

**BOARD OF ZONING APPEALS**  
Minutes for the meeting of October 5, 2000

**A. ROLL CALL**

PRESENT:

ABSENT:

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

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 September 7, 2000 meeting were approved.

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

1. In the absence of the Chairman Mr. Nice and the Vice Chairman Mr. Giedd, Ms. Wallace was elected Chairperson for this evenings Board of Zoning Appeals meeting.

**Case No. ZA-16-00**

**2912 Richard Pace South**

Mr. Scott Denny presented his staff report stating that Mr. James Knicely, on behalf of Dr. and Mrs. Gesualdi, property owners, has applied for a one and seven tenths foot (1.7') variance to Section 24-353 (a) of the James City County Zoning Ordinance to permit the continued placement of a portion of the garage side, the left side, of the dwelling at 2912 Richard Pace South in the required fifteen foot (15') side yard setback. The dwelling is located thirteen point three feet (13.3') from the left side property line as identified in the July 7, 1998 survey conducted by Campbell Land Surveying, Inc. The property is further identified as Parcel (04-0-0014B) on the James City County Real Estate Tax Map (47-1).

On July 7, 1986 a building permit application was approved for the construction of a single family dwelling in the A-2, Limited Agricultural District. The proposed site plan for the property indicated the left side of the dwelling would be located twenty feet (20') from the left property line. A subsequent survey dated November 27, 1986, conducted by

Rickmond Engineering, indicates that the dwelling is located behind the required fifteen feet (15') setback line (See Survey "A"). On December 16, 1986 the builders, DCI HOMES INC, sold the property to Steven Graber. The property was then sold to Dr. & Mrs. Gesualdi on July 25, 1989. The encroachment was not discovered during the course of these transactions.

In June of 1990 the Board of Supervisors changed the zoning of all A-2, Limited Agricultural, to R-8, Rural Residential. Although this action did rezone this property, the setbacks were not changed and a fifteen feet side yard setback is still required.

On July 7, 1998 another survey of 2912 Richard Pace South was conducted but by a different surveyor, Campbell Land Surveying, Inc. (See Survey "B") This survey indicates the left rear corner of the dwelling is thirteen point three feet (13.3') from the left side property line. The placement of the dwelling constitutes a one point seven foot (1.7') encroachment into the left side yard setback.

Staff acknowledges that the property owners did, in good faith, purchase the property without knowing of the setback violation. Staff further acknowledges that the authorization of a variance would not be of substantial detriment to the adjacent property or the existing character of the district. Staff has not received any complaints from the adjacent property owners regarding the current location of the dwelling. However, the strict application of the zoning ordinance would not produce a demonstrable hardship approaching confiscation of the property. Therefore, staff cannot support this application.

Mr. Denny stated that he would be happy to answer any questions.

Mr. Fraley asked what was the motivation of the survey on July 7 1998.

Mr. Denny stated that the property is in the process of being refinanced.

Ms. Wallace opened the public hearing

Mr. Knicely spoke on behalf of the property owners Dr. & Mrs. Gesualdi stating that the encroachment was no fault of Dr.& Mrs. Gesualdi, who bought the property in good faith

Mr. Knicely produced letters from adjacent property owners in support of the variance application. He also stated that the variance if granted would not be detrimental to any adjacent properties or the subdivision itself. Mr. Knicely also stated that the character of the district would not be changed, and that similar variances had been granted for the neighborhood in the past.

Mr. Knicely then stated that if the Board was not at that time inclined to grant the variance he would like to defer the application until a time when the full Board could rule on the case.

Ms. Wallace closed the public hearing.

Mr. Giedd stated that the variance should be granted.

Mr. Fisher stated that it was an error by the surveyor and the property owners should not be punished and Ms. Wallace agreed.

Mr. Giedd stated that the surveyor should be notified of his error.

Mr. Fraley made a motion was made to grant the variance to establish the left side yard set back at 13.3 feet to accommodate the existing structure as identified on the July 7, 1998 survey conducted by David P. Campbell for the purpose of the continued placement of the existing structure as it stands today.

Mr. Giedd seconded the motion.

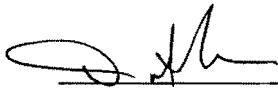
The motion was approved 4-0.


**E. MATTERS OF SPECIAL PRIVILIGE**

None.

**F. ADJOURNMENT**

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

  
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David Nice  
Chairman

  
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Allen J. Murphy  
Secretary