

**PLANNING AND ZONING BOARD**  
**MARCH 9, 2005**

**1. ROLL CALL**

The meeting was called to order at 7:15 p.m. Board members present were Chair Mike Bender, Vice-Chair Mimi Turin and Scott McLaughlin. Also present were Town Attorney Monroe Kiar, Planner David Abramson and Board Secretary Janet Gale recording the meeting. Casey Lee and John Stevens were absent.

**2. APPROVAL OF MINUTES: February 9, 2005**

Mr. McLaughlin made a motion, seconded by Vice-Chair Turin, to approve the minutes of January 26, 2005. In a voice vote, with Ms. Lee and Mr. Stevens being absent, all voted in favor. **(Motion carried 3-0)**

**3. PUBLIC HEARING**

*Variances*

3.1 V 2-1-05, Ebanks, 13101 SW 16 Court (A-1)

Sheri Ebanks, the petitioner, was present. Mr. Abrams summarized the planning report.

Chair Bender inquired if the Town had received any letters opposing this variance request. Mr. Abramson responded negatively.

Chair Bender asked if anyone wished to speak for or against this item. As no one spoke, he closed the public hearing.

Vice-Chair Turin asked when the 30-foot setback requirement went into effect. Mr. Abrams informed her that it became effective when the Rural Lifestyle Initiative had been implemented which happened prior the house being purchased by the petitioner.

Mr. McLaughlin made a motion, seconded by Vice-Chair Turin, to approve the variance request since it would meet the 25-foot setback minimum originally set prior to the Rural Lifestyle Initiative. In a roll call vote, the vote was as follows: Chair Bender – yes; Vice-Chair Turin – yes; Ms. Lee – absent; Mr. McLaughlin – yes; Mr. Stevens – absent. **(Motion carried 3-0)**

3.2 V 2-2-05, R & R Davie, LLC, 3550 Weston Road (BP)

3.3 V 2-3-05, R & R Davie, LLC, 3550 Weston Road (BP)

As only three Boardmembers were present and Chair Bender and Mr. McLaughlin indicated that they would abstain from voting on these two items, Chair Bender advised that he was turning the meeting over to Mr. Kiar.

Mr. Kiar had Chair Bender and Mr. McLaughlin confirm that they intended to abstain from voting on items 3.2 and 3.3. He proceeded to read from the Charter, Section 7(H) regarding Board Procedure and Quorum. The Charter mandated that no less than three Boardmembers were required to make any determination or effect any action, and all action to be valid, must be voted upon affirmatively by no less than three members.

Mr. Kiar conducted legal research pertaining to this vote on the matter submitted by the petitioner. He indicated that he had been told that three members of the Board had stated their inability to vote on these applications due to certain business relationships that they shared with the applicant which may be construed as a conflict of interest. State Statutes confirmed that their abstentions were valid and binding and they could not be compelled by the Town Code to vote on these applications. It was, therefore, his opinion that three members of the Board had genuine conflicts of interest and could not vote on the applications.

Mr. Kiar had contacted the Attorney General's Office and was informed that this situation was a "case of first impression" and the Town was without guidance as to how to proceed in this situation. There

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was nothing to be found in the Code which addressed such a situation. His suggestion was that the Code of Ordinances be amended to anticipate such a situation as this in the future. Mr. Kiar thought that this should be done as soon as possible. Insofar as this Board was concerned, he opined that it did not have the authority to take any action.

Vice-Chair Turin commented that she did not have a conflict with these applications; however, she disclosed that she had been contacted by Rick Case regarding the issue.

A lengthy discussion ensued to discuss possible solutions for this dilemma. Mr. Kiar indicated that he would research the proposals which had been mentioned.

Jon Voigt and Bill Sander, representing the petitioner, were present. Mr. Abramson confirmed that there had been new modifications made to the variance requests. Chair Bender continued with the public discussion; however, only the applicants were present for comments.

Mr. Sanders asked that although he understood the situation, was it possible to have it brought to the Council's attention at its next meeting. Mr. Kiar responded that it would be his recommendation that the Town try to address this as soon as possible with an ordinance that could be ultimately passed by the Council to come up with a solution so that this would not happen again. Mr. Kiar agreed that he or staff would advise Council of the situation at its next meeting in order to get the ball rolling on a resolution.

Chair Bender disclosed that he had spoken with Rick Case, Mr. Sander, Mr. Voigt and Bill Laystrom regarding the sign variances. He clarified that the applicant was still allowed to install signage which was within the Code in order to meet an April 1st grand-opening deadline. Mr. Abramson confirmed that the variance requests had been modified so that the wall signs "Rick Case and the Hyundai with the "H" logo were both permitted. There was some discussion regarding additional temporary signage.

Mr. McLaughlin disclosed that he had conversations with Rick Case and Mr. Sanders regarding this meeting and he had informed them that he would be a non-voting member of the Board on this issue.

Mr. Sanders stated that he appreciated the Board's efforts to come to a resolution for this problem.

**4. OLD BUSINESS**

There was no old business discussed.

**5. NEW BUSINESS**

There was no new business discussed.

**6. COMMENTS AND/OR SUGGESTIONS**

There were no comments and/or suggestions made.

**7. ADJOURNMENT**

There being no further business and no objections, the meeting was adjourned at 8:00 p.m.

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Chair/Board Member