

# PLANNING COMMISSION MINUTES

April 13, 2020

## MEMBERS PRESENT

Mr. Wilson  
Mr. Garrison  
Mr. Bolton  
Mr. Petrick  
Mr. Dodson  
Mrs. Evans  
Mr. Craft

## MEMBERS ABSENT

## STAFF

Lisa Jones  
Ken Gillie  
Clarke Whitfield

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

Mr. Gillie stated as everyone knows, City Hall has been closed to protect the citizens as well as the staff. We are doing this public hearing, which is an opportunity for everyone to speak through electronic means. We sent out both forms that people could fill out and send back in or go online with their comments. The comments that have been received at this point have been forwarded to Planning Commission. With the phone line, we received one comment that is for a case that we will talk about later.

## **ITEMS FOR PUBLIC HEARING**

1. *Special Use Permit Application PLSUP20190000386, filed by Justin Williams & Michelle Adkins, requesting a Special Use Permit for commercial recreation (indoor) in accordance with Article 3.K, Section C, Item 5 of the Zoning Ordinance of the Code of City of Danville, Virginia 1986, as amended at 401 S. Ridge St., otherwise known as Grid 2713, Block 021, Parcel 000008 of the City of Danville, Virginia Zoning District Map. The applicant is proposing to have indoor gaming.*

Mr. Garrison opened the Public Hearing.

Mr. Gillie stated the House and Senate voted to outlaw these games. The Governor has proposed an amendment that would allow them for 1 year and 1 year only and to be taxed at a certain rate. At this point I do not have any idea how the House and Senate will look at this proposal. There is also no layout for how they would be taxed and who would be doing the taxing. There is no set up for if this actually occurs. I don't know if this can be done within the year that the Governor is proposing. So at this point I don't know if the House and Senate will agree to that or will overturn or vote on that request. I will still stick with my recommendation which is based on the House and Senate vote and staff recommends denial on this.

Mr. Garrison stated have you heard anything from Mr. Williams about postponing this again?

Mr. Gillie stated I have not. That is one of the reasons that staff is recommending for denial because without him requesting this to be continued it has to be denied. Staff received no

additional comments during this period. They received the same notification and could have went on the website or called in and we did not receive any information regarding this case.

Mr. Garrison closed the Public Hearing.

**Mr. Petrick made a motion to deny special use permit PLSUP20190000386. Mr. Dodson seconded the motion. The motion was denied by a 7-0 vote.**

2. *Special Use Permit Application PLSUP202000004, filed by Shazad Tahseen on behalf of AANT INC, requesting a Special Use Permit for commercial recreation (indoor) in accordance with Article 3.M, Section C, Item 4 of the Zoning Ordinance of the Code of City of Danville, Virginia 1986, as amended at 2980 W. Main St., otherwise known as Grid 0617, Block 007, Parcel 0000015 of the City of Danville, Virginia Zoning District Map. The applicant is proposing to have indoor gaming.*

Mr. Garrison opened the Public Hearing.

Mr. Gillie stated staff would recommend denial for this. I was hoping that the applicant would send something in and we have not received any comments for the applicant requesting that this item be tabled. Staff is recommending denial for this request as well. We have received no comments either through phone line or internet.

Mr. Garrison stated am I correct that this person has never been here for any of the times that this has been on the agenda?

Mr. Gillie stated I don't remember them being here so I would agree with you.

Mr. Garrison closed the Public Hearing.

**Mr. Wilson made a motion to deny special use permit PLSUP20200000004. Mr. Petrick seconded the motion. The motion was denied by a 7-0 vote.**

3. *Rezoning Application PLRZ2020000029, filed by Gerald Kelly on behalf of TriCor Properties LLC, requesting to rezone from N-C Neighborhood Commercial District to "Conditional" HR-C Highway Retail Commercial District, 1113 Franklin Turnpike and two adjacent parcels (Parcel ID#s 70167, 70166, & 70046), otherwise known as Grid 1916, Block 011, Parcel ID's 000039, 000040 &, 000041 of the City of Danville, Zoning District Map. The applicant is proposing to build mini-storage warehouses on the property.*

Mr. Gillie stated that Mr. Kelly sent in a request this morning for a continuation. (Please see attached letter from Mr. Kelly).

**Mr. Wilson made a motion to postpone this Rezoning Application PLRZ20200000029. Ms. Evans seconded the motion. The motion was approved by a 7-0 vote.**

4. *Rezoning Application PLRZ2020000058, filed by Dana Peters, requesting to rezone from OT-R Old Town Residential District to "Conditional" HR-C Highway Retail Commercial District, 215 Ash Street (Parcel ID# 73005), otherwise known as Grid 1807, Block 003, Parcel ID# 000049, of the City of Danville, Zoning District Map. The*

*applicant is proposing to rezone to allow for a discontinued non-conforming use (commercial kennel) to be used.*

5. *Special Use Permit Application PLSUP202000059, filed by Dana Peters, requesting a Special Use Permit for a waiver to yard setbacks in accordance with Article 3.M, Section C, Item 7 of the Zoning Ordinance of the Code of City of Danville, Virginia 1986, as amended, at 215 Ash Street (Parcel ID# 73005), otherwise known as Grid 1807, Block 003, Parcel ID# 000049, of the City of Danville, Zoning District Map. The applicant is requesting a Special Use Permit to allow for a discontinued commercial kennel to be used.*

Mr. Garrison open the Public Hearing.

Mr. Gillie stated we received one comment which said I moved to this area of Danville for peace and quiet. (Ackbar) We received a comment from the owner, Dana Peters. (*Please see attached letter*). The owner did have a flight scheduled to come here and I had talked to her previously and told her that the building would not be open, so she did not come. I know that some of you have concern if the applicant doesn't come, but her plan was to attend the entire time, so she is not here because she is not allowed in the building.

Mr. Garrison closed the Public Hearing.

Mr. Dodson stated does she own the house right beside the kennel?

Mr. Gillie stated Ms. Peters owns the house next door.

Mr. Wilson stated is it in the public interest? I have always been fascinated by that whole thing. I'm not sure how I understand, how a kennel at the end of a street is a public interest. Is that the right question to ask about the spot zoning thing?

Mr. Whitfield stated not all spot zoning is illegal but if it is not of the public interest then it could be considered spot zoning.

Mr. Wilson stated I'm a little confused about the applicant. The applicant doesn't live here from the address on the letter. Who is going to run this kennel or be the manager of this operation?

Mr. Petrick stated is this going to be leased, in other words?

Mr. Wilson stated we don't have any kind of plan or anything. This is a pretty good example for me of why we should kick this down the road, so we can have a public hearing on it. We have spot zoning issues and we have to decide if it is in the public's interest. I don't know what that means and we need to determine what that is.

Mr. Petrick stated it is a shortage of similar properties that are properly zoned that could be used for the same purpose. I think that would probably be more compelling, but a legitimate public purpose is going to be hard to defend. Don't you think?

Mr. Gillie stated from staff's perspective this is a decision that you as a board may recommend Council on: whether you make that determination on this being a public interest. From staff's perspective, it is a structure, and this piece of property has not been

used for two years and loses its vested rights. They are trying to fix it, and I wish the applicant could be here to explain the situation and I can't really testify on her behalf, but because the situation that we are under, we are doing the best that we can to get the information to you. If this is being recommended to be tabled I don't think the applicant would be upset. It has already lost its grandfathered status and it's not like we are pushed for a time limitation on this.

Mr. Garrison stated right now we are under a stay at home order until June 12. The next meeting that we can have a true public hearing is in July.

Mr. Gillie stated at the moment that is what the order is, but it could be changed. We are doing the best that we can with the information that we have at the moment. We are also hoping that maybe technology can change to allow us to have some outside interaction and our IT department is working on this. We don't have the ability and that is why we don't have it set up right now.

Mr. Garrison stated I understand that, but to have a public hearing where she can actually be here will probably be July, unless you can set up some kind of video conferencing where they can come and be in another room.

Mr. Gillie stated we are trying to work on a way that will be safe for everyone.

Mr. Wilson stated I think even with that, I am very concerned about a really pretty serious initial HRC Highway Retail District that has clearly plopped them in the middle of a residential area. It is very hard for us to make decisions when we don't have the public's input and that just seems so critical to our role in Planning Commission to hear comments of people and get a feel for neighbors. There may be more neighbor concerns established that we never get. I am strongly inclined to kick this down the road.

Mr. Dodson stated didn't he say of the stuff that he sent out, only one person out of the whole street was opposed to it. They have been there for thirty years.

Mr. Gillie stated we annexed in 1988, and it was there. I don't know when it operated beforehand.

Ms. Evans stated would it be helpful to contact Mary Wardle since she operated it before to see if there were any concerns or complaints?

Mr. Whitfield stated I think it would be up to the applicant if they felt it was necessary to bring her in.

Mr. Bolton stated I would like to hear from her. If she has good plans for the building. Then it is either going to be something like that or sit there vacant. What else are you going to do with a block building on a dead end street? I have no problem with putting this off until a later date.

Ms. Evans stated if we approve it and then two years down the road nothing happens, what happens then? Is it still conditional home retail?

Mr. Gillie stated if you recommend approval and Council agrees to do the additional zoning that is the only thing that it could be. With a special use permit, you have a one year time

limit before something starts. If she doesn't operate within a year, she would lose the special use permit, but the zoning itself would not change. It would be zoned as a commercial parcel but only by special use. A subsequent owner or applicant would have to come back and do things within a certain period to ask for another special use permit. It is kind of a double safety on something that could be detrimental to a neighborhood. The applicant had every intention of being here, this is not one that they did not want to come. Up until last week we were still back and forth on them coming to this meeting. In their defense, they did everything possible to try to be here to answer these questions for you.

Mr. Garrison stated if this was approved for the zoning change and special use permit, would it still then if she didn't start the work for a year and lost the special use permit, would the zoning just be for a kennel?

Mr. Gillie stated correct. The zoning would be just for a kennel.

Mr. Bolton stated to answer Steve's question about public need, if she has a business plan and shows a big demand that would be helpful.

Mr. Petrick stated the crux of the issue is spot zoning and you have said as such and our only recourse is to make a decision as to whether it serves as a legitimate public purpose and frankly I don't know of anything that could be said about public or the neighbors or owner that is going to change any of that. I think we are setting a dangerous precedent here.

Mr. Wilson stated what is a dangerous precedent?

Mr. Petrick stated by spot zoning, and this is clearly a situation where you have a residential area and you are surrounded by residential properties and you are zoning commercial.

Mr. Wilson stated I feel like if we can't hear the arguments, because we have done spot zoning in the past where we have approved in the recommendations that was considered spot zoning. Once they came in and talked about it and we saw the major issues we were able to go forward with it with confidence. We don't know why seven people didn't respond.

Mr. Dodson stated probably because they don't care. If it was upsetting to me, I would have sent it in.

Mr. Garrison stated looking at the map that street dead ends there and the property that it dead ends to is zoned by Moore. There is no way that we would ever extend that street to the County, am I correct?

Mr. Gillie stated it is highly unlikely.

Mr. Garrison stated the City and County would have to agree to extend that into the County, am I correct?

Mr. Gillie stated that is correct and we have not in the past in other situations that would be similar.

Mr. Wilson stated I guess I'm a little bit confused where we are going?

Mr. Petrick stated at this point I don't see approval as an option. A postponement is our only option other than denial.

Mr. Wilson stated I would lean that way because I think the role of the Planning Commission is to be that bridge between City Council and the public and if that is not there it is very hard for us to make a decision.

Ms. Evans stated is there no other option than Highway Retail Commercial?

Mr. Gillie stated for a kennel, no.

Ms. Evans stated do you know what her plans are for the house?

Mr. Gillie stated no the house was not part of this request.

**Mr. Wilson made a motion to postpone this Rezoning Application PLRZ2020000058 till we can have a public hearing. Mr. Bolton seconded the motion. The motion was approved by a 7-0 vote.**

6. *Special Use Permit Application PLSUP2020000081, filed by National Restaurant Designers requesting a Special Use Permit to allow a waiver of yard requirements in accordance with Article 3.M; Section C, Item 21 of the Code of the City of Danville, Virginia, 1986, as amended at 1041 Piney Forest Rd, otherwise known as Grid 1811, Block 004, Parcel 000001 of the City of Danville, Virginia, Zoning District Map. The applicant is proposing to allow a six (6) foot front yard setback where thirty (30) feet is required.*

Mr. Gillie stated we did receive one comment from JHC Properties LLC (See attached letter).

Mr. Garrison opened the Public Hearing.

Mr. Gillie read a letter from Nation Restaurant Designers. (See attached letter).

Mr. Garrison closed the Public Hearing.

Mr. Bolton stated I just noticed the person that wrote in said they were opposed at this time due to the landscaping blocking the view and if something could be done with that they wouldn't be opposed. Is there anything that we need to consider about the current landscaping?

Mr. Gillie stated we haven't received any plans about the existing landscaping. My assumption is that it will probably be removed during construction. If you look at their drawings that they submitted, there is no landscaping being done after construction. I assume what is there now will be torn out during construction.

**Mr. Petrick made a motion to approve Special Use Permit Application PLSUP2020000081 per conditions by staff. Mr. Bolton seconded the motion. The motion was approved by a 7-0 vote.**

7. *Special Use Permit Application PLSUP202000083, filed by Arketa Washington, requesting a Special Use Permit operate a Family day care home in accordance with Article 3.E, Section C, Item 24 of the Zoning Ordinance of the Code of City of Danville, Virginia 1986, as amended, at 180 Franklin Ct, otherwise known as Grid 2805, Block 024, Parcel ID# 00002, of the City of Danville, Zoning District Map. The applicant is requesting a Special Use Permit to allow for a Family day care home for providing day care for up to 12 children.*

Mr. Garrison opened the Public Hearing.

Mr. Gillie read neighborhood comments. (*Please see attached letters*).

Mr. Garrison closed the Public Hearing.

Mr. Bolton stated was there a special use permit approved on this property?

Mr. Gillie stated not on this property.

Mr. Bolton stated we did one in a similar area didn't we?

Mr. Gillie stated we have done a few daycares in the past but not on Franklin Court. We did one kind of in the south central section of the City. We have had two of these similar but not at this location.

Mr. Bolton stated do you remember the amount that children were allowed or up to?

Mr. Gillie stated we allow up to twelve because that is what the code permits, but that is after they have been inspected by the fire marshal and building inspector to make sure what the facility can handle and that bath rooms were sufficient size, play area, windows for escape, doors, and smoke detectors. This facility has not been inspected so I can't say whether it can handle this or not at this time.

Mr. Dodson stated is there a reason that it has not been inspected yet?

Mr. Gillie stated no, not that I am aware of. I thought that I advised the applicant but it could have been miscommunication. When we met I told her that we needed a special use permit and the facility also had to be inspected. With the state as well as local she might have thought that one inspection took care of both. I don't know because I haven't talked to her since we sent the reports out. Because I haven't had any contact with her, I just don't know what the next step for her would be. I want to give her the opportunity to try to address those. That is why staff did not recommend denial. We feel that moving this further down the road would give her a chance to meet with the neighbors and address any concerns about drop off and pick up and also make sure that the facility can actually handle the number of children that she has asked for.

Mr. Petrick stated children are in there now?

Mr. Gillie stated they can have up to five.

Ms. Evans stated without a special use permit?

Mr. Gillie stated correct.

Ms. Evans stated but you don't know how many.

Mr. Gillie stated I do not know. The zoning clearance that they have says it should not be more than five. Since it hasn't been inspected I can't determine whether they are in compliance with that. I haven't received any complaints about this facility until we received information from neighbors that it is traffic and everything else. At this point I had no reason to go out and inspect, because I had not heard anything about it.

Mr. Craft stated she wouldn't go ahead and get inspections and everything without knowing if she was going to get the zoning or not. Why would she pay for all the inspections? I would think that once you are approved then it would be mandatory that she get the inspections under state and local law.

Mr. Gillie stated the inspections are mandatory before you open and whether it is cost effective to go ahead and ask for this. I believe she had a state inspector out there, which is why I believe there might have been miscommunication on local inspections as well as state inspections. I don't have a copy of the state inspection so I don't know what they found. I know she is required to have local inspections done and by talking to my inspectors, and the fire inspectors, they have not been out to this facility to have it done yet.

Mr. Bolton stated would a good inspection change our mind on anything. I think we need to assume that she would pass inspection and if she does, do we want to allow this.

Mr. Dodson stated there is a lot of opposition.

Mr. Wilson stated a lot, and I lean towards what neighbors think. Is she aware of all of the opposition?

Mr. Gillie stated I believe she is aware and one of the suggestions was that this case be held over to allow her the chance to address some of the neighborhood concerns. If people are parking in the middle of the street, that is an adult issue and you need to talk to your clients and have that addressed. The screaming kids, well kids are just kids and maybe need a little more supervision. I think all the things that the neighbors brought up are things that can be addressed, but the question is will they be addressed? I would like to give the applicant a chance to at least address the concerns. The inspection is something that needs to be done. Staff was concerned based on the size of the house and the age of the facility so the inspection needs to be done before we make a recommendation, because that may limit the number of children. Right now it is asking for twelve, and if it goes forward with twelve and we say she can only have eight but your recommendation says twelve when we leave this meeting then we have a conflict later. I don't have the information at this point and I am recommending that this be sent down the road.

Ms. Evans stated do you know if it is just her taking care of these proposed twelve children or does she have employees? How many can one person take care of?

Mr. Gillie stated my understanding it was just her taking care of them. Under regulations, one person can take care of that number of children and still comply.

Mr. Craft stated so she can have five under precedent?

Mr. Gillie stated she can have five and have no need to have a special use permit or any inspections or anything else. That is just considered a family according to the City Zoning Code.

Mr. Craft stated so she can open tomorrow?

Mr. Gillie stated she is actually open now. She is currently open with that but to increase the number of children she would need approval.

Mr. Craft stated I would think if she is opened now then there were a number of inspections done already.

Mr. Gillie stated at five we don't have to inspect.

Mr. Bolton stated she is more than doubling the amount.

Mr. Gillie stated she is proposing to double the amount.

Ms. Evans stated with five you have complaints of parking.

Mr. Gillie stated these are the first complaints that I have received. I have not received any complaints prior to sending out these neighborhood letters. While there has been issues they have not notified staff of those. I have never investigated because I have not receive complaints prior to this. Now I have to do some discussions with Ms. Washington about the issues even with just five children.

Mr. Garrison stated we are assuming that she has just five because we don't know that.

Mr. Gillie stated correct.

**Mr. Wilson makes a motion to postpone Special Use Permit PLSUP20200000083 for future meeting. Mr. Dodson seconded the motion. The motion was approved by a 7-0 vote.**

#### **IV. OTHER BUSINESS**

#### **V. APPROVAL OF MINUTES FROM MARCH 9, 2020.**

**The March 9, 2020 minutes were approved by unanimous vote.**

#### **VI. ADJOURNMENT**

With no further business, the meeting adjourned at 4:00 p.m.

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**APPROVED**