

ZONING APPEALS MEETING October 16, 2014

Members Absent
Philip Campbell
Michael Nicholas

Staff
Ken Gillie
Renee Burton
Shanta Hairston
Clarke Whitfield

Chairman Dyer
John Hiltzheimer
Dolores Reynolds
Ann Sasser Evans
Dawn Witter

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 am 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.

is not related to the parking issue. Have you finished to do something else?

to 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 were going to landscape it. We were 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 is not the option.

Mr. Hiltzheimer stated and there is 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 is 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 were doing because we don't seem to have the criteria spelled out. In essence we were given that in the May meeting?



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? 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

the Agenda then I would have known that they were been there to give them more information. Perhaps them more information as well. It was not on the

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 am not sure they are 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're

When you rezone a property, you requested that this be made on that change. This board looks at the conditions 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 are 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.

Planning Commission, they are allowed to make initially made the request that this be sent to Planning Commission to City Council because I believe that this is an appropriate 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'd 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.

decide at the November meeting that they want to come back to them in December, they would have to look at it. It won't get to City Council until possibly until January or February of 2015. Now at this point, your signs are 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 yeah 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 doesn'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?



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g adjourned at 10:46 a.m.

APPROVED