

These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on May 19, 2014.

MINUTES OF THE WYOMING BOARD OF ZONING APPEALS

HELD AT WYOMING CITY HALL

April 21, 2014

The meeting was called to order at 1:30 P.M. by Chairman VanderSluis.

Members present: Beduhn Burrill Lomonaco Palmer
 Postema VanderSluis

Member absent: Dykhouse

A motion was made by Palmer, and seconded by Lomonaco to excuse Dykhouse.

Motion carried: 6 Yeas 0 Nays

Other official present: Tim Cochran, City Planner

A motion was made by Burrill, and seconded by Lomonaco to approve the minutes of the April 7, 2014 Board of Zoning Appeals meeting.

Motion carried: 6 Yeas 0 Nays

TABLED APPLICATIONS:

Appeal #V140007 P.P. #41-17-10-155-004

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Robert Jewell

2231 Porter St. S.W.

Zoned B-1

The petitioner has a non-conforming single family residence in this B-1 Local Business zoning district. The petitioner currently has one non-related boarder at the residence, which is allowable under Zoning Code Section 90-7 (1) under the definition of Family. The petitioner desired to rent an additional room to a second boarder, which would cause the residence under Zoning Code Section 90-3 to become a Boardinghouse. This use is not allowable under the B-1 Local Business use provisions of Zoning Code Section 90-336. The petitioner's request for a use variance to allow a second non-related boarder on the premises had been tabled at the April 7, 2014 meeting.

A motion was made by Burrill and seconded by Lomonaco to remove the application from the table.

Motion carried: 6 Yeas 0 Nays

Cochran said staff found no compelling reason to grant a variance to allow a second boarder. The property has legal non-conforming use as residential, and the owner is entitled to continue the use. If inclined, the owner could redevelop the property to a commercial use. Comments made at the public hearing implied the neighbors found the proposed use to be potentially detrimental. Staff had formulated Finding of Facts on which they based their recommendation of denial.

1. The petitioner has a nonconforming single family residence in a B-1 Local Business District. One bedroom is currently used for a boarder, which is allowable under the Zoning Code definition of Family. He desires to rent an additional bedroom which would establish the residence as a Boardinghouse under the definition within the Zoning Code. Staff believes the additional boarder within the residence will create no material changes to the residence and would not lead to any greater nonconformity of the commercially zoned property. If approved, a restriction should be placed on the property to prohibit parking on unpaved (lawn) areas. This would prevent any negative secondary effects from the additional boarder.
2. The property is zoned B-1 Local Business. To put the property to a permitted use would require either significant building reconstruction or demolition. The property may continue to be used as a single family residence.

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3. The additional boarder within the residence will result in no visible property or activity changes to the property. The essential character of this mixed use area will not be altered.
4. This area of Wyoming incorporates a wide range of various residential, commercial, religious, industrial, and service uses. This situation is not so recurrent as to make practicable the formulation of a general regulation.
5. The Zoning Code permits boardinghouses in R-4 Multiple Family zoned districts. This property is zoned B-1 Local Business which does not permit the use.
6. The desire to rent a bedroom to an additional border appears to be driven to derive additional income from the property. This is a hardship that was created by the applicant.

A motion was made by Burrill and seconded by Beduhn that the request for a variance in application no. V140007 be denied.

Motion carried: 6 Yeas 0 Nays

PUBLIC HEARING:

Appeal #V140009 P.P. #41-17-25-300-043

Universal Sign

651 – 50th St. S.W.

Zoned I-2

The petitioner desired to erect a wall sign of approximately 322 square feet on this industrial building under construction. Zoning Code Section 90-799 Primary Sign Requirements Nonresidential Districts limits such wall signs to a maximum of 100 square feet in this I-2 General Industrial District. The petitioner’s request for a variance of 222 feet of additional wall sign area had been tabled at the April 7, 2014 meeting.

A motion was made by Burrill and seconded by Beduhn to remove the application from the table.

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Motion carried: 6 Yeas 0 Nays

Cochran explained the project to construct a large freezer facility was currently underway. The building towers over U.S. 131. He referenced a site plan of the project. The proposed 322 square foot wall sign would face U.S. 131 for building identification and delivery guidance. The property would be allowed a 300 square foot, 60' billboard highway sign. If the wall sign variance is approved, staff would ask the Board stipulate the right for a highway sign be removed. Given the size of the wall, the wall sign would be more pleasingly aesthetic than a highway sign. Staff recommended the variance request be approved with the proposed stipulation with the following Finding of Facts.

A motion was made by Postema and seconded by Palmer that the request for a variance in application no. V140009 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because Gordon Food Service desires to place a wall sign of approximately 322 square feet on the large building wall oriented to U.S. 131. The property is entitled to both a wall sign of 100 square feet and an expressway business pole sign of 300 square feet that may be up to 60 feet in height. The proposed sign would be placed on the 50 foot high wall of the freezer facility. If the variance is authorized, a condition of approval is to prohibit an expressway business sign. The proposed wall sign effectively becomes an expressway business sign that is placed in a more aesthetic manner.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the proposed larger wall sign provides the necessary expressway business identification while balancing the signage allotments of the Zoning Code.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed signage will have no impacts on adjoining properties. It will be readily recognizable from the expressway and would not increase congestion.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the 50 foot high wall placed adjacent to US 131 provides a unique opportunity to combine a wall sign and expressway business sign into a more aesthetic design. This situation is unique, and would not make reasonably practicable the formulation of a general regulation.

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Burrill agreed with staff. Because of the height and size of the facility, the sign will fit the character of the building.

VanderSluis asked if the wall sign was granted with the stipulation removing the right for a highway sign, should the wall sign ever be removed, would the property regain the right for a highway sign?

Cochran said he would ask legal counsel confirm, however he thought if the signage was brought back into compliance, they would regain the right.

Motion carried: 6 Yeas 0 Nays (Resolution #5559)

PUBLIC HEARING:

Appeal #V140010 P.P. #41-17-33-427-022

First Companies

5811 Byron Center Ave. S.W.

Zoned PUD-1

The petitioner desired to construct a daycare center in the rear yard area of this property. The daycare site would be divided from the property and will not have frontage onto Byron Center Avenue and will not have direct driveway access to the street. Zoning Code Section 90-895 requires that daycare centers must front upon a major thoroughfare with direct access directly thereto. The petitioner's request for a variance to waive these requirements had been tabled at the April 7, 2014 meeting.

A motion was made by Beduhn and seconded by Lomonaco to remove the application from the table.

Motion carried: 6 Yeas 0 Nays

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Cochran explained that this development is part of an ongoing project that City staff and the Planning Commission have worked on as part of a planned urban development, which includes apartments, condominiums, single family residential houses and Bayberry Market Place to the north. This property was always planned to be commercial. He thought this was the last property available for development. The property has high value with the development of Metro Hospital across the street. The hospital development had increased the commercial development in the area. This property is proposed to be split with Goddard Daycare to take up the back half of the property. Staff felt the daycare was a good transitional use between the residential use and the higher impact commercial use. The Zoning Code requires that daycare used properties front on major thoroughfares. Currently the property has frontage on Byron Center, however when the property is split, it will no longer have that frontage. There is good access to the property from Bayberry Farms Drive and the Bayberry Market Place to the north. Staff would not want another access to Byron Center because of the already high traffic on the street. Staff supported the variance request and based on the following Finding of Facts recommended approval.

A motion was made by Burrill and seconded by Lomonaco that the request for a variance in application no. V140010 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because the 2.8 acre property currently has frontage onto Byron Center Avenue, which is a major thoroughfare. The petitioner desires to divide the property into a rear site for Goddard Day Care and a front area for commercial development. Day care centers are restricted by the Zoning Code to frontage on a major thoroughfare with direct access thereto. The proposed Goddard Day Care site would have access in close proximity to Byron Center Avenue through the adjoining Bayberry Market Place retail center and also along Bayberry Farms Drive.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the proposed Goddard Day Care Center was approved by the Planning Commission in February 2014 subject to obtaining this variance. The Planning Commission determined the day care center to be a good transitional use from the commercial area along Byron Center Avenue to the residential areas of Bayberry Farms, which the use would serve. The ability to develop high value properties in a manner which is conducive and sensitive to surrounding land uses is a substantial property right.

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3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed day care center will be complementary to the adjoining commercial and residential developments. The site will have access indirectly to Byron center Avenue and direct access to Bayberry Farms Drive which will not unduly increase congestion on the public streets.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the proposed Goddard Day Care site is a unique transitional property from the intensity of land use along Byron Center Avenue to the adjoining residential areas. This situation is not so recurrent as to make reasonably practicable the formulation of a general regulation.

Beduhn asked if there would be any buffer on the north side between the property and the Market Place.

Tim said a high quality six feet high fence would be erected.

Burrill wanted to emphasize that the property had been always planned for commercial use with access to Bayberry Farms Dr. as well as the connection to Bayberry Market Place. What specifically required the variance was the daycare use. Also, he wanted it noted that while some neighbors had commented on storm water issues in the area that was not an issue the Zoning Board of Appeals could address. However the City Council's April 21, 2014

Meeting agenda included discussion about resolution of the issues.

Lomonaco wondered if the City was concerned about the connector drive from Bayberry Market Place.

Cochran answered that an access drive had always been planned with the P.U.D.

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Postema had some question regarding the site plans, which Cochran answered. Postema then suggested the time of the variance might seem weird since the property did not currently need the variance because of the current frontage on Byron Center.

Regardless of when the variance was requested, Cochran stated the variance would be required for the property split. Staff felt it would clear any possible issues in the future by having the variance in place.

Motion carried: 6 Yeas 0 Nays (Resolution #5560)

There were no public comments at the meeting.

The new business item for the May 19, 2014 agenda was introduced by Cochran.

Cochran reminded the Board members of the Training Opportunity scheduled for May 12, 2014. He requested the Board members R.S.V.P.

Canda Lomonaco

Secretary _____

CL:cb

