Dinwiddie County Board of Zoning Appeals

Date
Regular Meeting Agenda - 7:00 PM
Board Meeting Room - Pamplin Administration Building

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF AGENDA

4. CLOSED SESSION

2.2-3711 (A) (7) Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel:

- Regarding specific legal matters requiring the provision of legal advice by such counsel with regards to case V-16-1.

5. MINUTES

A. September 15, 2016

Documents:

Minutes for September 15, 2016.pdf

6. CITIZEN COMMENTS

7. OLD BUSINESS

V-16-1: The applicants, Robert Trent Jr. and Peggy L. Trent, are seeking a variance from Section 22-75. – Yards of the Dinwiddie County Zoning Ordinance as it applies to the setback requirement for the placement of a building. Section 22-75 requires the minimum side yard for each main structure to be 35 feet and the total width of the two required side yards to be 70 feet or more from the property line. The applicants are requesting a variance of 30 feet from the side yard setback requirement along the northern property line for an existing building and a variance to the total width of the two required side yards of 70 feet or more. The subject parcel is located at 7821 Squirrel Level Road, North Dinwiddie, Virginia, and is designated as Tax Map Parcel 35-6, and is currently zoned as Agricultural, General, District A-2

Resolution of Recognition: Thayer Baird

8. **NEW BUSINESS**
9. **BOARD MEMBER COMMENTS**
10. **ZONING ADMINISTRATOR COMMENTS**
11. **ADJOURNMENT**

VIRGINIA: MINUTES OF THE REGULAR MEETING FOR THE DINWIDDIE COUNTY BOARD OF ZONING APPEALS HELD IN THE BOARD MEETING ROOM OF THE PAMPLIN ADMINISTRATION BUILDING ON THE 15TH DAY OF SEPTEMBER 2016 AT 7:00 P.M.

PRESENT:	LANCE EVERETT	CHAIRMAN	DIST #4
	TRACY SHEETS	VICE CHAIRMAN	DIST #3
	WILLIAM SEAY		DIST #5
	WILSON YAGER		DIST #1
	GUY SCHEID		DIST #2
OTHERS:	MARK BASSETT	PLANNING DIRECTOR	
	JAMIE SHERRY	ZONING ADMINISTRATOR	
	TYLER SOUTHALL	COUNTY ATTORNEY	

IN RE: CALL TO ORDER

The Chairman called the meeting to order at 7:00 p.m.

IN RE: ROLL CALL

The Chairman asked for the roll to be called and all members were present.

IN RE: APPROVAL OF AGENDA

The Chairman asked if there were any corrections or amendments to the agenda.

Ms. Sherry recommended that item 7 **(Resolutions of Recognition)** be moved to item 5 to be heard before Citizen Comments.

The Chairman asked the members if they had any questions concerning this change. He said if there are none he would entertain a motion to accept the agenda with the requested change.

Mr. Seay made a motion that the agenda be accepted with the requested change. It was seconded by Mr. Scheid and with Mr. Yager, Ms. Sheets, Mr. Scheid, Mr. Seay and Mr. Everett voting "Aye" the agenda was accepted with the change.

IN RE: MINUTES

The Chairman said we have the minutes from the January 21, 2016 Organization meeting before us. He asked if there were any corrections. There were no corrections. He said if there are none he would entertain a motion to accept the minutes as presented.

Ms. Sheets made a motion that the minutes be accepted as presented. It was seconded by Mr. Scheid and with Ms. Sheets, Mr. Yager, Mr. Scheid, Mr. Seay and Mr. Everett voting "Aye" the minutes were accepted as presented.

DRAFT

IN RE: RESOLUTIONS OF RECOGNITION

Ms. Jones was asked to come forward and the following resolution was read:

DINWIDDIE COUNTY BOARD OF ZONING APPEALS
RESOLUTION OF APPRECIATION

September 15, 2016

THELMA JONES

WHEREAS, Mrs. Jones served as a member of the Board of Zoning Appeals for twenty-four years and four months from February 1991 to May 2015 handling zoning appeals and variance cases with distinction, integrity, and foresight; and

WHEREAS, the Board of Zoning Appeals on this 15th day of September is desirous of acknowledging these qualities and further to express its appreciation for this work on behalf of the County of Dinwiddie; and

WHEREAS, Mrs. Jones greatly contributed to promoting the health, safety and general welfare of the public by acting with care and purpose to make decisions to benefit of the citizens and the County. Mrs. Jones heard appeals of decisions or determinations of the Zoning Administrator and authorized variances from Chapter 22 of the Code of Dinwiddie County;

NOW, THEREFORE BE IT RESOLVED, that the Board of Zoning Appeals of Dinwiddie County, Virginia, hereby commends Mrs. Jones for her contributions and devoted service to the County of Dinwiddie and its citizens; and

BE IT FURTHER RESOLVED, by the Board of Zoning Appeals of Dinwiddie County, Virginia, that this resolution be presented to Mrs. Jones, and a copy spread upon the minutes of the this Board of Zoning Appeal meeting

Ms. Jones thanked the BZA members and staff for all their hard work and assistance and wished everyone the best as they move forward.

IN RE: RESOLUTIONS OF RECOGNITION

Mr. Massengill was asked to come forward and the following resolution was read:

DINWIDDIE COUNTY BOARD OF ZONING APPEALS
RESOLUTION OF APPRECIATION

September 15, 2016

W. GERALD MASSENGILL

WHEREAS, Colonel Massengill served as a member of the Board of Zoning Appeals for ten years and ten months from March 2004 to January 2015 and served as Vice Chairman between 2007 through 2008 and also in 2011 through 2013 and served as the Chairman between 2009 and 2010 handling zoning appeals and variance cases with distinction, integrity, and foresight; and

WHEREAS, the Board of Zoning Appeals on this 15th day of September is desirous of acknowledging these qualities and further to express its appreciation for this work on behalf of the County of Dinwiddie; and

WHEREAS, Colonel Massengill greatly contributed to promoting the health, safety and general welfare of the public by acting with care and purpose to make decisions to benefit of the citizens and the County. Colonel Massengill heard appeals of decisions or determinations of the Zoning Administrator and authorized variances from Chapter 22 of the Code of Dinwiddie County;

NOW, THEREFORE BE IT RESOLVED, that the Board of Zoning Appeals of Dinwiddie County, Virginia, hereby commends Colonel Massengill for his contributions and devoted service to the County of Dinwiddie and its citizens; and

BE IT FURTHER RESOLVED, by the Board of Zoning Appeals of Dinwiddie County, Virginia, that this resolution be presented to Colonel Massengill, and a copy spread upon the minutes of the this Board of Zoning Appeal meeting.

Mr. Massengill also thanked the BZA members and staff for all their hard work and assistance and wished everyone the best as they move forward.

IN RE: CITIZEN COMMENTS

The Chairman opened the citizen comment period of the meeting. He asked if there was anyone signed up to speak. He said since there was no one he was closing the citizen comment period.

IN RE: PUBLIC HEARING

Board of Zoning Appeals Staff Report

File:	**V-16-1**
Applicants:	**Robert Trent, Jr. and Peggy L. Trent**
Property Address:	**7821 Squirrel Level Road, N. Dinwiddie, Virginia**
Acreage:	**1.37 Acres**
Tax Map Parcel:	**35-6**
Current Zoning:	**Agricultural, General, District A-2**

SUMMARY OF CASE

The applicants, Robert Trent Jr. and Peggy L. Trent, are seeking a variance from Section 22-75. – Yards. of the Dinwiddie County Zoning Ordinance as it applies to the setback requirement for the placement of a building. Section 22-75 requires the minimum side yard for each main structure to be 35 feet and the total width of the two required side yards to be 70 feet or more from the property line.

The applicants are requesting a variance of 30 feet from the side yard setback requirement along the northern property line for an existing building and a variance to the total width of the two required side yards of 70 feet or more. The subject parcel is located at 7821 Squirrel Level Road, N. Dinwiddie, Virginia, and is designated as Tax Map Parcel 35-6, and is currently zoned as Agricultural, general, District A-2.

ATTACHMENTS

The following are included:

- Application
- Maps
- Property Pictures
- Exhibits A-F

PURPOSE OF THE STANDARD:

As described in Section 22-2, of the Dinwiddie County Zoning Ordinance, the regulations of the zoning ordinance are for the *"purpose of promoting health, safety, and the general welfare of the public."* The zoning regulations are also a planning tool utilized by the County for improving the orderly development of land.

More specific to this application, Sec. 22-70. States:
Generally, agricultural, general, district A-2 covers the portion of the county into which urban-type development could logically expand as the need occurs. As a general rule it surrounds residential sections. This district is established for the specific purposes of:

1. Providing for the orderly expansion of urban development into territory surrounding incorporated areas within or adjacent to the county;
2. Confining such development to such locations as can feasibly be supplied urban-type facilities; and
3. Discouraging the random scattering of residential, commercial and industrial uses into the area.

APPLICABLE CODE SECTION

The provision of the Zoning Ordinance, which is relevant to this variance request, is:

Sec. 22-75. - Yards.
In agricultural district A-2, the yard regulations shall be as follows:
Side yards. The minimum side yard for each main structure shall be 35 feet and the total width of the two required side yards shall be 70 feet or more. *Rear yards.* Each main structure shall have a rear yard of 75 feet or more.

CASE ANALYSIS

The subject property is located at 7821 Squirrel Level Road, North Dinwiddie, Virginia and is designated as Tax Map Parcel 35-6.
The subject property is zoned as Agricultural, general, District A-2. The property was rezoned in 1999 from Residential, limited, R-1 to Agricultural, general, District A-2 with proffers. Proffers associated with the aforementioned rezoning case, P-98-12, are attached as Exhibit A.

A 1994 plat, attached as Exhibit B, indicates the building is 5.38 feet off the property line, which is the subject of this request. The same plat shows the front yard setback as 68.82 feet from the property line. Sec. 22.73 states that the frontline setback shall be located 105 feet or more from the centerline of the right of way. The 2009 Virginia Department of Transportation construction plans, attached as Exhibit C, for the improvement of Squirrel Level Road indicates road was realigned, which put the building front yard setback back in compliance to meet the minimum of 105 feet from the centerline of the right of way. The building meets the setbacks on the southern property line with a minimum side yard setback of 35 feet and it meets the minimum 75 foot rear yard setback to the eastern property line.

Over the years the property has been held by several different owners, of which most have operated a general store in the building. Mr. and Mrs. Trent, who purchased the property in 2009, have never operated the building as a general store. Earlier this year a request for a zoning determination was made by an adjacent property owner on the building for which this variance is being requested. Based on the failure of the *Structure Building, Main* to not meet the required setbacks, it was determined that there is no use permitted in the *Structure Building, Main* other than possibly a general store. The zoning determination, dated May 18, 2016, is attached as Exhibit D. Mr. and Mrs. Trent are seeking a variance to make the building compliant with the zoning ordinance in order to legally use the building for the allowed uses based on the proffers associated with rezoning case P-98-12.

Virginia Code section 15.2-2309 states "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."

At the time the zoning ordinance was originally adopted in September 1964, the building, which is the subject of this request for a variance, was already constructed. The 1950 plat, which is attached as Exhibit E, shows the property line that would have existed upon adoption of the ordinance. The building was constructed on the property line between parcels C and L as identified on the 1950 plat. Adoption of the ordinance created the legal non-conforming status of the building, as it would not have met the setbacks of the district. The existing 1.37 acre lot was created in 1976, which is attached as Exhibit F. The building continues to be non-conforming, as the side yard setback of the Residential, limited, R-1 District was 15 feet at that time the lot was created.

AUTHORIZATION FOR GRANTING VARIANCES

The Code of Virginia, specifically § 15.2-2309. Powers and duties of boards of zoning appeals.

The Board of Zoning Appeals has authority to grant a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

"Notwithstanding any other provision of law, general or special, 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 (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned 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; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) 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."

STAFF EVALUATION

In case, V-16-1, staff recommends **APPROVAL** of the variance of 30 feet from the side yard setback requirement along the northern property line for an existing building and a variance to the total width of the two required side yards of 70 feet or more because the Code of Virginia states in 15.2-2309 that notwithstanding any other provision of law, general or special, 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

(i) 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;

There is nothing to indicate the Trent's had any knowledge of the legal status of the building until the May 18, 2016 determination letter was issued. They did not create the hardship as the building was made non-conforming when the zoning ordinance was adopted in 1964.

(ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

The variance will allow the building to be utilized for the permitted uses identified in rezoning case P-98-12. These uses include:

- a single-family dwelling;
- a church;
- a professional office (within occupant's dwelling);
- a gift shop;
- an antique shop;
- a general store;
- a beauty or barber shop;
- a home occupation;
- governmental offices with a conditional use permit;
- a veterinary hospital with a conditional use permit,
- a day care center; and
- nursery and landscaping services;

Of the permitted uses, it is staff's opinion that the operation of a general store would be the most intensive use, with the exception of a veterinary clinic, which would only be allowed with

a conditional use permit. By law, a conditional use permit requires a minimum of two additional public hearings. Since the building has been used on and off as a general store for most of the last half century, it is expected that there would be no substantial detriment to adjacent and nearby properties.

(iii) the condition or situation of the property concerned 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;

This situation is not so recurring as to make an amendment to the zoning ordinance.

(iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

Granting the variance would not add to or subtract from to the legal uses of the property. All permitted uses would be dictated by the proffer conditions approved under the P-98-12 rezoning case.

(v) 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 A4 of § 15.2-2286 at the time of the filing of the variance application.

There is no relief in this instance offered by a special exception or the process for modification of the ordinance.

BOARD OF ZONING APPEALS ACTION:

The final statement of action would be similar to the following. If a BZA member chooses to make this motion, it should be read aloud:

I move that the Board of Zoning Appeals adopts the following resolution:

WHEREAS, the Code of Virginia, specifically § 15.2-2309, states that the Board of Zoning Appeals **shall** grant a variance 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:

i. 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;
ii. the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
iii. the condition or situation of the property concerned 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;
iv. the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

v. 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 A4 of § 15.2-2286 at the time of the filing of the variance application; and

WHEREAS, the Board (FINDS AS TRUE or DOES NOT FIND AS TRUE) the factual statements and rationale set forth in the staff report, including that the *structure, building main* was constructed prior to 1964,

BE IT THEREFORE RESOLVED THAT pursuant to Virginia Code Section 15.2-2309, after full examination of the facts and law related to the case, the Board of Zoning Appeals finds the foregoing criteria are (MET or NOT MET) and the Board of Zoning Appeals (APPROVES or DENIES) variance request V-16-1, to grant the request for a variance of 30 feet from the minimum side yard setback for the main structure of 35 feet along the northern property line and a corresponding variance from the minimum total side yard setback of 70 feet.

The Chairman asked the members if they had any questions for Ms. Sherry.

Mr. Seay asked Ms. Sherry to clarify the reason we are hearing this case.

Ms. Sherry said the building is less than the required 35' minimum side yard setback for the A-2 district. We received a letter from an adjacent property owner asking specifically about the vested rights of the building we are addressing this evening. The state code authorizes local codes to go ahead and make restrictions or put regulations on non-conforming buildings and this building is considered non-conforming because it does not meet the minimum setbacks of the district.

Mr. Seay said the survey on the building was done in 1994 and then the rezoning was done in 1999. When the survey was done it was signed off by the County. Therefore, to my understanding that means it is grandfathered in the system. The applicant is not adding on to the building nor is he making any improvements to the building. That leads me to ask, why are we having a meeting for this case? Also did you say the adjacent property owner requested to have a variance?

Ms. Sherry stated the request was for a zoning determination on the building, which is allowed by state statute. Staff looked into this to see if they had to provide a determination and it was decided they had to respond.

Mr. Seay said he doesn't quite understand that. My understanding of how the variance procedure works is the applicant has to file for a variance and the applicant has to pay the fee. I've been in the County a long time and I've never seen anything quite like this. So again, my concern is the property was grandfathered in and it was sold a few times. When the applicant purchased the property everything was fine and now he has the expense of getting a variance that I don't believe he needs.
Ms. Sherry said a great deal of research was actually done to follow the code and other case law to make sure we were answering the question (s) properly. This case was brought to our attention and the determination we came up with left us no other option for the applicant to use his building.

Mr. Yager said just to be clear, the Trent's are not planning to open a store, change the structure of the building, remodel or redesign it.

Ms. Sherry said the Trent's have not given her any indication as to any changes or alterations of the building. The request tonight is simply for them to legally use the building for something other than a general store.

Mr. Yager asked when the Trent's purchased the property and is this the first time this concern has come to your attention since that purchased date.

Ms. Sherry said they've owned the building since 2009, which is seven years and this is the first time I'm hearing about this concern.

Mr. Everett asked what the building has been used for in the last seven years.

Ms. Sherry said that may be a better question asked to and answered by the applicant.

The Chairman said if there are no more questions for Ms. Sherry would the applicant like to come forward and add anything.

Mr. Robert Trent, 7821 Squirrel Level Road, Petersburg VA said he doesn't know what to say as he is totally confused.

Mr. Everett asked Mr. Trent what the building has been used for in the last seven years.

Mr. Trent said he has been using it as a rental property. I have also used it for storage of my clothes, furniture and tools.

Mr. Everett asked Mr. Trent what his purpose was for bringing this variance before BZA.

Mr. Trent said I brought this case before you because my neighbor wanted me to tear the building down. She has victimized us for years with one thing after another. This is just another attack from her on us.

Mr. Everett said so you are here because of your neighbor, not because the building or the property has been used for any offensive use now or will be in the future.

Mr. Trent said that is correct.

Mr. Yager asked Mr. Trent if he knew anything about the setback issues when he purchased the property.

Mr. Trent said he knew nothing about any issues this property may have had when he purchased it. He said the previous owner is present and could answer any questions as well.

The Chairman asked the previous owner if she had anything to add.

Melissa Clary, 4721 Jaymont Drive, North Chesterfield VA said she and her husband purchased the property to run a business and then he changed his mind. We put the property up for sale and Mr. Trent purchased it. I was not aware of any problems and I had never met the adjacent property owner.

Mr. Everett asked Ms. Clary how long they owned the property.

Ms. Clary said they owned the property for about a year and a half and there was a tenant renting from them at that time.

The Chairman said if there are no more questions for Ms. Clary or the applicant he was opening the public hearing portion of the case. He asked if there was anyone signed up to speak.

Ms. Sherry said Ms. Shipp is requesting that she be treated as an aggrieved party in this matter. This would allow her to have an equal amount of time as the applicant and staff. She asked that the Board allows her to speak for ten (10) minutes.

The Chairman said he was in agreement with the ten (10) minutes.

Ms. Shelley Shipp, 7801 Squirrel Level Road, Petersburg VA said good evening, Mr. Chairman, Members of the Board.

The staff report omitted facts, violated the principles of law, and recommended an approval and resolution which will result in prohibited **legislative** action taken by the BZA. The approval of this request would be plainly wrong and in violation of the purpose and intent of the zoning ordinance.

PURPOSE OF THE STANDARD

As described in section 22-2 (3), the regulations of the zoning ordinance are "*to facilitate the creation of a convenient, attractive and harmonious community*" and, the nonconforming laws are a tool to accomplish this purpose. The subject property does not follow the general rule of surrounding residential sections; instead it is mostly surrounded by my R1 properties. The building and its location are no longer attractive or harmonious to the residential community and as an adjacent property owner, I am burdened with the uses of the existing building and the significant encroachments of the side yard setbacks for an A-2 zoned property.

REQUIRED STATUTORY CRITERIA

The Trent's must meet one of the following criteria and they do not meet either one of them.

1. **Unreasonable Restrictions**
   The granting of this variance request based on an *unreasonable* restriction of the utilization of the property would be declaring our nonconforming ordinances unconstitutional and facially invalid.

2. **Would the variance alleviate a hardship due to a physical condition relating to <u>the property</u> or <u>*improvements*</u> <u>thereon</u> at the time of the effective date of the ordinance**
   Staff's case analysis ignored the unambiguous and plain meaning of this criteria. In *BZA for the County of York v. 852 L.L.C., 257 Va. 485, 514 S.E.2d 767 (1999)*, the zoning administrator and the BZA went astray with their interpretations in their efforts to reach an outcome they believed was fair to the landowner and the county. Staff did not give any weight to the words "*thereon*" and "*the property*", thus acted legislatively and changed the law. Each word's meaning must be considered in the context of the entire phrase from which it is taken. *Bell v. Commonwealth, 22 Va. App. 93 (1996)* and, an undefined term must be given its ordinary meaning, given the context in which it is used. *Sansom v. Board of Supervisors of Madison County, 257 Va. 589, 514 S.E.2d 345 (1999)*

"Thereon" refers to "*the property"*, and "*the property"* being a **single** *lot of record*; however, in 1964 the existing building was located on **two** *lots of record.* In order for a variance to be granted based on this criteria, **both** the pre-1964 building **and** the 1.37 acre lot needed to have existed at the time of the effective date of the ordinance. *Cherrystone Inlet, LLC. v BZA of Northampton County, 271 Va. 670, 675, 628 S.E.2d 324, 326 (2006).*

In the event the board finds the Trent's **do** meet one of the aforementioned criteria, they still must meet 5 more. They **do not** meet at least 2 of those criteria.

3. **Was the property acquired in good faith and that any hardship was not created by the applicant?**

Whether or not the Trent's had any knowledge of the legal status of the building is irrelevant, ignorance is still no excuse to the law, including our nonconforming ordinances and the proffered conditions on the subject property. In *Steele v BZA of Fluvanna County 246 Va. 502, 506, 436 S.E.2d 453, 456 (1993),* the court declared "a self-inflicted hardship, whether deliberately or ignorantly incurred, provides no basis for the granting of a variance". See also *BZA of Town of Abingdon v. Combs, 200 Va. 471, 106 S.E.2d 755 (1959)* and *Alleghany Enterprises, Inc. v. BZA of the City of Covington, 217 Va. 64, 69, 225 S.E.2d 383, 386 (1976).*

The 1994 plat of the subject property clearly shows the building does not meet the northern side yard setbacks, and the Trent's did not apply for a variance or certificate of occupancy **before** occupying and changing the use of the building.

Zoning ordinance section 22-21 together with section 103.3 of the 2012 USBC Rehabilitation Code requires a certificate of occupancy **before** changing the use of the existing building. As shown in **Exhibit A,** Mr. Trent's March 30, 2015 conviction clearly shows he occupied and changed the use of the building to a *garage, public or garage, private* **before** he applied for a variance or a certificate of occupancy. In *Spence v. BZA for the City of Virginia Beach,* the court found no self-inflicted hardship existed because the applicant had **not** violated any zoning ordinances **before** attempting to use the property, unlike the Trent's in this case.

Staff blatantly disregarded Mr. Trent's conviction as a relevant fact in this case. The conviction was omitted and Staff erroneously recommended approval. Regardless of whether or not the Trent's meet the required criteria of "unreasonable restriction" **or** "alleviate a hardship due to improvements thereon", Mr. Trent was convicted of violating section 22-71 – Permitted Uses, created his own hardship, and now seeks this variance as a means to continue the use of the existing building.
For this reason alone, the Trent's variance request cannot be granted.

In *Steele* the court stated "…a self-inflicted hardship cannot be the cause of a constitutional deprivation of a landowner's rights" and also declared "a self-inflicted hardship exists when an owner violates the zoning ordinance and then seeks relief by means of a variance from the consequences of the zoning violation".

Also, *Good Faith* is defined in the Merriam–Webster Dictionary as:

- Honesty, fairness, and lawfulness of purpose
- Absence of any intent to defraud, act maliciously, or take unfair advantage

I do not believe the Trent's purchased the subject property in *good faith* and may have purchased it for the unlawful purpose of continuing Mr. Trent's automotive business, not a hobby as he claims, and defraud Dinwiddie and its citizens out of revenues from taxes, license and permit fees.

I believe Mr. Trent:

- Is the owner of a business named Trent Automotive **(Exhibit B)** - a linkedin.com page showing from 1974 to the present, a Bobby Trent as the owner of Trent Automotive.

- Has been in business since 1974 **(Exhibit C)** – facebook screenshots showing a Bobby Trent living in Chester, Virginia, married to a Peggy Trent, and a birthdate matching court records. In a conversation between a Bobby Meeks and a Bobby Trent on July 4, 2011, ~ 2 years **after** purchasing the subject property, Bobby Trent claims "…I have painted a few more since been in the body shop business since 74".

- Operated Trent Automotive located at 231 E. Hundred Road in Chesterfield County from 1/01/1997 until 09/30/2009. **(Exhibit D)** – an email from Patti Howell, Chief Deputy Commissioner of Chesterfield.

- The Trent's purchased the subject property on 10/19/2009, only 19 days after the closing of Trent Automotive in Chesterfield County.

- Has operated an automotive repair and body shop from at least 4 locations: **(Exhibits E-H)**

  a. 231 E. Hundred Road in Chesterfield
  b. 13500 Old Stage Road in Prince George
  c. 12600 Richmond Street in Chesterfield
  d. 7821 Squirrel Level Road, the subject property. **Exhibit H** are pictures of automotive activities Mr. Trent conducted on the subject property including a junk yard, the towing of vehicles, the Snap On tool truck which made weekly stops on Wednesdays, the repairing of vehicles ranging from limousines to RVs to salvaged vehicles.

  - **Exhibits I-N** – are six exhibits of pictures of out of state salvaged vehicles Mr. Trent towed to the subject property. The first page of each exhibit depicts an auction advertisement of a salvaged vehicle from North Carolina, Michigan, or Georgia.
    The second page of each exhibit depicts the same salvaged vehicle several days after auction closing located on either Mr. Trent's rollback or already unloaded on the subject property. I believe Mr. Trent has been warned by Officer Dayton of the DMV Law Enforcement Division regarding the salvaged vehicle licenses required by state law.
    Mr. Trent has continued his automotive repairing violations after his violation notice, arraignment and even after his conviction.

4. **Will the granting of the variance be of substantial <u>detriment to adjacent property and nearby properties</u> in proximity to that geographical area?**

Staff determined in their evaluation that, "the building has been used off and on for a general store for most of the last half century"; this is not true. The general store closed its doors in January of 1996, I

know, I purchased my properties February of 1996. In 2005, the building reopened for less than a year but only as a vegetable stand selling fresh produce, cigarettes, snacks and sodas. The building has not been used for a general store for over 20 years and would be of substantial detriment to the rental income of my existing rental property to the north, and my plans to develop my lot to the south for rental purposes and retirement income.

The Trent's have not exhausted their legislative options. The R-U district does allow side yard setbacks of 5 feet.

In closing, I'd like to add that I do question the legal status of the building to be nonconforming. The **northern** part of the building conformed to the side yard setback requirements in 1964. However, it was the 1976 division of land, not the adoption or subsequent amendments of the zoning ordinance, which created the encroachment along the **northern** property line. It appears the building may be illegal.

Thank you for allowing me the opportunity to speak and recognizing my potential status as an aggrieved person.

Mr. Scheid asked Ms. Shipp if she is saying the property in the pictures we've been given was used for storage and sale of vehicles.

Ms. Shipp said it has been used for storage as for sales I've only witness one truck having a for sale sign on it.

Mr. Yager asked Ms. Shipp if the Trent's have owned the property for nine (9) years why has it actually taken you this long to bring this problem forward.

Ms. Shipp said I started this back in 2013 with my first complaint.

Mr. Yager said at that time they had already owned the property for four years correct.

Ms. Shipp said yes that is correct.

Mr. Everett asked Ms. Shipp if her father, grandfather or family built the building.

Ms. Shipp said he purchased it.
Mr. Everett asked Ms. Shipp if he purchased it as one property with this building and the house she lives in.

Ms. Shipp said to give a little history about it. If you notice the three distinct roof lines, when it was purchased by my family it was like that. The building was built in three different sections. The southside, which is the right side was the original general store. Part of that building went with my lot on the southside. That was the original from the 1950 plat you have in front of you. It was considered tract L. Then they came along and built the two story and that was on tract C. Then somewhere along the line they decided to connect the buildings way back before the zoning ordinances adopted. That is basically where the line got crossed and the reason the building was on two tracts at that point and time. My family purchased it as that and did not divide it off until 1976. When they divided it the northern lot line, in my opinion, was correct at the effective date of the ordinance, because it was

correct on tract C. However, it became illegal when that lot was done and that is why I'm questioning it.

Mr. Everett said at the time it was done the building was legal.

Ms. Shipp said correct. The building was illegal at the time it was done. But the side yard setback as far as the encroachment of that, the northern part of that lot line which is a part of their request this evening was perfectly fine on tract C. It was the southern part that was not, because it would have been a zero lot line because it went through the middle of the building. And the way the law says is basically the property had to be a single property. That 1.37 acre needed to have existed at the effective date of the ordinance.

Mr. Seay said he had one question for Ms. Shipp. When your father divided the property and then sold it to Mr. Ford everything was fine. When Mr. Ford sold it to the applicant and he owned it for three or four years it was fine. Then at some point it became not fine. Were you the property owner of the adjacent property?

Ms. Shipp said I do own the house and the rental house. I did not move in until 1996 and I did not become aware of that property for one reason being non-conforming and or illegal until then.

Mr. Everett said what I'm getting out of all this is your main complaint being an unauthorized use of garage and vehicles stored. Am I correct?

Ms. Shipp said not necessarily because commercial uses have not been on that property since 1996.

Mr. Seay asked Ms. Shipp what she wants Mr. Trent to do tear the building down.

Mr. Shipp said yes, because I'm interested in it not encroaching on that part and making a more harmonious community with our non-conforming laws are intended to do.

Mr. Everett said you could sell him a few more feet and make it conforming.

Ms. Shipp said she is not interested in that and that's not part of the law. The law strictly states what it does and he must meet every single criteria and if not a variance cannot be granted and if it is it is being granted in violation of our laws.
I feel the fact that if it is not interpreted the way it is supposed to be and every word given the right meaning that the Board is going to be acting in a legislative way instead of administratively.

Mr. Scheid asked Ms. Shipp if the information she handed out to them was made available to staff or anyone else or did you just bring it in this evening?

Ms. Shipp said these were my exhibits that I brought in.

Mr. Scheid asked Ms. Sherry if she was aware of the information that the members were given this evening.

Ms. Sherry said she was aware that Mr. Trent was convicted in March of 2015 for violating the proffers on the property.

Mr. Scheid said it seems like what we are looking at here is several things. We are looking at a variance. We are not looking a user violation of rezoning of the property or looking at the proffers offered or anything like that. I want to make sure that is very clear. The reason I want to make that clear is because Dinwiddie County has got so many properties that are in violations of yard restrictions. To just say tear your structure down because you are in violation of a yard would be a terrible thing to do.

Ms. Shipp said I'm not asking for that. What I am saying is if the law says if he violated, which he clearly did, by occupying it and not seeking a variance those court cases that I've mentioned in my comments goes over all of that and I'm asking for the Board to at least review all of that information and I believe you will see where I am coming from and what I'm trying to present to the Board this evening. The fact that Mr. Trent violated it, he can't be granted a variance, because he violated the permitted uses and he's requesting to be able to reuse this building for uses. He's not going to be able to be granted that. And regardless of being tied up so much in that criteria, he has to meet the first two. If he cannot meet the unreasonable restrictions or he cannot meet that to elevate the hardship to do the physical characteristics relating to the property or the improvements thereon that kills the variance. He has to meet one or the other and then he has to meet all the other five.

Mr. Scheid asked Ms. Shipp what was the violation? Was it because he had a number of vehicles on the property.

Ms. Shipp said no it was because of section 22-71.

Mr. Scheid said and that says what?

Ms. Shipp said that is permitted uses.

Mr. Scheid said what permitted was he violating?

Ms. Shipp said the permitted use he was violating was a public garage or a private garage.

Mr. Scheid said there is a renter in the building now based on what Mr. Trent said and to me that is a single family use which would be legal and that's all it can be used for.

Ms. Shipp said the building has been illegally altered. Ms. Sherry said that in her determination. Ms. Shipp said Ms. Sherry determined at the time of the effective date of the ordinance the entire building was a general store. I think Mr. Trent had testified that he had someone living in it and rented it. As well as I believe the former owners did.

Mr. Yager said he read that the entire building had been rezoned and not just a portion of the building.

Ms. Sherry said the property itself was rezoned and subject to the proffers. The building was independent. That is what led to some of the complications in the zoning determination.

Mr. Scheid said the point I was getting to was if it is rezoned it says it may be used for one of the permitted uses not all of them. So if someone is going to be using it as a rental property, in my opinion that is it.

Ms. Shipp said she is not following that.

Mr. Scheid said they are using it as a single family dwelling and it says you can use it as a single family dwelling, but you cannot have multiple uses on it. You cannot have a grocery store on it and a garage at the same time. It can only be used for one thing.

Ms. Shipp said they were using it for single family residential. They were using it as a dwelling.

The Chairman said if there is no one else signed up to speak he was closing the public hearing portion of the case. He asked the applicant to come back up to answer or comment on the information that was discussed.

The Chairman allowed Mr. Ray Houchins Jr., 105 Blue Ridge Street, Lynchburg VA said he has been surveying land for over 40 years. I have done a lot of closing point surveys and it seems like to me this should be something that is already grandfathered in. I believe this property should be left alone and accepted as is.

Mr. Trent said this property did have some cars on it at one time, but Mr. Harris informed him that they had to be inside behind a fence so I put them inside and built a fence. I think it should be noted that Ms. Shipp is on her step ladder, extension ladder and camera daily. I do have friends that come by and I help them fix their cars. I do the same for neighbors who come by. I just believe this is opportunistic from my neighbor. Any time there is a car in the yard she is out there taking pictures. She has the neighbor in her rental house taking pictures. Because of that I've had to get rid of all my cars. I'm not trying to ignore the law. I just want to get out from under this scope of Ms. Shipp.

The Chairman asked Ms. Sherry if she had anything else she wanted to add before we have our board member discussion.

Ms. Sherry said she wanted hand out one of the cases that Ms. Shipp referenced in her presentation. She wanted the board members to know that staff did take into account the case of Cherry Stone -vs- The Board of Zoning Appeals. This case happened in Northampton County Virginia and was then ultimately heard by the Supreme Court. This case dealt with lots of record.

The short version is there were setbacks that overlapped base on regular setback and that of the Chesapeake Bay that were inactive back in 1988. The distinction here is we are dealing with improvements on the property, which is clearly identified in 15.2-2309 as a structure and not the property itself. Other than that I stand by my staff report.

Mr. Everette said in his opinion we should not even be here if this property is grandfathered in. It has had several owners and it has been surveyed and recorded. He said he was interested in hearing Mr. Southall's professional opinion about this case. Do we legally need to be here?

Mr. Southall stated that there are a couple of things going on before I give you my professional opinion. First I want to reiterate I am not the Attorney for the Board of Zoning Appeals. The County's Attorney office represents the County and the Board of Supervisors. The reason I say that is because it could someday be a potentially conflict of interest. There are however some County and City Attorney's office do represent their Board of Zoning Appeals and if this case were to be deferred to another day I think there may be a possibility that for this case I could perhaps do a presentation. I will have to think about and talk to the Board of Supervisors about that.

The second things is there has been a lot of information and a lot of cases presented tonight. In a traditional court setting, I would have an opportunity to view a brief or arguments presented. Ms. Shipp has brought up various points and I have not had the opportunity to review them. That obviously puts me in a position to not speak to each and every case she mentioned tonight.

That being aside there has been some questions asked about the Zoning Administrator's opinion that was issued in May of this year. That opinion does mention that I concur with her findings with a few exceptions of which I noted in that opinion. It is my belief that the law led us to the outcome of the letter. Mr. Southall stated some of the basic facts of the case and stated that is why the building is considered non-conforming.

Mr. Southall stated that the building was in existence prior to 1964. In 1976 a plat was recorded, but does not appear to be signed by the subdivision agent. The plat shows the building slightly over 5 feet away from the property line. The opinion then discusses what the building can be used for. It was determined that it could not be used for anything other than perhaps a general store, which is its historical use. In the letter there was some discussion about tearing the building down and the law states that would not be the case in this instance. So the only remedy for the applicant related to using the building was him coming before the Board of Zoning Appeals requesting a variance. That is what the applicant chose to do. That is why we are here. Mr. Southall stated that staff did convict Mr. Trent of violating the zoning ordinance in March 2015. Mr. Southall stated that he wrote the letter in concurrence with Ms. Sherry.

Mr. Everett asked Mr. Southall if the building was grandfathered in and if they even needed to act on this case. Mr. Southall stated that because of the letter, a variance is a potential remedy. He stated that the letter has passed the time on which it can be appealed.

Mr. Seay stated that the original owner who owned the property and did the division is at the reason we

Mr. Yager asked about the future intent of the Trent's for this building. Mr. Southall stated that was a question for the Trent's. He stated, that if granted, the variance would allow for the dozen or so legal uses to be allowed in the building.
Mr. Scheid said he has an observation to make. You notice that Mr. Southall said there was no sub-division agent's signature on the plat that was provided. The reason is because the Circuit Court Clerk would submit to record any plat submitted to her office with or without the signature of the subdivision agent. The County was made aware of that and resolved that issue some years later. That being said seeing no signature from the Planning Department or Zoning Administrator indicates that they had no part of that plat because it was never given to them to review for approval or disapproval. So I can understand the confusion of everybody. The plat was put to record and the person buying it believes they could use property for what they want. The other observation I have and want everyone to understand is, out of all the uses permitted only one use at a time is permitted if this variance is approved. Mr. Scheid also stated that it looks like Ms. Shipp put a lot of work into her research and he commended her.

The Chairman asked the members if they wanted to table this variance to next month as there was so much information provided by Ms. Shipp that needs to be looked at or do they want to take a vote tonight.

The Chairman took and unofficial yes or no vote for tabling the variance case for 30 days.

Mr. Scheid then made a motion to table V-16-1 until October 20th at 7:00 pm here in the board meeting room of the Pamplin administration building. He said it is being table so that planning staff, legal staff and the Board of Zoning Appeal members can look over all the information that Ms. Shipp presented. It was seconded by Ms. Sheets and with Ms. Sheet, Mr. Yager, Mr. Scheid, Mr. Everett voting "AYE" and Mr. Seay voting "NO" the case was tabled until October 20th.

IN RE: NEW BUSINESS

Ms. Sherry informed the members about the new equipment that was at their station. She reminded them that we are going to go forward with electronic packets.

IN RE: ZONING ADMINISTRATOR COMMENTS

Ms. Sherry thank the members for their patients concerning this case. She said it has been a new path for all of us surrounding the new legislation in particularly with the ex parte communications. She said I appreciate each you respecting the fact that I couldn't talk to you about the case. She said I want you to know I recognize the difficulty you may have had because of that.

IN RE: ADJOURNMENT

Mr. Everett said since there are no comments and no further business he would entertain a motion to adjourn the meeting. Mr. Scheid made a motion and Ms. Sheets seconded it and with all other members voting "AYE' and hearing no objection the meeting adjourned at 8:30 p.m.

Respectfully submitted:

Jamie Sherry, Principal Planner
Zoning Administrator

Signed: _____
Lance Everett, BZA Chairman

Dated: _____