

PLANNING COMMISSION MINUTES

MARCH 8, 2021

MEMBERS PRESENT

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

MEMBERS ABSENT

STAFF

Doug Plachcinski
Lisa Jones
Clarke Whitfield

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

ITEMS FOR PUBLIC HEARING

1. *Rezoning Application PLRZ 2020-155 (PLVAR2020-110), remanded from the Board of Zoning Appeals on a case filed by Mark and Karen Davis, requesting to rezone from HR-C Highway Retail Commercial District to S-R Suburban Residential District at 734 Mt. Cross Road, Parcel #72873. The applicant requested a variance to allow for a deck constructed without permits onto a legal non-conforming residential use to remain in a HR-C Highway Retail Commercial District. The BZA remanded this case to the Planning Commission for a possible rezoning.*

Mr. Plachcinski stated the applicant notified us today that they tested positive for Covid and will not be here for today's meeting.

Mr. Garrison opened the Public Hearing.

Mr. Garrison closed the Public Hearing.

Mr. Craft made a motion to postpone for an indefinite period of time for rezoning application PLRZ 2020-155 as submitted. Mr. Dodson seconded the motion. The motion was approved by a 4-3 vote.

2. *Special Use Permit Application PLSUP 2021-25, filed by property owners Cynthia and Shawn McKnight, requests a Special Use Permit for agriculture, forestry and horticultural uses in accordance with Article 3.B Section C.1. of the Zoning Ordinance of the Code of City of Danville, Virginia 1986, as amended, at 1560 Halifax Road, Parcel ID#74777. The applicant requests a Special Use Permit for "homesteading" type agriculture in the T-R Threshold Residential Zoning District.*

Mr. Garrison opened the Public Hearing.

Mr. Garrison closed the Public Hearing.

Mr. Craft stated you said one livestock animal and five poultry?

Mr. Plachcinski stated that is correct.

Mr. Craft stated excluding swine.

Mr. Plachcinski stated excluding swine. There is a conflict in the Ordinances where Chapter 5, it explicitly prohibits swine, and yet, swine is included in the definition of agricultural in the zoning ordinance. So, at some point we need to reconcile that because excluding swine is the more prescriptive part of the Ordinances in an entire context, I would assume it applies in this case.

Mr. Craft stated one hundred twenty-five (125) foot setback is that included in the existing property?

Mr. Plachcinski stated it is the area of the property that is being used for the livestock. So, even if they go up to the property line the properties to the south all of those dwellings are far more than 125 feet away from the property line.

Mr. Craft stated so it doesn't apply to the existing house then 125 feet?

Mr. Plachcinski stated it's only for the neighbors. If you want to have the agricultural animals on your property, then it doesn't apply to your house.

Mr. Bolton stated will the five chickens include whether they could use roosters within that five?

Mr. Plachcinski stated this has come up before and I did not include it in any recommendations. If the Planning Commission would like to add no roosters to the five chickens then I think that they would be fine with that.

Mr. Bolton stated this is so far back off the road I don't think it would be an issue, but I was just curious if we needed that.

Mr. Plachcinski stated we've learned before that they make necklaces that you put on the roosters to keep them from making a loud noise.

Mr. Bolton stated okay and I'm good.

Mr. Craft stated that doesn't mean they will put them on there.

Mr. Bolton stated true.

Ms. Evans stated so the Planning Division recommends approval with up to five chickens and one livestock animal excluding swine, but the definition that you read said one livestock animal or five poultry.

Mr. Plachcinski stated the property is larger than the 3 acres. I've looked at the Ordinance to see how the Ordinance would deal with a partial area, and its absent guidance. So, you know, you can't have a half livestock animals so it is kind of since they have more. I'm just going with it that they're allowed that. They are aware if they want to go with let's say up to ten poultry then that may trigger that feed lot definition in chapter five where they will have to have separate construction made, and so I don't think they're interested in that part.

Mr. Petrick stated who is responsible for policing these ordinances?

Mr. Plachcinski stated it is a combination effort between the Planning Division and we have animal control officers with the police department.

Mr. Petrick stated if a neighbor had a complaint they would go to animal control?

Mr. Plachcinski stated they could and then they would contact us and we would work on it together or vice versa.

Mr. Garrison stated so we're going to establish now that if it's more than three acres, we're going to say that anything between three and six, we can put the second group of animals on?

Mr. Plachcinski stated I would advise, rather than deeming that we're establishing it now that, we address this through our future Ordinance Amendment.

Mr. Garrison stated I think we should because if we pass this then the next person that comes has four acres, and say well, you allowed somebody with more than three to have a second set of animals. If I was still here I would and if we recommend approval on this, then I would have to recommend approval on that in the future.

Mr. Plachcinski stated well every case is different, so you know in some ways that is setting up a precedent but then everything is decided on their individual merits. You bring up a good point though because if it's three or over and we also apply that same definition to an urban agriculture situation where the ordinance simply allows two and under. Then we're getting it back into portions of animals and we just need to clarify that.

Mr. Bolton made a motion that we recommend approval of Special Use Permit Application PLSUP 2021-25 with conditions per staff. Mr. Kahn seconded the motion. The motion was approved by a 7-0 vote.

- 3. Rezoning Application PLRZ 2021-50, filed by Jimmie L New, requests to rezone 109 Barter Street, Parcel ID #52948, from HR-C Highway Retail Commercial to M-I Industrial Manufacturing. The proposed rezoning allows the current building tenant to perform on-site heavy vehicle repair.*

Mr. Garrison opened the Public Hearing.

Present to speak on behalf of this request was Jimmie New, Owner of PTL Contractors and 109 Barter Street. Mr. New stated it has been my office and construction business since the mid 80's. One thing that I would like to clarify in the letter it says heavy duty truck repairs it's really not heavy duty. Mr. Swaringen is the owner of the trucks and we have a deal with him having the trucks there at my place. We are not dropping transmissions or motors and things like that. He has a nice fleet of about ten transfer trucks and he keeps them first class. When we repair and the city cited us because I did not know that we could not do that work on lights, windshield wipers or anything electrical that needs to be done, he keeps those trucks in good running and looking conditions. We are not dropping motors, transmissions or axles and things like that. What started this process, I put in an application to put in an enclosed building and I thought that would be the answer and it would solve that. I had no idea that industrial maintenance zoning was kind of in the middle of the road on Trade Street and I'm on the corner of Trade and Barter HR-C. I did not know that and I'm trying to do everything that I can to keep those trucks right there and I want to keep a mechanic there also. I just feel like the wording was really harsh about heavy duty and like I

said we are not dropping motors. If you have any questions I would like Mr. Swaringen to answer them.

Mr. Craft stated are you changing oil?

Mr. Jason Swaringen stated yes, I am the owner with Triple S Trucking Company. I rent the lot and the main office from Mr. New.

Mr. Craft stated what size are the trucks?

Mr. Swaringen stated they are 26,000 lbs. and above.

Mr. Craft stated so they are heavy duty?

Mr. Swaringen stated yes.

Mr. Craft stated what do you have as far as the oil? Where does this go?

Mr. Swaringen stated we have an above ground holding tank that we dump it in and recycle. I own the service station on Riverside Drive that is up above it and we have a truck that actually comes by and picks the used oil up to recycle.

Mr. Craft stated is that the enclosed pan underneath the tank?

Mr. Swaringen stated yes sir.

Mr. Bolton stated do you ever see yourself dropping engines, transmissions, and things heavy like that?

Mr. Swaringen stated no, we are not set up for that and we kind of keep it on a small routine maintenance type deal. We do some brake work and fix a tire, but we don't change any tires. As far as the trailers we try to keep up to spec safe and also keep it clean. You can ride by now because we try to keep everything clean and in order. It is a gravel lot and there is really no way of pulling engines or transmissions.

Mr. Bolton stated are they usually running or off when you are working on them?

Mr. Swaringen stated they are off.

Mr. Petrick stated I have a question for staff. I didn't review the particulars in permitted uses under HR-C as it relates to mechanical work. Is there no mechanical work allowed under the HR-C?

Mr. Plachcinski stated it is the kind of vehicles that are being worked on and in this case they are not typical light duty, passenger cars and trucks, these are heavy trucks.

Mr. Petrick stated these are all semi?

Mr. Swaringen stated yes.

Ms. Evans stated what is presented here says the proposed zoning rezoning allows the current building tenant to perform on-site heavy vehicle repair, but you're referring to heavy vehicle is the transfer trailer not heavy duty repair such as transmissions, correct?

Mr. Plachcinski stated correct, it is not the kind of work but it's the kind of vehicle that's operative.

Mr. Petrick stated is there distinction to be made between the two?

Mr. Plachcinski stated not under our current zoning.

Mr. Petrick stated so under the current zoning there is no mechanical work allowed if it is a heavy duty vehicle or are we talking about heavy duty work?

Mr. Plachcinski stated we're talking about the vehicles that the current zoning does not address all levels or gradients of work on that vehicle to my knowledge.

Mr. Bolton stated you didn't address spot zoning with the other M1's across the street and all of this does it not fall into that?

Mr. Plachcinski stated it's not consistent with the comprehensive plan so it is really up to the Planning Commission to make that call whether you feel it is spot zoning or not because it is adjacent. When I'm making a recommendation, I'm trying not to guess is it okay here or okay there. I think the safest way for staff to look at that is to say, is it consistent with the comprehensive plan? Yes or no, you are correct it is on the border.

Mr. Petrick stated but does it set a precedent once it is allowed?

Mr. Plachcinski stated again every case in front of you there are peculiarities with each case. So, if there is a reason and you include it in your motion why it may be acceptable in this case, then it takes it away from the realm of spot zoning. We have a future land use map and where we'd like to think of those lines on the map is being hard and fast. They are really kind of blurred areas and they may make sense in some cases why you would rezone something that's on the edge of an area that is inconsistent with the master plan or there may be cases where you wouldn't rezone that. That is really the discretion of the Planning Commission and why we have these discussions.

Mr. Petrick stated but why, all things being equal, if the adjacent property owner decided they wanted to do the same thing and applied for it, then we would have a definite precedent or they would have that defense.

Mr. Plachcinski stated you could consider it, yes, and everything else equal.

Mr. Khan stated is it a 24 foot or 40 foot rig, straight truck or rig?

Mr. Swaringen stated the biggest truck and trailer combined would be a 53 foot.

Mr. Bolton stated what are your operating hours?

Mr. Swaringen stated it seems like eight days a week. We don't do any work on Sundays but of course it is one of those deals where they run all week and you work on them all weekend. We work on them Monday through Saturday and sometimes the sun sets it seems.

Mr. Bolton stated Jimmie do you still have your office there?

Mr. New stated yes, but I'm in the process of retiring. I will keep my office space there. I will maintain an office. He also owns the Enterprise Car Rental lot and that is kind of that whole corner. We are just trying to abide by the rules and I just had no idea HR-C was that part.

Mr. Bolton stated when you are in your office their work doesn't bother you?

Mr. New stated no, not at all. When he is down there working the mechanics they don't take off the street people with other trucks. This is strictly personal trucks and he owns all of them. We have a laurel park tractor that comes down there, but that is just somebody that comes down there. There's no work from another company. What we do is not work for hire for any other truck to come by. People come by to talk to them and it's not job bed out by any means.

Mr. Garrison closed the Public Hearing.

Mr. Bolton stated I was going to ask Doug it says that you sent out fifteen notices and you got six back unopposed. Usually if you don't get something back, it's not objectionable. Tell me again why you're recommending not approving this or sending it to Council for approval?

Mr. Plachcinski stated it's not consistent with the future land use map and the 2030 Comprehensive Plan.

Mr. Bolton stated that is the only reason?

Mr. Plachcinski stated that is the only reason.

Mr. Bolton stated how many cases when the plan is different, I mean it's not 100% all the time and when it doesn't correspond with the future plans, we don't just turn it down for that. I don't remember ever doing that for simply because of that.

Mr. Plachcinski stated with my limited experience here in Danville. I don't know what your track record is as I said, if you have a reason and you include it in the motion, I take no affront. I'm just providing a recommendation bases solely on the plan.

Mr. Bolton stated of course, if we change the zoning and then it's that zoning forever until somebody requests. If he were to sell or leave then somebody else could come in and have a fleet that wasn't just their fleet, correct?

Mr. Plachcinski stated correct, it would be opened to the Industrial Zoning District and all of the permitted use that's allowed on it.

Mr. Bolton stated yes, you can't restrict zoning like you can a special use. I mean could we put a condition?

Mr. Whitfield stated you can't put conditions on a zoning.

Mr. Bolton stated that's what I was thinking.

Mr. Whitfield stated but if they wanted to get together with the Planning department and they could proffer not to do certain things and proffer out everything except like mechanical on this heavy trucks owned by the owner of the property, something like that. I mean you could do that and not necessarily something you could do today. If you're thinking you want to

work with them, and you're inclined to possibly at least explore this, then it might be worth having a sit down between Doug and Mr. New and maybe proffer out a lot of uses that could be used for that property.

Mr. Garrison stated does that apply to any subsequent owner?

Mr. Whitfield stated yes sir.

Ms. Evans stated right now it is highway retail commercial if we do not approve or recommend that they change it to Industrial, can those tractor trailers trucks remain there on the lot just as a parking place?

Mr. Plachcinski stated it is my understanding that it is legally nonconforming now as it is except the repair portion. The repairs are not customary and instant at any point in time. The vehicles can be there but performing the repairs on the site is the violation.

Ms. Evans stated if they didn't do repairs but washed the trucks is that different?

Mr. Plachcinski stated I would probably counsel with the Zoning Administrator to see what their take is on it. I don't know the answer and as the zoning ordinance is just pretty silent on different levels of repair. It's kind of all or nothing approach and that approach doesn't seem really the best way to do it, but where do we start categorizing different kinds of activities? The one thing that I didn't hear is that the applicant had mentioned that at their BZA hearing as you know, it could be possible to repair the trucks somewhere else, but it's a vastly different economic proposition to do so. That is why it is really crucial for them to repair the trucks on site to the extent that they do, to keep the trucks in service and to cut down on time away from the site. That is my words summarizing their words at another hearing.

Mr. Bolton stated with the Public Hearing closed how would we go about the process of maybe getting you two together to proffer or something. I maybe all by myself here but it doesn't matter.

Mr. Whitfield stated procedurally, I would suggest that you postpone this until the next meeting and then let the applicant know that the Planning Director is ready to work with them. They could sit down and there is literally a list of everything that's allowed in the M1 and they could just go through literally everything and strike things out and then it would be a conditional zoning and any subsequent property owner would be stuck with what the original owner or applicant had proffered out, unless they came back to this body and ask to have some of those back in. That's the way that I would do it because that way you all may feel more comfortable about approving it and sending a recommendation of approval. I don't know which way you are going. I'm just providing advice here in a vacuum. That's the way I would suggest it to be done and you come back and go through the process and in that way, you would feel more comfortable with whatever you sent to council.

Mr. Garrison stated Mr. New could you come back up. Are you agreeable to postponing this until our next meeting so you will have time to meet with Mr. Plachcinski and work out the proffer?

Mr. New stated absolutely.

Mr. Garrison stated okay, so would you tell me that you are willing to do that.

Mr. New stated we are willing to wait until the April meeting.

Mr. Petrick made a motion to postpone this Rezoning Application PLRZ 2021-50 until the April Meeting. Mr. Bolton seconded the motion. The motion was approved by a 6-1 vote.

II. OTHER ITEMS

Parking space reduction request from Cornerstone Baptist Church, 300 Overby Street, Parcel ID # 04930 to reduce required onsite parking from 62 to 32 because parking is provided on other church-owned parcels and on-street parking is available.

Mr. Petrick made a motion to approve the parking space reduction request from Cornerstone Baptist Church, 300 Overby Street, and Parcel ID # 04930 to reduce required onsite parking from 62 to 32 spaces. Mr. Dodson seconded the motion. The motion was approved by a 7-0 vote.

III. INITIATE ZONING ORDINANCE AMENDMENTS

1. Create a new Zoning District with use and dimensional standards for the future casino/entertainment complex development at the former Schoolfield mill site.
2. Revise Article 2.P. Accessory Uses and Structures to allow side yard mechanical units in residential zoning districts with appropriate screening and distance from neighboring dwelling windows and doors.

Ms. Evans made a motion to direct staff to create a new zoning district and to allow mechanical units in the side yard. Mr. Bolton seconded the motion. The motion was approved by a 7-0 vote.

IV. APPROVAL OF MINUTES FROM JANUARY 11, 2021.

The February 8, 2021 minutes were approved by unanimous vote.

V. OTHER BUSINESS

VI. ADJOURNMENT

With no further business, the meeting adjourned at 3:42 p.m.

APPROVED