

# BOARD OF ZONING APPEALS MEETING

January 21, 2021

Members Present

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

Members Absent

Michael Nicholas

Staff

Lisa Jones  
Doug Plachcinski  
Ken Gillie  
Alan Spence

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

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

## I. ELECTION OF OFFICERS

Mr. Spencer called for nominations for Chairman.

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

Mr. Spencer called for nominations for Vice Chairman.

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

Mr. Spencer called for nominations for Secretary.

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

## II. ITEMS FOR PUBLIC HEARING

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

Mr. Dyer opened the Public Hearing.

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

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

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

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

Mr. Swaringen stated yes sir.

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

Mr. Swaringen stated yes.

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

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

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

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

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

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

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

Mr. Swaringen stated 10 years.

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

Mr. Swaringen stated yes.

Mr. Dyer closed the Public Hearing.

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

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

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

Mr. Gillie stated highway retail commercial.

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

Mr. Gillie stated correct.

Mr. Dyer stated across the road is heavy industrial?

Mr. Gillie stated correct.

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

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

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

Mr. Gillie stated they could attempt that.

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

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

Ms. Evans stated through complaints?

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

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

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

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

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

Mr. Plachcinski stated no.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Swaringen stated what is the problem?

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

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

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

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

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

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

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

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

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

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

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

Mr. Gillie stated it is Verizon.

Mr. Swaringen stated they work on their trucks too.

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

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

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

Mr. Meder stated that sounds reasonable.

### **III. APPROVAL OF MINUTES FROM JULY 16, 2020**

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

### **IV. OTHER BUSINESS**

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

---

APPROVED