

PLANNING AND ZONING COMMISSION  
MINUTES  
August 19, 2013

**I. Call the meeting to order.**

The meeting was called to order at 6:00 with Steve Diehl as Chairman presiding. Board Members present: Steve Diehl, Jim Rimbey, Setephania Pierce, BJ Evans, and Michael Just. City of Ingleside Staff present: City Manager Jim Gray, Interim Building Official/Code Enforcement Officer Carey Dietrich, and City Secretary Kimberly Drysdale. There were 7 guests.

**II. Consideration and action of the Minutes of the Board of Adjustment Meetings of May 20, 2013.**

Board Member Just made a motion to approve the minutes of the May 2, 2013 Board of Adjustment Meeting and was seconded by Board Meeting Rimbey. The motion was approved unanimously.

**III. Discussion with the City of Ingleside attorney regarding the role of the Board of Adjustment.**

City Attorney Michael Morris explained that the Board of Adjustments is like a “Court” of equity but is not bound like other Courts. The City Staff, Planning and Zoning, and City Council are bound by the Ordinances approved by the City. The Board of Adjustments can allow for variances that happen in day to day life. A good example is a pie shaped lot cannot always meet frontage width requirements and may require a variance. City Ordinances are specific by nature; however, the “real world” is often different and requires a just/fair review to determine if the property owner created the problem themselves. As long as the issue was not self-inflicted, the Board of Adjustments can consider feasible alternatives. If the Board of Adjustments denies a request or a member of the public disagrees with an approval by this Board; the only appeal process is through the District Court. An example provided was that a property owner desires to build a single car garage on the side of his house in a neighborhood that has a lot of single and double garages. But the garage will impede six-inches into the fifteen-foot setback. This is a reasonable request that still fits within the neighborhood. A poor example is if they wanted a three-car garage when the rest of the neighborhood only has single and double car garages. The Board of Adjustments could approve the single car garage, but it would not be advisable to approve the three-car garage.

Chairman Diehl questioned Local Government Code Section 211.009(3) that states “authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done;” by asking if all three of

these items have to be met in order to approve a variance. Mr. Morris stated the main obstacle is that the request must be “reasonable” and not cause a public nuisance.

Board Member Pierce asked what happens if the property owner begins the project prior to coming before the Board of Adjustments and Mr. Morris stated that it is a risk at the property owner’s expense and the City is under no obligation to approve the variance. Chairman Diehl questioned if there was any liability if the city staff provides a recommendation, compromise, etc. for the variance being requested and Mr. Morris stated that the staff can make a statement “I have no objection...” but not a recommendation to approve.

#### **IV. Discussion and action of Board of Adjustment rules and definitions.**

Chairman Diehl asked if there were any questions regarding the proposed changes to the Rules of Procedure for Proceedings before the Board of Adjustments presented in the packet and there were none.

Board Member Pierce made a motion to approve the Rules of Procedure for Proceedings before the Board of Adjustments as presented and to forward to City Council for final approval and was seconded by Board Member Rimbey. The motion was approved unanimously.

#### **V. Other Business**

- a. Public hearing to give all interested parties & citizens an opportunity to be heard concerning a request filed by Stripes, LLC to encroach into the side setback by relocating a canopy 3 feet 1 inch off the side property line, (encroachment of 11 feet 11 inches) at Lots 13, 14, 15, and 16, Block 9, RJ Williams Subdivision, also known as 2686 Main.**

Speaking in favor of the variance was Stripes representative, James Clance. He stated they were attempting to move the pumps to the side of the building instead of their current location in the front of the building which causes chaos for the parked and pumping customers’. The canopy will overhang into the setback, but not a building.

Speaking against this variance was Ms. Diane Thauburn who owns property behind Stripes and is concerned with the R-1 (Single Family residential) property she owns near this site and that there is not enough room for the public to come and go around the proposed site without impeding traffic and then she is also concerned with the lights and noise so close to the R-1 property.

Mr. Clance explained that they now use recessed LED lighting which doesn’t impend onto the neighboring lots and there is an alley and street separating this business from the R-1 property.

**b. Consideration and possible action on (A) above.**

Stripes representatives James Clance and Robert Howe explained that the old canopy was already intruding within the 15 foot setback. This project started with the replacement of the old tanks and we were trying to go ahead and move the pumps and canopy while renovating the tanks. They have tried to purchase the property on the opposite side of the store, but the current property owner refuses to sale and they started the tank replacement while working on the variance. They cannot move closer to the store building because there are other issues. Most Cities do not recognize a canopy as a building structure, they treat them differently and allow a smaller setback. Mr. Howe stated they are trying to move the current unsafe issue to a better area and they are willing to work with the City to build a barrier to protect the sidewalk. He suggested a fence or a pipe railing to protect the sidewalk/pedestrians. Currently the traffic enters/exits on Main Street, 4th Street, and Avenue D. The revisions with a barrier would keep the traffic entering/exiting on Main Street and Avenue D only and would keep the traffic off of the sidewalk altogether.

It was noted during the meeting that one of the pumps is also impeding into the setback. Interim Building Official/Code Enforcement Officer Carey Dietrich stated the staff has no reservations with the revised placement of the pumps/canopy other than the safety of the public on the sidewalk and of course the traffic breaking the sidewalk. As long as a barrier was installed, the staff would have no objection.

City Manager Jim Gray stated at this time there is zero protection for the sidewalk and the pedestrians. The traffic currently drives over the sidewalk on a regular basis. The proposed movement of the pumps/canopy and Stripes willingness to work with the staff to build a barrier to protect the sidewalk/pedestrians would be in the best public interest. If the pumps/canopy remain where they have been for the previous 30 years, there is no protection of the sidewalk/public and the chaos for the customers continues. Mr. Gray suggested a small wall barrier instead of plants, fence, or pipe railing. At this point, the Board can either approve, approve with requirement for a barrier to protect the sidewalk/pedestrians, deny, or do nothing (which automatically approves the application).

Board Member Pierce stated she is concerned with this being for public interest and safety but her main issue is because the construction was started prior to the variance being sought. Chairman Diehl stated in the future he would request that the staff and the applicant attempt to work out a resolution and the staff to provide written direction.

Board Member Rimbey made a motion to approve the variance allowing Stripes, LLC to encroach into the side setback by relocating pumps and canopy at Lots 13,

145, 15, and 16, Block 9, RJ Williams Subdivision also known as 2686 Main Street with the requirement that they build a barrier per the staff's recommendation to protect the sidewalk and pedestrians; and was seconded by Board Member Just. The motion did not pass with Board Members Rimbey and Just voting aye; and Chairman Diehl and Board Members Pierce and Evans voting no.

Chairman Diehl suggested Stripes to bring back a drawing to include the proposed barrier and the Board Members prepare to be contacted for a Special Meeting.

**VI. Comments from the Public**

There were no comments from the public.

**VII. Reports from Board of Adjustments members.**

Chairman Diehl asked that the staff work out as much as they can with an applicant before it comes to the Board of Adjustments and prepare a written summary in the information packet.

**VIII. Reports from Staff.**

There were no reports from the staff.

**IX. Adjournment**

The meeting was adjourned at 6:29 pm.

**APPROVED:**

**ATTEST:**

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Chair or Vice Chairman

Kimberly Drysdale, City Secretary