

BOARD OF ZONING APPEALS

October 10, 1996

A. ROLL CALL

PRESENT:

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

ABSENT:

Mr. Ripley

Others Present:

Jacqueline White, Zoning Officer
Steve Grant, Staff
Doug Murrow, Plans Examiner

B. MINUTES

The minutes of the August 8, 1996 and September 8, 1996 were approved as submitted.

C. OLD BUSINESS

ZA-21-96; Gregory R. Davis, Attorney for Colonial Construction and Charles & Mary Crone.

Mr. Gregory Davis, attorney for the developer and the owners, has applied for a variance from the rear setback requirements for the property located at 122 Indigo Dam Road. The property is further identified as parcel (10-9A) located on Real Estate Tax Map (38-4) in the R-2, General Residential zoning district.

The applicant is requesting a 4.9 foot variance from the rear yard requirement. The property owners, Charles and Mary Crone, subdivided the original property in 1995 (S-109-94), creating parcels (10-9) and (10-9A). In the subdivision process, a five foot strip of land across the front of the parcels was dedicated to Virginia Department of Transportation (VDOT). Site drawings of the parcels immediately across the street also indicate that a five foot strip was dedicated to VDOT, creating a fifty foot right of way for this portion of Indigo Dam Road.

Colonial Construction received a building permit for construction of a single family dwelling on this property in April 1996. The original site plan submitted with the building permit indicated that a 1-story, L-shaped structure was to be thirty feet from the front property line and 35 feet from the rear property line. The approved building permit stated that a deck was not permitted and requested that, due to the proximity of the structure to the property lines, a foundation survey be provided to the Code Compliance office.

The post construction survey submitted with the variance request indicates that the house has been constructed at an angle. As built the structure appears to encroach into the rear yard requirement by approximately 6 feet at the north corner and 4.9 feet at the other corner. The applicant needs a 6 foot variance to the rear yard requirement to meet zoning ordinance requirements. The final certificate of occupancy has not yet been issued.

The applicant has indicated that the surveyor's error in setting the house created the encroachment. The contractor failed to obtain a foundation survey to assure compliance with the zoning ordinance prior to completion of the structure.

Mr. Feigley asked Ms. White for clarification of the amount of a variance requested by the applicant and the county.

Mr. Feigley opened the public hearing.

Mr. Greg Davis, attorney for the applicant, stated that the error in the placement of the house was due to surveyor error. He further commented that his client thought that the survey required by the Code Compliance office was due at completion not at foundation.

Mr. Giedd asked if the house would fit in the building envelope. Mr. Davis stated yes, however he felt that the envelope was a hardship.

A discussion of surveys and surveyors took place.

Mr. Crone stated that he hired the surveyor after checking into his background and on the advice of other builders in the area.

Ms. Wallace asked for clarification as to how much of a variance is being requested.

A discussion of the amount of a variance requested took place.

Mr. Feigley closed the public hearing.

Mr. Nice stated that he was in favor of granting the variance because the building contractor hired what he thought was a reputable surveyor, and that it would be reasonable for him to expect the houses to be placed on the property correctly.

Mr. Giedd stated that he would like to continue the case until a correct survey could be obtained, since information is lacking to make a decision and that there is a question between staff and the client as to how much of a variance is required.

A discussion to continue the hearing took place.

Mr. Feigley reopened the public hearing.

Mr. Feigley stated that it was the consensus of the Board to defer case ZA-21-96 for the purpose of obtaining a correct survey of the property at 122 Indigo Dam Road, to the next scheduled meeting of the Board.

ZA-22-96; Gregory R. Davis, Attorney for Colonial Construction and Charles & Mary Crone.

Mr. Gregory Davis, attorney for the developer and the owners, has applied for a variance from the rear setback requirements for the property located at 121 Indigo Dam Road. The property is further identified as parcel (10-10A) located on Real Estate Tax Map (38-4) in the R-2, General Residential zoning district.

The property owners, Charles and Mary Crone, subdivided the original property in 1995 (S-35-95), creating parcels (10-10) and (10-10A). In the subdivision process, a five foot strip of land across the front of the parcels was dedicated to Virginia Department of Transportation (VDOT). Site drawings of the parcels immediately across the street also indicate that a five foot strip was dedicated to VDOT, creating a fifty foot right of way for this portion of Indigo Dam Road.

Colonial Construction received a building permit for construction of a single family dwelling on this property in April 1996. The original site plan submitted with the building permit indicated that the L-shaped, 1-story house was to be 30 feet from the front property line and 35 feet from the rear property line, meeting zoning ordinance requirements. The approved building permit requested that due to the proximity of the structure to the rear property line a foundation survey be provided to the Code Compliance office. The building plans and permit also specifically indicate that no deck is to be constructed on the house. The post construction survey submitted with the variance request indicated that the house, as built, is only 22 feet from the front property line and that a deck has been constructed onto the rear of the house resulting in a distance of only 30.4 feet from the rear property line. The applicant is now requesting a 3 foot variance from the front setback requirement and a 4.6 foot variance to the rear yard requirement. The final certificate of occupancy has not yet been issued.

The applicant has indicated that the surveyor that they hired, incorrectly set the foundation points for the house. The contractor failed to obtain a foundation survey to assure compliance with the zoning ordinance prior to completion of the structure. The rear deck, approximately 17 feet x 10 feet, was constructed without building permit approval. The applicant can eliminate the deck and meet the 35 foot rear yard requirement.

Mr. Feigley asked what does Code Compliance do when a structure has been built without a permit.

Ms. White stated that a permit would have to be issued, but in this case the building permit requirement is pending the decision of the Board.

Mr. Nice commented that the building permit application states he would be building a deck.

Ms. White stated that it was noted on the application by the plans examiner that a deck was not allowed because it did not meet setback

requirements.

Ms. Wallace asked if this type of discrepancy happens, frequently, or seldom. Ms. White stated seldom.

A discussion of the size of the deck and the building envelope took place.

Mr. Feigley opened the public hearing.

Mr. Davis stated there are two issues for this application. He further stated that the 3 foot variance requests results from the fact that the surveyor improperly located the front of the house. Mr. Davis stated the second issue is that of the deck and that the blueprints submitted to the county showed the deck. Mr. Davis further stated that the site plan did not show the deck and this resulted in the deck being improperly placed. Mr. Davis stated the hardship issues were as those stated in the previously heard case ZA-21-96.

Mr. Giedd asked if there was any proof that could be given that after the surveyor set the points the contractor used the points to construct the building.

Mr. Davis responded with an offer of Mr. Crone's sworn testimony.

Mr. Nice asked staff how code compliance handles notes on permits in reference to foundation surveys being required.

Doug Murrow responded that the note is placed on the computer primarily because it is a good point at construction to verify setbacks. Mr. Murrow further stated that we advise the contractor at the time of permit that the survey is required. Mr. Murrow did state that the current system does not have any alarms to advise that no further construction should proceed until the survey is supplied. Mr. Murrow commented that we ask for the surveys whenever minimum setbacks is an issue and code compliance has had very few problems with this survey being completed in the past.

Mr. Feigley asked what responsibility do the inspectors have when the survey is required.

Ms. White stated that it is difficult for the inspector to verify setbacks when out in the field. Ms. White further stated that as a result of the Boards' request in the past, surveys became a requirement at foundations to avoid this type of error.

A discussion of the ordinance and the deck took place.

Mr. Giedd commented that the applicant has a 47.3 foot structure he's trying to place in a 40 building envelope and it appears no attempt was made to meet the setbacks.

Mr. Feigley stated that he is having problems with all three applications, because the applicant was forewarned of the need for a foundation survey because the setbacks were tight and he appears to have ignored this fact.

Mr. Crone stated that he was at the site when the house was laid out on the property, but then went in to the hospital and it was the framer who went ahead and placed the deck on the site.

Mr. Feigley closed the public hearing.

Mr. Feigley stated his position saying that he was willing to consider granting a variance to the front setback, but not granting the rear setback variance.

Mr. Giedd stated that he agreed.

Mr. Nice agreed with the other members because it was clearly noted that the deck was not to be allowed.

Ms. Wallace stated that she would go along with the board, but stated that she keeps hearing that the fault always lies with someone other than the contractor.

Mr. Feigley stated that the reason he's willing to be lenient because this house sets back further than all of the other houses on the block.

Mr. Giedd commented that if the applicant had requested a variance from the front setback prior to building, this application would never have had to go before this board.

Mr. Feigley moved that a 3 foot variance be granted for the front setback and that the request for a variance to the rear setback be denied. Ms. Wallace seconded the motion.

The variance for the front setback was approved unanimously and the variance for the rear setback was denied unanimously.

ZA-23-96; Gregory R. Davis, Attorney for Colonial Construction and Charles & Mary Crone.

Mr. Gregory Davis, attorney for the developer and the owners, has applied for a variance from the rear setback requirements for the property located at 119 Indigo Dam Road. The property is further identified as parcel (10-10) located on Real Estate Tax Map (38-4) in the R-2, General Residential zoning district.

The property owners, Charles and Mary Crone, subdivided the original property in 1995 (S-35-95), creating parcels (10-10) and (10-10A). In the subdivision process, a five foot strip of land across the front of the parcels was dedicated to Virginia Department of Transportation (VDOT). Site drawings of the parcels immediately across the street also indicate that a five foot strip was dedicated to VDOT, creating a fifty foot right of way for this portion of Indigo Dam Road.

Colonial Construction received a building permit for construction of a single family dwelling on this property in March 1996. The original site plan submitted with the building permit indicated that the 2-

story structure was to be 30 feet from the front property line and 42 feet from the rear property line. The approved building permit requested that due to the proximity of the structure to the property lines a foundation survey be provided to the Code Compliance office. The building permit application indicated square footage for a deck but did not show a deck on the site drawings. Prior to the issuance of the building permit the applicant was requested to show on the site drawings the location of the deck and a correct rear setback. The applicant indicated a deck location at 34 feet from the rear but was informed that it needed to be 35 feet from the rear to meet setback requirements. The post construction survey submitted with the variance request indicates that the house, as built, is only 21.9 feet from the property line and 33.8 feet from the rear property line. The applicant needs a 3.1 foot variance from the front setback requirement and 1.2 foot variance to the rear yard requirement to meet zoning ordinance requirements. The final certificate of use and occupancy has not yet been issued.

The applicant has indicated that the error in the location of the house was self inflicted, stating that the dwelling was improperly located by mistake. The contractor failed to obtain a foundation survey to assure compliance with the zoning ordinance prior to completion of the structure. The rear deck is approximately 8 feet x 20 feet. The applicant can eliminate or reduce the size of the deck and meet zoning ordinance requirements, for where the house currently sits on the lot, to meet the 35 foot rear yard requirement.

Mr. Feigley asked why a certificate of occupancy had been issued.

Ms. White explained that it was a temporary certificate of occupancy and that the final certificate of occupancy was pending the outcome of this variance request. Ms. White also noted that a temporary certificate can only be issued if there are no hazardous or safety issues that are outstanding.

Mr. Feigley asked why the county would issue a temporary certificate of occupancy if it was decided that the house would have to be moved.

Ms. White stated that the county and the contractor and the homeowner understand all of the ramifications if the variance is not approved. The county will not issue a temporary certificate of occupancy unless the contractor and the homeowner are fully aware of these ramifications.

Mr. Feigley opened the public hearing.

Mr. Davis stated that he would like to revise the request to reflect a 3.1 foot encroachment to the front of the house. Mr. Davis further stated that this is a custom house that is now complete and the owner will not close on the property until this variance issue is resolved. Mr. Davis commented that the porch corners were set by the surveyor and was done erroneously. Mr. Davis further commented that in regards to the deck it was shown on a site plan and the surveyor advised Mr. Crone that there was only 9 feet available for a deck and that is why an 8 foot deck was placed.

Mr. Nice asked if there was a possibility that the surveyor was unaware of this 5 foot setback.

Mr. Davis commented that it was possible, but no matter how you calculate the setback it will come out the same.

A discussion of why the deck encroaches took place.

Ms. Wallace asked if Mr. Crone looked at the permits when they were issued to him, since they clearly state that a deck was not allowed.

Mr. Crone stated that he did not look at them, that he filed them away.

Mr. Feigley closed the public hearing.

Mr. Nice stated that he was willing to grant the variance of the front setback but not the rear setback.

Mr. Feigley agreed with Mr. Nice to grant the request for the front setback.

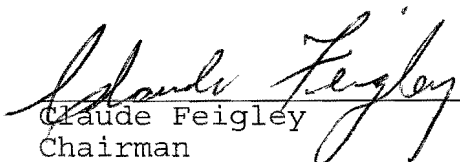
Mr. Feigley moved that a 3 foot variance be granted for the front setback and that the request for a variance to the rear setback be denied. Mr. Nice seconded the motion.

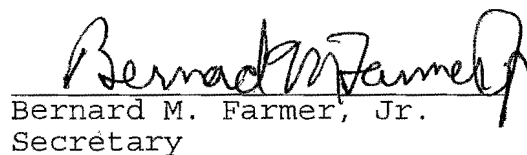
The variance for the front setback was approved unanimously and the variance for the rear setback was denied unanimously.

E. MATTERS OF SPECIAL PRIVILEGE

F. ADJOURNMENT

The meeting was adjourned at 9:30 P.M.


Claude Feigley
Chairman


Bernard M. Farmer, Jr.
Secretary