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## **CITY OF LA VISTA**

### **LA VISTA BOARD OF ADJUSTMENT MEETING**

**May 15, 2008**

The Board of Adjustment of the City of La Vista, Nebraska was convened at 6:05 p.m. on May 15, 2008 at the La Vista City Hall, 8116 Park View Boulevard. Members present were: Malmquist, Jordan, McCormick, Paulsen, and McEneaney. Also present was Marcus Baker, Planner.

Legal notice of the public meeting was published in The Papillion Times. Notice was simultaneously given to all members of the Board of Adjustment. All proceedings shown were taken while the convened meeting was open to the public.

#### **1. Call to Order and Roll Call**

The meeting was called to order by Chairperson McCormick at 6:05 p.m. and roll call was taken.

#### **2. Approval of Agenda**

Malmquist motioned to approve the agenda as printed. McEneaney seconded. Ayes: Malmquist, Jordan, McCormick, Paulsen, and McEneaney. Nays: None. Motion carried.

#### **3. Approval of Minutes of January 9, 2008**

Jordan moved to approve the minutes of January 9, 2008. Paulsen seconded. Ayes: McCormick, Paulsen, Jordan, Malmquist and McEneaney. Nays: None. Minutes were approved.

#### **4. Old Business**

McCormick commented that the sign for the Young Chiropractic Clinic recommended for approval by the Board at the January 9, 2008 meeting displays well and there does not appear to be any problems.

#### **5. New Business**

##### **A. Variance Request for Off-Site Signage in Southport West Replat Three**

i. **Staff Report:** John Q. Hammons Industries is requesting a variance for Off-Site Signage on property owned by JQH La Vista III Development, LLC, Lot 1-3, Southport West Replat Three. This property is zoned C-3, Highway commercial/Office Park District, Gateway Corridor Overlay District.

The Embassy Suites Hotel is currently being constructed on Lot 3 of Southport West Replat Three, along with the development of the La Vista Conference Center on Lot 2 and the Courtyard by Marriott Hotel on Lot 1 of the same subdivision.

The hotel and conference center development was originally proposed on the same parcel of land in Southport West; however, the parcel required subdividing into separate lots for financing purposes, i.e. a loan was provided by the City of La Vista to help finance the conference center and parking areas. Additionally, the subdivision of these properties had to provide adequate parking within each lot for the buildings associated with each use. The conference center and the Embassy Suites Hotel were designed to be attached with a zero lot line setback.

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Please notice that Lot 1 does not have frontage to it other than the I-80 interstate ramp and that is not a site for a future monument sign. Lot 3, Embassy Suites, had proposed a sign next to the access coming into Lot 3 and ran into some buried utility, sidewalk, and landscaping issues which presented a very challenging problem trying to get such a large sign onto the lot without interference to infrastructure. Therefore the purpose of this variance request.

The following definitions from Sec 2 of the Zoning Ordinance will be helpful to the decision process:  
**SIGN** shall mean and include any outdoor sign, display, declaration, device, figure, drawing, illustration, message, placard, poster, billboard, insignia, or other things which are designed, intended, or used for direction, information, identification, or to advertise, to inform, or to promote any business, product activity, service, or any interest.

**SIGN, OFF-PREMISES** shall mean a sign including the supporting sign structure which directs the attention of the general public to a business, service, or activity not usually conducted, or a product not offered or sold, upon the premises where such sign is located.

The following Zoning Regulations apply to the request:

#### 7.03.01 Signs Prohibited Under These Regulations

All signs not expressly permitted in these regulations or exempt from regulation hereunder in accordance with the previous section are prohibited in the city. Such signs include, but are not limited to:

1. Beacons and flashing signs;
2. Video signs;
3. Marquee signs;
4. Portable signs, except as allowed by a Temporary Sign Permit;
5. Roof signs;
6. Suspended signs;
7. Strings of lights not permanently mounted to a rigid background, except those exempt under the previous section;
8. Off-premises signs, except for signs located on outdoor public or quasi-public recreational areas/ facilities, provided such signs are located in a manner approved by the City (such as not facing adjacent street right-of-way or residential zoning districts) and are no larger than 32 square feet. (*Ordinance No. 951, 3-15-05*)
9. Animated signs; and
10. Audible Signs.

The applicant applied for a monument sign to be placed on Lot 3, which would have the Embassy Suites Hotel name and logo on the sign as well as the La Vista Conference Center label. Since the La Vista Conference Center is on Lot 2, the sign application had to be denied. The Courtyard by Marriott will have a similar situation because Lot 1 does not have frontage on Westport Parkway. In addition, according to the applicant there are legal issues which do not allow the Marriott and the Embassy Suites hotel names and/or logos to be on the same sign.

The following specific requirements must be considered in approval of a variance:

#### Section 8.03.03.01 and Nebraska Revised State Statutes Section 19-910:

The Board of Adjustment shall authorize no such variance, unless it finds that:

1. The strict application of the Ordinance would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

**Bylaws and Rules of Procedure of the City Of La Vista Board of Adjustment – Section 7, Specific Requirements in Approval of a Variance:**

In any action by the Board with regard to approval of a variance, such action shall be taken in accordance with the limitations of Nebraska law and the requirements and limitations of the applicable City Zoning Regulations and these Rules of Procedure. In any action to approve a variance, the Board shall make findings which shall be recorded in the minutes.

Malmquist inquired if both signs would be considered off-premise. Baker said there would be an off-premise sign on Lot 3 which would advertise the La Vista Conference Center located on Lot 2; and, the Courtyard by Marriott (located on Lot 1) would have a monument sign posted at their access from Westport Parkway which would be on Lot 2.

McCormick asked, if for any reason that Embassy Suites would change their name, or alter it in any way, would the request have to come back to the Board of Adjustment for review. Baker said the variance would carry to any future property owners unless a restriction were put on the variance tonight. If the sign were relocated it would have to return. Face changes would not be required for further review. Baker stated the variance could be limited to the current property owners.

Tony Moody, general manager of the La Vista Complex for Mr. Hammonds and represents the owner interjected that the master development agreement between Mr. Hammonds and the City of La Vista it is to be called the La Vista Conference Center and there can be no changes without going back to City Council. This is a 20-year licensing agreement and the penalties of changing the name are extremely exorbitant.

McCormick questioned the temporary buildings on site and Moody said they would be removed next week. The anticipated opening of the Embassy Suites would be July 1.

iii. **Recommendation:** Malmquist moved to approve the variance request finding that the strict application of the ordinance would produce a unique and undue hardship not shared generally by other properties and the authorization of such hardship should not be a substantial detriment to adjacent property values, etc. and the granting of such variance is based upon reasons of demonstrable and exceptional hardship distinguished from variations for purposes of convenience, for profit, or caprice. Malmquist made the following findings in her motion:

A. The strict application of any applicable provision of the applicable City Zoning Regulation would, in each specific variance petition, result in at least one of the following:

1. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in questions.

**Hardship found:** The board finds this to be an irregularly shaped lot due to the delineation required through financing the development.

2. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exception topographic conditions on the piece of property in questions;

**Hardship found:** The board finds this lot is relatively flat with no topographic constraints.

3. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.

**Hardship found:** The Embassy Suites Hotel and the La Vista Conference Center are being marketed as a joint development. A hardship may have been created when the development was severed by lot lines. This hardship was an unintended consequence of the subdivision.

B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that EACH of the following requirements for authorizing a variance can be met:

1. Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable City Zoning Regulations;

**Specific requirement satisfied:** The purpose and intent of the sign regulations is “to encourage the effective use of signs as a means of communication in the city; to maintain and enhance the aesthetic environment and the city’s ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; to minimize the possible adverse effect of signs on nearby public and private property; and to enable the fair and consistent enforcement of these sign regulations.” The public good would not be substantially impaired by the granting of the variance. Staff believes that placing three separate monument signs for each lot could cause “visual clutter” and reducing the number of monument signs is a preferred alternative that would satisfy the purpose and intent of the sign code.

2. The strict application of the applicable requirements of the applicable City Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;

**Specific requirement satisfied:** In the opinion of the Board, the strict application of the code would not allow the La Vista Conference Center to be advertised on the Embassy Suites lot. Also, the Courtyard by Marriott would have nowhere along Westport Parkway to place their monument sign because their lot does not have street frontage. An undue hardship has been the result of the City of La Vista requiring the subdivision of the properties for financing purposes.

3. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

**Specific requirement satisfied:** Lots 1-3 of Southport West Replat Three share this hardship, but no other properties in Southport West currently have this hardship.

**4. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance;**

**Specific requirement satisfied:** Some flexibility in the design of signs is written into the Southport Design Guidelines; therefore, staff does not believe substantial detriment would occur on adjacent properties or within the zoning district.

**5. The authorization of a variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;**

**Specific requirement satisfied:** The way in which the property had to be subdivided for the City's financing purposes created an exceptional hardship for placing monument signs in sensible and visible locations on the properties. The variance request is not a matter of convenience or profit in the board's opinion.

**6. The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable City Zoning Regulations.**

**Specific requirement satisfied:** This development was unique in that the City helped finance a portion of the development, which necessitated creating three separate lots. No changes to the City's Zoning Regulations would be needed, as this will not be a recurring situation.

Seconded by Jordan. Vote: Ayes: McCormick, Jordan, Paulsen, Malmquist and McEneaney Nays: None. Motion passed.

**B. Variance Request for Reduced Setback for a Monument Sign**

**Description of Development:** The Embassy Suites Hotel is currently being constructed on Lot 3 of Southport West Replat Three, along with the development of the La Vista Conference Center on Lot 2 and the Courtyard by Marriott Hotel on Lot 1 of the same subdivision.

The applicant has stated that power, telephone, and cable line placement along Westport Parkway has infringed on their ability to place their monument sign at the corner of the access which serves as the main entrance to the Embassy Suites Hotel. Due to these utility constraints, the sign is proposed to be installed less than 5 feet to the property line. The sign permit was denied because the sign did not meet the minimum required setback of 10 feet.

The following regulations within the Zoning Ordinance are applicable to this variance request:

**7.01.05 Permitted Signs and Limitations**

**1. *Ground Monument***

- A. Monument signs shall be located along the frontage of the zoned lot. All signs shall be of permanent construction and are subject to the provisions of local codes and ordinances. On corner lots, the monument sign may be placed on either frontage.
- B. All ground monument signs shall be located on the same lot as the advertised use.

- C. Signs shall contain only the name or trademark of the business, building or complex which it identifies.
- D. With the exception of change panels permitted for gas stations to advertise gasoline prices, no change panels, advertising or names of individual tenants will be allowed.
- E. Setbacks for all ground monument signs are ten (10) feet.

The Southport West PUD (Ordinance #1013) states:

“This Ordinance recognizes that because of the size and scope of the project, and because access will be obtained to the development via large public arterial streets, the project has an extraordinary need for flexibility in the signage regulations applicable thereto.”

The following specific requirements must be considered in approval of a variance:

**Section 8.03.03.01 and Nebraska Revised State Statutes Section 19-910:**

The Board of Adjustment shall authorize no such variance, unless it finds that:

- 5. The strict application of the Ordinance would produce undue hardship;
- 6. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- 7. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- 8. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

**Bylaws and Rules of Procedure of the City Of La Vista Board of Adjustment – Section 7, Specific Requirements in Approval of a Variance:**

In any action by the Board with regard to approval of a variance, such action shall be taken in accordance with the limitations of Nebraska law and the requirements and limitations of the applicable City Zoning Regulations and these Rules of Procedure. In any action to approve a variance, the Board shall make findings which shall be recorded in the minutes of the Board.

iii. **Recommendation:** Malmquist moved to grant the variance for approval of a setback variance on the ground monument sign for Embassy Suites. The minimum setback is currently ten (10) feet and this variance would allow encroachment into the set back no more than seven (7) feet. Malmquist made the following findings in her motion:

A. The strict application of any applicable provision of the applicable City Zoning Regulation would, in each specific variance petition, result in at least one of the following:

- 1. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in question;

**Hardship is found:** The Board finds that the lots are irregularly shaped due to legal constraints required by the City's financing of the conference center. Utilities along Westport Parkway complicate the placement of the sign at the access point.

2. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exception topographic conditions on the piece of property in questions;

**Hardship is found:** The Board finds the lot is relatively flat with no topographic constraints.

3. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.

**Hardship is found:** The Board finds that the access was approved and constructed according to plans. Placement of the sign at the original location is no longer possible due to utility installations.

B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that EACH of the following requirements for authorizing a variance can be met:

1. **Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable City Zoning Regulations;**

**Specific requirement is satisfied:** The purpose and intent of the sign regulations is "to encourage the effective use of signs as a means of communication in the city; to maintain and enhance the aesthetic environment and the city's ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; to minimize the possible adverse effect of signs on nearby public and private property; and to enable the fair and consistent enforcement of these sign regulations." Placement of the sign would be required to be in a safe location not impeding line of sight; therefore, the public good would not be substantially impaired.

2. **The strict application of the applicable requirements of the applicable City Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;**

**Specific requirement is satisfied:** The strict application of the code would place the sign too close to utility lines.

3. **Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;**

**Specific requirement is satisfied:** No other properties share this same hardship.

4. **The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance;**

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**Specific requirement is satisfied:** Some flexibility in the design of signs is written into the Southport Design Guidelines; therefore, the board does not believe substantial detriment would occur on adjacent properties or within the zoning district.

**5. The authorization of a variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;**

**Specific requirement is satisfied:** The variance request is not a matter of convenience or profit in the board's opinion. The characteristics of the property and approved development, combined with the installation of the utility lines, have created the hardship.

**6. The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable City Zoning Regulations.**

**Specific requirement is satisfied:** No changes to the City's Zoning Regulations would be needed, as the conflicts with utility lines should not be a recurring situation.

McEnearney seconded: Ayes: McEnearney, Jordan, Paulsen, Malmquist and McCormick. Ayes: None. Motion passed.

Mr. Moody invited everyone to the grand opening gala expected to be July 31, 2008, pending final approval from the Nebraska Fire Marshall office.

**6. Adjournment:** Paulsen motioned to adjourn the meeting. Jordan seconded. Ayes: Jordan, McEnearney, McCormick, Paulsen, and Malmquist. Nays: None. Meeting adjourned. The meeting was adjourned at 6:32 p.m.

Reviewed by BOA Secretary: Randy Jordan, 5/29/2008

Sharon Dennis  
Recording Secretary

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Board of Adjustment Chair

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Approval Date