

MINUTES OF THE REGULAR MEETING OF THE CITY OF STUART BOARD OF ADJUSTMENT HELD IN CITY HALL, 123 SOUTHWEST FLAGLER AVENUE, STUART, FLORIDA ON THURSDAY, MAY 24, 2007

Those present: John Pasqualone, Chairman
Bonnie Landry
Dr. E.E. Griffith

Those absent: Philip Harvey
Mark Mathes

Also present: Paul Nicoletti, City Attorney
Pinal Gandhi-Savdas, Planner
Murriah Dressel, Planner
Gloria Fike, Code Enforcement

I. CALL TO ORDER: Chairman

Chairman Pasqualone called the meeting to order at 7:00PM.

II. ROLL CALL: Secretary

Those answering roll call and others present are referenced above.

III. APPROVAL OF MINUTES: April 12 & 26, 2007

MOTION: Dr. Griffith

SECOND: Bonnie Landry

Motion carried

Chairman Pasqualone, Request to reduce the required separation distance between a principal structure and accessory structure from 5 feet to 21 inches.

Property Location: 612 S Federal Highway

Property Owner/Applicant: R & R Acquisitions and Investments/Sunrise Auto Sales

Representative: Michele Hanner

BOA Case #06120004

Pinal Gandhi-Savdas, The property is zoned business general which is B2 and has a land use designation of commercial. The site currently has a principal building and an accessory structure which is in the rear of the property. The property is utilized as a used car sales lot and the accessory structure is used as a paint booth. The applicant submitted the permit application in January 2006 for the accessory structure and the application was denied because it did not meet the separation distance requirements however the applicant was granted permits for the accessory structure in error by the Development Department. So currently the existing accessory structure is not in compliance with the land development regulations. The purpose in requesting a variance is to grant relief from the required 5 feet separation. If granted, the applicant would be allowed to retain the

accessory structure at 21 inches from the principal building. Staff recommends approval of the request based on the following conditions, that the paint booth shall close by 9PM on Monday through Saturday and remain closed all day on Sunday. Landscaping materials near fencing abutting street right of way shall consist of shrubs and trees which are subject to staff approval and landscaping materials on the south side of the paint booth shall be installed to screen the adjacent private property.

Michelle Hanner/Sunrise Auto Sales, Presentation

Pasqualone, When you said the place of business should be closed by 9:00 is that the paint booth or the auto sales?

Pinal Gandhi-Savdas, The paint booth. We need to change the language on that condition.

Chairman Pasqualone, Does that comply with the noise ordinance?

Paul Nicoletti, It is a self contained spray booth, I don't think there are any issues with noise. You might ask Staff if there have been compliant regarding that.

Pinal Gandhi-Savdas, Gloria have there been any complaints?

Gloria Fike, No

Paul Nicoletti, I am looking at the letter submitted by the fire inspector. He suggests that the window in the main building could be blocked in to eliminate openings in the wall. Did you see that in the letter? I am going to add as a recommended condition that they block the window in the bathroom and add a fan.

Mike Sands/606 Cleveland Ave. – Against
Jim McFarland/633 & 639 Cleveland Ave.- Against
Alan Burroughs/565 St. Lucie Crescent – Against
Dale Park/626 Cleveland Ave. – Against
Peggy Campion – 545 St. Lucie Crescent - Against

Dr. Griffith, What the Board looks at are the eight criteria for reviewing approval of a variance and it sounds to me from listening to the public that our 3, 7 & 8 are in question. So I'll read them to you and you can respond. #3 Results in a verifiable reduction in property value in any adjacent or nearby property #7 Cause any threat to public safety in any manner whatsoever #8 Cause any threat to the health or general welfare of the inhabitants of the City.

Michelle Hanner, I understand all three of those, but my thoughts are whether its 21 inches or 5 feet from the building, I don't think addresses any of those three things. It will still be there. I can move it 5 feet if I have to, but as far as noise, fan direction and DEP with the fumes, it can be looked at. I want it to be safe. We are working within what we can do and as long as I am meeting the ordinances and the DEP, I don't know how 21 inches or 5 feet changes that.

Bonnie Landry, If they were to move it, is there a place you could move it to within the setbacks allowed?

Michelle Hanner, Yes

Paul Nicoletti, If it is moved, does it usurp any of your required parking?

Michele Hanner, No

Bonnie Landry, For Staff, are they meeting their buffer requirements between a residential use and commercial use?

Gloria Fike, There is an existing problem right now with no permit on one of the violations for the fence that they removed and replaced. That zoning requires a chain link or mesh type fence. They changed it from a chain link to a stockade. We suggested to them that they apply for an administrative variance to keep the stockade fence because it hides too much and is a noise barrier. It is in the process now. That is about the best buffer and there are trees there, it is not just barren. However the planning department has suggested some more landscape on the south side where the closest resident is.

Paul Nicoletti, In fact we are requiring them, particularly if this variance goes through or the administrative variance for the fence to provide additional landscaping. That business is built, it is nonconforming and doesn't today have a landscape requirement like a new business would so if the Board sees fit to grant the variance, I would like to see us be much more specific because over the last year or so in dealing with this property. We have learned you need to be very specific with this particular owner, so I would call out the size of the material, how much material, on what centers you are going to plan it and be very specific because that is the kind of relationship that has evolved over the last year or so. This is no reflection on Ms. Hanner at all who has been very helpful. So I would be very specific in Items 2 and 3.

Bonnie Landry, If we restrict the hours of operation, is that something that would be difficult to enforce?

Gloria Fike, It is enforceable under the noise code. We have a Code Officer once or twice a month working on Saturdays. We would have to ask the Stuart Police Department for their cooperation and ask them to check this. However, the guidelines that you are talking about are very close to the noise ordinance, almost right there and the Police Department is very aware of that.

Chairman Pasqualone, Do you have anything like a Type 1 Buffer, Type 2 Buffer in the LDR?

Murriah Dressel, We do.

Bonnie Landry, I am trying to make this so everyone has the right use of their property. If we don't grant it and she moves it, she has no conditions. We can't improve the site. So it might be a way of each person getting something out of this. If we require them to come up to code on their landscaping, it might make it less offensive for you. So I am leaning towards reaching a compromise.

Chairman Pasqualone, Could there have been an addition built on to the existing structure in lieu of the accessory structure?

Murriah Dressel, Probably not without a variance.

Chairman Pasqualone, The accessory building itself, is that like a Teds Sheds type building on skids?

Michelle Hanner, Yes.

Chairman Pasqualone, The paint booth itself, was it brought in and built on site like a kit?

Michelle Hanner, I have some pamphlets from the company we hired to do it. I'm not sure it is a kit.

Paul Nicoletti, How about we revise the conditions to: 1. The paint booth component of the business has adhere to the following hours including any hobby work: Monday through Friday – The paint booth shall be closed by 9PM. Saturday – The paint booth shall be closed by 6PM. Sunday – The paint booth shall remain closed all day. 2. Landscaping materials near fencing abutting street right-of-way shall consist of shrubs and trees which shall be in compliance with Section 6.06.00 of the City of Stuart Land Development Regulations 3. Landscaping materials on the south side of the paint booth shall be installed to screen the adjacent private property and shall be in compliance with Section 6.06.00 of the Stuart Land Development Regulations.4. Existing bathroom window in the principal building (CBS Construction) shall be blocked off with the same material as the existing building and add a ventilation fan by a licensed contractor.

MOTION: Bonnie Landry recommended approval with the conditions: 1. The paint booth component of the business has adhere to the following hours including any hobby work: Monday through Friday – The paint booth shall be closed by 9PM. Saturday – The paint booth shall be closed by 6PM. Sunday – The paint booth shall remain closed all day. 2. Landscaping materials near fencing abutting street right-of-way shall consist of shrubs and trees which shall be in compliance with Section 6.06.00 of the City of Stuart Land Development Regulations 3. Landscaping materials on the south side of the paint booth shall be installed to screen the adjacent private property and shall be in compliance with Section 6.06.00 of the Stuart Land Development Regulations.4. Existing bathroom window in the principal building (CBS Construction) shall be blocked off with the same material as the existing building and add a ventilation fan by a licensed contractor.

SECOND: Dr. Griffith

Paul Nicoletti, I have a question for the motioner, is it your intent that the primary business be closed at 9PM or just the spray booth?

Bonnie Landry, Primary business

Michelle Hanner, The auto sales are open seven days a week.

Bonnie Landry, The business of painting, detailing and fixing automobiles.

Chairman Pasqualone, Would you entertain at 6:00 on Saturday and 9:00 the rest of the week.

Michelle Hanner, That is fine

Bonnie Landry, I would amend my motion to Monday –Friday to be closed by 9PM and Saturday's by 6PM.

Roll call: Bonnie Landry – Yes
 Dr. Griffith – No
 Chairman Pasqualone - Yes

Motion carried 2 to 1

Chairman Pasqualone, Would you like to discuss the City Commission meeting.

Paul Nicoletti, The City Commission was talking about Boards in general and I don't think singled this Board out specifically, maybe on one occasion. They seemed to be concerned about the re-hearings. The question is, is the \$400.00 enough to make sense, we don't want every BOA decision to go to a re-hearing. Why have a Board of Adjustment if they all go to re-hearings? So from that standpoint, what I think we are about to propose to the Commission is to have appeals taken to the Magistrate. The question is, whether it will be a do-over hearing or an appeal. My preference would be as an appeal. So we have to do a good job for the record. If we follow what we did tonight, it's clean, a court reporter could make a record out of it, take it to the Magistrate and they could hear oral argument which is not a do-over. There is no presentation of evidence. It is a much cleaner kind of legal argument.

IV: COMMENTS FROM THE PUBLIC:

V: NEXT BOA MEETING: June 28, 2007

VI: ADJOURN: 8:21PM

Chairman Pasqualone, there being no further business before the Board the meeting is adjourned.

APPROVED

RESPECTFULLY SUBMITTED

Jon Pasqualone, Chairman

Michelle Vicat, Board Secretary