

**BOARD OF ZONING APPEALS
MEETING
APRIL 22, 2008**

MEMBERS PRESENT: Lynne Matthews, Chairman
Henry Bauman, David Brower, Larry Hofmeister,
Richard Kilmer, James McClary, Ray Rose

MEMBERS ABSENT: Randy Fassett

OTHERS PRESENT: Teri Tubbs, Zoning Official
David Hilston, Urban Design Manager
Lisa Hannon, Zoning Coordinator
Councilmember Bill Albers
Dennis Murphy, Growth Management Director
Richard Wells, Eileen Cavanaugh, Ed Wotitzky
John Swen, Fred Hirschovits, Joe Suriol

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Last Scheduled Meeting - February 26, 2008
- C. Next Scheduled Meeting - May 27, 2008

APPROVAL OF MINUTES

- A. Meeting of February 26, 2008
 - Mr. Hofmeister MOVED, Mr. Kilmer SECONDED approval of the February 26, 2008 minutes. MOTION CARRIED UNANIMOUSLY.

OLD BUSINESS

- A. Results of City Council Action on March 19, 2008
 - 1. V-01-08 - 235 Di Vinci Drive - Request to grant a variance to the City Code of Ordinances, Section 26-3.13(e), page 26-26, of the City Code to allow gravel and rock within 6 feet of the seawall in the Special Residential Overlay (SRO) district instead of sod, as required; and Section 26-8.13(a), page 26-86, to allow gravel within drainage facilities of the required yards instead of sod as required; and Section 12.3(c), page 26-128, to allow gravel within utility easements, instead of groundcover, as required; and Section 12.3(i), page 26-129, to allow gravel instead of required sod in swales or other areas subject to erosion; and Section 26-12.4(k), page 26-132, to allow gravel instead of the required ground cover, shrubbery or mulch in the required yard area; and Section 26-8.14(h), page 26-88, to allow a paver walkway closer than 3 feet to the side yard property line for an existing single-family residence located at Block 42, Lot 7, Punta Gorda Isles, Section 6, known as 235 Di Vinci Drive.

- Ms. Teri Tubbs, Zoning Official, announced the applicant had withdrawn his request, stating the property was now in compliance.

NEW BUSINESS

- Recording Secretary Kelly swore in all participants.
- A. Public Hearing
- 1. AP-01-08 - Appeal of Administrative Decision of the Zoning Official per the City Code of Ordinances, Chapter 26-16.2, regarding replacement of individual non-conforming signs on an existing non-conforming sign structure located at Block 35, Lots 2, 3, 4, 5 and 6, PUG a/k/a 205-225 Wood Street.
- Ms. Tubbs displayed several overheads of the site location, as delineated in the agenda material, providing a detailed review of staff's Findings #1 through 4 with regard to the history of this property commencing in September 2004, following Hurricane Charley in August 2004. She specifically reviewed the criteria required by City Code for an appeal, noting same was also outlined in the agenda material. She stated to allow non-conforming signs to be reestablished would be in conflict with the Land Development Regulations (LDRs) and the intent of City Code. She noted the existing pole sign may remain on the property until such time it became damaged or destroyed to more than 50% of its value or was relocated or removed. She pointed out the building was set back more than 15 feet from the fronting right-of-way (ROW) and would be permitted to have a conforming ground sign of 5 feet in height and 16 square feet in area to replace the existing non-conforming sign. She concluded with a recommendation for denial of AP-01-08; however, staff further recommended the applicant meet with the Team Punta Gorda (TPG) Design Committee to discuss design options for a new ground sign which would meet the applicant's needs as well as the intent of City Code. She mentioned two other locations where non-conforming signs had not been allowed to be replaced, specifically at 318 and 305 Tamiami Trail. She displayed a list of examples of required permits for sign face changes dating back to 1995, stating replacement of non-conforming signs commenced in 2005.
- Mr. Brower clarified the applicant was requesting approval for 11 individual signs on 1 sign structure, questioning the authority by which staff had determined each slot was to be considered separately.
- Ms. Tubbs replied the sign code required a permit for any sign, adding sign faces within a ground sign were considered part of same and required a permit. She noted this had been a consistent procedure in the City since at least 1995.
- Mr. Brower asked if permits had existed for those 11 signs.
- Ms. Tubbs replied no permits had been issued; thus, they were considered unlawful.

- Mr. Brower asked if permits would have been issued if applications had been submitted in 1998.
- Ms. Tubbs replied affirmatively.
- Mr. Brower asked if any specific section of the City Code defined the 11 signs separately, noting there were actually 12 signs including the large “Plaza Camille” sign at the top of the structure.
- Ms. Tubbs replied the sign permit application process ensured the business being advertised was a permitted use as well as held a Local Business Tax Receipt (formerly known as an Occupational License). She displayed a copy of Table 11.1 from the current sign code, noting a permit was required for each individual face.
- Mr. Brower asked how it had been determined each individual sign face was considered separately.
- Ms. Tubbs replied she was unsure whether same was spelled out; however, the City had been requiring a permit for all sign faces since 1995.
- Mr. Hofmeister clarified the Board was addressing an appeal of the Zoning Official’s decision as opposed to a variance request. He asked if sign permit applications were submitted on a per business or per building basis.
- Ms. Tubbs replied per business.
- Mr. Hofmeister asked if each business in Plaza Camille was eligible for a 16 square foot sign.
- Ms. Tubbs replied one, sixteen-square foot sign would max out the property, stating ground signs were required to have a three-hundred foot separation. She explained the parcel was not large enough to accommodate multiple ground signs; thus, a single ground sign must accommodate all of the building’s tenants.
- Ms. Matthews commented it was unreasonable to prevent a business from advertising through signage.
- Ms. Tubbs reiterated she had recommended the applicant meet with TPG’s Design Committee. She displayed a photograph of a sign which had received a variance after quite a painstaking design process, stating same was over nine feet tall and thirty square feet in area, which was almost double what was allowed.
- Ms. Matthews clarified the applicant could still proceed with a variance request.
- Mr. Rose asked if each business was allowed a sign.
- Ms. Tubbs replied all of the businesses had window signs, which were visible only from the parking lot. She mentioned the Wood Street Grill had set out a small menu board, which was permitted in the City Center (CC) zoning district. She acknowledged the building design made signage difficult.

- Mr. Kilmer clarified free standing and façade signs could not be combined. He recalled one condition of approval of the above mentioned, previously approved variance was no façade signage or banners would be allowed.
- Ms. Matthews reiterated the Board was being asked to address an appeal as opposed to a variance.
- Mr. McClary disclosed he had driven by the subject location, stating he believed additional signs on the main sign structure would be blocked by the site trees.
- Ms. Tubbs mentioned a suggestion had been made to relocate the sign to another spot in the parking lot to allow the sign to be seen more easily.
- Mr. Richard Wells stated he owned one of the businesses in Plaza Camille, adding it was extremely difficult for customers to locate his business.
- Ms. Eileen Cavanaugh, applicant's agent, stated the original sign permit clearly depicted a double-poled, free standing sign with 11 store slots to be displayed below the main Plaza Camille sign. She expressed confusion as to whether or not individual sign permit applications had been submitted for the actual lettering of those individual signs, adding she understood there was no requirement for same. She advised the signs remained in place from 1998 until Hurricane Charley in August 2004. She stated she first approached City staff to ask what was required to replace the signs, adding she understood the sign was non-conforming but grandfathered and could be replaced unless repair costs exceeded 50% of the value of the sign; however, she was later advised the individual signs could not be replaced. She contended the entire sign had been considered under one permit application and should continue to be considered in that manner. She pointed out Plaza Camille businesses were located on a side street; thus, she requested consideration be given to the difficulty in maintaining businesses within same. She mentioned only nine or ten of the original eleven signs would be required to be replaced. She noted her intent was not to construct anything which was not aesthetically pleasing. She asserted there were other similar, non-conforming signs in the City, requesting she be given the same consideration. She stated she had not been advised of the possibility of seeking a variance.
- Ms. Tubbs responded she spoke with Mr. Doug Osborne several times in February 2008 with regard to her recommendation to speak with TPG as had the City Manager. She noted Mr. Osborne advised he would speak with the other tenants.
- Mr. Kilmer clarified the applicant was not requesting a change in the existing sign structure. He asked if each business owner had applied for individual sign permits.
- Ms. Tubbs replied they had not, acknowledging such applications would be denied as City Code would not allow reestablishment of non-conforming sign faces.

- Mr. Bauman commented it appeared the trigger to this situation was more than 50% destruction of the original sign, asking how same was determined.
- Ms. Tubbs replied each sign face was individual and was 100% destroyed.
- Ms. Cavanaugh countered she understood the entire sign could not be replaced; however, she had seen nothing indicating a portion thereof could not be replaced.
- Mr. Bauman commented Ms. Cavanaugh was looking at the sign as a totality whereas the City considered each sign separately, adding replacement of each individual sign constituted far more than 50%. He asked why Ms. Cavanaugh had elected to appeal the Zoning Official's decision as opposed to seek a variance.
- Ms. Cavanaugh replied she had been so advised upon expressing her disagreement with same.
- Mr. Rose stated he understood a date had been set requiring replacement of all non-conforming signs.
- Ms. Tubbs replied current City Code did address same; however, she believed that section would be reviewed and possibly changed in the near future.
- Mr. Brower interjected it seemed the Board was required to find an error in the Zoning Official's decision in order to overturn same, asking what error the applicant was alleging.
- Ms. Cavanaugh replied she believed one sign was permitted in 1998 which included steel posts, the top sign and slots for eleven "riders."
- Mr. Brower clarified the applicant was alleging there was one sign while the City maintained there were actually twelve. He questioned the value of the current sign.
- Ms. Cavanaugh replied the value of the sign, one day prior to Hurricane Charley, was \$5,800, adding the cost to replace 11 individual, two-sided store slots would have been \$1,100. She noted the cost of that portion of the sign which included the posts and top sign exceeded more than 50% of the value of the permitted sign in its entirety.
- Mr. Rose asked if that quote included fasteners as well as the center section.
- Ms. Cavanaugh explained the individual signs were initially installed into slots on the metal posts; however, the property owners elected to install them more securely by installing a center post and bracketing each individual sign on a more permanent basis.
- Mr. Hofmeister requested clarification of Ms. Tubbs's decision as same related to the 50% rule.
- Ms. Tubbs explained 100% of each individual sign had been removed or destroyed.
- Ms. Cavanaugh asked why a permit had not been required in 1998 for each individual sign.

- Ms. Tubbs replied each individual sign would have been required to be permitted; however, nothing on the application depicted specific stores. She stated before a sign permit was issued, staff ensured an LBT application had been submitted for that business.
- Mr. Rose asked if precedent existed for the Urban Design Division to treat these signs separately.
- Ms. Tubbs replied absolutely, drawing members' attention to the list of examples of permits displayed earlier in the meeting dating back to 1995. She pointed out the following situations as examples: Permit #95-21797, replace sign face on freestanding sign at 318 Tamiami Trail; Permit #02-68281, install freestanding sign at Punta Gorda Crossing at 2310 Tamiami Trail (included the Publix sign face specifically plus blank tenant area); Permit #02-69179, replace blank sign face at 2310 Tamiami Trail for Blockbuster sign; Permit #03-71749, install sign face on freestanding sign at 2310 Tamiami Trail for Radio Shack; Permit #03-70566, install sign face on freestanding sign at 2310 Tamiami Trail for Pies & Plates; Permit #05-93493, replace non-conforming free-standing sign with ground sign at 1900 Tamiami Trail (Amberg Insurance); Permit #07-106217, replace non-conforming Century 21 free-standing sign with conforming Truly Nolen sign at 1600 Tamiami Trail (change in use). She further stated the Steve's Auto free-standing sign at 305 Tamiami Trail had not been permitted to be reestablished.
- Mr. Wells asked if all the permits listed were for separate businesses.
- Ms. Tubbs replied they were not but rather the majority were for multi-business plazas. She clarified each business obtained their own sign permit.
- Mr. David Hilston, Urban Design Manager, interjected he believed there had been significant miscommunication, adding staff had initially dealt primarily with Mr. Osborne. He asked the Board to uphold the Zoning Official's decision and allow staff to work with the applicant to maintain consistency and work through the variance process.
- Mr. Rose questioned the cost of the appeal process.
- Mr. Hilston replied \$500; however, he would consider crediting same towards the variance application fee.
- Ms. Matthews called three times for anyone to speak on AP-01-08.
- Mr. Rose MOVED, Mr. Brower SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Hofmeister commented he was troubled by this case, stating he believed Punta Gorda must be business friendly; however, he did not wish to

compromise the integrity of City Code. He stated he personally would look favorably upon a variance request.

- Mr. Bauman commented he had reviewed the original permit application, which he believed could be interpreted in two different ways. He opined the City's actions had been consistent and correct. He expressed hope any fees paid for the appeal could be credited toward a variance application.
- Mr. Brower asserted the appeals process was the correct avenue as the applicant alleged an error by the Zoning Official, specifically whether the request was for one sign or twelve individual signs. He opined there was nothing in City Code allowing the Zoning Official that authority.
- Mr. Bauman MOVED, Mr. Kilmer SECONDED to accept and ratify the Zoning Official's position with regard to AP-01-08 based upon the evidence and testimony presented.
- VOTING AYE: Bauman, Hofmeister, Kilmer, McClary, Rose, Matthews.
- VOTING NAY: Brower.
- MOTION CARRIED.

Note: Mr. McClary left the meeting at 4:57 p.m.

2. V-03-08 - Request for variances by Punta Gorda Lodging, LLC, to the Land Development Regulations that were in effect at the execution of the Developer's Agreement between the City Marketplace, LLC and the City of Punta Gorda, dated August 13, 2003, and that govern the property known as the City Marketplace Property generally addressed as 115 Tamiami Trail, pursuant to Section 26-11(b), page 26-184, City Code of Ordinances (Revision 31). Request for a variance to Section 26-7(l)6.7, page 26-34, to allow construction of a new building to be 58 feet in height to the top of the structural roof, instead of 50 feet as permitted in the Central Business District (CBD); and Section 26-10(5)(5.4)(B)3.b, page 26-161, to allow 3 driveways to enter a single street from a single property instead of 2 driveways as permitted and to allow the minimum distance between the driveways on a single street to be 36 feet, instead of 50 feet as required; and Section 26-10(5)(5.4)(B)3.k, page 26-162, to allow the minimum distance from the intersecting right-of-way lines to the interior drive be 38.8 feet, instead of 40 feet as required; and Section 26-10(5)(5.4)(B)12a.vi, page 26-164, to allow a driveway to abut an internal property line instead of being 5 feet away from the property line as required by City Code (Revision 31).

Note: Mr. McClary returned to the meeting at 4:59 p.m.

- Ms. Tubbs displayed an overhead of the site location and reviewed staff's Findings 1 through 6, as delineated in the agenda material, stating approval of the request would facilitate a new commercial development within the City's core downtown area, thus

providing jobs and additional commercial tax base for the City. She acknowledged events such as the destruction resulting from Hurricane Charley in 2004, reduction in property taxes, current and anticipated economic conditions and the need for the City to reestablish a new commercial baseline all weighed heavily on this application. She stated the literal criteria designed for variance approvals or denials did not seem to fit in the current extraordinary times when compromise seemed the only avenue out of the harsh reality of economic circumstances. She opined much evidence had been provided to support their findings, although all criteria could not be met. She recommended the following conditions and safeguards for favorable consideration: (1) establishing a reasonable time limit for permit submittal, initiation of construction and completion of the project for which the variance was requested; (2) City Council architectural review and approval; (3) a provision for an agreement between the property owners to allow the driveway flair to encroach over the internal property line on the southwesterly corner of the property to ensure no problems at construction. She advised no public welfare, safety or other concerns were raised with the technical review by the Development Review Committee (DRC), which recommended approval. She noted the consensus of the Community Redevelopment Agency/City Council was favorable.

- Ms. Matthews requested clarification of staff's recommendation.
- Ms. Tubbs responded City staff agreed there were no technical reasons the variance could not be approved.
- Mr. Kilmer questioned the identities of the applicant and the property owner.
- Mr. Ed Wotitzky, applicants' attorney, replied the property was owned by City Marketplace LLC, adding the applicant was Punta Gorda Lodgings LLC. He introduced Mr. Fred Hirschovits, manager and officer of Punta Gorda Lodgings, noting he was available to answer any questions of a technical nature. He explained both the applicant and property owner had joined together in this application as the latter currently had a contract with the former for the acquisition of this property to be developed as a hotel. He continued the contract was conditioned upon granting of all permits and approvals required for the hotel construction, including this variance.
- Mr. Kilmer asked who established the western boundary of the property.
- Mr. Wotitzky replied the boundaries were established through negotiations between the two parties.
- Mr. Kilmer asked why the western line was not drawn 30 to 40 feet further west in light of the need for height and entrance/exit variances.

- Mr. Wotitzky replied there were a number of business considerations related to that decision, one being to accommodate the hotel operator and parking requirements of both the City and the hotel chain itself. He noted City Marketplace LLC had agreed to grant a parking easement along a portion of the property to the west of the hotel site, thus alleviating the need for a larger variance.
- Mr. Kilmer asserted it appeared special conditions existed as a result of actions by the applicant.
- Mr. Wotitzky responded most variance applications were a result, to a certain extent, of actions by applicants; however, in order for this project to be developed, the applicant had negotiated the necessary amount of property to allow construction of the hotel with the required number of rooms. He acknowledged all successful variance applications inferred a certain amount of special rights to the applicants of same.
- Mr. Hofmeister asked if a parking lot was proposed to the west of the hotel.
- Mr. Wotitzky replied the two parties had agreed to provide an area of joint parking to the west in order to minimize the variance being sought and to provide approximately 24 to 27 parking spaces.
- Mr. Hofmeister asked if that particular piece of property would be developed in the future, thus eliminating that available parking area.
- Mr. Wotitzky replied parking would not be eliminated but rather there may be an accommodation for same. He acknowledged he was not saying there may not be some development of that property; however, in order for City Marketplace to comply with its agreement with Punta Gorda Lodgings, those parking areas must be accommodated in that location.
- Mr. Hofmeister asked if the applicant would be seeking approval to develop that specific parking area in the future.
- Mr. Wotitzky replied there were no plans for same.
- Mr. Hofmeister commented the proposal this date was a drastic change from that originally presented by the City Marketplace developer, asking if perhaps parking could be accommodated in another manner.
- Mr. Wotitzky replied any future development was subject to approval by both the Planning Commission and City Council.
- Mr. John Swen, project engineer, clarified City Marketplace was in the process of planning that site as well as the southern portion, adding there would be parking provided on that site for condominiums or other planned uses. He stated whether it was surface parking temporarily or a garage, there would be a shared parking agreement negotiated between City Marketplace and the hotel for the necessary

additional parking. He continued the parties were not looking to actually develop that parking lot at this time but rather same would be worked into their project. He clarified the parties did not anticipate having to destroy that portion of the site for some other use but rather same would be dealt with when City Marketplace developed the remainder of the project.

- Mr. McClary asked if the hotel met the “per room” parking requirements.
- Mr. Swen replied it did not.
- Mr. Wotitzky countered he believed the number of parking spaces exceeded that required by the LDRs.
- Ms. Tubbs confirmed the proposed number of parking spaces exceeded that required by City Code in the CB District as well as current City Code; however, the applicant was allowed to exceed the minimum requirements.
- Mr. Hofmeister interjected his question related to how the property would be affected by future development.
- Mr. Brower pointed out parking was not the issue before the Board.
- Ms. Matthews confirmed the Board was considering all four requests as one variance. She clarified the parking being discussed this date was ground level under the hotel as opposed to subterranean.
- Mr. Kilmer asked if it was typical for the applicant not to be the property owner.
- Ms. Tubbs replied this happened on a somewhat regular basis as many contracts were contingent upon development approvals.
- Mr. Kilmer commented it appeared the Board was being asked to approve a variance based on the old City Code in order to allow the owner to sell the property to Punta Gorda Lodgings, asking if this was correct.
- Mr. Wotitzky replied affirmatively, stating the deal would not be executed without approval of this variance, and the project would not be developed.
- Mr. Kilmer expressed frustration with regard to the difference in how this site was initially established in size. He pointed out the entire site could have been modified to construct the necessary amount of rooms, parking, etc.; however, this hotel’s construction was being limited to a small size and location, which had been established by the applicants themselves.
- Mr. Wotitzky explained the acquisition of additional property was simply not financially feasible, asking Mr. Hirschovits to elaborate.
- Mr. Hirschovits explained the basis for proceeding in this manner was simply good business, adding it would not make sense to purchase any property unless he was

assured the hotel could be developed. He clarified the project simply would not work from an economic standpoint with anything larger than the subject property.

- Mr. Rose asked if all of the variances would be necessary under the current City Code.
- Ms. Tubbs replied current City Code would not require the one foot setback; however, it was difficult to respond with regard to the other portions of the variance request without having reviewed the site plan with current City Code in mind.
- Ms. Matthews stated she was personally familiar with the hotel business and the particulars of franchise agreements, expressing admiration of Mr. Hirschovits' tenacity for pursuing this project in this day and age.
- Mr. Brower agreed, stating he felt the request constituted the minimum necessary to make the project a success.
- Mr. Bauman expressed appreciation for the potential for improvement to the City's appearance, specifically with regard to that of this site which had remained vacant for a number of years; however, he suggested the Board include some type of contingency or safeguard to ensure performance.
- Mr. Hofmeister asked if the development agreement was still in place.
- Ms. Tubbs replied affirmatively, noting same had a life span of ten years.
- Mr. Hofmeister then noted a height of up to 60 feet would be allowed if the proposal was for a residential development.
- Ms. Tubbs agreed, albeit outside of this particular zoning district. She clarified the City did not have a residential district which allowed heights of 60 feet; however, height in residential districts was measured differently than in the CB or CC Districts.
- Mr. Hofmeister concluded he was not opposed to the height request, adding he believed the project would be an excellent addition to the City.
- Ms. Matthews asked if the City was recommending any time lines.
- Ms. Tubbs replied she was unsure at what stage Mr. Hirschovits was with his engineers, noting full engineered drawings required a fair amount of time.
- Mr. Hirschovits announced the tentative closing date was June 30, 2008, followed by a minimum of 4 months for architectural drawings, permitting, construction bid, mobilization, etc. He mentioned he had no control over the Southwest Florida Water Management District's (SWFWMD's) portion of the project.
- Ms. Matthews asked if staff was prepared to fast track this project.
- Ms. Tubbs replied absolutely.
- Mr. Hofmeister asked if 18 months was sufficient with regard to a start date.
- Mr. Hirschovits replied affirmatively, stating he planned to move forward as rapidly as possible. He noted Mr. Joe Suriol, developer, was present, expressing hope they both

could work together to bring larger events to the City in conjunction with Mr. Suriol's convention center.

- Mr. Suriol clarified he owned the property adjacent to the subject location, stating he had been required to present a comprehensive plan, to work with Team Punta Gorda (TPG) for numerous months and to determine how area streets would relate to parking. He noted he had also been dealing with Hilton Garden Inn and their 120 room standard. He acknowledged everyone desired a beautiful City; however, there was a balance between what was given and what was received. He asserted he had not been granted one inch beyond the fifty foot height limitation, inclusive of the decorative elements. He contended the "rules of the game" had changed since his project had been reviewed, asserting this was unfair. He commented negatively with regard to the City Marketplace project being approved on a piece-meal basis. He questioned how the proposed, eight-foot, perimeter wall could be approved when same deflected access to the waterfront, pointing out he had been required to expend \$2 million to provide waterfront access to the public.
- Mr. Brower expressed significant concern with regard to Mr. Suriol's comments, asking staff if same was correct.
- Ms. Tubbs replied Mr. Suriol's project was approved by the Planning Commission and City Council under a Planned Unit Development (PUD) ordinance, stating there had been no variance. She clarified a PUD was a negotiated type of development process, different from the variance procedure.
- Mr. Wotitzky commented this project had undergone a number of permeations, reiterating it was not a PUD but rather a negotiated developer's agreement which in turn opened the door for some flexibility with regard to building locations. He recalled a height variance had been in place for this property; however, the deadline for that variance, which would have allowed a height of 79 feet, had expired. He expressed sympathy with Mr. Suriol's comments; however, this was an entirely different situation.
- Mr. Hirschovits agreed the structure could have been constructed much higher under the previous agreement, adding he was attempting to work with the City to foster a pedestrian friendly atmosphere. He noted the above mentioned wall would not be solid, adding the intent was only to shield the parking area.
- Mr. Hofmeister commented he would be opposed to a solid wall as the City was promoting the entire area as pedestrian friendly.
- Mr. Bauman expressed empathy with Mr. Suriol, acknowledging the Board had not been presented with a variance request for his project. He recommended Mr. Hirschovits consider eliminating the proposed solid wall around the parking area.

- Mr. Hirschovits responded the City would not allow a solid wall nor was he desirous of same. He displayed a schematic drawing of a similar site, noting the wall was planned for one side only with the other sides being open.
- Mr. Hofmeister asked if the wall was required at all.
- Ms. Tubbs replied affirmatively, stating same would provide a buffer from U.S. 41. She advised the developer's agreement originally called for a one foot setback, adding the use of the wall as it was tied in to the covered entry accommodated meeting that requirement on the U.S. 41 side while still allowing parking to exist directly adjacent to the roadway. She clarified City Code would not allow a different configuration without the wall, noting same would be decorative with openings and awnings.
- Ms. Matthews called three times for anyone to speak on V-03-08.
- Mr. Rose MOVED, Mr. McClary SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Kilmer commented Mr. Oskey originally had a development agreement for this entire site; however, he had yet to devise a plan which was acceptable to the community. He asserted it seemed the property would be developed parcel by parcel, opining any hardship was created by the applicants.
- Mr. Kilmer MOVED to recommend denial of V-03-08 based upon the evidence and testimony presented.
- MOTION DIED FOR LACK OF A SECOND.
- Mr. Brower MOVED, Mr. McClary SECONDED to recommend approval of V-03-08 based upon the evidence and testimony presented, including the conditions and safeguards recommended by staff.
- Mr. Hofmeister MOVED, Mr. Bauman SECONDED to AMEND the motion to include an 18 month time limit, as stated above, from the date of City Council approval.
- Ms. Matthews called for a vote on whether or not to amend the motion.
- VOTING AYE: Bauman, Hofmeister, McClary, Rose, Matthews.
- VOTING NAY: Brower, Kilmer.
- MOTION CARRIED.
- Ms. Matthews called for a vote on the amended motion.
- VOTING AYE: Bauman, Brower, Hofmeister, McClary, Rose, Matthews.
- VOTING NAY: Kilmer.
- MOTION CARRIED.
- Mr. Kilmer expressed strong opposition, stating he believed this action would set a terrible precedent for future development of the City Marketplace property.

MEMBER COMMENTS

- Mr. McClary expressed concern with regard to the current downtrend in the economy.
- Mr. Hofmeister commented he did not wish to see City Marketplace developed on a parcel by parcel basis.
- Mr. Kilmer countered the Board had just acted to do so.
- Mr. McClary responded a project of this size simply could not be accomplished in this community during these economic times.

ADJOURNMENT

- Meeting Adjourned: 5:55 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary