

**GRAND JUNCTION BOARD OF APPEALS
DECEMBER 13, 2006 MINUTES
12:00 p.m to 1:35 p.m.**

The regularly scheduled Board of Appeals meeting was called to order at 12:00 p.m. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Dr. Paul Dibble (Chairman), Mark Williams, Travis Cox, Patrick Carlow and Ken Sublett.

In attendance, representing the Community Development Department, were Kathy Portner (Assistant Community Development Director), Faye Hall (Associate Planner), Adam Olsen (Associate Planner).

Jamie Kreiling, Assistant City Attorney, was also present.

The minutes were recorded and transcribed by Nishi Aragon.

There were no citizens present other than the applicant's, Tom Kvcel, Tom Heilig, Denny Brown, Sandy Parkerson, Norm Cooper, Dough Roman and Scott Hendrickson.

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the June 14, 2006 public meeting.

Motion: (Mr. Carlow) "So Moved [Consideration of the minutes of June 14th]"

Mr. Cox seconded the motion. A vote was called and the motion passed by a vote of 5-0.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

SS-2006-245 Variance - NOLAND SUBDIVISION

Request a variance to Table 3.2, minimum lot size and required side yard setback, of the Zoning and Development Code to allow two existing buildings to be on separate platted lots.

Petitioner: Tom Heilig, Heilig and Kvcel Inc
Location: 714, 744 Noland Avenue
Staff: Faye Hall, Associate Planner

STAFF'S PRESENTATION

Faye Hall gave a PowerPoint presentation. She stated that the applicant is requesting a variance two separate buildings are sitting on three separate parcel but have been under the same ownership since they were constructed. 714 Noland Avenue was constructed in 1975 and 744

Noland Avenue in 1977, the intentions were for both buildings to have separate lots under the same ownership up until February of 2006 when Heilig and Kvccl Incorporation purchased the property, their intentions to purchase both buildings and then sell one of the buildings off. When they did a survey on the buildings, it was discovered that 714 Noland Avenue building was crossing over the property line by up to 30" the Future Land Use Map indicates that this whole are is Commercial and Industrial all the surrounding properties are zoned I-1 and I-2. I want to mention to you that at the time the buildings were done in 1975 and 1977 there was not a Site Plan Review process, the minimum lot size requirements were 1 acre and setbacks requirements of 5' on the side was required in 2000 but before that time those requirements were not in place.

Dibble; (Chairman) are there 3 lots there?

Faye Hall; (Associate Planner) there are 3 lots there parcel 1 one is this area and parcel 2 is right in between lot 3.

Dibble; is that a buildable lot?

Faye Hall; no I don't believe it would be a buildable lot the way the building is crossing over.

Dibble; if it were vacant would it be buildable?

Faye Hall; when ever we look at a parcel that is a non-conforming in size, we have to look at if they were to propose something there would it meet the parking requirements for it; and in my opinion I would have to say it is too small.

Jamie Kreiling (City Assistant Attorney) is it true that parcel 1 is actually made up of 3 different separate lots? It's only being referred to as one parcel as it is recognized under the Mesa County Assessor's office with one parcel number but is actually consists of 3 separate lots. Which should be very similar in size to the same size as parcel 2 is?

Faye Hall; that is correct parcel 1 is actually made up of lots 24, 25 and 26.

Dibble; are they skinny just like the other ones?

Faye Hall; the lots are 25' wide x 125' deep, so the lots 24, 25 and 26 do survive as parcel 1.

Jamie Kreiling; lot 3 also consists of 4 separate lots, is that correct?

Faye Hall; that is correct, parcel 2 is lot 23 blk 7 of the Benton Canon's First Subdivision and parcel 3 is 19 through 22 of the Benton Canon's First Subdivision. What they had discovered after the purchase from the surveyors was that the building encroached into lot 23 by about 30". The applicant had the intentions were to beautify the parcel and then sell one of them off, until they discovered the error that the building was built over the property line in order to correct that they applied for the Simple Subdivision process their intentions of putting one building on each parcel to clean it up. The criteria are as follows:

- a. Hardship Unique to Property, Not Self-Inflicted. There are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended

use thereof, which do not apply generally to the other land areas or uses within the same zone district, and such exceptional conditions or undue hardship was not created by the action or inaction of the applicant or owner of the property. Like I stated before these buildings were built in 1975 and 1977 there was not a review process, in place for minimum lot size requirements and no side yard setback requirements that they had to meet. The properties have remained in the same ownership of Spendrup and Associates until February of 2006 when Heilig and Kvccl Inc., purchased the properties.

During the Simple Subdivision process it was discovered that the buildings were only 5 feet apart and were on only .573 acres combined, which makes the side setback of 5 feet and minimum lot size of 1 acre impossible to meet. Without the variance it would cause undue hardship on the applicant on the applicant as they would not be able to complete the simple subdivision process and have each building on its own lot. Currently both buildings have a first mortgage from two separate entities, as well as a second mortgage on the 744 Noland Ave building necessitated by the extent of renovations that were needed. I want to really stress that the intent when the buildings were first constructed was meeting zoning requirements at the time, that would meant that one building would of been on each parcel and on property line, however it was built over the property line by 30 inches. These exceptional conditions were not created by the action or inaction of the applicant. The applicant is trying to make this non-conforming situation to conform to the current standards as much as possible and be financially feasible to their situation.

- b. The variance shall not confer on the applicant any special privilege that is denied to other lands or structures in the same zoning district.

The granting of this variance would not convey any special privilege to the applicant that is denied to other lands or structures in the same zoning district. The majority of the parcels in fact all but one parcel is in this area and zone district is not meeting the minimum lot size of one acre. The only parcel that is, is the Mesa County shops that is meeting the minimum lot size requirement. You can also see, and this is kind of small; but if not all but the majority looks like over 75 percent of the buildings in this area were built on the property line, so they are not meeting the 5' side yard setback requirement. The granting of this variance we would be trying to bring these parcels and buildings into more conformance with our code and the appearance of the buildings are not going to change the physical aspect as far as this variance is concerned.

- c. The literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant.

The applicant is trying to clean up a non-conforming situation as much as possible. At the time the buildings were built there was no side yard setback and no minimum lot size requirement. When the properties were purchased, the applicant was able to get separate financing on one of the buildings based on the Improvements Location Certificate that showed the building to be on a separate piece of property. After

surveying the property it was discovered that there was a 30 inch encroachment. By not granting the variance it would mean that the current owner would not be able to sell off one of the buildings into separate ownership. This would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant.

- d. The applicant and the owner of the property cannot derive a reasonable use of the property without the requested variance.

Without the requested variance the applicant would not be able to sell off one of the buildings as was originally intended with the purchase. The applicant's intention when the buildings were purchased was to do renovations and beautify the property and then sell one of them. Both buildings are self sufficient and are utilized as warehouse/storage facilities and have multiple tenants. The buildings were never required to function together. They have historically had separate tenants and uses.

Travis Cox : Separate meters?

Faye Hall: I do not know the answer to that, I could ask the petitioner.

Tom Kvcel: yes they do have separate meters.

- e. The variance is the minimum necessary to make possible the reasonable use of land or structures.

The variance requested to the side yard setbacks in between the buildings and minimum lot size of 1 acre is the minimum necessary in order to place each building on a separate lot. This will allow the buildings to continue to be used and function separately and will allow the owner to sell one of the buildings to a current tenant.

- f. The variance will not be injurious to, or reduce the value of, the adjacent properties or improvements or be detrimental to the public health, safety or welfare.

The buildings in question have been rented as separate buildings with different tenants for many years. The variance would allow for the buildings to be sold separately, and would not change the physical appearance at all. Most of the facilities in the adjacent area have similar uses and most do not meet the current Code requirements of the 5 foot side yard setback or the minimum lot size of 1 acre.

- g. The granting of a variance shall not conflict with the purposes and intents expressed or implied in this Code.

The granting of this variance will let the applicant correct some errors made in the past, and allow the properties to be more in conformance with the Code and continue to operate as they have in the past. This will not conflict with the purpose or intent expressed or implied in the Code.

- h.** The granting of a variance shall conflict with the goals and principles in the City's Growth Plan.

The granting of this variance will not conflict with the goals and principals in the City's Growth Plan.

After reviewing the Noland Subdivision application, SS-2006-245 for a variance to Table 3.2 of the Zoning and Development Code, staff makes the following findings of fact and conclusions:

1. The requested variance is consistent with the Growth Plan.
2. The review criteria in Section 2.16.C.4 of the Zoning and Development Code have all been met.
3. The variance and subsequent Simple Subdivision will result in two lots, one being .273 acres and one being .3 acres, and side yard setback shall be reduced to 2 ½ feet.

Staff recommends approval of the requested variance to Table 3.2 of the Zoning and Development Code with the findings and conclusions listed above.

Faye Hall: Just so you know the last slide is just to show how it would appear, although I did mention that the property line would go into the building.

Dibble: So it would be it would be 2 out of 3 lots?

Faye Hall: there are an existing 3 lots and we are going down to 2 lots, each building will have it's own parcel.

Dibble: setbacks will not be relatively adjusted they will still be closer than the code allows?

Faye Hall: that is correct, when they were built it was a zero lot line currently there is a 5' side yard setback, and there is only approximately 5 feet between both buildings. But they are meeting the one hour fire system requirements from the building department.

Tom Kvcel: Tom Kvcel, I'm here with Heilig and Kvcel Inc. I live at 625 Panorama. The slide show that you are currently viewing indicates what the buildings looked like before and what they currently look like today. This is what the buildings looked like when we bought them in February of 2006, and as Faye indicated we had an improvements location certificate done that indicated 744 Noland was on a zero lot line. Subsequently to the purchase we had an actual survey performed and the survey showed that the building was about 30 inches off of the property.

Dibble: was indulgence done prior to the purchase that would of revealed that error?

Tom Kvcel: the improvement location certificate was performed on January 11th and our actual acquisition was done in February, so prior to the purchase we had an improvements location certificate.

Dibble: but did it disclose the error at the time?

Tom Kvccl: it did not disclose the error at the time. Like Faye had said we had indicated that we wanted to do some improvements to it. This is what it looked like before and this is what the inside looks like today. The installation of an office and upgraded lighting, up grading of insulation, fresh paint, fresh heaters and air conditioner as well. We have put in a side walk, we put in parking area, and replaced the flow line from 7th Street to 8th Street. Put stucco exteriors on the building the slide shows the 5' area between the two buildings. Rather than trying to do a zero lot line on one building and a applying 5' to the second building we felt that it was best to split it down the middle leaving a maintenance area so that we can access the side of the building if we want to. This is a view of the other side, you can imagine what the cost that was involved in doing these repairs and upgrades. And as you can see we have put in the sidewalks, we have graveled, put in landscaping, and newer roofs. It's hard to add any more than what Faye has already indicated, other than if you look at some of these examples in the area there's only one property lot 16 that meets current code.

Dibble: (Chairman) We will now open it up to the public if anyone in the audience if they would like to come forward speak for or against the project, seeing that no one came forward we will close the public sector. I would like to ask the department if anyone else would like to speak.

Jamie Krieling: (Assistant City Attorney) In review of the staff report in this matter and the information provided by the applicant as well as the information that has been brought here today to the Board of Appeals. There is some concern in regards to the meeting of the criteria particularly in granting a variance under these conditions. The concern would be in reviewing, that to do a variance the idea is that you are going to allow land within in a zoning district to basically violate what the normal requirements would be for land in that same zoning district. Because of that then the City Council has set forth specific criteria need to be met for allowing that land to be used differently than normally would be required. And those criteria are included within the staff report, as well as within the report that was submitted with the staff report from the applicant, you need to review the criteria based on the information provided and make a determination. Have they actually met the criteria, some of the concerns start with the hardship, the hardship goes to the hardship of the land, not to the owner the person who owns it and how they want to use it, but whether the land itself has a hardship, somehow it has burden in such a way that you should lift that burden in this particular zone district to allow it to have this variance to continue. The variance runs with the land it won't run with the owner, so if they sell this property that variance will continue on for who ever takes it in the future. It goes with the land so the future basically that minimum lot size will not have to be met and setbacks won't have to be met in the future. The variance granted based on the uniqueness of the land not of the owners the hardship again is on the land not on the owners, so when the owners purchased this they had a responsibility of knowing whether or not they were going to be able to use the land in the manner in which they wanted to use it, they should have known. They relied on a ILC that wasn't correct, the improvement location certificate, then I believe that is between the applicant the and the person who did their improvement location certificate. They had the opportunity at that time to they could of done a survey as they've apparently done at this time and determined that the property is actually over parcel's two lot line. If you notice though since there is actually 8 lots all together it is not a over just parcel two's lot line the buildings are built over various lot lines, so it is not unique that we have just the one parcel 2, that they are trying to say was a zero lot line to

their understanding, when they purchased the property. Even if it was a zero lot line it still wasn't meeting the setbacks that were required in that zoned district that they would still have to come forward and asking for a variance today, if they still wanted to be able to do the subdivision so that they could sell off one of the lots. Technically I would say there is a special privilege if you grant this variance on behalf of this applicant, because yes there are other properties within the area that don't meet the minimum lot size and may have other concerns, but they are non-conforming lots. Non-conforming parcels just as this particular piece of land is a non-conforming parcel, but once you grant them the variance you are now making it conforming so you have granted them special privilege by granting this variance. Reasonable use, according to the staff report and the information that has been provided by the applicant, historically it's been used as a warehouse storage facility they intend to continue using it as a warehouse storage facility, there's a reasonable use, and there has been a reasonable use that reasonable use can continue when you grant a variance you are granting a variance based on the fact that there isn't a reasonable use, that the property can be used for unless that variance is granted. If it going to continue to be used historically the way it has always been used then there's obviously a reasonable use for this particular property. You also when looking at the reasonable use you don't look whether it's economically has a better use if it is more profitable using it in an other manner, which has been implied by the applicant that if they can actually sell it off as two separate lots then it's more valuable to them. It's not whether it's the best profitable use, it's whether or not does it have a reasonable use that's allowed in that zoning district, apparently it does because it is going to continue with the same use that it's had regularly for the last "I think" 30 years based on the information in the report, in addition when you grant a variance you look at the minimum requirements so that if you grant them a variance you do the minimal amount that will allow them then to have a reasonable use for the property. It's already being used reasonably has a reasonable use there isn't minimum requirement to grant them because they are already meeting the minimum requirements. The property basically will continue as it is they just can't sell it as two different separate lots as they particularly want to be able to do. It will continue it would be considered non-conforming presently under our code but the use can continue for the use that is has been for the last 30 or so years.

Dibble (Chairman) How does this conflict with the bundle of rights contributed to the use land, one is to which sell the property or to convey title? It seems like this whole area is in jeopardy to violate a persons right to do what they wish with the land within the existing conditions, which were in code, I assume they were up to code when they created most of them 20 to 30 years ago, our codes changed does that change a persons ability even if they are errors made to utilize that. Grant it there have been mistakes made and obviously they relied on something that was incorrect, when they were given the occupancy. But I'm wondering what do we do to correct the entire region the entire area.

Jamie Krieling: basically they are still in the same position as they are when they originally bought the land. They can sell the land in the same manner that under the conditions that they purchased it. Again it may not be the most profitable way for them to deal with the land but they still have the same benefits from the land that they had when they made the original purchase.

Dibble (Chairman) does that mean that will have to remise buildings that exist on the pieces of property? Is that correct?

Jamie Krieling: they can sell it as it is eight separate lots. They could still go ahead and sell it.

Dibble (Chairman) even if it violates “what do you call it” trespass or encuresie. You can’t sell a piece of property if it is on someone else’s land.

Travis Cox: she is saying that they would have to sell both buildings at the same time.

Jamie Krieling: right they would sell it as a full parcel.

Dibble (Chairman) so they can’t demise one building and sell the two parcels?

Jamie Krieling: the only way that I am aware that they might considered it but I believe that they might have some consideration and some concern in going that route would be possibly trying to condominimize the buildings would be another option to look at. I don’t know that can still meet all of the criteria in the code it sounds like they looked at some of that and there was still going to be some difficulties for being able to meet it. But as far as being able to sell one building verses the other building then no, based on the way the land is today they would have to sell all together as one parcel, since the two buildings do overlap into one of the lots, which I believe is 23.

Dibble (Chairman) one building overlaps the other one is entirely on one piece of property, is that correct on parcel number one. The one building exists freestanding and could be separated.

Jamie Krieling: no I believe it is my understanding that is what they believed when they purchased the property, I’m not sure if it was parcel 1 or parcel 3.

Dibble (Chairman) pull up that screen that shows you have 3 parcels, are you saying that the building transverses two of parcels or just one of the parcels?

Jamie Krieling: it is my understanding that both buildings go into parcel 2 which is a lot on it’s own, which is lot 23, because of those specifically being on lot 23 that they can’t now divide up lot 23, without doing a subdivision through our process.

Dibble (Chairman) not just one 30 inches but both buildings are 30 inches?

Kathy Portner: my understanding of your question, Mr. Dibble is if they were to demolish the building on parcel 3 I believe that they could sell that parcel separate from parcel 1.

Dibble (Chairman) that is part of what I asked, yes! That wasn’t the answer I wanted to hear.

Kathy Portner: because it currently exists as a legal parcel.

Dibble (Chairman) but if they demolish both buildings then they could sell all three parcels separately?

Kathy Portner: they could sell off each parcel.

Jamie Krieling: if I could clarify since I understand what your question is now from Kathy's clarification, "thank you" if they did not have a building that is on parcel 3 and also on parcel 2 they could actually sell each individual lots, not just parcel 3 all together because parcel 3 is made up of four different lots, they could sell the individual lots all four of them separately.

Dibble (Chairman) that's why I asked the question originally, what could you put on them? Long skinny buildings. You would have to combine or condominiumize, the lots in order to put anything on it.

Jamie Krieling: they could do that.

Travis Cox: I would like to make a clarification that most of the lots if not all in the original downtown were 25' by 125' my house for instance sits on 2 lots the lot line goes right down the middle, they were combined for tax reasons, and that is similar to what we have here there were eight lots and it looks like: were they ever combined?

Jamie Kreiling: now legally they are not combined for purposes of being able to sell them, it's just done for purposes of the parcel numbers and the Tax Assessor's office, and why they picked the distinctions that they did as to parcel 1, 2 and 3 I don't know.

Dibble (Chairman) but the parcel were never combined?

Jamie Kreiling: no, the parcels were actually never combined, so technically right now anyone of those lots could be sold. It's just the person who is going to be buying it, is buying it with a portion of a building on it, and if they have to do with use of lending, funds then they are going to have difficulties doing that.

Dibble (Chairman) but that hasn't been a problem so far?

Jamie Kreiling: not today apparently

Dibble (Chairman) is there a lender involved here, who has loaned money against the reconstruction?

Jamie Kreiling: my understanding from the staff report the information provided to you today by Ms. Hall that there is two different lenders involved, one has secured the building on parcel 1 and 2, the one to the left. And the parcel 3 also has a separate lender involved.

Dibble (Chairman) based on the information that is proved in the file?

Jamie Kreiling: based on the information that I believe came with their title commitment; there was a deed of trust for each of those.

Dibble (Chairman) so this is a perplexing problem?

Jamie Kreiling: yes and to expand a little bit on what Mr. Cox was indicating, for many of the parcels that are in the original Grand Junction town plat and some of the outline close areas that have similar size lots. We have in the past in new buildings go up over particular lot lines. If the

owner of the land agrees that those lots then can not be sold separately, that could only be sold as one parcel, and then that agreement is then recorded so that it is on record for anybody who looks through a title search.

Ken Sublett: I'm confused if this is granted they intend to sell one of the buildings is that correct?

Jamie Kreiling. That is my understanding.

Ken Sublett: but the lots are still not under one ownership? What am I missing?

Jamie Kreiling: what would have to happen is after you grant the variance then they could go forward with a subdivision plat a simple subdivision since they are only going to have the two lots, they are combing down from 8 lots to 2 lots, and when they have combined them under the subdivision plat then there will only be 2 parcels, and they could sell the one parcel that includes the one building that is now on parcel 1 and 2 and they could sell the other lot that includes the building that would be on parcel 2 and parcel 3.

Patrick Carlow: Where would the empty space between the two buildings which lot would that go to half to each?

Jamie Kreiling: at this point in time in regards to the subdivision plat would be to split that right down the middle so I think it is given about 2 ½ feet on either side.

Dibble (Chairman) you still would have non-conforming structures on both lots?

Jamie Kreiling: by granting a variance you basically allowed them to now be conforming, if you would grant the variance. That's the special privilege verses the other properties that are in the area.

Patrick Carlow: in spite of the consequences seem to me be a much better solution. If they were forced to tear the buildings down, they still have 3 lots in my mind the other one would be unbuild able.

Jamie Kreiling: the difficulty is that you are necessarily looking for the better solution as much as you are having the criteria.

Patrick Carlow: it helps clean things up to some degree.

Travis Cox: I just noticed something on this slide because we didn't spend much time on it. There is a 14' multi-purpose easement that looks like it is about 5 to 6 foot into these buildings.

Faye Hall: they have reduced that multi-purpose easement to staying away from the buildings. We are now just requiring the easement to be 10'. Just to clarify the engineer had basically requested to do the multi-purpose easement that would not encroach into the building which I believe is 7 ½ feet.

DISCUSSION

Tom Kvccl: the question comes into the variance for the setbacks requirements in the current code. As indicated these building were build in 1975 and 1977 where there were no review processes in place. Even if it were kept in one parcel the question is would the structures still meet today setback requirement? No I don't think so. We have more users for smaller places here in the Grand Valley than we do for 18,000 square feet which makes it a little more economical if you look at your future for small resistant, either buying and occupy part of it or occupy all of it or rent part to help them, historically large units like this if they go vacant quite often they stay vacant for a long time, and you end up with a unit that looks like it did when we first took it on. I think that there are some economical reasons for the City to grant the variances. It will help the business in the area and as you can see it has beatified the area, and it will help those buildings buyable in the future.

Jamie Kreiling: Mr. Chairman if I may, there was a question that you asked earlier that I don't think I answered as far as the ability to continue to use these lance in this area where they changed the zoning from what it was originally when these buildings would of been built and technically under the law it does allow a municipality to be able to do such a thing, and we have done that through our zoning code but we have allowed then for different ways for non-conforming lots to be able to become more conforming or to be able to continue under the original use and technically this piece of property can continue under it's original use it's my understanding that it is going to continue under it's original use they just want to be able to split it up so that they can sell it. That answers your earlier question that you had as far as the changes that we have created because of our code.

Dibble (Chairman) and the original use is warehouse?

Jamie Kreiling: warehouse/storage facility is my understanding.

Dibble (Chairman) so regardless of ownership they will still continue to be under it's original use?

Jamie Kreiling: yes they can continue under it's original use.

Dibble (Chairman) they just want the legal rights to sell.

Travis Cox: Mr. Chairman, a lot of valid points have been brought on both sides of this one. There is a portion of criteria number "A" that we don't spend a lot of time looking at, unfortunately it applies to criteria number "A" but it mentions with in regards to undue hardship the intended use there of and it seems to me that the intended use of these two buildings always has been the two buildings. Who ever owned them or who ever built them believed that they were building them on a zero lot line, and that they built two separate buildings if they intended of being one piece property and one building they would of no doubt not wasted the 5 foot in between. I agree with staff interpretation of the criteria and them having it met.

Patrick Carlow: It's obviously not an ideal solution on the one hand but if there is that many non-conforming uses in that area we are just going to have bits and pieces come in from everybody. I would like to see it a little differently but I have no reason to oppose this.

Ken Sublett: this is a difficult property on one hand I do in fact agree with the position brought forth by the staff, however considering where this is, and also considering the that we really are making this a special case relative to other things down there. At the moment I am some what inclined to not grant this.

Mark Williams: that makes things really difficult for me, I work for tom Kvcel I am his attorney. I didn't realize that Tom was an applicant, I went right by the name. I think my vote would be in favor of it, and I think it would be in favor of irrespective of a client of mine. But I think that the process requires me to abstain.

Dibble (Chairman) do you have financial investments in this particular property?

Mark Williams: no not other than a personal relationship with the applicant. As awkward as it sounds I have a personal relationship with Tom Kvcel.

Dibble (Chairman) would your personal relationship with him influence your judgement on this case?

Mark Williams: I think my answer is yes, but my reasons to vote for this overrides.

Jamie Kreiling: Mr. Chairman, if I may; do you have a on going financial relationship with Mr. Kvcel?

Mark Williams: He is my client he pays me to represent him, I am representing his son currently in a case. And I like him, I like his family. But my reason to vote for this override my "I think" my financial.

Jamie Kreiling: It will be up to the Board of Appeals, but would appear that there would be a conflict of interest in the financial interest.

Dibble (Chairman) if there is a financial consideration in dealing with him on a ongoing bases I would have say that there probably is a conflict of interest.

Mark Williams: I would have to abstain.

Jamie Kreiling: Mr. Chairman, If I may as there is a conflict of interest for the Board of Appeals member then I would ask that you do not take into consideration the Board of Appeals members who has the conflicts position in regards to a vote for or against normally in a conflict of interest we would ask them that also Mr. Williams to please step out into the hallway.

Dibble (Chairman) with that little bit of information my summary is last in line, this has been complicated by the fact that there are buildings there they were conformal to any code that did exist and obviously lot line consideration they go right up on the lot lines. And even though there was an error in their building so there was a constructional problem there but looking at the current situation I think perhaps indulgence wasn't done properly but they relied in good faith upon what they felt and also they had some financial institutions that like wise were willing to base their loan. They did take what I feel is a substantial step in being just good neighbor sam and also taking in consideration the look of the City the beautified and conditioned that would of

been a blight and probably and probably was a blight to the City's appearance which I think is a benefit to the City. They have done this in good faith, they have done some good upgrades I think they should be commended for that. I think the staff has done their homework here in being able to articulate the code structure we may have some difficulties in how its arrived at or how it's continued out in the future. We are told not set precedence by anyone, particularly in determination, each case on it's own merit. I would think that the overall spirits of that area, as it redevelops would be benefited by allowing such a variance so I am in favor of allowing this, I think we can make a point that it does conform to the code regulations.

MOTION: (Mr. Cox) "Mr. Chairman, on variance request SS-2006-245 I move that we approve the request for a variance to Table 3.2, of the Zoning and Development Code reducing the minimum lot sizes to 2.73 acres and .3 acres, and reducing the side yard setback to 2 ½ feet to allow to existing buildings to be on separate lots in an I-1 zoning district, finding the request to be consistent with the Growth Plan and the review criteria of section 2.16.c.4, of the Zoning and Development Code.

Commissioner Patrick Carlow seconded the motion. A vote was called and the motion passed by 4-0 with Mark Williams abstaining.

**VAR-2006-181 Variance - Liberty Baptist Church Sign Variance
Request approval of a Variance to Section 4.2.G.1.a, b of the Zoning and Development Code to allow a 40 square foot sign, 13 feet in Height, in a RSF-4 (Residential Single Family-4 u/a) zone district.**

**Petitioner: Dan Wilkerson - Liberty Baptist Church
Location: 448 South Camp Road
Staff: Adam Olsen, Associate Planner**

STAFF'S PRESENTATION

Adam Olsen gave a PowerPoint presentation. He stated the applicant is requesting a sign variance for the Liberty Baptist Church, located at 448 South Camp Road, this is just a photo of the existing sign that is there. This is a request to Section 4.2.G.1.a, b of the Zoning and Development Code, which stipulates the maximum size and height of the sign, located within a residential zone. In the Code it states that the size shall not exceed 24 square feet, per street frontage and not to exceed eight feet in height. This ariel photo illustrates the Church site in relation to the surrounding residential properties. The Liberty Baptist Church was approved for a Conditional Use Permit in 1995. With that approval they were given a sign allowance not to exceed 32 sq ft. The Church has purchased a new sign consisting of 40 sq ft, which is also 13 feet in height, and there for have come forward with this request. The Church is located in within in the residential-medium low future land use designation the Growth Plan supports these types of facilities within residential areas. However the requested sign variance is not consistent with certain goals and policies of the Growth Plan and mainly those goals and policies are as follows: Goal 13: Which states, to enhance the aesthetic appeal and appearance of the community's built environment.

Policy 13.1: The City will establish heightened aesthetic standards and guidelines for the gateway areas and high visibility corridors.

Policy 13.2: The City will enhance the quality of development along key arterial street corridors.

Policy 13.3: The City will foster improved community aesthetics through improved development regulations addressing landscaping, screening of outdoor storage and operations, building orientation, building design, signage, parking lot design and other design considerations.

Policy 13.12: Visual clutter along corridors will be minimized through the application of sign regulations and corridor design standards and guidelines.

A variance may be granted only if the applicant may establishes that all of the following criteria are satisfied, and these criteria is found in section 2.16.c.5 of the Zoning and Development Code, and those criteria are as follows:

- a. **Undue and Unnecessary Hardship.** The literal interpretation and strict applications of the sign regulation would cause undue and unnecessary hardship to the sign owner because of unique or unusual conditions pertaining to the specific building or property in question.

Applicant's Response: The sign has already been purchased based on a perceived representation that the 40 sq ft sign would be allowed and that a larger sign would have been allowed under County jurisdiction before the land was annexed.

Staff's Response: The Conditional Use Permit granted in 1995 allowed the sign to be greater than the 24 sq ft as specified in the Code. The CUP makes no reference for a variance to the height of the of the sign. The maximum allowed for this sign under the CUP is 32 sq ft. A sign that is 32 sq ft is 25% larger than what the Code allows. The Applicant's request of a 40 sq ft sign is 40% larger than what the Code allows. The sign renderings illustrate the height to be 13 feet, which is 39% greater than the allowed height of 8 feet. The 32 sq ft as allowed in the CUP should be of sufficient size for the advertizing of the church and school, while still meeting the eight foot requirement.

- b. **Not contrary to Property Values.** The granting of a variance would not be materially detrimental to the property owners in the vicinity.

Applicant's Response: There will be no detriment to the property owners in the vicinity. The new sign will be a pleasing addition to the South Camp corridor.

Staff's Response: To be more in harmony with the residential nature of the vicinity, a smaller sign is warranted.

- c. **Hardship Unique to Property, Not Self-Imposed.** The unusual conditions applying to the specific property do not apply generally to other properties in the City.

Applicant's Response: There are two entities located on the premises. Therefore a larger sign is necessary.

Staff's Response: A 32 sq ft sign is sufficient to advertise both the church and the school. There are no unusual conditions that apply to the property that do not generally apply to other properties in the City.

- d. Conformance with Character of Area, Corridor Plans.** The granting of a variance shall not be contrary to the goals and objectives of any applicable corridor overlay district or to the general objective of moderating the size, number, and obtrusive placement of signs and the reduction of clutter.

Applicant's Response: The sign would match the character of the area with its residential design theme and use of materials consistent with residential applications.

Staff's Response: Although effort has been put into the new sign and it appears to be visually pleasing, it would be more in character with the area if the size and height were reduced to 32 sq ft and 8 feet high.

Staff recommends that the Zoning Board of Appeals deny the requested variance to Section 4.2.G.1.a, b of the Zoning and Development Code. With the following findings and conclusions are as follows:

1. The requested variance is not consistent with the Growth Plan.
2. The review criteria in Section 2.16.C.5 of the Zoning and Development Code have not been met.

QUESTIONS

Mr. Carlow asked if the existing sign 24 sq ft does that include the banner of the Liberty Christian Church?

Mr. Olsen answered no I did not include that.

Mr. Dibble asked if the sign was 36 sq ft, not 24 we did grant the variance for the 25% increase. Mr. Olsen answered that sign was existing when the CUP was approved, with the CUP approval they were granted approval to construct up to a 32 sq ft sign.

Mr. Williams asked if they could reconstruct a sign up to 32 sq ft.

Mr. Olsen answered yes they could reconstruct a sign to meet the 32 sq ft but still maintain the height requirement.

Mr. Cox asked about the applicants response to criteria A, they have mentioned that they had purchased the sign based off a perceived representation that the 40 foot sign would be acceptable. Can you speak to their perception that it would be acceptable.

Mr. Olsen answered in researching that aspect of it I spoke with the Planning Tech who spoke with a representative of the church and they did give them a copy of the CUP approval and the minutes which were stipulated 32 sq ft sign she wrote on the paper 32 sq ft or highlighted it. I don't know where the representation came from it was my impression that 32 sq ft was implied from the beginning. Now there are different representatives with the church the original one has since then moved out of the area.

Mr. Dibble said that we could ask the same question to the applicant.

Mr. Carlow asked if on the schematic of the proposed new sign is it showing as 13 feet in height. With this would it get closer to 15 feet in height, or 14.7 feet.

Mr. Olsen answered I don't have that on the slide.

Mr. Cox said that 14.7 is the radius of the curve it doesn't necessarily mean and actually this drawing indicates that the radius point is below ground.

Mr. Olsen answered that this area is below ground I was just calculating from this solid black line.

Mr. Carlow asked if it was 13 feet to the top of the beam.

Mr. Olsen answered yes.

PETITIONER'S PRESENTATION

Mr. Brown who is one of the deacons for Liberty Baptist Church I moved to the Valley about 10 years ago. I have brought several of my constituents with me here today, I have Sandy Parkerson, (treasure), Norm Cooper (responsible for the design of the sign), Dough Roman (deacon), and Scott Hendrickson (intrum Pastor). If I could give you some input just a little bit the Liberty Baptist Church has been in this area for over 20 years we've seen the entire community grow up around the Liberty Baptist Church, Reveran Dan Wilkenson was the pastor up until this summer do to a medical circumstances is reasons he is no longer a pastor of the church there. So as results we now have an intern pastor and Scott Hendrickson, and who is leading us fourth. This unforeseen situation has placed us in some financial and some emotional straits and so as a result it has restricted the growth of the church until we get a number of problems resolved. One of the problems is that we are in the process of calling another full time pastor that will help us to gain insights the new vision and give us a new direction help the church to grow again so that we can become more vital and a vital part of the community to minister to the spiritual as well as the emotionalies of the community. There are several things that we are having to deal with at this very point two of these issues that we need to deal with is to provide a visible aesthetic by appealing sign or key that will let the passing public know that we are there. The church where it is now is at low end, we need to advertise through a sign as well as other media to let these folks who are in that area or who are passing through know that we are there so that we could meet their needs. We need to be able to have a sign, and that's what we have been planning on for a long time. The second thing as a result of way the parking lot is and let me if I can show you here, here is the existing side and here is the existing road that comes in all of South Park Blvd , now it was probably good in years past but now we need to better ourselves. We got to be able to build this is up because of problems of traffic coming on to this road. By the way you might notice this is South Park Blvd and we are looking towards the South in this picture and you see a lot of this vegetation that is up on the side of the road, you notice there is a car coming and that speed limit is about 40 somewhere around there, extremely dangerous we have to edge our cars out into this area to just make the determination if we could even get out into the street, as a result of all this vegetation, and having to go up the hill, through this loose gravel. So we need to be able to deal with a sign and get this sign installed, as well as deal with the interims of the church. Now we already have the sign as a result of whatever failed communications that we've have had one of the apprentice deacons as well as the pastor has some information that said that

it would be alright for us to have a 40 sq ft sign. I have no idea where that information came from and by the way here I stand before you folks today and have been flung into this and am now trying to pick up the loose pieces. We have spent nearly \$7,000 .00 dollars just on this particular sign, we got it in our storage shed were waiting to do something with it, we sure don't want to chop it up, we don't want to turn it into fire wood. We would really like to use this sign. So that is one of the things that we are looking for. We've seen this engineering drawing that has been presented here that's going to have a 40 sq ft sign that arch that you see across the top of the sign, the reason why that arch is engineered so that it would carry on the theme for the main entrance of the church. So that we would be able to bring the ideology all the way from South Park Road all the way to the front of the church. That is the reason why that arch was put in there. But we are dealing with having to beautify this area, I got up on top of this mountain several weeks ago got snow in my shoes and I took this picture up there and as you can see it needs beautifying and we want to be a part of that beautification and be able to install an anesthetically eye appealing sign on that road that would help the church and at the same time not offend the community. That would help the community and at the same time help us, with the entrance of the of the church. As it is now the church is a back away from the road because of marsh land area that is protected, there is a lot of foliage and a lot of growth there. I noticed that there has been a bike path that has been started through there but for what ever reason it hasn't been completed through this area and we as a church the Liberty Baptist Church would most assuraly would want to help you folks finish that bike path. It would be a benefit for both us and the rest of the community. So as you see as we drive along South Park Road there is a lot of foliage that is there, I notice right here is one portion of the bike path is being illuminated all of that foliage needs to be torn down, we need to have the bike path go through. Not sure why it's there but the church is more than willing to work and resolve that problem to be able to get these going. Now we see that sign that got's the arch on top of it that is going to have that 40 sq ft sign on it. And sign on the original engineering drawings the top of it is going to be about 9 feet. Well we are willing to do what ever it takes if we can keep that 40 sq ft sign and even going ahead and eliminating that arch, we can get rid of the arch to bring it down to a good specification and bring the top of the sign that we already have in place back down to eight feet. What ever we need to do to resolve problem, but we have invested an enormous amount of money in this sign already. So as a result one of the things that we feel that we have engineered a lot of information and a lot of esthetics into to this thing has got to help the eye appeal of the community and I think that it's going too. I think that it would meet the goal that goal 13 of the Growth Plan, that it would be esthetically eye appealing it would be beautiful to the surrounding community it's going to meet the needs of 13.1 and 2, seeing the needs for improvement in the area, as you saw in one of these previous pictures, it's not very eye appealing it does need to be approved all along that corridor. Even Policy 13.3, 13.4 and 13.13 the Liberty Baptist Church has already started a process of improving the community esthetics with plans to improve the landscape eliminate the clutter around the church. And the property and buildings especially along our property line and along the road line. The variations that we are working with here we seem to out of step with, I don't know how we got that way I'm moving into to this after the fact what we are looking for is trying to find a way that if we could salvage some of the money that we have already spent. One of the things that we think that if all of a sudden, our sign variance is rejected this is going to induce some undue and some unnecessary hardships on the church in the fact that here again we have invested nearly \$7,000.00 dollars, of the church members monies, and I will say that \$7,000.00 dollars that matches what our check book balance is for the operating cost for the church per month. We are on a real tight rope here trying to make everything work until we get a new pastor

in place and until we get a vision and until we get growth started again to be able to help the growth of the church is to be able to have a fashionable eye appealing esthetic sign built so we can build up our roadway into the church. We believe the sign would actually enhance the esthetic view of the surrounding property, the situation of the hardship with the church, a sign does apply to us. We are having to work with that, the Liberty Baptist Church sign will enhance the character of the area. So we are appealing to you, we are asking for clemency here to see what we can do to at least salvage some of our money and salvage the sign. If we have to work the surround of the sign but that's what we are looking for in this variance.

QUESTIONS

Mr. Dibble is there any questions for the applicant?

Mr. Sublet just slightly off the subject but the subject that you brought up and just a suggestion why don't you talk to the folks of Renaissance and ask them to cut down the tall grasses that is causing the visibility problems. Have you all done that.

Mr. Brown no we have not and you say that is the Renaissance.

Mr. Sublet yes that is the subdivision that is next to you and all of that foliage that is out there is in fact there's. If it is causing you a visibility problem then I would talk to them. Now back the subject, Churches and signs cause us great grief this is far from the first one that the sign problems that is relatively to churches. I think it was Mr. Macy that I waist half of my over taxing dollars I just don't know which half I am waisting. What would lead you to believe that a large sign in fact is good advertising.

Mr. Williams I have asked that many questions and the reason I asked that is I have never seen an academic study that indicates a large sign do much of anything for you except reduce your bottom line by some amount.

Mr. Brown one of the things that we experience right now with the existing sign back off away from the road and faced in an inappropriate direction we have had a number of visitors who have driven by the church and never found it. So as a result we feel like it affects our congregation it affects our ability to draw people so we know that if we had a sign that would be legible on the road that people could see, then at least they would not miss our church and our area and they would know where we are at. So in some instances this advertisement has got to be a defendant drawing part who would be able to draw people into the church that would be looking for our church.

Mr. Carlow it's not that the only sign on South Camp Road somewhat of an advertising nature.

Mr. Brown I don't think that I have seen any other signs on all on South Camp Rd at all.

Mr. Cox there is Scenic Elementary.

Mr. Cox can you tell me where you were in the application process in the approval process when you purchased the sign

Mr. Brown I was out of the process, this process was between the previous pastor and the apprentice deacon of whom he assigned the program too. The apprentice deacon since then has taken another job and moved to another City as a result this has all fallen back on us.

Mr. Cox do you know when the sign was purchased.

Mr. Brown I don't we may have the paper work that would tell us when it was purchased.

Mr. Brown do we have the date of when it was purchased, I think we can have that exact information. The sign was purchased October 27, 2005.

Mr. Dibble and when was the application for the variance submitted

Mr. Cox you will probably have to ask Kathy.

Mr. Olsen it appears that the sign clearance was applied for in February 7, 2006.

Mr. Cox so the sign was purchased before the application was made.

Mr. Olsen it appears so.

Mr. Carlow what prevents you from moving your current sign up closer to the road, do you have any restrictions on that.

Mr. Brown the existing sign the small sign that we have one way or another is going to have to come closer to the road, and it will have to be turned to where it can be visibably seen from each other. But if that would be the case then we would want to modernize the sign we would want to have the sign there lit at night especially in winter months, we have a number of elderly people who attend our church and as a result we have been told by a number of those members that they find it extremely hard to be able to find where to turn into the church parking lot as result of the inadequacy of the entrance and not really having an appropriate sign in that area.

Mr. Dibble the new sign which you purchased is that internally illuminated.

Mr. Brown yes it is.

Mr. Dibble I don't see anybody else other than the representatives of the church, he represents you is that correct.

Mr. Hendricks yes that is correct may I expand on a couple of things.

Mr. Dibble if they are pertained to this meeting.

Mr. Hendricks yes they, I also wanted to assure you of all the members that are here were not aware that the sign was purchased against the City's orders, I attended all of those meetings and it was clear that we were going to be approved for a 40 sq ft sign. That was made clear to us by Dan Wilkerson. As far as the sign, it is state of the art vandalism proof sign.

Mr. Cox can I clarify you on that statement, when you say that you were at all those meetings were referring to meetings with Dan Wilkerson?, and with the church committee and not with the City.

Mr. Hendricks yes I am referring to church business meetings, not meetings with the City. And the way that Dan Wilkerson represented what he found out from you is that it was a go it's done, we voted on it. I assure you that the members of the church would of never sacrificed their hard earned money to purchase a sign that was not in compliance with what the City set forth.

Regarding the sign though it is a state of the art that is vandalism proof sign that can withstand up to 120 miles of wind resistance, and it probably in the code one of the reasons to have a smaller sign is to take that into consideration, in breaking apart and falling into the road, and this sign certainly would not do that unless some amazing act of God, that would cause the wind to be greater than that. Also with the two institutions the City Code has 24 sq ft per institution, and with the two institutions there we could actually with 48 square inches we would be less than the code.

Mr. Dibble I believe that standard is per street frontage, sign per street frontage.

Mr. Hendricks so it is not per institution.

Mr. Dibble during these meetings that you had with your previous pastor it was represented to you that the City was involved and that it had met the codes.

Mr. Hendricks it was, we would not have voted on that other wise and we certainly would not have put up our hard earned money to purchase the sign.

Mr. Dibble did anyone verify that in deed that was the case.

Mr. Hendricks we were told that everything was good to go.

Mr. Cox, Mr Chairman can I ask Adam a question? Prior to application for a sign clearance are any representations made to an applicant.

Mr. Olsen when an applicant comes in for a sign clearance it is handled at the counter, most sign clearances are issued over the counter. This one got pulled back when they realized that this one

was larger, (a) of the 24 sq ft and (b) of the 32 sq ft that was approved with the CUP that's why this one never went any further than that.

Mr. Cox when was it brought to anyone's attention, that the sign being applied for was greater than that allowed with the CUP.

Mr. Olsen I believe it was when they applied for the sign clearance in February, which was kind of the halt to everything. But I said earlier I tried to go down to the bottom of this and spoke with some of the Planning Technicians and was able to find out that originally they did come in even before they asked for the sign clearance just to verify what size of sign they were able to have. I was told that they were given the results of the CUP with the 32 sq ft highlighted. The only thing that I could think of was that perhaps it was said that yes you could have a larger sign than 24 sq ft.

Mr. Dibble would it be typical that they would of been given a copy of code regulations for that particular event such as sign codes.

Mr. Olsen in this case perhaps not they were just given the CUP the minutes and the decision letter because this was different than a typical sign code, they were already allowed to go larger in this case.

Mr. Dibble but there would of been definitions of what larger was wouldn't there.

Mr. Olsen that's what I was referring to is in there notes, in the code it specifies the 24 sq ft per street frontage and the 8 ft high in this case they were given the CUP approval Which stipulated the 32 sq ft.

Mr. Dibble so that is 25% larger.

Mrs. Portner that is not in the code that was specific to their Conditional Use Permit.

Mr. Dibble is there an allowance in the code for an additional amount.

Mrs. Portner no not for a sign.

Mr. Cox just for a clarification on these numbers that are represented the 32 sq ft is actually 33% larger than 24%, and again 40 sq ft is 25% is larger than 32, and 40 sq ft is 66% greater than 24.

Mr. Dibble the height of the sign is almost about the same.

Mrs. Kathy Portner "Mr Chairman" if we could also add we had distributed a letter from a neighbor that we had received from a neighbor just so we can make sure that's entered into the record.

DISCUSSION

Mr. Cox "Mr. Chairman" somebody at the church brought bad information and I would feel comfortable making a statement that at no time that the City representative a 40 sq ft sign could be used and certainly wasn't represented after application, in addition to that I agree with staff interpretation of the variance request criteria and the approval criteria and would recommend not recommend on this I vote no on this.

Mr. Sublett "Mr. Chairman" I am certainly aware of finances of small churches, \$7,000.00 dollars is an awful amount of money in any situations especially for a small church, as I mentioned earlier this is certainly not the first time that we have seen sign problems here in relation to churches and I would guess this is probably not going to be the last time either. I drive past that sign practically everyday maybe several times a day. I don't experience the problems that have mentioned to us since to me there are so few signs out there on South Camp Road I think that thing sticks out there already. I will agree with what has been presented out here already that their entrance isn't the easiest place to find out there. I'm not sure that it will be

resolved by a sign, considering the position that we have taken on this even though I sincerely regret the monetary loss that this will cost I too will have to vote no.

Mr. Carlow my biggest concern is setting a precedence for other business or entities to come in and say we already got the stuff you have to let us use it. I am worried about that , not that it would happen but it certainly would open the door. We've turned down other signs in that same area that size I am reluctant to be in favor of this.

Mr. Williams unfortunately the sign code is pretty strict and tuff we have turned the County of putting up a sign on the Human Services building, I don't know how we can turn them down and say yes to the Church.

Mr. Dibble my heart is heavy when we have to deal with things like these it seems like we see these and we see people mistakenly think that they could put this up and nobody would eject without coming to the City and say I want to know the facts I want to know what I can do and what I can't do. Those are available through from our staff I believe that our staff is very competent and they are aware about those kinds of things. The code was developed through much dialog and process through out many years sign codes are always a question, the codes exist for the good of the community we have had churches come to us and say that they wanted to put up banner signs out there on their property to welcome people in, unfortunately we can't help that. Under the circumstances that we have here, you can't move your sign to make it more visible more adequate for entrance under the sign code that we have I would be willing to say with the same size of sign you have now. Unfortunately and I don't think this is our problem although we can agree with what we want. I don't understand why you spent the money and bought the sign, the sign code is here and it has a purpose and I think the criteria for the variance has not been met I think we will have to conclude and make a motion that the variance has been denied with the determination that we can't grant the variance.

MOTION: (Mr. Cox) "Mr. Chairman", on Variance request VAR-2006-181 I move that we approve the request for a variance to Section 4.2.G.1.a.b of the Zoning and Development Code to allow a 40 sq ft sign 13 feet in height to be constructed at 448 South Camp Road, in an RSF-4 zoning district finding that for us to be consistent with the Growth Plan and that the review criteria of Section 2.1.6.c.5 of the Zoning and Development Code have been met.

Commissioner Williams seconded the motion. A vote was called and the motion was denied by a unanimous vote of 5-0.

With no further business to discuss, the meeting was adjourned at 1:30.