

## MANATEE COUNTY BOARD OF ZONING APPEALS

June 13, 1963

A special meeting of the Board of Zoning Appeals was held on Thursday, June 13, 1963, at 1:30 P.M., with Chairman Fielding presiding. Board members present were: Verl Fielding; Oscar Smith, Sr; D. Vincent Wilder; Kenneth Pfister; Frank Larsen; and John D. Mallonee. Also present were Mr. Chas. Hess, Zoning Administrator and Mr. Kenneth Cleary, County Attorney.

Meeting called to order by Chairman Fielding.

Mr. Wilder moved that the minutes of the meeting of May 16, 1963, be approved as submitted. Mr. Pfister seconded. Motion carried.

APPROVED.

Mr. Fielding stated that the purpose of the meeting is a determination of a question concerning the ordinance, having to do with the relocation of non-conforming signs in areas where the right-of-way has been acquired by the County.

Mr. Wilder: I might say for the record that this matter arose as the result of the taking of a portion of the highway north of the river, where the land taken, including the land upon which such billboards existed and had been existing for some years and since September 1962, as non-conforming structures. The matter was brought by the sign people and the County Attorney, to the attention of the governing body, who felt that an interpretation of the meaning of the Ordinance should be brought to the Appeal Board for future decisions in these matters.

The number of signs at the present time are approximately 12, however, there will be some 100 signs which will fall into this category in the coming year or so and the sign people disagree with the interpretation placed upon Sec. 4 of the Ordinance by the administrative officials of the County in connection with this matter, therefore, the question before this Board is to determine whether or not a non-conforming sign which is located in a sign-free area, is permitted to be relocated upon the same owner's property.

Mr. Jim Wallace appeared representing the following, who were also present: Mr. Vehnekamp of Florida Sign; Mr. Jack Quinan of Florida Outdoor; Ralph Voight of Atlantic Advertising; Mr. King of King Signs, and Mr. Hempel of Ace Outdoor.

Mr. Wallace stated that the reason that these signs are non-conformities in this particular area, is because the area was designated on September 10, 1962, as a sign-free area. A sign free area permits signs of industries or organizations that are doing business on a particular location, -in other words, if you are manufacturing bottle caps, you could have a great big sign on your place which would say 'we manufacture good hard bottle caps' or 'we sell Coca-Cola'. The ordinance prohibits what are known as Class B or billboards which would be a sign for example advertising First Federal or something like that in this particular area. The 'sign free' doesn't mean free of signs, it means free of billboard signs which do not advertise on-location services and the like.

First of all, when a sign is located on a particular piece of property, the sign people take what is known as a lease. This lease does not prescribe the sign must be in this particular area or that particular area, but rather the signed lease gives them the right to put it on the entire property. Of course in locating the sign, they do locate it near the highway. They could locate anywhere on the property. The State Road Department and the sign people for years have always agreed to move these signs whenever a road comes through because all they do is move the signs back. They do that at their own expense, they do not make any charge at all to the county or the state because of the fact that if they did not move it the entire sign would be taken, and of course they would be entitled to compensation for the taking of the sign if they were to leave it there rather than to move it at their own expense.

In addition, a sign, just because it is moved back, does not actually materially change anything as far as the neighborhood is concerned, in other words, the area remains exactly the same, - it doesn't change the character or hinder it or anything like that--it remains just as it is--just maybe the sign will be moved back 20 feet or 15 feet--it will be moved back into a location where it could have been placed originally. There is no particular nuisance feature connected with the sign, it is something that is there and has been there before--it doesn't affect anybody, it doesn't make any noise, it is not objectionable, it also does not create additional vehicular traffic.

Mr. Wallace stated that there was no expansion at all because the sign is the same sign that was there before--you don't allow any additional signs or any additional size signs to be erected, in other words, the signs are the same, it is merely just the fact that it has been moved somewhat,--actually as an accommodation to all concerned, so under those circumstances I think that certainly the moving of a sign is proper and should be allowed.

Mr. Mallonee asked if the reason for the non-conformity, insofar as these signs are concerned, is because of some recent legislation or recent enactment of rules and regulations dating back in September of what year"

Wilder: 1962.

Wallace: The signs were already there at that time, when they created what is known as the 'sign-free area'.

Mallonee: Are these the same signs we are talking about?

Wallace: Exactly the same signs.

Wilder: Is it your contention, Mr. Wallace, I want to get clear in my own mind,--when you were discussing the items and standards in Sec. 4, B1, that this is not an expansion of a non-conforming use, but that this is a relocation of a sign which is non-conforming because of the sign free area and that the lease that you have permits you to locate this sign on any portion of the property which you have leased, and the moving of this sign 15 feet, 20 feet or 30 feet back from its present location would not be an expansion of the use of the area?

Wallace: Definitely not an expansion.

Wilder: It is merely a relocation of a sign to a more advantageous area either for you or the lessor.

Wallace: Yes. I might say the movement of a sign on a particular location is frequently a customary thing, in that perhaps there may be trees or something or other may grow up and may necessitate the sign be moved and is really a customary thing in a way, on the same property the sign has in the past been moved freely about, as well as to take care of road changes and things like that.

Mallonee: You stated that in September 1962 these signs became non-conforming by virtue of regulations. Was any regulation given by this body or any other county body relative to non-conforming uses as to the allowance of these to continue?

Wallace: They were allowed to continue for a period of three years from September 10, 1962.

Fielding: Your lease to the sign company provides that should the property be sold or should the owner desire to build on that property, the sign must come down. Is not this a case of the property being sold? Does the lease provide that if a portion of the property is sold that the lease applies to the remaining property?

Mr. Vehenkamp stated that there is an option in the lease that if the property is sold or that they decide to build and it is necessary to have that particular location, they can request it to be taken down or moved, -in most cases where property is sold from one land owner to another, unless the next land owner needs that particular site for his endeavor, the lease is just usually reassigned and the sign stays where it is. It is the property owner's option to request the sign to be taken down if he so desires, -if he sells the property or he decides to build in that particular location or requests it be removed--those options are many times put into the lease if the man wants them in--he puts them in--if he doesn't, he don't.

Wilder: It is your feeling, Mr. Wallace, that number 4 of the Administrative ruling, regarding enlargements of non-conforming signs, which was approved March 3, 1963 by the Administrative Director, which reads: "When lawfully existing signs are to be completely replaced and/or shifted for less than 100 feet to another lawful location, the permit for that sign shall be amended to show the replacement or shift. The fee shall be \$5.00 only." Is it your understanding in this matter that if you have a sign existing lawfully, as a non-conforming use on parcel 'A' which is 300' in depth and they take off 50' in the front, that you could shift this to the rear?

Wallace: Yes.

Fielding: You feel it comes under this administrative ruling?

Wallace: It permits us to shift them. We have had several other rulings too which permits certain shifts.

Wilder: Apparently it must be the administrative decision now that the land on which you are shifting this to, which would be in the rear of the presently located site would not be a lawful location--is that the controversy at hand?

Wallace: I think that is right. I do not know what grounds they used to deny it.

Larsen: In this, these people feel that they should move the signs back just until this period, until 3 years is up---they are not considering it as a permanent thing, but just until the time allowed.

Wilder: That's the law. I would like to get this in the record, under point 7 of the administrative ruling, it says, - "Signs which are non-conforming as to separation from other signs may be shifted in position on the same lot, provided that the shift does not increase the sign's non-conformity. \$5.00 permit only."

Is it your consideration that in this matter these signs being moved from the front to the rear of the same lot does not increase the non-conformity of these structures?

Wallace: No.

Mallonee: I keep going back to September 1962. This is when these signs became non-conforming. Now, under the condemnation proceedings of the county, my understanding is that if nothing is done, out they go and they will no longer be non-conforming, is that right? There will be no sign there. What you are asking for here, as I understand, is to go ahead and grant a new non-conforming use.

Wallace: We're just asking you to rule that under the provisions of the rulings that have already been made that we are actually authorized to move them back on the same piece of property.

Wilder: The record will show further, between the House Bill Chapter 59, 1542, House Bill 2017 Acts of '59, Special Acts, under 8.2 of the Act, gentlemen, it says, 'the governing body may adopt ordinances to control, regulate, establish, define and restrict in the unincorporated areas of Manatee County, the following matters to wit, -the height, number of stories, size, location, erection, construction, relocation, reconstruction, alteration, occupation and use of building or structures used for trade, commerce, dwellings, farming, industry, advertising or any other purposes.' Under the ordinances of non-conformities, Section 4, it gives the definition of non-conforming structure, in Sub. Sec. B, it states the definition of an expansion of a non-conformity and it says, 'except as provided in Paragraph D of this Section, no non-conformity shall be enlarged, extended or changed to a different non-conformity except upon recommendation of the commission after public hearing, with due public notice, and approval of the governing body.'

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Nowhere in this section does it mention the word 'relocate' or 'relocation', but no where throughout all of Section 4 does it mention the word 'relocate'. I think that is the matter for our consideration, whether or not it is the intent, whether or not the ordinance says you may not relocate on the same property, a non-conforming structure or use. It does permit dwellings to be enlarged on all portions of the lot upon which that dwelling is located, providing it meets the requirements of the setback regulations in the R-1 District. It permits repairs, maintainance and improvements but it does not say the word relocation; it permits mobile homes to be replaced by a new mobile home, upon application and approval, but only insofar as mobile homes are concerned, with no mention of any other structure as to replacing on the same property.

Smith: I would like to ask our attorney, -does administrative ruling have the force of the law?

Cleary: Until you change it. Administrative ruling is an order by the Zoning Administrator which has the force of the whole ordinance until somebody appeals it to this Board and this Board either agrees with it or disagrees with it.

Fielding: Do you have any statement you would like to make concerning this question?

Cleary: No, I think it is a matter of interpretation.

Wilder: Would you say, Mr. Cleary, that the administrative ruling would cover this situation that they have, that Ruling 4 and 7, I believe, would cover the situation which is now existing here and whether or not we should consider that in our interpretation of the ordinance and the administrative ruling as being correct or incorrect.

Cleary: Part of it would apply. Number 4 says "when lawfully existing signs are to be completely replaced and/or shifted", which means relocated for less than 100' to another lawful location.

Mr. Wilder recommended that the Board go into session and discuss the matter. Mr. Fielding called a recess.

After the recess, Mr. Fielding again called the meeting to order, stating that Mr. Larsen had to leave after the session.

Mr. Pfister moved, Mr. Smith seconded that the Public Hearing be closed. Motion carried.

PUBLIC HEARING CLOSED.

Mr. Wilder moved, Mr. Pfister seconded that the following resolution be adopted.

RESOLUTION OF DETERMINATION

As a result of consideration of the testimony and evidence given at the hearing in connection with whether or not Section 4 of the Ordinance prohibits the relocation of non-conforming advertising signs, not only Class B, but all such advertising signs, to a different location upon the same lot is not permitted, the Board has found and arrived at the following conclusions.

The 1959 Enabling Act provides in Section 8.2, Ordinances, that the governing body may adopt ordinances to control the height, size, location, erection, construction and relocation of structures used for advertising.

However, Section 4, Non-conformities, of the Zoning Ordinance as now written, is silent as to relocation of non-conformities.

The Ordinance does permit any non-conforming use to be enlarged, extended or changed to a different non-conformity, after a public hearing and approval of the governing body.

Inasmuch as the Enabling Act permits insertion in the ordinance the control of relocation of any structure used for advertising purposes and Section 4 of the Zoning Ordinance does not restrict the relocation of such structures, and the relocation of a non-conforming sign on the same owner's property does not appear to be an extension, enlargement or change of a non-conforming use, as outlined in Section 4, Paragraph B of the Ordinance, it would appear that the relocation of said sign on the same property would not be prohibited by the Ordinance as now written, and that such relocation would not require a public hearing, as long as the other requirements and administrative decisions made prior to this date are met.

However, properly to interpret the question at hand, it appears it is also necessary to determine the reasonableness of the three-year limitation contained in Section 20J, Sub-section B. This appears to be a reasonable limitation as to non-conforming signs. When read with the other sections in question, it seems inequitable not to allow the relocation.

It is, therefore, the determination of this Board that Section 20J, Sub-section B is a reasonable and fair requirement and it is further the determination of this

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Board that Section 4 of the Ordinance does not control the relocation of a non-conforming sign on the same owner's property if the other requirements and administrative decisions made prior to this date are met, and I, therefore, move that the following resolution be adopted, embodying this determination.

Mr. Fielding polled the Board. Voting as follows:

Smith-'Aye'; Mallonee-'Aye'; Wilder-'Aye'; Pfister-'Aye';  
Fielding-'Aye'. Motion carried.

UNANIMOUSLY APPROVED.

Meeting adjourned 3:05 P.M.

APPROVED:

  
Chairman