



BOARD OF ZONING APPEALS REGULAR MEETING AGENDA

4TH FLOOR CONFERENCE ROOM

December 21, 2023

10:00 AM

A. CALL TO ORDER

B. NEW BUSINESS

1. Appeal of the Zoning Administrator Determination submitted by Lauretano Sign Company requesting an appeal to the determination to deny approval of signage at 3251 Riverside Drive.

C. STAFF UPDATES

1. Training

D. MINUTES

E. ADJOURN



STAFF REPORT

DATE: December 21, 2023
TO: Board of Zoning Appeals
FROM: Renee Burton, Division Director of Planning
RE: Appeal of the Zoning Administrator Determination submitted by Lauretano Sign Company requesting an appeal to the determination to deny approval of signage at 3251 Riverside Drive.

The applicant, Lauretano Sign Company, submitted a sign package for review for the ModWash that is under construction at 3251 Riverside Drive. The sign package included two (2) signs located on either side of a projection constructed above the roof line of the structure. The sign package was rejected based on the interpretation that the two (2) signs placed on the projection are roof signs. Roof signs are prohibited in the City of Danville Zoning Code. Article 10.I. of the Zoning Code identifies a roof sign as:

4. Roof sign and roof projecting sign. *No sign which is not an integral part of the building design shall be fastened to and supported by or on the roof of a building and no projecting sign shall extend over or above the roof line or parapet wall of a building.*

Integral is defined as *necessary to make a whole complete; essential or fundamental.*

There has been no question whether or not this sign is an integral part of the building design. Staff contests that it is not an integral part because it is affixed to a projection, not to the primary structure.

The appeal of interpretation is whether the proposed signs are above the roof line. The City of Danville's Zoning Code does not define roof line. When there is no definition provided in a locality's Zoning Code, it is common practice to refer to the *Planner's Dictionary* published by the American Planning Association (APA). APA defines a roof line as:

■ **roof line** *The highest point on any building where an exterior wall encloses usable floor space. The term "roof line" includes the top of any parapet wall, providing said parapet wall extends around the entire perimeter of the building at the same elevation. However, the top of the parapet wall extending along one or more building elevations or a portion of one or more building elevations may be considered to be the roof line in those instances where the parapet wall improves the architectural appearance of a building or shields rooftop mechanical*

equipment.

Based on this definition, it is the interpretation of the Zoning Administrator that the projection or "fin" as referred to by the applicant is indeed above the roof line. The highest point of the structure at 3251 Riverside Drive that encloses usable floor space is at the base of this projection. The projection is not a parapet wall nor does it shield roof top equipment. Therefore, the projection and proposed signage are located above the roof line. Signage above the roof line is prohibited by Zoning Code.

ATTACHMENTS

1. BZA- Appeals Application
2. 3251 RIVERSIDE_AERIAL
3. 9031MK-3 47660 (2)
4. 9030MK-3 47660 (3) (2)



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

Application #: _____ BZA Meeting Date: December 21st, 2023
Date Received: _____ Received By: _____
Parcel ID: 60578 Zoning District: HRC- Highway Retail Commercial
Additional Information Requesting a BZA hearing for an appeal from Article 10; I Prohibited signs - 4. Roof Signs

APPLICANT PROVIDED INFORMATION

Property Location (address/ID#): 3251 Riverside Dr., Danville VA 24541 / 60578
Applicant: Lauretano Sign Group / Maria Whack- Southeast Permits
Applicant's Address: 717 Old Trolley Rd. Suite 6 #313, Sumemrville SC 29485
Applicant's Phone Number: 843-708-1254
Applicant's E-mail: projects@southeastpermits.com / Alyson@lauretano.com

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

The BZA board considers our signage proposal non-compliant with Article 10, I Prohibited Signs 4. Roof Signs. On behalf of MOD Wash, Lauretano Sign Group would like to appeal the interpretation of this code as the signs that are proposed do not extend above a roof line. These signs are on a structure (fin) that extends from the foundation to the roof.

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

The BZA board continued our request on November 16th, 2023 with the recommendation that

MOD Wash submit an application for appeal of zoning administrator and return for a hearing on

December 21st, 2023

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

Article 10, I Prohibited Signs 4. Roof Signs

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

The signs that we are proposing are not above the roof line. The building has a extending roof

that exceeds the normal roof line. This "fin" is part of the structure of the building and therefor part of the

roof. Allowing this signage to be placed on the fin will increase visibility for all evevations.

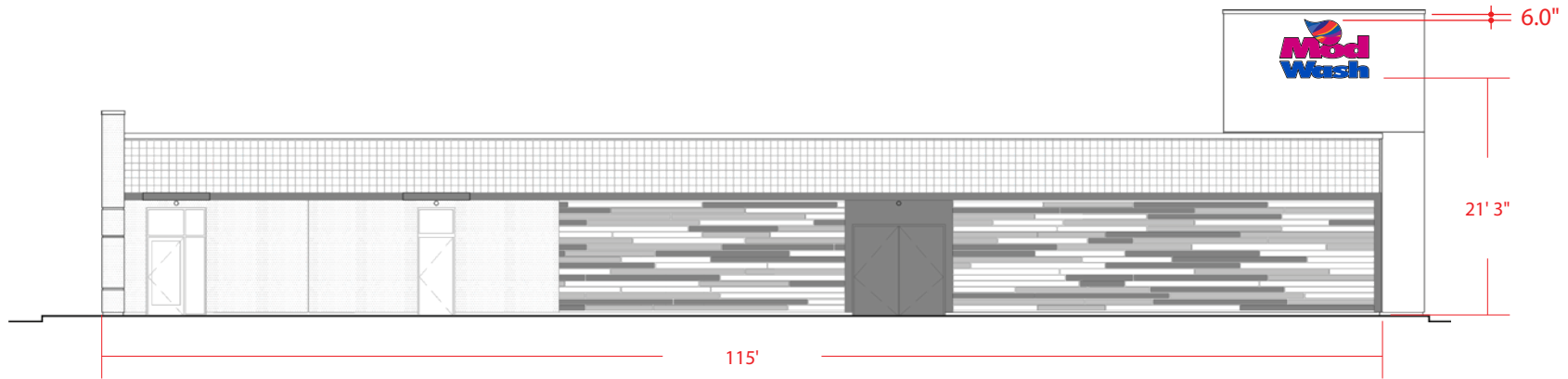
Applicant Signature

date

Property Owner Signature
(if not applicant)

date





East Elevation - 1/16" = 1'

Print	9031MK-3	Date	8/23/23	ES#	47660	Line	3	SP	AL	Sign Type	Channel Letters	
CLIENT APPROVAL				Title	ModWash					Location	East Elevation	
				City/State	Danville, VA					Size	5' 3" x 8' 0" (42 sqft)	
				Customer	ModWash					Description	F-2 Main ID Channel Letters on	
				AUTHORIZED SIGNATURE		DATE		Int. Note	East Elevation			
1 of 3	This drawing contains original elements created by Lauretano Sign Group, Inc., is property of Lauretano Sign Group, Inc. and is subject to all applicable copyright laws. This drawing may not be used in any way until full payment is received by Lauretano Sign Group, Inc. It is intended for review and approval purposes only, and is not to be reproduced, copied, transmitted by electronic media, or exhibited in any fashion to anyone outside your organization without the expressed written consent of Lauretano Sign Group, Inc.											

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1 Tremco Drive. Terryville, CT 06786
 phone: 860.582.0233 fax: 860.583.0949
 signs@lauretano.com www.lauretano.com



Scale: 3/8" = 1'

Front View

Note: For preliminary design purposes only.
Accurate field survey and dimension verification
required before beginning construction.
☐ Survey and Verification Complete

COLORS / MATERIALS

3" Deep Channel Letters:

3/16" White Lexan Face
w/ First Surface Applied Vinyl Graphics.
1/2" White Border.
1" Jewelite Trimcaps, .040" White Alum. Returns.
.063" Thk. CAD-Cut Alum. Backs.
White LED Illumination.

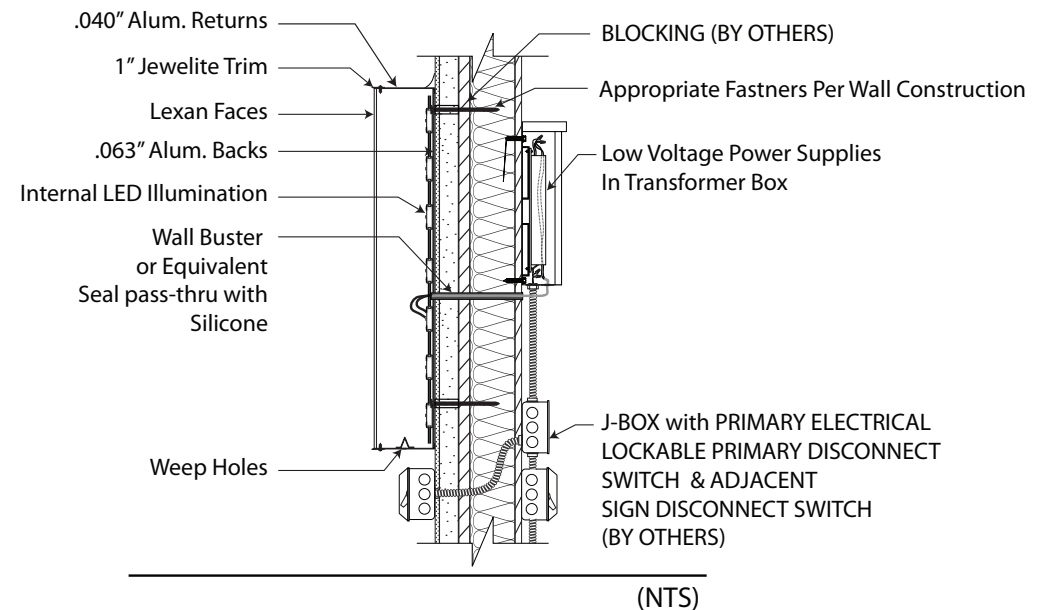
Colors:

- PANTONE 233C
- PANTONE 2728C
- PANTONE 130C
- PANTONE 1788C
- PANTONE 4141C
- PANTONE 2736C
- PANTONE 2602C

White Trimcaps, Retainers & Returns

NOTES

Seams Required Between "Mod" and Mod Drop.
Additional Seams May be Required.

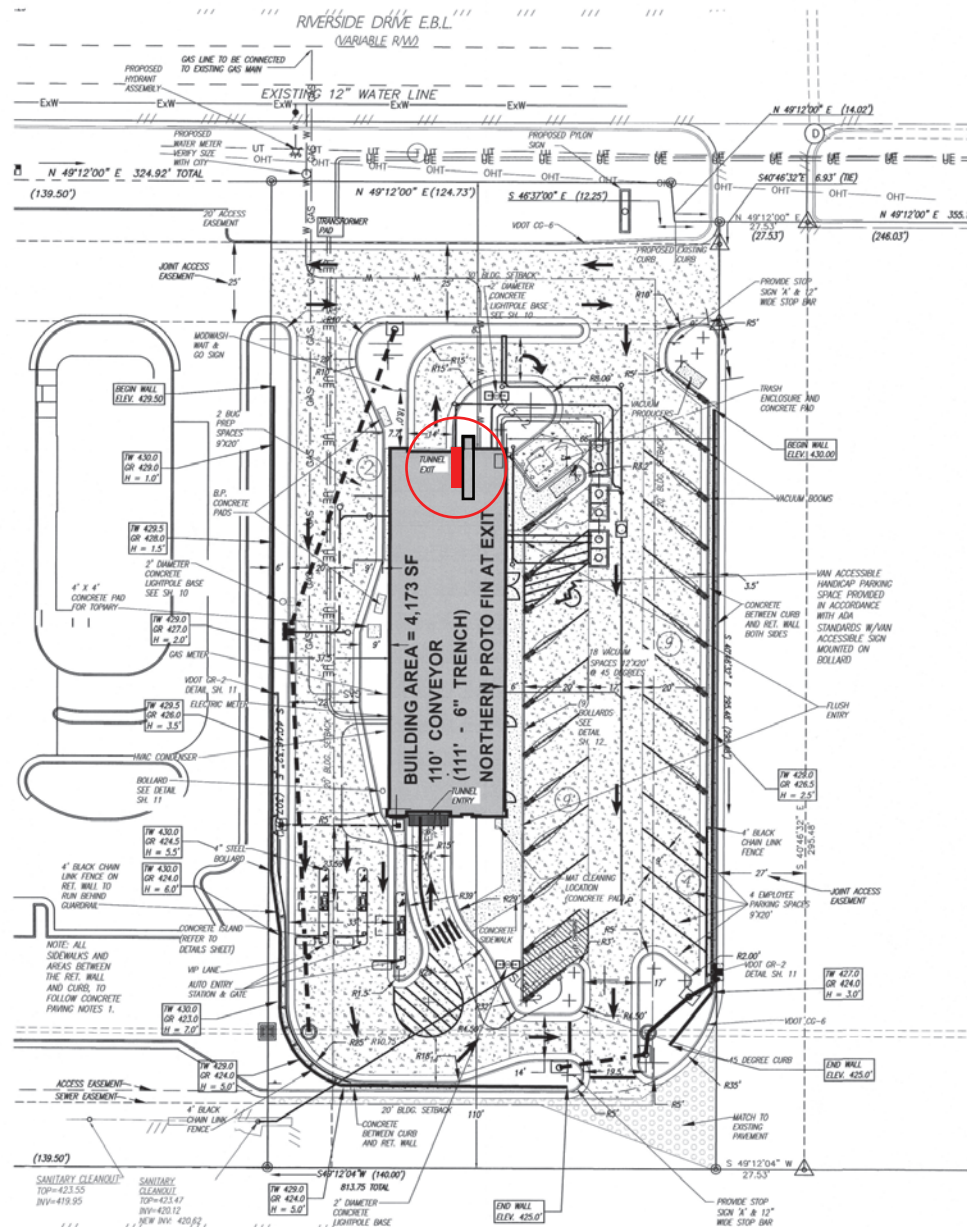


PROCEED TO PRODUCTION		Print 9031MK-3	Date 8/23/23	Installation Method	
		ES# 47660	Line 3		
AUTHORIZED SIGNATURE _____ DATE _____		 = Critical Dimension for Internal Quality Control	UL FILE NO. E70436	Amps	Volts

2 of 3 This drawing contains original elements created by Lauretano Sign Group, Inc., is property of Lauretano Sign Group, Inc. and is subject to all applicable copyright laws. This drawing may not be used in any way until full payment is received by Lauretano Sign Group, Inc. It is intended for review and approval purposes only, and is not to be reproduced, copied, transmitted by electronic media, or exhibited in any fashion to anyone outside your organization without the expressed written consent of Lauretano Sign Group, Inc.

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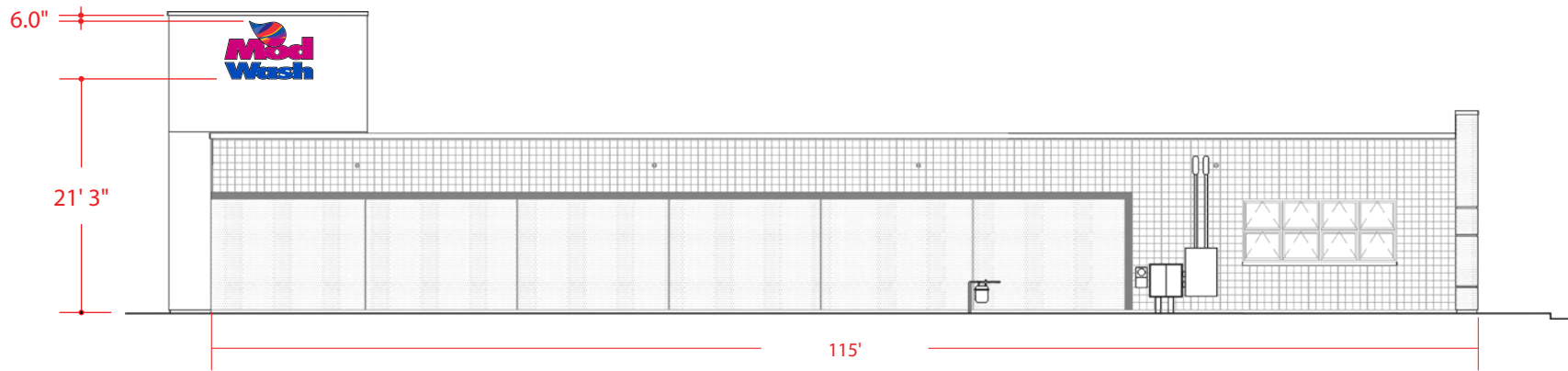


Scale: 1" = 60'

PROCEED TO PRODUCTION		Print 9031MK-3	Date 8/23/23	Installation Method	
		ES# 47660	Line 3		
AUTHORIZED SIGNATURE _____ DATE _____		6 = Critical Dimension for Internal Quality Control	UL FILE NO. E70436	Amps _____	Volts _____
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West Elevation - 1/16" = 1'

Print 9030JW-2		Date 8/16/23	ES# 47660	Line 1	SP AL	Sign Type	Channel Letters
CLIENT APPROVAL			Title	ModWash		Location	West Elevation
			City/State	Danville, VA		Size	5' 3" x 8' 0" (42 sqft)
			Customer	ModWash		Description	F-2 Main ID Channel Letters on
			AUTHORIZED SIGNATURE		DATE	Int. Note	West Elevation
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w/ First Surface Applied Vinyl Graphics.

1/2" White Border.

1" Jewelite Trimp caps, .040" White Alum. Returns.

.063" Thk. CAD-Cut Alum. Backs.

White LED Illumination.

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PANTONE 2736C

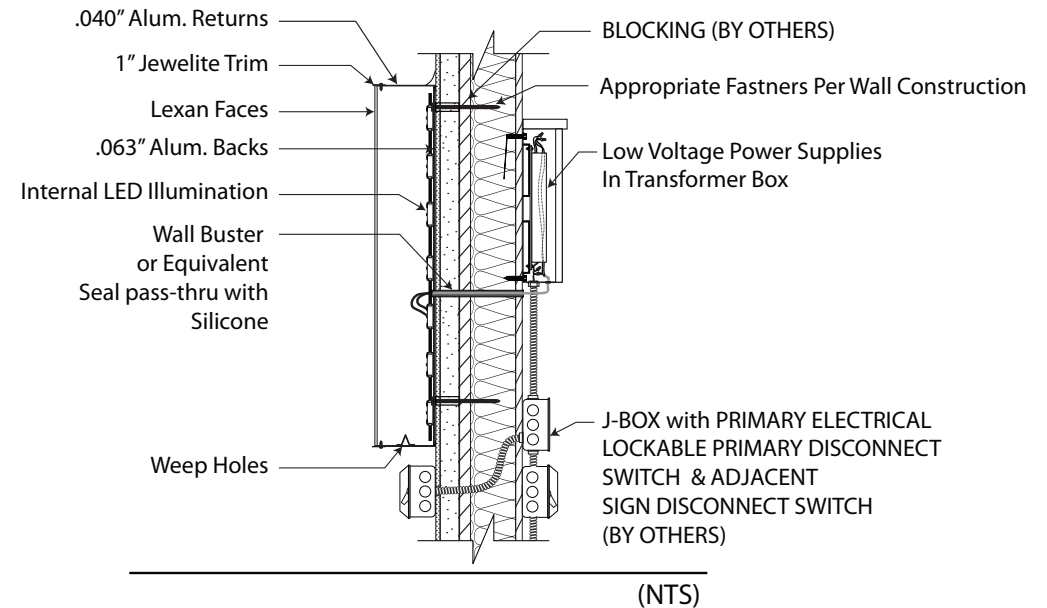
PANTONE 2602C

White Trimp caps, Retainers & Returns

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Seams Required Between "Mod" and Mod Drop.

Additional Seams May be Required.



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Print 9030JW-2

Date 8/16/23

Installation Method

ES# 47660

Line 1

6 = Critical Dimension for Internal Quality Control

UL FILE NO. E70436

Amps

Volts

AUTHORIZED SIGNATURE

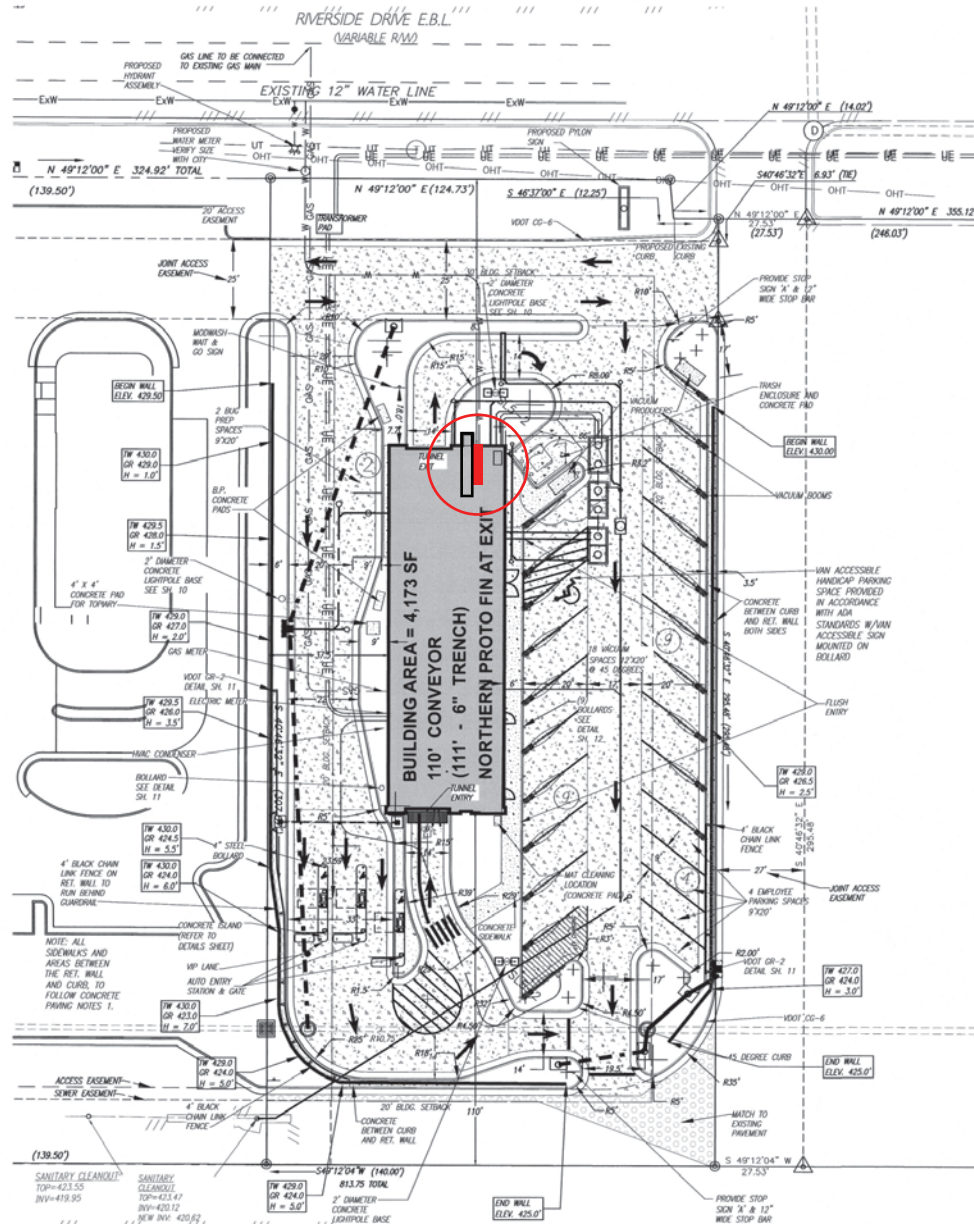
DATE

2 of 3

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Scale: 1" = 60'

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Line 1

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UL FILE NO. E70436

Amps

Volts

AUTHORIZED SIGNATURE

DATE

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BOARD OF ZONING APPEALS MEETING

November 16, 2023

Members Present

John Hiltzheimer
Nicole Garrison
Gus Dyer
Ann Sasser Evans
Newton Ray
Gus Dolianitis

Members Absent

Lawrence Meder

Staff

Renee Burton
Cynthia Lester
Ryan Dodson
Shanika Williams

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

I. ITEMS FOR PUBLIC HEARING

1. Variance application PZ23-00392 submitted by Doug and Helen McKee, requesting a variance from Article 7 Section C Item 5 of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended to allow reconstruction of a nonconforming structure (garage) damaged by "Acts of God" at 405 Avondale Drive (Parcel 21810).

Mr. Dyer opened the Public Hearing

Mr. McKee stated. With that act of God, on May 17, 2023, a huge limb landed on our garage and took out the garage and the vehicle inside of it and has not been replaced, I have an issue with being a new building as opposed to being a replacement building that garage has been there since, as far as I know, since 1975. In talking to the neighbors to the left of our house and the neighbor behind us who had the tree with the limb that fell off. They both agree that there's not a problem with the garage being rebuilt in the same spot. That lot is small enough and with the house situated the way it is to call rezone, there is no way a garage can be placed under the new zoning regulations that will vary and cause a significant decrease in the value of the property. Also, it's a place for my mom to put her car during bad weather. If we could get back to where we were.

Mr. Dyer stated. This is going to be a total new construction in the existing footprint pipes and everything.

Mr. McKee stated. Yes, the same.

Mr. Ray stated. We do work next door and I can't remember is that a front to back pitch on the watershed. Is it a concern that they want to come on their property down their driveway.

Mr. Mckee stated. Part of it goes on to our property and part goes on to his driveway.

Mr. Ray stated. I couldn't remember if it how close it came to the edge of the property.

Mr. Mckee stated. In think in regard to as much rain as I have been out there watching the rain fall and often the pitch of the garage, I know that whole area has issues.

Mr. Ray stated. There's no where for the water to go.

Mr. Mckee stated. We had a new roof put on and it wasn't a suggestion to put a gutter on there or not.

Mr. Dyer stated. Aren't they allowed by right to reconstruct the building that was an existing non-conforming building that was destroyed as long as it's the same footprint.

Ms. Burton stated. Not if it damaged beyond 50%.

Mr. Dyer stated. It was totally destroyed. According to staff reports the five criteria that they needed to meet to be granted a variance, was met.

Ms. Burton stated. Absolutely.

Mr. Dyer closed the Public Hearing

Ms. Evans made a motion to approve the variance application PZ23-00392

Ms. Garrison seconded the motion. The motion was approved by a 6-0 vote.

2. Variance application PZ23-00398 submitted by Lauretano Sign Group, requesting a variance from Article 10 Section I Item 4 of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended that prohibits signs extending above the roof line of a building at 3251 Riverside Drive (Parcel 60578).

Mr. Dyer opened the Public Hearing

Ms. Ibbotson stated. The first thing is what we consider the roof signage, this is actually not above the roof line that we're trying to put it on these opposite elevations. In the ease is a structure and it's grounded down in there. It's an actual structure. It not an above the roof line. So, we're seeking relief from that. The sign will say Mod Wash on both sides.

Mr. Dyer stated. I need a point of clarification. We're being asked to grant a variance, seems she's challenging the decision that this is in fact, above the roofline sign. Should that not be a challenge to the zoning administration's decision that this is above the roof line sign.

Ms. Burton stated. If that is what they want to challenge, yes, a conversation we had previously was that it was a roof sign, but they wanted to continue to record so we went for a variance.

Mr. Dyer stated. So, the question we had the exact same thing last month in which the sign in fact did extend above the roofline however you define the roof line. So, my question to you. What are you challenging? Are you asking for a variance from the existing code, as the administration has interpreted it, or are you challenging the administration's interpretation of the code.

Ms. Ibbotson stated. I guess we're challenging the interpretation of the code, because it does not in fact extend above the roofline. We have several examples of other locations in the area that have signs on their towers as we're requesting, such as Cookout, which is a really good example. The Kmart signage that was up there. Our diagram will show that it does not go above the roofline.

Mr. Dyer stated. The top of façade is in fact the roofline.

Ms. Ibbotson stated. Correct.

Mr. Dyer stated. That's why I'm conflicted. I went by and I saw the exactly the same thing you saw. So, is the roofline the silhouette of the building? Or is the roofline, the roof deck of the main structure.

Ms. Burton stated. It the silhouette of the building. Even if there were parapet wall, that would be considered the top.

Mr. Dyer stated. She said City Storage, that sign is mounted above the roof deck of the building. Is this considered a violation? Because the sign set above the main roof deck of the building.

Ms. Burton stated. Yes, if it was turned, even turned to create a faux front of wall, it could be placed there.

Mr. Dyer stated. The sign that says Cook Out extends above the roof of the building. You can see the roof right there, that black part is actually a setback. And there's a roof that's actually underneath that sign. I'm just conflicted over trying to decide whether we're trying to grant them a variance or trying to overturn the city's interpretation of what a sign overtop a roof is.

Ms. Burton stated. The application is for a variance. As far as the Cookout sign. I don't know, when that was issued or procedures for that. That was years ago.

Mr. Dyer stated. When was this sign ordinance put into effect?

Ms. Burton stated. In 2004.

Mr. Dyer stated. The cookout certainly has been there after 2004. I think what the problem is that what the city is saying is if this façade was turned, where it wasn't perpendicular to the front of the building, but in line with front of the building, I see what you're saying, if

you stand on the roof deck of the building, you can see the sign, and if you stand on the roof deck of the city storage you can't see the sign. It's the semantics of whether we're asking for a variance application, where we're going to say we agree that this sign is not in compliance, but we are going to grant you a variance, or we say no, the sign is in compliance. And that's where I have an issue. But I will let you continue on realizing you may be arguing two separate points.

Ms. Ibbotson stated. I understand that. We're going to have separate or problem at hand, which is we would like to put signage on there.

Ms. Burton stated. If there is a variance granted, that will allow them to put the sign up as submitted, if we decide to discuss this as an appeal, we will need to readvertise, and this will need to be postponed until another day.

Mr. Dyer stated. A very good point was made in the city's argument to deny this, was we would be creating a precedent, whereas creating questions.

Ms. Ibbotson stated. It has already been said several instances where this is kind of the case here with the sign that I understand that we're going to move forward. With the sign they have complete visibility because where this is going to be it 's going to be tucked back a little bit. People from Riverside Drive will see this coming in on both directions. And because we have buildings behind us in the shopping center, they will also be able to see where we are, which is why we are asking to extend our wall calculations. We want to request that the west elevation frontage be counted as the main elevation frontage, because that's where we will get most of the traffic from. It will be from the west elevation. And you can see that main frontage is 115 feet.

Ms. Burton stated. It where your primary entrance is.

Ms. Ibbotson stated. Yeah, we're just asking if we can change that around just for this project. That is what we would like a variance for.

Ms. Burton stated. That's a different variance from what was submitted.

Mr. Dyer stated. Just to clarify, when it says we are like an impartial jury, and we are required to uphold the code whether we agree with it or not. The reason for that is because the sign exceeds the maximum allowance of the front end.

Ms. Burton stated. Yes.

Mr. Dyer stated. Okay.

Ms. Ibbotson stated. The droplets themselves seem to fall under an exempt category, more artwork.

Mr. Dyer stated. We had that argument too, before with Schewels. Where they had a logo it's a company logo that pretends to forward the company, right that is considered a sign.

Ms. Burton stated. Correct.

Mr. Dyer stated. Even if it's not lettering.

Ms. Burton stated. Correct. Trying to see if there is anything in the application.

Mr. Dyer stated. Combined wall sign shall not exceed two square feet per linear foot. You're not arguing that you want the west side to be the frontage, you're asking for a variance to the existing interpretation that was that the north façade is in fact the frontage.

Ms. Burton stated. Right, which was not advertised. So, it's not for public hearing.

Mr. Dyer stated. I'm assuming you are from out of town. It really seems to me like this issue needs to be tabled until we can get clarification on what you really want to appeal.

Ms. Ibbotson stated. What we want to do as a whole is on the west elevation, which is where we want to put a sign up there. And we also want to put one on the opposite side on the east elevation. And then on the south elevation, we want "carwash" with our drop and on the north elevation, we want "carwash" with our drop. It's not an excessive amount of signage. I guess it just looks that way.

Mr. Dyers stated. They are allowed signage on all four sides of the building?

Ms. Burton stated. Correct.

Mr. Dyers stated. So, we had something with the Olive Garden, and they had the spot where they put a sign because that was because they exceeded the square footage of signage?

Ms. Burton stated. I believe so. So, your total maximum square footage of allowed signs is based on your storefront.

Ms. Ibbotson stated. That's why we are asking for the storefront image to be the west elevation.

Mr. Dyer stated. That doesn't raise the front is on Riverside Drive.

Ms. Burton stated. Right, that's your primary because you drive through towards Riverside.

Ms. Ibbotson stated. As you come down, you will see your building right there, which is why we're asking for more.

Ms. Burton stated. We will need to readvertise.

Mr. Dyer stated. Based on our case last month, obviously a building permit has been issued for this for the structure.

Ms. Burton stated. Correct.

Mr. Dyer stated. Is the signage not included in any of the elevations, is it not something that get reviewed, if you show ability, basically is that not something someone flags when they get a building permit say hey, your building is fine, but you can't put all that signage.

Ms. Burton stated. They are reviewed separately, one being that because a building can change based on whatever they may find once they start digging. We do that as a separate view, because if not, then we've automatically approved signage and then the buildings change and then it may or may not met code.

Mr. Dyer stated. So, its two separate deals? Sign permits and building permit.

Ms. Burton stated. Yes.

Mr. Dyer stated. I don't want to interrupt your presentation, but I don't want you to waste a lot of time. Does anyone else on the board feel the same way I do. I know they asked to do two separate things and we have one application for variance when in fact, they may actually be challenging the interpretation of the code.

Ms. Burton stated. We can certainly get back together and go back through the application. To look at that again, if you would like us to do that, and maybe come back in December. It has to be advertised. I can't change the item at this point.

Mr. Ray stated. I don't understand why a flag didn't come up, with them being from out of town, can't allow not statute making sure they meet all the codes.

Mr. Dyer stated. A lot of issues with the sign.

Mr. Ray stated. Why are they not catching them?

Ms. Evans stated. Isn't that what happened last month?

Ms. Burton stated. Last month there were a situation we did issue in error. This particular time, when the building is reviewed, there is a note put on building reviews that states sign schedule reviewed separately or sign schedule is to be submitted separately. And that is because things can change so much in the structure of a building. Before it's actually completely ready for signage.

Mr. Dyer stated. The difference between this one and the last is that they actually issued the sign permit, the sign permit has not been issued and that's why they are here.

Ms. Ibbotson stated. The building foundation has already been formed, and the walls are starting to go up. So not much on that building is going to change. If that's the concern you have.

Mr. Dyer stated. We are not concerned about that, what we are concerned is sign ordinance, we don't necessarily all have to agree with it. It's just what the sign ordinance is and we are charged with enforcing that sign ordinance unless there were extenuating circumstances that force us to grant a variance. There are five criteria that you're required to meet to get a opinion of this board. As it stands, it doesn't have to be something going before city council. If we agree that the code has been misinterpreted, then that's a

decision that we can make. The problem is with this variance, you are tacitly acknowledging that you agree with the city that you're violating the code, wouldn't you say unless you can present evidence where you meet the five criteria for a variance to be granted, you know we're not suppose to grant that variance. And so it's sort of a double-edged sword.

Ms. Burton stated. If you would like to amend that you can do that. But it will require a postponement.

Ms. Ibbotson stated. Either way it's a postponement.

Ms. Burton stated. I have to public advertise whatever the request is, and because that hasn't been publicly advertised at the point I would have to postpone.

Mr. Dyer stated. The thing is it's on the application, but it was not on the advertisement about a request to increase the manager of signage.

Ms. Burton stated. So, we will need to revisit all of that.

Mr. Dyer stated. I apologize, you can go on if you'd like to clarify what you're appealing. If you would like to appeal and ask to grant a variance application, you may go on and do so. But realizing what issues we're going to have to be considering, you might want to change that. If they denied the variance, they could come back and still challenge the ruling, right, that interpretation. It's not something they would have to wait a year to redo.

Ms. Burton stated. That's correct, because that would be a separate issue.

Mr. Dyer stated. We do have a deal where if you are denied a variance, you can't come back asking for the same variance again and again, it's a 12-month process.

Ms. Burton stated. That's right, so you can be granted a variance today for the roof sign. And then if you wanted to then come back for a separate variance for additional square footage that could be handled separately.

Ms. Ibbotson stated. I do have the roof sign, but not the square footage.

Ms. Burton stated. Okay, you can have that heard today. And then we can discuss the other.

Ms. Ibbotson stated. Then we will come back for additional square footage.

Ms. Burton stated. We can do that yes.

Mr. Dyer stated. I do feel like we need to clarify that. Because, once again we're generally not an opinion board where we say, we think this was great, we have to do what the code says. I think we were at the point where you were describing all the properties immediately surrounding that you can stand on your roof deck and see that appear to be violating the same standards.

Ms. Ibbotson stated. Correct. And I would like to add that it just created increased visibility with us tucked in there with all the other businesses around, everybody else can see it, they know where we are in there to come get their car wash there. It is not really technically above the roof. It is structurally sound. And as far as a building widens.

Mr. Dyer the sign that's mounted to this perpendicular structure, and the waterdrop on the front of the building, does that meet the limitations of the square footage on the side.

Ms. Williams stated. You're speaking something that is going to have to be determined on their own.

Ms. Burton stated. We will go through that square footage.

Mr. Dyer stated. What we are being asked to do right now is to grant them a variance to allow them to have the sign that extends above the roof.

Ms. Burton stated. Right, you will not have to put anything to say it needs to be 32 square feet or anything like that. At this point, it would need the maximum square footage to be within the allowable amount.

Mr. Dyer stated. Right now, we are saying they can put the sign where they want too.

Ms. Burton stated. That it can go on both sides of this extension. That's what you're looking for.

Mr. Dyer stated. In essence, it's a street sign that's attached.

Ms. Burton stated. Yes, that was our point of view.

Mr. Dyer closed the Public Hearing

Ms. Garrison stated. Is there going to be an additional freestanding sign?

Ms. Ibbotson stated. There is a pole.

Ms. Evans stated. How many signs we are talking about.

Ms. Ibbotson stated. Seven, one on each side of the fence, on the west elevation and east elevation, there's the mod wash, there's the mod wash on the south elevation, which is the front, and you have the carwash signage on the drop. And on the north, you have a power wash on the drop.

Ms. Garrison stated. On this particular sign we're talking about today is the structure back and front.

Ms. Burton stated. Right.

Mr. Dyer stated. I agree that there are signs that if in fact, the roofline of the building is the silhouette. That sign does not extend above the silhouette of the building. But that's an interpretation of the code. That's not granting a variance. If I say I granted them a

variance, I say yes, I agree with that side and the extent to both the roofline and so for personal reasons, I would be inclined to say no, I'm not granting this variance because I don't think the point is moot. I think that's not what we are here to talk about. Anyone else have any opinions on whether this requires a variance application or challenge the interpretation of the code.

Ms. Garrison stated. The interpretation of code.

Mr. Dyer stated. I think there is a great deal of confusion, we want to postpone the decision on this. Because I think that there's a lot of questions.

Ms. Ibbotson stated. Is there anything we can gather and come back to show our evidence of why we think.

Mr. Dyer stated. I would suggest that one of the possible routes that you might pursue is an appeal of the decision that this is in fact above the roofline of the building as opposed to asking for a variance. If you going to come back for additional sign square footage, you will need to get your ducks in a row. Because that's something the code says what the code says, we don't have to agree with it.

Ms. Ibbotson stated. There is no way of alternating handling the application.

Mr. Dyer stated. That would be probably a request to the planning commission, they actually changed the code.

Ms. Burton stated. There's a special use permit path that would be used for additional square footage. That is not in this board, not within the preview of this board.

Mr. Dyer stated. That Planning Committee, and City council.

Ms. Burton stated. That's correct. So, what can happen today, you can approve, you can deny, or you can postpone, you can postpone so that she can return with a amended application for an appeal of interpretation. Or you can look at the variance as is either approve or deny.

Mr. Dyer stated. I would be empowered to deny the variance application because it is, in fact above the roofline as interpreted by the city.

Ms. Burton stated. You also have the right to postpone if you would rather just wait and come back with an appeal.

**Ms. Garrison made a motion to postpone the variance application PZ23-00398
Mr. Dolianitis seconded the motion. The motion was approved by a 6-0 vote.**

3. Variance application PZ23-00399 submitted by Southern Virginia Legal PLLC on behalf of First Choice Transmissions and L. Hampton Wilkins, requesting an appeal to Zoning

Administrator determination to deny a request for zoning clearance for a business license in accordance with Article 7 Section B at 135 Forestdale Drive (Parcel 54834).

Mr. Dyer opened the Public Hearing

Mr. Gould stated. I will assume the legal and represent the applicants with respect to this appeal. We believe that First Choice transmissions provides an opportunity to keep this property to use and to do so in a way that is not a material departure from the most recent non-conforming use. We do not view this as an expansion of that much reasonably for use, which as we discussed was for an emergency transport business. While the city is absolutely correct that the OT-R classification does not allow for automobile repair facilities and does not enhance our emergency medical transport business as well, in this classification and as an emergency medical business, it was an intensive use of the property. They were little off hours, you can have transport running all hours of the day. We are not aware of any complaints from neighbors of noise related to vehicle repairs. Neighbors are happy to have First Choice there. We appreciate the city's desire to move this from a non-conforming use to a conforming use, and the city contention that having vehicles on the property expands the footprint of the non-onforming use. We would suggest that visible off-street parking number of vehicles has been the case since going back to 1988.

If it's the pleasure of this body to provide an appropriate screen for customers vehicles, that is not a concern. We realize that the location of this building is not ideal, but we can't undo what the city was dealt when it was annexed.

Mr. Dyer stated. Is this the First Choice that are currently operating in the building right now.

Mr. Gould stated. Yes, they are.

Mr. Dyer stated. So, they moved in, assuming they can without hesitation and the city is calling them on that saying they can't. Correct?

Ms. Burton stated. Yes.

Mr. Dyer stated. The previous business that was in here was the emergency medical transport?

Ms. Burton stated. Yes, there was a gentleman that came to the counter to our office requesting a business license clearance and was denied at that point and they moved in after that.

Ms. Garrison stated. Did they move in prior to asking for the permit.

Ms. Burton stated. I don't know the exact date they moved in prior to the request or moved in after, but I do know they are actively utilizing the property.

Ms. Evans stated. And Live Care still has a business license there.

Ms. Burton stated. They have an active 2023 license active at this property.

Ms. Williams stated. I live right next door. They have done a great job, they cleaned it up. Business seems to be so quiet sometimes. No noise.

Mr. Wiggins stated. I am a customer of the business. They have done a great job cleaning up the property.

Mr. Byrd-Dickens stated. We made improvements to the property; we hadn't done any drastic change to improve or modify the structure.

Mr. Dyer stated. That's the point I want to get to. So, you are leasing this building correct.

Mr. Byrd-Dickens stated. Yes.

Mr. Dyer stated. You're leasing from Mr. Wilkins. When it was presented to you that you wouldn't have any problem operating the business that you want there at that location.

Mr. Byrd-Dickens stated. Yes.

Mr. Dyer stated. Were you warned that there is a possibility that property was non-conforming.

Mr. Byrd-Dickens stated. No.

Mr. Dyer stated. Nobody told you Hey, you better check with the city before you move all your stuff in there because they may not let you may not grant you a business license. None of that was discussed with you before you moved in.

Ms. Evans stated. Did you move in first and then ask for a business license.

Mr. Byrd-Dickens stated. I transferred my existing business license from my business on Riverside Drive.

Ms. Garrison stated. You had already moved all of your equipment when you ask for that permit.

Mr. Byrd-Dickens stated. No, I was in the process of moving everything at that time.

Ms. Garrison stated. After they told you that you couldn't get a permit, you continued to move your property.

Mr. Byrd-Dickens stated. I was going through the motion of moving. When we moved into the building, we were aware of the fact that the business license needed to get zoning approval. I spoke to Ms. Burton, she informed me that the owner would have to file an appeal, so we done it in a professional manner. Our attorney is more familiar with it than we are.

Ms. Evans stated. So, a separate note and cleaning up the property, Your employees and the cars that you store there, do they park on the grass or on the pavement.

Mr. Byrd-Dickens stated. Grass, there's an asphalt millings parking lot out there, also a separate entrance there to the right. Also putting a fence there to the right to increase the appearance of the building.

Mr. Dyer stated. Are you aware that you're only allowed to have a four-foot fence on the front yard of the property. You have to come back for a variance application if you want to put a six- or eight-foot fence up right.

Mr. Dyer stated. There are no designated parking spots that are associated with this structure.

Mr. Dyer closed the Public Hearing

Mr. Dyer stated. Question for staff the business that was located in here prior to this transmission. Was the medical transport correct?

Ms. Burton stated. Correct.

Mr. Dyer stated. What is the most restrictive zoning category that allows that type of business? Is it allowed in TOC?

Ms. Burton stated. There is a medical piece in TOC it was considered legal non-conforming. When they received their license.

Mr. Dyer stated. What would that property have to be rezoned to make it conforming use. If it had be rezoned to TOC would it be conforming use, would they have to go to neighborhood retail commercial, industrial? I know that's right off the top of your head, that's unfair.

Ms. Burton stated. You would do a TOC rezoning with a special use permit I believe.

Mr. Dyer stated. Because what's being challenged is that this is where we are expanding the use beyond with previous non-conforming use.

Ms. Burton stated. The least intense category for and automobile sales is HR-C zone classification.

Mr. Dyer stated. Would medical transport fit into neighborhood commercial and retail without special use permit?

Ms. Burton stated. It is with the TOC but not with neighborhood commercial.

Mr. Dyer stated. Has any attempt been made to have this property rezoned?

Ms. Burton stated. No, the situation with rezoning this property is that it is surrounded by residential so you do run the risk of what's considered spot zoning, illegal spot zoning which means that you would ultimately be rezoning a property specifically for the benefit of one, not for the greater good of the community. So, you would ultimately be putting an HR-C just plop down in the middle of the OT-R.

Mr. Dyer stated. That the least restrictive zoning category that would allow this business to operate without a special use permit.

Ms. Burton stated. Correct.

Mr. Dyer stated. The transmission business would not be allowed in neighborhood retail commercial.

Ms. Burton stated. Correct, not without a code amendment.

Ms. Dolianitis stated. I went and look at it a couple days ago, was it painted, it just looked a lot better for the grass and the privacy fence.

Mr. Dyer stated. and an expansion of the parking lot would be and expansion of the business growth and expansion of a non-conforming use?

Ms. Burton stated. That would be staff interpretation. Yes. And it will be required.

Mr. Dyer stated. What is being asked today is to determine whether the city staff made a great decision that this is in fact, the expansion of the use. Bottom line, not whether you think they've cleaned up the lot, it is not whether you think it looks better than it did before, it's whether this is an expansion of the use. And so, the previous use was medical transport, this is now auto repair. And so that's the reason I was trying to clarify if there was a difference in the zoning category between what you would have for medical transport, and what you would have to have for auto repair, and it appears it does. Now technically, our code is not tiered correct this is the most intense use going down to the least intense use without practical purposes it is because it starts with threshold residential, which is, you have to have a house on one lot, all the way up to industrial. If you go by that, by the way our code is written TOC is a less intense use than HR-C. This would in fact be an expansion of the intensity of the use of this property and that is what we're being asked to determine as to whether this is an expansion of the use of this property because of the intensity of this property.

Mr. Dolianitis stated. I was looking at it more of a practical.

Mr. Dyer stated. Practical, pragmatic, aesthetics, common sense however you want to say it, we are here basically as a jury to determine whether in fact this is an increase the intensity of the use of this property.

Ms. Garrison stated. There will be cars parked there that are to be worked on overnight for periods of time I assume because transmission work is not pull in and pull out.

Mr. Dyer stated. That would be a question for the business owner to answer.

Ms. Garrison stated. Do you have more parking other than the employees?

Mr. Byrd-Dickens stated. An option that we have is to do for an extensive work we do have full-service center where we do tires, brakes, oil changes and everything. We do have an off-site location for storage and total repairs, we are offered to rent out some separate space for off site storage for unsightly vehicles if that was the case if it was needed. That is something we are willing to do.

Ms. Garrison stated. Well, you just expanded your business by telling us you are doing tires, and other repairs other than transmission.

**Ms. Garrison made a motion to uphold the zoning administrator decision expansion of a non-conforming use for variance application PZ23-00399
Mr. Ray seconded the motion. The motion was approved by a 4-1 vote.**

III. APPROVAL OF MINUTES FROM OCTOBER 19, 2023

The October 19, 2023, minutes were approved by a unanimous vote.

IV. OTHER BUSINESS

With no further business, the meeting was adjourned at 11:10 a.m.

APPROVED