

BOARD OF ZONING APPEALS MEETING
November 19, 2009

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

Secretary Evans called the meeting to order at 10:00 a.m.

I. ITEMS FOR PUBLIC HEARING

1. Variance Application Number V 09-016, filed by William A. Leggett, requesting a variance from Article 2, Section Q, Item 1, 3 and 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 468 Maple Drive, otherwise known as Grid 1713, Block 001, Parcels 000003 of the City of Danville Virginia, Zoning Map. The applicant is requesting a variance to keep a seven (7) foot fence/wall in a front yard of a corner lot where four (4) feet is the maximum permitted.

Twenty-two (22) notices were mailed to surrounding property owners within three hundred (300) feet. Fifteen (15) responses were returned with no opposition (Campbell, Pritchett, Abercrombie, Oakes, Newman, May, Johnson, Ramey, Dyer, Mayhew, Shea, Harris, Geyer, Carbone and Kowitz). One (1) notice was returned in opposition (Ray).

Open the Public Hearing.

Present on behalf of the request was Will Leggett. Mr. Leggett passed out pictures to the Board. He stated that he was able to take some pictures of other vehicles that were in the corner to show that the fence/columns that had been put up did not obstruct the individual visibility of a driver coming through there. He stated that when he first started the project, he did try to go through the proper channels of getting the proper permits. Mr. Leggett stated that he put the wall in and at the highest point it is about twelve feet in the far corner. He stated that he tried to contour it to the slope of the road that comes around. The road does come down fairly steep so when we designed the wall, we tried to do something that would step down. He stated that the fence itself is four feet, but at points it is twelve feet long in sections and it does have some sections that at close point come up to seven feet high on far ends. He stated that when you go back towards the dirt it is fairly level with the ground. Mr. Leggett stated the he worked with neighbors to find something that was conforming to all houses that were beside and adjoining so that it did not

take away from any one particular house. Mr. Leggett asked the board to consider letting him leave the fence as it is instead of having to remove it.

Close the Public Hearing.

Mr. Dyer stated that in the City's opinion where staff recommended denial of this application, it was stated that Mr. Leggett had alternatives that would fall in the zoning requirements. He asked staff what those options were?

Mr. Gillie stated that you could cut the fence size down to have a four foot fence. The option is to protect those traveling on the sidewalk from the height of the wall. He stated that a four foot fence would do that. It would stop someone. It is the standard railing height that you have on a deck.

Mr. Dyer stated that due to the grade of the road, because you have this slope, it means that you have to have a minimum of four feet. He stated that obviously there is a three foot grade difference in the length of this section of fence. If you are dropping down three feet over the length of the fence and if you can restrict the height of the tall end down to four feet, then you will be down to one foot on one side of it. He stated that would not provide any type of barrier for anybody.

Mr. Gillie stated that you can build a fence on a slope. There are plenty of fences that follow a three foot grade and continue up.

Mr. Dyer asked if they were contour fences?

Mr. Gillie stated yes. Mr. Gillie stated it was an aesthetics question.

Mr. Dyer stated that a step fence like Mr. Leggett has is the appropriate style fence for this neighborhood. He stated that this was a significant neighborhood with homes of architectural significance. Mr. Dyer stated that he feels there are two very substantial extenuating circumstances that Mr. Leggett is dealing with on this fence. One of them is that it is not just a fence running across his yard. It is actually a fence on top of a retaining wall so there is safety issue involved. Considering the safety issue involved, there should be a minimum height that we should be looking for with this fence and what would be appropriate would be the kind that is used around swimming pools. The other extenuating circumstance is the fact that the street that the fence faces along a very steep grade. The only alternative would be a contour fence which no one in the neighborhood would appreciate. Mr. Dyer stated that he thinks what Mr. Leggett has done is in keeping with the character of the neighborhood. He stated that he feels the criteria

for strict application does produce undue hardship on the property owner because with the strict interpretation of the rules, Mr. Leggett is left with no alternative.

Mr. Gillie asked if he could build a contour fence?

Mr. Dyer stated no, he did not think that was appropriate.

Mr. Gillie stated that appropriateness is not something that staff considers. Can you comply with the regulations? Yes, you can.

Mr. Dyer stated that the regulations in this case are inaccurate.

Mr. Gillie stated that was for the Board to decide upon.

Mr. Dyer stated that he thinks the problem with the zoning code is that it does not address the aesthetics of the case. He stated that this is a prime location in a significant neighborhood that the aesthetics of a fence should be taken into consideration. Mr. Dyer stated that there is no proper option available for Mr. Leggett. Therefore, the strict interpretation of this ordinance does in fact create a hardship on the property owner. The two criteria states the fact that the fence was basically on top of a retaining wall with a substantial drop-off on one side and also that he was dealing with a steep grade on the street side. He stated that Mr. Leggett could in fact berm dirt up against the part that was sticking out of the ground and technically meet the code.

Mr. Gillie stated that based on the grade definition that would not meet code because of the substantial drop on the back side. It is an average grade plane, not just a grade point.

Mr. Dyer asked if he could berm dirt against the street side?

Mr. Gillie stated that even if you bermed dirt against the street side, it still would not comply with the definition of grade because of the drop.

Mr. Dyer stated that he would add a third significant thing that he is dealing with. He stated that he is dealing with the fact that it is on top of a retaining wall, he is dealing with the grade of the street, and he is also dealing with the fact that he needs to provide something that will be architecturally correct for the neighborhood. Mr. Dyer stated that given those three constraints, he does not see any alternative to what he has done. Mr. Dyer stated that Mr. Leggett does in fact meet the first two criteria and staff agrees that he meets the next two criteria so he feels that Mr. Leggett meets all four criteria to be granted the variance.

Mrs. Rich made a motion to grant the variance application based on Mr. Dyer's statement regarding criteria. Mr. Dyer seconded the motion. The motion was approved with a 4-0 vote (Mr. Campbell and Mr. Snipes were absent).

II. OTHER BUSINESS

Mr. Gillie stated that at this point he does not have any cases scheduled for next month and does not expect there will be a meeting in December.

Mr. Gillie stated that if there is a meeting in January 2010, it will be an organizational meeting to include electing a chair, vice-chair and secretary.

II. APPROVAL OF MINUTES

The minutes of the September 17, 2009 meeting were approved by a 4-0 vote (Mr. Campbell and Mr. Snipes were absent).

With no further business, the meeting was adjourned at 10:17 a.m.

APPROVED