



BOARD OF ADJUSTMENT

Minutes of Meeting

February 28, 2013

1. CALL MEETING TO ORDER

The meeting was called to order by Chair ABBOTT at 7:02 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL

Board Members Present: Tom Abbott
Sally Banghart
Janet Bell
Lily Griego
Paul Griffith
Paul Hovland

Alternates Present: Russ Hedden
Jennifer Walter

Board Members Absent: Betty Jo Page

Staff Members Present: Meredith Reckert, Sr. Planner
Lauren Mikulak, Planner I
Kim Waggoner, Recording Secretary

3. PUBLIC FORUM

No one wished to speak at this time.

4. PUBLIC HEARING

- A. Case No. WA-13-01:** An application filed by Boston Market for approval of a 9-foot variance from the maximum 7-foot height limit and a 20-foot variance from the 30-foot setback requirement, resulting in a 16-foot tall freestanding sign with a 10-foot setback on property zoned Mixed Use-Commercial (MU-C) and located at 3820 Wadsworth Boulevard.

The case was presented by Lauren Mikulak. She entered all pertinent documents into the record and advised the Board there was jurisdiction to hear the case. Ms. Mikulak reviewed the staff report and digital presentation. The purpose of the variance request is

to allow the applicant to replace an existing monument sign with a new monument sign that is 16 feet in height and located 10 feet from the front property line. Staff outlined recent planning efforts along the corridor and described the current zoning, the proposed sign, and several alternatives.

Having found the application not in compliance with a majority of the review criteria, staff gave a recommendation of denial.

Board Member GRIEGO asked how nonconforming signs, such as the tall freestanding Burger King sign, are treated in the code. Ms. Mikulak stated that nonconforming signs are allowed to be kept or modified as long as they do not increase the nonconformity. The sign code does not require nonconforming signs to be removed by a certain date. All newly constructed signs have to meet current standards.

Board Member BELL stated she could understand why the applicant wants additional height for the sign given the presence of other taller signs on Wadsworth. The setback of the building from the street reduces visibility of wall signs especially compared to the visibility of the Burger King sign.

Board Member BELL inquired about the height of the retaining wall along the front property line. Ms. Mikulak stated the wall is about 2.5 feet tall. Board Member BELL commented that the height of the wall affects visibility of the existing Boston Market sign.

Board Member HOVLAND commented on the addition of the digital cabinet on the Burger King sign. Ms. Mikulak stated that the digital portion is allowed because it does not increase the nonconformity and is within the signs size limits. The allowed area of a sign is based on building size, and Boston Market could also increase the size of their sign and add an LED sign.

Board Member BANGHART stated she supports the idea of Wadsworth being more pedestrian friendly, but it is a high traffic area where auto-oriented signs may be appropriate. Ms. Mikulak stated Wadsworth is a state highway and it is slated to be upgraded in the future. The vision for Wadsworth in the City's comprehensive plan is to have detached sidewalks and fewer parking lots between the sidewalks and buildings. The mixed use zoning requires new buildings to be closer to the street.

In response to a question from Board Member WALTER, Ms. Reckert stated that the multitenant sign to the north was constructed in the early 1990's and the inline tenants feel it doesn't provide enough signage.

Board Member GRIEGO commented on a photograph in the staff report which shows that the street tree foliage may reduce visibility of the proposed taller sign.

Board Member BELL commented that the sign standards in the mixed use code are based on a future vision for Wadsworth and not on existing conditions.

Chair ABBOTT commented that the future design of Wadsworth is unknown and the timing of a widening is unknown. Ms. Mikulak agreed these are unknown but stated that funds have been secured for a preliminary environmental study and Wadsworth is a high priority area for the City.

Mike Pharo

The applicant's representative was sworn in by Chair ABBOTT. Mr. Pharo introduced Diane McClelland, a Purchasing Agent and Design Administrator with Boston Market, who was in the audience.

Mr. Pharo expressed disagreement with the long term view of Wadsworth as a pedestrian-oriented environment, and stated it is and will continue to be an auto-oriented corridor. He explained that the City's vision in the comprehensive plan will not be achieved without governmental intervention or participation, and this is not happening.

Mr. Pharo stated that Boston Market is requesting fair treatment and is requesting equal exposure. He explained that if nonconforming signs are permitted to exist, Boston Market should not be held to such a different standard. He stated that restaurants use signage to attract drive-by customers, and the applicant does not have equal exposure to the vehicular market. Mr. Pharo compared the applicant's property to the neighboring Burger King which has a taller sign and no street trees. Boston Market would prefer a taller sign even if a tree canopy partially blocks the view.

Mr. Pharo described the inequity of a sign code that allows competing restaurants to have much taller signs. The applicant is open to alternative sign designs, but wants a taller sign to be able to compete fairly. He described the recent investment in an interior remodel and Boston Market's commitment to the location in Wheat Ridge.

Board Member GRIEGO asked about the location of the next closest Boston Market restaurants. Mr. Pharo and Ms. McClelland stated they are at Wadsworth and Crestline in Littleton and at 92nd & Sheridan to the north. Board Member GRIEGO asked if the Wheat Ridge location is considered a destination restaurant. Mr. Pharo acknowledged it may be but the sign they have not is not adequate for the impulse diner.

Board Member GRIEGO stated that competition is a given in the restaurant business and asked the applicant to discuss the alternative designs staff had proposed in the report and presentation. Mr. Pharo stated the alternatives do not allow a taller sign, and therefore do not solve the issue of visibility to vehicles.

Board Member HOVLAND reiterated the two factors of the request - height and setback - and clarified that setback is based on the height. He asked if the applicant would consider a 15 foot sign which would eliminate the need for a setback variance. Mr. Pharo

explained the 16-foot request was based on wanting the sign to be taller than the nearby bus shelter, but the applicant would consider a 15-foot sign as a reasonable solution.

Ms. Mikulak responded to a comment that 30 foot setbacks seem exorbitant. The City typically does not allow signs above 15 feet unless a property is within a ¼-mile of the interstate. In that instance a sign may be up to 50 feet tall to be seen by interstate traffic, but a sign from 15 to 50 feet tall requires a 30 foot setback. This site is not within a ¼-mile of the interstate.

Board Member BELL asked if the street trees could be trimmed or modified. Ms. Reckert stated the trees belong to the property owner, but extensive trimming could impact the shape.

Chair ABBOTT stated that normally variances run with land in perpetuity but asked if a variance could be granted for a specific period of time such that a taller sign would be removed as the corridor started to redevelop. Ms. Reckert responded that conditions may be added, but for the sake of enforceability recommended a condition based on the tenant instead of based on a period of time.

Board Member BELL expressed disagreement with the comprehensive plan's vision for Wadsworth and stated that the street has a vehicular orientation and not a pedestrian orientation. She agreed with Board Member HOVLAND's suggestion of a 15-foot tall sign which would eliminate the need for a setback variance.

There was some discussion on how the motion should be presented and what should be included in the motion.

Upon a motion by Board Member HOVLAND and second by Board Member BELL, the following resolution was stated:

WHEREAS, application Case No. WA-13-01, applicant name Boston Market, location at 3820 Wadsworth Blvd.

WHEREAS, the application was denied permission by Administrative Officer; and

WHEREAS the Board of Adjustment application Case No. WA-13-01 is an appeal to the Board from the decision of Administrative Officer

WHEREAS, the property has been posted the fifteen days required by law and in recognition that there were no protests registered against it; and

WHEREAS, the relief applied for may be granted without detriment to the public welfare and without substantially impairing the intent and purpose of the regulations governing the City of Wheat Ridge.

NOW, THEREFORE BE IT RESOLVED that the Board of Adjustment application Case No. WA-13-01 Request A be, and hereby is APPROVED.

TYPE of VARIANCE: An 8-foot variance from the 7-foot maximum height standard for free standing sign in Mixed Use-Commercial zone district, thereby making a 15-foot maximum height. For the following reasons:

- 1. Wadsworth is a vehicular corridor and sight is limited with the existing sign.**
- 2. There are a number of non-conforming signs in the vicinity which block and distract from the lower height of the Boston Market sign.**
- 3. The design is to be as presented.**

Board Member GRIEGO asked for confirmation that the approval is granted specifically to the design which was presented by the applicant. Chair ABBOTT confirmed this was true.

Chair ABBOTT thanked the applicant for the recent investment made on the interior remodel, but stated that he intended to vote no, based on evidence that a taller sign does not entirely resolve the situation and the fact that alternatives may exist.

Board Member GRIEGO stated that she intended to vote no based on there being insufficient evidence supporting the request. She stated for the record that she does not agree with the treatment of nonconforming signs in the sign code.

Board Member WALTER stated she intended to vote no because alternative options may exist.

There was some additional discussion of sign visibility with adjacent traffic, traffic speeds, the auto versus pedestrian character of the corridor, and the challenge that any solution addresses only part of the problem.

Chair ABBOTT called for a vote and advised that a super majority of 6 affirmative votes would be required for approval.

The motion failed by a vote of 4 to 4 with Board Members ABBOTT, GRIEGO, WALTER, and HEDDON voting no.

Ms. Mikulak explained that because the height variance failed, the setback variance is no longer applicable.

Chair ABBOTT encouraged the applicant to continue to work with the City and thanked them for having their business in Wheat Ridge.

Board Member BELL asked if there was a time limit for Boston Market to submit an alternate proposal. Ms. Reckert stated the applicant may request a re-hearing in front of

the Board. The request must be filed in the office of the City Clerk within 30 days and new evidence must be submitted. If a request is submitted, the Board will vote on whether or not to conduct a re-hearing.

Chair ABBOTT expressed appreciation to all those who participated in the hearing.

5. CLOSE PUBLIC HEARING

Chair ABBOTT closed the public hearing.

6. OLD BUSINESS

There was some discussion on orientation for new members with the City Attorney. Ms. Mikulak stated staff could arrange a training to discuss the functions of the Board.

7. NEW BUSINESS

A. Approval of Minutes – May 24, 2012

It was moved by Board Member BELL and seconded by Board Member BANGHART to approve the minutes as written. The motion passed 7-0 with Board Member GRIFFITH abstaining.

B. Election of Officers

Paul Griffith was elected to serve as Chair of the Board of Adjustment. Lily Griego was elected to serve as Vice Chair of the Board of Adjustment.

C. Resolution Designating a Public Place for Posting of Notices of Public Meeting.

It was moved by Board Member GRIEGO and seconded by Board Member HOVLAND to approve Resolution No. 01, Series of 2013 – Designating a Public Place for the Posting of Meeting Notices as required by the Colorado Open Meetings Law. The motion passed 8-0.

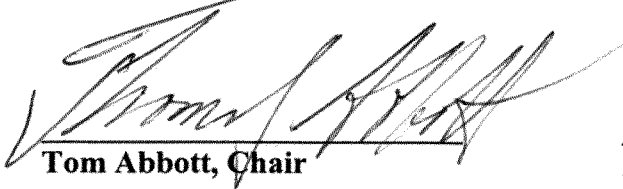
D. Ms. Reckert provided a staffing update:

1. There was an introduction for Kim Waggoner, Administrative Assistant of the Community Development Department and Recording Secretary for Board of Adjustment, Planning Commission and Housing Authority.
2. David Kuntz was introduced as the new Representative for District II.
3. Sarah Showalter has taken a position with the City of Denver and her last day will be March 8th.

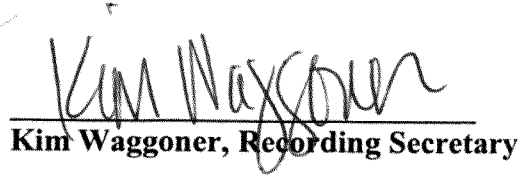
8. ADJOURNMENT

It was moved by Board Member HOVLAND and seconded by Board Member GRIEGO to adjourn the meeting. The motion passed 8-0.

The meeting was adjourned at 9:08 p.m.



Tom Abbott, Chair



Kim Waggoner, Recording Secretary