

MINUTES
BOARD OF ADJUSTMENT

January 6, 2010

7:00 p.m.

City Commission Chambers
22 South Beach Street
Ormond Beach, Florida

I. ROLL CALL

Members Present

Jean Jenner
Norman Lane
Dennis McNamara
Tony Perricelli
Ron Walker

Staff Present

Steven Spraker, AICP, Senior Planner
Ann Margret Emery, Deputy City Attorney
Chris Jarrell, Minutes Technician

II. APPROVAL OF MINUTES

A. Election of Chair

Mr. Jenner nominated Dennis McNamara to serve as Chair. Mr. Lane seconded the motion, which was approved by unanimous vote.

B. Election of Vice-Chair

Mr. Jenner nominated Tony Perricelli to serve as Vice-Chair. Mr. Lane seconded the motion, which was approved by unanimous vote.

C. Rules of Procedure

Mr. Jenner moved to approve the 2010 Rules of Procedure, as presented. Mr. Walker seconded the motion, which was approved by unanimous vote.

D. Adoption of the 2010 Calendar and Submittal Deadlines for the Board of Adjustment and Appeals

Mr. Lane moved to approve the 2010 calendar, as presented. Mr. Jenner seconded the motion, which was approved by unanimous vote.

III. APPROVAL OF MINUTES

The minutes of the October 7, 2009 meeting were approved by unanimous vote, as presented.

IV. OLD BUSINESS

There was no old business to be discussed.

IV. NEW BUSINESS

A. Case No. 10V-28: 5 South Yonge Street (Texaco Gas Station)

Mr. Spraker said that the application was for a landscape variance at the intersection of Granada Boulevard and US1. He recalled that the gas station was reconstructed in 2005, and stated that the Department of Transportation (DOT) was now preparing for some intersection improvements at that location to create dual turn lanes both north and southbound, which will require additional right-of-way. He said that the DOT had acquired a corner clip from the subject site for those improvements, accepting the site drainage into the right-of-way and leaving some landscape area, but not the full 20 feet as required by the Land Development Code (LDC). He said that as part of the cure plan for the eminent domain proceeding, the part of the property made nonconforming as a result of the taking would be considered to be conforming.

Mr. Spraker further explained that the cure plan would be nullified in the event the building was destroyed beyond 50% of the value and the vesting would be lost. He said that the only way to ensure that the improvements could be replaced with the same diminished setback and landscape buffer resulting from such an event would be by obtaining a variance, a permanent vesting action. He referenced the exhibits and said that because of the site size constraints resulting from the taking, the applicants needed the permanent assurance of their being able to rebuild without the loss of a pump island.

Mr. Spraker advised the members that an alternative solution had been found for widening the driveway to provide for better vehicle flow; therefore, the only issue before the Board was the landscape buffer. He reiterated that the necessity for the variance was the result of a governmental taking and not a situation created by the applicant. He said that staff felt that the application met the criterion for hardship and that there was no practical alternative. He added that a 20' buffer would either severely limit what they could do on their property or eliminate the use altogether. He said that Staff was recommending approval of the variance.

Mr. Fred Mortimer, of Mesimer and Associates, consulting engineers and land planners from of St. Petersburg, Florida, thanked staff for their help throughout the process. He concurred that the variance request was not the result of any

actions on the part of the applicants, but as a direct result of actions taken by the DOT. He said that the taking not only constricted the site from strict compliance to the Code (the 20-foot landscape buffer), but would eliminate gas sales at the facility in the event it was destroyed by a natural disaster. He said that the variance would provide them the ability to replace the improvements following a natural disaster or a fire without the uncertainty or complexity of complete code compliance.

Responding to Mr. Lane, Mr. Spraker said that the application before the board would give the applicant 10 feet of landscape buffer, rather than the five feet, as previously presented. He said that staff would have supported turning the pump islands if they had thought the turning movement would work, but because they did not, staff had worked with the DOT and the applicant to come up with a solution that worked much better. He said that the alternative to a variance would be a letter from the City stating that the property owners could rebuild on site to the same standards, but cautioned that a staff person in the future might force them to comply with a new standard. The variance, he said, would provide them with the assurance they needed that it would not be a problem.

Mr. Spraker said that there was currently a 20-foot landscape buffer, which would be cut in half by the taking, with the remaining improvements undisturbed. He confirmed for Chair McNamara that the entrance would be widened by approximately six feet (6') and said the intersection improvements consisted of adding double lefts, both eastbound and westbound, to alleviate the failing condition of the intersection.

The Board concurred with Mr. Lane that the plan presented was a big improvement over the plan last presented.

Mr. Jenner made a motion to approve the variance, as stated.

Mr. Perricelli seconded the motion, which was approved by unanimous vote.

Mr. Spraker confirmed that the variance stayed with the land, rather than the applicant. He said that the Order would reflect that the taking had already occurred and they were therefore vested by the variance.

B. Case No.10V-43: 663 South Nova Road – Gaff’s Quality Meats

Mr. Spraker introduced the item, saying that the site is located just north of Hand Avenue [on the east side of Nova Road]. He explained that the existing business sign had been destroyed by a drunk driver and that the applicants were seeking to replace the nonconforming sign.

Mr. Spraker stated that the sign that had existed on the site was nonconforming in several ways. He said that it had been located within the property’s front setback

area; at present, the Land Development Code (LDC) requires a setback of five feet from the property line. He pointed out however that an pending amendment to the sign code would allow the Planning Director some discretion in applying that setback requirement for nonconforming sites such as the subject for which there would be no practical way to meet the requirement.

Mr. Spraker said that another variance being sought would permit them to have more than the 50% allowable area for changeable copy area, with a third variance to allow 34 square feet of sign area, rather than the 28 square feet allowed per Code for the sign face, based on their 69 feet of lot frontage). He said that in order for the sign to be deemed a pole sign, it had to have at least nine feet (9') of clearance; they had approximately 4-5 feet.

Mr. Spraker acknowledged that the site was very challenging and presented a number of obstacles in allowing passersby to see the sign. He pointed out the large sign for the adjacent *Pinkadilly* thrift shop, which is about 11 feet tall and about 64 square feet wide. In addition, he pointed out power or cable lines at about 14 feet off of the ground. He said that the view at the north line was somewhat obscured by a power pole, a tree and a light pole. He said that it would be very difficult to fit a sign within the eight-foot (8') strip of land between the sidewalk and their parking lot.

Explaining the possible alternatives considered for the site signage, Mr. Spraker said that staff had considered moving a parking space, but had concluded that it created an additional hardship for the small business and did not believe that the sign would achieve visibility at that location. He said that was eliminated that as an option and that the applicants requested to put the sign back at nearly the same location it was previously located, one foot off the property line, utilizing a seven-foot (7') sign.

Mr. Spraker stated another option considered was for a five-foot (5') wide ground sign with a three-foot (3') setback. He said that the sign contractor explained that a 5-foot sign would not be wide enough for the sign text. He said that a third option was to allow a pole sign in order to allow it to extend over the parking area, but said the necessary height could not be achieved because of the low-hanging power or cable lines.

Mr. Spraker said that the sign company had come forward with a new proposal on the day of the Board meeting; therefore, the information on the latest scenario was not in the board packet. He said that the newly proposed sign would be 7-feet in width by about 9 feet in height and would result in eliminating the need for the 50% reader board variance. He said that it would allow 32 square feet of signage, an insignificant difference from the allowed 28 square feet in the view of staff and would also eliminate the height issue, since it would become a ground monument sign. He said that the issue therefore became the setback from the front property line and whether or not the one-foot (1') setback would be

acceptable to the Board. He said that once the Board determined the amount of setback area that was acceptable, the remaining issues would take care of themselves.

Mr. Lane confirmed with Mr. Spraker that the latest proposal would set the sign back one foot from the sidewalk and questioned if the 14-foot height for the power lines was a normal height. Since Mr. Spraker did not think it was, Mr. Lane suggested that perhaps the cable owners should take care of that problem.

Mr. Spraker thought that although the owner of those cables might agree to raising the lines, it could be expected to be a long process and pointed out that the business owner needed resolution long before that. He said that they originally thought a pole sign might be the solution, but realized that it would not be sufficiently visible behind the *Pinkadilly* sign, which he said was set back just enough that a monument sign would work. He also confirmed for Mr. Perricelli that the original pole sign was thought to have been about 10 feet in height; therefore, the proposed sign would be about a foot lower, and nicer looking. He said that the sign, as proposed, would be next to the parking area, and noted that the parking space to be utilized already had a wheel stop in place. He also confirmed for Mr. Walker that there would be no visibility/safety issue for cars entering and exiting the parking lot.

Mr. Perricelli asked if the new sign could be placed with a three-foot setback.

Mr. Spraker explained that it could be done and would result in a 5-foot sign, but reiterated that the sign contractor had advised that they would lose the copy area. He said that a 3-foot setback would push the sign into the parking area by two feet.

Chair McNamara questioned whether it would be possible locate the sign between two parking spaces, rather than in the center of a parking spot.

Mr. Spraker felt certain that the sign contractor would work to ensure that the sign was not damaged by a car. He said that although not unheard of, a car would have to run over the wheel stop in order to hit the sign.

Mr. Ray Webb, of Kenco 2000 Sign and Awning Company, Daytona Beach, said that he represented Sue and David McDonald, the owners of Gaff's. He lauded Mr. Spraker's presentation of the obstacles they faced and agreed that pilings would be added to protect the bottom of the sign. He also agreed that it would be difficult to get the power lines moved in a timely manner.

Mr. Webb confirmed that a 5-foot sign would limit the sign copy area and hence, the text and rendering the sign useless for any kind of message. Therefore, he said they were asking for a slight increase in the allowable sign area from 28 SF to 32 SF.

Mr. Webb said that they applicants were also seeking relief from a city regulation limiting the copy area to a white background. He said that the sign design being presented, though deviating from what was typically allowed, provided the sign with a constant background and provided more of an architectural look; he said a white background would given a circusy look, not nearly as attractive. He said that as a 45-year resident of Ormond Beach, he was also concerned with the need for attractive signage and had tried to achieve that balance of meeting the intent of the regulations while helping the owners get customers in the door. He said that they were therefore requesting the additional square footage, varying the background color with a little steer on the bottom and would fit the needed verbiage within the 7' x 9' tall sign. He said that regardless, they had to work maintain the ten-foot clearance to the power lines as mandated by the fire code.

Mr. Perricelli asked if there was way to accomplish what they wanted with a 3-foot setback.

Mr. Webb explained that unlike the adjacent *Pinkadilly* property, the subject site was limited by the eight-foot wide landscape buffer (from paving to sidewalk), and that by moving it further back they would encroach into the parking area and cost the owners a parking spot. He said that both he and staff had concluded that there was not a better location on the property because of the visual obstructions from the properties on either side.

Mr. Jenner opined that he did not like aluminum "tombstone" signs and disagreed that they were better than pole signs; he felt that they blocked traffic, caused accidents with pedestrians and were continually damaged.

Mr. Spraker responded to Chair McNamara that the steer on the sign most likely would not be counted as part of the overall square footage, but either way, would result in about 32 SF of sign area. He added that every business sign should include the property address.

Mr. Walker pointed out a 12-foot wide concrete area south of the first parking space and asked if the spaces could be reconfigured to allow the signage to be placed in the middle of the parking area, thus achieving a 3' to 6' setback.

Mr. Spraker indicated that it would most likely be used for motorcycle parking, although not really a part of the subject property. He said that the property line, per the survey, is located at the first parking space. He also pointed out that even if it was part of the property, it would not allow for adequate turning movement. He said that staff, with the applicant, had review 10-15 different scenarios that would not work, simply because the site was so small. He said that the Board should just decide what setback they wanted, since there was no right or wrong number.

Mr. Lane opined that the proposed sign was a big improvement over what had been there and thought that they had investigated every possible idea to try to come up with a useful solution. He acknowledged the code requirement for a white sign background, but pointed out that through the planned development negotiation process other properties had been allowed to use a background color other than white.

Mr. Spraker confirmed that they could do the same thing by utilizing the variance process, if they so desired.

Mr. Jenner expressed concern that the issue had not been advertised as a part of the variance.

Mr. Spraker explained that the changeable copy area and square footage had been advertised and therefore did not think the board would be wrong to address that issue. He said that Option 2a was what the applicant had requested from the onset, i.e., a 7-foot wide ground sign, which would mandate a 4-foot setback variance, an additional 4 square feet (over the allowable 28 square feet) and whether or not to allow the background color to be something other than white. He added that the height clearance issue and the 50% limitation would no longer be in question.

Mr. Spraker confirmed for Chair McNamara that the original request was to exceed the 50% sign face area, but that the new proposal showed that the applicant would comply with the 50% rule for the fixed copy. He clarified for Mr. Perricelli that the total sign width of 7 feet was what dictated the setback, even though the bottom portion of the sign might be smaller.

Mr. Webb responded to questions that the sign would be a total of nine feet (9') tall, even though the structure itself was 4'6"; he said it was constructed so as to allow passing traffic to read the sign. He agreed that the total sign wide would be seven feet, even though the pylon width was smaller.

Chair McNamara worried that if hit, the City permitting of the sign would be questioned.

Mr. Webb stated that the site was a very unusual property because of all the physical constraints, as well as those on the adjacent properties: poles, sign next door, limited parking area, as well as an easement used to access the site. He felt that the proposed sign was the best of the challenging scenarios.

Mr. Jenner cautioned the Board to deal with the setback and dimensional criteria, not the aesthetics of the sign. He said he was convinced that the applicants were trying to find a reasonable solution to a difficult problem. He felt that the proposed sign looked better than the former sign and reminded the Board members that the applicants were, for all intents and purposes, victims of a crime.

He said he had no objection to any of the requests and pointed out that he had never understood the regulation for the white background.

Mr. Spraker clarified that the applicant was requesting a one-foot setback, or a variance of 4 feet. He said there was no height variance to be considered, but that the allowable square footage also needed to be stated.

Mr. Webb asked that the background color also be addressed in any motion.

Mr. Lane made a motion to allow a four-foot setback variance, to allow 32 square feet of sign area rather than 28 square feet, and to allow the background of the sign to be yellow rather than white, the sign to look substantially like the exhibit shown at the meeting.

The motion was seconded by Mr. Jenner, which was approved by unanimous vote of the Board.

Chair McNamara advised the applicants that the variance had been granted and that they had one year in which to build the sign.

IV. DISCUSSION

Mr. Jenner questioned why the Texaco sign had been allowed to encroach slightly over the sidewalk.

Mr. Spraker did not know, but guessed that the problem had been overlooked during the final inspection. He said the sign would be moved back with the pending intersection improvements.

In response to Chair McNamara, Mr. Spraker advised that a proposed LDC amendment would substitute the existing regulations for the Downtown Redevelopment Area with a form-based code, focusing instead on building mass and context, requiring buildings to be constructed within four feet (4') of the right-of-way, which would allow for an additional four feet of sidewalk. He said that the proposal was a result of the 2007 Redevelopment Plan and was a very softly worded ordinance that would require compliance only for vacant sites or for properties that were being completely demolished.

Mr. Spraker said that the first workshop for the form based code was open to anyone who was interested and advised that staff would be soliciting community input. He said that a draft, available to the public, provided some of the text. He said that in addition to the changes regarding building regulation, there would be greater emphasis on shared parking. He explained that it was a dramatic re-thinking of how to accomplish parking in downtown areas; e.g., parking requirements would be less in the downtown than in other areas of the city. He said that if someone in the Downtown wanted to take advantage of any of the

several grant or loan programs, they would be required to allow their parking spaces to be utilized by the public when not in use by their business, thus eliminating the need for as many large parking lots. He said that if successful, it could potentially be applied to the US1 corridor and perhaps to SR A1A to some extent.

Mr. Jenner was pleased to hear of it and thought it should be called a function-based code, since the city had done form over function for years. He thought it had resulted in some businesses moving from the Downtown because the properties in that area were so constrained.

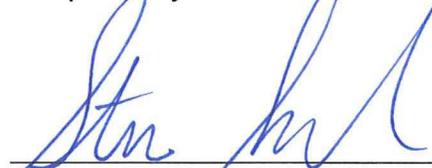
Mr. Spraker said it was an effort in that direction. He also advised that a sign code amendment going to be heard by the Planning Board on February 14th, and offered to e-mail the members that staff report for their input.

Mr. Jenner agreed that sign issues were different in different areas of the city; e.g., monument signs worked well in some areas, and not in the others.

ADJOURNMENT

As there was no other business, the meeting was adjourned at 8:05 p.m.

Respectfully submitted,



Steven Spraker, AICP, Senior Planner

ATTEST:

Dennis McNamara, Chairman

Minutes prepared by Betty Ruger.

Pursuant to section 286-0105, Florida Statutes, if any person decides to appeal any decision made by the board of adjustment with respect to any matter considered at this public meeting, such person will need a record of the proceedings and for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

All persons appealing to the board of adjustment must be present, or represented at the public hearing scheduled for the consideration of his request. Failure to be present or to be represented, results in the automatic refusal by this board to grant permission for any variance. In order to allow the meeting to proceed in an orderly fashion, the board, by motion, may limit the time allowed for remarks concerning a specific agenda item to a maximum of thirty (30) minutes for city staff, the designated representative of the applicant and the designated representative of any organized group and to five (5) minutes for members of organizations and other individual speakers. Additional time shall be allowed to respond to questions from the board.

Persons with a disability, such as a vision, hearing or speech impairment, or persons needing other types of assistance and who wish to attend city commission meetings or any other board of committee meeting may contact the city clerk in writing, or may call 677-0311 for information regarding available aids and services.