



**ZONING BOARD OF APPEALS**  
**Tuesday, October 21, 2014**  
**5:30 P.M. – City Council Chambers**  
**Rockford City Hall, 425 East State Street**

**Minutes on Website:** <http://rockfordil.gov/community-economic-development/construction-development-services/land-use-zoning/zoning-board-of-appeals.aspx>

**Present:**

**ZBA Members:** Melissa Luciani-Beckford  
Thomas Fabiano  
Kimberly Wheeler-Johnsen  
Alicia DiBenedetto-Neubauer  
Dan Roszkowski  
Scott Sanders  
Craig Sockwell

**Absent:**

**Staff:** Todd Cagnoni – Director, Community & Economic Development Dept.  
Scott Capovilla – Zoning and Land Use Administrator  
Officer Josh Grover - Rockford Police Department  
Angela Hammer – Assistant City Attorney  
Sandra Hawthorne - Administrative Assistant  
Marcy Leach – Public Works  
Mike Rotolo – Rockford Fire Department  
Lafakeria Vaughn - Assistant City Attorney

**Others:** Alderman Joseph Chiarelli  
Alderman Franklin Beach  
Alderman Teena Newburg  
Kathy Berg, Court Stenographer  
Applicants and Interested Parties

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Sandra Hawthorne explained the format of the meeting will follow the Boards Rules of Procedure generally outlined as:

The Chairman will call the address of the application.

- The Applicant or representative will come forward and be sworn in.
- The Applicant or representative will present their request before the Board

- The Board will ask any questions they may have regarding this application.
- The Chairman will then ask if there are any Objectors or Interested Parties. Objectors or Interested Parties are to come forward at that time, be sworn in by the Chairman, and give their name and address to the Zoning Board of Appeals secretary and the stenographer
- The Objector or Interested Party will present all their concerns, objections and questions to the Applicant regarding the application.
- The Board will ask any questions they may have of the Objector or Interested Party.
- The Applicant will have an opportunity to rebut the concerns/questions of the Objector or Interested Party
- No further discussion from the Objector or Interested Party will occur after the rebuttal of the Applicant.
- The Board will then discuss the application and a vote will be taken.

It was further explained to the public in attendance, applicants, objectors and interested parties that this meeting is not a final vote on any item. The date of the Codes & Regulations meeting was given as Monday, November 3, 2014, at 4:45 PM in Conference Room A of this building as the second vote on these items. The public in attendance, applicants, objectors and interested parties were instructed that they could contact the Zoning Office for any further information and the phone number was listed on the top of the agenda which was made available to all those in attendance. The City's web site for minutes of this meeting are listed on the agenda as well.

The meeting was called to order at 5:30 PM. A **MOTION** was made by Scott Sanders to **APPROVE** the minutes of the September meeting. The Motion was **SECONDED** by Alicia Neubauer and **CARRIED** by a vote of 4-0 with Tom Fabiano, Kim Johnsen and Melissa Beckford abstaining as new members this month.

**ZBA 034-14**                      **5410 and 5456 East State Street**  
 Applicant                      Dale Nelson / Drinc, Inc.  
 Ward 10                              **Special Use Permit** for a restaurant, bar and grill and nightclub in a C-3, General Commercial Zoning District  
                                                  **Laid Over from August and September meetings**

This item will be Laid Over to the November meeting.

A **MOTION** was made by Scott Sanders to **LAY OVER** the a Special Use Permit for a restaurant, bar and grill and nightclub in the name of Dale Nelson d/b/a Drinc. Inc. in a C-3, General Commercial Zoning District at 5410 and 5456 East State Street to the November 18<sup>th</sup> meeting. The Motion was **SECONDED** by Alicia Neubauer and **CARRIED** by a vote of 7-0.

**ZBA 042-14**                      **7310 Walton Street #110**  
 Applicant                      Q.T. Sign, Inc. / Danielle Wagner  
 Ward 01                              **Variation** to increase the number of allowable wall signs from two (2) to three (3) in a C-3, General Commercial Zoning District

The subject property is located 300 feet east of the Buckley Drive and East State Street intersection and is the Sleep Number Bed store.

Robert Freedman was present representing the Applicant. He felt people are unable to identify the store from Walton Street until they have passed it. They are asking for a 3<sup>rd</sup> wall sign on the south end of the building to be more identifiable to customers and Police and Fire. Mr. Freeman stated currently there is only signage on the north and east side.

Staff Recommendation is for Denial. No Objectors or Interested Parties were present.

Ms. Neubauer felt if the applicant wanted more visibility from Walton Street that one of the signs should be moved to the Walton Street entrance. Mr. Fabiano felt the Applicant did not present a viable hardship. Mr. Sanders felt a suggestion be made that the applicant relocate one of the existing signs to the south side.

A **MOTION** was made by Scott Sanders to **DENY** the Variation to increase the number of allowable wall signs from two (2) to three (3) in a C-3, General Commercial Zoning District at 7310 Walton Street #110. The Motion was **SECONDED** by and **CARRIED** by a vote of 7-0.

**ZBA 042-14**  
**Findings of Fact for Denial of a Variation**  
**To Increase the Allowable Number of Business Identification Wall Signs**  
**From Two (2) to Three (3)**  
**In a C-3, General Commercial Zoning District at**  
**7310 Walton Street #110**

**Denial** of this Variation is based upon the following findings:

1. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would not result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
2. The conditions upon which a petition for this Variation are based are not unique to the property for which the Variation is sought and are applicable, generally, to other property within the same zoning classification.
3. The purpose of this Variation is based exclusively upon a desire to increase the value or income potential of the property.
4. The alleged difficulty or hardship is not caused by this Ordinance and has been created by any persons presently having an interest in the property or by any predecessor in title.
5. The granting of this Variation will be detrimental to the public welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed Variation will impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair the property values within the neighborhood.
7. The proposed Variation does not comply with the spirit and intent of restrictions imposed by this Ordinance.

**ZBA 043-14**  
Applicant  
Ward N/A

**Zoning Text Amendments**  
City of Rockford  
Amendments to Section 10-007-C.  
Conflict with Private Agreements and Covenants, Items 1. And 2.

Scott Capovilla reviewed the request for Zoning Text Amendment. This text amendment would prohibit placing a restriction that would limit another grocery store or pharmacy in a building recently vacated by same. Mr. Capovilla explained that a grocery store or pharmacy fills a vital need in neighborhoods within the City of Rockford.

Mr. Sanders asked why this was limited to only grocery store and pharmacy use and why not a “big box” retail store situation. Mr. Capovilla stated it was felt grocery and drug stores were an excellent starting point for this text amendment and is based on a similar ordinance cast by the City of Chicago. Having a grocery store and pharmacy within walking distance is vital to a neighborhood. This document is to prevent such a void in an area of need.

The proposed Text Amendments read as follows:

### **10-007-C. CONFLICT WITH PRIVATE AGREEMENTS AND COVENANTS**

1. *This zoning ordinance is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties, which are not in abrogation of public policy or in conflict with Article 41 of this ordinance and/or have a deleterious and blighting effect on the City. If the provisions of this zoning ordinance impose a greater restriction than imposed by a private agreement, the provisions of this zoning ordinance will control. If the provisions of a valid, enforceable private agreement impose a greater restriction than this zoning ordinance, the provisions of the private agreement will control. The city does not enforce or maintain a record of private agreements.*
  
2. *Notwithstanding Section 10-007-C (1), and subject to the following sentence, a private agreement that purports to impose recorded negative use restrictions upon real property in the City so as to prohibit or have the economic or practical effect of prohibiting the use of such real property for grocery store or drug store purposes after a grocery store or drug store owner or operator of a store in excess of 7,500 square feet has terminated operations at the site, when such uses would otherwise be permitted, including as a special use, under the Zoning Ordinance, and which negative use restriction has a term of more than one year, shall be against public policy, shall be void and unenforceable, and shall be subject to the City's remedial and enforcement powers under Section 71-003 (with each day such negative use covenant remains of record or otherwise effective constituting a separate and distinct offense). The foregoing prohibition shall not apply to an owner or operator of a grocery store or drug store which terminates operations at a site for purposes of relocating such operations into a comparable or larger store located within the city and within one-half mile of the site where operations have terminated, provided such relocation and the commencement of operations at the new site occurs within two years and the negative use restriction imposed does not have a term in excess of three years. The Zoning Officer shall have the discretion to extend the one-half mile limit set forth in the preceding sentence by one-half mile (i.e. to one mile) and to extend the two year commencement of operations by one year (i.e. to three years) upon written request of an owner or operator and such requesting party's presentation of evidence establishing extenuating circumstances that establish good cause for such extension. The requesting party shall also provide notice and a copy of such written evidence to the alderman or aldermen of the ward in which the closed store and the new store are located at the same time such submission is made to the Zoning Officer. The foregoing*

*prohibition in this section shall apply regardless of whether the private agreement is incorporated in a deed restriction, a lease or memorandum of lease, or any recorded or unrecorded instrument.*

No Objectors were present. Supporters were in attendance.

Alderman Frank Beach, 10<sup>th</sup> Ward spoke in support of this amendment. Alderman Beach stated this upgrade to the Ordinance is a great improvement and he is in agreement with Mr. Sanders that it should extend to other types of businesses.

David K.A. Shair, 1020 North Prospect St. was present as a supporter. He stated that this is a way for the City to allow development to proceed and to prevent a business from limiting the use of the property.

Mr. Sanders stated he fully supports this text amendment but would like to see it expand to other business ideas.

A **MOTION** was made by Kim Johnsen to **APPROVE** the Zoning Text Amendment to amend Section 10-007-C as presented. The Motion was **SECONDED** by Alicia Neubauer and **CARRIED** by a vote of 7-0.

The Text Amendment as voted is as follows:

#### **10-007-C. CONFLICT WITH PRIVATE AGREEMENTS AND COVENANTS**

- 1. This zoning ordinance is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties, which are not in abrogation of public policy or in conflict with Article 41 of this ordinance and/or have a deleterious and blighting effect on the City. If the provisions of this zoning ordinance impose a greater restriction than imposed by a private agreement, the provisions of this zoning ordinance will control. If the provisions of a valid, enforceable private agreement impose a greater restriction than this zoning ordinance, the provisions of the private agreement will control. The city does not enforce or maintain a record of private agreements.*
- 2. Notwithstanding Section 10-007-C (1), and subject to the following sentence, a private agreement that purports to impose recorded negative use restrictions upon real property in the City so as to prohibit or have the economic or practical effect of prohibiting the use of such real property for grocery store or drug store purposes after a grocery store or drug store owner or operator of a store in excess of 7,500 square feet has terminated operations at the site, when such uses would otherwise be permitted, including as a special use, under the Zoning Ordinance, and which negative use restriction has a term of more than one year, shall be against public policy, shall be void and unenforceable, and shall be subject to the City's remedial and enforcement powers under Section 71-003 (with each day such negative use covenant remains of record or otherwise effective constituting a separate and distinct offense). The foregoing prohibition shall not apply to an owner or operator of a grocery store or drug store which terminates operations at a site for purposes of relocating such operations into a comparable or larger store located within the city and within one-half mile of the site where operations have terminated, provided such relocation and the commencement of operations at the new site occurs within two years and the negative use restriction imposed does not have a term in excess of three years. The Zoning Officer shall have the discretion to extend the one-half mile limit set forth in the preceding sentence by one-half mile (i.e. to one*

*mile) and to extend the two year commencement of operations by one year (i.e. to three years) upon written request of an owner or operator and such requesting party's presentation of evidence establishing extenuating circumstances that establish good cause for such extension. The requesting party shall also provide notice and a copy of such written evidence to the alderman or aldermen of the ward in which the closed store and the new store are located at the same time such submission is made to the Zoning Officer. The foregoing prohibition in this section shall apply regardless of whether the private agreement is incorporated in a deed restriction, a lease or memorandum of lease, or any recorded or unrecorded instrument.*

**ZBA 044-14**

Applicant  
Ward 11

**383 18<sup>th</sup> Avenue**

Rust-oleum Corporation / Scott Anderson

**Variation** to decrease the required front yard setback for a parking lot from ten (10 feet to zero (0) feet along 18<sup>th</sup> Avenue

**Variation** to reduce the required ten (10) feet wide frontage landscaping to zero (0) feet along 18<sup>th</sup> Avenue in an I-2, General Industrial Zoning District

This item will be Laid Over to the November meeting.

A **MOTION** was made by Scott Sanders to **LAY OVER** the Variation to decrease the required front yard setback for a parking lot from ten (10 feet to zero (0) feet along 18<sup>th</sup> Avenue; and the **Variation** to reduce the required ten (10) feet wide frontage landscaping to zero (0) feet along 18<sup>th</sup> Avenue in an I-2, General Industrial Zoning District at 383 18<sup>th</sup> Avenue to the November 18<sup>th</sup> meeting. The Motion was **SECONDED** by Alicia Neubauer and **CARRIED** by a vote of 7-0.

**ZBA 045-15**

Applicant  
Ward 13

**416 South Main Street**

Gorman & Company, Inc. / Ben Marshall

**Special Use Permit for a Planned Unit Development** consisting of a hotel, restaurants, private museum, large entertainment and meeting venue, and an atrium and conference center in a C-4, Urban Mixed-Use Zoning District

Prior to discussion, Mr. Sanders announced that he would be abstaining from discussion and vote on this item.

The subject property is located on the northeast corner of the Cedar Street and South Main Street intersection and is currently a vacant commercial building. Ben Marshall, representing Gorman & Company, Inc., reviewed their application. They are the developer of this proposed project to convert the Amerock Building. The existing building will be used as the hotel component of the building. The upper floors will contain the hotel rooms. They have been approached by an individual who cannot be named currently, with the possibility of opening a private museum. Although this tenant is not firm at this time, Mr. Marshall stated they would like to include this option in their proposal.

The Board had no questions of the Applicant.

Staff Recommendation is for Approval with (8) conditions. No Objectors or Interested Parties were present.

A **MOTION** was made by Alicia Neubauer to **APPROVE** the Special Use Permit for a Planned Unit Development consisting of a hotel, restaurants, private museum, large entertainment and meeting venue, and an atrium and conference center in a C-4, Urban Mixed-Use Zoning District The Motion was **SECONDED** by Melissa Luciani-Beckford and **CARRIED** by a vote of 6-0 with Scott Sanders abstaining.

Approval is subject to the following conditions:

1. Meet all Building and Fire codes
2. Submittal of building elevations for staff review and approval.
3. A landscaping plan shall be submitted for staff review and approval.
4. Submittal of a dumpster detail of the enclosure area and rendering for staff review and approval.
5. An illumination plan shall be submitted for review and approval by staff.
6. Must obtain separate permits for signage and signs must be constructed to match building design and in accordance with the Sign Ordinance.
7. Must develop site in accordance with new civil and landscaping plans approved by Staff.
8. All conditions must be met prior to establishment of use.

#### **ZBA 045-14**

#### **Findings of Fact for Approval of a Special Use Permit for a Planned Unit Development Consisting of a Hotel, Restaurants, Private Museum, A Large Entertainment and Meeting Venue and an Atrium and Conference Center In a C-4, Urban Mixed-Use Zoning District at 416 South Main Street**

**Approval** of this Special Use Permit is based upon the following findings:

1. The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
2. The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and/or necessary facilities have been provided.
5. Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to the applicable regulations of the Zoning District in which it is located.

With no further business to come before the Board, the meeting was adjourned at 5:55 PM.

Respectfully submitted,  
Sandra A. Hawthorne, Administrative Assistant  
Zoning Board of Appeals