

## BOARD OF ZONING APPEALS MEETING

November 21, 2013

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Dyer	Mr. Campbell	Scott Holtry
Mr. Hiltzheimer	Mr. Snipes	Christy Taylor
Mr. Nicholas	Mrs. Evans	
Mrs. Rich		

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

### I. ITEMS FOR PUBLIC HEARING

- 1. Variance Application Number PLVAR20130000317, filed by Joseph Miller requesting a variance from Article 3E, Section F, Item 2a(2), of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 149 Winstead Drive, otherwise known as Grid 0613, Block 065, Parcel 000009 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to construct an addition in the side yard creating a one (1) foot side yard setback where six (6) feet is required.*

Thirty notices were mailed to surrounding property owners. Six responses were unopposed; one response was opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Steven Merricks, General Manager of J.W. Squire Co. Inc. Mr. Miller is here today because of a fault of mine. In July we provided Mr. Miller with an estimate for a supported awning. It is referred to as an addition to the home. I don't know if building wise it is considered an addition, but we consider it a supported awning. In July, I gave Mr. Miller a proposal and he agreed. Normally I would put it in file, get it in line, and the week prior to doing so I would come to City Hall and buy a building permit. I was out of the office most of July and part of August. My guys not having anything to do, seeing an awning lying in the floor, decided to go erect it. That is why we kind of got out of line on the way we do things. I am speaking for Mr. Miller today because I feel responsible for him being here in the first place. Once it was erected, the Planning department notified Mr. Miller that he would need to take it down or apply for a variance. I told Mr. Miller I would be happy to give him a full refund, we could apply for the variance, or we could try to get it in compliance with what the Code reads.

Mr. Merricks presented a criteria analysis and a letter of support from a neighboring property owner.

Mr. Dyer explained to the applicant that four affirmative votes would be necessary to pass a variance.

There was discussion about postponing the request or proceeding with only four members present. The applicant made the decision to proceed with his request.

Mr. Merricks stated as I hand you the criteria analysis, the only thing that I would ask is that you not allow the lack of buying a building permit to affect your decision, because Mr. Miller had nothing to do with that.

Mr. Nicholas stated it is not the lack of building permit at the outset.

Mr. Merricks stated this wouldn't have happened if we would have obtained a building permit.

Mr. Nicholas stated the question is how you meet the four criteria.

Mr. Merricks read the criteria analysis and presented pictures to the Board.

Mr. Dyer asked is the retaining wall on the property line?

Mr. Merricks responded I think it is 1' off.

Mr. Holtry stated from our aerial view it looks like it is either right on or 1' off of the property line.

Mrs. Rich stated it is not really a retaining wall. There is a concrete slab and this is holding the concrete slab, because there is a big run off down the side of the house.

Mr. Dyer stated it is a retaining wall to the point that it is keeping the driveway level with the main level of the house.

Mr. Merricks asked is it a retaining wall Mr. Holtry or what is that wall considered?

Mr. Holtry responded that would be more of an engineering question.

Mr. Dyer asked is it considered part of the structure?

Mr. Lucas, Building Inspector responded it is a slab wall.

Mr. Dyer asked if it is attached to the house, is it technically part of the structure? In other words, if you have a house that was non-conforming or the Code allowed it to be built there; you are allowed to remain within that footprint right?

Mr. Lucas responded yes, but this was added on to the side of the house.

Mr. Dyer stated the slab, retaining wall, and the driveway were not added onto the side of the house.

Mr. Merricks stated not recently.

Mr. Lucas stated it is a foundation wall supporting the slab.

Mr. Dyer stated it is not open underneath. There is dirt between the slab.

Mr. Lucas stated no, it is all filled under the concrete based on what I am seeing in the pictures. I haven't gone out and looked at it.

Mr. Dyer stated I am assuming there is not a basement under the driveway.

Mrs. Rich stated that has been there for quite a while.

Mr. Lucas stated that is what Scott is telling me, but what I am thinking is when it was added to the existing driveway or the slab under the carport they didn't grade the new slab so the water was draining away from the carport.

Mr. Dyer asked is this structure part of the house or not?

Mr. Holtry responded I don't know if you would consider it a structure because you are able to put concrete on the ground all the way to your property line.

Mr. Dyer stated but this is supported by a foundation wall, which would be part of the house. Even a porch is considered a part of the original footprint of the house.

Mr. Lucas stated no because it is not supporting any structures. It is supporting the driveway.

Mr. Dyer stated if I have a 50' lot and I put a cinderblock wall down both sides of that lot right on the property line and raise the lot up 30' and build a house on it.

Mr. Lucas stated that is not part of the footprint of the house. The footprint of the house is the footing that is supporting the actual structure.

Mr. Dyer asked what about a covered front porch?

Mr. Lucas stated that is part of the structure of the house.

Mr. Dyer stated but an uncovered porch is not.

Mr. Lucas stated no.

Mr. Dyer asked did this have any structure over top prior to this?

Mr. Merricks stated it had a window type awning that was failing.

Mrs. Rich asked is the run-off running back far enough so that it is not getting into this house?

Mr. Merricks responded yes. The grade from her house to his is toward the wall, so the water is running along it. We could tie it into his existing gutter system if we needed to.

Mrs. Rich asked but you are not causing water damage on the outside of that house?

Mr. Merricks responded no.

Mr. Dyer stated this is zoned OT-R and currently that requires a 10' setback.

Mr. Holtry stated 6' side setback.

Mr. Merricks stated an awning can protrude 3' into that setback.

Mr. Holtry stated an awning without support.

Mr. Dyer stated basically if we allow this we have reduced that 6' to 1'. They are extending 5' into the proposed setback and an unsupported awning could extend 3' into that setback; so basically we are talking about 2' plus the railing.

Mr. Holtry stated correct.

Mr. Dyer asked is he allowed to have a railing along this wall?

Mr. Holtry responded he is.

Mr. Dyer stated so he has this structure that comes 1' off of the property line and is allowed to have railings on that; and then we are allowed to have 3' into that.

Close the Public Hearing.

Mrs. Rich stated aesthetically it looks fine. My concern is does it really meet all of the criteria.

Mr. Dyer stated Mr. Merricks has offered a scenario in which it does. You can agree with that or not agree with that.

Mrs. Rich asked are we setting precedence?

Mr. Dyer responded does this person have a situation that is unique; whereas if the guy next door comes and wants to do the same thing, we can say that you don't have the same hardship. That is where I worry about us setting the precedence. This is sort of reminiscent of Mrs. Conway's screened in porch. She was able to appeal that to the judge and the judge said it was fine. I would hate to think that Mr. Miller would not receive the same consideration because he is not drinking buddies with the judge.

Mr. Hiltzheimer stated money talks.

Mr. Nicholas stated you are on the record.

Mr. Dyer asked do we have anyone willing to make a motion? Thirty notices were sent and we received seven responses. Six of the responses were not opposed. One response was opposed. That is Woods and that is the property owner directly behind Mr. Miller. Is this map correct?

Mr. Holtry responded yes.

Mr. Dyer asked is there a right-of-way? It shows that there is maybe a 20' wide strip. I was thinking it was the one in blue. It is colored in. They can't even see it.

Mrs. Rich stated no they can't.

Mr. Holtry stated that blue section was on the GIS and I couldn't get it off.

Mr. Nicholas stated I think he is accurate, at least with the pictures, that the property itself is not similarly situated to the others. With regards to criteria two, I think he can get there. The undo hardship is not having a way to stop the rain, so that is one. Two would be that the property is different. I think we have seen evidence of that. My concern is number three. I don't know that the character of the district is going to be changed. There was comment made by Planning that this would devalue or reduce the value of the property. Does staff know anything about that?

Mr. Holtry responded it is based on if somebody is looking the house next door, buying a property that has somebody's house all the way against the property line might deter them from doing so.

Mr. Nicholas stated but that was already there. The physical structure is already 1' off of the property line.

Mrs. Rich stated it has been there for a long time.

Mr. Holtry stated the awning was not.

Mr. Nicholas stated but that concrete slab was, so in my mind that is in favor of the applicant.

Mr. Holtry stated we don't consider the slab as a structure. We consider the awning a structure. If you grant the variance, he would be able to enclose that structure. His house would be all of the way to the property line.

Mr. Dyer asked why is that?

Mr. Holtry responded because it is considered an addition.

Mr. Dyer stated this awning is certainly not living space.

Mr. Holtry stated he would be able to convert it.

Mr. Dyer asked can we stipulate that we are willing to grant this variance if he agrees not to enclose it.

Mr. Holtry stated the next property owner could.

Mr. Dyer asked doesn't that go with the property?

Mrs. Rich stated that side of the house doesn't lend itself to having anything.

Mr. Holtry responded that is a legal question.

Mr. Nicholas stated last month we said that the variance expires when the property changes hands.

Mr. Holtry stated that means once he leaves it would have to be taken down.

Mr. Nicholas stated sure. Essentially what we said was you can do it as long as you own the house, but if you don't own the house you have to take it down.

Mr. Dyer stated I don't see why there needs to be a requirement that this needs to be taken down. I think that we can stipulate that we allow this open area to be covered with an awning as long as it is not enclosed. I don't see any problem with that.

Mr. Lucas asked is this awning going to be 1' from the property line?

Mr. Dyer responded yes.

Mr. Lucas asked what is the setback of the house next door? I am looking at Building Code, which will not allow two flammable structures to be any closer than 5' because fire will jump 5'. Something needs to be maintained granted the awning is aluminum, we want to make sure that we don't get in that fire break distance.

Mr. Dyer stated the other homeowner is required to maintain 6' off of the side property line. That was the argument that I was making. If you grant this guy a variance then the guy next door loses the right to a variance; but since the retaining wall and the driveway are already there, the likelihood of him being granted a variance that would allow a 2' space is pretty unlikely. Since the person next door has not objected, in fact they sent a letter in support.

Mr. Nicholas stated what swings it for me is the fact that the concrete slab is already there. I understand that is not considered part of the structure.

Mrs. Rich stated if there was nothing there I would have a problem with it.

Mr. Nicholas asked why would we put that condition on?

Mr. Dyer responded because the city is concerned. The Code allows you to enclose a covered space. We are basically moving the footprint of the house over 5'. An option for us is to allow the awning without moving the footprint of the house.

Mr. Lucas stated if he would have come for a building permit the first thing I would have asked is if there was adequate footing under that slab retaining wall to support a roof load of 20 pounds per square foot. I am still going to require him to show me that there is one when I issue the building permit if the variance is approved.

Mr. Dyer asked what would that require?

Mr. Lucas responded an 8" block wall with adequate footing. I am going to make him dig down beside that wall to make sure there is adequate footing underneath it.

Mr. Dyer asked are you comfortable with that?

Mr. Merricks responded yes.

**Mr. Nicholas made a motion to approve PLVAR20130000317 citing the criteria submitted by J.W. Squire with the condition that the space cannot be enclosed further than what is in the application. Mrs. Rich seconded the motion. The motion was approved by a 4-0 vote.**

## **II. APPROVAL OF MINUTES**

**Mr. Nicholas made a motion to approve the minutes from the October 17, 2013 meeting. The motion was approved by a unanimous vote.**

## **III. OTHER BUSINESS**

Mr. Hiltzheimer asked will we have a meeting next month?

Ms. Taylor stated we do not have any cases filed yet.

Mr. Holtry stated they would have to get them to us either today or tomorrow.

Mr. Dyer stated I know that when you serve on a board that is appointed by City Council and you miss more than two meetings in a row they are supposed to replace you.

Ms. Taylor stated you must attend 75% of all meetings.

Mr. Nicholas stated you can miss three meetings in a row if you attend the rest of them.

Mr. Dyer stated but we don't have 12 cases in a year. We probably only have five cases a year.

Mr. Nicholas stated we are not overseen by the city.

Mr. Dyer asked does that same rule apply to board members appointed by a judge?

Ms. Taylor responded I do not know.

Mr. Dyer stated if you can't agree to at least try to show up at the meetings you shouldn't apply to be on the board.

Mr. Nicholas asked are Campbell and Snipes up?

Ms. Taylor responded yes. Their terms end on December 31<sup>st</sup>. Sue Demasi has tried to make contact with them to see if they are interested in being reappointed and she has been unsuccessful in contacting them.

Mr. Dyer stated I would not pursue that any further then.

Mr. Nicholas stated the problem may resolve itself.

Mr. Dyer stated I know this is the 2<sup>nd</sup> meeting Mrs. Evans has missed and she manages to make it to the Planning Commission meetings.

Mr. Nicholas stated this is the same line up as last month.

Mr. Dyer stated anyway I appreciate the members that try to be here.

Ms. Taylor stated I would address your concerns with Sue.

Mr. Dyer stated if we have members that aren't showing up; maybe we shouldn't encourage them to reapply. If anyone knows of someone interested in serving, please ask them to apply.

With no further business, the meeting adjourned at 10:37 a.m.

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APPROVED