

MINUTES
CITY OF SUWANEE, GEORGIA
ZONING APPEALS BOARD MEETING
March 19, 2024

PLANNING AND ZONING APPEALS BOARD MEMBERS: Present: David Sullivan, Ed Townsend, Ray Brown, and Beth Lembo. Staff members present: Alyssa Durden, Josh Campbell, , and MaryAnn Jackson. City Attorney Gregory Jay. Absent: Paul Altnauer

CALL TO ORDER

Ray Brown called the meeting to order at 6:30 p.m.

ADOPTION OF THE AGENDA

David Sullivan moved to approve the agenda as presented, second by Ed Townsend. Motion carried 4-0.

APPROVAL OF MINUTES

Beth Lembo moved to approve the March 19, 2024 minutes, second by David Sullivan. Motion carried 4-0.

OLD BUSINESS

NEW BUSINESS

V-2024-002 – Owner/Applicant: Y&S Enrichment, LLC. The applicant requests a variance from Article XV of the City of Suwanee Zoning Ordinance to allow for a reduction of required parking spaces. The site contains approximately 1.0 acre in Land Lot 251 of the 7th District and is located at 730 Peachtree Industrial Boulevard.

Alyssa Durden presented the staff report as follows: The applicant seeks a variance from Section 1502 of the City of Suwanee Zoning Ordinance to allow for fewer parking spaces than required for an approximately 10,131 square foot learning center and after school program. The property owner is planning to expand the existing building from approximately 4,000 square feet to approximately 10,150 square feet. The existing facility and the expansion would be occupied by a single user (Eye Level Learning Center). There appears to be a discrepancy between the submitted site plan and the submitted architectural plans. The proposed architecture would appear to require the removal of 3 parking spaces. The site plan does not show this impact.

The subject property has access off Peachtree Industrial Boulevard that it shares with the adjacent animal hospital. The site currently provides 14 total parking spaces for 4,000 square feet of commercial space and has an agreement with the animal hospital to share an additional 8-10 unstriped spaces to the rear of the animal hospital.

The property owner proposes to add approximately 6,211 square feet to the existing space in a two-story addition. The addition would be used as an athletic development space. Section 1502.R of the City of Suwanee Zoning Ordinance requires a minimum of 1 parking space per 250 square

feet of gross floor area for commercial uses such as the learning center. The applicant currently has 14 parking spaces on site. With the current structure, the property would require a total of 16 spaces. If there is no proposed addition, then the user would be able to go into the current space without a variance.

However, the applicant is planning to alter the building by adding 6,211 square feet. In order to accommodate that addition, the site would require 41 spaces. It is important to note that the current architectural plan would appear to require the removal of 3 of the existing parking spaces. The Zoning Ordinance allows for a 20 percent reduction in the number of parking spaces with an administrative variance, but this would only allow the applicant to reduce the number of spaces to 33. Therefore, the applicant is seeking a variance to allow for a reduction in the amount of parking by more than 20 percent.

The subject property is surrounded by a mixture of commercial and residential uses. To the north of the subject property, across Peachtree Industrial Boulevard, is an undeveloped commercial property (zoned C-2). To the east of the subject property is an auto body shop (zoned C-2). To the south are two residential neighborhoods: Kennedy Township (zoned RM-6) and Suwanee Square (zoned RM-8). To the west is the Heart of Suwanee Animal Hospital (zoned C-2).

Eye Level Learning Center is an after school program that provides tutoring on certain subject matters in both a 1-on-1 and group setting. They are planning to expand their existing footprint to allow for athletic development space. This space will consist of an approximately 30-foot by 80-foot field house to assess client's athletic skill and provide coaching to develop athletic strengths. This space is anticipated to be a total of approximately 6,211 square feet divided between 2 stories, which would increase the total square footage to 10,131 square feet.

The applicant has been running their after school program for 20 years. In their previous spaces, they have operated utilizing a 100% drop-off method, and they plan to continue this policy at the new location. The applicant anticipates a maximum of 9 employees in the building at a time. The applicant has a parking agreement with the neighboring Heart of Suwanee Animal Hospital. This agreement would allow them space to park 8-10 cars in the rear of the Heart of Suwanee Animal Hospital. This would allow for a total of 19-24 available parking spaces (depending upon the number of vehicles that could fit into the unstriped area behind the animal hospital and depending upon whether or not the addition results in the removal of 3 parking spaces) for the Eye Level Learning Center. While the applicant proposed to implement a drop off requirement, the subject property and the proposed development/use does not have a situation which rises to the level of hardship and defined by the Zoning Ordinance.

The City's Zoning Ordinance grants the Zoning Board of Appeals the authority to grant variances. According to Section 2006 of the Ordinance, the Board is authorized to grant variances when literal enforcement of the Ordinance will result in unnecessary hardship to a property owner. The Zoning Ordinance also states that variances may be granted when, relief would not cause substantial detriment to the public good nor impair the purposes or intent of the Zoning Ordinance.

The site is being used by a single user. Therefore, the property owner will be able to exercise more control over the amount of parking used than a multi-tenant site. Additionally, the site parking regulations are designed to make sure that commercial spaces provide sufficient parking for their customers. The applicant states that their previous location operated with a capacity of 50 students and 3 parking spaces. The applicant states they are expecting approximately 100 students, and they are expecting to continue the drop off requirement. If the applicant were to add more parking spaces, it would most likely require the removal of trees in the rear of the building. It should be noted that while the current property will have the ability to implement policies that influence the number of spaces needed, future users of the space might be significantly “under parked” if the variance is approved.

The subject property does not appear to have a situation that rises to the level of hardship as defined by the Zoning Ordinance. The property owner has a firm understanding of the amount of parking they will actually need and are working with the adjacent property owner who shares the same driveway to provide additional parking. Providing additional, but unnecessary parking, has negative environmental impacts through increased stormwater runoff and increased urban island heat effect. Therefore, staff does not object to the request.

The applicant does not appear to have a hardship requiring a reduction in parking requirements. The applicant is experienced in operating their business and suggests the increase in parking would be unnecessary. The applicant has arranged for a parking agreement with the neighboring property owner to provide more parking. Staff recommends denial of V-2024-002.

Ray Brown called upon the applicant.

Youngki Shim, Laurel Oak Drive, Suwanee, GA. Mr. Shim stated that the animal hospital has given 8 to 10 parking spaces to the learning center. They had a vacant lot that they were not using.

David Sullivan asked if the variance request is denied, will the learning center still have use of the additional parking spaces from the animal hospital. Mr. Shim indicated that he will still have use of the parking spaces. The animal hospital gave a letter to Mr. Shim regarding the parking spaces.

Mr. Shim explained that the facility does not need a lot of parking. The facility is drop off only. They assess kids for sports activities.

Ray Brown called for opposition. There was none.

David Sullivan moved to deny V-2024-002, second by Beth Lembo. Motion carried 4-0.

V-2024-003 - Owner: Atlantic Billboards, LLC. Applicant: Webb, Klase & Lemond, LLC. The applicant requests a variance from Article XVI of the City of Suwanee Zoning Ordinance to allow for alteration of a nonconforming sign to an electronic sign. The site contains approximately 0.01 acre in Land Lot 169 of the 7th District and is located at 3141 Lawrenceville Suwanee Road.

Josh Campbell presented the staff report as follows: the applicant is Webb, Klase & Lemond, LLC. The Owner is Atlantic Billboards, LLC. The location is 3141 Lawrenceville Suwanee Road. The parcel number is 7169 172. The property is zoned C-2A. The acreage is approximately 0.01

acre. The applicant is proposing to do a multi-message electronic display billboard. The request is to allow for alteration of a non-conforming sign. The applicant is seeking a variance from Section 1609/1611 of the Zoning Ordinance.

The subject property is zoned C-2A (Special Commercial District) and is carved out of an outparcel at 3141 Lawrenceville Suwanee Road which is currently vacant (formerly Burger King).

The existing sign is approximately 11.5' x 24' with an area of approximately 276 square feet. The existing sign is approximately 35 feet tall. The existing sign is static. The existing sign was erected prior to the adoption of the City's current Zoning Ordinance. The proposed sign depicts the same area and height but the applicant proposes to alter the existing static sign to an electronic sign with the ability to change messages.

Section 1611.18 of the Zoning Ordinance prohibits "signs exceeding two hundred square feet in copy area." Section 1611.19 of the Zoning Ordinance prohibits any ground height in excess of 20 feet in height except interstate visible signs. The existing sign is not consistent with these requirements but was constructed prior to the adoption of the current Zoning Ordinance as such the sign is considered a legal non-conforming sign.

Section 1609.B of the Zoning Ordinance reads: "Any legally permitted and constructed sign shall be allowed to continue as a legal non-conforming use under this Ordinance except that it shall not be enlarged, altered or rebuilt except in conformance with this Ordinance, but it may be repaired to the extent necessary to maintain it in a safe and sanitary condition..."

The applicant applied for a sign permit that would alter the sign from static to electronic. Section 1609 of the Zoning Ordinance prohibits legal non-conforming signs from being altered, as such the permit was denied.

The applicant seeks a variance from Section 1609/1611 of the Zoning Ordinance in order to allow for a sign permit to be issued that would allow for the alteration of a legal non-conforming sign. The proposed sign would exceed the copy area and ground height requirements set forth in the City's Ordinance.

Section 2006 of the Zoning Ordinance authorizes the Zoning Board of Appeals to grant variances in such individual cases of unnecessary hardships upon a finding by the Board that:

1. There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape or topography; and/or
2. The application of the Zoning Ordinance to the particular piece of property would create an unnecessary hardship; and/or
3. Such conditions are peculiar to the particular piece of property involved; and/or
4. Such conditions are not the result of any actions of the property owner; and/or
5. Relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of the Zoning Ordinance.

The applicant purchased the property in 2022. The sign regulations have not been altered since 2022. The applicant had an opportunity to understand the regulations that were in place at the time of the purchase and how those regulations would impact plans to alter the sign.

The applicant does not articulate “extraordinary and exceptional conditions pertaining to the particular property in question based on its size, shape, or topography” and does not articulate any hardship that could be addressed by approval of a variance.

No hardship necessitating an alteration to the existing sign is present.

As such, staff recommends denial of the request.

Ray Brown asked if the billboard was grandfathered in, before the ordinance was created. Josh Campbell confirmed it was installed in advance of the adoption of the City’s sign ordinance and explained that the applicant is not allowed to alter, enlarge or rebuild unless it is in conformance with the zoning ordinance.

Ray Brown called upon the applicant.

Adam Webb, 1900 The Exchange, Atlanta, GA. Mr. Webb is legal counsel for Atlantic Billboards. Mr. Webb stated that his client would like to make the sign more useful to the community. It can be done in a number of ways that are both creative and straightforward. The City of Suwanee presently prohibits this type of technology (multi-message signs). Mr. Webb noted multi-message signs on the Interstate and a dynamic sign at Burnett Insurance. This change will allow immediate changes to the billboard. This will allow for Amber alerts, fugitive alerts, weather alerts, Farmers Market on Saturdays, church on Sundays. The ads do not have to stay up for months at a time. They can be customized. This is great for organizations and the City of Suwanee.

Mr. Webb stated his client is seeking a variance under Section 2009 of the Suwanee Zoning Ordinance. Mr. Webb submitted an exhibit to the Zoning Board of Appeals members. Mr. Webb stated that under Section 2009 of the code, there are different standards for the variance than what the City of Suwanee has addressed. Mr. Webb acknowledges that the City’s language is in the code, but his client is seeking a variance under Section 2009 which requires a different set of criteria to be met. Not increasing traffic congestion, not increasing the danger of fire or danger to public safety, not diminishing or impairing property values, not otherwise impairing public health, safety, comfort, morals or welfare.

Mr. Webb introduced Mr. Michael Fitzgerald, a principal with the Owner.. Mr. Webb swore in Mr. Fitzgerald.

Mr. Michael Fitzgerald, 3162 Johnson Ferry Road, Marietta, GA. Mr. Fitzgerald stated that he grew up and was raised in Suwanee. He feels the technology of the billboard will help law enforcement and local businesses. He offered a condition to provide free space on the sign for the City and stated he would be happy to post City messages on both sides of the sign. Mr. Fitzgerald stated that he wants to partner with the City of Suwanee. The sign was approved back in the

1980's. He just wants to improve the technology. He will be able to change the signs many times a day with the new technology.

Mr. Webb asked Mr. Fitzgerald about traffic congestion. Mr. Fitzgerald indicated that the sign will not increase traffic congestion.

Mr. Webb asked Mr. Fitzgerald if the sign would impact fire and public safety. Mr. Fitzgerald stated that the sign will improve public safety. As soon as an Amber alert or fugitive alert is received, it will be posted immediately.

Mr. Webb distributed a letter to the Zoning Board of Appeals from the GBI Director. The letter thanked the Outdoor Association for their partnership and posting missing children alerts and fugitive alerts.

Mr. Webb distributed another document to the Zoning Board of Appeals. Mr. Fitzgerald explained that the letter is from the Georgia Emergency Management Agency. The letter is a thank you for helping with natural disasters.

Mr. Webb distributed a third document. Mr. Fitzgerald explained that this document is from the DOT thanking the Outdoor Association for their help with directing traffic during snow and ice events.

Mr. Webb presented a fourth document to the Zoning Board of Appeals. Mr. Fitzgerald stated that this letter is from the FBI thanking him for helping with apprehending fugitives. The FBI posts their ten most wanted list on the billboards.

Mr. Webb distributed another exhibit from the FBI. This letter is about the FBI tipline.

Mr. Webb asked Mr. Fitzgerald to explain what the government regulators have found about the safety of digital billboards. Studies have been done that show these billboards do not increase accidents.

Mr. Fitzgerald stated that the ads stay up for 10 seconds at a time. He uses the technology that is the safest and most restrictive. It does not have any motion. It has been litigated over the past 12 years. There is no increase in accidents from these types of billboards.

Mr. Webb asked Mr. Fitzgerald if this technology will decrease property value. Mr. Fitzgerald stated that the technology will not decrease property value. Burger King went out of business. The new owner would like to be on the sign. If he can convert the sign to the new technology, it can be used to help businesses.

Mr. Webb asked Mr. Fitzgerald to address impairment to public health, safety, comfort morals or welfare. Mr. Fitzgerald explained that the billboard will be a benefit to the residents of Suwanee.

Mr. Webb distributed some proposed conditions to the Zoning Board of Appeals. Mr. Fitzgerald reviewed each proposed condition. He will offer the billboard to be used by law enforcement at

any time. He is prepared to donate one full segment on each digital for City events and notices. He will not increase the height or area of the sign.

Mr. Webb asked Mr. Fitzgerald to explain which conditions he is willing to accept regarding the operations of the electronic element. Mr. Fitzgerald stated that since Suwanee does not have a digital ordinance, he took the state requirements and the most restrictive local requirements that he could find and put them in the conditions. The billboard will have a brightness control. There will not be a glare. The remaining conditions are required from the DOT for every billboard in the state.

Gregory Jay, Attorney for the City of Suwanee. Mr. Jay informed Mr. Webb that he has exceeded his time.

Mr. Fitzgerald stated that he cares about Suwanee. He believes the billboard will be an asset and he would appreciate the support from the board.

Mr. Webb stated that the criteria from Section 2009 have been met. There are no traffic safety concerns. The concerns mentioned have been downplayed by Mr. Fitzgerald. There are no public safety concerns.

Gregory Jay stated that he was present as an advisor/legal counsel to the Zoning Board of Appeals. He noted that the City of Suwanee did not view Section 2009 as an alternative in seeking a variance but rather as a minimum or floor in addition to the more detailed criteria set forth in the staff proposal.

Ray Brown called for opposition. There was none.

David Sullivan moved to deny V-2024-003, second by Beth Lembo. Motion carried 4-0.

Gregory Jay stated that the applicant would like to address the Board in consideration of another matter in that the Owner/Applicant wanted to preserve its constitutional rights to challenge the validity and constitutionality of the ordinance.

Mr. Webb explained that the denial is wrong for a few reasons. The code that is adopted for sign ordinance states that any sign not expressly allowed is prohibited which he states is contrary to a Georgia Supreme Court unanimous decision.. This ordinance has the same default presumption. He further asserted that the City of Suwanee cannot prohibit LED signs but can restrict them. The ordinance specifically allows the City of Suwanee to have an LED sign. The court has said that it is unconstitutional. The Board is well advised to overrule the denial. He also stated that the measures and procedures utilized in the City's adoption of its zoning ordinance and map are insufficient under the zoning procedures law. He indicated that if any of those elements are missing, then the sign ordinance is not valid. Mr. Webb urges the board to reverse the denial.

Gregory Jay stated that generally constitutional issues are reserved for Superior Court and that inferior boards such as the ZBA are not qualified or competent to determine such issues. Notwithstanding, this board can vote to deny the appeal or uphold the appeal.

David Sullivan moved to deny the appeal, second by Beth Lembo. Motion carried 4-0.

OTHER BUSINESS

ANNOUNCEMENT

ADJOURNMENT

David Sullivan moved to adjourn at 7:19 pm.