

BOARD OF ZONING APPEALS

MINUTES

January 26, 1989

A. ROLL CALL

Absent

Mr. Bob Ripley
Ms. Elizabeth Vaiden
Mr. Claude Feigley

Ms. Nancy James

Others Present

Mr. Bernard Farmer, Secretary to the Board
Mr. Larry Davis, Assistant County Attorney

B. MINUTES

The November 17, 1988 minutes were approved as presented.

C. OLD BUSINESS

None

D. NEW BUSINESS

1. ZA-29-88 Longhill Gate Associates

Mr. Farmer stated that Longhill Gates Associates had requested a variance of 4 to 8 feet from the rear yard requirements for structures located at 5318 through 5332 Tower Hill Road in the Longhill Gate Subdivision. Mr. Farmer further stated in 1987 and early 1988 permits were issued for construction of duplexes on the lots in question. These permits were issued in accordance with the site plan approved in 1986, establishing the Longhill Gate Residential Cluster development. Though minor differences (of 1 to 2 feet) exist between the site plan and the actual positioning of the homes, they generally are in accordance with the site plans. No decks were shown as part of the structures at the time the site plan was approved.

As well as can be determined, the developer misplaced the structures due to two reasons:

- (1) Though the rear lot lines were marked by a surveyor (Spearman & Associates) prior to beginning construction the marks were in the vicinity of where various utility companies had work to do. Apparently, the surveyors marks were moved during

the utility work and contributed to the errors.

- (2) Alvin Anderson, attorney for the developer, stated Mr. Berryman was unaware that the setback requirement also applied to decks. Apparently, the developer depended upon Section 20-507 (b) which states..."no building"... "shall be closer than thirty five feet to property outside the residential cluster development". This section does not refer to "structure" nor does it provide cross reference to the definition which states ... "decks" ... "ten feet or less from a main structure shall be considered part of the main structure".

Since no legal hardship had been demonstrated which effectively prohibits or unreasonably restricts the use of the property, nor had it been shown that a hardship is the result of application of the ordinance and not a restriction generally shared by like zoned properties, staff recommended denial.

Ms. Vaiden opened the public hearing.

Mr. Alvin Anderson, Attorney representing Longhill Gate Associates, presented the Board with a packet containing the following information:

- (1) Section 20-507(b) of the James City County Zoning Ordinance
- (2) Section 20-2 (Portion) of James City County Zoning Ordinance - Definition of "Building"
- (3) Mortgage Surveys
- (4) Certificates of Occupancy
- (5) Affidavit of Spearman & Associates
- (6) Section 20-2 (Portion) of the James City County Zoning Ordinance - Definition of "Accessory Building or Structure"
- (7) As-Built drawing showing improvements in relation to 35' building setback line on Lots 3-9, Section 1, Longhill Gate

Mr. Anderson reviewed the packet information contents with the Board. Mr. Anderson stated that Mr. Spearman representing Spearman & Associates went back to the site after the mortgage surveys were done. It was at that time that the encroachments were found. It was determined that at some time after the site survey had been done the pins had been moved or disturbed. Mr. Anderson further stated that Mr. Spearman and Mr. Berryman thought that the decks were not part of the main structure and for that reason the decks would not need to be put on the survey.

Mr. Feigley discussed with Mr. Anderson the definition of a deck and why the Board would or would not consider a deck as part of the main structure. Mr. Feigley felt it is clearly stated in the Zoning Ordinance and Mr. Anderson felt that one could be misled by the definition listed under Section 20-507(b).

Mr. Ripley and Mr. Spearman discussed the surveys that had been performed. Mr. Spearman stated that when the mortgage surveys were performed the encroachments were found and that he reported them to the mortgage companies as he is required by law to do so. Mr. Spearman also stated that he returned to the site to inspect the area to try and determine how these encroachments occurred. He and Mr. Berryman determined that it had to have happened at the time the utility companies were doing their site work.

Ms. Vaiden asked if anyone else wished to speak on this case.

Mrs. Reap, owner of 6A, stated that she would like to enclose her deck in the future and asked if this variance would allow her to do work on her unit in the future.

Mr. Farmer stated that if the Board grants the variance request they can choose to add conditions to the staff recommendation.

Mr. Dennis Miller, owner of 5A, asked the Board to consider granting the variance.

Mr. Raymond Dery, owner of 7A, also stated that he would like to enclose his deck in the future.

Mr. Ripley asked if any of the other units were still not sold.

Mr. Berryman stated that Mr. Jim Carter owned unit 9B and he owned units 8A and 8B.

Mr. Miller stated that the owner of unit 5B is out of town but would like for the variance to be granted.

Mrs. Reap stated that the owner of unit 6B lives out of state and would like for the variance be granted.

Ms. Vaiden closed the public hearing.

Mr. Feigley motioned to approve the variance request with the added conditions:

- (1) Improvements are permitted to the existing structures on Lots 5A, 6A and 7A.
- (2) No improvements or modifications can be made to the portions of structures on Lots 8A and 9B within thirty five feet of the project boundary.
- (3) The variances are to be noted on an approved modification to the site plan.

Mr. Ripley seconded the motion.

The motion was carried unanimously.

E. DETERMINATION OF SCHEDULE

The calendar for 1989 was approved as presented.

F. ELECTION OF OFFICERS

Ms. Vaiden moved that Mr. Feigley be Chairman and Mr. Ripley be Vice-Chairman.

Mr. Feigley seconded the motion.

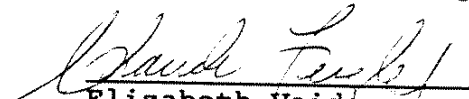
The motion was carried unanimously.

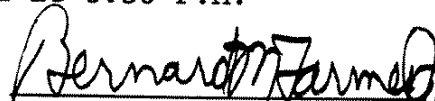
G. MATTERS OF SPECIAL PRIVILEGE

None

H. ADJOURNMENT

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


Elizabeth Vaiden
Vice-Chairman


Bernard M. Farmer, Jr.
Secretary