

Zoning Board of Appeals  
 Wednesday, January 5, 2011  
 6:00 PM Town Hall

Edinburgh Zoning Board of Appeals met in special session on Wednesday, January 5, 2011, 6:00 p.m., Edinburgh Town Hall.

Members Present: Keith Sells  
 Arvis Sneed  
 Ron Hamm  
 Lloyd Flory  
 Richard Pile  
 Rhonda Barrett, Secretary

Others Present: Brad Teter, Building Commissioner  
 Dustin Huddleston, Town Attorney

Keith Sells opened meeting at 6:00 p.m. and let everyone know that Larry Whitlock is no longer a member of the zoning board and that he was the previous Vice-Chairman of the board. He did roll call, he called all names and all members were present.

Keith Sells presented the November 3, 2010 meeting minutes for approval. Ron Hamm made motion to approve minutes. Arvis Sneed seconded. All ayes. Motion approved.

Keith Sells presented the next item on the agenda, which is election of officers for 2011. Arvis Sneed made a motion to elect Keith Sells as Chairman of the board. Richard Pile seconded. Keith asked if anybody else wanted to make any nominations. There being no other nominations, Keith asked for a vote with raising of right hand. All were in favor. Keith Sells was nominated as chairman of the board.

Keith Sells then asked for vice chairman nominations. Keith Sells made a motion to nominate Arvis Sneed as Vice Chairman. Ron Hamm seconded. Keith Sells then asked for a vote with the raising of right hand. All were in favor. Arvis Sneed was nominated as vice chairman of the board.

Keith then presented the 2011 schedule of meetings and asked for any comments.

Dustin Huddleston commented that the board does not have to meet if there is not a petition on the agenda.

Arvis Sneed made a motion to approve the 2011 meeting schedule. Richard Pile seconded. Keith asked for a vote with the raising of right hand. All were in favor. Motion carried.

Keith then presented the swearing in of any public speakers including petition filers.

Dustin Huddleston then asked if there were anyone in attendance who wished to speak for any of the two applications whether for or against to stand up and raise right hand to be sworn in. Dustin then swore in two people.

Brad Teter outlined the use variance D&J Energy Systems was seeking including location. He explained they were asking for a U-haul dealership, Automotive Repair business, an office, and storage for materials for generator repair. Brad explained they were in the Central Business District and the zoning of the surroundings. Brad read the criteria for a decision:

1. ***General Welfare: The approval (will or will not) be injurious to the public health, safety, morals, and general welfare of the community.***

**Staff Finding:**

The approval will be injurious to the public health, safety, or general welfare as the vehicles will be stored outside for 72 hours at a time and proper screening is not being used to hide all activities.

2. ***Adjacent Property: The use and value of the area adjacent to the property included in the variance (will or will not) be affected in a substantially adverse manner.***

**Staff Finding:**

Adjacent properties to the subject will be affected in a substantially adverse manner. The property to the North is a residence, the property to the South is a library and the property to the East is a Chiropractor and the nature of the business is not consistent with the uses surrounding it.

3. ***Practical Difficulty: The strict application of the terms of the ordinance (will or will not) result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.***

**Staff Finding:**

The strict application of the ordinance will not result in a practical difficulty. The petitioner should explain how the strict application of the ordinance results in a practical difficulty in the use of the property.

4. ***Unnecessary Hardship: The strict application of the terms of the Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.***

**Staff Finding:**

The strict application of the terms of the Ordinance will not constitute and unnecessary hardship if applied to the property for which the variance is sought. The property is suitable for other types of businesses.

5. ***Comprehensive Plan: The approval does not interfere substantially with the Edinburgh Comprehensive Plan.***

**Staff Findings:**

The approval interferes substantially with the Edinburgh Comprehensive Plan.

Brad stated that the staffs recommendations based upon the findings mentioned is for denial.

Keith asked if anyone on the board had any questions for Brad and his report that he had presented. There being no questions from the board, Keith Sells asked that the representatives for D & J Energy to address the board at this time to proceed with their presentation, and to introduce themselves.

Russell L. Jones attorney with Cohen, Garelick & Glazier out of Indianapolis, representing Jim Woods of D & J Energy Sytems. Mr. Woods is ill and is not in attendance, and with Attorney Jones tonight is Bill Coonz to speak for Mr. Woods.

Attorney Jones went on to explain the history of the original petition by Joann Wilbur in 2006 for an auto repair business. The petition is for 114 West Main Cross and 105 N Main Street. His variance had a mistake and had the word Central and not Main and asked that this be noted. At the time of the original petition, Mrs. Wilbur was selling the business on contract to Jerry Jones, who was then leasing the building to D & J Energy Systems. At that time Robbie Link was employed by D & J Energy System and spoke at the meeting for D & J Energy Systems. Attorney Jones felt there was confusion at the previous meeting with regards to the decision, therefore business continued and then was later taken to court. Attorney Jones and his client are trying to reach a resolution based on the previous denial by the board. Attorney Jones presented 4 photos to the board as exhibit "B." Attorney Jones explained that the business would have limited signage, employment opportunities, affordable auto repair, and a clean wholesome business operated by family men.

Bill Coonz added by explaining that the building located at 105 N Main would be used for storage of supplies to repair AT&T equipment. He also added that the front part of the building could be used for office space.

Keith Sells asked the board for comments.

Richard Pile asked about light repair work and if it included transmissions and motor repair.

Bill Coonz replied by saying it included tune-ups, plug wires, plugs, oil changes and brakes.

Richard Pile thought he had heard a radio ad about transmission service or something.

Bill Coonz stated that they do transmission service, like changing oil and service transmissions, shocks and stuff.

Lloyd Flory asked Brad about #3 on the list to maintain office if that was permitted in CBD, and if warehouse for parts, U-haul dealership, and auto repair were conforming.

Brad stated office was ok, downtown central business district does not allow for warehouse, U-haul and auto repair are not.

Lloyd Flory thought the warehouse could be looked at as retail type business.

Kami Ervin, adjoining property owner asked about waste disposal, floor drains, spill prevention, and the number of employees from Edinburgh Community.

Bill Coonz replied that there was one employee from Edinburgh, and they had a company pick up totes once a month, there are no floor drains.

Attorney Jones added that with an approval the business could grow adding employment opportunities.

Keith Sells asked if anyone else had any questions.

Evelyn Pence, adjoining property owner, added that she was concerned about the congestion around the business. She expressed that there seemed to be a lot of vehicles and U-hauls. She said it looks over crowded and she explained that she keeps her property looking good and that this property looks like it has a lot of vehicles.

Dustin asked Evelyn if she was against the petition. That if she was against it, then she needed to be sworn in.

Evelyn Pence at 119 W Thompson Street and Don Knight second petitioner were sworn in. Evelyn Pence, is a remonstrator, to D&J with the present business they are doing.

Richard Pile made a motion to vote on the issue.

Dustin Huddleston asked if he could clarify on the motion being asked.

Attorney Jones presented pictures of business to Evelyn Pence for her review of what she had seen previously. Evelyn Pence and Attorney Jones discussed the property and the number of trucks, office, auto repair, storage, and U-haul. She is concerned if the variance goes through that they are going to do what they want to do. She thought it seemed like a lot of businesses for one area.

Attorney Jones commented that it is one business name with three entities. The three entities include and office, auto repair, and storage area.

Attorney Jones asked about Evelyn Pence position with the petition being presented.

Bill Coonz stated U-haul can be removed.

Keith Sells asked for motion.

Keith Sells closed public comments.

Dustin Huddleston asked petitioner for clarification with regards to uses being requested. They are asking to operate an auto repair business, with restrictions on Exhibit A, a U-Haul operation, office, and storage area.

Lloyd Flory made a motion to deny the non-conforming uses of auto repair and U-haul business, Richard Pile seconded. Keith Sells asked for a right hand vote. All were in favor. Motion approved.

Motion made by Lloyd Flory to approve office use of D & J Energy and storage of materials. Arvis Sneed seconded. Keith Sells asked for a right hand vote. All were in favor. Motion approved.

Keith Sells asked if D&J was going to comply to the decision of the board this time, based on past experience.

Attorney Jones responded by stating that he needs to confer with his client.

Keith Sells presented the second request on the agenda from Don Knight request for signage, and asked Brad Teter to present the next petition.

Brad Teter explained that Don Knight was requesting a pole sign that was within the zoning requirements of the Strip Mall zoning district.

Brad Teter read the approval criteria to the board, which is as follows:

1. *General Welfare: The approval (will or will not) be injurious to the public health, safety, morals, and general welfare of the community.*

**Staff Finding:**

The approval will not be injurious to the public health, safety, or general welfare as the sign will be unlit.

2. *Adjacent Property: The use and value of the area adjacent to the property included in the variance (will or will not) be affected in a substantially adverse manner.*

**Staff Finding:**

Adjacent properties to the subject will not be affected in a substantially adverse manner. There will be no lighting or obstruction of vision that may cause an inconvenience or danger.

3. *Practical Difficulty: The strict application of the terms of the ordinance (will or will not) result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.*

**Staff Finding:**

The strict application of the ordinance will result in a practical difficulty. The petitioner has experienced growth surrounding his business. This growth has blocked the view of the current strip mall, making it hard to find.

Brad Teter stated that the staff recommended approval.

Keith Sells asked if any board members had any questions.

Arvis Sneed asked where the sign would be.

Brad Teter stated it would be an off premise sign on property owned by Don Knight.

Keith Sells asked for any board comments.

Ron Hamm asked about the height of the sign.

Don Knight stated he was not sure yet.

Brad Teter stated it would be within the limits of the restrictions for strip mall zoning.

Keith Sells asked Don Knight for any comments.

Brad Teter asked the board for approval with the condition of using the zoning restriction outlined in the strip mall zoning district.

Dustin Huddleston asked to note the section in the zoning ordinance.

Brad Teter stated the section in the Edinburgh zoning ordinance as 156.210 as the standard for this sign.

Arvis Sneed made a motion to approve the sign under section 156.210 of the zoning ordinance, standard sign ordinance.

Don Knight said it would be a lit sign.

Arvis Sneed stated that it would be fine to be lit.

Brad Teter stated that was not part of the approval.


After some further discussion, Arvis Sneed made a motion to approve sign with lighting under ordinance 156.210, Richard Pile seconded. Keith Sells asked for a vote by raising right hand. All were in favor. Motion approved.

Dustin Huddleston informed the board that the meeting schedule they approved is contained in the rules and procedures and they need to approve the entire document.

Arvis Sneed made a motion to approve the rules and procedures document, Ron Hamm seconded. Keith Sells asked for a vote with showing of right hand. All were in favor. Motion approved.

There being no further business, Keith Sells made a motion to adjourn, Arvis Sneed seconded. Keith asked for a vote with the raising of right hand. All were in favor. Meeting adjourned.

  
Keith Sells, Chairman

  
Rhonda Barrett, Secretary