

**BOARD OF ZONING APPEALS**

**MINUTES**

**DECEMBER 21, 1995**

**A. ROLL CALL**

**ABSENT:**

Mr. Feigley  
Mr. Giedd  
Ms. Wallace  
Mr. Ripley

Mr. Carr

**Others Present:** Jacqueline White, Code Compliance

**B. MINUTES**

The October 26, 1995 and the November 16, 1995 minutes were approved unanimously.

**C. OLD BUSINESS**

**ZA-23-95; Thomas and Susan Caulk**

The Board deferred case until the next scheduled meeting, pending a new survey showing rear setback measurements.

**D. NEW BUSINESS**

**ZA-25-95; Fernbrook Associates**

Jacqueline White presented case ZA-25-95. Mr. Jeff Weeks, on behalf of Fernbrook Associates, applied for a variance to the sign ordinance to allow for a second residential sign to be placed at the entrance of the Fernbrook subdivision. The property is further identified as 2850 Greensprings Road, located on Parcel (1-1A) on James City County Real Estate Tax map (46-3).

For the identification of residential subdivisions the sign ordinance allows that no sign, intended to be read from any public right of way, shall be permitted except one identification sign not exceeding 32 square feet in size not exceeding 15 feet in height from grade, and may be no closer than ten feet to the corner.

The subdivision has one principle entrance, which is lined by two brick walls which face each other. The brick walls, approximately four feet tall, have been constructed on each side of the entrance to the Fernbrook subdivision and a sign has been erected on the west wall. Mr. Jeff Weeks is proposing a second subdivision sign, which would be placed on the opposing (east) wall at the entrance to the subdivision.

In accordance with the proffers for the subdivision a scenic easement, 125 feet deep, shall be reserved adjacent to and parallel with the center line of Route 614 (Greensprings Road). These proffers do allow the owner to install and construct over,

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under, across and through the scenic easement such new roads, driveways, public utilities and entrance signs as may be necessary but only with the agreement and approval of the Development Review Committee. The Development and Review Committee approved the location of the brick walls within the greenbelt buffer, and location of the first sign, but objected to the placement of an additional sign.

There is no condition unique to this subdivision that necessitates a second subdivision identification sign. There is no hardship not shared generally by like zoned properties. The applicant is seeking a special privilege or convenience. The property does not exhibit any unusual topography and no undue hardship has been demonstrated.

Mr. Ripley asked how the size of a sign is measured.

Ms. White stated it is measured by length times width of the letters on the wall.

Mr. Feigley asked if by definition this application is for a free standing sign.

Ms. White stated yes.

Mr. Feigley read Section 20-68(i) of the Zoning Ordinance, Residential Subdivision signs.

Mr. Feigley opened the public hearing.

Jeff Weeks introduced himself and stated that he would be happy to answer questions from the Board.

Mr. Feigley stated that the Board had been somewhat besieged by people concerned about the construction at Fernbrook and they wanted to know how the size of the entrance happened.

Jeff Weeks explained that he designed that wall as unobtrusive and with Colonial Williamsburg style. He went to the Planning Department with all of his drawings and initiated the process. The Planning Department was not quite sure how to proceed, so Code Compliance was brought in to assist. Planning then called Mr. Weeks and advised that they had done all of the review they felt necessary and advised him that Code Compliance would issue the permit.

Mr. Feigley asked why an additional sign was needed.

Mr. Weeks advised that they had originally planned two signs, but were unaware that a second sign was not permitted until recently. Mr. Weeks further stated that he was

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trying to balance the appearance of the entrance and for identification purposes for guests, police, fire, etc.

Mr. Feigley read three letters the Board had received in reference to the Fernbrook sign

Mr. Feigley closed the public hearing.

Mr. Ripley moved to deny BZA case #ZA-25-95, Ms. Wallace second the motion.

The Board voted unanimously to deny the second sign for the Fernbrook Subdivision.

**ZA-26-95; Patrick & Jennifer Page**

Jacqueline White presented case ZA-26-95. Mr. & Mrs. Patrick Page, property owners, have requested a five foot variance to the side yard requirement for a proposed addition to the existing dwelling for their property at 112 Duer Drive in the Indigo Park subdivision. The property is further identified as Parcel (2-6-13) on James City County Real Estate Tax Map (47-2) in the R-1, Limited Residential zoning district.

Section 20-237 of the James City County zoning ordinance requires: The minimum side yard for each main structure shall be 15 feet. The minimum side yard for accessory structures shall be five feet, except that accessory buildings exceeding one story shall have a minimum side yard of 15 feet.

The house is currently about 27 feet from the right side property line. The rectangular lot is roughly 100 feet wide by 200 feet long. Jennifer & Patrick page are proposing to expand the current dwelling to accommodate a garage as well as additional living area. The proposed L-shaped addition is approximately 1200 square feet and as planned will encroach no more than five feet into the current setback requirement.

Although constructed prior to the adoption of the zoning ordinance, the dwelling unit conforms to the current zoning requirements of the R-1 zoning district. The house is more than 100 feet from the rear property line and does provide some buildable area. There is no unusual topography and no hardship has been demonstrated.

Mr. Feigley opened the public hearing.

Mr. Patrick Page stated the purpose was to place an addition to the structure. The garage area would be to the side of the structure and additional living area would be to the rear of the structure. Mr. Page further stated that the house has very limited storage space and that the plans are currently in the planning stages only and can change if necessary.

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Mr. Feigley asked Mr. Page what actual minimum space was needed and could a one car garage be utilized.

Mr. Giedd commented that the side yard could be utilized as a driveway and place the garage in the back.

Mr. Page commented that he did not want to remove any existing trees currently in the back, because they offer shade and cooling to the house in the summer.

Mr. Ripley offered some enlightenment on the building of the garage and the possibility of giving a 2 foot variance which would make the garage 14 feet, which is somewhat adequate.

Mr. Feigley closed the public hearing.

Mr. Feigley commented that he did not feel there was any undue hardship and that he had concerns about reducing any open space. He further commented that at this time he would be inclined to deny the variance.

Mr. Ripley stated that his first reaction is to deny the variance because the area is so closely populated and he hated to see a decrease open space between properties.

Mr. Giedd commented that he felt the addition would look good, but felt the Board needed to be consistent about hardship and leaving open space.

Mr. Feigley motioned that in case ZA-26-95 the request be denied for a 5 foot side yard variance. Ms. Wallace second the motion.

Mr. Giedd asked if the Board would be open to asking the applicant to submit a lesser variance.

Mr. Feigley stated that it would not change his motion.

The variance request, case ZA-26-95, was denied with a 3 to 1 vote, with Mr. Ripley dissenting.

**ZA-27-95; John & Susan Alberts**

Jacqueline White presented case ZA-27-95. Mr. & Mrs. Alberts, property owners, have applied for a variance to the minimum lot width requirement for a proposed single family dwelling for their property at 6012 Beech tree Lane in the Wexford Hills

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subdivision. The property is further identified as Parcel (2-22) on James City County Real Estate Tax map (15-4) in the A-1, General Agricultural zoning district.

The A-1, General Agricultural zoning district requires a minimum lot size of 3 acres for single family dwellings. Section 20-216 of the zoning ordinance requires, in the A-1 zoning district that: Lots of three acres or more but less than five acres shall have a minimum lot width at the setback line of 200 feet. Lots of one acre or more but less than three acres shall have a minimum lot width at the setback line of 150.

The above mentioned lot is a trapezoid shaped parcel approximately 3.06 acres in size. The lot is about 150 feet across at the street front and 309 feet across the rear of the lot. Due to the zoning ordinance requirements for minimum lot width and the configuration of the lot, the proposed dwelling must be at least 200 feet from the front property line in order to conform with the James City County code. Mr. & Mrs. Alberts wish to locate their house closer to the front property line than currently permitted by the zoning ordinance.

The Alberts' desire an open front yard and have expressed an interest in reducing the amount of clearing and the associated costs. The Alberts' have expressed a desire to construct their house at a setback of 100 feet, at which point the property has a lot width of only 175 feet.

The required setback for this property is indicated on the subdivision plan and the property owners were aware of the setback requirement at the time of purchase. The lot is 3 acres in size and provides a large amount of buildable area. The lot is of adequate size and shape that a dwelling can be built on the property and meet current zoning requirements. While the lot is narrower at the front than adjacent properties in this subdivision, in general the lot is not exceptionally narrow. The lot exhibits no extraordinary topography or unique characteristics.

Mr. Feigley asked Ms. White how accurate the stated size of 3.06 acres.

Ms. White stated that the size was taken from the subdivision plan.

Mr. Feigley opened the public hearing.

Mr. John Alberts stated that he wrote to the adjoining property owners and received a response from the developer stating that he did not have a problem with the variance request. He further commented that based on the current setback requirements the house would be looking at the neighbors backyard. Mr. Alberts stated that he had perk tests done prior to the purchase of the lot and would be required to have new tests done if the variance was not granted. Mr. Alberts advised the Board that the builder had stated that he could move the setback 50 feet without a problem.

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Mike Tuck, adjacent property owner, Lot 23, stated that he had some considerations concerning the variance. Mr. Tuck stated that three acres is a lot of property by today's standards and that Mr. Alberts knew of all requirements prior to purchase. Mr. Tuck further commented that the size of these lots were set aside for privacy and that if you wanted to have your home located closer to the street that another property should have been considered.

Mr. Feigley closed the public hearing.

A discussion of the natural line of construction and how the house would look set back farther than other homes took place.

Mr. Feigley moved that in case ZA-27-95 the variance request for a 175 foot lot width requirement be approved. Mr. Giedd second the motion.

Mr. Ripley asked to discuss the proposed motion.

Mr. Feigley withdrew the motion.

Mr. Ripley moved in case ZA-27-95 that the Board allow a setback from the road to be 175 feet in lieu of the 200 foot as shown on the subdivision plan, without regard to the width of the lot at that point. Mr Giedd second the motion.

The motion was approved unanimously.

**ZA-28-95; Cynthia A. Sanderlin**

Ms. Sanderlin, property owner, has applied for a five foot variance to the side yard requirement to allow for a proposed garage. The property is located at 7254 Canal Street in the Chickahominy Haven subdivision. The property is further identified as Parcel (9-53) on James City County Real Estate Tax Map (19-1) in the R-2, General Residential, zoning district.

In May 1995, Ms. Sanderlin submitted an application to construct a 24 x 36 foot detached garage on her property. Because the plans did not meet building code requirements and additional information was needed, the plans were not approved. The corrections needed included obtaining a waiver to the Chesapeake Bay Preservation Regulations to allow a reduction of the RPA buffer. Health Department requirements eliminated the front yard as a buildable site due to the septic system. The applicant made corrections and the plans were approved to construct a detached garage to the rear of the house. As approved the plans called for the garage to be to the rear of the

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house no closer than fifty feet to the bulkhead (maximum allowed by the Chesapeake Bay Act) and five feet five inches from the side property line.

Subsequent to receiving the building permit, the applicant discovered that the garage would not fit on the property as planned. The applicant has been granted a 50 foot waiver to the required 100 foot buffer and then determined that it could not be met. The applicant has now submitted revisions to the plan which relocate the garage next to the house (an attached garage) but now encroach into the required side yard. Ms. Sanderlin is requesting a five foot variance to the side yard requirement to allow for the garage.

The R-2, General residential, zoning district requires that the minimum side yard for each main structure shall be ten feet. The minimum side yard for an accessory structure (more than ten feet away from the main structure) shall be five feet.

Ms. Sanderlin could construct a smaller (one car) garage and meet zoning ordinance requirements. The lot does not exhibit unusual topography and no hardship has been demonstrated. The lots within this subdivision are generally less than 100 feet wide.

Mr. Feigley asked Ms. White to define RPA buffer and asked what the resource protection area was in this case.

Ms. White stated the Chickahominy River.

Mr. Feigley opened the public hearing.

Mr. Bruce Schweitzer introduced himself and stated he would answer any questions the Board may have.

Mr. Feigley asked Mr. Schweitzer what happened when the various plans submitted were discovered to not meet RPA and setback requirements.

Mr. Schweitzer stated that he made every attempt to move the proposed structure around to meet the requirements, but was unable to accomplish it.

A discussion as to what and how to store the various items that Mr. Schweitzer has on the property and alternatives as to where to set the proposed structure took place.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that a 16 foot door is going to have to be utilized regardless of the size of the structure so that the large boat can be housed, but it will still leave approximately 3 vehicles out in the yard.

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Mr. Ripley stated that if a 19 foot 8 inch garage was built, a variance would not be required. Mr. Ripley further stated that due to the chimney, an encroachment of 2 feet will still occur. Mr. Ripley stated that in numerous cases in this subdivision the Board has allowed to go down as little as five feet from the property line.

Mr. Ripley moved that in case ZA-28-95 a five foot variance to the side yard requirement be granted for the proposed garage. Ms. Wallace seconded the motion.

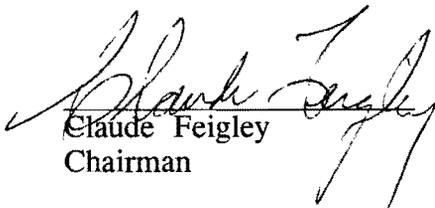
The motion was approved unanimously.

**E. MATTERS OF SPECIAL PRIVILEGE**

Mr. Feigley commented that at the end of last months meeting, the Board talked to Mr. Farmer about the Board writing a letter to the Board of Supervisors regarding the Boards problem with church spires, etc., and that a letter was sent to the Board of Supervisors. Mr. Feigley further commented that he understood that the Group from the Lutheran Church went to the Board of Supervisors meeting and voiced their concerns. Mr. Feigley stated that if the newspaper was correct, the group did not receive much sympathy and that he has yet to hear a response from the Board of Supervisors.

**F. ADJOURNMENT**

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

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary