

# BOARD OF ZONING APPEALS MEETING

January 16, 2020

Members Present

Ann Sasser Evans  
Nicole Garrison  
Lawrence Meder  
Gus Dyer  
Gus Dolianitis

Members Absent

John Hiltzheimer  
Michael Nicholas

Staff

Ken Gillie  
Lisa Jones  
Ryan Dodson  
Allen Spencer

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

The meeting was turned over to Mr. Spencer for the election of officers.

## I. ELECTION OF OFFICERS

Mr. Spencer called for nominations for Chairman.

**Mrs. Evans nominated Mr. Dyer as Chairman. The nomination was approved by a 5-0-1 vote. (Mr. Dyer Abstained)**

Mr. Spencer called for nominations for Vice Chairman.

**Mrs. Evans nominated Mrs. Garrison as Vice Chairman. Mrs. Garrison nominated Mr. Meder. The nomination of Mrs. Garrison was approved by a 3-1-1 vote. (Mr. Meder Abstained)**

Mr. Spencer called for nominations for Secretary.

**Mrs. Evans nominated Mr. Meder for Secretary. Mr. Meder nominated Mr. Dolianitis. The nomination of Mr. Meder was approved by a 4-1 vote.**

## II. ITEMS FOR PUBLIC HEARING

- 1. Appeal Application Number PLAZ20190000341, filed by Gentry Locke on behalf of Queen of Virginia Skill & Entertainment, LLC on behalf of PFJ Southeast LLC Store #256, requesting an appeal of a zoning violation notice effective July 19, 2019 for PFJ Southeast LLC Store #256 at 110 River Point Dr, otherwise known as Grid, 3713, Block, 006, Parcel 000001 of the City of Danville, Virginia Zoning District Map. The applicant is requesting an appeal of a final notice of violation issued by the Zoning Administrator that a Special Use Permit is required for Commercial Indoor Recreation when one has not been issued to operate commercial indoor recreation machines.*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Max Weigard, attorney with Gentry Locke. Mr. Weigard stated I represent Queen of Virginia who is the applicant in this Board of Zoning Appeal. I have a couple of documents that I have copies of if I may approach and share those. I spoke to you before and the way that I would like to go through this process if you will to talk to you about why we find ourselves here today. Then a little about the property of issue in this appeal and some information about the grounds of appeal. I think it was September that I stood before you and asked for a continuance of this appeal and you granted that. At that point and time, my client had applied for a special use permit and we asked for a continuance until that process was concluded. That process was concluded and we are now proceeding with this appeal. The property that we are talking about is probably one that is known to all of you as the Pilot Travel Center and Truck Stop at 110 River Point Drive, which is right on South Boston Road. It is zoned as HRC, it is a Travel Center and Truck Stop, and on page 3 of this power point presentation, it has ample parking it has twenty-six car spaces and twenty- five truck spaces. It has occupancy permit permitting up to two hundred people. The property is used principally and primarily for several different uses. One it is a truck stop and it is a place for trucks to park, refuel, rest and spend time while they are required to be off the road. It is also a convenience store, gas station for cars and trucks as well as a restaurant. In the presentation there are pictures showing the layout approach to the property. There is background information about the various uses of that property. The games that we are speaking of are on page 7 of this packet. You are looking at four pictures showing different viewpoints in the convenience store area of the truck stop. Those two games in the picture are turned around, are off, and have been since the notice of violation was received.

Mr. Dyer stated is that where they normally are when they operate?

Mr. Weigard stated my understanding when they were operating they were generally in that location. Although at the City Council meeting months ago, some questions were raised about their location. So I submit to you the location of those games if they were to go back into operation is something that would be discussed between Pilot and Queen of Virginia in terms of their appropriate location, in order to address concerns about game limitations on uses.

Mr. Dyer stated could you clarify for us the difference between Queen of Virginia Skill & Entertainment LLC and the Pilot station itself. Queen of Virginia owns the machines and Pilot does not own them?

Mr. Weigard stated that is correct.

Mr. Dyer stated do they pay rent or given a percentage of revenue?

Mr. Weigard stated there is a revenue sharing arrangement between Queen of Virginia as the owner and operator of the games and Pilot the owner and operator of the store. It permits Queen of Virginia to locate a maximum number of games in the store and provides a revenue sharing arrangement of the operation of those games. We are here today asking you to overturn the determination of the Zoning Administrator that the two gaming devices that were in operation at the Pilot Truck Stop require Pilot and Virginia Queen to obtain a special use permit. Those games generated no additional traffic or

use of the property outside of the regular operation of the truck stop itself. They were used consistent and in connection with operation of the primary use of the property as a truck stop and travel center. Specifically, they were consistent with providing truck drivers who again have to be there some amount of time and are not allowed to be on the road, gives them something to do so they're not just hanging around with nothing to occupy their time. Again, there are numerous amenities at the travel center in addition to others. The area of the store relative to the overall square footage of the convenience center, restaurant, and truck stop itself as a whole is relatively small. It is a very small portion of the property that is being used by these machines. The Zoning Administrator sent us a notice of violation it actually concluded the presence of a single recreational device within a commercial facility constitutes a commercial recreation facility therefore requires a special use permit. Our position we think is supported by law as well as the language of the City Zoning Ordinance is that one device or perhaps even two devices can constitute accessory use, which will be permitted without the issuance of a special use permit. Again, the Zoning Administrator determination was this, that any type of any device regardless of type if it's a recreational device located indoors requires a special use permit, is overbroad impractical application and therefore in our views is incorrect. The Zoning Administrator determination applies to a number of different types of recreational device machines for example a pool table, pinball and foosball tables. If you were to strictly, apply the Zoning Administrator determination to the operation of a recreation device under the zoning ordinance. Technically, what would be required is that any number of different types of facilities that you chose to operate a video game, pinball game and pool table any one of these Virginia game units would be required to get a special use permit. We are just operating one or two and there is a list on third to last page of the presentation of different types of establishments that would be included. In our view, the use of two machines at the Pilot Truck Stop particular is customarily incidental in relation to the primary use at the travel center truck stop. You heard back in November and December as well several applications and several appeals were related to a request to overturn determination for convenience stores. In our view, this is an even stronger case for you to include this in accessory use because of the nature of the use as a travel center truck stop. Whereas a pure convenience store, where the typical use they come in and they come out, they get there convenience items and they leave. At the truck stop you have a whole category of users, truck drivers, that I am speaking of who are required to stay. As a result recreation devices whether those are Virginia games or video games or foosball table are by their nature customarily incidental and consistent with underlying use of the truck stop even more so than with a convenience store. Someone said that the Board could reasonably expect such games to be associated with the primary use of a truck stop and travel center. You may have stopped at a truck stop going up and down the highway and seen such games and other recreational devices at those truck stops. They are customary and they are something that one expects to find at such facilities. Consequently, in our view we submit the use of these two games at the Pilot Truck Stop conforms to the meaning of accessory use as complicated in the Danville Zoning Board as well as Virginia Law. Therefore, we would ask you to overturn the Zoning Administrator determination and permit Pilot Truck to operate those two games on the property. I have referenced but I have not said directly that at last month's meeting this body approved or overturned the Zoning Administrator determination and approved the uses of similar games but different manufacturers by three convenience stores. Again, we submit to you that this is an even more compelling case for an accessory use and for permitting use of up to two games that are there as an accessory use in this Pilot Truck Stop facility for the

reasons that I have explained consistent with the use for the underlying use. The patrons are already spending more time than they would in a convenience store at the Travel Center Truck Stop and so to provide them with recreational opportunity while they are there its just logical. I know that you have heard a lot about accessory uses and what they are and aren't and how they work under the City Zoning Ordinance and I hope that it makes sense that we are coming here today again not seeking to expand on the existing use or do anything in that nature.

Mrs. Evans stated do you know if there any other forms of recreation prior to these games?

Mr. Weigard stated not at this particular Pilot.

Mrs. Evans stated so what do truck drivers do for entertainment when these games are not available?

Mr. Weigard stated I don't know they could obviously read books or Wi-Fi.

Mrs. Evans stated what percentage of sales or money went to Pilot?

Mr. Weigard stated I do not know.

Mr. Dolianitis stated you mention that games generated no additional traffic, are you saying that nobody else but truck drivers use these?

Mr. Weigard stated people that we are saying based on our understanding of the use of the games with Pilot are truck drivers and those that seem to be using the truck stop itself are using them.

Mr. Dyer stated in addition to the two machines were there any other amusement devices in this store on July 19, 2019?

Mr. Weigard stated no sir and if there were according to the Zoning Administrator determination those would have also required a special use permit.

Mr. Dyer stated the reason I asked you this because one of the big issues that we've been sort of debating is at what point if we say that one machine does not constitute, let me go back because once again I believe that the appeal application is misworded because it says that the Zoning Administrator says a special use permit is required for commercial indoor recreation and that is not correct. A special use permit is required for commercial indoor recreational facilities or establishments and in that case, the word recreation switches from a noun to an adjective. If in fact, a special use permit was required for indoor commercial recreation and this is obviously indoor recreation then there would be no debate. The debate is at what point and what number of machines do you accumulate that changes you into an indoor recreational facility or establishment. If you go to the City Code, there is actually part of the City Code that addresses amusements and in that definition, it states what an amusement is that they are coin operated video machines. Which I think this falls into that category. Then it goes on to create rules and regulations for amusement parlors. Then finally, under section 4-12 it states if you have three or fewer machines you are not subject to the rules and

regulations of amusement parlors. What I would put forth and it seems to me very black and white, I don't know why we have a hard debate about this, that the code clearly states that if you have three or fewer devices you are not subject to the rules and regulations of amusement parlors. The amusement parlor that is regulated by the Zoning Code by the means of the indoor commercial recreational establishments or facilities, under my reading of the City Code, that is the cutoff point is three machines. We are not supposed to be here to determine whether these are gaming devices or whether they are properly placed in the store or whatever. What we are here to determine is whether the Zoning Administrator was correct on July 19, 2019, to issue this violation. The City Code clearly states three or fewer machines do not fall under the rules and regulations of an amusement parlor. Again, amusement parlor would create the violation suggesting that this notice of violation was issued in error.

Mr. Weigard stated I agree with everything you just said. I would like to point out on page 4 of the letter that I circulated at this meeting and we address that very issue. Our argument, to be clear, is that two machines at this facility based on the underlying use does not rise to the level of a commercial indoor recreation establishment. It does not change that use and it does not rise to that level.

Mr. Dyer stated so you can attest to the fact that when this violation was issued on July 19, 2019, these two machines and these two machines only?

Mr. Weigard stated yes sir and I would say if there were any other machines it would have been noted in that notice of violation letter.

Mr. Dyer stated that is the question, it does not specify, it just says that this store was in violation. It does not say because it had two machines or twenty.

Mr. Weigard stated it only had two machines. That is why the violation notice was issued because it had those two machines.

Mr. Dyer closed the Public Hearing.

Mrs. Garrison stated I am concerned about the issue at this point because are we now appealing the Zoning Administrator decision or City Council's decision and do we have the purview to overturn the decision made by City Council?

Mr. Ryan Dodson, Assistant City Attorney, stated as of now this hearing is technically over whether or not to overturn the Zoning Administrator's original notice of violation letter. The City does share your potential concern since City Council already more less decided that they do believe a special use permit would be required for this. They denied that request and we can say that City Council's wishes should probably be deferred to on this matter.

Mr. Dyer stated what I am going to add to that is this violation was issued on July 19, 2019 and on July 19, 2019 the code stated that you had to have three or more machines to constitute an amusement parlor. The amusement parlor is subject to the regulation and not the amusements themselves.

Mr. Dodson stated that is not in the zoning code, that is in chapter 4, which is specifically about nuisance regulations that were passed twelve years before this particular code and in the wording it is specifically says that three or less exception is specific to that article. Article 2, chapter 4, it does not say it extends throughout the code.

Mr. Dyer stated what we are looking out here are definitions. The Zoning Code does not define indoor commercial recreation?

Mr. Dodson stated neither does chapter 4.

Mr. Dyer stated it does, it defines what an amusement is.

Mr. Dodson stated an amusement parlor and a commercial recreation facility are not the same word and not the same phrases.

Mr. Dyer stated again this board is to interrupt Mr. Gillie's decision and my interpretation of the code is that three or fewer machines does not constitute amusement parlor.

Mr. Gillie stated you are going to a different section of the code, which I stated was incorrect last month.

Mr. Dyer stated what I would like to say is that the Zoning Code is part of the City Code, is as valid as the code on amusements and they are all part of one document. That is the City's Code of Ordinance. What you are saying is that definitions that are defining one part of the City Code do not apply to other parts of the City Code?

Mr. Dodson stated it can't be that when the Zoning Code specifically says there is a conflict in the Zoning Ordinance.

Mr. Dyer stated there is not a conflict and there is nothing in the Zoning Code that says one machine constitutes an indoor commercial recreational facility. That is the Zoning Administrator interpretation. We are here to determine whether the Zoning Administrator interpretation is correct or not.

Mr. Dodson stated correct, we would proffer that relying on a different definition, and different code passed at a different time by a different City Council for a different word has no bearing on it.

Mr. Dyer stated if City Council feels that Code and definition is out of date then they should do something about it. That is certainly within their purview and they can do something about it tomorrow. What I am saying is on July 19, 2019 when this violation was issued that part of the City's Zone Ordinance was in place and it clearly defines what an amusement parlor is. Once again I will say this is an amusement parlor that is subject to the Zoning Code not amusements themselves because the Zoning Code clearly states that it is commercial indoor recreational facilities or establishments depends on which verdict that you read.

Mr. Dodson stated which is a different phrase than an amusement parlor is.

Mr. Dyer stated we were told they were one in the same.

Mr. Dodson stated the City is offering now that it is not the same. They were not passed at the same time and they were passed twelve years a part.

Mr. Dyer stated it does not make any difference and I do not care if the law was written in 1833 when the City was chartered if it is still part of the City Code of Ordinances then it is applicable.

Mr. Dodson stated we would still argue that the Zoning Ordinance specifically says .....

Mrs. Evans stated I would like to state why I understand what you are saying. The Planning Commission does have a work session scheduled for February 6 to discuss definitions. I understand this was in July 2019; however, I think we should give the Planning Commission and City Council opportunity to further look into this matter and come up with appropriate definitions.

Mr. Dyer stated I encourage that whole heartedly but what I am saying is if there is a sign out there that says the speed limit is 55 miles per hour and I get stopped and given a speeding ticket at 50 miles per hour, the City can't go back and retroactively lower that speeding limit to 50 miles per hour to make me in violation. When this violation was issued on July 19, 2019, these people were not violating the code.

Mr. Gillie stated I disagree whole heartedly as a Zoning Administrator. Article 2 section 1 says that if it listed, it is allowed, if it is not, then it is not. This was clearly a case of it is commercial and it is indoor recreation. It is plain and simple.

Mr. Dyer stated that is not what you are regulating.

Mr. Gillie stated yes I am, they do not have a special use permit. Commercial indoor recreation they do not have a permit for it. They have to ask for a permit, they asked for a permit, and they were denied. You are jumping to a completely different section of the Code. This is why you and I are going to agree to disagree.

Mr. Dyer stated what I'm using is the Section 4 reference.

Mr. Gillie stated which is immaterial under Article 41. We are going to agree to disagree so unless this is germane to this we should continue on.

Mr. Dyer stated so the question between you and I whether there is a distinction between a facility and a recreation device and an indoor recreational facility? Section 4 of the Code clearly states .....

Mr. Gillie stated I don't deal with Section 4 as I have told you,

Mr. Dyer stated but that doesn't mean that I can't.

Mr. Gillie stated yes it does in this case.

Mr. Meder stated the meeting that we had in December we recommended that the City update the Code. Has there been any movement on that?

Mr. Dodson stated yes, there is a work session scheduled for these specific definitions.

Mr. Meder stated are we invited?

Mr. Dodson stated yes, it is open to the public.

Mr. Dyer stated we are invited to participate?

Mr. Meder stated so we are not invited.

Mrs. Garrison stated we can listen but we can't talk.

Mr. Meder stated then I'm not going.

Mr. Gillie stated the meeting is scheduled for February 6 at 2:00 pm.

Mrs. Garrison stated I'm just trying to get all of this. At this point, why did the applicant defer this application to the BZA and go through the Special Use Permit if they believed at the time the machines were legal without the permit? Why have we already gone through that whole process and now we are here with this facility because I'm just going to be honest, of everything that we have heard in the Planning Commission, City Council and in this room, this facility was probably the most appropriate for the Special Use Permit. Obviously, there is a problem with how all of this has gone through the system.

Mr. Gillie stated that is a question for the applicant because you are asking why they went and deferred?

Mrs. Garrison stated why they went in that direction if they believed it was an accessory use not a violation?

Mr. Gillie stated I don't want to speak for the applicant but I think I know from my end why I think they went that route. That is a question for them on why they started then pulled and asked to table it and went to Council. Council denied it and now they are coming back.

Mr. Weigard stated Pilot and Queen of Virginia Pilot forward the violation to Queen of Virginia. The violation was for operation of a commercial indoor recreational establishment facility at the Pilot Truck Stop. There were two games there the concerned was that those two games means that it is operating as a recreation facility. My client elected to appeal that determination because as we stated in our appeal document in our view it is an accessory use. The use of two games does not rise to the level of a commercial indoor recreational facility or establishment. It may be a recreational use that is indoors and it may be commercial by nature but it does not rise to that level of commercial indoor recreational establishment. We applied for a Special Use Permit and I think in that permit application they saw permission initially to install up to ten games. Ultimately what was recommended was a maximum of two and then went

before the Planning Commission and they unanimously recommended up to four games. That was the issue before City Council and yes, City Council denied that.

Mrs. Garrison stated you are now back with your two games with no opportunity of growth?

Mr. Weigard stated we are asking you to include based on the Code of the City of Danville as of the day of violation that in fact that the use of two games at that facility does not constitute a commercial indoor recreational facility. Its a truck stop and a travel center, a convenience store and a restaurant. It is a lot of things but it is not a commercial indoor recreational facility. If we were offering ten games and a gaming parlor maybe, if we were offering four or five games maybe. What our position is and we are asking you to agree with, is that two at this facility at this location at that time under the code that was in effect then, but we can't comply with the code that may be in effect two months from now. We will comply with that when it has passed, but we are sitting here in July trying to determine what the rules of the game are. When it was suggested that we apply for a Special Use Permit if we wanted to operate a certain number of games we did. The bottom line is what we are asking is to examine the determination back in July based on the code that was in effect at that point and time and conclude that two games at this particular facility under these facts and circumstances is an accessory use.

Mr. Dyer stated does the City want to make any more comments?

Mr. Dodson stated I think we have already made our points other than BZA is tasked to interpret the Zoning Code. There are two sections of note; one says if there is a conflict between the City Code and the Zoning Code, then the Zoning Code prevails. If there are stricter standards in the Zoning Ordinance than in another part of the Code, the stricter standards of the Zoning Code prevail.

Mr. Dyer stated what does that conflict?

Mr. Dodson stated the City's argument if we are looking at the definition of a commercial recreation facility, that the interpretation of what that means, because as you said there is no specific definition in the Zoning Code, that a permissible definition as presented by the Zoning Administrator if it is stricter than a different part of the City Code that is not in the Zoning Code such as chapter 4, that under those circumstances the stricter standard must prevail under the Zoning Code as is written in it.

Mr. Dyer stated then why doesn't the Zoning Code say a Special Use Permit is required for commercial indoor recreation period? Why doesn't it make a distinction between indoor recreation and indoor commercial recreational facilities because there is a distinction in the City Code, it clearly states it that there can be in fact a distinction between a facility that has indoor recreation and indoor recreational facilities?

Mr. Dodson stated we don't necessarily dispute that. We don't believe that it is an unreasonable determination by the Zoning Administrator to read commercial recreational facility as referring to any facility that has commercial recreation.

Mr. Dyer stated so you think it is an unreasonable assumption to assume that is not correct?

Mr. Dodson stated I think it is a fairly debatable question.

Mr. Dyer stated if we disagree with the assumption, that one machine thus makes an establishment. Then we are not being inconsistent and we are not properly filling in our duties.

Mr. Dodson stated while our argument is that the issue is fairly debatable at looking at to what should be a motivating factor, what the prevailing factor is, this we would say that the BZA should defer to part of the Zoning Code that specifically says either there is a conflict or if there is a stricter regulation on something in the Zoning Ordinance.

Mr. Dyer stated I don't see where there is a stricter regulation. Mr. Gillie's interpretation is stricter regulation. What we are here to do is to determine the Zoning Administrator's determination is proper or not. I make the argument once again that there is in fact in the City Code of Ordinances a second of those ordinances, which it clearly defines that you can have indoor commercial recreation without it being an indoor recreation facility. In fact, if one machine turns it into an indoor commercial recreation facility, then what is the indoor recreation that does not create an indoor recreation facility. If that is the case then the code should say a special use permit is required for indoor commercial recreation not a indoor commercial recreational facility.

Mr. Dodson stated we still submit that the chapter 4 really does not have any bearing on this. Since, that is a nuisance power, it is specifically about mandatory time limits, mandatory lighting or places that allow access to children. Those places are not allowed to sell alcohol and a lot of these places that are applying do serve alcohol. I do not think that some would want to be subject to some of these rules to being an amusement parlor because that could jeopardize their ABC license.

Mr. Dyer stated well that is because if they have three or less machines they are not an amusement parlor.

Mr. Dodson stated again under chapter 4 that specifically says it refers to that article. Article 2 of chapter 4. It doesn't say that it is broadly applicable to all uses of that word in the City Code.

**Mr. Meder made a motion to approve and overturn the Zoning Administrator's Appeal Application PLAZR20190000341 to allow the placement of two skilled games within the Pilot Travel Center. There were no seconds to the motion.**

**Mrs. Evans made a motion to uphold the Zoning Administrator's decision. Mr. Dolianitis seconded the motion. The appeal was denied by a 3-2 vote.**

2. Variance Application Number PLVAR 20190000446, filed by Heather English for Allen Industries INC, on behalf of Schewel's Furniture, requesting a variance from Article 10, Section P., Item 2a of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended at 126 Sandy Ct, otherwise known as Grid 1709, Block 005, Parcel

000018 of the City of Danville, Virginia, Zoning District Map. The applicant is requesting 688.8 sq. ft. of wall signage where the code permits 463 sq. ft.

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Heather English for Allen Industries, Inc, on behalf of Schewel's Furniture. I want to share with your our exciting furniture store signage project. I have Mr. Max Schewel, property owner, here with me as well today. I'm going to kind of go through our application and give you a little basis why we are before you today. Mr. Schewel has some comments that he has prepared as well to go over with you. I would like to start by taking a glance at this wonderful site plan that came with my public hearing notice and I hope that all of you have a copy of this. Our biggest concern about the signage for this property is for the most part it is land locked. There are lots that are directly abutting the public right of way all around the store. We have received some information in the last couple of months that there is some planned development on the parcels in front of Schewel's directly abutting Piedmont Drive. Piedmont Drive being our primary road frontage that's going to pull customers into our store. They don't actually have an access driveway from Piedmont Drive because again these parcels here are between the store and that primary roadway. The building itself is set back about 560 feet from Piedmont Drive. So, motorists are going to have a little bit of difficulty seeing a small sign on that store front just given the distance. Then also given that there is some development plan even in the beginning stages of demolition and grading that they are going to be a strip center or some other retail establishment that is built between Piedmont Drive and the store front of Schewel's that is going to further hinder the visibility of the store front from Piedmont Drive. That hardship there comes from the lay of the property and not necessary from any circumstances that the property owners or operators have created for themselves. We are asking for some additional wall signage primarily because they don't have an entrance and they don't actually have a direct street frontage on Piedmont Drive. They don't have a right to put a freestanding sign out on Piedmont Drive. That would be more easily visible for motorist coming to the store. They do have a freestanding sign, it is on Sandy Court, and it's on the side street and it's not as visible for the majority of the traffic. Schewel's has been in business for a very long time and they have quite a few stores in Virginia. They are from this area and they have made the decision to invest in creating a coordinated signage for all of their stores going forward. Danville store is one of the first in a pilot phase for launching this coordinated signage plan and it is very important to them that the wall signage is seen given the hardship of the property itself because this is going to be one of the very first if not the first that has this new branding going forward. They have symbolic representation of the different kinds of products that are available in the store for purchase. There are no graphics on them and no wording just a simple symbolic image of a product. Each of those are approximately 58 square feet and they would like to use six of them. We are hopefully able to negotiate doing a few of them at the very least. It is so important to go along with the new primary wall sign.

Mr. Dyer stated so the icon signs they are 7 by 8 inch square?

Ms. English stated correct.

Mr. Dyer stated that makes them 50?

Ms. English stated 58 ½ square feet roughly.

Mr. Gillie stated 58.83.

Mrs. Garrison stated the actual building itself will not change?

Mrs. English stated they are not planning to enlarge the front but they are planning to use what they call ACM that is essentially a prefinished flat metal panel that they apply to the front of the building. That is going to create this pretty red sign behind where the primary sign is going to be. This is a much sturdier and much longer lasting way to go about things. It is freeing up that storefront without having to actually get out there and having an exterior painter go out there and paint these ACM panels hold up from a maintenance standpoint a whole lot longer than your standard outdoor paint.

Mrs. Garrison stated what I'm asking where you now just have the Schewel's on the front are you not going to extend higher than the current sign?

Mrs. English stated correct. It will all be contained within the storefront. The zoning ordinance does define how a primary wall sign square footage is calculated. It's a box square footage the overall height the highest point of the sign by the widest point of the sign and that does by the zoning administrator calculation come out to about 336 square foot. If you look at this design home is much smaller than the words Schewel's, By boxing that square footage you have a lot of dead space of signage area that could be utilize for the icons. It's about 85 square feet that actual square footage of Schewel's added with the actual square footage of Home verses the total box all away around the entire area of the sign. That would give us at least one or two icons if the board would be willing to consider such relief of the way the primary sign area is calculated.

Mrs. Evans stated with these parcels being developed how do you anticipate people being able to see through the parcels to see these signs that you are now asking to increase?

Mrs. English stated that is the concern and we are hoping that a larger signage that outline would help with finding us around these other businesses.

Mrs. Evans stated are we looking at the large sign or are we looking at the large sign with all the icons?

Mrs. English stated we would like to do the large sign and some of the icons. It is very important to the property owner that we try to incorporate a symmetrical amount of icons with the primary sign.

Mrs. Evans state how do you foresee an icon being seen from Piedmont Drive when these parcels are developed?

Mrs. English stated I can't answer that. I haven't seen any construction plans or seen any elevation and I don't think that these guys have either. The icons will be raised and they are approximately 16 feet off of grade from the bottom of them.

Mrs. Evans stated what if you center them?

Mrs. English stated that is definitely a consideration. I am the best person on technical sign questions.

Mr. Dyer stated so when we are measuring the square footage of the sign what we are doing is measuring the sign 32 feet, furthest point left and right?

Mr. Gillie stated yes.

Mr. Dyer stated and the furthest point North and South is 10x6 inches is that correct?

Mrs. English stated yes.

Mr. Dyer stated so what you are saying at that point they are consuming 336 square feet of their allotted signage correct?

Mr. Gillie stated correct.

Mr. Dyer stated so what she is saying is that a good percentage of that 336 square feet is dead space. In other words, there is no allowance for anything other than a rectangle sign? If you round off the edges obviously that reduces the amount of since there is no signage there?

Mr. Gillie stated Article 10 of the Zoning Code Sign Regulations Section F calculations of sign area .Item number 1 the sign area shall be calculated as the entire area within a single continuous perimeter in a single plane composed of a square, circle, rectangle, or other geometric figure that encloses the extreme limits of the signs message background and trim including all letters figures, graphics or other elements of the sign.

Mr. Dyer stated so you could create a pentagon around the sign that reduce the 336 margin correct?

Mr. Gillie stated square, circle, rectangle, or other geometric figure.

Mr. Dyer stated so pentagon is a geometric figure. If you would to come, right under the S and draw a line right under the S to make it to the tail of the Home part and the other S connect it to the E. Then you are cutting off some square footage. Is that acceptable?

Mr. Gillie stated the City sign regulation are very plain. We give you a number to work with and it is up to you how you make that work. They could easily comply with the regulations and actually submitted a design that complied with the regulation and they didn't like that design. They have come back and asked for more.

Mr. Dyer stated do you see how you are saving the two corners if they were to submit that and it is 288 square feet to the 336 would you acknowledge that or would you fight that?

Mr. Gillie stated I wouldn't argue if they can cut a little off of that, but how they make it work under the 463 is up to them.

Mr. Dyer stated they are right much over.

Mr. Meder stated are they over because we are adding the other signs to the right and left?

Mr. Dyer stated yes. The sign itself that says Schewel Homes does not violate, what they are doing by adding the icons.

Mr. Gillie stated nothing violates because they are allowed 463 and they have chosen to ask for more. They could have a giant Schewel's Home that meets 463, and not put the icons up and put just icons and not Schewel's. It is really up to them how they decide to make it work within the 463. We just tell you here is a number and you could have twenty little signs, and I wouldn't care just stay within 463. The design is up to them as long as they comply with the regulations and they don't want to comply with our regulations and that is why they are here.

Mr. Dyer stated so the red background other than what is inside that pentagon is not consider part of the sign area?

Mr. Gillie stated they could paint the whole building red and I wouldn't care.

Mr. Dyer stated on the icons the entire square of the icon is being counted and not just a box around the icon?

Mr. Gillie stated the icon is the box. It is channel letters and he is arguing the letters inside.

Mr. Dyer stated I'm not arguing.

Mr. Gillie stated the other one would be an actual box in this we are going from extreme letter to extreme letter and that is why we are drawing the rectangle around it. He is saying if we cut the angles on that, is that a geometric figure. I wouldn't argue over that point but on the squares for the icons I would say because that is a box that is being placed up on there, so that is the extreme limits of that sign. It is an offset raised, it's not the same as the panel on the back.

Mr. Dyer stated so if that was the letter A instead of a washing machine are you complying the same?

Mr. Gillie stated on the icon portion, yes.

Mrs. Evans stated at one time was the City thinking about revising or reviewing the signage requirements?

Mr. Gillie stated we are always looking at revising the signage requirement. In this case we don't feel that it meets the need for it because this is the same as Ashley Furniture is tucked away on Lowe's Drive and they don't say well, people can't see us off the Main Streets we need bigger signage, or anybody else. It's just a number you are giving 2

square foot perimeter foot than for the first 200 and 1 to 1 after that and it's a straight number. They could comply but they are choosing not to.

Mr. Dyer stated so the restriction on the amount of signage that they are allowed on the building is based on the frontage of the building?

Mr. Gillie stated correct.

Mr. Dyer stated are you using Sandy Court or Piedmont Drive?

Mr. Gillie stated I'm using Piedmont Drive because that is where the entrances are.

Mr. Dyer stated but that is limited access and how do you determine that?

Mr. Gillie stated where the front door of the building is and where it faces.

Mr. Schewel. Vice President of Schewel's  
Statement by Matt Schewel to the Danville Board of Zoning Appeals  
Jan. 16, 2020

My name is Matt Schewel and I am here today in my capacity as vice president of Schewel Furniture Company, the applicant, and manager partner of Schewel Danville LLC, the property owner. I appreciate the opportunity to speak briefly to you today about why you should approve our variance application.

I am joined by our Danville store manager, Steve Gery, and our regional supervisor, Tom Burch.

My colleague Heather has already addressed the two main technical arguments: that our proposed larger sign is needed due to the development of the street frontage and the significant setback of our storefront.

I would like to present three broader arguments for why the board should look favorably upon our request.

**First, Schewels Home is a 122-year-old Central Virginia business and a fixture in the Danville economy.** Schewel Furniture Company was founded in 1897 in Lynchburg by my great-great-grandfather Elias Schewel, making me the fifth generation of our family to own and operate the business. We opened our first store here in Danville in 1935, making this our 85th year serving this community. In the past 10 years, we have paid the city over \$300,000 in real estate taxes. Unlike some other retail businesses that may come and go, Schewels Home has a history in Danville and we would like to be here for the long term.

**Second, the current retail environment is very challenging, and the city of Danville should be doing everything in its power to help stores like ours.** We are facing new pressure from online retailers as well as increasing competition for customers' disposable income. Danville's economy has suffered in the past 10 years, losing key industries and several important retail stores. We don't want to be next, and we need your help.

**Third, the new signage we are proposing is a critical part of our company-wide rebranding initiative.** Both our new logo and the six icons are designed to appeal to the next generations of customers, while also improving the retail experience for our long-time clients. I believe that every customer deserves a “wow” experience when they see our building and walk through the door.

In conclusion, I hope you will take these factors into account and approve our variance application.

Mrs. Evans stated the icon of the truck is that just a sign to show delivery?

Mr. Schewel stated yes and we have a number of icons, there's more than six. We might change and we really want to focus on furniture, mattress, appliances, and electronics is what we do. Some situations we have doubled up to help us because we really want to illustrate that. I believe we have eight or nine so we might change it up depending on what we feel is most effective. We don't sell trucks we just deliver.

Mrs. Evans stated these icons that you have put here there going to be the icons that you want on the store and your not going to change them up to the other three or four?

Mr. Schewel stated no I don't think we have made a final decision on that. You made a good point with the truck and it can be confusing. I haven't made a final determination as to which icons will be on there. We are just trying to discuss the square footage.

Mr. Dyer state how critical do you view the icons themselves need to be visible from the roadway or is that more of a design element?

Mr. Schewel stated it is more of a design element.

Mr. Dyer stated so if they could be reduced where you could see them in front of the store supposed to 500 feet away on the highway. Do you feel like that would impact you?

Mr. Schewel stated I'm not sure about that. I think part of it, like Heather mentioned we don't know really the height or nature of the businesses that will be constructed in the frontage. I would hope that they would be visible from the road. If it is blocking our building, entirely it would make a difference but we don't really know.

Mrs. English stated I would like to add that they are going from Schewel's Furniture to Schewel's Home. They will have some other products other than furniture. They are trying to convey that with these icons. This building is set back 560 give or take a few feet from Piedmont Drive. If we go much smaller with those, there is no way they will be visible at all from Piedmont Drive.

Mr. Schewel stated with the icons we believe that the sign that we are proposing will be visible from the Mall, which would be a benefit.

Mr. Dyer stated you realize that we are not an opinion board that we are in fact a jury and you are required to address five issues and you need to convince us that you meet

these five criteria's in order to get this variance. The City agrees that you meet two of the five.

Mrs. English stated item number 1 that it is in good faith, and the applicant did not create that hardship. The hardship here is with the property itself. The natural location of this property being an interior lot surrounded by other businesses. Thus far there hasn't been development in front of this building has been very visible but that is a factor that is getting ready to change. That is not any kind of reflection that the property owner has developed himself. Item number 2 that the variance would not be substantial detriment to the adjacent properties. I don't see that being an issue for the adjacent properties because the adjacent properties have direct frontage on Piedmont Drive. They are closer to the road and they are going to be more easily visible than Schewel's will be. They are going to draw in more clients than the interior property. Item number 3 that this condition or situation is not reoccurring. Has this occurred before it's kind of a unique property.

Mr. Dyer stated we deal with sign issues quite often.

Mrs. Evans stated there would always be someone that wants to go beyond the signage limit.

Mr. Dyer stated at the River District Design Commission there was talk about River District sign that is going up on the framework of the old bridge going across Bridge Street. At that point you said that is not a sign it is just artwork at what point does the sign become artwork and vice versa.

Mr. Gillie stated if they sell a product or advertise for a product that is sold inside. The McDonald arch is not artwork that is a logo. This is a furniture store; they are advertising furniture, pictures, and things that they sell inside, this is not art that is advertising. It is a plain number they have submitted a design, that comply with our regulations, which we could have approved, but they chose to come to the board and ask for more.

Mr. Meder stated do we set precedent?

Mr. Gillie stated yes.

Mr. Dyer closed the Public Hearing.

**Mr. Dolianitis made a motion to uphold the staff's recommendation on the signage and deny the variance. Mrs. Evans seconded the motion. The motion was denied by a 5-0 vote.**

3. Variance Application Number PLVAR20190000455, filed by Dr. Ryan O'Connell, requesting a variance from Article 2, Section Q, Item #1 of Chapter 41 the Code of the City of Danville, Virginia, 1986 as amended at 133 Newbury Way, otherwise known as Grid 0718, Block 001, Parcel 000066 of the City of Danville, Virginia Zoning District Map. The applicant is requesting to install a 5' tall fence in a front yard where 4' is the maximum permitted by code.

Mr. Dyer opened the Public Hearing.

Dr. Ryan O'Connell spoke on his request. Dr. O'Connell stated I have an autistic son and I could not bring him today. I have five children, my middle son is nine years old, and he is severely autistic. He does not speak, and is a flight risk. He has an ankle bracelet on his waste that is managed by the Sheriff and GPS. We do everything in our power to try to keep him as safe as possible. We have time locks with the key pads on the inside of our doors with addition to the outside to prevent him from getting out. We have four other children that have to go in and out of the house and about a year and half ago he managed to get out and cross our property to the Snow's and was ankle deep in the Dan River. I got to him in time before he drowned and died, which is the most common cause of death in autistic children. My wife went back to New York for about two years for some autistic programs for the school and I work here at the hospital. Ultimately, they came back here this year and we knew that we were going to put a fence in and we have a fence in New York as well on our house. However, the house in New York where it sets seventy-five percent of the property was the back yard so it was easy to fence. Our property here in Danville, there is no back yard. The house sits on top of a hill and almost the entire property is the front of the house. The exits from our house empty to the side and front of the house. The only way to safely fence in is to fence the actual property itself. I requested a fence to go around the outside. If it could be up to an eight feet fence, I would like higher but obviously you have to draw a line. I wanted to do something that was as tall as I was without being too obvious to my neighbors. I went door to door, spoke with all of my neighbors, and did not have issues with them. When I actually spoke with the fencing contractor and we found out there was some restrictions on the front yard. I knew it would be but did not know what the exact policy was and that is when I submitted this to see what we could do next.

Mrs. Evans stated do you have a design of what your fence will look like?

Dr. O'Connell stated standard black aluminum its see through and it has a bar on the top and bottom.

Mrs. Evans stated a chain link fence?

Dr. O'Connell stated I wish it was a chain link fence it would save me about twenty thousand dollars.

Mr. Dyer stated I think it's probably similar to the one that we approved for Will Leggett.

Dr. O'Connell stated its standard black aluminum with six foot rails sections. We didn't put anything elaborate on there that would allow him to step on. It is a smooth rail that goes on the bottom like the normal six inch, and it comes up about five feet railing across the top. Then out in front of the driveway it has gates. The gates have a small arch in between them.

Mrs. Evans stated he will not be able to get his head through?

Dr. O'Connell stated no they are small. The fence would be 5 feet. If I had known he was going to be diagnosed with this, I wouldn't have bought this house.

Mrs. Evans stated are you aware that there were two people opposed?

Dr. O'Connell stated I am not because I went door to door. The only people that I have not spoken to but have tried multiple times are the Grogans. I spoke to their housekeeper and said will you please have them contact us. The Grogans contacted the Snow's when they heard about it and Snow told them you realize that I helped pull him out of the river. This is about safety and I still did not get a response from them. Those are the only people that can see the fence. The Hoffmans can't even see the fence. They are at the other end of the street.

Mr. Dyer stated is there any way that this can be conditioned if they move this has to be taken down?

Mrs. Garrison said this goes with the house.

Mr. Dyer closed the Public Hearing.

Mrs. Garrison stated exactly where do the Grogans live?

Dr. O'Connell stated directly across the street.

Mr. Dyer stated we had a similar situation with Will Leggett and he could have put up a chain fence that met the code in the middle of Forest Hills. Instead he put up a very attractive fence that didn't meet the code but we felt like it probably would be more agreeable to the neighbors for us to allow them to put up the more attractive fence than to put up a chain link fence.

Dr. O'Connell stated the contractor for a cheaper alternative offered us this but I believe it would be poor taste for the development so that was not entertained by our part.

Mrs. Evans you're not in a homeowner's association?

Dr. O'Connell stated no.

**Mrs. Evans made a motion that we approve the application that it meets four of the five criteria's. Mrs. Garrison seconded the motion. The motion was approved by a 5-0 vote.**

### **III. OTHER BUSINESS**

With no further business, the meeting adjourned at 11:54 a.m.

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APPROVED