

BOARD OF ZONING APPEALS

February 6, 1997

Before Roll Call Mr. Feigley welcomed new county staff member Robin Johnson to the Board. He thanked outgoing staff member Jane Townsend for all her help and wished her good luck in her new position in the County Organization.

A. ROLL CALL

PRESENT:

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

Others Present:

Allen Murphy, Acting Zoning Administrator
Jacqueline White, Zoning Officer
Steven Grant, Zoning Officer

B. MINUTES

The minutes of the January 9, 1997 meeting were approved as submitted.

C. OLD BUSINESS

None

D: NEW BUSINESS

ZA-01-97; Matthew & Rosa Mays

Ms. White gave the staff report stating that Mr. & Mrs. Matthew Mays had applied for a 15 foot variance to the front setback requirements to their property at 135 Racefield Drive, in the Racefield Subdivision, in the A-1 General Agricultural Zoning District. The above mentioned property is rectangular in shape, approximately 100 feet wide by 325 feet deep. The house constructed in 1980, is approximately 1000 square feet in size. The house is approximately 40 feet from the front property line. In May 1989, after the original construction of the house, the Zoning Ordinance requirements for the setbacks in the A-1 zoning district changed. The A-1 Zoning Ordinance now states in part "the structure shall be located a minimum of 50 feet from any street right-of-way which is 50 feet or greater in width." At the time the ordinance changed, the house became non-conforming. While additions to non-conforming single family dwellings are permitted, any

such additions must meet the current Zoning Ordinance requirements. In June 1996, Mr. & Mrs. Mays applied for a building permit to construct a 24 foot by 24 foot addition. Due to an oversight, the plans were approved to construct the addition 40 feet from the property line in line with the house instead of 50 feet as required by the current zoning ordinance. This created an encroachment of about 10 feet.

The Mays received their permit and began construction. The addition is not yet complete. In December of 1996, the Mays submitted an additional building permit application to construct decks 24 by 5 feet on the front and rear of the addition. At this point the encroachment of the addition and the proposed decks was identified. The Mays are now requesting a 15 foot variance to the front setback requirement to allow for the addition currently under construction, and the proposed front deck. The Mays could construct a ground level porch in the front instead of a deck and meet zoning ordinance requirements.

This application does not meet the standard criteria for granting a variance; however, there are extenuating circumstances in this case for the 24 by 24 foot addition which are not the fault of the property owner. These circumstances do not apply to the proposed deck addition.

Mr. Feigley asked if the only part of the addition that would not require a variance was the 24 by 5 foot deck on the back. Ms. White replied yes.

Mr. Nice asked if there were 2 variances being requested.

Mr. Feigley said yes, and explained what the variances were for.

Mr. Feigley opened the public hearing.

Ms. Rosa Mays, explained her request for the variance.

Mr. Feigley asked if the addition was 2 story.

Ms. Mays answered yes.

Ms. Mays stated that she did her part as a property owner by getting the required permits. If she had known about the setback requirements, they would have changed the size of the addition to include the deck. Ms. Mays said that she was not told until December 1996 that she was in violation of the front setback requirements. Ms. Mays respectfully requested a variance to the front setback requirement of her property.

Mr. Giedd asked why they chose to wait 6 months to apply for a permit for the decks.

Ms. Mays said because they were paying for everything as they went.

Mr. Giedd asked if they were building the decks themselves. Ms. Mays said yes.

Mr. Giedd asked if the plans showed a 40 foot setback.

Ms. Mays said the plans showed a 35 foot setback.

Mr. Feigley closed the public hearing and referred to the Board for any action they may wish to take.

Mr. Giedd said that non-conforming property had a little more latitude, and he didn't have a problem with the deck or the addition. Given the fact that it was originally built during the 35 foot setback requirement.

Mr. Nice said he went out and looked at the house and even with the deck on the house, it would still be in line with or behind the adjacent houses. Because they were all built up to the 35 foot line.

Mr. Feigley made a motion that the request for a 15 foot variance to the front setback requirement in case ZA-1-97 be granted. Mr. Ripley seconded it.

The variance was granted unanimously.

ZA-2-97; Coastal Homes & Barbara Jones

Mr. Grant gave the staff report stating that Barbara Jones and Coastal Homes have requested, with approval from the property owner, a variance to the rear setback requirement for the property at 37 Gray Gables, in the R-8, Rural Residential District. The property is further identified as parcel (1-1) found on the James City County Real Estate Tax Map (59-2).

The property is located in the Country Village Mobile Home Park. Country Village is a non-conforming manufactured home park that does not fully comply with Article IV (Manufactured Home Parks) of the James City County Zoning Ordinance. In order to clarify the development standards of the park a non-conforming status verification was complete in July of 1992. It was determined that the rear setback for each lot was to be a minimum of fifteen (15) feet. A letter detailing the non-conforming status was sent to the owner of the park on July 20, 1992.

The manufactured home located on this lot currently encroaches into the rear setback by, at most, two (2) feet. Therefore the applicants must seek a reduction of the rear setback to thirteen (13) feet. Prior to approval of the final Certificate of Occupancy (C.O.) it is necessary that a zoning inspection of the manufactured home be performed. During this inspection the home is checked for placement, size, and HUD certification. It was during this inspection that the encroachment was discovered. The final C.O. could not be issued and the applicants were notified of the setback violation.

It would be possible to move the home forward two (2) feet and meet all requirements, as specified in the non-conforming status verification letter. Instead of moving the structure the applicants opted to seek a variance. The Code Compliance office did not receive any prior notice of the arrival date of the manufactured home and conducted the inspection only after the applicant had requested their final Certificate of Occupancy.

The applicant has not been able to demonstrate hardship or any unusual circumstances. The lot is normally shaped and does not exhibit unusual topography. The non-conforming letter states that all single wide lots can accommodate manufactured homes up to sixty-seven (67) feet long. The difficulty the applicants are presently contending with has been self-imposed. Therefore staff must recommend denial.

Mr. Feigley asked what the variance was for.

Mr. Grant stated it was for a reduction to the rear setback of 15 feet.

Mr. Giedd asked if there was ample room to move the trailer forward.

Mr. Grant stated there was enough room to move the trailer forward 2 feet and still meet the 18 feet front setback requirement.

Mr. Feigley asked Mr. Grant to go through the procedure for placing a mobile home on a lot in a mobile home park.

Mr. Grant stated that the first step is to register it with the Commissioner of Revenue, then the company moving the mobile home, or the owner would apply for an electrical/plumbing permit.

Mr. Giedd asked if this is all done before arrival.

Mr. Grant said yes, once the permit is issued, they can place the trailer on the lot and call in for the required inspections.

Mr. Feigley asked if the only thing they have to do is get an electrical & plumbing permit. Mr. Grant answered yes.

Mr. Giedd asked what the county's role is in the placement of the trailer.

Mr. Grant said it was up to the management of the mobile home park.

Mr. Giedd then stated that it probably would not have made any difference if the county had received prior notice.

Mr. Grant stated that his office would have possibly looked into it further.

Mr. Feigley asked if the company or owner are made aware of setback requirements when they obtain their permit. Mr. Grant said not generally.

Mr. Nice asked if checking setbacks is arbitrary, not checked on every mobile home, only on selected ones.

Mr. Grant said since 1995 they have checked all of them.

Mr. Nice then asked if there was ever a site plan submitted for the replacement of mobile homes in the park.

Mr. Grant replied no.

Mr. Giedd asked how they identified the corners of the lot.

Mr. Grant stated in this particular case it was the parking area and the fence adjacent to the garbage cans.

Mrs. Wallace asked if the Code Compliance office had received notification prior to the arrival date, could this situation have been avoided.

Mr. Grant said yes they could have gone out there and inspected, as they have done in the past.

Mrs. Wallace asked if under normal situations, the owners would not necessarily have to notify Code Compliance prior to placing the mobile home on the lot.

Mr. Grant stated that was not correct. They have to obtain a permit first.

Mr. Nice stated the County should have to prove the setback violation and the only way to prove that is by certified survey. He further stated that the County is using trash cans and fences to measure setbacks, and he doesn't think this is fair at all.

Mrs. Wallace asked if anyone else had applied for a variance in that mobile home park. Mr. Grant said no, not to his knowledge.

Mr. Feigley opened the public hearing.

Russell Skidmore, representing Coastal Homes and Ms. Jones, stated that Coastal Homes had delivered and set up many mobile homes in Country Village Mobile Home Park and other mobile home parks in the area. Ms. Jones' mobile home was placed on lot 37 in Country Village, it was blocked, anchored, and skirted. He stated that it was inspected, and apparently approved because the electricity was turned on by Virginia Power. Then two days later Ms. Jones received a letter from Code Compliance stating that she was in violation of setback requirements. The mobile home is 14 x 70 and there is 3 ½ feet of hitch in the front.

Mr. Feigley stated that the hitch was not included when determining the setback violation.

Mr. Skidmore said there was 13 feet 4 inches from the left rear corner of the mobile home to the chain link fence, and 14 feet on the right side. He stated that he had measured several other mobile homes on adjoining lots and they were all about 13 feet from the fence. Mr. Skidmore further stated that the gentleman they have setting up mobile homes has been doing it for a long time and was not aware of setback requirements. He said that moving the home forward would be very expensive for Ms. Jones. It would require disconnecting the water, sewer, electricity, air conditioning, unblocking and unanchoring the home, removing the skirting, steps, and would cost between \$3500.00 to \$4000.00. On behalf of Ms. Jones and Coastal Homes, Mr. Skidmore requested a variance to the rear setback requirements.

Mr. Feigley asked if the mobile home was placed in line with the others. Mr. Skidmore stated yes, but they also measure the distance.

Mr. Feigley asked if the manager let them know about setback requirements, Mr. Skidmore replied no.

Mrs. Wallace asked Mr. Skidmore if there was any markings at all as to where the mobile home is to be placed. Mr Skidmore said that in this particular mobile home park, there are concrete pads to place the homes on.

Mr. Ripley asked if this was normal compared to the surrounding counties. Mr. Skidmore replied that in some mobile home parks, they don't even have concrete pads.

A discussion took place on the marking procedures.

Mr. Nice asked if this has prevented Ms. Jones from moving into the home.

Mr. Grant pointed out that a meter release was never called into Virginia Power from the Code Compliance office, and that a certificate of occupancy was never issued.

Mr. Nice asked for clarification, as to whether Ms. Jones is currently living in the mobile home. Ms. Jones answered saying yes.

Ms. Marian Oyer of 139 Indian Circle, an adjacent property owner, spoke in opposition to the variance. Ms. Oyer stated that in 1972 James City County originally told them the setback requirements would be 50 to 100 feet when the plans were complete. She found out later it was changed to 35 feet. Ms. Oyer said she pointed setback violations several times over the years to James City County, and it was never looked into. Ms. Oyer finished by stating that she was totally against the granting of this variance.

A discussion took place on Ms. Oyers statement.

Mr. Ed Oyer of 139 Indian Circle, adjacent property owner, spoke in opposition to the variance. Mr. Oyer presented several pieces of evidence; to include pictures, newspaper articles, and a petition signed by 7 people. Mr. Oyer said he had been battling this mobile home park for 25 years.

A discussion went on for some time on the controversy of the Country Village Mobile Home Park, and setback requirements.

Mr. Oyer spoke at length on the fact that he had been to the courthouse and could not find anything in the deed books on the site plans for Country Village Mobile Park.

Mr. Murphy pointed out that it is not a common practice to record approved site plans in the courthouse, it is for a subdivision plat, but it is not a practice, nor an expectation nor requirement that he is aware of, to record an approved site plan. He further stated that if a property owner wishes to divide his property, subdivide it in any fashion, a plat must be done by a

surveyor and that plat would have to be recorded, but not a site plan.

Mr. Feigley asked Mr. Murphy if the setback requirements are recorded on the plats. Mr. Murphy said that is found on the site plan.

Mr. Grant stated that the site plan is on file in the County's Records Management Office.

Mr. Oyer asked how many of the board members had gone out and looked at the property in question. Mr. Feigley said he had.

The discussion continued on the setback violations.

In finishing his statement, Mr. Oyer requested that the board get more information from the plats, or whatever means available. He asked the board not to grant the variance.

Moreen Nelson of 121 Indian Circle, adjacent property owner, stated that she feels the owner of the mobile home park should be held responsible for the setback violation.

Mr. Giedd asked if it would help if a privacy fence were placed between the properties.

Ms. Nelson said yes, that she would appreciate any help she could get. She stated that she had ongoing problems with children coming into her yard, among other things.

Ms. Barbara Jones of 37 Gray Gables stated that her circumstances would only allow her to purchase a mobile home. She said it was a 1997 mobile home and that the exterior was very well maintained. Ms. Jones was living in the home before she was made aware of the violation. Ms. Jones said she obtained the required permit, and got her electricity turned on. She stated it would be a hardship to move the mobile home, because everything inside would have to be moved out, before they could move the mobile home, and that it would also be a financial hardship.

Mr. Feigley asked Ms. Jones if she had depended on the owner of the mobile home park and Coastal Homes for proper placement of her home. She answered that she had never owned a mobile home before, and that she did depend on the management, and Coastal Homes.

Mr. Skidmore spoke again on behalf of Coastal Homes, stating that he did not feel they had done anything wrong. Mr. Feigley asked him if he felt any responsibility at all for what has happened to Ms. Jones. He said he felt sorry for her, but not responsible.

A discussion took place on the responsibility for the violation.

Mr. Feigley closed the public hearing.

A discussion of the variance took place by the Board.

Mr. Ripley made a motion to grant the variance of a two (2) foot reduction to the rear setback for the manufactured home belonging to Barbara Jones currently located at lot 37 in Country Village Mobile Home Park. All future alterations, additions, or changes to this manufactured home; or other manufactured homes placed on this lot, must conform to the zoning ordinance.

Mr. Nice second the motion.

The variance was granted unanimously.

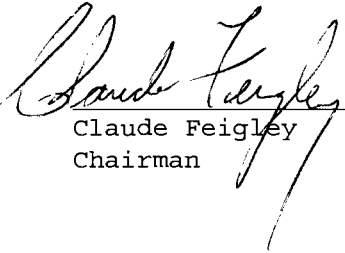
Mr. Feigley asked Mr. Murphy to examine the situation in Country Village Mobile Home Park, and the County's process for permitting replacement manufactured homes, and report back to the Board.

E. MATTERS OF SPECIAL PRIVILEGE

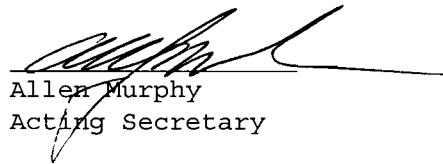
NONE

F. ADJOURNMENT

The meeting was adjourned at 9:40 P.M.



Claude Feigley
Chairman



Allen Murphy
Acting Secretary