

**BOARD OF ZONING APPEALS MEETING**  
**March 15, 2012**

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

Mr. Nicholas called the meeting to order at 10:00 a.m.

Mrs. Evans made a motion to elect Mr. Nicholas as Chairman pro-tem. Mrs. Rich seconded the motion. The motion was approved by a 4-0 vote.

**I. ITEMS FOR PUBLIC HEARING**

- 1. Variance Application Number PLVAR20120000066, filed by First State Bank, 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 837 North Main Street, otherwise known as Grid 2706, Block 029, Parcel 000008 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance for continuation of a legal non-conforming use (five-unit dwelling in a single family district) after it has been discontinued for more than two (2) years.*

Thirty-three (33) notices were mailed to surrounding property owners. Four (4) respondents were unopposed; seven (7) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Horice Shoeman, Chief Credit Officer and Mr. Kelvin G. Perry, President of First State Bank. Mr. Shoeman stated this property was converted into a five (5) unit building in 1986 by previous owner Morris Deshazor, then sold in 2004 to a gentleman by the name of Bobby Bennett. We took possession of the property in August 2009. We have been attempting to sell the building. We had a potential offer on the table. We had a potential buyer and we took a contractor out to look at the renovation work that needed to be done. We went to turn on the utilities to check the heating and air conditioning systems and we were advised at that time that the building could no longer be used as a five (5) unit building. The potential buyer did not want to enter into a contract until they knew that the building could continue as a five (5) unit property. That is the variance. You have in addition to that one potential buyer, we have had a couple of other potential buyers that were looking at it. We were also advised of a grant that we can offer potential buyers for \$15,000 in renovation money through a program that we have through the Federal Home Loan Bank. We have similar programs that are operating in the City right now that we use for weatherization that we are working with the City on. This program will allow us to sell the property and provide the potential buyer with what we have. Therefore, we are asking for the variance. Whoever buys the property will have to do some significant renovations to the property and they will be upgrading the property. We have also offered to provide those individuals financing if they credit qualify.

Mrs. Evans asked do you perceive being able to sell this property if it was returned to a single family dwelling or a duplex?

Mr. Shoeman responded no we don't. It is a very large house, which you've found with a lot of the houses in that area is that the utilities are so high that it becomes very difficult for a lot of folks to afford the properties of that size. In the folks that we have talked to, they would not have an interest in it if it was just a single family.

Mr. Nicholas asked is this the only multi-family dwelling in that area?

Mr. Shoeman responded no, I don't believe so. I believe there are similar units. In fact there is a multi-family unit right next door.

Mr. Perry stated and there is a group home a couple of houses before this property.

Mr. Shoeman stated the property, from the outside does not look like a multi-family unit. The exterior has not been disturbed. It looks like a large single family house.

Mrs. Evans asked are the apartments accessible from inside the house?

Mr. Shoeman responded two (2) of the apartments are accessible from the front. The other three (3) are accessible from the back. The entrances are on the back of the property.

Mrs. Evans asked do you know what the house next door, Mr. Staubus is used for now?

Mr. Shoeman responded no I do not.

Mrs. Evans stated it used to be a hair salon. Correct?

Mr. Shoeman responded I am not sure.

Mr. Perry asked is that the property on the right?

Mrs. Evans responded if you are facing.

Mrs. Rich stated it would be on the left if you are facing the building.

Mr. Shoeman stated on the left if you are facing the building. On the right there is a multi-family building. That is the one with the flat roof.

Mr. Nicholas asked is there any kind of parking?

Mr. Shoeman responded there is parking in the back that can be accessed.

Mr. Nicholas asked how many spaces are in that back alley?

Mr. Shoeman responded it is a little overgrown right now, so it would be difficult for me to tell. I would think that there is sufficient space back there to park at least four (4) cars.

Mrs. Evans asked and you acquired this in 2009?

Mr. Shoeman responded yes.

Mrs. Evans asked do you know when was the last time anyone lived there?

Mr. Shoeman responded I believe the last person was in late 2009.

Mrs. Evans asked so they were in there before you acquired it?

Mr. Shoeman responded yes.

Mr. Nicholas asked how many people were in there, do you know?

Mr. Perry responded well the owner actually lived in the unit that is on the right hand side. We acquired it through a foreclosure because he decided that he didn't want to pay for it any longer. He did have a few tenants in there at the time, but at the end of the transaction he was living in the far right unit himself.

Present in opposition to the request was Mr. Linwood Duncan. Mr. Duncan stated I live at 830 North Main Street, across from this particular property. I have lived in this house across the street for thirty-one (31) years. If I might take council on just a little piece of history, Joyce Glaise is one (1) of the principal advocates for down zoning of the inner city in the early 1990's. Council through its action had ratified subsequently in each of its Comprehensive Plans agreed that for the sanctity of the inner city, to return stability to the inner city, it was important to down zone the properties as they became available, so that people to use Joyce's phrase as I remember from the time as a reporter "weren't crammed into small units." Council included this particular section in the Ordinance for the specific purpose of being able to return these properties to a better use for the integrity of the inner city. As to the point that the gentleman raised that this looks like a single family dwelling, it doesn't. When Mr. Deshazor bought the house and this was prior to Council's action, the previous owner had ripped the mantles out, taken the fixtures out, the stair case was taken out, forty (40%) percent of the front porch was enclosed, the front door was taken out with its accompanying lights and transom. It in no way looks like a single family dwelling. It looks like what might have been one, but it does not look like one. The property owners in the area have been pretty stable over the years. Mr. Staubus's house is now rented as a single family. The multiple family unit next door, which the gentleman referred to as a four (4) unit apartment building, was built there before I moved to North Main in 1981. It was built as a four (4) unit apartment. There is only one (1) other mutli-family dwelling that was previously a single family dwelling two (2) doors up the street from me. That house, this particular statue, variances have been sought before Council twice. Once that house, which I referred to as two (2) doors up the street from me, a fellow bought it, added on to the back, and then went to Council and said "I should have four (4) apartments instead of two (2)." Council disagreed and that property has never been four (4) apartments. The apartment at the corner of Walker was a cottage, is a cottage, and the owners who were moving to West Main Street went to Council asking that it be an antique shop. Council denied that saying "we want to return single family residences to the inner city to the best of our ability and certainly to keep the down zoning intact." There has been no multiple people move out, in fact the block in which I live has been pretty stable for thirty-one (31) years. Now certainly, Al Harris moved and the group home went in; but it went back to single family. I believe now it is a group home again. All of the houses on my side of the street up to my house have been pretty stable for thirty-one (31) years. Mr. Staubus died. His heir's inherited it and now the property is rented. The cottage at the corner of 903, the cottage at the corner of Walker has just been sold. I do not know what more in a sense of stability could be provided to this area by the people that have continued to live there and continue to call it home. I would urge this Board not to set a precedent that could do further damage not only here, but across other areas of the inner city. The property became neglected and parts of them derelict over the years.

Mr. Nicholas asked how large is this? What is the square footage? Do you know?

Mr. Duncan responded of this particular building, I have no idea.

Mr. Shoeman stated the square footage is 3, 570 square feet. Also, may I just show you a picture? I just wanted to show you and there has been no substantial change to the property in terms of the picture from tax records to what the house looks like. Like I said, it does look like a single family house. I just wanted to let you decide if it does or not.

Close the Public Hearing.

Mr. Hiltzheimer asked what does staff feel about this property?

Mr. Gillie responded what do we believe about the property?

Mr. Hiltzheimer asked do you believe that it shouldn't be rezoned?

Mr. Gillie responded the rezoning is not the matter at hand. City Council made a conscious effort when they did the City wide rezoning to maintain this as a single family area. That established a lot of legal non-conforming uses. Once a legal non-conforming use is vacant for more than two (2) years it loses its right to reoccupy as a multi-family. It should then go to what is consistent with what can be done within the single family district, so staff's opinion is that it does not meet the required test for the variance.

Mr. Nicholas asked how long, tell me a little bit about the history. How long was the legal non-conforming use used? How long was it a multi-family dwelling?

Miss Scolpini responded in my research it is unclear when it was made into the four (4) apartments. In 1986, the fifth apartment was added. We did not have any building permits for the change from a single family to the four (4) apartments, but we did have one (1) for the fifth being added in 1986.

Mrs. Evans asked so the structure was added onto to create the apartments? They just didn't take a house and turn it into four (4) apartments?

Miss Scolpini responded they did originally, and then a fifth one was added onto the house in 1986. So, the house was originally a single family structure and then was divided into four (4) apartments.

Mrs. Evans asked without any additions?

Miss Scolpini responded correct.

Mr. Nicholas asked in the surrounding properties, do we see other non-conforming uses?

Mr. Gillie responded almost in any neighborhood you will see other non-conforming uses. In this area, yes there are some other non-conforming uses. We have also had some reversions back from non-conforming uses to conforming uses.

Mrs. Evans asked the property that was discussed at Planning Commission on Monday, was that in the same OT-R?

Mr. Gillie responded this is A-R, Attached Residential; but it is still a single family category.

Mrs. Evans asked the one that Planning Commission approved?

Mr. Gillie responded the one that Planning Commission recommended approval on Monday was in Old Town Residential District and they asked for a special use permit to have a duplex. The applicant has the ability to do the same thing here, instead they have asked for the variance to have the multiple units. They could also ask to rezone the property to a multi-family category, which would allow them to keep potentially the four (4) or five (5) units.

Mrs. Evans asked wouldn't that be spot zoning?

Mr. Gillie responded it could be spot zoning, yes.

Mrs. Evans asked but they could return to a duplex?

Mr. Gillie responded they could ask for approval to return to a duplex, yes. They could ask Planning Commission and City Council for that.

Mrs. Evans asked even though originally it wasn't a duplex?

Mr. Gillie responded correct.

Mrs. Rich asked so that is still a viable option though?

Mr. Gillie responded there are options available. Yes, viable options in our opinion.

Mrs. Rich asked besides the duplex what else?

Mr. Gillie responded under the A-R you can have single family residential, there is churches, there are some other uses, there is attached residential, then there is certain uses by special use permit. I am sorry our Wi-Fi just went down, so I just lost my Zoning Code. That is why I am over here fast and furiously trying to call up all of the things. Off of the top of my head, I do not remember them all; but there are other options available, other uses that could occur on that property under the current zoning.

Mrs. Evans asked so, the group home that is located down from Woodrow Wilson, what is that zoning?

Mr. Gillie responded it is probably OT-R, single family residential. The majority of the west side of the street is single family. A group home may not be a group home even though they call it that, because the definition of family under the Zoning Code allows up to eight (8) unrelated persons to live together as long as they are regulated by the State; so if they have eight (8) or less, they can still be considered a single family dwelling, not necessarily a group home. A group home is when you have more than eight (8) persons living in a single family home. Depending on the numbers that they have in there, they may not be a group home. They could still fall under our single family definition.

Mrs. Evans stated well from the outside and the people sitting on the front porch, that is what it appears to be.

Mr. Gillie stated I am not that familiar with that house, so I don't know right off of the top of my head. I know we have had a couple cases recently that have had multiple people either ten (10) or more: nine (9), ten (10), or eleven (11). Eight (8) or less, it is still single family.

Mrs. Evans asked even though they are unrelated?

Mr. Gillie responded as long as the Department of Mental Health, Mental Retardation, or Substance Abuse Services is the licensing authority.

Mrs. Rich stated it has to be regulated.

Mr. Gillie stated it has to be regulated by the State. Now, four (4) college kids renting a house don't work because they are not regulated by the State; but if it is regulated by the State it is held differently.

**Mrs. Evans made a motion to deny Variance Application PLVAR2012000066 as filed by First State Bank. Mr. Hiltzheimer seconded the motion. The motion was approved by a 4-0 vote.**

2. *Variance Application Number PLVAR2012000077, filed by LE & D Professionals, requesting a variance from Article 3M, Section H, Item 4, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at Parcel ID 22158 on Stokes Street, otherwise known as Grid 1607, Block 006, Parcel 000006 of the City of Danville, Virginia, Zoning Map. The applicant is requesting a variance to allow a curb cut to be constructed that will be less than 60' from an adjacent curb cut as required.*

Twenty-nine (29) notices were mailed to surrounding property owners. Four (4) respondents were unopposed; three (3) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Brian Lewis. Mr. Lewis stated I am here to answer any questions that you might have.

Mr. Nicholas stated just tell me in your own words why you need this variance.

Mr. Lewis stated with the project that we are hoping to have done near the Walgreens, we are subdividing the property up. The developer has acquired City right-of-way or is in the process of acquiring the South Main right-of-way, the alley way. The residual property in the rear, we are trying to gain access to that. We want to try and do some type of commercial development later on. Walgreens is only requiring about an acre, 1.78 acres and that leaves about an acre and a half to develop behind it. We are trying to give access to that and we have to have a curb cut.

Mrs. Evans asked it is just for access? It is not for use by the store?

Mr. Lewis responded no, this is actually going to be owned by a different developer to do something behind Walgreens. There is about an acre and a half behind it. They might want to do a medical office building or something behind it. It is just going to give access to that development.

Mr. Nicholas asked how far back or how much separation would the curb be that you are proposing to put in?

Mr. Lewis responded 32.75 feet from the adjoining entrance. They tried to do a joint entrance with Walgreens, but Walgreens wouldn't come if that was going to be the case. They wanted their own separate entrance.

Mrs. Rich asked if you don't come in to this back property this way how will you?

Mr. Lewis responded you won't. It will not be developed if we cannot get the curb cut here.

Mrs. Rich stated it will just remain as is.

Mr. Gillie stated could you please speak up.

Mrs. Rich stated I was just looking to see if there was another way to get in.

Mr. Lewis stated South Main has limited access.

Mrs. Rich stated and this is that little dead end piece that used to be South Main.

Mr. Lewis stated it used to be, but a developer has acquired it. The property line for Walgreens that you see going across right here, is now pretty much right in there; so that cuts all of that access out.

Mr. Hiltzheimer stated that is the old garage for the bus company.

Mrs. Rich stated I am sorry; I just got disorientated because I hadn't had time to look at it.

Mr. Gillie stated that is going way back for the garage for the old bus company.

Mrs. Rich stated I am sorry, but I am old. You've got to put thing in perspective for old people.

Close the Public Hearing.

Mrs. Rich stated if he develops it commercially, you have to have sixty (60) feet don't you with coming and going traffic?

Mr. Gillie responded an entrance width; you need a fifty (50) foot entrance. You can go between thirty (30) and fifty (50) is what the standards are. The higher speeds road is usually fifty (50). On a low speed road like this, we could get away with the thirty (30) foot entrance tapering down to a twenty-four (24) foot access aisle. The issue is by the time you put the thirty (30) foot access in the limited space available, the numbers we can't make work. As he said, the current South Main Street is limited access, so you can't provide an additional access off of that. It has to come in off of that side street.

Mrs. Rich stated you could bumpy, bumpy over the railroad tracks.

Mr. Gillie stated you could build a bridge over the railroad tracks if the railroad would let you.

Mrs. Rich stated which they won't.

Mr. Nicholas stated in the staff report you mentioned that many of the properties in the surrounding area share this hardship, but that this is not a common variance request. Are other properties just dealing with sixty (60) feet of separation or are they coming for variances? What is the situation with the surrounding commercial properties?

Mr. Gillie responded we have properties across the road, which we consider the same zoning classification that would have to follow the same regulations. They are already developed and have existing driveways. Their driveways are all non-conforming. They are all too close according to what our Code has. We don't feel that it is a common enough request, because again everything is basically developed. We are not having people coming and ask us for this. This is the only site in the immediate area that is vacant, that has potential for development, so it is not common.

Mrs. Evans made a motion to approve Variance Application PLVAR20120000077. Mr. Hiltzheimer seconded the motion. The motion was approved by a 4-0 vote.

## II. APPROVAL OF MINUTES

Mr. Hiltzheimer made a motion to approve the minutes from the February 16, 2012 meeting. Mrs. Evans seconded the motion. The motion was approved by a 4-0 vote.

## III. OTHER BUSINESS

Mr. Nicholas stated at the last meeting I know we had talked about a previous case and the City Attorney has provided us with a letter of opinion in that case. Has everyone received that? I didn't know if there was any other discussion that people wanted to have on that or if there is any other business that we need to take up on the record.

Mr. Hiltzheimer stated I realize that I was not on the Board when they had this before the Zoning Board of Appeals, but I am interested in knowing how things went with the court and that sort of thing and I was glad to see the letter. That is all I can say about it right now.

Mr. Gillie stated as it stands right now, we do not have any cases filed for next month. They still have until the 20<sup>th</sup>. We don't as far as I know. We may have one (1) possibly, so we will let you know if we have a meeting scheduled for next month.

Mrs. Rich asked and that is the middle of April?

Mr. Gillie responded yes.

Mrs. Rich stated I will be here. I have jury duty in May and June.

Mr. Gillie asked did everyone get their packets in the mail? We had an issue where we mailed Planning Commission actually before the Board of Zoning Appeals and the Planning Commission packets didn't arrive until after the meeting. We just wanted to make sure that everyone got what they needed on time. So, everyone was good? Ok.

With no further business, the meeting adjourned at 10:35 a.m.

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APPROVED