

BOARD OF ZONING APPEALS

MINUTES

OCTOBER 26, 1995

A. ROLL CALL ABSENT:

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

Others Present: Jacqueline White, Code Compliance Officer

B. MINUTES

Changes were suggested to the September 28, 1995 minutes. The minutes will be resubmitted for approval at next scheduled BZA meeting.

C. OLD BUSINESS

ZA-16-95: Mr. John L. Gunter

Mr. John L. Gunter has requested a 2 foot variance to the front setback requirement for the property at 123 Racefield Drive in the A-1, General Agriculture district in the racefield Subdivision. The property is further identified as Parcel (7-3) found on James City County Real Estate Tax Map (4-3).

The house is located on a flag shaped lot. The parcel is approximately 1.71 acres in size. Our records indicate that the house was built in 1985. Since the construction of the house setback requirements for the A-1 zoning district have changed. The zoning ordinance in effect at the time required:

...structures shall be located a minimum of 35 feet from any street right of way which is 50 feet or greater in width.

The current ordinance requires that:

...structures shall be located a minimum of 50 feet from any street right of way which is 50 feet or greater in width.

The original building permit application indicated that the house was to be constructed at the 35 foot setback line. A recent survey shows that the house is

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actually setback 33 feet. As constructed the house does not meet the requirements necessary at the time of construction nor does it meet current zoning ordinance requirements. Because the ordinance has changed the variance in question is not a 2 foot variance to the 35 foot requirement but rather a 17 foot variance to the current 50 foot requirement. An applicant cannot obtain a variance to an ordinance requirement no longer in use. Granting the variance will make the structure a legal nonconforming structure.

There is adequate room to have located the dwelling on the property within required setbacks. Except for being a flag lot, the lot does not exhibit any unique characteristic or unusual topography not shared by similarly zoned property.

Mr. Feigley opened the public hearing.

Mr. John L. Gunter stated that he recently sold the property and the new homeowner's lawyer required a new survey of the property. He further stated that had he known of this violation 11 years ago when he bought the property, he would have taken care of the variance then. He stated that the home is approximately 400 feet off the road and there is only one corner of the house that is one foot too close to the property line.

Mr. Feigley asked if Mr. Gunter was the original owner.

Mr. Gunter stated no, but he was the only owner to actually live in the house.

Mr. Feigley asked Mr. Gunter if he understood why the Board was asking for a 17 foot variance.

Mr. Gunter stated that he understood, but not at the time of application.

Both the Board and Mr. Gunter apologized because the hearing had been deferred to the October meeting from the September meeting.

Mr. Ripley asked Mr. Gunter if he knew who the builder was.

Mr. Gunter stated that he purchased the home from the builder, Jim Walter Homes. He further stated that before he purchased the property he asked Code Compliance to check the completion of the building permit; Code Compliance commented that all was going well. Mr. Gunter stated that he assumed that when the footing inspection took place, any setback violations would have been caught.

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Mr. Feigley stated that it was unfortunate, but that the building inspectors did not check for conformance to setbacks unless it was obvious to them.

Mr. Giedd asked if title insurance and a survey was required at the time he purchased the property.

Mr. Gunter stated he thought it was, but that he was not aware of a violation until he sold the property.

Mr. Feigley asked if there were any covenants that require certain setbacks to the property. He further stated that any variance that may be granted would only meet James City County Requirements, but not necessarily any covenant requirements.

Mr. Gunter stated that he was unaware of any covenants.

Mr. Anderson Bradshaw, attorney for the buyers, Mr. & Mrs. Kaminski, stated that he also wanted to express his gratitude for postponing the hearing until Mr. Gunter could be present.

Mr. Bradshaw stated that when he received the phone call that the case had been postponed, he was also notified at that time that it was not a 2 foot variance but in fact a 17 foot variance be requested. He stated that upon this information being received, he spent some time reviewing the code and was unable to find the section of the code that had been violated.

Mr. Bradshaw presented a lengthy explanation of a "flag lot" vs. a "flag shaped lot" and why he felt the house did not need a variance. Mr. Bradshaw further discussed various definitions in the zoning ordinance and how they were related.

Ms. White clarified that there is a definition of a front lot line in relation to flag lots. She further stated that if an interpretation is needed from the Zoning Administrator then Mr. Bradshaw may want to appeal that as another case, but at this point staff has considered this a violation and a variance should be decided based on the current information.

Mr. Bradshaw stated that he has written a letter to Mr. Farmer regarding his discoveries, but has not yet received a response from Mr. Farmer.

Mr. Giedd stated that the lot may be 50 feet wide and the house already conforming, but it is Mr. Gunter's case and in order to go along with what Mr. Bradshaw is saying it sounds like Mr. Gunter would be the one withdrawing the case and

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appealing the definitions.

Mr. Bradshaw stated that the Board needs to decide if this is a violation.

Ms. White stated that she did not believe that the Board has the authority to declare that it is not a violation and thought that it would need to be interpreted by the Zoning Administrator and then appealed to the Board.

Mr. Feigley closed the public hearing.

Mr. Feigley motioned that in case ZA-16-95 the applicant be granted a 17 foot variance from the intended front setback.

Mr. Giedd seconded the motion.

The motion was approved unanimously.

Mr. Carr stated that he would like Mr. Farmer to come before the Board and explain his position in the Gunter case as far as how he interprets the code book and why he has made the statement that he has and why staff has recommended that Mr. Gunter not be given the variance based on the information presented at this meeting.

Mr. Feigley wanted to know why the case came before the Board at all.

Mr. Bradshaw commented that when the matter first arose, all of the parties involved thought that a violation did exist. However, it was not until the matter had been postponed and Mr. Bradshaw had time to review the code, did he feel that a violation did not occur.

D. NEW BUSINESS

ZA-15-95; University Square Associates, Calvin Davis, General Partner

The case had been withdrawn and therefore was not heard.

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Feigley asked if the Board had received a copy of the letter regarding the Kingsway Church.

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Mr. Feigley stated that Mr. Farmer has asked the Board to consider whether they wanted to rehear the case since a ruling has already been given, and the new material is minimal. Mr. Feigley commented that legally they do not have to rehear the case.

Mr. Carr commented that the Kingsway Church has stated they disagree with the way staff determined the height.

Mr. Giedd asked if the appeal should be to the court and not to the Board.

Mr. Feigley stated that the proper action would be to appeal it to the courts within the 30 day time limit.

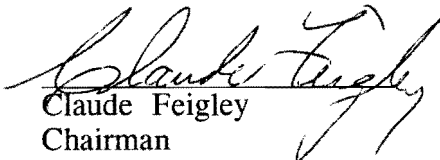
Ms. White commented that she's unaware of any time frame for refiling variance requests. The Board of Zoning Appeals would need to place a time frame requirement in their bylaws.

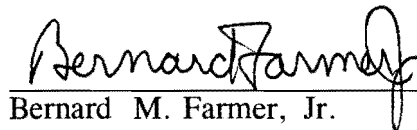
The board discussed time frames for resubmissions resulting in an informal vote where all but Ms. Wallace agreed to rehear the case.

The Board did not have any changes to the 1996 calendar for the proposed hearing dates.

F. ADJOURNMENT

The meeting was adjourned at 8:25 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary