

CITY OF AURORA
BOARD OF ZONING APPEALS
Meeting Minutes
May 14, 2008

The Aurora Board of Zoning Appeals met in a regularly scheduled meeting Wednesday, May 14, 2008 in the Council Chambers at city hall. The meeting was called to order at 7:30 p.m. by Chairman Don Arbuckle.

ROLL CALL: Present: Terese Fennell
Peter French
Don Arbuckle
Bernard McCarrell
Absent: Scott Friedler
Tony Gramm
Also Present: David Hirt, Legal Advisor
Rich Wehrenberg, Director of Planning, Zoning & Building Div.
Judy Conkling, Clerk Pro Tem

WORK SESSION:

Mr. Arbuckle explained the work session procedures to those in attendance.

OLD BUSINESS:

There is no old business.

NEW BUSINESS:

SHEL & ADEL PROPERTIES (FOR WINE RESERVE) 1029 NORTH AURORA

- [0803013] - *A variance from Section 1159.16(b)(4)(A) of the Aurora Codified Ordinances to allow a second sign on the front elevation*
- [0803014] - *A variance from Section 1159.16(b)(4)(B) of the Aurora Codified Ordinances to allow a second business frontage to face East Boulevard.*

Mr. Arbuckle reminded the others that this applicant has been before the board for other variances in the past.

WOODVIEW ESTATES HOMEOWNERS' ASSOC., COCHRAN & SOUTH SUSSEX

- [0804019] - *A variance from Section 1159.10(a) of the Aurora Codified Ordinances to allow a sign 7 feet from the right-of-way on Cochran Road instead of the minimum required 10 foot right-of-way setback.*
- [0804020] - *A variance from Section 1159.10(a) of the Aurora Codified Ordinances to allow a sign 9 feet **into** the right-of-way on South Sussex instead of the minimum required 10 foot right-of-way setback.*

Mr. Arbuckle reviewed the variances requested.

COLLEEN MURPHY (FOR CEDAR FAIR), 1100 SQUIRES ROAD

[0804021] - *A variance from Section 1159.13(f) of the Aurora Codified Ordinances to allow a sign 17 feet high instead of the maximum allowed 10 foot height*

[0804022] - *A variance from Section 1159.16(b)(3)(B)(1)(a) of the Aurora Codified Ordinances to allow a sign with 88 square feet of area instead of the maximum allowed 25 square feet of area*

Mr. Arbuckle went over the requested variances.

LAKES OF AURORA MASTER ASSOC., SR 82 & W PARKWAY

[0804018] - *A variance from Section 1159.16(a)(5)(C) of the Aurora Codified Ordinances to allow a sign at the entrance of the development to be 8 feet 6 inches high instead of the maximum height of 6 feet.*

Mr. Arbuckle explained the variance request. He noted that a petition from area residents objecting to the variance request was received just prior to the meeting.

MEETING:

Mr. Arbuckle explained the meeting procedure and asked Mr. Hirt to swear in staff and those in attendance that planned to speak.

AMENDMENTS TO THE AGENDA:

There were no amendments to the agenda.

APPROVAL OF MINUTES:

MOTION: To approve the minutes of the April 23, 2008 meeting as printed.

Mrs. Fennell moved for approval; Mr. French seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mrs. Fennell, Mr. French, Mr. McCarrell, Mr. Arbuckle
Nays: None

OLD BUSINESS:

There was no old business.

NEW BUSINESS:

SHEL & ADEL PROPERTIES (FOR WINE RESERVE) 1029 NORTH AURORA

[0803013] - *A variance from Section 1159.16(b)(4)(A) of the Aurora Codified Ordinances to allow a second sign on the front elevation*

[0803014] - *A variance from Section 1159.16(b)(4)(B) of the Aurora Codified Ordinances to allow a second business frontage to face East Boulevard.*

Jack Burge, of Holsman Sign Services, represented Wine Reserve. He introduced Jeff Hurt, owner of the Wine Reserve store. Mr. Burge explained that they went to the Architectural Board of Review with four signs. He told the members that his company has done all of the signs for that complex, and that they worked with the owner to develop a criteria for style, color and size. When they appeared before the Architectural Board of Review, they were still within the code for size. The owner is asking for a second sign to say "State Liquor Agency" on the front building elevation near the sign stating "Wine Reserve". The second sign is not being incorporated into the first sign because it would not fit.

Mr. Burge said that, initially, the owner considered three lighted signs on the building. They have since reviewed it and decided to go with only one lighted sign, with the others being unlighted. Since they could not fit the two signs together for the front elevation, they are asking for the second sign.

Per an inquiry by Mr. Arbuckle, Mr. Burge stated that the second sign would not be lit. Mr. Burge named several other signs at that complex that are lighted signs.

Regarding the second variance, Mr. Burge noted that the business fronts on two separate streets, which is unique for that shopping center. He said that they are requesting a sign on the East Boulevard side that would mimic the front lighted sign in size and style, but non-illuminated. He added that a precedent has been set since the city has other businesses on a corner that were allowed two signs. Further, he thought that a business on a corner with two elevations, that faces two thoroughfares, and in this case has windows on both sides, should be allowed to have a sign on both elevations.

Mr. Arbuckle explained that "precedent" is a meaningless term with this board since each request is judged on its own merit. He asked about the second sign's design, and Mr. Burge reiterated that it would be the same size, color and style as the first except that it would not be illuminated. A short conversation ensued.

Mr. McCarrell asked why a sign saying "State Liquor Agency" is necessary. Mr. Burge replied that if they only had a sign stating "Wine Reserve", people might logically assume that only wine or beer is being sold. He stated that the sign would alert the public that liquor can also be purchased there.

Resident Steve Spencer, of 837 East Boulevard, said that he has no objections to the signs. He feels that Mr. November has done an excellent job improving the site. He stated that he wanted to raise the issue of parking on the site. Mr. Spencer explained that the building renovation project was originally turned down by planning and zoning after this board denied a variance regarding the driveway. He then gave a detailed background on the review and the plan. He expressed frustration at the number of times he complained to the zoning department regarding the parking situation. Mr. Spencer said he was told that it is a police issue. The police department told him it is a zoning issue. He noted that delivery trucks and lazy patrons park at the back of the building wherever they choose, and someone is putting bags over the no parking signs.

Mr. Spencer said his only reason for attending this meeting is to speak on behalf of Dick Moody, who lives in the house behind the establishment. Mr. Moody has had a driveway easement since

he moved in over 40 years ago. At the request of the site's owners, several times Mr. Moody has agreed to move the easement to accommodate what was being done to the property. The problem is, many times he can't get off of his own property to use the easement, or cannot get around the buildings when necessary. Mr. Spencer also raised the point of the safety issue, since he wasn't sure if the rescue vehicles would be able to access Mr. Moody's place.

Mr. Arbuckle felt that the issue is a police/safety one, and he asked Mr. Wehrenberg to forward the board's concern about the situation to the appropriate parties. Mr. Wehrenberg said that his division does have the authority to enforce site plans. He offered to contact both the Police and Fire Chiefs to schedule a meeting to see if the parking is being enforced. He stated that appropriate action will be taken to make sure that the site plan is enforced.

Resident George Mazzaro, of 186 Eldridge, stated that he was present at a previous discussion on Mr. Moody's situation. He said he can appreciate the problem. He stated that the proposed signs for the business are nice looking signs. Mr. Mazzaro suggested that Mr. Spencer contact the Police or Fire Department to find out who is covering the no parking signs on the site.

Mr. Arbuckle had a minor issue with the "Wine Reserve" sign facing East Boulevard. He questioned how much traffic destined for the business actually travels on East Boulevard. Mr. Burge responded that there is definitely traffic coming off of East Boulevard and Orchard Avenue. He added that if the sign brings in just one customer that did not realize the business was there it is worth it.

[0803013]

MOTION: To grant to Shel and Adel Properties Ltd. for the property at 1029 North Aurora Road in a C-1 district a variance from Section 1159.16(b)(4)(B)(1)(c) of the Aurora Codified Ordinances which allows only one business identification wall sign per business to allow the construction of a second business identification wall sign, this being the State Liquor Agency sign, on the building's northeast elevation as indicated on the applicant's elevation and sign drawings.

Mr. McCarrell moved for approval; Mr. French seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mr. McCarrell, Mr. French, Mrs. Fennell, Mr. Arbuckle

Nays: None

[0803014]

MOTION: To grant to Shel and Adel Properties Ltd. for the property at 1029 North Aurora Road in a C-1 district a variance from Section 1159.16(b)(4)(B) of the Aurora Codified Ordinances which allows signage on only one business frontage, to allow the construction of a business identification wall sign on the frontage facing East Boulevard being the second "Wine Reserve" sign as indicated on the applicant's elevation and sign drawings.

Mr. McCarrell moved for approval; Mr. French seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mr. McCarrell, Mr. French, Mrs. Fennell, Mr. Arbuckle

Nays: None

WOODVIEW ESTATES HOMEOWNERS' ASSOC., COCHRAN & SOUTH SUSSEX

[0804019] - *A variance from Section 1159.10(a) of the Aurora Codified Ordinances to allow a sign 7 feet from the right-of-way on Cochran Road instead of the minimum required 10 foot right-of-way setback.*

[0804020] - *A variance from Section 1159.10(a) of the Aurora Codified Ordinances to allow a sign 9 feet **into** the right-of-way on South Sussex instead of the minimum required 10 foot right-of-way setback.*

Mr. Arbuckle briefly explained the variances requested. Mary Ann Serafino, of ES Sign & Design, introduced herself as the applicant's representative. She told the members that she was not very familiar with the requests and had hoped that someone from the homeowners' association would have been in attendance. She said that the sign was approved by the Architectural Board of Review. Ms. Serafino mentioned that the homeowners' in the development feel that the sign is necessary. She added that if the sign were to be placed within the code requirements it would not be visible. She commented that she did not think there is any other alternatives as to the placement of the sign. Per an inquiry by Mr. Arbuckle, Ms. Serafino acknowledged that she has not been to the site to see how the sign would fit.

Mr. Arbuckle noted that the members did visit the site. He stated that there is a ravine about six feet back that prohibits the placement of the sign further back on the site. Due to a question by Mrs. Fennell about the variance amount, Mr. Hirt explained that the variance is for 19 feet, which is for the required ten foot setback from the right-of-way, and the additional 9 feet that the sign is to be placed **into** the right-of-way.

Mr. Arbuckle asked Ms. Serafino about the need for the 19 foot variance, but since she had not been to the site she knew only that they worked hard trying to figure out the placement with regard to the culvert and zoning requirements. Mr. Arbuckle began a short discussion on other immediate areas for the sign placement.

Resident Steve Spencer, of 837 East Boulevard, asked if South Sussex's right-of-way is deeded, which would then be city property, or an easement, which is then private property. He noted that if it is a deeded right-of-way, then the sign would actually be on city property. He felt that allowing a sign on city property would be a bad precedent for the future, and might also create problems for the Service Department down the road.

Mr. Hirt explained that, in the past when an applicant wanted to place a sign in the right-of-way, the approval was conditioned upon the applicant receiving a license, or approval from the city. The motion will include that condition, so if this board does approve it, it would still need to receive approval from City Council.

Mrs. Fennell wondered why no one from the homeowners' association was in attendance. Ms. Serafino responded that she did call them earlier in the day to find out who would be attending,

but the person she called had plans for this evening and could not attend. Some conversation followed.

[0803019]

MOTION: To grant to Gerald and Diana Krajewski (property owners) for the property at 860 South Sussex Court in an R-3 district, a 3 foot variance from Section 1159.10(a) of the Aurora Codified Ordinances which requires signs to be at least 10 feet from any public right-of-way, to allow the construction of a ground sign 7 feet from the right-of-way associated with Cochran Road as shown on the applicant's site plan and sign drawing.

Mr. French moved for approval; Mr. Arbuckle seconded, and the motion was **DEFEATED**, 2-2, on a roll call vote.

Yeas: Mr. French, Mr. Arbuckle

Nays: Mrs. Fennell, Mr. McCarrell

Mr. Arbuckle explained to the applicant that the members who voted against the request need to state their reason(s) for voting to deny it. Mrs. Fennell stated that, based upon Section 1159.17(b), the applicant has not affirmatively demonstrated that the use to which the sign relates could not be properly identified without the variance. Mr. McCarrell agreed with the reason stated by Mrs. Fennell.

Per an inquiry by Ms. Serafino, Mr. Arbuckle reiterated the members' reason for denial and stressed that, when appearing before this board with a variance request, it is very important to be fully prepared.

Resident George Mazzaro suggested that the members table this item to give the applicant a chance to be better prepared for the next meeting.

Mr. Arbuckle commented that the first request has already been denied, but the board could table the second one if the applicant wishes. Ms. Serafino then asked the members to table the second request until the next meeting.

[0803020]

MOTION: To table the variance request.

Mr. McCarrell moved for approval; Mrs. Fennell seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mr. McCarrell, Mrs. Fennell, Mr. French, Mr. Arbuckle

Nays: None

There was a brief conversation on what the applicant should have prepared for the next meeting.

COLLEEN MURPHY (FOR CEDAR FAIR), 1100 SQUIRES ROAD

[0804021] - *A variance from Section 1159.13(f) of the Aurora Codified Ordinances to allow a sign 17 feet high instead of the maximum allowed 10 foot height*

[0804022] - *A variance from Section 1159.16(b)(3)(B)(1)(a) of the Aurora Codified Ordinances to allow a sign with 88 square feet of area instead of the maximum allowed 25 square feet of area*

Mr. Arbuckle explained the variances requested. Dan Glavin, of Glavin Industries, represented the applicant.

Mr. Glavin stated that the sign has been changed a few times over the last several years, usually for name changes. He said that since the sign was originally erected, the code has been changed, which makes this sign too large and too close to the right-of-way. As for the size of the sign, he noted that a variance for the size has been approved multiple times over the last few years.

Per a question by Mr. Arbuckle, Mr. Glavin confirmed that the same structure and posts are being used. He stressed that the sign is the same except for new lettering. Mr. Arbuckle wondered why the information for a season pass was necessary, and Mr. Glavin said that the sign with the season pass was approved last year. The proposed new sign does not include season pass information.

Neither the members or those in attendance had any further comments on this issue.

[0803021]

MOTION: To grant to Cedar Fair LP for the property at 1100 Squires Road in an I-1 district, a 7 foot variance from Section 1159.13(f) of the Aurora Codified Ordinances, which limits ground signs to 10 feet in height, to allow the construction of a 17 foot high ground sign as indicated on the applicant's site plan and sign drawings.

Mr. McCarrell moved for approval; Mrs. Fennell seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mr. McCarrell, Mrs. Fennell, Mr. French, Mr. Arbuckle

Nays: None

Mr. Arbuckle stated that the next variance is for the sign size, which is not allowed to be more than 25 square feet. The proposed sign is 88 square feet, which was allowed by this board at another meeting in the past.

[0803022]

MOTION: To grant to Cedar Fair LP for the property at 1100 Squires Road in an I-1 district, a 64 foot variance from Section 1159.16(c)(3)(B)(1) of the Aurora Codified Ordinances which limits ground signs to 25 square feet in area to allow the construction of an 88 square foot ground sign as indicated on the applicant's site plan and sign drawings.

Mrs. Fennell moved for approval; Mr. French seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mrs. Fennell, Mr. French, Mr. McCarrell, Mr. Arbuckle
Nays: None

LAKES OF AURORA MASTER ASSOC., SR 82 & W PARKWAY

[0804018] - *A variance from Section 1159.16(a)(5)(C) of the Aurora Codified Ordinances to allow a sign at the entrance of the development to be 8 feet 6 inches high instead of the maximum height of 6 feet.*

Mr. Arbuckle reviewed the variance request. Edward Donnelly, Property Manager for the Lakes of Aurora, represented the applicant.

Mr. Donnelly said that the sign is no higher than the existing sign, which was approved when the Lakes of Aurora was constructed. He said that the problem is that it sits on a two foot high stone wall. He added that the completed sign is actually lower than the existing sign, and that there is a six inch gap between the top of the wall and the actual sign. Mr. Donnelly mentioned that he was aware of a petition circulated by some residents stating that they did not want the sign to be raised higher. He stressed that the proposed sign is no higher than the existing one, that in fact, it was slightly lower than the existing sign.

Mr. Donnelly explained that the sign is in keeping with the signs that the city approved and were erected at Bissell Road. He stated that they are asking for the variance because the code changed since the original sign was installed. He felt that the existing sign was 15 to 20 years-old and needed to be replaced with a newer, nicer sign. Mr. Donnelly presented a picture of the sign to the board and explained the materials to be used and how it would be constructed. A conversation on the measurements and height followed.

Mr. Arbuckle noted that a petition was received by 16 residents objecting to the sign's proposed height. Mr. Hirt pointed out that it was received after the deadline, so the board must vote to accept the petition.

MOTION: To accept the petition submitted by the residents.

Mr. McCarrell moved for approval; Mrs. Fennell seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mr. McCarrell, Mrs. Fennell, Mr. French, Mr. Arbuckle
Nays: None

Mr. Arbuckle wondered why so many residents are against the proposed sign. Mr. Donnelly responded that their petition states they do not want the sign higher than the existing one. He noted that the reality is that the sign is not being raised any higher.

Mr. Arbuckle said that the page with the signatures states that the residents do not want a sign 8 feet 6 inches high. Mr. Donnelly told the members that he never received any communication from the residents expressing concern about the sign. He then pointed out that the sign for the Reserves, which is directly across the street from this proposed sign, is considerably higher. Mr. Donnelly stressed that he would be installing a sign that is an improvement of the old one and that fits with what had been granted previously.

Mr. Arbuckle noted that the residents that signed the petition are all across the street in the Reserves of Aurora development. Mr. Donnelly stated that the side of the Reserves' wall is 6 inches from the curb, where the Lakes' sign is over six feet from the curb. The Lakes' sign is to be 25 feet back from the road, where the Reserves' sign is much closer. He reiterated that the Reserves' sign is much higher than the Lakes' proposed sign.

Mrs. Fennell began a brief discussion on the construction and measurements of the proposed sign.

Mr. Arbuckle wondered why none of the residents that signed the petition showed up at this meeting to explain their objections.

Mr. Mazzaro stated that the petition should have stated that the residents did not want a sign higher than the one that exists. He mentioned that when the sign code was revised, signs like this were not grandfathered. He said that he would ignore the petition since no one gave any reasons why they were against the proposed sign in writing or in person. Mr. Mazzaro commented that, when code revisions are approved, the city should consider grandfathering the existing situations.

Mr. Spencer stated that the sign actually follows the code but, because of the city's insistence of having flowers, etc. around signs which are then included in the height, is then found to be too high. He stressed that the planter box is not a visible part of the actual sign. Including the box in the overall measurement forces the applicant to shrink the message in order to meet the requirements of having the box. Mr. Spencer noted that this applicant is replacing and improving an existing sign, which is actually going to be lower than the existing one. He wondered why there is a question about whether the applicant should be allowed to proceed. A brief conversation on the code requirements followed.

[0803018]

MOTION: To grant to the Lakes of Aurora Master Association for the property at State Route 82 and Parkway Boulevard in a Planned Development district a 2.5 foot variance from Section 1159.16(a)(5)(D) of the Aurora Codified Ordinances which limits residential subdivision identification ground signs to a maximum of 6 feet

above grade to allow the construction of a ground sign 8.5 feet above grade as indicated on the applicant's sign drawing.

Mr. McCarrell moved for approval; Mrs. Fennell seconded, and the motion carried, 4-0, on a roll call vote.

Yeas: Mr. McCarrell, Mrs. Fennell, Mr. French, Mr. Arbuckle

Nays: None

MISCELLANEOUS:

Mr. Arbuckle explained that he attended a seminar with Mr. Hirt and Mr. Wehrenberg. Mr. Wehrenberg distributed a copy of notes to the members for their information. Regarding site visitation by the members, Mr. Hirt suggested that if a member discovers something on a visit that would help them make a decision, that member should try to raise that issue during the meeting to make sure everyone is aware of it. Mr. Hirt then mentioned that if three or more members happen to be together, they should not discuss any applications, since three members would constitute a quorum for a meeting. If it is during a site visitation, Mr. Hirt recommended that one leave the site and return at a later time so as not to give the appearance of a meeting happening on the site. He then recommended that the members not discuss the applications with even only one other member outside of the meeting.

Mr. Hirt said that if a member has a conflict of interest, they should not vote or discuss that item at the meeting. Suggested at the seminar was having that member leave the room during the discussion of that item. He stated that the member should inform the others of the conflict during the work session portion of the meeting. If the board decides to adopt the practice of having that member leave the room, they would step out of the meeting what that item comes up on the agenda during the meeting.

Mr. Arbuckle asked the members to review the seminar notes that were distributed.

ADJOURNMENT:

Mrs. Fennell moved to adjourn at 9:00 p.m.; Mr. French seconded, and the motion carried, 4-0, on a voice vote.

Don Arbuckle - Chairman

Susan Dombeck - Clerk
MINUTES DONE FROM AUDIO TAPE