



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

AUGUST 18, 2022

10:00 A.M.

CONFERENCE ROOM – 4th FLOOR MUNICIPAL BUILDING

AGENDA

A. WELCOME AND CALL TO ORDER

B. ROLL CALL

C. ITEMS FOR PUBLIC HEARING

Variance request PZ22-149, filed by Lorraine Griffith, requests a variance from Article 2.P.9. of Chapter 41 of the Code of the City of Danville, Virginia that does not permit accessory structures closer than 10 feet from any other building or structure, at 529 Cedarbrook Dr (Parcel # 54021)..

D. APPROVAL OF MINUTES FROM JULY 21, 2022

E. OTHER BUSINESS

F. ADJOURNMENT



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

STAFF REPORT

MEETING DATE: August 18, 2022

RE: VARIANCE/APPEAL APPLICATION – 529 Cedarbrook Drive

Variance request PZ22-149, filed by Lorraine Griffith, requests a variance from Article 2. P.9., Accessory Uses and Structures of the Zoning Ordinance. The applicant is requesting a variance to permit a recently constructed covered porch/deck addition, on an existing single-family home, to be closer than 10 feet from an existing accessory structure. (Parcel # 54021).

BACKGROUND

The applicant would like to locate a recently built porch/deck addition closer than 10 feet to an adjacent structure.

APPLICATION FOR APPEALS

- a. An appeal may be taken to the Board of Zoning Appeals by any person aggrieved or by any officer, department, commission, board, or agency of the City affected by any decision of the Director of Planning/Zoning Administrator or from any order, requirement, decision or determination made by any other officer in the administration or enforcement of this ordinance.
- b. All information, including documentation and rational for the grounds for the subject appeal as well as plats, maps, site plans and other graphic exhibits or information as required by the Board in order that it might be fully informed, shall be furnished by the applicant. The application shall include a copy of the decision or determination on which the application is based.
- c. Any written notice of a zoning violation or a written order of the Director of Planning / Zoning Administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty days in accordance with this section, and that the decision shall be final if not appealed within thirty (30) days. The appeal period shall not commence until the statement is given to the recipient.
- d. An appeal shall be taken within thirty (30) days after the decision appealed by filing with the administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Director of Planning/Zoning Administrator shall forthwith transmit to the recording secretary of the Board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or a Court of record, on application and on notice to the Director of Planning/Zoning Administrator for good cause shown.

VARIANCE REVIEW CRITERIA

A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and the request meets each of the following five (5) review standards (Article 13, Section F.2.a.-e.):

- a. *The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.*

The property was acquired in good faith but the hardship for a variance is created by the applicant due to the placement of the covered porch/deck addition closer than 10 feet to an existing accessory structure. This application **DOES NOT** meet this standard

- b. *Granting the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

Allowing this variance would not directly affect adjacent properties. This application **DOES** meet this standard.

- c. *The property's condition or situation is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.*

The applicant has not demonstrated that the covered porch addition could not have been constructed in a different manner outside of the 10-foot setback. (Adding a breezeway attachment from the newly constructed covered porch addition to the existing accessory building would bring the addition into compliance. The applicant was given this option as a solution by staff but chose not to do so). This application **DOES NOT** meet this standard.

- d. *Granting the variance will not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.*

The covered porch addition to the existing single-family home is permitted in the OT-R (Old Town-Residential) zoning district. This application **DOES** meet this standard.

- e. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A.4 of § 15.2-2286 at the time of the filing of the variance application.

The applicant cannot request special use, special exception, or rezoning to satisfy the zoning requirement. Therefore, this application **DOES** meet this standard.

Therefore, this variance request **meets three (3) of the five (5) criteria** needed to grant a variance.

Staff recommends the BZA deny variance request PZ22-149.

ATTACHMENTS

- ✓ Application
- ✓ Property Ownership & Existing Zoning Map
- ✓ Data Sheet
- ✓ Existing Land Use Map (Aerial 2019)



City of Danville
Community Development
Planning Division

**BOARD OF ZONING APPEALS
VARIANCE APPLICATION**

We cannot accept Board of Zoning Appeals (BZA) applications unless the following steps are completed by the twentieth (20th) day of the prior month. BZA meeting are on the third Thursday of each month. This timeline assures the City can meet Virginia public notice laws.

1. The applicant attended a pre-application conference with the Zoning Administrator or designated staff;
2. The applicant completed this application;
3. The property owner or a duly authorized (in writing) representative signed this application;
4. The applicant submitted a plot plan drawn to scale showing the actual dimensions and shape of the property; and the exact size and location all existing and proposed buildings, signs, and required parking spaces;
5. The Zoning Administrator certified that the proposed use and construction plans comply with all Zoning Code provisions, except for the provisions necessitating a variance; and
6. The applicant paid the \$206.00 application fee.

PLANNING DIVISION PROVIDED INFORMATION

Application #: PZ22-00149 BZA Meeting Date: 8/18/22
Date Received: 7/12/22 Received By: S. Williams
Parcel ID: 54021 Zoning District: OT-R

Additional Information: _____

A variance shall be granted if evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

- (i.) The property interest for where the variance is requested was acquired in good faith and any hardship was not created by the variance applicant;
- (ii.) Granting the variance will not be of substantial detriment to adjacent property and nearby properties in the surrounding geographic area;
- (iii.) The subject property's condition or situation is not of such general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an ordinance amendment;
- (iv.) Granting the variance does not result in a use that is not otherwise permitted on such property or change the zoning classification of the property; and
- (v.) The variance application relief or remedy sought is not available through a special exception process that is authorized in City Code Chapter 41, Article 6 or the process for zoning ordinance amendment in City Code Chapter 41, Article 4 at the time of variance application filing.

The BZA may impose conditions regarding the location, character, and other features of proposed buildings and use it deems necessary in the public interest and may require a performance guarantee or bond to insure compliance.

APPLICANT PROVIDED INFORMATION

Property Location (address/ID#): 7529 Cedarbrook Dr. Danville, Va. 24541

Applicant: LORRAINE GRIFFITH

Applicant's Address: 529 Cedarbrook Dr. Danville, Va. 24541

Applicant's Phone Number: 434-791-2915

Applicant's E-mail: littewolfgriffith@yahoo.com

Variance Request Description: handicap deck for 84 year old person

I (we) appeal to the Board of Zoning Appeals for a variance permitting the action described above in that:

i. Explain how you did not create the hardship you need a variance to overcome:

I am 84 years old and alone. My husband died and after 67 years I cannot walk on the existing walkway to get to my trash and garage

ii. Explain how granting the variance will not negatively impact your neighbors and properties close by:

I am 70' away from property on left side and 60' on right side. My deck does not hinder my neighbors

iii. Explain why the hardship on your property is unique and not something that affects similar properties in the same zoning district.

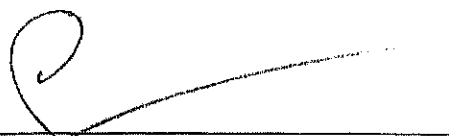
My deck is unique in the use of handicap access to my everyday life to dispose of my trash and get into my garage

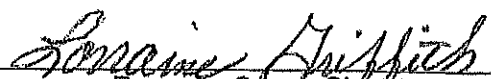
iv. Explain why granting the variance will not result in a use that is not otherwise allowed on the property or a change in the property's zoning classification.

Don't understand

v. The relief or remedy sought by the variance application is not available with a Special Use Permit.

Don't understand


Applicant Signature


Property Owner Signature
(if not applicant)

USMC 30 year Retired :100% Disabled and Disability Veteran.

529 Cedarbrook DR,

Danville, VA.

Deck on back of home built to help wife to keep from falling.

Built at the request of Marine MGYSGT Gene R. Griffith

for the health and convenience of his widow Lorraine Griffith

to aid her when she needs to get to the garage and take out the trash.



















VARIANCE REQUEST DATA SHEET 529 CEDARBROOK DRIVE

PUBLIC HEARING DATE: AUGUST 18, 2022 AT 10:00 AM

LOCATION OF PROPERTY: 529 CEDARBROOK DRIVE (PARCEL ID 54021)

PRESENT ZONE: OT-R OLD TOWN RESIDENTIAL

PROPOSED ZONE: NO CHANGE

ACTION REQUESTED: A Variance request PZ22-149, filed by Lorraine Griffith, requesting a variance from Article 2.P.9. of Chapter 41 of the Code of the City of Danville, Virginia that does not permit accessory structures closer than 10 feet from any other building or structure, at 529 Cedarbrook Dr (Parcel # 54021).

PRESENT USE OF PROPERTY: SINGLE FAMILY HOME

PROPOSED USE OF PROPERTY: SAME

FUTURE LAND USE DESIGNATION: RESIDENTIAL

PROPERTY OWNER (S): GRIFFITH GENE R & LORRAINE M

NAME OF APPLICANT (S): LORRAINE M GRIFFITH

PROPERTY BORDERED BY: RESIDENTIAL TO NORTH, WEST, EAST, AND SOUTH

ACREAGE: 0.55 ACRES TOTAL (APPROXIMATE)

CHARACTER OF VICINITY: RESIDENTIAL

INGRESS AND EGRESS: CEDARBROOK DR

TRAFFIC VOLUME: LOW



2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY

Prepared by:
Planning Division
7/27/2022

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.

SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY

Prepared by:
Planning Division
7/27/2022

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.

BOARD OF ZONING APPEALS MEETING

July 21, 2022

Members Present

Gus Dolianitis
Ann Sasser Evans
John Hiltzheimer
Gus Dyer
Lawrence Meder
Nicole Garrison

Members Absent

Michael Nicholas

Staff

Bart Nuckols
Bonnie Case
Shanika Williams
Ryan Dodson

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

I. ITEMS FOR PUBLIC HEARING

- 1) *Variance request PZ22-102 filed by Alice and Carl Reynolds on behalf of Helen and Russell Reynolds, requests a variance from Article 3.B.1.4 of Chapter 41 of the Code of the City of Danville, Virginia that does not permit private domestic well and septic systems, at 40 Kayewood Lane (Parcel 77926)*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Carl Reynolds. I really appreciate the opportunity. I know you guys approved the septic system at the last meeting. Some of you asked if the land perked. Yes it did. Someone from Anderson and Parker in Gretna came out, tested the ground, and drew up a plan for the septic system. That aerial map that Community Development put together shows the water line going through the trees on the south side of Riverside Drive, 58. It's really not practical. There are three ravines that start right at the gate when you are going through there and a lot of trees. The map is from 2018 and in the last few years a lot of trees have grown. I could not get a contractor that would give me a bid on coming through those woods. They just said it's too many variables.

Mr. Dyer asked could you mention who you might have spoken to in that regard.

Mr. Reynolds stated I talked to Henry Leggett who has done a lot of work in that area. He spoke to three other contractors and they all were hesitant to give a price. I did finally get a price from Dameron Plumbing and he has a proposal but will not and cannot guarantee it because of the amount of various problems that exist. Dameron Plumbing would not be responsible for boring under 58, the city would have to do that. He doesn't know for sure that the highway department would allow it.

Mr. Dyer asked did he quote you a price?

Mr. Reynolds stated he quoted a price of \$15,900 and said exactly two or three times he could not stand behind that price.

Mr. Dyer stated that would be his minimum plus contingencies.

Mr. Reynolds stated that would be the minimum. After talking with a couple of people that drill wells, I can get a well drilled for \$8,000 and as much as \$10,000 if I had to go as much as 300 feet. I guess we need a decision as fast as possible. The modular home is being built and is supposed to be delivered sometime in September or early October. We need the well drilled and septic system in by the time the house is finished so we can get an occupancy permit. By the way, Wrenn Yeatts across the road is on a well.

Mr. Dyer stated I'm not so sure that wasn't constructed before it was a part of the city. I know the water line out 58 is something the city has put in since the annexation.

Mr. Dyer closed the Public Hearing.

At this time, Mr. Dyer stated as you all notice we have a new member joining us and I ask Mr. Nuckols to introduce himself.

Mr. Nuckols stated I am the interim Planning Director for the city and it is a pleasure to meet everyone.

Mr. Dyer stated that I noticed on the information we received, staff recommends we deny this application. Did you make that recommendation?

Mr. Nuckols stated I think that was the general position of the staff itself of the Planning Department on the code as it is written.

Mr. Dyer stated I think the situation we have here is because we've been presented with cases like this before, and generally what the city's position is that if water and/or sewer is not available at a specific site, we have granted the variance to have either water or sewer or both in the city limits. Once again, the question is what is the meaning of water or sewer being available. Obviously water and sewer is available at any site in the city if somebody is willing to pay to run that water and sewer to the street. We asked Mr. Reynolds to find out the cost involved in this and we have seen that it is an exorbitant amount of money and 10 times the cost of a water tap fee. I would be inclined that the verbiage the city uses is that if water and sewer is readily available. I think it's clear in the case it is not.

Ms. Garrison stated city water only comes up to Parkway Drive. Is there water coming up from Vandola?

Mr. Dyer asked staff to pull up the map showing water lines. I think the last time we looked at it, I think the most practical location was from Parkway. It clearly appears that location is much closer than Vandola.

Mr. Meder made a motion approve the applicant's request to install a domestic well and septic system at 40 Kayewood Lane, Parcel 77926. Mrs. Garrison seconded the motion. The motion was approved by a 5-1 vote.

Ms. Evans voted yes but stated she did not like it.

Mr. Dyer stated maybe that should be a message to the city that we think if they are going to require water and sewer then make water and sewer available. I think that can be in the minutes and let that go.

- 2) *Variance request PZ22-133, filed by Chris Moore on behalf of Krista and Robert Boerrigter, requests a variance from Article 2.P.9 of Chapter 41 of the Code of the City of Danville, Virginia that requires ten (10) feet in between pools and buildings, at 136 Linden Drive (Parcel 23490).*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Chris Moore. I'm here on behalf of the Boerrigter's and we are building an addition on the back of their house. It's a complicated build with a limited amount of space that we have. We're not asking to move the structure towards the pool. We are actually just asking for an overhang so they can have some shade on that side. I brought a set of pictures if ya'll would like to pass them around so ya'll can understand what we are trying to do. If you would scroll down, as you see that is the proposed addition and what we are trying to do is do an overhang to give them some shade on their property. Their house is very secluded. The only person that is able to see their house which they won't be able to see it once we finish the screened porch addition, is the neighbors behind them and that's because they had to take a magnolia tree down while they were cleaning the powerlines in the neighborhood. My request is to have a three to four foot overhang added on to the addition for them to have some shade. If you look at the existing garage and on the back side of the building, it would take a 20 foot ladder to scale to get on the roof. If you actually look at the pictures I supplied to you, there will be no windows accessible to the roof for anybody to get on. That was the question posed to me from the inspectors. After talking to Ricky Evans and William Willis, they told me I could say on their behalf they thought it would be okay under the conditions that we have, that there is no access to the windows and that the whole area is sealed off to the public and secluded.

Ms. Evans asked if this is a new pool.

Mr. Moore stated no, it is existing.

Mr. Dyer stated it is a little confusing because the application states that you wish to construct a pool within the ten foot setbacks and its actually the building that is being constructed. The pool has been there.

Mr. Moore stated the building is within the ten foot setback. It's the roof line I'm wishing to encroach towards the pool. So just the overhang of the roof, not the building itself.

Mr. Dyer stated he had some confusion himself about this to he went down to find out what was going on. My concern was that obviously you had to get the building permit to

do what's already there. When you get a building permit, you have to go through zoning clearance. So my question was is this something zoning screwed up. From what I was told was you just obtained the permit for the footings and foundation. Is that correct?

Mr. Moore stated I have the entire building permit.

Mr. Dyer stated you have a building permit that has been issued for the whole build?

Mr. Moore stated I do.

Mr. Nuckols stated that's for the addition, not the overhang.

Mr. Dyer stated how was he issued a building permit that was in violation of the zoning code.

Ms. Williams stated working with the inspectors and speaking with Mr. Moore the overhang was not a part of the building permit.

Mr. Dyer stated in other words he can complete this building according to the plans he submitted and there is no violation of the zoning code without the overhang.

Ms. Williams stated correct.

Mr. Dyer asked will he have to come back and get an additional building permit for the other half? Because the original plans don't show it.

Ms. Williams stated so we have plans with the overhang. He would not require an additional building permit. I can speak personally with the inspectors and let them know that part has been approved.

Mr. Dyer stated then if he has a building permit he can go ahead and build.

Ms. Williams stated not for the overhang, that is not part of the permit.

Mr. Dyer stated then he should not have been issued a building permit for something that didn't meet zoning clearance.

Mr. Moore stated my plans are in accordance with the city building code. I'm asking if they will allow me to extend the overhang. That's why I'm here at the variance meeting now.

Ms. Williams stated the overhang was not approved and not a part of the current building permit. It can be added to the current building permit.

Mr. Moore stated again I just want to reiterate there is no access to the roof. You would have to have a 20 foot ladder to get on the roof at any point in time and the whole back yard is fenced and gated and is very secluded. Their house sits on top of a hill with the one driveway access to it. There is vegetation growth all the way around the property lines.

Mr. Dyer stated the reason that the ten foot set back is required is not for aesthetic necessarily. It's for safety reasons. So it doesn't really matter whether the neighbors can see it or not. I would have more concerns about it if the neighbors had kids. Kids will be kids.

Mr. Moore stated it was the safety issue about it. I guess ten foot back is hard for somebody to jump all the way into a pool and probably just as hard for them to jump six foot off of a twelve foot roof into a pool. You would have to be able to access which you will not be able to do.

Mr. Dyer stated but still it is the code. Once again the recommendation is to deny this request? Again, is that from general staff?

Mr. Nuckols stated that was the general staff recommendation.

Ms. Evans stated they meet three of the criteria.

Mr. Dyer stated it must be all five of them.

Mr. Moore stated that's why I was asked to come here and explain to you guys all the other good positive things that we have that would prevent somebody from doing that and under the condition that it will grant them exactly what they need to make this addition beautiful and exactly what they want.

Mr. Dyer stated lets go back to the criteria and lets look real closely at the two that staff determined you didn't meet and that was A. That is actually incorrect. It's the placement of the building. It's sort of backwards.

Mr. Moore stated there's also a carriage house/garage that made this build difficult for us to have to put it where it is. We couldn't move the building back into the driveway because if we did that, they would lose access to one of the parking spots in their garage because the building would encroach past the big garage.

Mr. Dyer stated so what are we missing by, four feet. Is that what we need?

Mr. Moore stated I need four feet. It's only overhang, not a structure, at the pool.

Mr. Dyer stated if they install awnings as opposed to a structural overhang, would that have to meet this set back.

Ms. Williams stated yes.

Mr. Nuckols stated again it's attached to the primary structure.

Mr. Dyer stated so let's go back. So the building itself cannot be made four foot narrower?

Mr. Moore said with the floor plan of the building you would have a hallway to walk through and it would make it so small.

Mr. Dyer stated you are not anywhere close to the setback. The side setback is 15 feet right?

Mr. Moore stated we actually have more than that because the two lots are adjoined. The problem is it would encroach to the carriage house and totally obstruct the garage. We have literally pushed it to the limit as far back as we could so they could still have access to their garage.

Mr. Dyer stated basically what this says is you have not demonstrated that this could have been designed differently. So the question is they have a preferred design and it doesn't meet zoning regulations and so we grant a variance because that's the design they want or go back and say you should have designed this so it meets zoning regulations.

Mr. Moore stated I would like to say that we went through rigorous drawings, elevations, everything to get this addition in to accomplish what they wanted and we were able to do this and keep our distance from the pool which meets city requirements, keep their access to the carriage house. Again, its just a simple question of they would just like overhang of the roof, soffit coming out four feet to have some shade on that side of the pool because there is no shade anywhere else in that yard.

Mr. Dyer stated this is hooked to the house right. This is not a separate structure?

Mr. Moore stated this in an addition to the house.

Mr. Dyer stated the only problem I have with this is that sometimes you can't always do what you want to do. There are rules and we didn't make the rules and we don't always have to necessarily agree with the rules. Basically, we need to determine if they have met the five criteria.

Mr. Dyer closed the Public Hearing.

Ms. Evans made a motion to approve the variance request. Ms. Garrison seconded the motion. The motion was approved with a 5-1 vote.

II. APPROVAL OF MINUTES

The June 16, 2022 minutes were approved by a unanimous vote.

With no further business, the meeting was adjourned at 10:33 a.m.

APPROVED