

BOARD OF ZONING APPEALS

July 1, 1999

A. ROLL CALL

PRESENT:

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

ABSENT:

Mr. Nice

OTHERS PRESENT:

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

B. MINUTES

The minutes of the June 7, 1999 meeting were approved as amended.

C. OLD BUSINESS

None

D. NEW BUSINESS

ZA-3-99 137 Howard Drive

Mr. Feigley asked the applicant, Mr. Robert Kidd, if he has ever been before the Board.

Mr. Kidd stated he has been here about ten years ago.

Mr. Feigley explained that the James City County Board has five members and one is absent tonight. To conduct a meeting, there needs to be a quorum of three. Four are present tonight and there is a possibility of a tie vote. The State has mandated that a variance will not be granted in the case of a tie vote.

Mr. Feigley asked Mr. Kidd if he knew why James City County has a Board that you can apply for a variance to if you feel the Ordinance created a unique hardship to you.

Mr. Kidd stated yes.

Mr. Scott Denny presented the staff report stating that Mr. Robert Kidd of Longhouse Village Associates, on behalf of Reather Ann Johnson, property owner, has applied for a variance to reduce the rear setback at 137 Howard Drive to permit the construction of a ten-foot by twelve foot deck. This deck, if built, would encroach 7.05 feet into the rear thirty five-foot (35') setback. This property is also identified as parcel (01-0-0059) on the James City County Tax Map (52-3) and in the R-2, General Residential Zoning District.

Upon examination of the application, original building permit and subdivision plat, staff discovered that the existing structure was also 1.79' feet too close to Howard Drive. Mr. Kidd, President of Longhouse Village Associates, was notified of the front encroachment and staff recommended inclusion of a variance request

to reestablish the front setback at twenty-eight feet. Mr. Kidd agreed that this issue should be addressed now in hopes that it would prevent any future problems with the sale of the property.

Section 24-258(b) of the James City County Zoning Ordinance establishes the rear setback in the R-2, General Residential Zoning District, at thirty-five feet (35'). Currently, the existing structure is located 37.95' from the rear property line. Therefore, the structure is not encroaching. However, the applicant has requested a variance to permit the future construction of a rear deck.

The second issue concerns the placement of the existing structure on the property. Section 24-256 of the James City County Zoning Ordinance states in part "Structures shall be located a minimum of 25 feet from any street right of way which is 50 feet or greater in width. Where the street right of way is less than 50 feet in width, structures shall be located a minimum of 50 feet from the centerline of the street." Howard Drive, a public street, currently has a right of way width of thirty feet (30'). The subdivision plat also identifies a ten-foot (10') strip that is to be dedicated to the Virginia Department of Transportation for future road widening. This will give the right of way a width of forty feet (40') and require that all structures be located at least fifty feet (50') from the centerline of Howard Drive.

The survey provided by the applicant identifies the structure as being 28.21 feet from the front property line. In order to meet the required fifty feet (50') from the centerline the structure would have had to been placed at least thirty feet (30') from the front property line. Further examination of the records revealed that the setbacks shown on the building permit matched the setbacks on the subdivision plat. These setbacks were incorrect. This error was not detected by staff throughout the subdivision or building permit process.

Since this variance request is comprised to two separate issues, staff has two separate recommendations. The application requested a reduction of the rear setback that would permit the construction of a ten foot by twelve foot (10'x12') rear deck. This deck would reduce the rear setback to twenty-seven point nine five feet (27.95'). Although the authorization of such a variance would not be of substantial detriment to the adjacent property, it would be a matter of special privilege. The property owner could construct a patio with steps that would meet ordinance requirements. In this case staff believes that a demonstrable hardship has not been demonstrated. Therefore, staff cannot support this aspect of the variance.

The second issue involves the current placement of the existing structure on the property. Since the property was purchased in good faith by Ms. Johnson, and the placement of the house was a result of an error that was not detected by staff during the review of both the subdivision plat and the building permit process, staff supports this request to establish the front setback at 137 Howard Drive at twenty eight feet.

Mr. Feigley asked, for clarity, if the Board will be considering a variance to both the rear and to the front setbacks.

Mr. Denny stated that was correct.

Mr. Feigley noted that the front property line indicated on the application for a building permit is incorrect and asked if the error occurred as a result of approving the application as submitted.

Mr. Denny stated that the error was created by assuming that Howard Drive had a 50-foot right of way. The right of way was not noted on the site drawing and that assumption should not have been made. If Howard Drive did have a 50-foot right of way, then the required setback for the house would have been 25 feet. Since the right of way is 30 feet, the house should have been placed further back.

Mr. Feigley asked if the applicant actually places the numbers on the application for a building permit.

Mr. Denny stated no -- Code Compliance Officers place the numbers there, and in this case he wrote them in.

Mr. Feigley asked if the number "28.39" for the Front Property Line on the application for a building permit does not conform to the zoning ordinance.

Mr. Denny stated that is correct.

Mr. Feigley asked why a deck of 120 square-feet is indicated on the application for a building permit and it is not shown on a drawing or elsewhere.

Mr. Denny stated that was another error by staff.

Mr. Feigley asked if staff is approving a 120 square-foot deck since it is indicated on the application.

Mr. Denny stated that staff reviews the site drawing and not noticing the discrepancy between the application and the site drawing was an oversight.

Mr. Feigley asked if this means the applicant receives permission to construct a 120 square-foot deck.

Mr. Denny stated that the application was approved and that he has requested a 120 square-foot deck. Normally, if it were noted that the deck was not on the site drawing, staff would contact the applicant and ask him to revise the site drawing to indicate the deck. In this case, Mr. Denny failed to notice it was on the application and therefore he was not contacted.

Mr. Feigley stated he knows that the deck was not built and that he wanted to ask the applicant why he did not build the deck. He then asked Mr. Denny why the application has a note that reads: "same as 97-2 or permit # 98-1346B."

Mr. Denny stated that when an applicant is submitting more than one application and construction plans are pretty much the same, staff normally puts same as numbers to reduce the amount of paper work.

Mr. Feigley asked whose actual writing is on the application; Mr. Denny's or the applicant's.

Mr. Denny stated it is the County's Senior Permit Technician with the exception of the signature.

Mr. Feigley opened the public hearing.

Mr. Robert Kidd, the builder of the houses in the subdivision, thanked the Board for hearing his case. He stated he feels that the County is vastly overworked and understands any error that may occur. He said he was unaware that the house did not meet the front setback until about three weeks ago. He stated they donated ten feet to the highway department when he re-developed the subdivision and felt they still met the front setback requirements.

Mr. Denny stated that after a ten-foot dedication to VDOT, the right-of-way is forty feet. The centerline of the street is twenty feet to one side and the house is twenty-eight feet from the property line. This put the house shy of the required fifty feet from the centerline when the right-of-way is less than fifty feet.

Mr. Kidd stated that he was unaware, until about three weeks prior to the completion of the house, that the deck was nonconforming and that he might have observed that if he paid closer attention. He handed out to the Board three pieces of paper and explained that the first one is of the subdivision as it has been on the County's books for thirty years. The front three lots were very small and nonconforming. He reconfigured and took about 100 feet from the rear lots and pushed the front lots back to make it conforming. The sheet marked "B" is the first submission he made to the County and noted that all the houses face inward which was his intention. He stated that it was noted to him that the Code requires all houses to face toward the hard surface road if the thirty-foot right-of-way is not a hard surface. The lots were re-configured again and then the houses on them. Sheet "C" is how it was finally approved and all four houses are facing Howard Drive. The County allowed for the two houses in the rear-facing center, but the two at the front have to face Howard Drive. From the original conception, the lot was not deep enough for a house and a deck on the rear.

Mr. Kidd stated that after turning the houses around and the lack of the ability to build a deck represents a hardship for the homeowner. He did contract to build her a deck and the homeowner wanted a deck. The placement of the house facing Howard Drive precluded the possibility of having a deck, which he found out about by the County several weeks before the completion of the house. He stated he was not going to argue with the County or the Planning Department - they know their job and it was his error. But it was not the error of the homeowner. There are seven houses in that community. They take great pride in that area and the other six houses have decks, all of which are conforming. He suggested that the homeowner, not being able to have a deck would create a bit of a hardship. He stated that, perhaps in legalistic fashion, if the building permit stated the homeowner could have a deck then she can have a deck, but he will not take that position.

Ms. Wallace asked if the deck was in the original plan.

Mr. Kidd stated yes.

Mr. Feigley stated he does not see how anyone could put a 10' x 12' deck on to this house and conform to the zoning ordinance regardless what happened.

Mr. Kidd stated that if the house were to facing inward, there is ample room to meet the setbacks.

Mr. Feigley stated that with the configuration of the house as constructed, there is no way it would fit. He stated there is hardly room for anything but fortunately you could at least have some steps off the back door since they are not considered.

Mr. Kidd stated he spoke with the woman next door, the only person who would be adversely affected by a deck, and she has no problems with a deck going on the house - the deck would face the side of her garage.

Mr. Feigley asked what was planned for the new 30-foot right-of-way between 135 and 137 Howard Drive.

Mr. Kidd stated that is a utility easement and the right-of-way was shifted over to make more room for the lot we are looking at. The road would not have been permitted if he suggested they go in with a gravel road, but the right-of-way was there and grandfathered from thirty years back. It has been a subdivision on the county map for thirty or forty years. It was just re-configured and he purchased all the lots.

Mr. Fischer stated that a 120 square-foot deck is being applied for, but it is not mentioned on the building permit. He then asked if only what is on the permit is approved, or is the whole application approved.

Mr. Kidd stated he would accept that it would only approve what the permit shows. He could apply for anything, but may only get approval on some things. He mentioned that there is no deck shown on the plat and it should have been on there.

Mr. Fischer stated that the problem here is that we don't have a hardship -- the way the word is used in the zoning ordinance. It is a great deprivation, but it doesn't meet the terminology required for a hardship.

Mr. Kidd stated he would argue that the Code, by not permitting the house to face inward which would permit a deck on the rear of the house, does pose a hardship.

Mr. Giedd asked what were the dimensions of the buildable space.

Mr. Kidd stated there would be thirty-one additional feet and he is only requesting a variance of seven feet.

Mr. Allen Murphy stated that there may have been a problem with the width of the house.

Mr. Kidd stated that Mr. Murphy was correct and that the house would have to be narrower.

Mr. Giedd asked what would be wrong with building a patio.

Mr. Kidd stated the homeowner wants what the others have and what he contracted to give her. He did suggest that idea and she was quite adamant about wanting a deck.

Mr. Giedd asked what will happen if she doesn't get the deck.

Mr. Kidd stated he would refund the money for the deck and build a patio with steps.

Mr. Giedd asked if she would get out of the contract.

Mr. Kidd stated she has been living there for three months – they closed and escrowed.

Mr. Giedd stated the neighborhood doesn't fit the concept of the zoning ordinance where there are setbacks to provide privacy and separation of property. The houses there now exist without privacy and separation. It looks like a nonconforming neighborhood – not in the sense of the law, but in the way they were built. He stated it looks like very effective use of the land which appears to be economical where people may have gotten into houses where otherwise they wouldn't be able to.

Mr. Kidd stated that to find a lot in James City County where you can buy a lot and a house for the \$75,000 range is almost impossible.

Mr. Giedd stated that the people bought into this neighborhood, saw the neighborhood before they bought the house and wanted a deck there which is almost a standard today. This is not the type of neighborhood where this deck would depreciate the value of their neighbors, which is his main concern. He stated that, with no good reason, he would not turn down the variance.

Mr. Feigley closed the public hearing.

Ms. Wallace stated that she, like Mr. Fischer, fails to see a hardship.

Mr. Feigley stated he has visited the site twice and tried to rationalize the effective use of property. He then stated that Mr. Giedd made an important point in noting that decks are important to people. He pondered if the County's strict enforcement of the zoning ordinance caused this hodge podge arrangement of the way the houses face so the landowner can use his land to the best of his ability. He stated he did not know if these things should be factored into the decision or not.

Mr. Giedd stated he does not disagree with the way the County allowed for the neighborhood to be planned. He thinks it is value engineering that meets the requirements of the County and using property that gets people into housing. He stated he agrees that no hardship exists.

Mr. Feigley stated that, with the requirement that the house has to face Howard Drive, he cannot think of a configuration of a reasonable size building that could go on this property with a deck on it.

Mr. Giedd stated that it is a tiny lot and the house is the biggest size house that could be built on it. The lot is very efficiently used and it is a modest home at just over 1,000 square feet.

Mr. Giedd made a motion to establish the front setback at 28 feet and the rear setback at 27 feet.

Mr. Fischer seconded the motion.

The motion was denied (2-2).

Aye: Mr. Giedd, Mr. Fischer

Nay: Ms. Wallace, Mr. Feigley

Mr. Feigley stated he thinks this motion would grant an unusual privilege to set the rear setback at 27 feet. He noted that the variance couldn't be granted with tie vote, as mentioned at the beginning of the meeting.

Mr. Allen Murphy stated that the Board could, if it so desires, make a motion to consider only the front setback variance request.

Mr. Feigley made a motion to establish the front setback at 28 feet.

Ms. Wallace seconded the motion.

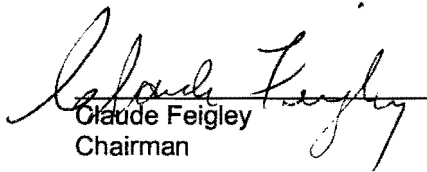
The motion was granted unanimously (4-0).

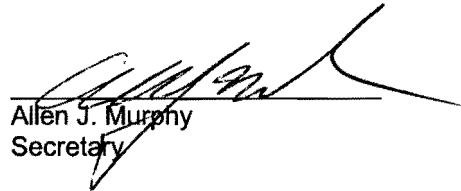
E. MATTERS OF SPECIAL PRIVLEDGE.

None

F. ADJOURNMENT

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


Claude Feigley
Chairman


Allen J. Murphy
Secretary