



## BOARD OF ZONING APPEALS

### MINUTES

**Wednesday, November 27, 2024 at 4:00 PM**

Council Chambers, City Hall, 114 North Broad Street, Salem, Virginia 24153

#### 1. Call to Order

A regular meeting of the Board of Zoning Appeals of the City of Salem, Virginia, was called to order at 4:00 PM, in the Council Chambers, City Hall, 114 North Broad Street on Wednesday, November 27, 2024, there being present the following members to wit: Captain Thomas L. Copenhaver, Boardmember Gary L. Eanes, Boardmember Steven M. Belanger, Boardmember Jeffrey A. Zoller, Boardmember Richard A. Tippee with Chairman Copenhaver, presiding; together with Mary Ellen Wines, Executive Secretary and ex officio member of said Board, and Planning & Zoning Administrator, William E. Simpson Jr., Assistant Director of Community Development and City Engineer; Maxwell S. Dillon, Planner; and Jim H. Guynn, Jr., City Attorney; and the following business was transacted:

Captain Copenhaver reported that this date, place, and time had been set in order for the Board to hold a public meeting.

#### 2. Pledge of Allegiance

#### 3. New Business

##### A. **Variance Request**

Hold public hearing to consider the request of Jason N. and Jennifer C. Fountain, property owners, for a variance from Section 106-202.3(B)(2) of the City of Salem Zoning Ordinance pertaining to site development regulations, for the property located at 621 North Broad Street, Tax Map # 70 - 2 - 1. Section 106-202.3(B)(2) states that accessory structures must be located behind the rear building line of the principal structure. Therefore, the petitioners are requesting a variance to construct an inground pool in the side yard.

Hold the public hearing to consider the request of Jason Ann and Jennifer C Fountain. Property owners for variance from section 106202.3 B. Two of the city of Salem zoning ordinance pertaining to site development regulations for the property. Located

at 621 N Broad St. Tax map #70-2-1 section 106202.3 B2 states that accessory structures must be located behind the rear building line of the principal structure. Therefore, the petitioners are requesting a variance to construct an in ground pool in the side yard.

Captain Copenhaver: Alright, should anyone disagree with the board's decision today, you have the right to appeal to the Circuit Court and the city of Salem. You must exercise your right to appeal no later than 30 days following the board's decision by following a petition to the Circuit Court specifying the grounds on which you are agree. Have all members of the both have the. Excuse me, of all members of the board had an opportunity to review the correspondence associated with this matter.

Board response: All Ayes

Captain Copenhaver opened the public hearing at 4:02p.m.

Captain Copenhaver: Has the Secretary received any correspondence. Or calls regarding this matter.

Ms. Wines: No, Sir.

Captain Copenhaver: Thank you, would the petitioner or the representative, please approach and present your case. Hi would you please state your name, address and relationship to the hearing?

Jennifer Fountain: 621 N Broad St. Salem, VA. I'm the worst representative to have to come here. Our architect is stuck in traffic and my husband was melting the cheese in the broccoli and rice casserole because we forgot about this meeting. That doesn't mean that we don't want a pool. So I don't know if you all have any questions? Our thoughts on it is the way that our house is laid out, our backyard is going to be behind this accessory structure which is our garage right now, which is where our garden is. Tony probably is familiar as to where that is. You can't see the pool from the main house. And it's also right there on a pretty busy corner between Broad and Maccie. So what we would like and what we think is sort of the ideal place for the pool is behind the garage. Which is the. garage right now, but will become an accessory apartment most likely for my mom. Put the pool there so that our house from what will be the new living room and screened in porch you can see. This is all from my grandkids. Couldn't afford it when we had kids. So be able to see grandkids in the pool as a safety concern, so is there any questions. I feel like Dolly would have done a better job.

Captain Copenhaver: Are there any questions? Any questions from the members of the board?

Captain Copenhaver: To summarize this adds privacy and then puts the pool within view for safety.

Mrs. Fountain: Yeah, privacy, privacy and safety not only for our family and children, but I think too, for the public, just because otherwise it is right in view. There's only going to be a fence separating the pool from neighborhood kids or people driving by and we wouldn't be able to have eyes on it as easily as we would if it's able to be in what's called the side yard.

Captain Copenhaver: Thank you, you may return to your seat. Is there anyone else who would like to speak on this matter? Hearing none the public portion of this hearing is hereby closed at 4:04p.m. Are there any other further questions or discussions about members of the board? Could I have a motion please?

Boardmember Belanger: So moved.

Boardmember Eanes: 2nd.

Roll call vote: All ayes.

Captain Copenhaver: The variance from the terms of the zoning ordinance requested in the application of the petitioner is hereby granted in accordance with the application presented at this meeting. The building official is therefore authorized and directed to issue a permit to the petitioner for the request to construct in accordance with the submitted application. The Secretary of the Board of Zoning Appeals is hereby instructed to certify a copy of this order to the City of Salem and to the building official of City of Salem.

#### **B. Appeal Request**

Hold public hearing to consider an application from Mikel Leo Trenor, property owner, appealing the decision from the Zoning Administrator dated September 5, 2024, which cited that 1374 Texas Street (formerly 1300 block) was in violation of the City of Salem Zoning Ordinance as follows: Chapter 106 Zoning, Article IV Development Standards, Sections 106-400 Site Plan Review and 106-404 Construction Standards.

Captain Copenhaver: I'm gonna repeat what I had stated earlier. Should anyone disagree with the board's decision today, you have the right to appeal to the Circuit Court of the City of Salem. You must exercise your right to appeal no later than 30 days following the board's decision by filing a petition to the Circuit Court specifying the grounds on which you are aggrieved. Have the members of the board had an opportunity to review the correspondence associated with this matter?

All Ayes

Captain Copenhaver: Has the secretary received any correspondence or calls regarding this matter?

Ms. Wines: No, Sir.

Captain Copenhaver: Thank you. Would counsel please define the preponderance of the evidence, and the burden of proof required to revoke the decision of the administrative officer?

Mr. Guynn: Yes, Mr. Chairman and under Virginia law the preponderance of the evidence would be basically more likely than not. If you think of it in the scales of justice format is that one side is, it doesn't have to be a specific amount, but just one side is above the other.

Captain Copenhaver: Thank you. All right, would the petitioner or their representative approach and please present your case. Would you please state your name, address and relationship to the matter before the board today?

Mr. Trenor: My name is Mikel Leo Trenor. I live at 309 Fort Lewis Boulevard here in Salem, though, we're discussing, I don't know what that address is.

Ms. Wines: 1374 Texas Street.

Mr. Trenor: 1374 yes.

Captain Copenhaver: Thank you and your relationship?

Mr. Trenor: I'm the property owner.

Captain Copenhaver: And the man that is with you today.

Mr. Fowler: My name is David Fowler. I reside in Botetourt Virginia. I'm a small business owner there. I do grading, excavating, and site work.

Mr. Trenor: We got a little of confusion on this matter. This is a piece of property that we've used for overrun of trailers. Then we'll get several shipments of trucks in that we upfit. We rented the property from VDOT over 10 years ago and then we was able to purchase that piece of property several years ago. But we've been using that for the longest time for the same use we're using it for now. Then it was gravel. But the wiregrass is crazy. We would maintain it twice a year spraying weed killer on it. I don't think the weed killer is a good as it used to be. But we we were just so busy last year that we had the lot fully full. Had no place to put any of the items somewhere else so I could spray the weed killer on it. So we probably went about nine months and didn't spray it so the weeds did overtake it pretty well. So we got caught up with our business and then this paperwork said we graded it. Well, we didn't grade it. He had a power rake pulled up the wiregrass and put down fresh stone. So we feel like we were just maintaining it. And I've got some pictures. So we did that, put down the first gravel sprayed it and the grass is almost back as strong as was in two months. So it's not like we haven't been maintaining it, haven't been using it. I think, which it says if you hadn't been maintaining it in two years it's an issue. But we just feel like we've

been maintaining it. So we want to continue to use it like we have been. If we need to let the wiregrass grow back and park stuff on it. But what I was told if we let the wiregrass grow back we can never use the property. That just seems unfair to me. And then, Mr. Fowler, he can tell you when he used the power rake about the gravel that was under it. It's not like we just dumped gravel over fresh grass. It's been used that way for the longest time. We really need that piece of property to use it as we're using it. We just felt like we was making the look better.

Captain Copenhaver: Can you describe for me how those what those lots are starting at your garage and then coming up towards Salem Stadium. What kind of surface they are and about the distances?

Mr. Trenor: Well, I guess it was eight or nine years ago. You know, we had our main building on 419 and the warehouse and another building up on top. That was all gravel and had been filled in over the years. It used to be a big gully and all that stuff. So we had to put a drainage pipe through to take the water and all that kind of stuff. But all that's gravel. But we did pave around the new buildings. So from there at 1415, is that right? No 1382 I'm sorry. 1382 Texas Street. That's all gravel and that building was built maybe eight years ago, and it was gravel all the way up to what we're discussing now. And yeah, I mean, you just gotta really stay on top of that wire grass. And then the piece on 419 probably did have wire grass going through it and we just maintained it. Put down some fresh crusher run and rolled it in. And I think it looks nice. I don't know why this piece is any different than the other ones we've been working on.

Captain Copenhaver: Any questions?

Mr. Fowler: So this is the property to the very end where Texas Street and the Turnpike come together. So it's probably 100 feet, 150 feet just pure grass.

Mr. Trenor: Yeah, that's never been gravel, but we still park stuff on it. There are some pictures. We got a really big we had like 6 or 7 truckloads of trucks come in back winter last year and they sat there until spring of this year. We had no place to park them which was a blessing. We've gotten caught up so we don't have all that excess stuff sitting around. So that's why we was able to maintain just the gravel part. But we didn't go into the grass part you're talking about. You know, when he power raked it that he just went to the part where the gravel has been there forever. We didn't go any further than that.

Boardmember Zoller: The gravel was placed there by the highway department before you leased the land?

Mr. Trenor: That's something we did right when we leased it. Because we could use it. So they said we use where we wanted to. So we graveled that area. It's probably 15 years ago when we leased it. And we were spraying, like, twice a year. But like I was discussing, you know, there's just so many vehicles that we had no place to move

them. To get in there and really spray that area, right? But it was amazing how fast it grew in nine months. It certainly wasn't two years.

Boardmember Zoller: So why is this different than the other gravel areas he's got around the building.

Ms. Wines: The other graveled areas and that I can only speak to what I know since I became zoning administrator, have been historically maintained to my knowledge.

This area was allowed to, as you can see in the pictures, to have the grass grow back in and pretty much negate the gravel. Obviously if you rake it and dig down there's going to be some rock. But historically, our department has considered new development any man made change, which is what it's defined as in the zoning ordinance. So when you go back to grass and it stays, it's non gravel for two years or longer or whatever it's grandfathered, but the two year period negates that. So now it's like it's starting fresh. It's new development and we have done this throughout the city on various lots. We're involved in a couple of those situations right now on other lots. Similar to this, but not quite similar. Walmart, when they redid their parking lot, they dug down to the dirt to get back to the natural state before they repaved and that was considered new development and that's why they had to install all the landscaping that went along with it. So it's the interpretation of our office historically that you can maintain it as is, but if you stop maintaining and allow grass to grow back up in it. Then it's considered new development.

Captain Copenhaver: Can I have a further follow on to that? So to comply now you would need to concrete it or pave it so you would have a section of paved near the garage, a big section of gravel and then a section of paved at the very end.

Ms. Wines: That would be correct. Yes, Sir. The legal, nonconforming, or the grandfathering of a site that that's the only way to affect change is once it's ceases for two years or longer than you can make whatever that area that has ceased brought up to compliance.

Mr. Trenor: The only thing I had to add to that was is it certainly has not been two years since it has not been maintained. I got a couple pictures would y'all mind looking at them?

Captain Copenhaver: What format are the pictures?

Mr. Trenor: I don't know what format they are. They are hard copies and I took these last week. And what is this showing is, you know, we performed this work in September. It's not even grass growing, and look how fast that grass is growing back in that area. So to say have been maintained in two years. I mean it was maintained less than a year ago. But I mean it grows fast.

Boardmember Rippee: How many times has Mr. Fowler raked it? Was it just a one

time deal?

Mr. Trenor: Just the one time.

Boardmember Rippee: And when was that?

Mr. Trenor: Labor Day weekend.

Captain Copenhaver: Would Mr. Fowler be willing to answer a few questions? Can you kind of describe for us what you found? What you did, and once you got the grass what was there as well?

Mr. Fowler: This process started when Mike asked me about this lot. He said weeds had kind of grown up in a gravel lot. He wanted to know what I would do about it. So, I met him one morning and we looked at it. I just took my boot and kicked around a little bit. You know we, I mean there was a gravel base under that weedy growth, so you know, I said the best thing that I would know to do is to let me bring my power rake up here. I can, for lack of better terminology, churn that material up and it refreshes the gravel that's there. It's a spiked roller that's hydraulically driven on a skidsteer. And what it does essentially it just it sweeps that weedy growth off the top of the gravel and you just move it to the side and then just refresh it. I do it out at our farm all the time. We've got some other properties that we park equipment on that I'll do the same thing. The weeds, if you will. Or what I swept off the top of the gravel I loaded that onto a dump truck and it did amount to about half a load almost a load and I just hauled it off site. You know it's essentially just, it's an organic matter. But it leaves the majority of the gravel there on site and we just refreshed it with as I think right at 100 tons of new stone.

Captain Copenhaver: You did you find when you got the crab grass up

Mr. Fowler: There was what looked like a 57 stone.

Boardmember Rippee: Do you have a photo of it?

Mr. Trenor: I do. It's in the packet. Yeah we come to it quick.

Boardmember Bellanger: Were you contacted after their interaction with the zoning administrators? Is that when you were contacted to do this? It was after Labor Day correct? You did it on Labor Day?

Mr. Trenor: Yeah, we did it Labor Day weekend.

Mr. Fowler: Yes, I worked on it Saturday.

Boardmember Bellanger: So what prompted you to contact this gentleman to do that? Was it the interaction with the zoning?

Mr. Trenor: No. We just decided to maintain it. No, we didn't hear zoning until after we did it. We got a registered letter said we graded it and graveled it. Then we had several more interactions afterwards. And I said well. I'll just let the wiregrass grow back. And I was told if you do that you can't ever use the property again. And that's not fair.

Boardmember Rippee: How often are you going to have to do this to maintain and then it just grows back?

Mr. Trenor: Well, I'm gonna have to stay more on top of that weed killer. Used to be when we first started doing it, you could spray that weed killer once a year. I don't know but weed killer is not as good as it used to be. And I'm sure it's hazardous to your health and you see all those ads on TV that that stuff causes cancer and all that stuff. So it's not near as good as it used to be. And we would have maintained it more like we did the rest of the lots, but it was just covered with trucks that we were waiting to upfit. That's the only reason that we didn't get it twice that year. It's probably more like 9 months. I don't have a picture but if you look at the picture a year before that it didn't have that wiregrass on it.

Boardmember Rippee: So this is going to be an ongoing project.

Mr. Trenor: It always is. I mean the 419 property, all the gravel at the 1415. There's grass going up in it now. That's always the problem with gravel. You have to keep spraying it and spraying it to maintain that growth.

Boardmember Rippee: So, there's some question about site plan?

Ms. Wines: Yes sir. Whenever you develop property, you have to submit a site plan in accordance with the zoning ordinance and parking for vehicles is only allowed by asphalt or concrete, unless it's a special circumstance and you have to install landscaping along with that. And then depending on the size, there may be other things like stormwater that come into to play. But site plans are required for any new development.

Boardmember Rippee: So in a perfect world and Mr. Trenor raked the gravel he got up the grassy patches, crab grass. He should provided the site plan of what he was doing?

Ms. Wines: He should have submitted a site plan before he did it. So we could bring the area up to compliance with today's code. Yes, Sir.

Boardmember Rippee: So if he would have submitted this site plan said this is what I'm doing. Would it have been approved?

Ms. Wines: Not for the state that it's in currently. No, Sir. There are landscaping

requirements, there are surface treatments such as asphalt or concrete that's required. Currently in the zoning ordinance, just a gravel lot for parking vehicles is not allowed.

Mr. Trenor: But I'm sorry. It is. If it's been used that way all along.

Ms. Wines: That's a different scenario. This is new development, which is what this is because it was allowed to go back to grass and that's why we're here.

Mr. Trenor: That's exactly why we are here. You say it's new and I say it's not.

Ms. Wines: Well, according to the pictures and the the information that we could find, as you can see in the packet, back to 2019. It appears that the entire area was grass 2019, 2020, and 2022, so.

Boardmember Bellanger: If they have to use blacktop or concrete for this property will they have to do like curbing and stuff like that as well?

Ms. Wines: That will be part of the site plan process. I don't know that curbing itself is required, but there will be perimeter landscaping that will be.

Boardmember Bellanger: With trees and all this stuff with it as required by the ordinance.

Ms. Wines: Yes, Sir. And we would determined through the site plan process about the curb and gutter.

Boardmember Rippee: So when was the City made aware that this particular parcel was being raked if it's sat there for a couple of years. When did the City get involved?

Ms. Wines: Yes, Sir, it was September 5th, I believe was the exact date and you can see from the pictures the before and after that amount of gravel if you look at the street views, that was very noticeable to our enforcement officer. Which this is part of his job; to drive around and look for things that are being developed or things that are not in compliance and that change from that grass to that gravel was very apparent as you drove by.

Boardmember Rippee: So Mr. Trenor has owned the property since 2021. So there was nothing up until what August of this year when the compliance officer drove by and saw this?

Ms. Wines: There was no gravel there. There were vehicles there. We can't enforce everything all the time. We only have one enforcement officer but there wasn't gravel, it was grass so. Grass, obviously is you can have grass on your property. So there was nothing noticeable until the gravel was laid down.

Boardmember Zoller: Can you temporarily park vehicles on a grass field?

Ms. Wines: Depending on the situation. But in a business aspect where your parking vehicles for sale or to work on them or in a business aspect that it's required to be parking with asphalt or concrete. That's new development. Like we said, on the gravel areas that he is fully maintained. Those aren't a question. We aren't questioning those at all because they have been maintained. It was just this area that was allowed to go back to grass that was the issue.

Mr. Dillon: And just to clarify, I think Mary Ellen's referring to the pictures on page 23 of the packet. The bottom would be from June of this year. Which you can see the grassy area at the top would be from September of this year where you can see the gravel improvement.

Boardmember Rippee: Was Mr. Trenor given a warning of this?

Ms. Wines: We found it that day and we sent a notice. We've had previous discussions about gravel from other properties, but no, we didn't give a warning notice. This is the kind of notice when we find violations. We typically send a notice of violation out.

Boardmember Rippee: But you got pictures from June.

Ms. Wines: That's from Google Street View. We didn't take it. We weren't watching. Once we saw the violation, we looked back historically on the aerial photographs and Google street view and whatever options we have available.

Captain Copenhaver: One question for the City Engineer, just from a drainage standpoint, is there an advantage to the gravel and the water that travels through the gravel versus a concrete or asphalt lot where it produces runoff?

Mr. Simpson: There can be, but it needs to be an engineered system in order to qualify for a stormwater containment facility. Gravel does help filter when you use gravel in an infiltration. Pit and things like that. Grass, however, is the the best source because it allows more penetration into the ground. But when grave gets used or asphalt or something like that then you do get an increase in runoff from that type of development. And our ordinance does say that any increase in runoff has to be detained on site.

Mr. Trenor: And my question to that would be and I asked Mary Ellen about it. We never had an issue and nobody said a word. We've been using that forever, I said. Well, I'll just let the wiregrass take it back over. And I was told that you can't continue to use it. You can't use the property at all. When I'll let the wiregrass, because it's close is taking back over anyhow. I'll just let it grow back to the way it was and continue to use it. But to say I can't use this property is just not fair I don't think

because I've been using it all along just like that.

Ms. Wines: We would that question, we'd have to go back and see when you started using it versus what the code said at that time to see if parking on the grass would have been considered a violation. Our zoning ordinance changed in 05. Before 05 we did not have a stipulation. I don't think I'd have to go back and look at the previous zoning ordinance. So if it if you parked on it before 05 on grass and you've continually parked on it. Which there's a lot of pictures that show parking. I can't make a determination right now, but.

Mr. Trenor: And it changes all the time. Like right now there's nothing on it.

Ms. Wines: But you can use the property, you just have to meet the development standards that's required. We're not telling you can't use it. We're just telling you you have to meet those requirements in order to use it.

Mr. Trenor: Yeah, as far as paving and all and that's way too much. And we've been using it all along. And the two year deal is not right. I mean, it's been maintained. We just had like a nine month skip that we didn't. And if I let any of that other property go that long just like that in nine months. I mean, I've just showed you the pictures that we took. There's only been two months and look at all the growth has come back in it. I mean I've got to spray it more because the one thing, the chemicals aren't as good as they used to be. But it was also we're blessed, I think the city was too was really busy.

Captain Copenhaver: Any other questions of either of them? If you can state your name and your address and relationship to the matter.

Nathan Trenor: Nathan Turner, I live at 852 Texas Hollow Rd. Salem. Virginia, I guess we still talking about the same property though his son. I work there. I guess I just want to point out the trailer lot that we're talking about on 419 that we still will be maintained. It's easier to maintain that because we have a aisle where people can drive through in and out to look at the trailers. And we have room to move the trailers around, be able to spray where like weeds and crab grass is growing up. Where in this instance it was difficult because trucks were parked everywhere. There was nowhere to move any trucks, so that's why it was nine months. I just wanted to add that into the case. That's all I have to say.

Boardmember Zoller: What are the options? I mean if we reject it, then he'd have if he wanted to use it, he'd have to put asphalt down. He'd have to go through the development process. Is that right?

Ms. Wines: Yes, Sir.

Boardmember Zoller: If we approve or are we approving a variance or or what?

Ms. Wines: You are either affirming my decision as the administrator that the violation notice was correct and he is in violation. Or you are disagreeing and saying that it shouldn't be considered new development and that he could continue as is.

Mr. Trenor: We agree on that, we just have a big difference in a judgement call.

Captain Copenhaver: Are there any other questions for the applicant? Anything else you'd like to present to us?

Mr. Trenor: No.

Captain Copenhaver: You may return to your seat. Is there anyone else that would like to speak on this matter today?

Mr. Trenor: This is always kind of a big thing to me. You know when you do something, you're trying to improve your property. If it doesn't hurt anything or anybody. I think we needed negotiate that more than we need to just like hammer it. The property looks better. There's no runoff issues. Nothing really changed. As you can see, nobody's here complaining about it. It's going to be used like it always has for the past 20 years. I just don't understand why we're even here to be honest with you.

Captain Copenhaver: Thank you. All right. If there is noone else here to speak the public portion of the hearing is hereby closed at 4:33p.m. Are there any other questions or discussions by the board.

Boardmember Zoller: I just have one more question. I mean, I may agree with her decision, but I may not agree that they should have to do the development thing. So is an option that he could. Let's say let's say I agree with your decision. Is there an option he could come back and work on a deal with the city where he doesn't have to do all this stuff. Does that exist? Or, you know, I'm saying like, can you get a variance from the zoning thing so you don't have to put down the asphalt and do all that?

Ms. Wines: Apply for a variance, yes sir, from anything in the zoning ordinance that's his option, yes.

Mr. Trenor: Can I speak again?

Captain Copenhaver: Yes, come on back up to the mic.

Mr. Trenor: Absolutely. I mean, I'll be willing to work with almost anybody. If there's a, it's probably not a good word, but a tweener like what you're talking about. I wouldn't have any problem planting a few trees around there. Whichever, as long as it doesn't get real crazy expensive. But not have to do all the paving, and this is so expensive for just a storage lot that we've already used. But yeah, I don't have a problem meeting somewhere in between. If that's what you're talking about. I think that's that's what you was asking, right?

Boardmember Zoller: Yeah. Yeah, that's it.

Boardmember Eanes: I guess the whole thing is that it is a timing issue. The city feels like it was abandoned for two years and the property owner says it was nine months. So that's the whole issue there.

Captain Copenhaver: Any other discussion ? Hearing none, could I have a motion to either grant or deny the appeal.

Boardmember Bellanger: So moved.

Captain Copenhaver: Which one?

Boardmember Bellanger: To grant it.

Captain Copenhaver: We have a motion to grant the appeal do I have a second?

Boardmember Eanes: I'll second.

Roll call vote: All Ayes

Captain Copenhaver: The appeal of the decision of the zoning administrator, dated 5 September 2004 is hereby granted in accordance with the application presented at this meeting. The Secretary of the Board of Zoning Appeals is hereby instructed to certify a copy of this order to the City of Salem and to the building official for the City of Salem.

#### **4. Adjournment**

Captain Copenhaver: This meeting of the Board of Zoning Appeals is hereby adjourned at 4:37p.m.