

The City of Fairhope Board of Adjustments and Appeals met on Monday, July 20, 2009 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Chairman Bob Mannich; Cathy Slagle; Stan Grubin; Louis Agee; Anil Vira; Jonathan Smith, Director of Planning & Building; and Emily Boyett, Secretary. Absent: Suzanne Winston

The meeting was called to order at 5:00 PM by Chairman Mannich.

Members were asked to review the June 15, 2009 minutes for consideration and make a motion to approve. Louis Agee made a motion to approve the minutes as written. Stan Grubin seconded the motion. Motion carried unanimously.

ZBA 09.04 Request of Mac and Virginia Walcott for a Special Use Permit to allow a wind generator. The property is located on the southwest corner of Bancroft Street and Equality Street, at 85 N. Bancroft Street.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The subject property is zoned B-2 (General Business) and is in the Central Business District (CBD).

On June 15, 2009, the Board approved the property to be used as an “outdoor sales lot.” Included in the applicants June 15th request was the proposed wind generator, but the applicant withdrew the wind generator request in order to provide the Board with additional information. Due to these circumstances, the applicant is also asking the Board to waive any associated fees for this request. Fees were paid to the City for the June 15th hearing request.

It appears that the applicant wishes to incorporate many “green building” features into the proposed “open air market” (e.g., “Grey Water Garden” and “Cistern for Water Harvesting”). Among the “green building” features is a Skystream wind generator that is approximately 40’ tall.

The maximum building height for all non-residential structures is 35’ in the CBD. The proposed wind generator is not a building or typical accessory structure; therefore, staff felt it is appropriate to seek Board approval for this type use and height request.

Article VI, Section 4. of the Fairhope Board of Adjustment Bylaws states: “Uses Not Provided For: Whenever, in any zoning district established under the Zoning Ordinance, a use is neither specifically permitted or denied and an application is made by a property owner to the Director of Planning and Building for use, the Director of Planning and Building shall refer the application to the Board which shall have the authority to permit

the use or deny the use. The use may be permitted if it is similar to and compatible with permitted uses in the applicable zoning district and in no way is in conflict with the general purpose and intent of the Zoning Ordinance.”

A wind generator is not a use specifically allowed by right in any zoning district. At this point, staff feels that the frequency for wind generator requests is not great enough to propose incorporating specific language into the Zoning Ordinance addressing wind generators. The Article VI Bylaws provision outlined above allows the Board to permit or deny requests such as this on a case-by-case basis.

The applicant has provided a number of sample ordinances and a sound report pertaining to Skystream wind generators. The sound report the applicant provided appears to render the conclusion that the Skystream wind generators produce little noise when in operation.

On June 30, 2009, staff (Jonathan Smith) and three Board members (Bob Mannich, Cathy Slagle and Stan Grubin) went on a site visit trip to Lulu’s in Gulf Shores to observe a similar wind generator. The wind on that particular day was not strong enough to power the wind generator, but when asked, several employee’s at Lulu’s stated that they do not typically notice any noise coming from the wind generator, with the exception of some “squeaking” form time to time.

STAFF RECOMMENDATION: Staff recommends the application fee be waived and the Board approve or deny the proposed 40’ tall windmill based on the information provided by staff and the applicant.

Chairman Mannich opened the public hearing. The applicant, Mac Walcott came forward to address the Board. He said the information provided and his own observation is that the machine will sound like wind. He stated it should be between 50 to 65 dBA.

Mark Polon of 464 Equality Avenue came forward to address the Board. He stated that the City Council passed a noise ordinance and therefore, this Board should not vote on this issue. Having no other comments Chairman Mannich closed the public hearing.

Cathy Slagle raised concerns with the height of the pole and the noise ordinance. Mr. Walcott responded that the pole he will use would be 40’ with 6’ blades and the information he provided shows the noise should not be an issue. Chairman Mannich said he would like to make sure the wind generator would meet the new noise ordinance. Mrs. Slagle said she does not want to set a precedent, have more come, and then have to fight their decision. Mr. Smith stated that the Board does not set precedents and that each case will be different. Stan Grubin moved to approve the request with the condition that the wind generator meet the new noise ordinance once adopted. Motion fails for lack of a second. Louis Agee made a motion to deny the request. Cathy Slagle seconded the motion. The motion fails with the following voice votes: AYE – Cathy Slagle and Louis Agee. NAY – Bob Mannich, Anil Vira and Stan Grubin. Stan Grubin asked if changes could be made to the height and Mr. Smith responded yes, any conditions can be placed on a request. Chairman Mannich said that with the information provided, that the noise is

not an issue. Louis Agee said he would like to limit the height to 35'. Louis Agee moved to approve the request to waive the application fees and to approve the wind generator with the conditions that it meets the new noise ordinance and that the pole height not exceed 35'. Stan Grubin seconded the motion and the motion carried unanimously.

Having no further business, Cathy Slagle made a motion to adjourn. Anil Vira seconded the motion. Motion carried unanimously. The meeting was adjourned at 5:39 pm.