

**PLANNING COMMISSION MINUTES**  
**September 13, 2010**

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Mr. Jones  
Mr. Scearce

**STAFF**

Clarke Whitfield  
Ken Gillie  
Christy Taylor  
Renee Blair

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

**I. ITEMS FOR PUBLIC HEARING**

1. *Special Use Permit Application PLSUP2010000062, filed by Phyllis Marshall, requesting a Special Use Permit to ~~allow indoor commercial recreation in accordance with Article 3M, Section C, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended, at 875 Piney Forest Road, otherwise known as Grid 1811, Block 009, Parcel 000018 of the City of Danville, Virginia, Zoning District Map. The applicant is proposing to operate a banquet facility.~~ WITHDRAWN BY APPLICANT*
2. *Special Use Permit Application PLSUP20100000104, filed by Linda Vance, requesting a Special Use Permit to operate a day care center (child) in accordance with Article 3M, Section C, Item 6, of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended, at 2135 South Boston Road, otherwise known as Grid 4718, Block 004, Parcel 00005 of the City of Danville, Virginia, Zoning District Map. The applicant is proposing to operate a child care center.*

Ms. Blair read the Staff Report. Ten (10) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. Three (3) respondents were unopposed to the request; zero (0) were opposed to the request.

Open the Public Hearing.

Present on behalf of the request was Ms. Lisa Vance. Ms. Vance stated that she was present to answer any questions.

Mr. Griffith asked there was a document that was submitted to us today that states after meeting with Mr. Foster, who owns the property, there is parking available. Is that correct?

Mr. Gillie responded Ms. Blair went on site, she can explain that better.

Ms. Blair stated the memo states that the required parking spaces are actually eighteen (18), not twenty-two (22) as listed in your staff report. That was a correction after an onsite meeting.

Mr. Griffith asked so it still does not meet the parking requirements?

Ms. Blair responded correct. There are twelve (12) onsite, fifteen (15) are necessary for the childcare center and three (3) for the existing accounting firm.

Mr. Laramore asked are there plans to increase the size of the parking lot?

Ms. Vance responded yes, I think Mr. Foster can answer that.

Present on behalf of the request was Mr. John Foster. Mr. Foster stated all of the properties around this, I own. There are twenty-three (23) parking spaces there now. When it was paved in 1987 some of the asphalt extended over the property line. It may be sixteen (16) feet over the line. It looks like all I would have to do, would be to deed off from the adjoining property enough footage to take in the asphalt that is already there. It is already paved. There are twenty-three (23) parking spaces there. It is just some of the length of the parking spaces extends over onto another piece of property. So, I am looking at deeding off enough footage to take in the asphalt. I do not think it would be a problem to do that.

Mr. Griffith asked would that satisfy the requirements?

Ms. Blair responded yes.

Mr. Laramore stated it looks to me that there are enough spaces somewhere to meet the requirements.

Mr. Foster stated when it was paved in 1987, some of it extended over onto another block that I owned without a lot of consideration to where the property line was. When it was first mentioned to me that it had extended over, I had to get a surveyor out to stake it. We did find out that it did extend over. I bought it in like four (4) different times, so you kind of lose track of where the stakes are.

Mrs. Pritchett asked are these spaces that you need for another parking lot requirement?

Mr. Foster responded no, it is a dwelling on the other side. They have always been for the businesses in that building. It has never come up over the last twenty-three (23) years that some of the asphalt extended over onto the other piece of property. There is a hitch, Glenn Cifers's property that separates the two (2) pieces of property. I think it would be pretty clear that you could distinguish the two (2) pieces of property.

Mr. Griffith stated I guess that is what confused me, because there appeared to be enough parking.

Mr. Foster stated there are twenty-three (23) parking spaces.

Mr. Griffith asked Ms. Blair are you satisfied then, that if the property line was changed to include that, they would meet all of the requirements then?

Ms. Blair responded yes, there needs to be a line adjustment to encompass those spaces. Once that is complete, there should be adequate room.

Mrs. Pritchett asked Staff has no problem with this Special Use Permit as long as the parking requirements are met. Is that correct?

Mrs. Blair responded meet the parking requirements and also the conditions for Building and Fire Codes to be met as well.

Mr. Griffith stated with the adjustment to the property and the boundary, and it meets all of the necessary Building and Fire Codes, and any requirements that the Department of Social Services would have.

Close the Public Hearing.

**Mrs. Pritchett made a motion to recommend approval of Special Use Permit Application PLSUP20100000104 with conditions per Staff and the adjustment of the property line with a recorded easement or deed from the property owner. Mr. Laramore seconded the motion. The motion was approved by a 5-0 vote.**

- 3. Rezoning Request PLRZ2010000105, filed by Layne Fuller, requesting to amend the Year 2020 Land Use Plan from Public and Semi-public Area to Community Service and to rezone from M-R Multi-Family Residential to HR-C, Highway Retail Commercial, parcel number 60267 (1.19 acres) located on the northern corner of West Main Street and Garden Grove Street otherwise known as Grid 0613, Block 003, Parcel 000012 of the City of Danville, Virginia Zoning District Map. The applicant is proposing to construct a structure for retail use.***

Ms. Blair read the Staff Report. Thirteen (13) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. Five (5) respondents were unopposed to the request; one (1) was opposed to the request.

Open the Public Hearing.

Present on behalf of the request was Mr. Layne Fuller. Mr. Fuller stated that he submitted the application for rezoning and would like to ask if there are any questions.

Mr. Laramore asked are there two (2) different proposals or two (2) different pieces of adjacent property?

Mr. Griffith asked is it one (1) together to amend and rezone from M-R to Highway Retail. Is that correct?

Ms. Blair responded correct and also to amend the Year 2020 Land Use Plan.

Mr. Griffith stated to allow for that, but they would both be one in the same.

Mr. Laramore asked for the same piece of property?

Ms. Blair responded yes.

Mr. Laramore stated I picked up 1.19 acres somewhere.

Mr. Gillie stated his initial letter had two (2) parcels. He withdrew the request to rezone one (1) of them. Your August 4<sup>th</sup> letter had two (2) parcels listed and there is only one (1) now.

Mr. Fuller stated this property is at the corner beside of Old Dutch Supermarket and shopping center. The other narrow piece on the other side of the road, we are not asking to rezone that. That is to remain Multi-Family Residential.

Mr. Griffith stated in the information we received, there was one (1) respondent who was opposed to this. I was unable to determine which piece of property they owned. I could not find a name that matched up with the respondent's name.

Ms. Blair stated 159 Ashwood Place is her address.

Mrs. Pritchett asked does that even show up?

Mr. Griffith stated that address does not show up, that is the reason I could not find the name within where you had sent the letters to everybody within the three hundred (300) foot radius.

Mr. Gillie stated it is not on your map. It would be at the intersection of Garden Grove and Sedgefield.

Mrs. Pritchett asked does it fall within the three hundred (300) foot radius?

Mr. Gillie responded it is approximately seven hundred (700) feet from the property.

Mr. Griffith that is why I could not find them within what we consider the normal affected area.

Mrs. Pritchett asked are there any concerns with traffic as far as Staff is concerned? Do we have any issues with traffic in this area or would this change pose any problems?

Mr. Gillie responded West Main is a four (4) lane commercial arterial already. It is able to handle it. Any drive entrances would be subject to engineering approval. We would look at the volume that is coming in and out of the use when it is constructed to see if it requires a traffic impact analysis. Based on preliminary discussions, it is a small enough use that it will not require it. Again, with West Main Street the way it is, it is not anticipated to create any additional problems along West Main. The concern I think was that traffic would go back through the neighborhood. In our opinion, that is not very likely because to get back to a light or anything else to come out of there, you would have to go back, turn onto another side street, and turn back onto another street to come back out onto West Main, which this already fronts on. You may have some people in the neighborhood shopping there, but that is just standard residential traffic. We are not anticipating anything at this time.

Mr. Jennings asked is there a cross over if you are headed south on West Main?

Mr. Gillie responded that does have a crossover. There is one at that location, yes.

Mr. Jennings asked does it go down that same street, Garden Grove?

Mr. Gillie responded yes.

Mr. Griffith stated there is one at Garden Grove, so you would make a left according to the plans, using that side entrance; and the rest of the traffic, the south bound traffic on 29 would be using the West Main Street entrance.

Mr. Jennings asked did you have in mind what type of retail sales?

Mr. Fuller responded yes, a Dollar General store. The property is being purchased from Billy Hutchins who owns the Old Dutch food store and commercial strip beside of it. He does know the use of the property and he has no issues with it.

Close the Public Hearing.

**Mr. Laramore made a motion to recommend approval of Rezoning Request PLRZ2010000105 as submitted. Mrs. Pritchett seconded the motion. The motion was approved by a 5-0 vote.**

4. *Rezoning Request PLRZ2010000106, filed by Nelson and Bobbie Johnson, requesting to amend the Year 2020 Land Use Plan from Suburban Single Family to Community Service and to rezone from S-R Suburban Residential to HR-C Highway Retail Commercial, parcel number 75924 (0.47 acres) located on the northern point of Twin Oaks Lane otherwise known as Grid 1508, Block 002, Parcel 000013 of the City of Danville, Virginia Zoning District Map. The applicant is proposing to operate a cab service at this location.*

Ms. Blair read the Staff Report. Nine (9) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. Zero (0) respondents were unopposed to the request; one (1) was opposed to the request.

Open the Public Hearing.

Present on behalf of the request was Mr. Nelson Johnson. Mr. Johnson stated I submitted this application.

Mr. Jennings asked where exactly is this property? Is it near 58?

Mr. Johnson responded no, it is out near 86 towards Yanceyville.

Mr. Jennings asked so there is no access to the property except for this private road that comes down to it?

Mr. Johnson responded yes.

Mr. Jennings asked do you live there?

Mr. Johnson responded no, I have lived there once before, but the property is vacant now.

Mr. Jennings asked is there a house on it or a building there on the property?

Mr. Johnson responded I just had a building put out there, that I was going to use for an office. The original house has been torn down. The address, 1382 Goodyear Boulevard was for the original house that was there, but all of that has been cleared off. I put a building out there to use for the cab office.

Mr. Jennings asked and it has no water?

Mr. Johnson responded yes, there is a well and septic system on the property.

Mr. Jennings asked do you have access to public sewage?

Mr. Johnson responded there is no public sewage out there.

Mr. Jennings asked no water?

Mr. Johnson responded yes, it has a well and septic tank.

Mr. Laramore asked is the building on the property something you moved out there?

Mr. Johnson responded yes, it is a portable building that we moved out there for office purposes.

Mr. Griffith stated in looking at this, there were several things that according to the City Code needed to be done. The building that is on there now is an accessory building rather than a primary structure. The City report from the Planning Staff states you received a letter about the building, not being able to have primary structure on the property.

Mr. Johnson stated we just sat it out there.

Mr. Jennings asked do you operate a cab service now?

Mr. Johnson responded yes. I have a cab business now on North Main Street. We want to move out of that building.

Mrs. Pritchett asked how many vehicles do you have now with your cab company?

Mr. Johnson responded I have five (5).

Mr. Laramore asked the way I am reading this is he will not be able to use that building for that business regardless of what we do. Is that correct?

Ms. Blair responded they need to rezone to HR-C Commercial to allow the use, as far as the public utilities are concerned, water and sewer; he can request a variance to develop the property without public utilities using the existing well and septic, which was granted originally in 2004, but it expired. He would need to go through that process again.

Mr. Gillie stated the building itself would not comply. It does not comply with Building Code or anything else. It is an accessory structure.

Mr. Laramore stated so regardless of what we do, the building we have got out there is unacceptable to be used anyway.

Mr. Gillie stated it is not an office building or anything else. It is a temporary accessory structure. It is a shed basically. You cannot operate a commercial enterprise out of a shed. You have to meet all of the Building Codes for occupancy and that building does not meet those.

Mrs. Pritchett asked it is not only the building. It appears that the actual lot does not meet any. It does not have curb and gutter, which is required for commercial. Is that right?

Mr. Gillie responded it does not meet any of the requirements for commercialization. There is no paved parking, no curb and gutter, no water, no sewer, and not really a building. The shed does not even have electricity, if I am correct. There are no utilities to it.

Mr. Johnson stated it is available for it. The building has been wired.

Mr. Gillie asked is it hooked up to our system or anything else?

Mr. Johnson responded no.

Mr. Gillie stated it is at the end of a private street. From our end, it does not meet any of our minimum requirements.

Mr. Jennings asked what does a cab office need other than a telephone and a booth to put it in?

Mr. Gillie responded it is just like any other office building. You have someone who is working there. They need sanitation facilities. They need the ability to go to the bathroom, to wash their hands. They need ventilation. They need to get air in and out. They need light. They need heat if someone is going to be working there year round. It is an office building just like any other, while it operates a cab company; it still has employees working there. It is someone working in an office. It is the same as an insurance agent or anything else. All of those basic necessities have to be provided to operate, even if it is a cab company.

Close the Public Hearing.

**Mr. Jennings made a motion to recommend approval of Rezoning Request PLRZ2010000106 as submitted. Motion died due to the lack of a second.**

Mrs. Pritchett asked can he have his vehicles out there and operate his cab company from another site with phone calls coming into his home or some kind of radio to tell them to dispatch from that area?

Mr. Gillie responded not as it is zoned now. Even if the zoning was changed, he would still have to improve the facility to meet the minimum requirements, the parking, the paving, curb and gutter, and the other thing would have to be taken care of. You also have to consider the drivers who are working out there. If someone is out there in a car waiting for a call to come in, what do they do if they have to use a facility and nothing is there, nothing is available. That is why when you have an office you have to meet all of these criteria for the people who are working there as well as those who are visiting the site.

**Mrs. Pritchett made a motion to deny Rezoning Request PLRZ2010000106. Mrs. Evans seconded the motion. The motion was approved by a 4-1 vote.**

5. *Rezoning Request PLRZ2010000107, filed by Love Associates, requesting to amend the Year 2020 Land Use Plan from Urban Single Family to Community Service and to rezone from OT-R Old Town Residential to N-C Neighborhood Commercial, parcel numbers 75839 (2.64 acres) located on the south side of Broadnax Street otherwise known as Grid 1612, Block 002, Parcel 000014 of the City of Danville, Virginia Zoning District Map. The request will correct a mapping error and allow for consolidation with adjacent property.*
6. *Rezoning Request PLRZ2010000108, filed by Love Associates, requesting to amend the Year 2020 Land Use Plan from Urban Single Family to Community Service and to rezone from OT-R Old Town Residential to N-C Neighborhood Commercial, parcel numbers 75841 (0.23 acres) located on the south side of Broadnax Street otherwise known as Grid 1611, Block*

*003, Parcel 000005 of the City of Danville, Virginia Zoning District Map. The request will correct a mapping error and allow for consolidation with adjacent property.*

Ms. Blair read the Staff Report for Item 5. Fifty-five (55) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. Five (5) respondents were unopposed to the request; fifteen (15) were opposed to the request.

Ms. Blair read the Staff Report for Item 6. Twenty-three (23) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. Four (4) respondents were unopposed to the request; four (4) were opposed to the request.

Open the Public Hearing.

Present on behalf of the request was Mr. Edgar Love. Mr. Love stated these two (2) parcels are one and a half (1 ½) of a five (5) acre tract of land that we own at that location. The last time I was before the Commission, the Commission voted unanimously to zone this property Neighborhood Commercial and when the plan went to City Council, it was approved. We thought the whole five (5) acre tract was Neighborhood Commercial. It was just some time ago that I realized it is not. These two (2) tracts were not zoned Neighborhood Commercial. They retained the Old-Town Residential zoning. This is what we are asking and I will be glad to answer any questions that you may have.

Mrs. Pritchett asked what does Neighborhood Commercial allow?

Mr. Gillie responded light commercial office, limited medical, there are twelve (12) different uses: business services, bed and breakfasts, barber shops, beauty salons, and then by Special Use Permit there are eighteen (18) uses including funeral homes, daycares, convenience stores, restaurants, and things like that if they get a Special Use Permit. It is designed to be something people can walk to or drive a very short distance to. It is not your heavy commercial area.

Mr. Laramore asked are you consolidating all of these parcels? I see two (2) of them with your name and one (1) with the name of Booker.

Mr. Love responded no, actually Booker is kind of nested in our five (5) acre tract, but we are not asking for anything related to Booker. It is just the Love property.

Mr. Laramore asked but the other properties you are speaking of are on the other side of him?

Mr. Love responded right. To the north and to the south of our property is all Neighborhood Commercial and of course the property borders on South Main Street.

Mrs. Pritchett asked I apologize because I did not ride by this piece of property, but is there any use right now that is affecting it?

Mr. Love responded no, right now it is vacant. In fact, when the City started the Land Use Plan, there was a residence on the property and with the widening of South Main Street, the house was taken. The right-of-way of the road clipped the front porch of the house, so the State took the house. It is just vacant land now.

Mrs. Pritchett asked why was it zoned Neighborhood Commercial four (4) years ago?

Mr. Gillie responded it had been recommended as part of the Zoning change. We went through the Land Use Plan and we had the meetings where we had certain properties where people came and said "can we change it to this or can we change it to that?" This is one of those where they had talked about changing in those meetings and it got on the list of things that were supposed to be changed. When we went through and did our maps, somehow we missed it, and that is what the Staff report says. We have gone back and listened to the tapes of meetings from nine (9) years ago and were able to find some of those old records. We missed that part. It was recommended to be changed, but it was not put on the maps that came in front of you guys. It should have been and we did not put it there. We had a lot of properties at that time that we were going through and this kind of slipped through the cracks. Years ago we recommended it, and it just did not get adopted. That is why now we are not going to go back and change our minds on anything. It should have been done back in 2004 when we did the Citywide rezoning.

Mrs. Pritchett asked so this was merely an oversight?

Mr. Gillie responded yes. We found where we talked about it in 2001 and we also found where it was recommended in 2004 when we were going through the various cases. There were about fifty (50) different properties that various people had recommended that they be changed. We came through with that list and said yes it should be changed or no it should not be changed. This is one of the ones that we recommended that should be, but it did not get placed on those maps that came in front of you. All I can say is years ago, someone made a mistake when they were doing the maps.

Mrs. Evans stated you have a fair amount of opposition to it.

Mrs. Pritchett asked was there opposition nine (9) years ago?

Mr. Gillie responded remember we were doing a Citywide rezoning at that time, so it was every parcel in the City. We did not go out and notify individual property owners like we did in this case. We sent out eight thousand (8,000) postcards telling people that we were rezoning properties. We had all of those various public meetings in front of Planning Commission and City Council. That property was not singled out like it is now. We thought since we are going through this process, it is only fair that we send out, just as we would for any other case, those individual notices to property owners. That is why we have the opposition this time, but back then we probably did not have the opposition; because people did not know or they did not take the time to learn. We did not go out and say "ok this one affects you and that one affects you." We did this just like any other case, but this should have never gotten this far. This should have been corrected many years ago. Staff will take this one on the chin. We missed it somehow when we were going through all of those properties.

Mrs. Pritchett stated it is so nestled in an entire residential area, I am confused as to why it was ever zoned Neighborhood Commercial.

Mr. Gillie stated from that perspective, when we looked at it years ago it was considered part of one (1) big tract. You have the neighborhood to the south, which kind of loops around. It is kind of a separate neighborhood. You have got the area to the north, which is also a separate neighborhood. This was kind of that piece in between. The neighborhood to the east is also a closed loop. There was no connectivity between what was left of this tract and any of the neighborhoods around it. That is why they recommended it. It was a piece in between that would not in affect impact those neighborhoods. It would be the back yards of all of the houses that are around. There would not be

a chance for anybody to go into or connect around it. That is why they did it, but we did not have it on our maps.

Mr. Griffith asked is the small piece of property accessible from Broadnax Street?

Mr. Love responded yes.

Mr. Griffith asked how do you get to the larger piece?

Mr. Love responded on that property, there are two (2) unnamed streets. They are shown on the map. In fact, if you look at the smaller parcel, the aerial view, just to the west of it you will see the narrow tract that is open. That is actually the unnamed street.

Mr. Griffith stated that is what I was looking at, but when I went out there this morning, there is nothing there.

Mr. Love stated that is leftover from when the City annexed this property years and years ago. It was on the County map when my grandparents owned it.

Mr. Griffith asked the unnamed street off of South Main that runs down behind the large piece of property, is all of that vacant land?

Mr. Love responded yes, it is a unnamed street from back in the early last century map.

Mr. Griffith stated I thought that over a period of time the City deeded a lot of these unnamed streets to the property owners.

Mrs. Pritchett stated if the property owners requested it.

Mr. Gillie stated if they request it, we can sell it back to them. The concern we have is again that Booker piece. It is a spot that sits in the middle on an unopened, unnamed public right-of-way, so we cannot abandon that portion of the right-of-way to make a full consolidation; because we would land lock the Booker piece. The remainder of the properties around could be consolidated, especially the one off of Broadnax could be removed, vacated, abandoned, and still leave that one coming in off of South Main Street. There are ways to keep everything with frontage, but it is one of those streets that has been on a map for sixty (60) to eighty (80) years. No one has ever done anything with it. It was laid out and as we said, they only annexed that portion in the City, so it has been there quite a while.

Mr. Love stated that one section, the Booker property, they are family as well. That is zoned Neighborhood Commercial.

Mr. Griffith stated I noticed that the larger piece of property is basically land locked.

Mr. Gillie stated they could open the unopened public street.

Mr. Griffith asked would the City have to do that?

Mr. Gillie responded no, the owner would have to do that.

Mr. Love stated we have no resources or no intentions of developing it ourselves. Our intent is to at some point, sell the property. In fact, that is how this issue arose. We had an inquiry about a year ago, someone was interested in the property and looked at the City's GIS system and seen that the land is zoned two (2) different ways, Old-Town Residential and Neighborhood Commercial. They notified me and that is when I contacted Mr. Gillie. He said this was the process we needed to go through to get it changed; because there was that error from years ago.

Mrs. Pritchett asked is everything on South Main all the back to this large tract zoned Neighborhood Commercial except for these two (2) parcels?

Mr. Gillie responded yes.

Mr. Love stated everything on South Main down to Grove Park is Neighborhood Commercial as well, everything to the south.

Present in opposition to the request was Ms. Cathryn Brass. Ms. Brass stated there are nine (9) families that live in Grove Park that have their property behind this. All of their back yards and all of their property will be affected by this change. This is a quiet stable neighborhood that is perhaps struggling a little bit with the down economy. I think it behooves all of us to make sure that this property or this neighborhood stays as it is.

Mrs. Pritchett asked there are a lot of properties on Dublin Court that currently back up to some of these areas that are zoned Neighborhood Commercial. Do those neighbors feel like they have been jeopardized by that zoning?

Ms. Brass responded I will have to admit that I am new to the neighborhood, but my parents have lived there for many years and I have visited them for many years before I moved down here a year ago. I am not that familiar with the people on Dublin yet, but I do know that this is a difficult hour for many people to get off work to come in and make comments. I am also aware that there were a lot of comments sent in that were negative.

Mrs. Pritchett stated I do not think there were any negative comments.

Ms. Brass stated well negative assertions.

Present in opposition to the request was Ms. Jacquelyn Williamson. Ms. Williamson stated I live on Broadnax Street and I would like to just say that we agree with the lady that just spoke. We would like for it to remain just as it is.

Close the Public Hearing.

**Mrs. Evans made a motion to recommend approval of Rezoning Request PLRZ2010000107 as submitted. Mr. Laramore seconded the motion. The motion was approved by a 4-1 vote.**

**Mrs. Evans made a motion to recommend approval of Rezoning Request PLRZ2010000108 as submitted. Mr. Laramore seconded the motion. The motion was approved by a 5-0 vote.**

- 7. Special Use Permit Application PLSUP2010000109, filed by Alvin Toomes, requesting a Special Use Permit to allow indoor commercial recreation in accordance with Article 3M: Section C, Item 4 of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as*

*amended at 2852 Riverside Drive, otherwise known as Grid 1710, Block 006, Parcel 000001 of the City of Danville, Virginia, Zoning District Map. The applicant is proposing to operate an internet cafe.*

Ms. Blair read the Staff Report. Ten (10) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. Two (2) respondents were unopposed to the request; zero (0) were opposed to the request.

Open the Public Hearing.

Present on behalf of the request was Mr. Alvin Toomes. Mr. Toomes stated I would like to ask for the Special Use Permit.

Mrs. Pritchett asked this appears to be totally out of our jurisdiction. This should be tabled and this gentleman should go and speak to the Police Department to determine if his request is actually something that is legal or not. Even though we have some court cases here etc., I do not think this is our job to determine. We cannot make a judgment on this. If it is an illegal operation, we cannot vote it yay or nay. My suggestion, my motion would be to table this. I am not sure we have this authority.

Mr. Gillie responded I did not know if that was a statement or a question.

Mrs. Pritchett stated I think it was a statement, but maybe I should have addressed it to Mr. Whitfield.

Mr. Whitfield stated as far as whether it is an illegal business or not, if you would feel more comfortable having them discuss that with the Police Department would probably not be a bad idea. There are certainly other aspects included the parking and things like that, that you certainly have the opportunity to make a call on; and quite frankly in the Zoning Code it is presumed that you have to have a legal business to operate. If that would make you feel more comfortable, there is no problem with that. If you feel like whatever business he is proposing is illegal, therefore it would not fit within the Zoning Code, you have that call. Sending him to the Police Department is probably not a bad idea.

Mr. Laramore stated I had the same question.

Mr. Griffith asked I have some reservations also. Have you discussed this with the Police Department or with the City Attorney?

Mr. Whitfield stated the Commonwealth's Attorney for that.

Mr. Griffith asked the Commonwealth Attorney or somebody like that about the legality of this?

Mr. Toomes responded not here in the City of Danville. I have in other Cities.

Mr. Griffith asked in the State of Virginia?

Mr. Toomes responded yes sir. There is quite a few of the stores already in the State of Virginia.

Mr. Laramore asked do you have other places?

Mr. Toomes responded in Virginia Beach.

Mr. Laramore asked you have one there?

Mr. Toomes responded no not in the State of Virginia, but I checked on other places to put stores. I am just waiting on buildings to come available for those. I did not have any trouble there and trying to come into Danville, this is the first time I have had to come before a committee to get a Special Use Permit. This is the first time I have ever had to do anything like this.

Mrs. Pritchett asked would you have any problems if we table this and have you discuss this with the Police Department or the Commonwealth's Attorney before we move on and look at the other zoning issues?

Mr. Toomes responded yes, sure; like I said this is the first time I have had to get approval by permit.

Mr. Laramore asked you say this is the first group you been before, but you do not have any other businesses anywhere else?

Mr. Toomes responded I know because I went to Altavista and put in for one (1) there, to see about putting a store there. It was okay to do it there.

Mr. Laramore asked I see, you received approval from other Communities.

Mr. Toomes responded correct, but I have not done that yet. I was going to start here and try to go up 29 and put another store there.

Mr. Whitfield stated each locality has their own definition of zoning restrictions. You have seen several things and there are a number of things that are contained in this particular zoning classification. There are other localities in Virginia that do not have as detailed a Zoning Ordinance as we do. That is probably why he is seeing this for the first time.

Mr. Toomes stated I did not know.

Mrs. Pritchett stated you are fine. We just want to put you in the right direction that we are going to be fine too.

Mr. Griffith asked based on this there was a Court ruling. Is this correct?

Mr. Whitfield responded that was a Circuit Court opinion issued from the Circuit Court is Spotsylvania County.

Mr. Griffith asked which would not be binding here?

Mr. Whitfield responded that controls only whatever district Spotsylvania County is in. It has no presidential value. It may influence the way other Virginia districts interpret it.

Mr. Griffith asked in Ms. Blair's report it states that the City of Danville has expectations regarding this type of business. It says that there have been three (3) or four (4) cases within the last year with similar types of businesses?

Mr. Gillie responded what we assume to be a similar type of business, yes. The description, based on the limited information we have been provided, seemed similar to what was operated before.

Mr. Laramore asked will you tell us briefly what this internet café consists of? What does the a typical person do there? Are they gambling online? Are they playing poker somewhere else or on the computer? Do you pay off money, prizes, and what will be the age limit for people who can go in there? Will you provide fax service and copier services?

Mr. Toomes responded it is not for the smaller age groups. If you get a lot of younger kids in, you find out you always have more trouble.

Mr. Laramore asked what are they doing? Are they playing poker online or do they have cash payoffs?

Mr. Toomes responded it differs. Some will play some kind of games on the internet, and some will just use and surf the internet. Some people will come in an fax something or use the ATM. It will be different services, not just one (1).

Mr. Laramore stated so with a variety of services, some people can go online, pull up an email or go to some gambling site or somewhere, and they just pay for whatever they do.

Mrs. Evans asked how would you police anyone under eighteen (18) coming in?

Mr. Toomes responded we have never had any trouble with our sticker on the door and stuff; no one tries to come in that is a minor. We really have not run into a problem with it.

Mr. Griffith asked are you currently operating businesses of this type?

Mr. Toomes responded yes.

Mr. Griffith asked is that in North Carolina?

Mr. Toomes responded correct, that is right.

Mr. Griffith asked if we were to table this and we got some additional information and some clarifications from the Commonwealth Attorney and the Police Department, we can just bring this back. If we deny it, he has to go through all of the application process again. Is that correct? Does he have to wait a year, or is there a waiting period?

Mr. Gillie responded if you recommend denial, just like any other case, it would go to City Council. It is up to City Council on whether they grant the Special Use Permit or not. If City Council denies a Special Use Permit, then he would have to wait a year, for that location, to come back. Just because you make that recommendation does not mean that City Council would. It is nonbinding. If you table it for more information, we would wait until we receive the information and it is brought back. If we do not receive the information within the timeliness that the State Code requires for a case to be heard, then we would just bring it back and say we have not received any additional information, here is what we have.

Mrs. Evans asked what is the time frame that the State Code requires?

Mr. Gillie responded it is ninety (90) days for a Planning Commission to hear a case. You have already heard it, so that is the thing of how long until it comes back. We would assume that we would try and keep everything within that total ninety (90) day period for you to make a recommendation one way or another. It is spelled out that if you do not make a recommendation within ninety (90) days from the time you hear it, then it is an automatic recommendation for approval.

Mr. Whitfield stated it would still have to go before Council at that point, but it would go to Council as an approval.

Mrs. Evans asked why is it considered an approval?

Mr. Gillie responded it is considered an approval only if you fail to hear it. It is to avoid a Planning Commission tabling something in perpetuity, taking something every month and continuing to table it, and never letting it go any further. There is some point that it has to go to make that final decision. That is why they give you, the body itself, ninety (90) days to hear a case and make a recommendation to City Council, up, down, or if you fail to make a recommendation within that time; they say you have heard it enough, it is an automatic recommendation for approval.

Mrs. Evans asked if we table it, would you be able to answer some questions with the Police Department within that time frame?

Mr. Toomes responded yes. I need to do something because there are other people that have put in applications for Special Use Permits, and I would like to be ahead of those. You might deny me and when the others come up, you might approve them. I will have a year or longer to wait. I will do whatever I need to try and get things straightened out.

Mr. Laramore stated basically you have not given them enough information, from the City's stand point, to determine what you are trying to do is legal. We are having a hard time deciding whether that even fits into the Zoning and you have not convinced them that it is legal. We are having a hard time trying to decide.

Mr. Toomes stated he did not know if it was legal through the Police Department or not.

Mrs. Pritchett asked does Staff have any comments at this point?

Mr. Gillie responded no, you have read our Staff report. We stick by the information that we have and what are recommendations are at this point.

Mrs. Pritchett stated if we were to close the public hearing, then I would like to make a motion.

Close the Public Hearing.

**Mrs. Pritchett made a motion to table Special Use Permit Application PLSUP2010000109 until next month, thereby giving Mr. Toomes time to investigate and make sure that we are being presented with a legal activity that we can act upon. Mrs. Evans and Mr. Jennings seconded the motion. The motion was approved by a 5-0 vote.**

8. *Code Amendment Request PLCA20100000064 requesting to amend Article 3T: Floodplain Overlay District (FP-O) of the Code of the City of Danville, Virginia, 1986 as amended, by*

*adopting new floodplain regulations and maps in accordance with the National Floodplain Management Program.*

The Staff report reading was dispensed.

Open the Public Hearing.

There were no questions.

Close the Public Hearing.

Mr. Griffith stated this will go before City Council at their September 21, 2010 meeting. I think this will become effective September 29, 2010.

Mr. Gillie stated if adopted by City Council at the September 21, 2010 meeting, it becomes effective September 29, 2010.

Mr. Griffith stated if City Council does not adopt it, we just opt out of the Flood Insurance Program.

Mr. Gillie stated hopefully that will not occur, but we would have to do some additional things.

**Mrs. Pritchett made a motion to approve Code Amendment Request PLCA201000064 as submitted. Mrs. Evans seconded the motion. The motion was approved by a 5-0 vote.**

## II. MINUTES

**Mr. Laramore made a motion to approve the minutes from the August 9, 2010 meeting. Mrs. Pritchett seconded the motion. The minutes were approved by a 5-0 vote.**

## IV. OTHER BUSINESS

Mr. Gillie stated the Special Use Permit and the Code Amendment for parking; they were both approved by City Council last time.

Mr. Gillie stated we have received some updated information on the Comprehensive Plan that Ms. Blair is going through now. We are still taking citizen comments through the website, so if anyone still wants to fill those surveys out, please do so. Tell us what you think about Danville.

With no further business, the meeting adjourned at 4:20 p.m.

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APPROVED