

**BOARD OF ZONING APPEALS**

**NOVEMBER 6, 1997**

**A. ROLL CALL**

PRESENT:

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

ABSENT:

None

OTHERS PRESENT:

Allen J. Murphy, Jr., Zoning Administrator  
Scott Denny, Code Compliance Officer  
John Patton, Code Compliance Officer

**B. MINUTES**

The minutes of the October 9, 1997 meeting were not made available in time for review from the Board and will be voted upon at the next meeting.

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

ZA-13-97. Hershel J. Gilley and Millicent R. Gilley

Scott Denny presented the staff report stating that Hershel J. Gilley and Millicent R. Gilley, property owners, have requested a one foot three inch variance to the side yard setback requirement for their property located at 124 Shellbank Drive in the R-1, Limited Residential, zoning district. The property is further identified as parcel (2-6) on James City County Real Estate Tax Map No. (45-1).

The house was constructed in 1979 and the encroachment was not discovered until an application was submitted for the addition of a deck and additional room on September 24, 1997. The survey of the property attached to their application noted the encroachment. At the time of construction, it is believed that the house was located, unbeknownst to the owners or staff, within the side yard setback. The additions were not encroaching the setback and were subsequently approved, however, staff notified the applicants of future difficulties if the encroachment were not addressed.

Staff felt that the granting of a variance would not be a detriment to adjoining property. A clearly demonstrable hardship, as defined by the Zoning Ordinance, does not exist; therefore, staff could not support this application.

Mr. Nice questioned if staff's recommendation was to establish the side yard setback at thirteen and a half feet or recommend a thirteen and a half-foot variance.

Mr. Denny clarified staff's recommendation to be for the establishment of the side yard setback for the property at thirteen and a half feet or a one and a half-foot variance.

Mr. Feigley asked if the variance request was solely for the side of the house affected or for both sides of the house.

Mr. Denny stated that the variance request was only for the side of the house currently encroaching the side yard setback.

Mr. Feigley opened the public hearing.

Mrs. Millicent R. Gilley, property owner, stated that the variance request was being presented largely to clean up legal affairs for her and her husband prior to any family emergency.

Mr. Feigley questioned whether the addition to the house was the source of the encroachment and whether or not a contractor had done the work.

Mrs. Gilley responded by saying that the family had done the majority of the work themselves. They had been told that the work was in conformance with the setback requirements.

Mr. Nice asked the applicant if the survey submitted with the application would serve as the survey of record given the problems they had with previous surveys.

Mrs. Gilley replied that if this variance request were approved, that the survey accompanying the application would serve as the survey of record.

Mr. Feigley closed the public hearing.

Mr. Nice stated that this case involved an applicant acting in good faith and the lack of controls which were commonplace around the time the addition in question was built and that he would favor granting a variance in this case.

Mr. Fischer added that no neighbor had registered any opposition to the granting of a variance and he would support the applicant's request as well.

Mr. Nice made a motion to grant a variance to establish the right side yard setback at thirteen and a half feet.

Mr. Feigley seconded the motion.

The variance was granted unanimously.

ZA-14-97      James Walls and Delores Walls

Scott Denny presented the staff report stating that Mr. James Walls and Mrs. Delores Walls, property owners, have applied for a variance to permit the construction of a four foot wide handicap ramp and an eight foot wide rear deck. The property is located at 4052 South Riverside Drive and is in the R-2, General Residential, zoning district. The property can be further identified as parcel (5-56) on James City County Real Estate Tax Map No. (19-1).

The house currently has a rear yard setback of thirty-eight and a half feet. The applicant's proposal would encroach into the required thirty five-foot setback by nine feet. Staff

acknowledges the necessity for a handicap ramp to permit access to the main structure, however, the location of the ramp and the location and width of the deck would result in an encroachment that might be avoided by repositioning or redesigning the ramp and deck configuration.

Current standards require that the landing width be at least as wide as the widest ramp leading to it. Since the proposed ramp was four feet in width and the deck eight feet wide, staff felt the proposed encroachment was greater than what would be necessary merely to make the house handicap accessible.

A clearly demonstrable hardship has not been presented in this case. There are no physical conditions associated with this property that present a unique hardship. While staff concurs with the need for handicap access, this request essentially calls for a deck addition. This request is greater than what is necessary to make the house handicap accessible; therefore, staff recommends denial of this application.

Mr. Feigley opened the public hearing.

Mr. James Walls, property owner, explained that his wife has Multiple Sclerosis and the steps leading to the rear door of the house are dangerous for his wife to negotiate. This request would provide her with easier access to the house and provide her with a small deck to enjoy the scenery behind the house.

Mr. Feigley questioned the applicant on the necessity for an eight-foot deck when it so clearly encroaches into the rear setback requirement.

Mr. Walls explained that the deck provides his wife with an area where his wife could be outdoors and have limited freedom of movement.

Mr. Nice asked whether the rear entrance is the primary entrance used to enter the home from the driveway and if there was any way to construct the deck and ramp so that it would not encroach into the rear setback.

Mr. Walls replied that the rear entrance is used in exiting the garage area and that he must carry his wife up four steps currently to enter the home.

Mr. Giedd asked for clarification as to the height of the steps at the rear of the house.

Mr. Walls stated that the steps measured 42" in height.

Mr. Nice asked if the garage behind the house was nonconforming.

Mr. John Patton, Code Compliance Officer, responded that the garage is considered a detached dwelling with setbacks measured off of the street.

Mr. Feigley asked if the applicant had to carry his wife into the home exclusively or whether his wife could manage to enter the home on her own.

Mr. Walls replied that his wife can manage to lift herself up the stairs with considerable difficulty but that he carries her into the house more often than not.

Mr. Nice asked the applicant if the predominantly pleasing view from the house is to the rear.

Mr. Walls responded that the view afforded from the rear of the home provides his wife with the most pleasure and comfort given her condition.

Mr. Feigley closed the public hearing.

Mr. Nice noted that the applicant's house is a corner lot that creates uniquely restrictive setbacks. Locating the ramp and deck on the right side of the house would not make it any closer to the garage and driveway. An eight-foot deck is a very small deck and minimizes the encroachment into the rear setback and he would favor granting this variance request.

Mr. Feigley questioned whether a four-foot ramp and four-foot deck would be acceptable.

Mr. Giedd mentioned that the focus should be on the property in question, not the current user of the property. Over the long term, the proposed addition would always be in nonconformity regardless of who owned the property. He stated that his emotions on this case were mixed.

Mr. Nice added that he couldn't think of a better reason to grant a variance than a situation such as this one where the actions of the Board showed such a clear benefit to the applicant.

Mr. Giedd questioned whether all possible options had been examined in locating the deck and ramp elsewhere.

Mr. Nice felt that the Board should consider the merits of an application on a case by case basis regardless of the language of the Zoning Ordinance.

Mr. Feigley said that he would be hard pressed to grant a variance of convenience making note that in his opinion the proposed deck would mainly be used for enjoyment and not convenience.

Ms. Wallace echoed Mr. Feigley's comments and questioned the necessity of an eight-foot deck.

Mr. Giedd spoke to the issue of nonconformity in neighborhoods and noted that there has been an abundance of variances granted in this neighborhood in the past.

Mr. Nice made a motion to grant a variance to the rear setback of nine feet that would allow for the construction of a ramp to allow for handicap accessibility and a deck to enjoy the view from behind the house.

Mr. Fischer seconded the motion.

The variance was granted by a vote of 3-2. AYE: Nice, Fischer, Giedd. NAY: Wallace, Feigley

ZA-15-97. Venture Distributing, Inc.

John Patton presented the staff report stating that Venture Distributing, Inc., represented by Mr. Ed Jenkins, has requested a variance to the setback requirements and the yard regulations for the existing buildings and proposed additions located at 5525 Olde Towne Road. The property is located in the B-1, General Business, zoning district and is further identified as parcel (1-3) on James City County Real Estate Tax Map No. (33-3).

No building permits are on record for the structures on this property, however, a site plan dated 1972 appears to show the structures in question. At this time, the setbacks were twenty-five feet from the road and ten feet from residential property. In 1973, these structures became nonconforming with ordinance changes. The applicant desires the ability to add on to the existing structures in order to develop the property. The 1 ½ story building is 2.2 feet in violation of the current front setback and the one story brick building and frame building are 32 ½ feet in violation

of the current side yard setback. The applicant is requesting a three-foot variance to the front setback requirement to allow a front setback of forty-seven feet and an eighteen-foot variance to the side yard requirement to provide a thirty two-foot side yard setback.

Staff recommended that the application be denied, as a clearly demonstrable hardship has not been presented. The property has been and is being put into beneficial use and could continue to be used and expanded without any variances being granted.

Mr. Feigley asked staff to clarify which buildings currently located on the property are being considered for expansion.

Mr. Patton replied by stating that the property owner desires the ability to expand the one story brick and frame building into a florist shop.

Mr. Feigley asked whether granting a variance in this case was absolutely necessary given the applicants ability to expand in the area between the existing buildings on the property.

Mr. Patton answered by stating that the other option the property owner has available is to tear the existing structures down and start from scratch. The variances requested would allow the applicant to take advantage of the existing structures and expand them to fit his intended use.

Mr. Nice asked if the proposed additions would be level additions.

Mr. Patton replied that there were several possible ways the applicant could expand under the current Ordinance restrictions. The variance requests would allow the applicant to expand the length and width of the one story brick and frame building.

Mr. Feigley opened the public hearing.

Mr. Ed Jenkins, property owner, presented conceptual plans showing his intended development of the property, drawing special attention to his desire to save the existing trees on the property.

Mr. Nice noted that the proposed building would hide some of the more unsightly aspects of the existing buildings on the site and is a considerable improvement to the site.

Ms. Wallace questioned the traffic that would be generated at the proposed business.

Mr. Giedd responded that there was an abundance of parking spaces shown on the conceptual plans for the florist shop given the size of the building.

Mr. Patton added that staff had not looked into the parking issues or landscaping issues at this conceptual stage.

Mr. Feigley closed the public hearing.

Mr. Nice favored allowing the applicant to do what he has proposed to the property with a variance to the larger building. Given the objections of the adjacent property owner, he would not be in favor of granting a variance to the smaller building.

Mr. Giedd asked whether the buildings on the property are currently habitable.

Mr. Feigley responded that they were habitable.

Mr. Feigley made a motion to grant a variance of eighteen feet to the left side yard setback, reducing the setback from fifty feet to thirty-two feet and that the request for the setback from the road right-of-way be denied.

Mr. Nice seconded the motion.

The variance was granted unanimously.

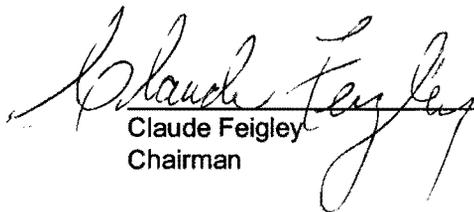
**E. MATTERS OF SPECIAL PRIVILEGE**

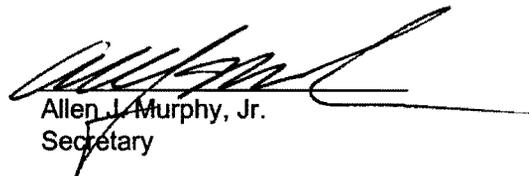
A calendar showing the meeting dates for the Board of Zoning Appeals in 1998 was brought forward for discussion and there were no objections raised to the dates listed on the calendar.

Mr. Feigley mentioned that the by-laws of the Board of Zoning Appeals call for the election of officers for the following calendar year and that this matter would need to be addressed at the next Board meeting. Mr. Feigley added that he has been considering resigning his position on the Board as well as his Chairmanship and that members should be thinking of potential candidates who could carry out the duties of the Board.

**F. ADJOURNMENT**

The meeting was adjourned at 9:30 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy, Jr.  
Secretary