

BOARD OF ZONING APPEALS MEETING

May 19, 2016

Members Present

Gus Dyer (entered at 4:03)
Michael Nicholas
Dolores Reynolds
John Hiltzheimer
Philip Campbell

Members Absent

Dawn Witter
Ann Sasser Evans

Staff

Ken Gillie
Tracie Lancaster
Alan Spencer

Vice-Chairman Nicholas called the meeting to order at 4:00 p.m.

I. ITEMS FOR PUBLIC HEARING

1. *Appeal Application Number PLAZ20160000130, filed by Tom Powers Sr, requesting to appeal the determination of the Zoning Administrator regarding Article 10., Section P., Item 3.a. of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 414 Park Ave, otherwise known as Grid 0716, Block 003, Parcel 000054, of the City of Danville, Virginia, Zoning Map. The applicant is appealing the determination that only one business directory sign is permitted by Code.*

Mr. Nicholas opened the Public Hearing.

Present on behalf of the request was Mr. Tom Powers, from Powers Signs. The question is that the drawing shows that you can have two signs; one per entrance correct Mr. Gillie?

Mr. Gillie stated the chart says you can have two and the verbiage says that you can have one. So as the Zoning Administrator I had to make a determination as to which. I went with the verbiage not the chart. There is a discrepancy and Mr. Powers is correct to point that out to us. So he is appealing that determination.

Mr. Nicholas stated alright where is the chart and where is the verbiage.

Mr. Gillie stated the Zoning Code should have been attached. I'm not sure why it wasn't but I'm trying to pull it up right now just in case you need to see it.

Mr. Nicholas stated this is not a factors case right. We are not dealing with the five factors.

Mr. Gillie stated no.

Mr. Nicholas stated because he is appealing your ruling. So there is a discrepancy between the chart and the verbiage.

Mr. Gillie stated under section P of the Zoning Code.

Mr. Nicholas stated is it in our packets?

Mr. Gillie stated it is not I thought it was. I'm sorry that packet when out when I was not here. The verbiage states that you can have one, and I can pass this around, but the chart says you can have two, one per entrance. It is a discrepancy this is the only portion of the Zoning Code that has that.

Mr. Dyer entered at 4:03PM and took over the meeting.

Mr. Nicholas stated my question is, is this chart part of Code?

Mr. Gillie stated yes.

Mr. Nicholas stated alright so the written part of the Code and the chart that is still in the code says two different things.

Mr. Gillie stated correct.

Mr. Nicholas stated why?

Mr. Gillie stated we don't know. It will be corrected shortly. The Code says one thing and the chart says something different. It's the only part of it that it does.

Mr. Nicholas stated well this is no bearing here but in law written words mean more than numbers.

Mr. Gillie stated that's why I went with the written word. But he's appealing that because in his defense depending on which part you look at it could be confusing.

Mr. Powers stated can I ask a question then? I understand that there are no facts and anything else that I present this is the only question that I have.

Mr. Nicholas stated you don't have to prove a hardship or any of the five factors because you are not asking for a variance. You want to follow the Code you are asking us to say what the Code is.

Mr. Dyer stated I think and you can correct me with this because this is legal precedent, if there is a conflict don't you go with the least strict of the two.

Mr. Nicholas stated it all depends.

Mr. Spencer stated it's up for interpretation. I think either way is probably right.

Mrs. Reynolds stated if there is a conflict it should go with the applicant with the tax payer, with the citizen.

Mr. Dyer stated we all know when a contract is written and there is a dispute in the contract that goes against the person that wrote the contract. Since the City is the person who wrote this document then they should be responsible.

Mr. Nicholas stated I agree with you that this is something we should do.

Mr. Gillie stated that's why he is here.

Mr. Nicholas stated he is relying on the Code in good faith and the Code says two different things.

Mr. Powers stated these people are here from Centra.

Mr. Dyer stated if we have questions for them we can ask them outside of the Public Hearing.

Mr. Dyer closed the Public Hearing.

Mr. Nicholas made a motion to grant the appeal and the decision of the Zoning Administrator be overturned. Mr. Hiltzheimer seconded the motion. The motion was approved by a 5-0 vote.

Mr. Nicholas stated I say we fix it now.

Mr. Gillie stated we are going to we have it advertised with Planning Commission for changes.

Mr. Dyer stated but which way are you going to fix it?

Mr. Gillie stated we will probably go to the single. To the actual verbiage because the rest of the code has a one even the rest of the charts say one. The one per entrance we will probably take that wording per entrance out so it's consistent throughout. But that doesn't impact him at this point because he pointed out hey it's in two different spots.

Mr. Dyer stated it just seems to me that this is so clear cut that you need to direct people where to go.

Mr. Powers stated is this closed can I make a suggestion?

Mr. Dyer stated yes were done.

Mr. Powers stated I would understand if there was a one acre lot but I think you probably ought to figure in the size of the lot. That it might be necessary to have more than one. This one being six acres I was thinking since you're going to rewrite it. You have got the 60,000 square feet threshold for different types of rounds signage so it's probably not bad idea to use the same level.

Mr. Gillie stated okay when we open it up you're going to have a chance to whack away at it.

Mr. Dyer stated will there be public hearings? Will you be able to make comments? You are welcome to come to the Public Hearing.

Mr. Gillie stated he will know when they are.

Mr. Powers stated I know they think since I am in the sign business its like the wolf doing the security on the hen house but I think there are something's you know you can listen to my point of view on.

Mr. Dyer stated you know more about it then we do.

Mr. Gillie stated we listened last time, we didn't always agree, but we listened.

2. *Variance Application Number PLVAR20160000127, filed by River District Lofts, LLC, requesting a variance from Article 3.K: Section H., Item 4.c. and Article 8., Section E., Item 16., of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 549 High St, otherwise known as Grid 2709, Block 016, Parcel 000001, of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow for the installation of fewer off-street parking spaces than required by Code.*

Present to speak on behalf of this request was Corrie Teague, Economic Development. Ms. Teague stated I am here on behalf of the developer who was not able to come today. You may be familiar with the properties on the corner of Floyd and High Street. 549 High Street it's actually the combination of two buildings one of which that had collapsed about a year ago. The developer is working very closely with the Department of Historical Resources and the Park Service to acquire tax credits for this project which will end up being 23 apartments in the building that is still standing. Parking and courtyard space with the interior of what is the collapsed space. Part of DHR requirements is that they maintain what is left of the exterior wall of the collapsed building; which limits how many parking spaces they can put within that particular lot. They don't have any additional space surrounding the exterior of that parcel. So according to Code I believe they are required to have 39 spaces according to the numbers of units and then the number of bedrooms per unit. I believe they can only fit I believe 25 parking spaces within that area. So they are asking for a variance on that.

Mr. Dyer stated I have a question but it won't be for you. If we need to ask you some question we will go back to you.

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated the zoning on this is Central Business District?

Mr. Gillie stated yes.

Mr. Dyer stated I didn't think you were required to have any parking spaces in Central Business?

Mr. Gillie stated you do under very few occurrences and this is one of those few occurrences.

Mr. Dyer stated can you explain what the other occurrences are?

Mr. Gillie stated on a the standard Central Business if you have commercial on the first floor and residential above it after 20,000 square feet you have to meet a limited threshold of parking. Since this doesn't have commercial on the first floor than it is strictly apartments it doesn't get that exemption and it has to meet the entire requirement under article 8.

Mr. Dyer stated so like the old Hotel Danville do they have off street parking?

Mr. Gillie stated no they do not. The conversions that we have had downtown already have the commercial on the first floor by the time you knock out the 20,000 square feet that takes up the majority of the building. They would have limited or shared off-site parking in this case. If we took out the 20,000 square feet the space that they are providing would be sufficient. Because they don't have commercial on the first floor they don't get that wavier.

Mr. Dyer stated so actually if they had a more intensive use of this property then they wouldn't have to have parking on it.

Mr. Gillie stated exactly that's why you will notice that staff agreed that they meet all the criteria it's kind of a anomaly in the Code.

Mr. Dyer stated right since we are at that point when the Code was adopted you had a bunch of Public Hearings. Quite a few of them and I was the only person that showed up and I had quite a few comments about the Code. I was always told we know the Code is not perfect when we come across a problem we will address it. Is that fair assessment?

Mr. Gillie stated that's a fair assessment and we are doing that now.

Mr. Dyer stated but we are not changing the code right we are just granting a variance at this point.

Mr. Gillie stated at this point we are granting a variance.

Mr. Dyer stated so don't you think this is a issue that needs to go before Planning Commission and Council where they would actually change the Code? Or is this a stop gap measure to let this project go forward so we don't have to wait for that to happen? What's the process?

Mr. Gillie stated both. This a stop gap to let this project go forward. Also, notice that the Code says it is such an occurring nature. This is not a recurring situation it's kind of an odd case and the majority of the cases downtown that are Central Business have commercial. That kicks in that wavier and then they meet those requirements this one they are not. Now could we go in a tweak that part? Yes, and we are looking at doing

that. But it doesn't happen often enough for us to feel that it's necessary at this point to change the code.

Mr. Nicholas made a motion to approve Variance Application PLVAR20160000127. Mr. Campbell seconded the motion. The motion was approved by a 5-0 vote.

II. APPROVAL OF MINUTES

The April 21, 2016 minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie stated as of right now we don't have any cases scheduled for next month but they have until tomorrow at 5'oclock. I haven't spoken with anybody about turning anything in. So I'm an anticipating a meeting but I will let you know but it looks like you might have a month off.

With no further business, the meeting adjourned at 4:15 p.m.

APPROVED