

BOARD OF ZONING APPEALS MEETING
May 16, 2013

Members Present	Members Absent	Staff
Mr. Dyer	Mrs. Evans	Alan Spencer
Mr. Campbell	Mr. Snipes	Ken Gillie
Mr. Nicholas		Renee Blair
Mr. Hiltzheimer		
Mrs. Rich		

Chairman Mr. Gus Dyer called the meeting to order at 10:00 a.m.

Mr. Spencer now presided over the meeting.

I. ELECTION OF OFFICERS

Mr. Spencer opened the nominations for Chairman.

Mr. Hiltzheimer nominated Mr. Gus Dyer as Chairman.

Mr. Spencer closed the nominations.

Mr. Dyer was elected as Chairman by a 5-0 vote.

Mr. Dyer now presided over the meeting.

Mr. Dyer opened the nominations for Vice Chairman.

Mrs. Rich nominated Mr. Michael Nicholas as Vice Chairman.

Mr. Dyer closed the nominations.

Mr. Nicholas was elected as Vice Chairman by a 5-0 vote.

Mr. Dyer opened the nominations for Secretary.

Mr. Nicholas nominated Mrs. Ann Sasser Evans as Secretary.

Mr. Dyer closed the nominations.

Mrs. Evans was elected as Secretary by a 5-0 vote.

II. ITEMS FOR PUBLIC HEARING

- 1. Variance Application Number PLVAR20130000142, filed by Adam Rosenoff, requesting a variance from Article 10:, Section I, Item 1, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 603 West Main Street, otherwise known as Grid 1606, Block 012, Parcel 000017 of the City of Danville, Virginia, Zoning Map. The***

applicant is requesting to erect an outdoor advertising sign which is prohibited.

Fifty-six notices were mailed to surrounding property owners. Ten respondents were unopposed; two respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Adam Rosenoff and Mr. Skip Headley. Mr. Rosenoff stated you have a picture of the sign since 1984. That is actually a mock-up. I couldn't find the actual picture. It shows on the bottom where we replaced the slide for the letters because they kept blowing off. We were under the impression that this sign belonged to our property.

Mr. Dyer asked when you refer to your property?

Mr. Rosenoff replied it is the cross where the church is. The property manager Skip is here.

Mr. Dyer stated the problem seems to arise where the theater or the church actually sits on a separate parcel than the shopping center. If you were in the shopping center there wouldn't be any problem. The City has a problem when somebody owns a piece of property here and advertises that property on another parcel. Even though these are contiguous and managed by the same people, technically it is in violation.

Mr. Rosenoff asked was it not in violation when it was done?

Mrs. Rich responded it was.

Ms. Blair responded we believe so. From the records that we have that are in your packet, it appears that it was erected illegally at the time.

Mr. Dyer asked when it was originally the park theater?

Ms. Blair responded yes.

Mr. Dyer stated I know this is not the original Ballou Park sign. When the shopping center was built in 1963 there was a different sign.

Ms. Blair stated that is in your packet.

Mr. Dyer asked are you aware that we are responsible for making sure that you meet four criteria in order to grant the variance?

Mr. Rosenoff responded yes.

Mr. Dyer stated at this point, would you argue your case as to why you meet those four criteria.

Mr. Rosenoff stated can you repeat them to me. I would also like Skip to come up. I am a representative from the church. It is a little complicated for me. I was the one that refaced the sign and Skip Headley is the property manager who was responsible for erecting the sign, who has a larger financial hardship and myself who is just the petitioner if we didn't have the sign.

Mr. Dyer stated it is my understanding that we do have an actual letter from the property owner granting you permission to request this variance.

Mr. Rosenoff stated correct.

Mr. Dyer referred Mr. Rosenoff to the prerequisites for granting variances and the criteria for analysis.

Mr. Rosenoff stated for the undo hardship, I can state that when the church rented the property it was with the understanding that although the building was going to be hidden that we would have a sign that was on the street. You can't see the church at all unless you drive down the street. We were looking to serve the community and that was very important that we have that. That would be a huge loss to us. Just personal, financially, I paid for this myself because the church did not have the means to start erecting another sign. It was expensive enough just to have that one piece replaced.

Mr. Nicholas asked how much money was spent?

Mr. Rosenoff responded on that sign, I think it was around \$800 to fix the plastic and replace the lights.

Mr. Dyer stated financial concerns are not something we consider, because there are always cheaper ways to do things. I would say that your argument that you have a particular piece of property that even though it is zoned commercially, it doesn't have any road frontage. The lack of being able to put a sign up for a particular piece of property would be a better argument than the financial consideration.

Mr. Rosenoff stated I am at a little bit of a disadvantage because I didn't have any of this to review before I came here. I have no idea what it would take to get permission to do any other signage. I just know that when we rented the property, that sign came with it. I am just going by the fact that we thought it was all one property. It has existed forever. We didn't question any of it. No one was intentionally misleading us. The criteria that the hardship is not generally shared by other properties within the same zoning district, I don't know how often somebody has adjoining properties that are owned by the same property owner that has used them as one large parcel for 30 years. I would have to know if someone else had that same situation. These have been used as one large parcel for 30 years. When they built the theater, it was to be part of the shopping center and that is how it has been advertised; because you can't have a theater if you don't have a marquee. The authorization would not be a substantial detriment to adjacent property owners; the sign has been there for 30 years as it is. unless you have had complaints from people that didn't want the sign there for the past 30 years and who are personally offended by the fact that I cleaned up the bottom plate.

Mr. Dyer stated the City agrees that you meet the last criteria, so we won't need to go over that. Did we have any complaints about this sign in the previous 30 years?

Ms. Blair responded not to my knowledge.

Mr. Dyer stated the only reason this was brought to the City's attention was because?

Ms. Blair responded because of the reface.

Mr. Nicholas asked financial considerations aside, you could erect a sign on the church's property?

Mr. Rosenoff responded I don't know if that is true because we are well down Tunstall Road at the very end of a dead end. The road that is at the other end, I would have to get permission to put a sign in. The parcel belongs to Subway, McDonald's, or some other restaurant. Our building is completely hidden by the Masonic Lodge.

Mr. Nicholas stated I think that is one of the concerns of the City. If we allow you to erect a sign not on your property to advertise why can we not then allow Subway to erect a sign a half mile away.

Mr. Rosenoff stated I am asking to have something grandfathered in that has been there for 30 years. I am not asking to do something that didn't exist. I am under the impression that if we would have left the sign with the letters in it, we could have gone another 30 years and nobody was going to say anything. I thought I was just making the sign look more attractive.

Mr. Headley stated I am just here in case he needed any support from the property owner.

Mr. Nicholas asked do you support this application?

Mr. Headley responded yes, 100%.

Close the Public Hearing.

Mr. Dyer stated let me get this clear. It is illegal for a sign to be erected on one parcel that advertises a business on another parcel even though those parcels are contiguous.

Mrs. Rich asked and been used all this time?

Mr. Dyer responded right.

Ms. Blair stated an outdoor advertising sign is one that advertises a use or activity that is not located on that particular property.

Mr. Dyer asked is that across the board for all zoning categories?

Ms. Blair responded yes.

Mr. Gillie stated there is only one district that allows it.

Mr. Dyer asked what is that?

Mr. Gillie responded the planned shopping center overlay district.

Mr. Dyer stated ok, because that is what I was going to ask. Coleman Marketplace has a sign that is on the other side of the road from the shopping center. They also have a sign up that advertises Sonic that I know is on its own parcel. They have a combined sign that advertises Home Depot and Target and they are on two separate parcels, correct?

Ms. Blair responded correct.

Mr. Dyer asked he does have the option to ask for this property to be rezoned with a planned shopping overlay. Is that possible? Does this meet the criteria? Are there size criteria for that?

Mr. Gillie responded in order for something to have a planned shopping overlay district, it has to be a master developed shopping center and it has to have a signage plan approved as part of the initial development of that center.

Mr. Dyer asked so the likelihood of something being retroactively designed designated as planned shopping center overlay is remote?

Mr. Gillie responded very remote and it is under Article 3U, Section M. That is the one district that actually has signage requirements for it inside of the overlay portion.

Mr. Dyer stated well let me ask you this. If the people who just bought the Mall decide that they want to put a major marquee sign up that states all four shopping centers and two of those shopping centers are on separate parcels, are they going to be denied?

Mr. Gillie responded that is up to City Council on whether they deny it or not.

Mr. Dyer stated no, it should be up to this Board.

Mr. Gillie stated if they ask for a variance.

Mr. Dyer stated it would be staff's intention to tell them it was denied, correct?

Mr. Gillie asked are we talking about the rezoning or a sign?

Mr. Dyer responded no, what I am talking about is if Gibson comes to you tomorrow with a picture of a big marquee sign they want to put up that says Belk, Sears, JC Pennys, whatever. Are you going to tell them they can't do it?

Mr. Gillie responded correct.

Mr. Nicholas stated I am curious as to how the sign got there in the first place. I don't know if any of us were there when it happened, but from the staff report it was put there illegally. How does that happen?

Mr. Gillie responded I have been here since 1992 and Renee has been here since 2003. Some of the members of this Board may have more knowledge than staff on this matter.

Mrs. Rich stated the rotating signs that they had up there quit working, didn't they? It was something in the early 80's.

Mr. Dyer stated the theater was built after the shopping center. The theater was built probably in the late 60's and the shopping center was built in the early 60's. I think probably at the time the original park theater sign was erected there, it was not in violation. Probably when they came back and replaced the sign they assumed they could just replace what they had. Staff at that point may have been a little lax and didn't check it. Things like this happen. Non-conforming uses do get allowed. They sort of continue to get allowed, because nobody complains about them. What are the options? The only other option is to change the Zoning Code to allow for property on adjacent properties.

Ms. Blair stated it is not technically adjacent. There are actually parcels in between the shopping center and the shopping center parcel and this one. They are not adjacent.

Mr. Dyer asked they are not adjacent?

Ms. Blair responded no they are not. There is a parcel in between that fronts on Tunstall Road that is at the end of the cul-de-sac and on the opposite side of the cul-de-sac is a particular property.

Mrs. Rich stated but the parking lot from the shopping center runs right into the park theater at the end of that road. Now I agree with you that there is Meredith Gravely's studio or something and the Holiday Travel on the other side that aren't part of the parcel. There is a bank and the Shriners that used to be the Post Office; but when you come all the way down there to the dead end where it is a cul-de-sac they adjoin.

Mr. Dyer stated it is a parcel in between that is just being used for parking.

Ms. Blair stated it is the same ownership. As you can see on your map, the large parcel is labeled as Dan S., the smaller parcel on your left as Dan S., and then the parcel in question is the Bernie C. parcel.

Mr. Dyer stated then another alternative would be to have all three of these parcels combined.

Ms. Blair stated that is an option.

Mr. Gillie stated you would have to change the ownership of the Bernie C. to Dan S. because you can't combine properties of separate ownership. There are some technical issues to be worked through, but yes you could.

Mr. Dyer stated so technically these parcels are not owned by the same entity.

Ms. Blair stated they are owned by the same parent company.

Mr. Gillie stated but not the same individual. That is why I said there are some technical issues. Our attorneys would probably get more involved and then we would, but it could be done. A consolidation would require some legal wrangling's underneath it to address any issues the Code would have.

Mr. Nicholas stated right now the title is not held by the same entity. It is held by I am guessing different corporations all of which are under the same name. Practically it is owned by the same person, legally it is not.

Mr. Dyer stated so the big parcel is just the shopping center, and where it says Dan SHRC that is the parking lot, and the Bernie C. HRC that is the church.

Mr. Nicholas stated I am guessing this issue hasn't come up in the last 30 years and the only reason this gentleman is here is because he wants to reface the sign.

Mrs. Rich stated well he refaced it and then they noticed it.

Ms. Blair stated the work was done prior to an application being submitted for a permit. In my time here, it has not been an issue in the past. There is still that small panel that does state the Park Theater that is still present. We have never received a complaint on it.

Mr. Dyer stated but that is in violation. Would you request that it be removed at this point?

Mr. Nicholas asked if a variance was denied?

Mr. Gillie responded if a variance was denied, it should come down.

Mr. Dyer stated where they have a sign board underneath the Ballou Park Shopping Center, are they allowed to advertise any businesses on that sign board that aren't in that shopping center?

Mr. Gillie responded you can't advertise anything that is off-premise.

Mr. Dyer asked even temporarily?

Mr. Gillie responded you are not supposed to advertise anything that is off-premise.

Mr. Dyer asked including charitable events?

Mr. Nicholas asked so the guy holding the furniture sign advertising the big closeout sale is at the corner of Olive Garden and Kick Back Jack's is technically illegal?

Mr. Gillie responded technically it is illegal, yes. I have to give them 15 days to correct the violation.

Mr. Nicholas stated which is why they can do it.

Mr. Dyer stated so a charitable, non-profit event could be advertised on this sign. Is that what you are saying?

Mr. Gillie responded if it is within 15 days of that event, by the time I send out the notice of violation to someone, the event is over.

Mr. Dyers stated the point I am trying to get at is obviously a church is a non-profit organization. Is it the same thing whether it is non-profit, profit, commercial, enterprise, high school carwash, girl scout cookies, it is all advertising on-site or off-site.

Mr. Nicholas stated I think the facts of this situation lead me to believe they meet at least number three. I don't think if we grant this there is going to be a detriment to adjacent properties because the sign has been there for 30 years and there have been no complaints for 30 years. I think they would be happy that the sign has been cleaned up. On these facts, I think they meet number three. I think on these facts they meet number one. Their particular situation, not the finances, with the way their property is situated, the way they acquired it, and with what I would say a reasonable understanding of advertising. I don't know about two.

Mr. Dyer stated I would say that number two in general, I understand that the problem is that they don't have road frontage on a major thoroughfare. They have road frontage on a cul-de-sac. Unless you are already specifically going to the end of the street, even if they had a sign out there nobody would see it. It seems to me that the City zoned this piece of property HR-C when it is not really HR-C. It is not highway, but yet they are telling someone that they can put HR-C use on this property without giving them the benefit of what most HR-C property has.

Mr. Nicholas stated I am mindful of the City's concern with fact number three of setting a precedence for allowing this.

Mr. Dyer stated right, because if we allow this, why can't they put a sign for CVS on this property.

Mr. Nicholas stated which is why I think if we do grant this we want to put in the minutes that this is limited to this particular fact pattern. It is an existing sign that has been in use for 30 years from what was the Park Theater and on that limited set of facts we find that they meet number three. We would want to word it in such a way that Taco Bell can't come back and say "well, you approved it there. Now let us erect a new sign."

Mr. Gillie asked number three or number two?

Mr. Nicholas responded number three.

Mrs. Rich stated if we required him to erect a sign on his property, it would have to be over the height to be seen and it would be 10 times more detrimental to the neighborhood than what he has got.

Mr. Dyer asked is there a statute of limitations on violations? If something is not caught for a period of time does it become grandfathered in? Do you all not consider this sign grandfathered in?

Ms. Blair responded no.

Mr. Dyer asked why is that?

Mr. Gillie responded there is no statute of limitations on zoning violations.

Mr. Dyer asked suppose it was grandfathered when the original sign was constructed and you just don't have record of it?

Mr. Spencer asked how do you know it happened?

Mrs. Rich asked how do you know it didn't?

Mr. Nicholas stated I think that because of the lack of frontage they meet number one. I think that they meet number two because of the history of the sign because it has been there for the last 30 years without a complaint. I think they meet number three with the limiting it based on this set of facts and the City agrees that they meet number four.

Mr. Nicholas made a motion to approve Variance Application PLVAR20130000142. Mr. Campbell seconded the motion. The motion was approved by a 5-0 vote.

- 2. Variance Application Number PLVAR20130000143, filed by Tanya Lovern, requesting a variance from Article 8, Section B, Item 5 and Article 8, Section C, Item 1 (b), of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 439 Hunter Street, 441 Hunter Street and three adjacent vacant parcels on Hunter Street, otherwise known as Grid 0614, Block 005, Parcel 000012, Grid 0614, Block 005, Parcel 000014, Grid 0614, Block 005, Parcel 000015, Grid 0614, Block 005, Parcel 000011 and Grid 0614, Block 005, Parcel 000013 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to allow an existing 13 foot gravel drive to remain as ingress/egress to the property where a 24 foot drive is required.***

Twelve notices were mailed to surrounding property owners. Seven respondents were unopposed; zero respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mrs. Tanya Lovern.

Mr. Nicholas stated you state on here that they meet three out of four.

Ms. Blair stated it should be four out of four.

Mr. Dyer stated I would like to mention that there is a typo in your package.

Mrs. Lovern stated basically I operate the only wildlife rehabilitation center in the City. Nothing like this has ever been done. I cover four counties, so it is extremely important to me to have this center where it is. The road that goes to the center is covered by trees. It is gravel. It has culvert on each side of it, so it goes down about 15' or 20' on each side. It would be a great hardship for the center to have to fill it in with dirt to make it 24' wide. The road that the center is on, Hunter Street is only 17' wide. The FOP Lodge is not even 13' like mine. Mine is about 13.5' wide. We have no problems getting in and out. The fire trucks have come and said they have no problems getting in and out. It is basically something that was in the Code because of the zoning be redone that to rezone it has to have this 24' wide road going to it.

Mr. Dyer stated in the package we received, the planning staff has come to the conclusion that you do meet all four criteria, so unless you would like to argue that you don't I would suggest that you accept their opinion.

Mrs. Lovern stated I really appreciate it.

Close the Public Hearing.

Mr. Nicholas asked wasn't this the one that City Council said "make sure that you tell the Board of Zoning Appeals that we approve."

Mr. Dyer stated that would be the only point that I would like to make. We don't serve at the pleasure of City Council. We are a sworn in and paneled jury; however that is neither here nor there.

Mr. Nicholas made a motion to approve Variance Application PLVAR20130000143. Mrs. Rich seconded the motion. The motion was approved by a 5-0 vote.

III. APPROVAL OF MINUTES

Mrs. Rich made a motion to approve the minutes from the December 18, 2012 meeting. Mr. Campbell seconded the motion. The motion was approved by a unanimous vote.

IV. OTHER BUSINESS

Mr. Nicholas asked what ended up happening with the applicant from the last meeting?

Mr. Hiltzheimer responded we required him to postpone it. We required him to go back and do a review of it.

Mr. Gillie asked is that Marshall Terrace?

Mrs. Rich asked what happened with Mr. Whittle?

Mr. Gillie responded he went to City Council, asked to rezone the property, and they did rezone the property. He may end up coming back to you for parking stuff. He is working on trying to get the parking stuff worked out now.

Mr. Hiltzheimer stated someone I know said that he ought to tear the building down, build a parking deck, and charge \$500 a month rent for parking. He is a resident in the area.

Mr. Dyer stated I know at one point we were entertaining offering a class and that sort of came and went. Is there another prospective date?

Mr. Gillie responded I am still trying to work on it. I think it is just going to be, we are going to set a date and if you can make it you can, if you can't you can't.

Mr. Dyer stated this issue with the animal wildlife center, why was that not just a zoning ordinance change? That was the one criteria that I felt they didn't meet, because this is a very unique, specific use for this piece of property and I think it probably did merit a special consideration in the zoning. Why didn't they amend the Zoning Code because I am assuming this is Suburban Residential zoning on this property, correct? Why didn't they just say with a special use permit you can grant this type of use in a Suburban Residential?

Mr. Gillie responded it is a special use permit under Suburban Residential District but the use itself is no longer residential. It is a business use according to the Building Code and a commercial use according to the Zoning Code. Any commercial entity has to meet the commercial standards for a parking lot which is that entrance. While a daycare center is also allowed in certain residential districts, the daycare is not a residential use. A daycare that is built in a residential district would have to meet these same driveway requirements and everything else. That is why we didn't work on changing the Code, because there are other uses. Churches that are allowed there have to meet it. We didn't feel it was appropriate just to change it for this kind of use.

With no further business, the meeting adjourned at 10:28 a.m.

APPROVED