

**BOARD OF ZONING APPEALS**

**May 23, 1996**

**A. ROLL CALL**

PRESENT:

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

ABSENT:

Others Present:

Bernard Farmer, Zoning Administrator

**B. MINUTES**

The minutes of the April 25, 1996 were approved unanimously.

**C. OLD BUSINESS**

**ZA-11-96; Charlotte Moore**

Mr. Farmer stated that a letter was received pertaining to a case last month involving Charlotte Moore. Mr. Farmer further stated that it was an unusual situation in that Ms. Moore purchased a piece of property on Clark Lane which was a meandering dirt road until recently when the county undertook a block development grant project to pave the road. Mr. Farmer stated that the property was divided a long time ago by deeds and the county tax map records were incorrect, because of the uncertainty of the physical location and when simply reading the deeds. Surveyors were incorrect in their location of the property, it is actually situated 300 feet closer to Mooretown Road than was represented to the board on the plat submitted with the case. Mr. Farmer further stated that there are two issues involved, one would be whether the Board feels the movement of the 300 feet closer to the road is a pertinent fact in regard to the decision in granting the variance. Mr. Farmer stated that if the Board feels that the information was pertinent to their decision, then it would be appropriate to simply rehear the case. If they do not feel it was pertinent to the case then they need to affirm by voice vote that the case remains as previously decided. Mr. Farmer stated that the second issue involved is a procedural one in that there was no letter sent to what is now an actual adjacent property owner. Mr. Farmer further stated that staff has been trying to reach the owner, Mr. Fauntleroy, but have yet to make contact. Upon contact, if he was not aware, then staff will need to readvertise so that the action may remain valid.

Mr. Feigley asked if the property was still approximately the same size as the property that was discussed at the previous meeting.

Mr. Farmer stated that the property is a little larger.

Mr. Feigley stated that the location of the property was not a factor in his decision in granting the variance. Mr. Feigley further stated that he would still grant the variance if it was reheard today.

Mr. Ripley stated that he had a concern reference the VDOT deadline for removal of the house.

Mr. Farmer stated he was going to advise Ms. Moore that she was welcomed to proceed with the moving of the house, even if a new hearing was going to be required, because procedurally things were in error.

Mr. Feigley agreed with Mr. Farmer, but he did have a concern with the adjacent property owner not being notified.

Mr. Feigley asked if the Board was in agreement to advise Ms. Moore to proceed with the understanding that the variance granted at the last meeting has no impact reference the relocation.

Mr. Ripley stated that he agreed, however the impact of not notifying the adjacent property owner could cause some problems in the future.

Mr. Farmer stated that it was his understanding that Mr. Fauntleroy is grateful that the confusion has been cleared and has no objection to Ms. Moore's request.

Mr. Ripley stated that he is in favor of the variance.

The Board agreed for Mr. Farmer to advise Ms. Moore to proceed as scheduled.

#### **D. NEW BUSINESS**

##### **ZA-07-96; Tommy Hilfiger Retail, Inc.**

Amy Siano, on behalf of Tommy Hilfiger Retail, Inc. asked, via fax, for and received deferral to the next scheduled board hearing.

##### **ZA-12-96; Williamsburg Landing**

Williamsburg Landing asked for and received deferral to the next scheduled board hearing.

##### **ZA-13-96; Alois J. Kuhn & Donna L. Kuhn**

Mr. Farmer presented case ZA-13-96 stating that Mr. & Mrs. Kuhn have applied for a variance to the rear yard requirement for a proposed carport for their property at 149 Beler Road in the R-1, Limited Residential, zoning district. The property is further identified as parcel (7-26) found on James City County Real Estate Tax Map (38-4).

The property in question is a half acre, rectangular shaped lot located on the corner of Beler Road and Stanley Drive. In accordance with the zoning ordinance the front of the property is on Stanley Drive, a dead end. The house, constructed in 1958, faces Beler Road and is a one story dwelling approximately 2000 square feet in size.

Mr. & Mrs. Kuhn are requesting an 18 foot variance to allow for a carport to be constructed adjacent to their house. The existing house is nonconforming in that it currently encroaches into the current rear yard requirement by .3 feet. The property owners have cited several design and economic issues as primary in their desire to locate the carport to the immediate right (the rear yard) of the home. Although less desirable there are several other options that are available for the location of the carport that meet current zoning ordinance requirements.

The property has been put into beneficial use and no undue hardship has been demonstrated.

Mr. Feigley noted that on the submitted drawings there is a notation reference "former property line" and he asked Mr. Farmer if there had been some change to the boundaries of the lot.

Mr. Farmer stated that he would have to defer to the property owners, he did not have any information.

Mr. Feigley opened the public hearing.

Mr. Kuhn stated that he and his wife would like to have a carport next to the north-east side of the house. Mr. Kuhn further stated that this was the best location for the carport because there will remain approximately 18 feet from the carport to the property line. Mr. Kuhn commented that the location is the safest access to the property, since it is away from the corner of the intersection of Beler and Stanley Drive.

Mr. Ripley asked if there was a garage on the property.

Mr. Kuhn stated that currently there is no garage and he did not believe there ever was one.

Mr. Feigley asked Mr. Kuhn if he had considered any other arrangements for the location of the carport.

Mr. Kuhn stated that he had and showed the different possibilities to the board.

Mr. Feigley closed the public hearing.

Mr. Nice commented that he felt the hardship was in the definition of the "front" of the house.

A discussion of corner lots took place.

Mr. Feigley asked if the lot to the rear of the property was able to be developed.

Mr. Farmer stated that he was not sure the property was able to be developed because Mill Creek runs through the area and it is considered protected wetlands. Mr. Farmer also noted it is considered protected land because the slope is too steep.

Mr. Ripley stated that in the past they have been lenient to corner lots that were developed prior to the ordinance.

Mr. Feigley stated that he agreed with Mr. Ripley. Mr. Feigley further commented that his first impression was that the carport would not be noticeable and felt the granting of a variance would be justifiable.

Mr. Giedd stated that it is a non-conforming property and you cannot make a property more non-conforming. Mr. Giedd further commented that Mr. Kuhn has 53 feet of usable area on the Stanley Driver part of the property.

Mr. Feigley moved that in case ZA-13-96 an 18 foot variance be granted to the rear setback requirement for the construction of a carport. Ms. Wallace seconded.

The motion was unanimously approved.

**ZA-14-96; James and Eva Tull**

Mr. Farmer presented the case stating that James & Eva Tull had applied for a variance to the rear yard requirement to allow for a proposed expansion and enclosure of an existing deck. Their property is located at 4449 Powhatan Crossing in the Powhatan Crossing Subdivision. The property is further identified as parcel (11-9) found on James City County Real Estate Tax Map (46-2), in the R-1, Limited Residential, zoning district.

The house, constructed in 1990, is located on a square lot with single family dwellings on either side and a wooded lot to the rear. The deck is attached to the rear of the home and is 12' x 16' in size. The Tull's have stated that the existing deck was already on the house at the time of their purchase in 1993. A review of the original building permit does not show a deck to be part of the original construction plans, and no subsequent building permits were issued for the construction of the deck. It is staff's opinion that the deck was an unpermitted illegal addition. Mr. & Mrs. Tull now desire to enlarge the deck to 16' x 16' and enclose it.

The R-1, Limited Residential, zoning district requires a 35 foot minimum rear yard. The existing deck currently encroaches into the rear yard requirement by approximately 6 feet. To accommodate the existing encroachment and the proposed expansion a variance of 10 feet is needed. There is buildable space for additional deck area behind the garage.

Ms. Wallace asked Mr. Farmer at what point was it noted that the deck was encroaching.

Mr. Farmer stated that the encroachment was discovered when the Tull's submitted the plan for adding and enclosing the deck.

Mr. Ripley stated that the survey found in the packet was dated December, 1993 and the encroachment is shown at that time and it appears that no one was notified at the time of the survey or closing.

Mr. Feigley opened the public hearing.

Mr. James Tull stated that he bought the place not knowing that there was a problem with setbacks. Mr. Tull further commented that he was made aware of the encroachment when the building permit was filed for.

Mr. Ripley asked if the closing attorney for the property advised Mr. Tull of the encroachment at the time of closing. Mr. Tull stated no.

Mr. Giedd asked Mr. Tull if he would be retaining the present deck.

Mr. Tull stated that he was going to add to the existing deck and remove the rails from the existing deck.

Ms. Dawn Tull-Noyes, daughter of Mr. Tull, stated that only 2 adjacent properties will be able to see the deck and that it will have a positive impact on the property and surrounding area.

Mr. Nice asked if it would be practical if the variance were granted to build on the existing deck only.

Mr. Tull and Ms. Tull-Noyes discussed the reasons why they chose the property and why they would like the deck extended.

Mr. Feigley closed the public hearing.

Mr. Feigley stated that he had some concerns reference the illegal deck. Mr. Feigley further commented that he could not understand why the encroachment was not addressed by the attorney at the time of closing.

Mr. Giedd stated his first thought is to grant a variance to the 6 feet currently encroaching and did not feel that granting the additional 4 feet was justifiable.

Mr. Ripley asked Mr. Farmer what was the plan for the undeveloped property behind the subject property.

Mr. Farmer stated that there is a large tract of land that will eventually be developed as residential property. Mr. Farmer further commented that the County has been negotiating for part of the property as well.

Ms. Wallace stated that she was in agreement with Mr. Giedd in that a variance should be granted to the existing deck to bring it into conformance, and not grant a variance for the enlargement of the deck.

Mr. Ripley stated that he agreed that the board should definitely not grant a variance to allow the extension of the deck. Mr. Ripley further commented that he had a problem with the enclosing of the deck as well.

Mr. Feigley stated that he was considering adding conditions to the variance, but agreed that a variance should be granted to allow the existing deck to be brought into compliance and not grant a variance for the addition.

Mr. Ripley commented that this case is an unfortunate incident because the Tull's bought the property in good faith and that the surveyor and

the closing attorney should have notified the Tull's of the violation upon discovery.

Mr. Giedd moved that in case ZA-14-96, a six foot variance be granted to the 35 foot rear yard requirement so that the existing deck may be brought into conformance. Ms. Wallace seconded the motion.

The motion was unanimously approved.

**ZA-15-96; Jackie Frogg & Bonnie Frogg**

Mr. Farmer presented the case stating that Mr. & Mrs. Frogg had applied for a variance to the front setback requirement for their property located at 154 Old Stage Road in the Burnham Woods Subdivision. The property is further identified as parcel (4-29) found on James City County Real Estate Tax Map (12-1), in the A-1, General Agricultural, zoning district.

The house was constructed in 1980 by the Digges Company, property owners at the time. While there are no building permits on file, an original copy of the health department approval indicates that the house was to be rectangular in shape and sit 25 feet from the left property line and 35 feet from the front property line. At the time of construction the front setback requirement in the A-1 zoning district was 35 feet.

Mr & Mrs. Frogg purchased the house in 1984. The survey that was done when they purchased the home incorrectly showed the front setback to be 30 feet. The survey also indicates that the house is actually L-shaped, not rectangular as originally planned. The owners state that in the process of refinancing, they were made aware of the setback violation. The survey completed as a part of refinancing correctly depicts the front setback, as it should have originally been shown, at 35 feet. The house is shown to be 31.43 feet from the front property line (an original encroachment of 3.57 feet).

Since the original construction the front setback requirement for the A-1 zoning district has been changed from 35 feet to 50 feet. The Frogg's now need a variance of approximately 19 feet to comply with current zoning ordinance requirements.

Mr. Nice asked Mr. Farmer if it is common for surveys to be inaccurate. Mr. Farmer stated that given the amount of construction going on in the county, no it is very minimal.

Mr. Feigley opened the public hearing.

Mr. David Holland, attorney for the Frogg's, stated that when the house was purchased in 1984, the Frogg's received a survey and it showed the setback as 30 feet and in the course of refinancing, they had another survey showing that the property had a 35 foot setback and he advised the Frogg's to apply for a variance. Mr. Holland stated that the Frogg's are the innocent party in all of the errors.

Mr. Feigley stated that the only unusual thing about this case is that with the ordinance change the required setback currently is 50 feet.

Mr. Feigley closed the public hearing.

Mr. Ripley asked when the ordinance changed.

Mr. Farmer stated that it changed sometime between 1987 and 1988.

Mr. Feigley moved to grant a 19 foot variance to the front setback for the existing structure. Ms. Wallace seconded the motion.

The motion was unanimously approved.

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

Mr. Feigley asked Mr. Farmer to brief the board as to roof vs. non-roof.

Mr. Farmer quoted the ordinance in relation to the definition of a roof. Mr. Farmer stated that the ordinance stated the building line is defined as the intersection marking the building face and the ground plane. The portion above is in a different plane and is actually not the building face but becomes part of the roof line and roof structure.

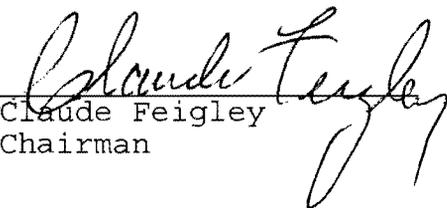
A discussion of the Digges' building roof and facade took place.

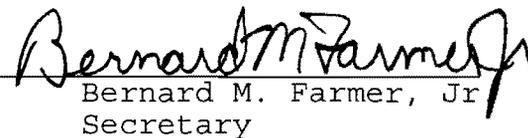
Mr. Feigley shared his research with the board in relation to attendance of the members.

The board agreed that Mr. Feigley would draft language for the bylaws related to attendance.

#### **F. ADJOURNMENT**

The meeting was adjourned at 9:15 P.M.

  
Claude Feigley  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary