City of Madison ALABAMA

Zoning Board of Adjustment and Appeals
Minutes of the November 1, 2018 Regular Meeting

The meeting convened in the Madison Municipal Complex, City Council Chambers, 100 Hughes Road, Madison, Alabama 35758, and was called to order at 5:30 p.m. by Board Vice-Chair Christopher Lindsey.

In Attendance:

Betty Fletcher, Chair	Absent
Christopher Lindsey, Vice-Chair	Present
Mary Hudson	Present
John Horch	Present
Ted Whitney	Present
Supernumeraries	
Wesley Alford	Absent
Michael Keenan	Present

City Staff Present
Mary Beth Broeren, Director of Development Services; Megan Zingarelli, City Attorney, and Sherri Williams, Assistant Planner and Board Secretary

Registered Public Attendees
Anthony Panza; Dustin Key

Approval of Minutes

The first order of business was the approval of the minutes for the May 3, 2018 Regular Meeting. Mr. Lindsey asked Board members for requested changes and/or corrections, if any. There being none, Mr. Lindsey called for a motion.

Motion: Ted Whitney moved to approve the minutes of the May 3, 2018 Regular Meeting, as written. John Horch seconded the motion and the vote was as follows:

Mary Hudson	Aye
Christopher Lindsey	Aye
John Horch	Aye
Ted Whitney	Aye
Michael Keenan	Aye

Motion Carried.

Mr. Lindsey read aloud, *this Board is composed of five persons, with two supernumeraries, and is empowered by the Alabama State Legislature, but appointed by the City Council and is charged with hearing petitions for relief from a literal and strict application of the Zoning Code. Cases are heard in the order in which they are filed. Motions are made in the positive and each case requires a positive vote of at least four members. (A simple majority will not approve an action). The burden of proof for Variances and Special Exceptions rests with the petitioner. Any party aggrieved by any decision of this Board may within fifteen days, file a written notice of appeal to the Circuit Court. An Appeal, which is on the agenda for tonight, requires a unanimous vote of all five members to overturn the decision of an administrative officer.*

Petitions and Formal Requests for Action

Mr. Lindsey stated that some of the current members were not members in 2011 when the last appeal came before the Board. He read aloud what the City of Madison Zoning Ordinance instructs in *Section 10-3 subsection 6. Appeals from the Decision of the Administrative Officer.* Mr. Lindsey further stated that it was up to the Board to determine whether Planning Staff interprets and administers *Section 4-6* of the Zoning Ordinance correctly, specifically as it relates to the freestanding sign located on the subject property. Mr. Lindsey then introduced the request.

a. ***Case APP-2018-001, 7779 Highway 72 West, Anthony Panza, 7775-7779 Highway 72 West LLC, an Alabama Limited Liability Company, An Appeal from the Decision of the Administrative Officer concerning interpretation or administration of a portion of Section 4-6. Applicability of Required Improvements in the B1, B2, B3, and MC Districts, relating to non-conforming freestanding signage. This request is in accordance with City of Madison Zoning Ordinance, Section 10-3.***

Request: Dustin Key appeared and stated that he is an attorney with the firm of Harrison & Gammons in Huntsville and is representing the property owner Tony Panza. Mr. Panza owns property on Hwy 72 and leases buildings located on the property to Starbucks and Pearle Vision. Starbucks wishes to perform renovations and upgrades to its building. Mr. Key stated that the majority of the alterations are to the interior of the building and that no alterations are planned for the ground sign, which advertises both Starbucks and Pearle Vision. An electronic message center is also attached to the ground sign and advertises other tenants in the center. He argued that since the chart in Section 4-6 does not list interior improvements as a development type the requirements in that section of the code do not apply to the subject property, and the City cannot require changes

to the ground sign. Architectural design is listed as a development type, but the costs associated with the changes to the exterior of the building do not exceed 50% of the assessed value of the property. He stated he believes the chart is ambiguous and does not say what a property owner can do. He further states that even if the chart does require the sign to be replaced, that *Section 8-5 Non-Conforming Use of Major Structures or of Major Structures and Premises in Combination*, contradicts Section 4-6. Mr. Key stated that he had the most recent version of the Zoning Ordinance, which he asserted was updated in November 2017, and that Section 8-5 states that the City cannot require that a grandfathered sign be brought into conformity unless it is voluntarily changed or destroyed in some way. Mr. Key stated that on page 6 of the report prepared by staffers, it states that Sections 7-7 and 7-7-8 apply to nonconforming signs, not Section 8-5. He stated that they must be referencing an old version of the code, perhaps one from 2014, because those section do not exist in the November 2017 Zoning Ordinance. That being the case, he believes the sign should be allowed to stay until it is altered or destroyed.

Staff Comments: Sherri Williams addressed the Board and stated that Mr. Key is incorrectly reading the chart in Section 4-6. She explained that the development types are listed on the left-hand side of the chart, and that the items listed on the right-hand side are existing site elements that Staff reviews for compliance when a building permit is submitted for alterations to an existing commercial building. Architectural design is not a development type, but is instead one of the many items staff reviews for compliance, based on the development types listed on the left-hand side of the chart. In January 2018 the City Council adopted a new sign ordinance, including Section 7-7, which states that the non-conforming structure regulations found in other sections of the ordinance do not apply to signage. Section 8-5, which Mr. Key states applies to nonconforming structures and signs, does not apply to signage. She further stated that Mr. Key references an old copy of the Zoning Ordinance, one from 2017 and that Section 4-6 supersedes the sections that Mr. Key referenced.

Megan Zingarelli addressed the Board and stated she wanted to clarify a few items for the record. She stated that she wished to address due process, since the issue had been raised by Mr. Key. The applicant has been given a notice and an opportunity to be heard, which is what is occurring at this meeting. She also stated that staff has tried to work with the property owner, suggesting that they could post a bond and keep the sign for a certain period of time. Also, when the regulations were created in 2014, the City did not immediately require all property owners discontinue using nonconforming signs. Lastly, Alabama law

supports the discontinuance of nonconforming properties and structures over time.

Mrs. Hudson asked for clarification about the construction at Starbucks. Property owner Mr. Panza, stated that the only thing Starbucks is doing is painting the outside. He stated that Starbucks is doing some work inside the building and he is contributing $25,000 to replace some metal and repaint the outside of the building, which is nowhere near the 50 percent mark. Starbucks is refurbishing the inside with all new electrical, plumbing, floors, and cabinetry. Mrs. Hudson asked if they are considered modifications and what are the costs. Mr. Panza stated that the interior modifications costs are in conflict with the assessed value of $130,000. He asserted that Starbucks doesn't have a problem with the sign, but the problem is with Pearle Vision who is the tenant at the rear of the lot. He stated that Pearle Vision has two signs – the digital board advertises the four tenants in the back, and Pearle Vision will sue if Starbucks changes the sign.

Mary Beth Broeren stated that only the costs of improvements that require permits are calculated for a Section 4-6 review. Painting, carpeting and cabinetry do not require permits; even adding shrubs does not trigger a Section 4-6 review. There are ways to improve a property without a permit. The preamble to Section 4-6 states *improvements to existing buildings.* It does not differentiate between interior and exterior improvements.

Mr. Lindsey asked for the total job cost and the assessment value. Sherri Williams stated the job cost is $175,000 and the assessed value of the property is $133,000.

Mr. Key quoted case law and stated that the sign is a vested property right and it is a constitutional issue. Mr. Lindsey said that they were not going to debate the entire ordinance, only how staff interprets Section 4-6.

Mr. Whitney stated that if you look at the table it clearly does show new construction, and the other three subsections, as development types. Mr. Key said that he agreed but that it doesn't make clear what that means.

Mr. Panza stated that he is amazed that as much as the City says it wants to clean up Hwy 72, it has not taken initiative to put power lines underground, etc. Board and Staff commented that the overhead utilities located along Hwy 72 are within a right-of-way that belongs to the State of Alabama and out of the control of the City.

Mary Beth Broeren stated for the record, when the City updated the sign ordinance in January we added a provision to allow property owners to post a bond, giving them a grace period, understanding that signs can be expensive and to give time to settle tenant issues. That was not a provision in the previous code and was included to be business friendly. We made that option available to Starbucks and they chose not to take it.

Sherri Williams stated that in April, Starbucks emailed and asked if they could post a bond so they would not be without a sign for the eight weeks construction time. The City Staff replied they could post a bond and would have 60-days after construction was complete to submit plans and install a new sign. They did not respond to Staff's offer. Mary Beth Broeren explained they would be able to keep the sign for longer, but 60-days was a good faith starting point. It matters to us...and the City does try to work with our businesses.

Mr. Panza stated that Starbucks would work with the City and work with him. The issue is the other businesses in the back. Dr. Horch stated that the issue is the sign, not the other businesses in the back.

Ms. Hudson asked Staff, if she were to understand that the City employee applied Section 4-6 because the cost of modifications would be higher than the assessed value of the property and that the Starbucks sign as it stands now is non-conforming, to which Staff responded yes.

Mr. Panza stated that Starbucks would be willing to shrink their sign, they are being cooperative. They want to do the interior renovations. The problem is the impact that the town is having on somebody else who isn't doing anything. They aren't asking for anything, but they are being told that because Starbucks wants this we are going to take away from them. I am between a rock and a hard place.

Mr. Lindsey asked if Planning Staff had received phone calls or emails regarding the request. Sherri Williams stated that Planning Staff had not received phone calls or emails. Mr. Lindsey then asked if the Board had additional questions or comments. There were no further questions or comments from the Board.

Motion: Ted Whitney moved to affirm the decision of the administrative officer concerning interpretation and administration of a portion of *Section 4-6, Applicability of Required Improvements in the B1, B2, B3, and MC Districts,* specifically as it relates to the non-conforming freestanding sign located at 7779 Highway 72 West. John Horch seconded the motion and the vote was as follows:

Mary Hudson	Aye
Christopher Lindsey	Aye
John Horch	Aye
Ted Whitney	Aye
Michael Keenan	Aye

Motion Carried.

Old Business

Mr. Lindsey asked Board members and Staff if there were items of *old business* to discuss. There being none, Mr. Lindsey closed the floor to *old business.*

Other Business

Mr. Lindsey asked Board members and Staff if there were items of *other business* to discuss. There being none, Mr. Lindsey closed the floor *other business.*

Adjournment

With no further business before the Board, Mr. Lindsey adjourned the meeting at 6:13 P.M.

Approved:

Betty D. Fletcher, Chair

Christopher Lindsey, Vice Chair

Attest:

Sherri Williams, Recording Secretary