



City of Danville

427 Patton Street, Suite 208

Danville VA, 24541

Phone: (434) 799-5260

Board of Zoning Appeals

March 18, 2021

10:00 A.M.

CONFERENCE ROOM - 4th FLOOR MUNICIPAL BUILDING

AGENDA

- I. WELCOME AND CALL TO ORDER**
- II. ROLL CALL**
- III. ITEMS FOR PUBLIC HEARING**
 1. Request for Variance PLVAR 2021-40, filed by Powers Signs on behalf of Woodall Nissan, requests variances from Article 10, Section D, Item 16 and Article 10, Section P, Item 1.a. of Chapter 41 of the City of Danville, Virginia, Code of Ordinances, 1986 as amended, at 132 Union Street Bridge Road, Parcel #51502, also known as Grid 1708, Block 001, Parcel 000011.000 of the City of Danville, Virginia Tax Map. The applicant requests a variance to erect a freestanding sign that exceeds 24" inches between sign faces, exceeds the allowable sign area, and exceeds the allowable area devoted to architectural elements which serve as support or base for such sign and which are not part of the message portion of the sign.
 2. Request for Special Exception PLZA 2021-45, filed by Kenneth Hammock, requests a special exception under Article 13, Section G, Item 6.b. of Chapter 41 of the City of Danville, Virginia, Code of Ordinances, 1986 as amended, at 134 Lamberth Drive, Parcel #71795, also known as Grid 9708, Block 002, Parcel 000015.000 of the City of Danville, Virginia Tax Map. The applicant proposes constructing an attached garage accessory building to an existing non-conforming manufactured home dwelling.
- IV. APPROVAL OF MINUTES FROM JANUARY 21, 2021**
- V. OTHER BUSINESS**
- VI. ADJOURNMENT**



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

Board of Zoning Appeals

STAFF REPORT

MEETING DATE: FEBRUARY 18, 2021

RE: VARIANCE/APPEAL APPLICATION - 132 UNION STREET BRIDGE ROAD

Request for Variance PLVAR 2021-40, filed by Powers Signs on behalf of Woodall Nissan, requests variances from Article 10, Section D, Item 16 and Article 10, Section P, Item 1.a. of Chapter 41 of the City of Danville, Virginia, Code of Ordinances, 1986 as amended, at 132 Union Street Bridge Road, Parcel #51502, also known as Grid 1708, Block 001, Parcel 000011.000 of the City of Danville, Virginia Tax Map. The applicant requests a variance to erect a freestanding sign that exceeds 24" inches between sign faces, exceeds the allowable sign area, and exceeds the allowable area devoted to architectural elements which serve as support or base for such sign and which are not part of the message portion of the sign.

BACKGROUND

The applicant proposes to replace an existing non-conforming freestanding sign. The applicant explains the existing sign supports are two (2) small, old, and weak structural poles.

APPLICATION FOR APPEALS

- a. An appeal may be taken to the Board of Zoning Appeals by any person aggrieved or by any officer, department, commission, board or agency of the City affected by any decision of the Director of Planning/Zoning Administrator or from any order, requirement, decision or determination made by any other officer in the administration or enforcement of this ordinance.
- b. All information, including documentation and rational for the grounds for the subject appeal as well as plats, maps, site plans and other graphic exhibits or information as required by the Board in order that it might be fully informed, shall be furnished by the applicant. The application shall include a copy of the decision or determination on which the application is based.
- c. Any written notice of a zoning violation or a written order of the Director of Planning / Zoning Administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty days in accordance with this section, and that the decision shall be final if not appealed within thirty (30) days. The appeal period shall not commence until the statement is given to the recipient.
- d. An appeal shall be taken within thirty (30) days after the decision appealed by filing with the administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Director of Planning/Zoning Administrator shall forthwith transmit to the recording secretary of the Board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or a Court of record, on application and on notice to the Director of Planning/Zoning Administrator for good cause shown.

VARIANCE REVIEW CRITERIA

A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and the request meets each of the following five (5) review standards (Article 13, Section F.2.a.-e.):

a. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

The property was acquired in good faith, but the hardship for a variance was fully created by the applicant because the applicant could install a sign that meets City code. This application **does not** meet this standard.

b. Granting the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

The subject property is on one of the City's busiest regional commercial corridors populated with businesses that draw from a trade area far beyond Danville's neighborhoods. Regional retail destinations like automobile dealerships must adhere to the same freestanding sign standards. Allowing a variance does not keep with plans for revitalizing Danville's regional commercial corridors. This application **does not** meet this standard.

c. The property's condition or situation is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

The applicant, in their application, states they selected "the one that most resembles the display of the existing ground signage without an increase". The applicant does not suggest that they request a sign that is closest to what meets the City's code. The Code allows the sign to continue in its current condition, but not allowed to expand. This application **does not** meet this standard.

d. Granting the variance will not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property

The non-conforming sign is not allowed in any zoning district in Danville. This application **does not** meet this standard.

e. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A.4 of § 15.2-2286 at the time of the filing of the variance application

The applicant cannot request to rezone or a special use permit. Therefore, this application **does** meet this standard.

Therefore, this variance request **meets one (1) of the five (5) criteria** needed to grant a variance.

ATTACHMENTS

- ✓ Application
- ✓ Property Ownership & Existing Zoning Map
- ✓ Data Sheet
- ✓ Existing Land Use Map (Aerial 2019)



City of Danville
Community Development
Planning Division

**BOARD OF ZONING APPEALS
VARIANCE APPLICATION**

We cannot accept Board of Zoning Appeals (BZA) applications unless the following steps are completed by the twentieth (20th) day of the prior month. BZA meetings are on the third Thursday of each month. This timeline assures the City can meet Virginia public notice laws.

1. The applicant attended a pre-application conference with the Zoning Administrator or designated staff;
2. The applicant completed this application;
3. The property owner or a duly authorized (in writing) representative signed this application;
4. The applicant submitted a plot plan drawn to scale showing the actual dimensions and shape of the property; and the exact size and location all existing and proposed buildings, signs, and required parking spaces;
5. The Zoning Administrator certified that the proposed use and construction plans comply with all Zoning Code provisions, except for the provisions necessitating a variance; and
6. The applicant paid the \$206.00 application fee.

PLANNING DIVISION PROVIDED INFORMATION

Application #: _____ BZA Meeting Date: _____

Date Received: _____ Received By: _____

Parcel ID: _____ Zoning District: _____

Additional Information: _____

A variance shall be granted if evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

- (i.) The property interest for where the variance is requested was acquired in good faith and any hardship was not created by the variance applicant;
- (ii.) Granting the variance will not be of substantial detriment to adjacent property and nearby properties in the surrounding geographic area;
- (iii.) The subject property's condition or situation is not of such general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an ordinance amendment;
- (iv.) Granting the variance does not result in a use that is not otherwise permitted on such property or change the zoning classification of the property; and
- (v.) The variance application relief or remedy sought is not available through a special exception process that is authorized in City Code Chapter 41, Article 6 or the process for zoning ordinance amendment in City Code Chapter 41, Article 4 at the time of variance application filing.

The BZA may impose conditions regarding the location, character, and other features of proposed buildings and use it deems necessary in the public interest and may require a performance guarantee or bond to insure compliance.

APPLICANT PROVIDED INFORMATION

Property Location (address/ID#): 132 UNION ST BRIDGE RD

Applicant: POWERS SIGNS - TOM POWERS SR

Applicant's Address: 807 INDUSTRIAL AVE

Applicant's Phone Number: 7936351

Applicant's E-mail: SR@POWERSSIGNS.COM

Variance Request Description: SEE ATTACHED SHEET

I (we) appeal to the Board of Zoning Appeals for a variance permitting the action described above in that:

i. Explain how you did not create the hardship you need a variance to overcome:

ii. Explain how granting the variance will not negatively impact your neighbors and properties close by:

iii. Explain why the hardship on your property is unique and not something that affects similar properties in the same zoning district.

iv. Explain why granting the variance will not result in a use that is not otherwise allowed on the property or a change in the property's zoning classification.

v. The relief or remedy sought by the variance application is not available with a Special Use Permit.


Applicant Signature

Property Owner Signature
(if not applicant)

Variance Request Description: A variance is requested for the installation of a ground sign that does not meet the requirements as set forth in Article 10P. The proposed ground sign exceeds the square footage limit for architectural elements. The Code allows 100sf of architectural elements and the proposed signage is 231sf. However, the proposed square footage of architectural elements is a reduction of 17%; the existing architectural elements is 335sf.

A variance request is requested for the installation of a ground sign that does not meet the requirements as set forth in Article 10D. The proposed sign exceeds the 24" limitation between the 2 faces of the ground sign. The proposed sign has 36" between the 2 faces. The additional space is necessary to increase the level of sign support. The existing sign support is 2 smaller poles that have been in place for many years and believed to have weakened. The new thicker monopole support will enhance the strength of the sign and ensure that it meets the Virginia USBC wind requirement of Exposure B, 90mph. The space between the 2 faces will be enclosed.

- i. Explain how you did not create the hardship you need a variance to overcome. As part of the Nissan family of dealerships I must meet specific requirements for advertisement. Nissan headquarters supply the ground signage that is to be displayed at the dealership. The attached diagram is what I received for installation.
- ii. Explain how granting the variances will not negatively impact your neighbors and properties close by. Granting this variance will not negatively impact my neighbors nor properties close by. In fact, the variance will allow the installation of a new sign with reduced sign area, an increased support system and improved aesthetics.
- iii. Explain why the hardship on your property is unique and not something that affects similar properties in the same zoning district. The hardship is unique in that as part of the Nissan family I do not have complete control over the signage that is required or offered for installation. There are multiple options presented by Nissan for signage, but the option presented with this application is the one that most resembles the display of the existing ground signage without an increase. In fact, the presented ground sign is a reduction in both the square footage of architectural elements and message area.
- iv. Explain why granting the variance will not result in a use that is not otherwise allowed on the property or a change in the property's zoning classification. Granting this variance will not result in a use that is not otherwise allowed. The variance would allow for the installation of a ground sign that is allowed on the property and within its existing zoning classification.
- v. The relief or remedy sought by the variance application is not available with a Special Use Permit. A Special Use Permit is not available that would create a remedy.



City of Danville
Community Development
Planning Division

SIGN PERMIT APPLICATION

Job Address: 132 UNION ST BRIDGE RD

SIGN CONTRACTOR INFORMATION

Business Name: POWERS SIGNS

Contact Person: TOM POWERS SR

Address: 807 INDUSTRIAL AVE

City, State, ZIP: DANVILLE VA 24541

Phone: 793-6351

E-mail: SR@POWERSSIGNS.COM

PROPERTY / SIGN OWNER INFORMATION

Contact Person: RORRIE WOODALL

Address: 1063 RIVERSIDE DR

City, State, ZIP: DANVILLE, VA 24541

Phone: 797-1411

E-mail: RWOODALL3@WOODALLAUTO.COM

GENERAL INFORMATION

Number of Existing Signs – Wall: 4 Freestanding: 1

Existing Sign Area in Square Feet – Wall: 142 Freestanding: 100

Proposed Number of New Signs – Wall: 0 Freestanding: 1

New Sign Area in Square Feet – Wall: 0 Freestanding: 100

Estimated Job Cost: \$19,000

\$139.74

*** The Planning Division will contact you to verify your permit fee once we receive your completed application and review it according to City standards. Please do not begin work until we issue the permit. For fastest service, please make sure your sign contractor registration and local business license are up to date. Please contact the Planning Division with any questions at (434) 799-5260 or plachhd@danvilleva.gov.

Job Address: 132 UNION ST. BRIDGE RD.

PROPOSED SIGN INFORMATION

Sign #1 Type: ☐ Wall ☒ Freestanding ☐ Banner ☐ Reface

Location: REPLACING EXISTING Building Frontage: _____

Dimensions: Height: 10'-7 3/4" Length: 9'-4" Depth: 3'

Sign Message: NISSAN

Comments: _____

Sign #2 Type: ☐ Wall ☐ Freestanding ☐ Banner ☐ Reface

Location: _____ Building Frontage: _____

Dimensions: Height: _____ Length: _____ Depth: _____

Sign Message: _____

Comments: _____

Sign #3 Type: ☐ Wall ☐ Freestanding ☐ Banner ☐ Reface

Location: _____ Building Frontage: _____

Dimensions: Height: _____ Length: _____ Depth: _____

Sign Message: _____

Comments: _____

Sign #4 Type: ☐ Wall ☐ Freestanding ☐ Banner ☐ Reface

Location: _____ Building Frontage: _____

Dimensions: Height: _____ Length: _____ Depth: _____

Sign Message: _____

Comments: _____

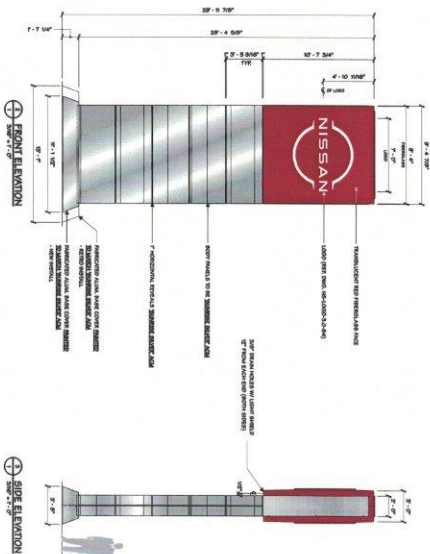


NISSAN NINE NEXT

PLAN VIEW



— ALLINK TOWER PRINTED MAP TO MATCH
PENCED/466/202



Virginia Beach, VA 23462

[illegible]

VARIANCE REQUEST DATA SHEET PLVAR 2021-40

PUBLIC HEARING DATES:	FEBRUARY 18, 2021 BOARD OF ZONING APPEALS AT 10:00 AM
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LOCATION OF PROPERTY:	132 UNION STREET BRIDGE ROAD
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PRESENT ZONE:	HR-C HIGHWAY RETAIL COMMERCIAL
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PROPOSED ZONE:	NO CHANGE
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ACTION REQUESTED:	GRANT VARIANCE FOR FREESTANDING SIGN
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PRESENT USE OF PROPERTY:	VEHICLE DEALERSHIP
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PROPOSED USE OF PROPERTY:	NO CHANGE
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FUTURE LAND USE DESIGNATION:	REGIONAL COMMERCIAL
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PROPERTY OWNER (S):	WOODALL NISSAN
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NAME OF APPLICANT (S):	POWERS SIGNS
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PROPERTY BORDERED BY:	VACANT ON NORTH, EAST SIDES. UTILITY ON SOUTH, WEST SIDES.
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ACREAGE:	5.72 ACRES TOTAL
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CHARACTER OF VICINITY:	HIGHWAY COMMERCIAL
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INGRESS AND EGRESS:	UNION STREET BRIDGE ROAD
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TRAFFIC VOLUME:	MODERATE, NO RECENT COUNTS
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SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY



Prepared by:
Planning Division
1/27/2021

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2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY



Prepared by:
Planning Division
1/27/2021

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Board of Zoning Appeals

STAFF REPORT

MEETING DATE: FEBRUARY 18, 2021

RE: SPECIAL EXCEPTION APPLICATION - 134 LAMBERTH DRIVE

Request for Special Exception PLZA 2021-45, filed by Kenneth Hammock, requests a special exception under Article 13, Section G, Item 6.b. of Chapter 41 of the City of Danville, Virginia, Code of Ordinances, 1986 as amended, at 134 Lamberth Drive, Parcel #71795, also known as Grid 9708, Block 002, Parcel 000015.000 of the City of Danville, Virginia Tax Map. The applicant proposes constructing an attached garage accessory building to an existing non-conforming manufactured home dwelling.

BACKGROUND

The applicant began construction of an attached garage to a non-conforming manufactured home dwelling. The finished garage will include an ADA access ramp to the manufactured home dwelling. The applicant desired to use an existing slab and foundation wall to facilitate the attached garage construction.

APPLICATION FOR SPECIAL EXCEPTIONS

To hear and decide applications for special exceptions for certain uses, yards and heights as may be specifically authorized in this article. The Board may impose such conditions relating to the use, yard or height for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be in compliance. No special exception may be granted except after a public hearing in accordance with this article. Applications for special exceptions are distinguished from special use permits which are reviewed and considered by the Planning Commission.

SPECIAL EXCEPTION REVIEW CRITERIA

Article 13, Section G. provides instructions for BZA special exception review:

1. The Board shall have the power in specific cases to grant a special exception for and apply standards and conditions to certain land use, lot area, and yard exceptions from the strict application of the terms of this ordinance under the following provisions:
 - a. To provide for adjustments in the relative locations of uses and buildings of the same or different classifications;
 - b. To promote the usefulness of these regulations as instruments for fact finding, interpretations, application and adjustment; and
 - c. To supply the necessary elasticity to efficiently administer these regulations in the interest of sound land use.
2. In considering an application for a special exception, the Board shall give due regard to the specific guidelines and standards of this ordinance, and to the nature and conditions of adjacent uses and structures as well as the probable effect upon them of the proposed special exception.

3. The Board shall take into account the special and unique characteristics, design, location, construction, method of operations, effect on traffic conditions or any other aspects of the particular use or structure, that may be proposed by the applicant.
4. If the Board finds that the proposed establishment or use will not adversely affect the health, safety or welfare of persons residing or working on the premises or in the neighborhood, will not unreasonably impair an adequate supply of light and air to adjacent property, nor increase congestion in the streets, nor increase public danger from fire or otherwise unreasonably affect public safety, nor impair the character of the district or adjacent districts, nor be incompatible with the general plans and objectives of the City's Comprehensive Plan, nor be likely to reduce or impair the value of buildings or property in surrounding areas, but that such establishment or use will be in substantial accordance with the general purpose and objectives of this ordinance, the Board shall grant the exception and authorize the issuance of a special exception permit.

[...]

The Board can allow a special exception for the following buildings under 13.G.6.b.

- b. Extension of an existing nonconforming use in a building so as to increase floor area by not more than twenty-five (25) percent, provided that no new non-conforming use may be established.

ATTACHMENTS

- ✓ Application
- ✓ Property Ownership & Existing Zoning Map
- ✓ Data Sheet
- ✓ Existing Land Use Map (Aerial 2019)



City of Danville
Community Development
Planning Division

BOARD OF ZONING APPEALS

APPEAL APPLICATION

1. Appeal application must be filed within thirty (30) days of the Zoning Administrator's action.
2. The applicant must answer each question on this application, attach additional pages and exhibits as needed;
3. The property owner or a duly authorized (in writing) representative signed this application;
4. The applicant submitted a plot plan drawn to scale showing the actual dimensions and shape of the property; and the exact size and location all existing and proposed buildings, signs, and required parking spaces; and
5. The applicant paid the \$206.00 application fee.

PLANNING DIVISION PROVIDED INFORMATION

PLAZ
Application #: PLZA2021-45 BZA Meeting Date: FEB 18 2021
Date Received: 1-22-21 Received By: APP
Parcel ID: 71795 Zoning District: SR-SUBURBAN RESIDENTIAL
Additional Information: EXPAND NONCONFORMING BUILDING

APPLICANT PROVIDED INFORMATION

Property Location (address/ID#): 134 Lambent Dr.
Applicant: Kenneth A. Hammock
Applicant's Address: 2876A Westover Dr.
Applicant's Phone Number: 434-822-0802 434-489-3392
Applicant's E-mail: ham132@comcast.net

1. I (we) appeal to the Board of Zoning Appeals because of the following interpretation/determination:

a: To close to property line.
b: No new construction is allowed.

2. Date of interpretation/determination that is the subject of this appeal (attach copy of referenced letter or other dated material):

3. The Zoning Administrator based their interpretation/determination on the following City Code:

4. I (we) feel that the Zoning Administrator made an incorrect interpretation/determination because:

a: New building is approximately center of Lot.

b: The building is to replace an existing building already on property, using part of the original foundation for the new structure

Kenneth A. Hammock

Applicant Signature

Property Owner Signature
(if not applicant)

I will build carport to integrate existing building to incorporate a handicap ramp under roof

SPECIAL EXCEPT REQUEST DATA SHEET PLZA 2021-45

PUBLIC HEARING DATES:	FEBRUARY 18, 2021 BOARD OF ZONING APPEALS AT 10:00 AM
LOCATION OF PROPERTY:	134 LAMBERTH DRIVE
PRESENT ZONE:	S-R SUBURBAN RESIDENTIAL
PROPOSED ZONE:	NO CHANGE
ACTION REQUESTED:	GRANT SPECIAL EXCEPTION TO EXPAND NON-CONFORMING MANUFACTURED HOME DWELLING WITH ATTACHED GARAGE
PRESENT USE OF PROPERTY:	RESIDENTIAL
PROPOSED USE OF PROPERTY:	NO CHANGE
FUTURE LAND USE DESIGNATION:	LOW DENSITY RESIDENTIAL
PROPERTY OWNER (S):	THE HAMMOCKS
NAME OF APPLICANT (S):	KENNETH HAMMOCK
PROPERTY BORDERED BY:	HOMES ON ALL SIDES
ACREAGE:	1.79 ACRES TOTAL
CHARACTER OF VICINITY:	LOW DENSITY REDISENTIAL
INGRESS AND EGRESS:	LAMBERTH ROAD
TRAFFIC VOLUME:	LOW, NO RECENT COUNTS

SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY



Prepared by:
Planning Division
1/27/2021

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2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY



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BOARD OF ZONING APPEALS MEETING

January 21, 2021

Members Present

Ann Sasser Evans
Nicole Garrison
Lawrence Meder
Gus Dyer
Gus Dolianitis
John Hiltzheimer

Members Absent

Michael Nicholas

Staff

Lisa Jones
Doug Plachcinski
Ken Gillie
Alan Spence

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

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

I. ELECTION OF OFFICERS

Mr. Spencer called for nominations for Chairman.

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

Mr. Spencer called for nominations for Vice Chairman.

Ms. Evans nominated Ms. Garrison as Vice Chairman. The nomination of Ms. Garrison was approved by a 5-0-1 vote. (Ms. Garrison Abstained)

Mr. Spencer called for nominations for Secretary.

Mr. Meder nominated Mr. Dolianitis for Secretary. The nomination of Mr. Dolianitis was approved by a 5-0-1 vote. (Mr. Dolianitis Abstained).

II. ITEMS FOR PUBLIC HEARING

- 1. Appeal of Zoning Administrator's decision PLZA 2020-291, filed by Jimmie New of PTL Contractors, requests a variance from article 3.M. Section B, Item 2 of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended at 109 Barter Street, Parcel # 52948, also known as Grid 1713, Block, 6, Parcel 1 of the City of Danville, Virginia. The applicant proposes constructing a 20' x 24' accessory building and repairing personally owned heavy trucks after receiving a final zoning violation notice.*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Jimmie New, owner of 109 Barter Street. Mr. Barter stated we are proposing this freestanding metal building because they say we are in zoning violation. They think we are working on trucks all the time. These

trucks right here belong to Mr. Swaringen and that is not a business that is being operated for outside customers to come there for anything. They are all his personal trucks. I have owned that building for 35 years, perhaps. It started as a trucking terminal and there has always been trucks there on Trade, Commerce, and Barter Streets, and that is what is out there: transfer trucks. We got your letter saying that we were in violation, we didn't understand why, and that is why we are here. I am happy to answer any or all questions. The reason I asked Mr. Swaringen to come here is because he is the owner of the trucks and that is his personal mechanic that comes by there to make sure that those trucks are running right. There is no heavy loading, if you will or working on motors and he doesn't even change tires there. We store them there while we are waiting on the trucks but there is not another business there, but mine. He is leasing that property from me, and he has his office there in my building and I'm glad to have him. I would love to be able to get that straight because we are not operating another business. We are just taking care of personal property that is right there.

Mr. Jason Swaringen stated I am with Triple S Trucking Company, Riverside Exxon, and Enterprise Car Rental. I rent the lot from Jimmie and the office. I have owned 14 tractor-trailers for 15 years. The majority of my time I have owned them and I have parked at Mr. News facility. We do not run a repair shop there, I have my own mechanics that comes in, and we do light service, light bulbs, wiper blades, and air conditions. The big stuff and heavy stuff we sub-out. I try to be a good neighbor to everybody. I picked up just as much trash off the street and off everybody else's property as I have my own. I try to get along with everybody. I try to keep it nice and neat and sometimes it gets out of hand a little bit. I try to be a good citizen and we are trying to be law abiding and trying to work this deal out.

Mr. Dyer stated what you are stating is basically that this is more of a routine maintenance of these vehicles as opposed to repair?

Mr. Swaringen stated yes sir.

Mr. Dyer stated do you change the motor oil at this location?

Mr. Swaringen stated yes.

Mr. Dyer stated do you take off wheels and replace tires there?

Mr. Swaringen stated we do light brake work as far as changing brake shoes and brake drums but no clutches, or engine repair.

Mr. Dyer stated it is more than what the average homeowner would do to their own car in their driveway.

Mr. Swaringen stated it is an odd business in itself and the more that I can do and the more that I can save the more I can. It is just like anything else if you can build a house why would you have somebody else build it.

Ms. Evans stated you said that you have been at this location for 14 years?

Mr. Swaringen stated I have owned the trucks for 14 years. I have been with Jimmie 10 years plus.

Ms. Evans stated how long have you been at this particular location?

Mr. Swaringen stated 10 years.

Ms. Evans stated and you're just now receiving notice of violation?

Mr. Swaringen stated yes.

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated so the issue here is that this property is zoned HRC and HRC does not permit this? What part of the HRC are they violating?

Mr. Gillie stated the HRC District allows for automobile repair and it does not allow for heavy equipment repair. That is specifically allowed in the MI Industrial District. This facility has no license to operate a truck or repair facility. They are clearly repairing trucks and have not done it until relatively recently. I would disagree with the claim that they have been there a number of years. Staff started receiving complaints about 2 years ago about truck repair going on at this facility. We started investigating and that's why you will see there has been multiple letters sent out. I got videos of them repairing wheels, taking parts out and doing other repairs out of site and out in the street. This is clearly now used as a truck terminal and a heavy equipment repair lot in violation of the zoning code.

Mr. Dyer stated the actual zoning category is regional commercial that is not an actual zoning?

Mr. Gillie stated highway retail commercial.

Mr. Dyer stated the map says regional commercial but the technical zoning of it is highway retail commercial?

Mr. Gillie stated correct.

Mr. Dyer stated across the road is heavy industrial?

Mr. Gillie stated correct.

Mr. Dyer stated is this activity allowed with heavy industrial?

Mr. Gillie stated they could move to a site that is zoned industrial, correct.

Mr. Dyer stated or they could attempt to have this piece of property rezoned?

Mr. Gillie stated they could attempt that.

Mr. Dyer stated when Mr. New came to you about the issue, how did he know to come to the Board of Zoning Appeals? Did you tell him that was his option?

Mr. Gillie stated I spoke to Mr. New about 2 years ago; Doug is the one that has spoken to you since. I am trying to talk loud so you can hear me Jimmie. I talked to Jimmie and told him that we have to stop repairing trucks there and Jimmie told me I will have them stop repairing trucks. It did not occur. Then after receiving multiple complaints, we sent another letter saying I thought you were going to take care of this. It was not taken care of and then it went to Doug.

Ms. Evans stated through complaints?

Mr. Gillie stated through complaints and staff receives complaints about this facility a lot.

Mr. Dyer stated when Mr. New made the application was he already aware that was one of his options? Did he come to you and say how do I handle this or what are my options?

Mr. Plachcinski stated that is correct and in the final notice zoning violation that was sent out on November 19, 2020 with Ken Gillie's signature says you have the right to appeal this notification to the City of Danville BZA.

Mr. Dyer stated was he also offered the option that he could have the property rezoned was he told that was an option?

Mr. Gillie stated with my conversations with him no, but I don't know if Doug has had any other conversations with him.

Mr. Plachcinski stated no.

Mr. Dyer stated the reason I am bringing this up is that we are not an opinion board. We can't say we think this is a good idea we are going to let you do it. We are like a jury and the law is the law. We can't change the law. What we are charged to do is to see if there are any circumstances that will allow you to be granted a variance for the zoning code. An example of that, it is against the law to drive 80 mph in a 40 mph zone but if you are hauling somebody to the hospital then that would be an extenuating situation so you would be given some grace in that instance. Technically, you are supposed to present to us five criteria's that you have to meet in order for us to grant you this variance. My question to you are you prepared to present your response to those five criteria's?

Mr. New stated this is the first time that I have heard that I can request to rezone of this so I am not prepared. I don't know what these five items are?

Mr. Plachcinski stated they are contained in the application that you filled out.

Mr. New stated I didn't even know that I was supposed to look at that. I am trying to comply with what you were saying that I was violating because we cleaned it up one time and that wasn't enough. Then we thought that the way that we understood it that it had to be behind walls and that is why the metal building came in still trying to comply with what is needed.

Mr. Dyer stated if this was behind a steel fence it would still be in violation of the zoning code, right?

Mr. Gillie stated correct, it just can't occur on the site. It can't occur there.

Mr. New stated can't in or out of the building?

Mr. Dyer stated the activity that you are performing at this site is not permitted in that zoning category. The reason I bring up City Council and Planning Commission is that they are an opinion forum. They can say they think this is a good idea and so we are going to rezone this property to allow your operation. We do not have that option, unless you can present to us that evidence that you meet the five criteria for this application to be granted, and then we really do not have much of an option. I say that from my personal perspective.

Mr. New stated I have to say that honestly I had no idea that I could look into that. I was looking at a violation not thinking I could change it. I had no idea that I could do that.

Ms. Evans stated I have a question for staff. If he applies to rezone would that be spot zoning? I go across the street it is Industrial?

Mr. Meder stated it is across the street and to the left.

Mr. Dyer stated well generally I think that the opinion is if it is continuous, spot zoning would be going into if you have a whole block residential and you go right in the middle and put commercial. Whereas if you gradually chip away at the edges that's being continuous and that is generally not considered spot zoning. It might not be appropriate but it's not considered spot zoning.

Mr. Gillie stated I'm sorry I can't see the colors so we are discussing exactly where it is.

Mr. Meder stated it has a heavy industrial on at least two sides.

Mr. Gillie stated I don't have the maps with me either.

Mr. Plachcinski stated they're looking at the land use plan not the zoning.

Mr. Gillie stated there is an Industrial right across the street from it. Whether it would be spot zoning it would be up to Planning Commission and City Council to determine. It would be within approximately. We run the lines through the middle of the street it would actually be more of a boundary adjustment than spot zoning itself.

Ms. Evans stated did I understand that he is also done repairs on the street?

Mr. Swaringen stated that is why I can't understand it has not been a problem until now. Is it complaints or that I am not liked? What is the problem now? I have been at Exxon for 20 years, just trying to figure out what happened here. As far as nice, neat and clean I only do the work on Saturday unless there is an emergency. It is nothing other than what a homeowner would do. They change the oil at their house. My dad did it for years and my friends do it now. Light bulbs, it is just routine maintenance. The stuff that I can't

afford to carry to a repair shop. There is no sense in me carrying it 20 miles away when I can do it myself.

Mr. Dyer stated I don't think changing light bulbs is the issue.

Mr. Swaringen stated what is the problem?

Ms. Evans stated I have seen people washing trucks on the street I can't remember if it was on a Saturday or Sunday. Is that your truck?

Mr. Swaringen stated that is a different company and they are just hired to do that.

Ms. Evans stated I know it has been on the weekend.

Mr. Swaringen stated that is just because they are only in on the weekends. We try to be a good neighbor and keep clean. Riverside Hardware people come in with trailers they mark on my lot and empty their ashtray on my lot, throw chicken bones on my lot, and the people across the road come out and park on my lot, and throw beer bottles on my lot. No complaints I'm just trying to figure out what I can do to apply and what I have to do to make things right here.

Mr. Gillie stated to comply quit fixing trucks on site that is simple. You just can't do any work, no repair to those vehicles at all, on site. Nothing, no brakes and there not even supposed to wash them there. They should not be washing them in the street to begin with. None of that is supposed to occur. This is not a facility for trucks, it is zoned highway retail. Your car at Exxon, yes, you are a repair facility, that is allowed there. This is truck repair and this is something different. It is heavy equipment verses light equipment. If Jimmie wants to try to rezone the property, he can ask to do it that way and that is an option available to him. Right now, you are in violation of zoning code because you are fixing trucks on a site that is not zoned for it. We have been telling you for 2 years now, again I constantly get complaints about it. They are out there working on trucks in the street or they are out there working on trucks here, they are storing brake rotors, and they have tires out there and they got hoods up and people are doing stuff. I have videos, weekdays, driving by where a person has his head up under there and got the wheel off or he is fixing the front end of the thing. The zoning code says you are not supposed to be doing it. If you want to fix it, stop and then try to rezone the property.

Mr. New stated you said that the only option that we would have is for me to ask to get the property rezoned.

Mr. Gillie stated if you want to do truck repair and stuff, yes.

Mr. Dyer stated I don't want you to presume that we are going to turn it down.

Mr. Gillie stated from a City's perspective is where I was trying to answer that question.

Mr. Dyer stated based on what our responsibilities are is that you need to be able to present evidence that you meet these 5 criteria's in order to be granted this variance.

Mr. Meder stated directly across the street what do they do there?

Mr. Gillie stated it is Verizon.

Mr. Swaringen stated they work on their trucks too.

Ms. Evans made a motion to deny the Zoning Appeal Application PLAZR2020-291. Mr. Dolianitis seconded the motion. The motion was denied by a 6-0 vote.

Mr. Meder stated are we able to grant him a 90-day variance so they can apply for rezoning to heavy industrial?

Mr. Plachcinski stated I think that the way I will approach this is if Mr. New proceeds with the rezoning application, it will abate any enforcement effort on our part until that process is completed.

Mr. Meder stated that sounds reasonable.

III. APPROVAL OF MINUTES FROM JULY 16, 2020

The July 16, 2020 minutes were approved by a unanimous vote.

IV. OTHER BUSINESS

With no further business, the meeting adjourned at 10:29 a.m.

APPROVED