PLANNING & ZONING COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
PUBLIC HEARING

Action Minutes
Tuesday, May 3, 2011

Bill Howell, Chairman opened the Public Hearing with reading the Legal Notice as follows:

NOTICE is hereby given that the Planning & Zoning Commission will hold a Public Hearing on Tuesday, May 3, 2011 at 5:30 P.M. in the Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico to receive input regarding the following:

1. Variance Request – Height variance to commercial code requirements.
   This request is for Holiday Inn Express at Lot 6, Block 4, of the Hot Springs Retail Center Phase 3. Applicant is Holiday Inn Express. Representative is Randy Ashbaugh.

Mr. Howell Chairman administered the oath to Ron Fenn, Brad Grower, Kevin Weisbeck, and Randy Ashbaugh.

Dave Weiser, City Manager gave a staff presentation regarding the Variance Request for the Holiday Inn. (Complete copy attached hereto and made part hereof.)

January Roberts was uncertain whether the variance is for 45' or 47'.

Dave Weiser, City Manager stated the variance request is for 47ft.

Lee Foerstner asked questions regarding the height of the building.

Joey Perry had questions on why the variance request was needed.

Dave Weiser, City Manager stated the variance is due to the slope of the building. The Building is not being built on flat land.

Kevin Weismeik approached the podium, and stated that they are requesting the variance request because they plan on doing some solar projects on the roof, and need a parapet height to shield some of that stuff to make the building more attractive.

Randy Ashbaugh approached the podium, and stated that Walmart’s finish floor is 44/54, and this structure is another 18 to 20 ft. taller than that.

Lee Foerstner asked City staff why it is considered a sign when it’s part of the building.

Dave Weiser, City Manager stated the parapet wall is not considered a sign. The variance request is for the parapet wall it has nothing to do with the fact that there is a sign on that wall.

Joey Perry stated when she looks at the west elevation of the building it looks like less than 25% of the building will need to exceed the 35 ft. height limit?
Kevin Weismeik stated 2/3 would need to exceed it because they have the elevation inside of the building on the first floor for the pool, and common space. There is 2 ½ to 3 ft. where the roof comes down but there is going to be exhaust fans up there, and they are going to try to put some Solar panels up there in several different spots.

Ron Fenn approached the podium and read aloud a letter of concerns regarding the variance request for the Holiday Inn Express. (Complete copy attached hereto and made part hereof.)

Ron Fenn and Board members discussed Mr. Fenn’s concerns.

Dave Weiser asked if the building stood East to West.

Randy Ashbaugh stated the building is facing North and South. The South end is higher than the North.

Ron Fenn stated that the property has not even been touched as far as compacting and leveling or anything else. How is it that we are dealing with something that is un-prepared?

Kevin Weismeik stated that they have had a survey done, and soil tests done, and the soil test came back positive.

Brad Grower approached the podium, and voiced different concerns he had regarding the variance application for the Holiday Inn Express.
It is not the place of any member of this appointed body to offer argument in response to comments by the public. To do so is to engage in prior restraint of free speech which is guaranteed by the Open Meetings Act (NMSA1978) as clearly stated in 1999 by The 10th Circuit Court in their decision regarding Mesa v. White.

If you wish to offer contradictory statements, then the proper course of action to do so after members of the public have finished their comments. To do anything less, is to knowingly and intentionally violate the Open Meetings Act (NMSA1978) and offer clear evidence of discriminatory bias.

The proposed variance which was recommended for approval by this commission at your previous meeting was never ratified by The Truth or Consequences City Commission. That is a fact.

The sign that was built on the corner of Date and Smith does not conform to the sign code restrictions regarding height for that lot which has a frontage address on Smith Street. That is a fact.

According to city code the term “frontage” does not include the entire perimeter of a parcel located at an intersection, but ONLY the side facing the street on which the address of the parcel is located. That is a fact.

The sign code does NOT allow any administrative variances to be issued for ANY signs not meeting code restrictions. That is a fact.

The sign that was illegally erected at the intersection of Date and Smith clearly violates at least four separate portions of city code, and illustrates clearly the extent to which city staff has been willing to go in order to undercut our laws and undermine the authority of our commissions.

I doubt that you will agree with these statements, but they are facts, nonetheless.

BRADLEY GRAVER
Tuesday 3 May 2011

Dear Planning & Zoning Board Members,

Tonight you are being asked to consider for recommendation, a building height variance of 10 to 12 feet (depending on which document you rely).

Before you do so I would like to present some evidence that refute the claims upon which this request is being made.

The packet you received (unless it was modified or amended after Friday at 4:30pm) is incomplete and calls upon you to act without sufficient facts to form a clear picture. Consider the following:

1. There is no information about the proposed hotel’s size and footprint.
2. There is no location of the proposed structure on the property map.
3. There are no plans or elevations included in the packet.
4. There is no topographical map of the property. Yet, this request is hinged on your finding of topographical necessity.
5. If you visited the site, you will not have found the building’s location staked out.
6. You are asked to rely on an unsigned document called “EXHIBIT A” which is patently incorrect. There is NO “excess of 15’0” of grade separation downward from the south to the north” evident on this parcel, let alone on the “building pad”.
7. You are being asked to recommend this variance for height to accommodate what amounts to non-permitted signage. As this building cannot by definition have “Frontage” on the Interstate, which abuts the North side of the property. A “permitted” freestanding sign would eliminate the necessity for additional parapet modification.

The Technical Review Committee, adjourned its Library meeting on Monday 2 May 2011 to look at the site in response to some of my concerns, and with the possible exception of Building Inspector Friberg, who claims to have a survey report confirming the claims, I doubt that any of them would state under oath that they witnessed this supposed south to north downward grade separation.

I present to you photographic evidence supporting my contention that there is no merit in this request for height variance and absent any claims of “unnecessary hardship to the owner in use of his land” as the only other reason for variance under Sec. 11-5-5. Variance. SubSec. A-1 Provisions for variance. I strongly urge this body to reject this application as unnecessary and unsubstantiated.

Sincerely,

Ron Fenn
Former P&Z Board Appointee
PLANNING & ZONING COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
REGULAR MEETING

Tuesday, May 3, 2011

TIME & PLACE: The Planning & Zoning Commission of the City of Truth or Consequences, New Mexico, met in Regular Session in full conformity with the law and ordinances of said Commission, in the Commission Chambers of said City on Tuesday, the 3rd day of May, A.D., 2011 immediately following the Public Hearing.

PRESIDING OFFICER: The meeting was called to order by Bill Howell, Chairman and Angela A. Torres acted as secretary.

ATTENDANCE: Upon calling the roll the following members were reported present:

Bill Howell, Chairman
Joey Perry, Vice Chairman
Lee Foerstner, Member
James Jacobs, Member
January Roberts, Member

Absent:

Also Present:

Dave Weiser, City Manager
Charlie Friberg, Building Inspector
Angela A. Torres, Deputy City Clerk

QUORUM: There being a quorum present the Commission proceeded with the business at hand.

APPROVAL OF AGENDA: Bill Howell Chairman called for approval of the agenda.

"Joey Perry moved approval of the agenda with the addition of the variance requests."
Bill Howell Chairman called for review and approval of minutes of the Regular Meeting held Tuesday, April 5, 2011.

"James Jacobs moved approval of the minutes as submitted."

Seconded by January Roberts.

Joey Perry stated that on page two of the minute’s comments on 15-4 the minutes stated: The Planning & Zoning Board had regarding discussion on Sec. 15-4. On Section 15-4 the word regarding should be removed, and it shall read The Planning & Zoning Board had discussion on Section 15-4. She requests that the maker of the motion, and the person whom seconded the motion could perhaps revise their motion to include the correction.

"James Jacobs revised his motion, and moved that the minutes be amended to Ms. Perry’s recommendation."

Seconded by January Roberts.
Motioned carried unanimously.

Brad Grower approached the podium, and stated complaints he had regarding City Officials.

Ron Fenn approached the podium and made statements regarding his concerns of illegal signs in Truth or Consequences.

Dave Weiser gave a brief staff presentation regarding the proposed Holiday Inn structure being accessible to the Fire Department with their existing, available equipment.

Variance Request – Height variance to commercial code requirements.
This request is for Holiday Inn Express at Lot 6, Block 4, of the Hot Springs Retail Center Phase 3. Applicant is Holiday Inn Express. Representative is Randy Ashbaugh.

January Roberts stated that if they decide to recommend the variance that they cannot come back on us and build another floor.

Joey Perry stated if the slope of the property is what’s causing the variance then if the building were put on a flat parcel somewhere else would a variance still be required. The answer she heard was yes. The letter explaining why the applicants are requesting the variance states because of the topographic hardship. It seems to her that it’s not the topographic hardship that is causing the request for the variance. Joey Perry recommended that the height limit in commercial areas be
Lee Foerstner disagreed with Joey Perry due to the fact that it is below the freeway; it is a hardship, and it is going to make it very unattractive for those buildings and traffic around it where it exposes what's on top of the roof. He believes that's why they stated they needed the parapet with the height to it.

"James Jacobs moved to approve the variance with the requirements put in by January Roberts." Seconded by January Roberts.

Bill Howell, Lee Foerstner, James Jacobs, and January Roberts voted aye.

Opposed was Joey Perry.

**ADJOURNMENT:** There being no further business to come before the Commission, Bill Howell Chairman called the meeting adjourned.

**APPROVAL:** PASSED AND APPROVED this 7th day of June, 2011, on motion duly made by Lee Foerstner, and seconded by James Jacobs, and carried.

Bill Howell, Chairman