

BOARD OF ZONING APPEALS MEETING

August 21, 2014

Members Present

Gus Dyer
John Hiltzheimer
Dolores Reynolds
Michael Nicholas
Dawn Witter

Members Absent

Philip Campbell
Ann Sasser Evans

Staff

Renee Burton
Scott Holtry
Sr. Secretary
Clarke Whitfield

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

I. ITEMS FOR PUBLIC HEARING

1. *Variance Application Number PLVAR20140000202, filed by Randy Appeal representing Architectural Graphics Inc., requesting a variance from Article 10. Section P., Item 1(a), 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, Parcels 000020 & 000021 of City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to keep a ground sign with architectural elements greater than 100 square feet.*

5 notices were mailed to surrounding property owners. 2 responses were unopposed; 0 responses were opposed.

Open the Public Hearing.

No one was present on behalf of the Variance Application PLVAR20140000202.

Close the Public Hearing.

Mr. Nicholas asked why was approval given?

Mr. Holtry responded because it was my fault. It was something that I didn't know needed to be looked at.

Mr. Nicholas asked have these situations happened in the past where the city essentially admits an error on their part and then requires property owner to incur expense to remedy that?

Mr. Holtry responded I am not familiar with any, but this is the process our Director has sculptured.

Mrs. Witter asked is there anything that has happened in the past where if it's the city's fault, the city actually coughs up the cost of it?

Mrs. Burton responded that has not been practiced.

Mr. Nicholas responded I particularly like the applicant's argument as of the property owners do not obtain the accrual of the expense of installation there upon being advised the sign has to be removed.

Mr. Dyer responded after we dispose of this case I am going to bring up some other business, but I understand the point of the ordinance. The city's determined big signs are bad and little signs are good, and you don't want the clutter environment, but at the same time it does appear that if you are going to allow business to change use and you are going to allow them to continue to use an existing sign then you are sort of granting them special privileges that the other property owners don't have, and I don't know that I fully agree with that.

Mr. Whitfield stated except under the code the variance goes with the property not the business.

Mr. Dyer asked technically it's a technicality is what you're saying, isn't it?

Mr. Nicholas responded I think the point there is that you're granting it, the variance would be granted too regardless, because someone's going to get the benefit. In other words if you grant it, subsequent owners will then benefit from the city's mistake either that they cannot incur the expense, in other words the hardship is not being felt by the property, the hardship is on the owners of the property.

Mr. Dyer stated I will also bring up precedence since we have some members on board that weren't here when this was originally brought to us. I think this is the building that at one time was the Mazda dealership, and when Mr. Woodall purchased the Mazda dealership he relocated it from further out 58 West where the old Toyota place was and he wanted to bring the sign he had out there and put it on his property, take his existing sign and just relocate it and that was a situation where that sign was grandfathered in from where it was originally sold but did not meet the current code requirements and we denied him his request at that time to relocate the sign. Of course the circumstances are always different, but that was a precedent that took place.

Mrs. Witter asked so then he went through process change to get approval and it was rescinded.

Mr. Nicholas responded I don't see that as precedence. He applied for something he knew was not going to be conforming, and that was denied.

Mrs. Witter stated so it's not like he bought the sign and put it up anyway.

Mr. Nicholas asked any idea on the cost to take the sign down?

Mrs. Burton responded they can maintain the signage as far as the sign message itself. They only have to reduce the size of the pole cover, being a larger grey portion than we have still probably a large cost, the total cost of \$83,000 for the entire signage. So probably I would guess \$5,000.

Mr. Holtry responded to replace it would probably be more.

can grant a variance to this with a condition that is this ceases to become a Hyundai dealership that the sign has to be removed?

Mrs. Witter asked based on the fact that it was a city issue?

Mr. Nicholas stated the condition not changing ownership in an LLC buys an out but still keeps it as a Hyundai dealership.

Mr. Dyer responded that's what I'm saying as long as it remains a Hyundai dealership they're going to continue to have the Hyundai sign, but if it becomes Mazda dealership or McDonalds then they're not going to be.

Mr. Nicholas stated if the owner decides to switch to Hondas, same owner same boss.

Mr. Dyer responded What I'm saying is we conditioned on it being Hyundai not conditioning it to be owned by the same guy, but if the sign is removed for any reason the next sign is not going to be?

Mr. Whitfield stated I think the wheelchair ramp was a cut and dry thing. I think that somebody could, a good lawyer could argue in the future that a car is a car whether it's a Hyundai, Honda, or Toyota. Clearly the Board was granting the variance on this sign.

Mrs. Witter stated you can't grant based on owner.

Mr. Whitfield responded right, and you are looking at the property. The other thing, a handicap ramp is complete different than a sign for a business.

Mr. Nicholas I don't know that that'll work out.

Mr. Dyer asked I have another issue that I would like to bring up that sort of relates to this. Can we postpone this decision?

Mr. Whitfield responded somebody will make a motion to table, then all someone has to do is bring a motion off the table into the meeting, so have you closed the public hearing?

Mr. Dyer responded yes.

Mr. Whitfield stated if someone makes a motion to table and again that's to be heard in this meeting as opposed to a postpone to a different meeting.

Mr. Nicholas stated clarifying the motion to table for consideration later in this meeting.

Mr. Whitfield stated and that's technically that's what a table is as opposed to a postpone.

Mrs. Reynolds made a motion to table Variance Application PLVAR20140000202. Mr. Nicholas seconded the motion. The motion was tabled and approved by a 5-0 vote.

Mrs. Burton responded if they currently have applied, they would need to table this request so at that point, violation time has ceased.

Mr. Dyer asked is this being delayed long enough for it to go through the works?

Mr. Nicholas stated even if everything goes right there is no way Council can approve that in 60 days.

Mrs. Burton stated it would be October before it is even placed into Planning Commission's hands to recommend staff to look at it so you're looking at January on this one.

Mr. Nicholas made a motion to deny the Variance Application PLVAR20140000202. The motion failed due to lack of a second.

Mr. Nicholas made a motion to approve the Variance Application PLVAR20140000202. Mrs. Reynolds seconded the motion. The motion failed due to a 2-3 vote.

Mr. Nicholas made a motion to deny Variance Application PLVAR20140000202. Mrs. Witter seconded the motion. The motion failed due to a 3-2 vote.

II. APPROVAL OF MINUTES

The July 17, 2014 minutes were approved with amendments by a unanimous vote.

III. OTHER BUSINESS

With no further business, the meeting adjourned at 10:32 a.m.

APPROVED