

CITY OF LYNN HAVEN
BOARD OF ADJUSTMENT
REGULAR MEETING
February 20, 2025

A Regular Meeting of the Lynn Haven Board of Adjustment was held on Thursday, February 20, 2025, at 5:30 p.m. at the Walter T. Kelly Chambers,

Present: Jerry Whitworth, Chairman
Morgan Doolittle
Douglas C. Pennington
Christopher Clubbs
Amanda Richard, Planning Director
Vicki Harrison, Board Secretary
Amy Myers, City Counsel

1. Call to Order at 5:30pm by Mr. Whitworth

Mr. Doolittle made a motion to approve the excused absence for Ms. Boyanov as staff was notified of her absence prior to the meeting,

Second to motion: Mr. Clubbs

On vote: Doolittle: aye
Clubbs: aye
Pennington: aye
Whitworth: aye

Motion passed: 4-0

2. Mr. Pennington made a motion to approve the August 22, 2024, Minutes,

Second to motion: Mr. Doolittle,

On vote: Pennington: aye
Doolittle: aye
Clubbs: aye
Whitworth: aye

approved 4-0

#3. VAR-25-01: Obsidian ML 1, LLC, 2301 Hwy 380 W, Request Variance from ULDC Section Table 5.03.07(C)(1): Ms. Richard stated the applicant/owner is Obsidian ML 1, LLC, who was not present, however, their agent Mr. Darrin Taylor, Holtzman Vogel was present. The project name is Cumberland Farms Sign, and the requested action is a variance on Sign Height Requirements. The property is located at 2301 Highway 390 West, and the parcel number is 11669-001-000. The property has a commercial land use, is approximately 1.69± acres and the existing use on the

property is a Gas Station.

The applicant is requesting a variance from the requirements of the City's Unified Land Development Code, Table 5.03.07(C)(1): Standards for Permanent Signs, which was included in the board packets, specifically the requirement that signs be no taller than ten feet (10 ft.).

Ms. Richard stated the applicant does not wish to adhere to the ten feet (10ft) maximum height requirement for their signs located at the gas station on the corner of Highway 390 and Jenks Avenue. This was a Tom Thumb gas station, which is currently being rebranded to a Cumberland Farms gas station, and as part of this process the signage is being redesigned. The signs are currently non-conforming as they were installed prior to the amendment to the ULDC requiring that signage be a maximum height of ten feet. The existing signs are 16 ft 9 in and 15 ft, with the applicant proposing the new signs be 14 ft 9 in and 13ft. Section 9.301.00 of the ULDC 'Continuation of Nonconforming Uses & Structures' states that "The lawful use of a building, structure or premises, existing at the time of the adoption of the this ULDC may continue although such use does not conform to the provision of this ULDC" and "B" "Nothing in this chapter shall be construed to prevent the ordinary & routine maintenance & repair on non-conforming structures." However, Section 9.01.02 'Expansion or Modification of Nonconforming Uses or Structures 'A' states that "No existing building, structure or premises shall be changed, reconstructed, extended or structurally altered in any manner or used for any purpose not consistent with the provision of this ULDC or any other applicable law." This means that if a structure is modified it loses its nonconforming status and is required to be brought up to current code.

The applicant has stated in section III of the supporting narrative 'Summary of Why Variance Should Be Approved' that it appears that the City's sign code violates Section 553.79(25) Florida Statutes because drivers will not be able to safely see the gasoline prices on SR 390. She was unable to find a Section 553.79(25), but F.S. Section 553.79(24)(a)2 addresses "design, construction, or location of signage advertising the retail price of gasoline" so perhaps this is the section that is being referred to and is attached.

The new proposed signage keeps the gas price section of the sign in the exact same place as it is on the current sign regarding its height with the top of that data section being at nine feet (9') and is within the maximum height requirement although the applicant has reduced the size of the gasoline price portion of the sign. They have a smaller data display cabinet and more space beneath while their company logo exceeds the height requirement. The second sign does not have a gas price display at all.

Ms. Richard stated a copy of the application, aerial map, applicant supporting narrative; Table 5.03.07(C)(1); Standards for Permanent Signs; Section 9.01.00 'Continuation of Nonconforming Uses & Structures'; Section 9.01.02 'Expansion or Modification of Nonconforming Uses & Structures and Section 9.02.02. 'Required Findings for a Grant of a Variance' of the ULDC; Chapter 55.79 Florida Statutes.

Ms. Richard stated the 18' sign height requirement changed by Ordinance a couple of years ago to 10'. Non-Conforming can continue, but not modified, any modifications to the sign requires the new code to be met.

Ms. Richard stated the presentation on the screen is a presentation that the applicant would like to present.

Mr. Pennington asked if there is a staff recommendation. Ms. Richard stated no, the Board of Adjustment is not a recommendation board, it is a decision making board, and City Counsel is present for direction.

Mr. Darrin Taylor addressed the board and stated he is with Holtzman-Vogel, as the Director of Planning with the firm in Tallahassee, Florida and thanked the board for the opportunity to be there. Their firm EG America represents convenience stores throughout the southeast and the Cumberland Farms brand, and they are requesting a variance. The issue they are proposing is not questioning her comments regarding the nonconforming use issue, but as far as the structure looking at the variance process that the City of Lynn Haven's code provides for.

He stated that they are proposing the rebranding is something that is happening throughout the southeast. They are dealing with a lot of local governments with the issue of replacing signs. Basically, how it typically works is that with some local governments if you're not making it bigger it is a vesting issue for many local governments, you are simply replacing the cabinet they don't consider that new development. Or a lot of local governments take the position that if the sign structure itself is not being modified you are simply replacing that, it's not an issue or a matter if you have to address the new code.

He stated he does understand that the City is taking this position, and they respect that, and that is why they have a filed a variance request under Section 9.02.02, and within the code there are eight (8) specific criteria in order to meet a variance request. He stated she did mention the Florida Legislature, to mention quickly and it is something not in your purview because it is a legal question. The Florida Legislature has weighed in on the issue of signage, and she mentioned the citations, and how the legislature has identified this as the fact of issues with logos, issues with rebranding, the legislature considers it important that if a business changes logos or issue of gasoline, consider the price, and being able to see that, the legislature considers that a public issue to make sure that you are able to see the prices, shopping for a price. Legislature has basically preempted local governments on those issues. This is not something before us tonight as that is a legal issue.

He stated the question is the consistency with Section 9.02.02 of the code, then proceeded with his presentation for the existing and proposed images, and the dimensions of each sign, and the reduction of each signs height. When reviewing the criteria within the City's code, there are factors where the variance criteria looks at; are there unique factors with this sign, are there issues that are not related to anything that the applicant or property owner has done or are impacting the property. He reviewed that the property was developed in 2002, and you would want to have the property toward the edge to have as much visibility as possible. When this was built it had to be setback about 250' from the intersection because the drainage and open space had to put in at the intersection, so that everything moved back. In 2002, Highway 390 was two (2) lanes, with a turn lane to Northshore, and it was two (2) lanes on Jenks Avenue with a flare just past the store to the intersection. Considering the issue of visibility, issue of turning movements at that time, it wasn't much of an issue. Today it is a six (6) lane road on 390, closed median going in there, all these things impact turning movements and visibility. The reduction of the signage, considering an AM/PM peak hour period, looking across traffic, being hard to see the signage as it is being moved down when you are trying to see the logos with the stores.

Mr. Taylor read the eight (8) criteria from the application he submitted. He stated to summarize there is an established criteria for the granting of a variance, eight (8) specific criteria that's established in the code and they have demonstrated consistency with those criteria considering the

unique factors on the sign and on behalf of the applicant, he is requesting that the variance be approved, and he would be happy to answer any questions from any of the board members.

Mr. Pennington asked if the sign stays as it was, and you only change the logo panel without any change to the frame, does that constitute a modification. Ms. Richard stated if they are going to remove something and replace it with something else, that is a modification. Mr. Pennington asked if you remove Tom Thumb and put Cumberland Farms there without changing the frame is that a modification. Ms. Richard stated that has been the interpretation and other businesses have had to reduce their signs. They could place the logo in the space beneath, and the City is encouraging monument signs. The gas prices will be harder to see because they are smaller, so it is not making it easier to see.

Mr. Whitworth asked if this is a standard sign for Cumberland Farms. Mr. Taylor stated essentially yes, as far as the signage that is being applied, yes, it is a standard. Mr. Whitworth asked if he goes to Tallahassee and sees a Cumberland Farm store, will that signage be just like this one being proposed. Mr. Taylor stated no, he is not testifying to that because there are larger signs, as the signs in Tallahassee are much larger. He can't testify that there are different signs that are that particular size. This is the sign that is being proposed for this location, also considering we usually work within the structure that is there, most local governments don't want you to pull out the sign and replace it, because that is when you do get into an issue. Most local governments consider that as long as you are working within the structure of the sign and simply replacing the cabinet then they are typically not having to deal with new codes and that is the standard operating procedure when they are rebranding stores.

Ms. Richard stated to bear in mind that they are not replacing the cabinet, they are changing the gas price portion also.

Mr. Whitworth stated the gas price on the new sign is smaller than it is on the existing sign, is that correct statement? Mr. Taylor stated that size of the pricing agent compared by the two (2) it is smaller but that is part of it, basically the issue is whether you are replacing the structure of the sign, and this is a cabinet replacement as far as what we are doing.

Mr. Clubbs asked that since the road has expanded is the setback requirement currently being met, or would a new sign be required to be pushed away from the road.

Ms. Richard stated that she does not review the setbacks on the sign applications, or when it was looked at, or if initially when it didn't meet the height, it was not approved, and that is what spurred the variance request, but Vicki does the initial reviews. Ms. Harrison stated the proposed signs are in the same location as the existing signs.

Mr. Doolittle stated it looks like there is more visibility under the sign and increased visibility above it, essentially squeezing it down a bit.

Mr. Beshearse addressed the board and stated people are aware of the intent of the ordinance as places change and redesign; there is an opportunity to bring signage down to what the City wants signage to look like within the corridors and within the City. If it is a change to the height of the sign it should be brought down, He welcomes Cumberland Farms to the area, but partner with us to get all the properties somewhat cohesive. If everything is allowed to be grandfathered in, then it is not an enforceable code. There are economic costs to make the adjustment, and he doesn't see where meeting the new height will make the signage less visible, and certainly not the one without

the gas prices. This is an opportunity for them to make their signs more attractive and to meet our current ordinances.

Mr. Doolittle stated that does open up the question that if we are in violation of State law with this ordinance, what does that open the City up to.

Ms. Myers stated she would not give an opinion on whether the sign code is currently violating State law, but she would acknowledge and confirm that there are State laws that specifically prevent a municipality from enforcing an ordinance that imposes design, construction, or location of signage advertising the price of gasoline. It does treat them specifically and does prevent the City from enforcing those regulations. In the paragraph right above it, it speaks to the logos as well, so she knows that both are in play here. She just wanted to mention that gasoline stations such as this are not like every other property owner in the City.

Mr. Pennington asked if there is a ruling on the height required for it to be visible, or what height is too low for it to be visible. Ms. Myers stated that it is up to the board as the decision maker as to whether or not you have formed your own opinion from knowing this property, where it is located, new road widening and reconfiguring of the road has effected the visibility of the signage. Or if you have heard evidence on the record today about how the specific height is necessary for maximum visibility, or specific visibility.

Mr. Whitworth asked Mr. Taylor theoretically, if this was turned down, does he have a contingency to do something different as far as the signs. Mr. Taylor stated he could not answer that question, as far if that would be a client decision. He could speak of potential options, and as the attorney mentioned there are certainly potential legal options, there are also potential signage options, and the client makes that decision, and the client will let them know what the decision is.

Ms. Myers stated that she would encourage them, in making their decision, to focus on the criteria stated in the code.

Mr. Pennington stated that in his question, with changing the logo the plastic part, not the structure had to do with an alternative, but he is hearing that is considered a modification and would require changing. To follow up with what Mr. Beshearse stated, there is a reason why these ordinances are in place and the rules there to abide by them when changes are made. He is personally looking for a compelling reason why it is just not doable unless we give this variance, and it looks like to him the sign could be lowered or put the logo under it.

Mr. Clubbs stated he doubted Cumberland Farms would allow the logo to be placed under the gas prices. Cumberland Farms is not the one requesting this, it is the local owner, which to them could be an undue hardship because they have design standards to meet. A new sign can economically be much more expensive, and it appears that they are trying to accommodate the spirit by shrinking it down and making the sign shorter. It does meet the spirit, just not all the way. Trying to make a compromise on spending another \$100,000 on signs, which is not out of the question, and can be expensive, and he feels it is a middle ground they are asking for.

Mr. Doolittle made a motion to approve the variance request as presented,

Second to motion: Mr. Clubbs,

On vote: Doolittle: aye

Clubbs: aye
Pennington: nay
Whitworth: nay

Failed 2-2 (tie vote)

Ms. Richard thanked the members for their attendance. She stated she appreciates their availability and dedication to meet when a variance request is received. She stated that there is an opening on the Planning Commission, and two (2) Board of Adjustment members have submitted their applications for consideration by the City Commission at the February 25th meeting to be appointed to the Planning Commission, so there may be an opening on the Board of Adjustment.

Mr. Whitworth stated on a personal note he had something and he would like for it to be read into the minutes: To Whom it May Concern, I have been associated as a volunteer committee member with the City of Lynn Haven for about 15 years. I have served on the Planning Commission, two terms as Chairman, and I have served on the Board of Accessors, for one term as Chairman. My time on both has been pleasant and rewarding and I have enjoyed the help from the full time Planning Staff. They have been both friends and professional at all times. They are to be commended for their efforts. It is, at this time, that I tender my resignation from the Board of Accessors due to family health problems. I do this trepidation and regret and wish all the rest of the Board Gods speed and well in the future. If I can be of assistance in the future, please call on me. Jerry Whitworth, Chairman, Board of Accessors.

With there being no further business or discussion, the meeting adjourned at 6:06p.m.



Jerry Whitworth, Board Chairman

Christopher Clubbs

prepared by Vicki Harrison