

BOARD OF ZONING APPEALS

FEBRUARY 5, 1998

A. ROLL CALL

PRESENT:

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

ABSENT:

Mr. Giedd

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 and November 6, 1997 meetings were approved as submitted.

C. OLD BUSINESS

None

D. NEW BUSINESS

ZA-16-97. Donald and Karen Cossman

Scott Denny presented the staff report stating that Mr. & Mrs. Donald Cossman, property owners, have requested a ten-foot variance, which would permit the existing structure to remain twenty-four feet from the rear property line for their residence at 105 Loxley Lane. The property is zoned R-1, Limited Residential, and is further identified as parcel (3-53) on James City County Real Estate Tax Map No. (45-2).

The applicants were made aware of an encroachment of the rear setback during the purchase of the property in 1988 but were told by their closing attorney that the encroachment was not an issue worthy of their concern. The encroachment was noted during a recent sale of the property and the issue was brought to the Code Compliance department by the applicant's representative for clarification. This was the first time staff was made aware of the ten-foot encroachment.

Staff received no complaints from adjacent property owners and felt that granting this variance would not be a detriment to adjoining property. A clearly demonstrable hardship does not exist as defined by the J.C.C. Zoning Ordinance; therefore, staff cannot support this application.

Mr. Feigley asked staff to clarify a change to the staff report mentioned in Mr. Denny's presentation.

Mr. Denny responded that the applicant's were aware of a ten-inch encroachment to the right rear corner of the home at the time they purchased the property but were not aware of a ten-foot encroachment of the rear setback by the deck and sun room until the survey was brought to staff's attention during the recently attempted sale of the property.

Mr. Feigley asked if the deck and sunroom were included on the original survey in 1988 when the building permit was issued.

Mr. Denny said that that appeared to be the case.

Mr. Feigley opened the public hearing.

Mr. Donald Cossman, property owner, asked that a variance be granted so that the pending sale of the property can be completed. At the time of his purchase of the home in 1988, the deck and sunroom were on the property. A refinance of the property in 1992 again noted the ten-inch encroachment of the right rear corner of the home but in neither occasion were the applicants informed of a ten-foot encroachment by the deck and sunroom.

Mr. Feigley asked if the applicant was aware of the setbacks and the Zoning Ordinance at the time of purchase in 1988.

Mr. Cossman replied that he was aware but was instructed by his closing attorney to disregard the encroachment as a pertinent issue.

Mr. Nice asked if title insurance was issued for the property.

Mr. Cossman responded that title insurance had been issued in 1988.

Ms. Barbara Watson, Realtor for the applicants, noted that there were no objections presented from any of the adjacent property owners.

Mr. Feigley closed the public hearing.

Mr. Nice noted that the applicants had acted in good faith and had reason to trust the advice of their closing attorney in 1988 and not pursue the matter. The County despite the encroachment issued a Certificate of Occupancy. Given these facts, he supports granting this variance request.

Mr. Feigley agreed with Mr. Nice that the error was not the applicant's fault in this case. The closing attorney deserves a reprimand for advising his clients to disregard a zoning encroachment.

Ms. Wallace stated that the applicant's were victims of circumstance and favored granting a variance in this case.

Mr. Fischer echoed the opinions of the other Board members and also favored granting a variance.

Mr. Feigley made a motion to grant a variance establishing the rear setback at twenty-four feet for the property at 105 Loxley Lane.

Mr. Nice seconded the motion.

The variance was granted unanimously 4-0.

ZA-17-97 Design Master Associates, Inc.

Mr. John Patton presented the staff report stating that Mr. Glen Duff, on behalf of Design Master Associates, Inc., property owner, has requested a nineteen foot variance to the rear setback requirement to allow for the construction of a 4,200 square foot addition to their existing business located at 151 Point 'O' Woods Road. The property is zoned B-1, General Business, and is further identified as parcel (1-39) on James City County Real Estate Tax Map No. (13-4).

In 1993, the property was rezoned from R-1, Limited Residential, to B-1, General Business, with proffers, in Case Z-11-93. The conceptual plan and the approved site plan, SP-15-94, both showed a possible expansion of the office building by 2,500 square feet, 50' x 50', at the rear of the building. The proposed expansion met and continues to meet the required setback requirements. Design Master Associates, Inc. now desires to more than double the size of their existing 4,000 square foot building by adding a 4,200 square foot addition, 70' x 60'. The proposed configuration encroaches the rear setback requirement by nineteen feet. Mr. Duff noted in his application that the rear of the property is adjacent to a steep slope and would restrict its usefulness as residential development. The current owners of the adjacent residential property concur with Mr. Duff's opinion.

Staff feels that granting a variance in this case would not be a substantial detriment to adjacent property due to the topography and proffers requiring compatibility with surrounding residential development, however, the application fails to show how the denial of a variance would produce an undue hardship. Staff added that it would be more appropriate for the applicant to purchase more of the undeveloped adjacent property and have it rezoned to B-1 than to grant a variance. Staff could not find any legal support for a variance to be granted, therefore, cannot support this application.

Mr. Fisher asked staff who owns the property immediately behind the Design Master site.

Mr. Patton replied that Nice Brothers owns the property.

Mr. Nice asked staff what the setback requirement would be if the property behind the Design Master site were not zoned residential.

Mr. Patton replied that the rear setback requirement would be twenty-feet, not fifty-feet.

Mr. Feigley opened the public hearing.

Mr. Glen Duff, of Design Master Associates, Inc., outlined for the Board a brief history of his company and its current desire to expand their facility. He indicated that if they are not allowed to expand their current building that relocating to a surrounding county is their next option. He reiterated that it is his desire to stay in James City County. He added that his firm's architect has indicated that the most efficient use of the land is a 60' x 70' addition, hence this application.

Mr. Feigley asked the applicant to explain the logic behind his desire to add an additional 4,200 square feet.

Mr. Duff responded that the proposed expansion would allow Design Master to locate all of their warehousing facilities under one roof and would allow them enough room to prevent the need for a future expansion beyond their current needs.

Mr. Fisher asked if the height of the building was limited to one-story.

Mr. Duff responded that proffers restrict the building to a single story.

Mr. Feigley asked if any other options would provide the company with an acceptable amount of floor space besides the architect's suggestion.

Mr. Duff responded that all other options presented serious financial constraints, which are unfeasible to Design Master. He added that the resale value of the property would be greatly affected if the firm were unable to expand in a manner consistent with their current building.

Mr. Fisher asked whether Design Master had given serious consideration to an expansion that would stretch more horizontally behind their existing building to avoid setback encroachment.

Mr. Duff responded that the hip roof of the current building would make an expansion of that nature cost prohibitive. He added that the proposed expansion would not be a detriment to the county or adjoining property.

Mr. Nice asked the applicant to elaborate on the comments made by the County when the building was originally constructed.

Mr. Duff stated that the County had said from his earliest inquiry that the land to the rear of the current Design Master site would eventually be zoned commercial. Keith Taylor, J.C.C. Economic Development Director, said that the County would be willing to make exceptions to help new businesses grow.

Mr. Nice stated that the County uses its Comprehensive Plan as a tool to guide development. Given the topographical restrictions of the land behind the Design Master site, nobody will ever develop this site for a residential use.

Mr. Feigley stated that finances should not be the primary concern or focus of the Board's decision.

Mr. Feigley closed the public hearing.

Mr. Nice stated that the purpose of the Board of Zoning Appeals is to take the intent of the law and apply common sense and fairness when taking an objective look at any application. He added that in this case, it is Design Master's business and money and should be their decision as to how to expand. The proposed addition is compatible and a sound design. If the property surrounding the Design Master site was rezoned to B-1, the setback requirement would be twenty-feet and this case wouldn't even come before the Board, therefore, he is in favor of granting a variance of nineteen-feet.

Mr. Fisher stated that in order to grant a variance the Board must find hardship and financial concerns are not to be considered as a hardship. Several other solutions, however undesirable to the applicant, are available; therefore, he cannot support a granting of a variance.

Mr. Feigley stated that this application comes down to a choice between the rights of B-1 and R-1 property owners. However flawed the Zoning Ordinance may be it is still the law. While giving some weight to the topographical constraints to the area behind the Design Master site as a residential use, other options exist which prevents support for granting this variance.

Mr. Nice made a motion to grant a variance of nineteen-feet to establish the rear setback requirement at thirty-one feet for the proposed addition.

There was no second to Mr. Nice's motion.

Mr. Feigley made a motion to deny the granting of a variance as the applicant has not clearly demonstrated an undue hardship.

Ms. Wallace seconded the motion.

The variance was denied by a vote of 3-1. AYE: Feigley, Fischer, Wallace NAY: Nice

Mr. Nice wished to express his disagreement with the actions of the Board on this case.

Mr. Feigley informed Mr. Duff that he has the right to appeal the decision of the Board within thirty days to the Circuit Court.

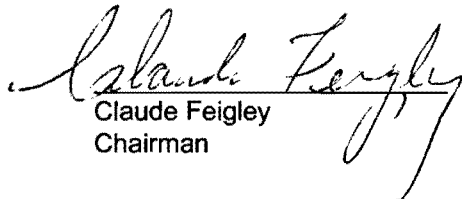
E. MATTERS OF SPECIAL PRIVILEGE

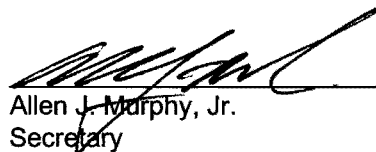
The election of officer's for the 1998 calendar year produced the following results:

- Mr. Fischer, seconded by Mr. Nice nominated Mr. Feigley as Chairman.
- Mr. Feigley, seconded by Mr. Fischer nominated Mr. Nice as Vice Chairman.
- Mr. Feigley, seconded by Ms. Wallace nominated Mr. Allen Murphy as Secretary.

F. ADJOURNMENT

The meeting was adjourned at 9:15 p.m.


Claude Feigley
Chairman


Allen J. Murphy, Jr.
Secretary