

BOARD OF ZONING APPEALS MEETING

March 18, 2014

Members Present

Gus Dyer
Dolores Reynolds
Ann Sasser Evans
Michael Nicholas

Members Absent

John Hiltzheimer
Philip Campbell

Staff

Ken Gillie
Christy Taylor
Scott Holtry

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

I. ITEMS FOR PUBLIC HEARING

1. *Variance Application Number PLVAR2014000040, filed by Hampton & Monica Martin requesting variances from Article 2. Section P., Item's 5 and 9 and Article 3.C: Section F., Item's 2.A. (1) & (2), of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended at 163 Blair Place otherwise known as Grid 1819, Block 009, Parcel 0000005 of the City of Danville, Virginia zoning map. The applicant is requesting a variance to construct two accessory structures in the side and front yard setbacks reducing the setbacks to 8 feet in the front and 3 feet on the side, and to construct an accessory structure within 10 feet of another structure.*

Thirty-one notices were mailed to surrounding property owners. Seven responses were unopposed; four responses were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Hampton Martin. I purchased this building about two or three months ago. Before I purchased it I spoke with my neighbor at 164 Blair Place about placing a portable garage there and he did not have a problem with it. We cleared the lot in between ours and I explained to him how large it was going to be. He did not have a problem with it. That is why I proceeded to purchase it and put it there. My back yard is fenced in and I have a gazebo on the left of my house. There are two large trees in my back yard and a drop off. It is fenced in all the way around, but there is a considerable drop off on the right side, which will not allow me to put that in my back yard.

Mr. Dyer asked is your next door neighbor Ren Gifo?

Mr. Martin responded actually that gentleman is renting.

Mr. Dyer asked so you did not speak with Mr. Ren Gifo?

Mr. Martin responded we have been there approximately 12 years and I have rarely seen the gentleman that owns the house. There have always been tenants there. The gentleman on the left of me is also renting. I thought they were sending the letters out to the person that resides there. I spoke with my neighbors on the street and none of them had a problem with it.

Mr. Dyer asked so the notices were sent out to the property owners, not necessarily to the people that reside there?

Mr. Holtry responded correct.

Mr. Dyer stated this is a two part application. There is also a gazebo.

Mr. Martin responded the gazebo was there 12 years ago when we purchased the house. we haven't moved it or anything. It has been there since we bought the home.

Mr. Dyer asked are you aware that this board has to determine this case based on four criteria?

Mr. Martin responded yes.

Mr. Dyer asked are you aware of what those four criteria are?

Mr. Martin responded I am now, yes.

Mr. Dyer asked are you prepared to argue your case based on those four criteria?

Mr. Martin responded I am really not prepared. I just received the packet five minutes ago.

Mr. Nicholas stated I think the biggest thing you need to demonstrate is why, if we do not allow you to do this, how you will be effected. You have a garage or something on the property now.

Mr. Martin stated no sir.

Mr. Nicholas asked has it been converted into living space?

Mr. Martin responded since I have purchased the house I haven't converted anything.

Mr. Nicholas stated my point is the property has a garage. That is my understanding from staff.

Mr. Holtry stated it has a garage that was converted in 1993.

Mr. Nicholas asked so what hardship are you going to suffer?

Mr. Martin responded I bought this for my business. I purchased this to keep my limousine in. It is almost 30' long. It will not fit in the back yard. The drop off is so bad

and there is a large tree to the left. The drop off is so bad, if I put it in the back it would be almost impossible to get that vehicle back there. It is a 12' x 30' garage.

Mr. Nicholas stated but you knew the limitations of the property when you bought it, right?

Mr. Nicholas stated yes I did.

Mr. Dyer asked does the City make any distinctions between temporary and permanent structures as far as setbacks are concerned or portability of said structures?

Mr. Holtry responded we would consider this a permanent structure.

Mr. Dyer stated it appears on this photo of the property that the house is very close to the right hand property line. You don't think there is any way to get this structure back behind the front of your house?

Mr. Martin responded no not the way it is set up. There is only about 12' or 15' feet between the deck and the side of the gazebo.

Mr. Dyer stated it appears we have two separate issues that we are dealing with. As far as the issue with the gazebo, I noticed in the information package that it has been there for at least 10 years but you are not exactly sure when it was constructed.

Mr. Holtry stated we just have aerials showing about the time it was built.

Mr. Dyer stated so you have aerials of the house without the gazebo and aerials with the gazebo but there is a space there. At any point in that space was this a legal conforming structure?

Mr. Holtry responded it was not and no permits were pulled.

Mr. Nicholas asked do you know exactly when the gazebo was constructed?

Mr. Holtry responded we just have the aerial shots.

Mr. Dyer asked is it a legal use to allow Mr. Martin to keep a commercial vehicle on this property?

Mr. Gillie responded he can have a home occupation for that. He can't lease the vehicle to anyone else and he does have to use the vehicle in conjunction with the business. He can't park it with a sign or anything.

Mr. Dyer asked so there is no problem with the car being parked on the property it is just the structure.

Mrs. Evans stated and the car cannot be parked on the street.

Mr. Gillie stated the car could be parked on the street because it is a passenger vehicle.

Mr. Holtry stated the gazebo was built sometime between 1998 and 2002.

Mr. Dyer stated so it has been there for at least 12 years.

Mr. Gillie stated we have never received a complaint on the gazebo.

Mr. Dyer asked what generated this?

Mr. Holtry responded the tent in the front yard.

Mr. Dyer asked was there a complaint?

Mr. Holtry responded against the tent, yes.

Mrs. Evans asked how long has this structure been up?

Mr. Martin responded about two or three months. I spoke with everyone on my street and no one had a problem with it. I noticed that a couple people who were opposed are on Audobon and a street over. They are not even on Blair Place.

Mr. Nicholas asked do we know if those in opposition were delineated because of the gazebo or tent or just opposed to the application as a whole?

Mr. Holtry responded yes.

Mr. Martin stated I could understand if I just threw something up. I think it looks pretty nice. I don't see where it would be negative to one's property value.

Mr. Nicholas asked if approved, are you going to use the tent or put something else up?

Mr. Dyer responded it is to allow that to remain there. So this temporary structure (garage) would it have to be behind the face of the house or just 30' off the property line?

Mr. Holtry responded it would have to be either in the rear yard 10' away from the house or you could attach it to the house (side yard) if there is enough space.

Mr. Dyer asked can it be detached in the side yard?

Mr. Holtry responded no.

Ms. Reynolds stated you mentioned something about trees in your back yard. The one that would be impediment to moving this in the back could you remove that tree and have room?

Mr. Martin responded I actually removed one behind the gazebo that was very large and a row of trees between our properties.

Ms. Reynolds stated I know that, but you said there were two left. I am wondering if this one I am looking at were removed if you could get this structure back there.

Mr. Martin stated the way it is set up having to be 10' away from the house and the way my back yard is fenced in I don't think it would fit.

Mr. Nicholas asked if this application is denied what is the time limit before he can re-apply?

Mr. Holtry responded he can appeal.

Mr. Nicholas stated I understand that. What I am saying is if he modifies his proposal and comes back to ask for approval again is there a waiting period or could he draw up a case for next month? Alright sir, you are somewhat at a disadvantage because this is a seven member board and you need four votes in your favor in order to approve the application. Well there are only four of us here, which is the bare minimum for a quorum. If anyone of us is opposed to this request it will fail. We have the option of proceeding with this today or someone could make a motion to carry it over until next month. Hopefully it will be on a regular meeting date, we won't have this crazy weather, and one person's opinion will not carry as much weight as it does today. Would you prefer to have this carried over or would you prefer for us to take action on this today?

Mr. Martin responded from what I am hearing I think it would be to my advantage to have it carried over.

Mr. Nicholas stated I am more inclined to be in favor of the gazebo. It has been there. We have the option of splitting them up.

Close the Public Hearing.

Mr. Nicholas stated with the temporary structure (garage), if we take a vote today I am inclined to vote no.

Mr. Dyer stated that would be my indication as well. If the other two members are inclined to vote no then we would have a consensus. Do you care to state your opinion?

Ms. Reynolds stated I am thinking that the building (gazebo) was there when he bought this property. It wasn't changed then and he bought it in good faith. He should not be required to do anything about that one. The other one (garage) was not researched very well. It was just put up recently and it breaks Code. I am sort of thinking that one should go and the other one should stay.

Mr. Nicholas made a motion to divide the application in order to consider two distinct parts, the gazebo and the temporary structure.

Mr. Nicholas made a motion citing all reasons stated: existing for 12 years without complaint and it was purchased in good faith and should not be penalized for that, to approve the accessory structure (gazebo). Mrs. Evans seconded the motion. The motion was approved by a 4-0 vote.

Mr. Nicholas made a motion to deny the remainder of the application for reasons cited by staff. Mrs. Evans seconded the motion. The motion was approved by a 4-0 vote.

II. APPROVAL OF MINUTES

Mrs. Evans made a motion to approve the January 16, 2014 minutes. The minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie stated you will have a meeting next month. There is one case filed and possibly a second one.

With no further business, the meeting adjourned at 10:27 a.m.

APPROVED