

BOARD OF ZONING APPEALS

MINUTES

NOVEMBER 16, 1995

A. ROLL CALL

ABSENT:

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

Ms. Wallace

Others Present: Bernard M. Farmer, Jr., Director, Code Compliance

B. MINUTES

The September 28, 1995 minutes were approved unanimously.

Mr. Carr stated that in case ZA-16-95, flag shaped lot, it stated that Mr. Carr voiced some questions about the case. Mr. Carr stated that he had asked for Mr. Farmer's position on the case.

Changes were made to the October 26, 1995 minutes. The minutes will be resubmitted for approval at the next scheduled BZA meeting.

C. OLD BUSINESS

None.

D. NEW BUSINESS

ZA-21-95; Kingsway Church, Joe Morgan

Mr. Joe Morgan, on behalf of Kingsway Church, has reapplied for a variance to the height limitation requirement to allow for a steeple to be located on a proposed church. Mr. Morgan's application states that he is requesting a seven foot variance. The previous application, case number ZA-3-95, requested a 17 foot variance for the steeple and that was not granted. The property is located at 109 Leon Drive in the R-1, Limited Residential, zoning district and is further identified as Parcel (8-7-1B) found on James City County Real Estate Tax Map (38-4).

Drawings, recently submitted with the building permit application, indicate that as proposed the church, including steeple, has a height of 79'6" (as required by the ordinance the height is measured from the average elevation along the ground surface along the front of the building). Additional drawings, submitted with the variance application, depict a shorter steeple, however, the crucifix (approximately 4 feet in height) located on top of the steeple is not shown and the average elevation along the front of the structure is not represented, as they are on the building permit drawings.

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The strict application of the ordinance does not produce an undue hardship or situation not generally shared by liked zoned property.

Mr. Farmer additionally added that the issue is fairly clear in the "text" language of the ordinance and that the appropriate vehicle for exceeding the height is through the Board of Supervisors as a change to the ordinance provision.

Mr. Feigley asked Mr. Farmer to spell out the differences between this application and the application that was denied.

Mr. Farmer stated that lies with which drawings the applicant intends to prevail, whether they are the permit drawings that have been submitted into our office or the variance application drawings.

A review of the two drawings took place.

Mr. Feigley stated that he does not have any drawings to tie in with the application request of 7 feet.

Mr. Farmer commented that we will need clarification from the applicant.

Mr. Carr asked the reason for the 60 foot height limitation.

Mr. Farmer stated that he could not answer why 60 feet was chosen for this particular zoning district.

Mr. Giedd asked if there were different height requirements for the different zoning districts. Mr. Farmer replied yes and further stated that there are specific provisions that allow the Board of Supervisors to grant a height limitation waiver to allow things to go above the height of 60 feet in some districts.

Mr. Feigley opened the public hearing.

Mr. Joe Morgan stated that there was some question about the ordinance as to where the height is taken from and that is taken from the average height of the ground level at the front of the building. The architect redrew the plans and it shows a 9 foot variance and he thought that is what he asked for and provided the Board with a new set of drawings.

Mr. Ripley asked Mr. Morgan if the steeple, shown in the drawings submitted at this meeting, exceeds 69 feet from the average ground elevation.

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Mr. Morgan stated that 69 feet was correct. The height was based on the basement elevation. He further stated that the architect sent him a letter stating that he sent the revised drawings to code compliance, however, he did not receive a copy of the drawings.

Mr. Farmer stated that code compliance did receive a drawing that was different and that is the drawing that accompanied the variance application. The drawing has a redrawn front elevation of the building that was submitted to our office by Mr. Cronin, the architect. Mr. Farmer pointed out that this was the drawing submitted with the application and that it is inconsistent with the words on the application and inconsistent with the building application drawings that were also received by Code Compliance. Other than that, no other drawing has been received.

Mr. Morgan shared with the Board the process he has gone through for the church and this variance and why there is a 60 foot height restriction for zoning purposes.

Mr. Feigley asked if Mr. Morgan could prove to the Board a true hardship.

Mr. Morgan stated that the hardship is in trying to have the church look proportionate and keep in line with the colonial style.

A discussion of what is a hardship took place.

Mr. Carr asked where the average elevation is on the front of the building.

Mr. Morgan stated that the average elevation is in one foot below the first floor.

Mr. Ripley asked if the inspectors could measure that distance for conformance to the variance.

Mr. Timothy Langston explained why there was a 60 foot height restriction (for fire department access) as well as why keeping with the colonial aesthetics of Williamsburg is important.

Mr. Steve Seuters stated that they could design a church that look like all other churches, however they chose to have a church that has a colonial look and to keep the church proportionate.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he was not concerned about the drawings, but the key was whether or not the Board wants to grant a variance of a height greater than 60 feet

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above the average elevation. He further stated that he was reluctant to grant a variance in this case.

Mr. Carr stated that he wanted to back away from specific ordinances and simply look at what makes a community. He stated he felt church steeples make a community and they do not fit in with the exceptions listed in the ordinance. Mr. Carr stated that the Board is here to use common sense about ordinances that are written by well intentioned people, but there is no way that an ordinance can be written to cover every single situation.

Mr. Carr further stated that he will vote for church steeples to be higher than 60 feet most of the time because it represents what a lot of people really believe in.

Mr. Ripley stated that the hardest thing he has with the variance is that it is a clear cut case of us modifying what has been set down by the Board of Supervisors. He felt that there were other alternatives to make this work. He stated that he felt churches were an important part of the community, but he hated to defy the ordinance.

Mr. Giedd stated that he disagreed with Mr. Carr. He stated that the Board is here to look for the hardship, and that we have the authority to change their ruling if reasonable hardship is shown. He stated we need to keep our emotions out of the decisions. He further stated that he does not see a hardship and the Board does not have the right to throw it out because we don't like it. He stated that he felt there were legitimate reasons why 60 feet was chosen as a height restriction and the 60 foot restriction may have something to do with the scale of the building in the R-1 district and maybe this large building does not belong in this zone, or maybe the property needs to be rezoned so that the church can go to a higher steeple.

Mr. Carr moved that case ZA-21-95 be granted on the basis of no greater height than 69 feet from one foot below the first floor level.

Mr. Feigley asked for a second to the motion and none was given. Therefore the motion was dropped, however at the advice of Mr. Farmer they voted on the motion as stated.

The motion was denied with Mr. Feigley, Mr. Geidd and Mr. Ripley dissenting.

Mr. Morgan wanted the record to reflect that he would like to appeal the Board's decision.

ZA-23-95; Thomas and Susan Caulk

This case was deferred until December's meeting so that the owner could be present.

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ZA-24-95; King of Glory Lutheran Church; Paul Kristiansen

Mr. Farmer gave the staff report. He stated Paul Kristiansen, on behalf of the King of Glory Church, has applied for a variance to allow a church steeple to exceed the height requirements for a church currently under construction at 4897 Longhill Road in the R-2, General Residential, zoning district. The property is further identified as Parcel (1-33) on James City County Real Estate Tax Map (32-4).

The King of Glory Church is requesting a 25 foot variance to the height requirements to allow the steeple to be 85 feet from grade. Although the drawings indicate the actual height is to be approximately 80 feet, the applicant is requesting an additional 5 feet to account for any potential errors in the measurement or placement of the steeple.

The development of the above mentioned property has not been effectively prohibited. The church is currently under construction and the strict application of the zoning ordinance has not produced an undue hardship. The property does not exhibit any unusual topography or unique characteristics.

Mr. Feigley opened the public hearing.

Mr. Mike Ash, architect for the project, stated he tried to come up with a good reason as to hardship. He further stated that he did not approach the design of the church with the intention of violating the height restriction.

Mr. Ash stated that the overall aspect of the building needs to fit in with its context and with the nature of the building itself, so the church by definition is a public building that is a focus of the community and the idea of the steeple or spire that rises above the rest of the community has long been established. He further stated that it derived as a beacon to define sanctuary.

Mr. Ash stated that they wanted to design a church and a spire that were in harmony in proportion to themselves. Mr. Ash further stated that as a designer wanting to have a building proportionate can be a hardship.

Mr. Feigley asked Mr. Ash if he felt the 60 foot limitation was unreasonable. Mr. Ash stated that in relation to a steeple there is no such thing as unreasonable, however in needs to be in proportion and harmony to the building in which it is attached.

Mr. Feigley asked why it took the applicant until October to apply for a variance when the Planning Department advised them in April of the need for a variance.

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Mr. Ash stated that based on his past experience that once the building permit was issued it was his assumption that there were exceptions for churches and the variance was not needed, since in other dealings with other counties the building permit was not issued until all exceptions or requirements were taken care of.

Mr. Farmer clarified that Code Compliance does not try to discourage people from exercising their legal rights and we try to bend over backwards to be helpful as applicants come forward and want things. Mr. Farmer further stated that Code Compliance gives applicants advice as to what their legal recourse might be and that was what Mr. Pleskac, the planner was trying to do. Mr. Farmer stated that he did not feel that anybody should necessarily view that attempt as an indication relief would be granted from a specific provision. There was no implication that the variance would automatically be approved.

Mr. Feigley stated his concern as to why the King of Glory Church was granted a building permit prior to approval of a variance and Kingsway Church did not receive a building permit prior to approval of a variance.

Mr. Farmer stated that Kingsway Church has not been denied a permit, neither has King of Glory Church. Mr. Farmer further commented that Code Compliance would grant legal authority to construct that building absent granting authority to build a church spire higher than the ordinance provisions will allow.

Mr. Ripley explained his understanding of the permit process.

Mr. Giedd asked Mr. Ash if he was under the impression that this variance would be approved.

Mr. Ash stated based on experience, if the application had any questions or notation to the submitted plans, then the building permit was not issued until all questions or notations had been responded to.

Mr. Feigley stated that in reading the letters from the Planning Department, he felt as if everything was okay to proceed that it implied that the variance would be granted.

Mr. Carr voiced his point of view as to how the Board handles these variances and felt the Board of Supervisors needs to handle the zoning of churches differently.

Mr. Paul Kristiansen, chairman for the Building Committee, stated the reason why it took so long to ask for the variance, because when they received the building permit, they took note of the comments on the steeple and were told by their architect and other people in the area that as long as the application for variance took place in plenty

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of time to have the steeple ordered and delivered, there would be no problem. Mr. Kristiansen stated that he did not feel the steeple was a major issue.

Mr. Roger Venzke, pastor, stated that he did not feel arguments for aesthetics is a bad argument. He sees the Board as the Supreme Court and must interpret the law that has been written a long time ago and to try to interpret what was the intent of that law.

Mr. Feigley closed the public hearing.

Mr. Carr motioned to grant the variance request for case ZA-24-95.

Mr. Ripley stated that the Board cannot vote to grant a variance request from King of Glory Church and not Kingsway Church and felt the Board would have to vote against the variance request. Mr. Ripley further stated that he does not feel that any of the staff implied that the variance would be granted.

Mr. Giedd stated that he did not feel he could vote one way and then the other on a same type of variance and that there are other alternatives for a solution.

Mr. Feigley stated that he felt the Board should try to have the ordinance changed to comply differently with churches.

The variance was denied with Mr. Giedd and Mr. Ripley dissenting.

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Feigley asked Mr. Farmer to comment about "flag" lots.

Mr. Farmer stated that there is no absolute definition anywhere that he was aware of as to what constitutes a "flag" lot. Mr. Farmer stated that he has always taken that to mean as a lot that has a narrower stem that is not wide enough to be a buildable part of the lot.

The Board commented that Mr. Bradshaw was stating the ordinance referred to it as a right of way and not part of a lot.

Mr. Farmer stated that the issue is not whether it is or is not a "flag" lot but what you call the front property line. Mr. Farmer read the definition of a "flag" lot, discussed and showed drawings as to the definition of a "flag" lot.

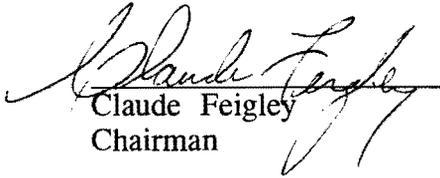
Mr. Feigley asked Mr. Farmer if it was proper for the Board to sit down with the Planning Department and bring the problem of the churches to their attention, or should the individual supervisors be advised of the problems.

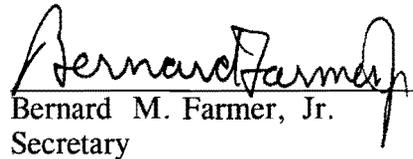
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Mr. Farmer suggested that the Board draft a letter that comes from the BZA collectively to the Planning staff the Board could also direct the letter to the Board of Supervisors and copy to the Planning Department. It was the consensus of the BZA to draft a letter to the Board of Supervisors.

F. ADJOURNMENT

The meeting was adjourned at 10:15 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary