

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: February 4, 2020

DEPARTMENT: Community Sustainability

TITLE:

Appeal by Daniel Hiatt and Frederick Schmidt, of PZB case # 19-00500004: approval by the Planning and Zoning Board of a Conditional Use Permit at 1812 Aragon Avenue, Unit A

SUMMARY:

Daniel Hiatt and Frederick Schmidt are appealing a final order of the Planning and Zoning Board which granted a request for a Conditional Use Permit to allow a “fabrication service excluding retail display and sales use” at 1812 Aragon Avenue, Unit A.

BACKGROUND AND JUSTIFICATION:

The applicant, Kadassa, Inc., applied for a Conditional Use permit to operate a fabrication services excluding retail display and sales business for stone countertops at 1812 Aragon Avenue. Kadassa made application after the City’s code compliance division opened a case for several violations including inadequate fencing, failing to have a business license, and failing to have a conditional use approval. Those three violations remained and were discussed at the Planning and Zoning Board meeting.

The Planning and Zoning Board meeting was held on Wednesday, August 7, 2019. During the quasi-judicial hearing to hear the request for the conditional use permit, Daniel Hiatt spoke and raised a number of concerns. The Planning and Zoning Board voted 7-0 to postpone PZB 19-00500004, with the request of additional information from staff.

At the Planning and Zoning Board meeting held on October 2, 2019, staff presented a revised staff report with additional attachments addressing the items that were of concern at the previous meeting. These items included a copy of the permit for the original construction of the buildings, a copy of the permit for the addition to connect the two buildings, a copy of the permit to renovate Unit A, the Florida Department of Health environmental regulations, a picture of the wet curtains that Kadassa installed at the subject property, and a picture of the vinyl screening installed within the existing fence and gate. The staff report also included additional information in regards to the property’s active Code Case (Case #19-2384), the existing roll-off container, parking calculations, and the result of an inspection performed by the City’s Water Utilities Division. Daniel Hiatt and Frederick Schmidt, through their attorney, Jason Mankoff, made a presentation on why they felt the conditional use permit should not be granted. After reviewing the revised staff report with attachments, and having heard additional testimony from the applicant and the affected parties, the Board voted 5-1 to approve the request for a Conditional Use Permit to allow a “fabrication service excluding retail display and sales” use at 1812 Aragon Avenue, Unit A.

Subsequently, following the quasi-judicial appeal process (summarized below), Mr. Mankoff, on behalf of Daniel Hiatt and Frederick Schmidt timely filed an appeal of that decision. The Written Basis of Appeal is attached.

Please note that the appeal packet includes all information that was provided to the Planning and Zoning Board at both the August 7, 2019 and the October 2, 2019 hearings.

Quasi-Judicial Appeal Process

Section 23.2-17(b) and (b)(1) of the City's code, outlines the process for appealing decisions of the planning and zoning board/historic resources preservation board to the City Commission. It states:

b) *To city commission.* Should an applicant for development approval or an affected party with demonstrated standing decide to appeal a decision of the planning and zoning board or the historic resources preservation board, he shall submit to the development review official a notice of appeal within fourteen (14) days of the issuance of the written decision. Thereafter, the applicant or affected party shall submit to the development review official in writing the basis for the appeal within thirty (30) days of the board's written decision; except appeals from decisions pertaining to variances shall be appealed directly to circuit court as described in subsection c). The development review official shall forward the appeal and the board's decision to the city commission for review.

1. After courtesy notice as provided in this article, the city commission shall conduct a quasi-judicial hearing, and shall consider those applications on appeal from the planning and zoning board or the HRPB based on the record made in the proceeding below. The city commission shall convey its decision in writing to the appellant and the development review official. The considerations substantiating the decision of the city commission shall be documented.

Although a quasi-judicial appeal hearing will be conducted, it will not be a *de novo* hearing, meaning that the commission will not hear the case all over again or consider new evidence. Instead, it will consider the information presented at the Planning and Zoning Board meetings, information that has been provided to the Commission as noted above, and minutes from the meetings. In addition, under the City's Rules and Procedures (resolution 26-2017), it states in Rule 6 that an applicant will be given ten minutes to make a presentation. For purposes of this quasi-judicial appeal, staff believes it would be appropriate to allow each party to make comments or give a presentation within this ten minute time frame. The comments of course will be limited to the information provided to, discussed at, or voted on at the Planning and Zoning Board meetings. Thereafter, the commission members may make comments, ask questions, and review the information presented at the Planning and Zoning Board meetings.

As stated in section (b)(1), "*the considerations substantiating the decision of the city commission shall be documented.*" This means that the Commission's reasons for upholding or rejecting the Planning and Zoning Board's decision should be placed in a written order and the *considerations substantiating* the decision should be based on whether the Planning and Zoning Board's decision was based on competent, substantial evidence.

The courts have defined substantial evidence as that which will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. It is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. Competent means 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. See e.g., Village of Palmetto Bay v. Palmer Trinity Private School, Inc. 128 So. 3d 19 (Fla. 3d DCA 2012).

Finally, although the City's code does not address public comment for this type of quasi-judicial appeal, the Commission would be within its authority to allow public comment even though its decision cannot be based upon any new evidence that may be presented by a member of the public.

MOTION:

Move to uphold/reverse the decision of the Planning and Zoning Board for Case 19-00500004.

ATTACHMENT(S): All attachments are available in paper form only

- A. Notice of Appeal by Affected Party
- B. Basis of Appeal by Affected Party
- C. Conditional Use application
- D. Applicant Justification Statement
- E. Full Staff report and attachment for the August 7, 2019 Planning and Zoning hearing
- F. Staff PowerPoint Presentation from the August 7, 2019 Planning and Zoning meeting
- G. August 7, 2019 Planning and Zoning Board Meeting Minutes
- H. Full staff report and attachments from the October 2, 2019 Planning and Zoning Meeting
- I. Staff PowerPoint Presentation given at the October 2, 2019 meeting
- J. October 2, 2019 Planning and Zoning Board Meeting Minutes
- K. Final Development Order
- L. Proof of advertising of Appeal hearing