

BOARD OF ZONING APPEALS MEETING
November 15, 2012

Members Present	Members Absent	Staff
Mr. Dyer	Mrs. Evans	Clarke Whitfield
Mrs. Rich	Mr. Campbell	Ken Gillie
Mr. Nicholas		Christy Taylor
Mr. Hiltzheimer		
Mr. Snipes		
Mrs. Rich		

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

I. ITEMS FOR PUBLIC HEARING

- 1. Variance Application Number PLVAR20120000303, filed by Raymond Wilborne, requesting a variance from Article 3.E., Section F, Item 2. A. (2), of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 517 Holbrook Street, otherwise known as Grid 1712, Block 014, Parcel 000005 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to allow a four (4) foot side yard setback where six (6) foot is the minimum allowed.*

Twenty-seven (27) notices were mailed to surrounding property owners. Four (4) respondents were unopposed; one (1) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Raymond Wilborne. Mr. Wilborne stated I am requesting the two additional feet to continue building my carport that we are in the process of building. I would appreciate you all granting me the right to do so for several reasons. I always tell people the truth first. I am very selfish and it would help me to have it there because I am at the age now, I am 64 years old and I need everything as close to me as I can possibly get it. Building this will also improve the community and the neighborhood. I spoke to my neighbor facing the house on my left side. He was very appreciative of me being there and everything I have done to improve the neighborhood. I have always learned that sometimes you just need to keep things short and simple. People can understand that, so I would ask that you please grant me the right to continue to do that.

Mr. Dyer stated Mr. Wilborne this Board is charged with the responsibility of judging your application based on four criteria. Are you familiar with those four criteria?

Mr. Wilborne responded yes. If I am not mistaken the inspector came out.

Mr. Dyer stated there are four criteria that you need to meet in order for us to be able to grant you a variance.

Mr. Wilborne stated I am not completely familiar with them.

Mr. Dyer stated the first criteria and asked Mr. Wilborne to address it.

Mr. Wilborne stated I don't completely understand the question.

Mr. Dyer stated then you realize we are not a Board that has the leeway to just do things what we think. We are required to take action based on certain rules and regulations. That may have some bearing on your case.

Mr. Nicholas asked does anyone else have a carport in your neighborhood?

Mr. Wilborne responded yes, my next door neighbor has a carport.

Mr. Nicholas asked does his follow the six foot setback?

Mr. Wilborne responded I would say yes. It is fine. It doesn't bother me where it is at. It was there when I got there, so I can't say whether it is or not; but if I had to say, I would say yes. All of the lots are basically the same size.

Mr. Dyer stated it is my understanding that this issue was brought to your attention by the Building Inspector when he came by and saw that you were working on your carport.

Mr. Wilborne stated that is correct.

Mr. Dyer asked had you at that point obtained a building permit to construct your carport?

Mr. Wilborne responded no I had not.

Mr. Dyer stated some of this could have been avoided if you had known about the setbacks and things before you actually started construction.

Mr. Wilborne stated that is correct.

Mr. Dyer stated it is my understanding that you would like your carport as 11'6" wide.

Mr. Wilborne responded that is correct.

Mr. Dyer stated if you went back to 9'6" that would fit into the current City Code. Have you considered reducing it to 9'6"?

Mr. Wilborne responded after considering it to be reduced, it would be too small unless I go in and do some further adjustments to the house by moving the fireplace.

Mr. Dyer stated the current 11'6" includes an encroachment of the space by a fireplace.

Mr. Wilborne stated the fireplace sticks into that space. The fireplace is 36" out.

Mr. Snipes asked were you aware that the carport was being built without first obtaining a building permit?

Mr. Wilborne responded yes. It is just a carport that you drive up under. Somewhere I had been informed that when you are building an addition to a house and you are not closing it in, I was told a building permit wasn't needed. I found out that was a terrible error. Now I found out that a building permit is needed for anything done exterior to a house.

Mr. Snipes stated it seems to me that your contractor would have known that too.

Mr. Dyer asked were you doing this construction yourself or did you contract with someone?

Close the Public Hearing.

Mr. Nicholas made a motion to deny Variance Application PLVAR20120000303 based on staff's recommendation. Mr. Hiltzheimer seconded the motion. The motion was approved by a 5-0 vote.

- 2. Variance Application Number PLVAR20120000302, filed by Blair Construction, Inc., requesting a variance from Article 3.P., Section H, Item 7, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 350 Stinson Drive, otherwise known as Grid 3606, Block 001, Parcel 000001.001 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to allow three (3) curb cuts on a single right of way where two (2) is the maximum allowed.*

Three (3) notices were mailed to surrounding property owners. One (1) respondent were unopposed; one (1) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Tim Clarke, Blair Construction. Mr. Clarke stated I thank you for the opportunity to come and speak before the board. We filed this request on behalf of Canadian Bank Note who you may or may not know is the entity that makes all of the drivers licenses in the Commonwealth of Virginia; so if you have one of the new black and white driver licenses this is indeed the building that it is made in. The building is being expanded or is in the process of being expanded to make drivers licenses for two other states. They will not be 100% made there but a lot of the parts and pieces will be made there. As a result of the expansion as well as the shape of the lot which is on Stinson Drive, it causes us to need to have a truck entrance to allow a tractor trailer to go around behind the building, through the building, and back out the other side. By needing this third entrance it really requires me as the Code is written now I have to fill this one in the middle in. In the interim for right now it may be ok to fill that middle one in; however the future expansion plans of Canadian Bank Note should they acquire more business would include building a building over this parking lot and filling in this triangular space and that would cut off the through traffic of where this new entrance is. It would cause me to come back before you and ask for a third entrance. Canadian Bank Note would have also have had to spend the money to

remove this entrance, put all of the curb cuts back, landscape it back, grass it back; and hopefully if they continue to expand I will be back in front of you asking to put it back in. Therein lies a hardship financially of having to tear something out that hopefully we will put back in the future as Canadian Bank Note continues to grow. That is really the long and the short of the case. In anticipation of your question, Mr. Dyer on the four points the hardship is financial in nature. Obviously it is more cost effective to leave an entrance in than to tear it out and then come back later and have to put it back in. Respectfully I disagree with staff on their interpretation of the hardship.

Mr. Nicholas stated let me interrupt you right there. I understand that part of the hardship, but with the two entrances why do you need a truck entrance?

Mr. Clarke responded I have got to drive a tractor trailer through the building in the back. Originally if you go back through the history of the expansion, we went before the Regional Industrial Facility Authority to try and get permission just to have a loading dock on the front of the building and to park trucks on the street to back them in. At the request of some of the Regional Industrial Facility Authority members we did what we could so the trucks wouldn't have to park in the road and you wouldn't have to have a loading dock on the front of the building. We are physically going to drive trucks through this entrance, through the back of the building through a loading dock, and back out this entrance over here. We need to add this entrance in order to get a tractor trailer in.

Mr. Nicolas asked a tractor trailer cannot fit in that middle entrance?

Mr. Clarke responded there is going to be a building right there.

Mr. Nicholas asked they can't come in and move left?

Mr. Clarke responded no. This is designed, if you have ever been out there, it is tight just to drive through with a pickup truck let alone a tractor trailer.

Mrs. Rich stated I was going to say that it looked like too tight of a turn for a tractor trailer.

Mr. Clarke stated it is a one way entrance for those trucks that do come in and it will be an entrance too for cars that can come in and come across.

Mrs. Rich asked the new building is just this here?

Mr. Clarke responded it is the hatched area. It is inside the dotted line. It is a 9,000 square foot building now. We will increase it to just under 16,000 square feet. The future addition will be over here.

Mr. Hiltzheimer asked the dark part is the new addition?

Mr. Dyer responded that is right.

Mr. Nicholas asked where is the loading dock right now?

Mr. Clarke responded the loading dock right now is located right here.

Mrs. Rich asked they have to back into that?

Mr. Clarke responded anytime you work with an Economic Development client, especially one like this building drivers licenses for Virginia, it is the first time it has ever been not done by the Commonwealth. When this building was designed five years ago, the thought was that everything would come on a Brinks truck like a short security truck. The dock that they have now is probably about the distance from where I am standing to the wall. You can back a Brinks truck in it and shut the doors. Everything they do is highly secure and under armed guard. This allows them to park a whole 54 foot trailer with the truck inside the building, shut both doors, and secure the area; where now they unload secure material outside with two guys with guns. Expanding their operation, they are expanding the amount of material that they bring in and out as well.

Mrs. Rich asked is traffic flow about medium on that stretch?

Mr. Gillie responded yes.

Close the Public Hearing.

Mr. Nicholas stated I noticed in the staff report on the second criteria you stated that the *property has been successfully developed with two entrances*. What is staff's position on the proposed expansion and the need for basically what he was just talking about? It would seem to me that if the expansion takes places as requested you are not going to be able to get a tractor trailer in there with just those two curb cuts. What is your take?

Mr. Gillie responded the expansion that we have in front of us, the one that they have actually asked for as they said they could remove that entrance, cover it over, put in the second entrance, and drive a truck through. This variance is for a potential future expansion, which we don't know will or will not occur. The permits I have right now say "I've got this addition." He can put his entrance in, close off the one, and be in compliance with the Code. It is kind of premature now to come and ask for this third entrance based on what we may do in the future. A lot of people have plans for the future that do or do not come to fruition. From a staff's perspective, until we actually have that addition in front of us it is premature. You can make do with the two entrances. You can close off the one entrance and still be in compliance with the Code. Physically the property has two entrances now. They could still have two entrances and function just as well. Staff is not allowed to consider financial hardship. Variances are physical development of the property. I don't disagree with his financial comments at all. I mean him and I have had this conversation in the past. Can it be done from our standpoint? Yes it can, so that is why we are here.

Mr. Dyer stated suppose they were to just take a chain and put it across that middle entrance. Is that then considered closing that entrance?

Mr. Gillie responded no they would actually have to remove it.

Mr. Dyer stated all of this is occurring on their original lot. They have not acquired any additional land for this expansion.

Mr. Gillie stated correct.

Mr. Dyer stated it is my understanding that you appeared before the Regional Industrial Development Authority to speak about this case at their last meeting. It was on their agenda.

Mr. Gillie stated they asked for permission to apply for it and the Regional Industrial Facilities Authority, since they are a property owners within the area they received notification and they asked should they be opposed or not opposed. You will notice on their list that they have checked off as being not opposed. I just made a presentation there saying "this is what they are asking for."

Mr. Dyer stated this requirement as far as the curb cut that is a Citywide Ordinance. That is not just something that applies to the Cyberpark, correct?

Mr. Gillie responded correct. It is Citywide for anybody in that zoning district. The covenants that regulate the Cyberpark say that they should be in conformance in the Zoning Code. They have asked for a waiver of the covenants if they can get the Board of Zoning Appeal approval. The Regional Authority told them that if they could get the variance they wouldn't have an issue with the covenants, but they are two separate issues.

Mr. Dyer asked did you or did you not appear at the Regional Industrial Development Authorities last meeting?

Mr. Gillie responded yes, I appear at most of them.

Mr. Dyer asked what was their opinion on this?

Mr. Gillie responded they were not opposed to it.

Mr. Dyer stated I have spoken to some of the Economic Development folks in Danville and they are very much in favor of this. Is that not something that you came away with at the IDA meeting?

Mr. Gillie responded that they are in favor of the expansion? We are all in favor of the expansion.

Mr. Dyer stated they are in favor of granting this variance.

Mr. Gillie stated I don't know. I was there just to talk about whether they were opposed or not opposed.

Mr. Clarke stated they passed a resolution to support it.

Mr. Gillie stated they passed a resolution in support of the covenant modification. If they have another resolution, I don't have a copy of it.

Mr. Dyer stated this case to me brings to mind a very similar case that we have recently dealt with and that was the issue up at Roman Eagle. They were granted a third curb cut because of extenuating circumstances. Perhaps we should take that into consideration.

Mr. Hiltzheimer stated it would be much more beneficial to the property owner to have this third cut.

Mr. Gillie stated a lot of people ask for that though. We have got businesses all over that are constantly asking for multiple. Do you think we should change the Code?

Mr. Dyer asked other than the fact that this is three curb cuts when they are only allowed two, are there any other issues as far as the distance between the curb cuts, the distance of the curb cuts from the property line, any of those other issues? This is just a matter of a third curb cut on a single lot.

Mr. Gillie stated the Code says that you are only allowed to have two of them. They have to be so far from each other.

Mr. Dyer asked they meet those?

Mr. Gillie responded they meet all of those requirements.

Mr. Dyer stated maybe this is something that needs to be looked at. If you have 1,000 acres, are you only allowed two curb cuts if it is all one consolidated piece of property?

Mr. Gillie responded if it is all one consolidated piece of property with frontage on a street, yes. We don't usually have, because of our urban nature, properties that large.

Mr. Nicholas stated my only hang-up is at this point the expansion is proposed and the premature nature of it. I do understand why they are making it. I do think that it is somewhat premature if we are not talking about plans that have been approved and correct me if I am wrong, and are in the works and they just need this in order to make the expansion. If we are doing this preemptively so that years down the line if we have enough business we are going to expand. I think that is different than "we want to expand and we need this in order to expand."

Mr. Dyer stated I would encourage you to take that into consideration in making your decision; but I think you have to weigh the difference between what the negatives of allowing this application to be approved are versus the positives. If you feel that the negatives outweigh the positives then I am sure that would influence your opinion. One thing that I would like to point out is the applicant has been good enough to submit the four criteria. When you make your motion, if you make a motion in opposition to the variance of course you can just cite the planning staff. If you would like to make a motion in favor of the application you can either cite your own reasoning or you can cite the reasoning provided by the applicant.

Mrs. Rich stated I think it is a little premature to say that you are going to have that third expansion, but then again it is expensive digging up a driveway and getting rid of it.

Mr. Dyer stated that is the point that I was trying to make that you consider the negatives associated with this versus the positives.

Mrs. Rich stated I don't think it is that big of a negative to leave that middle entrance.

Mrs. Rich made a motion to approve Variance Application PLVAR20120000302 based on the applicant's criteria analysis. Mr. Hiltzheimer seconded the motion. The motion was approved by a 4-1 vote (Mr. Nicholas voted in opposition).

II. APPROVAL OF MINUTES

Mr. Nicholas made a motion to approve the minutes from the August 16, 2012 meeting. Mr. Hiltzheimer seconded the motion. The motion was approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie stated you are probably going to have a meeting next month. I am just letting you know now.

Mr. Nicholas asked when will that be?

Mr. Hiltzheimer asked how many are we going to have? Do you know yet?

Mr. Gillie responded you should have only one case.

Ms. Taylor responded it will be December 20.

Mr. Dyer stated I noticed that at least Council has the authority to change the dates of their meetings with prior notice. Do we have that option?

Mr. Gillie responded yes.

Mr. Dyer asked how far in advance does it need to be made?

Mr. Gillie responded it should be announced at today's meeting so I can advertise accordingly. As long as I advertise the date of the meeting, notify the applicant and adjacent property owners and it is announced at the meeting beforehand we can change it.

Mr. Dyer stated I didn't know if people would be out of town.

Mr. Gillie stated usually we don't have cases this late in the year, but I can almost guarantee we will. They stopped by to fill out the papers yesterday. I am assuming that they are going to turn them in today.

There was discussion about potential dates for the meeting.

Mrs. Rich made a motion to move the December meeting to December 18, 2012 at 10:00 a.m. Mr. Hiltzheimer seconded the motion. The motion was approved by a unanimous vote.

Mr. Gillie stated Planning Commission has recommended approval of the River District overlay. They will be looking for people to serve on the River District Design Commission if anyone is interested. I am also assuming that once that is in the Zoning Code while there will be an appeal process to City Council, they will have the option to appeal to the Board of Zoning Appeals. As soon as that is adopted, I will get a copy of that to each of you so you can be aware.

Mr. Hiltzheimer asked can we serve on both Boards?

Mr. Gillie responded you can serve on as many as you want to serve on. They will be putting out stuff for people to apply, so if anyone is interested I just wanted to let you know.

With no further business, the meeting adjourned at 10:38 a.m.

APPROVED