

BOARD OF ZONING APPEALS

June 3, 1999

A. ROLL CALL

PRESENT:

Mr. Feigley
Mr. Fischer
Mr. Giedd
Mr. Nice

ABSENT:

Ms. Wallace

OTHERS PRESENT:

Scott Denny, Code Compliance Officer
Jim Breitbeil, Development Management Technician
Andy Herrick, Assistant County Attorney

B. MINUTES

The minutes of the December 3, 1998 meeting were approved as submitted.

C. OLD BUSINESS

None

D. NEW BUSINESS

ZA-1-99 7144 Church Lane

Scott Denny presented the staff report stating that Ms. Ethel Barnhill, property owner, has applied for a 17-½ foot variance to the rear 35-foot setback to permit an existing deck to remain in its present location. The property is located at 7144 Church Lane and can be further identified as Parcel (5-20) on the James City County Tax Map No. (22-1). This property is zoned R-1, Limited Residential.

Section 24-237(b) of the James City County Zoning Ordinance requires a rear setback of 35 feet. The house was constructed in 1986. The setbacks for the R-1 zoning district have not changed since the construction of this house. The original building permit, 86-0278-B, identified the distance to the rear property line as 36 feet. Ms. Barnhill has stated that the portion of the deck that currently encroaches in the rear setback already existed in 1995 when she purchased the property. However, her attorney did not bring the encroachment to her attention.

Staff recognizes that the continued presence of this deck would not create a detriment to the adjacent property and it would not change the character of the surrounding area. Staff also recognizes that no complaints have ever been received regarding this deck and the property backs up to the property of Newport News Waterworks. The strict application of the ordinance would not produce an undue hardship in this instance. Therefore staff cannot support this application.

Mr. Feigley stated he noticed a note on the survey that stated the garage encroaches the side building setback line. However, it does not encroach the accessory building setback line. He stated that the garage appears to be a problem with the side setback. Mr. Feigley stated he measured the distance between the house and the garage and that the closest point is approximately 5 feet and the farthest point is approximately 8 ½ feet. On that basis it is less than 10 feet away from the main structure and therefore should conform to the building setbacks and not to the accessory building setback. He stated the applicant might want to ask for that variance at the same time.

Mr. Feigley stated that the garage appears to encroach the side 15-foot setback by 2.6 feet.

Mr. Holland, attorney for Ms. Barnhill, asked to amend the application to also include a variance request of 2.6 feet to the east-side setback for the existing garage.

Mr. Nice asked if the garage was constructed at the same time as the house.

Mr. Denny stated yes.

Mr. Feigley opened the public hearing.

Mr. Holland stated he does not have much to add but would like to state that Ms. Barnhill is an innocent party. The house was built in 1986. She purchased it in 1995 and her attorney at that time did not mention to her that the deck was encroaching the rear setback, not to mention the garage as well. Ms. Barnhill has sold the property and the new owner, who is present, and her neighbor to the right-hand side is also present in support of Ms. Barnhill. Mr. Holland stated that he received two estimates to move and reconfigure the deck and they were \$9460 and \$8650.

Mr. Feigley asked if Ms. Barnhill is present.

Mr. Holland stated yes.

Mr. Feigley asked Ms. Barnhill whom she bought the house from.

Ms. Barnhill stated Ms. Jeanne Rich in 1995.

Mr. Feigley asked if she was the original owner of the house.

Ms. Barnhill stated no. She bought it from the person who built the house. She bought the house as is with the garage and the deck in the position they are in today.

Mr. Feigley asked if Ms. Barnhill had the property surveyed when she purchased the house.

Ms. Barnhill stated yes and that nobody indicated that there existed a problem at that time.

Mr. Benjamin Morris, resident at 7140 Church Lane, stated that the original owner added the garage and part of the deck after the construction of the house. He stated that he would like to see the deck stay where it is in its present location and has no objection to the variance requests.

Mr. David Wilburn, current resident at 7144 Church Lane, stated he has a copy of an email from other neighbors stating they are happy with the deck and have no problems with the house. He stated his wife is handicapped and is in a wheelchair. He also has three children. Part of the lure in buying the house was the deck. Any change in the deck would cause more of a problem for the neighbors than leaving it as is. He also stated that this is the first time he was aware of the garage encroaching the side setback.

Mr. Feigley asked if Mr. Wilburn bought the house in good faith.

Mr. Wilburn stated yes.

Mr. Andy Herrick, Assistant County Attorney, introduced himself to the Board. He stated that James City County is required to publish a notice for each separate variance. If the Board were inclined to proceed with the variance for the garage, they would have to do so in the form of a single variance rather than two separate variances.

Mr. Feigley asked if the Board could rule on the variance on the garage since it was not advertised.

Mr. Herrick stated that a variance on the garage could not be passed as a separate variance. It would have to be put together as a single variance. If the variance for the garage is to be considered separately, the County Code would require public advertisement.

Mr. Feigley asked if the Board could legally make a motion that would include both of the variances.

Mr. Herrick stated yes and that is what he is suggesting.

Mr. Feigley closed the public hearing.

Mr. Nice stated the homeowner is innocent in this situation, there are no objections from neighbors and feels that this case does not effect the intent of the ordinance. He then stated he would be in favor of supporting the variance.

Mr. Feigley stated that since the house, with the deck, has passed through at least two other transactions, he could not keep Mr. Wilburn at fault and that he bought the home in good faith. He is in favor of supporting a variance for the back yard setback and the side yard setback.

Mr. Geidd stated that he does not have a problem with the variance but does with a contractor putting up structures without building permits. He also stated that the contractor is wrong and should be the one in front of the Board explaining his case.

Mr. Nice stated he would like to acknowledge Mr. Feigley for being so astute in the zoning ordinance. He was able to help the applicant today and eliminate another inconvenience that may have occurred in the future.

Mr. Feigley made a motion to establish the rear setback at seventeen (17) feet and establish the East Side setback at twelve (12) feet.

The motion was granted unanimously (4-0).

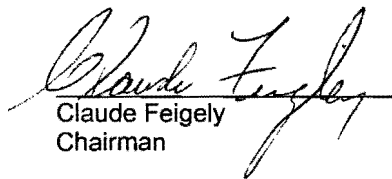
E. MATTERS OF SPECIAL PRIVLEDGE.

Being the first scheduled meeting of the year, the Board members nominated officers for the remainder of the year 1999.

Chairman – Mr. Feigley
Vice-Chairman – Mr. Nice
Secretary – Mr. Allen Murphy

F. ADJOURNMENT

The meeting was adjourned at approximately 8:10 p.m.


Claude Feigley
Chairman


Allen J. Murphy
Secretary