

BOARD OF ZONING APPEALS MEETING
March 17, 2011

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Dyer	Mr. Hiltzheimer	Clarke Whitfield
Mr. Campbell		Christy Taylor
Mr. Bralley		Renee Blair
Mr. Snipes		Emily Scolpini
Mrs. Evans		Ken Gillie
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 PLVAR20110000074, filed by Amanda and Gregory Bryce, requesting a variance from Article 7, Section B, Item 3, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 120 Hurt Street, otherwise known as Grid 2805, Block 021, Parcel 000001 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to continue a legal nonconforming use (triplex) that has been discontinued for more than two (2) years.*

Thirty-four (34) notices were mailed to surrounding property owners. Three (3) respondents were unopposed; eighteen (18) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Ms. Amanda Bryce. Ms. Bryce stated I am the applicant. The first (1st) thing I would like to bring to light is some clarification. I believe that the records are incorrect in that the nonconforming use had been discontinued for two (2) years. According to the zone and the regulations, I would like to see whatever regulations define vacancy. The two (2) apartments that are legally the duplex have been in use. Apartment A has been designated by Harcy Mountain, a non-profit tax exempt organization. It includes, and I have proof and pictures: a chalkboard used in meetings, paintings, relative books, everything that is dealing with the actual non-profit organization in support of a website HLB.org. I have all of the evidence and proof to provide you for that. The other side, the apartment C, I also disagree with the findings. I am really a little bit baffled as I have gone through the records to understand the nonconforming use vacancy is also incorrect. I worked nights for approximately six (6) months including with the renter that we had for at least six (6) months; I was using that apartment for sleeping during the day to not be interrupted by our actual residence that is on the side. I was spending the majority of the week sleeping in that other apartment. The upstairs was being used for storage. It also does not include the electricity. There are some variances as to whether that was originally proved to be a part of the triplex, but it was indeed a triplex when we bought it.

Mr. Dyer asked you do realize that we are charged here with determining whether you meet four (4) specific criteria?

Ms. Bryce responded yes, sir. I am not sure if I ever came out of the noncompliant use.

Mr. Dyer stated that is not really an issue for this Board to consider.

Ms. Bryce stated I am not even sure if it should have come to this level. I think there is a real misunderstanding that it ever fell out of the zoning.

Mr. Dyer stated let us see if we can get some clarification on that. This building was clearly built as a duplex, correct? There are two (2) front doors.

Mr. Gillie responded yes.

Mr. Dyer stated from the date it was originally constructed, which I think was in 1924.

Ms. Bryce stated it was not. It was put as a duplex in 1965.

Mr. Dyer stated in 1965 it was converted to a duplex. I am assuming if they received permits to convert this to a duplex in 1965, at some point the property allowed for it to be a duplex.

Mr. Gillie stated the zoning that was in place prior to 1978 allowed a pyramid type scheme. Depending on what it was zoned at that point, allowed for multiple other uses.

Mr. Dyer stated could you speak up a little louder, Mr. Bralley cannot hear you.

Mr. Gillie stated the zoning prior to 1978 allowed a pyramid type scheme, so there were multiple uses allowed in various districts. Since the building was constructed and converted some time before 1978, the building was at least a duplex at that point.

Ms. Bryce stated records do not show in 2002. The permit cannot be identified that it was converted to a triplex, however in 2002 it was converted to a physical building structure change as a triplex.

Mrs. Evans asked and you did that?

Ms. Bryce responded no. I bought the property in 2006. It was done by the previous owner, Mr. Grey who also used it as rental property.

Mr. Gillie stated 1965 had it listed as a duplex. We really do not have any records that show when it was converted to a triplex.

Mr. Dyer stated I know that one (1) of the criteria we use is utility connections. It is my understanding at this time there are still only two (2) meter boxes on the property. Is that correct?

Ms. Bryce responded yes, that is correct.

Mr. Dyer asked does that mean that one (1) of those boxes serves two (2) units?

Ms. Bryce responded that is right.

Mr. Dyer asked in the units that share electrical service, are there two (2) separate kitchens?

Ms. Bryce responded no.

Mr. Dyer stated basically what you have is a larger unit that you are using as two (2) units right now.

Ms. Bryce stated no, not exactly. The two (2) units that have separate electricity, are the units

Mr. Dyer stated what I am trying to distinguish now is apparently at some point this was a legal duplex. What I am trying to establish was if it was ever a legal triplex, because there is a big difference between that. The City Code does allow for properties as duplexes, but do not allow you to go more than two (2) units.

Ms. Bryce stated I think there is a lapse in the records, and this is from you guys from the time before I owned the property. I am not getting clear data on the legalities of that aspect. I can tell you that it was purchased as that, meaning three (3) separate entrances, three (3) apartments that are divided.

Mr. Dyer stated one (1) of the units does not even have a kitchen.

Ms. Bryce stated that is correct. It is unfinished in a sense.

Mrs. Evans asked have you been using it to rent?

Ms. Bryce responded not the one (1) without a kitchen. I was using that for storage.

Mrs. Evans asked but you want to use that?

Ms. Bryce responded I would like to use it for renting even if it is as an office space.

Mrs. Evans asked is it zoned for office space?

Mr. Dyer responded no, it is not.

Mr. Gillie stated it is not zoned for office.

Ms. Bryce stated as a non-profit it could be used as an office space.

Mrs. Evans asked can it be used as a non-profit?

Ms. Bryce responded there is a church unit across the street that is a non-profit. The zoning for that district with the residential does allow it to be used for non-profits in that it does not overlap the regulations for building size and it meets the codes for occupancy.

Mr. Gillie stated it does not. It clearly does not.

Ms. Bryce asked it does not?

Mr. Gillie responded it cannot be used as an office space.

Ms. Bryce asked even for non-profit?

Mr. Gillie responded an office is an office whether it is non-profit or profit.

Ms. Bryce stated we would not use it as such a function.

Mrs. Evans stated let me ask you this. What about the one (1) that you say is now being used by a non-profit that cannot be used as a non-profit?

Mr. Gillie stated that would be a violation of the Zoning Code.

Mrs. Evans stated those people would have to leave if we approve it.

Ms. Bryce asked why would the building across the street be allowed to be used as a non-profit and on the other block they have another clause that allows it to be used a childcare facility?

Mr. Gillie responded a church itself is allowed in the district, an office is not.

Ms. Bryce asked if it is non-profit as a religious function, as a 501 Charlie 3 which is also religious? That is what it currently is.

Mr. Gillie responded it would have to be a church. You would have to conduct services. An office is an office whether it is 501C3 or for profit. The church itself, if you are having services and everything that meets our description of a church, then it is allowed in that district. The daycare itself can also go in that district with a special use permit issued by City Council. There may be ways to do it if you want to use your facility as a church. The problem is with the occupancy of a residential use and a church, the mixed use is not permitted.

Ms. Bryce stated that is what it has been currently up to this point. We were using it as religious quoting to put online for religious meetings and services that can be seen as well. The current view has changed from that function to wanting to be able to rent that as a regular apartment.

Mr. Dyer stated I believe that the City Code allows for townhouses and duplexes in OT-R, Old Town Residential. Is that correct?

Mr. Gillie responded correct.

Mr. Dyer stated with a special use permit issued by City Council. Is it your opinion that this property qualifies as a duplex or a townhouse?

Mr. Gillie responded the request was for a three (3) unit.

Mr. Dyer stated I am just trying to clarify.

Mr. Gillie stated if it is determined that it is a duplex, which we have a permit from 1965 where it was constructed as a duplex then that is another option that is available. As a request for a triplex, there was nothing under the OT-R that would allow this to work.

Mr. Dyer stated the City is contending that the nonconforming use has been discontinued for more than two (2) years. How does the City judge that?

Ms. Blair responded the third (3rd) apartment as she stated is unfinished and has never been rented for occupancy. So, there never was as far as we can tell an actual triplex use. Physical structure, there appears there was construction to create a triplex, but we do not have records.

Mr. Campbell stated speak up.

Mr. Dyer stated we will allow you to ask questions Mr. Bralley to clarify things.

Mr. Bralley stated no, I think us old folk need some hearing aids here. I do not like to vote for anything I do not understand, and I would like to hear what is going on.

Mr. Dyer stated we can appreciate that.

Mr. Gillie stated the third (3rd) unit was never finished.

Mr. Bralley laughed.

Mr. Gillie stated that is where we have a duplex. The second (2nd) unit in the duplex has remained vacant.

Mr. Bralley stated I got that. Thank you.

Mr. Dyer asked is it the City's contention that it has been used as a duplex or is that another issue we are dealing with?

Mr. Gillie responded that would be another issue. Our contention is that it has been used as a single family, a portion for storage, and a third (3rd) unit that was never finished.

Mr. Dyer stated I know at a prior meeting we had a discussion in which you determined that a unit was vacant because the utilities had been cut off. There are two (2) separate meters here on this piece of property. Was ever one (1) of those meters turned off for more than six (6) months?

Ms. Blair responded not to my knowledge.

Mr. Snipes asked at what point was it used as a three (3) room apartment? Was it sometime used as a three (3) unit?

Ms. Bryce responded in regards to how you guys define a three (3) unit, I do not think that it ever met that complexity. It was used as a duplex. The third (3rd) unit did not have an actual finished kitchen and bathroom. The man passed away before that was finished. We purchased it divided as three (3) units. It has always been used as a duplex. The third (3rd) unit is what we would like to finish being able to have a person live in it.

Mr. Snipes asked are you going to install a separate meter for the third (3rd) unit?

Ms. Bryce responded we were going to share that with one (1) of the other ones, so no we were not going to put in a separate meter.

Mr. Dyer asked is there any connection between these units other than going outside?

Ms. Bryce responded no.

Mr. Dyer asked in other words, to get to each individual unit you have to go outside and go through a door to enter that unit. There is no way to be in one (1) unit and go to another unit?

Ms. Bryce responded that is correct.

Mr. Dyer asked is that something that has been done recently?

Ms. Bryce responded no. It was done before we purchased the property.

Mr. Dyer stated we do not know when that was done.

Ms. Bryce stated in 1965 the two (2) separate units were done. In 2002, from the records that I have read that were submitted from you guys, it was a third (3rd) unit. The third (3rd) unit was completed when you did an audit for something else.

Mr. Dyer asked were they allowed to subdivide one (1) of these units in 2002?

Mr. Gillie responded they were not permitted. The record just lists it as that. Sometime between 1965 and 2002 somebody took it upon themselves to create that additional space without a kitchen, without anything else.

Mrs. Evans asked without a building permit?

Mr. Gillie responded without a building permit. Our records do not have one (1).

Present in opposition to the request was Mr. Warner Edwards. Mr. Edwards stated I appreciate the opportunity to have the Board hear what I have to say. I live at 611 Franklin Turnpike. It has been my home since 1936. I was born in that house. This is an area that has been a one (1) family dwelling type of area. We have a good place here for us. We enjoy this area. This thing about putting in a triplex and having it in my back yard, I do not know how you all feel about it, but I do not think you would want a three (3) apartment complex in your backyard. My back yard comes right up to his property line. It would be to my advantage to see it not happen. This house has been vacant for more than two (2) years. At the time it might have been set up as a two (2) project dwelling, but I cannot recall ever seeing more than one (1) family at a time there. I hope that you will not pass this because it is going to hurt the property value of us involved in this. There are four (4) properties that will apply to this property line. Two (2) of them are down on Westview Drive and my house and Mrs. Shelton's house is on Franklin Turnpike. We back up to those property lines. The house has been vacant for quite a while until these people came from out of town and started working on this. I never knew where it was a three (3) thing. At the time when I was a boy raised up down there, it was a one (1) family dwelling. The man that owned the house, his daughter got married and his family lived upstairs and her family lived down stairs. It was like that for quite a few years. If there is any way that we can get away from this because I think it is going to hurt the value of our property on Franklin Turnpike and Hurt Street and on Skyland Drive. I appreciate you all letting me talk to you and I hope that you will think about this really good and how this is going to affect the families that are associated in this area. I would appreciate that.

Mr. Dyer asked was this a duplex at one (1) point?

Mr. Edwards responded I did not know it was a duplex when it was applied for it. At one (1) time they said it was, but I do not recall ever having but one (1) family in the house.

Mrs. Evans stated you said that a family lived upstairs and a family lived downstairs.

Mr. Edwards stated that was in the 40's and 50's. That was right after the City annexed in 1951. It was annexed into the City in 1951. At that time it was the Ramsey family, which is the daughter of the man that owned the house Mr. Williams. At that time they were living upstairs and they had a daughter. It was a single family at that time. Later on someone else bought the building and it may or not have got into a duplex. I never recall seeing more than one (1) family in it at a time.

Mr. Dyer asked let me assume that in 1965 it did become a duplex. Since 1965, have you had any problems with anyone living there?

Mr. Edwards responded there were some people that came in and rented the place that worked for the cable company. There was a misunderstanding about a dog getting in their trash. They kind of scared my wife. She went out on the back steps and they started fussing saying that we needed to do something about it. Anyway, it turned out that it was not that. It was their problem. Their own dog got into it. I went out on the porch and told them that it was best if they left us alone and to go on about their business. We never did associate with them because they were in there for a short time.

Mr. Dyer stated a transient home.

Mr. Edwards stated they were just in there that time of building their cable.

Mr. Dyer asked so you feel like a rental property like this would have more transient than somebody who would be there for a long time?

Mr. Edwards responded I think it would. My home has been there for thirty-six (36) years. I was born in that house; and I would like to see it there for my children and my grandchild if they want to come live there as a single family dwelling. That is about all that I have got to say, and I appreciate you listening to me. I hope that you will take concern about what we have here. The families that are located here in this area, I have talked to most of them and they agree with me.

Present in opposition to the request was Mrs. Barbara Edwards. Mrs. Edwards stated I am concerned about where all of these people are going to park their cars. Our property backs right up to it. I know for a fact that my next door neighbor, the previous owners came in and parked their cars in the yard and had ruts in her yard. She had to put a fence to keep them off of her yard. I do not feel like we need to spend money to put up a fence to keep these people off of our yard. I do not want ruts in my yard. Is it going to have off-street parking? I mean most families have two (2) cars.

Mr. Dyer asked if a triplex was allowed would they have to have a number of off-street parking spaces?

Mr. Gillie responded if a legal nonconforming triplex is allowed, no because it would be grandfathered in. If it was a new triplex constructed then yes, it would require parking.

Mr. Dyer asked so there would be no type of paved off-street parking? They could just park anywhere they want to?

Mr. Gillie responded I have nothing in the Code that requires it.

Mr. Dyer asked are there ordinances in the Code that prevent people from parking in the yard?

Mr. Gillie responded no.

Mr. Dyer asked people can pull a car up in their front yard and leave it there all day long?

Mr. Gillie responded yes they can.

Mrs. Edwards asked you can park in your own yard, right?

Mr. Gillie responded you can park in your own yard.

Mrs. Edwards stated well they were not parking in their own yard. They were tearing up the neighbor's yard. I do not want my yard tore up.

Present in opposition to the request was Ms. Linda Shiflet. Ms. Shiflet stated my back yard joins their back yard. I bought my house in 2000. There was nobody living there then. There has been nobody living there any length of time since I have been there. Mr. Gray owned it at one (1) time and he kind of came and went. He lived in Greensboro. When these people bought the property, and the first (1st) time I met them they said something about putting in a duplex, I said "no it was one (1) family." Amanda at that time agreed with me. She said "yes I know it was a one (1) family." Since then they have kind of been remodeling. It was rented one (1) time for a short period of time and I do not believe this was their fault, but I think it was very bad people. I think they had to get the police to evict them. I believe they turned off the water, so the people went out in the yard and used the bathroom. I can see them from my kitchen window. I am very concerned about the type of people that would be in a triplex. I live alone, and I would probably be selling my house if it came to that. The yards are very small, and if they had parking, I do have a fence in the back, they would be right up against my house. I do not know if this qualifies at this time or not, but my next door neighbor she just had surgery so she could not be here today.

Mr. Dyer asked would that be Mrs. Shelton?

Ms. Shiflet responded Peggy Arnold. They have her name wrong.

Mr. Edwards stated the Shelton's own the house next door to me on Franklin Turnpike.

Mr. Dyer stated the map shows Shelton being on the other side of Shiflet too.

Ms. Shiflet stated they have kind of a big garage shop at their house, which backs up to this property. They got termites a little over a year ago. They had to have their house treated and I had to have my house treated. The people at Dodson told me that the house on Hurt Street was very much infested with termites. I do not know whether that has been corrected or not. I know we had to spend money on our houses because that is probably where it came from. There are a lot of issues. It would be nice if the house was fixed up, but not for three (3) families. I think more than I would be very nervous to have three (3) families right behind me.

Present in opposition to the request was Mr. Keith Simpkins. Mr. Simpkins stated I own some property pretty close to theirs. I have a little experience with rental property. I know what happens when you get multiple units in neighborhoods. Our neighborhood is slowly getting away from multiple units. Just outside of the three hundred (300) feet where you sent letters to, the eight hundred (800) block of Franklin Turnpike was a multi unit and is finally a single unit. We have a multi unit in the seven hundred (700) block that I know for a fact is going back to a single unit whenever one (1) of the tenants leave. Multi unit neighborhoods are crowded. They have more crime. I would like to see this unit go back to a single unit. I do know that they have duplex meters on the house, but I walked around it and the gas meter is not even hooked up. I did not pay any attention to the electric meter. It would still be nice for it to go back to a single unit. I appreciate your time.

Mr. Meder stated if you just want to raise your hand that you are in opposition, we can do that. If you have something you would like to add to what these other folks have said, then you are welcome to come speak. If not, you just want to note that you are opposed, that would be fine.

Present in opposition to the request was Ms. Priscilla Coon. Ms. Coon stated I own the house at 527 Skyline Avenue. My parents live in that home and I come today representing their interest in that

home. I thank you all of listening to us today. I understand and appreciate the difficulty that you all may have in determining this variance, but I hope you will respect the rights of each individual home owner. Like we say, it is a single neighborhood with single families. I have never known any two (2) families to live in this so called duplex and certainly we do not want to see three (3). Without any hesitancy or any reservation I am strongly opposed to this change and zoning for the subject property. Of course you have seen many others that will be impacted by it equally opposed to it. It would be easy for us to say "not in my back yard." I would like for you to listen and allow me to offer a few reasons why we do not want this in our neighborhood. The City has during the last zoning evaluation determined through a lengthy and highly structured planning and zoning process that this use of this property is inconsistent with already identified and documented objectives for this community. That process determined that such was an inappropriate use and I suggest that it is still true. The proposed change negates the thought process as mentioned above and would result with the same inconsistency with previously stated objectives. The present nonconforming use by definition represents noncompliance with zoning laws and in effect legal permission to violate zoning requirements. It is noted that such use was in compliance with law prior to the discontinuance for two (2) years of said use. The community impacted contains a mix of older citizens such as my parents, middle aged people, and even a few young families. These people for the most part exercise due diligence in keeping up their property. There are even a limited number of occupants that are single family tenants that do rent their homes, but the owners of these rental houses have kept the appearance in very good condition. It is a good community to live in. Rarely however, do renters demonstrate the same level of care as do homeowners. I would respectively suggest that persons renting, I know it is a triplex that it is only marginally maintained and or monitored would hardly be the type person that you would want in your neighborhood. Typically their tenancy is only temporary, which serves to minimize their interest in the neighborhood. Higher density occupancy of this property would result in increased traffic as has been approached. The traffic flow from the tenants and/or their guests will increase demands on parking. All of this would occur on a fairly narrow street where each property has limited parking. Later this year the connector for Franklin Turnpike to US 29 will be opened in our neighborhood. This might or probably would increase the chance that we get some more of those transit occupants. These people may use Danville as their bedroom but work in other cities. They would not have any connection with our neighborhood in any way. Finally, since many in this community are elderly with my parents being a typical example, I would plead with you to respect their privacy and their right to a quiet enjoyment of their own homes for the remainder of their lives. My mother and father have lived there for fifty-three (53) years and never did we expect this; and I lived there most of my teenage years, we never expected a duplex to be in our neighborhood and certainly not a triplex. Their remaining days like those of their neighbors should be peaceful and I humbly ask you to respect this. In closing, I am well aware of the complex nature of your decision. I respect the owners efforts and wishes, but I would today simply propose to you that such interest are not in the best interests of those such as my parents and their neighbors who call this street home. Thank you very much.

Present in opposition to the request was Mr. William Divers. Mr. Divers stated I live at 527 Skyline Avenue. My daughter just spoke. What I want you to know about this house is that when I moved there, Mr. Rigney had built a house. I moved there in 1958. Mr. and Mrs. William Divers were living in this house at that time. They got old like me. They had one (1) daughter, and they moved in with them. This is a right good size house. I do not know when this started, but after they had passed away the daughter moved out and bought a house on 29 off North Main Street. Curtis Ray bought the house. He started making this into apartments, but he could not do it. He got it started but they came over and condemned the house because he messed it up. We did not have any trouble. We have one (1) of the most beautiful places you can live in. There are wonderful people that have been there a long time. A lot of them have gone on to be with the Lord, but I appreciate the opportunity to come and tell you the story of how it got started.

Ms. Coon asked may I add one (1) thing?

Mr. Dyer responded one (1) thing.

Ms. Coon stated I noticed that the present owner stated that they bought the house thinking that it was a duplex. We never knew anything about a duplex. I think that it was one (1) side of the house that had been split up and maybe one (1) person lived in one (1) room because that side did not have a kitchen in it. I do not understand the living and that is none of my business. I do think that she has misstated by saying that the place has been occupied lately as a duplex because there was a non-profit religious thing. As far as I know, I do not know of anything that has gone on in that house in the last three (3) or four (4) years. I do not understand that part of her statement. I do not know of anything that has gone on non-profit or otherwise in that particular house.

Close the Public Hearing.

Mr. Snipes asked Mr. Edwards you mentioned that there were two (2) families living in that house at one (1) time. My question is was there one (1) entrance or two (2) exterior entrances?

Mr. Edwards responded they had two (2) entrances. They had a front entrance to the house and it had a back door on it. It had another entrance on it that went up to the next floor. They were also in the same area because it was a straight line into the kitchen where they went off of that to the upstairs steps at that time. I have not been in the house in quite a few years. I have not been over there since these people bought the house. I stay on my property and I watch things pretty well. It is just one (1) of those things that I think we need to think about. A one (1) family dwelling is what we mostly have in our community. It is good to have that and I appreciate the opportunity to speak with you all. Thank you very much.

Mr. Bralley stated I do not know if it is discussion or not, but as you know I am new to the Board. I have never been to a meeting like this where so many people are opposed to something I feel that I would be opposed to if I lived there. Fortunately where I live I do not think we are going to have a triplex, duplex, or whatever you want to call it. I am against any triplex or duplex being built in a neighborhood that has residential people. I am opposed to approval of the variance.

Mr. Campbell asked can we just make a motion?

Mr. Dyer responded yes, if the discussion is over we can entertain a motion.

Mr. Bralley made a motion to deny Variance Application PLVAR20110000074. Mr. Campbell seconded the motion. The motion was approved by a 6-0 vote.

Mr. Dyer stated the motion has been denied. I would like to clarify that what we have denied is the variance as it is written. There may be some other issues that Ms. Bryce would like to pursue. At this point, this application has been denied.

II. APPROVAL OF MINUTES

Mr. Dyer called for approval of the minutes from the February 17, 2011 meeting. The minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie stated we have no other business. We still have three (3) more days for someone to file, but at this point we do not have any cases for next month. I do not have anyone who has been asked to file anything.

Mr. Whitfield stated there may be one (1). If you all will recall back a couple of meetings ago Vic Millner was here representing Louise Conway.

Mr. Dyer stated we are very familiar with it.

Mr. Whitfield stated that case has been appealed. I think it may be remanded back to you for another public hearing. That may very well be happening because Mr. Millner has withdrawn from that case and a new attorney is involved. The judge may remand that back to you.

Mr. Dyer asked how are they allowed to bring that back to us? Is there not a time period in which they cannot?

Mr. Gillie responded the court can order it back to you.

Mr. Whitfield stated they appealed it within the proper time, but because of Mr. Millner withdrawing and the time that it has taken, the court has not heard it yet. Their deadline has passed. It is just that the court has not taken action on it yet because of the change in attorney.

Mr. Dyer asked the court can ask us to reconsider it?

Mr. Whitfield responded right, the court can send it back to you.

Mrs. Evans stated and then we have to go through it all over again.

Mr. Dyer asked it was my understanding that at some point we were going to go down and speak before the judge. Is that not something we can do?

Mr. Whitfield responded the case has not been set yet. That is what I am telling you. The case has not been set.

Mr. Dyer asked what does the court expect us to do if they send it back us?

Mr. Whitfield responded what happened was there was a motion without a second (2nd). It needed to be some action whether it is an affirmative vote in favor of the variance or denying the variance.

Mr. Dyer stated I was under the assumption that if we did not have a motion to approve it and then given a second to approve it and then voted to approve it then it died.

Mr. Whitfield stated that may be the impression that you got, but I do not think that is correct.

Mrs. Evans asked did we not deny it?

Mr. Dyer stated I thought we denied it too.

Mr. Gillie responded you made a motion to approve and the motion failed. There was no motion to deny.

Mr. Whitfield stated there was no second.

Mr. Gillie stated in effect, it dies for any lack of motion. They can appeal that to the courts. The court can then look at it and say technically the Board did not approve it but they also did not deny it, so they can send it back to you and make you say yes or no.

Mr. Dyer stated in other words, if someone makes a motion and that motion does not pass then we have to have a second (2nd) motion.

Mr. Whitfield stated no.

Mr. Dyer stated that is what happened because I know I voted against it. I know it did not pass.

Mrs. Rich stated I voted against it.

Mr. Whitfield stated I looked at the transcript and the transcript does not indicate that there was a vote. The transcript indicates that there was a motion to approve that was never seconded. In fact I think you made the motion.

Mr. Dyer stated that is not my recollection at all. This is Mrs. Conway, right?

Mrs. Evans stated I thought we denied it.

Mr. Dyer stated that is not my recollection at all. We denied that.

Mrs. Rich stated I thought we denied it.

Mr. Gillie stated we will go back and review that, but there is a chance because it is going on to the court system that the court could remand it back to you.

Mr. Dyer stated they can send it back if they want to.

Mr. Gillie stated and you hear it again. That is one of the reasons we ask when you deny something or approve something that you spell out the reasons why you are approving or denying to try and make sure there are no legal technicalities for the court to revert it back to you.

Mr. Whitfield stated then again it might not come back. I do not know. I just wanted to let you know just in case.

Mrs. Evans asked if it does not come back what happens?

Mr. Whitfield responded the court will make the determination. The court will either over rule or uphold your decision.

Mrs. Evans asked if you are saying we did not vote, what is there to overrule?

Mr. Whitfield responded exactly. That is my point.

Mr. Gillie stated there is a couple different ways the court can look at it. It is right now because of the time with Mr. Millner dropping out and the new attorney coming in; it is going back to the court system. It may get sent back. We do not know and we are trying to tell you that we do not have any cases filed for next month. I do not have anything for you guys, but you may have a meeting anyway.

Mrs. Rich stated I remember that we sympathized with her, but we could not say it was alright. We had to say no.

Mr. Dyer stated you cannot build something and then come back to the City and say well now you have to let me keep it because it would cost me too much money to tear it down. I am definitely sure that a vote was taken to vote against it because I recall voting against it. I remember the heat that I was going to get.

Mrs. Evans stated Mr. Millner was very angry.

Mr. Snipes stated I think what happened was that there was a motion to approve it, but it was not seconded.

Mr. Dyer stated I do not recall anybody being in favor of it.

Mrs. Evans stated in the future we should either approve or deny.

Mr. Whitfield stated right, like today was clearly a denial.

Mr. Dyer stated because the motion was made to deny, it was seconded, and we voted.

Mr. Whitfield stated you do not have go back today and make a motion.

Mr. Dyer stated we need to have motions made.

Mr. Whitfield stated motion made, seconded, and either voted up or down.

Mrs. Evans asked we should never let something die?

Mr. Whitfield responded right.

Mrs. Evans stated like we apparently let it die.

Mrs. Rich stated I do not remember it that way.

Mr. Dyer stated I do not recall that being that way either.

Mr. Gillie stated we will go back and check the records again.

Mr. Whitfield stated I have looked at the transcript twice.

Mr. Dyer stated well if we have approved the minutes and they were not accurate then maybe we ought to go back and read the minutes before we approve them next time.

Mrs. Rich stated I am questionable for June. I do not remember. I get back around the sixteenth (16th) of June.

With no further business, the meeting adjourned at 10:47 a.m.

APPROVED