

VANCE COUNTY BOARD OF ADJUSTMENT

The Vance County Board of Adjustment met at a regular and duly advertised meeting on **June 14, 2018** at 4:00 p.m. in the Commissioners Meeting Room of the Vance County Administrative Building at 122 Young Street in Henderson, NC.

MEMBERS PRESENT

J. Thomas Shaw III – Chairperson
Ruth Brummitt – Vice Chairperson
Agnes T. Harvin
Ruxton Bobbitt, Alternate
Logan Darensburg
Phyllis Stainback

STAFF PRESENT

Sam Hobgood, Director Planning
Angie Blount, Planner
Jonathan Care, County Attorney

MEMBERS ABSENT

Alvin Johnson, Jr.
Blake Haley

Chairperson Shaw declared the public hearing open and asked if there were any corrections of the minutes for the last meeting. Mrs. Harvin stated that she had corrections. Mrs. Harvin was advised to refer them to Staff member, Angie Blount for correction. Mrs. Stainback advised she also had corrections and that she would also refer them to Mrs. Blount. Chairperson Shaw asked if anyone on the board would like to make a motion to accept the minutes. Mrs. Brummitt made a motion to accept, Mr. Bobbitt seconded the motion with the condition of correction. Chairperson Shaw asked if there were further discussion. Being none, Chairperson Shaw asked for those members wishing to approve the minutes to signify by saying Aye, those opposed by saying Nay. All members voted in favor of approving the minutes with corrections.

BOA CASE NO. 20180614-1; Louis B. and Gloria G. Daniel; 3910 Dabney Rd, Henderson, requesting a variance from the right side setback from the property line. Tax map number 0403 02007A.

Chairperson Shaw explained to the board the procedures of the hearing and asked that anyone wishing to give evidence or testimony to come forward to be sworn.

Chairperson Shaw asked Planning Staff to approach the podium and give testimony. Angie Blount, Planning Staff, took the podium and stated the request made by the applicants, Louis B. & Gloria G. Daniel, to reduce the right side setback from the required 20' to 5' 1". Mrs. Blount advised the board that the construction was done without permit, prompting a zoning violation and that during the process of applying for permits the setback discrepancy was discovered. Mrs. Blount advised that the applicants were given the options of removal of the infringing structure, reduction of to meet the setback or make application for a variance. Board member Bobbitt asked if the work had been performed by a licensed contractor or by the homeowner. Mrs. Blount advised she did not have that information. Chairperson Shaw asked if there were any questions for staff. Chairperson Shaw announced the board would now hear from the applicant. Gerry Koinis, attorney for the applicant took the podium. Mr. Koinis stated that he is employed with the law firm Hicks & Wrenn in Oxford and would be representing his clients Louis and Gloria Daniel in this case. Mr. Koinis explained that Mr. Daniel is elderly and in poor health and could not be present at this meeting, but that his wife, Mrs. Daniel was present as well as their son, Jerry Cox. Mr. Koinis stated that Mr. Cox has also been sworn. Mr. Koinis stated the Applicant were requesting a variance from the right side property line from the required 20' for R30 zoning. Mr. Koinis stated that he would like to give an overview of the reason his clients chose to seek a variance and after that he would be going through and answering each of the factors relevant to the issuance of a variance.

Mr. Koinis stated that the Applicant received a letter from their insurance company advising them that if repairs were not made to their property their insurance coverage would not be renewed. Mr. Koinis stated that the thought of not having their home covered by insurance placed the Applicant in a state of panic

which resulted in them having Mrs. Applicant son, Jerry Cox, to make the repairs to the home. Mr. Koinis stated that although Mr. Cox has vast experience in doing this type of work, he is unlicensed. Mr. Koinis told the board that the work was done without permit, but that the Applicant are currently working with the County Planning Department to obtain permits. Mr. Koinis explained that the first step is to ask for a variance against the right side setback for the work that has already been completed. Mr. Koinis stated that they ask for the additions to the home be allowed to stay.

Mr. Koinis addressed the standards for granting a variance. He stated that in regards to the first standard, whether or not an unnecessary hardship would result from strict enforcement of the ordinance, the Applicant added on a room to their existing dwelling which houses a laundry facility as well as a handicapped accessible bathroom. Mr. Koinis stated that the Applicant are elderly and have limited mobility and that the handicapped accessible bathroom was a necessity. Mr. Koinis stated that the Applicant did the work knowing that it would encroach into the setback, but added that they had no knowledge that permits were required.

Mr. Koinis asked the board to refer to exhibit B1 in their packet, which is a copy of the Notice of Non-renewal of their homeowner's policy, which listed the reasons for non-renewal as damage and rot to the structure, which if not repaired the policy would terminate. Mr. Koinis explained that faced with termination of their homeowners policy and having limited funds, the Applicant allowed their son to carry out the repairs to their home. Mr. Koinis added that the strict application of the ordinance in this case would create a hardship for the Applicant, due to the time and money already expended constructing the addition and carport, to tear it down or to reconstruct according to the applicable setbacks would involve even more of their limited funds and time. Mr. Koinis added that if the Applicant had to reconstruct they would be without a safe bathroom which could pose a health and safety hazard.

Mr. Koinis addressed the next standard, whether or not the hardship resulted from conditions that are peculiar to the property such as location, size or topography. Mr. Koinis asked the board to refer to exhibit B2 in their packets, a copy of an unrecorded as built survey which shows the structures on the Applicant property. Mr. Koinis explained that due to existing structures and the septic tank/field at the rear of the dwelling, it was not possible for the Applicant to build to the rear. Mr. Koinis explained that to the front of the dwelling exists the well and that the required setback could not be met for construction in the front. Mr. Koinis added that construction was also not possible on the West side of the property due to limited setback.

Mr. Koinis addressed standard c., that the hardship did not result from actions taken by the applicant or the property owner. Mr. Koinis stated that the Applicant relied on their son, Mr. Cox, who as the contractor would have handled any applicable permits. Mr. Koinis stated that if a licensed contractor had been used, perhaps any required permits or setback requirements would have been obtained. Mr. Koinis stated that the work was urgently needed to the home, and that the Applicant allowed their son, Mr. Cox, to perform that work due to his prior experience. Mr. Koinis stated that the applicant did not set out to avoid regulation. Mr. Koinis stated that the applicant wishes to become compliant.

Mr. Koinis addressed standard (d)., that the requested variance is consistent with the spirit, purpose and intent of the ordinance, so that public safety is secured and substantial justice is achieved. Mr. Koinis advised that the variance requested would not change the character of the property, Mr. Koinis asked the board to refer to the photograph of the property in their packets which shows the work that has been done. Mr. Koinis asked the board to observe the addition, he advised it serves as a laundry room and also a handicapped bathroom. Mr. Koinis also pointed out the added carport and stated again that the character of the neighborhood would not be affected by these changes. Mr. Koinis commented that the property on the right side of the Daniels property is a Church and that they have not had any complaints from them and that no one had come to the hearing in opposition of the variance. Mr. Koinis commented that the Applicant has been cutting grass on property owned by the Church for years even though it did not belong to them, pointing out they were being good neighbors. Mr. Koinis stated that the encroachment into the

setback would not cause any issues due to a gravel drive that separates the two properties. He advised the encroachment does not reach the gravel drive, therefor would not cause any issues for cars.

Mr. Koinis concluded by stating that the request is to encroach into the setback 14.89 feet, leaving 5.11 feet between the new construction and the property line. Mr. Koinis asked that the Daniels application, responses, site plan, and general warranty deed all be submitted and accepted as evidence. Mr. Koinis stated that he as well as the applicant and the contractor, Mr. Cox, would be willing to answer any questions the board may have.

Mrs. Brummitt referred to factor c. of the Variance Request Application. She asked if the son, Mr. Cox, was a regular contractor and worked as one all the time, and she also asked whether or not he worked with licensed contractors. Mr. Koinis explained that currently Mr. Cox was working as an electrician. Mr. Koinis asked Mr. Cox to come to the podium and explain his background.

Mr. Cox took the podium. He stated to the board that he had been working in construction since he was 18 years old and has worked for several different contractors. He advised he does not contract himself because he does not hold a license. Mrs. Brummitt asked if Mr. Cox was aware of the need for permits when building. Mr. Cox stated that he had worked for Mickey Jackson and Brummitt Electric in North Carolina, but mainly for contractors in the state of Tennessee and that they did mainly commercial work. Mr. Cox stated that he did not handle the license part and therefor was not aware of the need for permits. Mrs. Brummitt asked Mr. Cox if he was a licensed electrician. Mr. Cox replied that he was not. Mr. Bobbitt asked if he understood correctly that the job was permitted. Mr. Koinis answered that it was not, that was the reason for the variance and then they would apply for permits. Mr. Koinis explained that the issue of building without permit became two issues when it was discovered they had built into the setback, but that they would be in process of receiving permits. Mr. Bobbitt asked if the work had been completed. Mr. Koinis advised it was finished. Mr. Bobbitt asked if a stop work order needed to be issued. Mr. Koinis stated that the applicant was given a Notice of Violation for building without zoning or building permits. Mrs. Blount reiterated that a Stop Work Order was not issued, but a Notice of Violation was. Mr. Bobbitt asked that if a variance was granted would the applicant continue through the permit process and have inspections done and do whatever is necessary to become compliant. Mrs. Blount advised the applicant would need to secure a letter from an Engineer stating that all the work (structural, electrical, plumbing) was done to NC State Building Code, but first seek a zoning permit and follow up with a building permit. Mr. Koinis stated that he did not think the applicant would have any problem with the board placing a condition on the variance that the work be carried through to Certificate of Occupancy.

Chairperson Shaw asked if there were any more questions from the board for Mr. Cox or Mr. Koinis. Mrs. Stainback asked about the right side property line, regarding the surveyors note that it was the "agreed" property line. She commented about their having to be an agreement about the property line. Mr. Bobbitt asked the county attorney, Jonathan Care, if since the property line borders Church property, was it incorrect to assume that the property would never be subdivided or built upon enough to cause a setback problem. Mr. Bobbitt wondered if that would be setting a precedent that they did not want to set. Mrs. Blount asked Mr. Bobbitt to clarify his question, he stated the fact that it was Church property and that it may never have construction on it that would endanger setbacks, or could it ever be subdivided. Mrs. Blount asked if he was asking about moving the property line between the properties to gain the setback for the applicant. She advised that she had considered that possibility but that would place graves fairly close to the property line if that were done. Mr. Care stated that he believed the board had already set a precedent by considering neighboring property and that they had been consistent in the past. Mrs. Stainback agreed regarding the setting of precedents. Mr. Care commented that each case is unique and different. Mrs. Stainback commented that the "agreed upon" property line as shown on the plat could be a factor in deciding the case. Mr. Bobbitt stated that he did not have the plat to look at. Mrs. Stainback commented that the plat refers to an "agreed upon" property line. Mrs. Harvin asked Mrs. Blount about the meaning of "agreed upon". Mrs. Blount advised that when a survey is done the surveyor usually marks the property line by placing iron rods or "pins" in the ground and that is would be agreed upon

because there would be no doubt. Mrs. Harvin asked if there would be any way that the property owned by the Church could be recombined into the Daniels property to make their setback. Mrs. Blount advised that the Daniels could obtain the amount of property they need to meet the setback from the Church but that the graves would need to meet a 30' setback from any property line. Mrs. Harvin stated that she wondered about the triangle, if it could be recombined and give the Daniels what was needed. Mrs. Harvin asked if anyone had tried to approach the Church about the triangle. Mr. Koinis stated that where the triangle is the grassy knoll area that the Daniels had been taking care of, divided by the gravel drive. Mr. Koinis advised that he had not approached the Church about allowing the Daniels to take that area in to possibly obtain the setback they needed. Mrs. Harvin commented that she could not see the Church having a need for the triangle property. Mrs. Stainback commented that Mr. Koinis should involve the Church in the decision. Mr. Bobbitt advised that his feeling is that the Church would not be likely to ever subdivide the property, and that he would support granting the variance. Mr. Bobbitt commented that if the applicant could get a decision regarding recombining the triangle, and receive the decision in a timely fashion, he would be in support of that as well.

Chairperson Shaw asked if there were any further questions for Mr. Koinis or any further comments from Staff. Mrs. Brummitt asked if the procedures for the inspections could be gone over again. Mr. Hobgood advised that any work that was done and is now concealed would have to be confirmed as having been done to building code. He advised two things could happen. He advised they would need to have an engineer sign off on any of the work that his inspectors did not have the advantage of looking at before it was completed, such as electrical and plumbing. Mr. Hobgood advised that an engineer has diagnostic tools they use to confirm the work was done correctly and to building code. Mr. Hobgood advised that the only way the inspector could look at the work is if sheetrock was removed. Mr. Hobgood advised that would also apply to any footings that had been dug. He advised the depth would have to be identified. Mr. Bobbitt commented that having a third party confirm compliance would probably be the simplest solution versus demolition of the sheetrock. Mr. Bobbitt commented that the inspections department has been around longer than the zoning department and that this case of building without permits just happened to come to the boards attention this time due to a citizen complaint, that there are probably other cases out there that have not been uncovered. Mr. Bobbitt commented that there are probably a lot of people out there doing work without permits. Mr. Darenburg asked about the cost of having an engineer verify the work. Mr. Bobbitt advised that it had been a long time since he had any experience with it, but it would probably be close to \$200 or \$300 per trade to produce an engineer letter. Mrs. Stainback commented that it would keep them from having to tear the work down and redo it. Mr. Koinis advised that the Daniels are aware of the cost of becoming compliant but are also aware that this is the result of their actions.

Chairperson Shaw stated that since there is no one present to speak in opposition the board would now move on. Chairperson Shaw advised the board to refer to their variance check sheet. Chairperson Shaw listed each of the conditions that must be met for granting a variance and asked the board to check true or false after each one. Mrs. Harvin stated that she had a problem marking true to several of the conditions but stated that the alternative was also not fair. Mr. Bobbitt stated that it is difficult to mark some of the conditions but finding an alternative to the issuance of a variance might also be difficult because the Church would probably never agree to offering the land so the applicant could meet the setback. Mr. Bobbitt stated that if they issue the variance and the applicant goes through the process of either demolishing to meet the setback or having an engineer to certify the work, the board has put forth their best effort in reviewing the case and issuing the variance as it should be. Mrs. Harvin asked Mrs. Blount if he carport were taken off, would the setback be met. Mrs. Blount advised they have to meet a 20' side setback. Mr. Care stated that according to the site plan, if the carport were removed it would meet. Mr. Care stated that the carport itself, according to the surveyor, was 20.5'. Mrs. Blount stated that the work would meet the setback if the carport were removed. Mrs. Stainback commented that if they had come to the board asking for a variance before they had done any work, would it have been granted. Mrs. Harvin asked if there was a carport on the house previously. Mr. Cox stated that there was not a carport, but there was a porch. Mrs. Stainback asked if the porch was the same footprint of the carport. Mr. Cox replied that the porch did not extend as far as the carport does. Mr. Cox advised that he built the carport so his parents, who are elderly, would not have to go out into the weather to get in the car. Mrs. Stainback stated

that she felt the board needs to be consistent with their decisions. Chairperson Shaw asked if the carport could have been built to the front of the addition. Mrs. Harvin stated that she had the same question. Mr. Cox advised he would have had to change the roof line in order to build to the front. Chairperson Shaw asked if anyone would like to make a suggestion or make a motion. Mr. Bobbitt stated that maybe they could issue a variance subject to all building codes being followed. He stated that he observed some things in the photographs that concerned him regarding positive drainage that could affect the structure. Mr. Bobbitt advised it looked like grading would need to be done to avert water away from the structure. Mr. Bobbitt asked if they could issue a variance subject to all building codes being followed. Mr. Hobgood advised they could not issue a building permit until zoning permit had been issued. Mrs. Blount advised that zoning regulations have to be met first and is the reason for the variance, because they cannot be met. She advised they had a choice of removing the structure, reducing the structure to meet setback or making application for a variance. Mrs. Harvin asked Mr. Hobgood if he saw any reason that the carport might have to be rebuilt to meet code. Mr. Hobgood advised that he could not make a determination from the photograph. Mr. Bobbitt commented that from the angle of the vehicle in the carport leads him to believe that there is a grading issue. Mr. Hobgood agreed that this does suggest a possible problem. Mr. Bobbitt commented that from the photograph the structure appears to be solidly constructed, but that tells them nothing about the wiring or plumbing or anything else that is on the inside. Chairperson Shaw commented that it would be difficult to address a drainage issue in 4.3'. He advised it could probably be done but that it would be tight. Mr. Bobbitt asked if the variance is issued, what time frame is given for the work to be complete and compliant. Mrs. Blount explained that if the variance is issued and they progress to a building permit, they have to have their first inspection within six months of issue, then they have to have one inspection per year until they obtain their certificate of occupancy. She advised that having to obtain an engineer letter for the work that has been completed should reduce their time to be compliant.

Chairperson Shaw asked if someone would like to make a motion to approve or deny the request. Mr. Bobbitt made a motion to approve the variance with the condition that the applicant meet all building codes. Mr. Bobbitt commented that a third party could look at it and say there is no way to become compliant without moving it. Mr. Bobbitt stated that positive drainage is a huge issue in this case. Mr. Bobbitt stated that the applicant will have to meet that requirement. Mr. Bobbitt stated that he does not have a problem with the setbacks due to the Church. Mr. Bobbitt stated that he did not know how they could avoid cases like this except to educate. Mrs. Harvin stated that she would like to see something noted in this case that it was brought about due to the applicant disregarding building code so that it does not become routine to issue variances in cases like this. Mr. Bobbitt commented that he did not know how it would be done. Mr. Hobgood commented that the inspections department sees cases every day with licensed contractors disregarding regulation. Mr. Bobbitt commented that there are people doing projects off the road where it will never be caught. Mr. Bobbitt commented that he does not believe a licensed contractor would have done a project like this given the location.

Chairperson Shaw stated that a motion to approve has been made and asked if anyone would second. Mrs. Stainback seconded the motion. Chairperson Shaw asked if there were any further discussion. Mr. Bobbitt stated that at this point the board looks to Planning Staff to make sure the codes are enforced in this case. Chairperson Shaw asked that Mr. Bobbitt's comments be added to the motion, that Staff will make sure the codes are enforced in this case. Mr. Bobbitt added that he has faith in Staff.

Chairperson Shaw called for a vote. Those in favor of granting this variance to signify by stating Aye, those in opposition to signify by saying Nay. The motion carried in favor of approving the variance.

Mrs. Blount advised Mr. Koinis to have his clients to make application within the next 30 days.

Chairperson Shaw declared the June 14, 2018 meeting of the Vance County Board of Adjustment closed.