

BOARD OF ZONING APPEALS MEETING
July 15, 2010

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Snipes	Mr. Bowles	Ken Gillie
Mr. Dyer	Mrs. Rich	Christy Taylor
Mrs. Evans		Emily Scolpini (Intern)
Mr. Campbell		Clarke Whitfield

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

I. ITEMS FOR PUBLIC HEARING

Item 1. Variance Application Number PLVAR201000023, filed by Larry and Starr Bell, requesting a variance from Article 7: Section C, Item 3, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 3103 West Main Street, otherwise known as Grid 0505, Block 002, Parcel 000003 of the City of Danville Virginia, Zoning Map. The applicant is requesting a variance to allow for demolition and reconstruction of existing gas pumps and canopy creating an expansion of a nonconforming structure.

Five (5) notices were mailed to property owners within three hundred feet; Two (2) respondents were unopposed; Zero (0) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Larry Bell. Mr. Bell stated that he is the owner of Carter's Quick Shop. We think that this would improve the traffic flow and access to the gas pumps and get the gas pumps away from the fence they have put in. It would greatly improve our business. We would be able to provide diesel. Where the pumps are now creates a problem with people coming in and out of the pumps. There is not enough room. Davenport Energy is going to do the work.

Close the Public Hearing.

There were no questions.

Mr. Dyer stated they meet all four (4) criteria.

Mr. Dyer made a motion to approve the request for Variance Application PLVAR201000023. Mr. Campbell seconded the motion. The motion was approved by a 4-0 vote.

Mr. Whitfield stated before we open the public hearing for Item 2, I believe that we are going to have to table this item unless another member shows. One of our members has a conflict of interest because they are employed by Danville Regional Medical Center. That would only give us three (3) members and we have to have four (4) affirmative votes to grant the application. In order to give the applicant a fair opportunity to have their variance granted, we should table that until the next meeting.

Mr. Dyer asked can we hold it until later?

Mr. Whitfield responded you can delay the item and wait to see if another member shows up. You can table it until after the public hearing for the third item, because you have enough members for that.

Mr. Dyer made motion to hold the public hearing for Item 3 before Item 2. Mrs. Evans seconded the motion.

Mr. Gillie stated that Mrs. Evans could not second the motion due to a conflict of interest.

Mr. Whitfield stated that you do not need a motion. If the Chairman would like to declare the items be taken out of order, he can do that.

Mr. Snipes stated we will go out of order.

Item 3. Variance Application Number PLVAR201000028, filed by Powers Signs Inc., requesting a variance from Article 10: Section P, Item 1a, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 2143 Riverside Drive, otherwise known as Grid 1711, Block 008, Parcel 000021 of the City of Danville Virginia, Zoning Map. The applicant is requesting a variance to erect a 96sf ground sign where 75sf is permitted.

Ten (10) notices were mailed to property owners within three hundred feet; Three (3) respondents were unopposed; Zero (0) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Robert Woodall III, General Operations Manager for Woodall, Inc. Mr. Woodall stated the sign that we have now is on our Hyundai lot which is located at 4754 Riverside Drive. The sign is about three (3) years old and we paid in excess of about \$35,000 for it. We need to move it to our other location, to the building we own beside Short Sugars. We elected to move it there because it has better traffic flow. It is a fifty-five (55) mph zone where the other store is at and when Toyota moved, traffic moved out. We have checked on replacing the sign. Hyundai Motor Company does not have a sign available right now that conforms. They are not making any signs because of the way the economy is right now, with all of the car dealerships closing over the past thirty-six (36) months. They have re-possessed signs and signs that they have un-installed. They said it would be as much as eighteen (18) to thirty-six (36) months to get a new sign. Having a business on Riverside Drive with no sign would hinder our visibility. We need all of the visibility and traffic we can get. We do generate a lot of revenue from gross receipts for the City. It is hundreds of thousands of dollars that we pay right to the City for licensing and taxes. We are good stuarts to the City. We allow access to the walking trail on all three (3) of our buildings we own on Riverside. We give an easement, so we have been more than flexible with them. We have helped them out with access to that.

Mrs. Evans asked are any of the signs Hyundai has lying around what we need?

Mr. Woodall responded no, most of them are bigger than what we have. Our sign was the newest and most conforming. They would like for all signs to be uniform. We are getting ready to spend

about \$500,000 on our Chevrolet store to make it like all other Chevrolet stores. They all want them like a McDonald's. I do not necessarily agree with that, but we have to live with what we are dealt.

Mr. Dyer asked how critical is it that this sign actually identify Woodall?

Mr. Woodall responded according to DMV regulations, they want the name on the sign unless they have a variance from the manufacturer. Those are rules we have to follow. My father is on the Department of Motor Vehicles Board and I can guarantee you that if we are going to put the sign up, it will have to have our name on it.

Present on behalf of the request was Tom Powers, owner of Power Signs. Mr. Powers presented a drawing of the sign to Board members and Staff. Mr. Powers stated the actual Hyundai sign itself is sixty-three (63) square feet. By definition, if it were not for Robert Woodall's letters on the lower part, that would be considered an architectural element. The ninety-six (96) square feet is the total area of the box. One time before I did a sign that read Woodall Used Cars, and DMV called our hand on it. They said that it had to read exactly the way it is printed on the license. It is the same thing with a tow truck driver. He has to have his name permanently affixed to a vehicle. The sign is there now, and this is reverse of what we asked for a few months ago. Under these circumstances that we are in now economy wise, it would be a shame to scrap this and not be able to move this down the road where there are signs similar to it. As far as a custom sign, Toyota had to build a custom sign for Danville, Virginia. The sign they removed from their old location was one of the last two (2) in the United States and the reason they had those two (2) is because they could not get the Code to allow the standard Toyota signs. They had to build a special one for Danville, so it becomes a little bit of a hardship. This Code is seventy-five (75) square feet, and the previous Code was one-hundred (100) square feet. This sign would have met the previous Code, but now because it needs to be relocated, we are in between a rock and a hard place. Robert Woodall itself is about seven (7) square feet, so the actual viewing area would be sixty-three (63) and seven (7) for a total of seventy (70) square feet. I know Ken Gillie is saying that is not the way we figure it.

Mr. Gillie asked does the Toyota sign say Danville Toyota?

Mr. Woodall responded Danville Toyota is on the building.

Mr. Gillie asked could you put Robert Woodall on the building and still comply with DMV?

Mr. Woodall responded if you give us a variance because we already have the building sign.

Mr. Gillie asked could you have made the building sign smaller?

Mr. Powers responded it was an existing sign.

Mr. Gillie asked have you maxed out on the building sign too?

Mr. Powers responded yes.

Mr. Gillie asked does Nissan have Robert Woodall on the sign?

Mr. Woodall responded it is on the building.

Mr. Gillie asked will DMV let you move the part around somewhere?

Mr. Woodall responded as long as you have the name somewhere.

Mr. Gillie asked does it just have to be posted somewhere it is visible, on the building, door or sign?

Mr. Woodall responded yes. Hyundai wants you to have a certain amount of signage and they want it visible from the street. It has to be the same color. It is not like other entities. They want to know what color chairs you have in the building.

Mr. Powers stated there is a lot of effort that goes into tying in logos. I cannot build them a sign. I could have built Comfort Inn a sign but I would have had to pay a licensing fee of \$2400 and that was only good for that one (1) sign. They want to maintain conformity and have total control over it, so there is not much I can do to help them modify this; because they are not going to let us do it. The best we can hope for is to move it from one side of Riverside Drive to the other. That is where the Mazda sign was that was too big under the last situation.

Mr. Dyer asked how wide is this column?

Mr. Powers responded the column itself is about eighteen (18) inches.

Mr. Dyer asked is the one-hundred, seventy-five (175) square feet the sign plus the architectural element?

Mr. Gillie responded correct.

Mr. Dyer stated the square part at the top is fifteen (15) by six point four (6.4). That is ninety-two point six-five (92.65) feet. The pole would have to exceed seventy-five (75) square feet and I do not see any circumstance in which it could.

Close the Public Hearing.

Mr. Dyer stated this is the argument we have had before, which is what constitutes a sign. In my mind a sign is letters, numbers, or logos that convey a message; background space is not a sign.

Mr. Gillie asked do you need our definition?

Mr. Dyer responded you read it and I am aware of what is supposed to happen. You are supposed to be able to draw a regular size geometrical figure around the area in which the sign fits. That area cannot exceed seventy-five (75) square feet. Even if I am willing to say the entire upper level is a sign, but where it says Robert Woodall, the background is essentially the same as the pole. So if the pole is the architectural element, then the bar where Robert Woodall is mounted on is also part of the architectural element. The sign that has the Robert Woodall lettering is affixed to the architectural element. It is the same with the hospital. You took the lettering of Danville Regional and drew a box around it and said that was the square footage of the sign. You did not say because it is mounted to a brick wall that the entire six (6) story building is a brick wall, then therefore the background of the lettering is consistent with the building and the entire brick wall is a sign. It is

only fair to say that yes the Hyundai part that is lit is a sign, but the part that says Robert Woodall is not lit.

Mr. Dyer asked are the letters lit?

Mr. Powers responded I think they should be, but I am not sure.

Mr. Dyer stated it is a reasonable argument to make that in fact the area of this sign is the sixty (60) square feet plus an area of ten (10) inches by one-hundred (100) inches, which is seven (7) square feet. You then combine those two (2) areas together and you come up with an area less than seventy-five (75) square feet. If it was my job to interpret the area of this sign, that is the figure I would come up with and as long as the entire area does not exceed one-hundred, seventy-five (175) square feet. In other words, he can put up a something that covers one-hundred, seventy-five (175) square feet and put a smaller sign on it; and that would be more intrusive. I think you have to look at the intent of what the Code is meant to do and I think the intent is to prevent a sign from being too intrusive. Obviously, this sign is less intrusive than a sign that could legally meet the Code. My interpretation of the Code would be that this sign only consists of sixty-seven (67) square feet.

Mr. Campbell stated my concern is you are only meeting one (1) of the four (4) criteria. The major piece that sticks out in my mind is safety.

Mr. Campbell asked how will this sign affect those persons driving down Riverside Drive as far as safety is concerned?

Mr. Powers responded driver attention on Riverside Drive is one of the toughest. This sign is basically a box on top of a stick and if it is not directly in view of a driver, I think it is just an eye catcher out of the corner of your eye. I do not think it is an attention grabber.

Mr. Dyer stated I am aware of a sign that is a hazard. At the intersection of Deer Run Road and Piney Forest Road there is a sign that obstructs your view of oncoming traffic. That sign definitely creates a safety hazard.

Mr. Dyer stated if you took the lettering off of the sign, that part would be part of the architectural element and that would meet the Code. All they are really doing is adding an additional sign and affixing it to the architectural element. That is the argument that I would make. There is more than one (1) way to interpret a Sign Ordinance. A looser interpretation of the Sign Ordinance would allow Mr. Woodall to install this sign as it currently exists.

Mr. Gillie stated it would allow people to start putting signs on architectural elements. They either have the sign or an architectural element. They are two (2) distinct things according to the Zoning Code. If we start allowing people to put a sign on the architectural element then we are effectively allowing a one-hundred, seventy-five (175) square foot sign period.

Mr. Dyer stated I thought you are allowed seventy-five (75) square feet of sign area and then an additional one-hundred (100) square feet of architectural element.

Mr. Gillie stated that is the cladding, the poles, and all other things on it. If we start allowing people to put wording on the architectural element then we are allowing a one-hundred, seventy-five (175) square foot sign.

Mr. Dyer stated as long as the sign part can be incorporated in the box and the box is less than seventy-five (75) square feet. If Robert Woodall was not on there, I would consider this part of the architectural element. It is the same color and construction as the pole.

Mrs. Evans stated if you did not have Robert Woodall on there, you would not need that part. You would just attach the upper portion to the pole.

The Board members had discussion about what constitutes a sign and architectural element.

Mrs. Evans asked can Staff address the safety issue?

Mr. Gillie responded the location of the sign would not create a safety hazard in our opinion. It is back far enough from the right-of-way and it is not in the site triangle. If they decide to move the sign, they would have to comply with all of the Code requirements to address the safety issues. We are not concerned that the pole itself or the location of the sign would create a safety issue.

Mr. Snipes stated it seems to me that anytime we try to do anything, something is going to be in conflict with something else. For an example, Hyundai will not accept any other type of sign placed on the lot. It has to be there uniform sign, but their uniform sign does not agree with the City Code. We have a conflict and we need to resolve that conflict, by a compromise. As it stands, all four (4) criteria are not met. We are to decide if there is some way we can allow it.

Mr. Snipes asked how shall we dispose of it?

Mr. Dyer responded I will agree with the premise that if you do not agree with my interpretation of the area of the sign then this application should be denied. If it is does not meet all four (4) criteria then we are to deny. The argument that I would make is the variance should not be required because the sign meets the Code with the way that I interpret it. I think that we need to be consistent. When Planning Staff determined the size of the sign the hospital wants to put on the building, they basically drew a box around the lettering and said this is the area of the sign; the part that conveys a message: letters, logos, and numbers. As long as you can draw a box around the area that contains lettering, logos, or numbers and that area is less than seventy-five (75) square feet, then that sign meets the Code.

The Board members had discussion about the actual sign area.

Mr. Snipes asked Mr. Woodall what would be the consequences of changing the sign to comply?

Mr. Woodall responded the easiest thing to do would be to close the store and move to the County. I agree with Mr. Dyer. It would be no different than if we took Robert Woodall in seven (7) foot block letters and put it on top of the sign.

Mr. Woodall asked Mr. Gillie would that comply?

Mr. Gillie responded no.

Mr. Gillie read the definition of sign area.

Mr. Dyer asked what is the background of this sign?

Mr. Gillie responded the framework.

Mr. Dyer asked is it blue? Is the background blue or blue and gray? At what point do you stop with the background?

Mr. Gillie responded to me everything is gray because I do not see color.

Mr. Dyer stated that is where I am making a differentiation between my interpretation and your interpretation.

Mr. Gillie asked what is the framework of this? We draw a box around what they mount on it.

Mr. Dyer stated but you are incorporating areas into that box that are not part of this sign.

Mr. Gillie read the definition of the sign area again.

Mr. Dyer stated the background of the hospital is brick, so that whole building is a sign. If you have the background of the Toyota place and it is that lit up white plastic, then that whole thing is a sign.

Mr. Gillie stated if you feel that is the way we should interpret it, then we stop allowing wall signs based on the Boards interpretation.

Mr. Dyer stated it seems to me that the Planning Staff is being inconsistent. I consider the section under the Hyundai part architectural element if it does not say Robert Woodall. It is clearly separated from the framework of the sign. The framework of the sign is forty-nine point seven (49.7) inches tall and seven (7) inches wide; because there is clearly a break in the framework of the sign. The area that lies beneath that break would be part of the architectural element if it did not include the Robert Woodall lettering. You are then affixing another sign, which you are allowed to do.

Mr. Gillie stated you can have one (1) ground sign.

Mr. Dyer asked at Coleman Market Place, do you consider that one (1) sign?

Mr. Gillie responded one (1) sign as long as the faces are not a certain amount of inches apart. I do not have that in front of me. Actually they have two (2) ground signs, but that was with special provisions of City Council.

Mr. Dyer stated actually they have four (4) if you include Golden Coral.

Mr. Dyer stated the argument I am making is that you basically have two (2) boxes.

Mr. Dyer made a motion to grant the request for Variance Application PLVAR201000028. Motion died due to the lack of a second.

Mrs. Evans made a motion to deny the request for Variance Application PLVAR201000028. Mr. Campbell seconded the motion. The motion failed due to a 2-2 vote.

Mrs. Evans asked now what?

Mr. Whitfield responded after the vote is taken, you cannot move to table. You can leave it as is, and essentially what happens is he does not get his variance.

Mr. Powers asked can we re-apply? Can we withdraw?

Mr. Whitfield responded I do not think you can withdraw at this point.

Mr. Gillie stated you cannot withdraw but you can re-apply. There may be another option that we can discuss.

Mr. Snipes stated I would hate to see us lose a business because of an argument over a sign.

Mr. Gillie stated because there was a motion to approve and that motion died, and there was a motion to deny and that was a 2-2 tie, it is still a denial of the case because you do not have anything to approve it.

Mr. Snipes stated the Variance has been denied.

Mr. Dyer asked how has the Variance been denied?

Mr. Whitfield responded because it has not been approved.

Mr. Dyer stated it has not been denied either.

Mr. Whitfield stated it has been denied because you all did not over turn it. It still stands denied.

Mr. Woodall asked what does Robert's Rules of Order say about that?

Mr. Whitfield stated that City Code states that Robert's Rules of Order are not to be used in any Board or Commission hearing except in specific instances where Council rules. Council meetings do not address these issues.

Mrs. Evans asked what is their recourse?

Mr. Gillie responded their recourse would be to re-apply and there is no limit on applying for it. We will talk about some other options.

Mr. Whitfield stated the one (1) motion that has not been made is to approve it based on the fact that it does meet all four (4) criteria.

Mr. Dyer asked do you consider the part where it says Robert Woodall, regardless of whether it says Robert Woodall or not, part of the sign?

Mr. Gillie responded yes. That is part of the outer framework of the sign.

Mrs. Evans stated to me, if Robert Woodall was not there, you would not need that.

Mr. Dyer stated it makes the sign more architecturally appealing. I will give you a prime example. The CVS across from Tightsqueeze Plaza has a really nice sign. The CVS stores in Danville only have a sign sitting on top of a pole. The reason for that is that the City told them they could not have that much architectural element below the sign because that would exceed the Sign Ordinance. They basically said to heck with you, we are not going to re-design a sign just for Danville, so they put the sign on top of a pole. To me, that runs contrary to what the City is trying to do anyway, which is make sure we do not have a bunch of gaudy signs all over town.

Mr. Gillie asked should we change our regulations just because someone says to heck with you guys?

Mr. Dyer responded no. In this instance, there is a legitimate interpretation of the Sign Ordinance that would allow this sign to exist just as it is.

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

Mr. Dyer made a motion to table Variance Application Number PLVAR201000027. Mr. Campbell seconded the motion. The motion was approved with a 3-0-1 vote (Mrs. Evans abstained).

II. OTHER BUSINESS

Mr. Gillie announced that member Lampley resigned. We have put out requests for applications. Once we receive those applications, we forward them to the Judge and the Judge has to appoint someone. In the meantime, there are only six (6) members. We are still required to have four (4) members to have a meeting and you have to have four (4) affirmative votes to approve anything. It is a seven (7) member Board even though we only have six (6) active members.

III. APPROVAL OF MINUTES

Mr. Dyer made a motion to approve the minutes of the June 17, 2010 meeting. Mr. Campbell seconded the motion. The minutes of the June 17, 2010 meeting were approved by a unanimous vote.

With no further business, the meeting adjourned at 11:00 a.m.

APPROVED