



## MEMORANDUM

**TO:** Records Management  
**From:** Melissa C. Brown, Zoning Administrator  
**Date:** 3/28/2012  
**Re:** Board of Zoning Appeals Minutes – January 25, 1996

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The following minutes for the Board of Zoning Appeals dated January 25, 1996 is missing the signature for Mr. Claude Feigley, Chairman. Mr. Feigley is no longer available to sign these minutes.

These minutes, to the best of my knowledge, are the official minutes for the January 25, 1996 Board of Zoning Appeals meeting. They were approved by the Board of Zoning Appeals at the February 22, 1996 meeting. However, at the February 22, 1996 meeting, one correction to the January 25, 1996 was made and approved. The last page, Section E should have included a sentence stating the “Mr. Farmer was reelected a Secretary to the Board of Zoning Appeals”.

Please accept these into the official record.



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Melissa C. Brown  
Zoning Administrator

**BOARD OF ZONING APPEALS**

**A. ROLL CALL**

PRESENT:

Mr. Feigley  
Mr. Ripley  
Mr. Giedd

ABSENT:

Mr. Carr  
Ms. Wallace

Others Present:

Jacqueline White, Code Compliance

**B. MINUTES**

The minutes of the December 21, 1995 were approved with the following changes:

Page 2, Paragraph 4: change "happen" to "happened";  
Page 3, last paragraph: change "front of structure" to "side of structure"; and  
Page 7, Paragraph 3: change ""in feet" to "10 feet".

**C. OLD BUSINESS**

ZA-23-95: Thomas and Susan Caulk

This case has been deferred twice. A brief summary of the case was presented by Mr. Feigley.

Mr. Feigley stated that the problem with the property was a violation of the rear setback by an existing deck and steps and the applicant has also constructed another deck, without a building permit, which is also in violation of the setback ordinance. The problem in the past has been if the Board wanted to grant a variance to this applicant of just how much of a variance to grant. On the original statement the request was a range of 3 to 17 feet, so we the Board asked the applicant to get a more precise measurement. One of the problems associated with this particular case is that the rear setback is an indefinite line called the median of the level of the lake behind the house, so an attempt is being made to get a more precise value of the requested variance.

Mr. Caulk stated that he contacted the surveyor, Mr. Spearman and he stated that in order for him to survey the property he would need to charge approximately \$150.00 to basically come out to the property, place a pole at the edge of the lake and run a tape to it. Mr. Caulk further stated that Mr. Spearman stated he could do a more indepth measurement, but that it

would be more costly. Mr. Caulk stated that due to the cost he chose to do the measurement himself after conferring with Mr. Farmer and Mr. Feigley. He stated that his measurement from the existing deck was 18 feet, 4 inches and the lefthand corner of the newer deck is 17 feet, 11 inches and 16 feet from the left hand side closest to the lake.

Mr. Feigley asked if, when the house was purchased in 1992, there was a wood deck and stairs and if the property surveyed at that time.

Mr. Caulk stated that the property had been surveyed, but without setback lines.

A discussion of how Mr. Caulk discovered a variance was required ensued.

Mr. Ripley stated that we had been looking at the rear setback as a violation, but it also appears that a violation may be on the right side setback too. It appears to be a violation of approximately 8 to 10 inches.

Mr. Giedd asked Mr. Caulk how far the new deck extends beyond the old deck.

Mr. Caulk stated approximately 3 feet.

Mr. Giedd asked Mr. Caulk if there was any reason why the new deck could not come back to meet the old section.

Mr. Caulk stated that the reason the deck extends the 3 feet is due to the location of the hot tub. If he had placed the hot tub even with the old deck he would have had to dig a hole, by placing the hot tub where it now sits, a hole was not necessary.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he did not have a problem with granting a variance for the structures that were there when Mr. Caulk purchased the property. He further stated that he did have a problem approving the additional deck when the violation is a result of the failure to obtain a building permit. Mr. Feigley stated that he agreed the new structure that was built is less of a violation than the corner of the existing structure. He stated that the original violation was a little less than 17 feet and the new structure is in violation by approximately 16 feet.

Mr. Ripley stated that he did not have a problem with the violation of the existing deck since Mr. Caulk purchased the

property not knowing there was a violation. He further stated that he did have a problem with the new section.

Mr. Ripley moved that in case ZA-23-95 a variance be granted for 8 tenths of a foot to the right side yard requirement for the existing structure; and for 17 feet for the original deck. The deck that Mr. Caulk constructed is to be reconfigured after the proper building permits have been obtained.

The motion was approved unanimously.

**D. NEW BUSINESS**

ZA-29-95; Ralph Brown for Kingdom Hall of Jehovah's Witnesses

Mr. Ralph G. Brown, on behalf of the Kingdom Hall of Jehovah's Witnesses, has requested a variance from the side yard requirement for the property at 5731 Richmond Road, in the B-1, General Business District. The property is further identified as Parcel (1-29) found on the James City County Real Estate Tax Map (33-1).

The variance is being sought in order to construct an addition and a carport onto the existing church. The original building, which measured 25 feet by 50 feet, was constructed prior to 1970. The rear section of the existing building (37 feet by 56 feet) was added in 1973 with the approval of a site plan. The property consists of an approximately 1.25 acre site which contains the current 3,300 square foot building.

The building currently encroaches into both the front setback and one of the side setbacks. A minimum of 50 feet is required for the front setback but the building encroaches 22.28 feet into the setback. On the side (southern property line) the building encroaches 6.58 feet into the required 20 foot setback.

In 1989 the property was rezoned, from R-3, General Residential District to B-1, with proffers (Z-15-89). When the planned sale of the church property did not materialize the proffers were amended in 1995 (Z-18-95). The change in the proffers was necessary as the previous 1989 proffers required that no building be erected closer than 100 feet from Richmond Road which would have precluded the current proposed additions.

The proposed addition will be 720 square feet in size and the proposed carport will comprise an additional 480 square foot increase in the footprint size. The Berkeley Commons Outlet Center, zoned B-1, lies to the south and the west of the church property. The property to the north is zoned R-2, General residential District. It is required by Section 20-

394 of the County zoning ordinance that the side yard for any property zoned B-1, be increased to 50 feet when the property is adjacent to residentially zoned property. As proposed the carport would encroach 18.27 feet into the required setback. The applicant is requesting that the side setback be reduced to only 20 feet. In their request the applicant has stated that the addition will not fit at any other location. The intended construction location may constitute the easiest location to integrate the addition and carport into the building; however, other construction options do exist. The carport and addition could be moved more toward the rear of the structure and the proposed interior rearranged. Additionally, a smaller carport, awning, or canopy might be constructed, which adheres to zoning requirements, and still fulfills the applicant's desire to provide shelter to those entering the church.

The strict application of the zoning ordinance does not preclude construction on the property. No exceptional topography, unusual lot size or shape, and no extraordinary characteristic has been demonstrated to exist for this property.

Mr. Feigley asked Ms. White if the Board needs to consider front and left side encroachment to the setback.

Ms. White stated that it is not necessary.

Mr. Feigley clarified the proffers involved with this property.

Mr. Feigley opened the public hearing.

Mr. Ralph Brown, stated that the space is needed, due to the congregation growth. Space is at a premium and there is no room to upgrade the bathrooms without the addition. Mr. Brown stated that several ideas as to the most desirable place to have the addition. Mr. Brown stated that the organization does not necessarily have to have the carport, but a shelter is needed as far as the weather is concerned. However, whatever is built will more than likely encroach on the setback line. Mr. Brown further stated that the neighbors to the north have been very receptive to the idea of the addition and have absolutely no objections. Mr. Brown stated the Berkeley Commons has no objections, because it does not affect their property.

Mr. Feigley asked Ms. White that according to the submitted drawings it appears that the new additions do not violate the zoning ordinance and that the only violation is the carport.

Ms. White stated yes.

Mr. Feigley stated that according to the zoning code that any canopy less than 3 feet that is attached to the building, even though it extends out into the setback area, would not be a violation.

Mr. Brown stated that the carport is strictly a convenience, because it would be nice to be able to drive under cover in bad weather.

Mr. Feigley asked Mr. Brown if he had drawings of the carport.

Mr. Brown stated that he did not have plans with him on the carport. Mr. Brown stated that they would like a structure that fits in with the building. Mr. Brown further stated that the carport and entrance to the building needs to be at the side of the building, because the stage of the auditorium sits towards the back of the building and they would not like any disruption from a rear entrance.

Mr. Giedd asked if any type of subdivision took place on this property recently.

Mr. Brown stated no.

Mr. Ripley asked if any portion of the property had been sold to Berkeley Commons.

Mr. Brown stated no, that they did not really negotiate with the organization, except for the entrance and paving of the parking lot.

Mr. Ripley asked Ms. White if the property to the north is now zoned R-2 and if the Steering Committee for James City County is in the process of doing a new comprehensive plan and wanted to know if there were any thoughts as to changing the zoning along the Richmond Road corridor.

Ms. White stated that she was unaware of any changes that may or may not take place in this area.

A discussion of the possible rezoning of the property and the proffers involved took place.

Mr. Feigley asked Mr. Brown what amount of a variance to the side yard requirement was he requesting.

Mr. Brown stated that he would like enough of a variance to place the carport.

Mr. Ripley stated that an 18 foot variance would be required with the stated proposal.

Mr. Giedd pointed out that the property was already non-conforming.

Mr. Brown stated that the congregation intends to stay at this location for some time. They have a lot of visitors who attend services.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that if not for the R-2 zoning on the north side of the building and since the existing ordinance would allow 20 feet on the south side he would be willing to allow a setback of 20 feet on the north side which means a 30 foot variance would be granted from the 50 foot setback requirement.

Mr. Giedd stated that he thinks the fact that the property to the north is zoned R-2 and at this particular point what Mr. Brown wants is what is in the submitted drawings, his inclination would be to give them what they needed as opposed to adding ten feet on general principal.

Mr. Giedd moved that in case ZA-29-95 the Board grant a 20 foot variance to the current 50 foot setback on the north side of the building for the purpose of adding an addition and carport to the existing structure. Mr. Ripley seconded the motion.

The motion was approved unanimously.

#### **E. MATTERS OF SPECIAL PRIVILEGE**

Mr. Feigley stated that there were no Matters of Special Privilege except that the Board of Supervisors has changed their ordinance on church steeple heights. The Board of Supervisors will now be responsible for granting waivers to the height limitations.

Mr. Feigley was re-elected as Chairperson, Mr. Ripley was re-elected as Vice-chairperson and Mr. Farmer was re-elected as Secretary of the Board of Zoning Appeals for the 1996 term.

#### **F. ADJOURNMENT**

The meeting was adjourned at 8:40 P.M.

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Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary