

CITY OF GREENACRES

OFFICIAL MINUTES TRACKING

Council/Board: Towning Board of Adjustments & Appeals
Meeting Date: 8-28-17
Transcribed by: mf No. of Pages: 6 Transcription Time: 5.5

REVIEW OF MINUTES

Reviewed By:

Name/Initials	Date	Revisions	
<u>[Signature]</u>	<u>9/18/17</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<u>KARA PEDDIS / JCF</u>	<u>10/10/17</u>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

APPROVAL OF MINUTES

Meeting Date: _____

Motion By: _____ Seconded By: _____

Check One: Approved Tabled Denied Vote: _____

Changes requested by Council or Board? Yes No

If yes, note changes: _____

Date Scanned and Filed: _____ By: _____



OFFICIAL MINUTES
CITY OF GREENACRES, FLORIDA
SUNSHINE LAW WORKSHOP AND
ZONING BOARD OF ADJUSTMENTS AND APPEALS MEETING

Monday, August 28, 2017

6:30 pm - Workshop Discussion

1. Roll Call:

Present

Dannette Fitzgerald, Chairwoman
Arthur Harrell, Vice Chairman
Betty Anne Litowsky
James Paglialungo
Walter Buist

Staff Present

James D. Stokes, Board Attorney
Kara L. Irwin-Ferris, Director of Planning & Engineering
Osniel Leon, Senior Planner
Melody Larson, Assistant to the City Clerk

Public Attendance: 3

Press Attendance: 0

2. Pledge of Allegiance to the Flag

Chairwoman Fitzgerald led the Pledge of Allegiance to the Flag.

3. Workshop

Board Attorney James Stokes provided a refresher on the Sunshine Law and quasi-judicial proceedings. He explained the importance of providing reasonable notice, that the meetings are recorded and minutes are taken per statute. Exceptions include executive sessions and collective bargaining where Council meets and public notice is provided; however, the meetings are not recorded or minutes taken.

Board Attorney Stokes explained that the Sunshine Law applies to all elected, appointed, and advisory board members and where two or more board members gather to discuss agenda business. It is not applicable to private, one-on-one informational meetings with staff. Ninety-nine percent (99%) of what the Zoning Board of Adjustments and Appeals (ZBAA) reviews is quasi-judicial. Parties to a quasi-

judicial proceeding include board or committee members, special magistrates, staff, applicants, and aggrieved or affected persons who have complied with the notice provisions.

The duties of the ZBAA are similar to those of a judge, e.g. it hears the testimony produced under oath, reviews the facts, hears staff's recommendations, allows cross-examination, weighs evidence and applies the law to the facts and makes decisions based on those facts. Staff can make recommendations; however, the board decides if the request meets the variance criteria. If the applicant meets the variance criteria, by law the ZBAA must grant the variance. Corporations must be represented by an attorney.

Board Attorney Stokes explained that once a decision is rendered by the ZBAA, the applicant has the ability to file an appeal with the Circuit Court of Appeals. The Court will consider three (3) things: 1) was due process accorded, 2) were essential requirements of the law observed; and 3) were the findings and judgment supported by competent evidence.

Ex-parte communications must be disclosed orally or in writing to prevent presumption of bias. Site visits are also considered ex-parte communication as the information gathered could be influenced. Once testimony is provided, the hearing should be closed with no further deliberation taking place and a decision should be rendered.

* * * * *

1. Call to Order and Roll Call.

The Zoning Board of Adjustments and Appeals Meeting was called to order at 7:04 p.m. on Monday, August 28, 2017 with Chairwoman Dannette Fitzgerald presiding. Melody Larson, Assistant to the City Clerk, called the roll.

Board Attorney Stokes asked those present who would provide testimony to be sworn in.

3. Agenda Approval - Additions, Deletions, Substitutions to the Agenda.

Chairwoman Fitzgerald called for additions, deletions, or substitutions to the agenda; hearing none, she called for a motion.

MOTION: Vice Chairman Harrell made a motion to approve the Agenda as presented. Mr. Paglialungo seconded the motion.

VOTE ON THE MOTION: **In Favor:** Chairwoman Fitzgerald, Vice Chairman Harrell, Ms. Litowsky, Mr. Paglialungo, and Mr. Buist.

Motion carried: 5 - 0.

4. Approval of Minutes -

Chairwoman Fitzgerald asked for any corrections or deletions to the minutes of July 11, 2017. Hearing none, she called for a motion.

MOTION: Vice Chairman Harrell made a motion to approve the minutes of July 11, 2017. Ms. Litowsky seconded the motion.

VOTE ON THE MOTION: **In Favor:** Chairwoman Fitzgerald, Vice Chairman Harrell, Ms. Litowsky, Mr. Paglialungo and Mr. Buist.

Motion carried: 5 - 0.

Chairwoman Fitzgerald called for any ex-parte communications by board members. Mr. Paglialungo, Mr. Buist, Ms. Litowsky, Chairwoman Fitzgerald and Vice Chairman Harrell disclosed visiting the RaceTrac site.

5. Cases:

A. BA-17-07 RaceTrac - A request by the owner for a variance to exceed the permitted LED signage. The site is located at 6025 Lake Worth Road.

Senior Planner Osniel Leon described the variance request from Art. IV, Division 4, Sec. 16-985, to exceed the LED requirements for monument signs in Sherwood Plaza. On November 29, 2016, the ZBAA approved a variance to allow a convenience store with fuel sales within 500 feet of a movie theater and house of worship and 1,500 feet from a service station. The City Council approved a Special Exception to redevelop a former pharmacy into a convenience store with fuel sales and outdoor seating.

The applicant is requesting a 75 sq. ft. and 50 sq. ft. LED changeable copy area for freestanding signs on Lake Worth Road (south) and Sherwood Forest Boulevard (east). City Code allows a maximum of 12 sq. ft. per sign. The applicant states that the landscape plan limits visibility. Senior Planner Leon explained that modifications to the landscape plan would be a more appropriate solution rather than a variance to the Code. The applicant's request more than doubles the allowable changeable copy area and no other convenience stores with fuel sales have been granted similar requests; therefore, staff recommends denial of BA-17-07.

Chairwoman Fitzgerald called on the applicant for comment.

Kristen Hutton of the Wantman Group, Inc., agent for the owners, testified that a new House Bill gives gas stations leniency with respect to LED signage. It mandates that local zoning codes may not prevent gas station signage from being clearly visible and legible to drivers of approaching vehicles from advantage points in any lane of traffic in either direction on a roadway abutting the premises. Our focus is specifically on the LED signage. The maximum 12 sq. ft. permitted by Code for LED copy area does not take into consideration the size, location, and landscaping. The applicant is requesting an increase of 29.11 sq. ft. for the freestanding monument sign on Lake Worth Road and an additional 17.37 sq. ft. for the sign on Sherwood Forest Boulevard.

Chairwoman Fitzgerald called on the applicant for comments; hearing none, she asked the Board Attorney for clarification.

Board Attorney Stokes emphasized that the Board must determine if the visible signage is sufficient; it does not have to be clearly visible from both directions since the site is a corner parcel.

Mr. Paglialungo disclosed visiting the RaceTrac on Lake Worth Road and Congress Avenue. That sign is approximately 11 ft. tall x 5 ft. wide. He took exception to the proposed 13 ft. wide sign and believed the applicant had not given the Board a good reason to exceed the existing Code requirements.

Tom Hardy with RaceTrac Petroleum clarified that the discussion focuses on the size of the numbers (the pricing), not the height of the sign. The reason for requesting larger numbers is for visibility and safety. With a 12 sq. ft. copy area, the numbers would be too small to advertise pricing. That is the reason for requesting 32-inch size LED numbers, to enable visibility from ¼ to an 1/8 mile distance. He wanted to clarify the confusion over sign height and the size of the lettering.

Mr. Paglialungo and Mr. Hardy discussed reducing and reorganizing the size of the sign.

Chairwoman Fitzgerald noted that granting a larger sign would grant a special privilege to RaceTrac that other businesses do not presently enjoy. She pointed out that when the site plan was approved by Council, the applicant agreed to the landscape requirements. She believed RaceTrac would be setting a precedence.

Mr. Buist asked that the signs shown on the drawings be scaled appropriately.

Vice Chairman Harrell doubted that PBSO had ever issued traffic citations for accidents caused by poor signage.

Mr. Paglialungo noted that no other business along Lake Worth Road exceeds the City's sign code requirements.

Chairwoman Fitzgerald opened the meeting to the public. Seeing no one come forward, she closed the meeting to the public and called for a motion.

MOTION: Chairman Harrell moved to deny BA-17-07. Ms. Litowsky seconded the motion.

VOTE ON THE MOTION: **In Favor:** Chairwoman Fitzgerald, Vice Chairman Harrell, Ms. Litowsky, Mr. Paglialungo and Mr. Buist.

Motion carried: 5 - 0.

- B. BA-17-08 RaceTrac** - A request by the owner for a variance to allow sanitation vehicle to traverse loading space to access dumpster area. The site is located at 6025 Lake Worth Road.

Senior Planner Leon described the variance request from Art. VIII, Sec.16-1335(9)(b) to allow sanitation vehicles to traverse the loading zone to access the dumpster area. The subject site is located on the northwest corner of Lake Worth Road and Sherwood Forest

Boulevard (Sherwood Plaza). In November 2016, the ZBAA approved a variance from distance requirements to movie theaters, houses of worship and other service stations and in March 2017, Council approved a site plan for a convenience store with eight (8) pumps with 16 pumping stations and an outdoor seating area. The applicant requests access to the dumpster area from Lake Worth Road. Pursuant to Code, access to the dumpster location should not interfere with the internal circulation pattern of the site and does not permit sanitation vehicles to traverse any parking or loading space to gain access to the dumpster area. Senior Planner Leon explained that the applicant had the opportunity to provide site plan modifications that would have eliminated the need for a variance. The dimensions of the sanitation trucks can maneuver easily as approved. Granting this variance would confer a special privilege, it would go against the intent of the Code and would be contrary to public interest; therefore, staff recommends denial of BA-17-08. If the Board grants the variance, staff recommends two (2) conditions of approval.

Chairwoman Fitzgerald called on the applicant for comment.

Kristen Hutton on behalf of the applicant, agreed that sanitation trucks could make the turn south from Sherwood Forest Boulevard as proposed but believed it would be very tight. The intent of the Code is to prevent a conflict of delivery trucks and sanitation vehicles stacking traffic onto a major roadway. Ms. Hutton proposed facing the dumpster west to alleviate congestion through the loading zone. RaceTrac can guarantee that the delivery vehicles will be scheduled on different days than sanitation pickup. *(A list of delivery schedules in all Florida RaceTrac locations was provided for the record.)* Ms. Hutton noted that RaceTrac ensures compliance with the Code and accepts staff's two (2) conditions of approval. She stated that a literal interpretation of the Code would deprive the applicant rights enjoyed by other businesses. By approving this variance, no special privileges are being conferred upon the applicant.

Chairwoman Fitzgerald asked for comments from board members.

Mr. Paglialungo questioned the guarantee over traffic backups. Planning and Engineering Director Kara Ferris-Irwin pointed out that Condition No. 2 was added to address staff's concerns for consecutive traffic stacking violations and emphasized that it would be enforceable.

Vice Chairman Harrell asked Mr. Hardy if he was in agreement with staff's two (2) conditions of approval. Mr. Hardy acknowledged and accepted staff's conditions of approval.

Chairwoman Fitzgerald questioned the orientation of the dumpster facing east during site plan approval and the variance request changing its direction to the west.

Mr. Hardy admitted that the dumpster issue was identified during the site plan review process; however, real estate obligations prevented them from pursuing it at that time. By granting this variance, pedestrian traffic would not be interfered.

Chairwoman Fitzgerald opened the meeting to the public. Seeing no one come forward, she closed the meeting and called for a motion.

MOTION: Ms. Litowsky moved to grant approval of BA-17-08 subject to staff's two (2) conditions of approval. Mr. Paglialungo seconded the motion.

VOTE ON THE MOTION: **In Favor:** Vice Chairman Harrell, Ms. Litowsky, Mr. Paglialungo, **Opposed:** Chairwoman Fitzgerald and Mr. Buist.

Motion carried: 3 - 2.

- 6. **Department Report.**
- 7. **ZBAA Members' Comments.** – None.
- 8. **Adjournment.**

Chairwoman Fitzgerald adjourned the meeting at 8:01 p.m.

ZONING BOARD OF ADJUSTMENTS AND APPEALS

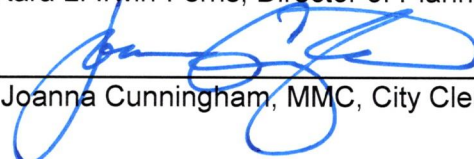


 Dannette Fitzgerald, Chairwoman

Respectfully submitted,



 Kara L. Irwin-Ferris, Director of Planning & Engineering



 Joanna Cunningham, MMC, City Clerk

Date of Approval: 10-30-17

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