

**BOARD OF ZONING APPEALS**

February 22, 1996

**A. ROLL CALL**

PRESENT:

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

ABSENT:

Mr. Carr

Others Present:

Bernard Farmer, Zoning Administrator

**B. MINUTES**

The minutes of the January 25, 1996 were approved with the following change:

Last Page, Section E, add "Mr. Farmer was reelected as Secretary to the Board of Zoning Appeals".

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

**ZA-01-96: Joel Sheppard, Inc.**

Mr. Farmer gave the staff report indicating that Mr. Joel S. Sheppard has requested a variance to the rear setback requirement for the property at 120 Harvest Circle, in the R-1, Limited Residential District. The property is further identified as Parcel (20-33) found on James City County Real Estate Tax Map (47-2).

In March 1995 Mr. Sheppard, submitted a building permit application and plans to construct a single family dwelling. The plans indicated that a deck on the rear of the house would be 26 feet from the rear lot line. The plans were approved and a building permit issued. Apparently, both the plans examiner and Mr. Sheppard overlooked the discrepancy and mistakenly thought it was acceptable. The house and deck were then constructed. The completed deck, which is 168 square feet, encroaches into the rear setback by nine feet.

The lot does not exhibit any unusual topography or unique characteristics. However, the size of the house and concrete drive limit the addition of a deck to the sides of the house.

Mr. Feigley asked Mr. Farmer what his feelings were on the responsibility of an applicant, to review a permit once the permit had been granted.

Mr. Farmer stated that builders hold some responsibility in understanding the requirements and not being wholly dependant on others.

Mr. Feigley opened the public hearing.

Mr. Joel Sheppard stated that he discovered the error and went to Mr. Farmer. Mr. Sheppard stated that he was advised to appear before the Board for a variance. Mr. Sheppard stated that he had been in contact with the neighbor behind the property in question and they did not have a problem with the location of the deck.

A discussion of how Settler's Mill had been developed took place.

Mr. Farmer stated that within Settler's Mill there are three types of restrictions in terms of setback dimensions, normal zoning ordinance provisions, the cluster restrictions and then within the cluster divisions there are individual lots with requirements due to Chesapeake Bay Preservation Regulations.

Mr. Feigley asked Mr. Farmer how much experience did the Plans Examiner have and how long he has been with Code Compliance.

Mr. Farmer stated that Doug Murrow, Plans Examiner, has been with the department 4 years and is a registered architect. Mr. Farmer further stated Mr. Murrow has considerable education, good experience, he's been through the certified BZA Program, understands zoning and is eminently qualified to do what he's doing.

Mr. Sheppard wanted the record to show that Mr. Murrow should not be blamed, that he is more than qualified and is always very helpful with any questions he has had.

Mr. Feigley closed the public hearing.

Mr. Ripley stated that he felt it was an unfortunate event and an oversight and the Board needs to move forward.

Mr. Feigley stated that he felt, knowing Mr. Sheppard's reputation in the community and the fact that this is apparently an oversight of a well qualified employee, the variance should be granted. Mr. Giedd stated he felt the same way.

Mr. Feigley moved that in case ZA-01-96 a variance be granted to the rear setback requirement. Ms. Wallace seconded the motion.

The motion was unanimously approved.

**ZA-02-96: Heinz and Melanie Plato**

Mr. Farmer gave the staff report stating that Heinz & Melanie Plato have requested a variance to Section 20-200, public utilities, of the James City County Zoning ordinance for their property at 5408 Riverview Road in the A-1, General Agricultural zoning district. The property is further identified as Parcel (1-10-B) on James City County Real Estate Tax Map (15-3).

The lot in question is over four acres in size. The variance is requested to locate a pole 110 feet closer to the house and reduce the related costs.

Mr. Feigley opened the public hearing.

Melanie Plato stated there are overhead lines to the adjacent houses and Virginia Power has proposed to place one pole on the other side of the private road and then go underground 110 feet more than would normally be underground.

Mr. Feigley asked if the pole they are wanting to move an existing or an additional pole. Ms. Plato stated an additional pole.

Mr. Giedd asked if Virginia Power would bring the service all the way to the house overhead. Ms. Plato stated that Virginia Power will bring the service to within 200 feet and then it will go underground.

Mr. Feigley closed the public hearing.

Mr. Giedd stated he was not aware that in an A-1 zoning that there would be this underground service requirement.

Mr. Feigley stated since the properties on either side of the subject property have existing overhead service and due to the nature of this particular area, it does place somewhat of a hardship on the Plato's to place underground service on their property.

Mr. Ripley moved to allow the Plato's to locate the service drop pole closer to their residence to obtain a 200 foot maximum underground service to their dwelling. Mr. Giedd seconded the motion.

The motion was unanimously approved.

**ZA-03-96: Powhatan Associates**

Mr. Farmer gave the staff report stating that Mr. W.R. Whitley, Jr., on behalf of Powhatan Associates, has applied for a variance to the Special Regulations sections of the James City County zoning ordinance for their property, Powhatan Plantation. The property is located at 3601 Ironbound Road and is further identified as parcel (01-19) found on James City County Real Estate Tax Map (38-3). This property is located in the PUD-R, Planned Unit Development, Residential Zoning District.

Mr. Whitley, on behalf of Powhatan Associates, is requesting a variance to allow site lighting, in the current construction phase and future construction phases, to consist of light poles from which the bulb and globe of the light fixture both extend below the casing. The ordinance was changed in July 1995, prohibiting light fixtures which were not recessed.

The lot does not exhibit any unique characteristic or unusual topography and no undue hardship has been demonstrated.

Mr. Feigley stated that apparently the site plan for Phase 9 went through the proper channels for approval and he asked Mr. Farmer if the lighting would have been part of that site plan. Mr. Farmer stated yes.

Mr. Ripley wanted to know if there were any comments to the site plan approval reference changing the lights.

Mr. Farmer stated that Mike Freeda, Planning, advised Cliff Freeman about the lights and the ordinance.

Mr. Feigley opened and closed the public hearing (there was no representation from the applicant).

Mr. Feigley stated that the existing light poles are very attractive and the only disadvantage is that it is exposed as a dusk to dawn light. Mr. Feigley further stated that having been a member of the Lighting Committee that resulted in the ordinance, currently in effect, that the thinking of the committee was on commercial properties, bus parking lots, shopping centers, etc. Mr. Feigley read the recommendations from the Lighting Committee.

Mr. Feigley read a memo from Mike Freeda regarding his discussion with Powhatan Associates noting that the lights must be recessed within the fixtures.

Mr. Ripley stated that he is reluctant to grant a variance when there is no one available to represent the case and that in the past the Board has deferred it. Mr. Ripley further stated that he would like to see the lights as they are currently. Mr. Feigley agreed that the Board should defer.

Mr. Giedd stated that he did not feel there was anything to gain by deferring the case another month.

Ms. Wallace stated that she had mixed emotions about continually postponing cases simply because someone does not appear to present their case before the Board. Ms. Wallace stated she was not in favor of postponing this case and that she likes the looks of the current lights and feels that they should be uniform.

Mr. Feigley stated that if a variance was granted to allow Powhatan Associates to use what they currently have on site, there should be

some conditions stating that this will not apply to recreational areas, parking areas, etc.

Mr. Feigley moved that in case ZA-03-96 a variance be granted to Section 20-53 to permit the applicant to install site lighting in conformance with existing lighting throughout the PUD complex. Mr. Ripley seconded the motion.

The motion was approved unanimously.

**ZA-04-96: John H. Speegle, D.D.S.**

Mr. Farmer gave the staff presentation, indicating that Dr. John H. Speegle, D.D.S., has requested a variance to the rear and side yard requirements, for a proposed addition, on the property at 7349 Richmond Road, in the B-1, General Business District. The property is further identified as Parcel (01-33) found on James City County Real Estate Tax Map (23-2).

The building was originally built as a single-family dwelling around 1952. The submitted site plan also shows a garage/storage structure on the property. While the site plan is unclear as to the exact location, our records indicate that it may encroach by approximately five feet into the side yard (south) property line. In 1979 the structure was converted to a dentistry practice for the previous dentist, Dr. McCoy. It is Dr. Speegle's desire to expand the structure to accommodate new facilities. Although the layout of the proposed addition has not been finalized Dr. Speegle has applied for a variance of 11 feet from the rear yard requirement and 20 feet from the side yard (north) requirement.

The existing building is a non-conforming structure, therefore expansions are allowed, but must conform to current regulations. About two-thirds of the proposed addition would encroach into the rear and side yard.

Mr. Farmer stated an addition to this business is still possible with the required setbacks, although the layout may be more difficult to integrate into the existing structure and site. The property does not exhibit any unusual shape of topography.

Mr. Feigley asked Mr. Farmer how this piece of property became designated a B-1 zoning district. Mr. Farmer stated he did not know.

Mr. Feigley opened the public hearing.

Dr. Speegle stated that he would like to expand his business, but with residential on all three side of his property it makes it difficult to do this with the current setback requirements.

Mr. Ripley asked Dr. Speegle if he had looked at any other direction that he might be able to expand the building and would it be possible to expand on the left side of the property toward the parking lot.

Dr. Speegle stated that it would seriously crimp the parking lot. Dr. Speegle further stated that the stairway to the basement is on the outside of the building and there is also a buried oil tank, for heating purposes, near the stairwell. Dr. Speegle stated that his plan was a concept plan and he has maximized the amount of space he would need, and that after finalizing the details it could be smaller.

A discussion of how much room may actually be required took place.

Ms. Kay Kelley, daughter of neighbor Eva Hitchens, stated that her mother's property borders the subject property on two sides (left and rear when facing the subject property). Ms. Kelley further stated that they had concerns if the roadway to her property would have to be relocated if this variance was granted.

The Board stated that they did not feel the approval of the variance would interfere with her roadway.

A discussion of conforming vs. nonconforming properties took place.

Mr. Giedd asked Mr. Farmer if the professional offices (doctors & dentists) are looked upon as commercial properties. Mr. Farmer stated yes.

Mr. Feigley closed the public hearing.

Mr. Feigley moved that in case ZA-04-96 a variance be granted for a 10 foot variance to the rear property line with the condition that the proposed addition be no closer to the north side property line than the existing structure.

Mr. Giedd asked Mr. Feigley if he would add an additional condition that the property remain as a "professional" office.

Mr. Feigley agreed to the additional condition. Ms. Wallace seconded the motion.

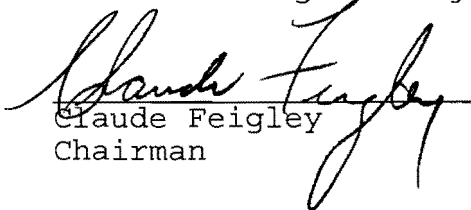
The variance was granted unanimously.

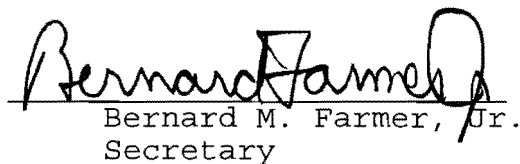
**E. MATTERS OF SPECIAL PRIVILEGE**

None

**F. ADJOURNMENT**

The meeting was adjourned at 9:50 P.M.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary