

BOARD OF ZONING APPEALS MEETING

June 19, 2014

Members Present

Gus Dyer
John Hiltzheimer
Dolores Reynolds
Ann Sasser Evans
Philip Campbell
Michael Nicholas

Members Absent

Staff

Ken Gillie
Renee Burton
Scott Holtry
Christy Taylor
Alan Spencer

Chairman Dyer called the meeting to order at 10:00 a.m.

I. ITEMS FOR PUBLIC HEARING

- 1. Variance Application Number PLVAR20140000103, filed by Donnie Price requesting variances from Article 2. Section P., Item's 5, and 9, and Article 3.F: Section F., Item 2.B, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 235 Iris Lane, otherwise known as Grid 1916, Block 003, Parcel 000004 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to construct an accessory structure in the side yard setback and to reduce the setback to 6 feet where 12 feet is required, and to construct an accessory structure within 10 feet of another structure.*

Nineteen notices were mailed to surrounding property owners. Five responses were unopposed; three responses were opposed.

Open the Public Hearing.

Present on behalf of the request was Attorney Mark Holland on behalf of Mr. Donnie Price. The staff report acknowledged that the application does meet two of the four criteria, the first and the fourth. I thought it would be a good use of my time to only address the middle two. The second is that the hardship is not generally shared by other properties in the vicinity within the same zoning district. We believe that language is critical because when one looks at not even the same zoning district but simply the map that was produced by staff. We would contend that this map alone shows the difference that Mr. Price suffers from. Staff seemed to concentrate on just the residences of the same building. This is a quad-plex building with four units and there is an adjoining building similar to it. It seems that staff focused on those two properties and felt that the hardship was shared by them. We feel that it is more appropriate to look at the zoning district and certainly on the adjoining land owner. The vast majority of people that live in this area have significant lots and they have the ability to add a simple outside structure such as Mr. Price has constructed. The ability to add or construct a garage or storage unit is something that all of these properties have, but Mr. Price does not because of the topography of the lot and because of this very odd lot size. When the neighbor in the front created his own lot lines, he created some very

odd lot lines for Mr. Price. We believe the hardship that he is facing, the inability to have a garage or add any sort of structure is not shared. We do feel that it is important that he is on the border here because he only has to deal with those City residents and there is no one to the northwest of Mr. Price that is impacted by this at all. The second is that allowing the variance would be a detriment to adjoining property owners. The staff focused on the fact that these regulations are set up to allow for open space between structures and clearly they are and to allow for use of emergency vehicles. When you look at the picture of these lot lines, having a structure next to the lot line looks bad; but the fact of the matter is when you look at the photographs you can see Mr. Waller's residence. The adjoining house is the one in the rear. It is a wooded lot. The fact that there is a small structure to the left of Mr. Price's house doesn't affect the ability to get around behind this house. I have a photograph that shows the spacing between this structure that he has built and some of these woods that belong to Mr. Waller. Mr. Price is allowed to plant trees and shrubbery there, so he is not required to keep this area clear of other things that would make it difficult to drive an emergency vehicle around this house. He is just not allowed to put a structure there and that is why we are asking for the variance. The photograph shows that there is still plenty of room to go around. We would also highlight the fact that, as I understand it, there are only a handful of responses from the notices sent to surrounding property owners. Two of those live on Tamworth Drive. They are not in the same neighborhood as Mr. Price. They are in a nicer neighborhood and they have significant lots. They have the ability to build a small structure like this on their lots. They can't see Mr. Price's property. They are not impacted in any form or function by this structure. There was one additional comment from Mr. Hardy. It is not clear to me that Mr. Hardy is the owner of this property. I believe it is a renter or tenant. I am not aware that anyone in any of these four units has complained. They have different lot sizes and most of them have significantly larger lot sizes. It is for that reason that he alone is really impacted by this hardship that will befall him if not allowed to keep this structure. As indicated in his filings, if it will make it better for this Board to allow the use to continue, he will attach it to his house so that it is one structure and not an additional structure. I think those are the things that Mr. Price wanted to emphasize. He and I are available for question if you have them.

Mr. Nicholas asked do any of the other lots have this type of structure?

Mr. Holland responded it is my understanding that they do not.

Mr. Dyer stated I would like to get some clarification from staff. These lots are zoned A-R?

Mr. Holtry responded correct.

Mr. Dyer asked and so these individual units are on their own lots that run from the front to the back, but is it common parking? What is the situation with the parking? Is there an easement to allow people to cross other people's lots? There appears to be a common driveway entrance. People either by right or by habit have been crossing other people's lots.

Mr. Gillie responded these were built when it was still Pittsylvania County. We didn't do deed research to see. We can assume that there is an access easement between all of

the lots because it is a common parking area in front, each is on its own property lot, and there are fire walls separating each unit.

Mr. Dyer stated it does appear that the adjacent property is owned by Mr. Hardy. Is that what your records show?

Mr. Gillie responded yes.

Mr. Dyer stated my concern would be that if people have had common usage to get around to the back. I don't know how people would get around to the back of their units if they weren't allowed to cross other people's property. That is a little bit of a concern for me. This will be obstructing people's access to the rear of their property. You said that Mr. Price would be willing to actually attach this structure. How would that be accomplished?

Mr. Holland responded my understanding is that steel beams could be taken from the structure to the brick façade.

Mr. Dyer stated the required setback is 12' but he has more than that now.

Mr. Holtry stated he has more than that, but with the shed there it reduces it to 6'.

Mr. Nicholas asked if he does attach it will he still need a variance?

Mr. Holtry responded he would still need the variance for the setback.

Mr. Nicholas stated functionally I don't know if that makes a difference.

Mr. Gillie stated you can still get around it. We walked around it to get our measurements.

Mr. Nicholas asked what is the clearance with it there?

Mr. Holtry responded about 6'.

Mr. Gillie stated 6' on his property. There is probably another 2' or 3' of area on someone else's property.

Mr. Nicholas asked so you could get a pickup truck around there?

Mr. Gillie responded probably. The topography of the hill may make it more difficult.

Mr. Dyer stated there is a unit on the other side that is in the same situation. They have excess side yard. The problem with that is if we say alright and grant Mr. Price his variance, does that impede upon that property owner from doing the same thing?

Mr. Gillie stated it is not completely impassable. We didn't have any problems getting around there.

Close the Public Hearing.

Mr. Nicholas stated functionally requiring him to attach it to the house does the same thing.

Mr. Dyer stated right it is a technicality. It would make me feel better if we required it to clear up the possibility of precedence.

Mrs. Evans stated I agree.

Mr. Nicholas stated each case is individual. There is no reason to make him attach it.

Mr. Dyer stated so it meets Code. If we don't require him to attach it we have to show that it meets the four criteria and I think that is a difficult argument to make. It does seem that we have had a couple of cases that we have dealt with like this. We have granted people the ability to reduce their side yards. We should take that into consideration. Another thing we should take into consideration is that there have been times in which the Building Code has required only a 6' setback. Any comments or questions?

Mrs. Evans made a motion to approve Variance Application PLVAR20140000103 with the condition that the structure be attached to the house. Mr. Campbell seconded the motion. The motion was approved by a 6-0 vote.

2. *Variance Application Number PLVAR20140000132, filed by Jane Wiseman requesting a variance from Article 2, Section P., Item 5, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 347 Forest Circle, otherwise known as Grid 1717 Block 002, Parcel 000003 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to construct an accessory structure in the front yard.*

Twenty-four notices were mailed to surrounding property owners. Thirteen responses were unopposed; two responses were opposed.

Open the Public Hearing.

Present on behalf of the request was Ms. Jane Wiseman. Thank you very much for hearing my case. I want to put a garden shed on my yard, but my yard is a very strange shape. The backyard is really sort of non-existent. It is sort of a paved parking place. The nice level spot that is wooded turns out to technically be my front yard. That is what I found out. I was hoping that you guys would give me a variance to put it there. I don't think it will be visible from the street. There is also a public alley that runs right behind the house. That spot is really close to Forrest Circle and that alley, but the alley is very narrow. Public garbage trucks will not even go down it now. It is mostly used by homeowners that live back there. I tried to take pictures of where I want to put it at all sorts of angles. The neighbor who is behind the public alley is the only one who doesn't like this idea.

Mr. Dyer stated staff has come to the conclusion that you have met all four of the criteria. Unless you would like to make the argument that you don't there is really nothing you need to do.

Mr. Nicholas asked why is this not the front yard?

Mr. Holtry responded it is. She has two front yards.

Mr. Gillie stated one of our recommendations is to recommend to that the Planning Commission go back and look at changing the way the Code is addressed. It is a very odd situation. The way the Code reads is everything is a front and you can't have one. That is why we are here.

Close the Public Hearing.

Mr. Nicholas made a motion to approve Variance Application PLVAR20140000132 citing the staff's recommendation. Mr. Campbell seconded the motion. The motion was approved by a 6-0 vote.

Mr. Nicholas made a motion for Planning Commission to investigate a new definition in regards to front yards. Mrs. Evans seconded the motion. The motion was approved by a 6-0 vote.

II. APPROVAL OF MINUTES

The May 15, 2014 minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie stated we have a brief meeting after this meeting just to advise you of the Virginia Storm Water Management permit stuff, so if everyone could just hang out.

With no further business, the meeting adjourned at 10:25 a.m.

APPROVED