

BOARD OF ZONING APPEALS
Minutes for the meeting of June 7, 2001

A. ROLL CALL

The meeting came to order at approximately 7:33 p.m.

PRESENT:

Mr. Ken Giedd
Mr. David Nice
Ms. Gloria Wallace

ABSENT:

Mr. Jack Fraley
Mr. Emeric Fischer

OTHERS PRESENT:

Mr. Scott Denny, Code Compliance Officer
Mr. Charlie Petersen, Development Management Assistant

B. MINUTES

The minutes of the November 2, 2000 meeting were approved. Ms. Gloria Wallace noted a need for a correction to the minutes of the May 5, 2001. This correction has been made and the minutes will be available for signature at the next BZA meeting.

D. OLD BUSINESS

Mr. Scott Denny made the announcement that Codes Compliance Officer, John Patton had retired April 1, 2001 and that his experience would be greatly missed. Mr. Ken Giedd stated that he was a friend to many in the county.

E. NEW BUSINESS

Case No. ZA-08-01 7319 Little Creek Road

Mr. Ken Giedd stated the purpose of the Board of Zoning Appeals to the applicant.

Mr. Scott Denny stated Mr. Daniel Revelle and Ms. Michelle Maxey, the property owners, applied for a variance to Section 24-238 (b) of the James City County Zoning Ordinance to permit the continued placement of a portion of a deck at 7319 Little Creek Road. The deck currently encroaches 8'4" feet into the rear 35' foot setback as indicated on the survey conducted by Mathew Connelly, dated April 10, 2001. The property is further identified as Parcel No. (6-14) on the James City Real Estate Tax Map (22-1) and is located in the R-1 Limited Residential Zoning District.

Mr. Scott Denny stated that on September 1999, the building permit application was submitted to put an enlargement of an existing deck, located behind the dwelling at 7319 Little Creek Road. Upon review of the application, staff discovered that a portion of the existing deck already encroached in the rear 35' foot setback. A site inspection was made by staff at the time and it was determined that the portion of the deck that was

encroaching had probably been constructed at the same time as the rest of the deck. The original construction of the building took place in 1993. Charles and Kathleen Woolum, property owners, were notified of the encroachment through the letter dated September 16, 1999. However, the Woolums took no action at that time.

Mr. Scott Denny explained that during the course of the latest site visit, staff spoke to an occupant of 7319 Little Creek Road, Mr. Danielle Revelle. It was during this conversation that staff found the property had undergone closing on April 27th, which was three days prior to staff receiving the application. Therefore, the Woolums were no longer the property owners and no longer has a vested interest in the property. The new owners, Mr. Danielle Revelle and Ms. Michelle Maxey submitted a new application on May 14, 2001.

Mr. Scott Denny stated that staff acknowledges that the current owners purchased the property in good faith and are not responsible for the placement and encroachment of the deck. He stated that staff further acknowledges the fact that the existing deck, as indicated in the enclosed photos, backs up to the reservoir and is not detrimental to the adjacent properties. Nor will the character of the zoning district change as a result of the variance. However, strict interpretation of the code would not produce an undo hardship and therefore staff can't support this application. I'd also like to note that staff has not received any telephone against the variance. In the event that the Board of Zoning Appeals grants the application, staff does recommend that the resolution read to establish the rear setback at 26' feet to allow any discrepancies in the survey.

Mr. Scott Denny stated that he would be happy to answer any questions from the board.

Mr. Ken Giedd asked the reason for the latest site visit.

Mr. Scott Denny stated that as part of the zoning variance procedures, staff had to locate a variance application sign and take site photographs. He explained that this sign is used to provide additional notification to an adjacent property owner that a variance case is taking place on the property. It was during the locating of this sign and taking of site photographs that staff spoke with a current occupant.

Mr. Ken Giedd acknowledged that he understood the reason for the latest site visit.

Mr. Ken Giedd acknowledged the conversation staff had with a current occupant.

Mr. Scott Denny stated the previous occupants had applied for an even greater encroachment than what is currently built and that staff recommended disapproval of the 1999 application for a building permit because it encroached on the rear setback.

Mr. Scott Denny stated that subsequently, this 1999 request was denied.

Ms. Gloria Wallace asked how staff follows-up with applicants.

Mr. Scott Denny stated that applicants receive notification through the mail.

Ms. Gloria Wallace commented that she was not comfortable with the way the previous occupants handled the situation and asked if there was anything that could be done to prevent this situation from occurring in the future.

Mr. Scott Denny stated that staff could pursue injunctive relief, however at present, staff notified the current property owner of the code compliance violation. Staff offered the solution of either removing the deck or submitting a request for variance of existing code.

Mr. Scott Denny said that an inquiry was made as to why the previous occupant had never handled the situation. The previous occupant indicated that they had not submitted an application yet, but had every intention of applying for a variance. They had been debating whether to remove the deck because the deck Jacuzzi was broken.

Mr. Ken Giedd asked if there were any other questions from the board.

Mr. Ken Giedd opened the public hearing.

Mr. Danielle Revelle, property owner, came forward and stated that he appreciated the Board of Zoning Appeal's consideration in this case.

Mr. Danielle Revelle stated that the previous owners didn't devote enough attention to the matter and that he and his wife are more than happy to get this matter resolved. He stated that he hoped the board would grant approval because the watershed easement at the rear set back can't be developed and removing the deck would create a financial hardship.

Mr. Danielle Revelle asked that the Board of Zoning Appeals grant approval to this variance request.

Mr. Ken Giedd thanked Mr. Danielle Revelle for his statement.

Ms. Michelle Maxey, property owner, came forward and stated that when they purchased the dwelling, the deck and the Jacuzzi were selling points. She explained that they were made aware of the decks encroachment into the rear setback during a survey and that she had asked the previous owners to take care of submitting the application. The previous owners never submitted the application and it wasn't until after the property closing and her submitting the application that she spoke with Mr. Denny about the deck encroachment.

Ms. Michelle Maxey stated that the deck has been there since 1992 and that because she and Mr. Danielle Revelle have inherited this problem, she hopes they can keep the deck.

Ms. Michelle Maxey reiterated that the deck was a selling point for the house and that she feels it increases the overall property value. She displayed photographs of her property.

Ms. Michelle Maxey gave a visual demonstration of the encroachment distance to the board.

Mr. Ken Giedd thanked Ms. Maxey for her statement.

Mr. Ken Giedd closed the closed the public hearing.

Ms. Gloria Wallace stated that it was an unfortunate situation for the present owners to have been sold some property that was not in compliance and though a true hardship had not been shown, they should not be penalized for what someone else did not handle.

Mr. David Nice agreed with Ms. Gloria Wallace's comment and suggested that maybe the previous owner's were not aware that this deck encroached, as with happens so many times with the selling of property. The property line is somewhat invisible, especially as it relates to a deck. He stated that they probably inherited the problem because the deck is original with the house.

Mr. David Nice stated that he favors granting the request for variance.

Mr. Ken Giedd stated that the Jacuzzi is an addition to the original deck. He deduced that someone installed the Jacuzzi and built an appendage onto the deck. Mr. Ken Giedd commented that it was unfortunate that the closing attorney did not recognize the previous owners non-compliance prior to closing and have them handle the situation.

Mr. Ken Giedd asked the distance to the waters edge.

Mr. Danielle Revelle estimated the distance to be roughly 100 yards.

Mr. Ken Giedd made a motion to establish the rear setback at twenty-six feet (26') for the existing deck only with no future development to take place with the deck beyond the 26' foot setback.

Ms. Gloria Wallace seconded the motion.

Mr. Scott Denny read back the resolution.

Mr. Scott Denny called for a vote.


The motion was approved 3-0

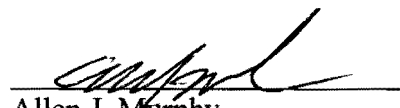
E. MATTERS OF SPECIAL PRIVILIGE

None.

F. ADJOURNMENT

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


Ken Giedd
Chairman


Allen J. Murphy
Secretary