

**MINUTES
BLOOMINGTON ZONING BOARD OF APPEALS
REGULAR MEETING - 4:00 P.M.
WEDNESDAY, JANUARY 17, 2018
COUNCIL CHAMBERS, CITY HALL
109 EAST OLIVE STREET
BLOOMINGTON, ILLINOIS**

Members present: Mr. Brown, Ms. Meek, Mr. Schultz, Mr. Veitengruber, and Chairperson Bullington

Members absent: Mr. Butts, Ms. Harris

Also present: Mr. George Boyle, Assistant Corporation Counsel
Ms. Angela Fyans-Jimenez, Sorling Northrup legal services
Mr. Bob Mahrt, Interim Community Development Director
Ms. Katie Simpson, City Planner
Ms. Izzy Rivera, Assistant City Planner

At 4:10 PM, Ms. Simpson called the roll. With five members in attendance, a quorum was present.

PUBLIC COMMENT: None.

MINUTES: The Board reviewed the minutes from December 20, 2017.

Mr. Veitengruber motioned to approve the minutes; seconded by Mr. Butts. The board approved the minutes by voice vote, 5-0.

REGULAR AGENDA:

Z-32-17 Consideration, review and action of a petition submitted by ACE Sign Company for a variance to allow for an additional identification sign for the property located at 2402 E Washington St. in the C-1, Office District (Ward 8).

Chairman Bullington stated Mr. Veitengruber was recusing himself from presentation and discussion on case Z-32-17. He introduced the case. Chris Tennis, VP Commercial Vendor with Illinois National Bank and Keith Haynes, Ace Sign Company, petitioner who submitted the case on INB's behalf were sworn in. Mr. Haynes stated the reasons behind the request for variance are outlined in the petition. He stated he is pleased that staff is recommending in favor of the variance request. The request is being requested in order to address an identification issue for INB. It is important that the additional signage will give INB the visibility on Washington St and their entrance. Mr. Haynes stated he will rely on the recommendation of staff.

Ms. Rivera presented the staff report. She stated the presentation will be outlines by the lens through which the case is viewed, description of the process, background, standards and the recommendation. Ms. Rivera stated with any variance case the intent and purpose of the code should be considered such as making sound decisions that do not negatively affect the community or property owners. When staff looks at sign variances, staff is aware that signs are a right, they serve to promote the business and communicate with the community. Visual impacts,

property values and neighborhood character are also always considered. Ms. Rivera stated the site is located at 2402 E Washington St. In 1979 the site was zoned C-1 and subsequently taken over by various banks throughout the years and currently occupied by INB. The site is surrounded by B-1, Highway Business District and B-2, General Business District. The site is located at the northeast corner of N. Prospect Rd and E Washington St, and has access on both streets. The site is a 1.12 acres lot. 2402 E Washington St is surrounded by banks, some across the street. These banks are located in the B-1 and B-2 zoning classification. B-1 and B-2 zoning are less restrictive with allowable signs.

In 2005 an approved sign permit allowed 3 monument signs and the refacing of a wall sign. Currently the 3 monument signs are present on the site. One sign facing Washington St, the other on the west side of the property and the third sign, a direction sign at the south east corner entrance. The proposed sign will be a 72 X 38 sign, blue with lights. The sign will be facing E Washington St.

Ms. Rivera stated staff reviews Chapter 3 Sign Code to ensure there are no negative impacts or hardships to the surrounding area. Staff considered that there are other banks in the immediate area and would like to ensure the advertising rights of INB are equal to the other banks. She stated for all of these reason staff is recommending in favor of case Z-32-17, an additional identification sign.

Chairman Bullington motioned to accept staff's findings as fact; seconded by Mr. Schultz. The motion was approved 4-0 with the following votes cast in favor: Chairman Bullington—yes; Mr. Schultz—yes; Mr. Brown—yes; Ms. Meek—yes.

There was a recess at 4:20PM and the meeting resumed at 4:22PM.

Z-02-18 Consideration, review and action on an appeal to sign administrator submitted by Picture This Digital Media, LLC, to reverse the sign administrator's decision (Ward 1).

Chairman Bullington introduced the case. Patrick Cox, attorney and Diana Bubenik, Prairie Signs, were sworn in. Mr. Cox outlined the history of the case, how the permit process began and how the City applied the code to other cases in the past. He states his client, Picture This Digital Media, already owned an off premise sign at this location. Since the sign was being utilized, Picture This Digital Media, decided to upgrade the sign, and begin the process to do so with the City of Bloomington. Mr. Cox stated the City communicated that the sign would first have to be torn down, Picture This Digital Media took the sign down. When Picture This Digital Media went back to the City, they were told to obtain a permit from the Illinois Department of Transportation. The sign is located on Veterans Parkway and therefore would require an additional permit. Mr. Cox stated they were told by the City that the local permit would be approved once they received a permit from IDOT. Four months later IDOT approved the permit, and Picture This Digital Media returns to the City and was denied by the City, because months earlier another company applied for an off premise sign. The new sign was located directly next to where the former off premise billboard was located. Mr. Cox stated the new sign permit was quickly granted July 2017, while Picture This Digital Media had taken down the existing sign and was awaiting a sign permit from IDOT as instructed by the City of Bloomington. Mr. Cox referred to 5.7K from the code which states there should be 100 feet between signs. Mr. Cox stated the sign that was granted in July 2017 would not have been granted if Picture This Digital Media had not already torn down the existing sign.

Mr. Cox stated the sign code section impacting them now, has impacted Picture This Digital Media in the past when Dairy Queen was built in front of Cub Foods. Picture This Media has built an off premise sign in that location, when Dairy Queen moved in they began to install an on premise sign directly in front of the off premise sign that Picture This Media already had in place. Picture This Media challenged the placement, but was told the 100 foot distance does not cross property lines. Mr. Cox stated Dairy Queen then was free to build their sign directly in front of the Picture This Digital Media billboard already had in place. Picture This Digital Media had to light their sign higher in order to be seen over the Dairy Queen sign. Mr. Cox stated that since Picture This Digital Media was told the distance between signs does not cross property lines, Dairy Queen was able to build their sign 15 feet away from the billboard sign placed by Picture This Digital Media.

Mr. Cox stated that given the fact pattern and the previous ruling, and others cases that can be found that show that on premise and off premise signs have been dealt in this way, they should be allowed to rebuild the off premise sign. He stated the sign that is currently located there will not be obstructed. Picture This Digital Media sign will be to the side and much higher, and will not block the sign, they should be allowed to put up another sign.

Mr. Schultz asked if the sign that was shown to the commission was behind Starbucks and if the business in question was to the west of Starbucks. Mr. Cox stated the sign was behind Starbucks and the lot where Starbucks is located on is owned by Picture This Digital Media. Mr. Schultz asked what the sign will be advertising when built. Mr. Schultz wanted clarification if an off premise sign was going to be built or an on premise sign, and what the sign would be advertising. Ms. Bubenik stated an off premise sign is being proposed, and it would not advertise Starbucks. Mr. Schultz asked if the sign would be located where a small sign is located currently on the west edge of the lot. Ms. Bubenik stated the small sign is located at the property next door at 1703 S Veterans, and is an on premise sign, and is located 30 feet from where they would like to place the off premise sign. Mr. Schultz asked where the new sign would be in relation to the small one currently in place. Mr. Cox referred to Exhibit 1, and marked where Picture This Digital Media would like to place their new sign. Chairman Bullington stated he would be marking in blue ink the located on Exhibit 1 where they would like to place a sign, and he marked a blue square around the located where the existing sign is located.

Mr. Schultz asked if the new sign would be facing Veterans Parkway, Ms. Bubenik stated the sign would be perpendicular to Veterans Parkway, so that the sign could be seen from all traffic lanes. The existing sign is currently blocked by the building, the new sign would be further out and taller to be seen from east and west bound on Veterans Parkway.

Chairman Bullington asked if there was anyone who would like to speak in favor or opposition. Charles Farnner, Owner of Picture This Digital Media, 7 Pebble Brook Ct, was sworn in. He stated that the process is a complicated process, when located within a city and on a state route. This requires two permits. Mr. Farnner stated the City would not give a permit, until a state permit has been given. Mr. Farnner referred to the dates located in the packet which outline that Picture This Digital Media followed both the city and the state permitting process, and there was time overlay. He stated the business incurred great expenses to tear down a sign, and also go through the state permitting process. Mr. Farnner stated the State keeps a file open until the permit is denied, then the case is closed. He stated if there is additional information required or request, the applicant has time to satisfy all the requirements. Mr. Farnner stated the permit process with the State was going on while the City granted a sign request from another company. This in turn made Picture This Digital Media sign no longer permitted. Mr. Farnner stated they

spent money and time to follow the process and take down an existing sign, if Picture This Digital Media had not taken down the sign, the next door business would not have been allowed to place a permit, and they could not control how fast the State would grant the permit for their sign.

Mr. Bob Mahrt introduced himself as Interim Community Development Department Director, and stated he would be presenting the staff report. Mr. Mahrt introduced case Z-02-18, 1701 S Veterans Parkway, an appeal of a sign administrator's decision. The Administrator's decision to deny the Appellant's sign permit application is in accordance with the requirements of the Sign Code which is Chapter 3. He stated the appeal has been filed in conformance with applicable procedural requirements and public notice was published in The Pantagraph on December 29, 2017. Mr. Mahrt gave background information on the site. The zoning is B-1 Highway Business District, and is surrounded by the B-1 Highway Business District. Mr. Mahrt referred to the Zoning Board of Appeals scope of review found in Ordinance 2012-71.

Mr. Mahrt stated the Advertising Sign Code is published on the City of Bloomington website. Chapter 3, Section 1.2 recognizes the purpose and intent of the City of Bloomington Advertising Sign Code. He stated the ordinance distinguishes between "on-premise" and "off-premise" signs. "On-premise signs" are intended to serve the business where the sign is located. Section 5.1 regulates on-premise ground signs. "Off-premise signs" advertise goods, products, services or facilities or directs persons to a different location from where the sign is located.

Mr. Mahrt stated the regulations for on-premise and off-premise signs differ in order to protect the reasonable rights of all advertisers and to reduce the likelihood of a proliferation of signage and roadway distractions. The Sign Code requires that both on-premise and off-premise signs maintain a minimum, 100 foot horizontal separation with other on-premise signs. He stated Section 5.1(a)1 clearly exempts "on-premise signs located on separate premises" from the 100 foot separation requirement with another on-premise sign. No such exemption from the horizontal separation requirement exists for off-premise and on-premise signs located on separate premises, therefore the horizontal separation between on-premise and off-premise signs located on separate premises is intended to be a minimum of 100 ft. He stated the subject property at 1701 S. Veterans Parkway is located at the northwest corner of the intersection of two state routes, Veterans Parkway/US Business 55/Former Rt 66 and Morrissey Dr/US 150.

Mr. Mahrt outlined the timeline and stated On November 14, 2016, permit application No. 27968 was submitted to the City of Bloomington by Prairie Signs. The application requested permission to erect a double-faced off-premise sign, approximately 242 square feet per side, at 1701 S. Veterans Parkway. The application consisted of a City of Bloomington permit application form, aerial view of the property marked to show the expected location of the sign, and a rendering prepared by the sign contractor illustrating that the proposed sign would be digital and 30 ft tall. An Engineer, certified in the state of Illinois, did not stamp the rendering; the application failed to include information required pursuant to Ch.3, Sec. 3.7 describing the construction and design of the sign including the materials used, and support/footing design. When sign applications, like No. 27968, are incomplete, the sign administrator tries to work with the applicant to acquire the materials and information necessary for compliance and ultimately, for approval. The sign contractor/applicant, Prairie Signs, was notified by email on November 18, 2016, that the City could not approve the permit because three off-premise signs already existed on that side of the street, including a(n) (unpermitted) billboard already on the premises, which is the Starbucks property.

Mr. Mahrt stated four months after the initial exchange of emails denying the application, the applicant's representative informed the Sign Administrator that the off-premise sign that had been on the subject property had been removed and that the applicant wished to proceed with the permit process. The Administrator responded that since the sign for which the permit was being sought would be located along a state route, a permit would need to be obtained from the Illinois Department of Transportation (IDOT) before the City could issue a sign permit, pursuant to Ch. 3. He stated the applicant was also encouraged to contact the Central Illinois Regional Airport Authority (CIRA) to verify that an airspace study was not required prior to issuance of a permit. More than three months later, on June 29, 2017, the applicant applied for an IDOT permit.

Mr. Mahrt stated in early July, the adjacent property owner applied for and received a permit for an on-premise sign to advertise for the business located at 1703 S. Veterans Parkway. A permit from IDOT is not required to erect an on-premise sign; IDOT only requires a permit for off-premise signs. On August 10, 2017, the Sign Administrator verbally informed the appellant, Picture This Digital Media LLC, that permit application No. 27968 could not be approved because it was incompliant with the requirements of Section 5.7k, a 100 foot separation between off-premise and on-premise signs. The horizontal separation between the proposed off-premise sign and the permitted on premise sign at 1703 S. Veterans Parkway would be approximately 30 ft. On August 14, 2017, the Administrator sent written notification via email to the application. On August 29, 2017, IDOT notified the applicant the IDOT permit had been approved.

Mr. Mahrt stated the basis for the administrator's decision were based on the following:

- 1). The Sign Code Administrator is bound by the law as written and does not have the authority to make exceptions to the plain language of the sign code ordinance.
- 2). The Advertising Sign Code allows the City of Bloomington to regulate the size, location, and materials of signs (Ch.3 Sect. 1.2). and the purpose and intent for such regulation is to protect the reasonable rights of commercial property owners and afford them the right to advertise for goods and services rendered on their property, while reducing the proliferation of signage and roadway distractions which negatively impact public health and traffic safety (Ch. 3 Sect. 1.2).
- 3). The Sign Code recognizes a need may exist to advertise for goods and services rendered on a different property and permits off-premise signs, and regulates off-premise signs to fulfill the intent of the Code (Ch. 3 Sect. 5.7).
- 4). The Sign Code requires that both on-premise and off-premise signs maintain a minimum, 100 foot horizontal separation with other on-premise signs (Ch. 3, Sect. 5.1(a)1 and Ch. 3. Sect. 5.7k, respectively).
- 5). Section 5.1(a)1 clearly exempts "on-premise signs located on separate premises" from the 100 foot separation requirement with another on-premise sign.
- 6). No such exemption from the horizontal separation requirement exists for off-premise and on-premise signs located on separate premises, therefore the horizontal separation between on-premise and off-premise signs located on separate premises should be a minimum of 100 ft.
- 7). The exemption has existed in City Code for decades. The restriction on off-premise signs allows a property owner the right to advertise for the goods and services sold on-site without fear of having their signs blocked by an off-premise billboard. On-premise signs are subject to

additional requirements, such as a limit on total permitted signage, that do not apply to off-premise signs, therefore the 100 ft horizontal separation requirement for off-premise signs is not intended to discriminate but to protect public and private investment.

8). Application No. 27968 was incomplete without approval from IDOT and without construction information. The Administrator may not deny an adjacent property owner a permit because an applicant intends to comply with the requirements of Chapter 3.

Mr. Mahrt stated staff agrees with the decision of the sign administrator and stated the Administrator's denial of the appellant's sign permit application was proper and consistent with the letter of the Advertising Sign Code in that there is no exception in the Code to the requirement that the separation between on-premise and off-premise signs shall be less than 100 feet.

Mr. Mahrt referred to the location of the sign and the location of the site. Mr. Schultz asked if the small sign located next to Starbucks, was the sign that prevents a new sign from being placed within 100 feet. Mr. Mahrt stated the on premise sign permitted by code was located at 1703 S Veterans Parkway. Mr. Schultz stated Picture This Digital Media was not given the same treatment, because the property owners next door were able to place their sign wherever they wanted. Mr. Mahrt stated the property already has an on premise sign, an off premise sign is allowed if all the requirements of the code are met. Both properties have the right to place signs on premise, however there was no way to prohibit the placement of the on premise sign from the adjoining property.

Ms. Simpson stated IDOT does not require a permit for the on premise sign. Business who are located along the state route, wanting signs to promote their business, at that location, do not need to get a permit from the State. However if there will be advertising for other business, not in that location and are along a state route, they will need a permit from the State. The property at 1703 S Veterans did not have to go through the IDOT permit process, and was therefore was only required to obtain a permit from the City. The application met all the requirements, and there was no reason to deny that permit. Ms. Simpson stated that sign was put up while Picture This Digital Media was waiting from their permit from IDOT.

Ms. Meek asked which sign Exhibit 2 was referring to. Mr. Mahrt stated that was the previous sign that was on the property, which was not originally permitted. Ms. Meek asked if there was a rendering of the proposed sign. Ms. Simpson stated there was a copy of the permit application that was received by the city, with a rendering.

Chairman Bullington asked legal counsel if their role for this case was to serve as an appellate court, and not the usual finders of fact. He asked if their role for this case was to review the decision made by the sign administrator, and consider the fact the sign administrator considered and not the commission's findings. Ms. Fyan-Jimenez stated the function of the commission for this case was to serve as an appellate court, and review the facts that were reviewed by the sign administrator at the time, and whether or not the board will sustain the decision that was made. Chairman Bullington asked if the petition was granted, would they be able to place their sign, and if the petition was denied, what would be the next steps. Ms. Fyan-Jimenez stated if the appeal is granted, they would still be required to request a permit and follow any process or requirements. Ms. Simpson stated, staff would need the IDOT permit, as well as the drawings to make sure the sign meets the requirements. She stated staff would be directed by the Zoning Board to approve

the permit, assuming it complied with the building and electrical code. Mr. Mahrt stated the petitioner has made an appeal, but has not requested a variance. Ms. Fyan-Jimenez stated the petitioner would still have to go through the permitting process, and after that the variance could be requested. If the appeal was denied, under the Illinois Administrative Review Act, the petitioner could file an appeal to Circuit Court within 35 days.

Chairman Bullington stated the petitioner could have the last word, as in any appellate court setting. Ms. Meek asked if the directive from the City to remove the original sign was included in the packet. Mr. Cox stated emails were included that outlined the City's directives. Mr. Schultz asked if the new sign would serve the same purpose as the original sign. Mr. Cox stated that it would. Mr. Schultz asked if the sign would be advertising the business on the property, Mr. Cox stated that it would not. Mr. Schultz asked if the sign would be illuminated and digital, Mr. Cox stated that it would be. Mr. Schultz asked if there were limitations to what could be advertised. Mrs. Simpson stated the City could not regulate content.

Mr. Cox stated if the original sign has not been torn down, that could have prevented the next door property to put up their sign, according to his interpretation of the code and how it is being applied. He stated promises were made, and now they are being prevented from putting up their sign.

Chairman Bullington stated the board will function as an appellate court, and asked if there was something within the sign code that gives the board an opportunity to find the administrator's decision was done improperly. Mr. Cox stated there was not.

Chairman Bullington stated that a yes vote would sustain the denial of the sign, and a no vote would state the sign permit should have been approved. Ms. Fyan-Jimenez stated a no vote would be that the board disagrees with the administrator's decision to deny the permit for the sign.

The appeal was denied 2-2 with the following votes cast: Mr. Brown—yes; Ms. Meek—no; Mr. Schultz—no; Chairman Bullington—yes.

Chairman Bullington stated since there were less than 5 members present to vote, the petitioner could appeal to the City Council if a variation is rejected by a vote of less than 5 members from the Board of Zoning Appeals. Chairman Bullington stated this case could fall under the Variance section of the Boards authority.

Ms. Fyan-Jimenez read an excerpt from section 4.E.1. She stated there was no part in that section that addressed next steps for a vote with less than 5 votes and a split vote. She stated the case could refer back to the variation section of the code, which states the petitioner could appeal to City Council within a particular timeframe.

Chairman Bullington stated, staff would be in contact with the petitioner to discuss next steps and the direction the petitioner could take with this type of decision.

OLD BUSINESS: None

NEW BUSINESS: None

ADJOURNMENT:

Ms. Meek motioned to adjourn; seconded by Mr. Brown. Approved by voice vote. The meeting was adjourned at 5:08PM.

Respectfully submitted,

Izzy Rivera
Assistant City Planner