



Town Council Agenda Report

SUBJECT: Request for Town Council reconsideration of motion

CONTACT PERSON/NUMBER

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

TITLE OF AGENDA ITEM:

Applicant requests Town Council reconsider its 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 feet to 4 feet 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 applicant's representations". Vice-Mayor Weiner then clarified that "the representations included [the applicant's] willingness to comply with Western Theme District as he does the parking lot."

This condition resulted in part from the applicant's 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 enhancements 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.

On November 15, 2000, staff requested Council clarification of the motion. Council reaffirmed that it did intend for the applicant's project to fully comply with Western Theme District architectural standards. Council then agreed to revisit the motion at the December 5, 2000 Council meeting with the applicant present, given that there did not appear to be a meeting of the minds when the applicant agreed to the condition of approval.

The applicant requests the Council reconsider its original motion and not require full compliance with Western Theme District architectural standards.

PREVIOUS ACTIONS:

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

On November 15, 2000, Councilmember Kathy Cox clarified that her motion to approve was subject to full compliance with Western Theme District architectural requirements, and Vice Mayor Richard Weiner verified that his request for clarification of that motion had also been to ensure full compliance.

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): N/A

Attachment(s): Letter from applicants attorney, Excerpt from Town Council Minutes, and original staff report.

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November 28, 2000

JEFF KATIMS
 PLANNING & ZONING MANAGER
 TOWN OF DAVIE
 6591 ORANGE DRIVE
 DAVIE, FLORIDA 33314-3399

VIA FACSIMILE

Re. Town of Davie/A-1 Pride, Inc./Reconsideration of the Variance

Dear Jeff:

As you know, I am assisting my friend, Randy Roero, the owner of A-1 Pride, Inc., with respect to his business in the Town of Davie.

As the Town may be aware, Mr. Roero purchased a single-family, residential structure which was in a severe state of disrepair on or about November 5, 1997. The Town was excited to have a buyer who was willing to -- and did -- clean the place up and repair the structure.

A-1 Pride, Inc., applied for and received an occupational license after it bought the property, with the occupational license being effective for a period commencing October 1, 1997. Mr. Roero's company has occupied the structure since the date it was purchased. The property continues to be used for business purposes.

Prior to his purchase of the property, Mr. Roero was not aware that any site or structure modifications would need to be made prior to commencing his business, except that the property would have to be cleaned up. The property was previously used for commercial purposes without zoning modifications being required. He was surprised to obtain a citation from Davie in connection with the need to install Town desired upgrades, including one disabled parking

Jeff Katims
November 28, 2000
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space, three regular parking spaces, fencing, landscaping and a paved driveway from 41st Court in the front to connect with the property's installed parking in the rear. He was further advised that a variance and site plan approval would be needed.

In this case, the only variance needed is to reduce the east side yard landscape buffer width from ten feet to four feet in order to accommodate a driveway. He was advised then -- and continues to be advised to this day -- that his property is not required to conform with the Town's western theme design guidelines.

A-1 Pride's property fronts on N.W. 41st Court, which abuts the lot's south property line. The building's front facade will include western theme attributes. The building is bounded on the rear and east by single-family residential homes. Installing western theme elevations on these sides of the structure would not seem to be of substantial benefit to these neighboring properties. To the west, and a considerable distance away, is a bank building. The property's west lot line has a five foot concrete fence that substantially screens the building from view by the bank. One would question whether installing western theme attributes on all sides of the structures, as opposed to just the front elevation, would -- given the lot's relationship to its adjacent properties -- be necessary or afford any substantial benefits.

More importantly, the amount of additional investment required in the building to make it totally western theme compliant is such that economic redevelopment efforts will be negatively impacted. Importantly, the Town's Community Redevelopment Agency has approved the site plan as submitted. Mr. Roero has advised that if someone from the Town of Davie had informed him that total western theme compliance would be needed, he would not have purchased the building and substantially improved it. In fact, no one advised that even a variance would be needed at the time he purchased the property, or at the time he received his occupational license.

It would be very difficult financially for Mr. Roero to include additional western theme attributes to the building in order to obtain a variance, especially given the fact that these attributes are not required under the Town's laws, nor would western theme elevations be of any substantial benefit to the surrounding property. We would respectfully request the Town to reconsider this matter.

Very truly yours,

Cindy Bedgood
for DONALD LUNNY JR.
For the Firm

MR. LUNNY JR. WAS OUT OF THE
OFFICE WHEN THIS LETTER WAS
TYPED. WE ASKED HIM TO SIGN
IT TO AVOID DELAY IN ITS
DELIVERY TO YOU.

DJLJR:clb
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BRINKLEY, McNERNEY, MORGAN, SOLOMON & TATUM, LLP
ATTORNEYS AT LAW

**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)

Application #: V 3-2-00

Revisions:

Exhibit "A":

Original Report Date: 4/19/00

TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation

APPLICANT INFORMATION

Owner:

Agent:

Name: Connie & Randolph Roero
Address: 6331 SW 41 Court
City: Davie, FL 33314
Phone: (954) 791-9446

Name: A-1 Pride, Inc. (Connie Roero)
Address: 6331 SW 41 Court
City: Davie, FL 33314
Phone: (954) 791-9446

BACKGROUND INFORMATION

Application Request: To reduce the minimum required 10 foot perimeter landscape buffer from 10 feet to 4 feet along the east property line.

Address/Location: 6331 SW 41 Court/Generally located on the north side of SW 41 Court approximately 270 feet east of Davie Road (SW 64 Avenue).

Future Land Use Plan Designation: Regional Activity Center (RAC)

Zoning: B-2, Community Business District

Existing Use: Professional Inspection Company/Fumigation Company

Proposed Use: Same as above.

Parcel Size: .2234 acres (9,731 square feet)

Surrounding Uses:

Surrounding Land Use Designation:

North: Single family residential
South: Strip retail, across SW 41 Court
East: Single family residential
West: First Union Bank

Regional Activity Center
Regional Activity Center
Regional Activity Center
Regional Activity Center

Surrounding Zoning:

North: R-5, Low Medium Dwelling District
South: B-1, Neighborhood Business District, across SW 41 Court
East: RM-10, Medium Dwelling District
West: B-2, Community Business District

ZONING HISTORY

Related Zoning History: The subject site was rezoned to the Western Theme District in 1984 as part of an area wide rezoning. The subject site was included within the Regional Activity Center in 1998.

DEVELOPMENT PLAN DETAILS

This site includes an existing 1,268 square foot principal structure with a 297 square-foot detached accessory structure. This property was previously utilized as a single family residence until the property was rezoned to the B-2, Community Business District in 1984. The existing structure was utilized as a residence until 1990 when the Mears Lawn Maintenance company purchased the property and obtained an occupational license to operate a business consistent with the commercial zoning designation.

In 1997, A-1 Pride took ownership of the land and received an occupational license to operate a Professional Home Inspection business within the building. In June of 1999, A-1 Pride was cited by the Code Compliance Division for insufficient off-street parking and landscaping. 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 within 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.

Applicable Codes and Ordinances

Landscape Section C(1) of the Town of Davie Western Theme Development Manual, requires a minimum 10 foot wide perimeter landscape buffer where the property of a commercial use is adjacent to a lot occupied, zoned or land use designated residential.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 8. This planning area is the “heart” of Davie, and is the most diverse, characterized by older, small-scale commercial development, older single-family residential neighborhoods, and newer large-scale multi-family residential developments that serve the rapidly growing South Florida Educational Center (SFEC). This planning area also encompasses the downtown Davie Business District, where western-theme architecture is required. The Davie Town hall and Rodeo Arena are two large such developments in this area.

Planning Area 8 contains the only CBDG redevelopment target area within the Town. Residential development east of the Davie Road corridor is substandard and has been the subject of community redevelopment efforts. The revitalization of Davie's original business district, and neighborhood redevelopment is important in this area.

Broward County Comprehensive Plan Considerations

This property falls within flexibility Zone 98. This request has no affect on Broward County concurrency as no increase in building area is proposed.

Staff Analysis

In support of the variance request, the petitioner accurately states, “when single family homesites are rezoned to business zoning classifications, sometimes the nonconforming sites are unable, because of the size and lot configuration, to accommodate all landscaping, parking, and other site amenities associated

with the new commercial development.” Accordingly, staff believes there may be special circumstances which apply to this site which do not generally apply to other properties within the same zoning district.

The existing property configuration does not provide sufficient space for a full landscape buffer and a driveway meeting the minimum width requirement. Driveway width is not subject to variances, however, buffer width may be varied by the Town Council. Currently, there is minimal landscaping and no fencing along the east property line of the subject site. The proposed improvements will provide a 4 foot landscape buffer, landscape material, and a commercial-width driveway along the east property line. Therefore, staff believes this request meets the general intent of the code regarding buffer requirements.

In conclusion, staff believes this request meets the criteria for a variance, is the minimum request necessary to accommodate the purpose of the request, and will not be harmful to the welfare of the general public.

Findings of Fact

Variances:

Section 12-309(B)(1):

(a) There are special circumstances and conditions applying to the land and building for which the variance is sought; the circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the same district. Said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land or building for which the variance is sought, and would deprive the Town of encouraged redevelopment of the older areas of the Town consistent with the Town's Comprehensive Plan.

(b) The granting of the variance is essential for the reasonable use of the land or building, however, the variance as requested is the minimum variance that will accomplish this purpose;

(c) Granting of the requested variances is in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff Recommendation

Recommendation: Based upon the above and the finding of facts in the positive, staff recommends **approval** of petition V 3-2-00.

Planning and Zoning Board Recommendation

The Planning and Zoning Board recommended approval of petition V 3-2-00 (motion carried 3-0, Mr. Stahl absent, April 26, 2000).

Exhibits

1. Existing Plot Plan
2. Proposed Plot Plan
3. Land Use Map
4. Subject Site Map
5. Aerial

Prepared by: _____

Reviewed by: _____

