

**BOARD OF ZONING APPEALS MEETING**  
**January 21, 2010**

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Bowles	Mr. Lampley	Ken Gillie
Mr. Dyer	Mrs. Rich	Christy Taylor
Mrs. Evans		Renee Blair
Mr. Campbell		Lindy Lowery
Mr. Snipes		Clarke Whitfield

City Attorney Clark Whitfield, called the meeting to order at 10:00 a.m.

**I. ELECTION OF OFFICERS**

City Attorney Clarke Whitfield, called for nominations for chairman. Mrs. Evans made a motion to nominate Mr. Snipes as chairman of the Board of Zoning Appeals. Mr. Dyer seconded the motion. The nominations were unanimously closed and the motion to elect Mr. Snipes as chairman was approved by a 5-0 vote.

City Attorney Clarke Whitfield, called for nominations for vice-chairman. Mr. Dyer made a motion to nominate Mrs. Rich as vice-chairman. Mrs. Evans seconded the motion. The nominations were unanimously closed and the motion to elect Mrs. Rich as vice-chairman was approved by a 5-0 vote.

City Attorney Clarke Whitfield, called for nominations for secretary. Mrs. Evans made a motion to nominate Mr. Lampley as secretary. Mr. Dyer seconded the motion. The nominations were unanimously closed and the motion to elect Mr. Lampley as secretary was approved by a 5-0 vote.

Mr. Snipes now presided over the meeting.

**II. ITEMS FOR PUBLIC HEARING**

**1. Variance Application Number V 10-001, filed by Tom Leggett on behalf of Turner Swicegood, requesting variances from Article 3:C., Section F, Items 2. A. (1) & (2), of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 123 Herndon Place, otherwise known as Grid 1718, Block 014, Parcels 0000013 of the City of Danville Virginia, Zoning Map. The applicant is requesting variances to construct an attached garage with a front yard setback of twenty (20) feet where thirty (30) feet is required, and to have a ten (10) foot side yard setback where fifteen (15) feet is required.**

Seventeen (17) notices were mailed to property owners within three hundred feet; Ten (10) respondents were unopposed; Zero (0) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Tom Leggett. Mr. Leggett stated that they are attempting to build a garage to match the adjacent property. Staff presented pictures of the neighboring property

to the Board. Mr. Leggett stated they want to construct a one (1) car garage that will exceed ten (10) feet in front of the existing structure. He mentioned that the property to the right already has the same type of structure in place. Mr. Leggett stated that the house currently has a one (1) story addition on the right side and the proposed garage would be the same width as the addition. He stated that the setback on the front would be more than twenty (20) feet. Mr. Leggett stated that all of the houses on the street are built on fill dirt which would cause a problem with constructing the foundation on the back of the property.

Close the Public Hearing.

Mr. Dyer asked staff what are the front yard setback requirements?

Mr. Gillie responded that staff has on records a setback requirement of twenty (20) feet. The measurements Mr. Dyer questioned are from the edge of the curbing. Staff maintains additional right of way for the sidewalk. This is approximately seven and a half (7 ½) feet behind the curb. This appears to be a greater setback than what is shown; Staff measurements from the structure to the actual property line once the addition would be put in place would leave a twenty (20) foot setback.

Mr. Dyer asked if staff had verification of the variance granted for the house next door?

Mr. Gillie responded that a variance was granted in February 1996.

Mr. Dyer asked if the existing garage on the house next door encroached in the front yard setback?

Mr. Gillie stated that it appears to encroach into the front yard setback. The variance was only granted for a side yard setback, not a front yard setback. He stated that he was not in charge of zoning in 1996.

Mr. Dyer asked if there were any official surveys that had been done?

Mr. Gillie responded not for the house next door.

Mr. Dyer asked if there were any markers or irons?

Mr. Gillie responded no, not that we are aware of.

Mr. Leggett stated that the house is actually fifty-two (52) feet from the curb.

Mr. Dyer asked what the right of way from the property line is to the street?

Mr. Gillie responded that based on the information staff has using aerial photographs, and other things which again are not one hundred (100) percent accurate, staff has the neighboring property at twenty-three (23) feet from the property line.

Mr. Dyer asked staff how wide is the lot?

Mr. Gillie responded that the lot is one hundred six (106) feet wide.

Mr. Dyer asked if a variance was granted for the neighboring property to allow a ten (10) foot setback on the side yard?

Mr. Gillie responded that the adjacent property variance was granted in February of 1996 to construct a twenty-three (23) by twenty-four (24) foot garage with a five (5) foot side yard setback where fifteen (15) feet was required.

Mr. Dyer asked if they offered a reason?

Mrs. Blair responded that there was nothing in the notes as far as reasoning, that it was simply checked off that yes, they met the criteria.

Mr. Dyer asked if there was any neighborhood response?

Mrs. Blair responded that there were ten (10) responses; zero (0) were opposed.

Mr. Dyer asked if there was a way to put up a public display of the map of that area?

Mr. Gillie responded yes.

Mr. Dyer stated that he would like to see the right of way.

There was discussion amongst Staff and the Board regarding the measurements of the right of way from the curb to the property line.

Mr. Dyer asked could they table the decision until the measurements were clarified, and if so would they have to have a another meeting or could they specify that if it is less than thirty (30) feet they would grant the variance?

Mr. Whitfield responded that it would be better, if you want to table the decision, that another meeting is held.

Mr. Gillie displayed a map of the area using an overhead projector. The map showed the house and neighboring house with the existing garage. Mr. Gillie pointed out the right of way line and the curbing.

Mr. Dyer asked if staff used this map to obtain the measurements?

Mr. Gillie responded that staff did not find irons on the property. He stated that the right of way maps are fairly accurate and the right of way location is because of the street utility lines. Mr. Gillie stated that staff did not pull a tape from what they thought was the right of way line to the house.

Mr. Dyer asked how staff came up with the fact that the house is only thirty (30) feet from the street?

Mr. Gillie responded that based on our measurements in the right of way and what we saw here, it appeared to be around fifty (50) feet, and ours forty (40) feet. By the time you do the math with the addition of the garage, we came up with the twenty (20) feet front yard setback. Mr. Gillie stated that the house is not square to the street so we use the closest point to measure from.

Mr. Dyer asked if there were any survey maps?

Mr. Gillie responded that we were unable to find any. Mr. Gillie stated that based on the age of the house it is not likely that one was ever done.

Mr. Dyer asked if they measured from the face of the house or the front porch?

Mr. Gillie responded that measurements were not done from the front porch. Mr. Gillie stated that there is an allowance for a front porch projection.

Mr. Dyer stated that it seemed to be easy to measure from the face of the house to the edge of the curb, estimating seven and a half (7 ½) feet from the back of the curb and come up with something. Mr. Dyer stated that he is asking for a twenty (20) foot front yard setback, in which the garage would only project out from the house ten (10) feet. That makes the house appear to be thirty (30) feet from the property line.

Mr. Dyer verified with staff that the neighboring property did not have a variance for a front yard setback?

Mr. Gillie responded that is what it appears based on what information Staff was able to find.

Mrs. Evans asked if the neighbor did it anyway without a building permit?

Mr. Gillie responded that whether there was an oversight on Staff's part in 1996, he could not say. Mr. Gillie stated that it appears to be a violation of the front yard setback in 1996 that was not caught.

Mr. Dyer asked suppose your measurements are off and the garage on the house next door is thirty (30) feet off the property line?

Mr. Gillie responded that the only options we have are that Board table the decision and actually have a field survey done, or grant the variance with the condition that the garage only extends ten (10) feet from the house.

Mr. Dyer asked if this was a unified request for the side and the front yard setbacks?

Mr. Gillie responded yes.

Mr. Dyer asked if they could grant the side yard setback and not the front yard setback?

Mr. Gillie responded yes.

Mrs. Evans asked if there were any other options such as a carport for this property?

Mr. Gillie responded that it would still require a setback variance. Anything that has a roof over top of it constitutes a structure and needs to be within the setback requirements.

Mrs. Evans asked would a carport encroach in front?

Mr. Gillie responded that it would depend on what size they built, but Staff feels yes.

Mr. Dyer asked who would be responsible for obtaining a field survey?

Mr. Gillie responded that it is not the City's responsibility to go out and survey something like that.

**Mr. Dyer made a motion to grant the variance allowing a ten (10) foot side yard setback where fifteen (15) feet is required and to deny the variance allowing a front yard setback of twenty (20) feet where thirty (30) feet is required. Motion died due to the lack of a second.**

**Mr. Campbell made a motion to grant the variance application as submitted. Motion died due to the lack of a second.**

Mr. Whitfield stated that someone could second a motion just for the purpose of discussion under Robert's Rules and not have to vote in favor of it.

Mr. Dyer asked Mrs. Evans how she justified being against granting the variance?

Mrs. Evans responded because the front yard setback variance for the neighbor was never granted.

Mr. Dyer stated that he felt the Board should allow for the same variance granted to the neighbor in 1996.

Mr. Gillie stated that the applicant has agreed to go out and shoot the front of the property to figure out the distance discrepancy. The Board has the option of tabling this and coming back next month and give him a chance to actually figure out the front yard distance.

Mr. Dyer stated that would not make any difference, they are not asking him to do that.

Mrs. Evans asked Staff if this was Old Town Residential?

Mr. Gillie responded no.

Mr. Snipes asked Mrs. Evans that since you are agreeing with Mr. Dyer and he re-makes the motion are you ready to second it?

Mrs. Evans asked Tom Leggett if he could build the garage without the variance granting a front yard setback?

Mr. Leggett responded yes.

Mrs. Evans asked if that is the case then why was he requesting a front yard setback?

Mr. Dyer stated that Tom Leggett submitted a plat showing a garage on this house. Staff stated that the garage was non-conforming in two (2) directions.

Mrs. Evans stated that they needed to know whether or not the construction of a garage would be possible without a front yard setback variance.

Mr. Dyer stated that having Mr. Leggett get a field survey done to prove he is right and the Board still denies the variance needs to be avoided. Mr. Dyer stated that with the motion I made and if in fact Tom Leggett is right and Staff is wrong, the garage can be built. However, if Staff is right and Tom Leggett is wrong then the garage can not be built. This way we do not have to come back and he doesn't have to spend money on something that may or may not work out.

**Mr. Dyer made a motion to grant the variance allowing a ten (10) foot side yard setback where fifteen (15) feet is required and to deny the variance allowing a front yard setback of twenty (20) feet where thirty (30) feet is required. Mrs. Evans seconded the motion. The motion to grant the variance was approved by a 4-1 vote.**

## **II. APPROVAL OF MINUTES**

One correction was made to the attendance records on the November 19, 2009 minutes. Mrs. Evans was present and Mr. Snipes was not present.

**The minutes of the November 19, 2009 meeting were approved with the correction by a unanimous vote.**

## **III. OTHER BUSINESS**

Mr. Gillie welcomed Mr. Bowles as a new member of the Board of Zoning Appeals.

Mr. Gillie stated that due to the lack of cases being filed, there would not be a February meeting.

Mr. Gillie informed members of the Board that a Certified Board of Zoning Appeals Commissioners class is going to be held, and anyone that would be interested should obtain further information from him.

Mr. Dyer asked of the status regarding the request for Planning Commission in regards to the sign ordinance?

Mr. Gillie responded that yes they are still working on it. Staff is still gathering the necessary information.

Mr. Gillie asked if he was referring particularly to the Toyota sign?

Mr. Dyer asked if there was anything in the Code about illuminating a sign from behind, if that constitutes a sign? Are there illumination standards?

Mr. Gillie responded that there are for residential properties. They are in a commercial district, so there is no adjacent residential property.

Mr. Dyer asked if that sign constituted a wall sign?

Mr. Gillie responded yes.

Mr. Dyer asked if there were restrictions on the size of a wall sign?

Mr. Gillie responded the restrictions are two (2) square feet per linear foot for the first two hundred (200) feet and then one (1) square foot per linear foot after. At this time they are in compliance with our square footage requirements.

With no further business, the meeting adjourned at 10:54 a.m.

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APPROVED