



OFFICIAL AGENDA

BOARD OF ADJUSTMENTS & APPEALS

CITY OF STARKVILLE, MISSISSIPPI

WEDNESDAY, OCTOBER 22, 2014 at 4:00 PM
COMMUNITY DEVELOPMENT DEPARTMENT (2nd FLOOR)
CITY HALL
101 E. LAMPKIN STREET STARKVILLE, MS 39759

- I. CALL TO ORDER
- II. ROLL CALL
- III. CONSIDERATION FOR APPROVAL OF THE OFFICIAL AGENDA
- IV. APPROVAL OF THE:

MARCH 26, 2014 MEETING MINUTES
SEPTEMBER 24, 2014 MEETING MINUTES

- V. NEW BUSINESS

VA 14-07 PANDA EXPRESS, DIMENSIONAL VARIANCE OF SIGN HEIGHT REQUIREMENT 1006 HWY 12 STARKVILLE, ZONED C-2, WARD 1, REQUESTING DIMENSIONAL VARIANCE FOR MONUMENT SIGN OF A PROPOSED HEIGHT OF 11'2 11/16" WHICH IS ABOVE THE 8' MAXIMUM ALLOWED, APPLICANT: PANDA RESTAURANT GROUP

- VI. PLANNER REPORT
- VII. ADJOURNMENT

The City of Starkville is accessible to persons with disabilities. Please call the ADA Coordinator, Mr. Joyner Williams, at (662) 323-8012, ext. 121 at least forty-eight (48) hours in advance for any services requested.

UNAPPROVED

MINUTES OF THE MEETING OF THE BOARD OF ADJUSTMENTS & APPEALS THE CITY OF STARKVILLE, MISSISSIPPI MARCH 26, 2014

The Board of Adjustments & Appeals held a meeting at 4:00 PM on March 26, 2014, in the Community Development Department at City Hall. Members present were Commissioners Milo Burnham, Bonn Camp, Zack Harrington, Marco Nicovich, and Bill Webb. Absent were Lee Carson and Bobby Grimes. Attending the Commissioners were Chief Administrative Officer Taylor Adams, City Planner Buddy Sanders, and Recording Secretary Bill Green. After Commission Chair Milo Burnham called the meeting to order, the attendees were led in the Pledge of Allegiance followed by a moment of silence.

AN ORDER APPROVING THE WRITTEN AGENDA

The Board considered the matter of approval of the written agenda dated March 26, 2014. After discussion and upon the motion of Commissioner Webb, seconded by Commissioner Nicovich, the Board voted unanimously to approve the written agenda as presented.

CONSIDERATION FOR APPROVAL OF THE MINUTES MEMO OF OCTOBER 24, 2013

Commission Chair Burnham called for consideration for approval of the minutes memo of October 24, 2013. Commissioner Webb moved to approve the minutes memo, seconded by Commissioner Harrington, and the resulting vote for accepting the minutes was unanimous.

CONSIDERATION FOR APPROVAL OF THE MINUTES OF FEBRUARY 26, 2014

Commission Chair Burnham called for consideration for approval of the February 26, 2014, minutes. Commissioner Nicovich moved to approve the minutes, seconded by Commissioner Webb, and the resulting vote for accepting the minutes was unanimous.

CITIZEN COMMENTS

There were no citizen comments noted at the meeting.

NEW BUSINESS

VA 14-02: Cellular South Real Estate, Inc. Proposed Oktibbeha County Cooperative tower site, side/rear yard setback and 2,640-foot tower setback variances located in an M-1 Zoning District in Ward 2

City Planner Buddy Sanders made a presentation before the Board of Adjustments & Appeals of a request by Cellular South Real Estate, Inc., to seek variances for the development of a proposed Oktibbeha County Cooperative tower site.

The applicant is proposing to construct a 100-foot monopole wireless communication tower behind the Oktibbeha County Cooperative, in the southwest corner of the subject property. The tower lease area will be 75 feet by 75 feet and will have a 7-foot fence along all four sides. Landscaping will be required around the proposed tower compound area.

In the application, the applicant states that the one foot of pipe per one foot of setback on the west and south cannot be met because the Co-op has future growth plans that prohibit placement any farther into the property.

Currently, the tower would be 80 feet from the southern and western property line. The request is for a 20-foot variance from the west and south parking lot. A memo from Staff requested additional information in the form of a letter from the Co-op verifying the need for the variance.

The other request is a variance from the Ordinance that requires towers to be at least .5 miles from a residential zoning district. This tower would be .36 miles from the subdivision that surrounds the area. Staff recommends that the Board of Adjustments and Appeals require the Applicant to provide a photo illustrating that the tower would not have an effect on residential zoned property.

The applicant has provided a fall-radius letter stating that the proposed tower would fall within a 50-foot radius of the proposed 100-foot tower. If the requested Variances are granted, the setback at the site will be 80 feet. The applicant has also provided a Determination of No Hazard from the Federal Aviation Administration (Approval for 106 feet; Variance Application height 100 feet), Federal Communications Commission Antenna Structure Registration number 1288973, and a letter from RF Engineer pertaining to the need for the subject location.

The City Ordinance states that the purpose of setbacks are to provide safe distances from other structures and/or to minimize the effect that one structure or use may have on another. While the applicant did provide evidence that the tower can be located safely from property lines, the applicant did not provide evidence, such as photo simulations, that the tower would not have an effect on residential areas.

It is Staff's recommendation that the Board of Adjustments and Appeals table Variance Request VA 14-02 to allow Cellular South Real Estate, Inc., time to provide:

- 1.) Photo simulations of what the proposed tower would look like from residential zoned areas.
- 2.) A statement from the Oktibbeha County Cooperative of proposed developments that would prevent the proposed tower meeting the required 100-foot setback.

After the presentation, Chair Burnham came forward with comments and made the observation that this is the third time C-spire has come before the board with a variance request for the tower. The first time resulted in a withdrawn application concerning distance issues; the second time was in 2012, where they proposed to place a tower on Abernathy Drive and asked for a variance for the proximity of the tower to a residential area. During that request, Chair Burnham stated his concerns regarding the unclear wording of the Ordinance and noted that for the sake of clarity, updates to the Ordinance needed to be made. Chair Burnham recounted that after the Board rejected the second variance request, he went before the Mayor and the City to let his concerns be known about the contradictions in the Ordinance. Next he read an account of what he had presented to the Board of Aldermen. He suggested that in light of the confusion caused by the Ordinance, the Board should proceed with caution in making decisions in such cases, and he requested that a review be made of the Ordinance to make the wording less

misleading and more clear, so that the Board, as well as those who request variances, would avoid being placed in difficult positions.

After discussion regarding the conflict of permitted uses in the Ordinance, CAO Taylor Adams asked the City Planner to send out notice for a public hearing on April 15 for the first regular Board of Aldermen meeting in May, and he asked for a meeting with City Staff and Chair Burnham in order to discuss and suggest potential revisions to the Ordinance to be brought before the Board of Adjustments and Appeals for their input.

Commissioner Webb stated his concern about a tower falling on someone's property

Commission Chair Burnham called for the representative from C-Spire to speak on the subject, who came forward to explain the engineering behind the construction of the towers. Commissioner Webb asked if studies had been made of the effect of towers that had fallen, and Mr. Burnham averred that such cases were rare and that during the Tuscaloosa tornado, a similar tower had been one of the few things left standing.

After questions of tower fall safety were answered, Mr. David McGee, a representative of C-Spire, came forward to give a formal presentation for the variance request. He stated the need for more coverage in Starkville, which would necessitate a tower. He went on to discuss in detail what Mr. Sanders already presented, and after the presentation, the floor was opened up for discussion from the Board.

Concerns were raised regarding the height as it pertains to airport safety, and after discussion, Chair Burnham noted that reworking the Ordinance would cause a further delay and asked for a motion to approve the variance request. Commissioner Harrington moved to grant the variances as requested even though requirements may change with Ordinance revisions, which was seconded by Commissioner Camp, and the motion passed by a vote of four to one. The Applicant was reminded that the variance request would go before the Board of Aldermen for their approval on April 15, 2014.

ADJOURNMENT

There being no further business before the Board of Adjustments & Appeals, the Commission Chair declared the meeting adjourned at 4:45 PM.

Milo Burnham, Chair

Buddy Sanders, City Planner

UNAPPROVED

MINUTES OF THE MEETING OF THE BOARD OF ADJUSTMENTS & APPEALS THE CITY OF STARKVILLE, MISSISSIPPI SEPTEMBER 24, 2014

The Board of Adjustments & Appeals held its regularly scheduled meeting at 4:00 PM on September 24, 2014, in the Community Development Department at City Hall. Members present were Commissioners Marco Nicovich, Bill Webb, Bobby Grimes, and Bonn Camp. Absent were Lee Carson and Zack Harrington. Attending the Commissioners were Community Development Director Buddy Sanders, City Planner Daniel Havelin, and Recording Secretary Bill Green. After Vice Chair Nicovich called the meeting to order, the attendees were led in the Pledge of Allegiance followed by a moment of silence.

ELECTION OF COMMISSION CHAIR

In order to fill the position of Commission Chair left vacant by Milo Burnham, the Board of Adjustments & Appeals held an election for Commission Chair and Vice Chair. After reviewing the qualifications for Commissioners to be considered for the offices of Commission Chair and Vice Chair, stating that they shall have at least two years' Commission experience, Vice Chair Nicovich opened the floor for nominations for the position of Chair. Commissioner Nicovich nominated Commissioner Webb, which was seconded by Commissioner Grimes, and the resulting vote to elect Commissioner Webb as Chair was unanimous. The Commission affirmed that Commissioner Nicovich should retain his position as Vice Chair.

NEW BUSINESS

VA 14-07: A setback variance request for 310-2 Central Avenue, in an R-3 Zone, Ward 5.

City Planner Daniel Havelin made a presentation before the Board of Adjustments & Appeals of a request by Mr. Kenny Morgan to seek variances for a Reduced Front Yard Setback Requirement to allow the currently under-construction structure to become compliant. The requirement is 25 feet from the front, and currently the face of the existing structure is 22.3 feet. Originally when the request was initiated, there were two problems with setbacks: one with the front yard, and one with the side yard. Mr. Morgan has already gone through the process of alleviating the side yard setback by purchasing additional property from a client. So the current request involves the Front Yard Setback Requirement, and that encroachment is 2.7 feet.

After Mr. Havelin's presentation, the floor was opened for the Applicant's representative to speak. Mr. Mike Brent, who is the engineer on the project, came forward to explain that the Applicant assumed that since the subdivision was old, setbacks probably weren't required, and he didn't check for the current zone setback requirements. Once the engineering firm discovered the oversight, a lot aggregation was made, and they informed the Applicant of the need for more room on the side. The Applicant also misjudged the street width, putting him 2.7 feet short of what is needed for the setback. As a result of these errors, the Applicant has resolved the side setback issue through an expensive fix, and since buying property on the front is not an option, he is asking for a variance for the 2.7 feet he lacks on the front because his house is in place on a fixed foundation, already half-finished, and would be very expensive to move. His house is the

second closest one to the street and the placement was chosen in an effort to avoid cutting down a tree in the yard.

After discussion among the Commission on what the City requires regarding surveyor pins and batterboards at the time of inspection, City Planner Havelin was asked if the City received any opposition after the public notification, to which he answered that his office has received three phone calls and one letter in opposition.

Commissioner Webb opened the Public Hearing and called for any who would like to speak on the subject. Grady Michner, who owns a rental house on Critz Street within 300 feet of the structure, viewed the property and stated his opposition to the variance request. Because of the way the structure is situated, he believes that the curb appeal would be compromised and therefore a detriment to the neighborhood.

Next, Thad Bryan, who owns a house on Critz Street, voiced his concern about the house being 70 percent complete before the infraction was discovered. Community Development Director Sanders answered that when the permit was issued originally, the proposed site plan met the setbacks. When a deck was added, Staff was alerted and discovered the issue with the setback. The Applicant then made a request for a lot aggregation, with additional property to meet the side setback requirement. Once Staff received the material for the lot aggregation, the discovery was made that the house did not match the original site plan regarding front setback requirements.

With no others coming forward to speak, Commissioner Webb then closed the Public Hearing and opened the floor to discussion among the Board Members. After discussion regarding public opposition and the responsibility of builders to make certain of setback requirements before construction, Commissioner Webb made a motion to deny Variance Request 14-07, which was seconded by Commissioner Nicovich, and the Board voted two to one to deny the Variance Request.

Mr. Sanders informed the Applicant that if he wished to appeal the ruling, he could do so in writing within ten days, addressed Chief Administrative Officer Taylor Adams, who would then turn it over to the Community Development Department.

ADJOURNMENT

There being no further business before the Board of Adjustments & Appeals, Commissioner Nicovich moved to adjourn, which was seconded, and the meeting was adjourned at 4:26 PM.

Bill Webb, Chair

Daniel Havelin, City Planner

THE CITY OF STARKVILLE
COMMUNITY DEVELOPMENT DEPT
CITY HALL, 101 E. LAMPKIN STREET
STARKVILLE, MISSISSIPPI 39759

STAFF REPORT

TO: Members of the Board of Adjustments & Appeals
FROM: Daniel Havelin (662-323-2525 ext. 136)
SUBJECT: VA 14-07 Panda Express Dimensional Variance of sign height requirement 1006 Hwy 12 Starkville, Zoned C-2, Ward 1, Requesting dimensional variance for monument sign of a proposed height of 11' 2 11/16" which is above the 8' maximum allowed, Applicant: Panda Restaurant Group
DATE: October 22, 2014

AREA:

The subject property is located at 1004 Highway 12 West (south side of Walmart parking lot). The 0.78 acre parcel is currently zone C-2 General Business.

PROPOSED USE & BACKGROUND:

The applicant has recently acquired the southern portion of the parking lot of Walmart on Highway 12 West. They have completed the Development Review Committee process and are in the process of being issued a building permit. The applicant is planning to open a fast food business (Panda Express) on the site. The applicant is seeking relief by means of a dimensional variance for the required maximum height for a monument sign. Their proposed sign is 11' 2 11/16", which is 3' 2 11/16" above the maximum allowable 8' monument sign.

Please see Attachments 1-6.

VARIANCE REQUESTS:

Appendix A - Zoning, Article IX, Signage, Sec. D. Sign requirements for zoning districts.

C. *Commercial district (C-2) and manufacturing district (M-1).* The following signs are permitted in the C-2 and M-1 zoning districts of the City of Starkville under the following conditions:

1. *Monument signs.*
 - a. Monument signs advertising the name of a business and services provided by a business shall not exceed 80 square feet in area and shall be a minimum of five feet from the edge of the paved road, back of curb or right-of-way line, whichever is greater, and shall not be placed within the sight-distance triangle of any intersection.
 - b. The area beneath and around the sign shall be landscaped with plants, ground cover and materials so as to complement the site and integrate the

monument sign with buildings, parking areas, surrounding vegetation and natural features of the landscape.

- c. Multiple on-site signs advertising the name and services provided by the same business must be separated by a minimum of 330 linear feet of frontage along a public roadway.
- d. Monument signs shall not exceed eight feet in height above the finished grade.

VARIANCE REQUEST REQUIREMENTS:

Appendix A, Article VI, Section K outlines four conditions a Variance request needs to meet:

To authorize an appeal in specific cases such variance from the terms of this ordinance [may be issued] as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. A variance from the terms of this ordinance shall not be granted by the board of adjustments and appeals unless and until a written application for a variance shall be submitted, demonstrating:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and the same conditions are not applicable to other land, structures and buildings in the same district.

The proposed site is lower in elevation than the existing roadway. The applicant considers this a hardship. The adjacent properties to the east are at a higher elevation and therefore do not have the same condition.

2. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.

All new signs on existing or new developments are under the same signage requirements.

3. That the special conditions and circumstances have not resulted from the actions of the applicant.

No actions of the applicant have resulted in or added to the current conditions.

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district. In granting any variance, the board of adjustments and appeals shall have the authority to prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance. Under no circumstances shall the board of adjustments and appeals grant a variance to permit a use other than a use permitted generally, or by special

exception, in the district involved, nor shall a variance be granted to any use expressly or by implication prohibited by the terms of this ordinance in said district.

A special privilege would be conferred on the applicant that would otherwise be denied to others in the same district. The proposed overall height increase would be similar in character with some of the other sign heights in the area, but most are to be amortized over the next ten years per Article 6 Section C (18) of the City's sign ordinance. Signs which were permitted and constructed under the previous version of the sign ordinance are exempt from the amortization clause.

STAFF RECOMMENDATION:

Should the Board of Adjustment and Appeals approve the Variance requests by Panda Restaurant Group, the following condition is recommended:

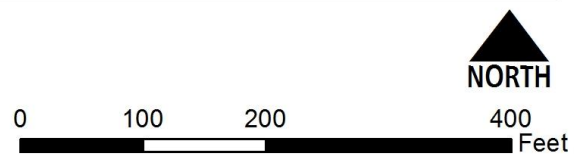
1. That the sign be landscaped as proposed on approved landscape plan and as required by current landscape ordinance.

Attachment 1
VA 14-07 Aerial

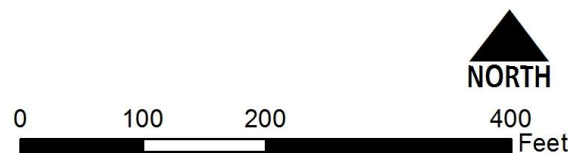
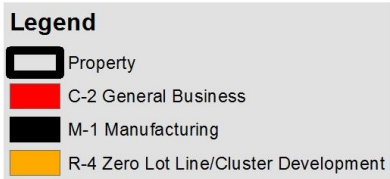
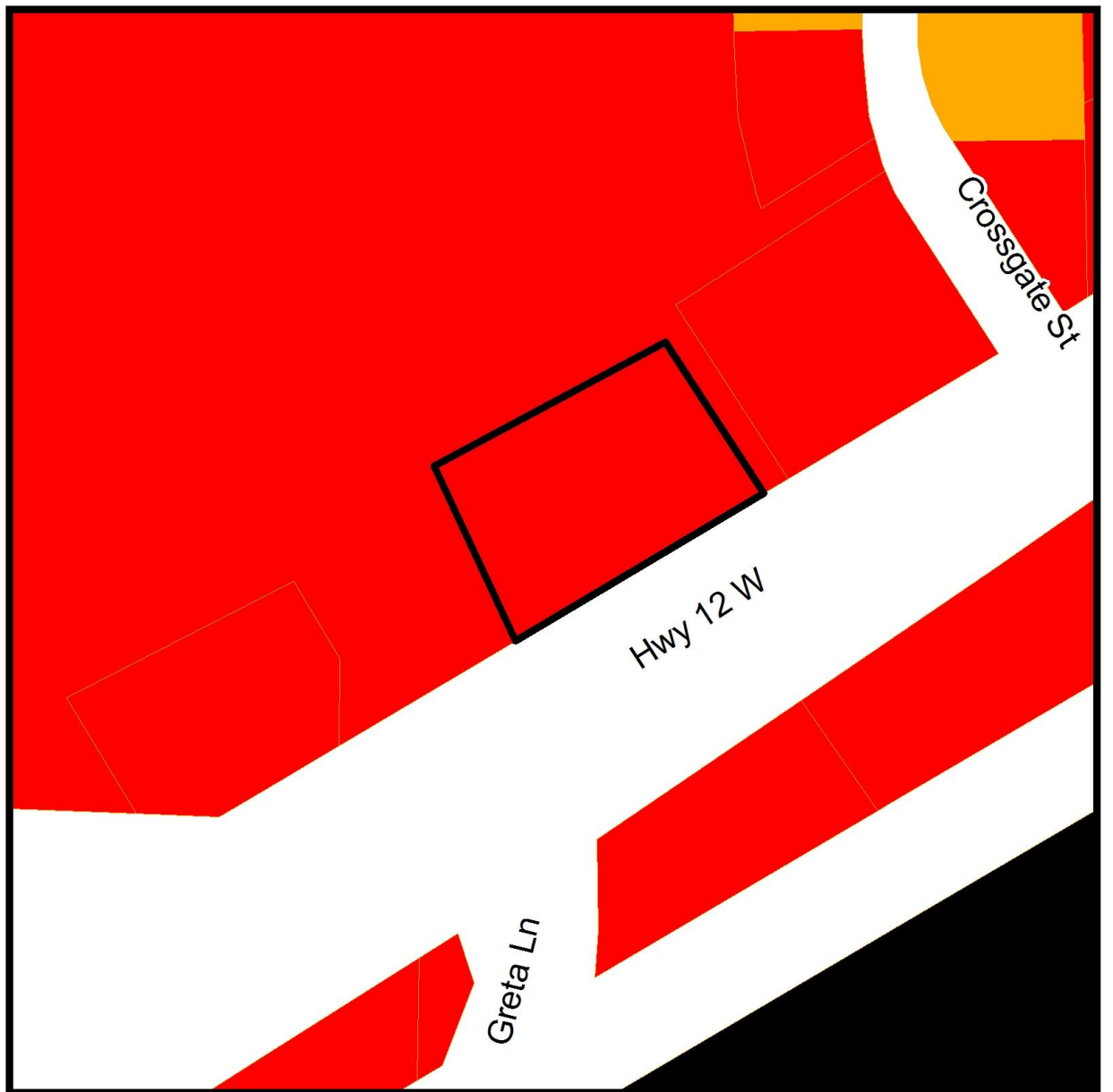


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend
 Property



Attachment 2
VA 14-07 Zoning



Attachment 3



View looking west along right of way adjacent to site

Attachment 4



View looking north at site

Attachment 5



View looking northeast towards site

Attachment 6