

BOARD OF ZONING APPEALS

JULY 3, 1997

A. ROLL CALL

PRESENT:

Mr. Nice
Ms. Wallace
Mr. Geidd
Mr. Fischer
Mr. Feigley

OTHERS PRESENT:

Allen J. Murphy, Jr., Zoning Administrator
Jacqueline White, Code Compliance Officer
Scott Denny, Code Compliance Officer

B. MINUTES

The minutes of the June 5, 1997 meeting were approved as submitted.

C. OLD BUSINESS

None

D. NEW BUSINESS

ZA-6-97. Philip Davidson

Ms. White gave the staff report stating that Mr. Philip Davidson, contract purchaser, has requested a 15.2 foot variance to the rear setback requirement of Section 20-259 of the James City County Zoning Ordinance for a proposed single family dwelling for the property located at 149 Clark Lane in the R-2, General Residential, zoning district. The property is further identified as parcel (1-54) on James City County Real Estate Tax Map No. (32-2).

The property is rectangular in shape with the longest length fronting Clark Lane and the dimensions of the lot are approximately 87 feet by 174 feet. The lot is about 15,800 feet in size. The R-2 zoning district requires a minimum side yard setback of 10 feet, a minimum front yard setback of 25 feet and a minimum rear setback of 35 feet.

The applicant is proposing a rear setback of 19.8 feet in order to accommodate a proposed single family dwelling approximately 1289 square feet in size. The buildable area remaining, given the current setback requirements, is a narrow strip approximately 27 feet deep, 552 feet long.

The shallowness of the lot does appear to render a hardship given the small size of the proposed home. The property does not exhibit any unusual topography or unique characteristic. Staff recommended that a 15.2 foot variance to the rear setback requirement be granted and further suggested a variance of 16 feet be allowed setting the rear setback at 19 feet.

Mr. Feigley opened the public hearing. With nobody present to speak on this case, Mr. Feigley closed the public hearing.

Mr. Feigley asked staff whether or not the applicant had been notified of the hearings.

Ms. White responded that the applicant had been notified of the date and time of the hearings.

Mr. Feigley stated that it is his preference that the applicant asking for a variance be present to state their case as to why their variance be granted. He asked the Board members if there was any objection to proceeding with the case or deferring it so that the applicant could appear.

Mr. Nice stated that there was no need to defer the case given staff recommendation and the reasonable hardship presented to the owner of the property.

Mr. Nice asked whether or not anything had been built on the property and if the variance request was so that they can build.

Ms. White responded that the variance request was so that they can build on the undeveloped lot.

Mr. Feigley asked if there was any objections to proceeding with the case. There were no objections.

Mr. Feigley made a motion to grant the variance.

Ms. Wallace seconded the motion.

Mr. Fischer asked if there was a minimum lot size requirement in the R-2, General Residential, zoning district.

Ms. White responded that the minimum lot size in the R-2 zoning district was 10,000 square feet.

The variance was granted unanimously.

ZA-7-97. Ralph & Mary Freer

Ms. White gave the staff report stating that Mr. & Mrs. Freer, property owners, have requested a variance to Section 20-595, Floodplain Area Regulations, for a single family dwelling with has recently received a temporary Certificate of Occupancy. The property is located at 3018 The Pointe in the Chickahominy Haven subdivision in the A-1, General Agricultural, zoning district.

In August 1996, the builder applied for and obtained a building permit for a one story, single family dwelling. Prior to the completion of construction, the County Engineer, Mr. Wayland Bass, became aware that the property was within the one hundred year floodplain. The builder was informed that an Elevation Certificate would be required prior to the issuance of a Certificate of Occupancy. Upon receipt of the Elevation Certificate, it was determined that in order to meet Ordinance requirements, the building would need to be elevated approximately eight inches.

The Zoning Ordinance requires that the finished floor be at least one foot above the one hundred year floodplain elevation. In this case, the base flood elevation is 8.5 feet, indicating that a base flood elevation of at least 9.5 feet first floor elevation is required. A temporary Certificate of Occupancy was issued pending resolution of this floodplain issue.

Had the floodplain been identified by the contractor, owner, or county prior to construction, this application may not have been necessary. The application generally meets the additional criteria listed in the Floodplain Ordinance for variance consideration, however, the fact that the property is in the floodplain is not shared by like zoned properties. Granting a variance would be a detriment to adjacent properties.

Strict application of the Ordinance requiring the raising of the structure at least eight inches would constitute a financial hardship, the application of the ordinance in this situation does not approach confiscation or effectively prohibit the use of this property, therefore, staff opinion does not support the granting of a variance in this case.

Mr. Feigley stated that it was apparent that the property was in the floodplain when the building permit was issued. He questioned how staff found out about this fact.

Mr. Doug Murrow, Director of Code Compliance, stated that the site plan drawings received did not include information that would lend itself to show that the property was located in the floodplain. During the review period, it was not brought to staff's attention that the property was in the floodplain.

Mr. Feigley inquired as to who made the decision that the property was in the floodplain.

Mr. Wayland Bass, County Engineer, stated that after the completion of construction, at the time when the application for the Certificate of Occupancy was being reviewed, he was asked to review the drawings and noticed that the property was in the floodplain.

Mr. Feigley asked whether or not Code Compliance possesses any maps showing the location of floodplains in the County that would raise a red flag during the review process. He also asked if notification was the builders responsibility.

Mr. Murrow stated that he was uncertain how Mr. Bass became involved in the review of this particular set of drawings and that staff is aware of the location of floodplains in the County.

Mr. Feigley asked if it was normal operating procedure to involve the County Engineer just prior to issuance of the Certificate of Occupancy.

Mr. Murrow stated that it was not and did not have an answer as to why or how Mr. Bass became involved in this particular case.

Mr. Feigley responded that Mr. Murrow must have known or had a feeling that something was wrong.

Mr. Bass stated that it is not unusual for Code Compliance to bring him an application for review.

Mr. Feigley responded by stating that this was not an application. It was an Occupancy Permit after the building had already been finished.

Mr. Murrow stated that there are cases when he seeks the help of Mr. Bass to determine whether or not a property is in a floodplain and that this case was indeed an unusual one.

Mr. Feigley stated that there should be a County procedure for handling this sort of situation, especially in an area such as Chickahominy Haven.

Mr. Murrow replied that without a good survey at the time of the application where elevation has been clearly identified, it is difficult to ascertain whether a property is or is not located in a floodplain. Identification of the floodplain in this case did not occur until the builder provided an Elevation Certificate upon request.

Mr. Fischer asked how someone knows whether or not a property is located in a floodplain.

Mr. Murrow replied by stating that this information normally is provided by the surveyor. FEMA provides floodplain maps but that they must be used in conjunction with an actual survey.

Mr. Giedd said that typically a surveyor will research a property in the Mapping Department in the County prior to placing stakes in the ground at a property.

Mr. Nice replied that a surveyor should be knowledgeable of floodplains. This information should come up twice: during construction and during loan closing procedures. He asked why staff would be recommending its position without taking any ownership for why this case was presented in the first place.

Mr. Allen Murphy, Zoning Administrator, responded that the staff report was honest in its opinions and fair in its representation that the variance request met certain criteria in the Floodplain Ordinance. The staff recommendation realized that the situation was unfortunate and had the builder, surveyor, or the County caught certain facts, this application may not have been necessary. The question in staff's mind comes down to whether or not the hardship present borders confiscation. While financial hardship is obvious if he is forced to comply with the ordinance, technically, staff is not supposed to consider financial hardship.

Mr. Nice made the point that assessing financial hardship is another gray issue and the entire matter is highly subjective.

Mr. Fischer asked who licenses contractors in James City County and whether or not an exam is required.

Mr. Murrow responded by saying that contractors must possess a Class A license and are licensed through the State and must also have a business license and be registered as a contractor in the County. No local examination is required but there is a State exam.

Mr. Nice stated that it is reasonable for the contractor to know whether or not a property is located in a floodplain, just as it is reasonable for the surveyor to know, and the homeowner, and the County. A process needs to be instituted to delineate flood plains from now on.

Mr. Murphy stated that all applications are now being checked by the Zoning Officers against a flood plain map and if any are close to a flood plain, the application will be sent to the County Engineer for further review.

Mr. Feigley opened the public hearing. With nobody present to speak on the case, Mr. Feigley closed the public hearing.

Mr. Feigley asked the Board whether or not the case should be deferred until the applicant and builder could be present to speak.

Mr. Nice stated that the homeowner is in the house at the present time.

Mr. Geidd requested that he would like to have the applicant present before a vote would occur.

Mr. Feigley made a motion to defer the case to the August Board of Zoning Appeals meeting.

Ms. Wallace seconded the motion.

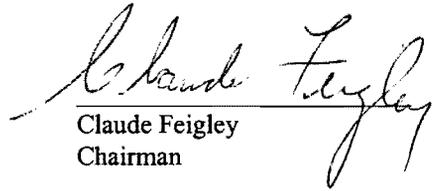
Deferment of the case was unanimous

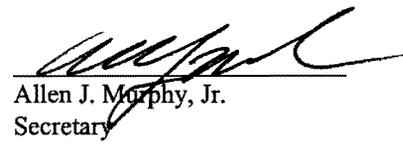
E. MATTERS OF SPECIAL PRIVILEGE

None

F. **ADJOURNMENT**

The meeting was adjourned at 8:05


Claude Feigley
Chairman


Allen J. Murphy, Jr.
Secretary