



**MINUTES
BOARD OF ADJUSTMENT
ONE ST. PETERS CENTRE BLVD., ST PETERS, MO 63376
MEETING OF MARCH 20, 2013
6:00 P.M.**

CALL TO ORDER

Chairman Dan Meyer called the meeting to order at 6:00 p.m.

ATTENDANCE

Those in attendance were Mr. Bill Kendall; Mr. Nick Trupiano; Mr. James Selinger; Mr. Dan Meyer Mr. William Jaggi; Mr. Ken Braunfeld, Planning Coordinator; and Ms. Melissa Vollmer, Recording Secretary.

MINUTES

Mr. Meyer asked the Board for any comments or questions regarding the minutes of February 20, 2013. Mr. Selinger made a motion and Mr. Jaggi seconded to approve the minutes as presented. All in favor, the motion carried and the minutes were approved.

COMMUNICATIONS AND REPORTS OF OFFICERS

Mr. Meyer asked for any reports or communications from the Officers. Mr. Braunfeld indicated there were none.

PETITION 13-E:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 13-E. Ironman Properties (Ultimate Defense Firing Range and Training Center) requests a variance to allow a reduction in the side yard in the I-2 Heavy Industrial District. The property is located on the north side of Brown Road, east of Highway 79 more commonly known as 590 Turner Boulevard.

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 13-E. The petitioner or their agent was requested to step forward to present their position. Mr. J.R. Smith, Musler Engineering, was sworn in as the petitioner. Mr. Smith explained that Ultimate Defense Firing Range and Training Center is expanding by adding more space for firing lanes, training rooms and storage. Mr. Smith noted that the most practical location to expand would be to the east, creating a side-yard encroachment. A portion of the emergency exits will also extend onto the adjacent property. Based on this, they are requesting a variance to allow a reduction in the side yard to zero (0) feet.

Mr. Meyer asked if there were any questions of the petitioner. Mr. Kendall questioned the hardship of the variance. Mr. Braunfeld noted that due to the size of the lot, location of the building, and the specialized construction of the building, including armored walls, interior firing range layout, bullet recovery systems and sophisticated lead abatement ventilation equipment, this eastward expansion was the most practical option for the applicant. Mr. Ken Braunfeld was then sworn in to present the City's position for Petition 13-E.

Mr. Braunfeld stated that the applicant is the owner of Ultimate Defense and Firing Range located on the north side of Brown Road, east of Highway 79, more commonly known as 590 Turner Boulevard. The applicant desires to expand the existing building to the east to add more space for firing lanes, training rooms, and storage.

In 2010 the site plan was approved by the Planning and Zoning Commission and a Special Use Permit was granted by the Board of Aldermen for an eighteen bay firing range, training, and gun sales and service facility. Since then the business has been more successful than originally anticipated and needs to grow to keep up with demand.

A review by the applicant determined the most practical location to expand would be to the east, creating a side yard encroachment. Expansion options were limited due to size of the lot, location of the building, and the specialized construction of the building including armored walls, interior firing range layouts, bullet recovery systems, and sophisticated lead abatement ventilation due to the discharging of guns indoors.

In addition, a portion of the emergency exits will extend on to adjacent property. Staff understands that while the adjacent property owner is fully in support of the expansion, they did not want to sell ground for the project, but chose to grant an easement for the emergency exits.

On March 6, 2013, the Planning and Zoning Commission granted approval of the site plan with the contingency that a setback variance be obtained. Approval of an amended Special Use, but the Board of Aldermen, will be reviewed at the March 28, 2013 meeting to expand to twenty-six firing lanes in place of the current eighteen.

Based on this, Ironman Properties (Ultimate Defense) requests a variance to allow a reduction in the side yard in the I-2 Heavy Industrial District. The property is located on the north side of Brown Road, east of Highway 79, more commonly known as 590 Turner Boulevard.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.240 I-2 Heavy Industrial

F. Lot Area, Storage and Yard Requirements.

2. All buildings shall be set back from the street right-of-way line to provide a front yard having not less than thirty (30) feet in depth. No building shall be located closer than ten (10) feet to a side lot line and fifteen (15) feet to a rear lot line, except when adjacent to a residential district where a seventy (70) foot wide or rear yard is required.

Mr. Braunfeld stated that the configuration of the lot, building layout, specialized construction, equipment, and ventilation requirements make it impractical to relocate/reconfigure the facility and limits the options for expansion. The proposed expansion will be an exact match to the existing building creating one seamless facility. The building encroachment to the east will be adjacent to a greenbelt, driveway, parking lot, and not adjacent to another building.

It is noted that the applicant has an existing cross-access easement agreement for use of this driveway and will obtain an easement for the encroachment of the emergency exits on the adjacent property. It is also noted that the adjacent property owner preferred to grant easements rather than sell ground for the emergency exits. In addition, a review by the Building Department found that the facility can be constructed to meet all applicable building code requirements.

Therefore, while there will be a technical encroachment of the setback, the visual impact of the encroachment will be non-existent due to the adjacent greenbelt, parking lot, and driveway.

Setback requirements have been established to provide for adequate separation of buildings and uses, and create reasonable amount of open space between structures to enhance the general health, safety, and welfare of the community.

It is staff's opinion that the proposed variances will not impair an adequate supply of light or air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The proposed encroachment is not adjacent to another building but rather a greenbelt, parking lot, and driveway which the applicant already has cross-access to use. Therefore, while there will be a technical encroachment of the side yard setback, the visual impact of the encroachment will be non-existent. The proposed variance allows for the most practical expansion of the existing facility thus providing for the reasonable use of the property.

2. Does the hardship result from the strict application of these regulations?

While there will be a technical encroachment of the side yard setback the visual impact of the encroachment will be non-existent due to its proximity to a greenbelt, parking lot and driveway. The strict application of setback regulations would make the practical expansion of the facility difficult resulting in a hardship.

3. Is the hardship suffered by the property in question?

The subject property is of limited size and the unique characteristics of the facility restrict the practical options for an expansion, and therefore, the ability to achieve the highest and best use of the property.

4. Is the hardship the result of the applicant's own actions?

The subject property is of limited size and the unique characteristics of the facility restrict the practical location for an expansion thereby creating the hardship.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved it would be in harmony with the general purpose and intent of the zoning regulations, since it would allow for the reasonable expansion of the facility thus providing for the reasonable use of the property.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will be assured and substantial justice will have been done because the applicant will be able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis, it is staff's recommendation to permit a variance to allow a reduction in the side yard in the I-2 Heavy Industrial District at 590 Turner Boulevard with the following contingencies:

1. The building shall not extend closer than zero (0) feet to the east property line.
2. The emergency exits may have a zero (0) foot setback.
3. The applicant shall obtain an easement for any portion of the emergency exits that extend past the property line.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 13-E. Mr. Cliff Gillette, homeowner to the West of the shooting range spoke in favor of this expansion. Mr. Ben Blanton, property owner to the east of the shooting range, spoke in favor of this expansion.

Mr. Trupiano made a motion and Mr. Jaggi seconded to approve Petition 13-E with the noted contingencies.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Trupiano Yes
Mr. Kendall Yes
Mr. Selinger Yes
Mr. Meyer Yes
Mr. Jaggi Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 13-E was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The property is located on a tract of land being part of Lot S of Carole A. Blanton Horizon Center Plat Book 46 Page 222, more commonly known as 590 Turner Boulevard.
2. The lot is presently zoned I-2 Heavy Industrial District.
3. Adjacent zoning is I-2 Heavy Industrial District.

Mr. Kendall made a motion and Mr. Selinger seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Kendall presented the Conclusions of Law for Petition 13-E as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 13-F:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 13-F. Thoele, Inc. requests a variance to permit a freestanding sign greater than fifty (50) square feet in area and greater than twelve (12) feet in height in the C-2 Community Commercial District. The property is located on the west side of Mid Rivers Mall Drive, north of Mexico Road (403 Mid Rivers Mall Drive).

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 13-F. The petitioner or their agent was requested to step forward to present their position. Mr. Mike Thoele was sworn in as the petitioner. Mr. Thoele explained that their existing sign was hit by a truck and was significantly damaged; therefore, the sign needs to be replaced. In addition, the gas station will be rebranded as a Mobil, so this is the perfect time to replace the sign with a more modern and up-to-date sign.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 13-F.

Mr. Braunfeld stated that the subject development is located at 403 Mid Rivers Mall Drive which is on the west side of Mid Rivers Mall Drive, north of Mexico road. The commercial site has been developed with a service station for some time. It is surrounded by commercial development and zoning, including furniture stored to the west, a bank to the south, a new drugstore and other retail and restaurant users across Mid Rivers Mall Drive to the east, and a mix of retail and restaurant uses to the north along Mid Rivers Mall Drive.

The site is located in the C-2 Community Commercial District. In the C-2 District, City Code currently permits ground signage up to twelve feet in height and fifty square feet in area long with an additional twenty-four square feet of changeable copy sign. When many of the parcels in the area were constructed, including the subject site, City Code allowed signage in the C-D District to be a maximum height of twenty-five and seventy-five feet in area. Therefore, much of the signage along Mid Rivers Mall Drive meets these larger criteria. Those signs are legal/non-conforming signs and can remain. When they are substantially renovated, or the site they are on is redeveloped, the signs must then comply with the current code.

In the subject case, the existing sign was hit by a truck and was significantly damaged; therefore, the sign must be replaced. The applicant is requesting a smaller sign than the existing sign, but a sign that is larger than what is permitted in the C-2 District. The existing sign is twenty-seven feet in height and seven feet

wide, excluding the frame. The approximate area is 130 square feet. The proposed sign will be twenty-one and one-half feet in height and approximately forty-eight feet in area in addition to a 25.06 square foot changeable copy digital sign.

Noting the above, the applicant has requested a variance to permit a sign which exceeds twelve feet in height and fifty square feet in area at 403 Mid Rivers Mall Drive.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements of the Zoning and Subdivision Regulations (Title IV Land Use Chapter 405 as amended) it states:

Section 405.745 Permanent sign regulations by zoning district.

- A. All signs in this Section are considered permanent and shall be located in the zoning districts as set out herein.

- B. Signs Permitted in “A-1” Agricultural District. For uses permitted upon review and approval by the Planning and Zoning Commission, refer to appropriate zoning district for sign regulations. The regulations below shall only apply to an agricultural business advertising agricultural products which are sold from the premises on a year-round basis (vegetables, greenhouse stock).
 1. Changeable copy sign. Only one (1) sign shall be permitted per street facing. Said sign shall not exceed twenty-four (24) square feet per facing or forty-eight (48) square feet per facing or forty-eight (48) square feet for the total aggregate sign area. Sign shall not exceed fifteen (15) feet in height above the average street grade. Sign copy shall only advertise goods or products sold on the premises and not contain the name of the business.

- D. Signs Permitted in all “C” Commercial and “I” Industrial Districts (Non-Residential). In certain non residential districts, the following signs are permitted in accordance with the regulations set forth herein.
 1. Ground Signs.
 - a. Ground signs as described above shall be permitted as follows:
 - (2) “C-2” Community Commercial. The maximum height may not exceed twelve (12) feet. The face of such sign may not exceed fifty (50) square feet per face or a total aggregate sign area of one hundred (100) square feet.

Mr. Braunfeld noted that the gas station business has been at the subject location for some time and has included a sign which exceeds that allowed by the C-2 District. Therefore, the sign is grandfathered. Because the sign was recently damaged, a new sign is being constructed on the site. The new sign must comply with the regulations or a variance is needed.

Staff notes that overall, the sign pattern in the area is mixed – many monument style signs are located closer to the mall area, and taller signs are further south on Mid Rivers Mall Drive. This is due to limitations imposed by subdivision indentures and the older age of some signs. In general, the commercial nature of the corridor includes a mix of building styles and sign designs.

Noting this pattern, a taller and larger sign, as proposed, will not be out of place at the subject site. As noted, the existing sign is larger than that proposed. Given the existing sign, coupled with the pattern in the area, staff is of the opinion that the modified height of twenty-one and one-half feet will not be out of place. Also, the larger sign face will help visibility and will not be out of place with the range of sign sizes in the area.

The proposed sign drawing shows two poles supporting the sign. The code requires sign supports be skirted or treated to be attractive. Staff has discussed this with the applicant and they are willing to comply.

Staff further notes that, in response to challenging economic times, the City created the Economic Development Task Force several years ago to identify strategies for business attraction and retention. One topic addressed was adequate signage. The sign that is being proposed will allow this use to continue operation at this location with a new ground sign that is aesthetically pleasing along Mid Rivers Mall Drive.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The use is established and could be identified by a smaller sign; however, by allowing a larger sign than what is allowed by code, but smaller than what is in place, the site will continue to be visible in the general area and therefore ensure a reasonable return.

2. Does the hardship result from the strict application of these regulations?

If the sign complies with the code, visibility may be limited because of the reduced height and may impose a hardship for the applicant. A variance will allow them to have maximum visibility from the nearby commercial intersection.

3. Is the hardship suffered by the property in question?

Modification of the code since the sign was installed would require a lower sign at this time. Changing the sign to a much lower sign could pose a hardship for the subject property.

4. Is the hardship the result of the applicant's own actions?

The existing sign was hit by a customer which then resulted in the need for a new sign. The applicant did not cause this action.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the development will be in harmony with the general purpose and intent of the zoning regulations, since the sign height and size increase will not cause hazards to pedestrian and vehicular traffic or cause blighting within the community.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of the requested variance to permit the height of the proposed ground sign of a maximum of twenty one and one half feet and to allow the sign to be a maximum of eighty (80) square feet, including the digital changeable copy sign, at 403 Mid Rivers Mall Drive.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 13-F. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve Petition 13-F.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Trupiano Yes
Mr. Kendall Yes
Mr. Selinger Yes
Mr. Meyer Yes
Mr. Jaggi Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 13-F was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The subject lot is located on the west side of Mid Rivers Mall Drive, north of Mexico Road.
2. The lot is zoned C-2 Community Commercial District.
3. The adjacent zoning is C-2 Community Commercial District to the north, C-1 Neighborhood Commercial District and C-2 Community Commercial District to the west, and C-2 Community Commercial District to the east.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 13-F as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Trupiano seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

PETITION 13-G:

Mr. Meyer stated that the purpose of the meeting was to consider Petition 13-G. Affinity Homes requests a variance to allow side yards of less than five (5) feet in an R-3 Planned Urban Development (PUD). The property is located on the north side of Siena Drive, east of Toscana Way (139 Siena Drive).

Mr. Meyer further stated that the evidence and testimony received this evening would be the only record considered by the Board. Title IV Land Use of the Municipal Code, as amended, shall be Exhibit #1 for this petition.

Mr. Meyer declared the public hearing open to consider Petition 13-G. The petitioner or their agent was requested to step forward to present their position. Mr. Scott Miller, Affinity Homes, was sworn in as the petitioner. Mr. Miller explained that on the subject lot, the residence was constructed before a slight encroachment of 1/10 of a foot was noted. The amount is very slight and was only detected by a surveyor's instrument. Due to the small encroachment, Affinity Homes is requesting the stated variance.

Mr. Meyer asked if there were any questions of the petitioner. Being none, Mr. Ken Braunfeld was sworn in to present the City's position for Petition 13-G.

Mr. Braunfeld stated that the applicant has constructed a home at 139 Siena Drive in the Bella Vista subdivision. The subdivision is zoned PUD Planned Urban Development. The agreement for the PUD requires a minimum five foot side yard for each lot. During construction, the house and deck were placed 4.9 feet away from the side property lines – an encroachment of 1/10 of a foot on each side of the lot. This minor extension into the side yards was not noted until a final survey was done as part of the title work. At that time the applicant was advised by the surveyor of the issue and the City was contacted.

Mr. Braunfeld noted that the variance requested by the applicant is from requirements in the Planned Urban Development (PUD) agreement for the Bella Vista subdivision, as approved via Ordinance 4093, it states:

10. Building setbacks on all single-family lots shall be as follows:
 - a. Front yards shall be a minimum of twenty (20) feet.
 - b. Side yards shall be a minimum of five (5) feet.

Mr. Braunfeld noted that setbacks are typically required around the perimeter of most lots in the City to establish a yard area for each single family home. The typical setback on standard lots is five to six feet for each side yard, this creating a ten to twelve foot wide area between structures as a minimum. On the subject lot, the residence was constructed before a slight encroachment of 1/10 of a foot was noted. The amount is very slight and not noticeable in the field; it was only detected by a surveyor's instrument.

Therefore, the applicant has requested a variance to encroach into each side yard by 1/10 of a foot; this would allow the new homeowner to have clear title of the residence. Staff has field checked the site and notes that the encroachment is not noticeable in the field. Also, staff has checked the utility atlas of the City and notes that there are no utilities in easements within either side yard setback.

Staff notes that the encroachment is very small and, as noted, is not noticeable in the field. Given this minor encroachment, staff is of the opinion the modified setback is reasonable.

Mr. Braunfeld stated the code considerations as follows:

1. If the petitioner complied with the provisions of this Zoning Code (does not obtain the variance they are requesting), will they not be able to get a reasonable return from, or make reasonable use of the property?

The home has been constructed on the site; removing the home for a 1/10 of a foot setback variation would create a hardship. By allowing the home to remain, the builder and homeowner can make reasonable use of the property.

2. Does the hardship result from the strict application of these regulations?

If the home complies with the code, the home would have to be rebuilt at a significant cost to the builder and the new homeowner; it would have a significant hardship on the owner.

3. Is the hardship suffered by the property in question?

The property suffers a hardship because of the placement of the residence.

4. Is the hardship the result of the applicant's own actions?

The placement of the home was the result of many workers under the supervision of the applicant. However, given the very minor nature of the encroachment, it was very hard to detect without survey equipment.

5. Is the requested variance in harmony with the general purpose and intent of the zoning regulations and does it preserve the spirit?

If the variance is approved the development will be in harmony with the general purpose and intent of the zoning regulations, since the encroachment is negligible and cannot be detected.

6. If the variance is granted, will the public safety and welfare have been assured and will substantial justice have been done?

The public safety and welfare will have been assured and substantial justice will have been done because the applicant will have been able to use their property to the fullest extent and will have no ill effects on surrounding properties or the City as a whole.

Based on this analysis staff recommends approval of the variance to allow a structure to encroach 1/10 of a foot into the side yards for property located on Lot 43 of Bella Vista Plat One as recorded in plat book 40 pages 307-310 at the St. Charles County Recorder of Deeds Office, more commonly known as 139 Siena Drive.

Mr. Meyer asked if any of the board members had questions for Mr. Braunfeld. Mr. Meyer asked if there was anyone in the audience to speak in favor, opposition or in comment of Petition 13-F. Seeing no one present to comment, Mr. Meyer closed the public hearing.

Mr. Kendall made a motion and Mr. Jaggi seconded to approve Petition 13-G.

Mr. Meyer requested Ms. Vollmer call the roll, which resulted in the following votes:

Mr. Trupiano Yes
Mr. Kendall Yes
Mr. Selinger Yes
Mr. Meyer Yes
Mr. Jaggi Yes

There being 5 yes and 0 no vote, Mr. Meyer declared that Petition 13-G was approved.

Mr. Trupiano presented the findings of fact as follows:

1. The subject property is located on lot 43 of Bella Vista Plat One as recorded in plat book 40, pages 307-310 at the St. Charles County Recorder of Deeds Office, more commonly known as 139 Siena Drive.
2. The lot is presently zoned PUD Planned Urban Development.
3. The adjacent zoning is PUD Planned Urban Development.

Mr. Jaggi made a motion and Mr. Kendall seconded to approve the findings of fact. All in favor, the motion carried.

Mr. Jaggi presented the Conclusions of Law for Petition 13-F as follows:

1. The variance will not impair the supply of light or air to the adjacent properties.
2. The variance will not increase congestion in the public streets.
3. The variance will not impact the safety of the community.
4. The variance will not impact on the general health and welfare of the community.

Mr. Kendall made a motion and Mr. Selinger seconded to enact the Conclusions of Law. All in favor, the Conclusions of the Law were adopted.

Mr. Meyer made a motion and Mr. Kendall seconded to adjourn the meeting at 6:50 p.m. All in favor, the motion carried.

Respectfully submitted:

Melissa Vollmer
Recording Secretary

Dan Meyer
Chairman