

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