

CITY OF THE DALLES PLANNING COMMISSION MINUTES

Thursday, June 4, 2009

City Hall Council Chambers

313 Court Streets

The Dalles, OR 97058

Conducted in a handicap accessible room

CALL TO ORDER:

Chair Lavier called the meeting to order at 6:32pm

BOARD

MEMBERS PRESENT: Bruce Lavier
Ron Ahlberg
Mark Poppoff
Dean Wilcox
Chris Zukin

BOARD

MEMBERS ABSENT: Derek Hiser
Benjamin Hoey

STAFF PRESENT:

City Attorney Gene Parker
Senior Planner Richard Gassman
Administrative Secretary Brenda Green

APPROVAL OF AGENDA:

It was moved by Wilcox and seconded by Poppoff to approve the agenda as submitted. The motion carried unanimously; Hiser, Hoey absent.

PUBLIC COMMENT: none

QUASI-JUDICIAL PUBLIC HEARING:

Quasi-Judicial Public Hearing – Application Number: VAR 112-09 of Burgerville #17 **Request:** To obtain approval for a menu sign that exceeds the code size limitation. **Location:** Property is located at 118 W 3rd St. The property is further described as 1N 13E 3 BC tax lot 1000. Property is zoned “CBC” – Central Business Commercial.

Chair Lavier read the rules for conducting a public hearing. He asked the Commissioners if they had any bias, conflict of interest, or ex-parte contact. Commissioner Zukin disclosed that he had a potential conflict of interest because Burgerville was a client of his, but that this particular sign was not one of his projects. City Attorney Parker asked if he had had any contact with Burgerville in regards to this specific sign. Zukin stated no. Parker did not see any issues. There were no challenges from the audience. Chair Lavier declared the public hearing open and asked for the Staff Report.

Senior Planner Gassman presented the Staff Report. He opened by stating that no comments had been

received. Gassman shared that this request is an unusual situation but not necessarily unique. He gave the history of the sign explaining that the original sign request had been denied but the applicant ignored the denial and put it up anyway. It has now been up for ten years without permission and was only brought to the attention of the Planning Department when an additional sign permit application was turned in. In the ten years the sign was up there had been no known complaints. Gassman discussed the possible reasons that the entire situation was missed for ten years.

Senior Planner Gassman went through the staff report pointing out that in staff's view, the applicant had not met several of the criteria required to approve the variance. Gassman went through those criteria; specifically findings number 10, 11, 12 & 13, and the purposes behind them. Based on those unmet criteria staff is recommending denial of the variance.

Commissioner Ahlberg asked about the former menu board that was grandfathered in. Commissioner Zukin added a question in regards to the size of that grandfathered sign. Senior Planner Gassman explained that those details were not available; it all happened almost nine years ago before he was an employee. Gassman explained that sometimes with staff turnover the information that is in someone's head doesn't always get passed on which is most likely a big reason of why this situation happened.

Commissioner Wilcox felt that the application should have been able to be handled at the staff level. He pointed out that in his opinion the sign in question was very unobtrusive and not bothering anyone. Wilcox described several other signs that he felt were far worse than the one in question. He then proposed granting the variance and moving directly to a vote. Chair Lavier pointed out that the proponents and opponents needed to be given the opportunity to speak first.

Commissioner Zukin followed up on Ahlberg's observation about the sign that was up prior to the current one. He asked if it could be assumed by the letter from Bob Paul that it was non-conforming because of the size. Senior Planner Gassman was unable to confirm that assumption without looking into what the sign code specifications were at that time. He also pointed out that it could have been non-conforming due to some other reason.

Public Testimony:

Nick Hardin, Burgerville General Manager, 407 Maxus Place, Hood River, OR 97031. Mr. Hardin described the Burgerville corporation's structure, their history in The Dalles, and the philosophies of the corporation including using local vendors, green practices and their community support programs. Hardin explained the importance of the current sign and stated that it is a corporate design; all signs are made the exact same way and size.

Commissioner Ahlberg asked what the need was for a second sign. Hardin replied that it was a secondary menu board so customers could decide on their order before getting up to the ordering spot. He also shared that the second sign had already been put up before he was hired but that he had taken the sign down as a show of good faith.

Considering that the sign was custom built the same for all Burgerville locations, Commissioner Wilcox asked if there had been any problems gaining approval for that same sign in any other location. Mr. Hardin replied no it had been approved everywhere else.

Commissioner Poppoff shared his surprise that there had not been size issues at other locations,

pointing out that he did not feel The Dalles' sign code was difficult.

Jack Graves, 17011 NE 41st Circle, Vancouver WA, has worked for Burgerville since before The Dalles location was built; although he worked in a different department at the time. Graves explained the evolution of the signs and how they incorporate the corporate branding as well as the menu with space for monthly specials. Graves acknowledged that things got dropped through the cracks on both sides ten years ago. He explained that when this oversight came to the surface he called the original sign installer. The sign installer remembered the situation but had forgotten all about it as well.

Commissioner Ahlberg expressed his concern that the sign had clearly been denied and that someone had blatantly ignored the denial and put it up anyway. Mr. Graves apologized for it happening and explained that he did not know why it happened either. He added that the department and employees which used to handle signs doesn't even exist anymore; they have since outsourced that function. Chair Lavier shared that the City of The Dalles employee whom handled that application is also no longer with the department.

Opponents: none

Commissioner Ahlberg asked staff to go over the suggested conditions if the variance was to be allowed. Senior Planner Gassman described an option of allowing the applicant a total amount for all their signs combined which would allow them to keep their current sign, but reduce the amount of any future signs. This would support the idea of trying to keep everything fair with other businesses; they would still only be allowed a total of 64 feet.

Commissioner Ahlberg reiterated his surprise that the size issue has not come up at other locations. Senior Planner Gassman explained that not all places regulate sign boards that are already on property.

City Attorney Parker advised that if the Commission is interested in approving the variance, they should look at the criteria and explain the rationale as to why each criterion has been satisfied. Chair Lavier felt that based on the findings it would be difficult to justify the criteria.

Commissioner Ahlberg suggested that the fact it had been almost ten years and that there was fault on both sides for it falling through the cracks could be used as a rationale. City Attorney Parker suggested that idea could be an explanation towards extraordinary circumstances.

Chair Lavier mentioned limiting them to the one current sign and allowing it until a point when they completely replace the current sign, not just reface it. Senior Planner Gassman indicated that option would be considered creating a temporary variance. Lavier confirmed yes, that was what he was meaning. Lavier was not comfortable with a business directly ignoring the code.

Commissioner Wilcox suggested that it would be common sense to just grant the variance considering that there had not been an issue in the ten years that it had been up.

Commissioner Zukin brought up the suggestion by staff to limit the applicant's total sign area to 64 square feet. Chair Lavier asked the applicant how they felt about that idea. Mr. Graves responded that it would be acceptable as long as they would still be allowed to change the face. Mr. Hardin added that having the extra ten square feet would be helpful due to an upcoming requirement to display nutritional

information. Mr. Graves also noted that it would be an extreme financial impact if they were required to completely replace the sign with a new smaller sign.

Chair Lavier closed the public testimony portion of the hearing.

Deliberation:

Commissioner Ahlberg stressed his concern at the number of cases in which people have gone ahead with unapproved things and then come in after the fact asking for permission. He was concerned about setting precedence and having it happen more often.

Chair Lavier agreed with that feeling and would want it emphasized that once the applicant wants to install a replacement sign, this variance will no longer be in effect. Lavier also pointed out that in this situation it got dropped on The City's end as well.

Commissioner Zukin stated that he agreed with Commissioner Ahlberg's concerns. Speaking from working in the business he agrees that the regulations are needed and that permission should have been received. He also pointed out that had the error been found earlier the sign installer could have been held liable for not obtaining a permit. However, in this situation it got dropped through the cracks on both sides. Zukin felt that the variance should be granted with the staff's suggestion of limiting the total menu board size on the property to 64 square feet.

Chair Lavier asked City Attorney Parker for suggested wording of a condition. There was a discussion about possible wording options and which conditions to keep or modify. Lavier wanted it stipulated that the code must be met once the sign is structurally replaced. Parker asked for a recess to come up with wording.

Chair Lavier called for a recess at 7:17 pm.

Chair Lavier called the meeting back to order at 7:21 pm.

City Attorney Parker suggested a condition which would read; In the event the primary structural portion of the existing menu board sign, including the supporting structure, is replaced, the sign will have to comply with the sign code requirements in effect at the time of replacement.

Commissioner Wilcox made a motion to approve VAR 112-09 of Burgerville #17 with the four conditions as modified. It was seconded by Zukin and carried unanimously; Hiser and Hoey absent.

RESOLUTION: City Attorney Parker will put together a resolution based on the Commissioners findings along with an updated Findings of Fact and Conclusions of Law statement and present it at a future meeting.

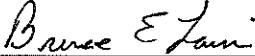
COMMISSONER COMMENTS: none

STAFF COMMENTS: Senior Planner Gassman announced that the next meeting will be a joint work session with the City Council to discuss the I-84/Interchange Management Plan. Gassman explained the importance of the plan and the areas that will be affected.

NEXT MEETING: The next scheduled meeting is June 18, 2009.

ADJOURNMENT: The Planning Commission meeting was adjourned at 7:30 p.m.

Submitted by
Brenda Green, Administrative Secretary



Bruce Lavier, Planning Commission Chair