

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 26, 2009

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on June 26, 2009. Members present were Chairman Peter Brown, Louis Stout, James Griggs, Carolyn Edwards, Barry Stumbo, Kathryn Moore and Jan Meyer. Others present were Jim Hume, Division of Building Inspection; Barry Brock, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; Capt. Charles Bowen, Division of Fire & Emergency Services, and Rochelle Boland, Department of Law. Staff members in attendance were Bill Sallee, Jim Marx and Wanda Howard.

Swearing of Witnesses – Prior to sounding the agenda, Chairman Brown asked all who wished to speak at today's meeting to raise their hand and be sworn. He administered the oath to several citizens in attendance.

- II. **APPROVAL OF MINUTES** – Chairman Brown announced that the minutes of the May 29, 2009 meeting would be considered for adoption at this time.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously to approve the minutes of the May 29, 2009 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, Chairman Brown sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** – Chairman Brown asked if there was any person having an appeal before the Board that wished to request postponement or withdrawal of such at this time. There was no response to his inquiry.
2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
- a. **C-2005-53: FENDER FUNERAL DIRECTORS** - the Board of Adjustment has requested a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural Urban [A-U] zone, on property located at 1593 Russell Cave Road [Council District 2]) for failure to comply with conditions imposed at the time of approval.

The conditions imposed at the time of the approval by the Board are as follows:

1. The funeral home shall be established in accordance with the submitted application and site plan, or as approved by the Division of Building Inspection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The design of the off-street parking areas and access to Russell Cave Road shall be subject to approval by the Division of Traffic Engineering.
4. The off-street parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. Any landscape buffers required by Article 18 of the Zoning Ordinance for the vehicular use areas shall be extended to include the full extent of the property perimeter, excluding frontage on Russell Cave Road. Existing landscaping shall be retained and maintained to the maximum extent feasible.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Any outdoor pole lighting for the facility shall be of a shoebox (or similar) design, with light shielded and

directed downward to prevent any disturbance to surrounding residential properties.

8. That current privacy fence shall be maintained and extended to 10' from the sidewalk at Russell Cave Road, unless the affected neighbor is opposed.

The Division of Building Inspection will report at the hearing.

Representation – Mr. Richard Murphy, attorney, was present representing the appellant, along with Sara Tuttle, Strand & Associates. Mr. Murphy stated that over the past two months, he and Ms. Tuttle have been working on a plan that the Division of Building Inspection could approve for this use, both now and in the future. Their plan will have 90-degree parking, as Mr. Gallimore had requested. Mr. Murphy said that it will have all the required landscaping, and it will have Mr. Brock's approval of the treatment of storm water. He also said that Mr. Hume has been presented a contract for the paving to be applied within the next two weeks.

Chairman Brown asked about condition #7, regarding outdoor lighting on the site. Mr. Murphy replied that there will be no outdoor lighting at this location, at this point in time. Mr. Murphy said that, should there be outdoor lighting in the future, they have agreed that it will be the shoebox variety.

Chairman Brown asked Mr. Hume, Mr. Gallimore and Mr. Brock whether or not they were satisfied with these plans for the funeral home. Mr. Hume replied that he was satisfied, but he asked that this hearing be continued for 30 days, in order to allow time for the work to be completed, and in compliance with the Board's prior conditions of approval. Chairman Brown asked if the work was expected to be completed within the next 30 days. Mr. Gallimore stated that this latest plan was much improved over the plan submitted a month ago, and that with the exception of the permit required from Building Inspection, all looked to be in order. Mr. Brock stated that his office had received all of the information that they had requested, and that the appellant needed a grading permit prior to commencing work on the site.

Mr. Gallimore stated that he had worked with Ms. Tuttle, and that from his observations, work was progressing on the site. Mr. Brock stated that the Division of Engineering has received the information requested from their office.

Chairman Brown stated that things seemed to have been worked out on this plan, and asked Mr. Hume if a 30-day continuance was still being requested. Mr. Hume replied in the affirmative, and Mr. Murphy concurred with a 30-day continuance.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously to continue **C-2005-53: FENDER FUNERAL DIRECTORS** - a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural Urban [A-U] zone) on property located at 1593 Russell Cave Road, to the Board's July 31, 2009 meeting.

- b. **C-2009-34: NATALIE HANDSHOE** - appeals for a conditional use permit to establish an indoor recreational facility (personal fitness training) in one suite of an existing building, in a Light Industrial (I-1) zone, on property located at 2551 Regency Road (Council District 10).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect any of the surrounding properties, which are not likely to be impacted by low levels of activity and traffic associated with a small indoor training facility. Establishing the facility will not require any additions to the existing building, and adequate off-street parking is available on site for participants and employees.
2. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The facility shall be established in accordance with the submitted application and site plan, with operating hours on Monday through Friday from 5:00 PM to 9:00 PM.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the facility, including an occupancy permit.

Representation – Ms. Natalie Handshoe was present, representing her application. Chairman Brown asked Ms. Handshoe if she understood the recommendation for approval and would agree with the two recommended conditions. Ms. Handshoe replied in the affirmative to both questions, but she requested that the

hours of operation be altered.

Ms. Handshoe asked to be able to provide personal fitness training during the day, on occasion. She stated that the majority of her clients come to her in the evening hours, often after work. She asked for her facility to be open more hours than just four per day. Ms. Handshoe stated that there would be no parking overlap with other businesses there. Her business was mostly by "appointment only."

Mr. Marx stated that the Urban County Government staff had discussed this earlier that morning, and they were agreeable to the change in condition #1 proposed by Ms. Handshoe.

Chairman Brown asked Ms. Handshoe if she had a requested change to the hours of operation. She suggested 8:00 am to 9:00 pm. Mr. Marx replied that he would be agreeable to that change.

Ms. Moore asked if there would be sufficient parking. Ms. Handshoe replied that she believed so. She only had one to three clients at a time, and there were four parking spaces available at all times for her building. During the day, she only expects one client visit at a time. Mr. Marx stated that, since the class sizes were to be very small, that it would be comparable to the other tenant spaces in the area.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously to approve **C-2009-34: NATALIE HANDSHOE** – an appeal for a conditional use permit to establish an indoor recreational facility (personal fitness training) in one suite of an existing building, in a Light Industrial (I-1) zone, on property located at 2551 Regency Road for the reasons provided by the staff, and subject to the two conditions recommended, altering condition #1 as follows:

1. The facility shall be established in accordance with the submitted application and site plan, with operating hours on Monday through Friday from 8:00 AM to 9:00 PM.
- c. **A-2009-32: LIBERTY WORSHIP CENTER** - appeals for an administrative review to allow a 200 square-foot sign to be placed on an existing 50-foot-tall support structure in a Professional Office (P-1) zone, on property located at 1975 Haggard Court (Council District 2).

The Staff Recommended: Approval of an administrative appeal (involving a transfer of 56 square feet of permitted sign square footage) granting a 96 square-foot sign (on a single pole), for the following reasons:

1. The single-pole structure supporting the proposed sign of 96 square feet will be much smaller than the existing double-pole structure, resulting in a significant decrease in the visual impact of the existing sign support structure at the rear of this property.
2. The existing 50' tall and 20' wide sign support is not only an eyesore, but a potential safety hazard if it continues to be unused and not regularly maintained. The proposed alteration will result in a functional structure with a reasonable expectation for periodic maintenance by the church.
3. There will not be any adverse impacts to the subject property or any surrounding properties since the installation of one freestanding sign in addition to the one wall sign (instead of the two allowable wall signs) will reduce the total amount of sign square footage at this location, thus reducing the visual impact of the property's signage and keeping the intent of the Zoning Ordinance intact.
4. The Board of Adjustment has the authority to grant this request, as amended, since it does not increase the total number of permitted signs or the maximum permitted sign square footage on the lot.

The Staff Recommended: Approval of a sign height variance, from 10' to 50', for the following reasons:

1. Granting this variance will not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity, since it will accommodate the use of an existing 50' tall sign structure (reduced in size) and will allow the church property to be more visible to the motoring public.
2. Granting this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance, because it will result in signage comparable to (but not as large as) that found on the adjoining hotel properties.
3. The low elevation of the subject property relative to the interchange and North Broadway/Paris Pike has created special development considerations in this case.
4. This height variance is not the result of any willful violation of the Zoning Ordinance, but has resulted from the church's desire to use an existing sign support structure that was in place at the time the church purchased the property.

This recommendation of approval is made subject to the following conditions:

1. An identification sign of 96 square feet (8' by 12') may be placed on a single pole of the existing structure, with a resulting total height of no more than 50', as depicted in the revised elevation drawing submitted on June 10, 2009.
2. The balance of the existing 50' by 20' sign support structure shall be removed, either prior to or concurrent with the installation of the new sign.
3. All work shall be done in accordance with a permit issued by the Division of Building Inspection, with the appellant to provide reasonable documentation that the single pole support that is to remain is structurally sound and suitable for the proposed sign.
4. No additional wall signs are allowed on this building.

Representation – Mr. Glinden Ashcraft was present on behalf of the Liberty Worship Center. Chairman Brown asked Mr. Ashcraft if he had reviewed the conditions recommended for approval, and if the church would agree to abide by these four conditions. Mr. Ashcraft replied affirmatively.

Action – A motion was made by Mr. Stout to approve **A-2009-32: LIBERTY WORSHIP CENTER** – an appeal for an administrative review to allow a 200 square-foot sign to be placed on an existing 50-foot-tall support structure in a Professional Office (P-1) zone, on property located at 1975 Haggard Court, as recommended by the staff, and subject to the four conditions recommended by the staff.

Discussion of Motion – Mr. Griggs asked if the motion was to approve a 96 square foot sign, and also included the recommendation that only one support pole be utilized, rather than the existing sign structure. Mr. Stout replied affirmatively, and stated that his motion was for a 96 square-foot sign on one 50' pole, as recommended (in the first condition) by the staff.

Mr. Griggs seconded the motion. The votes on the amended motion were as follows:

Ayes: Edwards, Griggs, Meyer, Moore, Stout, Stumbo

Nays: Brown

Abstained: None

The motion passed by a vote of 6-1.

- B. **Transcript or Witnesses** – The agenda announced that any applicant or objector to any appeal before the Board was entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn. Chairman Brown swore witnesses earlier in the meeting.
- C. **Variance Appeals** - There were none remaining.
- D. **Conditional Use Appeals** - There were none remaining.
- E. **Administrative Review**

1. **A-2009-35: GARRETT, LLC** - appeals for an administrative review to determine that a 6-foot tall solid fence, as required by the Zoning Ordinance, should not be required around an outdoor storage and work area, in a Heavy Industrial (I-2) zone, on property located at 203-205 Lisle Industrial Road (Council District 2).

The Staff Recommended: Disapproval, for the following reasons:

- a. There are no physical limitations or other compelling circumstances that would prevent the installation of a solid fence around the proposed work and storage area on this property.
- b. The applicability of the Zoning Ordinance requirement for a solid fence [Article 8-23(o)3] does not depend on an evaluation of to what extent an outdoor work and storage area in an I-2 zone will be visible from or disturbing to adjoining properties.
- c. Property characteristics that may limit the visibility of the proposed work/storage area at the present time, such as the extent of forested areas, may change in the future, as could the ownership of, and land uses on, the adjoining properties. This uncertainty supports a determination that an exception to the Zoning Ordinance requirement should not be made in this particular case.

Representation – No representative was present for this appeal.

Mr. Sallee stated that he had spoken about ten minutes earlier by phone with Mr. Cory Heitz—the listed contact for this application. Mr. Sallee said that Mr. Heitz was on his way to the meeting, and that he expected to arrive at about 1:20 PM.

Note: Chairman Brown declared a recess at 1:16 PM. The meeting resumed at 1:25 PM with all members present.

Discussion – Chairman Brown said that he had conferred with Ms. Boland during the break, and understood that the Board could proceed with a hearing, if desired, or could postpone consideration of this appeal to the July meeting. Mr. Stout asked to hear the staff's rationale for recommending disapproval of this request.

Staff Presentation – Mr. Marx displayed the site plan submitted for the property on the overhead projector, oriented the Board to the location of the subject property, and identified the outdoor storage area proposed on the subject site. He stated that the applicant had contacted nearby property owners, and none have objected to their request to not screen the outdoor storage use proposed for the subject property.

Note: Chairman Brown noted the arrival of Mr. Cory Heitz, representative for the appellant, at 1:28 PM.

Mr. Marx displayed several photos of the subject property, from surrounding properties. The photos showed that there are trees surrounding the property. Mr. Marx stated that a cemetery borders the subject property to the south. A photograph taken from Lisle Industrial Road showed that the proposed outdoor storage use can not be seen from that road, as the trees are so thick. Photos from the Urban County Government's waste water treatment plant on another side of the subject lot showed the proposed storage area and a thick tree line along the rear property line.

Mr. Marx displayed an aerial photo of the subject property. He summarized the staff's concern with this request, emphasizing that changes can occur to property that might impact the need for solid fencing. He stated that the Zoning Ordinance does not allow for any type of assessment of the merits of the solid fence requirement. In fact, he identified a property just to the northwest of the subject property, where a zone change request was recently filed from industrial to residential. He said that this rezoning request shows the need for this absolute Zoning Ordinance requirement for a solid screening fence for outdoor storage. Mr. Marx concluded by stating that the Staff Report provided three findings for disapproval of this administrative appeal.

Representation – Mr. Cory Heitz was present as a representative of the appellant. He apologized to the Board for being tardy, as he had reviewed the staff report, and thought that their recommendation was a "final action."

It was Chairman Brown's opinion that the Zoning Ordinance doesn't seem to give the Board much of an option in this case. Mr. Heitz asked to show one of the staff's photos of the subject site, as seen from the waste water treatment facility property. Mr. Heitz stated that, due to the topographic differences in these properties, a solid fence will not block the view of their outdoor storage use. He stated that from Lisle Industrial Road, the existing trees will not allow this required solid fence to be seen. As a result, Mr. Heitz thought that an adjustment was warranted.

Mr. Hume suggested that the Board stick to the Ordinance requirements.

Mr. Griggs suggested to Mr. Heitz that the vegetation is deciduous, and that it would be more visible later in the year. Mr. Heitz replied that the landscaping is thick in that area. Mr. Griggs stated that he was worried about the precedent that this could set. Mr. Heitz asked if the solid fence could be delayed until such a time as a development is proposed nearby, or until the adjacent trees are removed. Mr. Griggs asked about the proposed use of the subject property. Mr. Heitz replied that Wyse Recycling will be storing scrap materials on the property. Mr. Griggs recommended, since it would be unsightly, that the Ordinance be followed.

Mr. Stout asked the staff about granting relief for the screening from the front, where the fence can't be seen from the street. Mr. Marx wondered about the mechanism by which that could be done. Mr. Stout said that he hadn't decided his opinion on this case, and thought that there should be a fence of some sort there.

Mr. Marx stated that the view was not just from the street, but also visible from the cemetery. Mr. Stout stated that he wasn't sure there would be many people in the cemetery. Mr. Stout stated that he was interested in

granting relief from the street view. Mr. Hume stated that the property currently consists of two separate lots, and that the occupancy could change in the future—and that there could be one user for each lot. For this reason, Mr. Hume thought that the screening fence should be installed.

Mr. Heitz reminded the Board that there were no objectors to their request at this meeting. Ms. Moore replied that the Board considers the opinions of objectors, but that was not the sole determinant of a case.

Ms. Moore asked Ms. Boland whether or not this fence would qualify for a variance. Ms. Boland referred to Article 7-6(b) of the Zoning Ordinance. She said that variances are only applicable to dimensional requirements of the Ordinance. However, this request was an Administrative Appeal, where the applicant contends that the Division of Building Inspection has made an error, and not for a variance. The Zoning Ordinance states that a solid fence is a requirement for an outdoor storage use in this zone. Ms. Boland stated that the Board can grant a height variance, but can not waive an unequivocal requirement for a principal use.

Mr. Stout told Mr. Heitz that, while he has tried to help him, the word “shall” greatly limits the Board’s ability to waive the fencing requirement. He concluded that, while he sympathizes with the applicant, he thought the wording of the Ordinance was very limiting.

Action - A motion was made by Mr. Stout, seconded by Ms. Moore, and carried unanimously, to disapprove **A-2009-35: GARRETT, LLC** – an appeal for an administrative review to determine that a 6-foot tall solid fence, as required by the Zoning Ordinance, should not be required around an outdoor storage and work area, in a Heavy Industrial (I-2) zone, on property located at 203-205 Lisle Industrial Road, for the reasons recommended by the staff.

- IV. **BOARD ITEMS** – Chairman Brown announced that he and his wife have scheduled a celebration for the following Tuesday, June 30 at 5:30 PM, to honor the memory of former BOA member Joanne Bell, who recently passed away. He invited all Board members to attend.
- V. **STAFF ITEMS** – There were no staff items presented at this meeting.
- VI. **NEXT MEETING DATE** – Chairman Brown announced that the next meeting date would be July 31, 2009.
- VII. **ADJOURNMENT** - There being no further business, Chairman Brown declared the meeting adjourned at 1:42 PM.

Peter Brown, Chairman

James Griggs, Secretary