

MINUTES

BOARD OF ADJUSTMENTS AD APPEALS

REGULAR MEETING

Tuesday, May 19, 1992

FILED
JUN 11 1992

10:00 a.m.

Members present: Joyce Rigler, Lewis Ozuna, David Wright, Bill Harris (10:25), Don Hawkins.

Members absent: Ben Turbeville.

Staff present: Lyle Drescher, David Hall and Pat Payne.

Visitors: List.

The **first item** of business was calling the meeting to order at 10:13 a.m by Chairman Don Hawkins.

NOTE: A seventh appointed member to the Board of Adjustment and Appeals was not present for the swearing in of his position.

The **second item on the agenda** was consideration and approval of the minutes from the regular meeting of April 21, 1992. A motion was made by David Wright and seconded by Lewis Ozuna to approve the minutes as presented. Motion carried by the following votes: Ayes: Ozuna, Rigler, Wright and, Hawkins. Nays: None. Absent: Harris and Turbeville.

The **third item on the agenda** was consideration of and action on a request by Brandon Beck, owner of Grandy's (Capital City Restaurants); and Betty Marler Pate, owner of former Marler Ford business; for a variance to the Gainesville Sign Code, Section Nine-D; and I-35 Corridor Regulations, Section 2.2.1.3, for a painted wall sign on the east wall of the former Marler Ford building.

Mr. Hawkins asked Mr. Beck if he wanted to speak in behalf of his request. Mr. Beck began by giving an analysis for his request for a wall sign painted on a building and being over the allowable size of 160 square feet. He explained that his lot has a unique configuration in that over half of his parking spaces are located behind and to the north of the Marler building. The placement of this lot makes it difficult and almost impossible to see the parking spaces from the south where most traffic enters the Grandy's property. If that lot to the south is full when vehicles enter, people may not see more parking spaces at the rear and will leave, thinking all spaces are taken. The front lot has two, 2' X 3' foot signs placed at the west side of the lot, but those signs have not helped in directing traffic to the rear either. Those signs replaced earlier signs which were smaller and also ineffective. Mr. Beck then further explained how he planned the design of the proposed wall sign.

Mr. Hawkins asked if anyone else wanted to speak for the request. Ms. Betty Pate spoke stating that she is for the wall sign to be painted on her building.

Mr. Hawkins asked Mr. Dresher what the City's stance on the request was. Mr. Dresher replied that the two main questions are the total square footage and the fact that no painted wall signs are allowed within the I-35 Corridor; and if allowed, will this set a precedent and how will the same issues be addressed in the future. Also, will the sign, if allowed, be maintained as well as are the other signs on the property.

Mr. Hawkins asked if there were further comments. Mr. Beck asked to address that last comment concerning the maintenance of the sign. He said that obviously the sign would be part of the business and he could not afford to have the sign looking shabby, so they would take good care of it since it would be sitting right in the front door of the business.

Mr. Hawkins presented questions on the issue, one being the encroachment of the Marler building on the Grandy's property. [NOTE: The Grandy's property is leased from Mr. Ralph Sidner, which property was leased previously from the Marler Ford business for its used-car sales; therefore the encroachment (attached plat) was not an issue until the Grandy's lease was let]. Ms. Pate said they were required to lease that portion of the building which encroached upon the Sidner (Grandy's/Beck) property. She further said that in return for allowing Mr. Beck to paint a wall sign on her building, he has agreed to terminate their arrangement for Ms. Pate's lease (encroachment). Mr. Hawkins further explained that the reason for his questions concerning the encroachment was that it might determine if the requested wall sign on the Marler building would be an on-premise or off-premise sign. The I-35 Corridor Regulations do not allow off-premise signs. Mr. Hawkins said, technically, he felt that if the Marlers (Ms. Pate) are leasing the encroached area from Grandy's, then it would be considered a request for an off-premises sign. Mr. Beck said if the sign is allowed, the lease will be cancelled. Mr. Hawkins asked if the lease is cancelled for Ms. Pate, will lease payments be discontinued in exchange for allowing the sign on the property. The lease is for another two and one half years, according to Ms. Pate. The Ford Motor Company has given their oral approval of the agreement. Mr. Hawkins asked how many feet of land are between the actual Marler building and Mr. Beck's driveway. Mr. Beck replied that there is about a foot. Mr. Hawkins suggested a freestanding sign (with a variance). However, Mr. Beck said if the maximum allowed square footage is used, the sign would be too large, overhanging the curb line and covering windows in the Marler building. He also said he felt it would be too obtrusive. Mr. Hawkins asked why he wanted it to be so large (max. 160 sq. ft.); Mr. Beck replied they were only trying to get the maximum amount of awareness both from California Street and within the property itself. People are not looking for signs, only for parking spaces, and that is why they do not see the smaller, regulation "Parking" signs directing traffic through the lot.

Mr. Hawkins said there needs to be a remedial plan to correct and satisfy the situation, both from the City's regulation standpoint and also for the issue at hand.

Mr. Hawkins final comments were that for several years the City has been trying to set a precedent to regulate signage throughout the City, especially within the Corridor since its regulations were

adopted in January, 1989. Therefore, the status of the proposed sign, whether it be on-premises or off-premises, is a major factor in the decision making for the requested variance and also for the maximum allowable square footage for signage.

Mr. Hawkins asked for discussion from the Board at that time. David Wright said he would be willing to make a motion subject to the determination of the status of the sign either being an off-premises or on-premises sign along with a thirty two foot variance (maximum allowable sq. ft. is 160-Mr. Beck requested 192 sq. ft). Other discussion ensued with Mr. Beck stating that he felt that a pole sign would be entirely too large, being like a billboard. The Board agreed. One suggestion was that a four by eight sign be used with a height restriction.

Mr. Drescher said that the Board is in no position to make a conditional judgement in allowing or disallowing the requested variance as it is presented. The issue of the sign being on-premises or off-premises was considered to be the most determining factor in deciding the outcome of the request. Mr. Drescher said that if the Board was uncertain what is the right opinion, then the matter should be tabled until legal counsel can submit an opinion. Joyce Rigler suggested that the matter be tabled until the scheduled, special meeting for May 26, 1992, after which the City Attorney can be consulted and offer a legal opinion. A motion was made by Belvin Harris and seconded by Joyce Rigler to **continue the public hearing until the special meeting, slated for May 26, 1992.** Motion carried by the following votes: Ayes: Rigler, Ozuna, Wright, Harris and Hawkins. Nays: None. Absent: Turbeville. Abstentions: None.

The **fourth item of business** was consideration and action on a request by Milton Ward, 625 S. Denton Street, for a nine foot variance to the height restrictions of the Zoning Ordinance, as amended, for construction of an accessory building at his residence.

Mr. Hawkins asked Tommy Robinson, contractor to present the request. Mr. Robinson began by stating that Mr. Ward wants to replace a double-car garage with a new structure that will be compatible with the rest of the neighborhood. The neighborhood has a historical background with most of the structures being higher pitched roofs, multi-story homes, etc. Therefore, the twelve-foot height restriction (if set three feet from the rear property line) would highly restrict the integrity of the surrounding properties, as well as Mr. Ward's existing home. The rear yard also abuts a common street, not residential properties, so a building constructed to the likeness of other structures would be more conducive to the overall solidarity of most of the residences and structures within the area.

Mr. Drescher explained Ordinance No. 471-4-91, which addresses accessory buildings and the requirements of the rear yard setback, which is a minimum three feet and allowable height of twelve feet. If the height exceeds twelve feet, then the accessory structure must be set back one foot for each foot over the allowable height. Obviously, in the older sections of the City, in order to construct, reconstruct, or renovate buildings in keeping with the existing architecture of the surrounding neighborhood there is a problem, and the City is in agreement with Mr. Robinson's statements. Therefore, the City agrees

with Mr. Ward's position of a height requirement variance of nine feet, allowing twenty one feet for the structure.

After no further discussion, a motion was made by Belvin Harris and seconded by David Wright to **grant a 9' variance to the height restrictions of the Zoning Ordinance** to construct an accessory structure in the rear yard at 625 S. Denton Street. Motion carried by the following votes: Ayes: Rigler, Ozuna, Wright, Harris and Hawkins. Nays: None. Absent: Turbeville. Abstentions: None.

The **fifth item on the agenda** was consideration of and action on a request by Milton Ward, 625 S. Denton Street, for a four foot variance to the setback requirements of the Zoning Ordinance, as amended by Ordinance No. 471-4-91, to construct an accessory structure at the rear of his property (relates to variance requested and approved in fourth agenda item). The lot has double frontage and a building line has been established along one frontage (rear) on the plat or by ordinance.

The parkway on the rear frontage street, Dodson Street, has a seven foot parkway, with Mr. Ward wishing to build his structure six feet from the curb line. This request, if granted, would set the building one foot into the parkway, which is City-owned property-thus, the four foot variance request, including the three foot setback requirement.

Mr. Robinson said the old structure will be torn down and the new structure will be bricked to match the house. He indicated that other structures in the rear yards on Dodson Street were even closer than what Mr. Ward proposes to build his building. However, it was pointed out that those structures had been there before the Zoning Ordinance was adopted and most of them were very old.

Mr. Drescher explained that a total of ten feet was required from the curb line-a seven foot parkway with a three foot setback. They want to be six feet from the curb line.

Mary McCain who lives on Dodson Street and across from Mr. Ward's rear yard said that it is astonishing that anyone could even think about building onto the City's property (the parkway). She said it is inexcusable, in her opinion, for the City to allow this. She further said she has no objections, since a precedent has been set throughout the neighborhood, for the structure to be set on the property line. Property lines, she continued, are supposed to mean something.

Pat Payne explained that the request is only as submitted by the property owner and did not necessarily mean City approval.

Mr. Hawkins thanked Ms. McCain for her comments.

Mr. Ward explained that there is a garage two doors from his property that seems to be the same distance from the curb (six feet), but has been there for many, many years. He also pointed out other older structures close to the curb. He was reminded that these were before the Zoning Ordinance.

Mr. Robinson said moving the structure back, from where it is now, only three feet and not four feet in order to stay on the property line is their option, and they would be willing to do that. He said

when the plat was submitted, they did not realize it was into the parkway (This determination was made after submission of the plat, and after measurement of the street from center line to the curb and determination of the parkway).

Mr. Hawkins said he didn't feel that the Board even had a right to grant a variance into City right-of-way.

Mr. Robinson said that if the parkway has been determined to be seven feet from the curb, then they will put the accessory structure there if the Board will grant a three foot variance to do so. (A variance can be granted for a lesser amount, not more.)

A motion was made by Belvin Harris and seconded by David Wright to **grant a three foot variance** from the rear property line for construction of an accessory building at 625 S. Denton Street. Motion carried by the following votes: Ayes: Rigler, Ozuna, Wright, Harris and Hawkins. Nays: None. Absent: Turbeville. Abstentions: None.

After no further business, the meeting was adjourned at 11:00 a.m.