

**BOARD OF ZONING APPEALS**

**JULY 2, 1998**

**A. ROLLCALL**

PRESENT:

Mr. Feigley  
Mr. Fischer  
Ms. Wallace

ABSENT:

Mr. Nice  
Mr. Giedd

OTHERS PRESENT:

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

**B. MINUTES**

The minutes of the June 4, 1998 meeting were approved as submitted.

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

ZA-6-98. Fred Bennett, 151 Clark Lane

Scott Denny presented the staff report stating that Mr. Fred Bennett, on behalf of Clint & Veronica Morton, has requested a variance to Sec. 24-259 (b), Yard Regulations, for an existing dwelling located at 151 Clark Lane. The property is zoned R-2, General Residential, and is further identified as parcel (1-53A) on James City County Real Estate Tax Map No. (32-2).

At the March 5, 1998 BZA meeting, Case ZA-2-98 involved a variance request to permit the construction of a deck on this same property. A foundation survey submitted with this application was conducted by Mr. Dean Raynes on January 8, 1998 showed the foundation thirty-five feet from the rear property line. The variance which was granted in Case ZA-2-98 allowed the construction of a 12' x 16' deck with the condition that there be no future encroachments.

A representative from Composite Structures, the builder of the residence, contacted the Code Compliance office on May 29, 1998 to request a copy of the variance approval letter. The representative inquired if the variance that was granted included a portion of the house. A second survey conducted by Mr. Charles Sheckler on May 18, 1998 was sent to the Code Compliance office that showed an encroachment of four inches. Staff advised the property owners and Composite Structures of the discrepancy and recommended that the surveyors meet and discuss the results of their surveys. Mr. Raynes stated that both surveys are correct as his was measured from the foundation and Mr. Sheckler's was measured from the edge of the siding of the home. Staff hand measured the protrusion of the exterior siding and found the measurement to be slightly over two inches. Staff concluded that there is a problem with one of the surveys.

Staff recognizes that the unusual circumstances involving the two surveys is not the fault of the property owners and granting a variance would not have a negative effect on adjoining property nor change the character of the surrounding area. A strict enforcement of the ordinance would produce an undue hardship; therefore, staff supports the requested variance.

Mr. Fisher asked staff what prompted Composite Structures to request a copy of the variance approval letter from Case ZA-2-98.

Mr. Denny replied that the closing attorney for the property owners requested that a second survey be done noting the original survey showed the dwelling to be located on the thirty-five foot setback line. The second survey noted the encroachment of the dwelling as well as the proposed deck. The closing attorney requested that the property owners get the matter resolved to prevent future problems should they decide to sell the home.

Mr. Feigley questioned whether or not the slab had been poured at the time Case ZA-2-98 came before the Board in March.

Mr. Denny responded that the slab had been poured prior to the March BZA meeting. A foundation survey, dated January 8, 1998, found that the dwelling was on the thirty-five foot setback line. Case ZA-2-98 was brought before the Board to resolve the encroachment of the deck on the rear of the dwelling.

Mr. Feigley opened the public hearing.

Mr. Fred Bennett, owners agent, stated that foam insulation in the walls accounts for the different measurements in the dwelling and the foundation slab and that this difference is no more than two inches. He added that after the March BZA meeting, the property owners decided to reduce the size of the deck behind the residence.

Mr. Feigley asked the applicant if he was aware of the thirty-five foot setback requirement.

Mr. Bennett stated that he was aware of the ordinance requirement but noted that he was the contractor for the deck and was not involved when the residence was constructed.

Mr. Feigley closed the public hearing.

Mr. Fisher stated that the surveyors are at fault in this matter and the applicants and their contractors acted in good faith and should not be held accountable.

Ms. Wallace asked staff if the surveyors who had conducted the two surveys had been notified of this case.

Mr. Denny informed the Board that both surveyors were notified of this hearing and Mr. Sheckler had planned on attending if not for the holiday weekend.

Mr. Feigley stated that the Board should have questioned the location of the foundation in Case ZA-2-98. Given that the matter was not addressed at the March BZA meeting, he expressed no objection to granting a variance in this case.

Ms. Wallace stated that given the home is already built and the owners have already moved into the residence, the problem before the Board in this case is difficult to remedy. Given this fact, she stated that she would support the granting of a variance.

Mr. Feigley made a motion to grant a variance to reduce the rear setback from 35 feet to 34.7 feet.

Ms. Wallace seconded the motion.

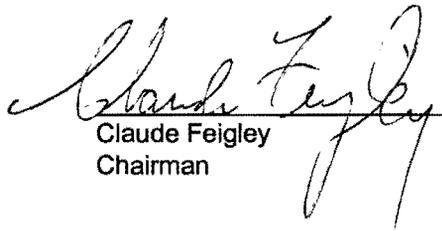
The variance was granted unanimously 3-0.

**E. MATTERS OF SPECIAL PRIVILEGE**

None

**F. ADJOURNMENT**

The meeting was adjourned at 7:55 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy, Jr.  
Secretary