

BOARD OF ZONING APPEALS MEETING
August 18, 2011

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

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

Mr. Hiltzheimer arrived at 10:02 a.m.

I. ITEMS FOR PUBLIC HEARING

- 1. Variance Application Number PLVAR20110000301, filed by Nancy Blair, 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 1908 South Boston Road, otherwise known as Grid 4717, Block 002, Parcel 000029 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.*

Eleven (11) notices were mailed to surrounding property owners. Five (5) respondents were unopposed; zero (0) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mrs. Nancy Gilbert Blair. Mrs. Nancy Blair stated I live at 221 Green Acre Drive. The store itself is on 1908 South Boston Road. It was owned previously by my parents as a little mom and pop grocery store, which they were in for about fifteen (15) or twenty (20) years. It has been empty for a while, because I had a sick husband, my parents had died, and I just did not want to fool with it. That is why the business just fell apart. It has been rented a couple of times, but the people just could not seem to do very well. I am just interested and I have a client here who wants to open a bargain store, and we want to do some improvements on the property. I know it is not good for property to be closed for a long period of time, so I decided that if it would work out with her, we would try to do this and then I find out that I cannot.

Mr. Dyer explained the responsibilities of the Board, because Mrs. Nancy Blair stated that she did not understand them.

Mr. Dyer asked could you briefly give us some reasoning why you feel that you meet those four (4) criteria?

Mrs. Nancy Blair asked why I meet those?

Mr. Dyer responded yes.

Mrs. Nancy Blair stated I am not sure what they are.

Mr. Dyer read the first (1st) criteria and explained it.

Mrs. Nancy Blair asked why is it a hardship on me for having it?

Mr. Dyer responded why the strict enforcement of this causing hardship.

Mrs. Nancy Blair stated well, the fact that I cannot let somebody rent it and we did not figure that out.

Mr. Dyer stated the City contends that you could rent it to somebody that could rent it as an appropriate use. The problem we have here is the zoning. You are zoned Neighborhood Commercial, which does not allow for retail uses. That seems a little odd, but that is the way it is. We did not do that. City Council did that. You could use it for some type of professional office, and insurance agent, or some other type of use. In other words, they are not saying that you cannot use the building. They are saying that you cannot use it for retail use.

Mrs. Nancy Blair asked even though there is a store right across the road?

Mr. Dyer asked is the Country Boys store a different zoning, or are they grandfathered in?

Ms. Blair responded they are grandfathered in.

Mr. Dyer stated they are grandfathered in. In other words, they were using that building when the zoning came into place and as long as you continue to use the building for that use, then you are grandfathered in. Your use was not grandfathered in because you ceased operation for more than two (2) years. Are you in agreement that the building has been un-used for two (2) years?

Mrs. Nancy Blair responded yes.

Mr. Dyer stated when you cease using a building for more than two (2) years; you lose that grandfathered in option.

Mrs. Nancy Blair asked am I just limited according to the things that can go in there?

Mr. Dyer responded yes, unless you can convince this Board otherwise.

Mrs. Rich stated she can always go back and get it rezoned maybe, but they are pretty unwilling to spot zone.

Mr. Dyer asked is there anything else that you would like to add?

Mrs. Nancy Blair responded the only other thing is that I had already told Sandra Gibson that she could rent the store before I was aware that I had to do this. She had a store out on Westover and she lives out near this store on 58. We were just shocked that I could not allow her to do it.

Mr. Dyer stated unfortunately a lot of people find themselves in your situation. Normally you would like a building like that on a main highway that had been used a store there would be no problem. When this property was rezoned, you were probably notified of it; but did not come by and check how the zoning on it was going to be. Is there anything else that you feel like you can add?

Mrs. Nancy Blair responded I would appreciate it if you would do this. I do not know anything else.

Mrs. Evans asked have you considered going before the Planning Commission to ask that it be rezoned?

Mrs. Nancy Blair responded I did, but it would take longer and Sandra had already told the people on Westover that she was closing her business there. I just took the quickest rather than having her wait a longer period of time.

Mr. Dyer stated you are not the only person that has done that route. The difference is the Planning Commission, who is just an advisory board that just advises Council, they can do whatever they want to. We are required by law to find that you meet these four (4) criteria. If we do not feel that you meet these four (4) criteria, even if we think you have a great idea, we do not have the power to do that. That is the difference.

Mrs. Nancy Blair stated their hands are tied.

Mr. Dyer stated our hands are tied. Council can do whatever Council wants to do, because they are the governing body. We are not.

Mr. Hiltzheimer asked do you think that Council would go along with rezoning it if they did get the petition?

Mr. Gillie responded that is an impossible question for us to answer. I can never tell you what nine (9) people are going to think any given day. I have no clue.

Mr. Dyer asked since you advise Planning Commission who then advises Council, what would planning staff's opinion be?

Mr. Gillie responded a straight HR-C zoning, we would probably recommend denial. We could possibly work with the applicant on conditions to the HR-C based on the size of the property and maybe eliminating certain uses. It is up to the applicant as to whether they are willing to proffer those conditions. We are not allowed to request those. We could help them formulate something that would help them in their case, but again this is all speculation. We just do not know.

Mrs. Evans asked would eliminating uses eliminate retail sales?

Mr. Gillie stated there are two (2) things going on. Planning Commission at their last meeting requested staff to look into limited retail sales in the Neighborhood Commercial District. They are going through the process now of a potential Code change, which could address this concern. I am not saying that it is going to, because that has not been formulated and has not been adopted by City Council yet. This may take care of itself in the immediate future without the need for a variance, it may not. The conditional, if it was staff, and again I am going to give some hypotheticals, we would not want to see another car lot or something like that there. Eliminating some of the automobile repair uses, car sales, and things like that would make it more palatable for staff to make a recommendation for approval; but that would have to be a conditional rezoning. The applicant would have to proffer those conditions. There is a lot of ifs involved. Right now, the Code change that Planning Commission has recommended may take care of this, but we have to see what City Council adopts. At this point I cannot say, but I think there is action that may help her in the near future. You just do not know until it occurs.

Mrs. Evans asked do you anticipate that change going to Planning Commission in September?

Mr. Gillie responded yes.

Mrs. Evans asked it could potentially be two (2) to three (3) months down the road?

Mr. Gillie responded if Planning Commission would agree in September, it could be adopted by City Council in October or November. They have asked us to go and look at some limited retail sales in the Neighborhood Commercial District. We have some ideas on it. We have not finalized those yet, so that is why I am not able to discuss it; but I think that would probably take care of this situation without the need for a variance. I cannot say that it definitely will because first off I do not know what Planning Commission would agree to and I do not know whether or not City Council will adopt it. All I can tell you is what we are recommending.

Mr. Dyer asked Mrs. Nancy Blair do you understand all that was said?

Mrs. Nancy Blair responded sort of.

Mr. Dyer stated this is not the first time this issue has come up before this Board. Apparently Council is going to look at the option of allowing some retail sales in the zoning category in which you are located and that may happen as early as September for the Planning Commission and then October for City Council for final approval. That is probably quicker than you could do it yourself if you went and made application. We will see what this Board does, but that may be an option for you.

Mrs. Nancy Blair asked should I just wait?

Mr. Dyer responded let the Board make its decision and you can follow up with Mr. Gillie. He can inform you of what your options will be.

Present on behalf of the request was Ms. Sandra Gibson. Ms. Gibson stated I am the one that wants to open the store. When I spoke with the gentleman, when I came down the first time, he told me that if I could do a partial store, probably fifty (50%) percent of the store as in drinks, cakes, and stuff like that. That is something that I do at the old store, but I am willing to do more of it. If we can go into the store, I can do fifty (50%) percent of it like the mini market beside me. The main reason that I did not want to is because I did not want to hurt them. That is something that I am willing to do. I have pictures of the items that I have in my store.

Mrs. Rich asked do you do like a catering?

Ms. Gibson responded no. I have in the past. It is a variety store. My definition of variety is all different types of items: new items, items that have been discontinued from other stores that you buy in small quantity. At the other store I sold drinks, cakes, nabs, stuff for the workers that did come in. It is sort of like a mixture here and not really all of one (1) thing. I feel like I could be a good asset to the community. We have a store there, and we have flea markets, and the NASCAR store are all right there within a mile. I feel like the items that I sell would help the people in that area or anybody that is passing through. There are a lot of people that like antiques, collectibles, and stuff like that, even items that shows that they have visited here. If anybody would like to see the pictures of anything that I have in the last store I have those. It is new and used items.

Mr. Dyer stated would you please pass those around.

Mr. Dyer asked if she were a convenience market, does that fit within the definition of what will go in Neighborhood Commercial?

Mr. Gillie responded you can have a convenience store. That is the one (1) thing of retail sales that is permitted within the area.

Mr. Dyer asked how do you define a convenience store as opposed to any other kind of store? Any store is convenient if you need to go shopping.

Mr. Gillie responded there is an actual definition in the Zoning Code. Would you like to read the whole thing?

Mr. Dyer asked does it restrict what you can sell?

Mr. Gillie responded yes it does.

Mr. Dyer asked if she were to have over fifty (50%) percent of her sales in food sales, does that make that a convenience store?

Mr. Gillie responded it has to be pre-packaged foods, drinks, other things like that. The other material that she sells, the rehab items, and other things cannot be more than fifty (50%) percent of her gross receipts. There is a limitation on how that is.

Mr. Dyer asked how is that determined?

Mr. Gillie responded we would look at the stock she would have after she is in operation. When she turns in her inventory for taxes we can see what the sales are similar to what a restaurant does verses their alcohol sales.

Mrs. Evans stated that would probably be after assuming Planning Commission and City Council approved everything. It is probably going to be after that before you get those receipts anyway. Correct?

Mr. Gillie responded we would have to look at her stock and everything else before she would open.

Mr. Dyer stated she could open under one (1) criteria and then transition her merchandise into another if that passes.

Mr. Gillie stated if it passes, correct; but remember variances run with the life of a property.

Mrs. Evans asked your sales for cakes, drinks, and things now is it fifty (50%) percent?

Ms. Gibson responded no, I did not have to have fifty (50%) percent. I can work on that. That would not be a problem.

Mrs. Evans asked do you have any idea what percent it is?

Ms. Gibson responded right now, the guy next door done most of that, I would probably say fifteen (15%) percent.

Mrs. Evans asked who is the guy next door?

Ms. Gibson responded Hudson Welding. He had those machines in there. That is where most people bought their stuff. I really did not stock it, because I did not want it to go bad.

Close the Public Hearing.

Mr. Snipes asked when there was an operation in before, it was non-conforming at that time also was it not?

Mr. Gillie responded it was legal non-conforming at that time, correct.

Mr. Snipes asked that part was grandfathered in then?

Mr. Gillie responded correct.

Mr. Snipes stated the problem now is that it has been vacant for two (2) years.

Mr. Gillie stated it has been vacant much longer than two (2) years.

Mrs. Rich asked is it possible to table it and wait, or do we have to make some kind of definite action now?

Mr. Dyer responded you can make the motion to table it and we can vote on it.

Mrs. Rich asked what do you think?

Mr. Dyer responded it seems to me that our decision is pretty cut and dry, but that does not mean that there are not other options to allow this lady to proceed with her business plan.

Mrs. Rich stated there is an option for her to be able to proceed.

Mrs. Rich made a motion to table Variance Application PLVAR20110000301 until such time as Planning Commission has made a recommendation on proposed zoning changes in the N-C Districts. The motion died due to the lack of a second.

Mr. Campbell made a motion to deny Variance Application PLVAR20110000301. Mr. Snipes seconded the motion. The motion was approved by a 6-1 vote (Mr. Bralley voted in opposition).

- 2. Variance Application Number PLVAR20110000302, filed by Ricky Jones, requesting a variance from Article 3M, Section A&D and Article 3M, Section E, Item 2, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 1.57 acres of South Boston Road, otherwise known as a portion of Grid 3715, Block 001, Parcel 0000012 of the City of Danville, Virginia, Zoning Map. The applicant is requesting variances to build on a lot of record without street frontage.*

Nine (9) notices were mailed to surrounding property owners. Three (3) respondents were unopposed; one (1) respondent was opposed.

Mr. Dyer stated I think there is probably some background that we need to be informed about. Is this part of some type of law suit that the City had agreed to?

Mr. Gillie responded you can actually open the public hearing, because the City has comment to make during the public hearing portion of it.

Open the Public Hearing.

Mr. Gillie stated this is the result of a NFFA, City of Danville, and multiple party runway extension and runway protection zone expansion. In a nut shell this is what the courts passed down to the City stating that this is what will be approved and this is what will be placed on record. As part of the settlement in the suit, the City has agreed to support the necessary variances to obtain and have a lot without frontage. The road used to be a private road. It is now going to be; well it is not a public street per say, it will be a publically maintained road. We are taking over the maintenance of the road as part of the settlement, so the lot, while not open on a public street, will be open on a publically maintained facility.

Mr. Dyer asked is this just a right-of-way or is there actually some kind of way you can travel on it?

Mr. Gillie responded you can travel on it. It is a paved thing. The City will pave it. The City will maintain the pavement. It is not a right-of-way because it is not dedicated for public use although it is now ours to maintain. It is rare for the case that you will see the City say that it meets all four (4) criteria. In this case it does meet all four (4) criteria, because this is what the court has said "here it is, this is what you will do and make it happen." That is why we are here, to make it happen.

Present on behalf of the request was Attorney Michael Nichols. Mr. Nichols stated to be honest; you have said just about everything that I was going to say. That presentation is exactly why we are here. We have an agreement that was ratified by order of the Circuit Court where in the City agrees to support the variance before you today. I do not believe there is any opposition to the request for a variance. If the Board has any questions about the specific item that we are discussing, I will certainly yield to Mr. Jones and we can have that discussion. As some public meetings tend to run over, what he said is exactly why we are here. We are here to make it happen.

Present on behalf of the request was Mr. Ricky Jones. Mr. Jones stated I am the owner of the property. As was said by the Council and by the Courts I have this piece of property that I am looking to do some construction on at a future date. I have nothing in plans right now. I know I have to abide by the Zoning Ordinances, which I am well aware of. That is all I have to say.

Mr. Dyer asked is this piece of property contiguous to any other property that you own that does have road frontage?

Mr. Jones asked do I have other road frontage?

Mr. Dyer responded in other words, is this piece of property contiguous or adjacent to any other property that you own solely?

Mr. Jones responded no.

Mr. Dyer asked that has road frontage?

Mr. Jones responded no.

Mr. Dyer stated this is basically an orphan lot.

Mr. Gillie stated it is now. It is the remnants of a piece that was taken to make the runway protection zone, so no construction would occur in the area for the safety of airplanes. This is the residue left over after that was taken out.

Mr. Dyer asked why are they giving him this residue back instead of just purchasing it along with the rest of the property that they bought?

Mr. Gillie responded the runway protection zone is kind of a cone that goes out and squares off. We got the portion of it that is out and squared off. The government did not want the residue, did not need it, the City did not want, did not need it. Mr. Jones had a need for it and wanted it, so to save money on the sale and everything else they have agreed to turn that back over to him.

Mr. Dyer asked are you agreeable to having this piece of property returned to you?

Mr. Jones responded correct.

Mr. Dyer asked you are not being forced to take this piece of property in lieu of being paid?

Mr. Jones responded correct.

Mr. Dyer stated it just seems to me that if you buy a piece of property and you take away the total value of the piece of property that they should buy that too.

Close the Public Hearing.

Mr. Campbell made a motion to approve Variance Application PLVAR2011000302. Mrs. Evans seconded the motion. The motion was approved by a 7-0 vote.

II. APPROVAL OF MINUTES

Mr. Hiltzheimer made a motion to approve the minutes from the June 16, 2011 meeting. Mrs. Evans seconded the motion. The motion was approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie stated I do not have any cases filed yet for next month. The deadline is tomorrow. I do not believe I am going to have any cases for next month. You may have a month off, but at this point I cannot say for sure. It is not looking like we are going to have a meeting. At the last meeting I talked to everyone about potential training for the Board of Zoning Appeals. I have also talked to Pittsylvania County and some of the surrounding counties. They are interested in joining together to have a training session. What I wanted to know is what works best for everyone? Would an all day session where you would start in the morning, have lunch, work in the afternoon be better? Would you rather have just a couple hours in an evening? What kind of training would you like to have? We can do a full week course if we wanted to, but I did not think anyone would want to do a whole week's worth of training. I figured a day or two (2) or even an evening would be best. What is the preference of the Board, so I can work on scheduling this?

Mr. Hiltzheimer responded an all day session for me.

Mr. Dyer stated it would depend on what day it is.

Mr. Gillie asked is there any days that are better than others?

Mrs. Rich responded Mondays are good for me.

Mr. Hiltzheimer stated Mondays would be good for me.

Mr. Dyer stated yeah, I can do a Monday.

Mr. Campbell asked what was good for the others?

Mr. Gillie responded since we are scheduling it, they said they would work around our schedule. I just have to work with the gentleman that is doing the training. He is pretty flexible. He has some things going on for about a month, but after that he is good. The training would probably occur sometime in October or November if we can work it out.

Mr. Dyer asked how many total hours are we looking at being in class?

Mr. Gillie responded it would probably be an eight (8) hour class.

Mr. Dyer asked if we did two (2) hours in the evening, would we have to do four (4) classes?

Mr. Gillie responded he could do it as a four (4) hour session one (1) evening. The problem with that is you eat dinner, you start at six (6), by ten o'clock (10:00) you are tired and you start losing stuff. He would prefer to do an all day thing where you would start at eight (8:00) in the morning, work, we would have lunch, and then finish off in the afternoon. He said that you get more out of it if you can do it that way. You can stretch out the same amount of material just a little longer and you get more out of it that way.

Mrs. Evans stated Mondays are not good for me. The third Monday is definitely out.

Mr. Campbell stated Thursday is good for me.

Mrs. Rich stated Thursday is good for me as well.

Mr. Dyer stated Thursday is bad for me.

Mr. Hiltzheimer stated Thursday is not good for me.

Mr. Dyer asked would he do it on a Saturday?

Mr. Gillie responded I can ask him. I did not ask him about weekends, because I did not figure anyone would want to give up a Saturday. I can.

Mrs. Evans stated I would prefer not to.

Mr. Dyer stated we have objections to that.

Mr. Campbell stated I would not be opposed to having something two (2) evenings. Would you all provide the dinner?

Mr. Gillie responded yes.

Mr. Campbell stated I would not have a problem.

Mrs. Evans asked what about Wednesdays?

Mr. Gillie responded I think Wednesdays may be an issue for the trainer, especially Wednesday evening that is church night as people call it and he had said that Wednesdays may be problematic. He did not say it was out.

Mrs. Evans stated I was just thinking about Wednesday during the day or if you could do half days.

Mr. Campbell asked what about if we did two (2) weeks, one (1) each week?

Mr. Gillie responded that is a possibility as well. I just have travel costs for him, but that is not that big a deal. I have got some money available for that.

Mr. Campbell stated it seems like most of the Board could do Monday.

Mr. Dyer stated two (2) consecutive Monday evenings or something.

Mr. Gillie stated I will check with my counter parts in Pittsylvania, Halifax, and Henry and see if they have any issues. We will try and schedule something for two (2) concurrent Monday evenings. I will let the Board know further on as we go through it.

Mr. Snipes stated I am flexible.

Mrs. Evans stated I am assuming it will be in Danville.

Mr. Gillie stated we are looking at having it in Danville. The last time we had the training it was actually in Chatham. I do not know if anyone remembers that, but since I am the one that is coordinating it, the training is probably going to be here.

Mr. Campbell stated I think the training needs to be consecutive. I do not think it needs to be one (1) week and then two (2) weeks later.

Mr. Dyer stated it might be easier to absorb the information if it is not crammed into one (1) day.

With no further business, the meeting adjourned at 10:33 a.m.

APPROVED