



MEMORANDUM

TO: Records Management
From: Melissa C. Brown, Zoning Administrator
Date: 3/28/2012
Re: Board of Zoning Appeals Minutes – January 9, 1997

The following minutes for the Board of Zoning Appeals dated January 9, 1997 is missing the signature for Steven Grant, Acting Secretary. Mr. Grant is no longer a James City County employee.

These minutes, to the best of my knowledge, are the official minutes for the January 9, 1997 Board of Zoning Appeals meeting. They were approved by the Board of Zoning Appeals at the February 6, 1997 meeting. Please accept these into the official record.


Melissa C. Brown
Zoning Administrator

BOARD OF ZONING APPEALS

January 9, 1997

A. ROLL CALL

PRESENT:

Mr. Feigley
Mr. Giedd
Mr. Nice
Mr. Ripley

ABSENT:

Ms. Wallace

Others Present:

Steven Grant, Zoning Officer

B. MINUTES

The minutes of the December 5, 1996 meeting were approved as submitted.

C. OLD BUSINESS

None

D: NEW BUSINESS

ZA-29-96; Harry E. Schnackenberg

Mr. Grant gave the staff report stating that Mr. & Mrs. Schnackenberg had requested a variance to the rear setback requirement for the property at 4955 Burnley Drive, in the R-1, Limited Residential, zoning district. The property is further identified as parcel (17-3-3) found on James City County Real Estate Tax Map (38-4).

The above mentioned property is a corner lot located in the Mill Creek Landing subdivision. The lot is slightly larger than one-third acre, or about 15500 square feet. For a corner lot the zoning ordinance stipulates:

Of the two sides of a corner lot the front shall be deemed to be the shortest of the two sides fronting on streets.

Both sides fronting on streets and the rear must maintain a 35 foot setback in the R-1 district. In this situation both street sides are the same length. The submitted survey, originally dated March 7, 1989, indicates that the Burnley Drive side is the front yard. The applicant intends to enclose and extend, by two feet closer to the rear property line, an existing 10 foot by 20 foot deck. The deck currently encroaches into the rear setback by five feet. Therefore the applicant must obtain a variance of seven feet to complete the desired enclosure or obtain a variance of five feet to even keep the existing deck.

The original building permit did not include the addition of a deck to the house. The plat that was submitted stated that "... no deck indicated on plat - setback must be maintained..." No subsequent permits are on record to indicate that a deck was ever approved for this location.

The lot is not unusually shaped and does not exhibit any unique characteristics. There is sufficient room on the front of the house to allow an addition of the same footprint as the applicant intends to complete on the rear of the house.

The applicant has not demonstrated an undue hardship imposed by the Zoning Ordinance. The granting of a variance in this case would constitute a special privilege or convenience. The setback violation and any subsequent economic hardship was self-imposed since no permits were ever obtained for a deck. Staff must recommend denial of this variance request.

Mr. Feigley asked for clarification on how the plat determined the front of the house.

Mr. Grant stated that the original building permit plat showed that the front of the property was clearly on Burnley Drive and that if Ridgewater Drive was used the house would have been encroaching into what would be the rear setback.

Mr. Feigley asked if the notation on the site plan warning of the setback requirements was submitted on the original plat. Mr. Grant stated yes.

Mr. Ripley asked when the house was built.

Mr. Grant replied in 1989 and there are no records for any deck permitted.

Mr. Feigley opened the public hearing.

Skip Snyder of Patio Enclosures, contractor for the Schnackenberg's, stated that the Schnackenberg's were a retired couple who would like to add two feet to their

existing deck and then enclose the deck so that they could enjoy being in their backyard all year round. Mr. Snyder further stated that the Schnackenberg's advised him that the deck was built at the same time the house was built.

Mr. Feigley asked for clarification as to which deck was to be enlarged and enclosed.

Mr. Snyder stated the deck that was 20 x 10 in size.

Mr. Feigley asked if Mr. Snyder knew that the deck was encroaching into the setback.

Mr. Snyder stated that he was not aware of the encroachment until he applied for the permit for the addition and enclosure and the County advised him at that time.

A discussion of the setbacks took place.

Mr. Feigley asked why Mr. Snyder and the Schnackenberg's felt there was a hardship being imposed on them.

Mr. Snyder stated that the setback interferes with the Schnackenberg's use of their property and that the backyard is not really functional because the yard slopes in an upward direction from the house.

A discussion of when the deck was built took place.

Mr. Nice stated that he was not prepared to grant a seven foot variance but he would be willing to grant a five foot variance to bring the deck into conformance.

Mr. Feigley asked Mr. Nice if he was also willing to grant the enclosure even though it would be non-conforming.

Mr. Nice stated yes that he felt the owners had a right to enclose the existing deck.

Mr. Ripley stated that he was leaning towards agreement with Mr. Nice, but advised Mr. Nice what decisions the Board has made in the past to non-conforming issues.

A discussion of non-conforming decks and porches took place.

Mr. Giedd stated that there are three ways the board could vote for denial and the applicant would have to 1) take down the deck, 2) grant variance for existing deck or 3) grant a variance for the new encroachment and that he was leaning toward the middle of the road and not letting them improve upon it.

Mr. Feigley closed the public hearing.

A discussion of the lot and size of the house and past decisions of the board on similar cases took place.

Mr. Ripley moved that a five foot variance be granted for the existing deck and that no further improvements or construction be allowed to take place on the deck.

The motion was approved unanimously.

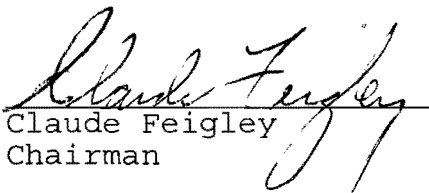
E. MATTERS OF SPECIAL PRIVILEGE

Mr. Feigley advised that since this was the first meeting of the new year that board officers needed to be voted upon.

After some discussion the board agreed that Mr. Feigley would remain as Chairman of the Board, Mr. Giedd will act as Vice-Chairman and the Zoning Administrator will be the Secretary to the Board.

F. ADJOURNMENT

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



Claude Feigley
Chairman

Steven Grant
Acting Secretary