

MINUTES OF THE SHAWNEE COUNTY BOARD OF ZONING APPEALS

Monday, November 14, 2011
Shawnee County Annex
6:00 PM

Roll Call and Announcement of Hearing Procedure: Mr. Bortz, Chairman, called the meeting to order and suspended the hearing procedure as everyone present was familiar with the hearing procedure. He also announced the Board of Zoning Appeals would convene first and after adjournment they would convene as the Planning Commission.

Members Present: Dave Macfee, Brian Jacques, Chris Bortz, and Lynn Marolf. With four members present a quorum was established and the meeting was called to order.

Members Absent: Patrick Tryon, Nancy Johnson, and Christi McKenzie.

Staff Present: Barry T. Beagle, Planning Director, Gloria Obregon, Administrative Assistant and Aimee Betzen, Assistant County Counselor.

Approval of the October 10, 2011 Public Meeting Minutes: Mr. Macfee moved for Approval of the October 10, 2011 Board of Zoning Appeals minutes, second by Mr. Marolf and with a unanimous voice vote the minutes were Approved.

Communications: There were no communications of staff.

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

Declaration of Conflict of Interest by Members of the Commission or Staff: Mr. Jacques stated he and Mr. Young have maintained a professional relationship; however, they have never discussed the issue appearing tonight before the Board of Zoning Appeals.

Public Hearing:

1. **VR11/04 by East Side Baptist** requesting a variance to increase the maximum sign allowance for a church sign on property located at 4425 SE 29th Street in Tecumseh Township.

Mr. Beagle relayed the variance appeared before the Board of Zoning Appeals members the previous month on October 10, 2011 and had been continued to tonight's public hearing. The church is asking for an increase in size for their church sign from 40 square feet to 62.7 square feet. Mr. Beagle also spoke of information which had been received by the County Counselor's office who informed him there was a potential that a federal known as RLUIPA (Religious Land Use and Institutionalized Persons Act) may have application to tonight's case file. The question then becomes whether the regulation in its present form presents a substantial burden on the church as to restricting their religious exercise, and whether the same regulation would have the effect of discriminating religious exercise versus non-religious entities.

Mr. Beagle stated Aimee Betzen of the County Counselor's office supplied her review of the Federal law, reviewing case law as well as the statutory language. Mr. Beagle relayed to commissioners if

**Minutes of the Shawnee County
Board Of Zoning Appeals
Monday, November 14, 2011**

they believe RLUIPA has application with this case file and would “trump” the variance request, then it would be his recommendation to dismiss the Variance as it would no longer be applicable and allow the church to follow through with their sign permit application. If however, if commission members do not believe that RLUIPA is not applicable then he recommends for them to go forward with the consideration of the Variance and act to approve or disapprove the Variance request. Mr. Beagle introduced Aimee Betzen, Assistant County Counselor who provided her findings to the commissioners.

Aimee Betzen addressed commission members stating there are several items to deal with as follows:

- Is the sign variance regulation is causing a substantial burden to the church in exercising their religion.
- If that is the case than the county must show their interest is very substantial and the limitation is the least restrictive limitation they can apply.

Ms. Betzen said there is a risk the applicant for the variance could show the sign regulations have placed a substantial burden on the exercise of their religion. If that were the case the burden shifts to the County to prove that their interest is serious enough to justify the variance, but in this case, Ms. Betzen does not feel the County would be able to show that. Ms. Betzen stated in her opinion is the risk outweighs the potential benefit of making sure sign regulations are the same.

Ms. Betzen expressed concerns for the following:

- Sign regulations cannot be applied more favorably and we must make sure we are applying it the same way to both religious entities and non-religious entities.
- There are some limitations in the sign regulations that apply specifically to churches, and spoke about a Monument sign which would be only for multi-family housing.
- The regulations do not have the same lighting requirements that are in place for the church signs.
- There is an issue with discriminating against this particular religion as compared to another religions, as it is her understanding there are a number of churches around who have large signs and appear to be in violation, but nothing has been done to prevent them from having their signs.
- It must also be shown that the sign regulation isn't unreasonable and there is not a lot of case law on the subject and she believes the risk outweighs the potential benefits.

Mr. Jacques relayed to Ms. Betzen the burden is on the taxpayers to show there is a burden that infringes on their religious practice, but the Board of Zoning Appeals has already denied a similar sign request to Mother Teresa. At that time the County was unaware there were signs that were out of compliance, so to some extent they have already treated one church one way, and would be treating this church a different way. Ms. Betzen said that could result in problems with the discrimination provision. Mr. Jacques asked if the Board of Zoning Appeals would be better off in being consistent, to which Ms. Betzen replied, she did not believe so, and her opinion is that the Board of Zoning Appeals is better off going back to the previous church and looking at the information they provided as to what their sign was for. The current applicant is stating they need a portion of the sign for their outreach activities which are part of their religious exercise.

Mr. Bortz asked Ms. Betzen if she was saying it was all in how a church words their request as to what they want to do for additional sign area. Ms. Betzen said the applicant must prove whatever our rule is, that it places a substantial burden on their religious exercise. Discussion continued about various situations for church signs.

**Minutes of the Shawnee County
Board Of Zoning Appeals
Monday, November 14, 2011**

Mr. Jacques asked if the County is recommending the Board of Zoning Appeals dismiss the variance if they determine that RLUIPA applies, and if so does that mean the person who will be determining the substantial burden will be the person issuing the building permit in the future. Ms. Betzen said possibly. It was further discussed as to whether a building permit would be issued even if the Board of Zoning Appeals dismissed the variance. Mr. Beagle said in this specific circumstance if they are indicating RLUIPA trumps the churches religious expression than he understands the sign permit would automatically be granted, because it has been noted that under Federal law that it usurps local regulations. Mr. Jacques questioned if they couldn't ask the applicant to show they cannot do what they want to do in their 40 square feet, as commissioners are allowed to restrict them, just not unreasonably restrict them. He then said the question then becomes is 40 feet sufficient. Ms. Betzen said in the case before them she does not think what the applicant is proposing is too much off the mark. Regarding the 40 foot restriction, forcing the applicant to display their message within that area could cause a substantial burden on their religious exercise.

Mr. Jacques asked Mr. Beagle if he had drawings that could show church messages could fit within the 40 square feet. Mr. Beagle presented a visual of Berryton United Methodist Church sign who sought a variance to the sign regulations which at that time limited churches to 25 square feet, and provided information as to how the sign regulations were amended. Mr. Beagle believes it is possible to achieve the goals of the current applicant to identify themselves and to relay to the public their missions and functions of the church. It was noted the visual for Berryton church versus the applicant's was not matched as to the distance from the camera and the sign for Berryton church sits closer to the street.

Mr. Beagle stated there is a difference between church establishments erecting signs and obtaining a permit for them, and the existence of larger church signs does not mean the Planning Department acknowledged or allowed that to happen. He commented that zoning violations are complaint driven and if there is no complaint, the department is not aware of the various situations. The Planning Department would have made contact with the three (3) churches identified by Mr. Young to inform them their sign was in violation of sign regulations had it not been for the RLUIPA issue.

Monument signage versus church signage was talked about and how signage is applied to various district zonings. Mr. Beagle said there was no canvassing or surveying of other churches throughout Unincorporated Shawnee County when it came to establishing the maximum square footage of 40 square feet for signs when the regulations were amended.

Mr. Jacques spoke about the sign regulations and if they were amended to meet RLUIPA standards, what would happen to existing church signs that might be over the amended height. Mr. Beagle said he was not sure of that answer. Mr. Jacques replied there needed to be uniformity in the sign regulations and cited Mother Teresa's small church sign and other larger signs that were in existence. Mr. Beagle relayed that if the sign regulations were to be amended he would seek the input of the County Counselor's office because of the federal RLUIPA law, and did not know how long that would take.

Mr. Marolf said in looking at the RLUIPA regulations he could not find any mention of signs. Ms. Betzen discussed the establishment of a church, their land use, and if the current sign limitation would place a substantial burden on a churches religious exercise stating it would be difficult to say how a court would rule. Discussion proceeded as to what would be considered enforceable language for church sign's, with Mr. Marolf stating there are no guidelines for commissioners to go by.

Mr. Bortz said he was struggling with the fact there are regulations in place that do not seem to apply to a church. He noted regulations can always be looked at being amended, but was also struggling with the appearance that if a church is not allowed to build whatever size sign they want, the County could be held liable in a law suite. Ms. Betzen reiterated her comments regarding a church being caused a

**Minutes of the Shawnee County
Board Of Zoning Appeals
Monday, November 14, 2011**

substantial burden under the “test” and talked about and how that could affect the County. Mr. Beagle talked about the criteria for a variance with Ms. Betzen stating she did not make any judgments based upon the criteria Mr. Beagle spoke about as federal law overrides Kansas statutes.

Mr. Kurt Young, 6210 SE 61st Street, Tecumseh, KS spoke as a representative for East Side Baptist Church, offering comments in favor of the variance. Mr. Young distributed a communication to commission members from the Pastor of East Side Baptist Church who could not be present for the public hearing. He stated the purpose of the requested increased sign size is to utilize it as an outreach mechanism and talked about the various programs the church provides to the community and as with all churches, hopes membership in the church can be increased. Mr. Young spoke to issue of Mother Teresa Catholic Church and the variance they were denied as Mr. Young was a Planning Commission member at the time. He said Commissioner’s were not aware of the RLUIPA law when they voted on the variance. He also spoke about the sign amendment that was passed in previous years and it is his opinion the standards have changed once again relating to church signs, and the regulations need to be looked at again. Mr. Young talked about the dimensions of the sign offering to reduce the changeable portion by 6 inches on each end.

Mr. Marolf and Mr. Young talked about the various sizes of church signs and the difference in regulations for monument signs versus church signs. Mr. Marolf also asked Mr. Young if the applicant felt they could not effectively convey their messages without a larger sign, which Mr. Young replied he does not view the church sign as being bigger even if they are requesting a larger size. They also spoke about the rate of speed at which cars travel and if asking someone to try to read four (4) lines of text would not be asking too much. Mr. Young said he did not know the answer to the question, but noted the sign is at an intersection where there is a Stop Sign.

Mr. Bortz opened public hearing asking for comments in favor of the variance, which there were none. He then asked for comments in opposition, which there were none, so public hearing was closed.

Comments from commissioners were as follows:

Mr. Jacques

- He views the request for the sign increase as a small item.
- It is not appropriate for the person who issues building permits to make the decision as to whether a sign permit is granted.
- If the issue were to proceed to court is the County ready for that challenge.
- The sign for the church across the street is substantially larger than what is being requested by the applicant.
- Enforcement of a violation could involve requesting the County Counselor to enforce the violation; who could make the determination as to whether the violation is or is not appropriate.
- Approval could be based upon the five (5) criteria that is present and then a determination could be made as to what is appropriate for a sign regulation.

Mr. Macfee

- If approval is granted It appears the five (5) criteria are being set aside because of a potential challenge and if commissioners do not operate by the criteria it would appear they are granting special status, which could also lead to a law suite.
- He is in conflict with what seems to be a reasonable request, which under normal circumstances the strict criteria would be adhered to.
- The RLUIPA is new information members did not have before.
- Would feel more comfortable if the sign regulations had already been reviewed in relationship to the RLUIPA law.

**Minutes of the Shawnee County
Board Of Zoning Appeals
Monday, November 14, 2011**

- Does not believe it would be fair to disapprove the variance based upon the fact that it doesn't meet the criteria, and members are talking about looking at sign regulations and possibly changing them.

Mr. Bortz

- If the sign size of 60 feet was determined to be reasonable and sign regulations were amended to reflect that, the County could still be challenged in the future if a church requested a larger sign size than 60 feet. He is not sure increasing the sign size would avoid a potential challenge based upon the RLUIPA federal law, reiterating one church has already been denied a sign variance, and does not see commission members treating the current applicant differently.
- Struggling with approving the variance and then looking at the regulation from the fact in that they have already set a line about where it will be without hearing public comment.

Mr. Marolf

- It appears to him that by approving the variance members would be treating this church differently than the Catholic church.
- Was questioning if the RLUIPA law had not been presented and had no bearing, how would he be voting, and believes the present regulations are clear.

Mr. Bortz moved to Defer, noting he feels it would be better to have the full commission present to give a better determination of Approval or Disapproval, second by Mr. Marolf and with a vote of **(4-0-0)** the variance was **Continued** to the December 12, 2011 public hearing.

Adjournment:

Mr. Jacques moved for adjournment of the meeting, second by Mr. Macfee and with a unanimous voice vote the Board of Zoning Appeals adjourned at 7:15.