



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

NOVEMBER 17, 2016
4:00 P.M.
4TH FLOOR CONFERENCE ROOM
MUNICIPAL BUILDING

- I. WELCOME AND CALL TO ORDER
- II. ROLL CALL
- III. ITEMS FOR PUBLIC HEARING

Variance Application Number PLVAR20160000282, filed by Mark Nance, requesting a variance from Article 3.E.: Section I., Item 4 of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 121 Indian Valley Road, otherwise known as Grid 0508, Block 005, Parcel 000003, of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow for the installation of a well where it is prohibited by Code.

- IV. APPROVAL OF THE MINUTES FROM JUNE 16, 2016
- V. OTHER BUSINESS
- VI. ADJOURNMENT



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November 17, 2016

SUBJECT:

Variance Application Number PLVAR20160000282, filed by Mark Nance, requesting a variance from Article 3.E.: Section I., Item 4 of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 121 Indian Valley Road, otherwise known as Grid 0508, Block 005, Parcel 000003, of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow for the installation of a well where it is prohibited by Code.

BACKGROUND:

The subject parcel is located near the intersection of Holland Road and Indian Valley Road and was annexed into the City of Danville in 1988. The property was constructed with two houses sharing a common well and property lines intersecting this house. The applicant is proposing to correct the property line issues, and add a private well to serve this residence. City code does not permit the installation of private wells. The nearest City of Danville water line is approximately 850' from the residence to the north of the 29 bypass. The City is not proposing to extend this water line to serve this property.

PREREQUISITE FOR GRANTING VARIANCES:

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to

subdivision 6 of § [15.2-2309](#) or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) at the time of the filing of the variance application.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with.

CRITERIA ANALYSIS:

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance

- ***And the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance***

The property has been in the family of the applicant for 65+ years and was annexed into the City in 1988. The City of Danville provides public water to properties in the City, but does not serve this area, and has no immediate plans to serve this area. Therefore, this application **does** meet this criterion.

- ***And the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area***

This area is served exclusively by private wells and septic systems. The City of Danville provides public water to properties in the City, but does not serve this area, and has no immediate plans to serve this area. The property has been checked for well compatibility by the Health Department and has been found suitable. Therefore, this application **does** meet this criterion.

- ***And the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance***

The City of Danville provides public water to the majority of properties in the City but does not serve limited areas. The City has no immediate plans to serve this area. Therefore, this application **does** meet this criterion.

- ***And the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property***

This variance request would not allow a use that is not otherwise permitted on such property or a change in the zoning classification. Therefore, this application **does** meet this criterion.

- ***And the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § [15.2-2309](#) or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) at the time of the filing of the variance application***

This variance request may not be remedied by the special exception process. Therefore, this application **does** meet this criterion.

Therefore, this variance request meets five (5) of the five (5) criteria needed to grant a variance.

Attachments:

Application
Staff Exhibit
Data Sheet
Property Ownership & Existing Zoning Map
Existing Land Use Map (Aerial 2015)



VARIANCE APPLICATION

No application for a variance will be accepted for a Board of Zoning Appeals agenda unless the following conditions are met by the twentieth (20th) of the month, unless a weekend, prior to a Board Meeting. The Board meeting is held on the third Thursday of each month.

1. A pre-conference meeting with the applicant and the Zoning Administrator or designated Staff person has been conducted.
2. All questions on this application have been fully answered
3. The property owner(s) or his agent with the written authorization of the owner has signed the application
4. A Plot plan drawn to scale, showing the actual dimensions and shape of the lot, the exact size and location on the lot of all building and signs existing and proposed, and the location of all required parking spaces has been submitted.
5. The Zoning Administrator has certified that the proposed use and construction plans comply will all provisions of the Zoning Code, except for which a variance has been requested.
6. Original signatures of the applicant(s) and/ or property owner(s) are present on the application.
7. An application fee of \$200.00 has been submitted.

INFORMATION TO BE PROVIDED BY THE PLANNING DIVISION

CASE NUMBER: _____ EXISTING ZONING: OT-R

RECEIVED BY: Ah DATE FILED: 10/6/16

TAX MAP NUMBER: _____ BZA DATE: 11/17/16

VARIANCE FROM ZONING SECTION _____

IN AUTHORIZING A VARIANCE THE BOARD OF ZONING APPEALS MAY IMPOSE SUCH CONDITIONS REGARDING THE LOCATION, CHARACTER AND OTHER FEATURES OF THE PROPOSED STRUCTURE OR USE AS IT MAY DEEM NECESSARY IN THE PUBLIC INTEREST AND MAY REQUIRE A GUARANTEE OR BOND TO INSURE THAT THE CONDITIONS IMPOSED ARE BEING, AND WILL CONTINUE TO BE COMPLIED WITH.

PRESENT OWNER (S) OF ALL PROPERTIES INCLUDED IN APPLICATION

(PLEASE TYPE OR PRINT):

Estate of Ruby C. Hamlett

1. NAME: Bonnie M. Nance, Exc. TELEPHONE: 434-793-0686

MAILING ADDRESS: 341 Starmont Dr., Danville, VA 24540

EMAIL ADDRESS: _____

SIGNATURE: *Estate of Ruby C. Hamlett*
by Bonnie M. Nance, Exc. DATE: 10/6/16

APPLICANT (PLEASE TYPE OR PRINT):

If the applicant is not the property owner, written authorization from the property owner must accompany this application.

NAME: Mark Nance TELEPHONE: 434-489-6376

MAILING ADDRESS: 130 Brook Cir Danville VA 24541

EMAIL ADDRESS: marknkn@gmail.com

SIGNATURE: *Mark Nance* DATE: 10/6/16

The decision of the Board of Zoning Appeals is final, unless appealed to the Danville Circuit Court within thirty (30) days of the date of the Board's decision in accordance with Article 13 Section I Item 2 of the Zoning Code, 1986 as amended.

Property Address: 121 Indian Valley Road, Danville, VA 24541

I (we) have applied for a variance to allow the following:

A well

§ 15.2-2309 [excerpt]
Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

I (we) now appeal to the Board of Zoning Appeals for a variance permitting the action described above in that:

- i. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Describe):
Property has been in family for 65+ years and was annex into the city in 1988
- ii. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area (Describe):
area isn't served by city water and a well is need for the house + has been approved by health dept.
- iii. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance (Describe):
most of city is served by city water but area uses only wells
- iv. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property
 Yes or No
- v. The relief or remedy sought by the variance application is not available through a special exception process
 Yes or No



DANVILLE EXPY

ROYHAM DR

INDIAN VALLEY RD

HOLLAND RD

211

75623

711

75545

121

75546

75547

75550

118

75549

689

75377

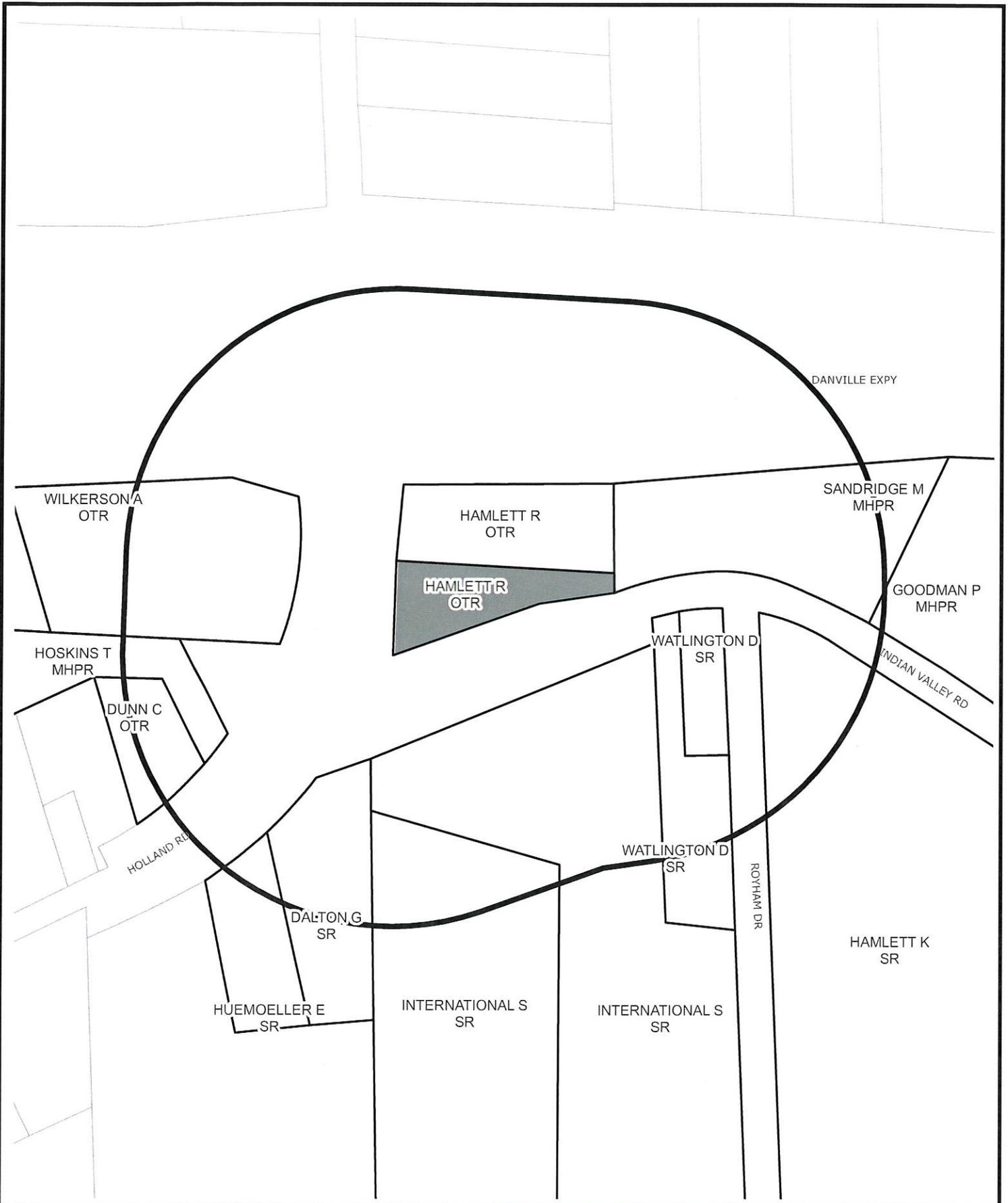
75398

75574

75573

CW Well

*Spetic
121 Indian
Valley*



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY



Prepared by:
 Planning Division
 10/25/2016

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.

VARIANCE REQUEST
DATA SHEET

DATE: November 17, 2016

LOCATION OF PROPERTY: 121 Indian Valley Rd

PRESENT ZONE: OT-R, Old Town Residential

ACTION REQUESTED: The applicant is requesting a variance to install a well where it is prohibited by Code.

PRESENT USE OF PROPERTY: Single Family Residential

PROPOSED USE OF PROPERTY: Same

PROPERTY OWNER (S): Rita Hamlett and Bonnie M. Nance

NAME OF APPLICANT (S): Mark Nance

PROPERTY BORDERED BY: Residential to the north, south, and west.
Manufactured Home Park to the east.

ACREAGE/SQUARE FOOTAGE: .32 acres

CHARACTER OF VICINITY: Residential

INGRESS AND EGRESS: Indian Valley Rd and Holland Rd

TRAFFIC VOLUME: Low

NEIGHBORHOOD REACTION: To be reported at the Board of Zoning Appeals hearing of November 17, 2016.



2015 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY

Prepared by:
Planning Division
10/25/2016

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BOARD OF ZONING APPEALS MEETING

June 16, 2016

Members Present

Gus Dyer
Michael Nicholas
Dolores Reynolds
John Hiltzheimer
Philip Campbell

Members Absent

Dawn Witter
Ann Sasser Evans

Staff

Ken Gillie
Tracie Lancaster
Alan Spencer
Anna Levi

Chairman Dyer called the meeting to order at 4:00 p.m.

I. ITEMS FOR PUBLIC HEARING

1. Variance Application Number PLVAR20160000152, filed by Massa Multimedia Architecture, PC, requesting a variance from Article 10., Section P., Item 2., Paragraph 2 of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 261 Nor Dan Drive, otherwise known as Grid 1808, Block 004, Parcel 000077, of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow for more signage than is permitted by Code.

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request is James Higgins on behalf of Walmart. I would like to start off by giving the Board just a little bit of overview of the application that we had submitted. I have worked with and had correspondence with Mrs. Burton in regards to the signage application at the main store as well as the fuel station and canopy. It our May 20th application we submitted all the applications for the signage along with the Variance application. My substituent conversions with Mrs. Burton and per her review of a courtesy letter that provide calculations for her review in terms of making sure that the signs are within alignment with your ordinance. She had indicated that both signs and the permits that we had provided for the main store where in compliance. However, the canopy signage that was calculated on the linear footage of the kiosk building what we were showing on our application was in excess of what was allowed. What I would like to do is if I may present a couple of exhibits that I have brought with me. One, is a compilation of some photographs that I have just recently taken here today actually, After visiting the site showing certain perspectives of the canopy from different venues. As well as some exhibits that show our earlier signs that we had shown on our permitted set; the number of signs that we showed in our sign booklet of May 20th. Then I have a latest version that would show signs located primarily showing both the Walmart sign and the digitals signs facing the two right-of-ways. That final presentation while in excess of the allowable. Hopefully the Board will be accepting of that understanding that it gives the best visual ability for potential customers to see the fuel pricing on a day basis. As they both approach the site as well are in the site. I

don't have enough copies for all of the members that are seated here. I have enough so that they can share.

Mr. Dyer stated if you want to take one and pass it down.

Mr. Huggins stated this first exhibit I will give one to each side.

Mr. Dyer stated they don't care.

Mr. Whitfield stated yeah they are more important than we are.

Mr. Gillie stated we just need one for the record. Yeah they need it way more than we do.

Mr. Nicholas stated why that is going around could you address why you meet the five factors that we have to find that you meet in order to agree to a variance.

Mr. Huggins stated I'm assuming that is in the letter.

Mr. Nicholas stated it is these five right here.

Mr. Huggins stated well the first one property interest for which the variance is being requested was acquired in good faith and any hardship was created by the applicant. I don't believe that there is any hardship that is being composed by requesting the additional sign. I think if anything it helps inform the customers of daily pricing of the fuel. I don't believe that there is any detriment to the adjacent properties.

Mr. Nicholas stated well the adjacent properties aren't allowed to have signs of the same size as you are requesting. Why is it that you should get larger signs and they not?

Mr. Huggins stated once again I would say that Wal-Mart is trying to create the exposure for those of vehicular traffic; so that they can see the signs at the best possible vantage. Preferably, their ideal situation would be to have the digital signs on each of the four faces of the canopy. So that customers can see that before they get close to the site. So that they can value judgment to make appropriate turns without possibly being involved in passing the site and causing an inconvenience of possibly driving further down the road and then coming back. Or making a split decision fast break and possibly getting into an accident. Health and safety of the general public is a concern. By offering them the ability to see these signs as they are approaching the site would be beneficial. The condition or situation of the property of the concerned is not a general or recurring nature reasonable practicably formulation of a general regulation to be adopted.

Mr. Dyer stated can I stop you right there for one minute? In the past because basically what this says is this problem is not so recurring that it is something that should be addressed in the code. Correct?

Mr. Gillie stated yes.

Mr. Dyer stated in the past the decision was that this was not something that is so generally occurring that it should be addressed in the code. So, in previous applications this was stated that the applicant does meet the requirement. The requirement that they are trying to meet is that it is something that it is not so general that it ought to be addressed in the code. Am I mistaken on that?

Mr. Gillie stated we don't feel that a code modification is necessary in this case.

Mr. Dyer stated so then in fact he does meet this criteria.

Mr. Gillie stated we may have put a no where we should have put a yes.

Mr. Dyer stated I'm going to stop you there because I believe that this should say that this does meet the criteria. So you don't have to argue that point. The City agrees with you that. I think the next two in fact that you do meet those. So it's the first two criteria that you have to meet in order for us to grant the variance. One thing that I would like to point out to you is that we are not an opinion Board. You're not here to try and convince us that you have a good idea. We might think you have a great idea but if it violates the Code and we can't find the reason in order to support your application we can't support it.

Mr. Huggins stated understood.

Mr. Dyer stated so you have addressed the first two issued. Then the other three I think you are willing to take the City's recommendation that you do already meet that requirement. Correct?

Mr. Huggins stated I would say so.

Mr. Dyer stated do you have anything further that you would like to add.

Mr. Huggins stated no other than the fact that I do have the exhibits here to show what we had originally shown for Wal-Mart with digital signs all the way around. Obviously, they are not in compliance they are over the allowance. The best case scenario that we could present to the board here today would be to provide the best exposure for the two right-of-ways with a Wal-Mart sign and a two digital signs facing North Dan Drive and two digital signs facing Piney Forest. If there were no other signs on the other two faces both the parking lot and the shopping center and the rear of the property, Wal-Mart would be accepting and would be happy to receive a variance for the placement of signs on those two faces.

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated okay these are the calculations correct? Or what we are looking at? So this is just for the gas station and kiosks? Are they maximizing their sign usage?

Ms. Levi stated yes they are. I think I included that page in your packet also. Yeah they are totally maxed out.

Mr. Dyer stated so did they get credit for the canopy?

Ms. Levi stated that is based on the size of the kiosk. So the main building there is the kiosk so they get two square feet of signage for every linear foot. The kiosk is 35 long.

Mr. Dyer stated 35x8 so they get 71.32 square feet of total signage.

Ms. Levi stated correct.

Mr. Dyer stated that includes that building and the kiosk?

Ms. Levi stated right.

Mr. Dyer stated so what we have here then is we have 11.26 square feet of signage on the building itself correct; which leaves us with 60.06 square feet of signage that is allowable on the canopy. What they are asking for is 100.58 is that correct?

Ms. Levi stated correct.

Mr. Dyer stated so we are about 80 percent over the allowance.

Ms. Levi stated they have enough space leftover for two digital signs.

Mr. Dyer stated two. Does that include the digital signs plus the Wal-Mart sign?

Ms. Levi stated yeah they have room for both Wal-Mart signs, the one on the kiosk, the canopy and the two of the digital signs.

Mr. Dyer stated but not two Wal-Mart signs on the canopy?

Ms. Levi stated this is only calculating one.

Mr. Dyer stated alright one Wal-Mart sign on the canopy. When you say two digital signs do you mean the twin signs as one sign?

Ms. Levi stated diesel would be one unleaded the other.

Mr. Dyer stated so they only have room for one of each, one regular and one diesel on both sides of the sign.

Ms. Levi stated right.

Mr. Dyer stated does everybody understand what they are asking?

Mr. Huggins stated could I possibly make a comment?

Mr. Dyer stated sure.

Mr. Huggins stated I'm not sure if I correctly understand but if you are referring to the May 20th dated presentation I think our canopy was actually showing to Walmart spark signs.

Mr. Dyer stated yes it does. This paperwork that we have does show two Walmart signs. What they are saying now is all you are allowed under the current code would be one Walmart sign plus one unleaded gas digital sign and one diesel sign correct?

Ms. Levi stated correct.

Mr. Gillie stated its square footages not the signs.

Mr. Dyer stated they could make the sign smaller and then they could have two. If they wanted to cut the size of it in half they could have two.

Mr. Gillie stated they could have 50 Walmart signs as long as they cut down them small enough. It's all a straight numbers game.

Mr. Nicholas stated I get what they are asking for but I don't see how they meet the first two criteria.

Mr. Nicholas made a motion to deny Variance Application PLVAR20160000152. Mr. Campbell seconded the motion. The motion was approved by a 3-2 vote.

II. APPROVAL OF MINUTES

Mr. Dyer stated there was a discrepancy with the vote.

Mr. Gillie stated however you feel that it should be. After listening to the tape there is a disagreement but we will go with what you feel.

Mr. Dyer stated we will ask the source right now. Mrs. Reynolds last month we feel like we had an unanimous decision and approved the application. So are you in agreement that you agreed to the application?

Mr. Nicholas stated did you vote to overturn the appeal?

Mr. Reynolds stated I voted in favor of the person that was making of the citizen.

Mr. Dyer stated so it was unanimous decision.

Mr. Gillie stated we will amend it to reflect that.

The May 19, 2016 minutes were approved by a unanimous vote with the change of Mrs. Reynolds's vote on Item 1 to yes instead of no.

III. OTHER BUSINESS

Mr. Dyer stated once again at what point do these signage issues become common to where you feel that it should be addressed?

Mr. Gillie stated actually, we asked the Planning Commission to investigate possible changes because of some changes where the Supreme Court made a decision that they have passed over to allow us time. We are probably going to hire a consultant to come and do some major changes to our sign regulations if we are looking at doing that in the future. I just don't have it budgeted at this point. I have got to get the money to do such. We are going to go back and that's why I talked to Mr. Powers last month about it.

Mr. Dyer stated what do you feel like they are going to address the size of signs? Are we in a position to where if somebody ends up making an application today and we think that may be allowed next month?

Mr. Gillie stated no, we don't think that will change. In our opinion that shouldn't change. So of the things that will change is we have different categories based on different districts some of that will change. We have different categories a certain use within a district that will change. In general I don't think the size of the signs is really going to change except will be more district specific.

With no further business, the meeting adjourned at 4:23 p.m.

APPROVED