

The following are minutes of the Bettendorf Board of Adjustment and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next board meeting.

**MINUTES
BETTENDORF BOARD OF ADJUSTMENT
JUNE 12, 2014
5:00 P.M.**

Voelliger called the meeting to order at 5:00 p.m.

Item 1. Roll Call

PRESENT: Falk, Gallagher, Johnson, Voelliger
ABSENT: Spranger
STAFF: Fuhrman, Soenksen

Item 2. Review of Board Procedures.

Item 3. The Board to review and approve the minutes of the meeting of May 8, 2014.

On motion by Gallagher, seconded by Falk, that the minutes of the meeting of May 8, 2014 be approved as submitted.

ALL AYES

Motion carried.

Item 4. The Board to hold a public hearing on the following items:

- a. Case 14-044; 3460 Oakory Lane (R-1) - A request for a variance to allow a 6-foot high fence in a required front yard, submitted by Mary Nelson.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #3 to these minutes.

Voelliger asked what type of fence is proposed. Soenksen explained that it would be a wooden privacy fence.

Voelliger asked if there was anyone present wishing to speak in favor of the request.

Mary Nelson, the applicant, stated that personnel from Magellan Pipeline had visited her property and had approved the proposed location of the fence as it would be located at least 3 feet from their pipeline. She stated that the previous owners of the home had attempted to block road noise by using plantings, but that because of the heat and fumes from the vehicles traveling on Devils Glen Road and the slope of the property, vegetation is very difficult to keep alive. She stated that she had agreed to leave the north 5 feet of the proposed fence open to allow access to the drainage easement at the request of the city's Engineering Department.

Voelliger asked if any of the proposed fence would be located on city right-of-way. Soenksen stated that it would not.

Voelliger asked if other 6-foot high fences exist in the city that are located directly adjacent to a sidewalk. Soenksen confirmed this, adding that the Board has approved similar requests for fences to be located along multi-lane streets. Voelliger asked if the proposed fence would be set back at all from the sidewalk. Soenksen confirmed this, adding that typically the property line is located 1 foot back of the sidewalk.

Falk asked if the 5-foot opening to access the drainage easement would be a condition of approval. Soenksen explained that the Board can place any conditions on the application, adding that no fence would be allowed to be built in a drainage easement.

Voelliger commented that the other fence in the neighborhood is set back much further from the property line than the proposed fence. Soenksen confirmed this, adding that the pipeline company must approve the location of the fence. Voelliger asked who would determine the allowable height of the fence. Soenksen explained that the Board has the authority to restrict the height of the fence.

Johnson commented that it appears as though the shrubs on the property line overhang the sidewalk in several places. She suggested that staff ensures that the applicant is aware that the property line is set back from the sidewalk and that the fence cannot be placed directly adjacent to it. Soenksen stated that typically city staff is not on site when a fence is installed but that when the petroleum pipeline is involved, staff would be present. Nelson commented that typically she trims the shrubs in question but that pending the Board's decision, she had waited.

Johnson commented that her recollection is that the Board has been consistent in approving similar variance requests. Soenksen confirmed this, adding that when an applicant lives on a through lot or a corner lot, the Board has typically allowed this type of request. A brief discussion was held regarding where fences are allowed to be placed according to the ordinance.

There being no one else present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

On motion by Johnson, seconded by Gallagher, that a variance to allow a 6-foot high fence in a required front yard be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #4 to these minutes.

- b. Case 14-045; 999 Middle Road (C-2) - A request for a variance to reduce the required sign setback from 20 feet to 10 feet, to increase the height of an on-premises identification sign from 20 feet to 52 feet, to increase the allowable size of an on-premises identification sign from 125 square feet to 344 square feet, and to increase the allowable size of the electronic programmable portion of an on-premises identification sign from 50 square feet to 150 square feet, submitted by Acme Sign Co., Inc.

Voelliger asked if there was an affidavit of publication. Soenksen stated that notice of public hearing had been received. Notice and affidavit of publication are Annex #2 to these minutes.

Soenksen reviewed the staff report. Staff report is Annex #5 to these minutes.

Voelliger asked if there was anyone present wishing to speak in favor of or in opposition to the request.

Mark Molo, the applicant, stated that he and his family have operated in the Quad Cities since the mid 1970s and have always tried to be a good community citizen. He explained that he purchased the property in question fairly recently and has been waiting until the redevelopment of the adjacent property was finalized before proceeding with plans to improve his site. Molo stated that he has made a substantial private investment in the demolition and reconstruction of the store on the site, adding that he believes that he could recoup some of that cost by advertising the business on the proposed sign.

Molo stated that the proposed hotel sign is approximately 375 square feet in size. He indicated that the new building will be dwarfed by the new multi-story hotel that is currently under construction on the adjacent property. He displayed photographs taken while traveling south on I-74 which demonstrate the visual obstructions caused by natural features, topography, and other structures. He indicated that the proposed sign would be the same height as the existing hotel sign. Molo explained that the sign would advertise the brand name, the price of fuel, and the products that are available for purchase inside the store. He commented that he has been made aware that one of the concerns residents have about LED signage is the intensity of the light. He added that he will ensure that when the sign company staff programs the sign it will not violate the ordinance requirements.

Doug Jarvis, Acme Sign Company, explained that the existing hotel sign is 12 feet higher than the existing gas station sign. He indicated that measured to the top, the current BP sign is 41 ½ feet high and approximately 120 square feet in size. He stated that increasing the proposed height would achieve the applicant's goal of the sign's appearing to be the same height as the hotel sign. He added that there is a substantial grade difference between the hotel and the BP sites. Jarvis commented that it is his understanding that the new hotel sign will remain the same height as it will be placed on the existing pole. He indicated that he had spoken with Doug Rick of the Iowa Department of Transportation who had indicated no opposition to the sign's being raised and/or having an electronic message section of the proposed size.

Jarvis explained that a smaller electronic message sign would not be useful at a reduced height given the speed of vehicles traveling along the interstate because the size of pictures or text would be too small.

Brian Matlock, retail/marketing manager for the applicant, explained that fuel profit margins at convenience stores are very slim which necessitates that the owner supplement those sales with food and beverage items. He indicated that the convenience store industry has changed a great deal in the past few years, and the owner plans to change his business model accordingly by focusing on retail and food items that will attract customers to the store. Matlock stated that approximately half of the convenience store space will be dedicated to food and beverage items, adding that in the future that percentage could increase to 60-70. He indicated that it is very important to inform consumers of the change to the business.

Matlock stated that the applicant feels the proposed sign could help fill the needs of consumers in the area by advertising new products and also integrate the business into the community. He indicated that the proposed electronic message board could be used to inform residents of upcoming events or highlight the achievements of local sports teams. He explained that he would be responsible for the content of the proposed sign and reiterated that he would operate it in such a way as to adhere to the city's regulations.

Voelliger asked how large the letters would be on the electronic portion of the sign. Jarvis explained that there is a wide range of sizes of letters available for this type of sign. He indicated that the numbers for the gas pricing section would be 2 feet high which he feels would be slightly undersized.

Voelliger asked if 6 seconds would be enough time for motorists to clearly read the sign. Jarvis explained that the standard for billboards and interstate signage is 6-8 second before changing, adding that he feels that this is sufficient time to read the message.

Johnson asked for clarification of how large the proposed hotel sign would be. Molo indicated that it would be 374 square feet. Soenksen indicated that a sign of that size would require a variance, adding that as yet he has not received such a request.

Johnson asked if the previous hotel sign had required a variance. Soenksen stated that he is unsure of that, adding that the sign would have been allowed to be up to 300 square feet in size.

Johnson asked if there are currently any LED message signs along the I-74 corridor. Soenksen stated that there are none in Bettendorf. He added that he had spoken to and submitted a packet to a Des Moines official who regulates interstate signage who had indicated that the proposed signage would be allowed there.

Johnson expressed discomfort with allowing the proposed signage along the I-74 corridor as she feels it would be tacit approval of other signs in the corridor. Soenksen commented that approving the request would be tantamount to an amendment to the sign ordinance. Johnson concurred, indicated that because it would be the first of its kind, the Board's decision regarding the proposed sign would set a precedent. She added that she feels that such a change would be considered more appropriately by the Planning and Zoning Commission and City Council as it is not the Board's purview.

Soenksen stated that he had not previously considered what purpose the LED portion of the sign would serve, adding that he had not been aware of the changing business model of conveniences stores. He questioned whether other businesses such as a hotel would need to advertise retail items as the applicant plans to do. Johnson commented that a hotel may wish to advertise current rates or a Starbucks store may choose to highlight their specials. She added that she is not comfortable with approving the request because it would set a precedent that seems more characteristic of an ordinance change. She indicated that if other businesses make similar requests, the Board would already have set the precedent of granting them. Soenksen commented that a smaller programmable LED sign is allowed by ordinance.

Johnson questioned why the Board would allow any additional square footage for an electronic message board when the remainder of the sign already accomplishes the goals of identifying the brand, the name of the business, and the prices. Soenksen stated that the applicant has

indicated that there is more to the business than those things and that it is important to advertise the food and beverage items available for sale.

Falk indicated that in his opinion the inclusion of the term 'mart' in the business name indicates to consumers that there are retail items for sale. He added that the BP logo is internationally known to designate a store where gas is available. He expressed concern about business owners along the I-74 corridor competing with one another using increasing amounts of signage.

Falk asked for clarification of what type and size of signage is proposed at the hotel adjacent to the applicant's property. Molo explained that his understanding is that the pole sign for the hotel will be 374 square feet in size and will identify the hotel, the Starbuck's store, and one other business that is unknown at this time. He indicated that his business is very diversified and that he needs a place to advertise gas, food, and coffee. Soenksen reiterated that if in fact the proposed hotel sign is 374 square feet a variance would be required.

Falk asked if the applicant could use the existing pole, base, and with a reconfigured sign that is compliant with the sign ordinance. Soenksen confirmed this.

Falk expressed concern that if the applicant's sign is allowed as requested, the owner of the hotel may wish to increase the height and/or size of that sign. Molo commented that the drawing of the hotel sign that he was given does not indicate an increase in height. Falk reiterated Johnson's concern that the Board would be setting a precedent by granting the current request.

Jarvis commented that the pole signs in the Spruce Hills Drive/I-74 area are approximately 60 feet high, adding that those taller signs do not seem to have prompted any sort of pattern of requesting variances for other businesses. He explained that the applicant merely wishes to increase the height of his sign by 12 feet which will provide adequate visibility. He reiterated that the electronic message portion of the sign is very important to the business because the profit margins for gasoline sales are so slim. Jarvis indicated that it is critical that consumers be aware of the retail items available for sale inside the store, especially since pay-at-the-pump has become so prevalent.

Molo stated that while the previous sign may have been adequate when it was installed in the mid- to late 1960s, the convenience store industry has so drastically changed that it is no longer viable. He explained that changing his business model is, in his opinion, the only way to compete with larger chain convenience stores.

Voelliger expressed concern about the brightness of the LED portion of the proposed sign and its potential effect on motorists. Molo reiterated that he would comply with the city's regulations in that regard.

Voelliger commented that the entire I-74 corridor would change in the future and will eventually have 3 lanes of traffic in both directions.

Jarvis explained that the manufacturers of this type of sign make them so that they are in compliance with DOT specifications with automatic dimming at night. He indicated that he is aware of the complaints that have been received with regard to LED signage in the city. He stated that when electronic signs are too bright clarity and legibility are lost.

Johnson asked if the previous hotel sign had advertised a business other than the hotel. Jarvis explained that there was a hotel sign, a restaurant sign, and a changeable copy sign on the same pole.

Johnson asked if there are any other changeable copy signs in the I-74 corridor other than Old Chicago. Soenksen indicated that he is unaware of any except for some in the downtown area that have been removed. Johnson commented that the convenience store is in a difficult location because of the curve of the interstate and the configuration of the on- and off-ramps at the intersection. She asked how large the signs in the Spruce Hills Drive/I-74 area are. Soenksen stated that while he is unsure of their exact size, they are not nearly as large as the proposed sign. He added that because of the lot size and distance of the sign from Middle Road, the sign for the hotel will likely be allowed to be 300 square feet in size. Johnson commented that it is possible that the hotel sign will not require a variance. Soenksen confirmed this. Voelliger commented that it has not yet been determined what The Lodge hotel management may request in regard to signage given the proposed redevelopment of that site.

Johnson commented that she is not necessarily opposed to any element of the proposed sign, but reiterated that whatever action the Board takes will establish a precedent for the entire interstate corridor. She added that the city is in the process of revising the Comprehensive Plan and suggested that perhaps this issue would be more rightly addressed during that process or at the Planning and Zoning Commission level. She suggested that perhaps the ordinance could be changed such that allowable height for signage be based on elevation above the roadway rather than from the grade and that the size allowed is not based on the square footage of the building.

Molo stated that he would be willing to work with the city if staff feels that the signage needs to be adjusted even beyond the DOT standards.

Johnson asked what the 50 square foot allowable size for electronic message signs is based upon. Soenksen explained that every business owner is allowed to include 50 square feet of LED signage regardless. He reviewed the section of the ordinance with regard to brightness of signage which stresses that if the zoning administrator feels that a particular sign is problematic even it meets city standards, the owner could be required to lessen the intensity.

Jarvis commented that in his opinion, measuring the allowable height of a sign based on the elevation of the roadway would be a positive ordinance change. Falk added that Brown Mackie College was granted a variance related to sign height based on the topography of the site in relation to the much greater height of the interstate.

Johnson asked if the hotel sign would be allowed to be of a similar configuration to the applicant's proposed sign. Soenksen confirmed this, reiterating that the programmable electronic portion of any sign would be limited to 50 square feet in size without a variance.

There being no one else present wishing to speak in favor of or in opposition to the request, Voelliger closed the public hearing.

On motion by Johnson, seconded by Falk, that a variance to reduce the required sign setback from 20 feet to 10 feet be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

On motion by Johnson, seconded by Falk, that a variance to increase the allowable height of an on-premises identification sign from 20 feet to 52 feet be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Johnson asked when the store is proposed to be opened. Molo explained that he is hopeful that the store will be open in mid-July. Soenksen commented that the store will likely be open before the next Board of Adjustment meeting.

Johnson commented that the ordinance limits the electronic portion of a sign to 50 square feet. Soenksen added that according to the ordinance, every electronic sign is allowed to be 50 square feet in size regardless of whether it is located along a local roadway or an interstate, what the speed limit is on the street, or where it is located in the city.

On motion by Johnson, seconded by Gallagher, that a variance to increase the allowable size of an on-premises identification sign from 125 square feet to 344 square feet be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Johnson commented that regardless of what the Board decides, she requested that the issue of allowable square footage of electronic signage be brought forward to the appropriate municipal board or commission for review and a possible change to the sign ordinance. Soenksen stated that he has made notes of the suggestions made and will ensure that the matter is addressed. Johnson added that if a similar variance request is made by another applicant and is denied, she would like there to be a record that the issue of a possible revision to the ordinance regarding electronic signage is being considered and that the current request is not necessarily precedent-setting. Voelliger commented that much of the applicant's justification for the request is based on its location in the city and would not necessarily be applicable to other petitioner. Soenksen added that other factors that are relevant to the current case being considered are elevation of the adjacent roadway relative to sign height, speed of the traffic nearby, type of adjacent roadway, and right-of-way width. Johnson commented that it would not necessarily be fair to compare two very different-sized lots when determining if a variance should be granted with regard to size allowed.

Johnson stated that she is very aware that residents are not fond of electronic signs. Soenksen confirmed this, adding that city staff receives the most complaints by far about programmable electronic signs. Johnson reiterated that if the proposed 150 square foot electronic portion of the sign is allowed, it is tantamount to an ordinance change. She asked if the applicant would be willing to accept a reduction in the size of the electronic portion of the sign. Molo explained that if the messaging part of the sign is smaller, it would be difficult to see and react to given the location and configuration of the roadway. He added that he believes that the sign will mostly

be seen by motorists who do not stop but that who will remember the location and stop the next time they pass.

Jarvis commented that the proposed sign would not be located in a residential area with a 25 mph speed limit. He indicated that the store's interstate location differentiates it from most other businesses who may request a variance for a larger sign.

Johnson asked if the size of the lettering for the prices is intended to be seen from the interstate at highway speeds. Jarvis explained that the pricing section has 2-foot high numerals, and that section of the sign is 7 ½ feet high. He added that 2-foot high letters are actually too small but that the next available size is 4 feet high which would preclude their use because of the scale of the sign. He reiterated that even though motorists who travel along the interstate to and from work may not be able to see the pricing in time to stop on the way to work, they may stop on the return trip.

Johnson asked if it would be typical to have an equal ratio of the electronic programmable portion of a sign and the cabinet section. Soenksen confirmed this. Johnson expressed concern about the ratio of the proposed sign and the potential negative reaction approving the request might cause. Voelliger stated that he believes that it is city staff's responsibility to determine what would be appropriate with regard to location and size of electronic programmable signs and to initiate an ordinance revision in accordance with that determination. Johnson concurred, adding that the Board is in a quandary regarding the current case because it is unknown when or even if the City Council will decide to increase the allowable size of electronic programmable signage.

Falk stated that he does not feel that the message section of the sign is out of proportion to the remainder of the sign. He indicated that it must necessarily be of a certain size to allow two lines of copy to appear on the sign. Johnson stressed again the conundrum the Board has if a 150 square foot electronic sign is allowed and the City Council determines at some point in the future that only 100 square feet is appropriate.

Voelliger asked if the applicant plans to propose similarly-sized signs at their other locations in the Quad City area. Matlock stated that because the store in question is new, it will be used as the model to redefine the Big Ten Marts and project the new business model to customers. He indicated that the signage would help familiarize customers with new retail and food offerings that will be available from now on and of which consumers may not be aware. Voelliger stated that facilitating an ordinance revision soon is very important because many of the other convenience stores in Bettendorf will likely want to install similar signs.

Jarvis stated that the store in question is located adjacent to the interstate. Johnson indicated that she understands the applicant's position, but reiterated that it is up to the Planning and Zoning Commission and City Council to decide what type and size of signage is appropriate in that corridor.

On motion by Johnson, seconded by Gallagher, that a variance to increase the allowable size of the electronic programmable portion of an on-premises identification sign from 50 square feet to 100 square feet be granted in accordance with the Decision and Order.

ALL AYES

Motion carried.

Decision and Order is Annex #6 to these minutes.

Gallagher expressed concern that the action taken is the equivalent of legislating which is not the Board's purview. Johnson concurred. Gallagher commented that while he is not at all opposed to the proposed sign, any decision made would be rather arbitrary pending a revision in the ordinance to address this type of business in this location. He reiterated that the city must promptly facilitate a discussion and possible ordinance revision by involving other municipal boards and commissions.

Falk asked if it would be possible to order the sign less the electronic portion of the sign pending a possible ordinance change. Jarvis confirmed this. Falk stated that it appears as though the Board is not opposed to the sign as proposed but that the members feel that a different body should be rendering this type of decision.

A brief discussion was held regarding the applicant's options if he chooses to either order the electronic sign in the approved size or wait to see if the City Council amends the sign ordinance in a more advantageous way and add to it later.

There being no further business, it was unanimously approved to adjourn the meeting at approximately 6:40 p.m.

These minutes and annexes approved _____

John Soenksen, City Planner