

**BOARD OF ZONING APPEALS**

**MAY 7, 1998**

**A. ROLL CALL**

PRESENT:

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

ABSENT:

Mr. Nice

OTHERS PRESENT:

Scott Denny, Code Compliance Officer

**B. MINUTES**

The minutes of the March 5, 1998 meeting were approved as submitted.

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

ZA-4-98. Lawrence & Elizabeth Beckhouse

Scott Denny presented the staff report stating that Lawrence and Elizabeth Beckhouse, former property owners, and Chris Byrne and Sarah McNeeley, current property owners, have requested a 2.3 foot variance to Sec. 24-237 (b), Yard Regulations, for an existing deck at 107 Harbin Court. The property is zoned R-1, Limited Residential, and is further identified as parcel (7-4) on James City County Real Estate Tax Map No. (46-2).

A building permit was issued on March 29, 1984 for a single-family dwelling. The plan submitted with the permit application indicated that a rear deck would be located at the thirty-five foot building setback line. A survey dated February 6, 1987 was submitted with the variance application. The survey indicated that the existing deck encroaches into the rear setback by 2.3 feet and stated that the unusual configuration of the lot was the cause of the encroachment.

The parcel in question is a mirror image of the lot directly across the cul-de-sac. The shape of the lot is not unusual for a cul-de-sac lot and is not a hardship that is not shared by other properties in the same vicinity.

There have been no complaints from neighboring properties since the deck was built in 1984 and there are no dwellings within 100-feet of the existing deck. Staff found no demonstrable hardship approaching confiscation and can not support this application.

Mr. Feigley asked staff to clarify the order of events for this application.

Mr. Sheldon Franck, owner's agent, stated that the Beckhouse's built the dwelling, including the deck, in 1984. The property was refinanced in 1987. The Beckhouse's listed the property for sale in 1998 and submitted a variance application in order to give clear title to a potential new owner. Chris Byrne and Sarah McNeeley purchased the property after the variance application was submitted.

Mr. Fisher asked staff who supplied the survey included with the application.

Mr. Denny stated that Lawrence and Elizabeth Beckhouse submitted the survey.

Ms. Wallace asked staff when it became aware of the encroachment.

Mr. Denny responded that staff was not aware of the encroachment until the variance application was submitted.

Mr. Feigley opened the public hearing.

Mr. Franck stated that his clients, the Beckhouse's, purchased the property in 1984. The deck was constructed at the same time. The encroachment was not noticed until a refinance of the property in 1987. There had been no complaints from surrounding property owners since the deck was constructed. The encroachment had no effect on the refinance of the property. A variance application was submitted in order to prevent the encroachment from hindering the sale of the property. The home has since been sold. The configuration of the lot is not unique but it is unusual.

Mr. Feigley stated that in the Commonwealth of Virginia a strictly defined hardship must exist in order to grant a variance.

Mr. Franck responded by saying that there are several ways to define a hardship.

Mr. Feigley stated that the builder created this problem in 1984. The error occurred during construction. The dwelling and deck could have been built in conformance with the ordinance.

Mr. Fisher asked at what point the applicant was aware of the encroachment.

Mr. Franck stated that the Beckhouse's became aware of the encroachment in 1987.

Mr. Fisher asked how much space would be lost if a variance is not granted and the applicant is asked to remove a portion of the deck.

Mr. Franck replied that the deck is rather small to begin with and the removal of the corner area would reduce the deck space considerably.

Mr. Chris Byrne, current property owner, stated that he and Sarah McNeeley purchased the property in April 1998. They were aware of the application that had been submitted by the Beckhouse's but did not want to lose the house solely because of the outstanding application. He added that the encroachment does not change the character of the surrounding area and that there have been no complaints in over sixteen years.

Mr. Feigley stated that the BZA can grant a variance if a property owner has acted in good faith.

Mr. Giedd stated that the original owner of the property had acted in good faith and that an encroachment of this nature would have little if any effect on a refinance as it doesn't change the overall value of the property.

Mr. Feigley stated that the Certificate of Occupancy fails to mention the zoning ordinance at all and additional steps need to be taken by the County to prevent these sorts of problems from happening in the future.

Ms. Wallace asked the applicant if he regarded the variance as a formality given his decision to purchase the property despite the encroachment.

Mr. Byrne stated that he was aware of the encroachment and had not inquired with the Code Compliance office about this application.

Mr. Feigley closed the public hearing.

Mr. Giedd stated that in 1984, surveying techniques were not as exact as they are today and this problem would likely have been caught if it happened today. He added that he would have no problem in granting a variance for this application.

Mr. Feigley stated that builders continually assume that the BZA will approve variance applications and the County needs to take steps to see that these sort of encroachments are caught and corrected during construction.

Mr. Fisher stated that the County should require the builder to certify that all setback requirements have been met in order to hold them accountable.

Mr. Feigley made a motion to grant a variance to reduce the 35-foot rear setback by 2.3 feet to 32.7 feet.

Ms. Wallace seconded the motion.

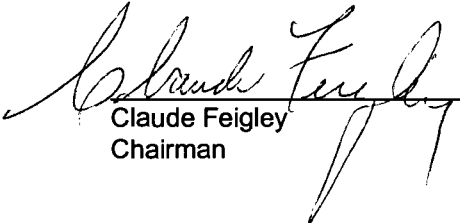
The variance was granted unanimously 4-0.

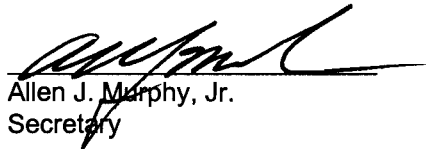
**E. MATTERS OF SPECIAL PRIVILEGE**

None

**F. ADJOURNMENT**

The meeting was adjourned at 8:20 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy, Jr.  
Secretary