A regularly scheduled Zoning Board of Appeals Meeting was held on Thursday, December 8, 2016, at 1:00p.m., City Hall, 419 Fulton Street, Room 400, with Vice Chairperson Zachary Oyler presiding.

ROLL CALL

The following Zoning Board of Appeals Commissioners were present: Laith Al-Khafaji, Ed Barry, Jerry Jackson, Zachary Oyler, and Nathan Wagner – 5. Absent: Mark Anderson and Richard Russo – 2.

Staff Present: Syed Ahmad, Leah Allison, Shannon Techie, and Madeline Wolf

MINUTES

Commissioner Barry moved to approve the minutes for the meeting held on November 10, 2016; seconded, by Commissioner Jackson.

The motion was approved viva voce vote 5 to 0.

REGULAR BUSINESS

CASE NO. ZBA 3025 (Continued from 11/10/2016)

Petitioner Jim Youngman of Adams Outdoor Advertising, is appealing the Zoning Administrator’s decision for the spacing requirement of an off-premise sign per the Unified Development Code, Section 8.3.10.c.2, in a Class C-1 (General Commercial) District for the property identified as Parcel Identification No. 14-19-402-007 with an address of 2238 W Glen Ave, Peoria, Illinois (Council District 4).

Senior Urban Planner, Leah Allison, Community Development Department, read the case into the record and presented the request. Ms. Allison provided the property characteristics, summary of the appeal as outlined in the memo. Ms. Allison reviewed the purpose of section 8.3.1 as outlined in the memo.

Staff recommended affirmation of the Zoning Administrator’s decision based on the intent of the sign ordinance and specific requirements of section 8.3.10.c.2.

The regulations as interpreted by staff meet the intent of the sign ordinance, specifically to protect and preserve property values, lessen congestion of land and air space, avoid uncontrolled proliferation of signs, and preserve the wholesome and attractive character of the City. The 1,000 lineal foot separation requirement applies to any street in the City of Peoria, not just the street of the subject property. This is evident when considering the language of 8.3.10.C.2.b.1 which stated:

1) 50 lineal feet from the base of the sign to any on-premises freestanding sign located on the same street frontage.

as compared to 8.3.10.C.2.b.2 which stated:

2) 1,000 lineal feet from the base of the sign to any off-premises freestanding sign on either side of the street, permitted or special use.

If the intent of the 1,000-foot separation was to be applied to the same street frontage, the regulation would have been written as it is in the sentence 1) above. The 1,000-foot separation regulation was intentionally written without the requirement of the same street frontage. The words “the street” means any street in the City of Peoria. The regulation as written and interpreted allows the placement of off-premise signs to meet the intent of the overall sign ordinance.

The interpretation offered by the petitioner failed to meet the intent of the sign ordinance. If interpreted as suggested by the Petitioner, an off-premise sign may be located on each frontage of a corner property.
The result is a proliferation of 30-foot tall, 300 sq. ft. in size off-premise signs on both frontages of commercial and industrial zoned corner properties.

The petitioner was sworn in by Staff Member Madeline Wolf.

Sam Zabek, petitioner, referred to the packet he prepared and distributed to the commission. Mr. Zabek said the existing sign on Glen Avenue was considered a non-conforming sign as it was near residential; the proposed site was more in conformance with the proximity to residential. Mr. Zabek contended that the ordinance was not subject to interpretation and city staff was bound by the language of the ordinance; stating the 1,000 lineal foot separation requirement applied only to off-premise signs located on the same street as the proposed location of Glen Avenue. Mr. Zabek said denial of the application was wrong and requested the ZBA overturn or reverse the Zoning Administrator’s decision.

Syed Ahmad, Attorney for the City of Peoria, referred to Mr. Zabek’s handout, Sibenaller v. Milschewski page 6 of 8, and said the case demonstrated how legislative bodies are to interpret the code. The intent of the code was to have minimal number of signs. Mr. Ahmad said based on Mr. Zabek’s argument, each intersection would allow a sign; the allowance of four signs at an intersection was not the intent of the ordinance that was written by the City Council. Mr. Ahmad said the Zoning Administrator considers applications in a matter that fulfills the intent of the City Council and legislature, which is to reduce the number of signs.

Mr. Zabek said he understood the intent of City Council; the proposed location would be more in compliance with the ordinance. Mr. Zabek argued the application was for the relocation of an existing sign.

Mr. Ahmad noted the existing nonconforming sign was grandfathered, which does not permit the sign to move locations. Mr. Ahmad said the sign was not allowed at the proposed location per the ordinance as it would be within 1,000 linear feet from an existing sign.

Ms. Allison said the interpretation of section 8.3.10.c.2 has been consistent since the adoption of the Ordinance in 1990; therefore, there had not been an ambiguous interpretation. Ms. Allison noted the provision in the ordinance that stated the removal of non-conforming signs are not permitted to be replaced.

Commissioner Al-Khafaji requested clarification from Mr. Ahmad in regard to his statement of the interpretation that would allow four signs at the intersection.

Mr. Ahmad said if the interpretation of the code was limited to street facing, four signs would be permitted at the intersection, which ultimately defeated the intent of the ordinance.

Vice Chairperson Oyler opened the Public Hearing at 1:28 p.m.

Sam Zabek, petitioner, said the ordinance did not allow for hypothetical situations. Mr. Zabek said he understood he would not be allowed to install 8 signs on Glen Avenue.

Vice Chairperson Oyler closed the Public Hearing at 1:30 p.m.

Chairperson Oyler read the Findings of Fact for the Appeal.

Motion:
Commissioner Barry made a motion to uphold the position of staff; seconded, by Commissioner Jackson.

The motion was approved by roll call vote 3 to 2.
Yeas: Barry, Jackson, Wagner – 3.
Nays: Al-Khafaji, Oyler – 2.

CASE NO. ZBA 3026 (Continued from 11/10/2016)
Public Hearing on the request of Shirley Weber, to obtain a variance from the City of Peoria Unified Development Code Section 5.4.7.C., Fence Requirements, to install a front yard fence that exceeds the allowed height of 3 feet in a Class R-3 (Single-family Residential) District, for the property identified as Parcel

Senior Urban Planner, Shannon Techie, Community Development Department, read Case No. ZBA 3026 into the record and presented the case. Ms. Techie provided the property characteristics, requested variance, and the Development Review Board recommendation as outlined in the memo. Ms. Techie noted the commission chose to defer the case for one month to provide the petitioner time to measure the recommended setback of 10 feet from the property line.

The Development Review Board felt that the standards for variances are met due to the existing placement of structures on the site, the shape of the site, and the fact that the property was a corner lot.

The Development Review Board recommended APPROVAL of the variance with the following conditions:

1. That the fence be constructed of vinyl or other similar material.
2. The fence not exceed 4 feet in height.
3. The fence be set back 10 feet from the front property line.
4. The existing fence around the pool (that doesn't meet barrier requirements) be removed and the new fence serve the purpose.

Commissioner Barry questioned if the only distinction between the city and the petitioner was the height of the fence.

Ms. Techie said yes; the deferral was to allow time for the petitioner to measure to verify that she can meet the 10 foot setback.

The petitioner was sworn in by Staff Member Madeline Wolf.

Shirley Weber, petitioner, reviewed her request and spoke to the misunderstanding of the location of the property line. Ms. Weber said applying the 10 foot setback would cause her to remove bushes and trees in the landscape area which would increase her expense. The purpose of the proposed fence was to improve the appearance of the fence, retain personal property, safety and security, and to comply with zoning. Ms. Weber noted there were no objections from neighbors. Ms. Weber said she was not willing to spend $9,500 - $10,000 for a privacy fence that would decrease her use of the property.

Commissioner Barry inquired which of the four conditions Ms. Weber would be willing to meet.

Ms. Weber disagreed with Conditions #3 and #4. Ms. Weber noted when her fence was struck by a vehicle, she thought it was an opportunity to build a higher fence and to improve the material of the fence. Ms. Weber was not willing to adhere to the 10 foot setback from the front property line.

In response to Commissioner Barry's inquiry regarding the proposed fence material, Ms. Weber said she preferred a solid vinyl fence.

In response to Commissioner Al-Khafaji's inquiry, Ms. Weber said she objected to anything less than 6 feet in height. Ms. Weber noted Cilco required the removal of a tree that also reduced privacy.

Ms. Techie noted Condition #3 stated the fence be set back 10 feet from the front property line and said it was the owner's responsibility to identify the property line.

Vice Chairperson Oyler closed the Public Hearing at 1:50 p.m.

Vice Chairperson Oyler read the Findings of Fact
Motion:
Commissioner Barry made a motion to approve the variance with the four conditions of staff; seconded by Commissioner Al-Khafaji.

The motion was approved by roll call vote 5 to 0.
Yea: Al-Khafaji, Barry, Jackson, Oyler, Wagner – 5.
Nays: None.

CITIZENS’ OPPORTUNITY TO ADDRESS THE COMMISSION

Shirley Weber, 2006 Gilbert Avenue, questioned if she was obliged to the conditions set forth in the motion for Case No. ZBA 3026 if she chose not to remove the existing fence.

Ms. Techie said the existing fence was on public right-of-way; therefore, it was Public Works’ decision. Ms. Techie said she would follow up with Public Works after the meeting.

There was no further interest from the public to provide public testimony at 1:55 p.m.

ADJOURNMENT
Commissioner Jackson moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Barry.

The motion was approved unanimously viva voce vote 5 to 0.

The Zoning Board of Appeals meeting adjourned at approximately 1:55 p.m.

Leah Allison, Senior Urban Planner

Shannon Techie, Senior Urban Planner

Madeline Wolf, Development Technician