

RAPID CITY ZONING BOARD OF ADJUSTMENT  
October 8, 2015

MEMBERS PRESENT: Erik Braun, Karen Bulman, Galen Hoogestraat, Mark Jobman, Linda Marchand, Kay Rippentrop, Steve Rolinger and Jan Swank. Amanda Scott, Council Liaison was also present.

MEMBERS ABSENT: John Brewer and Andrew Scull

STAFF PRESENT: Vicki Fisher, Fletcher Lacock, Robert Laroco, Kip Harrington, Tim Behlings, Ted Johnson, Carla Cushman, Jess Rogers and Andrea Wolff.

Marchand called the meeting to order at 7:00 a.m.

Marchand introduced the new alternate Zoning Board of Adjustment/Planning Commissioner, Mark Jobman who has recently been appointed.

1. Approval of the September 24, 2015 Zoning Board of Adjustment Meeting Minutes.

Rolinger moved, Swank seconded and unanimously carried to approve the Minutes from the September 24, 2015 Zoning Board of Adjustment meeting.

2. No. 15VA003-CIVAR-15-0015 - Pleasant Valley Subdivision

A request by Gary C and Michele S. Deisch to consider an application for a **Variance request to reduce the minimum required side yard setback from 8 feet to 5 feet** for Lot 15 in Block A of Pleasant Valley Subdivision, located in Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 4021 West Chicago Street.

Lacock presented the application noting that the item has been revised since originally reviewed and that the request has changed to a detached garage rather than the previously requested attached garage. Lacock reviewed how the proposed detached garage would allow for additional space between the garage and the structure to the east and allows more light and more air flow which follows the Comprehensive Plan for Low Density Neighborhoods recommendation of de-emphasizing garages. Lacock stated that with these changes, staff recommends approval.

**Rolinger moved, Bulman seconded and unanimously carried to approve the requested Variance with the following stipulation:**

1. **Upon submittal of a building permit, construction plans prepared by a registered land surveyor shall be submitted. (8 to 0 with Braun, Bulman, Hoogestraat, Jobman, Marchand, Rippentrop, Rolinger and Swank voting for and none voting against)**
3. No. 15VA004-CIVAR15-0016 - Green Acres Addition  
A request by GBA Inc. to consider an application for a **Variance to reduce the minimum required front yard setback from 25 feet to 0 feet** for Lots 13 thru 16 of Block 16 of Green Acres, located in Section 34, T2N, R7E, BHM, Rapid

City, Pennington County, South Dakota, more generally described as being located at 404 St. Onge Street.

Lacock presented the application and reviewed the associated slides, noting that this item had been continued at the previous meeting due to lack of quorum. Lacock stated that this item is associated with a Vacation of Right-of-Way application (File #15VR002) that was approved at the September 24, 2015 Planning Commission meeting. Lacock reviewed the history of the property stating that in June of 2014 the Zoning Board of Adjustment approved a reduction in the front yard setback from twenty-five feet to five feet contrary to staff's recommendation to deny, but that when the building was completed it extended 1.9 feet into the right-of-way. Lacock noted that the Vacation of Right-of-Way that was recently approved had been amended to include the entire frontage of the property rather than just the area where the structure encroaches into the right-of-way. Lacock said that staff had not supported the original request, but that if the Zoning Board of Adjustment does approve the Variance that it be contingent on the approval of the associated Vacation of Right-of-Way being approved by Council and that the Variance apply only to this structure and any redevelopment of the property be required to meet the five foot setback approved by the previous variance.

Bulman stated that she would be supporting the item, but that she believes that this type of error in development and construction should be avoided in the future and does not understand how the developer or builder was not aware that they were so far into the right-of-way.

In response to a question from Scott whether there is a fine system to address this type of action, Fisher stated that there was not and that attempts to address this has not been supported and that it is the general practice that when these errors are made they request and generally receive approval for the variance. Fisher did state that there have been a few examples where the builder was required to modify or correct the error.

Rolinger stated that this does happen more often than you think and believes that the City Council take up the issue and address this practice.

Cushman stated that she would review the option of imposing fines and present the information back to the Planning Commission.

**Rolinger moved, Braun seconded and carried to approve the requested Variance as revised. (7 to 1 with Braun, Bulman, Hoogestraat, Jobman, Rippentrop, Rolinger and Swank voting for and Marchand voting against)**

4. **Appeal by Epic Outdoor Advertising of City staff's decision that use of full motion video on Epic's public purpose signs is in violation of R.C.M.C. 17.50.080.D.1 and 17.50.080.O.**

Jess Rogers, Assistant City Attorney, reviewed the history of the item saying that in 2005 when the signs in question were installed City Council determined that if

Epic Signs agreed to devote twelve minutes of every hour to public purpose advertising the signs qualified as public purpose signs. Rogers clarified that at the time this determination was made the Public Purpose Section of the Sign Code allowed for animation or full motion video, but that in 2012 the Sign Code was revised, prohibiting any full motion animation or video including public purpose signs. Rogers stated that when the City Attorneys' Office was made aware earlier this year that Epic Signs continued to implement full video animation on these signs they were sent a letter notifying them of the violation and to cease immediately. It is this determination that Epic Signs is appealing.

Debra Jensen, 913 Mount Rushmore Road, a member of Scenic Rapid City, reviewed the process that lead to the revision of the sign code. Jensen pointed out that Lamar Outdoor Advertising, the other major sign company in the area, does not run full motion advertising on any of their signs. Jensen asked that the Zoning Board of Adjustment uphold this decision.

Lisa Moderick, 3814 City View Drive, President of Scenic Rapid City, stated that she had served on the ad-hoc committee that had worked to make the sign code clear and understandable addressing the regulations for signs and requested that the Zoning Board of Adjustment uphold the decision and enforcement of the law. Moderick also suggested fines or repercussions for not adhering to the sign code.

Mike Quasney, 1512 Lark Drive, stated that he hopes that the Zoning Board of Adjustment upholds the decision prohibiting the full motion advertising.

Mike Sabers, 720 St. Anne, attorney for Epic Outdoor Advertising, reviewed the legal issue before the board stating that signs in question have always run animation, that in 2005 Epic's public purpose signs were legal under Ordinance 4030 and run as approved at the time meeting the requirement to provide twelve minutes per hour of public service. Sabers stated that even though the Sign Code has been revised and disallowed full motion animation video, that Epic's signs in question are not included under the prohibition as the signs were previously operating under the old Sign Code Ordinance and that the City is unable to retroactively apply the revised Sign Code to those signs. Sabers quoted from various decisions by the South Dakota Supreme Court and reviewed how he believes that his client's signs are legal under what is considered Legal Non-Confirming Status. Sabers asked that the Zoning Board of Adjustment reverse the decision of the City Attorney's office.

Cushman clarified that this is an appeal of an administrative official concerning the Zoning Code and that the options before the Zoning Board of Adjustment actions are to uphold the decision or to reverse the decision

In response to question from Rolinger, Rogers stated that no retroactive action is being requested and clarified that the law has changed and that the action is now illegal. Rogers reviewed the difference between a legal-non-conforming structure and a legal non-confirming use and clarified that the decision to cease is to the use not the structure.

In response to a question from Braun regarding the retroactive application of a Zoning Ordinance, Rogers confirmed that the Sign Code is a part of the Zoning Ordinance and that this determination concerns only four existing signs.

**Hoogestraat moved to uphold the City Attorney's decision, Bulman seconded.**

Swank stated that when requests for change to signs come before the Planning Commission that the request for legal non-conforming signs are generally approved to allow the improvement as a compromise and stated that he would be voting to uphold the City Attorney's Decision.

Rolinger stated that retroactive action is not something that the City has ever done and stated that the fact that the only four signs exist that allow animation makes them highly valuable to Epic Signs and removing this status will affect their income value for Epic Signs.

Bulman stated that she seconded the motion as she feels that Epic will still have use of their signs and that she does not feel they should have the advantage over all other signs in the city.

Scott reviewed the distinction between structure and use and the application of retroactive enforcement to each. Scott stated that with the advancements in technology associated with digital signage in the last ten years since these signs have been in use that these signs have had to have been updated at some time during those ten years noting that the signs can be updated or upgrade without structurally modifying the sign and that needs to also be considered.

Sabers stated that the difference between structure and use does not exist in the law and that his client will incur significant loss on the use of these signs if the decision is upheld.

**Hoogestraat moved, Bulman seconded and carried to uphold the determination that Epic's use of full-motion video is in violation of the sign code and must cease immediately. (6 to 2 with Bulman, Hoogestraat, Marchand, Rippentrop, and Swank voting for and Braun and Rolinger voting against)**

5. Discussion Items  
None

6. Staff Items  
None

7. Zoning Board of Adjustment Items  
None

**There being no further business, Rolinger moved, Bulman seconded and**

Zoning Board of Adjustment Minutes

October 8, 2015

Page 5

**unanimously carried to adjourn the meeting at 7:57 a.m. (8 to 0 with Braun, Bulman, Hoogestraat, Jobman, Marchand, Rippentrop, Rolinger and Swank voting yes and none voting no)**