

== NOTICE OF MEETING ==

BOARD OF ADJUSTMENT

Regular Meeting – November 15, 2018 – 7:00 p.m.
Council Chambers – Branson City Hall – 110 W. Maddux Street

AGENDA

CALL TO ORDER

ROLL CALL

BOARD BUSINESS

- 1) Approve Minutes
 - a. October 18, 2018

OLD BUSINESS

- 2) Approve Findings of Fact
 - a. Project No. 18-19.1: 3103 W. State Highway 76 (October 18, 2018)
Applicant: Limeade Hospitality, LLC/Jerry Emery

PUBLIC HEARING AGENDA ITEMS

ADJOURN

Where Values are the Difference

NOVEMBER: INTEGRITY

Doing the right thing, even when no one is looking.

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Lisa Westfall, City Clerk, 417-337-8522

Posted: November 8, 2018

At: _____ By: _____

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BOARD OF ADJUSTMENT

October 18, 2018

CALL TO ORDER

Chairperson Keller called the City of Branson’s Board of Adjustment meeting to order at 7:00 pm in the City Hall Council Chambers, 110 W. Maddux Street, Branson, Missouri.

ROLL CALL

Board Members Present: Jim Babcock, Doug Baker, Kevin Huddleston and Chairperson Bob Keller

Board Members Absent: Vice-Chairperson Richard Miles

Staff Present:

Joel Hornickel	Director of Planning and Development
Perry Eckhardt	Senior Planner
Amy Jackson	Planner
William Duston	City Attorney
Chris Lebeck	Assistant City Attorney

BOARD BUSINESS

1. Approve Minutes.
 - A. August 24, 2017

MOTION:

Motion by Board Member Baker and seconded by Board Member Huddleston to approve the minutes of the August 24, 2017 meeting.

AYES: Board Members Babcock, Baker, Huddleston and Chairperson Keller
NOES: None
ABSTAIN: None
ABSENT: Vice-Chairperson Miles

Motion to approve the minutes of the August 24, 2017 meeting carried with a 4-0 vote.

OLD BUSINESS

None

PUBLIC HEARING AGENDA ITEMS

- 2. Request for a Variance from Section 70-292 Pertaining to a Nonconforming Sign within the Property Located at 3103 W. State Highway 76, Branson, Missouri.
Project No. 18-19.1 (18-01900001)
Applicant: Limeade Hospitality, LLC

Speakers: Mr. Joel Hornickel and Ms. Chelsea Emery

MOTION:

Motion by Board Member Baker and seconded by Board Member Babcock to grant the Variance from Section 70-292 Pertaining to a Nonconforming Sign within the Property Located at 3103 W. State Highway 76, Branson, Missouri.

AYES: Board Members Babcock, Baker and Chairperson Keller
NOES: Huddleston
ABSTAIN: None
ABSENT: Vice Chairperson Miles

Motion to grant the Variance for the property located at 3103 W. State Highway 76, Branson, Missouri, failed with a 3-1 vote per Branson Municipal Code Section 94-155(d)(4).

MOTION:

Motion by Board Member Babcock and seconded by Board Member Baker to have the Findings of Fact for Project No. 18-19.1 prepared by the City Attorney.

AYES: Board Members Babcock, Baker, Huddleston and Chairperson Keller
NOES: None
ABSTAIN: None
ABSENT: Vice Chairperson Miles

Motion to have the Findings of Facts for Project No. 18-19.1 prepared by the City Attorney carried with a 4-0 vote.

ADJOURN

MOTION:

Motion by Board Member Babcock and seconded by Board Member Huddleston to adjourn the meeting at 7:27 pm.

- AYES: Board Members Babcock, Baker, Huddleston and Chairperson Keller
- NOES: None
- ABSTAIN: None
- ABSENT: Vice Chairperson Miles

Motion to adjourn the October 18, 2018, Board of Adjustment meeting carried with a 4-0 vote.

Bob Keller, Chairperson

Date

Amy Jackson, Planner

Date

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FOR THE BOARD OF ADJUSTMENT OF THE CITY OF BRANSON, MISSOURI
PROJECT NO. 18-19.1 (18-01900001): LIMEADE HOSPITALITY, LLC/JERRY EMERY

INTRODUCTION

Limeade Hospitality, LLC., by and through its agent, Jerry Emery, (hereafter Applicant) requested a variance from Branson Municipal Code Section 70-292 pertaining to a nonconforming sign within the property located at 3103 W. State Highway 76. The variance requested the existing nonconforming sign to be classified as a conforming sign so future upgrades or alterations can be made.

FINDINGS OF FACT

- 1.1 The Applicant's property containing the nonconforming sign is located at the northwest corner of the intersection of W. State Highway 76 and Francis Street as identified in Exhibit B.1 and B.2 provided in the Planning and Development staff report signed and dated October 10, 2018 and made a part of the record.
- 1.2 The Applicant's property containing the nonconforming sign is currently zoned Entertainment (ENT) district as defined by Branson Municipal Code Chapter 94.
- 1.3 Applicant also owns the business "Angel Inn – By the Strip" which has an address of 3029 W. State Highway 76.
- 1.4 The "Angel Inn – By the Strip" property is currently zoned Community Commercial (CC) district as defined by Branson Municipal Code Chapter 94.
- 1.5 "Angel Inn – By the Strip" is physically located off of W. State Highway 76 on Francis Street.

- 1.6 “Angel Inn – By the Strip” and the subject property are not contiguous as they are separated by Francis Street and approximately 113 feet as shown in the attached Exhibit A.
- 1.7 The subject sign is used to advertise “Angel Inn – By the Strip” on Highway 76 to Highway 76 traffic as demonstrated in Exhibit C.1 provided the Planning and Development staff report signed and dated October 10, 2018 and made a part of the record.
- 1.8 The subject sign is nonconforming in displaying off-premise advertising of “Angel Inn – By the Strip” as demonstrated in Exhibit C.1.
- 1.9 “Angel Inn – By the Strip” has signage on its own property at 3029 W. State Highway 76 as demonstrated in the previous referenced Exhibit C.1.
- 1.10 The subject sign is also nonconforming as it does not meet the ten-foot setback requirement along Francis Street.
- 1.11 The Applicant has requested that the sign on the subject property be classified as a conforming sign so future upgrades or alterations can be made.
- 1.12 On October 2, 2018, the Applicant filed a variance request application with the Planning and Development Department on behalf of the Board of Adjustment (hereafter the BOA) under the powers granted to it under Branson Municipal Code Section 94-155(d).
- 1.13 The City of Branson has regulations codified in Branson Municipal Code Section 70-292 concerning nonconforming signs. That code states as follows:
- Sec. 70-292. - Legal nonconforming signs.
- (a) Where a lawful sign exists at the effective date of adoption of the ordinance from which this chapter is derived, or amendment of this chapter, that would be illegal under the terms of this chapter, such sign may be continued so long as it remains otherwise lawful, subject to the provisions of this section.
- (b) Any proposed change to a nonconforming sign, excluding general repairs, maintenance and advertising copy, shall require the sign to be brought into conformance with this chapter.
- (c) If greater than 50 percent of such nonconforming sign is damaged by any means, it shall be considered destroyed and shall not be brought back into service or use except in conformity with the provisions of this chapter.

- (d) No such nonconforming sign or sign structure may be altered in any way that increases its nonconformity.
- (e) Alternations to a nonconforming sign or sign structure may be made, provided that the alterations eliminate its nonconformity.
- (f) When a permit has been obtained, temporary removal of any portion of a sign for repairs or general maintenance shall not be considered to be in violation of this article, provided that no alterations are made to the sign or sign structure.
- (g) Should such sign or sign structure be moved for any reason and over any distance whatsoever, it shall thereafter conform to all regulations for the distance in which it is located after it has been moved or relocated. Any sign temporarily removed by a public utility company, the city, or any governmental agency to accommodate repair or maintenance, or expansion operations may be replaced, provided that there is no change in size, height or location of the sign.
- (h) If any sign is moved as a direct result of a public street expansion, it may be relocated to a position determined by the city engineer to be appropriate in relation to the expansion project, and such a sign shall not be considered nonconforming for the reason of separation. No permit shall be required for such replacement.

1.14 To be granted a variance, the Applicant must meet certain criteria found in Branson Municipal Code Section 94-155(d)(2). That Section states as follows:

- (d) *Powers and duties.* The board of adjustment shall have the following powers and duties:
 - (2) *Variances—Conditions governing applications, procedures.* To authorize upon appeal in specific cases such variance from the bulk or area regulations of this chapter, as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:
 - a. A written application for a variance is submitted demonstrating:
 - (i) That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other land or structures in the same district;
 - (ii) That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
 - (iii) That the special conditions and circumstances do not result from the actions of the applicant;
 - (iv) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district.

No nonconforming use of neighboring lands or structures in the same district, and no permitted or nonconforming use of land or structures in other districts, shall be considered grounds for the issuance of a variance.

- b. Notice of public hearing shall be given as is outlined in the proceedings of the board of adjustment.
- c. The public hearing shall be held. Any party may appear in person, by agent or by attorney.
- d. The board of adjustment shall make findings that the requirements of subsection (d)(2)a of this section have been met by the applicant for the variance.
- e. The board of adjustment shall further make a finding that the granting of the variance is the minimum variance that will make possible the reasonable use of the land or structure.

In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under this chapter.

1.15 Applicant, with the application and during the Board of Adjustment hearing on October 18th , laid out their arguments to satisfy the four-part variance test in Branson Municipal Code Section 94-155(d)(2)a.

1.16 As provided for in Branson Municipal Code Section 94-155(c), a hearing date was set within a reasonable time, not to exceed thirty days, but giving seven days' public notice to the interested parties.

CONCLUSIONS OF LAW

2.1 The Board of Adjustment has jurisdiction to hear and decide this matter. The Applicant's application was filed in a timely matter.

2.2 The notice requirements of Branson Municipal Code Section 94-155 have been satisfied as shown by Exhibit D.1 and E.1 provided by the Planning and Development staff report signed and dated October 10, 2018 and made a part of the record.

2.3 At the time of the October 18, 2018 hearing, the Applicant's sign was a legal nonconforming use. A legal nonconforming use of land means a use of land which lawfully existed prior to the enactment of a zoning ordinance and which is maintained after the effective date of the ordinance even though not in compliance with the new use restrictions. *Rose v. Board of Zonings Adjustment Platte County*, 68 S.W.3d 507 at 515.

- 2.1 Branson Municipal Code, in Section 70-2 defines an off-premise sign as a “*Sign, off-premises*, means any sign advertising products, services, uses, or enterprises sold or offered at a location other than the premises where the sign is physically located.”
- 2.2 Because nonconforming uses detract from an overall zoning scheme, they are not favored in the law. *Burns v. City of Des Peres*, 534 F.2d 103 (1976).
- 2.3 The proper policy of zoning legislation is to phase out nonconforming uses. *Boyce Industries Inc. v. Missouri Highway and Transportation Commission*, 670 S.W. 2d 147 (1984).
- 2.4 Missouri case law clearly has upheld the ability of municipalities to limit the amount of repair or alterations to a non-conforming use. *Caskey v. Edwards*, 107 S.W. 37 (1908). In this case, the Applicant intends to make future repair and upgrades to portions, or all of his non-conforming sign.
- 2.5 With a proper ordinance, alteration that prolongs the life of a non-conforming use can show abandonment of that use. *Martin Oil Co. v. Missouri Highway & Transportation Commission*, 2 S.W. 3d 144. The City’s ordinance on such matters is Branson Municipal Code Section 70-292 previously reference and cited in paragraph 1.13 above.
- 2.6 The variance request of the Applicant to ignore the setback requirement and off-premises use of the sign and reclassify the sign as a conforming sign does not meet the four code requirements found in Branson Municipal Code Section 94-155(d)(2)a.
- 2.6.1 First, there are no special circumstances peculiar to the land or structure. The sign simply advertises a property that does not physically touch W. State Highway 76, but is rather physically located on Francis Street, “Angel Inn – By the Strip.” There is nothing in the record to indicate that sign or the subject property on which the sign sits is unique. Furthermore, the noncontiguous property on Francis Street of which the sign advertises already carries its own signage as shown in previously referenced Exhibit C.1.
- 2.6.2 Second, a literal interpretation of the chapter does not deprive the applicant of rights commonly enjoyed by other properties in the same district. There has been no showing or demonstration

on the record by the Applicant or the Planning and Development Department of other properties that enjoy the same off-premises advertising on W. State Highway 76 for properties that do not physically touch W. State Highway 76. Additionally, there has been no showing or demonstration by the Application or the Planning and Development Department of any other properties that have signs that enjoy the same placement contrary to the ten-foot set back requirement.

2.6.3 Third, the special conditions and circumstances do result from the actions of the Applicant. The subject property with the non-conforming sign was purchased and transferred after the “Angel Inn – By the Strip” was purchased and transferred as outlined in Exhibit A.5, A.6, A.7, and A.8 provided by the Planning and Development staff report signed and dated October 10, 2018 and made a part of the record.

2.6.4 Fourth, that granting the variance requested will confer on the Applicant a special privilege that is denied by this chapter to other lands or structures in the same district. If this variance is granted it will allow the Applicant to make improvements and enjoy a setback of a sign that advertises a property and business, “Angel Inn – By the Strip” that is not physically on W. State Highway 76. The subject property upon which the sign sits is noncontiguous to the property of “Angel Inn – By the Strip” and is in fact separated by Francis Street and approximately 113 feet as shown in Exhibit A attached. No evidence has been presented into the record of other lands or structures of similar nature in the same district that have been afforded the same privilege.

2.7 The variance request was denied with a vote of three (3) in favor of the variance and one (1) against.

DECISION TO DENY VARIANCE

Based on the foregoing Findings of Fact and Conclusions of Law, the Branson Board of Adjustment by the authority granted to it by Branson Municipal Code Section 94-155 denies the request of the Applicant for a variance from Branson Municipal Code Section 70-292 pertaining to a nonconforming sign within the property located at 3103 W. State Highway 76. The Board of Adjustment Chairman is hereby authorized to sign these Findings of Fact, Conclusions of Law, and Decision.

These findings of Fact and Conclusions of Law are adopted by the City of Branson's Board of Adjustment on _____, 2018.

Board of Adjustment, For the City of Branson,
Missouri

_____, Chairperson
Bob Keller

Approved as to Form

Christopher W. Lebeck, Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the applicant, via First Class U.S. Mail, but sending a copy to _____ located at _____, on this ____ day of _____, 20____.

EXHIBIT A

