

BOARD OF ZONING APPEALS MEETING

April 17, 2014

Members Present

Gus Dyer
John Hiltzheimer
Dolores Reynolds
Ann Sasser Evans

Members Absent

Philip Campbell
Michael Nicholas

Staff

Ken Gillie
Renee Burton
Scott Holtry
Christy Taylor
Clarke Whitfield

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

I. ITEMS FOR PUBLIC HEARING

- 1. Variance Application Number PLVAR20140000070, filed by Christopher Robinson requesting a variance from Article 2. Section Q., Item 1 of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 302 Edmonds Street, otherwise known as Grid 1606, Block 007, Parcel 000008 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to construct a six (6) fence within the front yard where four (4) feet is the maximum allowed.*

Forty-two notices were mailed to surrounding property owners. Fourteen responses were unopposed; zero responses were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Christopher Robinson. I have a packet I would like to hand out just to summarize the history and what I am wanting to do and why. I have spoken with the neighbors on both sides of the property.

Mr. Dyer stated I was hoping that we could get a police officer here.

Mr. Robinson stated I do have the cards of the two gentlemen I refer to in the letter. One was Lt. Pace and the other was the Traffic Control Superintendent.

Mr. Gillie stated you have the incident reports in your packet.

Mr. Dyer asked did he meet with you at your property?

Mr. Robinson responded no, I asked if someone could. I have already made enough police reports for broken fences, burglaries, and such there on the property but not with this officer. I came in with the specific intention of getting a report.

Mr. Dyer asked are you prepared to answer to the four criteria?

Mr. Robinson responded sure.

Mr. Dyer read the first criteria. How would you address that?

Mr. Robinson responded I bought it in 2008. It was to the best of my knowledge a drug haven. I got it at an auction from American National Bank. It was in a dilapidated state and known for drugs. The people that knew me, in the City, were glad I bought it because they knew I would fix it up. I invested money, time, effort and I was also careful to put the right tenants in there that were law abiding. If this continues the way it goes now, I am going to have to sell it. I am doing all I can to make the building profitable. I am current on all of the City's inspections that are mandated. If I can't protect the tenants and keep them there, then I can't rent it. If I can't rent it then the building is just going to be sold. I have low rent and others want to get in this place. If the neighborhood was better I would take the fence down. I put the vinyl fence up in the front because I wanted it to look nice. I wanted to improve it. That has to come down and I have to put up privacy fencing because people are kicking them over. That was the last police report, which would be on record. I don't know who it is. A lot of that area is rented. They are simply just kicking my vinyl fence down, so there is the financial hardship.

Mr. Dyer stated it says here that you can construct the fence with a 30' setback on Edmunds Street and a 20' setback from Chatelaine Avenue. It says that you could construct a fence up to 8' tall as long as it is 20' from the front property line. This would address his concerns without a need for a variance.

Mrs. Burton responded correct. That number differs. His application stated the 20' and 30', but when we spoke on the phone it was actually going to be closer than the numbers that were given on the application.

Mr. Dyer asked do you think that relates to the property line as opposed to where the street is? In other words, he is measuring from the street 20' and you are measuring from the property line.

Mrs. Burton responded no, we had conversation about that so we were clear on where we were measuring from.

Mr. Dyer asked is it appropriate for you to construct this fence at least 20' off of the property line?

Mr. Robinson responded the one on Edmunds Street is approximately 30' from the road. I have a survey map but there was a slight conflict with where the lines were, so I called engineering and asked if the surveyors could come show me where I should put that line on the Chatelaine side. It is 10' from the east side of the corner of Chatelaine from the curb. That is where the City said I could put the fence.

Mr. Dyer asked are you planning to encircle this entire piece of property with the privacy fence?

Mr. Robinson responded yes because I already have it on the two sides.

Mr. Dyer asked if he can stay 20' off of the front property line, isn't he in compliance?

Mrs. Burton responded 20' takes him approximately to the structure itself. It is only roughly 23' from the right-of-way. It would block off his parking area. He is proposing to use the existing fence line that is there now with the 4' and put up 6' instead, which is roughly 10'.

Mr. Dyer asked what exactly are you hoping to accomplish?

Mr. Robinson responded I am hoping to keep the negative element away from my tenants with the result that they will feel more secure, so they will be able to live there comfortably and not be antagonized by the neighborhood.

Mr. Dyer did the police officer have any concerns with the privacy fence aggravating the situation?

Mr. Robinson responded when I was putting in the security system about 2 months ago one of my fence panels had been kicked down. This was the fourth time it had happened. I called the police. I told the officer that I was going to have to put up a privacy fence. He said that it was really sad that I had to barricade myself in but that he could understand my sentiment. I asked the traffic superintendent to give me his opinion because we are on a corner.

Mr. Dyer asked are you backtracking on your statement and saying that now he can construct a privacy fence and not require a variance?

Mrs. Burton responded I did not say that. He can do that. It will be a hindrance to him personally on his parking area, but by Zoning Code he can construct a fence 20' back on Edmunds and Chatelaine and be within zoning requirements.

Mr. Dyer stated the parking spaces appear perpendicular to the street. Given the 20' that he is going to set the fence back and whatever the right-of-way is there, there is still ample room to park perpendicular to the street, right?

Mrs. Burton responded it should be.

Mr. Dyer stated a parking space is not required to be but 20' deep, so we know we are at least going to have 20'.

Mrs. Burton stated right, but looking just by strict interpretation of the Code, it doesn't take into effect the way you use the land.

Mr. Dyer stated the second criteria is also sort of reliant upon his ability to construct a fence without needing a variance.

Mr. Dyer read the second criteria. In other words, you have a unique situation that your property tends to be more prone to vandalism and crime than your neighbors, and so if you care to address that.

Mr. Robinson stated I don't know all of the clientele of the other houses. I know a lot of them are rented. For instance, across the street on Edmunds they are an elderly couple, very nice and they have no privacy fence at all; but they are there all of the time. The tenants that I have are working. The last burglary, which was about 2 months ago was when David and Mable (Mr. Robinson's tenants) were both gone. Whoever was in the area knew that they were gone, made his break-in, and left within 30 minutes. They knew their hours of operation. A lot of them in the area are rented, and I think that may be part of the problem. All of the people are either there all of the time or have less than flattering intentions, but for whatever reason it is unique. We have a unique situation here that is different from the others in the direct vicinity of my building.

Mr. Dyer read the third criteria. It seems to be the main objection from the City is that if you put this fence up it would impede their site lines in situations probably with traffic and you have addressed that with the traffic superintendent.

Mr. Robinson stated as far as the adjacent property owners, I have spoken with both of them. The ones on the other side of the street, I don't know that they even care. The one on the one side is glad because he is concerned about when I cut the grass getting stones thrown at his new car. On the other side, they are real sweet people and they totally understand. As far as the traffic, impeding the site of vision, I had Lee Farley come out. Mr. Farley mentioned that the way they measure the distance that is required is by measuring 25' from the corner and drawing a hypotenuse around that triangle. He said that the fence couldn't be anywhere in that area. He said as long as I cut the one off at the corner and go from there, there was no conflict with traffic.

Mr. Dyer stated the City agrees that you meet the fourth criteria. Do you have anything else that you would like to add?

Mr. Robinson responded just that this is my last attempt. If the area improves, I will be the first one to want to take it down and put this kind of fence (existing) back up.

Mrs. Evans asked how will your tenants enter and exit the property if the fence is up?

Mr. Robinson responded I am going to provide an area that is 5' wide. I want to put a gate there. I have asked the postal delivery man if I can put the mail boxes outside and label them. She said that would be no problem at all. I just want to put a P.I.N. in there so they can get in. Just the tenants would know that. If I have a change in tenants I will just change the numbers. That would be on the Edmunds side near the parking area.

Mrs. Reynolds asked would you tell me exactly what the privacy fence is. I know there are a lot of different kinds.

Mr. Robinson responded it is just a pressure treated dog-eared privacy fence. They are 6' pieces but because the property goes up and down I will be putting in posts. It is going to be wood, similar to the one that is already on the two side yards.

Mrs. Evans asked are they boards or pickets?

Mr. Robinson responded they are pickets but privacy.

Mrs. Evans stated so no space in between.

Mr. Robinson stated right. I think a lot of people are just sitting on their porches and looking. My intention is to stop them from being able to see when tenants leave, when they go and to give tenants a sense of privacy if they want to cookout or sit outside. I am trying to give them that privacy. The less intrusive way to do that is to put up a privacy fence high enough to limit the line of sight.

Mrs. Reynolds asked are your tenants all for this?

Mr. Robinson responded oh yes, definitely.

Mrs. Evans asked have you considered some type of landscaping once you complete the fence?

Mr. Robinson responded I guess I will eventually get to that. Once I get it more secure I will find other ways to improve, but I am just addressing one thing at a time.

Close the Public Hearing.

Mrs. Evans asked you are not opposed to the height of the fence, just the placement. Is that correct?

Mrs. Burton responded correct. Code allows you to construct up to an 8' tall fence beyond the front yard setback line, which is 20' in this area.

Mr. Dyer asked how far off are we?

Mrs. Burton responded currently on Chatelaine he is approximately 7' from that right-of-way.

Mrs. Reynolds stated the purpose of a Zoning Ordinance, the purpose of local law, is to protect our citizens and make life as pleasurable as we can make it within the confines of the law. It seems to me that Mr. Robinson has gone way over what most landlords would have ever done to secure his people and yet he is still plagued with crime. Police officers for the most part don't prevent crime. They find out who did it. Here they are, his tenants, at the mercy of this neighborhood, which is really high crime. He is trying to do what he can to protect them, give them quality of life, to keep his property up, and to make some profit. It seems to me that the purpose the City should have is to work with him in every way possible because it seems that he has done his part. That is what I think.

Mr. Hiltzheimer stated I think that he is going to the extreme trying to protect his property and his tenants. We should give the variance.

Mr. Dyer stated the only concern I have is my understanding the ordinance restricts fences in the front yard is that a higher fence doesn't protect you from crime but it makes things more dangerous. If something was happening in the neighborhood it would be possible for someone to duck behind one of these fences and the police would not be able to see them when they are driving by. If the property were to catch on fire,

people couldn't see the smoke coming from the property. I think what we have to weight is if those concerns outweigh the concerns of the actual situation.

Mrs. Reynolds stated any criminal would have to jump an 8' fence to hide because he won't have the combination, so I think that is out and smoke rises. I don't think those two things enter into it.

Mr. Dyer stated as someone who had an 8' privacy fence, I can tell you I seen a guy scale it in like 2 seconds and I seen a police officer spend about 15 minutes trying to get over it.

Mrs. Evans asked if he put up the fence if the variance was granted, would landscaping be an issue outside of the fence as far as traffic?

Mrs. Burton responded it would depend on the type of landscaping. There is the potential if you had something that is going to span a great distance; but if you had something that is going to grow narrow and shoot straight up, it probably would not be a concern.

Mrs. Reynolds stated the fence would be softened by landscaping in front and I would put the stickiest, thorniest thing I could come up with. Anybody that thought they wanted to scale it, would wish he had not.

Mrs. Evans made a motion to approve Variance Application PLVAR20140000070 with landscaping in front of the fence. Mr. Hiltzheimer seconded the motion. The motion was approved by a 4-0 vote.

2. *Variance Application Number PLVAR20140000071, filed by CBN Secure Technologies, Inc., requesting a variance from Article 2. Section P., Item 4 and 5 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 a variance to allow an accessory structure in the side yard when Code requires that it be placed in the rear yard.*

Three notices were mailed to surrounding property owners. Zero responses were unopposed; zero responses were opposed.

Open the Public Hearing.

No one was present on behalf of the request.

Close the Public Hearing.

Mr. Dyer stated this is a situation similar to what we had last month. They want some type of gazebo structure for recreational use for employees. If you have been out there, you will notice the lot is graded so that it drops off substantially at the back. This issue was originally brought before the Regional Industrial Development Authority and they had no objections to this structure.

Mrs. Evans stated it doesn't exactly go with the building.

Mr. Dyer stated no, it doesn't. I am really surprised that they approved it.

Mrs. Evans stated I would feel better about it if it looked more like the building.

Mrs. Reynolds asked doesn't it say here that no one can see it? The landscaping that he has planned completely hides it from the road. None of the other property owners can see it now. It is the only place on the property that the employees can have an outside area.

Mr. Dyer stated the City agrees that they meet 3 of the 4 criteria. It has been charged to us to decide if they meet the 4th criteria, which is actually the 1st criteria. It is a hardship to them if they are forced to put this in the rear of the property, because they basically have no usable land in the rear of the property. I think the pertinent question is whether they actually need this structure to conduct business.

Mrs. Evans asked is it just for smoking?

Mr. Dyer responded I am assuming it is for general use. Its primary use is to provide shelter for employees that do smoke.

Mr. Gillie stated it is a lunch area where they can go outside. It is a very secure facility. They have an internal break room, but if anyone wants to get out and get sun, that is the place for them to go. The smokers use it, so they have a place to go to in the rain; but it is not only used for smoking. It does have ceiling fans and other things to make it more comfortable. It is screened around to keep the bugs away. They are planning on using it as recreation for their employees.

Mrs. Evans stated but if you don't smoke, I wouldn't want to go there.

Mr. Dyer stated you could use it when it wasn't being used as a smoking lounge.

Mrs. Evans stated I know from experience, smoking areas are nasty. They smell like smoke even if they are outside.

Mrs. Reynolds asked it is screened, right?

Mr. Gillie responded it is.

Mrs. Evans stated it doesn't make any difference.

Mrs. Reynolds stated why they need it is not our problem. It is for the employees and their use, whatever they choose to use it for. That would not enter into what we think.

Mr. Hiltzheimer made a motion to approve Variance Application PLVAR2014000071 with landscape screening. Mrs. Reynolds seconded the motion. The motion was approved by a 4-0 vote.

II. APPROVAL OF MINUTES

The March 18, 2014 minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie stated we have a meeting next month so plan on being here. We have at least 2, possibly more. They have until Monday to turn stuff in.

Mr. Dyer stated I know there has been some type of discussion concerning some type of class. The only thing I am waiting on is for us to have a full house. We still have a vacancy on the Board.

Mr. Dyer asked do you know if we have any applicants?

Mr. Gillie responded last I knew, we did not.

With no further business, the meeting adjourned at 10:45 a.m.

APPROVED