

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, March 17, 2010

Call to Order

Those members present: William Houk, John Barnhart, and Todd Hollenbaugh.

Those members excused: Gary Meyer, and George Prentice.

Staff members present: Lynn Taylor, Kathryn Dale, and Rob Jacques.

Staff members excused: None.

Executive Session

Chairman Hollenbaugh invited a motion for approval of the agenda with the deletion of the Executive Session.

Mr. Barnhart made motion to approve the agenda with the deletion of the Executive Session. Mr. Houk seconded the motion. The motion passed 3-0-0.

Chairman Hollenbaugh advised for a variance petition to prevail, an Applicant would have to garner three votes from the board. Chairman Hollenbaugh noted the absence of two board members and offered the Applicant the opportunity to table their case. Mr. Rick Self, Applicant for case BZA-03-2010, chose to proceed with his case.

Adjudication Hearing

BZA-03-2010 327 W. Spring Street, Circle K/Marathon Gas Station, replacement of a manual gas pricer sign with a LED sign, and rearrangement of sign faces, Rick Self, Agent, Applicant

Mr. Barnhart made motion to adjourn to Adjudication Hearing BZA-03-2010. Mr. Houk seconded the motion. All were in favor.

Ms. Dale provided a review of this case stating the Applicant proposed to replace the manual gas pricing panel with electronic LED numbers. The Applicant is also proposing a face change of the Circle K sign which does not require any variances. Ms. Dale referred to the Notice of Refusal letter sent by Staff to the Applicant when he initially had applied for a zoning certificate to install the LED signage. Ms. Dale further explained that the reason for denial referenced Section 1151.05(e)(3) which states that fuel stations are permitted to display fuel prices with a changeable copy sign. Mr. Dale referred to the definition of a changeable copy sign as being a sign consisting of characters, letters or illustrations that can be changed by mechanical, electronic, or manual means and noted that the definition did not address any specific electronic format nor addresses LED. Ms. Dale noted that in some respects the sections contradicted each other. Ms. Dale reviewed the Decision Standards. As aforementioned, because LED is not specifically addressed, the code historically has been interpreted strictly as to say they are not permitted.

Mr. Rick Self, Applicant, was sworn in by Mr. Hollenbaugh. Mr. Self stated he had been an agent for Circle K Mac's Convenience stores for 15 years. Mr. Self noted he was not trying to go against the character of the community; however, feels the sign would be an improvement to this location. Mr. Self also

noted he recommended to Corporate not to do the same thing at the High Street location unless the community requested (because of the historic design guidelines). Mr. Self referred to the City's zoning code being ambiguous. Mr. Self stated this sign would have no capabilities to flash, scroll, roll, or blink and could only be changed from inside the store and only changed when gas prices change. There will be one price for one product and will only have one gas price (regular) to advertise. Mr. Self stated they believed in being good neighbors in the community.

Mr. Barnhart inquired about the sign size changing or staying the same. Mr. Self stated the sign would stay the same and noted the new signs would look better. Mr. Self also noted they have actually had people get hurt physically changing the signage. Mr. Self also stated the gas price would be located below the store logo.

No one in the audience had standing.

Mr. Barnhart moved to close the Public Hearing. Mr. Houk seconded the motion. All were in favor.

Mr. Barnhart referred to page 15 of the agenda (which is the current and proposed photo of the sign). Mr. Barnhart felt this to be a reasonable request.

Mr. Houk referred to the zoning code and stated he couldn't imagine that the word "electronic" referred to anything else and that it seemed to him it didn't need a variance anyway. What else would electronic mean besides an LED - really thinks "electronic" covers this.

The BZA deliberated and made the following Findings of Fact regarding the replacement of a manual gas pricer with an LED sign variance request:

1. That, the property would yield a reasonable return and could be beneficially used without the variances because the site will remain as a gas station and the current sign and means of advertising gas prices can remain.
2. The variance request is not substantial because only the method in which gas is advertised is changing.
3. The character of the neighborhood would not be substantially altered; the adjoining properties would not suffer substantial detriment as a result of the variances being granted because the properties in question are located in a business district.
4. The variance would not adversely affect the delivery of governmental services because there was no response from any City department reviews indicating that the variance request would negatively affect any governmental services.
5. The Board found that the property owner was, in all likelihood, not knowledgeable of the zoning restriction regarding LED signage when it acquired the property, because LED signs are a relatively new technology.
6. The Applicant's predicament can be feasibly obviated through some other method other than a variance by continuing to advertise the price of gas as they currently do.
7. The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the variances because allowance is inherent per Section 1151.05(e)(3) even though the code does not specifically address the specific LED technology.
8. Other relevant factors include the belief by the Board that the code is ambiguous regarding electronic signage, and may in fact permit LED signage.

After considering and weighing these facts and circumstances, the Board found that practical difficulty was shown sufficient to warrant granting the variance requested, and voted 3-0-0 to **APPROVE** the application with the following conditions.

1. That, the proposed work be constructed as approved with this appeal and that no changes or modifications be made without the consent of this Board.
2. That, the LED signage shall only be used as a changeable copy sign in connection with fuel sales, as those terms are used in Chapter 1151 of the Zoning Code; and
3. That, the copy shall remain fixed at all times other than when changing the price of fuel, and that at all times the sign shall not be flashing, animated, moving, or otherwise operated contrary to the design provisions of Section 1151.03.

William Houk moved to approve BZA-03-2010 327 W. Spring Street, Circle K/Marathon Gas Station, replacement of a manual gas pricer sign with a LED sign, and rearrangement of sign faces with conditions . John Barnhart seconded. The motion passed with the following roll call:

AYE: William Houk, John Barnhart, Todd Hollenbaugh (3)

NAY: None (0)

ABS: None (0)

[Approval of Minutes of the January 20, 2010 Regular Meeting](#)

Mr. Houk made motion to approve the January 20, 2010 minutes as written. Mr. Barnhart seconded the motion. All were in favor.

[Old Business](#)

Mr. Hollenbaugh inquired if staff had found any information regarding the trees being cut down at the local Wal-Mart. Ms. Dale to check on.

[New Business](#)

The BZA asked that the Planning Commission and City Council further review electronic signage in the zoning code.

[Adjournment](#)

Mr. Houk moved to adjourn the meeting. Mr. Barnhart seconded the motion. All were in favor. The meeting adjourned at 8:07 p.m.