



ZONING BOARD OF APPEALS
Tuesday, November 18, 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
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 Tom McNamara
Alderman Franklin Beach
Kathy Berg, Court Stenographer
Applicants and Interested Parties

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, December 1, 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 Alicia Neubauer to **APPROVE** the minutes of the October meeting. The Motion was **SECONDED** by Craig Sockwell and **CARRIED** by a vote 7-0.

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, September, and October meetings

This item will be Laid Over to the December 16th Zoning Board of Appeals meeting.

A **MOTION** was made by Craig Sockwell to **LAY OVER** the Special Use Permit for a restaurant, bar and grill and nightclub in a C-3, General Commercial Zoning District at 5410 and 5456 East State Street to the December 16, 2014 meeting. The Motion was **SECONDED** by Alicia Neubauer and **CARRIED** by a vote of 7-0.

ZBA 044-14 **383 18th Avenue**
Applicant Rust-oleum Corporation / Scott Anderson
Ward 11 **Variation** to decrease the required front yard setback for a parking lot from ten
 (10) feet to zero (0) feet along 18th Avenue
 Variation to reduce the required ten (10) feet wide frontage landscaping to zero
 (0) feet along 18th Avenue in an I-2, General Industrial Zoning District

This item will be Laid Over to the December 16th Zoning Board of Appeals meeting.

A **MOTION** was made by Craig Sockwell 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 18th Avenue and the Variation to reduce the required ten (10) feet wide frontage landscaping to zero (0) feet along 18th Avenue in an I-2, General Industrial Zoning District at 383 18th Avenue to the December 16th meeting. The Motion was **SECONDED** by Alicia Neubauer and **CARRIED** by a vote of 7-0.

ZBA 046-14

Applicant
Ward 14

6449 East State Street

Dolan Realty for Verizon Wireless

Special Use Permit for a 10' tower extension on the existing 70' ATC tower for an overall height of 80' in a C-2, Limited Commercial Zoning District

This item will be Laid Over to the December 16th Zoning Board of Appeals meeting.

A **MOTION** was made by Alicia Neubauer to **LAY OVER** the Special Use Permit for a 10' tower extension on the existing 70' ATC tower for an overall height of 80' in a C-2, Limited Commercial Zoning District at 6449 East State Street. The Motion was **SECONDED** by Craig Sockwell and **CARRIED** by a vote of 7-0.

ZBA 047-14

Applicant
Ward 01

4XX North Mulford Rd; 6102, 6122 Mulford Village; 175 Executive Parkway

Machesney Investments, L.L.C.

- (A) **Special Use Permit** for an off-premise business identification sign
- (B) **Variation** to increase maximum sign height from 8' to 30'
- (C) **Variation** to increase maximum sign square footage from 64 square feet to 390 square feet in a C-2, Limited Commercial Zoning District

The subject property is Lot Z from Plat #3 of Mulford Village Shopping Center. Lot Z is vacant land and is not part of the shopping center. The former K's Merchandise building is being split into several tenant spaces.

Pankaj Mahajan, and Attorney Tim Muldowney were present. Mr. Mahajan reviewed the requests of the Applicant explaining this location is the NE corner of Mulford and East State. They now have a user for K's Merchandise building, who is ServiCom Call Center. They recently purchased the Kinko's building as well. They asked the owner of the adjacent off site sign to share the sign on Mulford Road to allow them to share advertising and asked them to combine the two existing signs into one sign. They would be keeping the existing metal structure sign in the existing location and revamping it with additional panels and covering up empty panels. In 2007 they received approval to unify the sign when they originally purchased K's Merchandise building. The drawing present at the meeting is the intention of the proposed sign.

Mr. Sanders asked for clarification of the designs presented. He stated there are 3 different sign designs in the zoning packet and none of them are reflected in the drawing presented by the Applicant at this meeting. Mr. Sanders stated the design presented this evening was inconsistent with any of the drawings in the zoning packet. Mr. Mahajan then clarified that Exhibit B was the one that had the correct design, and this is an electronic message board. For clarification purposes, Mr. Mahajan stated the sign on Mulford was the off-premise sign, which would be shared. The electronic message sign would also be shared. Regarding size of the existing sign, Mr. Mahajan stated they are not adding to the structure at all.

Staff Recommendation was for Approval of all requests with (3) conditions. No Objectors or Interested Parties were present.

Staff conditions of Approval are:

1. A final submittal of sign elevation for Staff's review and approval.
2. Submittal of a site plan showing the required setback for the proposed free-standing sign.
3. Advertisement for the free-standing sign shall be limited to the businesses located in Lots 1-3 as shown on Exhibit D.

Mr. Sanders stated he strongly is not in favor of this type of sign. This is exactly the type of sign that our ordinance and the Board is trying to eliminate one at a time. This sign appears to be a menu board of businesses. He expressed his feeling that this is just a menu board of businesses in the most generic possible fashion. Aesthetically this is exactly what we are trying to move away from with the current sign Ordinance and felt we all would benefit by a better sign. Mr. Sanders feels that they are wanting to make changes and modifications beyond that description of changing panels on the existing sign. Mr. Capovilla verified that the existing sign as it stands now is legally non-conforming – it is grandfathered in; however, this particular sign could not be constructed under the current sign ordinance. Mr. Sanders did state that he is grateful that this location is being redeveloped.

Alicia Neubauer also stated in the interest of fairness, in the past the Board has been strict with taller signage with other Applicants. The intention of the Ordinance was to lower the scale of signage to less prominent signs. Mr. Sanders asked if the Applicant had thought about removing the sign in its entirety and putting in a more modern sign that is in conformance. Mr. Mahajan stated they do not own the Mulford sign, and the owner has no interest in removing this sign so that option is not available to them. They did, however, own the K's Merchandise sign, which has been removed.

Mr. Sanders stated he was confused – and asked for clarification of - Staff's statement in the Zoning Report "The applicant submitted a few different sign elevations that should be consistent to the intent of the sign regulations. In Staff's opinion the sign should be designed to appear landmark style" but that they supported the Applicant's request. Mr. Capovilla explained that Staff felt the newer design would reflect a monument sign by adding a brick or stone base without removing the actual existing sign.

A **MOTION** was made by Alicia Neubauer to **APPROVE** the (A) Special Use Permit for an off-premise business identification sign; to **DENY** the (B) Variation to increase maximum sign height from 8' to 30'; and to **DENY** the (C) Variation to increase maximum sign square footage from 64 square feet to 390 square feet in a C-2, Limited Commercial Zoning District at 4XX North Mulford Road; 6102 Mulford Village; and 175 Executive Parkway. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 5-2 with Craig Sockwell and Dan Roszkowski

Approval is subject to the following conditions:

1. A final submittal of sign elevation for Staff's review and approval.
2. Submittal of a site plan showing the required setback for the proposed free-standing sign.
3. Advertisement for the free-standing sign shall be limited to the businesses located in Lots 1-3 as shown on Exhibit D.

ZBA 047-14
Findings of Fact for Approval of a Special Use Permit
For an Off-Premise Business Identification Sign
In a C-2, Limited Commercial Zoning District at
4XX North Mulford Road; 6102, 6122 Mulford Village & 175 Executive Parkway

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 C-2 and C-3 Districts.

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 C-2 and C-3 Districts in which it is located.

ZBA 047-14
Findings of Fact for Denial of a Variation
To Increase Maximum Free-Standing Business Sign Height
From 8 Feet to 30 Feet
In a C-2, Limited Commercial Zoning District at
4XX North Mulford Road; 6102, 6122 Mulford Village & 175 Executive Parkway

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 047-14
Findings of Fact for Denial of a Variation
To Increase Maximum Sign Square Footage
From 64 Square Feet to 390 Square Feet
In a C-2, Limited Commercial Zoning District at
4XX North Mulford Road; 6102, 6122 Mulford Village & 175 Executive Parkway

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 048-14

Applicant
Ward 01

6122 Mulford Village Drive

Dyn Capron Holdings, L.L.C

Special Use Permit for a Planned Unit Development consisting of two (2) buildings – one for a fast food restaurant with a drive-thru, and one for commercial retail that includes an off-premise monument style free-standing business identification sign, and site, off-street parking, and landscaping plans with deviations from the regulations in a C-2, Limited Commercial Zoning District

The subject property consists of 2.42 acres and is located on the northwest corner of the Mulford Village Drive and Bienterra Trail intersection. The property is surrounded mostly by commercial uses, with some residential uses to the north.

Pankaj Mahajan representing the property owner, Attorney Tim Muldowney; Jeff Atkins, Mercury Studios; Jarrett Jensen, Jensen & Jensen Architects; and Rich Pozzi, project manager for Portillo's were present.

Mr. Jensen, Architect for the project gave some background information on Portillo's. They have a total of 38 casual restaurants plus catering and shipping divisions. They are a fast food casual restaurant with

dine in and take out facilities. Hours of operation Monday - Thursday 10:30 AM to 10PM; Friday and Saturday 10:30 AM to 11:00 PM and Sunday 10:30 AM to 10:00 PM. The building is 8712 sq. ft. in size and is a one story building with a drive through wraparound which is a double drive through on three sides. The design is a retro 60's diner concept. There is a seasonal dining patio on the west side of the building. There is LED lighting inside and outside of the buildings.

Mr. Atkins explained the building is all pre-cast construction and gave a description of the exterior of the building. The drive through elevation on the north will have two windows – one for payment transactions and one for pick up.

Mr. Sanders asked how the double drive through lane worked. Mr. Atkins showed the layout of the single drive entrance expanding to the double drive through lanes to the south end of the facility. This allows for stacking of 40 vehicles all the way around. Portillo's runners will be physically out taking orders and transacting cash while vehicles are in the waiting lane. The second lane would allow the flexibility for customers to pull out and go around to the exit once they receive their order. Approximately 60% of the time the food is delivered to the vehicles. They will be operating this system year round. Mr. Pozzi stated they wished to start construction December 1 of this year. Weather permitting, they would like to open up in June.

Mr. Sanders still questioned the amount of compromises that Staff is making considering this is a new development. He felt frustrated that this is a new development that is starting from scratch and does not need the number of compromises in the Ordinance that the Applicants are asking for. Mr. Sanders felt this lot was not large enough for this project because it requires all of these variations to the Ordinance. He felt landscaping is greatly deficient. He questions the necessity of the redundant drive through lane. Mr. Jensen responded that the function of the drive through lane is standard with all Portillo's. They intentionally do not put parking stalls within the drive through area. Mr. Mahajan stated this is the location Portillo's wants and he does not think Portillo's is going to change their operation. He stated this is the site they chose out of others that were looked at. Mr. Sanders felt the ordinance does not prohibit Portillo's finding a location within Rockford. Mr. Mahajan asked if the city would prefer to see a vacant building remain sitting on this lot. Mr. Jensen then stated Portillo's builds a good looking, theme oriented building. He stated it was the overall development that he feels makes a good investment. There is something to be said for the amount of investment they put into the building. Mr. Sanders expressed that he enjoys Portillo's, but wonders if we would be considering this same slate of variances if it were not Portillo's. Mr. Pozzi stated the drive through design has been perfected by Mr. Portello and there is no compromising on this design. Mr. Pozzi added that 40-50 percent of their income is from the drive through.

Mr. Mahajan stated he understands Mr. Sanders concerns and stated what you have, what you see, is what you get. He stated this property is in a TIF for a reason – because this area is not developing in the way it was hoped it would develop. The mall to the north is almost dead. They are trying to make the investment to make this area better.

Ms. Neubauer wished to discuss landscaping. She stated Staff recognizes that there could be some tweaks in landscaping working with the Applicant. She asked if the Applicant is aware of the pedestrian path being installed. Mr. Mahajan stated he has not discussed with Staff and does not know why they are being asked to install this all the way to Mulford. Mr. Capovilla explained that there are no sidewalks at this time and, a concern for safety, they are asking for a multi-surface pedestrian path be installed along East State Street from Bienterra trail to Mulford Road. Mr. Mahajan does not feel this should be a requirement and has not had time to discuss with Portillo's. Ms. Neubauer stated this is a recent application and she does not want to rush through this application without sufficient time for consideration, just as they would feel with any other development. Ms. Neubauer discussed signage requiring separate sign permits. Mr. Capovilla stated all signs would have to have a separate permits submitted for Staff review and approval. The only signage included in this Application is the off-site

Shopping Center Business Identification Sign. He further explained that bicycle spaces will be dealt with during the building process. Mr. Capovilla stated exhibit J is the proposed sign submitted with the packet by the Applicant, which is a 20' tall sign for the retail center. Mr. Mahajan disagreed that this was the drawing submitted. Mr. Capovilla explained the retail center would be have at least 6 businesses so it would be in conformance at 20' because it is considered a shopping center sign. Mr. Sanders asked what the square footage allowed would be on a 20 foot sign. Mr. Cagnoni stated he believed it would be 240 sq. ft.

Staff Recommendation was for Approval with (14) conditions. Interested Parties were present.

Alderman Joseph Chiarelli was present and gave his full support of this project. We need to get this project underway because Portillo's is under a time crunch. He stated this Applicant has gotten over 8,000 signatures to be in Rockford (not submitted for the record). They have projected over 9 million in sales resulting is \$180,000 in our coffers.

Alderman Frank Beach stated the 10th, 14th and 1st Ward all come together in support of this project. He stated Alderman Durkee asked him to extend his support as well.

Alderman Tom McNamara, 3rd Ward, also spoke on behalf of the Applicant. He has been getting phone calls and e-mails of support for this project. He feels this is one more notch in our belt to continue to have the momentum of progress in our city.

Mr. Mahajan thanked the Alderman present for their support and stated they would like to have a sign out before Christmas to create awareness of this restaurant coming to Rockford.

Mr. Sanders stated his vote will largely place his confidence with Staff's ability to work with the Applicant to move a little closer to the ordinance on this project. He asked if they were willing to give up a few parking places "here and there" to come more closely into landscaping requirements. Mr. Mahajan stated other considerations have to be looked at but he does not want to penalize Portillo's because their transaction with Portillo's depends on a certain number of parking spaces. He stated Portillo's have already given up 4 parking spaces. He stated Portillo's has already compromised on a number of things and he is not certain on how much more flexible they can get. He again stated they wished to start construction in two weeks or less.

A **MOTION** was made by Craig Sockwell to **APPROVE** the Special Use Permit for a Planned Unit Development consisting of two (2) buildings – one for a fast food restaurant with a drive-thru, and one for commercial retail that includes an off-premise monument style free-standing business identification sign, and site, off-street parking, and landscaping plans with deviations from the regulations in a C-2, Limited Commercial Zoning District at 6122 Mulford Village Drive. The Motion was **SECONDED** by Kim Johnsen and **CARRIED** by a vote of 6-1 with Scott Sanders voting Nay.

Approval is subject to the following conditions:

1. Meet all Building and Fire Codes.
2. Submittal of Building Permits for Staff's review and approval.
3. Submittal of a revised civil plan to include reduced aisle widths within the parking lots and increased setbacks for the parking lots along Mulford Village Drive, and the new interior islands within the parking lots of Lots 1 and 2.
4. Submittal of a full landscape plan including plant species and size for Staff's review and approval.
5. Drainage calculations shall be submitted to determine if the existing detention pond has the adequate storm water storage or if additional storm water storage will be required for review and approval by the City Engineer.
6. Submittal of a dumpster detail and rendering for Staff's review and approval.
7. Submittal of a photometric plan with fixture details and fixture specifications for Staff's review and approval.

8. Submittal of building elevations for Staff review and approval.
9. Installation of the multi-purpose pedestrian path along East State Street from Bienterra Trail to Mulford Road.
10. Must obtain separate permits for signage and sign must be constructed to match building design and in accordance with plans approved by Staff.
11. Must develop site in accordance with revised civil and landscaping plans approved by Staff.
12. That a Final Plat (replat) creating two lots shall be approved by City Council and recorded.
13. Must develop building in accordance with elevations approved by Staff.
14. All conditions must be met prior to establishment of use.

ZBA 048-14
Findings of Fact for Approval of a Special Use Permit
For a Planned Unit Development Consisting of Two (2) Buildings;
One for a Fast Food Restaurant with Drive-Thru and One for Commercial Retail that Includes
An Off-Premise Monument Style Free-Standing Business Identification Sign and
Site, Off-Street Parking, and Landscaping Plans with Deviations from the Regulations
In a C-2, Limited Commercial Zoning District Located at
6122 Mulford Village Drive

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

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