

**BOARD OF ZONING APPEALS**

**AUGUST 7, 1997**

**A. ROLL CALL**

**PRESENT:**

Ms. Wallace  
Mr. Giedd  
Mr. Fischer  
Mr. Feigley

**ABSENT:**

Mr. Nice

**OTHERS PRESENT:**

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

**B. MINUTES**

The minutes of the July 3, 1997 meeting were approved as submitted.

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

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 which 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, Anchor Builders 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 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 not be a substantial 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 informed the audience of the events of the July meeting pertaining to this case and the Board's questioning of staff on the issue of County procedures to determine whether or not an applicant knows that they are in a floodplain and who bears the burden in this determination.

Mr. Feigley stated that the Ordinance allows the Board to refer any application to any engineer or qualified person for technical assistance in evaluating matters such as the ones associated with this case. An evaluation of this application was asked of the County Engineer, Mr. Wayland Bass.

Mr. Bass stated that the finished floor of the dwelling is currently at an elevation of 8.9 feet which is only 5 inches above the one hundred year floodplain. The Ordinance requires a one foot free board as a safety factor for wave action. He recommended that the vents in the crawl space should be sized so that their total area allows for one square inch for each square foot of floor space.

Mr. Feigley asked if the purpose of this recommendation was so that water could flow freely away from the foundation to prevent damage to the foundation in the event of a flood.

Mr. Bass responded that it allows water to flow into the crawl space to prevent undue pressure on the outside and as water levels decrease, the opposite holds true.

Mr. Feigley asked what dangers would be present to the HVAC equipment at their current elevation if a flood were to occur.

Mr. Bass replied that the HVAC equipment would most likely be ruined, hence his recommendation to raise the HVAC equipment to the level required by the Ordinance of 9.5 feet.

Mr. Giedd inquired as to the costs associated with raising the building up and what the cost of damage would be if a flood were to occur.

Mr. Bass replied that the contents on the first floor would be damaged but would not wager a guess as to the cost of damage.

Mr. Feigley asked how often the Corps of Engineers reviews the one hundred year floodplain.

Mr. Bass stated that to his knowledge the Corps of Engineers last reviewed the floodplain in 1991 but he was unaware of any schedule in place for future reviews.

Mr. Feigley opened the public hearing.

Mr. Ken Dodd, President of Anchor Builders, Inc. stated that the elevation of the HVAC equipment was raised to proper elevation prior to completion of construction. He questioned why he was not notified when applying for his building permit that the property was located in the floodplain. He estimated the cost of raising the dwelling to meet Ordinance requirements at \$25,000.

Mr. Feigley asked if he was aware that there is a floodplain ordinance in James City County and whether he relied on the County to notify him or if he bears some responsibility to check this.

Mr. Dodd stated that in his opinion that this is why applications are sent to the zoning department and he shouldn't have to request this when submitting an application.

Mr. Giedd asked if there was any notation on the survey to indicate that the property was in the floodplain.

Mr. Dodd stated that this is almost always on the survey.

Mr. Feigley asked whether or not he had any concern about the issues raised by Mr. Bass pertaining to vents in the crawl space.

Mr. Dodd replied that he did not.

Mr. Ralph Freer, property owner, stated that the County should be solely responsible to notify the builder if a property is in the floodplain. Properties located across the street share the same problems as his dwelling with respect to floodplain risks.

Mr. Geidd asked if he was aware of the risks and if he still wanted a variance given the risks.

Mr. Fischer inquired as to the costs of raising the house.

Mr. Freer stated that other costs would exist beyond simply raising the dwelling and reiterated that other older homes in the immediate area surrounding his shared the very same risks.

Mr. Feigley closed the public hearing.

Mr. Feigley made a motion to grant a variance with the condition that the owner receive written notice of the risks associated with not taking the precautionary measures recommended by the County as well as the likelihood of increased insurance premiums.

Mr. Giedd seconded the notion.

The variance was granted unanimously.

ZA-8-97. Jerry & Donna Mellis

Ms. White gave the staff report stating that Jerry and Donna Mellis, property owners, have requested a variance to the side yard requirement for their existing home and a proposed addition. The property is located at 234 Robertson Street in the St. George's Hundred subdivision. The property is zoned R-1, Limited Residential. The property is rectangular in shape, approximately 100 feet by 150 feet. The existing dwelling is approximately 1560 square feet in size and was constructed in 1986.

The R-1 zoning district requires a minimum side yard of 15 feet for its main structure. Mr. & Mrs. Mellis have stated that they were not made aware of the encroachment into the side yard requirement on both sides of the dwelling prior to closing in July 1997. The right side is approximately 14.9 feet from the property line and the left side is approximately 14.7 feet from the property line. The Mellis's had planned on applying immediately to construct an addition the left side of the dwelling in line with the existing structure. The Mellis's are requesting a variance of 0.3 feet (3.6 inches) on the left side of the dwelling and the proposed addition and 0.1 feet (1.2 inches) on the right side of the dwelling.

Failure to catch the encroachment prior to closing is an unfortunate situation and granting this variance would not be a detriment to adjacent property owners. While a strict application of the Ordinance constitutes a hardship for the property owners in this case, technically, a hardship does not exist for the proposed addition, therefore, staff does not support the granting of a variance in this case. Staff recognizes that there is no

practical difference in the effect on adjacent property if the addition were built in line with the existing structure.

Mr. Fischer stated that he was unclear about how granting this variance would positively effect the proposed addition given the existing encroachment on both sides of the existing structure.

Mr. Allen Murphy, Zoning Administrator, responded by saying that granting this variance request would allow for the proposed addition to be constructed in line with the existing structure.

Mr. Feigley opened the public hearing.

Mr. Jerry Mellis, property owner, stated that he had informed neighbors of his intentions to build an addition to his existing dwelling and there were no objections. He stated that his mother in law is terminally ill and the family would like to have her close in her final days and without the addition this would be impossible. A proposed property swap with his neighbors was sought as a possible solution but was not agreed upon by either neighbor. Following closing in July, he met with Mr. Murphy to discuss his options ultimately leading to this application.

Mr. Feigley made a brief summation of the facts of this case and reviewed a timeline with the applicant, Mr. Mellis.

Mr. Feigley closed the public hearing.

Mr. Fischer made a motion to grant a variance request of 4 inches to the left hand side and a 2 inch variance to the right side of the home and the proposed addition.

Ms. Wallace seconded the motion.

The variance was granted unanimously.

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

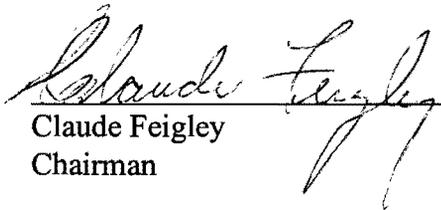
Mr. Murphy informed the Board that Ms. White would be leaving her position with the County and relocating with her husband to Atlanta, Georgia. Mr. Feigley and the other members of the Board thanked Ms. White for her service and wished her the best in her future endeavors.

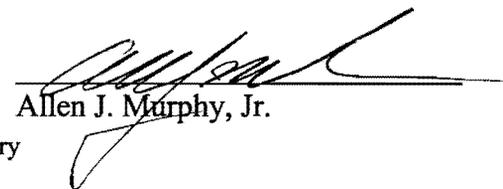
Mr. Murphy informed the Board that Mr. Denny would become a familiar face to them in the coming months and that no replacement for Ms. White has been hired at this time.

Mr. Murphy informed the Board that the Code Compliance office has changed its policies with respect to foundation surveys. If the dwelling is located within three feet of the proposed setback requirements, the code compliance office will require a foundation survey.

**F. ADJOURNMENT**

The meeting was adjourned at 8:25pm

  
Claude Feigley  
Chairman

  
Allen J. Murphy, Jr.  
Secretary