



**TOWN OF LAKE PARK  
PLANNING & ZONING BOARD  
MEETING MINUTES  
AUGUST 4, 2014**

**CALL TO ORDER**

The Planning & Zoning Board Meeting was called to order by Chair Judith Thomas at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

Judith Thomas, Chair	Present
Erich Von Unruh, Vice-Chair	Present
Michele Dubois	Present
Martin Schneider	Present
Ludie Francois	Excused

Also in attendance were Thomas Baird, Town Attorney; Nadia DiTommaso, Community Development Director; Debbie Abraham, Town Planner, and Kimberly Rowley, Recording Secretary.

Chair Thomas stated that she would like to reorder the Agenda so that the Application for Variances would be heard first. The Town Attorney stated that the Board would be required to present a motion to reorder the Agenda. Chair Thomas requested a motion to reorder the Agenda so that *New Business Item "B"* would be heard first. Vice-Chair Von Unruh made the motion and it was seconded by Board Member Schneider. The vote was as follows:

	<b>Aye</b>	<b>Nay</b>
Judith Thomas	X	
Erich Von Unruh	X	
Michele Dubois	X	
Martin Schneider	X	

**The Motion carried 4-0 and the Agenda was reordered.**

**APPROVAL OF AGENDA, AS AMENDED**

Chair Thomas requested a motion for approval of the Agenda, as amended. Board Member Schneider made the motion and it was seconded by Vice-Chair Von Unruh. The vote was as follows:

	<b>Aye</b>	<b>Nay</b>
Judith Thomas	X	
Erich Von Unruh	X	
Michele Dubois	X	
Martin Schneider	X	

**The Motion carried 4-0 and the amended Agenda was unanimously approved.**

**APPROVAL OF MINUTES**

Chair Thomas requested a motion for the approval of the June 2, 2014, Planning & Zoning Board Meeting Minutes as submitted. Board Member Dubois made a motion for approval and it was seconded by Vice-Chair Von Unruh. The vote was as follows:

	<b>Aye</b>	<b>Nay</b>
Judith Thomas	X	
Erich Von Unruh	X	
Michele Dubois	X	
Martin Schneider	X	

**The Motion carried 4-0 and the Minutes of the June 2, 2014, Planning & Zoning Board Meeting were unanimously approved as submitted.**

**PUBLIC COMMENTS**

Chair Thomas explained the Public Comments procedure.

**ORDER OF BUSINESS**

Chair Thomas outlined the Order of Business.

**NEW BUSINESS**

Chair Thomas clarified that the P&Z Board will actually make decisions rather than recommendations regarding the variance applications. The Town Attorney stated that a variance hearing is a quasi-judicial hearing which results in a final order and that the variances stand on their own. He stated that it would not be proper to take the site plan, but that it should be a separate hearing. The Town Attorney further stated that the Board will therefore need to disclose any ex-parte communications with the Applicant or Staff or any other individual regarding the variances and he will then swear in anyone who would present any testimony. The Board Members declared that there were no ex-parte communications and the Town Attorney swore in those who would be presenting testimony.

**B. AN APPLICATION FOR SIX (6) VARIANCES SUBMITTED BY THE AHRENS COMPANIES ON BEHALF OF R&K 10<sup>TH</sup> COURT LLC (OWNER) PURSUANT TO THE SITE PLAN APPLICATION LISTED AS ITEM "A" ON THIS AGENDA**

**STAFF PRESENTATION**

Debbie Abraham, Town Planner, addressed the P&Z Board Members and stated she is presenting the variance application, as well as details of the site plan so that the Board understands the context in which the variances are being presented.

Ms. Abraham stated that Ahrens Companies is the acting Agent for R&K 10<sup>th</sup> Court, LLC, who is currently the owner of a vacant parcel located along the west side of 10<sup>th</sup> Court. Ahrens Companies submitted a Site Plan Application proposing the construction of a 3,203 square foot office/warehouse, industrial style building on a 0.31 acre, undeveloped site. Ms. Abraham explained that the proposed use is compliant with the existing C-4 Zoning and the existing commercial/light industrial land use designation. She stated that the lot is similar in size to the properties within the 10th Court Corridor, but smaller than most commercial/industrial properties located in the west side of the Town. The average size building within this Corridor is about 6,400 square feet, which is twice that the Application is proposing for this site. The neighboring properties were not built to the Town's current Code requirements because they were developed before the Code was created, and therefore were not subject to setbacks, landscaping, or parking requirements.

Ms. Abraham stated that the Applicant's Site Plan Application is accompanied by a Variance Application since the Applicant feels that the literal interpretation of the Code's landscaping, setback, and Architectural Guidelines are unfeasible. Ms. Abraham explained that if the literal interpretation of the Code were imposed onto the Site, the Applicant would not have any developable land. The Site is approximately 13,600 square feet, and in order for the Site to come into full compliance with the Code, the Applicant would need to allow for approximately 6,800 square feet for setbacks, including landscaping buffers. A 3,000 square foot building would require an additional 1,400 square feet for parking and walkways, as well as approximately 6,000 square feet for two-way drive aisles to provide interior lot access from north to south, and east to west. Ms. Abraham stated that 14,200 square feet would be required to fully comply with all Code requirements, but only 13,600 square feet is available for the entire Site based on the proposed building.

Ms. Abraham continued that the Applicant's Site Plan proposes a building orientation for an office/warehouse setting which will provide for Code required parking and drive aisle widths for adequate access, but requires variances for certain landscaping and setback sections of the Code. The Applicant's first variance request (Variance #1) is from the Landscaping Code requiring a 15 foot landscaping buffer on the east side as it is adjacent to a public right-of-way, and an 8 foot landscaping buffer on the north and south sides.

The Applicant's second variance request (Variance #2) is from the C-4 Zoning District Regulations which requires a minimum 12 foot side yard setback. The Applicant is requesting a variance to allow for only 4' from the property line to the building on the north side, and 1' from

the south property line to allow for the required dumpster enclosure. A zero lot line side yard development is typical along the entire 10<sup>th</sup> Court Corridor, presumably due to the smaller lot sizes.

Ms. Abraham stated that Staff found that due to several reasons, Variance #1 and Variance # 2 have met the variance criterion set in the Town Code, specifically that the subject site is special and peculiar because, unlike all the other similarly sized lots that were able to build without any extensive landscaping or setback requirements due to their age, the subject site is faced with having to develop a building that is operational at half the building square footage previously permitted along the Corridor, while trying to incorporate the landscaping and setback Code. Consequently, special conditions do exist in that the 0.3 acre lot, similar to the other 0.3 acre lots along the Corridor, is the only lot seeking development under the existing landscaping and setback codes which are codes which are better suited for larger lots. Ms. Abraham stated that the lot was subdivided years ago and therefore, this was not a result of the Applicant; the Applicant is simply proposing a minimum-sized building of 3,203 square feet with a building orientation that incorporates the required parking and drive-aisles. Ms. Abraham stated that Staff is recommending approval of Variance #1 and Variance #2, however, the Applicant is also requesting additional variances from the Town's Architectural Guidelines for which Staff is recommending denial.

Ms. Abraham continued that the Applicant is proposing to construct the building with a metal siding material which is discouraged in Town Code and actually perpetuates the need for additional variances. The Applicant is requesting Variance #3 from the requirement of recesses and projections; Variance #4 from the avoidance of blank walls; Variance #5 from the prohibited use of rib roofs, and Variance #6 from the requirement of a minimum 4 foot height variation at the roof edge. These requirements do not fulfill the variance criterion of the Town Code, as the criterion seeks to ensure the variances requested are not a result of economic hardship, or are consequent to the actions of the Applicant. Staff believes that granting variances from the Town's Architectural Guidelines would result in special treatment to the Applicant since there is no reason, other than costs, in which the Applicant will not be able to comply with Town Code.

Ms. Abraham stated that in conclusion, while the Applicant is proposing a 3,203 square foot office/warehouse building along 10<sup>th</sup> Court which is a use permitted by Code, the Applicant failed to meet the criterion for the variances as it relates to the Architectural Guidelines. The site plan does meet other requirements; however, since the Architectural variances are integrated into the site plan, Staff is recommending denial of Variance #3, Variance #4, Variance #5 and Variance #6, from the Architectural Guidelines.

Ms. Abraham stated that the Representative for the Applicant, Mr. Ahrens, is present and will be providing a presentation that includes visuals of existing conditions along 10<sup>th</sup> Court.

Vice-Chair Von Unruh asked for clarification on which variances were being recommended for denial by Staff. Chair Thomas asked which report Ms. Abraham was reading from during her presentation. Ms. DiTommaso stated that the presentation did not read from the Staff Report and that the presentation was more in depth with added emphasis by Staff.

## APPLICANT PRESENTATION

Richard Ahrens of Ahrens Company addressed the P&Z Board Members and stated that he is representing R&K 10<sup>th</sup> Court, LLC.

Mr. Ahrens provided a visual presentation of the proposed building and began to provide details of the site, including fences, canopies, overhead doors, stucco banding and metal roof panels. Town Attorney Baird stated that these items are actually site plan issues that are being addressed and that the variances need to be addressed first. The Town Attorney stated that in order for the variances to be approved that Mr. Ahrens needs to identify how the Applicant meets the variance criteria.

Regarding Variance Criteria #1... *special conditions and circumstances exist which are peculiar to the land, structure, or building...*, and Variance Criteria #2... *the special conditions or circumstances are not a result of actions by the Owner/Applicant...* Mr. Ahrens stated that there are unusual circumstances with this project because of where it sits on 10<sup>th</sup> Court, and that it is the only and last developable parcel available on either side of 10<sup>th</sup> Court or 10<sup>th</sup> Street. Mr. Ahrens showed a visual aerial view of 10<sup>th</sup> Court from the west and stated that special conditions or circumstances are not a result of the actions by the Applicant, but when the Town did the overlay they did not take into consideration small parcels of lands for which the architectural appearances can be accomplished. Mr. Ahrens pointed out that both sides of 10<sup>th</sup> Court have an approximate 60% coverage ratio which definitely affects the architectural ability to perform the criteria that is in the Architectural Standards. Mr. Ahrens stated that there is no relief from architectural standards for small, sub-standard size parcels.

Regarding Variance Criteria #3... *granting the variance will not confer on the Owner any special privilege that is denied to others...* Mr. Ahrens stated that in this zone, absolutely they are not being denied. He stated the architectural standards adopted in the overlay were based on designs meant to go along Northlake Boulevard and Congress Avenue.

Vice-Chair Von Unruh asked the Town Attorney if the P&Z Board could decide to approve the variances although Staff recommends denial. The Town Attorney responded that the responsibility of the P&Z Board is to determine if the variance criteria has been met on each of the Variances #1- Variance #6.

Regarding Variance Criteria # 4.... *a literal interpretation of the land development regulations would deprive the Owner of rights commonly enjoyed by other properties in the same zoning district...* Mr. Ahrens stated that this site is the same zoning district and by not granting the variances, the owner's rights are being taken away.

Regarding Variance Criteria #5.... *the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure...* Mr. Ahrens stated that although he is supposed to be addressing architectural standards, site plan standards drive part of the architectural standards and therefore he will need to address part of the site plan in order to facilitate what those criteria are being caused by.

Regarding Variance Criteria #6... *the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and will not be injurious to the area involved or otherwise detrimental to the public welfare...* Mr. Ahrens pointed out visuals of the site and said the site is not detrimental to the public welfare.

Regarding Variance Criteria #7... *granting the variance would not be contrary to the Comprehensive Plan...* Mr. Ahrens stated that the Town's Comprehensive Plan did not take into consideration situations of this nature, and by not granting the variance, his client is being injured.

Mr. Ahrens presented a visual looking south down 10<sup>th</sup> Court from Northlake Boulevard and pointed out the lack of architectural flavor and release, existing overhangs, the majority of parking being out front, and a lack of landscaping and storm drainage. Chair Thomas stated that variances are considered on a case-by-case basis and asked the Town Attorney if it is appropriate for the Board to be viewing the Corridor, rather than simply addressing the subject lot. The Town Attorney stated that variances are considered on a case-by-case basis, and the evidence and presentation of the Staff and the Applicant should be directed to the property that is requesting the variance relief, and considerations of what other properties may or may not have done is not germane to the issue to whether the property in question is entitled to experience relief. Mr. Ahrens stated that he disagrees and that he needs to make his point on the laws of variances, and in order to satisfy any of the seven (7) Variance Criteria he needs to show the Board the surrounding properties. Chair Thomas stated that she is going to take the position that the Board Members have already had the opportunity to view the site and they are going to focus on this lot since the variances are for this lot and not for the zoning district. Mr. Ahrens stated that the Architectural Guidelines state that the building is to be in conformity with the surrounding buildings and it is very clear in the Town Code. Ms. DiTommaso stated she believes Mr. Ahrens is referring to the Alternative Architectural Style in the Code which reads...*the Town Commission may authorize the use of an alternative architectural style if in the exercise of their reasonable discretion the Commission determines the alternative design to be consistent with the surrounding architectural character and design intent of the District in which the property is located...* Mr. Ahrens stated that Ms. DiTommaso is correct.

Chair Thomas stated that the Code is referring to the Town Commission, but they are sitting as the Planning & Zoning Board which is a quasi-judicial board separate from the Town Commission. According to Town Code, the site plan application would be going to the Town Commission upon the recommendation of the P&Z Board, but at this point the Board is only hearing the variances as they relate to the property and architectural design of the building. Chair Thomas stated that the variances are decided by the Board and will not go to the Town Commission if not approved by the Board. Chair Thomas further stated that if the variances do not go forward and the site plan is contingent on the variances going forward, then you would need to change the site plan before it can go forward.

Chair Thomas questioned the Town Attorney about the procedure for voting on the six (6) variances and whether the Board should vote separately on each variance. The Town Attorney stated that the variances were presented by Staff in a two-group format, "Group 1" being landscape variances and "Group 2" being architectural variances, and therefore, the Board may

vote either by the “group”, or vote on each variance individually if the Board prefers. The Town Attorney stated that it wouldn’t facilitate good decision making to vote on all six (6) variances at once since different evidence is presented for each variance. Vice-Chair Von Unruh stated he prefers to vote on each variance separately. Board Member Schneider and Board Member Dubois agreed that it is best to vote on a one-by-one basis.

Mr. Ahrens pointed out the site plan and stated that the calculations utilized by Staff for landscape purposes were miscalculated because they did not include the storm drainage areas, so therefore the lot size is greatly changed from what was presented by Staff in the opening statement. Vice-Chair Von Unruh asked Staff if that is an accurate statement. Chair Thomas stated that the Board is considering variances and looking at the property as undeveloped and how the lot is configured is up to the designers, architects and engineers, but ultimately these are site plan issues. Chair Thomas suggested the Board proceed to look at the variances as presented.

Variance #1...*A landscaped buffer shall be a minimum of 8’ in depth around the perimeter of a parcel; provided, however, a landscaped buffer of 15’ in depth shall be required on lands located adjacent to public street right-of-way....*Mr. Ahrens stated that with the required 15’ and 8’ there would be nothing left. Vice-Chair Von Unruh stated that Staff is recommending that the criterion has been met on the first two variances regarding landscaping, and he is in agreement with Staff’s recommendation. He stated that if all of the Board Members are in agreement with Staff’s recommendation on Variance #1 & Variance #2, then the Board could move on to Variances #3 - Variances #6.

Board Member Schneider stated that he finds it very difficult to support variances on an empty lot because the building hasn’t been constructed yet; there are setbacks and requirements that need to be met on the empty site and the building could be made smaller and they could come up with alternative ways to make it work. Board Member Schneider further stated that he has a problem with two of the criteria... *Special conditions and circumstances are not a result of actions by the Owner/Applicant ...*because they are building the building and it needs to fit within the Town’s setbacks and requirements. Board Member Schneider asked Staff is this is a conforming site and does it meet the C-4 minimum criteria for lot size. The response from Staff was yes, it is a conforming site. Board Member Schneider stated that this is a conforming site, and if there are no exceptions for sites under a certain size, then they would have to meet the setbacks requirements for the C-4 Zoning District unless there were waivers or the Code was changed so they would have special consideration within the District. Board Member Schneider further stated that it’s hard to say on a blank piece of land that the special conditions are not the result of the actions of the Applicant and he has trouble with both the setbacks and the landscaping, especially the setbacks, as this looks more like a District problem.

There were no comments from Board Member Dubois.

Board Member Von Unruh asked if Staff evaluated and took into the consideration what other buildings in the area look like and whether or not the design that the Applicant is putting forth was good enough to meet the conditions under the first two sets of criteria. Ms. DiTommaso responded that Staff took into consideration the literal interpretation of the Code when

calculating the full setback and landscaping requirements, parking and drive-aisle access, and the land development regulations. Board Member Von Unruh asked Staff if they took into consideration that if other surrounding existing buildings are sold and rebuilt in the future they then could look to this property and expect the same variances. Ms. DiTommaso stated that it would be setting a precedent with this lot. The Town Attorney stated that variances are considered on a lot-by-lot basis, and just because a variance might be granted for one property does not mean that another property within the same zoning district would have to be granted the same variance. He further stated that it's true as a practical matter, when you have similarly situated or sized lots that there is the aura that a precedent has been established, but the law is that variances are considered on a case-by-case basis. Vice-Chair Von Unruh asked Mr. Ahrens if they were to make the setbacks currently required by Code, would he be unable to build the proposed building. Mr. Ahrens stated absolutely, and that building a smaller building does not make sense economically.

Chair Thomas stated the Code is meant to be progressive and proactive and in regard to Criteria #1 and Criteria #2, this is not a non-conforming lot, it's a buildable, platted lot and there are no special conditions or circumstances which relate to this lot. She continued that there is a light pole on the lot, which actually reduces crime, but the light pole does not restrict the build-ability of the lot. She stated that the building could be made smaller, or there could be a different orientation of the building, and that there are various ways of incorporating landscaping and xeriscape options in order to address the retention issue on the property. Chair Thomas stated that her opinion is there is nothing peculiar, that this is a vacant parcel and a lot of modifications could be made to the site and it is not injurious to the property owner. Chair Thomas stated what she is hearing from the Applicant is that this is the size of the building that we want to put on a small lot, and since it has been allowed in the past, then my lot should be that way too. However, the Town Commission has sought to change the view of the Town and that is what we need to move forward with.

Board Member Schneider stated that he agrees with the comments of Chair Thomas in that Criteria #2 and Criteria #5 are not met, that there are no special circumstances or circumstances that are not a result of actions by the Owner/Applicant, and that although the economics might not work that they could consider a smaller building.

Chair Thomas stated if there are no further comments from the Board, that she would entertain a vote on whether or not the Applicant has met the criteria as it relates to the variance criteria.

Mr. Ahrens stated the conditions of the small lot were not created by the owner, that the Town created overlay zoning and put it into an area that has very small parcels and the criteria does not work. He stated that that is not an issue which was driven by the owner, but was driven by the fact that there was a hurry to do overlay architectural criteria which sucked up a lot of areas that should have been addressed before the application was made. In response to the fact that the building can be made smaller, Mr. Ahrens stated that it is possible to make the building 1,000 square feet, however it is not justifiable to spend \$300,000 for a 1,000 square foot building.

Chair Thomas reiterated that it's a buildable non-conforming lot, that there is nothing peculiar and there are other properties the same size that has buildings on them, and now there is a Code



requiring you to build according to these setbacks. Chair Thomas asked the Community Development Director what is the special overlay in the C-4. Ms. DiTommaso stated that the Architectural Guidelines are Town-wide guidelines that were adopted around 2009, and they are not in a special overlay area, but are Town-wide.

Chair Thomas stated that each of the variance criteria must be satisfied in order for a variance to be granted. The Town Attorney verified that all seven (7) variance criteria must be met. Chair Thomas asked if the Board feels that the Applicant has met all seven (7) of the variance criteria as established in Staff's presentation for landscaping and setbacks.

**PLANNING & ZONING BOARD RECOMMENDATION**

Board Member Schneider made a motion to deny Variance #1 on the fact that Criteria #2 and Criteria #5 have not been met. Board Member Dubois seconded and the vote was as follows:

	<b>Aye</b>	<b>Nay</b>
Judith Thomas	X	
Erich Von Unruh	X	
Michele Dubois	X	
Martin Schneider	X	

**The Motion carried 4-0, and Variance #1 was unanimously denied.**

Mr. Ahrens stated that he has been instructed to withdraw the Application because it is not economically feasible, and there is no reason to hear the remaining variances since the first variance was denied. Mr. Ahrens stated that the Applicant cannot build anything that is reasonable on that parcel of land.

Chair Thomas asked Mr. Ahrens if he had conversations with Staff prior to the meeting and was he not aware of Staff's recommendation regarding his Application prior to tonight. Mr. Ahrens stated that the application process began in April and Staff did not communicate that modifications were needed for the site plan for the first two variances. Mr. Ahrens stated that since the Board denied the first two variances, there is no sense in moving forward with the remaining variances.

Chair Thomas stated that since the Application has been withdrawn that Item A is now a moot item.

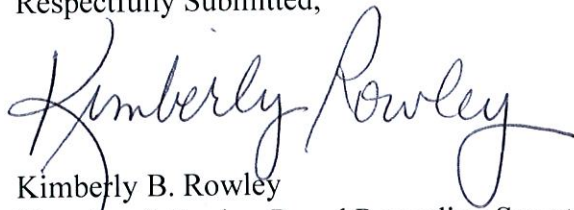
**COMMUNITY DEVELOPMENT DIRECTOR COMMENTS**

There were no further comments by the Community Development Director.

**ADJOURNMENT**

There being no further business before the Planning & Board, the Meeting was adjourned by Chair Thomas at 8:07 p.m.

Respectfully Submitted,



Kimberly B. Rowley  
Planning & Zoning Board Recording Secretary

**PLANNING & ZONING BOARD APPROVAL:**



Judith Thomas, Chair  
Town of Lake Park Planning & Zoning Board

DATE: 9/8/2014