

BOARD OF ZONING APPEALS MEETING
June 16, 2011

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Dyer	Mr. Snipes	Alan Spencer
Mr. Campbell		Ken Gillie
Mr. Bralley		Renee Blair
Mr. Hiltzheimer		Emily Scolpini
Mrs. Evans		
Mrs. Rich		

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

I. ITEMS FOR PUBLIC HEARING

- 1. Variance Application Number PLVAR20110000216, filed by Sammy Pierce, requesting a variance from Article 7, Section B, Item 3, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 3207 North Main Street, otherwise known as Grid 2914, Block 002, Parcel 000002 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to continue a legal nonconforming use (retail sales) that has been discontinued for more than two (2) years.*

Twelve (12) notices were mailed to surrounding property owners. One (1) respondent was unopposed; zero (0) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Chester Baker. Mr. Baker stated I would like to address first, the two (2) year deal. I am a fully aware of the law, but if I could determine the two (2) year parcel of vacating the property, the property has not been vacated for that period of time. I have given you now; a George Dougley Lovelace was the tenant. He has been a tenant for about ten (10) years. This sheet that I am giving you is a history of his rent. You can see by that what he has done. I am giving you a copy of his lease. I could give you the whole lease if you want to see the whole lease. I just made copies of those relative items. I highlighted the part of his lease on page two (2). The term says that he must give a thirty (30) day notice and if he does not give the thirty (30) day notice, his lease will continue on for the next twelve (12) months. The permitted use, I wrote down at the bottom, for what it might be worth. I wanted to tell you that he has not given notice that he wanted to leave.

Mr. Campbell stated please say that again.

Mr. Baker stated he has not given notice that he wanted to cancel his lease. If he did not give notice that he wanted to cancel his lease, the lease continues on for the next year.

Mrs. Rich asked did he make payments?

Mr. Baker responded he did not. The last payment he made is noted on the last sheet. The last payment he made was on 1/12/08. His lease went from November 2008, and if you extend it for a year, that would put his lease to December 1, 2009.

Mr. Dyer stated but he had not made rent payments for that period.

Mr. Baker stated he had not. I have given you a schedule of his payments. He became delinquent in January 2007. You have a statement of what he paid. I got a lot of promises stating that he was going to pay it. I got that promise now that he still owes. In addition, he had not moved his stuff out of the building. He had occupied it and continued to use the building. That continued until a few months ago when I just called his hand and said time is up. The new tenant had to remove some of his stuff that he still had remaining in the building. I believe in all respect, that we might qualify for the two (2) year level.

Mr. Dyer asked the tenant stopped paying rent, but he did not cease operating his business?

Mr. Baker responded eventually he moved to another location.

Mr. Dyer asked do you know when that was?

Mr. Baker responded when he paid that last rent he told me "I am going to pay it. I am going to pay it all, because I might need you Chester Baker." He did not want to leave. He wanted to keep my good will. He had been a good tenant as you can see by these sheets. I went along with it.

Mr. Dyer asked do you know if the utilities were maintained in that location? Was the electricity ever turned off? Did you pay utilities or did the tenant pay utilities?

Mr. Baker responded they paid the bill. All of the expenses were his.

Mr. Dyer asked so you do not have any recollection of any utilities being disconnected or when they were disconnected?

Mr. Baker responded I do not have a record on that. He was still occupying and still using the building. He had tires. He had equipment. He had compressors. He had all of that. He had a safe, his desk and his materials.

Mr. Dyer asked is all of that still in the building?

Mr. Baker responded some of it is still there. He abandoned after I told him time was over. I have a new tenant. I will cover that here. We have a new tenant under lease. The new tenant has been modifying and cleaning the building making it ready to go.

Mr. Dyer stated so your argument here is that you still fall within that two (2) year period.

Mr. Baker stated yes it does. Over look me if I am nervous.

Mr. Dyer stated do not worry about it. So, this gentleman owes you \$21,000 dollars in back rent. Is that right?

Mr. Baker responded that is right. If I wanted to charge him, since he has not given notice, I could continue on beyond that. Time is enough, so there had to be a stopping point. I would not go beyond that. If you add two (2) years to December 1, 2009 you will have December 1, 2011. We have not got there yet.

Mr. Dyer asked how did this come about? When did he discover that he needed this variance application? In other words, if you have got rental property and somebody signs a lease. You just moved somebody in there. When were you made aware that this would have been a non-permitted use?

Mr. Baker responded when I got this correspondence. I am going to give you a copy of his lease. When I leased it to Sammy Pierce, my condition with him was that he would ready the building to meet all specs, to meet the Code, to meet any requirements. He would do it at his expense. I made a considerable concession. If you will look, he paid \$1500. He started out at \$1,000, but he paid \$1500 dollars a month rent. George Lovelace paid \$1500 dollars a month. I reduced Sammy's rent to \$500 on the condition that he made the building satisfactory to our Planning Commission, to any authorities that have any control. He went along with that. He came to get his license and he was denied. That is when I discovered it. The hardship I will address too. I started with a sixty (60) acre tract plus the frontage on that area. I started a project sixty (60) years ago. It is my lifeline. Everything I have done has been toward building it if I could. When I took that sixty (60) acres, it was a tobacco farm and a cow pasture with cattails and swamp land growing in. I spent \$50,000 dollars with trucks hauling dirt to build this area we are talking about today. I had given the City easements across that property for storm drains and things like that. I struck this off to give you an idea of what my project looks like as this particular item we are concerned about is related to the total project. I ran this off a few minutes ago, and it is a full copy. It is enough if you can read it and see it (Mr. Baker passed it around). All of this I intend to leave with you.

Mr. Dyer asked the rental history seems to begin in 2005. Is that correct? Is that when Mr. Lovelace occupied the building?

Mr. Baker responded I rented this particular site in 1946.

Mr. Dyer stated I want to go back and check, because of the zoning. When did the zoning change?

Mr. Gillie responded in 2004.

Mrs. Evans asked what was it zoned before?

Mr. Gillie responded prior to 2004, I do not know. I would have to pull the old maps to see what it used to be zoned.

Mr. Dyer stated I am sure it was some type of commercial use.

Mr. Gillie stated yes. We had a C1 and a C2.

Mrs. Evans stated so either C1 or C2 he could have retail sales.

Mr. Dyer asked what type of business did Mr. Lovelace have in this store?

Mr. Baker responded he had an automobile business.

Mr. Dyer asked was he selling items or was he servicing?

Mr. Baker responded he did both sales and service.

Mr. Dyer asked do you all concur that what he was doing was a legal non-conforming use at the time? If he is servicing vehicles, that is permitted in NC, right?

Miss Scolpini responded everything that I found in my research was automobile sales. There was no servicing.

Mr. Dyer asked so are you making the contention that there was no retail activity there?

Miss Scolpini responded there was retail. He sold cars at this location.

Mr. Dyer stated selling cars is the same thing as selling tires, batteries, and t-shirts.

Mrs. Rich stated that is all retail.

Mr. Gillie stated retail is retail. The car sales is a use permitted in most like HR-C districts, so while it is not necessarily retail sales, it is a separate use; but it is considered similar to retail. It is its own stand alone use. You can have a facility where you have retail sales, but you cannot retail sale automobiles, because of the bulk of the vehicles, the outside storage, and the other things associated with it.

Mrs. Rich stated I have a whole other concern. This at one point was obviously a service station. Yes?

Mr. Baker responded yes.

Mrs. Rich asked have the tanks been filled with sand or removed? That is my concern.

Mr. Gillie responded it does not show up on any of my lists of underground storage tanks. I do not know if anything was removed or not. I cannot say if they have been. We have a list of leaking underground tanks and others that we get from the State. This property did not show up on my lists. I do not have a permit or anything in the file; and I do not believe Miss Scolpini found anything that said that they had actually been removed. I just do not know.

Mr. Baker stated the storage tanks that you refer to in your correspondence were three 10,000 gallon tanks. They were installed on the property next to it, and were there for several years. I operated that building and I had gas pumps at 1667 when the State changed the highway. By eminent domain that got my gas tanks, not the tanks but the dispenser units. That left us dead with those tanks. I have since then had Sellers Brothers remove those tanks. So, I can answer that for you. They were removed, but not on this property.

Mr. Gillie stated they had a different address that is why they did not show up in our file.

Mrs. Rich stated the older tanks by this time would be leaking. Since they are gone, I am happy.

Mr. Dyer stated on this map that we have been given here, I am assuming that the property that is outlined in red is in the County. I thought that part of that shopping center up there was in the City. Is that not correct? Is all of that in the County? In other words, where we have the black line here is basically the City limits?

Ms. Blair responded yes.

Mr. Dyer asked so the B2 zoning is operated by the County? That is not anything that the City has control over. Do you know how far Neighborhood Commercial extends down Piney Forest Road before it gets to be Highway Retail Commercial?

Mr. Gillie responded I will tell you in just a second.

Mr. Baker stated I would like to continue what we have done for the last sixty (60) years as far as a promotion is concerned.

Mr. Gillie stated it is N-C to where Terry Avenue goes back. It is single family residential for all of the residences. You have a multi-family for the apartment complex at the corner. Then you have the church, which is also single family. CVS is the first Highway Retail property on Piney Forest. There is nothing in the immediate area.

Mr. Dyer stated nothing in the area, but those next to the shopping center. If that were in the City it would have to be something different.

Mr. Gillie stated but it is not.

Mr. Dyer stated I would really like to address the issue as to whether he is still grandfathered in. it seems that Mr. Baker's contention is that he had a tenant with a binding lease. If you have a tenant with a binding lease, even if you are not collecting any rent, you have some legal standing to be able to collect that rent. If Mr. Baker had been willing to cut his loses sooner he might would have been able to have a tenant in this building, so that we would not even have to worry about the two (2) year issue. I do not know how you all address that. Have the utilities been cut off for more than two (2) years? Has there not been a business license issued for that location for two (2) years?

Miss Scolpini responded the last business license issued was in 2008. He applied in 2009 and in 2010, but never paid. The Commissioner of Revenue's office does not consider them a continuing business.

Mrs. Evans asked on the first one, you say that he could apply to the Planning Commission to rezone the property. Would that not be spot zoning?

Mr. Gillie responded it could be, it could also not be. It depends on what he would ask for. Mr. Baker has multiple properties in that immediate area. This situation will probably come up depending on what he tries to do with those additional facilities. He could ask to rezone multiple properties: the 1667, 3207, and some adjacent land if he has plans for it, then it would not be spot zoning. He would not have an individual property that has special rights. He could ask for the immediate area to be zoned, and if Planning Commission and City Council would grant it, then no it would not be. Staff's contention is that he should ask to rezone the property as opposed to a variance for the use; because he has options available to him.

Mrs. Evans asked have you considered that Mr. Baker? Have you considered going before the Planning Commission and asking for the property to be rezoned?

Mr. Baker responded we are not in that stage yet. If you look at the big map I gave you and the reason for it, Market Square Shopping Center is Phase 1. Phase 2 wrap onto this property. My lease with George Lovelace expired now, and my new lease with Sammy Pierce for this building contain a paragraph inside that if and when I get to Phase 2 development part or any development for the rest of the property, I can give them a short notice and they must move. This lease does not let him stay when we get into development. Development of those properties is in the future. I do not intend for this service station property to stay that I am asking for Sammy, but I need the income from it. I need the income so I can pay the taxes.

Mr. Dyer stated I can definitely see what Ken is saying, because even though there is nothing with a higher zoning category in the City than neighborhood commercial he is adjacent to a shopping center that just happens to be in the County. You are only looking at one (1) side of it. There is another side that is the County side of it. It would not be spot zoning so much as if he went in the middle of a residential area. I mean there is commercial adjacent. It does not have to be in the City.

It seems to me based on the information that we have about the business license, did you check on the utilities?

Miss Scolpini responded I did not check on utilities.

Mr. Dyer stated even with a business license, the last valid one was issued in 2008 which would have expired December 31, 2008. We are looking at all of 2009 and all of 2010. We are sort of close. That is why at one point or if this process had started before the first of this year or if this is something that has just come up in the last two (2) months. I am assuming that Mr. Pierce either came by for a business license, or a building permit, and was told that his business was non-conforming.

Mr. Baker stated I negotiated with Mr. Pierce back in the early part of last year and we just recently did paperwork.

Mr. Dyer stated but you can see how too much time transpired between then and now.

Mr. Baker stated I was not aware at the time that this was going to be a problem at all.

Mr. Dyer stated well unfortunately things that we are not aware of can come back and haunt us. I would like to hear from anybody on the Board that has any questions for Mr. Baker. Do you have any comments?

Mrs. Evans asked even though you are not ready to move forward with the rest of the development with this property, you would not want to go before the Planning Commission and have the whole or part of it rezoned?

Mr. Baker responded I do not know what to ask for until I have the developer who is going to move in there. We have 249 acres if you will look at that sheet. I have to take all of that into account.

Mrs. Evans asked do you anticipate developing it soon?

Mr. Baker responded I hope it would be soon, but it is down the road. I have done a lot of work. I brought the mall into Danville. I spent two (2) years bringing up men. They just do not know how much time it will take. I have covered the whole United States. I have been to New York and Chicago, Detroit. Personally, it takes an awful lot of work. I would like to cover the other subject unless you can tell me the two (2) year deal will suffice.

Mr. Dyer stated I do not know whether we are prepared to judge that right now.

Mr. Baker stated let me go over these then if you will. I have given, since I have owned this property and a lot of other properties, a lot of money to the City of Danville. I just had this printed out. It is not current. It covers just a short period. Out of sixty (60) years it covers five (5). If you will, use some multiplication and look at that end of it. This sheet is a summary of taxes, real estate and personal property. I have three (3) copies of this. This is just covering a five (5) year period for what that might be worth, and what my efforts have been. Incidentally I have a retail and professional license for that whole column, and I look at anything I own out there and so does the Commissioner of Revenue. My license that is current could in a sense, if I was to go into this one (1) building, the service station that Sammy Pierce wants to lease, I would have a license already.

Mr. Dyer stated I do not believe that you would be able to occupy this building with that license, because you would have to have a separate license for each parcel of property.

Mr. Baker stated I do not know about that. I have another building on the Old Mayfield Road, which is eight (8) miles away and we had a situation a couple of years ago when I thought I needed a license for that separate building and I sent money and an application to the Commissioner of Revenue. They called me back and said that I did not need it.

Mr. Dyer stated but that is your ongoing business. If you wanted to have a separate business in this location, I believe that you would have to have a separate license.

Mr. Baker stated well, it would be my ongoing business.

Mr. Dyer stated I mentioned before there are the four (4) criteria that you have to meet in order for us to grant this variance. One (1) of the four (4) is acknowledged by the City that you already meet that requirement. We need to sort of hone in on the three (3) they have indicated that you do not meet. First of which is that there is an undo hardship on you by the strict interpretation of the ordinance, if you would like to address that.

Mr. Baker stated you can see by the mapping that I have given you how important this tract of land is to the whole. When I first went there in 1946, I leased it from the Standard Oil Company. I opened and operated it for ten (10) years. In that building I had a drive-in restaurant, and I built an office on the side for an automobile business. I had a retail, wholesale, all operating out of and in the County. It was not City. I did not ask for the changes, I just had to live with what was there. I could not buy it. It belonged to a local doctor. I had tried unsuccessfully to buy this site. The last time, I went to Mrs. Dr. Newman's home, and said "I know you said that you do not want to sell that service station, but would you make me a price and let me see if I can meet it." She opened the front door and she said "Chester Baker you get out of my house and do not come back if that is what you come for." That was my status. Rutledge Clement did my legal work as long as he was able to. He had told me not to do some of the things that I wanted to do for political reasons. Time went on and I continued to lease it. I then sub-leased it to others operating automobiles, used cars out of there until I could buy this land around it. Now all of the land around it you can see, but I still did not have that building.

Mr. Dyer stated we need to focus on the four (4) issues. What you have is very interesting, but unfortunately that is just the history of it.

Mr. Baker stated I just wanted you to see where I got an opportunity to buy the property how important it was that I must buy it. It became part of the whole.

Mr. Dyer stated the City contends that by denying this variance application it does not create any undo hardship on you, because you can still use the property for other uses and also you have the option of rezoning. How do you counter that? How do you contend that this creates an undo hardship on you by denying this?

Mr. Baker responded I did not have a hardship with this property as long as George Dawson was there and paying the rent. He is not there any longer and I have got the cost of the project, I have got the cost of the taxes, and the maintenance of the building. I have got tremendous expenses and no income. If I do not have income, I cannot meet the expenses.

Mr. Dyer stated the City contends that you could have income if you were to use this building for one of its legal conforming uses or if you were to get the property rezoned.

Mr. Baker stated but my business is not using the building personally myself. My business is to lease the property for income until such time.

Mr. Dyer asked do you feel that this gentleman that wants to lease this for tire sales is the only option you have as far as leasing the building at this time?

Mr. Baker responded I have been trying for some time now to put somebody in it. I have turned down a dozen things that were not appropriate. People that want to put things in it, and I know better. There is no point for me to rent to someone to make a carwash or something of that nature.

Mr. Dyer stated the second criteria. Mr. Dyer stated since all of the property around it, and you own a good chunk of it, is zoned the same category, how do you feel that this piece of property has a hardship that these other pieces of property does not? How is this property being harmed by denying this application that other properties would not be?

Mr. Baker responded I have a tenant, but if you deny it, I will not have a tenant. The other people have businesses going. Market Square Shopping Center has businesses going fluently.

Mr. Dyer asked do you realize that they have a different zoning and that you have the option that your property be rezoned basically with the same thing the shopping center is zoned?

Mr. Baker responded they all had the same zoning until the put the shopping center there.

Mr. Dyer stated but you do have the option to rezone. The problem that we have here is that we are like a jury. There are certain laws that we have to abide by. We can all think that your idea is great and that it should be done, and we still cannot grant you a variance; because we do not have that power. The Planning Commission and City Council has the power to rezone this. They do not have the same constraints on them that we have. In other words, we can have a really good idea and we cannot approve something because it does not follow what are guidelines are. Council does not have that constraint on them. They have the option of doing things above and beyond what we can do on this Board.

Mr. Baker stated it would be up to you to grandfather it back to where it was.

Mr. Dyer stated that is not something that this Board can do.

Mr. Baker stated I have a grandfather assigned to the next building there. It is on the highway. It is my understanding that an animated sign on the US Highway is not permitted; but I have a letter from the State that they have granted me grandfather clause on that sign, which is between the two (2) buildings. So, if I could be grandfathered on the sign, couldn't I be grandfathered on this building as well?

Mr. Dyer responded I think that again it is up to the Board to determine that. It seems to be indications that this building has been in non-use for over two (2) years. If the building is not in use for over two (2) years, then you lose that grandfather status.

Mr. Baker stated I still argue that it has been in use.

Mr. Dyer stated let us get to the third criteria.

Mr. Dyer read the third criteria.

Mr. Dyer asked do you feel like by allowing you to do something that the other property owners are not allowed to do would not be a deterrent to them?

Mr. Baker stated I do not see anything different that the other property owners are not doing. It would be equal to it. I am equal to it.

Mr. Dyer stated the City already agrees that you meet the fourth criteria. We do not have to worry about that one. Is there anything else you would like to add?

Mr. Baker stated I gave you a copy of the lease to Sammy Pierce and a copy of his payments. Incidentally he made a \$500 escrow deposit.

Mr. Dyer asked when was that made? Do you have a date of when that was made?

Mr. Baker responded that was made 5/5/11.

Mr. Dyer asked so, that was last month?

Mr. Baker responded I put it in the bank 5/14/11. Anyway, the dates are on here. He made \$1000 deposit, which was \$500 for escrow and \$500 for the first month.

Mr. Dyer asked do you have a copy of the lease that you had with him?

Mr. Baker responded yes.

Mr. Dyer asked what is the date on that lease?

Mr. Baker responded his term begins February 6. We have modified it. January 15, 2011. That is when he made the first payment of \$1000 and then since then he has made three (3) payments of \$500 each for three (3) months.

Mr. Dyer stated that is good enough. Do we have any questions for Mr. Baker from the Board?

Mr. Baker stated I have still got a little bit more here.

Mr. Dyer stated I think you have addressed all of the issues that we can concern ourselves with. Like I say, we have a limited scope in which we work.

Mr. Baker stated I tried to cover the hardship and I tried to cover the two (2) year.

Mr. Bralley stated I think we have heard enough.

Mr. Dyer stated Mr. Baker I think we have probably covered everything.

Mr. Baker stated here is George Lovelace's lease.

Mr. Dyer stated we have a copy of that. We have covered all of that.

Mr. Baker stated if I cannot put the tenants in it, I do not have anything else to put in it. It would put me out of business.

Mrs. Rich stated Mr. Baker you have given us this already.

Mr. Baker stated that was just more copies. I intended to leave all of these with you.

Mrs. Rich stated ok, thank you.

Mr. Dyer stated I just want to re-iterate that there options that you have above and beyond asking for this variance. Primarily that is to find somebody to go in that building who does fall within the proper zoning category and that would be any type of service business. Is that correct?

Mr. Gillie responded anything that would fall under Neighborhood Commercial District, so services and some other stuff.

Mr. Dyer stated if you are not familiar with all of those, Mr. Gillie can certainly give you a list of all of the businesses that could go in there. The other alternative again is to have it rezoned to Highway Retail Commercial. Would that be next?

Mr. Gillie responded Highway Retail Commercial would be the next one up if he is trying to do like the planned shopping centers. There are other districts that he could possibly look at.

Mr. Dyer stated those folks that make those decisions have greater leeway than we have.

Mrs. Rich stated we are pretty limited.

Mr. Dyer asked is there any questions for Mr. Baker? Mr. Baker we appreciate your time. You can take a seat.

Mr. Baker stated I am sure you see my situation. I worked pretty hard to end up with one (1) tenant, so I am trying to do something. This is not forever. We will find something better later, but let me have the income from it now.

Mr. Dyer stated we will consider that.

Mr. Baker stated for what it is worth, I ran into Margie Farmer yesterday in the hospital and she told me that she would have no objection to this whatsoever.

Mr. Dyer stated we have the comment sheet that states there were no objections to any of the letters sent out.

Close the Public Hearing.

Mr. Dyer stated I want to make sure that everyone is comfortable with the fact that the business was non-operating for over two (2) years.

Mr. Hiltzheimer stated at least two (2) years.

Mr. Dyer stated I think it is unfortunate that Mr. Baker waited probably a little bit too long to try and find another tenant.

Mr. Hiltzheimer stated I think he did too.

Mr. Dyer stated that is not anything that we can do anything about.

Mr. Hiltzheimer asked is the underground tank still there?

Mr. Dyer responded no, it has been removed. They were actually on a separate piece of property.

Mrs. Evans stated he could go before the Planning Commission and have it rezoned, which is what I recommend.

Mrs. Evans made a motion to deny Variance Application PLVAR20110000216 based on the fact that it does not meet the criteria. Mr. Hiltzheimer seconded the motion. The motion was approved by a 5-1 vote (Mr. Bralley voted in opposition).

2. *Variance Application Number PLVAR20110000217, filed by Jesse Brandon, requesting a variance from Article 7, Section B, Item 3, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 320 North Ridge Street, otherwise known as Grid 1716, Block 008, Parcel 000008 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to continue a legal nonconforming use (convenience store) that has been discontinued for more than two (2) years.*

Eighteen (18) notices were mailed to surrounding property owners. Three (3) respondents were unopposed; zero (0) respondents were opposed.

Mr. Dyer read a statement of conflict of interest.

Open the Public Hearing.

Present on behalf of the request was Attorney Jerry Williams. Mr. Williams stated I am the attorney for Jesse Brandon.

Mr. Dyer stated probably from the prior case you are aware of the four (4) criteria that you are required to meet in order for a variance to be granted. I would like for you to address those four (4) issues if you do not mind.

Mr. Williams stated I am speaking for Mr. Brandon and if he needs to correct me he will. Mr. and Mrs. Brandon operated this store. This store has been in operation for years and years, since I was a kid. This is one (1) block up from where my office is on Ridge Street. When Mr. Brandon bought it from the former owner, I think it was not in operation for a while; but he started it back up and operated it for a while. It just got to be that he could not make any money. He and his wife were both working at the time. They had to hire someone to run the store. It just was not producing enough revenue. It was producing red ink instead of black ink so to speak. They decided to abandon it. In the meantime, Mr. Brandon and wife have retired. They are on Social Security and/or pensions. They decided that they could get a little more income by starting the store, which they will work. If they are working they would not have to pay outside salaries and that sort of thing. It is a hardship in terms of they need more income, as we all do in this economy. They would contend that it is a hardship for them not to have it, because it could be revenue.

Mr. Dyer stated I am going to refrain from any type of comment, so if any of the Board members would like to address Mr. Williams on this.

Mrs. Evans stated I would like to ask again about the hardship. According to our notes, this could go before the Planning Commission to be rezoned. Have you thought about that?

Mr. Williams responded I think he thought about it. As Mr. Brandon understood it, and as I understood it at the time, this was the quickest route in terms of less expense to him, in terms of getting it done. This is the quickest route in terms of having it heard in a more timely fashion. He thought he met the criteria to have it done this way, to get the variance.

Mrs. Evans asked what would it need to be rezoned as? Would that be spot zoning?

Mr. Gillie responded there are a couple districts that Mr. Brandon could ask for. In conversations with him we discussed the different options. Central Business District is at the intersection of High Street, so it is approximately one (1) property away. In the property itself, Mr. Brandon has additional property that could go over to High Street. In Staff's opinion, it could not be considered spot zoning, because it is within reasonable proximity. Mr. Williams' office is also zoned Central Business District and as he said, he is just a block over from this. The Central Business District would allow for retail sales on the first floor and apartments on upper floors. That was the option that is available.

Mrs. Evans stated that would take at least two (2) months.

Mr. Gillie stated at least two (2) months, more than likely two (2) to three (3) because of the timing between this Board and that Board.

Mr. Williams stated the hardship not generally shared by other property is that this property is going north towards the river, toward Kentucky Fried Chicken. This is the only retail or business type establishment. Starting at Monroe Street it is all residential. Coming south there is WBTM on one (1) side of the street. There is one (1) more residential coming down at the corner of High Street and Ridge Street. The rest of it starting at High Street coming south toward City Hall so to speak there is my office, Joyce Hill's office, and then American National Bank. The other properties are not really included. It is not really apropos in this case because the other properties have never been a sort of convenience store or retail. It is mostly business. Going north is residential, but this store has been there even before those houses. I am not sure that this is apropos to the situation. This has been a store for all of this time. It just changed its character because Mr. Brandon could not do it. It got grandfathered in. He could not afford it at the time he stopped operating it as a store.

Mrs. Rich stated I think that he had authorization of a variance.

Mr. Dyer stated yes, the City has agreed that on the same criteria.

Mr. Williams asked what is it that they disagree with?

Mr. Dyer responded it is the first and the third.

Mr. Dyer stated the third criteria.

Mr. Dyer stated if you have Mrs. Rich's copy, you can see the City's comments, Planning Staff's comments.

Mr. Williams stated yes, ok.

Mr. Williams asked are there property owners who object to it?

Mrs. Rich responded no.

Mr. Williams stated well that answers that question. Doesn't that answer itself? I mean, if there was substantial detriment to other property owners they would come forward, I assume and speak. Mr. Brandon himself owns the lot of the adjacent property as you can see on the map. I would submit to you if most of you are like me, you can see from this map on the lower corner where it says Williams that my parking lot and my building is not included, but my parking lot is. Mr. Brandon and I were talking about it and who is going to object? The store has been there for years. I do not know who would object besides maybe some of the people that are in the residential area just north of where the store was. Apparently they do not object. This has not been a store where beggars hang out. It has not been a store where beer and wine, and that sort of thing are in the parking lot. It has been a community store. I would submit that the lack of any complaint on the part of the neighbors or property owners who were, and I certainly do not think anybody could complain that it is detrimental to the value of the property; because like I said it has always been a store. You would think that Ms. Red and Mr. Thomas, the one next to him. Ms. Red has been there for years. She owns two (2) or three (3) properties. Mr. Thomas has been the apartment building. That is Lawrence Thomas. That is an apartment building. As far as I know they have not objected to Mr. Brandon has gone and talked to them; and told them what he wanted to do. They were happy for him to have it. What is the last one?

Mr. Dyer responded they agree that you meet that criteria. You do not have to worry about that one. It was just these two (2) that needed to be addressed.

Mr. Williams stated I would be happy to address anything that anybody would like for us to address.

Mr. Campbell stated I would like to hear something from Mr. Brandon.

Mr. Brandon stated I purchased this property some years ago and I turned it into what it is now. I have got quite a bit of money invested in it. It is a hardship as far as my wife and I are concerned with not enough income coming in. I am too old to go out and sale what I know, my experience, to the public. You all will have to excuse me; because I am not a public speaker. You are speaking to somebody who actually knows the whole history. I turned this piece of property around to the point that maybe one day it would benefit me. We decided to go back and open the store up. We do not have enough income coming in. This is the reason why I wanted to go back and re-open the store. Now I am hitting a brick wall. The City is forcing me as far as tax is concerned as well as other people. This is one (1) reason I am here this morning. I am not a public speaker. I am just merely asking. I am at the point now where I either do or don't. I am hoping that you will rule in my favor, so I can have a little more income coming in. Are there any other questions that you would like to ask? Forgive these tears. It is a tear of saddening and a tear of joy. I tried to go by the rules that are set before me. You all do not have any trouble out of me. I obey the law, but you are still forcing me to do things that I am not able to do, such as taxes. Within the last fifteen (15) years, I have paid the City about \$20,000 dollars for taxes. You are still riding my back. I am here for you all to help me. You know who I am, most of you know. I am not a great speaker, so I hired Attorney Williams to speak for me. If you all can read through these torn words that I have put before you and rule so that I can have a little more income coming in, I would appreciate it. Thank you.

Close the Public Hearing.

Mrs. Evans asked if it was rezoned as you are suggesting, does that affect his tax status?

Mr. Gillie responded I am not the real estate assessor. For me to say if that would affect his tax status, I cannot say for sure. The taxes are based on a number of factors. Zoning is a part of it, but it is not the only factor on taxes. It is what the building is valued at, what it can be used for, what it is

being used for, the condition of the building, and a multitude of other things. Changing the zoning could affect his taxes, it also could not. I am not the tax assessor, but that is only a portion of what makes the tax value on a building.

Mr. Campbell asked what is OT-R zoning?

Mr. Gillie responded it is Old Town Residential.

Mr. Campbell stated explain that to me.

Mr. Gillie stated it is a single family residential category. It allows for single family homes. You can get duplexes by Special Use Permit. There are other things that are allowed by Special Use Permit within that district. Churches are a use permitted by right, and you can go through daycares, adult daycares, and some other additional uses that are familiar with a residential district.

Mrs. Evans asked could he get a Special Use Permit for this?

Mr. Gillie responded no, it would be multi-family in a commercial. The Old Town Residential District does not allow for a retail convenience store. He needs to change the zoning to have a convenience store.

Mrs. Evans asked did he pay money for this process to begin?

Mr. Gillie responded I met with Mr. Brandon and discussed his options on the building, because it has been vacant for such a long period of time. I presented a rezoning application to him as well as a variance application. I explained the time that both of them take and the cost associated with each, and let Mr. Brandon decide which route he wanted to take.

Mrs. Evans asked if we denied it and he went forward to the Planning Commission, would he again have to pay a fee?

Mr. Gillie responded he would have to pay a fee and go through that process. The fee associated with any application is not really to the City. I am required to send notices out to property owners within three hundred (300) feet. I also have to put legal ads in the newspaper. Now, for the Board of Zoning Appeals, since it is a single meeting, I have to publish the ad twice, two (2) weeks before the meeting and a week before the meeting in the Danville Register & Bee. The Planning Commission case when someone asks to rezone something, I have to run four (4) legal ads. Twice before Planning Commission, two (2) weeks before the meeting and a week before the meeting; and also two (2) weeks before City Council and a week before City Council. The fee is higher to rezone a property just because there are more advertising requirements. You also send the letters out to everyone twice as opposed to sending them once. You still notify people within three hundred (300) feet. It is just that you are doing everything double. The cost to rezone is \$350 to apply, for the Board of Zoning Appeals it is \$200 dollars. It is not necessarily double; because of the way it is some of the staff time is a little less. We have already done reports and everything else to go to City Council. We do not have to spend as much time before doing research, so that is why the cost is different. Otherwise, the money is going to the newspaper to pay for the legal ads and the postage for sending things out to surrounding property owners.

Mr. Campbell made a motion to approve Variance Application PLVAR2011000217. Mrs. Rich seconded the motion. The motion was approved by a 4-1-1 vote (Mrs. Evans voted in opposition and Mr. Dyer abstained).

II. APPROVAL OF MINUTES

Mrs. Rich made a motion to approve the minutes from the March 17, 2011 meeting. Mrs. Evans seconded the motion. The motion was approved by a unanimous vote.

III. OTHER BUSINESS

Mrs. Evans asked is there a meeting scheduled for next month?

Mr. Gillie responded not so far, but they have until the 20th to apply.

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

APPROVED