

BOARD OF ZONING APPEALS

July 27, 1995

A. ROLL CALL

ABSENT: Mr Geidd

Mr. Feigley
Mr. Ripley
Mr. Carr
Ms. Wallace

Others Present:

Jacqueline M. White, Code Compliance Officer

B. MINUTES

The minutes of the June 22, 1995 meeting were approved with changes.

C. OLD BUSINESS

Mr. Feigley asked about Mr Epperson's case, ZA-4-95. Jacqueline White stated that Mr. Epperson was asked to send a letter to officially withdraw the case. No letter has been received, but the garage has been completed to meet current zoning. Mr. Feigley stated that the case, then, has in effect been withdrawn.

D. NEW BUSINESS

ZA-10-95; C. Richard Dobson

Jacqueline White presented the staff report: Mr. Svein Lassen, attorney for the builder/ seller, Mr. Richard Dobson has requested a four (4) inch variance from the front setback requirement. The property is located at 3020 Cedar Run in the R-1, Limited Residential, zoning district in the Berkeley Green subdivision. The Berkeley Green subdivision was approved and exists as a residential cluster development. The front setback requirement for this subdivision is 25 feet. The side and rear yard requirement is 5 feet. This particular lot is approximately .25 acres (~ 10,400 square feet) and is situated on a cul-de-sac.

Mr. Dobson obtained a building permit for the house in October 1994. The dwelling was constructed and received a certificate of occupancy on June 14, 1995. The original plot plan, submitted with the building permit plans, showed that the house was to be located 26 feet from the front property line. A survey done after the

completion of the house shows that the house was not set according to the plan and now encroaches approximately 4 inches. The lot is large enough to accommodate the house and meet the setback requirements. It has not been demonstrated that the lot possesses any unusual topography or unique characteristic. The responsibility of assuring that the house was correctly located was that of the builder, the failure to do so is perhaps a self inflicted burden but does not constitute a hardship warranting a variance. The denial of this request would not effectively prohibit the beneficial use of the property. The property does not exhibit any unusual topography or unique characteristic. Because no undue hardship has been demonstrated, staff recommends that this request be denied.

Mr. Feigley asked about the setbacks in a cluster and opened the public hearing.

Mr. Svein Lassen, attorney for C. Richard Dobson, builder and seller and for buyers Johanna Schwengrub, Freda Tonts, Audrey Tonts Rojas, spoke, explaining why the variance was being requested. Mr. Lassen stated that Mr. Dobson, builder, has built numerous houses in the county and in the Berkeley Green subdivision and that this was the first time that he has had to come before the Board of Zoning Appeals for anything in this subdivision. Mr. Lassen stated that the only the corner of the house at the garage encroaches into the setback. Mr. Lassen further explained that the original plan was to build the house with aluminum siding on the house. This feature was later changed to a brick siding and the four inches is a result of the use of brick instead of aluminum siding. Mr Lassen went on to address each aspect of a variance request stating that although there is no unusual topography or characteristic to the lot, the encroachment is a simple oversight in an attempt to upgrade the house. Mr. Lassen then asked to bring up the supervisor for the construction of this particular house.

Mr. Feigley clarified that he did not think that this was the first time that Mr. Dobson has been before the Board for Berkeley Green and recalled a prior case. Mr. Feigley also explained that this variance request appeared to be a result of a self inflicted hardship, since Mr. Dobson was the developer for the subdivision and as such set the setbacks for the development.

Mr. Carr stated that he didn't think that changing from aluminum siding to brick would have caused an encroachment.

Mr. Ripley explained the process of using brick and clarified that it would indeed result in approximately four inches more.

With no further questions for Mr. Lassen, he was excused.

Mr. Wes Dawlins, supervisor for the project, explained the events leading to the decision to change the siding of the house. He stated that the house was a

speculation house and they wanted to upgrade the house. Mr. Dawlins stated that they took several measurements from the side and front of the property as construction progressed.

Mr. Carr asked Mr. Dawlins why contractors generally build houses so close to the front property line.

Mr. Dawlins stated that measurements are typically taken from the front and that the front tends to be the starting point for a project. Mr. Dawlins also stated that for this house they did not want to approach the planted vegetation in the rear yard.

Mr. Feigley asked what type of measurements were made.

Mr. Dawlins stated that tape measurements were made from the street.

With no further questions, the public hearing was closed. The Board members discussed the case. Mr. Ripley stated that he felt that it was an honest mistake and that there was minimal encroachment. Mr. Ripley stated that the amount requested for this variance was small and rather insignificant.

Mr. Carr motioned that the variance be granted. The motion was seconded. The variance was granted unanimously.

ZA-11-95; Gary & Melonie Hollis

Jacqueline White presented the staff report: Mr & Mrs Hollis, property owners, have requested a 4 inch variance to front setback requirement for property at 3 Jonathon Court in the R-1, Limited Residential district, in the Hunter's Creek subdivision. The lot is about 15,000 square feet in size and is located on a cul-de-sac, although only partially on the curved portion. The parcel is generally rectangular except the front right corner which is curved. The R-1, limited residential, zoning district requires a 35 foot front setback.

The original plans for this construction were approved in 1985 and a certificate of occupancy was issued in September 1987. According to records the building was to be located 35 feet from the front property line. The enclosed survey dated May 1990 shows that the house was not situated in accordance with the plan and encroaches approximately 4 inches into the front setback. The lot provides adequate room for the dwelling to be located on the property and meet setback requirements. While the lot has somewhat of a curve along the front right side it is not unlike other parcels situated in cul-de-sacs. No unusual topography or unique characteristic exists. The applicant has not demonstrated any unusual hardship approaching confiscation and

the property has been put into beneficial use. Because no undue hardship has been demonstrated and the use of the property would not be effectively prohibited, it is staff's recommendation that this request be denied.

Mr. Greg Davis, attorney for Mr. and Mrs. Hollis, explained that the encroachment occurred several years ago and was a builder error. The property owners are now selling the property and the buyers would like the variance before they will agree to buy the house.

Mr. Feigley asked how they were able to obtain mortgage insurance and title with the presence of an encroachment.

Mr. Davis explained that the original owners were aware of the encroachment and that the bank agreed to the mortgage but only with a limited warranty. The new buyers were not willing to except a limited warranty and requested that a variance be obtained.

Mr. Carr asked if surveyors were required to report encroachments.

Jacqueline White stated that she was not aware of any such regulation.

With no further questions for Mr. Davis, the public hearing was closed.

The board members discussed the case, stating this was a builder error and that the encroachment was minimal. Mr. Feigley motioned the variance be granted. Ms. Wallace seconded the motion. The variance was granted unanimously.

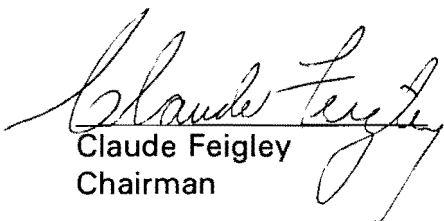
The board had some conversation as to the requirements of a surveyor.


E. MATTERS OF SPECIAL PRIVILEGE

None

F. ADJOURNMENT

The meeting was adjourned at 8:30 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary