

PLANNING COMMISSION MINUTES
September 12, 2011

MEMBERS PRESENT

Mrs. Evans
Mr. Griffith
Mr. Jennings
Mr. Scarce
Mr. Wilson
Mr. Laramore

MEMBERS ABSENT

Mr. Jones
Mr. Laramore

STAFF

Clarke Whitfield
Ken Gillie
Christy Taylor
Renee Blair
Emily Scolpini

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

I. ITEMS FOR PUBLIC HEARING

1. *Rezoning Application PLRZ20110000327, filed by Chester Baker, requesting to rezone approximately 3.08 acres to allow retail sales.*

Ms. Blair read the Staff Report. Six (6) notices were mailed to surrounding property owners within three hundred (300) feet of the subject property. One (1) respondent was unopposed to the request; zero (0) were opposed to the request.

Open the Public Hearing.

Present on behalf of the request was Mr. Chester Baker. Mr. Baker stated I have got some items to present to you. All three (3) properties must be rezoned to HR-C, Highway Retail Commercial to create a district. If only 3207 North Main is rezoned it would be considered illegal spot zoning, and that is signed by Emily Scolpini. There is question about my section being out of business for two (2) years or more. This package is the utility bills for about two (2) years that I would like to submit to show you that we were using utilities in the office facilities that were there. I am a real estate broker and my office is at 1663 Piney Forest and I have been active continually with no lost time. I have a City license for myself. That is the sheet for 2010. I have a City license decal corporation that I own, and that is for 2010. I have the same thing for 2011, continuation all of the time. Again, I have not been out of business and the business has not been shut down. To substantiate that, here is the City of Danville paying me for 1% sales tax on sales over the period. I could have brought you a handful of these, but I brought just enough to make the point that my operations have been in business. I had a surgical operation on my ticker. Dr. Gary Miller, as you know, put me down for a year. For about a year I had to improvise what I did do. Here are sheets that will support some of the sales tax that have been paid. The zoning was C2. I have been on that corner since 1946. Nothing has changed. I have not been out of business. There is a technical error in the map for the C2, and this is a good map that I would like to give you. There is a clerical error in the planning report that was sent to me, and it refers to this application as for an area of 3.08 acres. That should be corrected to 4.49. I make the notation to clear that up. It is the same thing on another sheet; change it from 3.08 to 4.0142. I am a real estate broker. This is just a letter from an equipment person to let you know that in May 2010 I was working during that period of time. For the parking, for what it might be relevant, here are a couple pictures that are good for that. Those items are all that I have to present to you. If there are any questions, I will try my best to answer them.

Mr. Jennings asked what do you plan to use the property for? You said retail sales. Are there any specific items?

Mr. Baker responded I own the property. I own it all. Was that your question?

Mr. Griffith responded I think the question was what are your intentions for the property once it is rezoned?

Mr. Baker responded I did not see the need for the rezoning, but others here suggested it. That little yellow page, from one (1) of your clerks, suggested that it be rezoned. I was content for it to stay as it was on the C2. We are leasing a service station on one (1) of the parcels to Sammy Pierce. The lease has already been completed. He has done everything and is ready to open his business, but there is some question on the zoning.

Mr. Griffith asked so that is why we have the rezoning request then?

Mr. Baker responded yes.

Mr. Wilson asked is it going to be a computer store repair shop? Did I understand that right?

Mr. Baker responded there is a video retail rental store with an enormous amount of movies in all, thirty-five thousand (35,000). We have got some cosmetics to do, and vandalism. When that is completed, it will be reopened. Right now it is closed to the public.

Mr. Wilson stated I am confused. Is it going to be a video store, or a computer store?

Mr. Baker responded it will be a video store same as it is, no changes.

Mr. Scarce stated he refers to it as C2. We know it is zoned Neighborhood Commercial presently, right?

Mr. Gillie responded correct.

Mr. Scarce asked would you elaborate on that, since it has probably been a while since you have seen him?

Mr. Gillie responded Mr. Baker and I see each other quite regularly. The property was zoned C2 prior to the adoption of the new Zoning Ordinance back in 2004. From that point on it has been zoned N-C, Neighborhood Commercial. The City's contention is that the property has been vacant for more than two (2) years and the legal nonconforming status of the property expired. Mr. Baker went before the Board of Zoning Appeals and asked for a variance to continue his legal nonconforming status. The Board denied that variance agreeing with the City that the buildings had been vacant for more than two (2) years. That is why he is asking to rezone the property right now. Staff's opinion is that we cannot recommend straight HR-C because it allows some uses that we do not feel are compatible with the surrounding residential properties in the area, the cemetery across the street, and some other things. We would be willing to work with Mr. Baker if he is willing to table the request. Planning Commission could even table the request. We could come back with a conditional rezoning.

Mrs. Evans stated Mr. Baker, City staff is recommending that they could recommend this approval if you proffer some conditions. Have you worked with the staff about looking at those?

Mr. Baker responded we had an operation that was Northside Tires that was in a portion, one (1) particle of the building; but that was automotive. This corner has been automotive since 1948

continuous in some form. It was either something that I had owned and operated or either I had leased to these people to operate the tire repair shop. That was James Darrell. James Darrell is a fine fellow and he had a good operation. He had sales that were a million and a quarter a year. I know they were a million and a quarter a year, because his rent was based on a percentage of the sales. I know from that what the sales were. James died. His son was in prison. He brought his son in before he died. He did everything he knew to make his son well, to put him in business. It did not work. His name is Frankie Darrell. You may find that name come up some time in the future. He ran through the operation, and it was a failure. Right now with the cosmetics to the building, we will put a compatible business in it, something acceptable. I do not know what it might be. It might be automobiles or it might not be. The change in the zoning I do not think would hurt us. As we get a tenant to go into the building that will be the course we will take. Of course, we are not going to put anything that is not compatible to the location. My office is in four (4) rooms on one (1) end of that building. The office of the tire operation is on the other end. It is all in one (1) solid building. You have some pictures of it.

Mrs. Evans asked if the City gave you a list of some things that could not go in there, and you all struck some of those, would you be agreeable to do that?

Mr. Baker responded I would like to not be restricted, but I would honor it if they issue it.

Mr. Griffith stated I think staff's concern in their recommendation was that there are residential sections nearby; there is a cemetery across the street. The new zoning allows for items, types of businesses that might not be compatible with the rest of the neighborhood. That is one (1) of the reasons they were trying to put a limit, some restrictions on what could or could not go in that location. Would you be willing to meet with them to discuss that, to try and resolve some of those issues before we make a recommendation?

Mr. Baker responded yes.

Mr. Griffith stated we have got three (3) choices. We can approve it, we can deny it, or we can table the motion to give you an opportunity to meet with them to resolve some of these areas, which I think might be the best thing to do.

Mr. Baker stated I would like to request that you approve it as it is. I had, on the application, Sammy Pierce co-sign it, because he is the tenant. That is immediate now. The others will come, and the video store I own, so I could sign for it and I do not intend for anything other than that type of thing.

Mr. Griffith stated I think what we are trying to say is that we need something other than just a blanket approval that would open it up for any type of business that would fall into that category.

Mr. Baker stated if it is restricted to automobile type operations.

Mr. Griffith stated this is something you can meet with staff about and try to work out something that would be compatible and in the best interest of the entire neighborhood. Like I said, we have three (3) choices. We can approve it as it is, we can based on staff's recommendation deny the request, or we can table it to give you an opportunity to meet with them and try to satisfactorily resolve everything to everyone's benefit.

Mr. Baker asked could you approve it now, so Sammy Pierce can go ahead. He is ready to open. He is waiting on this answer. He would open, I suppose tomorrow or pretty close. The building is

complete. He has stocked it. He has shelved it. He has painted it. He has got it fresh and ready. We would like to see him go ahead.

Mr. Griffith responded we have three (3) options. You can make that recommendation to the Board. Even if we approve it, he cannot open tomorrow; because it still has to go to City Council on October 20th for their approval. Anything that we do, nothing is going to happen until October 20th.

Mr. Baker stated I am trying to make a point.

Mr. Griffith stated I understand.

Mr. Baker stated I cannot do much more than I am doing now: providing some jobs to the community, some help to the people. I do not have a day go by without someone asking how soon they can rent movies again.

Close the Public Hearing.

Mr. Scearce made a motion to table Rezoning Application PLRZ20110000327. Mr. Jennings seconded the motion. The motion was approved by a 5-0 vote.

2. *Code Amendment Application PLCA20110000328 proposing to modify the definition of retail sales to allow for limited retail sales in areas zoned N-C, Neighborhood Commercial.*

Miss Scolpini read the Staff Report.

Open the Public Hearing.

Present on behalf of the request was Ms. Sandra Gibson. Ms. Gibson stated I went before the Board before on this property that Mrs. Blair owns on South Boston Road to open up a variety store. I really have not read a lot of what is actually going on today, but I feel like I need to say something. I am really interested in her property, opening a small store that is also located beside a retail store. It is in the neighborhood there. As far as the neighbors, no one has any objections for me to open there. I have gently used items, new items, and a variety of items. We also have the Flea Market that is in walking distance from the store. All of those types of items are being sold in that neighborhood. I have gone through every step that I could to be able to open this store, but it seems like I keep getting knocked down. The good Lord above keeps telling me to keep going that it is going to work. That is all I have to say. The type of store that I am talking about opening is nothing that will hurt anybody in that neighborhood. It would help people in the neighborhood. I worked for the Salvation Army for several years and lower income people like to shop at thrift type stores; because they cannot afford the higher end stores. The stuff that I have there is gently used stuff and it is stuff that they can afford to purchase. With the economy here in Danville, the less jobs we have the more people are moving out of Danville to go find people that can afford to buy their stuff. I think that you really need to take into consideration the economy here in Danville. I would appreciate it, and I know other people would appreciate it. Thank you.

Mr. Scearce asked where is your property located?

Ms. Gibson responded her property is located on South Boston Road beside the Mt. Hill Mini Market. There is Mountain Hill Road that is right there. It is just a little bitty small building.

Mr. Scearce asked is it in the City or the County?

Ms. Gibson responded it is in the City.

Mr. Scarce asked do you know what it is zoned as?

Mr. Gillie responded it is zoned N-C. This is the case that came in front of you last month we are asking to possibly change the zoning code to allow for that type of use. At that location, currently it would not be permitted what she is trying to do.

Ms. Gibson stated this is a very small building.

Mr. Scarce stated I know what you are talking about. I am just trying to understand the zoning issues with the property.

Ms. Gibson stated I could go in there and fix it up really cute. It would be a good thing when people go by and see it. It is not going to be anything that is going to be an eyesore. I can promise you that. I just live down the road, so I am one (1) of the neighbors. It would be nice.

Mr. Griffith stated I think this addresses a number of pieces of property around town that have been questions about.

Close the Public Hearing.

Mr. Scarce read the square footage restrictions. Is that put that way in case there are multiple tenants in one (1) building?

Mr. Gillie responded correct. You can have a small center in a Neighborhood Commercial District that has multiple tenants inside it. This is similar to what the old N-C district was, what we used to call C1 many years ago. We do have that same restriction of 3,000 square foot. That would have it as a small facility, hopefully not generating a lot of traffic like a large retail facility would have.

Mr. Scarce asked do you know the square footage of the video store that we were just working with?

Mr. Gillie responded no, I am sorry I do not know the square footage of that off the top of my head.

Mr. Scarce stated I was thinking that if we passed this that would allow him to open his video store as long as the square footage would work. Where do we get 2,000 from if his video store is 4,500? Is there some magic number?

Mr. Gillie responded the video store may be allowed under this. There are some other issues regarding Maintenance Code, some things that would need to be fixed before that video store could open even if this code would be changed.

Mr. Scarce stated I was just thinking that if we passed this, and the square footage met, then he would not have to come back before us.

Mr. Gillie stated if this passes through City Council, and he abides by the square footage, yes that is correct.

Mr. Wilson stated this is a pretty extensive list. I kind of have a concern here. Piney Forest Road is just another hodge podge of variety. Does this increase the chances of just more 'anybody wants to

put anything in' or is it going to improve the general appearance and way businesses and residential flow up and down the street? Is it going to make it a little bit more uniform or is this just going to allow people to take advantage of it? If that video store does qualify by us doing this, that is a concern to me.

Mr. Gillie responded perspective I guess is the question. The video store if it would comply, we have a couple ways to look at it. The video store right now has some issues with Maintenance Code due to the building being vacant. Maintenance has not been occurring because the building has sat vacant. Is it beneficial to allow someone to occupy a building and maintain it verses to let it sit there and decay? The allowance for retail sales, we have substantial neighborhood commercial, usually they are small strip centers or small individual buildings by neighborhoods. This would provide an additional opportunity for some of those buildings to be occupied. It is something that was allowed in the past. We removed it back in 2004 to try and kind of narrow down the amount of uses. Since that point we have had a lot of continuation of legal nonconforming uses. We have also had folks come in and ask to open the small retail facilities as this lady as asked for. In our feeling, it is not going to be a deterrent to the neighborhood. It may allow for the re-occupancy of certain buildings that have sat vacant. To be a deterrent to the neighborhood, we do not feel so. We do not feel that it is going to create a large amount of traffic, because you still have that trigger of how large a facility will be. We had some of the other uses in the continuance of legal nonconforming that were not really using anything. Does it open up to additional things? Yes, there is always the possibility that something could go in there that we did not anticipate. We are trying to weigh the bad verses the good. In this case, we feel that this code change may be a benefit for some of these areas.

Mr. Scarce stated I agree with what staff has said. There is a need to have the ability for some of the property that is available in town zoned Neighborhood Commercial to be able to have retail sales. I am in favor of it.

Mr. Griffith stated I think with the exclusions that were put in here you are not going to have a garage, a service station, or these other items. It will certainly allow for some of these buildings that have been vacant to be re-occupied.

Mr. Scarce made a motion to approve Code Amendment Application PLCA20110000328 as submitted. Mr. Jennings seconded the motion. The motion was approved by a 5-0 vote.

II. MINUTES

Mr. Jennings made a motion to approve the August 8, 2011 minutes. Mrs. Evans seconded the motion. The minutes were approved by a 5-0 vote.

IV. OTHER BUSINESS

Mr. Gillie stated Council approved the items at the meeting based on the new schedule. They approved the items that we had last time. We do have cases for next month, so we will have a meeting.

Mr. Griffith asked how are we coming on the consultant's report as far as narrowing down the findings on the Land Use Plan?

Mr. Gillie responded we are waiting for the release of the River District Plan, so we can incorporate some of the issues that have come up during the River District Plan into the Comp Plan and then have that ready for you.

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

APPROVED