

**CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT MEETING SUMMARY
Thursday, November 6, 2008**

The Board of Adjustment meeting was called to order at 7:01 p.m. on Thursday, November 6, 2008 by Ms. Laura Lueking, Acting Chair of the Board of Adjustment.

I. Introduction of Board and City Staff

The following individuals were in attendance:

Ms. Laura Lueking, Acting Chair
Mr. Bruce DeGroot
Ms. Katherine Hipp
Mr. Leon Kravetz
Mr. Richard Morris
Mr. Gerald Schwalbe, Alternate

Councilmember Bob Nation, Ward IV
Mr. Harry O'Rourke, representing City Attorney, City of Chesterfield
Ms. Annissa McCaskill-Clay, Lead Senior Planner, City of Chesterfield
Ms. Mary Ann Madden, Recording Secretary, City of Chesterfield
Court Reporter, Midwest Litigation Services

II. Approval of October 2, 2008 Meeting Summary

Richard Morris made a motion to approve the Meeting Summary. The motion was seconded by Bruce DeGroot and **passed by a voice vote of 5 to 0.**

III. Request for Affidavit of Publication

The Chair noted that the Affidavits of Publication and exhibits for all Petitions had been placed on the dais.

IV. Public Hearing Items:

The Chair read the Opening Comments for the Public Hearings.

- A. **B.A. 10-2008 16860 Chesterfield Airport Road (Ethan Allen Retail, Inc):** A request for a variance from City of Chesterfield Zoning Ordinance Section 1003.168C.3(2)(a) to permit a free-standing building in a "PC" Planned Commercial District-zoned development to have two (2) attached business signs on one (1) exterior wall. (17T240265)

Staff Presentation:

Ms. Annissa McCaskill-Clay, Lead Senior Planner for the City of Chesterfield, stated that the subject parcel is located within Chesterfield Commons East at 16860 Chesterfield Airport Road. On August 7, 2000, the City of Chesterfield zoned the property "PC" Planned Commercial District. Per Ordinance 2128, signage for the site is per the City of Chesterfield Zoning Ordinance. On September 3, 2008, an application for a second sign on the front elevation was rejected by the City of Chesterfield per Section 1003.168E.2(3)(a) of the Zoning Ordinance which states:

"For a business being the sole occupant of a building located on a corner lot or a lot with double frontage, said business may have **one (1)** attached business sign on any three (3) walls of a building that are exterior walls."

Ms. McCaskill-Clay then presented exhibits supporting the request for a variance to permit a free-standing building to have two attached business signs on one exterior wall.

Petitioner's Presentation:

Mr. Paul Kennedy, representing the Petitioner, 2406 Callaway Court, Wentzville, MO stated that Ethan Allen feels the proposed signage is important to their image. They view the signage less as an advertising issue but more of an image. The proposed sign consists of 8" non-illuminated brushed aluminum letters above the door and is more for image than advertising. The sign would be visible as people enter the store.

Mr. Kravetz asked if the signage is consistent with other Ethan Allen stores around the country. Mr. Kennedy replied in the affirmative and stated that Ethan Allen feels the signage is a very important piece of their image.

Mr. Kennedy stated that Ethan Allen feels the hardship in this case is that the signage is a significant piece of their image and is consistent with what has been done at all their other stores.

Speakers:

No Speakers were present to speak in favor of, or in opposition to, the variance request.

Discussion

Mr. DeGroot expressed his concern that the Petitioner has not demonstrated an “unusual hardship or difficulty which is unique to the petitioner in his use”, as stipulated in Section 2-216 (5) of the City of Chesterfield Municipal Code.

Acting Chair Lueking asked if the illuminated “Ethan Allen” signage currently on the building is utilizing the maximum area for the sign. Ms. McCaskill-Clay replied that the sign is not utilizing the maximum area. Staff did take this into consideration when reviewing the requested second sign, but was not able to count both signs as one because there is too much distance between the two signs.

In light of the fact that Ethan Allen has not utilized the maximum amount of signage on its existing sign, and considering that the second sign is considered part of its corporate image, Mr. Kravetz stated that he had no problem with granting the second smaller sign.

CONCLUSION

Leon Kravetz made a motion to approve the variance to permit a free-standing building in a “PC” Planned Commercial District-zoned development to have two (2) attached business signs on one (1) exterior wall as requested under B.A. 10-2008 16860 Chesterfield Airport Road (Ethan Allen Retail, Inc). The motion was seconded by Richard Morris. Upon roll call, the vote was as follows:

Richard Morris	No
Katherine Hipp	Yes
Bruce DeGroot	No
Leon Kravetz	Yes
Laura Lueking	Yes

The motion failed 3 to 2.

- B. B.A. 11-2008 16851 North Outer 40 Road (Hardees Iceplex):** A request for a variance from City of Chesterfield Zoning Ordinance Section 1003.168E.2(3). to permit an existing “PC” Planned Commercial District-zoned recreational facility to maintain an electronic message center.

Staff Presentation:

Ms. Annissa McCaskill-Clay, Lead Senior Planner for the City of Chesterfield, stated the subject site is the Hardee’s Iceplex, which is owned by Summit Development Group. The site was zoned to “PC” Planned Commercial on October 19, 1999 by the City of Chesterfield via Ordinance 1564. The signage criteria for this PC District are per the City of Chesterfield Zoning Ordinance. On

August 26, 2008, an application for an electronic message center was rejected by the City of Chesterfield due to Section 1003.168E.2(3) of the Zoning Ordinance, which classifies electronic message centers as a type of prohibited sign.

Ms. McCaskill-Clay then presented exhibits supporting the request for a variance to permit an existing "PC" Planned Commercial District-zoned recreational facility to maintain an electronic message center.

Petitioner's Presentation – The following three individuals were introduced to speak on behalf of the Petitioner:

- Mr. John Ross, President of Summit Development Group and Managing Partner of Hardee's Iceplex, 100 South Brentwood, St. Louis, MO;
- Ms. Christine Preusser, Warren Sign, 2955 Arnold Tenbrook, Arnold, MO; and
- Mr. Lloyd Ney, General Manager of Hardee's Iceplex, 16851 North Outer 40 Road, Chesterfield, MO

Ms. Preusser gave a PowerPoint presentation outlining information about the proposed sign, along with information about electronic message centers in general.

Proposed Sign

The proposed sign is a 20-foot tall, internally-illuminated sign. The top portion "Hardee's Iceplex" is a flex face with fluorescent lamps and ballasts. The "Acceleration" panel is an acrylic panel decorated with vinyl and is internally-illuminated. The sign is supported by a steel center-mount pipe covered with a pole cover with corporate decorations for Hardee's. The electronic message center portion is a 46MM sign and would have up to three lines of 12" copy.

The sign is designed to give people information about events taking place at the Iceplex, along with the current time and temperature.

Electronic Message Centers

Information was presented showing that electronic message centers are not considered "flashing" signs, do not create a driving hazard, and do not create a "Las Vegas appearance". It was noted that safety hazards are caused by signs that require a worker to utilize a ladder to change messages on a regular basis.

Photographs of some of the existing sign technology was presented, which the Petitioners feel is "old, unattractive, dangerous to workers, burdensome, and subject to wind damage and vandalism". Photographs were also presented of electronic message centers in Chesterfield, which work the same way as the sign the Petitioners are proposing. The technology for electronic message centers is "newer, attractive, safe, and easily updated".

Mr. Ross gave a PowerPoint presentation outlining the Petitioners' specific request and application. The following two variances are being requested:

1. A sign base in excess of 3 feet – the Petitioners are requesting 9 feet.
2. The electronic message center

Mr. Ross stated that the proposed sign would:

- Provide improved information on how to get to the Iceplex. It was noted that many visitors to the Iceplex are not from the local area and are unfamiliar with the Iceplex's location.
- Advertise the continuously changing events at the Iceplex – most of which are community-focused.
- Be used as an "Amber Alert".

Mr. Ross stated that when the Iceplex was built in 1996, there was a different highway system in the area where a grassy median separated the eastbound and westbound lanes. In 2000-2001, a median was constructed that "effectively blocks" the site's visibility for motorists traveling eastbound. Visitors to the Iceplex can cause a safety hazard if they are lost and confused about how to get to the site.

Mr. Ross noted that the Iceplex provides a big resource to the community with many community events. The site is also an access to the Monarch Levee Trail, which is used on a regular basis.

Mr. Lloyd Ney gave information about the Iceplex facility and some of the events that it hosts. The facility is about 120,000 square feet and is made up of three ice sheets. In the past five years, they have had as many as 650,000 visitors per year – which makes them the 15th most-visited attraction in the St. Louis area.

The Iceplex is used as a practice facility for high school teams culminating with the Iceplex hosting the State semi-finals every year; is home to the largest youth hockey association in St. Louis with over 500 members; is home to the St. Louis amateur Blues; and has a successful connection with former and current professional hockey players.

National events that have taken place at the Iceplex over the past three years include the Special Hockey International Tournament for disabled athletes; USA hockey events; 2007 NCAA championships; and national championships for the St. Louis Bandits of the North American Hockey League, which resulted in over 1,100 room nights used at local hotels. This year the Iceplex will host the 2009 USA Hockey Youth National Championships.

Mr. Ross pointed out that the proposed sign will not impact any of the neighboring properties. He then distributed to the Board members a letter dated October 24, 2008 from G. Kimberly Diamond, Attorney-at-Law, Husch, Blackwell

& Sanders, who manage the Monarch Levee District. Mr. O'Rourke received and marked the letter as "Exhibit 6".

Mr. Ross continued with a PowerPoint presentation showing a site line section that demonstrates the sign base needs to be 9' tall to achieve visibility of the proposed sign for travelers on I-64 in order to see the sign over the highway median barrier. The sign is slightly less than 100 sq. ft. and the message board is 45 sq. ft. with lettering up to 46MM tall, which makes it legible from 650 feet as motorists travel along the highway.

Regarding the "Approval Criteria" outlined in Staff's Report, Mr. Ross noted the following:

- They have not brought a burden onto themselves. The building was built five years before the highway and median were constructed.
- They believe there is a practical difficulty by the site not having visibility to the highway, which they feel is an important asset to the community.
- They feel they are observing the spirit of the ordinance and observing public safety. They feel the proposed sign deals with the welfare of the community with the "Amber Alert"; and feel that the sign addresses public safety concerns by keeping motorists from getting lost.

DISCUSSION

Mr. Morris asked if any other alternatives have been explored to make the building more visible from the highway, such as removing some of the trees in front of the site. Mr. Ross replied that they were required by City Ordinance to plant and maintain a specific number of trees on the site. Ms. McCaskill-Clay clarified that the trees located in the frontage are part of the required Landscape Plan. If any trees were removed, there would have to be some sort of mitigation of the trees and the Petitioner would have to show due cause for removing the trees - other than visibility issues.

Mr. Kravetz noted that the proposed sign is a dual-purpose sign – (1) to identify the Iceplex and (2) to advertise. He feels the sign could be constructed without the electronic message board. He asked if the Petitioner has explored with MoDOT the possibility of MoDOT erecting informational signage prior to the Iceplex's exit. Mr. Ross replied that MoDOT has agreed to a 1'x1' piece on a larger sign for the Iceplex, which they feel does not stand out like the proposed sign. He added that they do not view the message center as "advertising" but as a "means of communication".

Mr. Ross then pointed out that they would be allowed to erect a message sign that is not electronic but where the letters are manually placed on the sign. Ms. McCaskill-Clay confirmed that a non-electronic, changeable copy sign would be allowed. She added that the proposed sign would have to go the Planning Commission for approval of the height and dimension of the copy area, but the Planning Commission cannot approve the electronic message center.

Mr. O'Rourke reminded the Board that the petition is for an electronic sign, which is otherwise a prohibited sign. The issues raised with respect to tree removal, architectural elevations, the design of the sign, and the height of the sign are separate issues. It was clarified that the Planning Commission will review the height of the sign if the electronic message center is approved by the Board of Adjustment.

Acting Chair Lueking made the following points:

- She agrees that the Iceplex needs an entrance sign.
- She does not like the sign that is being proposed. She feels the Hardee's logo is too large.
- She does not want to see any trees removed from the site.
- She feels that electronic message centers can be "abused" and can turn into "flashing" or "strobing" signs.
- Other electronic message centers in the City have had restrictions placed upon them. Mr. Ross stated that they are open to restrictions on the sign with respect to how often the message is changed.
- She feels that three lines of copy is a lot for the proposed sign.
- She feels the sign looks like a pylon sign.

Ms. McCaskill-Clay pointed out that the discussion should focus on whether an electronic message center is appropriate for the location. The actual aesthetics of the sign (*the height, the prominence of the logo, the design of the sign, etc.*) will be reviewed by the Planning Commission if the sign is taken forward.

Mr. Ross stated that he is willing to re-design the sign to take into consideration the comments made this evening.

Mr. O'Rourke pointed out that the Board cannot consider any change to the sign at this point – they can only consider the sign now before them. It was noted that if this sign is rejected, the Petitioner can appeal to the St. Louis County Circuit Court – or the Petitioner could submit a re-designed sign with a message center that would automatically be rejected by Staff. This rejected, re-designed sign could then be presented to the Board of Adjustment. The Petitioner also has the option of withdrawing the petition.

Speakers:

No Speakers were present to speak in favor of, or in opposition to, the variance request.

CONCLUSION

Mr. Kravetz made a motion hold B.A. 11-2008 16851 North Outer 40 Road (Hardees Iceplex) to allow the Petitioner to come back with a re-designed sign.

Ms. McCaskill-Clay stated that the only thing within the Board's purview is whether the electronic message center is appropriate for this location and questioned what the Board would be looking for in a re-designed sign.

Ms. Lueking stated that the size of the message center is a concern to her.

The above motion **died** due to the lack of a second.

After further discussion, the Petitioner requested to withdraw the application.

Mr. Kravetz made a motion to allow the Petitioner to withdraw B.A. 11-2008 16851 North Outer 40 Road (Hardees Iceplex). The motion was seconded by Ms. Hipp. Upon roll call, the vote was as follows:

Leon Kravetz	Yes
Katherine Hipp	Yes
Richard Morris	No
Bruce DeGroot	Yes
Laura Lueking	Yes

The motion to allow withdrawal passed 4 to 1.

C. Election of Officers

Acting Chair Lueking asked for nominations for the Chair of the Board of Adjustment. Mr. DeGroot nominated Laura Lueking.

Mr. Schwalbe made a motion that the nominations be closed. The motion was seconded by Mr. Kravetz – the motion passed by voice vote.

The vote on the nomination of Ms. Laura Lueking as Chair of the Board of Adjustment passed by voice vote.

Ms. Lueking accepted the position as Chair of the Board of Adjustment.

Chair Lueking asked for nominations for Vice-Chair of the Board of Adjustment. Chair Lueking nominated Leon Kravetz; the nomination was seconded by Mr. DeGroot.

The vote on the nomination of Mr. Leon Kravetz as Vice-Chair of the Board of Adjustment passed by voice vote.

Mr. Kravetz accepted the position as Vice-Chair of the Board of Adjustment.

Discussion was then held on whether to start the Board of Adjustment meetings at 6:30 p.m. rather than 7:00 p.m. It was agreed to keep the starting time at 7:00 p.m.

V. Adjournment

The meeting adjourned at 8:28 p.m.