

**BOARD OF ZONING APPEALS MEETING**  
**October 21, 2010**

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Snipes	Mr. Campbell	Renee Blair
Mr. Dyer		Christy Taylor
Mrs. Evans		Clarke Whitfield
Mrs. Rich		

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

Mr. Dyer asked are we still a seven (7) member Board or have we been reduced to five (5)?

Ms. Blair responded seven (7) members.

Mr. Dyer asked but we have a quorum?

Ms. Blair responded we have a quorum.

Mr. Dyer asked do we have to have a unanimous decision today?

Mr. Whitfield responded to overturn anything yes.

Mr. Dyer asked so in order to grant a variance, we would have to have a unanimous decision?

Mr. Whitfield responded yes.

Mr. Snipes stated we have three (3) items for public hearing today. We want to change the order of these from what is printed. We want to take number two (2) first, number three (3), and then number one (1).

**I. ITEMS FOR PUBLIC HEARING**

*Item 2. Variance Application Number PLVAR201000132, filed by Terry D. Hamlett, requesting a variance from Article 3C, Section I, Item 4 of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 848 Luna Lake Road, otherwise known as Grid 1617, Block 001, Parcel 000020 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to construct a private domestic well where a private domestic well is not permitted.*

Six (6) notices were mailed to property owners within three hundred feet; Two (2) respondents were unopposed; Zero (0) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Terry Hamlett and Ms. Rita Hamlett. Ms. Hamlett stated we have joint properties. He has the lot with the septic system and I have the well, but the well is no longer sufficient for both of the properties. We have been annexed for twenty-two (22) years and from everything I hear from the City, they are not going to put water or sewage in anytime in the near future. So we are asking for a variance for him to be able to put a well in on his property and then for my property, which is the next variance, is for me to have the septic system separate; and in case my well might not contain enough water, that I be allowed to re-drill the well or drill another well.

Mr. Whitfield stated we probably should take these one (1) at a time. We should deal with Mr. Hamlett's piece of property first. We will have another public hearing for yours. Sorry to interrupt, but just to make sure our procedures are correct.

Mr. Hamlett stated she was speaking for me, because I do not hear real well. I need to drill a well, and I need your permission to do it. I have the septic tank and it looks like it was grandfathered around thirty-five (35) years ago. We were there when I graduated school in 1977. We are brother and sister with houses next to one another. Both of them were our mama's and daddy's house. Now if we go on and ever want to sell them, we need to split them. The main thing right now is that we do not have enough water for both of our houses, and I would like permission to drill a well.

Mr. Snipes asked for our record, we have to do the two (2) separate. We have to issue two (2) variances, one (1) for each. That is why we need to take them separate. We are doing number two (2) first, which is Mr. Hamlett's request. She is presenting your case also, is that right?

Mr. Hamlett responded that is right.

Mr. Snipes asked the well that you have now, is that a drilled well or a dug well?

Mr. Hamlett responded it is a drilled well. It is in my sister's yard and it runs a line to my house. I have the septic tank. We want permission to cut, to make sure we separate both houses. It is working now, but it is not working great. You get shampoo in your hair and you cannot get it out if someone is taking a shower at the same time you are. It is like apartments. You have to wait thirty (30) minutes for someone to leave, so you can take a shower.

Close the Public Hearing.

Mr. Dyer stated as we are all aware, these variances are required to pass four (4) criteria. It does appear that this case does pass all four (4) criteria.

**Mr. Dyer made a motion to approve the request for Variance Application PLVAR201000132. Mrs. Evans seconded the motion. The motion was approved by a 4-0 vote.**

*Item 3. Variance Application Number PLVAR201000133, filed by Rita D. Hamlett, requesting a variance from Article 3C, Section I, Item 4 of Chapter 41 of the Code of the City of Danville, Virginia, 1986 as amended (City of Danville Zoning Ordinance) at 845 Luna Lake Road, otherwise known as Grid 0620 Block 005 Parcel 000001 of the City of Danville, Virginia, Zoning*

***Map. The applicant is requesting to construct a private domestic septic system where a private domestic septic system is not permitted.***

Ten (10) notices were mailed to property owners within three hundred feet; Three (3) respondents were unopposed; Zero (0) respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Ms. Rita Hamlett. Ms. Hamlett asked I would like to also add to that which did not get picked up. If by him putting in a well down at his place is not enough, I might have to re-drill my well or I might have to drill a new well. I put it on my application, but it did not end up on this variance. Can you add that to it?

Ms. Blair responded you have an existing well.

Ms. Hamlett stated I have an existing well that we are sharing, so he will get his own.

Ms. Blair stated you have an existing well. If you close that well, create a new one, drill a new well, you are not increasing your legal non-conformance. It does not require a variance for that particular action; as long as you close off what you have existing.

Close the Public Hearing.

Mr. Dyer stated as we are all aware, these variances are required to pass four (4) criteria. It does appear that this case does pass all four (4) criteria.

**Mr. Dyer made a motion to grant the request for Variance Application PLVAR201000133.**

**Mrs. Evans seconded the motion. The motion was approved by a 4-0 vote.**

***Item 1. Variance Application Number PLVAR201000131, filed by Powers Signs, Inc. requesting a variance from Article 10, Section N, Item 1a of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 114 Market Street, otherwise known as Grid 2709, Block 019, Parcel 000001 of the City of Danville, Virginia Zoning Map. The applicant is requesting a variance to erect a 75 sf ground sign where 16 sf is allowed.***

Twenty-three (23) notices were mailed to property owners within three hundred feet; Five (5) respondents were unopposed; Two (2) respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Tom Powers, Sr. Mr. Powers stated I have some additional drawings and pictures that I would like for you to look at.

Mr. Dyer asked are these all the same?

Mr. Powers responded yes all of the packets are the same.

Mr. Dyer asked I thought the last time I was here there were five (5) members, and there are not seven (7) members. Is it a seven (7) member Board, but there are not seven (7) members?

Mr. Whitfield responded yes, but by Council's Ordinance it is a seven (7) member Board. That is why it is interpreted to be a seven (7) member Board.

Mr. Powers stated I understand, but I was thinking that some of the discussion at the last one I was at was that even though it is a seven (7) member Board, there were two (2) slots that were not filled because somebody vacated. It then became a five (5) member Board by necessity.

Mr. Whitfield stated there are five (5) members, but it is a seven (7) member Board. The Ordinance requires it to be a seven (7) member Board and we are in the process of trying to fill out those members.

Mr. Powers stated I guess my concern there is that any decision on my case would have to be unanimous of those that are here. Even though there are two (2) that do not exist.

Mr. Whitfield stated that is correct.

Mr. Powers stated the packets that I have given you start out with what we originally applied for. This is the maximum size sign allowed in the City of Danville. The one on the first page, number one (1), is the same as the one you have in your package. That is where we started, and to be honest, part of the confusion that is on my part in that the Central Business District (CB-C) had originally started out with one half (1/2) square foot signage for every running foot of wall sign. That was changed to two (2) square feet, which is the same as Riverside Drive. I am not sure why that did not connect with a ground sign remaining the same as what the original Code says, which is sixteen (16) square feet, ten (10) feet overall. We are doing one (1) exactly like this within Rustburg. They have changed their logo. They are expanding and this is a duplicate of the one (1) in Rustburg. What I put in the packet and what I understand is that the Board has the ability to be able to grant a request that is lesser than they originally asked for or modify it. I have had this situation with some others where a request was granted based on modification or meeting certain criteria. I had one in Chatham awhile back. They wanted the lights to face down on a board rather than up. On the four (4) criteria that it has to meet, number one (1) is the strict application of the Ordinance will produce undo hardship on the property owner. We feel that having a four (4) lane road on the backside of this piece of property, which is Memorial Drive, is not identical to but very similar to the situation we had on the hospital. You have got a situation where you have a zone that dictates the entire piece of property. That is obviously zoned correctly. You would not want to put a sign like this on Main Street. That would be embarrassing to even do or impossible to do, but you do have the traffic flow. You have a forty (40) mile per hour speed limit where we are proposing to put the sign. We feel like it should be permitted based on the fact that it does not fall within the restrictions on the front side and obviously what is trying to happen on the front side. I do note the City's response here. It says that we are asking for seventy-five (75) square feet where sixteen (16) is required. This must be a typo, because it says that the existing sign is twelve (12) square feet. I think somewhere else in the package the City prepared it says that it is a four by eight (4x8). That should be thirty-two (32), but in actuality, and I got the permit in 1987 when the bank first got the building. We had to relocate that sign. That sign existed before that. The sign goes back to the sixty's. I checked

it yesterday just out of curiosity to make sure that I did not make an error in that it is a four by ten (4x10), forty (40) square feet on that sign that is there now.

Mr. Dyer asked are you referring to the black and white sign that is a pole sign?

Mr. Powers responded yes. I will tell you how far it goes back. It used to have reflective disks on it that when the wind hit it, it would kind of sparkle. That goes back into the sixty's. Also by it being on Market Street, it has little or no visibility by traffic. Memorial Drive would be one-hundred (100) times better.

Mrs. Rich asked where are you putting the sign? Are you putting it where this black and white one is?

Mr. Powers responded no. The new sign is going on the left hand corner.

Mrs. Rich asked are you leaving the existing sign?

Mr. Powers responded no.

Mrs. Rich stated so it is going to be facing Memorial Drive.

Mr. Powers stated on the corner of that parking lot. That is Central Business District (CB-C) and it would be hard to argue that Main Street does not need to be Central Business District (CB-C). We understand that. The second (2<sup>nd</sup>) criteria that the hardship is not generally shared by other properties in the vicinity of the zoning district, in the vicinity, in the second (2<sup>nd</sup>) page, you will see the existing four (4) signs. The Virginia bank sign on my second (2<sup>nd</sup>) page, I am sorry. That shows existing signs that have been there. The First State Bank sign, I think has been modified. I do not know how long ago that was. It appears that it could be either an eight by eight (8x8) or a six by six (6x6). If it would have been done by the last Code it would be sufficient. Of course, it is probably thirty (30) feet tall. The ATM sign that First State has over that remote parcel right across from Virginia Bank, that was recently re-done. Technically by Code, that sign is a four by eight (4x8). It may not be, but since I am not dealing with it, I was not going to climb up on their roof. If it is a four by eight (4x8), that means by Code it is thirty-two (32) square feet times three (3) for a total of ninety-six (96) square feet. You have to count each face as square footage, because it is separated by more than two (2) feet. That sign is almost one-hundred (100) square feet.

Mr. Dyer asked is that a ground sign or is that a wall mounted sign?

Ms. Blair responded it would be a building sign. It is legal non-conforming, because at current Code, we do not allow signage above the roof line. It is a legal non-conforming building sign.

Mr. Dyer asked that is a totally different category all together. It is neither a ground sign nor a wall sign. It is something different. Is the Martinizing sign non-conforming since it is above the roof line?

Ms. Blair responded correct and probably size wise as well. That is a large sign.

Mr. Dyer asked was the First State bank sign grandfathered in?

Ms. Blair responded correct.

Mr. Dyer asked are they allowed to modify that sign? In other words, if they became Second State Bank could they change that sign?

Ms. Blair responded you can change the face. It would need to be equal in size as to what is there. Anything beyond that would then need to be brought to Code.

Mr. Dyer asked can that size sign be relocated on that lot?

Ms. Blair responded it must stay as is.

Mr. Powers stated roof signs have been illegal years and years.

Ms. Blair stated I think since 1986.

Mr. Powers stated for two (2) reasons: structure, wind load, and it actually produces the real reason roof signs are not allowed in that it produces a hazard for the Fire Department should they have a fire on a roof. They would have to crawl over the roof and back down the sign. The bottom line regarding a sign on top of roof is that it is actually a sign in the air, it might not be on a pole, but it does serve and is equal to; the Martinizing sign is I am guessing a five by twenty (5x20). There is one (1) on the sidewalk too. At any rate, the reason I do not feel like the hardship is shared is for instance in the First State sign, it is a ground sign and the current Code some changes were made and I asked for these changes. Mr. Gualtney made the changes that the sign could be reduced by thirty percent (30%) and stay in the same place. The site is grandfathered and the reason for grandfathering the site is the fact that in this particular case, where would you move it? The setback is ten (10) feet, where the old setback was five (5) feet. If you had to move the sign five (5) feet back from the right-of-way, which Central Business District (CB-C) is a five (5) foot setback.

Mr. Powers asked if they wanted to put a whole new sign up reduced by thirty percent (30%) would they have to conform to the height?

Ms. Blair responded the size must be reduced. The square footage is reduction, but the height would have to meet current Code.

Mr. Powers stated but like Mr. Dyer said if they wanted to put another bank in there, they could just re-use that cabinet and put a new face in. The same thing goes for Martinizing. I think First State did redo that ATM sign in the last year or so, because it looks fresh.

Ms. Blair stated at least in the past two (2) years.

Mr. Powers stated if you will follow me with the pictures, I stood at the place where we want to put the sign and kind of rotated around. What that amounts to is the view looking out to the

adjacent property. The White Mill property is Tobacco Warehouse District (TW-C) and it would be allowed a twenty-four (24) square foot ground sign for a single occupancy or a thirty-six (36) square foot ground sign for multiple occupancy. I want to come back to that later. Item three (3) in that authorization of such a variance would not be a deterrent to adjacent property owners, the adjacent property owners already have signs that exceed, meet, or are equal to what we are asking for at this location. I just do not see how it would hurt Martinizing if it went on the corner with as big as a sign that they have or First State Bank in either of the two (2) locations. I disagree with those. Planning and Zoning does agree on the fourth (4<sup>th</sup>) item. They do agree that this is an odd situation much like we faced at the hospital for different reasons, but a piece of property that faces four (4) streets.

Mr. Powers asked are there any questions about any of that?

There were no questions.

Mr. Powers stated the thing about the White Mill, let's face it, if somebody wanted to come in and renovate the White Mill, and they said we have got to have a sign bigger than this, they would probably get it. I have had this situation happen. EIT across from the Welcome Center on the bypass asked to put a sign up on the right-of-way. They got the opportunity to do right-of-way use, which means they are responsible for any cost that the sign would incur should it be in the way if the City had to work on a water line or whatever they had to do. I talked to Renee about Wilco and she said "EIT did it. We ought to be able to do it." We actually had started making the sign and applying for the permit and she called us and said "Somebody upstairs said they do not want to do that anymore. They want the Seamsters to buy this piece of property back." The sign sat in the back of shop for several years. CBN comes in, Canadian Back Note, and somebody from Economic Development tells them that they can put a sign on the right-of-way. We did not put it on the right-of-way, but we did encroach on the ten (10) foot setback and Renee, I think her words were "What do they need me for if they are just going to make the rules up there?" One day Mr. Seamster's sign blew down and I just went down and put the new sign up. I told him that he needed to tell someone upstairs that they need to allow Mr. Seamster to do the same thing that they allowed these two (2) new businesses to do. That is part of what motivates me in this particular case is if these people had not been here forty (40) or fifty (50) years and if Texas State Bank wanted to come in and go in that location, and they wanted to put in a sign as big as Coleman Market Place, then they would probably get it. If they come and say we are going to bring forty (40) or fifty (50) jobs, that is the reality of it. I guess I am done.

Mr. Dyer asked well let me address what you just said. You know that you are probably not without sympathy on this Board, but this Board is limited in what we are allowed to do. Was this ever brought before Council? Either getting the Sign Ordinance amended or to me the simplest thing would be to get the property rezoned to Highway Retail (HR-C) that would allow the seventy-five (75) square foot sign. We have to meet these four (4) criteria. To be honest with you, I do not think you meet criteria four (4) either. This is about the seventh (7<sup>th</sup>) or eighth (8<sup>th</sup>) Sign Ordinance that we have dealt with in the last year and a half. This seems to me to be a very common occurrence and it is something Council needs to address. When you went to apply for a sign permit and were told you needed a variance, did they also suggest that you apply for rezoning?

Mr. Powers responded Renee and I discussed that. She talked to Kenny about it and the problem being that you definitely cannot do anything with Main Street. It has got to be preserved.

Mr. Dyer asked and that is the problem that I have. If we grant you this variance, then we are creating precedence. How could we then deny someone that is on Main Street asking for a seventy-five (75) square foot ground sign?

Mr. Powers responded I think the difference there is that we are asking for this request on Memorial Drive that happens to be the same piece of property that is occupied by Main Street, Market Street, and Spring Street. The way obviously to deny that would be, number one (1) they are not going to be able to meet the setback on Main Street. My answer to you is that you are granting it on a four (4) lane road and this piece of property is unique in the four (4) sides, and the traffic count on Memorial Drive being what it is, being the people that they could contact or the people that will view this would be greater than any other logical location up or down Main Street, Spring Street, or anywhere else.

Mrs. Evans asked can they not view a smaller sign?

Mr. Powers responded they could view a smaller sign.

Mr. Dyer stated sixteen (16) square feet you could carry around on your back. It is a sign board, but that was Council's decision. When they adopted this Sign Ordinance that is what they said. I mean they are the folks elected by the public, and they are the ones that said that.

Mr. Powers stated during the previous Ordinance I was asked by the previous administration as far as the Planning and Zoning to sit down through five (5) or six (6) meetings and go through the entire Code. There were times that we agreed to disagree. Three (3) Councilmen approached me and asked me to look at the current Code. They said "You know more about this than we do. You look at it and tell me what you think." We made a few changes initially, and there have been three (3) revisions to this Code. I think one (1) was for National College, one (1) was the setback situation I was just talking about with the thirty percent (30%) reduction, and actually there is a part in the Code that I asked for. The reason for grandfathering a location was like the Shoney's sign. They cut the face out of it and it sat there with light bulbs and metal showing for years. I suggested that they make them take this sign down stating that they would not do it because under current Code they cannot put it back up; but if you make them take it down saying this is the site, and you can reuse this site, because the new Code grandfathered the site. I do not think they have had an opportunity or reason to enforce that since then. My answer to you is I think this Code is highly questionable in some areas.

Mr. Dyer stated unfortunately that is an issue for Council to decide. You can look at this property map and see that this one (1) site is probably equivalent to at least a dozen of the buildings on Main Street. You do have a rather unique site. At the same time we are granting a variance that could come back and cause problems with other variance applications. This is not similar to the situation at the hospital. The hospital was limited to thirty-two (32) square feet. I

think we granted something over two-hundred (200) square feet. The argument there was that it did not make sense to rezone the hospital to a zoning category that would allow that size sign, but we recognized the unique character of the hospital within that zoning area. I guess the question now that we have to evaluate is if this is enough of a unique situation in this zoning category. To be honest with you, I really do not see it; because there are other banks up and down Main Street. This is basically the drive-thru window for Virginia Bank & Trust. In other words, the site that they have on Main Street does not have any drive-thru windows. If you are downtown banking with Virginia Bank & Trust this is where you get your drive-thru service. They have drive-thru services at American National Bank and at the other bank.

Mr. Dyer asked so you did discuss the issue of getting this property rezoned?

Ms. Blair responded we did, but like you said if you are looking to just simply fit the sign request you are looking at Highway Retail (HR-C) zoning. Staff did not feel that HR-C zoning is appropriate in a downtown district. You have Central Business District (CB-C) surrounding it. The only difference you have is the White Mill property, which is Tobacco Warehouse District (TW-C).

Mr. Powers stated the drawing that I did, option three (3), is the one that I feel like is probably size appropriate. What we really want is the reader board. They do not have the National advertising that some of the larger banks do. These reader boards put out daily interest rates, CD rates, and that sort of thing. We just feel like given the lot, technically we could put it on Main Street. We could put one (1) on each face of Main Street, Market Street, Springs Street, and Memorial Drive, because you are allowed two (2) square feet for every rounded foot. You are allowed one (1) sign per wall as it faces the street.

Ms. Blair stated it is one (1) sign per face in that one (1) sum of square footage. It can be divided.

Mr. Dyer asked what are the allowable wall signs?

Ms. Blair responded it is two (2) square feet of sign area per one (1) linear foot of store front.

Mr. Dyer asked if you have forty-five (45) square feet of store front, you could have a ninety (90) square foot sign?

Ms. Blair responded correct and that may be divided.

Mr. Dyer stated that is pretty generous. A forty-five (45) foot lot is not usually as wide as a residential lot and you are allowed to have a sign that is larger than this. I am sure you explored the option of just mounting this sign on the building.

Mr. Powers stated well the thing about that is on Memorial Drive heading from Main Street away from it, it would not do you any good in that direction. You are right about the forty-five (45). The reason that was done is there are some locations that are twenty (20) feet.

Mr. Dyer stated even on a fifty (50) foot lot, one-hundred (100) square feet is a lot of sign.

Mr. Powers stated that is only on the wall, because that is the situation here. If it is not HR-C as far as the ground sign goes, it is only on the wall. That is one (1) of the changes Mr. Sasser wanted to do early on before it was voted on. Of course, I did not disagree with him. It is mainly because most of the linear footage on most of those buildings is so small.

Mr. Dyer asked can they run a steel beam from the building to the sign and constitute it as a wall sign?

Ms. Blair responded no sir.

Mr. Dyer asked is the message board part technically fifteen (15) square feet?

Mr. Powers responded yes. If you will look at the very last drawing that is what is legal.

Mr. Dyer asked are these messages boards sized to a minimum size because of the pixels?

Mr. Powers responded right. We had to meet a bid request from the Health Department in Caswell County. The message board was fifteen (15) inches tall and six (6) feet wide. If you go by there, you cannot even see a whole word. It is like running by, because it is so small. This is not as fine a pixel as DCC. The sign at DCC was like \$50,000 dollars.

Mr. Dyer stated this is more like what you would see at the fast food restaurants.

Mr. Powers stated the picture is nineteen (19) millimeters and the DCC one is like sixteen (16). Drawing number one (1) is what we applied for, and the reason for that is that is the maximum size in the City of Danville. That is what we are doing in Rustburg, and Riverside Drive. It would just be the same size. The existing signs they have are larger. The existing signs that we re-faced in the locations they have are six (6) foot by twelve (12) foot on the top and they have a manual reader board. Sign two (2) is a lower, shorter version of sign one (1) and sign three (3) is a reduced size of the actually ID sign with the same reader board. Sign four (4) is the same reader board with very small ID sign.

Mrs. Rich stated it is the same reader board. You almost have to have that same size.

Mr. Powers stated I had to match a specification in Caswell County and I had three (3) weeks to do it because there was a budget situation and it is about useless. They run it so fast, like I said you hardly get a word across there.

Mr. Dyer stated it is almost a hazard if you are trying to read the sign.

Mrs. Evans asked do any of your drawings meet Code?

Mr. Powers responded the very last one that shows just the reader board. That is what Code is, ten (10) foot tall and sixteen (16) square feet of sign.

Mr. Dyer asked what are the allowances for architectural element?

Ms. Blair responded for this particular area it is thirty-two (32) square feet. It is sixteen (16) square feet of sign area and thirty-two (32) square feet of architectural element.

Mr. Snipes asked where exactly are you locating the new sign?

Mr. Powers responded it is on the corner of Market Street and Memorial Drive.

Mrs. Evans asked what size sign does Coachmen Cleaners have?

Ms. Blair responded I do not know.

Mr. Powers responded it is either a four by eight (4x8) or a four by six (4x6). It is either that or larger. I do not think it is any smaller.

Mr. Dyer asked how far does the Central Business District (CB-C) go down Memorial Drive?

Ms. Blair responded it ends right before the Charles Harris Financial Center.

Mrs. Evans asked what is it after that?

Ms. Blair responded Old Town Residential (OT-R).

Mr. Dyer asked is there anything on Memorial zoned Highway Retail (HR-C) or Neighborhood Retail (N-C)?

Ms. Blair responded further down near the KFC.

Mr. Dyer asked is the old Blackwell Motors Highway Retail (HR-C) or Neighborhood Retail (N-C)?

Ms. Blair responded that is Highway Retail (HR-C). The car dealership, KFC, the cleaners, all of that is zoned HR-C. Danville Appliance being near the Mill is Tobacco Warehouse District (TW-C). The opposite side of the street from Aamco is HR-C. There are two (2) blocks of Old Town Residential (OT-R) then it changes to HR-C.

Mr. Dyer stated the zoning is sort of choppy through that area.

Mr. Powers stated the situation Mr. Dyer is talking about with rezoning, it may not be necessary to rezone. This Board does have the ability to recommend that Planning and Zoning look at changing the Code to allow this. National College developed a three (3) million dollar facility and the Sign Code said they had to have a ten (10) foot setback and also a side setback. They did not have the driveway to do it. Mr. Gualtney actually asked Ken Gillie what could be done, because they did have a problem. It was refused before the BZA. The Code was actually re-wrote to say if you go twenty (20) feet back from a right-of-way, then the side setbacks do not apply.

Mr. Whitfield stated there was also the flag issue. Their flag is also considered a sign. I think that has been deviated as well. They wanted the flag to fly high enough so that it could be seen.

Mr. Powers asked with their logo on it?

Mr. Whitfield responded no, the National flag.

Mrs. Evans responded an American flag.

Mr. Powers stated I thought there was nothing that you could do about an American flag. There are no restrictions zoning wise.

Mrs. Evans stated it was the height of the pole.

Ms. Blair stated there is a height restriction and a size restriction.

Mr. Powers stated I knew you were limited to what you could do to restrict those. I think they asked for a price on a one-hundred (100) foot pole or something. I guess you would have a consideration of a fall zone.

Close the Public Hearing.

Mr. Dyer stated you are not without sympathy on this Board, but we are charged with a certain responsibility. That responsibility is to meet these four (4) criteria. The one that bothers me the most is the one about creating precedence. I do not think we want a bunch of large ground signs up and down Main Street, but like you say most property on Main Street probably would not have the setback.

Mrs. Rich asked is it right that the fourth (4<sup>th</sup>) one, City Council needs to deal with?

Ms. Blair responded that is up to the Board to decide.

Mr. Dyer asked does it go before Planning Commission first?

Ms. Blair responded correct.

Mr. Dyer asked and they make a recommendation to go before Council regardless of Planning Commission?

Ms. Blair responded correct.

Mr. Dyer asked do we request the change or does the applicant have to request the change?

Mr. Whitfield responded you can do that. You can say, we think this specific area in the Code to, say just for instance, to be insufficient. We would like the Planning Commission and then Council to consider changing this specific.

Mr. Dyer asked but we have to ask for a change in the Ordinance, not that we think this property should be rezoned? We have to work within something that this property will still be Central Business District (CB-C).

Mr. Whitfield responded right. They would have to be the catalyst for rezoning.

Mrs. Rich stated that is what we need to do.

Mr. Whitfield stated that is up to you.

Mr. Dyer stated we could come in and say that we think the Ground Sign Ordinance ought to be related to the frontage of the lot like the Wall Sign Ordinance; because in the case where you do have a piece of property that does have three hundred (300) square feet of road frontage on three (3) different sides. They should be allowed a larger ground sign than somebody that has fifty (50) linear feet.

Mrs. Rich stated we are pretty limited here.

Mr. Whitfield stated if you were to refer something to the Planning Commission for their consideration, you need to be specific as possible and you would need to take some action on this variance whether that would be to deny or table it, one of the two.

Mr. Dyer stated suppose we were to say that we agree with all of the criteria of the Sign Ordinance in the Central Business District (CB-C) with the exception of those pieces of property that front a four (4) lane divided highway, which Memorial Drive is where this piece of property fronts. Basically that is only going to affect those pieces of property on Memorial Drive. That is the problem. I think that all of the properties in the CB-C district that front on Memorial Drive share the same conditions that this piece of property does. I have got to be honest with you; I do not see how we can grant this variance just on the face of it, because of the fact that we are going to be creating this precedence. I guess the first thing we need to do is to make a motion on the variance.

Mr. Whitfield stated you should make a motion on your request, and then say based on that request, and then make a decision on the variance; so we do not have any procedural issues down the line.

Mr. Dyer stated I would certainly like to make a request to Planning Commission and to City Council to consider amending the Sign Ordinance as it relates to the Central Business District (CB-C) to allow for signs up to the City's maximum of seventy-five (75) square feet on parcels of property that front a four (4) lane divided highway where the speed limit is forty (40) miles per hour.

Mr. Powers stated yes, it changes right there before you get to the stop light.

Mr. Dyer stated and the reason for that is for safety, because small signs are hard to read. You cannot read a sign properly going down the road at forty (40) miles per hour.

Ms. Blair asked is this specifically for ground signs?

Mr. Dyer responded yes. The wall signs are already allow for the larger ones. This is just for ground signs.

Ms. Blair stated we just need to specify that.

Mr. Dyer stated an exception should be made for parcels of property that front on a four (4) lane divided highway with a speed limit of at least forty (40) miles per hour.

Mrs. Evans asked is it forty (40)?

Mrs. Rich responded yes, it changes just beyond their lot as you come into the stop light.

Mrs. Evans asked it is thirty-five (35) at Kentucky Fried Chicken. Where does it change?

Mrs. Rich responded there is a little strip in there that is forty (40).

Mr. Whitfield stated you might want to say thirty-five (35).

Mr. Dyer stated let us say thirty-five (35).

Mr. Powers stated they can work out that detail.

Mr. Whitfield stated maybe you want to take the speed limit out.

Mrs. Rich stated well you said be specific.

Mr. Dyer stated there are no other four (4) lane divided highways downtown other than this stretch of Memorial that have Central Business District (CB-C) zoning facing them. You might as well go ahead and put in the Tobacco Warehouse District (TW-C) too. I expect we are going to get something from the White Mill or somebody is going to want something.

Ms. Blair asked so you want them to address Central Business Districts (CB-C) and Tobacco Warehouse Districts (TW-C)?

Mr. Dyer responded yes.

Mr. Whitfield asked on a four (4) lane divided highway?

Mr. Dyer responded that front on a four (4) lane divided highway.

Mr. Whitfield asked with a speed limit of at least thirty-five (35) miles per hour?

Mr. Dyer responded speed limit of at least thirty-five (35) miles per hour.

Mr. Whitfield asked for safety and is that your motion?

Mr. Dyer responded yes.

**Mr. Dyer made a request to Planning Commission and City Council to consider amending the Sign Ordinance for ground signs as it relates to the Central Business Districts (CB-C) and Tobacco Warehouse Districts (TW-C) to allow for signs up to the City's maximum of seventy-five (75) square feet on parcels of property that front on a four (4) lane divided highway where the speed limit is at least thirty-five (35) miles per hour for safety. Mrs. Rich seconded the request. The request was approved by a 4-0 vote.**

**Mrs. Rich made a motion to postpone the Variance Application PLVAR201000131 until such time Planning Commission and City Council has made a decision on the request. Mr. Dyer seconded the motion. The motion was approved by a 4-0 vote.**

Mr. Whitfield stated just to be clear, it is apparent that Mr. Dyer's request be forwarded to the Planning Commission.

Mr. Dyer stated I would like to be notified as to when it is going before the Planning Commission, because I would like to go and plead my own case.

Mr. Dyer asked on these items with the sewer and water, should we not have something in the Zoning Ordinance that it should be allowed anyway?

Ms. Blair responded the Code requires that new construction have City utilities.

Mr. Dyer asked should there be an allowance in there when there are no public utilities?

Ms. Blair responded that is something you can refer to the Planning Commission.

Mr. Dyer stated it seems ridiculous. All we are doing is basically rubber stamping what you are already saying. It is a forgiven conclusion in most cases, but I hate for these folks to have to spend all of this money.

## **II. APPROVAL OF MINUTES**

**Mr. Dyer made a motion to approve the minutes of the September 16, 2010 meeting. Mrs. Rich seconded the motion. The minutes of the September 16, 2010 meeting were approved by a unanimous vote.**

## **III. OTHER BUSINESS**

Mr. Whitfield stated we did have an appeal from I believe it was the August 19<sup>th</sup> meeting.

Mr. Dyer asked Mrs. Conway?

Mr. Whitfield responded that is it, represented by Mr. Millner. I received an order to endorse, which I am going to do. We will move forward with the appeal to Circuit Court.

Mr. Dyer asked are we involved in that in anyway?

Mr. Whitfield responded somebody may be required to testify. Right now the responsibility, once I get the order over there, will rely on the Planning Department to get the record to the Circuit Court within ten (10) days.

Ms. Blair stated we do have an application filed for next month, so we will have a meeting.

Mr. Dyer asked is that going to interfere with Thanksgiving?

Ms. Blair responded it will be November 18<sup>th</sup>.

Mr. Whitfield stated we will be discussing filling the two (2) slots that we have vacant. As you all know, that is taken care of by the Judge.

Mr. Dyer stated I have created a big mess for myself, because I invited someone to make an application assuring that they would be appointed, since we were desperate for folks to come on board. Apparently they are not going to be appointed and they are not happy.

Mr. Whitfield asked can you see me after the meeting about that? We will talk about it after the meeting is concluded.

Mr. Dyer responded okay.

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

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APPROVED