

BOARD OF ZONING APPEALS
Minutes for the meeting of August 3, 2000

A. ROLL CALL

PRESENT:

ABSENT:

Mr. Fraley
Mr. Giedd
Ms. Wallace
Mr. Fischer

Mr. Nice

OTHERS PRESENT:

Scott Denny, Code Compliance Officer
Andy Herrick, Assistant County Attorney
John Rogerson, Development Management Technician

B. MINUTES

The minutes of the June 1, 2000 meeting were approved.

C. OLD BUSINESS

None

D. NEW BUSINESS

Case No. ZA-12-00 3040 Heritage Landing Road

Mr. Scott Denny presented the staff report stating Gary and Robynn Smith, property owners, have applied for a variance to Section 24-238 (b) of the James City County Zoning Ordinance to permit the continued placement of a deck at the rear of the dwelling at 3040 Heritage Landing Road. The deck currently encroaches seven feet (7') in the rear thirty-five feet (35') setback. The property is further identified as Parcel No. (5-35) on the James City County Tax Map No. (45-1) and is located in the R-1, Limited Residential District.

On June 27, 2000 Mr. and Mrs. Beals, the previously property owners submitted an application for a variance for a portion of the rear deck. Upon a review of the application it was determined that although the Beals were attempting to resolve the issue for the new property owners, they no longer had standing in the matter regarding the property. As a result the new property owners Mr. And Mrs. Smith were requested to submit a new application. The enclosed survey dated ~~December 6, 1996 indicates that a portion of the rear deck encroaches approximately seven feet~~ (7) into the rear thirty-five feet (35') set back. Mrs. Beals has stated that the property was conveyed to the Smith on June 16, 2000 with the same deck footprint that existed at the time the Beals purchased the property in 1996. The house and deck received a building permit in 1998 and received a Certificate of Occupancy on May 11, 1990. After reviewing the building permit application it appears the deck was not built as originally approved. No additional building permits have been issued for a deck since the date of issuance of the Certification of Occupancy.

Staff acknowledges that the previously property owners, the Beals, purchased the property in good faith, unaware that the deck encroached into the rear setback. Staff has not received any complaints regarding the property or the existing deck since the original construction. However, since the presence of the deck does not create a demonstrable hardship approaching confiscation, staff cannot support this application.

Mr. Denny showed the Board Members photographs of the existing deck and explained that from the coloration of the boards on the deck it does appear that the deck in its entirety has been in place for quite some time.

Mr. Fisher asked where do you start measuring the seven-foot encroachment?

Mr. Denny replied that you start measuring at the vertical building line.

Mr. Fisher asked when the Occupancy Permit was issued if there should have been measurements to make sure that there were no encroachments.

Mr. Denny replied that the inspectors mainly check to see if the deck was built to code, and it was. Mr. Denny also stated that there was oversight by the inspector for not checking the setback at that time.

Mr. Fisher then asked if the contractor knowingly built the deck as it is now?

Mr. Denny did not know if that was by mistake or not.

Mr. Denny also stated that it is possible that the contractor changed the plans from the approved version, to the one that he built.

Mr. Fisher stated that the County should have some kind of punitive power.

Mr. Fraley reiterated the same thought, stating that he had brought up the same idea in the June 1, 2000 meeting.

Mr. Fraley said the County should be able to do something to the Contractors who do not build according to the approved plans.

Mr. Fraley then restated the facts as to the Beals originally applying for the appeal, and then staff realized that the property had already changed hands so, the Smiths had to submit the Appeal Application since they were now the property owners.

Mr. Giedd then stated that this is usually discovered during the closing process, and after it was discovered it would be the sellers responsibility to remedy the situation prior to the property changing hands.

Mr. Denny stated that at the initial closing Mrs. Beals said that the error was not discovered.

Mr. Fraley asked if the variance were denied, would the Smiths have to dismantle that portion of the deck?

Mr. Denny replied yes sir.

Mr. Fraley was then shown what part of the deck would have to be dismantled (the seven feet (7') of the deck that encroaches on the rear set back).

Mr. Giedd opened the public hearing

Mr. Giedd closed the public hearing

Mr. Giedd stated that from building permit it appeared that there was originally to be a deck on one side and a screened in porch on the other side.

Mr. Giedd stated that from a zoning standpoint the deck did not appear to be an eye sore and the fact that it is already built has a lot of standing in his mind.

Ms. Wallace stated that she did not think the present owners should be penalized for something that they had no control over.

Mr. Giedd stated that the vote could be deferred until the next meeting so the Board could hear the homeowner's side of the story.

Mr. Fraley asked if staff's recommendation was based solely on the strict guidelines of the Zoning Ordinance.

Mr. Denny replied yes it was.

Mr. Fraley made a motion to grant the variance of seven feet (7') that applies to the portion of the deck that currently encroaches the thirty five feet (35') setback, and there shall be no further encroachments or improvements to the existing deck portion that encroaches in the rear thirty five feet (35') of the property. Mr. Fisher seconded the motion.

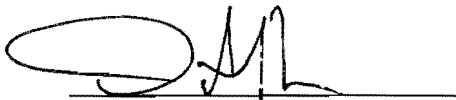
The motion was granted unanimously (4-0)

E. MATTERS OF SPECIAL PRIVILEGE

None.

F. ADJOURNMENT

The meeting was adjourned at approximately 7:53 p.m.



David Nice
Chairman



Allen J. Murphy
Secretary