

BOARD OF ZONING APPEALS MEETING
June 17, 2010

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mrs. Rich	Mr. Bowles	Ken Gillie
Mr. Dyer	Mrs. Evans	Christy Taylor
Mr. Lampley		Renee Blair
Mr. Campbell		Emily Scolpini (Intern)
Mr. Snipes		Clarke Whitfield

Chairman Snipes called the meeting to order at 10:05 a.m.

Mrs. Rich requested that the items for public hearing be presented out of order.

I. ITEMS FOR PUBLIC HEARING

5. *Variance Application Number 10-007, filed by Elliot Baynes, requesting variances from Article 3.B, Paragraphs E 3 A., and I 4, of the City of Danville Zoning Ordinance on approximately 40.033 Acres off Blair Loop Road fronting on the private Big Rock Road, otherwise known as Parcel 000001.001, Block 001, Grid 0818 of the City of Danville, Virginia, Zoning Map. The applicant is proposing to subdivide a legal non-conforming lot without public street frontage and access to public water to build a new single-family dwelling modifying a lot that does not have access to public water and frontage on a public street, which is required for all new dwellings. The applicant is also requesting a variance to the requirement for public sewer connection when sewer is available.*

Ten (10) notices were mailed to property owners within three hundred feet; Two (2) respondents were unopposed; Zero (0) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Elliot Baynes. Mr. Baynes stated that a couple years ago they bought the property and had it split between him and his father. When we first bought the property we wanted to build houses and everything was approved. We have not had a chance to do anything with the property yet. We want to separate the line that divides the two (2) properties to where both parcels of land have direct access to Big Rock Road. As it is right now, my track has access through my father's property. We both want to have direct access to Big Rock Road in case in the future one of us has to sell, it will not hamper the other person to drive through someone else's property they do not know.

Mrs. Rich asked why do you not want to connect to City sewer?

Mr. Baynes responded the tracts of land are so large and the areas we are looking at for the best home sites to utilize the property.

Mrs. Rich asked do they perk?

Mr. Baynes responded there were dwellings on the property before we purchased it and all of them had septic tanks. We are assuming they do perk. We have not had it tested. In order to get to City

sewer from where we are proposing to build homes, through all of the hills and the topography of the land, it is not possible to make it to the sewer line.

Mrs. Rich asked do you have approximately forty (40) acres?

Mr. Baynes responded yes.

Mrs. Rich asked when you subdivide; do you have a plan as to how large the building lots are going to be?

Mr. Baynes responded we are going to keep the acreage like it is. It will be one (1) house on each lot. We are not going to subdivide into multiple lots. It will only be one (1) house on each forty (40) acre tract.

Mr. Dyer asked just to clarify; they cannot get a building permit unless they provide a septic system?

Mrs. Blair responded they received a variance in 2006 and will need approval from the Health Department.

Mr. Dyer asked will they have to provide evidence if they are not on City sewer that they have an adequate septic system before it can be habilitated?

Mrs. Blair responded yes.

Close the Public Hearing

Mrs. Rich made a motion to approve the request for Variance Application V 10-007. Mr. Campbell seconded the motion. The motion was approved by a 5-0 vote.

- 6. Variance Application Number 10-008, filed by Donald and Dorothy Baynes, requesting variances from Article 3.B, Paragraphs E 3 A., and I 4, of the City of Danville Zoning Ordinance on approximately 34.000 Acres off Blair Loop Road fronting on the private Big Rock Road, otherwise known as Parcel 000001, Block 001, Grid 0818 of the City of Danville, Virginia, Zoning Map. The applicant is proposing to subdivide a legal non-conforming lot without public street frontage and access to public water to build a new single-family dwelling modifying a lot that does not have access to public water and frontage on a public street, which is required for all new dwellings. The applicant is also requesting a variance to the requirement for public sewer connection when sewer is available.***

Ten (10) notices were mailed to property owners within three hundred feet; Two (2) respondents were unopposed; Zero (0) respondents were opposed.

Open the public hearing.

Present on behalf of the request was Mr. Donald Baynes. Mr. Baynes stated that he owned the other parcel and there was nothing new to add unless anyone had any additional questions. Mr. Baynes stated we each want private access to our property and we will have it by this division. It is the same acreage on each lot.

Close the public hearing.

Mrs. Rich made a motion to approve the request for Variance Application V 10-008. Mr. Dyer seconded the motion. The motion was approved by a 5-0 vote.

- 1. Variance Application Number V 10-003, filed by Herman & Diane Guy, requesting variances from Article 2, Section V, Item 4, and Article 3.C: Section F, Item 2. A. (2), of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 302 Vicar Road, otherwise known as Grid 1916, Block 011, Parcel 000011 of the City of Danville Virginia, Zoning Map. The applicant is requesting variances to roof over a set of exterior basement stairs where the minimum setback required is 15 feet and a roof may extend 3 feet into the minimum setback and the home has an existing setback of 11.35 feet and the roof is proposed to extend 6 feet, making for a final setback of 5.35 feet.*

Twenty-six (26) notices were mailed to property owners within three hundred feet; Nine (9) respondents were unopposed; Zero (0) respondents were opposed.

Open the public hearing.

Present on behalf of the request was Mr. Herman Guy and Mrs. Diane Guy. Mr. Guy stated that he wanted to put a roof over his back door because when it rains real hard and fast the basement is flooding.

Mrs. Guy presented pictures of the flooding that has occurred in the basement.

Mrs. Guy stated beside our house we have a hill that adds to the flooding. We know that the roof is not going to stop all of the water, but at least it will slow it down. Roto-Rooter came by and he mentioned a french drain.

Mr. Guy stated we thought it was a drain that takes water to the street, but the plumber said it was a french drain and it is not going to absorb the water if it coming down fast, so it is coming into our basement.

Mrs. Guy stated they had pictures of the structure itself and of the hill where the water runs down. The flooding damaged the carpet, and the phone line. The mold and mildew has gotten into the furniture. The first time we had to get rid of the television, and computer. We have purchased a laptop and a flat screen so they will be off of the ground in case the water backs up again. This is not something we wanted to do just to spend money.

The Board and Staff looked at the pictures presented.

Mr. Dyer asked how long have you lived in this house?

Mrs. Guy responded ten (10) years. The flooding has been happening within the last two (2) years.

Mr. Dyer asked has something changed within the last two (2) years that is causing this problem.

Mrs. Guy responded yes. The cement walkway on the right hand side is like a gutter to me.

Mr. Guy stated our first year there we asked if the previous owner had any problems with water in the basement and they said no.

Mr. Dyer stated if you have standing water in your basement, putting a roof over these steps is not going to solve your problem.

Mrs. Guy stated we already know that.

Mr. Dyer stated the area that you are going to cover with your steps, is probably no more than twenty (20) square feet. In order for you to have standing water covering the entire basement, you have got water draining into your house from somewhere. The roof is not going to stop the water.

Mrs. Guy stated we know it is not going to stop all of it. It will slow it down.

Mr. Dyer asked it seems like one of those issues where you cannot have a little bit of a flood. You have water in your basement, what difference does it make to you if you have three (3) inches or four (4) feet of water?

Mr. Guy responded the water is not being absorbed into the gravel in the french drain.

Mr. Dyer stated a french drain is basically a gravel pit. Water does not actually drain into a sewer system. The water is supposed to eventually disperse into the ground. When you have more water coming in than going out, you have a back up. You have ground water coming into your basement. Water is coming from surrounding property owners into your basement. It seems to me that something has happened in the last couple of years. I do not know whether it is that the storm sewer line is collapsed or what.

Mrs. Rich stated what they need to do is dig out the french drain and put a new drain in to the street. That would solve your problem.

Mrs. Guy stated I know but the roof is already there.

Mr. Guy stated I talked to a plumber about this.

Mr. Dyer stated the roof does not meet the current Code. We are charged with trying to find extenuating circumstances. We are looking for unique circumstances and your situation is not something that normally would not be addressed in the Building Code. I think your problem is that someone has put in a sidewalk or a sewer line has collapsed that normally carries water away from your house. Those issues are not related to this roof being over your stairwell. Even if there is something unique that is causing the flooding in your basement, this roof over your stairwell is not going to address this issue. In the extent that it will mitigate your problem is not significant. We are not allowed to change the law that is made by City Council. There are four (4) criteria you have to meet for us to grant a variance. It seems that at least three (3) of those are not met. Our hands are tied as far as being able to grant you this variance. We appreciate that you have a bad situation here but we cannot do anything about it.

Mr. Snipes stated at this point we are just listening to their presentation.

Mr. Dyer stated I just want to make them aware of what we are allowed to do.

Mr. Snipes asked if there was anyone else present that would like to speak in favor or against the request?

Present on behalf of the request was Kathy Hunt Millner. Mrs. Millner stated that she is the next door neighbor and that they would be the ones most adversely affected with this roof. Mr. and Mrs. Guy seem to think that this will help some. The Guy's are seeking a Variance not to tear down the roof that they have already put there, what is wrong with it? They are only asking for a few feet and it is on the side that we live. Why can it not stay?

Mr. Millner stated that they have no objections to the roof. I understand what you are saying. You are drawing a conclusion prematurely. This directly affects no one but us and the Code. I am sure that the Board should take into consideration that some of this work has already been done. None of us who are there are plumbers, engineers or whatever. This is something that I have seen. I have seen the water there. I know some of that water would not be there with the roof in place.

Mrs. Millner stated I understand that the Ordinance was changed in 1986. We bought there in 1989 so the Variance was already there, but I think that somebody should have been notified that it had changed. I know when we bought the previous owners had a packet of everything. I am quite sure that if they had some notice that there was a Zoning Ordinance change, we would have had it. I am quite sure that Mr. and Mrs. Guy did not have it and if they had been told that a small job like this did need a permit, they would have known before. It would not have been erected to start with. Through no fault of their own, they are caught up in this dilemma. Right now to take it down, would cost more than it would to finish it.

Mr. Dyer stated when the Zoning Ordinance is changed, the meetings in which those items are discussed they are very heavily publicized. They are in the newspaper and on the City website. People do not participate. The time, at which these issues should have been addressed, at these public meetings, people ignore it. When you said that the only two (2) people affected by this were you and your neighbor, is really not true. If we grant this Variance, we are creating precedence. One of the really big problems I have with being on this Board is when people are allowed to do something in the past, and then someone else comes along and wants to do the same thing. If we let somebody do something in one instance, it is not fair for other people with the same circumstances not to do the same thing. If we do that then we might as well not have this Zoning Ordinance. We would just be letting people do whatever they wanted to. I have great sympathy for you and your neighbors but there are other issues that we have to consider.

Mr. Millner asked this is a Variance that they are asking for. The other two (2) cases before this was a Variance. Are they all not related to law already?

Mr. Dyer responded no. There are four (4) criteria. We cannot make the law, as much as I would like to let you do this. There are four (4) circumstances in which you must meet in order for a Variance to be granted. The City evaluates those four (4) circumstances and if you meet all of them then generally the Variance is granted. If you do not, the Variance is declined. The case that was before you, they met all four (4) of those criteria. If they would have gone and applied for a building permit they would have found out at that time it did not meet the criteria. Then they could have come here before they actually started construction.

Mrs. Millner asked I know this is no excuse for breaking the law, but where do you go from here?

Mr. Dyer responded we will continue this hearing and the Board will discuss it. Afterwards someone will make a motion and we will vote. If we in fact turn this down, there are appeal processes.

Mrs. Millner stated I am just trying to avoid what could present another situation. The Guy's could just walk away. What does that do for me? You have another foreclosed home in the area. We have one (1) in the area already that is a terrible eye sore.

Mr. Dyer stated I do not think the issue with the roof is going to alleviate the problem with the flooding. We are dealing with the fact that we have a roof that is non-conforming and we have to decide if there are circumstances where we should permit that roof to remain.

Close the public hearing.

Mr. Dyer asked has anybody from the City been out there to evaluate the situation as to why the drainage has changed within the last couple of years? Has it been any new construction in that area? Have the sewer lines been evaluated to make sure there is not a storm sewer backup somewhere?

Mrs. Blair responded I am not aware of any sewer issues. There has been some new construction of neighboring properties in recent years.

Mr. Guy stated that he called the City about the sewer. They came by and checked it, reporting no problems.

Mr. Millner stated there has been some construction to the joining lot, but there has been no change as far as the water flow. If anything, some of the water has been directed away from the property. The hill where a deck was constructed is heavily mulched to absorb water.

Mr. Dyer stated it seems to me if you have a water problem like this that pops up, something is causing it.

Mr. Guy stated when we moved there we had water problems but not like it is now.

Mrs. Guy stated the first time it was a little skim of water. Now it is the whole entire basement.

Mr. Lampley asked has the setback been changed since this house was constructed?

Mrs. Blair responded the current setback would be from 2004 that changed it from a fifteen (15) foot setback.

Mr. Lampley asked do you know when the house was built?

Mr. Whitfield responded in 1976.

Mr. Gillie stated the setback has actually changed twice since 1976.

Mr. Dyer asked the Code does not allow for you to have any type of porch on the side of the house that you are allowed to put a roof over top of?

Mrs. Blair responded no. There is a modification that you can build four (4) feet into the setback area uncovered, unenclosed.

Mr. Dyer stated this is where we get into a problem where there is a neighborhood that is already developed and does not meet criteria to overlay it. What is the point of changing the setback for houses that already exist? It does not make any sense. This is something we run into a lot.

Mr. Lampley made a motion to deny the request for Variance Application V 10-003. Motion died due to a lack of a second.

Mr. Dyer stated he would like to have other Board members comment on this.

Mr. Campbell stated if you know this would not rectify the problem, but you are thinking this is going to help the problem. I want to ask the Board, you talked about meeting the four (4) criteria. We need to share it with them.

Mr. Dyer stated if there is anything in these four (4) criteria that any of the Board members feel like the City Staff's opinion is not correct, we will need to address them. If anyone on this Board feels like these four (4) criteria are not met then we are obligated to deny the request. The four (4) criteria you have to meet are: The first is to produce undue hardship on the property owner, undue hardship is not supposed to mean financial hardship. We cannot do this just because it saves people money. What that means is that you have a circumstance on your property that is so unique that this piece of property creates an undue hardship on you. The second criteria is that such a hardship is not shared generally by other properties in the vicinity in the same Zoning district. We are not talking about the water problem when we address that. We are talking about the setback. That is what you are in violation of. All the property owners around you have the same setback. The third is the authorization of the variance will be a substantial deterrent to adjacent property owners. That goes back to the issue, if we let you do something, how do we not let your neighbor do something. The fourth criteria is the conditional situation is not so general but reoccurring to make it reasonably practical for the formation to be adopted by City Council. In other words, this is a situation that happens so often that we get ten (10) of these a month and City Council needs to address this issue specifically. In that case, you do meet that criteria. We do not run into this situation a lot. You have met one (1) of the four (4) criteria.

Mrs. Millner asked so it is two (2) criteria you can say they have met?

Mr. Dyer responded one (1) of them, everybody agrees that they have met. There are circumstances in which there are particular properties that have neat circumstances. You have issues that could be addressed within the Code. The drainage issues can be addressed within the existing Code. The issue we are dealing with here is allowing you to set this roof in the setback and I do not feel like we can allow this roof in the setback.

Mr. Snipes stated the Board members are sworn to uphold the law. I have had several cases where I have disagreed with the Code but I cannot do anything but rule according to the Code. In your case you said yourself that the roof would not solve the problem. You said it would help the problem but not solve the problem. That is like putting a band-aid on a wing. You have not solved the problem. We are to decide whether or not to grant the Variance or go with the Code. The law tells us to go with the Code.

Mrs. Guy stated the drain cannot hold but so much. The roof will slow it down so the water can drain properly. I know it cannot stop all of the water because you have wind blowing water in all directions. When it rains hard, the water pours in the house, causing health problems. You have mold, mildew, dirt, and electrical problems that are not healthy to anybody.

Mr. Snipes stated you are repeating your presentation. We wanted you to present your case and let us make a decision.

Mr. Dyer stated if anybody has any argument that these four (4) criteria are met speak now or forever hold your peace.

Mr. Campbell asked who gave you the information that the roof would somewhat alleviate the problem?

Mr. Guy responded a plumber. He said if you put the roof over the steps it would help, especially when it rains heavily. On May 28, there was a heavy rain and the water created a puddle in the drain while the roof was over it.

Mr. Campbell asked is this what he observed while it was raining?

Mr. Guy responded no, I did.

Mr. Campbell asked so this was after?

Mr. Guy responded no. The plumber told me this before.

Mr. Campbell asked if you receive a variance and it does not work, what would be your next step?

Mr. Guy responded we will try something else, but I think this will help a whole lot.

Mrs. Guy stated I went on the internet and looked for people that are having problems like this with their basements and one (1) of the suggestions was something like this.

Mr. Dyer asked even if it does eliminate the problem how does that justify the Variance?

Mrs. Rich asked the set of steps on the side of the house, is that on the footprint of the house?

Mr. Dyer responded right. They are not necessarily allowed to roof over the footprint of the house. They can have decks and patios that can extend into the setbacks, but you cannot put a roof over them.

Mr. Dyer made a motion to deny the request for Variance Application V 10-003. Mrs. Rich seconded the motion. The motion was approved by a 4-1 vote.

- 2. Variance Application Number V 10-004, filed by Barry & Wanda Reece, requesting a variance from Article 7: Section C, Item 4. of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 2302 South Boston Road, otherwise known as Grid 4719, Block 001, Parcel 000013 of the City of Danville Virginia, Zoning Map..***

The applicant is requesting a variance to allow for a non-conforming building to be allowed to develop under a permit issued in 2003 and voided in 2007 without complying with current code requirements.

3. *Variance Application Number V 10-005, filed by Barry & Wanda Reece, requesting variances from Article 3.M: Section H, Items 4&5, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 2302 South Boston Road, otherwise known as Grid 4719, Block 001, Parcel 000013 of the City of Danville Virginia, Zoning Map. The applicant is requesting variances to allow for two (2) driveways on a commercial lot without the minimum 100' between them, and allow for a driveway to be less than 60' from an adjacent driveway.*
4. *Variance Application Number V 10-006, filed by Barry & Wanda Reece, requesting variances from Article 8, Section C, Item 1. (b) and Article 9, Section D, Item 2. A., of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 2302 South Boston Road, otherwise known as Grid 4719, Block 001, Parcel 000013 of the City of Danville Virginia, Zoning Map. The applicant is requesting a variance to have a driveway of 23.93 feet where 24' is required and to not provide the required 5' landscape strip between a private driveway and the right-of-way.*

Thirteen (13) notices were mailed to property owners within three hundred feet; Three (3) respondents were unopposed; Zero (0) respondents were opposed.

Open the public hearing for Item 2.

Present on behalf of the request was Mr. Barry Reece. Mr. Reece stated that he is the owner of the property and in 2003 he received a building permit so that he could construct under the Zoning Code at that time. Every six (6) months I would work on the inside of the building as funds were available. I received letters from the City stating that I had not done anything, and I had. It has been stall, delay, and deny. I have done remodeling on the inside of the building. I have struggled with Jerry Rigney. It has been a very hostile relationship. I would like to be grandfathered from the 2003 Code to prevent curb and gutter requirements of the parking lot.

Mr. Dyer asked do you have any evidence as far as invoices or checks to prove that you have done some work every six (6) months? If you stop construction on a job for a six (6) month period then that permit is voided. You can appreciate why that is. A lot of people come to get permits and do not do anything. Particularly in a situation like yours, you were aware that things were going to change for you after a certain date, so you went and got a permit.

Mr. Reece responded all of the plumbing, mechanical, and electrical I hired contractors to do. I did the rest of the work myself. I could probably go back and find receipts for the work. I also pastor the church across the road and you can ask any of them. I have kept doing something every six (6) months because I knew I had a conflict if the permit was voided.

Mr. Dyer stated we are being asked to grant a Variance to finish this building under the Code that was in existence in 2003. The reason he is asking for that is because he says that his permit should still be valid. We are being asked to evaluate a situation that is really not for us to decide.

Mr. Gillie stated his permit was revoked. He will admit that is permit was withdrawn. When they re-issue a permit you are forced to comply with current zoning regulations. So once they remove

that permit, then from a Staff standpoint you have to comply with the regulations. We do not have an issue that he has a permit. He has a valid permit now, but he has to comply with the current regulations. His first permit was revoked due to lack of work, a second permit, possibly a third permit was revoked from lack of work, he now has a valid permit. We did not stop him from getting a permit, we are telling him to comply with the Code.

Mr. Dyer asked is zoning on the property correct?

Mr. Gillie responded zoning on the property is correct.

Mr. Dyer asked is he attempting to construct this building under old Code?

Mr. Gillie responded correct.

Mr. Dyer asked why should we allow you to build if you are acknowledging that your permit was voided? If you allowed that building permit to be voided, why should we allow you to finish building under an obsolete Building Code when everybody else in the City of Danville has to build under the current Zoning Code?

Mr. Reece responded because what I ran into was conflict with their office. They took away the permit based on what?

Mr. Dyer asked the argument you are making now is that your permit should still be valid from 2003?

Mr. Reece responded yes.

Mr. Dyer stated we cannot address that. That would be Building Code Board of Appeals, I guess. By submitting this application, you are acknowledging the fact that your original permit has been voided.

Mr. Reece stated I did not do this on my own accord. I am here because I was made to do this. I am trying to tell you that it is not my fault.

Mr. Dyer stated it seems to me that you could make two (2) arguments. You could make the argument that your original permit should still be valid, and if that is the argument you want to make this is the wrong Board. The other argument you can make is that you have certain circumstances that are so unique to you that we should allow you to build your building under an obsolete Building Code. If you have an argument for that then we will be glad to hear it. Just arguing the fact that you have a problem with the Building Department about a building permit does not involve us.

Mr. Reece stated I will try and give you an illustration of where I stand being victimized. From day one (1) it was an absolute hostile working environment. I have lived in twenty-seven (27) Countries around the world and we have a problem in the Zoning Department. They turned down one (1) site plan because I did not have a sign up and would not allow me to draw a sign in. It is almost like I was victimized twice because I never stopped. At some point if they took away my permit do they not have to document what was done the last time and what was not done?

Mr. Dyer stated I am going to go back and say it again, everybody here might agree that your building permit should be valid, but that we are not the right Board to evaluate that. We are the Board of Zoning Appeals. What you are asking us to do is to allow you to build the building under an obsolete Zoning Code. You are making accusations towards the Zoning Department that I both here quite frequently and I also do not find to be true. I deal with them a lot. If you are just going to make the argument that they were mean to you or did not treat you fairly, then we are going to need some evidence for that.

Mr. Reece stated they have all of the power. It is just my word against theirs. If there is an accusation at least look into it. This would not be the first time, not just with me.

Mr. Dyer stated if you feel that you have been mistreated by the Planning Department, you need to address that with City Council and the City Manager.

Mr. Reece stated I have discussed this with Mr. Lacy three (3) times. That is what got me going back in November to finish out the project. Mr. Lacy told me that he would take care of this and I know he is dead and gone.

Mr. Dyer stated we have a very limited scope of what we are allowed to do. You have got to meet four (4) criteria before we can grant a Variance. Once again I would like to hear additional comments from other Board members. In my mind, I do not see how we can grant you a variance to build under an obsolete Zoning Code. If you feel like you have a valid permit, then you need to address that with someone else. We cannot judge whether or not your building permit is valid. That seems to be the argument that you are making. I can appreciate your circumstance but I personally do not see how we can grant you this Variance.

Mrs. Rich stated I am totally lost.

Mr. Whitfield stated right now we are on request V 10-004. Essentially we are in the public hearing for that. The other two (2) cases have not been read. You still have the opportunity to go back and talk about items three (3) and four (4). I suggest you finish this public hearing, decide on this matter, and then you can combine the public hearing on three (3) and four (4) on the driveway and landscaping.

Mr. Dyer asked are there any other issues other than the parking lot between the Code that was in place in 2003 and the existing Code? Are there any Building Codes or interior issues as far as we know?

Mr. Gillie responded his building was already in place. We do not have any issues with that. There was a ramp configuration issue on the handicap access to the building. I think that can be addressed. The parking has changed, the number of driveways, the driveway location has changed. The landscape requirements have changed. Mr. Reece and I have worked together on a plan that could meet the Code based on one (1) of the previous plans that he has had. He has had multiple site plans. There is no disagreement. We have a plan that can meet current Code. He has asked to build on a plan that meets the old Code. That is why he is here.

Mr. Reece stated that is not my only argument.

Mr. Dyer asked are we talking about the number of spaces, and the landscape requirements?

Mr. Gillie responded it is the landscape requirements, the driveway requirements, the width of the area he is asking to use in front of the building that would access and not have sufficient width for a driveway. That distance has not changed; we have always had twenty-four (24) foot access.

Mr. Dyer asked there is no curb and gutter there now. How do you judge how wide this is?

Mr. Gillie responded just like any other driveway. You put in a commercial entrance which would meet our right-of-ways. We have slowly been extending lanes on Riverside Drive. As money comes available we do that. Eventually we will get to this area. At this point we have not had funding available to do so.

Mr. Dyer asked will he have to install curb and gutter on this parking lot?

Mr. Gillie responded he will have to do asphalt curbing at a minimum and the landscape strip that is required.

Mr. Dyer asked is the parking lot grandfathered in?

Mr. Gillie responded no.

Mr. Reece stated we just finished in November under the grandfather clause in 2003 with everything inside. Now that is finished under the 2003 Code. Why can I not do the parking lot? There is other reasons why I want to change the parking lot. If you channel everything down, you are going to have water drainage issues. If it is allowed to run off on all sides, like it has always done, I would not have that problem.

Mr. Dyer asked is he going to have to have a storm water retention pond?

Mr. Gillie responded based on the site plan and the parking lay out, we can handle storm water and keep it on his property by doing some curbing work and everything else. The water right now just flows everywhere. Even with channeling it and installing the landscaping storm water management should not be an issue.

Mr. Dyer asked so basically he does not want to put curb and gutter in?

Mr. Gillie responded curb and gutter, drive entrance issues, and landscaping.

Mr. Whitfield stated those are other items on the agenda.

Mr. Gillie stated from the old plan to now, the old plan included parking that did not meet the requirements, did not have the landscape islands, there were a bunch of things.

Mr. Dyer asked is the landscaping an aesthetics issue?

Mr. Gillie responded it is the parking, curbing, landscaping, and drive entrances.

Mr. Dyer asked on this lot, does he have plenty of room to provide however much parking you ask him for?

Mr. Reece responded my plan was to have all of the curbing done in the front, have curbing coming in to meet both of the entrances and also the center aisle in the front. What I wanted to do was to not curb that all of the way around so I can have drainage in all directions. Also, to be honest it is cost. We are looking at almost double the cost.

Mr. Dyer stated we are not here to save you money. We did not make the rules, City Council did. If you think the rules and regulations are causing undue hardship on developers in the City of Danville, then those are the folks you need to talk to.

Mr. Dyer asked what has been the relationship between the Planning Department and the Building Department as far as the permit?

Mr. Gillie responded Mr. Cockran, Building Inspector notified us that he went out and inspected the property and no work had been done. The question was raised, how he can go out there. There are windows in the building. You can see inside it. You can see what is there now, versus last time.

Mr. Dyer asked do you have an opinion one way or the other whether or not the 2003 building permit should still be valid?

Mr. Gillie responded no. Once a permit is removed, in order to get a new permit you have to comply with the current regulations. Did they issue a permit? Yes and at that point, he had to comply the current regulations. He has the ability to comply with the current regulations. The plans show how. Mr. Reece would like to build under the old regulations because of the cost issues. I respect that but from my end as an official, you have to comply with the current regulations.

Mr. Snipes asked does he have a valid permit now?

Mr. Gillie responded he has a valid construction permit because we did not say do not issue him a permit because he has the options available. We have a plan that will allow him to comply with current regulations.

Mrs. Rich asked how far back does this curb and gutter go or is it just for the front and does the whole parking lot have to be paved?

Mr. Gillie responded we have not permitted parking on gravel since the 1976 Code. The minimum number of parking spaces has to be paved. The paved parking has to be curbed and you are required to install landscaping. It is a five (5) foot strip along the right-of-way and a two and a half (2 1/2) foot strip along the property line. You are limited in drive entrances. Basically, you can have one (1) drive entrance, two (2) if you can have enough frontage and sufficient space between the drive entrances. This site does not have those minimums. He can have one (1) drive entrance. We can use the property in the front. We have twenty-four (24) feet for a two-way drive aisle. For a two-way drive aisle with a five (5) foot minimum landscape strip would be twenty-nine (29) feet to the right-of-way. This building is not twenty-nine (29) feet to the right-of-way. Mr. Reece was offered a right-of-way use agreement by City Manager Lacy, which he declined. He can express his interest or reasoning behind that. We knew it was in the file. It would allow him to use part of the right-of-way to meet the minimum requirements. He chose not to pursue that agreement. What I have from the City end is the curbing, landscaping, the single driveway entrance, and the parking has to be paved in order to comply with the Code. The use itself as a restaurant is permitted. The

building itself meets the minimum requirements. It is just the parking being upgraded, driveways, landscaping, the minimum width on the aisle, those kind of things that every other property in the City that is constructed has to meet.

Mr. Dyer asked would you address that as to why you declined to accept that agreement?

Mr. Whitfield stated before we go there, we should continue this public hearing and then open the public hearing for items three (3) and four (4). Everything can be addressed at one time. Mr. Snipes needs to open the public hearing for items three (3) and four (4) on the agenda. We have not done that yet.

Open the public hearing for Item 3 and Item 4.

Mr. Dyer asked why did you reject that offer?

Mr. Reece responded the City sent me a letter stating I would have to sign a letter to use the property the City has and the way it was written every five (5) years I would have to get that renewed. If at any time the City decided to use that or change that property, the City would change it at their discretion and at my expense. I have run into so much conflict with them, I did not want to put my neck out there and every five (5) be in another situation.

Mr. Dyer stated I am sure that was in case they widened the road they might need that right-of-way. I do not consider that being possible and I consider that a very generous offer. You accuse the Planning staff of being hostile and it seems to me that the argument you have has been with the Building Department.

Mr. Reece stated Mr. Gillie has been very reasonable as far as working with me. If that was directed to him maybe I misspoke. I hope that you guys can not just give a letter to all but the spirit of the law. There is a spirit behind what we are saying. Once this is over with I am pretty close to being finished on my part. As a pastor and a person, when I see abuse of authority, it costs other people. If you do not care what it is going to cost small business then you will not have very many small first time entrepreneurs. They will not be able to afford it.

Mr. Dyer stated I did not say that I do not care. City Council adopts these rules and regulations after public hearings. If someone feels there is something in the Code that will cause unfair hardship for development within the City, then that is the point when those issues should be addressed.

Mr. Reece stated it would be nice to see Council make an advisory board of first generational entrepreneurs.

Mr. Dyer stated you might want to address those issues with Council. Again, the issue we are addressing here is whether we can allow this building to be completed under an obsolete Building Code.

Mr. Reece stated my argument to you is we finished the inside under that Code just now in March. If I was allowed to do that, how do you justify splitting that off now and going a different route?

Mr. Snipes responded you do have a valid permit now. You can complete it under the new permit but you want to go back to the old one.

Mr. Reece stated everything was completed under the old permit even though I have the new one. It was grandfathered. I know that it is not your place of authority to deal with those situations but I think all of this could have been avoided. There is not a lot of people who will speak up against that Department because they are the power that holds you up and cost you a lot of money. If we had some reasonable changes I think it work much better for small businesses. I would certainly like to finish my parking lot as before. Everything else was finished under the 2003 Code to this point. Now the parking lot is the issue. I would just like to finish it like I did everything else.

Mrs. Rich asked how do you do a single in and out entrance there?

Mr. Dyer responded a twenty-four (24) foot driveway is in and out.

Mrs. Rich asked where do you put it?

Mr. Reece showed the Board, by use of overhead projection, the parking lot and drive entrances.

Mr. Reece stated on Saturdays and Sundays you have massive traffic coming in and out of the Ringgold Flea Market. If I get cut down to just one (1) entrance, it is going to hinder customers coming in and out. I am asking to maintain both of these entrances.

Mr. Dyer asked does the Code state that drive entrances have to be sixty (60) feet apart?

Mr. Gillie responded one-hundred (100) feet apart. You have to be twenty (20) feet from a property line, one-hundred (100) feet between them, and sixty (60) feet from adjacent driveways. On the west side of the property, I have a plan to move this over twenty (20) feet to install a drive entrance that will not line up across from the intersection. There is not enough space to have two (2) drive entrances. You have a single driveway coming in, approximately thirty (30) feet wide. Twenty-four (24) foot is your minimum for two way traffic, your standard CG-9D entrance. The entrance is offset from the crossover.

Mr. Dyer asked does the fact that the property to the East has a legal non-conforming driveway entrance impact his ability to put in two (2) driveway entrances?

Mr. Gillie responded the property to the East is in the County. It does not have an impact.

Mr. Dyer asked he could come over twenty (20) feet from that property line and put a twenty-four(24) foot wide drive entrance in. Go one-hundred (100) feet and put another twenty-four (24) foot entrance. Why can you not get two (2) drive way entrances in two-hundred and ten (210) feet?

Mr. Gillie responded an entrance is between thirty (30) and fifty (50) feet at the taper. You have twenty (20) feet, and your five (5) foot radius. You have the distance for your radius, the driveway, your space between it, your radius, your driveway, and the distance from the property line. The math does not work.

Mr. Dyer asked I thought this property was two-hundred (210) feet wide?

Mr. Gillie responded it is. The house does impact it. You have to be sixty (60) feet from the entrance there.

Mr. Dyer asked he cannot put his driveway twenty (20) feet from the property line because of the entrance on the adjacent property. What happens in a situation where someone has a one-hundred (100) foot lot or a sixty (60) foot lot and they have a driveway on both sides?

Mr. Gillie responded we have had cases like that. They have an option to have a shared drive entrance.

Mr. Dyer asked how can you deny someone access to their property from public street?

Mr. Gillie responded you can try to have the Board approve it or work with an adjacent property owner. We can make them work with adjacent property owners to obtain access that is safe and secure.

Mr. Dyer stated that seems unfair that you can be affected by a driveway on someone else's property.

Mr. Gillie stated there is room to place an entrance that meets all of our minimums.

Mr. Dyer asked can he have something wider than a twenty-four (24) foot driveway entrance?

Mr. Gillie responded a CG-9D is between thirty (30) and fifty (50) feet in width. There is twenty-four (24) feet at the property line but with the radius it is thirty (30) feet to allow the motion of the car coming in. You can have up to a fifty (50) foot wide entrance. You can have a single entrance between thirty (30) and fifty (50) feet.

Mr. Dyer asked would there be one (1) lane coming in and one (1) lane going out?

Mr. Gillie responded one (1) lane coming in and basically two (2) going out. In this case two (2) going out would not serve any purpose because it does not line up with the crossover. It is over kill and that would be an additional expense. I would not recommend it.

Mr. Dyer asked could he have one (1) twelve (12) foot driveway exit only?

Mr. Gillie responded you can have an exit only. In order to have that exit only, to get over to it, there are a couple of issues like paving cost. We are trying to limit paving cost. It may be possible; however most people feel that is an expense not worth doing.

Mr. Reece stated I am not worried about the expense of putting another entrance/exit right there. It will make this intersection and my place so much safer. If you choke it down to only one (1), you lose convenience. I have twenty-four (24) feet in between the front of this curbing now. These are large openings. We will be paving all of the front, the two (2) entrances, and the one (1) side. I put curbing in just to make it look better and I do not think what I am asking for is unreasonable. It will make things safer because it is absolutely a congested area.

Mr. Gillie stated with multiple drive entrances there is always the concern of where vehicles are turning. If they have multiple places to turn at, which one are they using? If it is already a congested intersection, adding an additional spot would add confusion. That is one of the reasons

the City devised drive entrance regulations. It has not been well received as much by the business community, but accident statistics do not lie.

Mr. Reece stated the Sprint station about two-hundred (200) yards above me on the west bound lane and Poogies, which is right straight across the road from them, all have multiple entrances and exits. We need to have the ability to give someone the option to get out of there and go down the road to where they can turn around and go back. I am asking to be able to have these two (2) entrances, pave on both sides, and pave the minimum parking.

Mr. Dyer stated we might think that it makes more sense to have two (2) driveway entrances and the fact that you are impacted by an adjacent property owner's non-conforming driveway, but that is not what the Code says.

Mr. Reece asked does he mean we have to be twenty (20) feet off of the property line on both sides?

Mr. Dyer responded no. He is saying all driveways have to be a minimum of sixty (60) feet apart. Somebody on an adjacent piece of property has a driveway entrance that was put in before this Code.

Mr. Reece stated in reality, my property line is in the center of her driveway. She is about three (3) feet over my property line.

Mr. Dyer stated back to the first issue, that he wants to build this building under the 2003 Code. Is there anything other than the parking lot that would influence?

Mr. Gillie responded from a Zoning perspective no. It is parking, landscaping, and driveway entrances.

Mr. Dyer asked why were we not presented with one (1) Variance application regarding the driveway entrances?

Mr. Gillie responded because if the Board denies, he can still ask for variances to the other cases. I tried to cover any potential situation for him. I am still standing by Staff's recommendation. Once the permit was voided, he has to comply with the current Code. In order to comply with that he can ask for Variances to those sections.

Close the public hearing for Items 2, 3, and 4.

Mr. Dyer made a motion to deny the request for Variance Application V 10-004. Mr. Lampley seconded the motion. The motion was approved by a 5-0 vote.

Mr. Dyer stated I have a problem with the driveway entrance request. It does seem that he has a hardship because he has an adjacent property owner that has a non-conforming driveway entrance. It seems to me that is a big problem.

Mr. Gillie stated can he put one (1) entrance in that complies? Yes he can. He meets the Code.

Mr. Dyer asked is there a way to have two (2) driveway entrances coming off of this piece of property?

Mr. Gillie responded not in compliance with the Code, unless he wants to take it upon himself to relocate his adjacent property owner's driveway entrance in the County.

Mr. Dyer asked I thought you said we do not consider the one in the County?

Mr. Gillie responded when you asked I thought you were talking about the entrance to the flea market. We measure from any adjacent driveway entrance.

Mr. Dyer asked even if it is in the County?

Mr. Gillie responded we measure sixty (60) feet even if it is in the County. I am not going past sixty (60) feet.

Mr. Dyer asked is that your interpretation? Is there is something in the Code that states that?

Mr. Gillie responded it says from any adjacent driveway. It does not just say from adjacent driveways within the City limits.

Mr. Dyer asked the Code only applies to the City of Danville?

Mr. Gillie responded no. It is measured from an adjacent driveway whether it is in the City or the County.

Mr. Dyer asked is there anything in the Code that says you are to take into consideration the case of a property in a jurisdiction other than the City of Danville?

Mr. Gillie responded we are required under law to notify adjacent jurisdictions of anything that occurs and also to notify property owners.

Mr. Dyer asked is changing this into a restaurant from its former uses even though the zoning has not changed causing it to lose the grandfather status?

Mr. Gillie responded yes.

Mr. Dyer asked what is the minimum number of parking spaces he is required to have?

Mr. Gillie responded twenty-one (21). The plan he had met our minimums.

Mr. Dyer asked if he meets the minimum spaces, can he have a gravel area?

Mr. Gillie responded curb and gutter will prevent access to that. In this case he has two (2) houses in the rear so we will have to allow a driveway entrance to those properties.

Mr. Dyer asked is he going to have a paved parking lot to accommodate twenty-one (21) vehicles then a gravel driveway coming off of the back of the parking lot to access these two (2) houses?

Mr. Gillie responded he can pave it if he chooses.

Mr. Dyer asked is he required to pave it?

Mr. Gillie responded no.

Mr. Dyer asked if someone were to go down the driveway like they were going to those two (2) houses but instead they turn and go around the building going out the gravel driveway that is on the eastern side of that building, is there anything you can do about it?

Mr. Gillie responded there is. I could site them for a violation of the Zoning Code because you would have an illegal entrance onto a highway.

Mr. Dyer stated but it is not a designated driveway.

Mr. Gillie stated if it is gravel and vehicles are traveling on it, it is a violation.

Mr. Dyer made a motion to deny the request for Variance Application V 10-005. Mr. Lampley seconded the motion. The motion was approved by a 5-0 vote.

Mr. Dyer stated this relates to the width of the driveway entrance and the five (5) foot courteous strip. The best way I can figure is we are talking about one (1) inch.

Mr. Gillie stated we had a survey plat from an old drawing that was attached to the use of right-of-way agreement. Mr. Reece's initial plan was to have parking on both sides of the building. He did not want to go around the whole building. He wanted to have it go around like a U to allow access to either side. Because of the way the building was located there was not enough space to comply with the twenty-four (24) feet necessary and the five (5) foot landscape strip that is required at the right-of-way. Five foot, one inch (5'1") is basically what he is off by. That is why he was offered a right-of-way use agreement.

Mr. Dyer asked in other words the front of the building is only twenty-three point nine (23.9) feet off of the property line?

Mr. Gillie responded correct.

Mr. Dyer I do not see why it would be necessary to pave the front of the building.

Mr. Gillie responded I do not want to speak for Mr. Reece, but I believe because of the handicap accesses in the back corner of the building and also a dumpster door or kitchen access.

Mr. Reece stated if you are facing the front of the building the handicap access is on the right front corner. The reason for the paving going around the side of the building is for parking.

Mr. Dyer asked you cannot put any parking in the front of this building?

Mr. Gillie responded correct.

Mr. Dyer asked can he have a one (1) way driveway?

Mr. Gillie responded if he has a one (1) way driveway he would have to loop around the back of the building. As a cost saving measure, I would not recommend it.

Mr. Dyer asked could he have one (1) way drive entrance that comes off the main entrance that goes into the front of the building and then exits?

Mr. Gillie responded it would go into the building, loop around and join.

Mr. Dyer asked instead of looping around the building could it go out?

Mr. Gillie responded with sixty (60) feet out from adjacent property, I do not believe you could even put in a one (1) way entrance on that side. I did not run the math on a one (1) way entrance.

Board members had discussion about the possibility of a one (1) way entrance.

Mr. Dyer asked are you planning on having parking on the eastern side of this building?

Mr. Reece responded I plan to have parking on both sides.

Mr. Dyer stated we are trying to solve a problem that is not ours to solve.

Mr. Dyer asked does he still have the option to use the right-of-way agreement?

Mr. Gillie responded I would have to discuss that with the City Manager.

Mr. Lampley made a motion to deny the request for Variance Application V 10-006. Mr. Dyer seconded the motion. The motion was approved by a 5-0 vote.

II. APPROVAL OF MINUTES

Mr. Dyer made a motion to approve the minutes of the April 15, 2010 meeting. Mrs. Rich seconded the motion. The minutes of the April 15, 2010 meeting were approved by a unanimous vote.

III. OTHER BUSINESS

Mr. Gillie introduced Miss Emily Scolpini as the Planning Intern. Mr. Gillie stated she is a recent graduate from Virginia Tech working with us through the summer to get some experience. If you have any words of wisdom please stop by and see her.

Mr. Gillie announced Mr. Lindy Lowery's retirement effective May 31, 2010.

Mr. Gillie stated there are no cases as of yet for next month. At this point, I cannot tell you if you have a meeting or not.

Mr. Dyer stated I know there is a lot of frustration on this Board and everybody probably thinks this meeting took way too long. I think the issues we discussed were fairly cut and dry, but this is the point where the public interfaces the City Bureaucracy. I think as a courtesy, we should at least explain to them why we are doing what we are doing. Sometimes I feel like I am the only one that is

attempting to do that. I feel that we have an obligation to explain to the public why they are not getting what they want. I would encourage other members to comment.

Mr. Dyer asked how is the Zoning Ordinance progressing?

Mr. Gillie responded we are not doing the Zoning Ordinance; we are updating the Comprehensive Plan. It is coming along. Mrs. Blair is head of that now.

With no further business, the meeting adjourned at 12:20 p.m.

APPROVED