

BOARD OF ZONING APPEALS

JULY 26, 1990

A. ROLL CALL

Mr. Claude Feigley
Mr. Bob Ripley
Mr. Baxter Carr
Mr. Ken Giedd
Ms. Nancy James

Others Present:

Bernard M. Farmer Jr. Zoning Administrator
Leo Rogers, Assistant County Attorney
John Patton, Code Compliance Officer

B. MINUTES

The minutes of the June 28, 1990, meeting were approved as presented.

C. OLD BUSINESS

None

D. NEW BUSINESS

**ZA-13-90. Nevin Steiner, 106 Windsor Way
Tax Map (32-3) Parcel (21-17)**

Mr. Farmer presented the staff report stating that Mr. Nevin Steiner had requested a variance of 5'2" from the rear yard requirements of the Zoning Ordinance for a new single family dwelling at 106 Windsor Way in the Windsor Forest Subdivision. In November of 1989, Mr. Steiner applied for and was issued a building permit to construct a single family dwelling on this property. His proposed plan accompanying the application showed placement of the dwelling 37 feet from the rear yard, which meets setback requirements. However, the site plan submitted does not indicate a deck being constructed. Evidently, during construction the applicant mistakenly used the surveyors work point as a property marker resulting in the present variance request. It is the staff recommendation that the variance be denied as no undue hardship has been demonstrated. The property may be placed into beneficial use with adherence to the Zoning Ordinance requirements.

Mr. Feigley opened the public the public hearing.

Mr. Steiner addressed the Board and explained how the house was staked.

Mr. Feigley asked if the deck which was constructed without a permit would have to conform to setbacks.

Mr. Farmer stated yes, it would have to conform.

Mr. Carr asked if Mr. Steiner had laid the house off .

Mr. Steiner answered yes.

There being no further discussion the public hearing was closed.

Mr. Ripley stated his concern over the number of similar variance requests that had come before the Board lately, he further stated that due to the difficulty in placing a rectangular house on a triangular lot he felt a hardship existed.

Mr. Feigley moved to grant a 7.2 foot variance from the rear yard requirements for the house and deck.

The vote for approval of the variance was unanimous.

**ZA-14-90. Ralph Wilson, 97 Castle Lane
Tax Map (46-2) Parcel (6-1)**

Mr. Farmer presented the staff report stating that Mr. Ralph Wilson had requested a 4.03 foot variance from the elevation requirements for a dwelling built within the floodplain at 97 Castle Lane in St. Georges Hundred Subdivision. In June of 1986 Mr. Wilson was issued a permit to construct the dwelling in question on this property. A portion of this parcel is subject to flood hazards and this information is noted on the record subdivision plat for this section of St. Georges Hundred. No records exist from the original permit but Mr. Wilson did provide an Elevation Certificate given him at the time of closing on the mortgage which indicates the finished floor elevation at 14.0 feet above mean sea level. This elevation certification appears to be in error, however, this information was relied upon at the time the dwelling was constructed.

While attempting to sell the home a new survey was prepared by Spearman and Associates which indicates the true floor elevation is 9.47 feet above mean sea level. This elevation as established from an USGS Bench Mark along John Tyler Highway, has been reviewed, and is considered a reliable elevation. A review of the most reliable flood hazard information, the Powhatan Creek drainage study prepared by the U.S. Department of Agriculture and Soil Conservation Service, indicates that the flood hazard is at an elevation of 13.5 feet for a 100 year storm event. An elevation of 13.5 feet is what the Federal Emergency Management Agency has proposed on their draft rate maps recently received by the county. Section 20-551 (1) of the James City County Zoning

Ordinance requires that the finish floor elevation of any living space not be lower than 13.5 feet. The Staff recommendation is for denial of the variance as no legal hardship has been demonstrated.

Ms. James asked if a date was available for the last major storm in this area.

Mr. Farmer stated the last major storm was in September 1989, but the level of Powhatan Creek did not rise to the predicted level of 13.5 feet.

Mr. Feigley opened the public hearing.

Mr. Wilson addressed the Board and offered to answer any questions. He stated "that during that major storm" the water level did not even reach his garage slab which is two feet lower than his finished floor elevation.

Mr. Feigley closed the public hearing

Mr. Feigley moved to grant the 4.03 foot variance from the elevation requirements for a home built in the flood plain.

The vote for approval of the variance was unanimous.

ZA-15-90. Shirley Holt, 281 Neck O Land Road
Tax Map (47-3) Parcel (1-46)

Mr. Farmer presented the staff report stating Shirley Holt had requested a variance from Section 20-404 of the Zoning Ordinance to reduce the size of a non-conforming lot located at 281 Neck O'Land Road. The applicant has an irregular shaped lot with a stem that is 10' x 331.27' that runs west towards Powhatan Creek. She proposes to sell this stem, which is approximately 3,510 square feet, to an adjacent property owner. The lot is currently a non-conforming lot consisting of approximately 18,469 square feet. As noted in the application, Ms. Holt plans to sell this portion of property in order to make repairs to her home. Section 20-404 of the Zoning Ordinance allows nonconforming lots to change provided that the adjustment does not make the nonconforming lot more nonconforming. This case would make the existing nonconforming lot more nonconforming. It is the staff recommendation that the variance be denied. Granting this variance would amount to a special privilege otherwise denied liked zoned properties and would be contrary to the guidelines established by State Law.

Mr. Carr asked why the lot is nonconforming.

Mr. Farmer replied the lot does not conform to present area or width requirements.

Mr. Feigley opened the public hearing.

Mr. Jerry Mephram, an adjacent property owner, and the one who would purchase the property spoke. He stated that the James City County Service Authority placed a pump house adjacent to the creek making it useless to Mrs. Holt. He has no use for it other than to provide an additional buffer between his property and the adjacent marina. He stated he would leave it in its natural state.

Mr. Giedd moved to grant the variance from the nonconforming provisions so that a legally existing nonconforming lot (due to area) may be reduced in size by approximately 3500 square feet.

The vote for approval was unanimous.

**ZA-16-90. Guy Mahone, 127 Leon Drive
Tax Map (38-4) Parcel (8-2-10)**

Mr. Farmer presented the staff report stating Daniel C. Waltrip, builder, had requested a variance, on behalf of Guy E. Mahone, the owner, of 8.25' from the side yard requirements of the Zoning Ordinance for a carport at 127 Leon Drive. There is presently a one story brick dwelling on the property. A garage was converted from this dwelling into living area at some point after the dwelling was constructed. The applicant proposes to construct a 11'6" x 20' carport attached to the dwelling. A fifteen foot side yard is required in this district resulting in a request for an 8.25' variance for this structure. Based on the attached survey other locations exist on this property for a carport to be constructed without any variance being necessary. It was the staff recommendation that the variance be denied.

Mr. Feigley opened the public hearing.

Mr. Waltrip addressed the Board and offered to answer any questions. He stated that no legal hardship existed but his elderly inlaws desired to be able to keep out of the weather when returning to their home. He acknowledged that he had converted the garage to living area when he owned the dwelling.

Mr. Feigley closed the public hearing.

Mr. Ripley referred to the similar case of Jack Jones which the board denied.

A discussion followed concerning the buildable area of the lot.

Ms. James moved to deny the variance request.

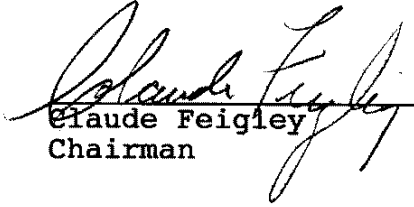
The vote for denial was unanimous.

E. Matters of Special Privilege

None

F. Adjournment

The meeting was adjourned at 9:30 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary