

**Excerpt from the
ZONING BOARD OF ADJUSTMENT MEETING
Community Planning & Economic Development (CPED)
250 South Fourth Street, Room 300
Minneapolis, MN 55415-1385**

The following actions were taken by the Zoning Board of Adjustment on August 21, 2014.

Board members present: John Finlayson, Eric Johannessen, Dan Ogiba, Matt Perry, Dick Sandberg, Jacob Saufley, and Ami Thompson

Board member absent: Cahill and Ditzler

Committee Clerk: Fatima Porter 612.673.3153

ITEM SUMMARY

Description:

Item #1- 1313 5th Street Southeast (BZZ #6700 Ward 3) (Shanna Sether)

Variance A. Carol Lansing of Faegre Baker Daniels, on behalf of 1313 5th Street MN Owner, LLC, has applied for a variance to allow for a new wall sign located on a non-primary building wall on an existing multiple-family dwelling located at 1313 5th Street Southeast, in the C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District and UA University Area Overlay District.

Actions: Notwithstanding staff recommendation, the Board of Adjustment **denied** the application for a variance to allow for a new wall sign not located on a primary building wall located at 1313 5th Street SE in the C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District and UA University Area Overlay District, based on the following finding:

Finding #1: There are not circumstances unique to the property that has created a practical difficulty in complying with the ordinance. The applicant has proposed the structure and has created the circumstances.

Absent: Cahill and Ditzler

Aye: Finlayson, Sandberg, Saufley, Thompson

Nay: Johannessen, Ogiba

Motion passed

Variance B. Carol Lansing of Faegre Baker Daniels, on behalf of 1313 5th Street MN Owner, LLC, has applied for a variance to increase the maximum height of a wall sign from 28 feet to approximately 75 feet on an existing multiple-family dwelling located at 1313 5th Street Southeast, in the C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District and UA University Area Overlay District.

Actions: Notwithstanding staff recommendation, the Board of Adjustment **denied** the application for a variance to increase the maximum height from 28 feet to approximately 75 feet to allow for a new wall sign located at 1313 5th Street SE in the C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District and UA University Area Overlay District, based on the following finding:

Finding #1: There are not circumstances unique to the property that has created a practical difficulty in complying with the ordinance. The applicant has proposed the structure and has created the circumstances.

Absent: Cahill and Ditzler

Aye: Finlayson, Sandberg, Saufley, Thompson

Nay: Johannessen, Ogiba

Motion passed

Variance C. Carol Lansing of Faegre Baker Daniels, on behalf of 1313 5th Street MN Owner, LLC, has applied for a variance to increase the maximum area of a wall sign from 0 square feet to approximately 113 square feet on an existing multiple-family dwelling located at 1313 5th Street Southeast, in the C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District and UA University Area Overlay District.

Actions: Notwithstanding staff recommendation, the Board of Adjustment **denied** the application for a variance to increase the maximum sign area from 0 feet to approximately 113 square feet to allow for a new wall sign located at 1313 5th Street SE in the C2 Neighborhood Corridor Commercial District, PO Pedestrian Oriented Overlay District and UA University Area Overlay District, based on the following finding:

Finding #1: There are not circumstances unique to the property that has created a practical difficulty in complying with the ordinance. The applicant has proposed the structure and has created the circumstances.

Absent: Cahill and Ditzler

Aye: Finlayson, Sandberg, Saufley, Thompson

Nay: Johannessen, Ogiba

Motion passed

TRANSCRIPTION

Staff Sether presented the report.

Chair Perry: Thank you for your presentation Ms. Sether. Mr. Sandberg.

Sandberg: Thank you Mr. Chair. Thanks Ms. Sether. Could you elaborate a little bit on the LED lighting of this sign? Is it just the characters or the letters of the sign that are being illuminated or is it the white field behind the letters?

Staff Sether: It's the white field behind the letters.

Sandberg: So, is this not behaving substantially as an internally backlit sign?

Staff Sether: The backlit sign would be in one cabinet. Whereas, the letters are placed separately in their individual, this rendering is probably a little bit easier to see kind of the components of the sign. So, staff has deemed this sign to be internally illuminated and not backlit. We've seen a sign recently that I think came before the Board of Adjustment that had a halo effect, I think we did that for 5th on Nic. It more or less kind of gives the same illumination appearance.

Sandberg: Ok, thank you.

Chair Perry: Ms. Thompson.

Thompson: I want to address one of the concerns brought up from the Marcy-Holmes Neighborhood Association. They make kind of a solid argument, in my opinion, that the circumstances were created by the applicant. Is the applicant the developer? Are they the same; the person that built the building and created its size and mass?

Staff Sether: We typically say it's both applicant and property owner. So in this case the applicant that's seeking the applications was I believe the same applicant for the larger project. But in this case, we have to look at; staff's determination on that particular finding on whether or not the circumstances were created by the applicant, we found that the unique circumstances were the size of the property, the allowed height. This was done through a planned unit development, the property and height was granted through exception by providing amenity. And the location of the sign, all other respects other than the height, it's based on the definition in the Zoning code. We've seen one other variance similar to this; I believe it was in 2010 for the Crown Plaza downtown, where they had the projection off the front of the building that had been existing. And that was where they thought the more appropriate sign location was just to attract traffic. This is a very large building, there are 317 dwelling units in the building, and then to identify itself from a more prominent street. At the corner of this building at 5th and 14th is the Target store. So, in that location staff felt to provide the signage along that primary building wall would have led to sign clutter.

Thompson: Ok, and is that where the other signage location is that they're suggesting. They suggest the proper place for a sign would be above the lobby entrance on 14th Avenue.

Staff Sether: And that would be fine but then the sign would face directly on to the adjacent residential across the street.

Chair Perry: Any other questions of staff? If you could refresh our collective memories on what happens if they would like to, in the future use the sign to put up some of the vendors that are located in the mixed use building. What happens to the status of the variance?

Staff Sether: This particular variance request is very specific to the approval of this particular sign. Any modification, probably other than a reface of a name change, would require a variance. So if they provided new commercial tenants, they wouldn't be able to list each one of them separately for example. The sign has to remain in character which we would say; a major change would be increasing the area, or increasing the height or changing maybe in some cases, the illumination method. It would depend on whether or not it went beyond what the Board of Adjustment had granted through these approvals based on these findings.

Chair Perry: So there are those protections built in for this particular request.

Staff Sether: They are. We're pretty specific about for a sign reface that it really has to be in character with the previous sign that had been allowed.

Chair Perry: I had one other thing that I just want to make sure that I understood. I had asked, would this require any variances if it were not on the projection but was on the primary building wall and you said no. But I think the height would still be a variance that would be required because it going up beyond 28 feet.

Staff Sether: The height, yes, that's correct, 28.

Chair Perry: Is the applicant present? Would you like to give any testimony in support of this application? The answer to that question was no. And I'm saying that because this is recorded, we're not televised but we are recorded. Is there anyone else that would like to speak in favor of this application? I see no one. There is at least one person that would like to speak against it. If you could step up to the podium and give your name and address for the record please sir.

Hung Russell (612 4th St SE): I am a resident of Marcy Holmes and a member of the Marcy-Holmes Neighborhood Association Board of Directors and also co-chair of the Neighborhood Association Land Use Committee. So, I understand that you have copies of the letter of non-support we had sent in this morning. And so I was prepared to come and read the contents of that letter. Because I wasn't sure it had come in time for you to have read it.

Chair Perry: Mr. Russell I think everybody had the opportunity to read it beforehand. If there are a couple of things that you'd like to highlight, you can do that, and that might be helpful. And then if people have questions, and there may be questions, then we can ask you questions.

Hung Russell: The vote was unanimous both on the Land Use Committee and on our Board of Directors against the proposed signage. And the three components that we were against was the size of it, the height of it, and the use of the LED lighting. The description of the variance findings in terms of that these were circumstances that were not created by the applicant, to us seems a little disingenuous because it was the developer who designed it this way; the entire circumstances that they describe for this comes from the design of the

building as is, even down to the fact that the width of it is dictated by where the vent louvers are on that side of the building. That being said, it seems that the direction of it, in terms of the scale and the height, as it pertains to pedestrian traffic, to us it seems more in scale for vehicular traffic. This is in a Pedestrian Overlay District, so, it's assumed that we're going to get a lot of foot traffic coming through here. And much of the signage in the area is scaled appropriately for that. The fact that the sign is only on one façade that faces pretty much just to the south and the southeast sort of ignores all of the traffic that would potentially come from the north and the northeast. So there are some aspects of this which doesn't really fall within what we see as the purpose of the signage. We have proposed that the signage be scaled down and located directly over the lobby itself, which seems to be more suitable. And if the concern is that the lighting of this could impose on residential buildings across the street, it certainly doesn't have to be lit. The Target sign from what I understand is not currently lit. And there are many other signs that are that way too. Those are our three main concerns.

Chair Perry: Thank you Mr. Russell, any questions for Mr. Russell? I see none, thanks for your testimony. Is there anyone else that would like to speak against? Yes, again, if you could give your name and address for the record. And if the previous speaker has already mentioned something that you agree with, you can just mention that, you don't need to cover the same ground.

Barbara Camm (423 7th St SE): I am a member of the Marcy-Holmes Neighborhood Association Land-Use Committee. So I am in, I'm congruent with what Mr. Russell has already said. I just wanted to mention that, we did not have time to respond to the comment of Shanna about the LED lighting being internal as opposed to being backlit. And I'm sorry we weren't clear about the positioning of the sign over the lobby. That could be horizontal. Actually there's a huge horizontal space and that really seems appropriate for a sign, on the side of the building, the Fifth Street side of the building, I drove by the Target component of the building just before coming here, there's no illumination. That is very small, tasteful. There could be a sign vertically on that side and away from the residential area. Although, I think if it's just a plain sign as most residential buildings are, it would be acceptable without light pollution or attracting discord in terms of all of the bicycle traffic, the automobile traffic. It doesn't really need to be perceived from several blocks away. Thank you.

Chair Perry: Any questions of Ms. Camm? I see none, thanks for your testimony. Is there anyone else that would like to speak against this item? I see no one, close the public hearing, Board comment? Mr. Finlayson.

Finlayson: Well this is new construction. New construction is a clean slate. How did they not cause it? That's there circumlocution that I cannot buy.

Chair Perry: Mr. Saufley. Thanks for your comments Mr. Finlayson. Mr. Saufley.

Saufley: I completely agree with Mr. Finlayson and Ms. Thompson's question of staff earlier. I don't know how these practical difficulties were not created by the applicant. And I haven't heard anything that has changed my mind of that.

Chair Perry: Thanks for those comments. Mr. Sandberg.

Sandberg: Thanks Mr. Chair. I substantially agree that the findings of staff have some pretty good arguments against them by the neighborhood group. And that the practical difficulties could be gotten around in a number of ways without the variances both in height and on the face of the building which is required. So, I'm in substantial agreement with the arguments made by the neighborhood group.

Chair Perry: Thanks for those comments. I do have a question, which may be to you or to the other people, for my own understanding. How would you get around the height variance, the requirement they must fill to have the build based higher?

Sandberg: How would I get around it? I would say that the building could be used; it's not preventing the use of the building by not having a sign that can be seen from several blocks away. That the sign could be placed on other places of the building where it does not need to be that high or illuminated in any direction.

Chair Perry: Thanks for clarification. I have a couple of questions of staff, or at least one. LED lighting is something that's not before us. Just give us quick reminder on that too, on what is permitted.

Staff Sether: Yes, denial of this variance would allow for 180 square foot wall sign facing Fourteenth Avenue and illuminated externally, internally, I'm trying to remember if there is another method that's not coming to mind right now. So, they could allow for the same sign facing Fourteenth Avenue Southeast at 28 feet in height.

Chair Perry: Thanks, I think that was the one question. So in effect to the Board and to the public, whether the variances are granted or not, it still would allow the applicant to put a LED backlit sign in place. Also, to the public, all the Board needs to do is not find for one of the findings and the variance will not be granted. Because we are by law required to find for all of the findings in order to grant a variance. So you can sort of follow the logic there. If we just don't find for one then the variance or variances are not granted. Any further board comment? Ms. Thompson.

Thompson: I do kind of see how the gigantic size of the property could potentially be a practical difficulty. I do think that the developers have made the wrong practical difficulties in talking about the height of the structure and the location of the sign. I kind of worry a little bit that approving this variance would maybe be like a defensive sign variance granting because maybe they could make a bigger uglier sign without a variance and giving them a variance for this one would allow maybe a little smaller less ugly sign. So, I'm struggling with this one a little bit and I would like to hear some more feedback from my fellow board members.

Chair Perry: Mr. Johannessen and then Mr. Sandberg.

Johannessen: I agree with Board Member Thompson, and once it was explained to me that a non-variance required sign could be larger and face into the residential or other areas, it seems like it is the less obtrusive solution. That's where I stand.

Chair Perry: Thanks for those comments. Mr. Sandberg.

Sandberg: Thanks. Maybe this is a question for staff. I guess my understanding is the fact that this variance being given does not preclude that additional signage could be put on this building at a later date that conformed to the sign ordinance as long as the total square footage of signage for the building was not exceeded.

Chair Perry: I'd like staff to answer that.

Staff Sether: That is accurate; they would be able to do that permitted as right. The variances before you today are to allow this particular sign. A little bit over 400 square feet of signage is allowed on this primary building wall, which is substantial. I also want to point out that this is commercially zoned; this is not a residentially zoned property. You don't see residential uses very often come before this board, because that's not a variance we authorize. You're not able to apply for a sign variance if you're residentially zoned or have the OR1 classification. This is C2 and in an activity center.

Chair Perry: Thanks for the answer and those additional comments which I think are helpful. Other board comment? Mr. Ogiba.

Ogiba: Thank you Chair Perry. I actually agree with staff findings on this. I think the sign overall fits very nicely in the size and scope of the building. It's a huge project. It's a gigantic building. And in comparison to this in looking at it on paper versus what I actually think it would appear once built and once in place; it's going to be appropriately sized and appropriately identify the building. I have concerns in places like this where you're going to have a lot of visitors that are going to come in and I'm personally someone who likes to find where I'm going, signage helps that. And having it easily identifiable if I'm coming to visit a friend or someone that may live in this building and I'm from out of town, I think would be very helpful. I understand the concerns. I think it's great that the board from the neighborhood association as voiced those concerns. It's a little disappointing that this wasn't dealt with, with the developer; I think earlier on in the project that this was understood for them so this could possibly have been avoided to come before this board. Overall my inclination is to support staff findings for this because I think it probably the best solution given the size of the project.

Chair Perry: Thanks for those comments Mr. Ogiba, any additional board comments or a motion? Mr. Saufley.

Saufley: Thank you Mr. Chair. I still can't square my head around the idea that, as attractive as the sign may be, as well fitting as it may be it seems to be a difficulty created by the applicant themselves.

Chair Perry: So in effect, you are, and I think some other people are saying the same thing, not finding for finding one.

Saufley: Correct I can't support staffs finding that finding one has been met.

Chair Perry: Any other comments or a motion? Mr. Finlayson.

Finlayson: I move to deny.

Chair Perry: Is there a second.

Sandberg: Second.

Chair Perry: Mr. Finlayson moves to deny the, and I believe you're saying deny all three variances. Is that the motion Mr. Finlayson?

Finlayson: Deny one, deny all.

Chair Perry: Deny all three and second by Mr. Sandberg.

Sandberg: Concur.

Chair Perry: Any further comment? Will the clerk please call the roll? So just to be sure you know what you're voting on. You vote yes, that means you're voting to deny all three variances.

Staff Sether: I hate to interrupt, just because it's not coming to me right away. In order to deny we have to have written reasons finding of fact to deny. If the Board of Adjustment, before taking roll call vote, wants to hear what those written reasons of denial are ahead of making their decision or we can take the vote and then if it is the majority to deny then we can take the findings afterwards.

Chair Perry: I believe I heard the arguments for not finding for item one, the practical difficulties were in fact that the applicant had created the circumstances.

Staff Sether: It wasn't from the motion maker. I just wanted to clarify.

Chair Perry: So if the clerk could please call the roll.

Absent: Cahill and Ditzler

Aye: Finlayson, Sandberg, Saufley, Thompson

Nay: Johannessen, Ogiba

Motion passed