

BOARD OF ZONING APPEALS

MINUTES

AUGUST 24, 1995

A. ROLL CALL

ABSENT:

Mr. Feigley
Mr. Giedd
Mr. Carr
Mr. Ripley

Ms. Wallace

Others Present: Jacqueline White, Code Compliance Officer

B. MINUTES

The minutes of the July 27, 1995 were approved.

C. OLD BUSINESS

Mr. Feigley asked when surveyors are out doing their duties and they come across a discrepancy to the zoning ordinance are they required to report it?

Ms. White stated that she spoke to Mr. Farmer and he stated there is no legal requirement to report it to Code Compliance, however they may have a legal requirement to their client.

D. NEW BUSINESS

ZA-12-95: Mr. Robert Lee Gray, property owner, has applied for a twenty-five foot variance to the front setback requirements, a twenty foot variance to the rear setback requirements and a variance to the minimum width requirement for the property at 131 Neighbors Drive, in the Levi & Letti Wallace Subdivision in the R-2, General Residential, zoning district. The property is further identified as Parcel (5-8) found on James City County Real Estate Tax Map (32-2). Neighbors Drive is a private dirt road with a twenty foot right of way. The lot is square, 70 feet deep and 70 feet wide. Section 20-257, Setback requirements, state in part:

Structures shall be located a minimum of twenty-five feet from any street right of way which is fifty feet or greater in width. Where the street right of way

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 1995
PAGE 2**

is less than fifty feet in width, structures shall be located a minimum of fifty feet from the center line of the street.

Section 20-258 requires that lots of less than 20,000 square feet have a minimum width at the setback of seventy-five feet. Section 20-259 requires that each main structure have a minimum rear yard of thirty-five feet.

Mr. Gray is proposing to build a single family dwelling approximately 2,000 square feet in size. Under the current R-2 zoning requirements the lot is not suitable for building because the front and rear setbacks overlap. The lot also cannot meet minimum width requirements because it is only 70 feet wide. There are only a few houses located on Neighbors Drive and they appear to be about 20 feet from the road right of way. This subdivision was established prior to the existence of a zoning ordinance. The strict application of the ordinance produces an undue hardship in this case by allowing no area on which to build. The requested setback variances are probably reasonable for this subdivision. The proposed variance would be consistent with the surrounding character of this subdivision and is not expected to be a substantial detriment to the adjacent property.

Mr. Gray is requesting considerable reductions in the required front and rear setbacks. The variance that would be necessary, in light of the difficulties that the Zoning Ordinance imposes on this property, are reasonable and appropriate. The nature of this subdivision is unique and the hardship is not self-imposed. It is the staff recommendation that the requested variances be granted.

Mr. Feigley opened the public hearing.

Mr. Robert Jones, neighbor, stated he did not have a problem with Mr. Gray building a house, his concern was parking. He noted he had four vehicles and there are times when one or more vehicles may be parked out on the street. His concern was where would Mr. Gray park his vehicles.

Mr. Carr stated from the looks of the attached site drawing there should be plenty of room to accommodate the parking of a vehicle.

Mr. Robert Lee Gray stated that he plans to build a 2,000 square foot home and he feels that he would have enough parking available.

Mr. Ripley commented that Mr. Gray only has 15 feet to road line from the house and it appears it may be a problem. He asked Mr. Gray how many vehicles did he anticipate having.

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 1995
PAGE 3**

Mr. Gray stated he currently has three vehicles, but he will have a garage.

Mr. Feigley asked Mr. Gray to try and do everything possible to make room for parking.

Mr. Giedd stated he could move the house further back to accommodate parking. It should not make a difference to have more of a setback in front than in the back.

Mr. Carr suggested the rear setback should be approximately 10 feet and the front setback 20 feet, then there should be enough room to accommodate the additional vehicles.

Both Mr. Ripley and Mr. Feigley agreed there would have to be a condition attached to the requested variance.

Mr. Feigley closed the public hearing.

Mr. Feigley commented that the zoning ordinance passed in 1985 really did create a hardship on this particular plat. Any building that would conform to the original plat would have to have variances of some sort, otherwise we are confiscating the property and not allowing the property owner to use it. He had no problem granting the variances requested, however, they may want to consider putting a condition that the front of the house be a minimum of 20 feet from the property line.

Mr. Ripley stated he is also in favor of granting the variance because otherwise the lot is useless. Based on Mr. Jones's concern about the parking situation, he would be in favor of moving the rear setback to 10 feet and the front setback to 20 feet.

Mr. Feigley moved in case ZA-12-95 that a 25 foot variance be granted to the front setback requirement, a 20 foot variance be granted to the rear setback requirement and a 5 foot variance be granted to the minimum width requirement for the property at 131 Neighbors Drive with the condition that the front building line be no less than 20 feet from the front property line.

Mr. Carr second the motion.

The motion was unanimously approved as stated.

ZA-13-95: Mr. G.T. Wilson, AES Consulting Engineers, agent for the new owner, Mr. George Hartnell, III, has applied for a five foot variance to the rear yard

BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 1995
PAGE 4

requirement for an existing deck for the property at 4904 Falkirk Mews in the R-5, Multi-family Residential, zoning district in the Mews Subdivision. The property is further identified as Parcel (8-82) on the James City County Real Estate Tax map (32-4).

The Mews Subdivision is a multi-family development consisting of townhouses. This particular townhouse is an end unit connected on one side by another townhouse and a small open space on the other side. The townhouse was completed and received a certificate of occupancy in July 1988. The rear of the townhouse faces the edge of the subdivision with a fence between the townhouses and the Rolling Meadows Apartment complex. The R-5 zoning district requires that for developments containing 200 or less dwelling units all structures shall be located a minimum of thirty-five feet from any property line which adjoins property in a multi-family residential district.

Mr. Wilson is requesting a five foot variance to allow for a triangular portion of the existing deck to extend into the setback. A smaller deck could be located on the property and meet current setback requirements. No unusual characteristic or unique topography has been demonstrated warranting a variance.

Because no undue hardship has been demonstrated and the property has been put into beneficial use, staff must recommend that this request be denied.

Mr. Feigley opened the public hearing.

Mr. Sidney Morgan, President of the Homeowners Association, stated that his concern was that the variance would allow the deck to encroach on the common property.

Mr. Feigley showed Mr. Morgan that the setback line was encroached but the common ground was not affected by the variance request.

Mr. Stuart Sheppard, resident, stated that he and the developer were aware of the at the time of the building encroachment, but they thought it appeared to be an encroachment of approximately 1 foot. There was an assurance from the developer, to the prior owner and to Mr. Sheppard, that the encroachment would not constitute any serious problem in the future. Mr. Sheppard commented that the adjoining homeowners have never had an opposition to the deck encroachment.

Mr. Feigley stated the main issue with the Board had been answered with Mr. Sheppard's presentation, mainly that the deck was part of the original building. He

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 1995
PAGE 5**

commented that he was disturbed by the original thought, that the deck may have been a little too large but it was okay.

Mr. J.T. Wilson, AES Engineering Consultants, agent for the Hartnell's, stated the dwelling and the deck were built in 1988. The deck was built square with the building and consistent with the decks on the adjoining lots. It is an open structure, with no roof and will remain that way.

Mr. Ripley asked if the encroachment had shown up on anyone's plan.

Mr. Wilson commented he felt the builder may not have known that the encroachment existed.

Mr. Giedd asked if AES Engineering Consultants was the original surveyor of the lots.

Mr. Wilson stated yes. AES showed the encroachment and the builder should have known where he could or could not build.

The original site plan was shown. The encroachment was clearly marked.

Mr. Feigley closed the public hearing.

The Board discussed and reviewed the original site drawing and stated they had some concern that the violation was committed knowingly. They agreed that a condition should be attached to the variance request.

Mr. Carr asked if a letter could be sent to Mr. Waltrip, builder, that he has been placed on record for knowingly violating setback requirements and that if it should happen again it will be addressed.

Mr. Feigley did not see why a letter could not be sent, however Mr. Rogers, attorney for the County should be consulted.

Mr. Giedd moved to have the 5 foot variance granted with the condition that no further construction take place outside of the setback.

Mr. Carr second the motion.

The motion was unanimously approved as stated.

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 1995
PAGE 6**

ZA-14-95: Mr. & Mrs. McKown are requesting a 10 foot variance to the side yard requirement for the property at 310 Farmville Lane, located in the R-2, General Residential, zoning district. The property is further identified as Parcel (3-5) found on the James City County Real Estate Tax Map (23-2).

This parcel is rectangular in shape and is located on a corner lot fronting on both Farmville Lane and Bergen Circle. For corner lots the zoning ordinances defines the front as the shorter of the two sides fronting on a street. The side fronting Farmville Lane is the front. The lot currently contains a single family dwelling and a pool. The R-2 zoning district requires that on corner lots no structures shall be located closer than twenty-five feet to the side street. Mr. & Mrs. McKown are proposing to construct a detached garage/workshop approximately 432 square feet in size. As proposed the structure will encroach 10 feet into the side yard requirement along Bergen Circle.

The McKown's have stated that the requested variance is necessary to more easily access their backyard pool and would be much more convenient for them. The proposed construction can be redesigned and meet required setbacks. No unique characteristics have been demonstrated related to this property and no undue hardship has been shown. The property may be placed into beneficial use without the requested variance.

The applicant must demonstrate that a unique characteristic warranting a variance unreasonably restricts or practically prohibits the beneficial use of the property. They must also show that this a condition that is not generally shared by like zoned properties. Neither of these requirements has been satisfied. The applicant's property is a corner lot, and therefore must abide by several additional setback requirements. However, it is not a situation unique to this lot. The other corner lots along this street must also maintain these same setbacks. In examining the information presented in the case, the variance requested is more a matter of convenience than necessity for placing the property into use. Staff recommends the variance be denied.

Mr. Feigley opened the public hearing.

Mrs. Theresa McKown stated there would be a hardship because of her leg operation and she must utilize the pool and the equipment that would be placed inside the garage. She stated that when the lot was purchased in 1962 the only setback requirements she was aware of were from front to back not side to side. Mrs. McKown further stated the request to have the garage setback at 10 feet was to accommodate repairs that may or may not have to occur to the pool.

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 1995
PAGE 7**

Mr. Feigley stated that according to the drawings the Board has reviewed, there is 37 feet between the house and proposed garage. It would seem 37 feet would give ample room to give repair vehicles access to the pool.

Mrs. McKown stated she really does not plan to use the structure as a garage, but will use it for storage and a place for her equipment.

Mr. Feigley asked why would she need the structure so large, if they were not going to use the structure as a garage. He then stated it appeared the request is for convenience and does not propose any type of hardship.

Mrs. McKown stated that some of her equipment was large and that she also wanted to store her son's things in the building.

Mr. Giedd explained the zoning ordinance to Mrs. McKown, explaining that the rationale is to limit building area on a lot. He further explained that her requests were a matter of convenience and that there was no reason why the existing shrubs could not be cut in order to move the proposed garage within the setback requirements or that any other adjustments could not be made.

Mr. Giedd stated a structure could very easily be built to meet all current setback requirements and there does not appear to be a hardship.

Mr. Feigley closed the public hearing.

Mr. Feigley moved that the variance request in case ZA-14-95 be denied.

Mr. Giedd second the motion.

The motion was unanimously approved as stated.

E. MATTERS OF SPECIAL PRIVILEGE

Jacqueline White advised the Board of a new application filed by Calvin Davis, University Square Shopping Center (Williamsburg Crossing).

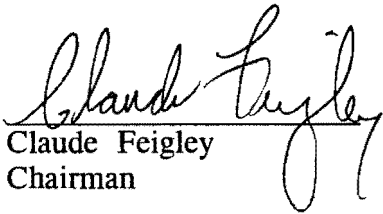
Mr. Carr noted he would not be at the September meeting.

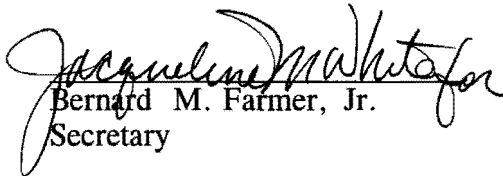
**BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 1995
PAGE 8**

Mr. Feigley asked if the Board could defer the Calvin Davis hearing until October, 1995 when all members of the Board would be present.

F. ADJOURNMENT

The meeting was adjourned at 9:06 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary