



Town Council Agenda Report

SUBJECT: Request for Town Council clarification of motion

CONTACT PERSON/NUMBER

Name: Mark A. Kutney, AICP
Phone: (954) 797-1101

TITLE OF AGENDA ITEM:

Request for clarification of Town Council motion to approve application V 3-2-00 for A-1 Pride, Inc. located at 6331 Southwest 41st Street.

REPORT IN BRIEF:

On May 3, 2000, Council approved application V 3-2-00, allowing a reduction in a side bufferyard from 10 ft.. to 4 ft.. within the Western Theme District for 6331 Southwest 41st Street. The variance was requested because the applicant converted use of the property from residential to business, triggering compliance with commercial parking and access standards some of which the property could not meet since it was designed for residential use. The motion by Councilmember Cox was, to approve "based on the applicants representations". Vice-Mayor Weiner then "clarified that the representations included his willingness to comply with Western Theme District as he does the parking lot."

This condition resulted in part from the applicants representation that the structure would "comply" with Western Theme architecture, even though the applicant had only intended to incorporate limited Western Theme features into the front elevation at Staff's request. The scope of work that the applicant proposed did not trigger mandatory compliance with the architectural theme, therefore, any architectural enhancement were voluntary.

When asked by Council whether the structure would comply with Western Theme Architectural requirements, the applicant was under the impression his proposal did comply, and unwittingly stated it would. The meeting minutes leave some doubt as to whether Council understood that the applicant was not required, and did not intend, to fully comply with the architectural requirement, and whether the Council intended to require full compliance.

Staff requests that Town Council clarify the intent of the motion so the applicant can proceed with site plan approval inconformance with the condition attached to variance approval. This item has been advertised and agendized as a public hearing given the quasi-judicial nature of the original variance approval.

PREVIOUS ACTIONS: Town Council approved application V 3-2-00 on May 3, 2000. (Motion carried 5 to 0).

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): Motion to clarify approval of application.

Attachment(s): Excerpt from Town Council minutes, letter from applicants attorney and variance order

**TOWN COUNCIL MINUTES
MAY 3, 2000**

Quasi Judicial Hearings

- 9.4 **REZONING** - ZB 3-2-00, Synalovski Gutierrez Architects, Inc./Jaffe at 595, Inc., 10200 State Road 84 (A-1 to B-3) *Planning and Zoning Division recommended approval subject to the planning report; Planning and Zoning Board recommended approval subject to the voluntary deed restrictions offered by the petitioner and the conceptual master plan*

Mr. Kiar explained the rules concerning the presentation of evidence. Town Clerk Reinfeld swore in the witnesses. Mr. Kutney advised that his qualifications were on file in the Town Clerk's Office and entered the planning report. He summarized the planning report. Mr. Kutney advised that a traffic analysis was provided by the petitioner and that it only addressed the issue of the site in question and not the impacts as it related to the area. He believed that a more thorough study would eventually have to be made by staff which would address the traffic system management issues as it related to the peak hours.

Manny Synalovski, representing the petitioner, indicated that he concurred with staff's recommendations and that the traffic consultant was present to answer any questions relative to the study. He explained the criteria that was followed and what the traffic study included.

Mr. Kiar asked if anyone wished to provide testimony in favor of or opposition to the rezoning. No one spoke.

Mr. Kiar stated that the hearing was concluded.

Councilmember Paul asked for clarification of the location as she was concerned with drainage provisions if it was located near a farm. Mr. Synalovski detailed the the provisions and assured that that he had no intention, nor would he be permitted, to flood beyond the property line. He added that there was a significant amount of open green space which was more than adequate to satisfy the requirements for on-site drainage.

Vice-Mayor Weiner made a motion, seconded by Councilmember Cox, to adopt the staff recommendation and approve. In a roll call vote, the vote was as follows: Mayor Venis - yes; Vice-Mayor Weiner - yes; Councilmember Clark - yes; Councilmember Cox - yes; Councilmember Paul - yes. (Motion carried 5-0)

- 9.5 **VARIANCE** - V 3-2-00, A-1 Pride, Inc./Roero, 6331 SW 41 Court (B-2) (to reduce the minimum required 10 foot perimeter landscape buffer from 10 feet to 4 feet along the east property line) *Planning and Zoning Division recommended approval; Planning and Zoning Board recommended approval*

Town Clerk Reinfeld swore in the witnesses. Mr. Kutney summarized the planning report.

Councilmember Cox inquired of whether or not the building conformed in appearance with the Western Theme since it was located within the Community Redevelopment District. Mr. Kutney responded that it was not totally; however, it was the applicants intention to comply with Western Theme regulations. Councilmember Cox asked if that had been made a condition of the variance. Mr. Kutney responded negatively stating that it was being done on a voluntary basis.

Randy Roero, the petitioner, stated that he intended to conform to the Western Theme in order to "blend in." Councilmember Cox asked about the time frame for these improvements and Mr. Roero responded that it should coincide with working on the parking lot.

**TOWN COUNCIL MINUTES
MAY 3, 2000**

Mr. Kiar asked if anyone wished to provide testimony in favor of or opposition to the variance. No one spoke.

Mr. Kiar stated that the hearing was concluded.

Councilmember Cox made a motion, seconded by Councilmember Paul, to approve based on the petitioner's representations. Vice-Mayor Weiner clarified that the representations included his willingness to comply with Western Theme District as he does the parking lot. Councilmembers Cox and Paul responded affirmatively. In a roll call vote, the vote was as follows: Mayor Venis - yes; Vice-Mayor Weiner - yes; Councilmember Clark - yes; Councilmember Cox - yes; Councilmember Paul - yes. (Motion carried 5-0)

- 9.6 **VARIANCE - V 3-3-00**, Macintosh, 1720 SW 116 Avenue (R-1) (to allow an accessory structure roof height of 21.13 feet to exceed the 21.13 feet height of the principal structure (a total of 3 feet difference) *Planning and Zoning Division recommended approval; Planning and Zoning Board recommended approval*

Town Clerk Reinfeld swore in the witnesses. Mr. Katims summarized the planning report.

Councilmember Paul stated that she looked at the pictures and it was evident that the improvement was needed; however, her concern was how it would affect the other homes in the area. Mr. Katims indicated that some of the other homes had already been elevated and that a comprehensive drainage undertaking had been presented at the Planning and Zoning Board meeting. He added that it was not a large area of property that was being filled, only the pad of the building and that the barn would be relocated to comply with current setbacks.

Gary Macintosh, the petitioner, explained that the surrounding homes were significantly higher than his and that when the structure was built in 1970, it was built too low.

Mr. Kiar asked if anyone wished to provide testimony in favor of or opposition to the variance.

Tom Green, 1800 SW 160 Avenue, indicated that he was not opposed to the variance request; however, he was concerned with the prospect of the entire property being filled and asked that the Town keep an eye on this. Mr. Macintosh explained that at the time the house was built, it met engineering standards and a water retention area was built in the back of the property. He responded that the fill Mr. Green was referring to was the muck from the hole which was demucked for the pad and it would be used to backfill the pad only. Mr. Macintosh stated that the variance was required in order to construct the barn and keep his animals in a safe condition.

Mr. Kiar stated that the hearing was concluded.

Vice-Mayor Weiner requested that Mr. Middaugh meet with Mr. Rawls to confirm that the property to the east was approved by engineering with regards to drainage and maintaining water. Mr. Middaugh responded affirmatively.

Vice-Mayor Weiner made a motion, seconded by Councilmember Paul, to approve. In a roll call vote, the vote was as follows: Mayor Venis - yes; Vice-Mayor Weiner - yes; Councilmember Clark - yes; Councilmember Cox - yes; Councilmember Paul - yes. (Motion carried 5-0)

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September 20, 2000

JEFF KATIMS
PLANNING & ZONING MANAGER
TOWN OF DAVIE
6591 ORANGE DR
DAVIE FL 33314-3399

VIA FACSIMILE

RE: Town of Davie v. A-1 Pride, Inc./Site Plan/Variance

Dear Jeff:

Randy Roero has asked me to submit this letter to you as a request for a meeting.

As you are aware, the Town's records demonstrate that they issued a receipt for Mr. Roero's site plan application on August 18, 1999 -- over one year ago. Although the site plan has received preliminary approval by the Town's Community Redevelopment Agency, the applicant was advised that a variance would be needed in order to construct the improvements shown on the site plan. After an office conference in your office which you and I attended, an application for a variance was filed on March 23, 2000.

It was our understanding that the variance would be considered "in tandem" with the site plan, and on March 24, 2000 I wrote to Dan Stallone requesting that a hearing in front of Code Enforcement be continued in view of the time deadlines that applied to the applications, as indicated in the letter. A copy of this letter was sent to you, and it was our hope that we would be through the

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process of getting both site plan and variance approval no later than May 3, 2000. Unfortunately, however, the site plan did not proceed "in tandem" with the variance, and it is our understanding that the site plan is being "held up" because staff does not believe that it fully complies with the Town's Western Theme Regulations.

It is my understanding that the staff believes the site plan must comply fully with the Town's Western Theme Regulations because of the variance approval. I have reviewed the record and variance proceedings and conclude that no additional Western Theme building attributes are required. I am writing you to share my analysis and to ask the staff to reconsider its position.

I have obtained the Town Council's Agenda Report for application V-3-2-00, which was the variance application. The Report indicates:

"The proposed improvements include creating a western theme facade on the existing building, installation of one handicap parking space, three additional regular parking spaces, fencing, landscaping, and a paved driveway connecting SW 41 Court with the property's east side yard area to the previously installed parking spaces in the rear. Upon review of this application, staff determined a variance was needed for a reduction in buffer width."

No other variance from the Town Code was required by the staff in order to approve the site plan. Indeed, in the "Development Plan Details" portion of the Report, the staff reported:

"On August 18, 1999, A-1 Pride, Inc., submitted a site plan modification application to the Planning and Zoning Division for improvements to comply with code. The proposed improvements include creating a western theme facade on the existing building, installation of one handicap parking space, three additional regular parking spaces, fencing, landscaping, and a paved driveway connecting SW 41 Court with the property's east side yard area to the previously installed parking spaces in the rear.

Upon preliminary review, staff determined that a variance was necessary to reduce the minimum perimeter landscape buffer along the east property line to accommodate the proposed driveway, as referenced above."

Generally, and appreciatively, the staff supported the variance request.

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At the Council's meeting concerning this item, the approved Minutes reflect the following:

"Town Clerk Reinfeld swore in the witnesses. Mr. Kutney summarized the planning report.

Councilmember Cox inquired of whether or not the building conformed in appearance with the Western Theme since it was located within the Community Redevelopment District. Mr. Kutney responded that it was not totally; however, it was the applicant's intention to comply with Western Theme regulations. Councilmember Cox asked if that had been made a condition of the variance. Mr. Kutney responded negatively stating that it was being done on a voluntary basis.

Randy Roero, the petitioner, stated that he intended to conform to the Western Theme in order to "blend in". Councilmember Cox asked about the time frame for these improvements and Mr. Roero responded that it should coincide with working on the parking lot.

Mr. Kiar asked if anyone wished to provide testimony in favor of or opposition to the variance. No one spoke.

Mr. Kiar stated that the hearing was concluded.

Councilmember Cox made a motion, seconded by Councilmember Paul, to approve based on the petitioner's representations. Vice-Mayor Weiner clarified that the representations included his willingness to comply with Western Theme District as he does the parking lot. Councilmembers Cox and Paul responded affirmatively. In a roll call vote, the vote was as follows: Mayor Venis - yes; Vice-Mayor Weiner - yes; Councilmember Clark - yes, Councilmember Cox - yes, Councilmember Paul - yes. (Motion carried 5-0)." (emph. supp.)

The above Minutes did not reflect any requirement by staff, or imposed by the Town Council, that any additional Western Theme building features be included on the site plan, nor do they indicate any statements from Mr. Roero that he would be willing to build any Western Theme attributes not presently reflected on the plans. In fact, Mr. Kutney candidly admitted that the building did not comply in its totality with Western Theme Regulations, and that compliance to the extent shown on the plans was voluntary. If the staff believed that additional Western Theme Code variances were needed in order to build the site plan, we assume that the staff would have identified

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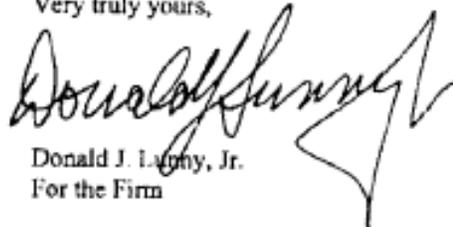
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them as opposed to limiting the variance to relief from a ten foot wide perimeter landscape buffer requirement. Mr. Roero and the Town Council could have then discussed and evaluated such additional items.

Before we meet, please provide me with a copy of the site plan files, including Minutes of meetings where the site plan has been previously considered. Whatever the cost is of copying this material will be promptly paid upon receipt of an invoice. I would like to review those plans in an effort to be prepared for this meeting so that it will be productive. I would ask that the requested meeting be scheduled at your convenience within the next two (2) weeks. I will be accompanied at the meeting by Mr. Roero, and assume that the Town will provide whatever personnel is necessary to address this matter.

By copy of this letter to Mr. Stallone, we are letting him know that we are continuing to pursue this matter. Thanks, Jeff, for your help.

Very truly yours,



Donald J. Lunny, Jr.
For the Firm

DJLJR/jg
cc: Daniel Stallone, Code Compliance Official
Randy Roero

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9/20/00

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TOTAL P.05

Item No.