

PLANNING COMMISSION MINUTES
December 9, 2013

MEMBERS PRESENT

Mr. Wilson
Mr. Griffith
Mr. Bolton
Mr. Searce
Mrs. Evans
Mr. Laramore
Mr. Jones

MEMBERS ABSENT

STAFF

Renee Burton
Ken Gillie
Christy Taylor
Scott Holtry
Clarke Whitfield

The meeting was called to order by Chairman Searce at 3:00 p.m.

I. ITEMS FOR PUBLIC HEARING

1. *Special Use Permit Application PLSUP20130000358, filed by Larry & Remona Peele, requesting a Special Use Permit to allow a detached accessory structure on a lot without a primary structure in accordance with Article 3.C., Section C, Item 23 of the Code of the City of Danville, Virginia, 1986, as amended, on parcel 71264, otherwise known as Grid 9819, Block 005, Parcel 000006 of the City of Danville, Virginia, Zoning District Map. The applicant is proposing to keep a detached wood fired heating system on a lot adjacent to the primary residence.*

Mr. Holtry read the staff report. There were 19 notices sent to surrounding property owners within 300 feet of the subject property. Eight responses were not opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Larry Peele. I have pictures to give you an idea of the location. You cannot see it from the street. I installed it in February 2006. The fellow I bought it from, the distributor helped me install it. The manufacturer recommends 60', so that is the location that is best suited for the boiler. You can't see it from the road unless you are driving at a 45 degree angle. This unit supplies my heat for the house. I have 40 windows in the house. I put this system in as a primary source of heat and it also supplies the hot water. I appreciate your time.

Close the Public Hearing.

Mr. Griffith stated I wouldn't classify this as a structure. What is the definition of an accessory structure?

Mr. Gillie read the definition of an accessory structure. It has to be considered accessory to it incidental to, so the question is this an incidental heating system to the primary structure; if so, then it is a detached accessory structure.

Mr. Griffith stated I rode by it several times and couldn't even see it. I just wouldn't have thought it would have been considered a structure.

Mr. Griffith made a motion to recommend approval of PLSUP20130000358 with the condition that only one accessory structure be allowed on the property. Mr. Jones seconded the motion. The motion was approved by a 7-0 vote.

2. *Special Use Permit Application PLSUP20130000359, filed by Ta Tarnisha Lowery, requesting a Special Use Permit to have a duplex in accordance with Article 3.E.; Section C, Item 2 of the Code of the City of Danville, Virginia, 1986, as amended, at 1203 Claiborne St., otherwise known as Grid 2706, Block 023, Parcel 000005 of the City of Danville, Virginia, Zoning District Map. The applicant is proposing to convert a single family home into a duplex.*

Mr. Holtry read the staff report. Thirty notices were sent to surrounding property owners within 300 feet of the subject property. Seven responses were not opposed.

Open the Public Hearing.

Present on behalf of the request was Ms. Ta Tarnisha Lowery. My original intentions were to provide some rental property in the area; but once I got there it was not what I thought. I would like to convert it to a duplex because the downstairs is finished. I went through the process to try and get the permit. The only thing that I wasn't aware of is the separation and the parking requirements. I did initially want to get a waiver for the parking, but I have been informed that is not allowed in this area. The street is right across from the cemetery. The front of the house has adequate parking for at least three cars. Not to be disrespectful to the occupants in that area, but the majority of them have no cars. Although we can't waive the parking, I was hoping that we could alter it. The property does have a driveway and there is the street side parking. This is something that I really want to do.

Mr. Bolton asked what type of heat is the basement going to have? Is it going to be separate?

Ms. Lowery responded I looked into a split system. Each one has its own heating unit and air conditioning unit. You adjust them with a remote control.

Mr. Bolton asked are free standing circulators still around? Are they ok in the city? I know a lot of basement apartments have free standing circulators.

Ms. Lowery stated I spoke with the inspector about the split system and he said it was ok. There is already duct work in the basement.

Mr. Griffith asked other than the parking, are there any problems with the other conditions set forth here?

Ms. Lowery responded no. I figured I would have to do all of that stuff anyway. I was anticipating all of it except for the separation because it is attached.

Mr. Griffith asked would the on street parking count?

Mr. Gillie responded no.

Mr. Griffith stated we had this on Marshall Terrace. There was discussion about parking and I thought we counted on street parking for that.

Mr. Gillie stated we did not count on street parking. They have to provide the minimum off street parking. They can do shared parking. There may be other opportunities for this type of parking in the immediate area, but we cannot count on street parking.

Ms. Lowery stated the backyard is not that big. If you ride down the street there are a lot of vacant homes that are boarded up. In fact this house is on your derelict list. I guess I feel like given the area, the lot size, and the situation sometimes things have to be considered as a whole. Even if it is a single family home, you still have to appeal to the audience. Back when the homes were built, lot sizes were smaller and everything was different from the codes that you have in place now.

Mr. Scarce asked didn't staff recommend approval?

Mr. Gillie responded we are recommending approval of the special use permit. There are options for the providing parking on site. Failure to provide parking on site, we would look at remote off site. There is always the ability to go to the Board of Zoning Appeals (BZA) and ask for a variance to the parking requirements. At this point, without the special use permit, she can't ask the BZA to allow a waiver. We are trying to do one step at a time.

Ms. Lowery stated I wasn't aware of that, sorry.

Mr. Jones stated there was a comment about the number of tenants. Are there limits placed on the number of tenants inside the apartments?

Mr. Gillie responded there are Building Code requirements regarding the number of tenants and there are Zoning Code requirements for the number of unrelated persons living inside a home. There are limitations based on the square footage of the facility.

Close the Public Hearing.

Mr. Wilson asked if we approve this are we basically sending it to the BZA?

Mr. Gillie responded no. You are sending it to City Council for their determination on granting the special use permit. If City Council grants the special use permit there will still be those conditions that they have to meet the minimums of the code. If they cannot meet the minimums of the code by either providing parking on site or remote offsite parking, then it goes to the BZA. In her case, you need to explore all of your options before you go to BZA, because the BZA should not grant a variance until all other avenues have been explored and found to be not possible. Right now we are just going through that first step of can they do it and once they can do it we will run down the other options. If all of the other options are found to be impossible then they go to the BZA.

Mr. Wilson asked so your recommendation basically includes those three options?

Mr. Gillie responded yes.

Mr. Wilson asked so really we are just looking at the idea of a duplex on that site?

Mr. Gillie responded correct.

Mrs. Evans asked do we have the option today to waive parking?

Mr. Gillie responded you do not because it is a code requirement. Only the BZA can grant a variance to that code.

Mr. Searce stated this is the first step toward making a piece of property that is not very usable, usable again.

Mr. Jones asked historically, has this body waived situations for parking?

Mr. Gillie responded you have limited options on anything that you can waive. In those cases, it is industrial operations that you can waive paving requirements for trucks. You did that for the Goodyear plant when they were doing an addition to the rear of the facility and for Riverside Roof Truss multiple years ago when they were driving forklifts between buildings. This body really doesn't have the ability to waive parking spaces because those are set by the code. We can go back and look at amending the Zoning Code, but as it stands right now that is a function of the BZA.

Mr. Jones asked if she loses at that level, she can always appeal to City Council right?

Mr. Gillie responded is she loses at the BZA level she can appeal to the court system.

Mrs. Evans asked what about the other duplexes in that area? Do they meet the parking requirements?

Mr. Gillie responded they are grandfathered in. They are legal non-conforming. The only other body other than the BZA that has the ability to waive parking requirements is the Commission of Architectural Review in the historic district. Because of the historic nature of the properties, that was something that City Council adopted as part of the historic overlay district. It is not under your purview. We have code changes at the end of the meeting, so if that is something you want us to look at, that would be the time to make a recommendation.

Mr. Griffith made a motion to recommend approval of PLSUP20130000359 with conditions per staff. Mr. Laramore seconded the motion. The motion was approved by a 7-0 vote.

3. *Special Use Permit Application PLSUP20130000357, filed by Roberts Investment Properties, requesting a Special Use Permit to allow for detached accessory structures on a lot without a primary structure in accordance with Article 3.C.; Section C, Item 23 of the Code of the City of Danville, Virginia, 1986, as amended, on approximately 30 acres between Riverside and Westover Dr., otherwise known as Grid 9818, Block 005, Parcel 0000016 of*

the City of Danville, Virginia, Zoning District Map. The applicant is proposing to construct two detached accessory buildings on a property without a primary building.

Mrs. Burton read the staff report. Thirty-three notices were sent to surrounding property owners within 300 feet of the subject property. Five responses were not opposed. Five responses were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Shawn Roberts, Roberts Investment Properties. I would like to build two accessory structures on this piece of property at 3547. It is behind 3571, which is a residential house that I own. I would like to put construction materials in this building. One building will be enclosed; the other building will be similar to an old barn. These properties will never be seen from Westover Drive. Given the topography of the land you will not be able to see these structures. The current road you use to get into the property has always been the farm road, but there is a legal paper street further east that I could access it from. The reason I didn't change the size of the buildings once staff denied the use of storing commercial equipment is because I already own the buildings that I am planning on erecting there.

Mr. Jones asked what is the length of this structure from Riverside to Westover?

Mr. Scarce asked you mean the length of the land?

Mr. Roberts responded I would say 1600 feet. I am just guessing. It is almost 250 feet from Westover.

Mr. Griffith asked what about the residents that live around this property?

Mr. Roberts responded the back of this property is wooded and undisturbed. This time of year you may be able to see something in the woods, but it would not be easily visible.

Mr. Griffith asked do the properties on Linden also back up to this property?

Mr. Roberts responded no sir.

Mrs. Evans asked what kind of buildings are they?

Mr. Roberts responded one of them is an old barn with an A style roof and the other one is a steel standing building that will be enclosed.

Mrs. Evans asked what items are you planning on storing?

Mr. Roberts responded farm equipment and personal material.

Mr. Griffith asked does this meet "one accessory structure allowed without a primary structure?" He is talking about putting up two.

Mr. Gillie responded no Planning Commission can grant a waiver to those requirements. The concerns we had was the size of the buildings and the commercial storage. I am sorry I can't get the measurement to work, so I can't give you the exact size of that piece of property.

Mr. Searce asked how many acres is it?

Mr. Roberts responded right at 30. I own 17 properties within a two mile radius in that area. It is a convenience factor for me. That is the reason I want to put the accessory structures there.

Mr. Searce asked would you be willing to put a condition on this to not use it for commercial use?

Mr. Roberts responded if that is what it takes. I originally wanted to put construction equipment in there, but if that is what it takes to get the buildings I will be willing to accept that.

Mr. Searce stated whether you put farm equipment in there or whatever, if the buildings are enclosed no one is going to see it.

Mr. Griffith asked one building is going to be enclosed?

Mr. Roberts responded one will have open sides.

Mr. Wilson asked have you met with any of the surrounding property owners at all?

Mr. Roberts responded several but not all of them. If you look at the property now, there are probably six buildings that are not usable. Where I want to put these structures cannot be seen by surrounding properties.

Mr. Wilson asked are you removing those buildings?

Mr. Roberts responded yes. They are basically laying on the ground now.

Mr. Laramore asked is your property attached?

Mr. Roberts responded no. If you go east on Westover Drive, I am the first house on Linden Lane.

Mr. Searce asked but you are accessing this through your property right?

Mr. Roberts responded yes.

Mr. Searce stated but it is not your residence.

Mr. Roberts stated right.

Mr. Laramore asked are these two properties zoned the same?

Mr. Searce responded I think they all show T-R.

Mr. Gillie responded the property that fronts on Westover is Threshold Residential and the other piece is Threshold Residential.

Mrs. Evans asked is the house rented?

Mr. Roberts responded it is not right now, I just recently purchased this property.

Mr. Bolton asked are we restricting the use because of zoning?

Mr. Gillie responded he cannot store commercial equipment on that property. It is not zoned to allow for commercial storage. In that case it would have to be a contractor's office or a contractor's storage lot, which would require a different classification than residential property. He could ask to rezone the property to have commercial storage, but in that case it would be spot zoning. He can store his personal equipment that he uses in conjunction with that property.

Mrs. Evans asked if we grant the special use permit and he ever decided to sell the property, could those accessory buildings remain and someone else use them?

Mr. Gillie responded they can use the buildings, but they could not use them for commercial purposes. If he were to sell the property, they could store their personal equipment, but they could not store anything of a commercial nature.

Mr. Jones stated number four on the staff analysis states that there is not access easement on record. He gets to this property through his property. So what you are saying is that if he ever sells that the owner will not be able to use that access.

Mr. Whitfield stated if he ever sells either piece of property, whoever has that large tract is either going to require or request an easement, but right now it is his property.

Mr. Roberts stated there is also the paper street.

Mr. Scarce stated so there is access.

Mr. Gillie stated you would have to improve that paper street for that access to count. Right now that does not meet city standards. He is accessing it through property he already owns which is fine, but there is the potential for him to sell it and create an access issue without improving that street.

Mr. Wilson asked is there a way to get these issues worked out? It seems to me that a lot of it is about roads in, future possible sales, and commercial usage. Is there anything that could be done to get those worked out?

Mr. Gillie responded Planning Commission could condition it that there is a consolidation of properties to require that he has frontage on a street. He has frontage on that paper street, so that is why we haven't said that he has to consolidate those two together. He does have frontage on an unopened paper street. If he would sell that lot off on the front then we would require him to improve the street. It would be cleaner and easier if they would just consolidate it and make one large piece. It does have frontage on Riverside, but it is not practical to actually

access that portion of it. For the non-commercial use, the applicant would have to proffer that.

Mr. Whitfield stated if you make it a condition of the special use permit and he stores anything on it he would be in violation of the special use permit.

Mr. Scarce stated it seems that the commercial storage is the only concern. All of the other is future what ifs.

Mr. Bolton asked you don't have a problem with these five if he proffers the use of commercial equipment?

Mr. Gillie responded he doesn't have to proffer, this is a special use permit. You can condition upon those. It is up to you. We need some sort of limitation to make sure something doesn't happen.

Mr. Griffith stated earlier we granted a special use permit to have one accessory structure, so we have the authority to waive the requirement of one accessory structure?

Mr. Gillie responded you can grant more than one, because it is for a detached accessory structure. We changed the code to allow for remote offsite detached accessory structures. Planning Commission can grant more than one.

Mr. Laramore asked does consolidating this property solve any of these problems?

Mr. Gillie responded not 100%. The property does have frontage on Riverside and frontage on a paper street, which it would have to be improved. The frontage on Riverside, based on topography, is not used for the access. The actual access comes off of another lot. Consolidating would solve the access issue. Is it truly required? No, he meets the other code requirements. It would clean it up but it doesn't necessarily solve it.

Mr. Scarce stated there isn't an access problem because he owns them all. I hate to put restrictions on him that restricts the use of his property or changes anything until such time he makes a decision to do something. The main question is the commercial use because of zoning.

Mr. Wilson stated it seems to me that as far as making a recommendation that we can only put conditions that restrict the use because that is what the code is.

Mr. Gillie stated when staff recommends denial of something we like to explain why we recommend denial. We put the issues that we have with it. The bullets up top are concerns that we have. If Planning Commission is going to recommend approval, the one thing that you should do in our opinion is say no commercial use of this, so there is no question. If in the future someone goes to buy this that should show up in the title search as a condition of the property. If we do see the equipment out there, Mr. Roberts knows that he is in violation of the Zoning Code.

Mr. Jones asked what would he have to do to access his property from Riverside Drive?

Mr. Gillie responded he would have to apply for a driveway permit. He would have to fill in a pretty big hole or hill to cut and do it. Is it possible? Yes if you throw enough money at it. In his defense, it is cost prohibitive to do something like that.

Mr. Bolton asked could he do an easement?

Mr. Whitfield responded sure. He could do an access easement. I think you are worrying about something that may or may not happen in the future. Clearly that would have to be done if either one of the tracks were sold.

Mr. Wilson stated the words *staff may support* are curious to me. Are there still reservations on your part if we were to go with commercial conditions?

Mr. Gillie responded we could have used the word *would* if Mr. Roberts agrees to not use it for commercial purposes. I believe here in public hearing he has agreed to that.

Close the Public Hearing.

Mr. Laramore made a motion to recommend approval of PLSUP20130000357 with the condition that no commercial storage is allowed. Mrs. Evans seconded the motion. The motion was approved by a 7-0 vote.

4. *Request to amend Chapter 41 entitled "Zoning Ordinance" of the Code of the City of Danville, Virginia, 1986 as amended, more specifically Article 7: entitled "Nonconforming Uses", and Article 10 entitled "Sign Regulations" to address how nonconforming may be permitted to continue and address changes made by the Section 15.2-2307 of the Code of Virginia, and Article 4. "Entitled Zoning Amendments", Section H entitled Reconsideration of Request to address the time before and application can be reconsidered.*

Mr. Holtry read the staff report.

Open the Public Hearing.

Present on behalf of the request was Mr. Fred Shanks. As a private businessman and someone in the real estate development field, I feel like 365 days takes a piece of property off of the grid for a period of time when it doesn't have to be. When a developer comes before Planning Commission and City Council with a best shot effort and gets denied, this would give them an opportunity to go back and speak with the residents or whoever was opposed to come together. If you can get that done within a certain period of time, you might keep the real estate alive. This is an opportunity for the city to become a little bit more business friendly and more developer friendly. I hope you would consider it.

Mr. Scearce stated I think the days are confusing. When you say 365 days it seems like you have to wait a whole year from the time that City Council denies it to reapply. Actually it is 365 days from when you made application. That is the reason staff had the issue. When I looked at it, I was going to suggest that they could come and reapply within 30 days after Council's decision, which would give them a period of 30

days to talk to neighbors and work out any issues. It will be pretty much the same thing I think. It is just a whole lot clearer in everybody's mind.

Mr. Gillie stated that works for us. What we are looking at, the way a case is filed, is between 60 and 90 days. If you add in a one-time tabling, they could still get denied within that 120 days and turn around and reapply. We were trying to give them some time to allow them to go back and meet with neighbors to fix what needed to be fixed. We were just concerned that if we went with 120 days the applicant wouldn't have time to go back to meet with neighbors. If you say 30 days after City Council's decision, it gives somebody 30 days to go back and fix whatever they need to. I think that would work. It wouldn't truly be 120 days. It may be 125 or 140 depending on the dates, but that gives time for people to work things out. We are not opposed to that at all.

Mr. Shanks stated keep in mind that developers don't go out and waste their time. I can't see one being denied today, going back tomorrow and not making a due diligent effort to deal with the unfavorable circumstances. I encourage you to give developers the proper credit.

Mr. Griffith asked would you agree with what was proposed?

Mr. Shanks responded within 30 days, yes.

Mr. Whitfield stated I think he was suggesting no more than 30 days, meaning you would have to wait 30 days after Council's decision.

Mr. Scarce stated to allow the applicant time to fix whatever the problem was.

Mr. Whitfield asked so what you are saying is on the 31st day they could reapply?

Mr. Scarce responded I think so.

Mr. Jones asked so what you are saying is that upon City Council's decision, they have to wait 30 days before they can reapply?

Mr. Scarce responded yes.

Mr. Griffith asked do they have to pay another fee when they reapply?

Mr. Gillie responded they do have to pay. The whole process starts over, but that gives them that period of time to work on things and meet with neighbors.

Mr. Griffith stated City Council still has the option that we do to table the item to give the applicant more time to work out things. I am not concerned with missed deadlines. That is the applicant's problem.

Mr. Gillie stated we were just trying to show the length of time the process takes and we didn't even factor in if it was tabled. It is possible that an application can take more than 120 days to go through the process.

Close the Public Hearing.

Mr. Bolton made a motion to table changes related to Section 15.2-2307 of the Code. Mr. Griffith seconded the motion. The motion was approved by a 7-0 vote.

Mr. Bolton made a motion to recommend approval of changes to Article 4, Section H with the modification of 30 days after City Council denial. Mr. Jones seconded the motion. The motion was approved by a 7-0 vote.

II. MINUTES

Mr. Bolton made a motion to approve the November 11, 2013 minutes. Mr. Wilson seconded the motion. The motion was approved by a 7-0 vote.

III. OTHER BUSINESS

Mr. Gillie stated Happy Holidays. Merry Christmas and Happy New Year. We do have cases filed for the meeting in January, so we will meet January 13. The inaugural meeting in January is always our election of officers. That is always the meeting not to miss because when you are not here you get assigned to something that you may not want to be assigned to.

With no further business, the meeting adjourned at 4:05 p.m.

APPROVED