

BOARD OF ZONING APPEALS MEETING

JUNE 16, 2022

Members Present

Ann Sasser Evans
Nicole Garrison
Gus Dyer
Gus Dolianitis
John Hiltzheimer
Lawrence Meder

Members Absent

Michael Nicholas

Staff

Lisa Jones
Doug Plachcinski
Ryan Dodson
Shanika Williams
Ken Gillie

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

I. ITEMS FOR PUBLIC HEARING

1. *Appeal of Zoning Administrator Request PL22-84, filed by MKM Partners c/o Shahid Javid, requests an appeal of a zoning violation as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 1501 W Main St. (Parcel # 54805). The Zoning Administrator sent a zoning violation notice to the property owner for operating skill games.*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was John Byrum, an attorney from Woods Rogers. Mr. Byrum stated I am representing the Appellant in this case. We have been here before as I understand from the last meeting in May and there was not a quorum present at that time I believe.

Mr. Dyer stated I am going to correct you there. We did have a quorum, but we did not have a full board. This board requires a majority vote, four affirmative votes to grant an appeal. Whenever you are short one member, then you are just short one member to get the affirmative vote. I just want to clarify that.

Mr. Byrum stated understood, thank you, but that leads me to ask do we have that required number today.

Mr. Dyer stated we technically have one member absent who for some reason is still on the board and he hasn't attended a meeting in over a year.

Mr. Doug Plachcinski, Director of Planning stated I have never seen him here in almost two years.

Mr. Dyer stated we have six or seven members present and once again I will let you know that you are required to get four affirmative votes.

Mr. Byrum stated as I understood and understand the situation that as long as we have six members present then we have sufficient numbers to proceed. I also understand however that this case, this notice of violation in this appeal follows a situation where they are very similar property that has games operated by my client, Hill Top convenience store and that involved an application for a special use permit and that application was removed by the board who concluded that it wasn't necessary. I would just offer for the sake of the record that we believe that precedent should apply to this case. To precede with our argument, I understand from the staff report that staff advises that the violation be affirmed and that this appeal be denied because staff cites the provision of the local zoning ordinance chapter 41 article 1 conflicting ordinances and which states:

D. - Conflicting Ordinances. Whenever any provision of this ordinance imposes a greater requirement or a higher standard than is required in any State or federal statute or any other City ordinance or regulation, the provision of this ordinance shall govern. Whenever any provision of any State or federal statute or other City ordinance or regulation imposes a greater requirement or a higher standard than is required by this ordinance, the provision of such State or federal statute or other City ordinance or regulation shall govern. The text of this ordinance shall be applied to any parcel covered by a previous grant of zoning with proffered conditions except where the imposition of the requirements of this ordinance would be in conflict with a specified proffered condition which would supersede the requirements of this ordinance.

Then the Virginia Code defines skill games as gambling devices which are illegal under Title 18.2 Crimes and Offenses Generally, Article 1, Gambling. Therefore, state law pre-empts a Special Use Permit application so that avenue is unavailable to the applicant. It appears to indicate that section in the statute that the community controls this case and is the reason that this appeal should be denied, and the notice of violation be affirmed. I just want to point out that the outset of that section of the Virginia Code was amended in 2021. It took effect in July 2021, after this violation originally occurred and I have copies of that code section 18.2 331.1 available if the board would like, all of which to say that statute under the code is not an issue today. The amendment of the zoning ordinance which required that these games of skilled be subject to a special use permit and zoned industrial also is not an issue here today. That amendment of the zoning ordinance went into effect after this notice of violation was issued and all that is before this board today is the question whether one or two games of skill, video games in a convenience store are an authorized accessory use for a convenience store and we would maintain that the evidence and the laws overwhelmingly indicates that it is an authorized accessory use. The Danville City Code defines accessory uses as a use which is clearly incidental and subordinate or customary defined in connection with or otherwise provided in the ordinance and is located on the same lot as the principal use on the premises. Those uses connected to the principal building by open breeze way will be considered accessory uses. An accessory use code provision is not what you need today. These provisions are pervasive not only throughout Virginia but the entire United States. We are not aware of any locality in Virginia that does not allow accessory uses to permitted principal uses and we have cited in our memorandum in support of our appeal a number of jurisdictions that provide accessory uses. In order to constitute an accessory use, that

use does not have to be present a majority of the time or even a substantial percentage of the time in connection with the principal use for an activity to be an accessory use if it is customary and incidental. To be customary and incidental there needs to be shown that the use is not rare or unique. The Zoning Administrator took the position that a single video game in a convenience store required a special use permit and now as I have mentioned he took that position in this case having previously decided that the similar case special use permit was not required even though the applicant had filed an application for one. We would maintain that decision is precedent here and it should and must be followed. One or two video games in a convenience store is certainly an authorized accessory use. You will find these types of video machines in convenience stores and other retail outlets throughout Virginia machines. They are the latest in the long line of stand-alone recreational machines that you would not be surprised to find in a retail outlet beginning with pinball machine. There's a certain number of notices of zoning violations that the Danville Zoning Administrator has recently issued, which demonstrates the ubiquitous presence of accessory machines in Danville alone. The Zoning Administrator recently issued notices of violations to local truck stops and convenience stores throughout Danville. In fact, the Zoning Administrator has indicated that more than thirty notices of violations have recently been sent to retail outlets. All of which to show that these machines are customary to retail locations as incidental uses certainly to a convenience store. The applicant is quick to admit that if we had ten video machines at this location, if we eight that we would be talking about a special use permit being required. Think for a moment of the precedent that will be set under the Zoning Administrator interpretation in this case. Just like I mentioned we have already precedents set that a situation like this does not require a special use permit, but if we agree that a special use permit that was required for one or two video games to a convenience store no accessory use would be permitted in any location no matter how small, or how incidental to the principal use unless it is expressed in a specific zoning ordinance. If that was the case the city would be requiring a special use permit for a host of requests of incidental uses across the range of businesses and further the Zoning Administrator's interpretation of the code revision that allows unspecified accessory uses. I would also argue the injunction on the criminal enforcement which specifically allows these types of video games to be used at a location that was previously authorized, which this one was until that issue plays out for the General Assembly for all these reasons. The applicant maintains that this appeal should be sustained, and that the Zoning Administrator's notice of violation should be dismissed which leads to the precedent that I mentioned that the Board has already seen with the other location. I am here to answer any questions that the Board has and look forward to entertaining your questions.

Ms. Evans stated the Hill Top Exxon? When did we supposedly decide that didn't need a special use permit?

Mr. Byrum stated my client tells me two meetings ago.

Mr. Dyer stated the notice was sent to City Council to change the zoning ordinance so at the time that this letter was sent out on March 2, there was a new city ordinance defining these games as adult entertainment and it had not been passed yet. My decision making on this issue has always been that a special use permit is required for an indoor commercial recreational facility. It is not required just to have indoor commercial recreation and another part of the city code defines an arcade which is

equivalent of an indoor recreational facility as having more than three games. So, to my mind if there are three or fewer games at this location, they are not required to have a special use permit and that is my opinion. Do we have any questions or comments from the Board?

Ms. Garrison stated you have 2 skilled games?

Mr. Powell stated yes.

Ms. Garrison stated do you have any other games?

Mr. Dyer stated do you have lottery machines?

Mr. Powell stated no sir, just two of the skilled games.

Ms. Evans stated are these registered with the ABC?

Mr. Powell stated yes, we were paying taxes to the Commonwealth and ABC, prior to the conjunction.

Mr. Dyer closed the Public Hearing.

Mr. Plachcinski stated if I could point out the city maintains, and I appreciate the discussion of what an accessory use is that it is subordinate, customary, and incidental to a principal use. However, all the remarks that we heard in the public comments period pointed towards legal accessory uses. In its wisdom the Virginia Legislature has outlawed these skilled games. They are not legal. Therefore, it's our opinion that with the conflict in the ordinance my opinion that the city cannot legally allow them regardless of special use permit status, regardless of accessory use status, they are illegal under the Virginia Code.

Mr. Dyer stated the problem with that is that the letter was sent to them states that they must have a special use permit. It seems to me like if the argument is being made that they are breaking the law then this ought to go before the legal system and not through the zoning. We are in a bit of a spot here because we are not really in position to determine whether these are legal or illegal; that is not really our purview. The issue that is before us is whether they are required to have a special use permit to operate to what are now decided two skilled gaming machines but are probably two indoor commercial recreational machines. I think that where we must tighten up on our focus today is to determine whether this Board determines whether he needed a special use permit to have two machines. However, you want to define it.

Mr. Plachcinski stated if you throw out this notice of violation, we will immediately issue another one under the same provision that they are illegal and that they have ten days to remove them.

Mr. Dyer stated that doesn't come back before us, will it?

Mr. Plachcinski stated it will if he reappeals.

Mr. Dyer stated why is it that the Zoning Administrator sends out that notice and not the City Attorney, or the Commonwealth's Attorney, or somebody who is involved in the legal side.

Mr. Plachcinski stated because the State Law says the Zoning Administrator is responsible for providing that notice.

Mr. Byrum stated can I address that issue? I know that you have closed your public comments. I would argue legally that the situation is exactly what the Chairman has said, although the code section was amended regarding these types of games it was done after this notice of violation was sent out and it doesn't have anything to do with the special use permit. If the Commonwealth wanted to enforce or bring a charge against the convenience store for operating these games, it can, and it should, and it would. I mean they are the authority that would enforce that statutory section not this body, and I point out that the General Assembly has issued an injunction against enforcement on that statute of these kinds of games for just the reason that is not settled yet. The statute also cannot be applied retroactively because the games would be grandfathered even if you apply the statute. This body is not the one that enforces that statute.

Mr. Dyer stated so are you making that argument that the Zoning Administrator acted as an enforcement agent where the state legislature has said that this should not be enforced?

Mr. Byrum stated correct.

Mr. Plachcinski stated I don't think the State Legislature said that.

Mr. Byrum stated the Governor, rather.

Mr. Plachcinski stated the Governor doesn't.

Mr. Byrum stated the injunction.

Mr. Plachcinski stated the injunction is from a County Court in Greenville County.

Mr. Byrum stated it applies by precedent to others.

Mr. Plachcinski stated for criminal enforcement, we would bring a civil charge, and that is how we will enforce our zoning rules.

Mr. Dyer stated a civil charge would go through the court system not through this appeal.

Mr. Plachcinski stated they could appeal that civil notice of violation back to the BZA.

Mr. Byrum stated I would argue that the Zoning Administrator can't bring criminal enforcement.

Mr. Dyer stated that is way above my pay grade here. I am going to maybe let you argue that before a judge. Any other questions?

Mr. Meder stated yes, I am a little bit confused that if we issue a judgement here it could be overturned by the city and the city has made us the board to see that the city is doing what they should be doing. Then you don't need us to vote at all today because the city just told us they are going to reverse this again if we were to reverse them.

Mr. Plachcinski stated no, that is not what I said. What I said was that if you procedurally determine that because the notice of violation was issued required a special use permit and you deemed that it does need a special use permit, you buy the accessory use argument, we will issue a different notice of violation. The due process does allow the recipient of the notice of violation to appeal it back to this body.

Mr. Dyer stated I think what we are determining here today to just tighten this case up as much as we can. We are determining whether the presence of two machines, whether they are pinball machines, skilled gaming machines or whatever, if the presence of two machine require a special use permit for indoor commercial recreational facility. I think that is the question that today we are focused on.

Mr. Meder stated hypothetical speaking if there were two pinball machines in that convenience market would they be cited also?

Mr. Dyer stated according to the reason why this was cited, yes. The reason these people were sent this letter is because they had two machines in their store that was used for indoor recreation.

Mr. Meder stated here is a question that goes beyond our board, but the State of Virginia said that these are illegal then why isn't the State of Virginia enforcing this?

Mr. Dyer stated that is not what we are here to determine.

Mr. Meder stated it just sounds ironic that they wouldn't send a State Trooper or ABC would say hey stop sending us your money because you are not allowed to have those machines.

Mr. Plachcinski stated the ABC is not collecting taxes because they are not operating legally right now.

Mr. Dyer stated I think once that statute expired July 1, of 2021, this all became a very gray area. Once again, I think we need to divorce ourselves from any of those arguments and just determine whether having two machines require a special use permit or not.

Mr. Plachcinski stated I understand the discussion and I'm not trying to dissuade the BZA from focusing on that decision, but also let's be clear that as the owner and applicants have come to the city when skilled games exploded on the scene, they made the suggestion that it was wide open and there were no limits on skilled games and there was an injunction, and the city took some time to be able to research and be able to understand the situation and what the effects of the injunction actually were. That happened when trying to begin to enforce it.

Mr. Dyer stated this is crazy and it's not very clear at all and it makes it very difficult for us, for attorneys, for business owners. We are kind of hooked.

Mr. Dyer stated once again that is why we need to tighten up on our focus. Let's just examine the issue if the presence of two machines at this location requires a special use permit or not. We have already made that determination in other cases, and we have set precedent that if there were three or fewer machines that we determined that they would not need a Special Use Permit, but each case is separate and individual. So, feel free to make a separate and individual decision on this case.

Ms. Evans stated there was a case similar to yours where a Special Use permit was applied for and Planning Commission approved it, but I'm not sure if City Council approved it?

Mr. Plachcinski stated they did not.

Ms. Evans stated and the reason being?

Mr. Plachcinski stated they didn't state a reason in their motion.

Ms. Garrison stated to be clear if you remove these two games and replace them with two pinball machines, we would not be here today?

Mr. Dyer stated according to this letter that they received, yes, we would because they would be violation the same City Ordinance. In this letter they are being told that they are required to have a Special Use Permit for being indoor commercial recreation facility.

Mr. Plachcinski stated it is hypothetical and in conjecture. I can't speculate on what the issue would be if the criteria and situation were different.

Mr. Meder stated I have four pinball machines at my house.

Mr. Dyer stated if you allow people to come into your house and play them for money then you are in violation. Also, you are in violation because you are in a residential area.

Mr. Meder stated if they don't have to pay?

Mr. Dyer stated then you are good.

Mr. Meder made a motion to grant this appeal and overturn the notice of violation issued to the applicant. Ms. Garrison seconded the motion. The motion was approved by a 5-1 vote.

2. Variance request PZ22-101, filed by Helen and Russell Reynolds, requests a variance from Article 3.B.1.4. of Chapter 41 of the Code of the City of Danville, Virginia that does not permit private domestic well and septic systems, at 41 Kayewood Lane (Parcel # 77939).

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Carl and Alice Reynolds. Mr. Reynolds stated there was no request for sewer on the application. He wants to put a well in because he is going to have a pool. He wants to have water so he can fill his pool and

irrigate his yard. There was no request for a sewer. There is a sewer line that goes down probably 1500 feet from where he was building a house. It is available but a well is what he is asking for.

Mr. Dyer stated is there a reason behind why they prefer well and septic as opposed to city services?

Mr. Reynolds stated there is not any water close. It is about 1800 feet or so and you have to go through two pieces of property to get to it.

Mr. Dyer stated this is the issue that we are dealing with, and we have dealt with this before. Technically the City Code says that you can't have a well and septic system in the incidences where water and sewer we quote "not available" then we have in the past granted variances to allow for private well and septic system. The phrase not available if you are willing to spend the money and take the time and effort water and sewer can be run anywhere. If this is just a personal preference for a well and septic where water and sewer taps are available from the city the that would be a different incidence than if this was a situation where I am going to use the phrase "not practically available" to have water and sewer. Which means there would be a substantial expense required to run water and sewer lines to make water and sewer tap available.

Mr. Reynolds stated he is not requesting sewer.

Mr. Dyer stated he is requesting to have a septic system, am I correct?

Mr. Reynolds stated no, not on this property.

Mr. Dyer stated all he is requesting is to have a well?

Mr. Reynolds stated yes.

Mr. Dyer stated you said the closest water line is a 1/3 of a mile away?

Mr. Reynolds stated yes.

Mr. Dyer stated is the applicant expected to bear the expense of running that water line for 1500 to 1800 feet?

Mr. Meder stated yes, from the road to the house, and from the house to the faucet. It is just like your house if it breaks between the road and your house.

Mr. Dyer stated I'm saying the closest water line to this property is approximately 1800 feet.

Mr. Meder stated yes.

Mr. Dyer stated it would be public utilities right-of-way to get to this lot. Is the applicant required to pay that or will the city run the water line 1800 feet?

Mr. Plachcinski stated typically for that distance it is the applicant that would be expected to pay for it.

Mr. Meder stated it is going through two parcels of private land.

Ms. Garrison stated you are going to run a sewer line?

Mr. Meder stated no.

Mr. Plachcinski stated the green lines on the bottom of this page is sewer and the blue line up above Riverside is where the water is.

Ms. Garrison stated so they are coming from two different directions?

Mr. Plachcinski stated right because the sewer has to be at the low point, so it falls low to topography.

Ms. Garrison stated so the sewer is coming from one direction and the water is coming from Riverside.

Mr. Dyer stated regardless of where they are coming from there is no water or sewer directly in the street in front of this house. Is that correct?

Mr. Plachcinski stated correct.

Mr. Dyer stated as I have mentioned before the precedent had been set that when water and sewer were not available that the applicant is allowed to install a well and septic system. The question is who determines whether it is available or not, if in fact it can be run at the expense of the applicant. I think the reasonable conclusion would be that you pay a water and sewer tap fee, \$1,500.00 for a water tap, and \$1,800.00 for a sewer tap, and that is usually all that you are required to pay to get water and sewer at your house. If this individual is being asked to spend thousands and thousands of dollars to run public utility down a public right-of-way, then maybe that is what constitutes water and sewer not being available.

Mr. Meder stated I think there are two things that you're not saying. First, is they are not asking for sewer on this request. Look at his form that he put in and it says a well but somehow on the front document from the city.

Mr. Plachcinski stated I appreciate the applicant clarifying the request.

Mr. Meder stated so there is no sewer on this request, just well. The gentleman said water for his garden and to fill his pool.

Ms. Evans stated so, there is not going to be a dwelling on this property?

Mr. Dyer stated yes, they are going to build a house.

Mr. Reynolds stated yes.

Ms. Evans stated where is the water and sewer coming from for the house?

Mr. Reynolds stated there is a sewer line about 500 feet away, and this house is on a hillside towards the river. The main sewer lines go down between his house and the river.

Mr. Dyer stated they are going to hook the house up to public sewer, but they want to use a well for water.

Ms. Evans stated but there is no water just a sewer line?

Mr. Reynolds stated correct, no water.

Ms. Garrison stated there are also other several lots are there. Any possibility of them being developed? It would be a whole different issue in the future.

Mr. Dyer stated I think in previous cases the city's position has been if there is no water or sewer and they don't intend to put water or sewer down that street. Do we know of any plans of the city potential running water and sewer down this street at any point?

Mr. Plachcinski stated I don't know of anything current.

Ms. Evans stated I know in the past we have approved such applications for people off Blair Loop Road, but I don't remember how many feet it was.

Mr. Dyer stated once again I think the fact that the description said water and sewer was not available.

Ms. Evans stated not available, but it is available.

Mr. Dyer stated well, I would make the argument that sewer and water is available anywhere if you are willing to bear the expense. I'm not a big fan of enforcing city codes or not enforcing city codes based on what something costs. It would appear to me that in the past we have set a precedent where we have allowed people to have a private well and septic systems because of the costs of running water and sewer line was the issue.

Mr. Dolianitis stated in a practical context, it is not available.

Mr. Dyer stated in a practical context, it is not readily available.

Mr. Dolianitis stated on thirty-five acres a well would not affect anybody else I wouldn't think.

Mr. Meder stated sir has the land perked?

Mr. Reynolds stated that piece of property, he is not asking for sewer.

Mr. Meder stated that's right, for sewer you need perking. Is there clean water in the ground? Do any other properties there have a well? Do they know if the water is good or contaminated?

Mr. Reynolds stated no, there was a well there years ago and it can't be found.

Mr. Dyer stated I think that is one of the jurisdictions of the water control board. They could possibly be denied a building permit if they don't have access to water or so. Their choice here is to have that water delivered by well as opposed to a water line.

Mr. Dyer closed the Public Hearing.

Ms. Garrison stated one more time how many feet?

Mr. Dyer stated he said approximately 1800 feet from the water line which is about a 1/3 of a mile. Which I think is probably the last time I checked \$50.00 a foot.

Ms. Evans stated I would like to know how many feet were at issue in the cases that we approved or denied.

Mr. Plachcinski stated our rule of thumb for participating in water and sewer line extension I believe is around 300 feet. That is the number that I have always heard from the utilities.

Mr. Dyer stated in other words when you go to apply for a water tap the city will at their expense and I thought it was 150 feet but maybe it has been increased would extend public utilities perhaps up to 300 feet to service a client and past that point it is the client's responsibility to extend the water line. I would make the point that it is practically available, and 1800 feet is not practical in my opinion.

Mr. Meder stated it is environmentally sound, a well.

Mr. Dyer stated this is a large parcel, correct?

Ms. Reynolds stated ninety-three acres.

Mr. Dyer stated this is zoned threshold residential, is that the zoning on it right now?

Ms. Reynolds stated yes.

Mr. Dyer stated that is allowed to be subdivided down below five acres anyway, I think. Is that the minimum lot size for threshold residential is five.

Mr. Plachcinski stated I think it is lower than that, but I will check.

Ms. Reynolds stated I can almost assure you that it will never be subdivided.

Mr. Dolianitis made a motion to approve the Variance Request PZ22-101 for a private well to be granted on the basis that public utilities are not available. Mr. Meder clarified that this motion is not approving a septic system as written in the initial documents. Mr. Meder seconded the motion. The motion was approved by a 5-1 vote.

Mr. Plachcinski stated I have the answer. In the threshold residential district, the minimum lot area is sixteen thousand square feet, and the maximum density is two units per developable acre. The Sandy River Residential is five acres.

- 3. Variance request PZ22-102, filed by Alice and Carl Reynolds on behalf of Helen and Russell Reynolds, requests a variance from Article 3.B.1.4. of Chapter 41 of the Code of the City of Danville, Virginia that does not permit private domestic well and septic systems, at 40 Kayewood Lane (Parcel # 77926).*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Alice and Carl Reynolds on behalf of Helen and Russel Reynolds. Mr. Reynolds stated there has not been any indication of sewer or water adjacent to this property. There is a fire hydrant on 58 west and there was no power coming down 58. We just put in a \$10,000.00 deposit to cut the right-of-way with the electric department to get electricity on the lot. We don't know exactly how much that is going to cost and we have done some clearing. We have bought a modular home which is going to be ready sometime this fall. If there is sewage according to this there is sewer and water available, but I don't know where it is at. I have been through three to five different departments at City Hall over this project. If there is water and sewer there I don't know where it is at.

Mr. Dyer stated perhaps the Zoning Administrator can enlighten us.

Mr. Plachcinski stated once again just clarifying that water and sewage could be extended at the property owners' expense to the site.

Ms. Reynolds stated yes, but it is very expensive.

Mr. Plachcinski stated I understand this and please don't think it is a judgement. It's just that I have to give a black or white explanation of it. I agree that it would be very expensive to extend.

Mr. Reynolds stated where will it be extended from?

Mr. Plachcinski stated the sewer would be extended from this direction from the South and water would be extended from the North from 58 down the right-of-way.

Mr. Dyer stated we don't have a scale on this map.

Mr. Plachcinski stated you do. It's six hundred feet.

Mr. Dyer stated so you are looking probably at an excess of twenty-five hundred feet or half a mile to run a sewer line?

Ms. Garrison stated you are already running a sewer line to that lower property.

Mr. Plachcinski stated the sewer is already in.

Ms. Garrison stated the sewer is already running to the first property.

Mr. Dyer stated that is what I am saying. This would be the nearest connection point, am I correct?

Mr. Plachcinski stated right.

Mr. Dyer stated if we run sewer up to the road right-of-way this would be the nearest connection point?

Mr. Plachcinski stated right.

Mr. Dyer stated from this point here up to that lot?

Mr. Plachcinski stated it is a substantial distance.

Mr. Dyer stated by my explanation it is about a half of a mile. Once again, the question is if water and sewer is practically available. We have in the past granted people a variance request to have private water and sewer system when public utilities were not practically available.

Ms. Garrison stated what size is this lot?

Mr. Dyer stated this is a substantial size lot. What size is the lot, Mr. Reynolds?

Mr. Reynolds stated it is fifteen acres.

Mr. Plachcinski stated this is the second one and I believe it is eight acres. This lot came up almost at eight acres. There are no worries. There should be plenty of them on the lot to set septic that would meet the health department requirements.

Mr. Meder stated you said that you were putting in a road, where is the road coming in from?

Ms. Reynolds stated you know where Wrenn Yeatts Funeral Home on 58 West? It is right across the road there. It is a dirt road that goes back into there.

Mr. Dyer stated the right-of-way was on the map and the road is following the existing right-away.

Ms. Garrison stated how many feet from Riverside to this lot is the water line? This one is much closer to Riverside.

Mr. Dyer stated substantially closer.

Mr. Plachcinski stated there is no scale on this map, but I am going to say it is over three hundred feet.

Mr. Dyer stated it is probably six hundred feet down that road.

Mr. Meder stated how close is it to that Lake Herron or is that just way out?

Ms. Reynolds stated Lake Herron is over in Beramin Woods.

Ms. Garrison stated that is pretty far.

Mr. Dyer closed the Public Hearing.

Mr. Reynolds stated I have a map if that will help.

Mr. Dyer stated that is what we have here on these screens. Any questions for the Zoning Administrator? Any comments?

Ms. Garrison stated can we separate this into instead of water and sewer just water, then sewer?

Mr. Plachcinski stated don't look at me.

Mr. Dodson stated with a variance application, yes.

Mr. Meder stated we have done that before.

Mr. Dodson stated the actual variance what you choose to grant or deny is technically up to you within the bounds of the application. If you want to partially grant a variance and then partially deny a variance that would be allowed as well.

Ms. Reynolds stated where would the sewage and water come from, if we don't have a septic tank?

Mr. Dyer stated if you don't have a septic tank then you would have to at your expense run a sewer line all the way down Kayewood to where Kayewood intercepts the line. Which is about half a mile down the dirt road. The water would come from Riverside Drive, which is where you turn right there at Wrenn Yeatts and that would approximately be six hundred feet.

Ms. Garrison stated they are already putting sewer on that lower property because they are only asking for a well.

Ms. Evans stated they said that sewer is already there.

Ms. Garrison stated so they are already putting sewer in that lower property somehow.

Mr. Dyer stated this is the lower property right here, right?

Ms. Garrison stated yes.

Mr. Dyer stated if they build a house right here then they can hook to a sewer line right there.

Ms. Garrison stated right.

Mr. Dyer stated that is a big difference from here and there.

Ms. Garrison stated it is also six hundred foot of water line. The water to me is accessible like the sewer is accessible to that lower property. The water seems accessible to the upper property.

Mr. Dyer stated I am not going to argue that.

Ms. Garrison stated that is why I wanted to know if it could be separated.

Mr. Dyer stated in other words grant the sewer variance and deny the water variance.

Ms. Garrison stated yes.

Mr. Dyer stated I think that you can make a motion saying that we grant a variance for sewer but that we deny the variance for water. I think that is pretty clean and cut. Again, it's not insignificant to run the water to a lot, because running the water three hundred feet probably what is going to happen if the water line is going to run down the public right-of-way to access this property it has to meet certain requirements and the property is probably going to require a four-inch line. The city may come back to them and say we want an eight in line for future development and you will have to pay the four-inch line and we will make up the difference. Once again three hundred feet at \$50.00 a foot is not an insignificant amount of money.

Ms. Reynolds stated is that water line on the North or South side of 58?

Mr. Dyer stated as long as it is in the right-of-way, I believe the city will run water in the right-of-way. Then you would be required to pick up and we believe the city will run three hundred feet at their expense. Then the additional three hundred feet you would be required to run that. There is definitely a water line running down Riverside Drive right-of-way. The problem is they are six hundred feet off of Riverside Drive.

Ms. Garrison stated one of my problems is that the development of other properties in that vicinity because it is going to come. If we start with this down the road, we are going to be setting a precedent.

Mr. Plachcinski stated I think unfortunately the BZA can't really speculate on what future development may be. I agree, that given a potential comprehensive comp plan update that this area on the West side of the city may be planned future for more intense development than what it is planned for now.

Mr. Dyer stated once again I will point out that would be the property owner's purview as whether they would subdivide, their own property. I am assuming that there is a mechanism that they cannot subdivide this lot smaller than what would be required for a lot that has a well and septic system. If I am not mistaken, I believe the smallest size lot that has an either a well or septic system is half an acre, and an acre if you have both well and septic. Do we know anything about that?

Mr. Plachcinski stated I am not aware that our zoning ordinance addresses that concern specifically but that is a good point that it should. I will add that to the list of things.

Mr. Meder stated sometimes we get letters in that say they agree or don't agree. Did we get any notices?

Ms. Reynolds stated this property adjoins Fred Leggett's farm and he sent in a letter saying that it was perfectly okay with this. He is my son's father-in-law.

Mr. Plachcinski stated he did, and they are printed out on my desk downstairs and there was no one opposed. We did receive letters in support of this. I apologize.

Mr. Meder made a motion to approve Variance Request PZ22-102 to allow a septic system at 40 Kayewood Lane. Ms. Evans seconded the motion. The motion was approved by a 4-2 vote.

Mr. Meder made a motion to deny Variance Request PZ22-102 for a well at 40 Kayewood Lane. Ms. Evan seconded the motion. The motion failed on a 3-3 vote.

Ms. Garrison made a motion to approve Variance Request PZ22-102 for a well. Mr. Dolianitis seconded the motion. The motion failed on a 3-3 vote.

Mr. Plachcinski stated let me point out that at the next BZA meeting, the Board can reconsider either of these motions. So, should the applicant explore getting city water to the site and bring in new information I would encourage the BZA to reconsider their motion and that if anything new comes to light as to what the actual viability is.

Ms. Garrison stated it would be helpful if we had precise numbers towards how far and approximately how much. It would be very helpful.

Mr. Meder stated if they came here and said they needed an edge line half a mile long and it was going to cost \$42,000.00.

Mr. Plachcinski stated I am glad you mentioned that, just because you've made two motions that did not pass, you may postpone action to the next meeting, and I will allow the applicant to bring more evidence. Would that be something that the BZA would be amiable to do?

Ms. Garrison stated I think it would be helpful in making a decision, because this is all very arbitrary, as in its fifteen hundred feet maybe and it's eighteen maybe. It would be easier if we had more precise information.

Mr. Plachcinski stated I would encourage the BZA to consider both nominations.

Mr. Dyer stated we have already voted and both of them have been recorded.

Mr. Plachcinski stated both of them have failed.

Ms. Evans stated we can make another motion to table it.

Mr. Plachcinski stated to postpone action.

Ms. Garrison made a motion that we postpone action on Variance Request PZ22-102 until the next meeting. Ms. Evans seconded the motion. The motion was approved by a 6-0 vote.

Mr. Dyer stated what we have done is given you an opportunity to come back. I would call someone and say what does it cost to run a water line six hundred feet and what does it cost to run a sewer line twenty-five hundred feet. If you could come back with those numbers. The septic passed and this is just for the water line. I would call some firms and get them to give you an estimate. I also wouldn't pay for an estimate.

Mr. Plachcinski stated it may be something that our utilities department can contribute to the discussion.

Mr. Dyer stated if we can clarify and get back with Mr. and Mrs. Reynolds on how far the city will run a water line with just the basic tap and how much more they would be responsible for.

Mr. Plachcinski stated yes.

Ms. Reynolds stated do we need to file again to come back?

Mr. Plachcinski stated no.

Ms. Reynolds stated we will just come back.

Mr. Dyer stated correct, and it may not be next month, but it depends if we have another case next month, unless you need it for next month.

Ms. Reynolds stated probably because they are getting ready to start building the house. We need to know as soon as possible.

Mr. Dyer stated what I would say to you that if you were comfortable with either way on the water lines. If you are comfortable putting in a well, and you are comfortable putting in and paying to have city water line run then you can do that at your own risk.

Mr. Plachcinski stated but the next meeting could be in July with only one item.

Ms. Reynolds stated okay.

II. APPROVAL OF MINUTES FROM MAY 19, 2022

The May 19, 2022, minutes were approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Plachcinski stated it has been pleasure working with you all.

Mr. Dyer stated this will be Mr. Plachcinski's last meeting and I would like to say that it has been a pleasure working with you. We don't always agree but we agree to get along. I want to thank you for your service to the city and to this board.

Ms. Evans stated I think this is a huge loss to the city, to the BZA, and to the Planning Commission. A huge loss. (Everyone seconded that). I wish that we could have kept Doug somehow and someday.

Mr. Dyer stated I will support that.

With no further business, the meeting was adjourned at 11:15 a.m.

APPROVED