

MINUTES OF THE SHAWNEE COUNTY BOARD OF ZONING APPEALS

Monday, April 13, 2009
Shawnee County Annex
6:00 PM

Roll Call and Announcement of Hearing Procedure: Mr. Macfee, Chairman, called the meeting to order, reviewed the hearing procedure and asked that roll call be taken. Following announcement of a quorum, Mr. Macfee announced there would be a 4minute time limit for speakers at tonight's public hearing.

Members Present: Chris Bortz, Nancy Johnson, Kurt Young, Michael Murray, Bruce Henriksen and Dave Macfee were present. With six members present a quorum was established and the meeting was called to order.

Members Absent: None.

Staff Present: Barry T. Beagle, Planning Director, Gloria Obregon, Administrative Assistant and Ken Delaughder, Legal Intern to County Counselor's Office.

Approval of October 08, 2007 Minutes, Public Hearing: Minutes of the October 08, 2007 meeting were approved with a motion from Mr. Murray, second by Mr. Young and a unanimous voice vote of the members.

Communications: There were no communications by staff.

Ex Parte Communication by Members of the Commission: There were no Ex Parte communications by members of the Commission.

Declaration of Conflict of Interest by Members of the Commission or Staff: There were no reported conflicts of interest by commission members or staff.

Public Hearing:

1. **VR09/01 by Mother Teresa Catholic Church** requesting a variance to increase the maximum sign allowance for a church sign on property located at 2014 NW 46th Street in Soldier Township.

Mr. Barry Beagle presented the staff report stating the request is by Mother Teresa of Calcutta Catholic Church is seeking a variance to Sec. 31.01(a) (1) of the sign regulations to increase the sign area limitation from 40 square feet to 76 square feet.

Mr. Beagle stated Fr. William Bruning cites recurring complaints of the church from visitors who state they have difficulty locating the church entrance on NW 46th Street. Fr. Bruning relayed the posted speed limit of 55 mph, a hill located west of the site and the setback of the church creates the necessity to place a highly visible sign at the church entrance.

Mr. Beagle relayed by state statue there are five (5) tests that must be considered and satisfied by the Board of Zoning Appeals in order to grant a variance. Mr. Beagle then explained each condition

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and responded to the criteria for each, reiterating the applicant has offered the traffic speed limit of 55 mph and the terrain which creates a condition that is unique to the property and warrants the granting of a variance.

The Planning Department requested the applicant supply evidence specific to the property that would justify granting a variance for a larger sign area and received 3 letters from the applicant's sign company, All Signs, which noted a principal concern of the reader board, which is a component of the overall sign. All Signs claims the reader board must be a certain size and letter height in order to be read by traffic traveling at 55 mph, which makes the reader board dictate the overall size of the sign and the need for a larger sign. Mr. Beagle also provided specific sign dimensions that were provided by All Signs in their correspondence, which was their justification for a larger sign. All Signs also provided several studies in their communications relating to sign size and traffic speed, however, they never produced quantifiable information specific to the property to demonstrate a unique conditions exists that renders an unnecessary hardship for the applicant and the justification for a variance.

After reviewing all conditions staff cannot find circumstances unique to the property to grant a variance and provided the following comments:

- All communications received have not documented a condition unique to the property except that it is situated on a road that has a speed of 55 mph and no quantifiable information has been provided to disprove a 40 square foot sign would not be visible at the church entrance.
- The applicant's request is tied more to the significance of a reader board more than the overall limitation of a 40 square foot church identification sign, and there are no special accommodations for a reader board.
- A church that fronts a street with a 55 mph speed limit is not entitled to a greater sign area than one on a street with the speed limit of 35 mph.
- Within a residential setting of the area, there will not be competition for motorist attention along the roadway with multiple signs as one would experience along a commercial corridor.

Staff finds a 40 square foot sign limitation is an appropriate standard within a residential setting regardless of whether or not a reader board is included. Staff then detailed the 5 (five) tests that must be met according to zoning regulations.

After reviewing each test, staff does not find a condition exists that would deny the property adequate identification based on a 40 square foot church dedication sign. The question before the board is not what is an appropriate size to accommodate a reader board, but does the strict application of the 40 square foot sign limitation cause an unnecessary hardship to the property owner?

Based on the above factors, the Planning Department recommends Disapproval of the requested variance. Mr. Beagle noted for the record that staff has had good communications with Fr. Bruning and the church, and they have been responsive to meeting all requests of staff for additional information.

Commission members asked Mr. Beagle about the size of signs for other churches, the temporary signage currently in place for the church and if there were any height restrictions for signs. Mr. Beagle said he does not have data before him that identifies the size of signs for other churches, there are no height limitations within the regulations, however, the applicant is requesting to erect a monument sign 16 feet in height.

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Fr. William Bruning, 4609 NW Kendall Drive, Topeka, KS 66618, representative for Mother Teresa Catholic Church addressed commission members providing the following comments:

- There is an existing blind spot when one approaches NW Green Hills Road and when cars are stopped to turn left, it creates a traffic hazard.
- The church is requesting a sign that is functional and signage is important to a church for the public to be able to identify church times and other events/services held by the church.
- Safety is a major concern regarding traffic as it turns in from NW 46th Street.
- The size of the sign has been determined by a representative of All Signs, who cited 30 years of experience as a factor for size of the proposed sign.
- The travel speed of 55 mph as well as visibility, readability and the ability to identify the location are also factors.
- The unique terrain, a blind spot entry way, the expertise of All Signs who has identified the need for the larger sign, and a reader board are the reasons for the request of a variance.

Fr. Bruning also stated if the variance is denied, the church will still keep a reader board, however, it will be smaller in size and the height of the sign will remain the same.

Commission members asked Fr. Bruning several questions relating to the size of the monument sign, the reader board and traffic speed. Fr. Bruning reiterated the ability for the public to identify the location of the church is very important and out of state visitors are not familiar with the area. Fr. Bruning also stated the county has had many calls from the public relating to NW 46th Street and Green Hills Road regarding traffic safety.

Mr. Beagle displayed slides for commission members showing approaches from the east and west from NW Green Hills Road and several other views.

Mr. Macfee opened public hearing and asked if anyone was present who wished to speak in favor or opposition to the proposal.

The following spoke in favor of the proposal and provided the comments below:

- Ted Applehantz, 7521 NW Nickell Road, Topeka, KS 66618
- Joe Enneking, 4543 NW Green Hills Rd., Topeka, KS 66618
- Paul Keating, 3515 NW 66th Street, Topeka, KS 66618
- Merlin Stallbaumer, 2829 Detlor Rd., Topeka, KS 66617
 - Some delivery trucks have had difficulty identifying the location.
 - There is a lot of traffic that turns left onto NW Green Hills Road going north which makes it difficult for traffic that travels on NW 46th Street.
 - The intersection of NW 46th Street and NW Green Hills Road has greenery starting in the springtime that one must get by to see the building.
 - A taller sign would be beneficial for the public, especially when there are night activities at a nearby school and one would not have to look directly into another vehicles headlight to see the sign.
 - Six of the houses on Kendall Road are parishioners of the church and are in favor of a larger sign and do not consider a larger sign offensive to the character of the neighborhood.

There were no members present to speak in opposition to the variance and Mr. Macfee closed the public hearing.

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Discussion amongst commission members gathered the sign would be lighted, it would be 16 feet in height and the issue before members is the reader board, which does not have a bearing on identifying the entrance to the church. Commission members added they understand the desire for a larger sign, but the reader board should not be a factor in granting the variance.

Mr. Bortz motioned for Disapproval of the variance, second by Mr. Murray and the variance was recommended for **Disapproval** with a vote of 5-1-0 with Mr. Henriksen dissenting.

Adjournment:

Mr. Murray motioned for adjourned of the meeting, second by Ms. Johnson and the Board of Zoning Appeals at adjourned at 6:45 PM.