


OFFICE OF THE CITY ATTORNEY

TO: City Council President Brian Spencer and Members of the City Council

FROM: Lysia H. Bowling, City Attorney

DATE: February 6, 2017 

SUBJECT: City Council's Consideration of Item No. 6, February 9, 2017 City Council Agenda, captioned as Quasi-Judicial Hearing: Review of Architectural Review Board Decision - 165 E. Intendencia Street, Palafox Historic Business District, G-2, Signage

As guidance to City Council in its review of the decision of the Architectural Review Board in connection with the above-referenced agenda item, and in light of the unique facts which are specific to this application, I am providing you with the following analysis of pertinent sections of the Land Development Code ("LDC") and case law applicable to this review.

Background

This item before City Council is an appeal of the decision of the Architectural Review Board ("ARB") denying the YMCA's application for approval of internally illuminated signage on the exterior of a structure located within the Palafox Historic Business District at 165 E. Intendencia Street. Section 12-2-21 of the LDC pertains to applications for projects within the Palafox Historic Business District and requires applications for projects within the Palafox Historic Business District to be submitted to the ARB for review and approval.

A hearing was held on November 17, 2016 before the ARB for the review of the application of Complete Signs, LLC ("Applicant") on behalf of the YMCA, and it was denied. More specifically, the ARB approved the installation of the signage, but declined to approve ("denial") the Applicant's proposed internal illumination and location of such signage.

Incorrect Criteria Applied by ARB

LDC Section 12-2-21 regulates development standards in the Palafox Historic Business District and governs decision guidelines for review and approval by the ARB for review of applications for projects within the Palafox Historic Business District. LDC Section 12-2-21(F)(2) provides in relevant part that every decision of the ARB shall be in the form of a written order stating the findings of the board, its decision and the reason therefore. The ARB did not provide such a written order as required by law for the decision it rendered on November 17, 2016 denying the subject application. In the absence of such required written statement of findings and reasons underlying the ARB decision, the minutes are the only record available to evidence the basis of the ARB's decision.

As the minutes of the November 17, 2016 hearing reflect, this denial appears to have been based on the ARB's reliance and interpretation of LDC Section 12-2-10(A)(5)(d)2. Undoubtedly, LDC Section 12-2-10(A)(5)(d)2. provides a list of prohibited signs, including "internally illuminated signs." However, reliance upon such LDC section is erroneous. This LDC section does not apply to the Palafox Historic Business District. Rather, LDC Section 12-2-10 explicitly and exclusively applies to the Pensacola Historic District, the North Hill Preservation District and the Old East Hill Preservation District.

As described in more detail below, the applicable, and thus correct, LDC section upon which the ARB was required to rely is LDC Section 12-2-21, which pertains uniquely to the Palafox Historic Business District. Under LDC Section 12-2-21, the criteria for all signs located within the Palafox Historic Business District are enumerated in LDC Section 12-2-21(F)(4)(a). LDC Section 12-2-21(F)(4)(a) does not prohibit internally illuminated signage in the Palafox Historic Business District. The portion of LDC Section 12-2-21 applying to signage in the Palafox Historic Business District provides as follows:

(a) Signs. In the case of any proposed new or altered sign, that the sign will not impair the architectural or historical value of any building to which it is attached, nor any adjacent building, and that such sign is consistent with the theme and spirit of the block where it is to be located, and that such sign is consistent with the following provisions:

1.

Within the Palafox Historic Business District, signs protruding into or overhanging the public right-of-way are permitted subject to prior approval by the board, and are subject to removal on thirty (30) days' notice if the city actually requires the space for any public purpose. Such signs must be of a character and size consistent with maintenance of the

theme and character of the district. Existing overhanging signs are hereby approved and will not require further board approval unless altered.

2.

Businesses located within the Palafox Historic Business District may place one portable (two-sided A-frame) sign on the sidewalk adjacent to the business location subject to the following conditions:

a.

The maximum size of the sign shall not exceed two (2) feet wide by three (3) feet high;

b.

The sidewalk width shall be a minimum of eight (8) feet;

c.

A one-time fee of forty dollars (\$40.00) shall be paid to the City of Pensacola for a license to use the sidewalk for placement of a sign;

d.

A license to use agreement, with proof of insurance, shall be required to use an identified area of the sidewalk for locating a sign;

e.

The sign shall be removed from the sidewalk at the close of business hours daily;

f.

Signs shall require approval by the Downtown Improvement Board and Architectural Review Board.

3.

Rooftop signs are prohibited, provided the business for which the sign is erected remains continuously in business, existing signs violating this provision may continue in use. Upon application to and approval by the board, such existing signs may be permitted to remain in place for a longer period if the board finds that the sign is consistent with the theme and character of the district.

4.

Whirling and flashing signs attached to a building are prohibited, unless such signs replicate an original sign used at that location in the historical theme area. Balloon-type, portable or non-accessory signs are prohibited. (Emphasis added.)

Notably, none of the above-reference prohibitions apply to the type of internally-illuminated signage proposed by the Applicant. Furthermore, nothing in the ARB minutes indicates any evidence that such signage would be inconsistent “with the theme and spirit of the block where it is to be located” or that it would “impair the architectural or historical value of any building to which it is attached, nor any adjacent building”.

Florida Case Law on Burden of Proof for Denial

In a quasi-judicial municipal proceeding, the applicant bears the initial burden of proving that their application meets the requirements of the applicable ordinance. However, once the applicant meets their burden, the burden of proof then shifts to those who are seeking City Council’s denial of the application. *Irvine v. Duval County Planning Com’n*, 495 So.2d 167 (Fla. 1986). Once an applicant demonstrates that it meets the published requirements for its proposed land use, City Council may deny the request only where the party opposing the application shows by competent substantial evidence that the proposed use does not meet the requirements of the ordinance. See, *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202 (Dist. Ct. App. 2003) (emphasis added). The Florida Supreme Court has held that competent substantial evidence “has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred” and “such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.” *Id.* (emphasis added.) The Florida Supreme Court has further instructed that “the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the ‘substantial’ evidence should also be ‘competent.’” *Id.* This competent substantial evidence standard, to be adhered to by City Council at this hearing, has also been explained by Florida courts as follows: “under this standard, generalized statements in opposition to a land use proposal, even those from an expert, should be disregarded. ... [However,] relevant fact-based statements, whether expert or not, are to be considered. *Id.* at 204 (emphasis added).

Conclusion

An instructive case, the facts of which are analogous to the present matter, is *Naples v. Central Plaza of Naples, Inc.* In such case, the City of Naples’ denial of an application for a special exception was reversed due to the applicant’s satisfaction of all objective criteria provided for in the City’s zoning code in conjunction with the absence of any evidence in the record that the placement of a multi-residential complex would be incompatible with surrounding uses. *Naples v. Central Plaza of Naples, Inc.*, 303 So. 2d 423 (Fla. Dist. Ct. App. 2d Dist. 1974).

Here, the Applicant asserts that it has met all objective criteria provided for in the ordinance as it is not proposing to install any type of signage prohibited under LDC Section 12-2-21. Moreover, the ARB minutes (and, likewise, the lack of a written order) do not appear to provide any evidence that an internally illuminated sign would be inconsistent with the “theme and spirit of the block where it is to be located” or that it would “impair the architectural or historical value” of any adjacent structures.