

BOARD OF ZONING APPEALS MEETING
August 19, 2010

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Snipes	Mr. Campbell	Ken Gillie
Mr. Dyer		Christy Taylor
Mrs. Evans		Renee Blair
Mrs. Rich		Alan Spencer

Chairman Snipes called the meeting to order at 10:00 a.m.

Chairman Snipes announced that Public Hearing Item 1 would be heard after Items 2 and 3.

I. ITEMS FOR PUBLIC HEARING

Item 2. Variance Application Number PLVAR2010000073, filed by Nashwan M Okam, requesting a variance from Article 7: Section B, Item 2, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 603 Jefferson Street, otherwise known as Grid 2717, Block 026, Parcel 000003 of the City of Danville Virginia, Zoning Map. The applicant is requesting a variance to expand the floor area of a legal non-conforming use (convenience store) at 603 Jefferson Street.

Fifty-seven (57) notices were mailed to property owners within three hundred feet; Twelve (12) respondents were unopposed; Two (2) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Nashwan Okam, owner. Mr. Okam stated I have two (2) stores and one (1) of them is closed and I would like to open both of them. I would like to fix them both.

Mr. Dyer stated it says that this is a three (3) suite building and he is attempting to move into one (1) of the vacant spots.

Mr. Dyer asked is there any way we can go ahead and say that all three (3) suites can be used at this time?

Mr. Gillie responded we advertised it as floor area of a legal non-conforming use and we did not specify in the advertisement what the floor area was, so it is up to the Board.

Mr. Dyer stated this building has been there for probably one-hundred (100) years and obviously nobody in this neighborhood will all of a sudden realize there is a commercial use in the midst. I realize what the City is attempting to do by taking land that is historical with commercial use and zoning it, in this case Old-Town Residential. They are trying to weed out some of the non-conforming uses. The fact of the matter is that this building was built for

commercial use and has been used as commercial and everybody is aware of it. I do not see a problem with this. Planning Staff is recognizing that in fact it does meet all four (4) criteria.

Close the Public Hearing.

Mr. Dyer made a motion to approve the request for Variance Application PLVAR2010000073. Mrs. Rich seconded the motion. The motion was approved by a 4-0 vote.

Item 3. Variance Application Number PLVAR2010000074, filed by Victor Millner on behalf of Louise Conway, requesting a variance from Article 3C: Section F, Item 2a(3) of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 410 Maple Lane, otherwise known as Grid 1714, Block 010, Parcel 000004 of the City of Danville Virginia, Zoning Map. The applicant is requesting a variance construct an enclosed rear deck 7.1' into the rear yard creating a 22.9' rear yard setback where 30' is required.

Twenty-nine (29) notices were mailed to property owners within three hundred feet; Fourteen (14) respondents were unopposed; One (1) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Attorney Victor Millner. Mr. Millner stated I represent Mrs. Conway and her daughter Helen Bledsoe. Mrs. Conway lives in the house and is in fact the life tenant. Her daughter owns the remainder of simple interest in the property. Mrs. Conway has lived in it since approximately 2004. Before I proceed I would like to pass around some pictures of the property that is being affected by this decision.

Mr. Millner asked are we being recorded?

Mr. Gillie responded yes.

Mr. Millner stated the first (1st) picture I am passing is from the porch or the deck. I would point out to all of you that the construction that is the subject of this hearing is in place. It remains only to put the ceiling into the screened in porch, everything else has been constructed before it was stopped by the Code compliance people. Any event, the first (1st) picture I am passing is a picture taken from Mrs. Conway's deck looking north to her next door neighbor, Mr. Michael Guanzon. It shows the deck and screened in porch on his house, which is less than seventy-five (75) square feet from the subject property. The next picture I show is looking from her other next door neighbor, Mr. Hile who is here with us this morning. Mr. Hile is her next door neighbor on the south side of Maple Lane. This is the view he would have from his house on the second (2nd) picture. The third (3rd) and fourth (4th) pictures are taken from Mt. View Avenue, which is the street that runs approximately one-hundred (100) yards to the east of Mrs. Conway's house and of course is mentioned in the report. This is the view in these two (2) pictures. The white house, which is owned by Mr. and Mrs. Crawford who are her immediate next door neighbors if you will look at the diagram, they are directly behind her. This is the view from approximately where their house is, pictures three (3) and four (4). The fifth (5th) photograph is of a fur tree which looks like a spruce tree, which in fact it is a spruce tree, shows the view from the deck of Mrs. Conway's house. From the structure it is virtually impossible to

see anything else from it. The next picture is from her property looking toward Mr. Guanzon, the next door neighbor to the North. The next picture is standing at Maple Lane looking down between Mr. Guanzon's house and Mrs. Conway's house showing the side porch on her house, as well as the rear deck on Mr. Guanzon's house. The next photograph is again taken from the porch that is in controversy looking towards Mt. View Avenue and the Crawford's house. The next two (2) pictures are taken from below the porch immediately looking up at it. They show the screen porch on the top and the under pinning below it on the stated structure. The last picture is one standing in the back yard below the deck which shows the wrought iron railing around the screen and looking across the grassy yard towards Mr. Hile's house. Ladies and gentlemen, I intend to ask Mrs. Conway, her daughter Helen, and Mr. Hile if you would allow me, to testify in this proceeding. First of all, I address the criteria analysis, which in each instance the Staff has determined that the criteria that the strict application would produce undo hardship is not met. I would submit this. This house on Maple Lane has been there for some time. Mrs. Conway moved there with her late husband Mr. French Conway and he died about five (5) years ago.

Mr. Millner asked do you have in your packet, the survey that was done by Stokes Daniels?

Mr. Spencer responded yes.

Mr. Millner stated you will notice on the survey, the deck that is shown in check marks.

Mr. Dyer stated I do not recall seeing that in the packet.

Mr. Millner stated I thought what they sent me had it in there.

Mr. Dyer stated oh yes, it has been reduced but it is in there.

Mr. Millner stated I have an oversized version of it, if you would like to see it. In any event, you will see that the deck is various distances from the rear line. As I understand, the objection of the Department is that the deck extends into the thirty (30) foot setback. We agree that the Code requires even though on your sheet on the background information of the report it says that the house has a thirty-five (35) foot rear setback. The Code needs to say thirty (30) feet and the Board and Commission says thirty-five (35). You can see the main part of the house is in fact thirty-five (35) foot setback and the deck varies from twenty-nine (29) to twenty-two (22) when you count the extension. I point out to you that the part of the deck that is shown to be twenty-nine (29) feet from the rear line, that deck has been in place for years. Later on an addition was added to embrace an open deck which has been in place for some time. The problem has arisen when Mrs. Conway wanted to cover and screen the deck. That is what we are here to talk about today. The footprint that is shown here has been in place for sometime without any complaint from anyone, any neighbor, anybody on this Commission. Her first Contractor, Mr. Slaughter some years ago came and extended the deck. Presumably he is a Contractor here in town. Mrs. Conway depended upon her Contractors to get the building permit. Mr. Slaughter did some extension work but did not cover and did not screen any of this. In May of this year, she contracted with a man named Jamie Cook, with Southern Construction. He came down, got a building permit, and started the work. Mrs. Conway did not know what he told these people. They say he misrepresented, I do not know, she does not know, she was not there. He

proceeded with the construction and now it is virtually complete except for putting the plywood paneling in the ceiling and maybe a little flooring. It is a done deal and she has spent upwards of \$15,000 dollars on this project. I point that out because one (1) of the criteria you meet is what harm it might do or hardship it might produce if this is not authorized or approved by you. In the neighborhood in which she lives screen porches, screen decks are common. Within one-hundred (100) yards of her house, her next door neighbor Mr. Guanzon has a porch which I showed you a picture of. Down the street at 416 Maple Lane, the first house ever built on Maple Lane, built by my uncle in 1941, has a screened porch similar to the one she wants. Mr. John Herb a realtor whose office is right down here, who lives two (2) doors down the street has an opened uncovered deck on his house of approximately the same shape. All of the back yards are elevated overlooking Mt. View Avenue. Now, Mrs. Rich I think lived in that neighborhood and she may have a better idea, but this back yard slopes tremendously. It is a steep slope down towards Mt. View Avenue and the houses behind it. The people who live directly behind, Mr. and Mrs. Crawford have sent a letter stating that they have no objections to this project. They have told me that, but they were unable to be here today. The next door neighbors, the rear neighbors that are shown on this property map, do not object. No one objects. Mr. Guanzon does not object. Mr. Hile, the next door neighbor does not object. The topography, the slope of this property gives it a unique quality of a porch that needs to be there. The existing footprint is not changed by this construction. She is only covering it and screening it to make it more usable year round. It is consistent with other houses in the neighborhood as I have told you. There is nothing extraordinary about this request. The zoning office says that this would not produce undo hardship upon her. I submit that it would because of the fact that number one (1), it reduces the enjoyment of the property and if you disapprove this it would necessarily require her to remove it at some significant and substantial expense. The idea that the criteria is not shared generally by other properties in the neighborhood. This thing addresses Averett College and the cemetery to the west and east. Averett College is probably the closest point and any point of Averett College would probably be six hundred (600) to seven hundred (700) yards away and what significance the cemetery has to this; what people buried in the cemetery care about the porch gets me, so why that is part of this report. Besides which, you cannot see the cemetery or Averett College from her deck nor can any of those people see her deck from those places. To say that it would be a detriment to adjacent property owners seems to me to be totally wrong in that the immediate adjacent property owner has a deck exactly like hers and can be seen from her house. That has been there for years. Mr. Hile, who is sitting here behind me, the neighbor on the other side, will tell you, admit it if you will hear him and I hope you will, that he cannot even see the deck from his house. Even if he could, he does not care because it is consistent with his neighborhood. The argument that the decreased yard size might be a hindrance to emergency personnel if they needed to cross it to get to the abutting property is that they are not obstructed. The existing deck has been there. We are not changing anything. Plus the fact that there is a significant amount of property on Mrs. Conway's lot plus the back yard of the adjacent neighbor are not changed by anything she has done or is proposing to do. Simply put Ladies and Gentlemen, the property is consistent with the neighborhood. Practically every house in that area has a screened in back porch. Your criteria here are this, the City granted the permit and now the City says that they granted it in error; but she in good faith acted on that permit and had the Contractor begin the project. As I said before, she did not come down with the Contractor to get the permit and had no reason to think that there was anything wrong. Admitted that it is within too many feet of the thirty (30) foot setback that is required of the ordinance; however the purpose of the variance is to show

that not allowing this creates a hardship for her, but allowing it creates a hardship for no one. They cannot see it, and if they could it does not interfere with their property whether they are on any of the adjoining properties. So without belaboring the point, and I hope you will look at the pictures, the basic footprint has been in place un-objected to, approved by the City for years, at least five (5) maybe more. All we are doing is covering part of it and screening it to make it a more usable function. No neighbor anywhere around objects to it. I submit to you that it is an appropriate thing for you to approve. I would like to call first of all Mr. Hile, the next door neighbor if you will listen to him and I hope you will unless you have other questions for me. I am not used to your procedure, but I wondered if, being a lawyer, if you would allow me to question Mr. Hile to emphasize what he has to say.

Mr. Millner asked Chairman Snipes may I question Mr. Hile?

Mr. Snipes responded yes, I will allow it.

Mr. Millner called Mr. Josephine Hile to speak on behalf of the request.

Mr. Hile stated I am here and I support the variance very strongly. I have lived on this piece of property since 1946. I do not think there is anybody in Forrest Hills that has been there longer. I am strongly in favor of the variance being granted. Like was said, I can barely even see what we are discussing about. The only way I can, is to go all of the way to the bottom of the hill and look back up hill. Anybody that is familiar with that piece of property knows you have got to be a mountain goat to live on it. It is a very nice deck and enclosure. I have seen it and it is a very nice addition to what is being done, what has been done. The footprint has not been changed and it just needs to be granted.

Mr. Millner asked does anyone have any questions for Mr. Hile?

Mr. Millner asked to your knowledge has any other neighbor made any comment about this project to you?

Mr. Hile responded I have heard no complaints.

Mr. Millner asked is it correct that Mr. Heard lives to your left as you are coming in the front door?

Mr. Hile responded correct.

Mr. Millner asked does he have a deck that protrudes into the same area?

Mr. Hile responded he has a double deck.

Mr. Millner asked is it comparable size to the one Mrs. Conway has?

Mr. Hile responded I would say that it is.

Mr. Millner asked has that been there for some time?

Mr. Hile responded yes, eight (8) years or so.

Mr. Millner called Mrs. Conway to speak on behalf of the request.

Mr. Millner asked are you Louise Conway?

Mrs. Conway responded yes.

Mr. Millner asked do you live at this property?

Mrs. Conway responded yes.

Mr. Millner asked does your daughter own the property and you have lived there through her lifetime?

Mrs. Conway responded yes.

Mr. Millner asked are you a widow?

Mrs. Conway responded yes.

Mr. Millner asked when did this screening get completed?

Mrs. Conway responded I bought the house in 2004.

Mrs. Conway asked what was your question?

Mr. Millner asked when was the deck put on that is there now? Was it put on in increments?

Mrs. Conway responded yes.

Mr. Millner asked was there some deck there when you moved there?

Mrs. Conway responded yes.

Mr. Millner asked and you have added to it with no objections from anybody?

Mrs. Conway responded yes.

Mr. Millner asked you hired Contractors to do it?

Mrs. Conway responded yes.

Mr. Millner asked did the Contractors get the permits as far as you know?

Mrs. Conway responded J.W. Squire got a permit on October 6 to put a screen on one (1) side of the house.

Mr. Millner asked so part of it was already screened prior to this present project?

Mrs. Conway responded yes.

Mr. Millner asked were there any objections to that?

Mrs. Conway responded no.

Mr. Millner asked do you live next to Mr. Hile and Mr. Guanzon respectively?

Mrs. Conway responded yes.

Mr. Millner stated the Crawford's are the neighbor down the hill directly behind you.

Mr. Millner asked can you see their house from your deck?

Mrs. Conway responded I can see it if I strain between the trees, but the trees are higher than my deck.

Mr. Millner asked is this deck seventy-five (75) percent or more complete at this point?

Mrs. Conway responded yes, all that is left are two (2) screen doors and the ceiling.

Mr. Millner asked did you have anything to do with getting the building permit?

Mrs. Conway responded no.

Mr. Millner asked you relied on your Contractor?

Mrs. Conway responded I had nothing to do with it because I thought that was supposed to be the Contractor's responsibility.

Mr. Millner stated that is all I have for Mrs. Conway unless you have additional questions.

Mr. Dyer asked have you paid your Contractor?

Mrs. Conway responded I have paid him \$12,000 dollars.

Mr. Dyer asked did he tell you he would get the building permit? Do you have a contract with this individual?

Mrs. Conway responded he fixed a contract but I would not sign it.

Mr. Dyer asked is there any reason for that?

Mrs. Conway responded I thought he was asking too much. I told him I would give him \$21,500 dollars to build the deck as I had planned. He fixed it out and brought me the contract and told me he wanted me to sign it that day. I told him after everything was started, we would talk about it. I gave him \$10,000 dollars that day and he bought all of the things that he needed.

Mr. Dyer asked was there any verbal conversation with this gentleman as far as who was going to obtain the building permits? Did he make you aware that a building permit was going to be required?

Mrs. Conway replied no, he did not. After he had started the construction he told me that the City had pulled him off of the job. I asked him why and he said because I do not have a proper permit. He came down here and said he had spoken with, I cannot remember who he said it was.

Mr. Dyer stated it was probably Mr. Lucas.

Mrs. Conway stated no, I think it was Ms. Blair. He came back and said that he could not get the permit. He came back a second time with a permit and he put it on the front door. He proceeded to try and finish my porch. He then came to me and stated that the City had pulled him off again. This time they said that he had gotten a permit in error. I have been crying over this since May. It has really been a hardship on me. I have already spent over \$23,000 dollars trying to get a screened porch on my house.

Mr. Millner stated I have a copy of the building permit that was issued by the City on May 19, 2010 to Seller's Construction, that was Mr. Cook, to construct a roof over existing deck and to make the screened deck.

Mr. Millner called Mrs. Helen Bledsoe to speak on behalf of the request.

Mr. Millner asked are you Helen Bledsoe, Mrs. Conway's daughter and own the underlying remainder interest in the house?

Mrs. Bledsoe responded yes.

Mr. Millner asked were you a party to any of the negotiations with the Contractor?

Mrs. Bledsoe responded no.

Mr. Millner asked did you have anything to do with the building permit?

Mrs. Bledsoe responded no. The only thing that I did was I went down to the zoning office once they pulled the last permit to find out why. I talked to Ms. Blair and Mr. Lucas and they said that it was because he had falsely gotten the permit. That was the only conversation I had.

Mr. Millner asked to your knowledge did your mother have anything to do with getting the permit?

Mrs. Bledsoe responded no.

Mr. Millner asked have I accurately described and through these pictures that you have seen depict the porch as it is now and is there anything that you want to add in terms of utility and the position of this deck regarding the neighbors?

Mrs. Bledsoe responded actually you cannot see the neighbors down the hill, the Crawford's because of the foliage on the trees. We do not hear them when they are outside unless they have a large amount of people there. We have gotten no complaints about any of it.

Mr. Millner asked am I accurate in describing the actual footprint of the property and of the porch?

Mrs. Bledsoe responded yes, absolutely.

Mr. Millner stated it has been there for some time and the screening and the extension of the roof is all that is left.

Mr. Millner asked what was there over that roof before this permanent roof was installed?

Mrs. Bledsoe responded there was a six (6) foot awning over part of the deck and the other part of the deck extended out into the sun.

Mr. Millner asked the side of the deck that conjoins Mr. Guanzon, has that always been covered?

Mrs. Bledsoe responded we had that done in 2004 when dad was sick. It was like a four-season type of roof structure with a screen put on at that point.

Mr. Millner asked so the part next to Mr. Guanzon has been roofed and screened since 2004?

Mrs. Bledsoe responded yes.

Mr. Millner asked did the rest of it have a removable awning over it?

Mrs. Bledsoe responded it was a special type of removable awning.

Mr. Dyer asked when we are talking about the part that was already screened in, basically if you will look at your survey map, it is this area right here. Is that correct, on the side?

Mr. Millner responded yes, it joins Mr. Guanzon's property.

Mr. Dyer asked did the screen part extend past the existing rear of the house?

Mr. Millner responded it extended to the corner, just above your finger there.

Mr. Dyer stated the original screening goes to the existing rear of the house.

Mrs. Bledsoe stated the awning went from the edge where the screened in porch was all the way over to where the bedroom door is. The other thing I would like to say while I am up here is that my mother has emphysema and as Mrs. Rich can tell you, there is no way anyone with emphysema can use that back yard at all. This construction is where she goes because she does not take vacations. She is on oxygen. This is where she spends her time. I would like for you to please take that into consideration. This is very important health wise also.

Mrs. Evans asked a violation letter was sent to Mr. Cook on May 13, 2010. Do you know when he actually started construction?

Mrs. Bledsoe responded the construction had been started before May 13, 2010.

Mr. Dyer stated the date on the permit is May 19, 2010.

Mrs. Evans stated I was just wondering how far along the construction was before the letter was sent to him.

Mrs. Bledsoe stated I do not know, but when he got the permit on May 19, 2010 most of the roof was already there. That is when they started screening it in, but the roof as far as I can remember was already in place at that point. After that they came and put the screen in and put the wrought iron railings around it.

Mr. Millner stated they did not add any floor space. That was already there.

Mr. Snipes stated after listening to all of the money that she has spent in this project already I was wondering whether the cost overrun or did you know from the beginning of it that it was going to cost this much.

Mrs. Bledsoe stated what happened was Mr. Cook and she had a verbal agreement. She did not sign a contract. It was a verbal agreement that he would build the porch for \$21,000 dollars. She had paid him \$12,000 dollars, which I understand from someone we talked with that she should have only paid him one third (1/3) of what he did. She paid him \$10,000 dollars in good faith and then he came back and said that he needed another \$2,000 dollars. He asked for the \$2,000 dollars after he had been told by the City that he owed \$2,500 dollars for a violation. That is what we were told. She gave him \$2,000 dollars because he said that he needed it. They tore down the previous porch on the side which cost her about \$6,500 dollars to start with. When J.W. Squire put up the awning, that was another \$2,000 dollars and the six (6) foot addition that is in question was another \$6,000 dollars. All of that was torn down in order to put this construction up. If you add that along with what she has paid Jamie Cook, she has already spent right around \$23,500 dollars. That is what she has in it right now and if she has to tear it down, she is back to whatever that is going to cost.

Mrs. Bledsoe asked did that answer your question?

Mr. Snipes responded yes.

Mr. Dyer asked what was the error in which the permit was issued?

Mr. Gillie responded if it pleases the board, Ms. Blair has done extensive research on this case so I will let her answer this.

Ms. Blair stated the building permit was issued for the side and rear. A zoning clearance was only issued for the side. There was complication in the building permit office. There was an application in the computer system to do the entire job side and rear. When Mr. Cook came to get the permit he only received a zoning clearance to do the side not the rear. There was some miscommunication and he did receive a permit but not a zoning clearance for the rear.

Mr. Snipes asked do you have any other presentation you would like to make?

Mr. Millner responded no.

Close the Public Hearing.

Mr. Dyer asked whose fault was that? Mr. Cook left here with that permit assuming he had the authority to construct the entire deck. At what point was he made aware that he needed additional clearances?

Ms. Blair responded he received a zoning clearance that day for just the side. At that point it was simply a conversation between him and the lady that was issuing the building permit. It is believed that he knew there was an application in the system and from what I understand he misled the lady that was issuing the permit.

Mr. Dyer asked what was the misrepresentation?

Ms. Blair responded I was not there for the conversation.

Mr. Dyer stated you are eluding that he misrepresented himself but you say you do not know what the misrepresentation was.

Ms. Blair stated Kim let me know that she was told that he was getting a permit for the side and rear. I was not there for that conversation. I can only assume that happened or she would not have issued the permit. The zoning clearance was simply for the side.

Mr. Dyer asked I am still very confused. He was issued a permit which you later determined was invalid. He got that blue card and in my experience that means he can begin working. Who assumes responsibility when somebody issues a permit in error? Is there anything in the City Code that addresses that?

Mr. Spencer responded I cannot say right off of the top of my head without looking it up.

Mr. Dyer stated the fact of the matter is that a permit was issued and a large amount of money was spent. Then someone goes oops, we were not supposed to issue this.

Ms. Blair stated actually the construction had began prior to the issuance of the building permit. The permit was issued after a complaint had been received in the inspections office.

Mrs. Evans asked who complained?

Ms. Blair responded it is anonymous.

Mr. Gillie stated all zoning complaints are anonymous according to Virginia law. It is one of those things that are not subject to the FOIA requests. We do not ask that question and if they tell us, we do not write down who it is.

Mr. Dyer stated it seems to me that someone has done something wrong and that person is the Contractor. He is not here to defend himself. You all are making the allegation that he obtained the permit fraudulently.

Ms. Blair stated we have had several issues with this deck.

Mr. Dyer asked have you taken any legal complaints against this individual?

Ms. Blair responded a complaint has been filed with DPOR.

Mr. Dyer asked the State organization that regulates his Contractor's license?

Ms. Blair responded yes.

Mrs. Evans asked it says that the building permit was closed and transferred to CityView in May 2010. What date?

Mrs. Evans stated he could have potentially done twelve (12) more days of work before it was officially closed out.

Ms. Blair responded it was closed out simply as a transfer. CityView is our new permitting system. We have completely closed out our old system which is a DOS based permitting system and upgraded. That is why it was closed out and transferred. It was not transferred because of anything the Contractor or property owner did. It was simply a software change.

Mr. Dyer asked is the fact that the permit was issued in error a result of the new computer system? Was there something that was not transferred properly?

Ms. Blair responded not to my knowledge.

Mrs. Evans asked is Jamie Cook requesting a refund?

Ms. Blair responded yes. He has requested a refund for the portion of work that was to be done to the rear deck because that was removed from the permit. The new permit was issued where only the side could be enclosed, so for that work quantity he requested a refund.

Mrs. Evans asked from the City?

Ms. Blair responded yes.

Mr. Dyer stated we have dealt with similar situations in which houses were built under one Zoning Code and then the Zoning Code is changed particular on houses with side setbacks. We have allowed side setbacks variances because houses were constructed at a time when side variances could be as little as five (5) or six (6) feet.

Mr. Dyer asked to your knowledge has there ever been a Code that allowed less than thirty (30) feet for a yard setback? Do you know when this house was constructed?

Ms. Blair responded 1967.

Mr. Dyer asked so in 1967 was the yard setback thirty (30) feet?

Mr. Gillie responded I am sorry that was before I was born, so I cannot answer that.

Mr. Dyer stated so in the instances we have set precedence by allowing variances from setbacks that has always applied to the side, to the best of my knowledge. I particularly recall a situation on Herndon where it was a request for both a side and front yard setback variance. We granted the side setback variance but we denied the front yard setback.

Mr. Dyer stated, Mr. Millner by addressing your point; basically we have to find that all four (4) of these criteria are met before we can grant a variance. We are not City Council; we are not the Planning Commission. We have very strict guidelines that we have to follow that are set by the State Code Section 15.22-2204. We are required to find that all four (4) of these criteria are met. According to the City Planning Staff, they feel that three (3) of the four (4) have not been met. So it is incumbent upon you to convince this Board that the City's Planning Staff has made an error and in fact those three (3) other criteria have been met. I do want to point out to you that the Board feels when you refer to a hardship, you are not referring to a financial hardship because of the fact that anybody could come in here and say you have got to let me do this because it is going to be cheaper.

Mr. Millner stated I agree that the money issue is not, but the fact that the deck or some configuration has been there for some time and a useable need for her to use this house.

Mr. Dyer asked are uncovered decks allowed to protrude into the yard setbacks?

Ms. Blair responded four (4) feet.

Mr. Dyer stated it is when you put a cover over the deck when they become non-conforming, that is not allowed.

Ms. Blair stated correct.

Mr. Dyer stated she is allowed to have an uncovered deck. It is the fact that they are closing in a screened in porch and putting a roof over top of it that creates a problem. That is something that City Council has determined in the Zoning Code. That is not something we can argue with. That is their prerogative to make that decision.

Mr. Millner stated it is yours to make the difference.

Mr. Dyer stated if we feel like you meet these four (4) criteria.

Mr. Dyer asked not taking into account the financial hardship; can you make an argument that there is a hardship on the property owner that is undo?

Mr. Millner responded yes, I would say that and knowing as I think you do; screened porches are a way of life in that neighborhood as well as others. They are a valuable adjunct to any piece of property. There is a great deal of salability, and then again that comes as financial. The usability of the house is greatly enhanced by a screened porch. It can be used 24/7 as opposed to swatting bugs and having citronella candles burning all of the time; particularly with a lady that has emphysema, health problems, cannot walk up and down steps and assorted other problems. I would submit that each of the four (4) criteria have been met. I do not know which has not been fully addressed.

Mr. Millner asked is it the fourth (4th) one?

Mr. Dyer responded no, the fourth (4th) one the Planning Staff agrees that you have met. We will start at the bottom and work up. The third (3rd) criteria, the authorization or grant should not be a substantial deterrent to adjacent property owners. I can agree with that because with the exception of one (1) person, nobody is opposed to this. In fact, you have neighbors that have come forward to say they are in favor of this. The criteria of such hardship is generally not shared by other properties in the vicinity of the same zoning district. If you look at all of the houses in the area, basically other than Mr. Hile whose backyard extends further, all of them have a tight back yard area.

Mr. Millner stated yes, and they all have screened in porches.

Mr. Dyer stated but their porches conform. It just so happens that Mrs. Conway's house extends further back and she has less back yard to deal with. I do not think that any of these screened in porches that you mentioned are non-conforming.

Mr. Millner stated in terms of setback requirements.

Mr. Dyer stated even with their screened in porches they still remain within the thirty (30) feet.

Mr. Millner stated I understand that is because of the way the house is configured on the lot in the first place. This house was built further back from the street.

Mr. Dyer stated it appears to be deeper.

Mr. Millner stated this house was built as a duplex and converted to what it is now. That was before Mrs. Conway ever owned it. As I point out, this house was built further back, but to be consistent with the neighborhood on Maple Lane from Hawthorne to the curb it is my observation from walking the street that everybody has a back porch and all but one (1) are screened.

Mr. Dyer stated this lot is not unique on Maple Lane.

Mr. Millner stated not on that side of Maple Lane.

Mr. Dyer stated the hardship is generally shared. If you can make the argument that the hardship is that the lot is extremely sloped or for whatever reason the lot is narrow that is not something that is unique to this lot.

Mr. Millner stated to be consistent with her neighbors I think that she should be entitled to the same privileges that her basic neighborhood shares.

Mr. Dyer stated her neighbors were able to construct their porches within the required setbacks. That is the argument that we have.

Mr. Millner stated I understand that, but their houses were closer to the street in the first place and whether they had the same size porch or not is something I do not know. I have not measured them all, point being that the perspective of the neighborhood and the steep elevation and the fact that it cannot be seen from the people below, who would be most affected have written as I understand from Ms. Blair requested for it to be approved, certainly do not object would seem to overcome your argument. To say that this house among all those on that strip of Maple Lane should be denied a covered screen porch seems to create an undo hardship for this house.

Mr. Dyer stated we are not denying her a covered screened porch. We are denying the right to extend into the rear yard setback.

Mr. Millner stated the point is that it did not come up until a cover was put over it. The footprint was already there. There is no further extension. You are only covering the extension. That seems to me to be somewhat in congress with the purpose of the Zoning Code. We are not intruding into the property anymore than it already was. We are not creating a visible hazard or a visible construction or a impediment for anyone.

Mr. Dyer stated you do understand that just because everyone in the neighborhood is in favor of it, if it violates the City Code it does not matter what they think.

Mr. Millner stated I understand that. That is the purpose of a variance and one of your questions that deal with it is the character of the neighborhood. If it was a sore thumb that

stuck out there and created a problem, obviously you should not do it. Again, we are not extending anything and in fact the people most affected have approved it.

Mr. Dyer requested a minute to digest some of the information.

Mrs. Evans asked if by chance it was approved today and someone later on down the road wanted to make a sunroom out of it, doing away with the screening and put in windows, would what we do today allow that building permit to be approved or granted?

Ms. Blair responded yes.

Mr. Dyer asked if it has a roof over top of it, it basically becomes part of the physical structure. Is that correct?

Ms. Blair responded correct.

Mr. Dyer asked I think we had a conversation one time which a roof does not constitute enclosing it is when you screen it in. You can have a roof over that and it is not considered a room, but if you screen it in, it is considered a room. To refresh your memory I am referring to my old patio. You had told me one time that if I put a roof over top of it and screen it in, it is not considered an open space.

Mr. Gillie responded correct.

Mr. Dyer stated that just applies to the open space requirements.

Mr. Gillie responded correct, the open space requirements on certain subdivisions.

Mr. Dyer stated so if it has a roof over top of it basically that becomes a footprint of the house and they can enclose it, they can heat it, they can air condition it.

Mr. Millner stated if you grant the variance for the porch you could also put a condition that it not be closed in as part of the variance, that they could not make it a heated part of the house. That would require an additional permit anyway.

Mr. Dyer asked is this survey map recent?

Mr. Millner responded yes, Mr. Daniel surveyed the property this year.

Mrs. Evans asked would the issue exist if the Crawford's would deed some of their property?

Mr. Dyer responded I have already approached that and the problem is that they do not have enough property to spare. They do not have a square to spare.

Mrs. Rich stated the purpose of the setbacks is so that safety personnel can get back there and there is no way to get back there other than by foot; because not only is the land not level all of the way but it comes down and then it drops, and then it drops again. At 414 Maple Lane there

is a six (6) to eight (8) foot drop maybe more than that. It could be close to ten (10) feet before you get to the side yard, right across the front there. At the front corner of the house there is a drop. The same thing happens at 410 Maple Lane. There is a drop. You cannot get back there.

Mr. Dyer stated all of the lots on that side of the street drop back that far.

Mrs. Evans asked in 2002, if BZA approved a variance allowing a 12x20 deck, then why was a building permit issued to construct a 12x24?

Mr. Dyer responded the variance allowed them to extend into the rear yard. The variance was not for a specific size deck. It allowed them to extend into the rear yard by eight (8) feet.

Ms. Blair stated the variance was for the change in the rear yard setback.

Mr. Gillie stated they asked at the time to build a 12x20 and then came back, changing the size of the deck. The width was not the issue.

Mr. Dyer asked what was the reasoning used by that Board to grant the variance?

Mr. Gillie responded we could pull the minutes.

Ms. Blair stated it did not go into detail.

Mr. Dyer stated the reason that it went back was because there was some kind of conflict of interest on the Board and then it was denied.

Ms. Blair stated with that denial a portion of the deck was to be removed.

Mr. Snipes asked is there any further discussion? If not, are you ready to make a motion?

Mr. Dyer stated I see that Mr. Lucas is present. Can we ask him a question or maybe you can answer it.

Mr. Dyer asked if in fact Mrs. Conway was defrauded by her Contractor, what are her options to receive compensation?

Mr. Gillie responded she can go through the State. She can also file civil litigation for misrepresentation. She has some legal recourse to try and obtain her money back.

Mr. Snipes stated the reason it is taking so long for us to decide is because we are sympathetic to the situation, but we must obey the law.

Mr. Dyer asked do we have precedence for this about a permit being issued in error and being recalled? Is the City liable?

Mr. Dyer stated the City issued a permit and somebody spent money. I realize there are allegations of fraud, but until a point when those allegations of fraud are proven.

Mr. Gillie responded the City is not liable. The Contractor knew what he was permitted to get and what he did not. He came and misrepresented himself to get what was approved. We then told him to stop work. We have done what we could from our end. We are not denying that there was an error in the issuance, but also that the Contractor knew what was and was not permitted, but he went and did it anyway.

Mr. Dyer stated construction had already started before he came to get a permit.

Mr. Gillie stated work was done without a permit.

Mr. Dyer asked what was the time frame between when the permit was issued and when you discovered that it was issued in error?

Ms. Blair responded the same day.

Mr. Dyer asked was Mr. Cook notified in a timely manner that he needed to come back?

Ms. Blair responded it was either that afternoon or the next morning when he was contacted.

Mr. Dyer stated at some point he subsequently went back to Mrs. Conway and asked for more money.

Mrs. Evans asked if that happened the same day and he was not issued another permit until a month later, did any work occur?

Ms. Blair responded I believe he continued work. The new permit was issued to make corrections. That would have been done by him sending a letter to the Inspections Division stating what changes needed to be made and requesting his refund.

Mrs. Evans asked did he continue to work knowing the permit was not valid?

Ms. Blair responded yes.

Mr. Dyer asked were all of the conversations regarding this violation with Mr. Cook? Were any of them directly related to Mrs. Conway? Did anybody call Mrs. Conway and say your Contractor does not have a permit?

Ms. Blair responded I had a conversation with Mr. Cook and then I had a conversation with Mrs. Bledsoe.

Mr. Dyer stated because she is technically the property owner.

Mrs. Rich asked were conversations after construction started?

Ms. Blair responded after Mr. Cook received his violation letter conversations began.

Mr. Snipes asked do we need more time on this? How should we dispose of it?

Mr. Dyer asked do we have a definition of the word hardship? Is that somewhere in the Code?

Mr. Gillie responded I will double check, but I do not believe hardship is spelled out in the Zoning Code. Hold on.

Mr. Dyer asked what does the Planning Staff generally consider a hardship?

Mr. Gillie responded physically unable to do something that complies with the Code.

Mr. Dyer stated due to a unique characteristic. In other words there has to be something unique to this house that none of the other houses have.

Mr. Gillie stated unique to the property not to the house.

Mr. Dyer stated right, it has to be unique to the lot. There has got to be something like sink holes or an underground mine shaft. It has to be something that makes this lot unique, not the house, not the structure, not the property owner unique. It would have been practical for the City to include that in their Code.

Mr. Gillie stated the Zoning Code does have the definition for inordinate hardship. "To establish a case of inordinate hardship, an applicant shall submit evidence that the strict conformance to any of the provisions to this ordinance will burden the applicant whereby he cannot make reasonable economic uses of the property due to such regulations. Such evidence may include proof of consideration of plans of construction, attempts to sell, rent, or lease the property, and information regarding any income expenses. Any hardship created by the applicant should not be considered when reviewing any application."

Mr. Dyer stated so there is economic concerns listed in there.

Mr. Gillie stated the economic concern is regarding the property.

Mr. Dyer asked would it include resale value?

Mr. Gillie responded attempts to sell, rent, or lease the property.

Mr. Dyer stated you do not have to have a screened in deck to sell a house.

Mrs. Rich made a motion to grant the request for Variance Application PLVAR2010000074. Motion died due to the lack of a second.

Mr. Dyer asked what happens if this variance is not granted? Do you order her to remove the deck?

Mr. Gillie responded we order her to comply with the Code.

Mr. Dyer asked so remove the roof?

Mr. Gillie responded she will have to remove whatever is necessary to comply with the Code.

Mr. Dyer asked if she refuses to do that does the City do it?

Mr. Gillie responded the City does not remove it. If she refuses to do it, the City will then take the property owner to Court to have the Court order that to be removed.

Mr. Dyer asked if she still does not do it, is she legally liable? Could she go to jail?

Mr. Gillie responded yes, actually she could. The Courts could fine them and then failure to do it after a certain point, the Court could put someone in jail for Contempt of Court.

Mr. Dyer stated it is incumbent upon the property owner not the Contractor to do the work.

Mr. Gillie stated the property owner is the responsible party.

Mr. Dyer asked the order of demolition, is that going to Mrs. Conway, Mrs. Bledsoe, or Mr. Cook?

Mr. Gillie responded it should go to the property owner because the owner is the ultimate responsible party. In cases like this, the City usually tries to work with both.

Mr. Dyer stated so in other words if I have a one-hundred (100) acre farm and somebody goes on my back forty (40) and builds an illegal structure, then it is my problem even if I do not know about it.

Mr. Gillie stated it is on your property. We have junk yards like that all of the time, where someone sticks eighty (80) cars on someone's lot. Property owners are responsible for their property. She will have civil recourse against her Contractor for doing work that was not approved and some other things, but that is a private matter between her and her Contractor.

Mr. Gillie stated we had a motion to approve without a second, so that dies. The Board can wait for a second motion, by that the Board in fact denied the variance.

Mr. Dyer stated by not making a motion.

Mr. Gillie stated you have heard the case. You made a motion to approve it, it died due to the lack of a second.

Mr. Dyer asked do we sit here all day? Is there a time limit?

Mr. Gillie responded in effect, you have completed the case. Someone made a motion to approve it that died from the lack of a second. They are asking for it. We have already denied the case. The Chairman can gavel and move on or you can wait and actually have a motion to deny. It is not required at this point.

Mr. Dyer stated it seems to me that we are between a rock and a hard place. We can do the right thing or we can do the required thing. I cannot for the life of me see how these first two (2) criteria are met. I would disagree with the City and say that in fact this does not create a deterrent to adjacent property owners.

Chairman Snipes called for a five (5) minute recess at 11:25 a.m.

Chairman Snipes called the meeting back to order at 11:30 a.m.

Mr. Gillie stated it is the Chairman's prerogative to end the case now and move on to the next. They have already been turned down by Staff, that is why they appealed to the Board. The Board made a motion to approve which died for lack of a second. In fact, the case is at that point denied. It is not necessary to make a motion to deny it. At this point, it is your call as Chairman of the Board as to what your next step will be.

Mr. Spencer stated keep in mind that you can second a motion and vote against it.

Mr. Dyer read the first (1st) criteria and the criteria analysis from the Staff report.

Mr. Dyer asked is there anybody on the Board that wishes to argue that?

No response from the Board.

Mr. Dyer read the second (2nd) criteria and read the criteria analysis from the Staff report.

Mr. Dyer asked is there anybody on the Board that wishes to argue that?

No response from the Board.

Mr. Dyer read the third (3rd) criteria and the criteria analysis from the Staff report.

Mr. Dyer stated I will argue that. I think that it does meet that criteria.

Mrs. Rich stated I think that it does meet that criteria.

Mr. Dyer stated we are not increasing density because density generally refers to the population of the area. This is a single family house and there could be eight (8) people living there or it could be one (1) person living there, so it does not increase the density.

Mrs. Rich stated they probably decreased the density by taking it from a duplex and making it a single family dwelling.

Mr. Dyer stated decreased rear yard being a hindrance for emergency personnel is not applicable because the rear of the property is not accessible.

Mr. Dyer stated the City agrees that they meet the fourth (4th) criteria, so basically we are at two (2) out of four (4). We are clearly required by Virginia Code Section 15.2-2204 that they meet all four (4) criteria.

Mr. Snipes asked so the best we can do is get a two (2) out of four (4)?

Mr. Dyer responded if everybody will go back where it says pre-requisites for granting variances. It states what the Virginia Code is. It is clear that Mrs. Conway has been wronged. My only concern is the extent in which the City participated in that by issuing a building permit that was later rescinded, but it less than the matter of half a day. The actual damage created by that should be minimal to almost zero (0).

Mr. Snipes stated the issuing of the permit is not actually our call. That was the City's call. We can move forward from that. Since a motion was made to approve it and I sense of a loss because of a second, we would declare that the variance is not to be issued. It was lost because of the lack of a second.

Chairman Snipes announced that Variance Application PLVAR201000074 was denied due to a lack of a second upon a motion to approve.

Mr. Snipes stated I do not know what recourse Mrs. Conway will have from this point.

Mr. Millner stated Circuit Court. See you there.

Item 1. Variance Application Number PLVAR201000027, filed by Powers Signs Inc, requesting a variance from Article 10: Section M, Item 2a. of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 142 South Main Street, otherwise known as Grid 1719, Block 003, Parcel 000002 of the City of Danville Virginia, Zoning Map. The applicant is requesting a variance to erect an additional 142 sf wall sign where the maximum allowable wall signage is 32sf.

Fifty-four (54) notices were mailed to property owners within three hundred feet; Nineteen (19) respondents were unopposed; Zero (0) respondents were opposed.

Mrs. Evans read a Conflict of Interest statement.

Open the Public Hearing.

Present on behalf of the request was Mr. Tom Powers, Sr. of Powers Signs. The reason for the variance is the size of the property and the adjacent property around it. It would not be feasible to ask for a change in the way it is zoned because it abuts to many historical properties. We felt like on this wall on the backside of Central Blvd. it would be best served if we applied for a variance. It is only for that one (1) sign on that one (1) wall. That is the whole reason we want the variance. I think you can see that the zoning does not exactly knock it down, the only thing we have discussed with zoning is that we think it would be best served if it was internally illuminated, so we can control the amount of light. Their concern was how bright this would make that back wall. If we internally illuminate it we can control it with dimmers and it is

going to be LED lighting. If it is a problem, then we can adjust that. Last month I had a similar issue with a Chatham billboard. The Board asked that the light shine down instead of up. It is not a problem.

Mr. Dyer asked are these letters going to be opaque with back lighting or are they going to be clear with light shining through them?

Mr. Powers responded they are going to be translucent with a plastic face and one of the options, which I would like to see, would be a solid letter that is hanger lit; but that requires penetrations through the wall. This is the only option that we can come out with primary power with all of the wiring coming out of a wire way that is outside with external service.

Mr. Dyer asked do we have a light pollution ordinance in the City?

Mr. Gillie responded light cannot spill onto a residential property line.

Mr. Dyer asked is there a certain candle watt or lumens that it is set at?

Mr. Gillie responded there is.

Mr. Dyer stated I would just like to make sure that this sign does not exceed what that standard is. I do not know what the standard is. If we could change the condition to read "does not exceed the City's standard."

Mr. Gillie stated one half (1/2) foot candle at the residential setback line.

Mr. Dyer asked can we just make that part of this, that it does not exceed that standard?

Mr. Dyer asked do you think that you could manage to do that Mr. Powers?

Mr. Powers responded yes. I might have to measure, but I can dim. We can dim these LED lights, so we can bring it down to an acceptable level.

Mr. Dyer stated I do not think that this sign would produce enough illumination to have any alterations across the street.

Mr. Powers stated it is about sixty (60) feet in the air.

Mr. Dyer stated the other two (2): that it be a minimum of twenty-four (24) feet above grade and that you only locate a sign on the wall facing Central Blvd.

Mr. Dyer asked are your parties agreeable with that?

Mr. Powers responded yes.

Mr. Dyer stated if all three (3) of those conditions are agreed upon, then I would make the motion to grant this variance simply because all four (4) criteria have been met.

Mr. Gillie stated we need to close the public hearing.

Close the Public Hearing

Mr. Dyer made a motion to grant the request for Variance Application PLVAR201000027. Mrs. Rich seconded the motion. The motion was approved by a 3-0-1 vote (Mrs. Evans Abstained).

Item 4. Appeal Application PLAZ20100000075, filed by Tom Powers, Sr., requesting to appeal the Zoning Administrator's Interpretation of Chapter 41 Article 10 Section D Item 39, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) that sign area does not include the outer extremities of the background or support area of a ground sign that does not contain advertising copy.

Open the Public Hearing.

Present on behalf of the request was Mr. Tom Powers, Sr. of Powers Signs.

Mr. Powers asked is the procedure for this the same as a variance?

Mr. Gillie responded in this you do not have to prove the four (4) criteria for the hardship, you just have to explain why you think I have interpreted it wrong.

Mr. Powers stated well that is easy. The application is for the Hyundai sign that is now at the location that was vacated by Woodall. They want to move it down next to Short Sugar's. The current sign has the Robert Woodall name at the bottom. We have determined that even though DMV requires that, they do not necessarily require that to be lit thirty (30) feet in the air on a sign. What we propose to do is remove the Woodall, paint this the same grey as the bottom of it, and the only thing that I see in my estimation that differentiates the actual copy area and the architectural element is because of this little recess. If somebody just painted a line across it, I would say that is not really legit. To define this as an architectural element, I guess an architectural element would have to be something that has an architectural appeal. I do not know that anything about it does.

Mr. Dyer stated that is a matter of opinion.

Mr. Powers stated it has the appeal to the point that it is not a pipe sticking out of the ground and then this sign sticking out of the top like a lollipop. That is my only argument is that slight recess. Mr. Gillie said that if it was just a painted line across there. I would have to disagree with that. That is my argument.

Mrs. Evans asked are you going to advertise it as Woodall any where?

Mr. Powers responded no, this will be just as it is.

Mrs. Evans asked are you going to advertise on the building?

Mr. Powers responded DMV requires three (3) inch letters that say Robert Woodall and the hours of operation. If you want to sell cars anywhere, I think you have to have a two (2) foot by three (3) foot sign with letter such a size with what hours you are open. There was a big stink about it years ago. People were going into the car business just to get dealer tags. The criteria for that at the time and really still is that you have the sign stating the name just like a wrecker. A wrecker cannot have a magnetic sign on the side. It has to be affixed permanently to the vehicle. That way if someone tows your car off, you know who it is. The same thing with car dealerships, you have got to know who you are dealing with. In fact, in Mr. Woodall's case he owned a used car lot on 58 and we did not put Robert on the sign. DMV records showed it as Robert Woodall's Used Cars. We put Woodall's Used Cars and they made us come back and change it. In this case without Woodall up there, all he has got to do is meet it somewhere in the glass so that when a buyer walks through the door they know exactly who they are dealing with, legally.

Close the Public Hearing.

Mr. Dyer asked would it be appropriate for me to make a visual presentation?

Mr. Dyer went to the whiteboard and drew a visual picture.

Mr. Dyer stated the Code states that you are allowed one-hundred (100) square feet of architectural element and seventy-five (75) square feet of sign area. You are allowed a structure of a maximum of one-hundred, seventy-five (175) square feet.

Mr. Gillie stated I would agree.

Mr. Dyer stated if any structure exceeds one-hundred, seventy-five (175) square feet, obviously that is in violation. Let's build a brick structure here that is ten (10) feet wide and seventeen and a half (17 ½) feet tall. That is one-hundred, seventy-five (175) square feet. You are allowed to have a structure that big. Let's write Bob's Used Cars. We can do that in several ways. We can take individual letters and affix them to that sign. I think in a prior conversation that I had with you; you said that you would consider this entire structure a sign.

Mr. Gillie stated correct.

Mr. Dyer stated I said you could take the brick behind the letters and paint them a different color and in that case, just the area that is painted a different color becomes the sign and the rest of it becomes an architectural element.

Mr. Dyer asked correct?

Mr. Gillie responded correct.

Mr. Dyer asked what is the difference?

Mr. Dyer stated what we are trying to do is uphold the intent of the Code and the intent of the Code is that we do not have the huge signs all up and down our main thoroughfare. This sign remains the same size. The lettering remains the same size. The intent of what we are doing here remains the same. The only thing we have done is defined an area behind the lettering as a sign. All the Code states is that you are to take anything that conveys a message, that would be lettering, numbers, or any type of logo. As long as that can fit in a regular geometric figure, then that is what should be considered the sign. It is the same thing as the deal with the hospital. You took the sign on the hospital and drew a box around it and said it is one-hundred, forty-two (142) square feet. You did not say the entire six (6) story wall was the sign even though the background of the letters was consistent. I think in order to avoid confusion, have problems with interpretation, that this interpretation makes more sense, that as long as you can include everything that conveys a message. If you had a little used car on top, then we would need to include that as part of the sign. As long as we are not exceeding one-hundred, seventy-five (175) square feet and as long as we can incorporate everything that conveys a message within that geometrical figure; and that geometrical figure does not consist of more than seventy-five (75) square feet. I think that makes a more appropriate interpretation of the Code with all due respect.

Mr. Snipes asked are there any questions for Mr. Dyer?

Mr. Dyer stated architectural element in fact is any part of the sign that does not convey a message. If this did not have Hyundai written on it, it would not be a sign. I assume that if you put up a pole with a T across it, then that would become an auxiliary use.

Mr. Gillie asked and put a T on it?

Mrs. Rich responded if it had nothing and it was all painted the same color then it is not a sign.

Mr. Gillie stated a sign is defined as any writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner, pennant, or any other device, figure, or character which is employed to announce, direct to attention to, identify or make known as visible from public street or sidewalk or public area of congregation. If they had that giant T there it would still meet our definition of a sign because it is there to draw attention to the facility.

Mrs. Rich stated there is no lettering on it.

Mr. Dyer asked can the same be said then for the Holiday Inn Express sign?

Mr. Dyer stated I am assuming the part below the Holiday Inn you are considering architectural element and yet that still conveys the Holiday Inn colors, the green and the blue, it is illuminated at night.

Mr. Gillie responded I have the wonder of being color blind, so I am not sure that it does.

Mr. Dyer stated the Code allows architectural element whether or not you think it is an attractive architectural element or God awful that does not really make any difference. What

we need to make sure of is that we are upholding the intent of the Code and the intent of the Code is that we do not have some humongous four-hundred (400) square foot illuminated Toyota sign, shining in everybody's faces.

Mr. Gillie read the definition of sign area.

Mr. Gillie stated it is an interpretation thing. That is why we are here. I see it one way and you see it another.

Mr. Dyer asked does this just pertain to this specific sign? It does not pertain to the Sign Ordinance in general or directing you to interpret it different from what you have been?

Mr. Gillie responded it will always set precedence because when I interpret again the same way I am interpreting it now, if this Board overturns that then the next person is going to come in and say you have got to look at mine that way. Mr. Powers is a sign Contractor so I can assume he will probably use it again.

Mr. Dyer stated this is not a variance application this is an appeal application.

Mr. Gillie stated correct.

Mr. Dyer made a motion to grant the Appeal Application PLAZ2010000075. Mrs. Rich seconded the motion. The motion was approved by a 3-1 vote.

II. OTHER BUSINESS

Mr. Gillie stated there are two (2) vacancies on the Board. We are accepting applications for that, but it is going to be a while before we have anyone appointed, I assume.

Mr. Gillie stated it looks like we will have a meeting next month.

Mr. Dyer asked has the Board been officially reduced to five (5) members? Is that just conditional? Once we appoint another member, do we go back to the seven (7) deal?

Mr. Gillie responded once you get another member you will have to have a majority of the six (6) which would be four (4) to approve anything, because right now you consist of a five (5) member Board because we have two (2) vacancies. We have talked about reducing the number from seven (7) to five (5) officially and then having some alternates which are allowed under the State Code. We are investigating that at this point.

Mr. Dyer stated I know we have another application in for one (1) person.

Mr. Gillie stated I have not checked with the Clerk of Council to see who has applied or who has not.

Mr. Snipes asked is Mr. Campbell still with us?

Mr. Gillie responded he is still with you at the moment. He was unable to make today's meeting.

Mrs. Evans asked at the moment, does that mean he is thinking about retiring?

Mr. Gillie responded he is also on the School Board now. Whether he will continue on the Board of Zoning Appeals and double duties, it is difficult to get anyone to serve as you know. We appreciate what everyone does, but when you are on multiple Boards it is difficult.

Mr. Dyer asked is the Sign Ordinance the same with all commercial property?

Mr. Gillie responded correct.

Mr. Dyer asked is Norris Funeral Home in compliance?

Ms. Blair responded yes.

Mr. Dyer stated it certainly looks a lot bigger than the Woodall sign.

Ms. Blair stated it is maxed.

Mr. Dyer asked did you include the little thing at the top as part of the architectural element or part of the sign?

Ms. Blair responded yes.

Mr. Dyer asked I know one of the criteria we are supposed to meet is that it is not so general a concern that it is something that goes back to Council for their review. Do you agree with that as far as the Sign Ordinance is concerned?

Mr. Dyer stated we seem to be doing a lot of the Sign Ordinances. This is the like the fourth (4th) or fifth (5th) one that we have done since I have been here.

Mr. Gillie stated you have repeatedly denied them.

Mr. Dyer stated I have not personally.

Mr. Gillie stated the Board. When I say you, I mean the Board. It is a thing where a lot of companies will come in and say I am going to try anyway. We advise them. I try and tell them that I have been here sixteen (16) years and I have only seen one (1) ever approved, but you can ask and they do.

Mr. Dyer asked do you see a lot of people coming in saying "we need a bigger sign" or that their default sign is bigger than what the Code requires?

Mr. Gillie responded every single business that comes in will say they need a bigger sign. "I need a bigger sign than the guy next to me." When you tell them what the rules are they say

“ok, we are going to ask for a bigger one.” Lonestar or Texas, one of the steakhouses, the auto parts place, they all came in and wanted a bigger sign. They function fine without it, it is just their company policy to run all of these down, get denied and once they are denied, they build what they are supposed to.

Mrs. Evans asked are we stricter than any other?

Mr. Gillie responded no.

III. APPROVAL OF MINUTES

Mr. Dyer made a motion to approve the minutes of the July 15, 2010 meeting. Mrs. Rich seconded the motion. The minutes of the July 15, 2010 meeting were approved by a unanimous vote.

Mr. Snipes stated I noticed on the letterhead that there has been a change.

Mr. Gillie stated I am only Interim Director of Community Development. Mr. Fischer, the director retired the end of May, first of June. I have been acting as Interim Director of Community Development. Ms. Blair has been handling a lot of the actual planning work that is why the one case I referred to her because she had done all of the nuts and bolts research. If you ask a question and I defer to her, please understand that my duties have taken me elsewhere and she has done a lot of the research.

Mr. Snipes stated you are a good man for the job.

With no further business, the meeting adjourned at 12:07 p.m.

APPROVED