



ZONING BOARD OF ADJUSTMENT MEETING

June 28, 2022

Meeting called to order by Chairman Joe O'Brien at 7:43 A.M.

Members present: Joe O'Brien, Mike Harris, Mike Kelley and Joe Schifano. Building Official Levis Peters and Planning & Zoning Administrator Sherri Proctor were also present.

The following request was presented:

Applicant: HCI Oak Mountain LLC

Location: Amphitheater Rd, Legal Description Attached.

Request: A variance from the Zoning Regulations in reference to the Corridor Overlay District, Building design and orientation. (Article XXI, Section 6, item 6.)

John Benner, with GenRev Properties, was present to speak for the owners and made the request, first, apologizing he is even here. Mr. Benner stated that this has been their plan, which has gone before planning and zoning commission and city council and has been the intention for the exterior for the past two years. He further described the look they are picturing is similar to buildings going in downtown Birmingham, citing the Dread River Distillery. He further stated the issue is they already have tenants who have designed their interiors assuming this type of building, particularly the insulation. Mr. Benner stated there is no sheathing behind it, it is a very industrial look. Mr. Benner went on to say, the apartments do not feature metal but the idea of using raw materials and having a more rugged look is part of the design. Mr. Benner stated they would have to go back and redesign which would delay the completion and would delay the tenants opening. He shared that they attempted to add more storefront, but that added \$30,000 for the additional windows. Ms. Proctor referred to the elevation on the back of the recommendation. Mr. Schifano asked what it represents. Mr. Benner stated that was the revised elevation with the additional storefront. Ms. Proctor provided the revision because after discussion, staff determined the additional glazing provided a better product, closer to meeting the intent and was more supportive of that representation. Mr. Benner expressed that Ms. Proctor pointed out hardship and explained they were already over budget on just this building because of the site work that was necessary. Part of the financial aspect of the project is making it viable for tenants to pay rent so they can afford to get into the buildings. Mr. Benner spoke that he did not know if economic was considered a hardship, adding that it is for them. He went further to say he was not sure how it is defined with the board, but to put brick on it and go back and sheath it and apply stucco or dryvit, which he does not like and there is

already enough of it on the apartments, plus it will cost more money. Mr. Benner went on to say, they have done some really cool things with the canopy project that ties the two buildings together. He described a canopy on the back of the building with a fireplace to gather around. The buildings blend in with the natural feel, and there will be a park and amphitheater. Mr. Benner explained the rendering, pointing out the park area right outside the door, designed to allow people and activities to flow from indoors to outside. He reminded the Board that there will also be a small amphitheater, with the intent of the base camp and amphitheater being the center piece for the entire development. He added it is the first thing you see as you drive into the development, so they do not intend to create something unsightly, but to provide interest. Mr. Kelley asked if it is a decorative metal. Mr. Benner answered it is corrugated metal. He added they will paint it a neutral color to blend with the environment and the signage will be painted over the wall. Mr. Kelley expressed that the rendering shown does not look like typical corrugated metal. Building Official, Levis Peters added, it is similar to standing seam metal. Mr. Benner told the board members their inspiration was from the Dread River Distilling Company building in downtown Birmingham. Ms. Cunningham found an image of the outside of Dread River Distilling Company for the members to view. Mr. Benner described the view of the distillery, adding that they took an old warehouse building and painted it a dark color, making it a trendy, updated building. Ch. O'Brien added that he agrees it looks good, but he is struggling with the financial issue, adding, the board cannot consider economic hardship. Ch. O'Brien continued that if the Board allows this instance, it puts them in a difficult situation for the next applicant that requests the same. Mr. Harris commented that this was a recently passed ordinance. Mr. Peters said yes, in January of this year. Mr. Benner went on to say they had already designed the building, asked the Board to consider this in terms of grandfathering since the project has been slated for over two years now and they had been moving forward with development and design and that it is part of the PUD. Mr. Schifano noted that Brian Barrett is their architect, and the architect for the Civic Complex across the street. Mr. Schifano informed the board members he was a part of that project and knows there was a lot of discussion about continuity on this corridor with what was going on with the Civic Complex and what was being planned on that side with the Canopy. Mr. Schifano asked how the exterior of the Canopy relates to what is being planned with the façade of the facility. Mr. Benner reiterated the building has been discussed at least two years in design and three years in concept, and that Mr. Barrett was working with the city during that time for the upgrade to the Civic Complex. Mr. Benner added the city should be confident that this will be a good product because they are working with Mr. Barrett and are familiar with his work. Mr. Schifano asked Mr. Peters if he has any idea how these buildings tie in together. Mr. Peters said he had not seen any of those plans, he has never seen a concept on any of it and that he was not involved. He added that it would have been Ms. Brown that was involved. Mr. Benner informed the board they met with city staff not too long ago to share renderings and that they were well-received. Mr. Benner stated he was not aware that the ordinance had changed and asked the Board if this was not a valid defense to allow the variance. Mr. Schifano stated he thinks the burden is on Mr. Benner to comply with the ordinance at the time of the application for permit. Mr. Benner added because they applied for a permit after the ordinance was passed, even though this building was already designed and planned and he signed leases based on this design and then the ordinance changed, asking would that not be a hardship. Mr. Benner continued to say this has made a hardship for the owner. Mr. Schifano asked if his PUD specifically speaks to buildings and materials and things of that nature. Mr. Benner said he would have to go back to their records and check. Ms. Proctor informed the members that staff reviewed the files that were provided for the rezoning and was not able to find anything that referenced materials. Mr. Harris asked if the intent behind the

metal building exclusion is to keep a butler style building from going up next to a brick façade building. Ms. Proctor answered yes. Mr. Benner went on to say this is almost like a designer building. Mr. Harris stated it appears the building is not a butler style structure but a designed building that happens to use metal, instead of brick. Mr. Benner asked if the Campus 124 has some metal in the front. He added it is the use that has a lot to do with it. It is a designer; retailer use as opposed to a storage use. Mr. Benner said there is a case-by-case argument here. Chairman O'Brien stated it has a nice look, but reiterated that he has reservations, by allowing this variance and setting a precedence which will cause issues for the Board in the future. Ch. O'Brien asked if the ordinance say anything or is there any discretion that the city can use. Ms. Proctor replied that the ordinance does not provide staff any discretion, that the ordinance states the materials that can be used as primary materials and it does not include any kind of metal. Ms. Proctor stated the intent behind the ordinance is to prohibit the look of Highway 31. Most of the metal buildings along Pelham Parkway have faded over time. Maintenance and upkeep become an issue, which is stated in the ordinance. Mr. Schifano asked if these are the buildings that are under construction now, where Maxus is building. Mr. Benner said, yes, they are building all of it and they are prepping the foundation area as we speak. The clubhouse and the base camp are right together as you drive in. The two on the far left are the apartments. The first phase goes from the two apartment buildings, the clubhouse then this building, Canopy Base Camp. We are building front first and then moving over to the big mixed-use building with the retail and carriage houses in the back. Ch. O'Brien added, yes, it is one of the things that we have to look at as the hardship and how it was created. How does this fit in with the architecture from the rest of the project, I mean are we going to see John in here six more times, Mr. Schifano asks. Mr. Benner spoke that those other permits have already been issued. Mr. Peters added all of the other is hardy-board and some stucco, but mainly hardy-board. Mr. Benner stated it is just this building, Canopy Base Camp, needing an additional permit, different owner. Mr. Kelley commented that it is actually two buildings and a quarter. Mr. Benner clarified that it is considered one building because the canopy connects it all, they work together. It looks like there is separation between them, Mr. O'Brien said. Mr. Harris asked so this ordinance was changed in January? Mr. Peters answered, yes, it was approved at the end of January of this year. Mr. Schifano also asked for some clarification, has Amphitheater Road always been in the corridor overlay district. Kelsey Cunningham, secretary of the zoning board of adjustments and permit technician, answered Amphitheater Road was already located inside the overlay district. The only item that changed, that she remembers, was section six, building design and orientation, Mrs. Cunningham stated. Mr. Peters adds, in short it states metal cannot be used it has to be something durable. Ch. O'Brien read article xxi, section six, item six from the zoning ordinance projected on the computer screen, *"In order to prolong the life of buildings, reduce the need for periodic maintenance and maintain a character, which is commensurate with the public interest, the following materials shall be used as primary exterior building wall finishes on portions of the building which are visible from the corridor overlay district right-of-way: brick, stone, glass, wood, stucco, Imitation stucco, Composite, precast concrete, poured concrete, and/or split-face concrete block."* I believe, Mr. Harris says, the true intent was to keep a butler style building going up in the middle of the area. Mr. Peters added that he believes the intent to limit metal because there are too many metal buildings in the corridor, and we are trying to improve the appearance of the corridors. Over time the metal buildings fade and they look bad, Mr. Peters expressed. He added there was disagreement on what was considered architectural metal there is no true definition other than the screws do not show on architectural metal. EAW on Pelham Parkway had to break up the front up of their building with some wood panels and that turned out to be a nice look. He noted that was before the ordinance was passed. Mr.

Peters stated that he was not familiar with the discussions over Cahaba Tractor's new buildings and how they are using metal, but they have agreed to planting large trees right front to help screen the metal. Mr. Schifano informed Mr. Peters that Cahaba Tractor came to the board for a couple of variances on their building. Mr. Harris added it was for grade, gravel and some roll up doors, but did not consider the structure. When asked how long the elevations had been discussed, Mr. Benner said possibly two years and restated that he recalls presenting the Dread River Distillery building pictures to the Planning and Zoning or to the city council. Mr. Harris commented he feels like they are caught in between the scope and the design of the project. They have a design from day one, working on it, and then an ordinance changes. He added 'personally I don't think you should be punished for it.' Mr. Harris further stated 'If you were coming in here with one single building that you started planning in October and its one building going up there, it's a different situation. The size and scope of this project is much more than that.' Ch. O'Brien asked at what point in time does someone with the city sign off on the project. Mr. Peters responded, 'from a permitting standpoint we do not sign off until the plans, specs and application meet the current adopted codes.' Not from a building permit standpoint, Mr. Benner says, but from a planning and zoning and city council approvals for all we have done by changing it to a PUD, all of the pictures we provide in the beginning to give people a vision of what we are doing. All of that was signed off on just by city council approval. Ch. O'Brien asked when the permit for the base camp was as applied for. Mr. Peters stated about two weeks ago. Mr. Harris asked if there was a master permit for this entire development. No sir, Mr. Peters said. Mr. Benner emphasized that he feels it will be the nicest development in North Shelby County. He added the apartments are going to be the nicest apartments in Shelby County. Mr. Kelley believes Mr. Benner has fallen into an area where he has gotten caught from the intent, from the beginning until now it does not necessarily a fault of his. Ch. O'Brien asked if the city was okay with the additional glazing on the front. Ms. Proctor answered, if they were to proceed with the additional glazing gets closer to being the primary material. Mr. Schifano added that is where he is falling on this to. He added 'how can you still do this within the intent of the ordinance to not have a butler looking building sitting out there? More glass you can view from the street, I believe gets you closer to that intent.' Mr. Benner said he priced the additional store front at \$30,000 extra which is mostly due to having a change in the design of the building. Mr. Benner expressed gratitude that the Board has worked well with them in the past and did not want them to feel obligated, and that he regrets that he has to address the Board. Mr. Harris asked what the issue was with the amount of glass. Mr. Benner explained he would not be able to paint the logo, which he really enjoys the look and it gives it 'some of that fresh new marketing on the new buildings.' Mr. Benner asked Mrs. Cunningham to go back and show the front elevation of the base camp project. He added when they released these elevations, he had not coordinated with tenants yet. He added there could be conflicts with where a kitchen may be and that the glass front would not work there and he would have to use spandrel glass because it may not be something the tenant wants open. Ms. Proctor agreed they may not want transparency there. Going down the corridor between the two, Mr. Benner continued to describe the design of the building, reiterating the inspiration was from the downtown Birmingham breweries. The building is just designed with that type of interaction. Mr. Schifano said he sees the wood on the back of the buildings, is there any reason something like this cannot be done on the front to break it up more. He added that this is a new ordinance, and the first time the board is considering a variance to it and is having trouble setting a precedent. He further stated, we plan on being here bringing tenants and businesses to the city a long time and we do not want to set the wrong precedent and undermine what we are trying to achieve. Mr. Schifano went on to state he would like to get to a point where this structure is meeting the intent of the ordinance, while

maintaining the integrity of what it was meant to do. Mr. Benner asked Mrs. Cunningham to show the front elevation again and to see if he could call his architect, Brian Barrett, to speak about the design. Mr. Benner reached Mr. Barrett and told him one of the questions that was raised was that they priced an additional store front glazing at about \$30,000. We were looking at the rear elevation, particularly the Taco Mac side, it looks like you have that wood paneling on a lot of the building. Mr. Barrett informed the board that yes, anything below the canopy is wood or glass on the Taco Mac, in the breeze way and at the front entrance. Mr. Benner asked Mr. Barrett how hard it would be to add more of that wood paneling. Mr. Benner was not sure how the paneling is being installed as opposed to the standing seam metal. Mr. Barrett explains, where the metal is attached on the metal frame of the buildings where they added wood, they would add a substrate of sheathing and then siding over that. Mr. Benner asked of the price difference. Mr. Barrett interrupted Mr. Benner and says he guesses it would be slightly more. Mr. Benner says he would rather have the glass, as he thinks the glass looks better. Mr. Benner asked if the amount of glazing they are speaking of gave enough cover. Mr. Schifano said yes. Mr. Benner reminded the Board that glazing added a cost \$30,000 and wanted verification that the amount is enough to meet primary material. Mr. Benner stated he understood to come back with at least that percentage of change and asked is that a good way to say it. Mr. Kelley replied that, yes, that is the direction we are going. Mr. Benner says he believes Mr. Farris is going to be very disappointed if he loses the big painted Cahaba Cycles sign, so they will have to talk to him about the revision since they have already signed the lease. Mr. Schifano said this board can determine primary façade material must be in keeping with the ordinance and that would allow the design team and tenants present the elevations that can be approved by staff. Ms. Proctor agreed. Mr. Schifano agreed with staff that the combination of glazing and the wood accents is a good compromise and achieves the primary material intent. Mr. Benner asked Mr. Barrett the sign can be painted over spandrel glass. Mr. Barrett said he thinks it is possible but would not look good. Mr. Benner asked Mrs. Cunningham to show the side elevation again so he can address another issue. He stated the side was plain and the least attractive side of the building. It is the entrance to the park. The corner of this building is the first thing you see when you drive up to the front and the clubhouse is just to the left of it. Mr. Benner continued. He asked the Board's opinion of adding some glazing to the front and some to the side of the building. Mr. Harris said he doesn't want him to get into a situation with Taco Mac there is now a kitchen on the other side, adding that would be a problem. Mr. Benner continued by suggesting providing a 'break' in the side may be a solution. Mr. Benner then asked Mr. Barrett to talk to the board about the elevations of the civic complex. Mr. Barrett expressed to the board that most of the work at the Civic Complex is going to be done between the roadway (Amphitheater Road) and the building itself. Mr. Benner asked the Board if they had seen any of the Civic Complex plans. The members resounded 'no.' Mr. Benner explained they are 'dressing up' the front elevation and creating a large plaza in the front where the crowds can go freely move about. The idea too was to have some synergy and that is why the entertainment district was created, where you can walk to the Amphitheater, to the Canopy and to the Civic Complex. Mr. Benner described the hardscape features that were planned to make it more inviting and accessible. The whole structure is a metal building, Mr. Benner added, and the front has some EIFS on it. Mr. Barrett informed them they are refinishing the EIFS, and the bottom 2.5 feet will be a stone water table. The stone will coordinate with the apartments. Mr. Benner asked his architect if there was a way to add an alternate material over the surface of the metal. Mr. Barrett replied that he thought that would be possible. Mr. Benner said they would talk through it. Mr. Schifano commented that he did not think Mr. Barrett is going to be a fan of going to stone on the industrial look you are trying to achieve at this building. Mr. Benner stated no, it is going to be a

combination. Mr. Benner added it is more of an issue going back to the partners with a project that is already over budget and saying they need more money, expressed Mr. Benner. Mr. Schifano commented that clearly the Board does not want to give a 'no' answer, but it is important to uphold the spirit of the ordinance. Mr. Proctor asked the board members if their interpretation of that section of the ordinance, if they understand it to read that one has to choose one primary material, and then use the rest as accents, or one would choose any number of those materials which would then meet the 'primary materials' rule. Mr. Kelley did not think it would matter how many materials were used. Ch. O'Brien agreed. Mr. Proctor clarifies and asks, if he came back with more brick, a little more wood and a little more glass and that gets you 51% then it meets the intent of the ordinance. Mr. Harris affirmed that a combination of the approved primary materials meets the objective to reduce the metal. Mr. Schifano commented that the ordinance does not call out a percentage of materials, it just says it must be a, b, c or d. Therefore, he agrees that a combination that achieves the 51% rule glass or whatever is acceptable. Ch. O'Brien told the other members he was fine with any of the materials if they are the same as those materials listed in the ordinance. Mr. Benner expressed concern that no calculation has been done to determine that it is 51%. Ms. Proctor states she has not calculated it but visually it appears to meet that, adding the architect should be able to provide that number. Mr. Harris expressed his thoughts saying project of this scope that has gone before council and planning & zoning, all the while showing different pictures of different buildings and he understands you have to get a building permit for each one of those buildings, but just wandered in the future if once that plan has been approved by planning & zoning why this should become a problem. Ch. O'Brien replied that it is a concept, and they are approving the whole deal there, not the electrical, plumbing, etc. Ms. Proctor added that in a typical PUD that information is presented in the rezoning and it becomes a part of that master plan. A pattern book details elevations, and lists materials, colors, etc. Mr. Harris stated that way when an ordinance is changed in the middle of construction it does not affect the plan. Mr. Benner acknowledged that is what they should have done in the beginning, adding they did not present finishes, we presented schematics. That is how to prevent this from happening even though that is difficult for the developer come up with all of that early on.

Joe Schifano made the motion to approve the use of metal in the corridor overlay district provided that the applicant provides a design that has enough of the approved materials to meet the elevations provided in Exhibit A. Mike Kelley seconded the motion and all approved. Variance was granted.

With no other business to come before the board Ch. O'Brien asked for a motion to adjourn. Mr. Harris made the motion to adjourn. Mr. Kelley seconded the motion.

The meeting was adjourned at 8:48 AM.



READ AND APPROVED / Sherri Proctor, Planning & Zoning Administrator
Respectfully submitted,
Kelsey Cunningham
Secretary