

# BOARD OF ADJUSTMENT & APPEALS MINUTES

December 12, 2016

1 of 7

The City of Foley Board of Adjustment & Appeals held a regular scheduled meeting on December 12, 2016 at 5:30 pm in the Council Chambers of City Hall located at 407 E. Laurel Avenue. Members present were: Vernie Heard, Montie Clark, Jack Kimsey, Jerry Wilkey, Terry Young, and George James. Absent member was Joseph Bullard. Staff present were: Miriam Boutwell, City Planner and Melissa Ringler, Recording Secretary.

Chairman Jack Kimsey called the meeting to order at 5:30 p.m.

## **MINUTES:**

Approval of the minutes for the November 14, 2016 meeting.

Montie Clark made a motion to approve the November 14, 2016 meeting minutes. Terry Young seconded the motion. All Commissioners voted aye.

**Motion to approve the November 14, 2016 meeting minutes passes.**

## **NEW BUSINESS & PUBLIC HEARING:**

### **1. Buy Wise LLC- Variance**

The Board of Adjustment and Appeals has received a request for a Variance for Article 9.5, maximum allowed wall signage height of 20' or roofline whichever is less and maximum sign face of 72 square feet in a B1 zone. Requested variance is for a 27' +/- sign height and sign face of 125.57 square feet for property located at 413 S. McKenzie St. Applicant is Buy Wise, LLC.

Mr. John O. Hearin stated they have rented the building and are requesting to increase the allowed signage to 125.57 square feet for the wall and canopy signage and to place the signage above the allowed 20' height requirement.

Chairman Jack Kimsey stated he had visited the site and noticed the painting improvements that have been done to the building.

Vice-Chairman Vernie Heard made a motion to approve the requested variance. Jerry Wilkey seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

**Motion to approve the requested variance passes.**

### **2. Mamma Mia! Pizzeria- Variance**

The Board of Adjustment and Appeals has received a request for a Variance for Article 9.5, maximum allowed wall signage height of 20' or roofline whichever is less in a B1 zone. Requested variance is for sign to be placed 2' +/- above the roofline for property located at 246 W. Laurel Ave. Applicant is Mamma Mia! Pizzeria.

## BOARD OF ADJUSTMENT & APPEALS MINUTES

December 12, 2016

2 of 7

The applicant stated the request is to install a 34.6 square foot wall sign on the front of the building which will be approximately 2' above the roofline.

Jerry Wilkey asked if the sign in the front window of the building will be used for the wall signage.

The applicant stated the signage currently in the window is a copy of the wall signage that will be placed on the building.

George James made a motion to approve the requested variance. Terry Young seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

**Motion to approve the requested variance passes.**

### **3. G & J Tile- Variance**

The City of Foley Board of Adjustment and Appeals has received a request for a variance to Article 7.3.2D required rear yard setback in a B-1A zone. Requested variance from a required 20' for property located at 1351 S. McKenzie St. Applicant is G & J Tile.

Mr. Mike Graham stated he is requesting a variance for the required rear yard setback in order to build a lean to onto the back of the building. He explained the lean is needed for loading and unloading materials in inclement weather.

Chairman Jack Kimsey asked if there is street lighting in the area.

Mr. Graham answered yes there is a street light located on Commercial Dr.

Montie Clark made a motion to approve the requested variance. Jerry Wilkey seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

**Motion to approve the requested variance passes.**

### **4. Brent Alexander- Use Permitted on Appeal**

The City of Foley Board of Adjustment and Appeals has received a request for a Use Permitted on Appeal for Article 7.1.2,D allowing an adult care facility in a B2 zone. Property is located at 302 E. Laurel Ave. Applicant is Brent Alexander.

Mr. Brent Alexander explained he is requesting a use permitted on appeal to open an adult care facility. He stated the hours would be based on demand but more than likely would be from 8a.m. to 5p.m. with approximately 5 adults. He stated there would be no beds and the services would not be offered for overnight stays.

## BOARD OF ADJUSTMENT & APPEALS MINUTES

December 12, 2016

3 of 7

Chairman Jack Kimsey asked if they would be occupying only the west side of the building.

Mr. Alexander answered yes.

Montie Clark asked if there would be a kitchen in the facility.

Mr. Alexander stated the kitchen would have a refrigerator and a microwave. He explained daily meals would be purchased from local restaurants.

Chairman Jack Kimsey stated he felt the facility would be very beneficial to the community. He asked if there had been any communication from the public, staff replied no.

Jerry Wilkey made a motion to approve the requested Use Permitted on Appeal. Vice-Chairman Vernie Heard seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

**Motion to approve the requested Use Permitted on Appeal passes.**

### **5. Heather Keith-Use Permitted on Appeal**

The City of Foley Board of Adjustment and Appeals has received a request for a Use Permitted on Appeal for Article 7.1.2D for a childcare/daycare use in a B3 zone. Property is located at 16478 US Hwy. 98. Applicant is Heather Keith.

Ms. Heather Keith explained she is requesting to open a child care facility. She explained there would be approximately 30 children age's infant to 5 years old and hours would be between 7am and 6 pm depending on demand.

Chairman Jack Kimsey stated he had concerns and asked if there would be an outdoor play area.

Ms. Keith stated there would be a 354 square foot fenced area added for an outdoor play area which would be used twice daily from 10 a.m. -11a.m. and 3 p.m. – 4 p.m. weather permitting.

Chairman Kimsey stated the property is zoned B-3 which is a commercial zone.

Ms. Miriam Boutwell explained in a B-3 zone the uses allowed by right are: drug stores, restaurants, drive-in eating places, jewelry and gift shops, flower shops, small beauty and barber shops, small dry cleaning and pick-up stations, automobile repair (minor), local laundry and washateria parlors, shoe repair shops, small business and professional offices, residential uses not prohibited herein, and other similar small retail businesses units not specifically prohibited herein.

## BOARD OF ADJUSTMENT & APPEALS MINUTES

December 12, 2016

4 of 7

Jerry Wilkey asked if the Fire and Police Department have approved the location.

Ms. Keith explained she has spoken with Nelson Bauer with the Fire Department and is in the process of getting renderings from an architect and a fire alarm system. She stated she did not know the police department approval was needed but would be glad to contact them.

Jerry Wilkey stated the traffic in the area is pretty heavy.

Ms. Keith stated they are planning to contact the property owner regarding the vacant parcel next door to see about the possibility of leasing to use as another means of access.

Ms. Reda Walker stated drop off for the daycare would be between the hours of 7 a.m. and 9 a.m. which is spread out times. She explained all 30 children would not be dropped off or picked up at the same times.

Chairman Jack Kimsey stated he has a law enforcement background and was involved with the traffic division and has concerns about the safety of the children. He explained the west bound traffic cannot make a left hand turn.

Ms. Walker explained any business that occupies the building will have the same traffic issues and a restaurant or other use would have more traffic than a daycare.

Chairman Jack Kimsey asked if there had been any communication from the public, staff replied no.

Ms. Julie Hills president of the Plantation of Magnolia River Home Owners Association explained the age group of the daycare center is infant to 5 years old she stated the subdivision is primarily retirees. She explained a disabled vet with PTSD lives directly behind the proposed location. She stated they do not feel this is what they need in the back yard of their homes.

Chairman Jack Kimsey asked if they understood the types of businesses allowed in the B3 zone and could potentially be located in the building.

Ms. Hill stated she did understand they could have children or hammering for all hours of the day. She explained there is a lot of traffic in this area and was almost in an auto accident at this location the other day and the funeral home being located across the street causes more traffic to the area.

A resident stated she was asked by Mr. Trowbridge who is currently out of town to speak on his behalf. He has his home up for sale and feels this will affect the sale of the property and has expressed he does not want screaming children in his backyard.

## BOARD OF ADJUSTMENT & APPEALS MINUTES

December 12, 2016

5 of 7

Ms. Walker explained there would not be a lot of screaming children. They will be providing high quality child care for the area.

Mrs. Katherine Cussons explained her husband has PTSD and is a 30 year combat veteran and cannot handle loud noises. She stated everyone wants their business to grow and there may eventually be more children at the location. She explained her nor Mr. Trowbridge received certified notification regarding the request and meeting.

Ms. Keith explained they would only be allowed to occupy the building with 30 children if the business were to expand they would have to find a larger building.

Mrs. Cussons explained the property is 35' from her back yard and the area is largely a retired community and that is the reason they bought their home.

Chairman Jack Kimsey asked if the building was there when Mrs. Cussons purchased her property.

Mrs. Cussons answered yes the building was there when they bought their home.

Ms. Boutwell explained childcare and adult care facilities are a required use permitted on appeal in every zone. She stated she wanted to make sure everyone understands any of the uses she previously read such as a restaurant or lounge may occupy the building and are not required to have a public hearing and get approval from the Board of Adjustment and Appeals.

Ms. Keith stated the building has been sold and several other tenants are looking at the building.

Mr. Bob Shallow stated his company has had the real estate listing for the last 621 days and the people behind the property have been a major pain. He explained they call continuously complaining and we have to tell them we do not own the property. He stated a bar could be opened in the building tomorrow. He explained a notification was sent out regarding the request stating the business would cause noise of crying screaming children with no name on it and that person should be ashamed of their self.

Ms. Cossens stated she wrote the information regarding the concerns of the proposed business.

Residents asked Mr. Shallow what his financial gain was in the situation.

Mr. Shallow stated he had no financial gain the property has been sold and he has no interest other that what is right and this is a commercial property.

Mr. Weldon stated he lives on Shakespeare Dr. behind the proposed located. He explained he has retired to this area and likes to relax in his back yard and does not want

## BOARD OF ADJUSTMENT & APPEALS MINUTES

December 12, 2016

6 of 7

to hear screaming children or bouncing basketballs at 6 a.m. in the morning. He stated the building was a doctor's office when he purchased the home. He stated a daycare that close to his home would drop the value of his home.

Mr. Roger Moore resident of 11685 Venice Blvd stated he has safety concerns. He explained the new business would create at least 40 to 50 new vehicles a day. He stated he knows how hectic and rushed getting children to daycare can be and is concerned someone will be killed or injured trying to enter or exit the location.

Chairman Jack Kimsey explained the request is not a rezoning request and is a use permitted on appeal. He stated if an allowed use goes into the building the residence of the area will not have an opportunity to come before the board. He explained his concerns are safety of the intersection.

Ms. Miriam Boutwell explained certified letters were sent to the property owners whose property touches the proposed parcel. She explained the letters are mailed to whoever is listed on the Baldwin County property tax records.

Resident stated he is concerned the traffic for the daycare will have to come through their subdivision in order to turn around to be able to access the daycare.

Mr. Cossens stated he is a combat veteran and he and his wife have nothing to be ashamed of and the concerns they have voiced regarding the daycare is a freedom of their speech. He explained he has had to contact the real estate company numerous times due to the lack of maintenance of the property which was causing rodents.

A resident explained the location is the worst place for a childcare center they will have law suits and he suggested they look at other locations. He stated they might as well get a piece of land in the center of I10 and let the children play.

Ms. Walker explained there would not be much noise and she understands the traffic concerns. She stated they want to provide good quality childcare in the area. Heather has 25 years experience and she has 3 years experience. She stated this is a labor of love and this is a starting point for us. She explained the traffic issues may not be ideal but they have been looking for quite a while and saw this opportunity as a starting point which would be a 3 year lease.

Councilman Rick Blackwell stated if the Board of Adjustment and Appeals approves the item everyone needs to work together and help them be successful and accomplish things to make everyone happy. He explained the City only has so much control over private property.

Chairman Jack Kimsey stated he can sympathize with the residents but his main concern is the safety of the children. He asked if there were any plans in the future for improvements to the road in this area.

# BOARD OF ADJUSTMENT & APPEALS MINUTES

December 12, 2016

7 of 7

Ms. Miriam Boutwell explained the road is maintained by ALDOT.

Jerry Wilkey stated he has concerns with the traffic and has traveled the area several times at different hours the last few days and had to wait through the red light twice. He stated most new business have a 97% chance of failure in the first year. He explained the applicant may want to think about that and how much money you want to possibly lose.

Jerry Wilkey made a motion to deny the requested use permitted on appeal. Montie Clark seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, nay.

**Requested use permitted on appeal denied.**

## **6. Adoption of By-Laws for the 2017 Calendar Year**

Montie Clark made a motion to approve the adoption of the by-laws for the 2017 calendar year. Vice-Chairman Vernie Heard seconded the motion. All members voted aye.

**Motion to approve the adoption of the by-laws for the 2017 calendar year passes.**

## **7. Election of Officers for the 2017 Calendar Year**

Vice-Chairman Vernie Heard made a motion to re-elect Jack Kimsey as Chairman. Terry Young seconded the motion. All members voted aye.

**Motion to re-elect Jack Kimsey as Chairman passes.**

Montie Clark made a motion to re-elect Vernie Heard as Vice-Chairman. Jerry Wilkey seconded the motion. All members voted aye.

**Motion to re-elect Vernie Heard as Vice-Chairman passes.**

## **ADJOURN:**

Meeting adjourned at 6:20 p.m.