

**Board of Adjustments and Appeals
Regular Meeting
January 28, 2004**

The Board of Adjustment and Appeals (BAA) of the City of Titusville, Florida, met in regular session in the Council Chambers, on Wednesday, January 28, 2004.

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Chairman Prather called the meeting to order at 6:31 p.m. Present were Vice Chairman Sheldon Brown, Members Richard Thornburg, Robert Donaldson, Sid Chehayeb, Alternate Members Michael Boggs and John Hudgens. Also in attendance were City Attorney Dwight Severs, Attorney Richard Rogers, Planner Don Land and Recording Secretary Tammy Holton. It was determined that a quorum was present.

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Chairman Prather asked the entire assembly to recite the Pledge of Allegiance to the Flag.

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First item of business was the approval of the minutes from the January 8, 2004 special meeting. Member Chehayeb made a motion to approve the minutes. Member Thornburg seconded the motion. There was a unanimous voice vote.

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Chairman Prather confirmed the quasi-judicial procedures verifying that all persons wishing to speak before the board have signed an oath card; confirmed that all agenda items had been properly advertised and call for members' statements, if they have visited any of the sites. The members confirmed that they had visited the sites and spoke to no one. Member Chehayeb stated for the record that he would abstain from voting on Appeal #1-2004 and Variance #4-2004, as he is involved with both items.

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New Business:

Appeal #1-2004 Jerry Spangler - The appellant has filed an appeal from a decision of an administrative official; specifically, a lawyer's office is not a permitted use in the Highway Industrial Infill (M-3) zoning district. Don Land gave an overview of previous actions and rulings on this item. Discussion followed.

Mr. Severs defined for BAA the term highest and best use. Gave historical background of LDR's and specified the zoning areas and uses. Mr. Severs relayed to BAA the

permitted use in the M-3 Highway Industrial Infill Zoning District. Reviewed the criteria to determine the proper interpretation of uses as defined by the LDR's. A law firm is not a permitted or accessory use as describe in the LDR's. Discussion followed.

Jerry Spangler, 3306 South Washington Avenue – In favor. Informed BAA that he would be the on-site senior manager of the project as well as legal counsel. This is an incidental business to the operation of mini-warehouse facility. Legal assistance is needed in the day-to-day operations. Only taking a small portion of the project for legal office, it is economically feasible to be onsite, instead of traveling back and forth. City is concerned with traffic this would eliminate many trips. According to the intent of LDR on M-3 zoning Section 27.27(j), he stated he was planning to enhance the area with beautiful landscaping that would be beneficial to the city. In relation to comprehensive plan, law offices are permissible under the commercial zoning as Mr. Land told the board. Chairman Prather told Mr. Spangler that his time remaining out of five minutes was one minute left. Discussion followed.

Dwight Severs – Rebuttal. Agreed that the comprehensive plan prevails, question is in the inconsistency. Mr. Severs read the whole section of the comprehensive plan into the record. This allows you to look in the LDR to justify where business and professional offices should fall within the LDR's. There is no inconsistency in the LDR's. This was accomplished with the Planned Industrial District. Discussion followed.

Chairman Prather appointed Member Boggs as the voting member in order to have five voting members. Attorney Rogers asked Mr. Spangler if he was in agreement with Member Boggs being a voting member. Mr. Spangler had not objections to Member Boggs being a voting member.

Vice Chairman Brown made a motion for dismissal of Appeal #1-2004. Member Boggs seconded the motion.

Member Boggs – yes
Member Donaldson – yes
Member Chehayeb – abstained
Member Thornburg – yes
Chairman Prather – yes
Vice Chairman Brown – yes

Vice Chairman Brown made a motion that with staff's recommendation a law office is not an accessory use to a mini-warehouse facility. Member Thornburg seconded the motion.

Member Thornburg – yes
Member Boggs – yes
Member Donaldson – yes
Member Chehayeb – abstained
Chairman Prather – yes
Vice Chairman Brown - yes

Variance #4-2004 Jerry Spangler - The applicant is requesting a Variance to Section 39-47(b), Road and Sidewalk Requirements. Located on the east side of S.R. 405, ±1,000 feet south of Satterfield Road. Don Land gave an overview of the request. Discussion followed.

Jerry Spangler, 3306 South Washington Avenue – In favor. Told BAA that he is the owner of the property, objection was because he should not be treated any different from any one else. The only sidewalk currently there is in front of Cumberland Farms. Mr. Land did call to ask if Mr. Spangler would be willing to do a recordable letter in order to do away with the variance request as Access Storage had done previously. Mr. Spangler informed BAA that he had not found a recordable document on the part of Access Storage and decided not to provide a document for his property. Access Storage has changed owners two times and still no sidewalks to date.

Discussion followed

Member Thornburg made a motion to grant Variance #4-2004 with the condition that when the City of Titusville decides to install sidewalks that the cost of construction be assessed by the owner. Vice Chairman Brown seconded the motion.

Member Chehayeb - abstained

Chairman Prather – yes

Vice Chairman Brown – yes

Member Thornburg – yes

Member Boggs – no

Member Donaldson - yes

Variance #5-2004 Sculptor Charter School - The applicant is requesting: (A) a variance to Sec. 59-549(b)(3) in order to reduce the required curbing; (B) a variance to Sec. 59-549(i) in order to reduce the side yard green belt requirement; and (C) a variance to Sec. 59-549(l) to waive the requirement for sidewalks. Located at 1103 John Glenn Boulevard. Don Land gave an overview of the request. Stated that staff has revised the recommendation on Part (C) to approval with the condition that the applicant be assessed the cost of sidewalks as previously granted on Variance #4-2004.

Robert Fernandez, 2232 Branthold Road West, Jacksonville – In favor. Informed BAA that he is the design specialist for the project. Clarified that the operator of the school has concerns for the safety of the children and did not want to put in sidewalks due to the industrial nature surrounding the project. This was to discourage children from walking or riding their bikes to the school. Would not like to be required to add sidewalks by the bus entrances or bus lanes. Dwight Severs told BAA that sidewalks are required in the public right-of-way; bus lanes would not fall into the category. Discussion followed. Vice Chairman Brown asked if Mr. Fernandez understood the change to Part (C) as recommended by staff. Mr. Fernandez stated he did understand. Discussion followed.

William S. Neff, 636 Box Branch Circle, Jacksonville – Drainage is toward the center of the road with 4:1 side slopes, as long as no steeper a fence is not required by SJRWD. Member Chehayeb stated that there is a requirement by the School Board that if a dry retention pond holds water for more than 24 hours at 1-inch it is required to be fenced. Discussion followed. Dwight Severs relayed to BAA that staff should note the comment and check to see if that is required. BAA is approving only as it relates to the variance.

Member Thornburg made a motion for approval of Variance #5-2004 Parts A through C with conditions as stated by staff on Part C. Vice Chairman Brown seconded the motion.

Chairman Prather – yes

Vice Chairman Brown – yes

Member Thornburg – yes

Member Boggs – yes

Member Donaldson – yes

Member Chehayeb - yes

Reports:

Staff – Don Land told BAA that he would pass along to Dan Moretti, Development Supervisor the concerns about fencing around the retention area.

Member Thornburg – Commended staff on a great job with providing information relating to the appeal.

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Adjournment:

The meeting adjourned at 8:30 p.m.