



BOARD OF ZONING APPEALS

POST OFFICE BOX 3300

DANVILLE, VIRGINIA

(434) 799-5261

NOVEMBER 20, 2014

10:00 A.M.

4TH FLOOR CONFERENCE ROOM
MUNICIPAL BUILDING

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

Variance Application Number PLVAR20140000307, filed by Bryant Gammon, requesting a variance from Article 3M, Section E, Item 2a, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 1500 Westover Drive, otherwise known as Grid 0710 Block 005, Parcel 000020 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow an eleven foot front yard setback along Blair Loop Road where twenty feet is required.

- IV. APPROVAL OF THE MINUTES FROM OCTOBER 16, 2014
- V. OTHER BUSINESS
- VI. ADJOURNMENT



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Board of Zoning Appeals
November 20, 2014

SUBJECT:

Variance Application Number PLVAR20140000307, filed by Bryant Gammon, requesting a variance from Article 3M, Section E, Item 2a, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 1500 Westover Drive, otherwise known as Grid 0710 Block 005, Parcel 000020 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow an eleven foot front yard setback along Blair Loop Road where twenty feet is required.

BACKGROUND:

The subject property, 1500 Westover Drive, is currently under construction for a Dollar General Retail establishment. The applicant, Bryant Gammon, is requesting a variance to allow an eleven foot front yard setback along Blair Loop Road where a twenty foot setback is required. This variance request is to allow the dumpster enclosure to be outside of the building setback. The dumpster enclosure consists of a concrete pad, a dumpster and a six foot fence enclosure.

The construction plans for this project has been under review by the Department of Community Development since May 2014. On May 15, 2014 the following comment, with others, was made by Zoning Staff "dumpster must meet building setback requirements". The submitted site plan was rejected by Staff based on this needed correction and others. Zoning Staff worked with the applicant to solve the outstanding issues related to the construction plans, including the dumpster location. On August 12, 2014 a comment was added by Zoning Staff that stated "all comments have been addressed". The building permit for construction was issued on September 3, 2014. The applicant knew about the issue, corrected it to meet code requirements, received a building permit and began construction.

The applicant has stated in his application that the location of the dumpster must be relocated within the front yard setback. Staff is not aware of any change in the physical characteristics of the lot, or other extenuating circumstance that would have necessitated this change in location. The applicant is well aware of design and construction standards as well as the City of Danville Zoning Code based on the original submittal that was rejected, and then corrected to comply, and a permit being issued. He has been involved in the development of several new Dollar General Construction projects within the City.

PREREQUISITE FOR GRANTING VARIANCES:

The principles of law to be applied by the BZA considering a request for a variance are found in the Virginia Code Section 15.2-2309. This Statute empowers a BZA to grant a variance when *“a property owner can show that this property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant provided that all variance shall be in harmony with the intended spirit and purpose of the ordinance.*

A BZA cannot authorize a variance unless it finds:

1. That the strict application of the ordinance would produce undue hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
4. 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 regulation to be adopted (by City Council) as an amendment to the ordinance.

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:

In order for the Board of Zoning Appeals to grant a variance, all four (4) of the previously noted criteria must be met.

- ***The criteria that strict application of the ordinance would produce undo hardship on the property owner.***
Strict application of the ordinance would not produce an undo hardship on the applicant. The applicant was well aware of the regulations prior to construction and had submitted a site plan that met the front yard setback regulations. Based on the site plan submission that placed the dumpster location beyond the front yard setback, the building permit was issued for construction. The applicant can place the dumpster in a location that complies with setback requirements and

has obtained a construction clearance to do so. Therefore this application **does not** meet this criterion.

- ***The criteria that such hardship is not shared generally by other properties in the vicinity and the same zoning district.***
All new commercial construction has to locate their dumpster within the building setbacks. This regulation is not unique to this property. In fact, this requirement has been met on the other new Dollar General locations that the applicant has had involvement. The applicant submitted a plan and obtained a permit for construction, and is actively constructing said building that complies with code. Therefore, this application **does not** meet this criterion.
- ***The authorization of a variance would not be of substantial detriment to adjacent property owners.***
Authorization of this variance could be of substantial detriment to the adjacent property owner. The property owner to the rear is a single family dwelling whose driveway is on the property line that is shared with Dollar General. Placement of the dumpster closer to the road could create an obstruction of site distance for anyone accessing the residential property and also allows the dumpster to be placed within the site line of their front yard. Therefore, this application **does not** meet this criterion.
- ***The criteria that the condition or situation is not so general or recurring in nature as to make reasonably practicable the formulation to be adopted (by City Council) as an amendment to the ordinance.***
This is not a common variance request and the situation is not so general as to not warrant a code revision by the City Council. Therefore, this application **does** meet this criterion.

Therefore, this variance request meets one (1) of the four (4) criteria needed to grant a variance.

ATTACHMENTS:

Application
Data Sheet
Property Ownership & Existing Zoning Map
Existing Land Use Map (Aerial 2012)

INFORMATION TO BE PROVIDED BY THE APPLICANT

IMPORTANT - PLEASE READ

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 prior to a Board meeting. The Board meeting is held on the third Thursday of each month.

- a) All questions on this application have been fully answered.
 - b) The property owner(s) or his agent with the written authorization of the owner has signed the application.
 - c) 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 buildings and signs existing and proposed, and the location of all required parking spaces has been submitted.
 - d) The Zoning Administrator has certified that the proposed use and construction plans comply with all provisions of the Zoning Code, except those for which a variance has been requested.
1. Property location: 1500 Westover Dr Gross Area/Net area: 1.36 acres
Parcel 72707 & 72704
 2. I (we) have applied for a variance to allow the following: Variance to Article 3.MiHR-C, E.a. requiring a 20' front yard on Blair Loop Road. Applicant requests 9' reduction in yard to allow placement of a dumpster and dumpster enclosure. See attached sketch of proposed encroachment
 3. I (we) now appeal to the Board of Zoning Appeals for a variance permitting the action denied by the

administrative official in that:

A. Special conditions and circumstances exist which are peculiar to the land, structure, or building (Describe):

Due to the topography of the site and the shape of the property, there is no other suitable location for the building or adjacent dumpster. Retail user needs 18' space between building and dumpster for loading space.

B. These conditions are not generally shared by other property owners in the vicinity (Describe):

The steep slope, retaining walls, double road frontage, strict site layout and loading requirements are not generally shared by other property owners in the vicinity

C. Application of the variance would not be of substantial detriment to surrounding property owners

(Describe): The proposed structure is small and is screened

so that it will look similar to a fence. The dumpster itself will not be visible from the road or neighboring properties

D. The variance requested is the minimum variance that will make possible the reasonable use of the land,

structure, or building. (Indicate why a lesser variance would not provide for a reasonable use of the

property.) A lesser variance would not provide the

minimum spacing between building and dumpster to meet delivery requirements of this store.

Use Additional Sheets if necessary

EXPLANATION OF REQUEST

1. New Construction:

Free standing structure (X) Addition to existing building ()

Use of building: Retail Total square footage: 9100 sf

Location of building on property (Include setbacks from property lines): The main building meets yard requirements. It is only the dumpster and enclosure in the east corner of the site that encroaches

N/A

2. Additional Signage: Into a front yard without street access.

Type of Sign: Ground () or Wall ()

Total square footage: _____ Dimensions: _____

Sign location (exact legal description): _____

3. Other request:

N/A

Please explain: _____

PRESENT OWNER (S) OF ALL PROPERTIES INCLUDED IN APPLICATION (PLEASE TYPE OR

PRINT):

1. NAME: Eric P. ... TELEPHONE: 919 999-0000

MAILING ADDRESS: 1000 ...

SIGNATURE: [Signature] DATE: 10/20/14

EMAIL ADDRESS: eric.p. ...@com

APPLICANT (PLEASE TYPE OR PRINT):

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

NAME: David Bryant Gammon TELEPHONE: 804 895 2875

MAILING ADDRESS: 13281 Rivers Bend Boulevard Chester VA 23836

EMAIL ADDRESS: bgammon@highmarkeng.com

SIGNATURE: [Signature] DATE: 10-20-2014

VARIANCE REQUEST
DATA SHEET

DATE: November 20, 2014

LOCATION OF PROPERTY: 1500 Westover Drive

PRESENT ZONE: HR-C, Highway Retail Commercial District

LAND USE PLAN DESIGNATION: CS, Community Service

ACTION REQUESTED: The applicant is requesting an variance to allow an eleven foot front yard setback along Blair Loop Road where twenty feet is required

PRESENT USE OF PROPERTY: Commercial

PROPOSED USE OF PROPERTY: Same

PROPERTY OWNER (S): PAR 3 Development Group LLC

NAME OF APPLICANT (S): Bryant Gammon

PROPERTY BORDERED BY: Commercial to the east and west and residential development to the north and south.

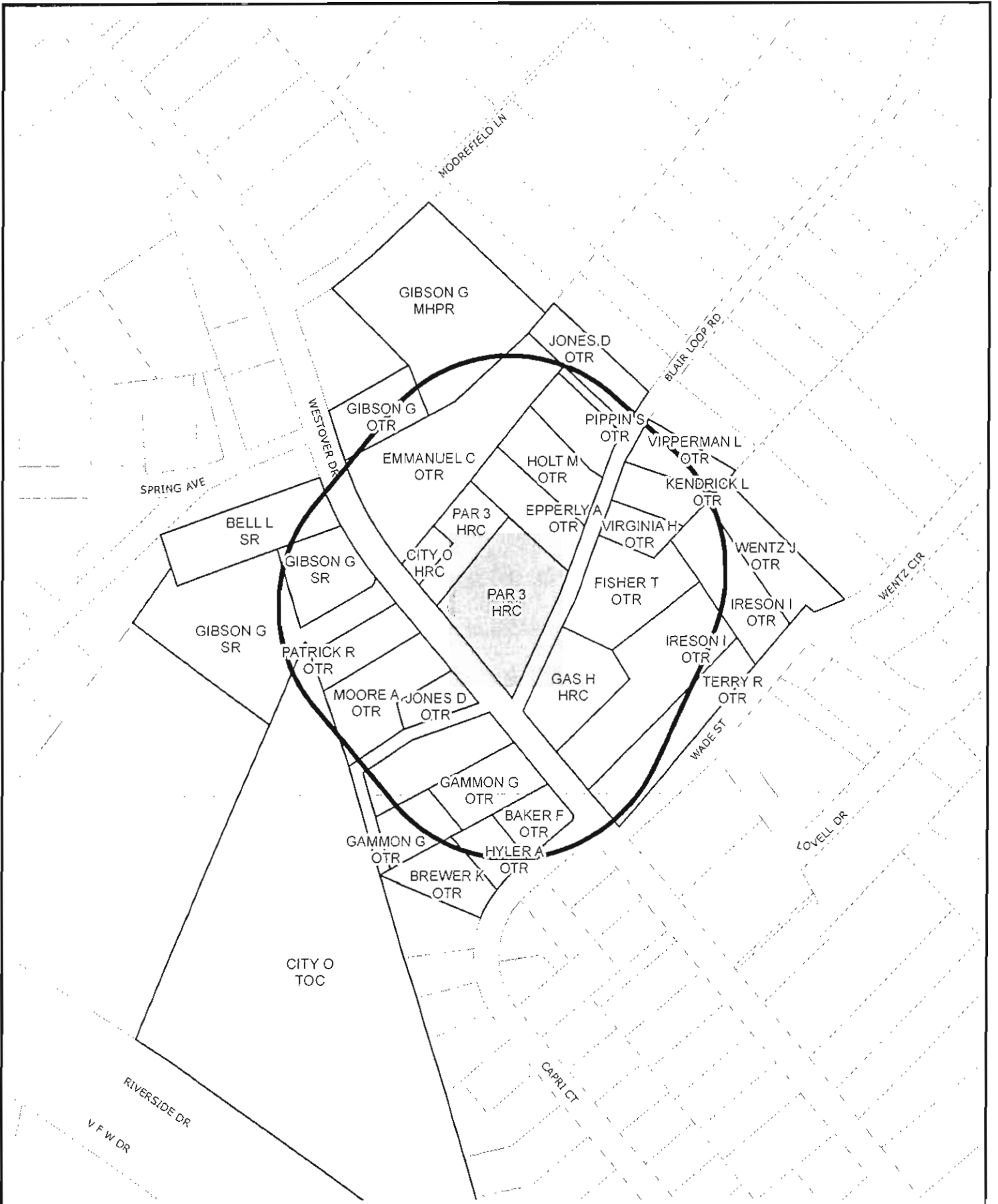
ACREAGE/SQUARE FOOTAGE: Approximately 1.4 acres

CHARACTER OF VICINITY: Mixed commercial and residential

INGRESS AND EGRESS: Westover Drive

TRAFFIC VOLUME: Medium

NEIGHBORHOOD REACTION: To be reported at the Board of Zoning Appeals meeting of November 20, 2014.



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY

Prepared by:
 Planning Division
 11/4/2014

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.



2012 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY

Prepared by:
Planning Division
4/11/2014

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

BOARD OF ZONING APPEALS MEETING

October 16, 2014

Members Present

Gus Dyer
John Hiltzheimer
Dolores Reynolds
Ann Sasser Evans
Dawn Witter

Members Absent

Philip Campbell
Michael Nicholas

Staff

Ken Gillie
Renee Burton
Scott Holtry
Christy Taylor
Clarke Whitfield

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

I. ITEMS FOR PUBLIC HEARING

1. *Variance Application Number PLVAR20140000268, filed by Madison Whittle, requesting a variance from Article 8, Section B, and Section E, Item 16, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 143 Marshall Terrace, otherwise known as Grid 1719 Block 021, Parcel 000016 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to use a legal non-conforming six unit apartment complex without providing parking.*

Chairman Dyer opened the Public Hearing.

No one was present to speak on behalf of the request.

Chairman Dyer closed the Public Hearing.

Mr. Dyer asked any questions or comments from board members?

Mrs. Evans stated I have a comment. Although I see where the staff says that it meets all four criteria, I'm very concerned that Mr. Whittle is not here today to talk about his case. Therefore, I would like to see it tabled until he can appear.

Mrs. Evans made a motion to table Variance Application Number PLVAR20140000268. Mr. Hiltzheimer seconded the motion. The motion to table the request was approved by a 3-2 vote.

Mr. Madison Whittle arrived at 10:02 a.m.

Mrs. Evans made the motion to reopen the Public Hearing for Variance Application Number PLVAR20140000268 due to late arrival of Mr. Whittle speaking in favor of the request. Mr. Hiltzheimer seconded the motion. The motion was approved by a unanimous vote.

Chairman Dyer reopened the Public Hearing.

Mr. Whittle was present in favor of the request.

Mr. Whittle stated I'm Madison Whittle and I live at 143 Marshall Terrace. The apartments that we're talking about, the zoning for off street parking, and I guess I'm here to answer any questions that you all need.

Mr. Dyer stated unless you would just like to make a statement. You realize that you are charged with answering to four criteria. Those criteria are outlined in the literature that we have. The staff does make recommendations themselves on those four criteria and they have come to the conclusion that you meet all those criteria unless for some reason you would like to challenge any of those for some reason then you may do so but if not then you may see to their recommendations.

Mr. Whittle stated I'll stick with that.

Mr. Dyer stated ok. Alright do we have any questions from any of the board members?

Mrs. Evans stated well I have some concerns. I know you've been here before and you've been before Planning Commission. There are still a number of people that oppose. The parking issues, I know one person suggested that parking be found elsewhere I don't know where else that would be. But have there been any changes to how you are going to address the parking?

Mr. Whittle stated I did and will offer my tenants a \$50 reduction in their rent if they do not have a vehicle. I've got nothing else to work with, but if there are students for the hospital or Averett we'll try to do that or if they just don't have vehicles we'll give them a discount. I don't have anything else to give them.

Mrs. Witter stated I have a question. I realize that the driveway paved back to the back is quite narrow, but from the pictures you've submitted you can fit a vehicle in there. How much would it cost as far as developing the back area? Because what it looks like off top is four spaces but at least it could take a little bit of the load off the street.

Mr. Whittle stated my neighbor wants to keep his line exactly where it is. I asked and had it surveyed. Besides asking to remove the building, I can't.

Mrs. Witter stated no I'm not talking about removing the building.

Mr. Whittle stated right I'm just saying I don't have any room down there and I would love to because it would help keep the tenants off the road, but it would also be easier to lease the lower level too.

Mr. Dyer stated I noticed that here you are asking to use this as a six unit building. I think when we had addressed this issue previously that you were going to reduce that to four, am I incorrect?

Mr. Whittle stated no it was always six.

Mr. Dyer stated always six. Ok. Alright are there any other questions for Mr. Whittle?

Mrs. Evans stated I have a question not related to the parking issue. Have you finished landscaping the front or do you plan to do something else?

Mr. Whittle stated we're going to do a few trees there, put the cover down to keep the grass from growing through, put some mulch on it and at this point we wanted to see where the water was going to go before we made our decisions on how we're going to landscape it. We're not quite sure what we would do. A dogwood tree or two in the front suits me.

Mrs. Evans asked but you are going to address it though?

Mr. Whittle stated yes.

Mr. Dyer asked any other questions for Mr. Whittle? If not you may sit down. Would anyone else like to speak in favor or opposition?

Chairman Dyer closed the Public Hearing.

Mrs. Evans stated I have a question for staff. Is there anywhere else to have parking? I know one of the close neighbors is concerned.

Mr. Gillie stated unless he would buy a property and tear something down, now. There's not the option.

Mr. Hiltzheimer stated and there's no way that he could use that side driveway down to the back to be able to create parking I don't think because it's too narrow.

Mr. Gillie stated the side driveway is very narrow and our code requires 12 feet for a one way drive and 24 feet for two. There's approximately seven and a half to eight feet. As he said, I can't speak for, but he testified that he tried to buy land from his neighbor. His neighbor doesn't want to change the lines so you can't make anything wider.

Mr. Dyer asked any other questions or comments? If not we will entertain a motion.

Mrs. Evans made the motion to approve the Variance Application Number PLVAR20140000268 as submitted. Mrs. Witter seconded the motion. The motion was approved by a 5-0 vote.

2. *Appeal Application Number PLAZ20140000264, filed by Sondra Stack representing Architectural Graphics Inc., requesting an appeal from the revocation of the freestanding sign permit issued May 19, 2014 at 2143 Riverside Drive, otherwise known as Grid 1711, Block 008, Parcels 000020&000021 of the City of Danville, Virginia, Zoning Map. The applicant is requesting an appeal to keep a ground sign with architectural elements greater than 100 square feet.*

Mr. Dyer stated I think we need some clarification on the procedure of exactly what we're doing because we don't seem to have the criteria spelled out. In essence we were given that in the May meeting?

Mr. Gillie stated no. This is a completely different situation than the May meeting. In this case, they are appealing the determination of the Zoning Administrator to revoke the sign permit that was issued to them. They don't have to meet the criteria, you just have to make the determination on whether or not it was proper for us to revoke their sign permit or not.

Mr. Dyer stated ok. Everyone understand that?

Mrs. Reynolds stated put it in your own words.

Mr. Dyer stated basically what we're being asked to do because the action we took in the May meeting basically denied the Variance Application. The City at that point did issue them a citation I guess requesting or requiring them to modify the sign so that it does meet the code, and we're now being asked to judge whether that was done properly, whether the City followed proper procedure in doing what they did. We're not being asked to judge what they did. We're being asked to determine whether what they did, they did properly.

Chairman Dyer opened the Public Hearing.

Mrs. Sondra Stack was present in favor of the request.

Mrs. Stack stated my name is Sondra Stack, I'm with AGI, the sign company. I wanted to begin by saying in May our original applicant who filed for a variance had a sudden illness, terminally ill. He could not be here and it was very unexpected which is why no one came to the meeting. As soon as I found out what the situation was, I talked to the City and was told this was the steps we had to go to so this is why nobody appeared for the variance meeting. Just to go on what we said, Mr. Woodall has paid for a very expensive sign that the City did approve. Many codes are up to interpretation and when we filled out the application we felt that we were within the code. Maybe the applicant misunderstood but we filled it out, we were granted a permit, built a sign, put it in, thought we were done, and then we got this citation saying it didn't meet the architectural element. I've been to the site, the sign looks good. I don't think it's too big. It's very similar in size to the Holiday Inn sign next door and we're asking that you allow us to keep it as is at this time.

Mr. Dyer asked ok, any questions?

Mrs. Witter asked the size difference, just to refresh my memory, how much bigger is it than the City allows?

Mrs. Stack stated I can show you a picture. Would you like to see a picture?

Mrs. Witter stated no I have pictures, I meant architecturally.

Mr. Dyer stated that might be a question that staff can answer.

Mr. Gillie stated it's 100 square feet over.

Mr. Dyer stated it's 100 square feet so basically it's double what is allowed.

Mrs. Witter stated ok.

Mr. Dyer asked any other questions? Alright thank you very much.

Mr. Robbie Woodall was present in favor of the request.

Mr. Woodall asked Ken is it doubled over because you're talking about the blue part at the bottom, is that what you're talking about? Are you considering the whole architectural element the sign or is that the part of the pole?

Mr. Gillie stated the pole cover portion is what's over.

Mr. Woodall asked so the blue part at the bottom, you're considering that a part of the sign as well?

Mr. Dyer stated that's considered the architectural element. I'm thinking in prior cases, the blue part would be considered the sign.

Mr. Gillie stated the blue part up top is fine, the gray part on the bottom is what's too big.

Mr. Woodall asked well how are you going to hold it up then if you don't put that on it? The sign what they put, and I'm Robbie Woodall just to address ya'll, and I watched them dig that hole. Now I'm no engineer but they dug a hole about as big as this building and ten feet deep and put that thing in. Somebody had to approve that to do it and I don't know who did it. I don't know what the issue is now but we spent two million dollars on Riverside Drive in the last year with no help from the City. Nobody from the City government ever appreciates you doing anything in the community, we took a building down that was about to fall down and it only had the four outside walls on it, if it was down here on Main Street they would have given me the building and paid me to do it. I don't know how you can be a good steward of the community. We hired twelve initial people and we're not going to take any money from anybody then fire them in 60 days. We've hired ten additional people now so you know we're trying to be good stewards of the community and do our part. I hate that this happened to them because we hired them through the manufacturers that are hired. I didn't want to pay a hundred and some thousand to put the sign up, but the people we deal with make us put a sign up to stay in business.

Mr. Dyer stated alright Mr. Woodall to sort of clarify things this Board as well as the applicant are charged with four criteria to meet in order to grant a variance. We are not an opinion board, we cannot decide well we think this is a good idea and we should let you do it or we think this is a bad idea and we shouldn't let you do it. We are required to make sure, whether we agree with the original rules and regulations or not, we are required to uphold those rules and regulations. Now in this case what has happened is that an application was made to put this sign up and a mistake was made by staff in the City. They granted this building permit that was actually in violation of the City Code. Whether you agree with the code or whether I agree with the code, that doesn't make any difference, it was a violation of the code. So that's where this issue has arisen is when the mistake was discovered, it was decided that you needed to make sure that the sign was within code. At the original meeting back in May, this is not the first time that

we've had a situation like this where we've had issues with the sign ordinance and so in our original meeting in May, a motion was made to send this back to City Council. Actually we sent it to Planning Commission, and hopefully it would pass that point to City Council, to get them to evaluate the situation and see whether it would be appropriate for them to make changes to the code to address this issue. For circumstances I'm not completely clear with right now, that has not happened. It should have happened. This originally happened in May so it should've happened before now. So because Council does have the ability to change this sign and allow you to do what you want to do, whereas we don't have that ability.

Mr. Woodall asked well why are we here and not City Council?

Mr. Dyer stated that's a good question. So at that point I would like if we could, can we temporarily close the hearing and discuss this?

Mr. Gillie stated sure.

Chairman Dyer closed the Public Hearing.

Mr. Whitfield stated and if you have questions for Mr. Woodall that you want to ask that doesn't have to be in the Public Hearing, you can ask questions so it's not a complete barred conversation.

Mr. Dyer stated ok so when this issue was originally brought before us, I think we only had four members present at the time, is that correct, and we could not get a decision made one way or the other. And so it was sort of left in limbo although technically I think because we did not take action on it, it was denied is that correct?

Mr. Gillie stated correct.

Mr. Dyer stated so technically it was denied then you all pursued the action that was necessary to get them to modify the sign so that it would be conforming to the current code, is that correct?

Mr. Gillie stated that is correct.

Mr. Dyer stated I believe that at the meeting this issue was originally heard at, we did make a request that Planning Commission and ultimately City Council consider modifying the code so that the individual could make an application for a Special Use Permit to exceed the architectural element of a sign based on Council's decision and that has not happened yes, is that correct?

Mr. Gillie stated it was brought up at the Planning Commission meeting on Monday. Planning Commission has requested more information before they decide.

Mr. Dyer stated well if it had been on the Agenda which it was not.

Mr. Gillie stated I can't place it on the Agenda.

Mr. Dyer stated if it had been on the Agenda then I would have known that they were going to discuss it and I could have been there to give them more information. Perhaps Mr. Woodall would be able to give them more information as well. It was not on the Agenda.

Mrs. Evans stated I don't think that would have made any difference. The entire Planning Commission wanted more information just than what staff was presenting.

Mr. Dyer stated well what I am saying is if it had been on the Agenda I would have known to be present at the meeting and at that point I could have provided them with more information if they wanted it.

Mrs. Evans stated I think they want more information from staff as well.

Mr. Dyer stated well I think staff is very ambivalent in this situation so I'm not sure they're going to get that.

Mr. Gillie stated no I would beg to differ. I was not at the meeting where this was brought up.

Mrs. Evans stated apparently I wasn't either.

Mr. Gillie stated Mrs. Evans wasn't there either as we said. So neither her nor I was aware of that situation. I was out on medical leave when the board met. After we had our conversation, I did bring it up at the first available meeting. I am sorry that I was not aware.

Mr. Dyer stated it just seems to me that if we make a motion to request that an issue be considered by Planning Commission it should appear on the next Planning Commission Agenda. Is that your interpretation as well since an error was made?

Mr. Gillie stated I was unaware of it but yes, we will take care of it next time.

Mr. Dyer stated now getting back to this issue. Once again we are required to uphold the City's Zoning Board whether we agree with them or not. The question we have here is these people were granted a permit, they spent a considerable amount of money erecting this sign, and now they are being told that they need to either modify or remove it regardless of how much money they've spent. It seems to me that is an issue that's not going to go away today. Has the City made any effort to make any negotiations with this party as far as financial considerations? Is the City willing to bear any of the costs making these modifications because they originally made the mistake. What's going on there?

Mr. Gillie stated no we don't. Remember you have a few options. Why we're here today is we issued a permit in error. We will not dispute the fact that we issued a permit in error. They do have a permit, they in good faith put their sign up. Once we discovered that the sign was in violation, they had the option of coming for the variance asking if they could keep it. The Board did not hear that case which was a de facto denial, which then put staff in the position of well then we have to revoke their permit. So as the Zoning Administrator I advised them that we have to revoke your permit. They've

appealed that. This Board has a few options. This Board can say no, your permit is valid then that creates a legal, nonconforming situation. Legal in that they obtained a permit, they did what they were supposed to do. Nonconforming because the sign will not comply with our regulations, but it's granted by the Board because they felt we made an error. Or you could uphold the decision. If you uphold the decision then they have to either bring the sign down and bring it in to conformance or they can appeal that to the Circuit Court. Now as for the City giving anything because we issued an error no.

Mrs. Evans asked is it another option to table until Planning Commission hears it?

Mr. Gillie stated you have that option to table it until such time as Planning Commission either decides to hear it or not hear it; that just puts the sign in kind of legal limbo. It won't be in violation; it will be in violation but it won't be able to be prosecuted at any means because they haven't exhausted their legal remedies to fix it.

Mrs. Evans asked and then if Planning Commission decides not to increase the signage?

Mr. Dyer stated well it's going to go to Council one way or the other.

Mr. Gillie stated no not necessarily because Planning Commission could make the decision not to review it and then it would stop at that point. So it doesn't necessarily mean by you making that recommendation that it would make it to City Council. Planning Commission could say that we don't feel that any changes are necessary and stop there.

Mrs. Evans asked so then they would have to come back before the Board of Zoning Appeals?

Mr. Gillie stated they would come back here for ratification for whatever the appeal is.

Mrs. Evans asked and they would not have to pay an application fee?

Mr. Gillie stated they would not have to pay an application fee because in effect, the matter would be placed in limbo until such time as Planning Commission made a decision one way or the other.

Mr. Dyer alright I want that clarified because if I'm an applicant and I want to get a piece of property rezoned and I go before Planning Commission and Planning Commission votes six to zero to deny, it still goes before City Council.

Mr. Gillie stated that's correct.

Mr. Dyer asked then why is this not granted that same courtesy?

Mr. Gillie stated because you're asking Planning Commission to determine whether a code modification is necessary or not. If they deem it is not necessary, it doesn't have to go to City Council.

Mr. Dyer stated I don't see the distinction.

Mr. Gillie stated because when you rezone a property, you requested that this be actually changed and a decision has to be made on that change. This board looks at the code and can make recommendations saying we think that Planning Commission should decide whether it should or shouldn't be changed. If they decide no it should not be changed, then it doesn't go any further. They're in effect acting for City Council on their behalf. If Planning Commission says yes we agree, we think it should be changed then that matter gets forwarded on. If they say no the code is fine as is, then it goes no further.

Mr. Whitfield stated and essentially don't forget that Planning Commission makes recommendations to Council.

Mr. Dyer stated but then Council gets to review those recommendations.

Mr. Gillie stated there would be no recommendation to Council.

Mr. Whitfield stated there would be no recommendation to Council because if there's no need to change then there'd be no recommendation.

Mr. Gillie stated Council doesn't have anything to review because there's no recommendation.

Mrs. Evans asked but if Planning Commission approved recommended changes then City Council could still disagree?

Mr. Whitfield stated absolutely.

Mr. Gillie stated sorry to interrupt but that would get it moving forward. If they decide there's no changes that are necessary, it doesn't go anywhere.

Mr. Dyer stated once again we don't have to agree with these things, we just have to abide by them.

Mr. Hiltzheimer stated something I have a question about in my mind is how do you determine that the sign itself has more than 100 square feet of architectural elements?

Mr. Gillie stated if you will notice there is a colored drawing, I can't tell what page it is, but if you can see the dimensions there. The four foot by six and three and an eighth, four foot by six and a three and an eighth, if you do those and do the squares and do the math on them, you do the number totals and it equals more than 100 square feet.

Mr. Hiltzheimer stated I thought you were saying that the base of the sign had to be.

Mr. Gillie no not the structural base holding the sign up, it's the cover of the cladding around the poles and everything else we calculated.

Mr. Hiltzheimer stated I thought it was the pole itself.

Mrs. Witter stated I have a question for you. In the last meeting my biggest issue was that the structure of the sign, if you guys were to try to go in to compliance I could see a business wanting to take off the shell just to comply rather than lose the \$83,000 I get that. Are there two poles there or one holding that structure? It's two correct?

Mrs. Stack stated underneath it is one.

Mr. Dyer stated I think if you can find this drawing you can see the central pole that is there.

Mrs. Witter stated so technically the cost then is it separate to the point where you could in fact make it smaller?

Mrs. Stack stated it is not. It's one big piece and that's something we'd consider if we were not to be successful in this appeal what are our options. And it's not as simple as just taking off a piece of the cladding. Because of the fact of the way it's made, it's all one piece with the actual blue part and I brought the engineering drawings with if you want to see the way it's made. You would have to design an entire new sign and it would be tens of thousands of dollars in order for him to come into compliance. We've had to make special signs like that in the past in history, but this is a standard Hyundai sign and you can't just modify it. It's not possible.

Mr. Dyer asked are there any other questions or comments?

Mrs. Witter stated I'd like to make a comment. I felt very horrible last time and I still think this is really horrible. The bottom line is that when you go down at any time down Riverside, and this has been eating at my brain ever since it came before us the last time, driving down Riverside you look at all the horrible signs with the metal poles sitting there and you get to that sign and it actually looks good. We're trying to entice business to come to Danville and I think it's really horrible that we're facing the possibility of making someone replace an \$83,000 investment they made into our city simply because we granted them permission, they put the sign up, and now we're saying oops we're sorry. I think that's terrible.

Mr. Hiltzheimer stated we were wrong in allowing that.

Mrs. Witter stated I just needed to say that.

Mr. Dyer stated I'm going to make these comments and I don't want anybody to read any, but my personal opinion about this particular case is but the first comment I'd like to make is we're not supposed to consider the financial burden of enforcing rules and regulations because it's always going to be someone who's going to come forward and say hey if you let me do this I can do it for half the cost. Certain standards are being maintained by requiring certain rules and regulations. The other thing is just because the City made a mistake doesn't necessarily mean that mistake should be allowed to continue. If someone were to come next year, if you live in a nice residential area and someone came along and got a permit to build a 7/11 next to your house and the City granted that permit and it was an error because the property wasn't zoned, you wouldn't be very happy with that. So that's why I feel like it's really important that we send this back to a body that has the ability to make a judgment call. We're not allowed to make a

judgment call. City Council and Planning Commission, they are allowed to make judgment calls and so that's why I initially made the request that this be sent to Planning Commission and hopefully ultimately to City Council because I believe that this is an issue that they need to address. Because as we saw in the case before, if anyone saw the Council meeting when Mr. Whittle appeared, everybody raises their hands and goes oh we didn't know we voted for this; we didn't know the ramifications of the code we passed ten years ago. So I think that Council needs to be made aware that there are rules and regulations to the things that they pass. It would be appropriate when necessary that they make modifications to those rules and regulations when it seems appropriate. So at that point, I would recommend that we act accordingly.

Mrs. Witter stated I agree.

Mr. Dyer stated we have the option of upholding the City's incrimination.

Mr. Whitfield stated denial.

Mr. Dyer stated correct. In other word we have the right to deny it and we have the right to table the motion until further action can be made by other bodies.

Mr. Whitfield stated then you have the right to approve it like Kenny said in which it would become a legal, nonconforming use.

Mr. Dyer stated and I have concerns about that too as well because like I say it sets a precedent that just because the City made a mistake then we have to let that mistake continue. I don't know if that's a good idea.

Mr. Gillie stated you do not have to in the future and it will not be precedent setting for a few reasons. One, the regulations are in place. Two, the City clearly made a mistake, we're not going to dispute that fact. We have as a City tried to rectify that by, one, revoking the permit. So we've told them while we've issued this permit in error, we're revoking it. You as a board, you mentioned the thing about a judgment call, on an appeal you're not bound by the four strict criteria. You can make a judgment call on the appeal. Did the City make a mistake? We are admitting yes we did, we should not have issued that permit but we did. Did Mr. Woodall do what they are supposed to do? Yes they did. They got the permit, they checked with us beforehand, they put the sign up like they were supposed to. Did we do a final inspection on the sign? Yes we did. We inspected it and said everything was fine. We found out afterwards that there was a mistake. So that's where this Board can come in and you're not setting a precedent. You're not letting everyone else come in and say I want a sign as big as his because his sign was issued wrong. We'll tell people we issued that in error and we tried to fix it. So you do have more leeway on an appeal. Now not saying one way or another which way you should go. That's why we don't make recommendations to this Board. I'm just letting you know that this isn't like a typical variance case where you have to meet those four criteria. In this case, it's should we pull his permit or not? That's up to this Board to decide on.

Mr. Dyer asked does everybody understand that? Once again I have a problem continuing a mistake. A mistake was made.

Mrs. Reynolds asked didn't he just say that they would not be continuing a mistake?

Mr. Dyer stated well in this specific instance we would be because the City made a mistake we would allow the nonconformance to remain in place without granting other people the same consideration. Say somebody else came in front of Mr. Woodall to build a Volkswagen dealership and he wants a same sized sign as Mr. Woodall uses to advertise his Hyundais to advertise his Volkswagens.

Mrs. Reynolds stated but if this were a special dispensation because of the State surely the City's not going to make the same mistake again.

Mr. Gillie stated you make a valid point. So the next person comes in. We have that every time we do major sign code changes. From 87-2004, we used to allow signs to be upwards to 125 square feet and we changed that and dropped it down to 75 square feet. So in 2004 when the new regulations came in, we had people come in and say well I want a sign as big as my person next door. At that point I would tell them no because these are the current regulations. We have people that are unhappy but they still complied with what the new regulations are and that was our goal to get smaller signs. In Mr. Woodall's defense, he came to us and asked us what can I put up and we gave him the okay. We should not have done that. We did by error. Once we found out, we brought it back. The next person is going to come in and we're not going to make that same mistake. We changed our policies and the way we look at things to make sure that this does not happen again. They did the right thing. As a staff, hopefully now we're not perfect to say we'll never make a mistake again because we're human, but we've changed our policies and practices so we should not have this happen again.

Mr. Dyer stated I still have concerns with setting the precedent because the City made a mistake we're going to allow that mistake to continue.

Mrs. Witter stated I disagree though. It's not a precedent based on what he's stating.

Mr. Dyer stated alright we have a different opinion. We'll stop right there.

Mrs. Evans made a motion to table Appeal Application Number PLAZ20140000264 until Planning Commission can review the sign code. Mr. Hiltzheimer seconded the motion. The motion was approved by a 5-0 vote.

Mr. Dyer asked so are you aware what has just taken place? There'll be no enforcement or requirement that you do anything to your sign until we readdress the issue and that should be after Planning Commission has had an opportunity.

Mr. Woodall asked what would be the timeframe on that?

Mr. Dyer asked are we good enough to get on November's Planning Commission Agenda?

Mr. Gillie stated we presented it and asked Planning Commission to discuss it. They wanted more information.

Mr. Whitfield stated before they even discussed it.

Mr. Gillie stated the earliest if they decide at the November meeting that they want to look at it, that means it would come back to them in December, they would have December and possibly January to look at it. It won't get to City Council until possibly until January or February of 2015. Now at this point, your sign's in legal limbo. So until such time if Planning Commission says they don't want to make any changes then it would come back to this Board automatically. You wouldn't have to pay anything, it would just be put back on the next Agenda available. The earliest it would come back to this Board would probably be January of 2015. That's a guess and I'll keep you informed.

Mr. Woodall stated that's ok and to be honest with you she's been handling all of that. We've been staying busy trying to make money every day.

Mr. Dyer stated I would hope that you all pay attention. Can they receive special notice before it goes to Planning and Council?

Mr. Gillie stated I will continue to notify the sign company and if Robert wants me to notify him directly, I'll notify him as well. We had been dealing mostly with her.

Mr. Woodall stated and that's fine, I understand what you're going through as a business owner and a community person. When you have a mistake, and people make a mistake every day, I stand behind it and take care of it and the governing body of City Council, as the last stop will stand, they need to stand behind their employees and make something happen one way or the other. I appreciate your comments but yean we try to keep our place looking good down there. We've spent a lot of money. We cut our grass even though the City don't cut their grass, I can hire me a guy to go over there and bring stuff in all week long but I don't.

Mrs. Stack stated so I have a quick question. For the next meeting you know I don't live here, I live in Florida state, do I need to be present for any of these meetings or is this sort of an internal thing?

Mr. Gillie stated you do not need to be present.

Mr. Whitfield stated because the November meeting will just be a decision that we talk about.

Mrs. Stack asked ok so if we do have to come back here and the Planning Committee decide that they want to do it and we have to come back to this spot, you'll inform me if I need to be here or not?

Mr. Gillie stated yes ma'am.

Mrs. Stack stated alright thank you.

Mr. Dyer stated and we will take that into consideration that you have to travel a distance to get here. Alright, do we have other business?

Mr. Gillie stated in front of you, you see the City iPads. We're trying out a new system to basically do Agendas all electronically as opposed to providing paper copies. We spent a substantial amount of money printing out copies for a meeting that lasts 45 minutes to an hour, so we're hoping if we can go to this electronic system that it will save the City money. You'll have access hopefully from your home. We'll have the files placed out there early enough, and also when you come to these meetings we'll have these iPads available for electronic. Does anyone have any issues if we start going towards that system? We're still in the testing phase of this. Do you like that idea? Not like that idea? You do like that idea?

Mr. Hiltzheimer stated I like it.

Mr. Gillie stated ok. Then we will continue proceeding on with working out the bugs in the electronic system. That's all we have.

Mrs. Evans asked do we have business next month?

Mr. Gillie stated I don't have anything yet. They still have until the 20th to apply so I can't say yes or no.

Mr. Dyer stated ok and once again if you will keep your eyes on the Agenda. If you all would like to come to Planning Commission, some of us will already be there, but if you would like to come to make comments on this issue and to discuss, I would appreciate that you do so.

Mrs. Reynolds asked so in November they're just going to decide if they're going to take it up? They could just decide that we're through with it and that's the end of it?

Mr. Dyer stated right because in order for them to vote anything, it has to be on a public agenda right?

Mr. Whitfield stated and advertised.

Mr. Dyer stated and advertised so the public would have an opportunity to come and make a comment on it. So what will happen I guess, it will be brought up and they will vote on whether they're going to vote on it or not. So that's probably the most critical meeting because that's where some of us have to make our case saying this is an issue that does need to be addressed by City Council not by this board. I hope that I'm not being too rigid in my interpretation of what we can and cannot do, but I think it is important that we realize our limitations. When those limitations conflict with the decision we think should be made then we need to pass those issues along to those who can make those decisions and not just try to get rid of the case one way or another. That's my comment.

II. APPROVAL OF MINUTES

The September 18, 2014 minutes were approved by a unanimous vote.

III. OTHER BUSINESS

With no further business, the meeting adjourned at 10:46 a.m.

APPROVED