

CITY OF HENDERSONVILLE
BOARD OF MAYOR AND ALDERMEN
MINUTES OF REGULAR MEETING
APRIL 26, 2011

PRESENT

SCOTT FOSTER, MAYOR (Arrived at 8:00 p.m.)
GARRY FORSYTHE, VICE-MAYOR
STEVE BROWN, ALDERMAN
ARLENE CUNNINGHAM, ALDERMAN
TOMMY ELSTEN, ALDERMAN
JIM HOBACK, ALDERMAN
JACK LONG, ALDERMAN
FRED QUALLS, ALDERMAN
SCOTT SPROUSE, ALDERMAN
MATT STAMPER, ALDERMAN
LISA WEST, ALDERMAN
JOHN BRADLEY, CITY ATTORNEY
KAY FRANKLIN, INTERIM CITY RECORDER

ABSENT

HAMILTON FROST, ALDERMAN
CHRIS GALLAHER, ALDERMAN

AGENDA

Sprouse moved; seconded by Stamper for approval of the agenda as presented.

Hoback requested adding an announcement after the Mayor's report.

There was a unanimous vote for approval for acceptance of the agenda.

PRESENTATIONS

Forsythe presented a proclamation to members of the Al Menah Shriners proclaiming April 25-May 1, 2011 as Shriner Paper Sale Week.

Pete Boswell accepted the proclamation and gave a brief history of the Shriner's Hospital and their services.

Forsythe presented a proclamation to Codes Director Steve Mills proclaiming May, 2011 as Building Safety Month.

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Mills accepted the proclamation and stated Building Safety Month is internationally recognized and each week in May will have a separate focus.

Forsythe read a proclamation recognizing City employees' five, ten, fifteen, twenty, twenty-five, thirty and thirty-five year service anniversaries.

Forsythe presented individual awards to employees, Corky Wilson, Kaye Palmer, Fire Chief Jamie Steele and family members of Wayne Russell who were in attendance.

MINUTES

Brown moved; seconded by Cunningham for approval of the April 12, 2011 minutes.

There was a unanimous vote for approval with West abstaining. Forsythe declared the motion carried.

CITIZENS COMMENTS

Elsten moved; seconded by Stamper to suspend the rules to allow Richard Riggins to make a presentation. There was a unanimous vote for approval.

Richard Riggins, 101 Wallingford Court, addressed the Board on behalf of his daughter who resides at 205 Southburn Drive. He gave a power point presentation showing how the right bank tributary # 2 and the siltation along the railroad bed affected the area. He stated he wanted to bring this information to the Board's attention and feels there are reasonable corrections to the flooding problem with minimum expense. He asked the Board for funding consideration.

David Whitt, 1030 Margaret Drive, addressed the Board citing Building Safety Month and stated building mold is known to trigger asthma attacks.

As there was no one else desiring to speak, Forsythe declared Citizens Comments closed.

REPORTS

Finance Committee – no report.

General Committee – no report.

Public Safety Committee – met in a special meeting to review the Fire and Police Departments' FY2012 budgets; discussed possible budget cuts and leasing versus purchasing police cars.

Public Works Committee – no report.

Capital Projects Committee – no report.

Planning Commission – no report.

Mayor (Foster begin chairing the meeting at this time) – reported working with FEMA on funding reimbursement for damages from straight line winds on April 4 and reported working with Nashville Electric Service on efforts to remedy the strobe effect from the street light along Indian Lake Boulevard and West Main Street.

Hoback announced a joint ward meeting between Wards 3 and 6 to be held on May 9 at 6:30 at the VFW building.

Foster stated there was a \$100,000 right bank tributary study done in 1998 that recommended \$750,000 in improvements of four boxes that cross under the railroad tracks. He stated the culverts were sized based on the farmland in the area which has since been developed. He stated updating the study and repairing one of the projects can be discussed during the budget process.

ORDINANCES AND RESOLUTIONS

The caption of Ordinance 2011-11 was read on first reading, an Ordinance amending The Hendersonville Municipal Code, Section 12 by adding a Chapter 14 – Green Building Incentive Program. Sprouse moved; seconded by Long.

There was a unanimous vote for approval of Ordinance 2011-11 on first reading.

OTHER AGENDA ITEMS

Foster explained the Board will determine whether to approve or deny approval of the painting of Flower Express. He reported the Planning Commission and the Board of Zoning Appeals did not approve the colors the building was painted.

Hoback moved; seconded by Sprouse to suspend the rules to allow Derek Vance, owner of Flower Express, to address the Board.

There was a unanimous vote for approval to suspend the rules.

Vance stated he was informed he would have to seek approval to paint his building his business' corporate color of pink but was informed by the Planning Department that due to his non-conforming building they could only make a recommendation as to the color. He stated later it was determined the company's corporate color was desired in order to be identified with the company and the decision was made to paint the building pink. He stated he was then informed the color of the building was not acceptable and he would need approval from the Planning Commission. He stated he sought a resolution to the situation to return the building as allowed by the ordinance. He stated he was instructed

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of a 25% threshold to be under without approval of the color or a drawing could be submitted to the Planning Commission requesting approval to keep the building pink. He stated he did not feel confident his request would be approved so he sought another color closer to the original to paint the building. He stated he was informed the building would have to be returned to over 75% of its original color as approved by the Planning Director. He stated he was later informed the Planning Director had the authority to control 100% of the color of the building. He stated he is asking for a determination on what the ordinance says and what his rights are. He stated he feels the ordinance specifically outlines the action as no room for interpretation and that less than 25% of the color of a building without provisions of the ordinance. He stated he hasn't changed more than 25% of the color of the building and feels the Board needs to be aware that precedence is being set giving the government 100% control over a small business and he is not allowed to use his corporate colors. He stated he feels Flower Express is in compliance with the ordinance.

Planning Director Fred Rogers cited the report included in the agenda including color photos showing the building before the recent painting and currently. He stated the design and colors are unlike anything in the City. He stated the Board of Zoning Appeals heard Vance's claim that the ordinance was being misinterpreted and the Board of Zoning Appeals denied his appeal. He further stated Vance appealed to the Planning Commission because he felt the design characteristics of the changes did not merit review to achieve the purpose of this ordinance and that appeal was denied also. He stated the Planning Commission considered the changes to the building and determined the changes to the building were not compatible with neighborhood buildings including the funeral home because of the colors combined with the unusual curve painted on the building. He stated Vance is now appealing the Planning Commission's denial to the Board and the Board must determine whether to uphold the Planning Commission's denial or reverse the Planning Commission's denial. Rogers explained if the Board agrees with the Planning Commission's decision it must approve a motion to deny the appeal of the Planning Commission or if the Board approves Vance's appeal, the building will remain as is. He stated if these colors are approved, it will be hard to not approve similar colors and designs for other buildings in the City and open the door for numerous appeals.

Sprouse stated Section 9-209(D) of the Zoning Ordinance gives the Planning Director a lot of discretion and questioned how something is determined to be alike or unlike surrounding buildings.

Rogers stated this section of the ordinance gives the Planning Director a lot of discretion but also allows a provision for appeal to the Planning Commission. He explained the combination of the bright colors and the unusual design on the building was used to determine non-compliance.

Sprouse stated he recognized the need for business owners to have identifying characteristics and his concern with justifying the rules as this area is not heavily developed.

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Rogers stated the Design Review Manual states it is not desirable for all buildings to have a uniform look and encourages corporate colors and identity. He explained the Section 9-101 (A) – (E) of the Design Review Manual gives the goals and guidelines to consider for compatibility.

Elsten stated some of Rogers' statements come from the Zoning Ordinance and some are from the Design Review Manual and questioned at what point the Design Review Manual is referenced.

Rogers explained the Design Review Manual is adopted by reference by the adoption of the Zoning Ordinance. He stated the process is in the Zoning Ordinance and the actual standards are included in the Design Review Manual.

Elsten questioned what qualifies for Design Review as it states changing the color of a building less than 25% does not qualify for Design Review.

Rogers explained the criteria requiring approval and that the Board of Zoning Appeals has already denied Vance's appeal of this question.

Elsten stated he is uncertain Flower Express has to abide by Design Review.

Rogers emphasized the Board of Zoning Appeals denied the appeal and that decision can only be reversed by a court. He stated the ordinance is plain and if these color combinations and design is approved, a precedent will be set for other buildings.

Cunningham questioned if both the color and design on the building were denied by the Board of Zoning Appeals and the Planning Commission. She also questioned what percentage of the building is painted these colors.

Rogers stated both color and design were denied and there is less than 25% pink on the building and therefore Section 9-209(D) applies.

Cunningham stated it is her understanding if the building is painted less than 25% pink, Vance did not violate the ordinance.

Rogers explained when Vance painted the entire building pink he changed the building 100% and later changed the color again.

Cunningham stated she feels the opinion is subjective and cannot see where the ordinance was violated.

Rogers stated again Vance will have to appeal the Board of Zoning Appeal's decision to the court if he feels the ordinance was misinterpreted.

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Forsythe stated the Planning Director can disapprove the building's colors and that there is an appeal process. He stated he feels the building's colors are not compatible with the existing buildings. He stated the building's colors have been denied by staff, twice by the Planning Commission and the Board of Zoning Appeals.

Hoback questioned why the Board is hearing this if the owner must take his appeal to the courts.

Rogers stated Vance will have to ask the court if his painting of the building requires approval. He explained the Planning Commission agreed with the Planning Director that this is a subject required for review and made the decision that the building is not compatible. He stated Vance has the right to appeal to the Board in regard to complying with the Design Review Manual and the question of whether the colors are compatible with surrounding buildings.

Bradley explained the ordinance and State law requires interpretation of ordinances to go before the Board of Zoning Appeals. He stated the Board of Zoning Appeals has interpreted that this building is subject to Design Review. He further stated the Planning Commission determined it was a violation of Design Review and is incompatible with surrounding buildings. He stated the only question before the Board is whether this building fit in with the neighborhood. He stated one reason this issue falls under Design Review is that at one time, the building was 100% painted and has since been changed again making it subject for Design Review. He stated the issue before the Board is whether you like the way Flower Express looks in comparison with surrounding buildings. He stated this is the first time anyone has appealed the Planning Commission's determination in regards to Design Review.

Sprouse stated he does not like to vote on whether he likes the building's colors or not as you can't legislate taste. He stated his concern is with taking a Planning Commission and Board of Zoning Appeals' decision and making it political. He stated he feels Rogers has a justified reason for his decision and respects the process.

Qualls stated the Planning Commission has dealt with issues on other buildings and had done a good job. He stated the Planning Commission and the Board of Zoning Appeals agree with the Planning Director's decision. He stated he feels the decision is right and that the building is not compatible with the other buildings in the area. He also stated he feels a precedent would be set if this decision is reversed.

Brown stated he understands Vance trying to draw attention to his business but feels the building is non-compatible and supports the Planning Commission's decision.

Hoback called for the question.

Elsten questioned if using the corporate colors has been discussed by Vance and Rogers.

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Rogers stated various options to use the corporate colors had been discussed.

Bradley explained an aye vote supports upholding the Planning Commission's decision and a nay vote supports Vance's appeal.

Sprouse move; seconded by Hoback to affirm the Planning Commission's decision.

There was a majority vote to affirm the Planning Commission's decision with Cunningham and Elsten abstaining.

Foster declared the motion carried.

Upon motion and second and followed by a unanimous vote for approval, the meeting adjourned at 8:50 p.m.

Approved: Scott Foster, Mayor

Attest: Kay Franklin, City Recorder