

DRAFT

**CITY OF LA VISTA
LA VISTA BOARD OF ADJUSTMENT MEETING
January 9, 2008
6:00 P.M.**

The Board of Adjustment of the City of La Vista, Nebraska was convened at 6:00 p.m. on January 9, 2008 at the La Vista City Hall, 8116 Park View Boulevard. Members present were: Malmquist, Jordan, McCormick, Paulsen, and McEneaney. Also present were Marcus Baker, Planner and Ann Birch, Community Development Director.

Legal notice of the public meeting was published in The Papillion Times. Notice was simultaneously given to all members of the Board of Adjustment. All proceedings shown were taken while the convened meeting was open to the public.

1. Call to Order and Roll Call

The meeting was called to order by Chairperson McCormick at 6:02 p.m. and roll call was taken.

2. Approval of Agenda

Malmquist motioned to approve the agenda. Paulsen seconded. Ayes: Malmquist, Jordan, McCormick, Paulsen, and McEneaney. Nays: None. Motion carried.

3. Approval of Minutes of March 15, 2007

Jordan moved to approve the minutes of March 15, 2007. Malmquist seconded. Ayes: McCormick, Paulsen, Jordan, Malmquist and McEneaney. Nays: None. Minutes were approved.

4. Old Business

None

5. New Business

A. Elections of Officers (Chairperson, Vice-Chairperson, Secretary)

Annual elections of officers to include Chairperson, Vice-Chairperson and Secretary. Current BOA members include:

Lou McEneaney
Dean Paulsen, Vice-Chair
Mike McCormick, Chairperson
Randy Jordan, Secretary
Gayle Malmquist, Planning Commission member

Malmquist nominated

McCormick as Chairperson,
Paulsen as Vice-Chairperson, and
Randy Jordan as Secretary.

McEneaney seconded the nominations. No further nominations were made. Ayes: Malmquist, Jordan, McEneaney, Paulsen and McCormick. Nays: None. Nominations stand.

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The following persons were elected into these positions:

Chairperson: Mike McCormick
Vice-Chairperson: Dean Paulsen
Secretary: Randy Jordan

B. SUBJECT: Request for Variance to Section 7.01.05(3) of the City of La Vista Zoning Ordinance; Request for second wall sign at Young Chiropractic and Rehabilitation Center.

i. **Staff Report:** The applicant, Young Chiropractic and Rehabilitation Center (Karen and Dr. Peter Young) located at 9825 Giles Road, Suite F, La Vista, NE 68128 has requested a variance to Section 7.01.05(3) of the City of La Vista Zoning Ordinance in order to place a second wall sign at their location. The property owned by One Giles Place, LLC, is located on Lot 251, Val Verde Subdivision on 1.45 acres and is zoned C-1, Shopping Center Commercial. Suite F specifically is 1,000 sq. ft.

The following definitions are described in Section 2 of the La Vista Zoning Ordinance:

FRONTAGE shall mean that portion of a parcel of property which abuts a dedicated public street or highway.

SIGN shall mean and include any outdoor sign, display, declaration, device, figure, drawing, illustration, message, placard, poster, billboard, insignia, or other things which are designed, intended, or used for direction, information, identification, or to advertise, to inform, or to promote any business, product activity, service, or any interest.

SIGN, WALL shall mean any sign attached parallel to, but within eight inches of, a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

SIGN, WINDOW shall mean any sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

Background:

Lot 251, Val Verde Subdivision has two buildings constructed on it. These are commercial flex buildings. The building on the eastern portion of the lot has frontage to a private drive accessing the subdivision and to Giles Road. The building on the western portion of the lot only has frontage to Giles Road.

Young Chiropractic is located in Suite F, which is located in the building on the western portion of the property. The Suite extends the full width of the building, and its north wall faces Giles Road. The storefront faces east and is the only entrance provided to the public. The west face of the building is for loading and unloading and presumably employee parking. The north face of the building has emergency exits along the wall.

Applicable La Vista Zoning Regulations:

Section 7.01.05

3. ***Wall Signs***

- A. All wall signs shall be mounted to the primary face of the use, *unless otherwise substituted by the Building Official. (Ordinance No. 988, 4-18-06)*
- B. The following criteria apply to Wall Signs:

District	Design Limitations for Wall Signs		
	Max. Size	Max. Height	Max. Number
TA	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One (1) per storefront Dual Frontage = one (1) additional Wall Sign may be used provided the combined total area does not exceed 150% of the initial allowable area.
R-1			
R-2			
R-3			
R-4			
C-1	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One (1) per storefront Dual Frontage = one (1) additional Wall Sign may be used provided the combined total area does not exceed 150% of the initial allowable area.
C-2	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One (1) per storefront Dual Frontage = one (1) additional Wall Sign may be used provided the combined total area does not exceed 150% of the initial allowable area.
C-3	2.5 square feet per lineal foot of building / storefront to a Max. of 600 sq. ft.	45 feet above grade	One (1) per main frontage One (1) additional Wall Sign may be used provided the combined total area does not exceed 150% of the initial allowable area.
I-1	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One (1) per main frontage Dual Frontage = one (1) additional Wall Sign may be used provided the combined total area does not exceed 150% of the initial allowable area.
I-2	1.5 square feet per lineal foot of building / storefront to a Max. of 400 sq. ft.	45 feet above grade	One (1) per main frontage Dual Frontage = one (1) additional Wall Sign may be used provided the combined total area does not exceed 150% of the initial allowable area.
PUD	The maximum allowed within the underlying zoning district, or otherwise prescribed in the approved P.U.D Plan of said lot/development.	The maximum building height allowed in the approved P.U.D Plan of said lot/development.	The maximum allowed within the underlying zoning district, or otherwise prescribed in the approved P.U.D Plan of said lot/development.

The owners applied for two wall signs for their business; however, the code only allows one wall sign per storefront or two wall signs if the business has dual frontage. The business has one storefront and the business has frontage to only one street (Giles Road); therefore, only one wall sign was approved by Planning Staff. The applicants were given their choice of whether they wanted the wall sign to be facing the parking lot to the east or towards Giles Road to the north. The applicants were also given the option of having a window sign on the storefront door or windows.

The applicants chose to construct a wall sign facing the parking lot to the east and are pursuing their request to also have an additional wall sign facing Giles Road to the north. No other types of signs have been requested.

La Vista Zoning Ordinance Section 8.03.03.01 and Nebraska Revised State Statutes Section 19-910:

The Board of Adjustment shall authorize no such variance, unless it finds that:

1. The strict application of the Ordinance would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

Bylaws and Rules of Procedure of the City of La Vista Board of Adjustment – Section 7, Specific Requirements in Approval of a Variance:

In any action by the Board with regard to approval of a variance, such action shall be taken in accordance with the limitations of Nebraska law and the requirements and limitations of the applicable City Zoning Regulations and these Rules of Procedure. In any action to approve a variance, the Board shall make findings which shall be recorded in the minutes of the Board that:

A. The strict application of any applicable provision of the applicable City Zoning Regulation would, in each specific variance petition, result in at least one of the following:

1. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in questions;

Staff Analysis: Not applicable

2. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exception topographic conditions on the piece of property in questions;

Staff Analysis: Not applicable

3. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.

Staff Analysis: All tenants of the west building would only be allowed one wall sign. The applicants situation is not extraordinary or exceptional due to any conditions of the property. The lot has two buildings, but only one of which has frontage to a second street.

B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that EACH of the following requirements for authorizing a variance can be met:

1. Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable City Zoning Regulations;

Staff Analysis: The purpose and intent of the sign regulations is “to encourage the effective use of signs as a means of communication in the city; to maintain and enhance the aesthetic environment and the city’s ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; to minimize the possible adverse effect of signs on nearby public and private property; and to enable the fair and consistent enforcement of these sign regulations.” The public good would not be substantially impaired, but Planning Staff does strive to enforce the sign code fairly and consistently. If there is only one frontage, then the provision is for one wall sign in the C-1 Zoning District.

2. The strict application of the applicable requirements of the applicable City Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;

Staff Analysis: The one allowable wall sign could have been placed on the North wall facing Giles Road for good exposure. Staff believes the hardship was self-imposed by placing the wall sign facing the parking lot.

3. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

Staff Analysis: Other tenants in the same building on this lot will have the same limitations on wall signs. Only one wall sign will be allowed per business and only one business will be allowed to use the North facing wall to Giles Road.

4. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance;

Staff Analysis: Some adjacent properties are allowed two wall signs, but those properties have dual frontage.

5. The authorization of a variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;

Staff Analysis: Characteristics of the property do not necessitate a hardship – there are no topographic constraints or irregular shaped lots.

6. The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable City Zoning Regulations.

Staff Analysis: The lot is a typical development that has commercial flex space for multiple tenants. A change to the sign regulations would change the rules for many and allow many more signs in the future, which starts to detract from the aesthetic environment.

ii. **Public Hearing:** Malmquist motioned to open the public hearing. Jordan seconded. Ayes: McCormick, Paulsen, Jordan, Malmquist and McEneaney. Nays: None. Public hearing was opened at 6:11 p.m.

Dr. Peter Young and wife, Karen appeared as applicants to request a second sign for their business in Val Verde. He said this is their first business and they were unaware of all the ordinances and felt that the property owner had failed to inform him of all the rules and ordinances. The applicant contends that the other businesses near them have been allowed two signs. These decisions were based on code interpretations which suggested that the other businesses have public streets on two sides of their facilities which allow for a sign on each public street. Dr. Young argues that one of those public streets is in fact NOT a public street, based on the definitions of a public street. He has spent a great deal of money purchasing two signs and is not allowed to display one of them. He reports his clientele has had difficulty finding his business. As a new business he relies on visibility and they are currently not getting any business "off the street" due to lack of visibility. Young stated that they were advised by the city that they could erect their sign on the north side of the building as opposed to above the door where it currently is. However, they had already purchased the signs and the second sign was measured for above the door and not for the north wall display.

Dr. Young asks that since the other businesses were allowed second signs, the city should allow a second sign on his business to conform to decisions previously made.

Dr. Young states he chose the end bay, with a higher lease, because he thought the visibility would be exceptional due to the busy Giles Road, but since he has been denied the north wall sign, he does not have the visibility he had desired. His referrals from current patients have had difficulty locating his practice because they cannot see his sign and have gone to the "other" chiropractor also located in Val Verde. Dr. Young states that to market his practice he has visited area businesses, hosted a grand opening, conducted public presentations, designed a temporary sign, and offered free first visit services for new clients.

Malmquist asked which contractor they had used for their signage. Dr. Young said his sisters' cousin owns a sign company. That person created their signs and *then* applied for a permit. He went on to state that perhaps he should have used a sign contractor familiar with the area.

Jordan asked when the practice had opened. Young said they opened the first week of November (2007).

Paulsen asked if their sign contractor was licensed. Young said they constructed signs throughout Nebraska.

Jordan verified that the applicants had been given a choice to put the sign on one side or the other. Young said that was correct, but the signs were measured and sized for specific areas of the building and the one for the door was not suitable for the north wall. The door sign is an illuminated sign (as specified by their lease) and could not go on the north wall.

Jordan asked if there is a power outlet on the north side of the building. Young said he did not know.

Paulsen asked what the city staff's stance is now on the other properties that were granted second signs in the past. Baker said in the strictest sense of the code, the other signs would not be allowed because the street that enters the Val Verde business area is not a public street. At the time the other businesses applied for second signs, this same street was interpreted as a public thoroughfare and thus the other two businesses were allowed two signs. The request for a second sign for Young Chiropractic would be even more of a stretch when interpreting the sign code than previous businesses.

McCormick stated he saw the points Dr. Young was making. However, he didn't feel as if the board could determine that Dr. Young could not have his second sign when the other businesses had been allowed.

Jordan agreed, but both agreed that they had to enforce the codes of the city.

Malmquist voiced difficulties in granting the variance as much as she would like to sympathize with the applicants. Based upon state code and the requirements forced upon the board for granting the variance, she did not feel in support because it did not seem as if any of the criteria to allow the variance had been satisfied.

Malmquist cited the following: the applicant does not have an irregularly shaped lot; no practicable or exceptional topographic difficulties; and no extraordinary or exceptional situation – nothing which seems to justify any hardship in any of the required instances required by state code. Item B gives no leeway. The one sign should have been placed along Giles Road and sized appropriately.

Paulsen clarified that a sign had already been made for the north wall. Young said yes, but they had to make a choice whether to put it on the north side or the east. However, their lease requires an illuminated sign over the door.

Jordan asked the size of the illuminated sign above the door. Young was not sure of its dimensions. He explained that the sign over the door says Young Chiropractic and the sign on the north wall would have given the logo and the name of the business Young Chiropractic and Rehabilitation Center. Dr. Young apologized for being inexperienced with his lack of research on such issues starting his first business.

Jordan said he felt sympathy for the business but the Board is bound by the statutes of the State of Nebraska.

Young replied that his hardship is self-imposed, but it does exist whether it is his fault or not. He has a reputable business and simply the lack of a sign can make or break his business. He needs to reach people. Young feels that exceptions have already been given to the other businesses and he should be granted a variance.

Paulsen inquired if they have to have a lighted sign over their door, could they also have a window sign? Baker said they could do a window sign as well.

Young felt that no other business would have his same situation because of their locations. With other new developments coming along Giles Road, he asked that the city start to enforce the rules when those came in, as opposed to starting them now with his business.

Baker said the third hardship is listed as extraordinary or exceptional situations. He said this would be a hardship that the board could consider if they felt the location was under an extraordinary situation.

Malmquist said she did not think this applied as there are buildings similar to this elsewhere. Dr. Young selected this particular facility because of its frontage to Giles Road, yet he was not able to take advantage of that like he could have. The sign should be on the north wall. He has the opportunity to do that by removing the other sign over the door.

Young asked how that could be defended if it is not deemed a public road or highway. Malmquist said she sees it as public access. Young said the definition in the ordinance says it has to be a public street or highway and it does not fall into those definitions. He inferred the term was being bent as far as it could, yet it does not apply at all. Malmquist advised that street frontage along Giles would be determined as the frontage for this business location.

Paulsen said the only solution he could see is to take the one down and put it up on the north side. Jordan asked if permission had been asked to the owner of the building to waive compliance with having an illuminated sign for the door. Young said he had not but the property owner was aware of the variance request with the City.

Paulsen said we must abide by state laws. Young asked that the board make their decision based on what the other businesses were allowed, which were allowed by the city.

Jordan motioned to close the public hearing. Paulsen seconded. Ayes: McCormick, Paulsen, Jordan, Malmquist and McEneaney. Nays: None. Public hearing was closed at 6:38 p.m.

Recommendation: McCormick motioned to recommend approval in support of the variance request on the basis of hardship of peculiar and exceptional practical difficulties or undue hardship upon the owner because the access street is not a public street and that two other businesses were granted two signs. Jordan seconded. Ayes: McCormick, Paulsen, Jordan and McEneaney. Nays: Malmquist. With a 4 to 1 vote the motion is approved.

It was suggested to Dr. Young that he re-submit an application for his second sign immediately. The temporary sign, currently displayed, will be taken down due to its expiration.

Jordan felt that the issue of the public access road versus a public road should be investigated.

McCormick added that there are more holes in the signage ordinance than any other in the city which need to be worked out.

General discussion occurred.

6. Adjournment

Jordan motioned to adjourn the meeting. Malmquist seconded. Ayes: Jordan, McEneaney, McCormick, Paulsen, and Malmquist. Nays: None. Meeting adjourned. The meeting was adjourned at 6:48 p.m.

Reviewed by BOA Secretary: Randy Jordan

Recording Secretary

Board of Adjustment Chair

Approval Date