

PLANNING COMMISSION MINUTES

August 10, 2020

MEMBERS PRESENT

Mr. Bolton
Mr. Dodson
Mr. Garrison
Mr. Petrick

MEMBERS ABSENT

Mr. Craft
Ms. Ann Evans

STAFF

Ken Gillie
Lisa Jones
Mr. Whitfield

The meeting was called to order by Chairman Garrison at 3:00 p.m.

ITEMS FOR PUBLIC HEARING

Rezoning Application Request PLRZ20200000155 (PLVAR20200000110), remanded from the Board of Zoning Appeals on a case filed by Mark and Karen Davis, requesting to rezone from HR-C Highway Retail Commercial District to S-R Suburban Residential District 734 Mt. Cross Road, otherwise known as Grid 0708, Block 002, Parcel 000005, of the City of Danville, Virginia, Zoning Map. The applicant requested a variance to allow for a deck constructed without permits onto a legal non-conforming use to remain on a residential property in area zoned HR-C Highway Retail Commercial District. The Board of Zoning Appeals remanded this case to the Planning Commission to review for a possible Zoning Change.

Mr. Garrison open the Public Hearing.

Ms. Karen Davis stated we just purchased the property and I'm not sure exactly how much that you need to know. We haven't even owned the property a year. We bought it for my son and two other roommates that go to Averett. They are right there at North Campus and most of their classes are there. They spend a lot of time there. It worked out great and they had already moved in prior to us purchasing the property. We were renting until our mortgage was going to go through. The week that we were going to close on our mortgage the broker realized and let us know that we could not obtain a mortgage because it was commercial and not residential. We could not get a residential loan and so we had to talk to the homeowner and borrow some money and we purchased it as cash price. We weren't really sure what this meant. We don't own rental property and we are not in the business for rental property. We just purchased it for our son and his friends to live in while they are in college. After we purchased it and looking into the insurance and talking about it my biggest concern and I wanted eventually that it was rezoned anyway. A friend of ours, the stairs were bad in the back of the house and we had them taken down, so we just put up a deck verses just stairs. My biggest concern to rezone back to residential is for insurance purposes because after we purchased the house we realized that if something was too happened to the house, if it causes 51% damage we are not allowed to rebuild the house. That is my biggest concern and I would prefer and hopefully it be residential. Are there any other questions?

Mr. Petrick stated were you aware of the zoning when you purchased the property or looked at the property?

Ms. Davis stated not when we looked at it, no sir, not until we were going to close. The mortgage broker called and said you are not going to believe this but our underwriters can't approve it, he is the one that brought it to our attention. My son was already living in the house and we decided to go ahead and do it as a cash deal.

Mr. Petrick stated I think the issue revolves around the addition to the deck.

Ms. Davis stated yes that is what brought all of this to our attention. The realtor lady is the one that told us to come before the board and ask for rezoning before this ever happened.

Mr. Petrick stated no call was made to inspections to determine whether or not it was illegal?

Mr. Mark Davis stated yes, I talked to William Willis and we played phone tag forever and ever. I called where he works at and no one ever answered the phone and I finally got a message to him. Then he sent a message with this pandemic going on and there is hardly anyone that is working now. We need to get this worked out and I said I agree, just tell me when we can get up here and we will do it.

Ms. Davis stated we had already sent a check in but they have never cashed it.

Mr. Davis stated I wouldn't have even bought the house or even tried to buy a house, if I had known it was going to be a zoning issue, and I'm not in it for the money. Somebody said you know you might get a lot of money out of it. I don't care about that, not that I couldn't use it. We are just trying to find a place for the boys to stay. I had talked to the football coach and he said Mark, if you could get us a place up here and put my football players in it, I will take care of them. I will make sure they are good boys and all of that stuff. Then all of this stuff here happened and it's not like we are trying to beat somebody out of money or a zoning permit. That just don't make any sense because I put more money in the drive way out there that I had no idea about the zoning thing. It is just an honest mistake on somebody's part and I will take part of the blame. This is where we are at now. I don't want to tear the deck down, but if I have to, just give me time to take it apart.

Mr. Garrison stated we don't make that decision and we are here today for just the rezoning. The deck is not a consideration to us and your request here is to rezone to residential.

Mr. Bolton stated I have a question for Ken and then for them. If they did rezone or we approved it and City Council approved it to go back to SR, could they go back later and request to go back to Commercial?

Mr. Gillie stated they could come back in a year and request to change it and that is why staff is recommending allowing that time. Jay Property asked to attempt to rezone and that was turned down because that would have been spot zoning. If we can get multiple property owners to work together on that application it will eliminate the potential for spot zoning. That is why as it stands right now, their case is a spot zoning case. Staff could not support spot zoning. We feel the adjacent properties, who attempted in the past, could join in on this. We have also received a phone call on an additional property that they have not had

time to talk to them. Maybe get a group of property owners together and ask for rezoning. That is, if City Council agrees to change it. Then in the future if development does go that way and then they could ask for rezoning in the future. I'm trying to take care of both issues at this time. There just hasn't been sufficient chance to get everybody together. That is why I am recommending that it be continued and not decided now. The prosecution for the deck, that will stop it, because they are trying to resolve the issue. We won't proceed until all applicants are either successful or unsuccessful. So we are not going to tell them to tear the deck down or anything else. They did apply for a permit and they wrote us a check but we can't give them a permit because of the illegal nonconforming status and violation. In their defense they did do that and that is why I am recommending hold it and let's see what happens after they get together.

Mr. Bolton stated the reason I asked that is, because just in my opinion the Commercial Zoning is so much more valuable to that property than the SR. In other words say once your son graduates and moves on. I don't know if you plan on selling it but that Commercial Zoning in my opinion would make the property a bit more valuable. That is why I wanted to make sure that you could come back and change it.

Mr. Davis stated I was told that you could. The whole thing is it's not that we were trying to do that. We were trying to give some good kids a place to stay.

Ms. Davis stated what he is trying to say is that we didn't do it for investment purposes. We just did it for a residence.

Mr. Bolton stated but if you do sell it, I would think that you would want to get as high a value as you can. That is why I was concerned if you changed it and Council approved it that you could go back when you wanted to sell it. The property would be so much more valuable with Commercial Zoning. The other thing, we talk about spot zoning all the time. I think basically what we have to hear from somebody is that it adds value to the community by changing it, if you are going to spot zone. Not to put you on the spot but what would you see as a community benefit going from Commercial to Residential?

Ms. Davis stated the only thing that I can think would be that if somebody like us, would come in to buy residential. Where it is, I totally understand that eventually in the future probably most of that will be commercial. Right now there are literally like five houses within a little pocket and if it was residential, I don't think many people would come in and let that house sit empty the way it is. We were just fortunate that my mom went in with us to help us give enough cash and purchase the house. I don't know that a lot of people will just have cash laying around and to resell the house, I think right now the way that it is would only sell as a residence. I see it in our best interest that it would be a residence if we went to try to resell it, unless a commercial came in to try to buy it. If they bought the whole area I would assume that they would probably bulldoze it and build something. That the house still would remain is a benefit. To keep it as a residence right now and I understand in the future, I know that area is going to probably be developed.

Mr. Davis stated we would get a couple of years out of it by our son being here. If it is going to cause trouble we can find another place. We have already paid for the place and that is why we were trying to get it zoned. I understand about the City and Averett doing what they must do. They guy that sold it to us, he never said anything to us and the real estate agent lady didn't say anything to us. We found out from the lawyer of the mortgage people, when we went to settle he told us about it.

Mr. Bolton stated so you didn't feel like you paid premium because it was commercial. You felt like you were buying a home and it was worth it the value as a home not as commercial lot. Like you see on Piney Forest Road there are little bitty houses you ride by sometimes you might be surprised what they sell for. The same thing might be with this one. If it is Commercial in the future, it would be a much greater value to you. That is why my first question was could you come back.

Ms. Davis stated thank you.

Mr. Davis stated the guy named Jerry Davis, he owns the house beside us and he owns the next house up. I went to ask him about it and he wouldn't even talk to me about it. He might be a fine fella but he just did not want to talk about it. His secretary said that he doesn't have time to talk to you about this stuff. Then the people that we went to visit around there, the only girl that was there, she rented the house. That is where we are at this point.

Ms. Davis stated I think a lot of them are rental properties.

Mr. Davis stated I don't want rental property to be honest with you. This might turn out to pay good money one day, but I'm just trying to get my boy through Averett and his buddies.

Mr. Bolton stated I think one of the recommendations were to continue this so that you might have a chance to talk to some of the owners. Maybe you could come in as a group and you will have an argument on the spot zoning. Do you think you could?

Mr. Davis stated we have already talked to everyone around there in that area. Mr. Gillie said about this other guy I don't know who he is or where he lives or anything.

Mr. Gillie stated I think if you had more time to talk to the property owners and we can give you a list of the adjacent properties. You are talking to the tenant of that house but not the actual owners. I think you should talk to the property owners.

Mr. Bolton stated Marshall Construction and Averett is local. You could probably talk to them fairly easy or a representative. They are not opposed so they will probably give you some support. How long do you think it will take if this thing goes through?

Mr. Petrick stated you mean if the change would happen with zoning?

Mr. Davis stated yes.

Mr. Petrick stated it would happen within a few months.

Mr. Davis stated if it didn't happen how long would we have to get out of there?

Mr. Gillie stated you never have to get out of there. If City Council fails to rezone the property then it would go to the Board of Zoning Appeals and they can make a decision on what to do next. You still have options available. As it stands right now you need to try to get all the property owners together and come in as a group. You haven't talked to the right people, but it is up to you. Our recommendation is that you table it and it gives you a chance to get with those folks. It will be resolved in the next few months one way or another. We are not going to proceed any further with violation notices because you are trying to fix it.

Mr. Bolton stated in the mean time they can continue to use it as they are using it, right?

Mr. Gillie stated correct, occupancy is not an issue at all as long as it doesn't burned down 51% or we will have to cross that bridge when we come to it. Right now it is a single family use with a violated deck. We can't close the permit out because these issues have not been resolved. That doesn't stop them from occupying the house at all.

Mr. Bolton stated if the group comes in to support them do they all have to get their property rezoned or don't they?

Mr. Gillie stated they could ask as part of this application and not as one group. It would be asking to rezone a block of properties not just a single property. If they ask for it as part of the application theirs would be rezoned also.

Mr. Petrick stated I don't believe in revitalizing this for one property. I think the solution would have this group of properties to ask for it. Is that how you are looking at it?

Mr. Gillie stated yes, it is called spot zoning for one property. The only way to proceed with rezoning is to have more than just their case come and ask for it. If they don't, then I'm going to have to recommend no approval and then it will go to City Council and if they say no, it goes by to Board of Zoning Appeals with this option didn't work now what does the board want to do. I'm trying to go with the route that is best for them.

Mr. Garrison stated and you say no because it would be spot zoning.

Mr. Gillie stated correct.

Mr. Garrison stated we are not hearing anything here and we are not concerned about the deck. The sole question here is do we rezone the property. If we do, then it would be spot zoning.

Mr. Petrick stated the variance around this deck by Zoning Appeals that was an option, correct?

Mr. Gillie stated we feel no, because in order for the variance to be granted it has to be a physical hardship on the property. There is not a physical hardship and the property is nonconforming and it should not have been expanded. If they would have applied for the permit ahead of time we would have denied it. It is not zoned to allow a deck. They built a deck, then they asked to keep it. The Board looking at it said under the requirements of state statute, but they can remand it to the Planning Commission to see if rezoning would alleviate it and that is what they have done in this case. It could be potentially spot zoning for one property.

Mr. Petrick stated just to be clear every parcel from the intersection of Riverside Drive to the County line is Commercial.

Mr. Gillie stated yes, it is some sort of Commercial, correct.

Mr. Petrick stated so this would be an obvious spot zoning situation.

Mr. Gillie stated yes, Averett is a transitional office type because of the University aspect. The remainder of the properties are zoned either neighborhood, highway, or retail. There are a multitude of zonings out there. Our long range plan was for this entire area up to the County line to be developed Commercial. That is why they developed a five lane road and everything else. As a short term fix, it can be rezoned back. We feel in the future that a Commercial development is the way for that to be, but if we can get enough properties together we can see how that goes.

Mr. Bolton stated not all spot zoning is illegal, but we have been pretty consistent I think in making folks state their case to as why it may be, like the one last month on Ash Street. Paulette Dean, the owner came in and convinced us that this was a community need for a pet shelter. Beyond that, the only solution is to get the other folks to join in and get it changed and then you're not specifically spot zoning. We can't recommend a continuance.

Mr. Garrison stated they would have to ask for it. If they ask for a continuance, we can do that and if they don't ask for a continuance, then we have to hear it today. We have other people here that wish to speak. Since we are still in Public Hearing, I want to give them a chance to speak since they came.

Mr. Davis stated I guess we will ask for a continuance today even though I don't quite understand everything. We will take him for his word and ask it be continued today.

Mr. Richard Bailey stated I am a Real Estate Broker and I'm here representing the Sims and Bell family. They are actual brother and sister and they own three acres just north of the subject property. We have plans to sell that property in a few months. It is vacant property and the house is beyond any hope of rehabilitating into a residence. It is pretty obvious that it will be once again, as it was many years ago, probably a commercial establishment. Certainly no one has any ill will towards the Davis family about building a deck and quite frankly by listening to their story, it is somewhat heart breaking because it seems that they are mired in a mindless bureaucracy that prevents them from doing that. I would hope that there would be some means and I don't have any idea what that would be. Perhaps staff or maybe this group could come up with something that would grant them the right to build the deck. I don't think that is really going to be the end of the world if they have a deck on the back of their house in spite of the fact that it doesn't meet some State Code somewhere. I think that is why we have people to make decisions rather than have everything engraved in stone and handed to Moses on a mountain. I agree with Mr. Bolton, it is somewhat heart breaking to hear that they were not advised of the conflict with the zoning when they bought the property. I have been in the Real Estate business for a long time, but not as long as he has. None the less I feel that is the responsibility that the Realtor should have disclosed and that is a given fact. That is not why we are here. The situation is very heart breaking and I agree with Mr. Bolton on another, that at some point in the future or perhaps even today their property would be worth more as a Commercial establishment. As indicated by Ken here, that property is defiantly going Commercial. That will be our focus when we sell the Bell and Simms property. We are not opposed to anything that they are trying to do. This thing about changing the zoning just seems to be a bit of an extreme fix. Could there be some kind of variance or nonconforming use or something granted for them to have this situation eased. I feel for them, but is there some way that we could keep the zoning and they build their deck. That would be the ultimate thing that we would like to see happen. There is no opposition for them building a deck. If there is an avenue that can be pursued where it can be done without changing the zoning then I would encourage that avenue.

Mr. Garrison closed the Public Hearing.

Mr. Bolton stated if we do continue it, is there anything like Mr. Bailey suggested. Everybody sort of feels like that is the common sense thing here and I know what we are dealing with and I know that you are right. Is there anything other than the variance and us rezoning as a fix.

Mr. Gillie stated you could amend the zoning code chapter 7, on legal nonconforming structure to allow for expansions for legal nonconforming structures. The issue with that is the purpose for legal nonconforming is for them to be brought up to conformance with the code which would be to go to Commercial. This is a residence in a district where it does not belong. Improving a deck on a house that should not be there, at what point do you draw the line. That is why it was at Zoning Appeals and that is why they went that route. The only option would be to change the code and allow for some sort of specifics of residential or nonresidential district or something else like that. It really just doesn't make sense and it is one of those cases that is just an oddball and will eventually go Commercial. The Simms property, they don't have to join us, they can continue with their Commercial development as he said. That property will probably go because the house has no reasonable use anymore. It will probably be torn down and something Commercial will be developed and that would not affect this case. This case and possibly the adjacent properties that are vacant residential or occupied residential could join, but it will not impact the Simms at all.

Mr. Bolton stated I just don't see that happening and don't see why we are continuing it.

Mr. Garrison stated we are continuing it at their request.

Mr. Bolton made a motion to postpone for an indefinite time period for the Rezoning Application PLRZ2020000155. Mr. Dodson seconded the motion. The motion was approved by a 4-0 vote.

IV. OTHER BUSINESS

Mr. Garrison stated I spoke with Mr. Gillie earlier about the 2030 Comprehensive Plan for the City which is up for review this year. It has to be reviewed every five years by both the Planning Commission and City Council. I'm giving you a heads up that we are going to have to take a look at the Comprehensive Plan. You might want to go ahead, like when you have those hours that you can't sleep. You might want to pull it up on your screen and take a look through it. We will probably not make any major changes this year but its possible next year it will have to be completely revised anyway. I just want to give you a heads up on that.

Mr. Gillie stated the Comprehensive Plan, if you need copies we can provide a digital copy to you. There were not any cases that went to City Council last month. Staff recently conducted interviews for a Planning position. Hopefully next month or two we will have a Planner and you will not see me anymore.

V. APPROVAL OF MINUTES

The June 11, 2020 minutes were approved by unanimous vote.

VI. ADJOURNMENT

With no further business, the meeting adjourned at 3:36 p.m.

APPROVED