

DOCKET 1163

DATE OF HEARING	October 6, 2014
NAME	Blue Ocean Portfolios, LLC
DESCRIPTION OF PROPERTY	1588 S. Lindbergh Blvd.
CAUSE FOR APPEAL	Relief from the decision of the City Clerk and City Planning Consultant for a sign which violates Section X, F, (4), (b) of Zoning Ordinance 1175.
RULING OF THE BOARD	After a discussion of the facts presented, the Board denied the variance for the sign because the applicant failed to prove the existence of practical difficulties or unnecessary hardship, and the decision of the City Clerk and City Planning Consultant is affirmed.

MINUTES OF MEETING
ZONING BOARD OF ADJUSTMENT
MONDAY OCTOBER 6, 2014

DOCKET 1163
1588 S. Lindbergh Blvd.

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, October 6, 2014 at City Hall.

The following members of the board were present:

Mr. Stanley Walch, Chairman
Ms. Robbye Toft
Ms. Liza Forshaw
Mr. David Schlafly
Ms. Laura Long

Also present were: Mayor Nancy Spewak; Mr. John Fox, City Council, Mr. James Schmieder, Director of Building & Zoning; and Mr. Michael Gartenberg, Building Official.

Mr. Walch called the meeting to order at 4:00 PM.

Notice of Public Hearing, as follows:

**NOTICE OF PUBLIC HEARING
ZONING BOARD OF ADJUSTMENT
CITY OF LADUE, MISSOURI
DOCKET NUMBER 1163**

Notice is hereby given that the Zoning Board of Adjustment of the City of Ladue, St. Louis County, Missouri, will hold a public hearing on a petition submitted by Blue Ocean Portfolios, LLC, St. Louis, MO 63131, requesting relief from the ruling of the City Planning Consultant and City Clerk who declined to issue a permit for a building sign which violates Section X, F, (4), (b) of Zoning Ordinance 1175.

The hearing will be held at 4:00 p.m. on Monday, October 6, 2014, at the City Hall, 9345 Clayton Road.

The hearing will be public and anyone interested in the proceedings will be given the opportunity to be heard.

Pursuant to Section 610.022 RSMo., the Zoning Board of Adjustment could vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under section 610.021 (1) RSMo.

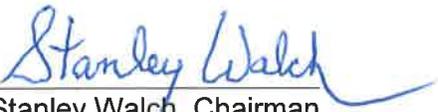
Stanley Walch, Chairman
Zoning Board of Adjustment

Mr. Walch introduced the following exhibits to be entered into the record:

Exhibit A – Zoning Ordinance 1175, as amended;
Exhibit B – Public Notice of the Hearing;
Exhibit C – Permit denial dated May 30, 2014;
Exhibit D – List of Residents sent notice of meeting;

Exhibit E – Letter from the resident requesting the variance, and any letters of support;
Exhibit F – Entire file relating to the application.

(Transcript attached as part of the minutes)


Mr. Stanley Walch, Chairman

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ZONING BOARD OF ADJUSTMENT
CITY OF LADUE
LADUE, MISSOURI

IN THE MATTER OF:)
)
BLUE OCEAN PORTFOLIOS) Docket No. 1163
1588 South Lindbergh Boulevard)
Ladue, Missouri 63124)

Monday, October 6, 2014

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BOBBIE LUBER, LLC  
Certified Court Reporters  
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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF: )  
)  
BLUE OCEAN PORTFOLIOS )Docket No. 1163  
1588 South Lindbergh Boulevard )  
Ladue, Missouri 63124 )  
Monday, October 6, 2014

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A P P E A R A N C E S:

BOARD MEMBERS:

Mr. Stanley Walch, Chairman  
Ms. Liza Forshaw  
Ms. Laura Long  
Mr. David Schlafly  
Ms. Robbye Toft

Also Present:

Mr. John Maupin, City Attorney  
Mr. Michael W. Gartenberg, Planning Consultant  
Mr. James Schmieder, Building Department  
Ms. Nancy Spewak, Mayor  
Mr. Paul Martin, Attorney for Appellant  
Mr. Jim Winkelmann, Blue Ocean Portfolios  
Ms. Jennifer Elbert, Blue Ocean Portfolios

Court Reporter:

Bobbie L. Luber  
Registered Professional Reporter #9209  
Missouri CCR #621  
Illinois CSR #084.004673  
Bobbie Luber, LLC  
P.O. Box 31201  
St. Louis, MO 63131  
(314) 993-0911  
bluber@lubercourtreporting.com

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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF: )  
)  
BLUE OCEAN PORTFOLIOS )Docket No. 1163  
1588 South Lindbergh Boulevard )  
Ladue, Missouri 63124 )

BE IT REMEMBERED that on the 6th day of  
October, 2014, hearing was held before the Zoning  
Board of Adjustment of the City of Ladue, Missouri, at  
Ladue City Hall, 9345 Clayton Road, in the City of  
Ladue, State of Missouri 63124, regarding the  
above-entitled matter before Bobbie L. Luber,  
Certified Court Reporter, Registered Professional  
Reporter, Certified Shorthand Reporter, a Notary  
Public within and for the State of Missouri, and the  
following proceedings were had.

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(The Meeting of the Zoning Board of

Adjustment of the City of Ladue was previously called  
to order at 4:00 p.m.)

CHAIRMAN WALCH: The next case is Docket  
Number 1163.

Before I call on Mr. Gartenberg to discuss  
this, this is a somewhat unusual situation. The --  
the sign -- request for sign was denied at our August  
meeting, and now the applicant has come back and has  
requested a rehearing. As I think most of you know,  
the ordinance does provide that we do not have to  
grant a rehearing and an applicant can't come back  
with the same project again for at least six months.  
I have been asked to waive the six-month requirement,  
and I would like to know before I do so if the board  
will -- if any member of the board objects to waiving  
the six-month rule.

MS. FORSHAW: No.

MS. TOFT: The justification for waiving it  
is that there was new evidence, or there is a change  
of circumstance. I'm trying to understand what the  
basis of what the waiver of the six-month requirement  
is.

CHAIRMAN WALCH: From what I have read in  
the file, I don't see a lot of new evidence. I see

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1 maybe a more articulate, and there is a threat of a  
2 lawsuit in the file.  
3 MS. TOFT: I don't think a threat of a  
4 lawsuit is the basis for waiving it.  
- CHAIRMAN WALCH: No, I don't either.  
MS. TOFT: And it's my understanding that  
7 the claim in the minutes from the hearing in 2005 that  
8 are public record, and they are available at City  
9 Hall, is what is now being claimed to be new evidence  
10 and thus the basis for requesting the waiver of this  
11 six-month.  
12 CHAIRMAN WALCH: That may be what the  
13 appellant is questioning.  
14 MS. LONG: And the applicant didn't have  
15 that information.  
16 MS. TOFT: I think it's always the case  
17 whenever someone loses, that they claim that they  
18 found something that might have helped them after the  
19 fact. I would be very reluctant to allow people to  
20 reopen cases just because they came up with a better  
21 argument or found another photograph that would help  
22 justify it.  
23 I'm just saying, I'm very reluctant to  
24 crack open rulings or waive six-month rules if this is  
25 in fact a document that was publically available but

which the appellant just failed to access prior to the  
2 previous hearing. I was not a party to that hearing.  
3 MR. MAUPIN: I believe what happened was  
4 the applicant requested a copy of the entire file  
5 pertaining to this location, and he was not given that  
6 information that contained a ruling on the Board of  
7 Adjustment which purported to adopt -- consider more  
8 signs at this location. He was not given that on his  
9 first request.  
10 I think that's the new information that is  
11 perhaps the basis of this waiver of the six months.  
12 MS. TOFT: I know I have accessed minutes  
13 from other City of Ladue boards online. Are these  
14 minutes not available. Were they not available  
15 online.  
16 MR. SCHMIEDER: No. To my knowledge the  
17 Board of Adjustment minutes are not available online.  
18 Or they certainly weren't in 2005.  
19 MS. FORSHAW: I see no harm in rehearing  
20 this case as a courtesy to the applicant. Perhaps  
21 there was some confusion about getting the materials  
he asked for.  
22 CHAIRMAN WALCH: Anybody else want to  
23 comment on the waiver issue? Well, I'm going to  
24 exercise my authority and grant the waiver, and we  
25

1 will hear the appellant.  
2 So, first, Mr. Gartenberg, in your new  
3 capacity as the planning consultant to the City of  
4 Ladue would you please explain the reason or reasons  
5 the plans were disapproved so the audience and the  
6 members of the board have a clear understanding of the  
7 issues in this case.  
8 MR. GARTENBERG: Yes, sir, I would. And I  
9 would refer back to my July 11th, 2014, memo to the  
10 board in which I identify the proposed signage  
11 provides identification for service business located  
12 on the second floor of a shopping center, Section  
13 X,F,(4),(b) of the Zoning Ordinance 1175 provides for  
14 the erection of a wall sign only to retail businesses  
15 located on the second floor of the shopping center.  
16 CHAIRMAN WALCH: Any questions of  
17 Mr. Gartenberg? All right. Now, I will take care of  
18 some procedure matters first.  
19 The public notice of this hearing will be  
20 marked as Exhibit B.  
21 And the denial letter from the city clerk  
22 dated May 30th was already marked as Exhibit C.  
23 And I think the same -- well, I'm not sure  
24 about the list of persons, and so we will mark that  
25 one as the list of people to whom the notice of the

1 public hearing was mailed will be marked as Exhibit D.  
2 The appellant has a new letter of September  
3 3rd, 2014, which will be marked as part of Exhibit E,  
4 along with letters that were previously marked as  
5 Exhibit E. Mr. Schmieder, were there any other  
6 letters?  
7 MR. SCHMIEDER: No, Mr. Chairman.  
8 CHAIRMAN WALCH: Thank you. And, finally,  
9 if it hasn't already been marked in the first hearing,  
10 any memorandum from the staff and consultants to the  
11 Zoning Board of Adjustment to the City of Ladue will  
12 be marked as Exhibit F. I believe that probably has  
13 been done as far as the first hearing. And that  
14 record also will be incorporated in this record. So  
15 that we have the entire record of both the August  
16 proceeding and this particular proceeding, which is a  
17 rehearing of the August proceeding.  
18 At this point will the appellant and  
19 anybody who wants to speak on the appellant's behalf  
20 come forward and give your name to the court reporter  
21 and she will swear you in.  
22 (At this time Mr. Martin, Mr. Winkelmann,  
23 and Ms. Elbert were sworn in by the court reporter.)  
24 MR. MARTIN: Mr. Chairman, I'm Paul Martin.  
25 I'm here to speak on behalf of Blue Ocean. And you

1 just met Mr. Winkelmann and Ms. Elbert that will be  
2 talking after I finish. I have a PowerPoint that I'm  
3 going to go through. I would like to submit a hard  
4 copy of the PowerPoint as an exhibit.

- In addition to that, I would like to submit  
Chapter 130 of the city's municipal code referencing  
7 signs as an exhibit as well.

8 CHAIRMAN WALCH: This will be Exhibit G and  
9 H.

10 MR. MARTIN: I have copies of the  
11 PowerPoint if you would like. But this will be the  
12 same information that's up on the screen.

13 First, thank you very much for your ruling.  
14 And we appreciate very much the surprise that we  
15 confronted at the August 4th hearing was such that it  
16 didn't give much time to analyze and digest what is  
17 truly an apparently subtle point. That's why we asked  
18 for reconsideration. We really appreciate the extra  
19 effort.

20 Mr. Chairman, your exhibit list included a  
21 letter that I sent dated September 3, 2014. I just  
22 want to point out for the record that that included  
23 the exhibits that were attached to that letter. I  
24 believe that is Exhibits A through H. I would like  
25 those be part of the record as well. I assume they

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are not.

2 CHAIRMAN WALCH: They were.

3 MR. MARTIN: And the transcript of the  
4 August 4, 2014 hearing. I assume they are also part  
5 of the record?

6 CHAIRMAN WALCH: Yes.

7 MR. MARTIN: Everything else has been  
8 addressed. Chapter 30 -- I'm sorry, Chapter 130 of  
9 the city sign chapter of the municipal code is --  
10 really, I want to include that just as a demonstration  
11 as to what this case is all about.

12 In Chapter 130 it identifies the purposes  
13 imposed on the city sign ordinance. And it talks  
14 about visual clutter. It talks about traffic. It  
15 talks about visual blight. It talks about safety  
16 hazards. The basic public safety and health  
17 considerations that form the basis of why you regulate  
18 signs.

19 You are probably aware that when you are  
20 talking about signs you are talking about First  
21 Amendment rights. Those rights are a little bit more  
22 stringent when you are talking about these kinds of  
23 cases.

24 No one has said that this sign is a visual  
25 blight, or establishes visual clutter, or offers any

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1 kind of traffic or health or safety problem. So there  
2 isn't any problem with Chapter 130 of the city's code  
3 per se.

4 As Mr. Gartenberg mentioned, and Chairman  
5 Walch, I apologize. I don't see many lawyers named  
6 Wallace, I misspelled your name here.

7 CHAIRMAN WALCH: It is definitely not  
8 Wallace.

9 MR. MARTIN: I didn't mean to insult you.

10 At the August 4th hearing you asked was  
11 that the only reason for denial, everything about the  
12 sign was in compliance with the ordinance description,  
13 and the answer was correct. Size was okay. It was  
14 just the placement for a non-retail business on the  
15 second floor.

16 This is the provision that required -- that  
17 we are talking about. Each individual business  
18 located on the ground floor level with no entrance to  
19 the street level or a second story retail business may  
20 have one or more wall signs. And that is done to save  
21 some time.

22 Blue Ocean's business was interpreted as  
23 not being a retail business, and so therefore  
24 implicitly under this particular provision it is not  
25 entitled to a second-floor sign.

11

1 This is the critical distinction. This is  
2 what the this case is about. The section that we are  
3 talking about does not limit the number or appearance  
4 of second-floor signs, rather the kind of signs that  
5 can be placed on the second floor. And if you will  
6 permit me this hypothetical, by saying that the second  
7 floor can have retail signs, the city council has  
8 already determined that having signage on the second  
9 floor is not a visual blight. Is not visual clutter.  
10 And does not create traffic or safety problems. The  
11 city council has already made that decision.

12 This provision, however, says that if you  
13 are retail you can have a sign on second floor, but if  
14 you are non-retail you can't have a sign on the second  
15 floor. The point that we want to make is what's the  
16 sign purpose behind that. Because if you can have a  
17 retail sign in the same spot that Mr. Winkelmann has  
18 for Blue Ocean, and there isn't any difference between  
19 signage and functional, then why do you draw the  
20 distinction between retail and non-retail signs on the  
21 second floor.

22 It creates a legal problem. And I know  
23 there was a mention of a lawsuit. That petition was  
24 prepared because at the time we were considering the  
25 August sign we were casting about wondering what to

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1 do, and that was certainly an option. It is not  
2 intended as any kind of threat. But it does bring  
3 several different legal claims, all of which get down  
4 to this lack of a reasonable justification which is  
- distinguishing between retail use and a non-retail  
when it comes to second-floor signage.

7 I refer to this as kind of a hole in the  
8 code. Why is second-floor signage limited to retail  
9 under that particular section? I truly cannot think  
10 of a legitimate reason or a good reason why. My only  
11 conclusion is that you have regulations that pertain  
12 to office buildings. And if you have an office  
13 building obviously the building has its offices. It's  
14 entitled to one identification sign on the outside of  
15 the building. You walk in the main entrance of the  
16 building, you have a list of directories of offices  
17 that are in the building, and they will tell you where  
18 to go.

19 You also have signage regulations for  
20 standalone businesses. Those things can be  
21 identified.

22 This regulation pertains to shopping  
23 centers. Perhaps it was just an oversight to include  
24 retail in that second floor level, I don't know. But  
25 the code does not effectively address mixed usages

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that occur in shopping centers, and particularly the  
2 Village of Schneithorst.

3 So one solution to this, and a solution I  
4 don't know if it has been explored by the board. I  
5 wanted to bring it to your attention, and also make it  
6 part of the record, it's an option. That option is an  
7 appeal. We have talked about variances of the Board  
8 of Adjustment, and I have represented a lot of Boards  
9 of Adjustment, often don't understand the scope of  
10 their authority, and that extends to considering  
11 appeals from decisions that are made by the city  
12 staff.

13 Your code section, Section 9 H,  
14 specifically says that you have the authority to hear  
15 and decide appeals. So if you wanted to you could  
16 determine whether an error was made in the  
17 consideration of Blue Ocean Portfolio as a non-retail  
18 business. The reason I say that is simple. While  
19 most definitions of retail clearly do pertain to the  
20 sale of commodities, not all definitions do.  
21 Webster's New Collegiate dictionary that we rely on.

22 The first definition is to sell in small  
23 quantities directly to the ultimate consumer. Blue  
24 Ocean does not sell commodities. But Blue Ocean does  
25 sell services to an ultimate end user. It is not a

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1 wholesaler. It services. And in that sense it is a  
2 retailer, and in the industry it is considered a  
3 retailer.

4 If you wanted to, you could determine that  
5 an error was made in interpreting the word "retail" as  
6 excluding Blue Ocean and you could reverse the denial  
7 on that basis.

8 The other solution is as you suggested  
9 earlier, which is a variance solution, where there are  
10 practical difficulties or unnecessary hardship in  
11 carrying out the strict letter of the ordinance. You  
12 have the authority to modify the application of the  
13 variance application. So that the spirit of this  
14 section shall be observed, public safety and welfare  
15 secured, and substantial justice done.

16 Now, we have already established that this  
17 particular provision of the sign code lets  
18 retailers -- if there are 20 spaces, I don't know how  
19 many spaces there are on the second floor, but if  
20 there are 20 spaces on the second floor, and there are  
21 20 retailers going in on the second floor, every  
22 single one of those retailers would be entitled to a  
23 sign. But if you are not a retailer you are not  
24 entitled to a sign.

25 That obviously creates a practical

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1 difficulty with respect to Blue Ocean. Mr. Winkelmann  
2 and Ms. Elbert are going to talk about how their  
3 customers can't find them in that shopping center.  
4 You are familiar with the area. You have different  
5 store frontages. You have different usages on the  
6 second floor. But the layout is confusing just coming  
7 into that parking lot looking at it. You don't know  
8 what door to go into. You don't know where anybody  
9 is. So the signage in this particular case is not  
10 having that signage definitely is practical difficulty  
11 or unnecessary hardship. And I say it's unnecessary  
12 because that distinction again doesn't serve the  
13 purposes of sign regulation under the zoning code.

14 So, you could decide that because the sign  
15 provisions don't address non-retail businesses,  
16 non-retail second floor businesses in shopping centers  
17 that a hardship and difficulty is created, and you can  
18 issue that variance. And I believe to do so you would  
19 be serving in the spirit of the law, public safety,  
20 and welfare, and you would be doing substantial  
21 justice.

22 I need to talk a little bit about the  
23 Prudential case that was referenced. The case that  
24 you have in front of you today is exactly the same  
25 case as you had as the 2005 board had with Prudential

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1 Realty. The variance was granted there on the same --  
2 basically the same argument. I think this argument  
3 articulates it a little bit more specifically, but it  
4 is basically the same argument. And it is what I  
~ refer to as a hole in the code.

So the Prudential case in 2005 serves as  
7 precedence to guide your decision here today in 2014.  
8 The Prudential case is a two-way sword. Because that  
9 variance was granted on the condition that this sign  
10 will be the only second floor tenant to have a sign  
11 permit.

12 I don't think that's a lawful condition.  
13 And the reason being that the city code gives you the  
14 responsibility and the obligation to consider and make  
15 decisions on variance applications as they come to  
16 you. Missouri case law gives applicants the right to  
17 have that decision made. So under the law that it's  
18 your obligation to make that kind of decision. So I  
19 did not think that the Zoning Board of 2005 could  
20 reach into the future and tie the hands of subsequent  
21 Zoning Boards forever based on its particular view of  
22 that particular variance.

23 CHAIRMAN WALCH: I don't believe anybody on  
24 this board believes it can, either.

25 MR. MARTIN: I'm not going to say

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anything -- any more about it.

2 CHAIRMAN WALCH: You don't need to belabor  
3 that point.

4 MR. MARTIN: That is my presentation. We  
5 think you should either grant the appeal or find a  
6 practical hardship and grant the variance. Thank you  
7 very much.

8 Jim, do you want to say anything?

9 MR. WINKELMANN: I want to thank you again  
10 for reconsidering this. This is a unique situation  
11 over at Schneithorst.

12 The space itself is in the old banquet hall  
13 above the restaurant. Today a 79-year-old client who  
14 we manage \$800,000 for first went to Fidelity, one of  
15 our competitors. Then she went to the Merrill Lynch  
16 building. She spent half an hour trying to find us.

17 Many of our people are above the age of 60.  
18 When they come -- my colleague, Jennifer Elbert, takes  
19 the phone calls. Jennifer, help the board, share with  
20 last month. We moved in September 1st.

21 MS. ELBERT: Yes. But we have had about a  
22 month of experience of clients trying to find our  
23 office, coming to a meeting. I would say eight of ten  
24 clients call us from the parking lot, or call us from  
25 around the area expressing difficulty in finding our

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1 location, on what door to enter, sometimes they are  
2 driving around the building. I would say about 80  
3 percent of our clients. As Mr. Winkelmann stated,  
4 many of them are older clients not familiar with the  
5 area as much.

6 MR. WINKELMANN: Even people familiar with  
7 the area, because of the uniqueness of the layout of  
8 that shopping center, they don't know what door to go  
9 in. And they are calling us from the parking lot.

10 The hardship is not for us, it's for our  
11 clients. We have about 420 clients, and they make  
12 frequent trips to the office.

13 CHAIRMAN WALCH: Do you have any questions?

14 MS. TOFT: I do have a few, if I may,  
15 because I was not at the earlier hearing.

16 We have visited the site. Have you  
17 discussed with the landlord why there is nothing on  
18 the first level to let people know that your business  
19 exists by way of entering the door and going up in an  
20 elevator?

21 MR. WINKELMANN: The marquee was just  
22 modified to reflect our presence on the 30th, on  
23 September 30th. But we have no deal with the landlord  
24 for anything more than the sign on the building, which  
25 is on the exhibit, and the marquee. There are no

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1 other deals struck with the landlord. So we can't go  
2 now and put something on the door or on the awning.  
3 There is no deal there with the landlord.

4 MS. TOFT: You say there is no deal there.  
5 I guess I'm asking, have you even broached the  
6 subject? One reason I bring it up is that when we got  
7 off the elevator there is a sign there pointing the  
8 direction for people to go. Your name wasn't on the  
9 sign.

10 MR. WINKELMANN: They haven't modified that  
11 yet. They are aware the directional sign has been  
12 overlooked. You are talking about the second floor  
13 landing?

14 MS. TOFT: Yes. But have you broached with  
15 the management about something downstairs with that  
16 door.

17 MR. WINKELMANN: Only the marquee is what  
18 they are willing to do. But that's also the entrance  
19 to other tenants and the restaurant. So they hesitate  
20 to designate that entrance as only us.

21 But if I may allow, that still -- visitors  
22 have to know to go in that door, and there is no way  
23 to go in that door.

24 MS. TOFT: And you think that by having a  
25 sign up on the second floor off to the side, that

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1 would somehow alert people to your presence?  
2 MR. WINKELMANN: It would be above the  
3 entry. The only practical place to put the sign is  
4 where we submitted it.

5 Again, the client this morning tried to get  
6 to our space through Fidelity, was denied. Went to  
7 Merrill Lynch thinking maybe it was over there. The  
8 addresses are not visible at all. When I say 1588  
9 South Lindbergh, it's the same address as 1600 South  
10 Lindbergh. It creates confusion for people even  
11 familiar with the intersection.

12 MS. TOFT: So now I'm going to ask what  
13 might be deemed an inappropriate question, but you  
14 obviously knew that was an inconspicuous entrance when  
15 you rented the space. I'm assuming that you got the  
16 space at less than market rate because a very good --  
17 it's not an entrance.

18 MR. WINKELMANN: I wish that was the case.  
19 It's not the case. It's a very unique space. We  
20 bargained for the space, the sign, comprehensive  
21 bargain. When I reviewed the code, and this word  
22 retail comes up, we are certainly not wholesale. And  
23 I mean, how were I to know that the sign permit was  
24 not going to be issued, because from my perspective  
25 and from our industry's perspective, we certainly are

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retail.

2 MS. TOFT: Let me ask you more about that.  
3 I've heard that representation by both you and your  
4 attorney. And, again, I wasn't at the prior hearing  
5 and so if this redundant, I apologize. You provide  
6 investment advice, I take it?

7 MR. WINKELMANN: Yes.

8 MS. TOFT: Are you a licensed broker?

9 MR. WINKELMANN: No. A broker would imply  
10 that they sell securities. We don't sell securities.  
11 People hire us to manage their portfolios. Whether  
12 it's an IRA, a family trust. People hire us to manage  
13 their wealth.

14 MS. TOFT: I apologize for the question,  
15 but by managing their wealth what are the vehicles  
16 that you offer to your clients? How is that you that  
17 manage their wealth?

18 MR. WINKELMANN: They give us limited power  
19 of attorney to access their account, their brokerage  
20 account. To trade in accordance with well-established  
21 investment policies that are developed for the family  
situation.

22 MS. TOFT: And so again I apologize for the  
23 inquiring nature of mine, but are you degreed? Do you  
24 hold some kind of licensure?  
25

22

1 MR. WINKELMANN: We are SEC registered  
2 investment advisors. The company is registered with  
3 the Securities and Exchange Commission. We are a  
4 heavily regulated industry, of course.

5 MS. TOFT: And you said Fidelity is a  
6 competitor, but Fidelity does in fact sells it own  
7 funds. Do you have your own funds that you sell?

8 MR. WINKELMANN: No. We have a fiduciary  
9 relationship with our clients, and therefore we would  
10 never sell our own proprietary funds.

11 MS. TOFT: And you said that you are  
12 considered retail in the industry. Upon what do you  
13 base that representation?

14 MR. WINKELMANN: Well, in the investment  
15 management industry we are managing a mutual fund  
16 which we have had from my previous account. That you  
17 would access through your Edward Jones broker, Merrill  
18 Lynch broker. That would be an institutional service.  
19 So the wealth management industry is bifurcated  
20 between institutional where you are managing for  
21 businesses or mutual funds, and retail when you are  
22 managing with the direct -- engaging with the client.

23 MS. TOFT: So your clients are individuals  
24 as opposed to businesses?

25 MR. WINKELMANN: They are not mutual funds.

23

1 They are not hedge funds. They are not commingled  
2 vehicles.

3 MS. TOFT: And to that extent do you have  
4 people walk up to your door and knock on your door  
5 without an appointment?

6 MR. WINKELMANN: Twice today.

7 MS. TOFT: Twice today. Asking for what?

8 MR. WINKELMANN: They were both existing  
9 clients. We didn't know they were coming. One guy  
10 was moving and wanted to drop in some paperwork. We  
11 didn't know he was going to be there. And the other  
12 one was just dropping off some information. We didn't  
13 know she was going to be there either. We don't know  
14 when they are going to come sometimes.

15 MS. TOFT: Can you distinguish for me how  
16 you are any different than say an attorney who does  
17 probate work, or an accountant who does accounting  
18 work for individuals?

19 MR. WINKELMANN: Our business model is  
20 clearly based on advertising. We advertise on KMOX  
21 radio footprint. We attract clients from Wentzville  
22 to Carbondale to Highland. This area, the location,  
23 is specifically identified to be the central location.  
24 Most of our clients are responding, are there, because  
25 of our advertising strategies.

24

1 MS. TOFT: As you know, late night  
2 television a lot of lawyers are doing a lot of  
3 advertising, and I think CPA's advertise also, so I'm  
4 just trying to understand how you would be any  
5 different because I'm sure Mr. Martin understands that  
6 were we to grant a variance here then every  
7 accountant, every attorney, every person who offers  
8 professional services in Ladue will be demanding  
9 signage, and we have heretofore turned those people  
10 down without any -- but for this one.

11 MR. WINKELMANN: If I might. We still have  
12 to strike a bargain with the landlord for those  
13 signage rights. And there are very few buildings in  
14 Ladue that this will be subject to. So I don't think  
15 the threat of some kind of landslide of CPA's and  
16 accountants running in here. You would have to first  
17 strike a pretty good bargain with the landlord to get  
18 the signage right.

19 MS. TOFT: In some instances it's probably  
20 the case the lawyers or CPA's own the buildings  
21 themselves. But that being said, are you telling us  
22 that Schneithorst promised you that you could have  
23 signage on the building?

24 MR. WINKELMANN: The deal in the lease was  
25 contingent on the signage permit. This case was

supposed to be heard, I think, Mr. Chairman, July 6th.

2 CHAIRMAN WALCH: I believe the July meeting  
3 was canceled.

4 MR. WINKELMANN: It was canceled in the  
5 middle of the lease negotiations.

6 MS. TOFT: So you have a knock out  
7 provision in your lease that if you are not allowed to  
8 provide signage on the second floor then your  
9 obligations under the lease --

10 MR. WINKELMANN: No. The spot is  
11 contingent on you all issuing a permit.

12 MS. TOFT: But you have no relief on your  
13 lease with Mr. Schneithorst or Desco or whoever  
14 manages it, that if you have the signage that you have  
15 no relief?

16 MR. WINKELMANN: I even went to the fact  
17 that either intentionally or unintentionally this  
18 issue about the Prudential variance was withheld from  
19 us in the lease negotiation. And so we had no idea  
20 about the condition on that.

21 I think just on a practical side if you saw  
22 their sign, you say how did they get their sign?

23 MS. TOFT: No. Mr. Schneithorst, I  
24 distinctly remember was at that hearing in 2005. Did  
25 he mention to you --

1 MR. WINKELMANN: No. He did not. The  
2 first news of this condition to me was in the meeting  
3 when Mr. Wooldridge brought it to the attention of the  
4 board. That was the first news that we heard of the  
5 condition.

6 Had we known about the condition prior we  
7 would have negotiated completely different with  
8 Mr. Schneithorst. We didn't know about the condition  
9 on the sign.

10 Again, if you are just visiting, you see  
11 Prudential or Berkshire Hathaway on the sign.

12 MS. TOFT: Did anyone lead you to believe  
13 that you were going to be allowed to have any  
14 particular sign? Did anyone from the City of Ladue  
15 represent to you in any way that you would be allowed  
16 to have a sign?

17 MR. WINKELMANN: Only when I requested the  
18 information on the Prudential sign specifically in an  
19 email to Mr. Schmieder or Mr. Wooldridge, I  
20 specifically requested all documents pertaining to the  
21 issuance of that sign permit, and I wasn't provided  
22 it, and so we didn't know.

23 To the matter that they omitted sharing  
24 information, I mean, I didn't have the information and  
25 I asked them for it. We had no chance to analyze the

1 meaning of the condition through the lease negotiation  
2 or up until the middle of the last hearing on August  
3 4th.

4 MS. TOFT: And when did you sign the lease?

5 MR. WINKELMANN: The lease was signed the  
6 end of July.

7 MS. TOFT: Thank you.

8 MR. SCHLAFELY: This is a conjecture  
9 question. It came back to 2005 when we were dealing  
10 with the other question.

11 If you were to get your name on a monument  
12 sign in front of the property, what you would see is a  
13 typical method when you have second story or third  
14 story office users versus retail, would that help you?  
15 Would that be something, would that induce you to  
16 evolve this location, or are you seeking a retail type  
17 sign on the building to provide the presence?

18 MR. WINKELMANN: I don't know of any -- I  
19 wouldn't be privy to any discussion between the  
20 property owners and Ladue for the monument sign  
21 construction or the inclusion thereof.

22 I do know, I think if we were to sell art  
23 work or photography we would have the exact same sign  
24 in the exact same location without need for a  
25 variance. So if we were an art gallery, Blue Ocean

1 Portfolios selling art work, we would put Blue Ocean  
2 Portfolios in the exact same place, and we would have  
3 been granted the sign permit.

4 MS. FORSHAW: I would point out that the --  
5 there are good reasons why the city council may have  
6 chosen to distinguish between retail and non-retail  
7 usage for signage.

8 The city has a general interest in  
9 minimizing visual blight and clutter and promoting  
10 traffic, et cetera. But in the case of retail usages,  
11 there is I guess a tension between minimizing visual  
12 clutter and signaling to the public where a retail  
13 location is. And they have in mind retail locations  
14 where there is a lot of walk-in traffic, a lot of  
15 people coming to patronize the establishment who have  
16 never been there before, who have had no previous  
17 contact.

18 And so I think the distinction was that the  
19 city council has drawn here for the signage for retail  
20 versus non-retail usages in the same building is a  
21 very rational distinction, and I think it's hard to  
22 argue that your business is retail.

23 MR. WINKELMANN: I might add that there is  
24 no recognition in the Ladue ordinances or the  
25 St. Louis County ordinances or the Missouri code for

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what retail is.

2 The fact we are certainly not a wholesale  
3 business. If you are not wholesale you must be  
4 retail.

5 MS. FORSHAW: You can be a service  
6 business, which is what you are.

7 MR. WINKELMANN: But there is no definition  
8 for that either.

9 MS. FORSHAW: It's true there is no exact  
10 definition of retail in the code that I can find.

11 However, the ordinance that describes the permitted  
12 usages in the G commercial district, in discussing  
13 retail uses it lists in subsection F, store or shop  
14 for the conduct of retail business. And I -- you  
15 know --

16 MR. WINKELMANN: If we sold snow cones  
17 under Blue Ocean Portfolios our sign would be  
18 complete. If we sold snow cones up there, and we  
19 called it Blue Ocean Portfolios and we sold snow cones  
20 there wouldn't be an objection. It doesn't make any  
21 practical --

22 MR. MARTIN: If I could add onto that  
23 thought. I say again, this a rather subtle point.  
24 But the code already allows retail signs. Every space  
25 on the second floor of Villages at Schneithorst could

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1 have a retail sign. And yes, are the reasons why you  
2 want to regulate signs as visual to eliminate  
3 proliferation of signs and to avoid visual blight,  
4 absolutely. But the code already allows retail  
5 signage all along that second floor. The distinction  
6 that we are trying to drive home here is, what  
7 difference does it make if it's a non-retail sign. If  
8 a retail sign isn't a threat to the city under the  
9 code, how can a non-retail sign be a threat to the  
10 city under the code?

11 MS. FORSHAW: Yes. And what I'm trying to  
12 explain is that we all agree the city has an interest  
13 in minimizing visual blight. It also has an interest  
14 in promoting traffic safety. And a retail use tends  
15 to involve more walk-in traffic, foot traffic, people  
16 arriving in the establishment who have never been  
17 there before, don't have an appointment. That's an  
18 important distinction.

19 So the city doesn't want a lot of exterior  
20 signs for office uses. In fact, on pure office  
21 buildings the signage is very limited. And it would  
22 in fact create an anomaly in the code to give office  
23 users better signage rights if they happen to be on  
24 the second floor of the shopping center than if they  
25 happen to be in an office building.

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1 MR. WINKELMANN: This only affects three  
2 buildings in Ladue. Only three buildings will be  
3 impacted. One of them already has a sign, which I  
4 don't think performs to the code. Old Republic Title  
5 on Conway Road is on the second floor at Conway and  
6 Clayton Road. There is First National Bank on the  
7 first floor. Old Republic Title Company is on the  
8 second floor. And to the best of my knowledge there  
9 is no sign permit, and it's been there for eight  
10 years.

11 MS. FORSHAW: We drove by several buildings  
12 today with retail on the first floor and offices on  
13 the second floor.

14 MS. TOFT: The other problem is, quite  
15 frankly, that it would not be difficult for any  
16 current office buildings to be converted into retail  
17 on the first floor. And were we to adopt your  
18 argument, then we could find buildings that are  
19 currently all service businesses, and they could  
20 become first floor retail, and the building could be  
21 cover with signage for the professional groups that  
22 have offices up there.

23 MR. WINKELMANN: There is currently over  
24 200 business identification signs between Conway and  
25 Clayton, and Clayton and Lindbergh. Over 200. Every

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1 business on the intersection of Clayton and Lindbergh  
2 has a business identification sign. Every business.  
3 And I mean in the sense of fairness. And the fact  
4 that Prudential already has a sign there.

And the circumstances leading up to this --  
remarkable circumstances leading up to us not knowing  
7 about this condition, I don't know what else we could  
8 have done to bargain for that sign, and to bargain for  
9 that space with the property owners.

10 MR. SCHLAFLY: Well, I think if you were to  
11 lease a first floor retail space you could get your  
12 sign.

13 MR. WINKELMANN: And what difference would  
14 that make to the blight issue, or for the clutter  
15 issue? How would that impact?

16 MR. SCHLAFLY: I mean the sign is already  
17 organized and it's there. You have the space for it.

18 MR. WINKELMANN: Or we sold snow cones we  
19 could have the sign. It doesn't make any practical  
20 governmental purpose for prohibiting our sign.

21 MR. MARTIN: Let me ask that question. If  
22 he applies to the city for a business license for a  
23 snow cone shop, and this service business as well, and  
24 he starts selling snow cones whoever wants to come up  
25 and buy it, is he going to get a retail sign?

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MS. TOFT: I think it's time to close. It  
2 really is. And what I would say to you to close the  
3 argument is that any person who wanted to put a snow  
4 cone business in a location where Blue Ocean was seen,  
5 would make a very bad business decision. And if  
6 somebody rents space where they know they are going to  
7 have clients that aren't going to be able to find them  
8 and then want to come in and seek to change our sign  
9 ordinance because they rented the space and now people  
10 are having a hard time finding them.

11 MR. WINKELMANN: We are not seeking to  
12 change the sign ordinance. We are seeking to be  
13 treated the same way Prudential was treated.

14 MS. TOFT: Mr. Chairman, I think it's  
15 probably time we close the public portion of the  
16 hearing.

17 MS. LONG: I have a question. Did you say  
18 that the marquee was modified?

19 MR. WINKELMANN: Just recently to include  
20 our name.

21 MS. LONG: Where is that? Can you describe  
for the record where that is.

22 MR. WINKELMANN: When you walk in the  
23 double glass doors, if you know to walk in there, the  
24 marquee is adjacent to the door entry into the bar.

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1 MS. LONG: The directory inside the  
2 building?

3 MR. WINKELMANN: Right.

4 MS. TOFT: Is there no address number on  
5 that door?

6 MR. WINKELMANN: No address number.

7 MS. TOFT: And, again, have you not asked  
8 to have the address number?

9 MR. WINKELMANN: Because of the uniqueness  
10 of the historical purpose of that building, the  
11 original building was built in 1957. The address for  
12 Schneithorst Restaurant is 1600 South Lindbergh. Even  
13 though we are above it, we don't have the same  
14 address.

15 MS. TOFT: But I'm talking about putting an  
16 address that people would enter to get to your  
17 business. At least if they pull in there they could  
18 say I see this is the address that I need to enter.

19 MR. WINKELMANN: I mean, I don't have power  
20 over that. Only the landlord, the property owner  
21 would have that.

22 MS. LONG: And our confusion then is --

23 MR. WINKELMANN: It's in the four corners  
24 of the lease agreement that wasn't bargained for. It  
25 wasn't there because we didn't know about the

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1 condition on the Prudential sign. We all thought that  
2 we would be treated the same.

3 CHAIRMAN WALCH: We are not bound by that.  
4 I hope you understand that.

5 MS. LONG: That has nothing to do with our  
6 decision.

7 CHAIRMAN WALCH: It has nothing to do with  
8 our decision.

9 MR. WINKELMANN: I hope you can understand,  
10 Mr. Chairman, that it has everything to do with my  
11 business decision. You are sitting there going here  
12 is a service business with a sign in the exact same  
13 development under the same circumstances that we are  
14 here for, why would we be treated differently?

15 MS. FORSHAW: I was not here when that  
16 variance was granted, but in looking at the two spaces  
17 there are some significant distinctions between them.

18 The Prudential office is a much larger office. It  
19 could reasonably have been expected at the time to  
20 have more foot traffic than yours. It has glass  
21 windows where you see in the office. It has listings  
22 on an easel. I mean, it is -- I could well imagine  
23 that the board at the time thought perhaps there was a  
24 hardship in the sense of there being a lot of foot  
25 traffic and a greater need to signal a location.

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1 MR. WINKELMANN: I bargained with the  
 2 landlord for the sign. I had no way of knowing, even  
 3 after asking Ladue specifically about all the reasons  
 4 or ways of Prudential got the sign, I was denied that.  
 5 We were denied that information. We went in and  
 6 entered into a business agreement not knowing about  
 7 that. I don't know from a business -- from a business  
 8 perspective what else could we have done.  
 9 MS. TOFT: Mr. Winkelmann, I was sitting at  
 10 that. And I was the person who made the motion. And  
 11 I will tell you that Mr. Schneithorst came and  
 12 Mr. Schneithorst -- it was made imminently clear in  
 13 the motion that he best not be renting to retail  
 14 establishments and for the second --  
 15 MR. WINKELMANN: If just --  
 16 MS. TOFT: If I may finish, sir.  
 17 Non-retail establishments, and hoping to put signs up  
 18 there, because it wasn't going to happen again. And  
 19 this was unique because it was a real estate office  
 20 and because they do advertise their listings, and  
 21 people do walk in real estate offices and want to scan  
 22 the listings quickly, that it was being more retail in  
 23 nature. But it was made imminently clear to  
 24 Mr. Schneithorst that we were not going to have  
 25 more -- him renting to more tenants who were

non-retail and having them come in and say this was a  
 2 quite a surprise to us.  
 3 And if you note the motion, I mean, I know  
 4 you say it was withheld from you. If you read the  
 5 motion, that's exactly what the motion says.  
 6 MR. WINKELMANN: I just have one more  
 7 remark with the set of circumstances.  
 8 At the time our suite was rented out by a  
 9 gentleman by the name of John Woods. Some of you may  
 10 have known John. A real interesting character. He  
 11 ran his family office up there. He spent a lot of  
 12 money, half a million dollars building out the space.  
 13 Shortly after this meeting in 2005 he was tragically  
 14 killed in a motorcycle accident. There was no way Mr.  
 15 Schneithorst would have contemplated this space would  
 16 have ever been up for rent after someone spent so much  
 17 money building it out. His family paid rent on that  
 18 space for the next eight years. It wasn't  
 19 contemplated that space would ever be rented out by  
 20 Mr. Schneithorst.  
 21 MS. FORSHAW: Mr. Winkelmann, would it be  
 22 fair to say that most of your clients come by  
 23 appointment?  
 24 MR. WINKELMANN: 80 to 90 percent of them.  
 25 MS. TOFT: Would you be making this request

1 if you did business as Winkelmann Investment Advisors?  
 2 MR. WINKELMANN: I would think that any  
 3 business would be making the same request.  
 4 MS. TOFT: Well, but my question to you  
 5 is -- you use the name Blue Ocean. If you were  
 6 Winkelmann Investment Advisors would you be making the  
 7 same argument that you are retail in nature?  
 8 MR. WINKELMANN: Yes. Just as Merrill  
 9 Lynch does next door.  
 10 MS. TOFT: So, yes, you would, if you were  
 11 Winkelmann Investment Advisors?  
 12 MR. WINKELMANN: Probably.  
 13 CHAIRMAN WALCH: Do you have anything  
 14 further?  
 15 MR. MARTIN: While I regret that we have  
 16 different perspectives on the validity of your sign  
 17 code, I appreciate your perspectives nonetheless. And  
 18 I just want to thank you for your service. I  
 19 represent Board of Adjustments all the time. It's a  
 20 hard job, and we appreciate you giving us this  
 21 opportunity. Thank you.  
 22 CHAIRMAN WALCH: Thank you, Mr. Martin.  
 23 Does any other member of the public wish to  
 24 speak to this matter? We still have another case to  
 25 hear here today.

1 Hearing none, I'm going to close the public  
 2 comment section of this meeting. I don't know if  
 3 there is much more to be said about this, but if  
 4 anybody has any comments speak up right now or try to  
 5 hold your piece.  
 6 MS. TOFT: I would just say that there is a  
 7 citation authority that I would disagree with that I  
 8 don't believe that by enforcing our sign ordinance  
 9 that we are rendering the space unusable. And the  
 10 case cited by the applicant in this states that  
 11 practical difficulties exist where the property cannot  
 12 be used for permitted use without coming into conflict  
 13 of government ordinances. I don't think that's what  
 14 we are doing in this situation, and so I don't know  
 15 that we are -- we are rendering the premises unusable  
 16 by enforcing a sign ordinance.  
 17 I'm just really -- I'm the liberal on the  
 18 board, and so I just -- I can't imagine how we are  
 19 going to keep our building from being totally  
 20 cluttered with signage if we were to consider an  
 21 investment advisor a retail business. How can we say  
 22 that that would be the same -- could be said of any  
 23 other professional service.  
 24 MR. SCHLAFLY: I think what the  
 25 Schneithorsts have done, the kind of development it

1 is, but the decision made on the signs by the landlord  
2 themselves is correct, that they want a really nice  
3 development. And I'm sure they are trying to support  
4 Mr. Winkelmann to have the best sign possible for  
5 their development, but the stone was cast in that the  
6 use will change the whole outcome for many sign cases  
7 that we look at. And that is the struggle that  
8 continues with this.

9 This retail office -- I mean, the ordinance  
10 not to be distinguished. That there was not a  
11 distinction between retail office. But there is.  
12 There is a difference. And public policy and policy  
13 for real estate development. And for the reasons  
14 already submitted by Liza, also public versus retail  
15 office is a private enterprise. If signs were to be  
16 wildly placed on the front of buildings and facia for  
17 every office use we would have a struggle that will be  
18 difficult to overcome.

19 We have to determine that there is not a  
20 distinction between those two uses in this ordinance,  
21 as I understand it. I think there is architectural  
22 outcome that the landlord could probably come up for  
23 you in this. I'm not opening it up. That apparently  
24 maybe Mr. Schneithorst would close at this moment,  
25 that there would be better ways to get directional

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architectural gueues in that development so that his  
2 clients could have directions to his office, and they  
3 have not been opened up, having a dominant sign up  
4 there.

5 I was at the meeting for the sign, and we  
6 were told that the real estate office was the dominate  
7 second floor usage. In fact, I was under the  
8 impression that they were the only tenant, with an  
9 enormous traffic coming in directed under that use. I  
10 didn't know there was a second office.

11 It's been revealed at this meeting that  
12 there was a private gentleman's office up there.  
13 Mr. Schneithorst didn't discuss the second office on  
14 that second floor, but that was a long time ago.

15 CHAIRMAN WALCH: Before three of us were on  
16 the board.

17 MS. TOFT: That's a good point. I had  
18 forgotten that that was in fact the representation.

19 CHAIRMAN WALCH: Any further discussion?  
20 If not does anyone care to make a motion?

21 Not hearing a motion I will simply call the  
22 question: Should this variance be granted as  
23 requested by the applicant. How do you vote,

24 Ms. Toft?

25 MS. TOFT: No.

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1 MS. FORSHAW: No.  
2 CHAIRMAN WALCH: No.  
3 MR. SCHLAFLY: No.  
4 MS. LONG: No.  
5 MR. WINKELMANN: I guess we will see you at  
6 the next step.

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1 CERTIFICATE OF REPORTER

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I, Bobbie L. Luber, Registered Professional  
Reporter, Certified Court Reporter, and Notary Public  
within and for the State of Missouri, do hereby  
certify that the meeting aforementioned was held on  
the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal.



Bobbie L. Luber, RPR, CCR #621

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