

CITY OF BRANSON
BOARD OF ADJUSTMENT
MINUTES
October 22, 2009

CALL TO ORDER: Vice-Chairperson Keller called the regular meeting of the City of Branson Board of Adjustment meeting to order at 7:00 p.m. at the City Council Chambers, 110 W. Maddux St., Branson, Missouri.

ATTENDANCE

1. Roll Call

Boardmembers Present: Edie, Parnell, Robinson and Vice-Chairperson Keller.

Boardmembers Absent: Fish and Chairperson Farris.

Also Present: Jim Lawson, Director of Planning and Development;
Tara Norback, City Forester;
William Duston, Assistant City Attorney;
Sonja Paden, Office Assistant II.

2. Approve Agenda

MOTION:

Motion by Boardmember Edie and seconded by Boardmember Robinson to approve the format of the October 22, 2009 agenda.

AYES: Boardmembers Edie, Parnell, Robinson and Vice-Chairperson Keller.
NOES: None.
ABSTAIN: None.
ABSENT: Boardmembers Fish and Chairperson Farris.

Motion to approve the October 22, 2009 agenda carried with a 4-0 vote.

3. Approve Minutes.

A. January 22, 2009.

MOTION:

Motion by Boardmember Edie and seconded by Boardmember Parnell to approve the minutes of the January 22, 2009 meeting.

AYES: Boardmembers Edie, Parnell, Robinson and Vice-Chairperson Keller.
NOES: None.
ABSTAIN: None.
ABSENT: Boardmembers Fish and Chairperson Farris.

Motion to approve the minutes of the January 22, 2009 meeting carried with a 4-0 vote.

OLD BUSINESS

None.

PUBLIC HEARING

4. Request For Administrative Hearing Concerning A Violation Of Sections 70-16 And 70-19 Of The Branson Municipal Code And The Review Process Outlined In Section 70-6(9) For The Property Located At 2941 W. Highway 76 Branson, Missouri. Project No. 09-19.3 (09-01900003).

KELLER: Okay. And then the public hearing we have tonight is a request for administrative hearing concerning a violation of sections 70-16 and 70-19 of the Branson municipal code and the review process outlined in section 70-6 item (9) for the property located at 2941 West Highway 76 Branson, Missouri, which is on the docket as project number 09-19.3.

LAWSON: Yes. Mr. Chairman, we have a PowerPoint presentation that we'd like to go through. This is-- as you refer to the code, this is part of the sign code, and since we haven't-- the board of adjustment hasn't dealt much with the sign code, we'd kind of like to start from ground zero, so to speak, and kind of talk about it. The issue tonight deals both with on-premise and off-premise type signs, so I think the first thing we want to look at is the definition. An on-premise sign means advertising any product, service or enterprise located on the premise where the sign is located. That's a typical sign, could be Wendy's or McDonald's or whatever, but the on-premise part means that you are advertising a business that's located on that same piece of property. The other definition is an off-premise sign. And this means any sign relating to products, services, uses or enterprises sold or offered at a location other than the premises where the sign is located. So that is a sign that's advertising a show or event at another part of town. Off-premise signs a lot of times are referred to as a billboard. It doesn't necessarily have to be a billboard that large, but that's what typically people think about. So in terms of our sign code, those are the two types of sign we have, on-premise and off-premise. And the--

William Duston, Assistant City Attorney, and Mr. Lawson conducted a brief conversation off the record at this time after which Mr. Lawson resumed talking.

The portion of the code-- one of the portions of the code that we are talking about tonight has to do with 70-16, which is an abandoned sign and it refers to, when an on-premise sign becomes an abandoned sign due to the demolition or destruction of the structure in which the business was located, the sign shall be removed. So what that means is if there was a building there, a business use, and the business was actually removed, was torn down and demolished, then the sign should have been part of what was torn down. Now you are allowed to-- if a business goes

out of business in a building and the building's still there, then you're allowed to keep that frame, that sign, and then when a new business comes in then they can use that same sign frame. But the way our ordinance is set up, when a building is completely taken away, then the sign should be taken away. And part of this particular item has been that I didn't realize that part of the code, so in some correspondence you have in your file, I have said that the owner had a non-conforming on-premise sign, but what the reality is that he didn't have an on-premise sign because of this particular part of the code that said it should have been taken down at the same time. And 9/07/06 was when this building was taken down. They did get a permit and it was overlooked that the sign frame was still up.

KELLER: And Jim, is this--

LAWSON: Yes.

KELLER: --this is the old Ben Delgado motel on 76 that was demo'd that had a Mexican restaurant on the corner then-- and Ben's behind it? or is this down further?

LAWSON: I'm not-- that was before my time. It has been a couple of businesses. It was a small business when it was taken down; it was a small building. I think it sold tickets and stuff, but I'm not sure. Do you know, Tara?

NORBACK: Yeah. From what I understand, it did sell tickets, at least at the latest business and it's right there on the corner of Rosalee and 76 across from Ben's Wishing Well. Ben's Wishing Well was on the opposite side of Rosalee.

KELLER: Yep.

LAWSON: Then-- and there's another part of the code that you need to be familiar with and that is an off-premise sign. And the way that the code was written some years ago, the city shall not issue any new permits for the construction of off-premise signs. So we-- when the time-- when the code was written some years ago, we have not since allowed any new signs. Now there are quite a few up and those are non-conforming and can stay up. So in late 2008, there was a sign put up that advertised a restaurant that was-- and this would be considered an off-premise sign and, if you look at the bottom of the sign, it even indicates that this particular business is one mile away. And our understanding from talking to the staff, this particular landowner came in and asked if he could do this and he was told no, and then he did it later. But you can see kind of in the background there's a sign there that has a frame. That particular building is still there; that business is not there anymore. But that is allowed so that when a new business comes in then, if they chose to use that particular frame, they could. So in this particular case we're looking at tonight, I have two violations that I have pointed out, one being the fact that the sign should've been removed at the time that the building was taken down. And then part two of that was that he has created an off-premise sign from an on-premise. Now the way our code is set up, we have asked him to remove the sign and he has chosen not to do

that, so now we're into the part of the code dealing with removal of the signs. In order for me to have a sign removed on a piece of private property, the code says that I have to come to you for you to confirm that there is a violation, and that's what the code says. And this is part of the code dealing with the sign being removed: board of adjustment upon finding that a violation exists may approve or modify the director of planning and development's order and the board of adjustment's decision may be appealed in the manner provided by law. So normally the board of adjustment deals with variance issues. They deal with appeals on interpretation of the code and those kind of things. But in this particular case, the board of adjustment has been put in the violation chain, is what I call it, or the enforcement chain to where you are part of that and that's probably a good thing so, if you have a planning director who doesn't like signs, he can't go around taking all the signs down. So what-- the role you have tonight in this particular case is to determine if the facts that I have presented to you that you agree that a violation does exist. And then if you agree with that then I can go ahead and have that particular sign taken down. Now as you know, there has been a request from the landowner asking that this item be deferred until next month. And what my position is, and I relayed that to the applicant, this particular application is not from the applicant; it's from me. And I'm sorry that the particular landowner is not here, but what we're dealing with tonight is just an interpretation of the code to the point of is this an off-premise sign, was the sign supposed to be taken down. So to me it's a quite clear issue and then you all need to determine whether you do want to act on it tonight or whether you want to defer it for a month to hear from the landowner. Since we've been dealing with this for quite some time now, I did not want to defer it again until next month. I wanted to at least come to you and let you hear the facts and let you start to think about it now, but whether you want to vote tonight or next month is fine. But I just didn't want to put it off another month because I'm concerned that the applicant, if he goes to court or something, can say, well, your honor, I've been ha-- that sign's been up there for a long time and so I have some rights. So that's kind of where I am, Mr. Chairman, and I don't know whether there's anyone here to speak on the particular item or not.

KELLER: Is there anybody here in the audience that would like to speak on this? Could you step up to the podium and state your name and--

PADEN: Sign in.

FILBECK: Hi. My name's Aimee Filbeck. I'm the general manager of the motel that's also on the property in question. I'm not really able to speak about the situation, but I am here for Mr. Gehrs to, of course, ask that he get the continuance. The only reason he couldn't make it is because his wife is severely ill. So, he would like to be here and it's not contrived. He--

KELLER: Okay.

FILBECK: --really would appreciate a continuance, if at all possible.

KELLER: Okay. Thank you.

FILBECK: Thank you.

PADEN: Will you please sign in there on the-- at the sheet?

KELLER: Does anybody here have any questions or comments from Jim that would like to hear anything from him? Brent, would you like to speak?

BUTLER: Brent Butler. 216 Skaggs Road, Branson, Missouri. I just-- maybe I went to sleep, but did you guys approve the min-- the agenda tonight?

EDIE: Yes. We did.

BUTLER: Great. I missed that vote, but that's okay. Certainly, you as individuals and me need to be compassionate towards people that are ill and can't be here tonight, but the reason I'm here is to say this is going on and it has been going on for too long, and my encouragement to you is to act tonight. The facts aren't going to change. You can have ten of these meetings to postpone it, postpone it, postpone it. The facts remain the same and sometimes it's time to say enough is too much, and we've had enough. And you are setting a precedent to delay this that other people that fall into the same category and have been overlooked for months, years, weeks, whatever, can claim the same privilege, and life goes on and those illegal signs are still there. My word to you tonight is it's time to fish or cut bait and you ought to fish. Thank you for your time.

KELLER: Thank you, Brent.

ROBINSON: Have we approved the agenda? Have we done that?

EDIE: I thought we did.

ROBINSON: Just a second.

KELLER: Sonja, did we--

PADEN: I--

KELLER: --approve the agenda?

PADEN: I did not hear anyone motion to approve and second to approve.

ROBINSON: We need to do that.

PADEN: Yea.

ROBINSON: Okay.

KELLER: Could we make a motion to approve the agenda for tonight, and would that be the item number before the request for the administrative hearing?

PADEN: Yes. You all decide--

LAWSON: That's the only item.

PADEN: -- yea-- if that's--

LAWSON: Yea.

PADEN: --something you want to do tonight, so. It's just like the minutes. You just decide who's going to approve it and someone seconds it, and it's done.

LAWSON: So somebody will--

ROBINSON: I'll second it.

PADEN: Who first-ed it?

EDIE: I'll move to approve the agenda.

PADEN: Edie and Robinson. Thank you very much.

EDIE: Glenn, second it.

ROBINSON: And I second it.

KELLER: Sorry about that.

PADEN: And you seconded it.

ROBINSON: Yes.

PADEN: Do you want me to do a vote for that?

ROBINSON: Yes.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Parnell?

PARNELL: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Vice-Chairperson Keller?

KELLER: Yes.

PADEN: Motion passes to approve the agenda for the evening with a four-zero vote.

KELLER: All right and on with business, does anybody have any questions for Jim or anybody else before we put this to a motion? So, if there's no-- does somebody have a-- want to propose a motion for this to vote on?

EDIE: Mr. Chairman, based on the continuing correspondence and information we have in our packets, this has been worked on for a long time. I see absolutely no reason to continue this. I believe tonight we need to vote on that this is an illegal sign. Is that what you're looking for Jim?

LAWSON: Dub?

DUSTON: I believe the planning and zoning director is looking for some type of motion approving his-- approving his action in-- approving his-- his-- approving his determination that we have an illegal sign that needs to be taken down. I mean, you guys are sitting in a judicial-- a judicial-type function tonight in which he's brought a request for you to take a sign down. And in taking the sign down, in section 70-6, it's also going to be paid for-- it's also being paid for by the individual who has the sign up. And so he's come to you tonight, and you guys serving in a judicial-type function in which you guys say, well, you know, yes, we approve of the way that you're reading 70-6 and you're reading of the sign code, and we approve your decision this sign needs to come down and we're stamping yea or nay on that. So you're allowed to say yea, nay or modify the decision in any form. I mean, say here within a certain time period or you're allowed to modify it in any type of direction. Now you've had the other side come up and ask you to postpone this, and then, you know, a decision will be made, one, to we're going to vote on this tonight or not vote on this tonight. And then we're going to make some kind of motion saying yes, we agree with the planning and zoning director; no, we don't agree with the planning and zoning director; yes, but we're going to modify it in such and such a way. So, I mean, basically your motion's going to

be some type of-- you know, I make a motion that the planning and zoning director's determination that this is an illegal sign, it needs to be removed, is correct. Does that-- does that answer the question?

EDIE: Yes, it does. Therefore, I do make a motion that the planning director is correct and this illegal sign should be removed.

KELLER: And I'll second that motion.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Parnell?

PARNELL: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

PADEN: Vice-Chairperson Keller?

KELLER: Yes.

PADEN: Motion passes with a four-zero vote.

MOTION:

Motion by Boardmember Edie and seconded by Vice-Chairperson Keller to pass Administrative Hearing Project No. 09-19.3 (09-01900003).

AYES: Boardmembers Edie, Parnell, Robinson and Vice-Chairperson Keller.

NOES: None.

ABSTAIN: None.

ABSENT: Boardmember Fish and Chairperson Farris.

The motion to pass Administrative Hearing Project No. 09-19.3 (09-01900003) carried with a 4-0 vote.

LAWSON: Thank you.

OTHER BUSINESS

KELLER: Do we have any other business tonight?

LAWSON: No. And we do apologize that it's been a long time since you all have met, so we'll try to drum up some more business for you all.

EXECUTIVE SESSION

None.

ADJOURNMENT

KELLER: And do we need to make a motion to dismiss?

PARNELL: Yes.

KELLER: I'll make a motion to dismiss business tonight.

EDIE: So moved.

DUSTON: Adjourn.

PADEN: To adjourn.

KELLER: Adjourn.

LAWSON: To adjourn.

PARNELL: I second.

PADEN: Boardmember Edie?

EDIE: Yes.

PADEN: Boardmember Parnell?

PARNELL: Yes.

PADEN: Boardmember Robinson?

ROBINSON: Yes.

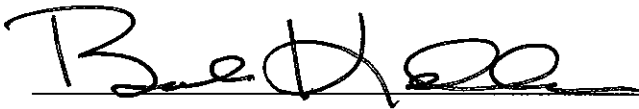
PADEN: Vice-Chairperson Keller?

KELLER: Yes.

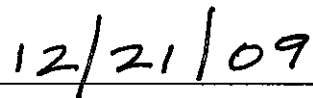
PADEN: Motion to adjourn passes with a four-zero vote. I think I talked more than you all did tonight.

MOTION:


Motion by Vice-Chairperson Keller and seconded by Boardmember Parnell to adjourn the meeting at 7:26 p.m.



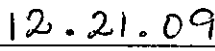
Bob Keller, Vice-Chairperson



Date



Sonja Paden, Office Assistant II



Date