

**PLANNING COMMISSION MINUTES**  
**December 7, 2009**

**MEMBERS PRESENT**

**Mr. Griffith**  
**Mrs. Evans**  
**Mr. Laramore**  
**Mr. Scearce**  
**Mrs. Pritchett**  
**Mr. Jennings**

**MEMBERS ABSENT**

**Mr. Jones**

**STAFF**

**Ken Gillie**  
**Christy Taylor**  
**Renee Blair**  
**Clarke Whitfield**

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

**I. ITEMS FOR PUBLIC HEARING**

**1. Rezoning Request RZ 09-014, filed by Beverly Wharton, requesting to amend the Year 2020 Land Use Plan from Suburban Single Family to Office/Professional/Transitional and to rezone from S-R Suburban Residential District to “Conditional” TO-C Transitional Office Commercial District, 660 Audubon Drive, otherwise known as Grid 1819, Block 006, Parcel 000004 of the City of Danville, Virginia, Zoning District Map. The applicant is requesting to rezone to allow for an accessory apartment within a single family dwelling.**

**2. Special Use Permit Application SUP 09-010, filed by Beverly Wharton, requesting a Special Use Permit for an accessory apartment in accordance with Article 3.I: Section C., Item 1. of the Code of the City of Danville, Virginia, 1986, as amended at, 660 Audubon Drive, otherwise known as Grid 1819, Block 006, Parcel 000004 of the City of Danville, Virginia, Zoning District Map. The applicant is requesting an SUP to allow for an accessory apartment within a single family dwelling.**

Mrs. Blair read the Staff Report. Twenty-seven (27) notices were mailed to property owners within three hundred (300) feet of the subject property. Five (5) respondents were unopposed; Ten (10) respondents were opposed.

Open the Public Hearing for Items 1 and 2.

Present of behalf of the request was Bill Wharton. Mr. Wharton stated that he was currently living in the basement and would like to rent the upstairs of his home and that he does not want a transitional business. Mr. Wharton stated that he had generated a petition and had only one (1) person object to his request. He added that he had no intentions on making any structural changes to the residence and that there would be no harm to the neighbors.

Mr. Jones arrived at 3:07 PM.

Close the Public Hearing.

Mr. Scearce asked Staff why we were going for Transitional Office Commercial if it is going to be just a duplex. Would that be multi-family?

Mr. Gillie responded that this was not a duplex per say according to Code. It is a Single-Family District and we do not allow for two (2) units in the OTR District. In order to have a second unit it would have to be a duplex which would require it to be two (2) subdivided properties, and we could not do that the way this house is laid out. The only option we had was to try and change the zoning to allow the Transitional Office Commercial.

Mr. Scearce stated that it seems that Transitional Office Commercial would be like spot zoning because it does not adjoin or adhere to any other zoning like that.

Mr. Gillie replied it does adjoin transitional office because the school property is Transitional Office Commercial. We did not mention spot zoning in our staff report because there is that type of zoning adjacent to the property although it is a completely separate use than what he is asking for. He has offered conditions to the Transitional Office Commercial which eliminates just about everything else except for the accessory apartment in the residential dwelling. It would be the only one in the area that would have that and the staff feels that it would be opening new ground that would not be a benefit to the neighborhood. We also had substantial opposition to this request. Mr. Wharton did get a petition together and only had one (1) person opposed; however we had ten (10) residents reply in opposition to us.

Mr. Griffith made mention that the of the ten (10) people who responded that were opposed only one (1) name appeared on the petition that Mr. Wharton presented.

Mr. Gillie stated that the way our Code is written under Old Town Residential regulations, we do not have a way to meet his request.

Mrs. Pritchett asked how the church diagonally across from the property was zoned?

Mr. Gillie stated that the church is zoned Suburban Residential and that Suburban Residential and Old Town Residential both have the same uses. Under Suburban Residential there is not a way to do what Mr. Wharton is requesting either.

Mrs. Evans asked if there were other properties within the City that have apartments in the basement or upstairs that are zoned to do that?

Mr. Gillie replied that we have some legal non-conforming situations which are properties that were constructed that way. Since the adoption of the new Code in 2004 we have not. The only people that have done anything remotely similar would be Housing Authority with duplexes through Special Use Permits and have actually created two (2) separate lots.

Mr. Griffith added that the duplexes that the Housing Authority has constructed are side by side.

Mr. Gillie stated that the definition is a side by side, and this is an up/down unit and we do not have a provision the way our Code is written.

Mrs. Evans asked if there are other up/down units within the City?

Mr. Gillie responded that there have not been any constructed since the new Code was adopted and that the existing up/down units are legal non-conforming.

Mr. Scearce stated that the residents that signed Mr. Wharton's petition are outside of the 300 foot property range. They are less affected by the change.

Mr. Wharton added that of all the people he talked to, they did not understand the letter received from the City. He commented that he believes that the people whom are opposed just do not understand it.

Mr. Jennings asked Mr. Wharton if he went from his house going door to door taking the survey?

Mr. Wharton answered yes.

Mr. Jennings asked if the one opposed was his neighbor?

Mr. Wharton responded no.

Mrs. Pritchett asked Staff are there any duplexes in this neighborhood?

Mr. Gillie responded no not in the immediate area.

Mrs. Scarce asked what if Mr. Wharton's home was a duplex split down the middle would it work in this type of zoning?

Mr. Gillie stated that it would require a Special Use Permit to have that type of unit in the Suburban Residential District and it would have to go through public hearing process. It would be out of character for the existing housing.

Mr. Scarce asked if there was a full kitchen in both sections of the house?

Mr. Wharton responded yes.

**Mr. Laramore made a motion to recommend denial of Rezoning Request RZ 09-014. Mrs. Pritchett seconded the motion. The motion was approved with a 6-0-1 vote (Mr. Jones abstained).**

**Mr. Laramore made a motion to recommend denial of Special Use Permit Application SUP 09-010. Mr. Jennings seconded the motion. The motion was approved with a 6-0-1 vote (Mr. Jones abstained).**

**3. Special Use Permit Application SUP 09-015, filed by Brenda Brokaw, requesting a Special Use Permit for a Bed and Breakfast in accordance with Article 3.E: Section C., Item 3. of the Code of the City of Danville, Virginia, 1986, as amended at, 284 W. Main St., otherwise known as Grid 1719, Block 011, Parcel 000011 of the City of Danville, Virginia, Zoning District Map. The applicant is requesting an SUP to allow for the operation of a bed and breakfast**

Mrs. Blair read the Staff Report. Fifty-four (54) notices were mailed to property owners within 300 feet of the subject property. Twenty-eight (28) notices were received. Twenty-five (25) respondents were unopposed; Three (3) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Brenda Brokaw. She stated that she felt she would be providing a service to the community in that she understands parents of Averett students have a hard time finding housing. Mrs. Brokaw is looking to do this on a very part-time basis. She has provided the same services before in Massachusetts and is primarily looking to house five (5) to eight guests a year. Mrs. Brokaw only has one room available.

Close the Public Hearing.

**Mr. Scarce made a motion to approve the Special Use Permit Application SUP 09-015 with conditions per staff. Mrs. Evans seconded the motion. The motion was approved by a 7-0 vote.**

**4. Special Use Permit Application SUP 09-016, filed by Kathleen Wallace, requesting a Special Use Permit to operate a school in accordance with Article 3.J: Section C., Item 14. of the Code of the City of Danville, Virginia, 1986, as amended at, 753 Main St., otherwise known as Grid 1716, Block 004, Parcel 000009 of the City of Danville, Virginia, Zoning District Map. The applicant is requesting an SUP to operate a driving school at this location.**

Mrs. Blair read the Staff Report. Twenty-seven (27) notices were sent to surrounding property owners within three hundred (300) feet of the subject property. Six (6) notices were received. Five (5) of the respondents were unopposed; One (1) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Michelle Roach. Mrs. Roach stated that classes are held in the evening Monday thru Thursday six (6) to eight (8) hours. They are limited by the state as well as to how many hours they can operate. They are only allowed to have students in the evenings for two (2) classroom periods. Mrs. Roach stated that they have Saturday morning classes 10:00 AM-1:00 PM. We generally have a class every two (2) months. Parking is not an issue since most of the students do not have driver's licenses.

Mr. Gillie asked if the classes on Saturday's were from 10:00 AM-1:00 PM?

Mrs. Roach replied yes.

Mr. Gillie stated that staff would amend the report to change the hours of operation to Monday thru Friday 5:00 PM-10:00 PM and Saturday 10:00 AM-10:00 PM if that is acceptable to everyone.

Mr. Griffith asked Mrs. Roach if that was acceptable?

Mrs. Roach replied yes.

Close the Public Hearing.

**Mr. Scarce made a motion to recommend approval of Special Use Permit Application SUP 09-016 with the modified conditions per staff. Mr. Jennings seconded the motion. The motion was approved by a 7-0 vote.**

**5. Code Amendment CA 09-004, requesting to amend Article 2:, Section R, Item 8 of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended, by amending the maximum height of commercial communication towers by allowing for a tower height of 150' and an additional height of 20' for Omni directional or whip antenna for a total height of 170' from grade.**

Mrs. Blair read the Staff Report.

Open the Public Hearing.

Present on behalf of the request was Barry Doebert, Administration Division Director for Public Works. He stated that he was present to answer any questions in regards to this request.

Mr. Jennings asked if the City rented tower space to other organizations?

Mr. Doebert responded yes. The change in ordinance will be a valuable asset because the City's own antennas will be placed higher which will allow for more space for other antennas as a source of revenue for the City.

Mr. Griffith asked if increasing the allowable height on current antennas would create a problem as far as set back on existing antennas?

Mr. Doebert stated that the existing tower under federal law, the FCC states that the wind resistance has to be at 70mph. The current tower was built at 90mph. This tower has a break point at approximately 80ft instead of 150ft. Even if the tower did break, it would still fall at 28ft short of any residence. It will land on city property even with the whip antenna.

Mr. Griffith asked if that would still be within the setback requirements?

Mr. Doebert responded yes.

Mr. Laramore asked if this was the only location of a City tower?

Mr. Doebert answered that the City has three (3) communications towers.

Mr. Laramore asked if this Code Amendment would cover all three (3)?

Mr. Gillie stated that this would cover any tower not necessarily the City's towers. It would have the same effect on private enterprise.

Mr. Jones asked if 20ft really made that much of a difference?

Mr. Doebert answered that it does when you have to get separation. In order to provide better communication coverage the tower needs to be higher and space the antennas so that the incoming/outgoing would not interfere with each other. This added height would allow them to avoid interference with the water tower on Third Avenue.

Mr. Jones asked staff if a person could approach the City Manager and go around the Planning Commission under the waiver?

Mr. Gillie stated that a person could ask but this happens very infrequently. This is not a very common occurrence.

Close the Public Hearing.

**Mrs. Pritchett made a motion to recommend approval of the Code amendment CA 09-004 as recommended by staff. Mrs. Evans seconded the motion. The motion was approved by a 7-0 vote.**

**6. Special Use Permit Application SUP 09-017, filed by the City of Danville, requesting to amend a Special Use Permit previously granted to authorize a public use or utility in accordance with Article 3.E, Section C, Item 15 of the Code of the City of Danville, Virginia, at 126 Third Avenue, otherwise known as Grid 2814, Block 009, Parcels 00001 of the City of Danville, Virginia, Zoning District Map. The City is requesting to amend a previous Special Use Permit granting permission to construct a 140' radio tower that was constructed at 150'.**

Mrs. Blair read the Staff Report. Eighty (80) notices were sent to surrounding property owners within three hundred (300) feet of the subject property. Twelve (12) notices were received. Ten (10) of the respondents were unopposed; Two (2) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Barry Doebert, Administration Division Director for Public Works.

Mrs. Evans asked that the Planning Commission approved a Special Use Permit in 2007 for a 140' tower and they immediately built a 150' tower?

Mr. Doebert responded yes. In the course of the construction they were told they could not go over 150' total including antennas. When the plans were sent out it was listed incorrectly as a 150' tower. The contractor built what was requested. It was a mistake on the City's part for not checking on the construction of the tower.

Mrs. Evans asked why then it took two (2) years for them to request the Special Use Permit from the Planning Commission?

Mr. Doebert stated they had a request for another antenna and upon measuring the height for placement of this new antenna, the surveyors stated that the tower was at 150'. Once they had confirmation of the actual height of the tower they presented the staff with this information to request the Special Use Permit to correct the mistake. Mr. Doebert added that even though the tower was built wrong, the ability for the police and fire emergency services to reach different areas within cities where they have had communication problems before has been completely erased.

Close the Public Hearing.

**Mrs. Pritchett made a motion to recommend approval of Special Use Permit Application SUP 09-017 as submitted. Mr. Jennings seconded the motion. The motion was approved by a 7-0 vote.**

**7. Code Amendment CA 09-005, requesting to amend Article 3.J., Section B (N-C Neighborhood Commercial District), Article 3.K., Section B, (CB-C Central Business District), Article 3.L., Section B (TW-C Tobacco Warehouse District), Article 3.M., Section B (HR-C Highway Retail District), Article 3.N., Section B (PS-C Planned Shopping Center District) and Article 15 (Definitions) of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended, by adding the operation of a bicycle shop by right in areas of the City of Danville zoned N-C, CB-C, TW-C and HR-C, and providing the definition of a bicycle shop.**

Mrs. Blair read the Staff Report.

Open the Public Hearing.

Close the Public Hearing.

Mr. Scarce asked staff based on the staff report it sounds like we are saying two things and he was confused. If that being the case, what is allowed verses what is not allowed?

Mr. Gillie said the N-C District has a provision that allows for the retail sales of convenience shopping goods. There is a definition in the Code as to what is a convenience shopping good. It allows for certain things. Bicycles are not listed in there. You can do limited retail sales in N-C District, but not of this nature. The definition for bicycle shop falls under general retail sales establishment which is not a use permitted in the N-C district. Staff thought it would be easier to create a definition for a bicycle shop and allow it as a use by right.

Mr. Laramore asked if there are any other things other than convenience stores and bicycle shops?

Mr. Gillie stated based on what the staff has been asked, we have not had a problem fitting things that wanted to go in N-C District that have had limited retail sales within our definition of retail shopping goods. This is the first request that has come to us that does not work since the new Code was adopted. Staff decided this was the cleanest way to allow what they wanted without completely re-writing what constituted a retail sale of convenience shopping goods portion of the zoning code.

Mr. Jones asked what if someone wanted to open a skateboard shop?

Mr. Gillie stated that would work because of the materials and the way it is listed.

Mr. Scarce commented that there are a lot of varieties of retail uses.

Mr. Gillie responded right. As we go through our Comprehensive Plan we are finding that we are starting to have more Code Amendments. The definition of retail sales of convenience shopping goods will be brought back before the Planning Commission to do a wholesale change on. At this point we are not ready to do that. It is working as is, but there are a few things that need tweaking. This will give us a chance to go back and really look at some things we find that are not working according to our Code.

**Mrs. Pritchett made a motion to recommend approval of Code Amendment CA 09-005 as recommended by staff. Mr. Jones seconded the motion. The motion was approved by a 7-0 vote.**

## **II. ITEMS NOT FOR PUBLIC HEARING**

### **8. Review of a Final Major Subdivision plat creating three (3) lots on Banner Street.**

Mr. Gillie read the Staff Report.

**Mr. Jennings made a motion to adopt Resolution 2009-12-1 to approve a final major subdivision plat creating three (3) lots on Banner Street. Mrs. Evans seconded the motion. The motion was approved by a 7-0 vote.**

### **9. Review of a Final Major Subdivision plat creating seven (7) lots on Seeland Road and dedicating right-of-way for widening of said road.**

Mr. Gillie read the Staff Report.

**Mr. Laramore made a motion to adopt Resolution 2009-12-2 to approve a final major subdivision plat creating seven (7) lots on Seeland Road and dedicating right-of-way for widening of said road. Mrs. Pritchett seconded the motion. The motion was approved by a 7-0 vote.**

### **10. Review of a Final Major Subdivision plat creating three (3) lots on Northside Drive.**

Mr. Gillie read the Staff Report.

**Mr. Jones made a motion to adopt Resolution 2009-12-3 as submitted by staff to approve a final major subdivision plat creating three (3) lots on Northside Drive. Mrs. Evans seconded the motion. The motion was approved by a 7-0 vote**

## **III. MINUTES**

**Mr. Laramore made a motion to recommend approval of the minutes from the October 12, 2009 meeting. Mrs. Evans seconded the motion. The minutes were approved by a 7-0 vote.**

## **III. OTHER BUSINESS**

Mr. Gillie stated that there were no items from Planning Commission to City Council at the meeting last month, and that the cases will be heard next week.

Mr. Gillie stated that during the last week in January we are trying to schedule the first public hearing for the Comprehensive Plan update, so if anyone is going to be out of town, please let him know.

Mr. Gillie introduced Ms. Christy Taylor as the new Community Development Senior Secretary. She will be serving as secretary for the Planning Commission.

Mr. Griffith welcomed Ms. Christy Taylor.

With no further business, the meeting adjourned at 4:06 p.m.

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APPROVED