

**BOARD OF ZONING APPEALS MEETING
DECEMBER 18, 2014**

Members Present

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

Members Absent

Staff

Ken Gillie
Jeannise Galloway
Scott Holtry

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

I. ITEMS FOR PUBLIC HEARING

1. *Variance Application Number PLVAR20140000328, filed by Danville redevelopment & Housing Authority, 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 111 Pleasant View Ave, otherwise known as Grid 1709 Block 005, Parcel 000008 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow an accessory structure in the side yard.*

Twenty-one notices were mailed to surrounding property owners. Eleven responses were unopposed; zero responses were opposed.

Mr. Dyer opened the Public Hearing.

Present on behalf of the request was Mr. Gary Wasson.

Mr. Wasson stated Good morning, my name is Gary Wasson and I'm Executive Director for the Danville Redevelopment and Housing Authority. We meet today to address our technical services with our architect on this project, Jeffrey Bond. If you've been given some information about the project, one of the things that we are trying to accomplish with the project is greater efficiency. We're building these maintenance garages at three of our sites so we can put supplies there and the pickups that we have will stay at those sites so they don't have to run around town here and there. We will be saving money plus time. Two of the sites they are going to I know have no issues at that point there. I'm going to let Mr. Bond talk about the particulars for the variance and be able to answer your questions on why we need this.

Present on behalf of the request was Mr. Jeffrey Bond.

Mr. Bond stated Good morning, with the Board's permission I would like to pass out the site exhibit showing the location of the proposed maintenance facility as well as an aerial photograph. Is that okay?

Mr. Dyer stated yes that's fine.

Mr. Bond stated we've also highlighted areas of significant grading as well as areas of major utilities running through the site. As Gary mentioned my name is Jeff Bond representing the Housing Authority. I do appreciate the City staff's review of this project as well as the Board of Zoning Appeals time this morning. What I'm going to try to outline today is reasoning behind the proposed location and how that is consistent with purpose and intent of the Zoning Ordinance. Based on our understanding of the ordinance prohibiting an accessory structure in a side yard, that's really intended to prevent somebody from placing a structure that is a detriment to its neighbor as in appearance of a building as well as the use and noise related issues to that effect. As Gary mentioned a little on the project background, the Danville Redevelopment and Housing Authority has determined that in order to efficiently and effectively respond to each of these apartment complexes, maintenance facilities are needed at each of the three sites. The one we are looking at today is obviously Pleasant View. DRHA is heavily funded through taxpayers' funds and this would be an investment in their infrastructure to make their personnel costs lower. Additionally, this will reduce the amount of fuel consumed by DRHA and lessen their impact on the environment. This building will be regularly occupied and used by the Housing Authority personnel as maintenance repair shops or minor repair projects at each complex. The operation maintenance of the property is viable to sustaining the livability of this apartment complex. The maintenance shops in our opinion are people of importance to the operation as that of the administration building. We feel that since DHRA is heavily funded from taxpayer dollars and this project is going to streamline some of the process that this is consistent with Item 3 of the purpose and intent of the Zoning Ordinance which is to provide for City growth that is consistent with the economic use of public funds and environmental quality.

Mr. Nicholas stated unfortunately we don't have the authority to amend the Zoning Code. You've got four factors that we need to focus on and your burden is to show that if we deny this, you'll suffer undue hardship. What's the undue hardship?

Mr. Bond stated I was getting to that.

Mr. Dyer stated we'll let Mr. Bond finish and then we'll entertain questions.

Mr. Bond stated kind of another general reasoning for placing this facility there is that it would result in the relocation of the playground. Currently the playground is located in the northwest corner of the site. By relocating it, we will be putting it in the middle of the complex. We feel that this is consistent with the purpose and intent of the Zoning Ordinance which is to provide residential areas with healthy surroundings for families. So by relocating we're hoping to increase the usability of that playground. To your point, criteria one for the application is that it provide undue hardships. The proposed location was chosen because it was deemed the most viable for several reasons. The rear of the property becomes steep due to topography issued based on the line diagram we had drawn for you, we've outlined some of the grade issues as we've placed in the rear yard of the site. Additionally the central location where we put in the playground was not chosen because there are major gas lines and other utilities throughout this area. Also the maintenance facility is an S-use and the community building being an assembly so we would have to have the required fire separates in there. These three reasons directly relate to the prerequisites for granting the variance. There are exceptional topographical issues and other exceptions. The proposed location has chosen to efficiently use public funds as other locations have significantly challenged

this with grading and existing utilities. Criteria number two is that it is not shared by other projects within the vicinity and the same Zoning District. There are other properties within the vicinity; however, none of them are within the same Zoning District. The directly adjacent properties are either zoned as planned shopping center or highway retail commercial; therefore, since this is the only multi-family residential parcel in this facility, we feel like this is a unique situation to this area and that this application meets this criteria. Criteria three states not of substantial detriment to owners and the character of the Zoning District will not be changed. The operation will be compliant to normal working hours other than emergencies that happen in the apartments. This is consistent with the use of the DRHA administration building and adjacent commercial properties. The character of the district will not be impacted. The exterior of the building will be of brick and asphalt shingles to match the other DRHA buildings. Again this is something we feel would not impact the exterior. We feel the exterior would stay the same and it would only shift the building and its operations away from the property lines slightly. We had a letter of support from BK Properties which is the owner of Trophy and Sign which is the adjacent property owner. Currently the proposed location is behind the administration building and behind Trophy and Sign so it'll be going between the rear of two buildings. We also have verbal support from Donald Searce with VRS Incorporated who owns the property directly across the street. Criteria four states condition not general as required in the Ordinance. This is not a common variance request as sited by City staff. Conditional aesthetic reason behind the proposed location, most of you know it's a dead end with DRHA complex comprising most of the east side of the road. The road terminates at a vacant lot which also has access from Sandy Court. Sandy Court is the road where we've got Bojangle's, Carpet Land, and Trophy and Sign. The proposed location of the maintenance facility is behind the DRHA administration as I said and behind Trophy and Sign- it's in the back of these two buildings. The proposed maintenance facility would be placed at the rear of these two facilities. It is our opinion that this is the least visibly intrusive location based on arguments presented. Our additional understanding of the accessory use proposed facility will be of substantial size and construction- approximately 860 square feet- with brick exterior. Although this does not relate to the fourth criteria we feel that this is a non-accessory use based on the Zoning definition for accessory use. In multi-family residential those uses are listed as tool sheds, detached garages, car ports, children's houses and doghouses. The substantial sized construction materials and quality will match that of the office building and apartments and therefore this structure should not be considered a shed. This building as I mentioned is 860 square feet constructed with brick exterior; so we feel this does not meet the definition of accessory use. The definition of a private garage is an accessory building designed and used only for storage purposes. As I mentioned the new facility will be occupied on a regular basis and serves a much larger function.

Mr. Nicholas stated so it doesn't meet that definition either.

Mr. Dyer stated so let me ask you this. What are you arguing? Are you arguing that you do meet the full criteria or are you arguing that this should not be considered an accessory use? Or are you arguing both cases?

Mr. Bond stated primarily we're arguing that we meet full criteria.

Mr. Nicholas asked criteria one, how if we deny this do you have an undue hardship on your use of the property?

Mr. Bond stated the only hardship is spelled out in the Zoning Ordinance. It says significant topography issues or other extenuating circumstances.

Mr. Nicholas asked in other words if we deny this how is your use of the property suffering a hardship?

Mr. Dyer stated I think he's arguing that there's no other place to put this which is an argument that we've heard in the past. That they need this building to be more efficient and to save money, which is taxpayer's money and there is in essence no other place to put this. If you all recall, I believe that similar case was with CBN Secure Technologies at the Cyber Park where they put up a smoking gazebo and we allowed them to put that in the side yard because there was no other place to put that.

Mr. Nicholas asked so what's the City's position on this?

Mr. Dyer asked do you feel that there are other places that this could be located?

Mr. Holtry stated we feel that there are other options such as attaching the structure to the office that's right there next to it or placing it in the rear.

Mr. Dyer stated before we get into that, let's discuss whether this is actually an accessory building or not. Why is this decided that this is an accessory structure?

Mr. Holtry stated the definition of an accessory use of structure is anything that is accessory to primary use. They've been without one of these accessory buildings or garage for quite some time now so it's definitely an accessory to that primary use.

Mr. Dyer stated alright, let me ask you this. Does this structure have a bathroom in it?

Mr. Bond stated no.

Mr. Dyer asked is there heated or air conditioned space?

Mr. Bond stated it will be ventilated and will have a sink for operational purposes.

Mr. Dyer stated so there's plumbing. Will someone occupy this building?

Mr. Bond stated yes. This is where the personnel will work on a daily basis.

Mr. Wasson stated we'll have supplies, products and stuff that they'll go in to get for the site for a work order or appliances or something like that.

Mrs. Evans asked but it's not like somebody will go and work there all day long?

Mrs. Witter asked is there an office and desk?

Mr. Bond stated there's a work bench but no office.

Mr. Holtry read the definition of accessory use per Zoning Ordinance.

Mr. Nicholas asked is it your contention that this is not that?

Mr. Wasson stated I don't understand how you could put it somewhere else on the site.

Mr. Dyer stated what we're discussing right now is the contention that this is not an accessory use, that this is a free standing building.

Mr. Nicholas asked if that is the definition of accessory use, do you feel that what you're proposing meets that definition or does not meet that definition?

Mr. Bond stated under the multi-residential family section, it lists the accessory use as tool sheds.

Mr. Nicholas asked is this multi-family residential?

Mr. Dyer stated yes.

Mr. Nicholas stated we're talking two different things. He's talking tool sheds and the definition you just read doesn't say anything about that.

Mr. Gillie stated the zoning is a multi-family residential. Multi-family residential allows for accessory uses and it defines under the MR regulations Section B permitted uses allows for multi-family residential dwelling units, private community facilities, recreation units, recreation uses in other common area improvements associated with the planned residential development limited to use by residents in the subdivision; number three is accessory use to include tool sheds, detached garages and car ports, children's playhouses and doghouses.

Mr. Dyer stated go back and read the one before that.

Mr. Gillie stated private community facilities.

Mr. Dyer asked what would your definition of a private community facility be? Is that like a clubhouse?

Mr. Gillie stated yes and I can give you the Zoning definition if you want me to go to the actual code.

Mr. Dyer asked what happens if we determine that this is not an accessory use?

Ms. Galloway stated then you would also need to say that this doesn't comply with the core requirements of the variance. The question isn't whether or not it's an accessory structure; it's whether or not you can grant the variance.

Mr. Dyer stated well if this is determined to be a free standing community facility, then does it need to have any type of variance granted?

Mr. Holtry stated yes, it would still be an accessory use. That was one of the items listed under accessory uses.

Mr. Dyer stated no you just read to use that accessory uses were number three and community facilities were number two. Right?

Mr. Gillie read the Zoning definition of a private community facility.

Mr. Dyer stated I'm going to say that I think this is probably an accessory structure.

Mr. Nicholas stated but I think the determining question is if it's an accessory use. What is the use of the structure?

Mr. Gillie read the definition of accessory use per Zoning Ordinance.

Mrs. Evans asked can you attach a breezeway to it and attach it to the administrative building then there wouldn't be an issue?

Mr. Holtry stated that's one of the definitions of accessory by attaching it to the building they can put a breezeway.

Mr. Dyer asked do they have to have a type of fire door or anything if there's a breezeway in the area?

Mr. Gillie stated it depends on the distance, height, and some other things so maybe. I don't want to answer yet.

Mr. Dyer stated I'm assuming on this plat that the separation that we see here precludes to the addition of any fire screening or guarding or anything. So in other words if that sidewalk is covered by a breezeway this would meet all of the City's demands?

Mr. Holtry stated yeah a four foot breezeway would.

Mrs. Witter asked is there any issue with adding in a breezeway?

Mr. Bond stated not from a building code standpoint.

Mrs. Witter asked in the long term, instead of having this variance denied and costing more money in gasoline and fuel, it would actually be a savings to get this approved and put in that breezeway, correct?

Mr. Wasson stated I think it would be better than having to find another place on that site that has topographical issues and things we would have to deal with.

Mrs. Evans asked are you willing to do a breezeway?

Mr. Bond stated yes we're willing to do a breezeway if that's what we need to do. I don't think it's going to approve the looks or the impact to its neighborhood.

Mr. Wasson stated it's not adding value to that and again we're dealing with taxpayer's dollars. If that's what we need to do then we will do it, but there's no value added to the project.

Mr. Dyer asked are there any more questions?

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated this is a very similar situation to what we had with CBN Securities where we allowed an accessory structure on the side yard because there was nowhere else to put it.

Mrs. Evans stated that was already done.

Mr. Dyer stated I think that would set a bad precedence. Because they had already built this garage then you give them more leeway?

Mrs. Evans stated no I was just pointing it out.

Mr. Gillie stated CBN if you remember sits kind of on a hill and they've built all around and it dropped off very substantially.

Mr. Nicholas asked where does the City say this could otherwise go?

Mr. Holtry stated like we said before it could attach to the structure. Also I took a picture in the back next to the basketball court. We've had to do some grading. One thing we don't look at is cost.

Mr. Dyer asked is this a hill right here behind where the proposed site is? It's very difficult to tell from the aerial, but what would you say is the difference in grade between the basketball court and where this proposed site is? Would you say it's more or less than six feet?

Mr. Holtry stated I would probably say it's six feet or more.

Mr. Dyer stated so at least a six foot grading. I do have one more question for staff. Has the City not just recently amended the Zoning Ordinance that allows for accessory uses on lots that have no other current uses? Is that still before Council or is that something that has been passed?

Mr. Gillie stated it's been passed.

Mr. Dyer stated so there is an allowance where you can put an accessory use on a lot that has no other use.

Mrs. Evans stated with a Special Use Permit.

Mr. Dyer stated it is with a Special Use Permit.

Mr. Holtry stated this does have a primary use already on the lot.

Mr. Dyer stated I know this is a technical question. How do you determine what's a side yard?

Mr. Gillie read the definition for side yard per Zoning Ordinance.

Mr. Dyer stated so that's a moveable object determined based on what the main structure on the lot is correct? A vacant lot doesn't really have a say. So this is determined this is a side yard because of the fact that the building front is on a public street. It's not just the fact that a piece of land is in the rear of this particular parcel.

Mr. Gillie stated correct.

Mr. Nicholas stated they've convinced me of two, three and four but I don't see where they meet one, the undue hardship. They're able to use the land for its primary purpose. If they want to put an accessory purpose on here, they can still do the accessory purpose but it'll be more expensive if they're not allowed to put it on here. Somebody who is in favor of this help me understand how they meet number one.

Mr. Bond asked can you pull up the criteria for filing for a Zoning Variance?

Mr. Dyer read the prerequisites for granting a variance which was also provided in the Agenda.

Mr. Bond asked does it go on to define what an undue hardship is?

Mr. Nicholas stated it does not.

Mr. Dyer asked Mr. Gillie, is that defined somewhere is that basically left up to our judgment?

Mr. Gillie stated that is left up to your judgment.

Mr. Bond stated I'm just going off memory but I thought I saw something in there about significant topography issues or other extraordinary conditions.

Mr. Dyer stated right. We have fell towards issues where topography is a main contributing factor. I can also recall another situation where we allowed an accessory structure in a side yard, and that was the gentleman that had the townhouse on Iris Lane. We allowed him to leave a freestanding structure there. So I think precedent probably has been set that would take those factors into consideration strongly. They do in fact have topographical issues here that they're dealing with. I'm trying to think, because I guess the accessory structure at CBN could've also been attached to the building if it would have been permissible. I can't even remember if we argued that or not.

Mr. Gillie stated at CBN the driveway was there because they couldn't put the building in and still have the driveway because the hill sloped off too substantially. On Iris Lane the gentleman also didn't have the property and he couldn't acquire it and then his lot went straight down into the creek in his back yard.

Mr. Holtry stated on that on they attached it.

Mr. Dyer stated I drove by there the other day and it is not attached.

Mr. Gillie stated he was supposed to attach it.

Mr. Holtry stated then they got a variance for a smaller setback.

Mr. Dyer stated that has not been done yet.

Mr. Nicholas stated the code says undue hardship relating to the property. I accept their argument that for their business purpose it is going to produce a hardship because they can't put it on the property; but the hardship's got to be related to the property.

Mr. Dyer stated I think you would have to consider the topographical issues they're dealing with.

Mrs. Witter stated it's for property maintenance. They need it to maintain the property.

Mr. Dyer stated we're not in Florida and everything is not perfectly flat looking at a plat like this where you see a flat image and there are issues associated with it that don't come through just looking at the drawing.

Mr. Nicholas asked is this related to the maintenance of this property where it's going to be located?

Mr. Dyer stated yes.

Mrs. Witter stated and personally trying to get them to put it back behind where that slope is is just unrealistic.

Mr. Dyer stated I do want to point out that we have architectural drawings of that building. It is a substantial structure whether it technically meets the definition of accessory use, that's really neither here nor there. We do see it is a large brick building with a shingle roof that matches the architecture of the surrounding structures. I don't think it produces any aesthetic issues, particularly where it's located. We did have twenty-one notices that were sent out to surrounding property owners and there were eleven responses and all eleven were not opposed.

Mr. Nicholas stated if it's for maintenance of the same property that's persuasive.

Mrs. Evans asked who's going to be the front? What is going to be the front, the door or the garage?

Mr. Bond stated it will be the large door.

Mrs. Evans asked the large door will be facing the street?

Mr. Bond stated correct.

Mrs. Evans stated well I have a problem with that.

Mr. Dyer stated okay let's move along. Do we have anyone who will make a motion?

Mrs. Witter made a motion to approve Variance Application PLVAR20140000328 based on applicant criteria. Mr. Campbell seconded the motion. The motion was approved by a 5-2 vote.

II. APPROVAL OF MINUTES

The November 20, 2014 minutes were approved by a unanimous vote with changes to page 12 as reported by Mr. Nicholas.

III. OTHER BUSINESS

Mr. Dyer asked for an update on the Dollar General dumpster that was previously brought before the Board. There was discussion on what they are allowed to do based on Zoning Code.

Mr. Gillie informed the Board that there are no Agenda items for January so there will be no meeting. He also informed the Board that voting for officers will be held at the next meeting.

Mr. Dyer informed the Board that he would need to change the March meeting to Tuesday March 17, 2015.

Mr. Nicholas made a motion to move the March meeting to Tuesday March 17, 2015. Mr. Hiltzheimer seconded the motion. The motion was approved by a 6-0 vote. Mr. Campbell had left the meeting at the start of the Other Business.

With no further business, the meeting adjourned at 10:40 a.m.

APPROVED