and therefore he did not look favorably upon granting the variance.

The Board discussed the request and felt that the builder had been negligent in his building into the setback.

Mr. Feigley motioned to deny the 3.5 foot variance.

Mr. Ripley seconded the motion.

The vote to deny was unanimous.

ZA-8-94; Commonwealth Business, Inc. (BASF Plant)

Mr. Patton presented the staff report stating that Mr. Vernon Geddy, on behalf of Commonwealth Business, Inc., has requested variances from Section 20-447, Utilities, of the James City County Ordinance for a proposed subdivision of property at 8965 Pocahontas Trail. Mr. Geddy, attorney on behalf of Commonwealth Business, Inc., contract purchaser, is seeking a variance to the M-2, General Industrial, zoning district requirement that all development in the district be served by public water and sewer. Commonwealth Business, Inc. is attempting to purchase a portion of the BASF site and re-subdivide the property previously divided for conveyance to Mann Industries. Mann Industries effectively ceased business at the site due to financial reasons. Any new subdivision (or re-subdivision) of the property must be done in conformance with the current zoning provisions regardless of whether any actual physical improvements are planned.

Mr. Patton further stated that previously, the Board of Zoning Appeals granted variances to allow the subdivision of the property when Mann Industries made their purchase. Several conditions were placed on the variances. The current case does not require any setback variances as the property lines have been proposed to meet current requirements. The applicant desires to use the current private water and sewer system for parcel 2A, located on the neighboring BASF site. Water is provided from a number of wells and storage towers. Sewer is provided through a private sewage treatment plant previously operated by Mann Industries and BASF. Mr. Geddy has stated that public sewer is not currently available on the site. Mr. Geddy further states that Parcel 2A is to be subdivided from Parcel 2 and sold to Commonwealth Business, Inc. Staff must recommend that the variance be denied as no undue hardship has been demonstrated.

Mr. Patton provided an aerial photograph for review by the Board.

Mr. Feigley questioned staff about the previous variance granted and whether or not those variances would carry over to the new parcel.

Mr. Patton stated that under the current zoning ordinance the only variance required for the new parcel is the utility variance.

Mr. Feigley opened the public hearing.

Mr. Vernon Geddy of Commonwealth Business stated that his understanding is that any landscaping variances were granted by the development review committee and the planning commission who reviewed the subdivision plat. The only variance he needs from the BZA is utility variance.

Mr. Geddy spoke further on the variance request.

Mr. Feigley closed the public hearing.

The Board discussed the case and considered the distance of available public sewer and water and the fact that a previous variance for the remainder of the previous subdivision was still viable and this was no more than a continuation of an already existing nonconforming situation.

Mr. Feigley moved to grant a variance from the requirements for connection to public water and sewer for parcel 2A with the following condition:

1. That the variance related to sewer is void should the State Water Control Board require connection to an alternate sewer system.

Mr. Ripley seconded the motion.

The motion was carried unanimously.

ZA-9-94; Hoyt and Janet Davenport

Mr. Patton presented the staff report stating that Mr. and Mrs. Davenport have requested a 5 foot variance to the rear yard requirement for a proposed expansion to a single family dwelling located at 4453 Powhatan Crossing in the Powhatan Crossing subdivision. The Davenports are seeking this variance in order to expand the master bathroom/bedroom and to allow for handicap access. No undue hardship has been demonstrated and the property is already in beneficial use, therefore the staff must recommend that the variance be denied.

Mr. Feigley opened the public hearing.

Mr. Hoyt Davenport spoke on behalf of his application for a variance. He stated that the purpose of his request is to allow for his mother, whom is wheelchair bound and visits occasionally, to have access to his home. He would also like to install a jacuzzi style tub for his wife whom has problems with her back.

Mr. Feigley clarified that the mother is not a resident in the existing home.

Mr. Feigley stated that it is difficult to evaluate the variance request without any existing and proposed plans to review.

Mr. Davenport submitted a preliminary proposal.

The board concurred that based on the plat submitted by the applicant it shows that there is approximately 6.43 feet existing area in which to expand the proposed addition without the need for a variance. Without further justification, including proposed plans for the expansion they were inclined to deny the variance.

Mr. Davenport requested that the Board defer the decision until the next meeting in order for him to provide the information.

Mr. Feigley motioned to defer action on this case pending additional information.

Mr. Giedd seconded the motion.

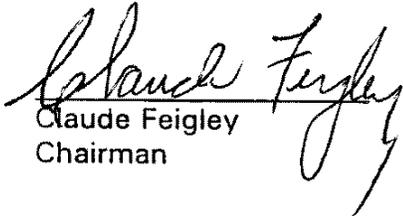
The board unanimously voted to defer action pending additional information until the next advertised meeting of the BZA leaving the public hearing open.

E. MATTERS OF SPECIAL PRIVILEGE

None.

F. ADJOURNMENT

The meeting was adjourned at 9:08 P.M.



Claude Feigley
Chairman



John Patton
Zoning Officer