



# BUILDING CODE BOARD OF APPEALS REGULAR MEETING AGENDA

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Troy, MI 48084  
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Gary Abitheira, Chair, Teresa Brooks  
Sande Frisen, Mark F. Miller, Andrew Schuster

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**December 4, 2019**

**3:00 PM**

**COUNCIL BOARD ROOM**

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1. ROLL CALL
2. APPROVAL OF MINUTES – September 4, 2019
3. COMMUNICATIONS
  - a. Reconsideration of Vote on Appeal of Troy Outdoor, LLC and Crossroads, LLC
4. PUBLIC COMMENT
5. MISCELLANEOUS BUSINESS- Approval of 2020 calendar
6. ADJOURNMENT

**NOTICE:** People with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk by e-mail at [clerk@troymi.gov](mailto:clerk@troymi.gov) or by calling (248) 524-3317 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.

Chair Abitheira called the Regular meeting of the Building Code Board of Appeals to order at 3:00 p.m. on September 4, 2019 in the Council Board Room of the Troy City Hall.

1. ROLL CALL

Members Present

Gary Abitheira  
Teresa Brooks  
Sande Frisen  
Mark F. Miller, City Manager  
Andrew Schuster

Support Staff Present

Salim Huerta, Building Official  
Allan Motzny, Assistant City Attorney  
Paul Evans, Zoning & Compliance Specialist  
Dana Self, SafeBuilt  
Alicia Warren, Planning Department Intern  
Kathy L. Czarnecki, Recording Secretary

Also Present

Attached and made a part hereof is the signature sheet of those present and signed in at this meeting.

2. APPROVAL OF MINUTES

Moved by: Miller  
Support by: Frisen

**RESOLVED**, To approve the minutes of the August 7, 2019 Regular meeting as submitted.

Yes: All present (5)

**MOTION CARRIED**

3. HEARING OF CASES

- A. **VARIANCE REQUEST, VLADIMIR KORCARI, 2904 THAMES** – This property is a corner lot with two front yards. As such, the proposed fence cannot be placed in the 25-foot required Thames Drive front setback or the 25-foot required Dover Drive setback. The petitioner is requesting a total of 130 linear feet of a six-foot high privacy vinyl obscuring fence variance in the required Dover Drive setback.

Mr. Huerta gave a review of the variance request, noting on the GIS map the requested location of the fence one foot from the Dover property line. He confirmed the applicant's concern with traffic noise from Dover Drive. Mr. Huerta said the

department received no written responses to the public hearing notices but noted there was one anonymous verbal opposition.

The applicant Vladimir Korcari and his daughter were present. Mr. Korcari's daughter said her father is asking for a six-foot high privacy fence to address concerns with safety and noise pollution. Mr. Korcari indicated he and his wife do not want a chain link fence.

Chair Abitheira opened the public hearing.

Giovanni Stefan, 2844 Dover, addressed concerns with the fence blocking the view when backing vehicles out of his driveway.

Chair Abitheira closed the public hearing.

There was discussion on:

- Aggressiveness of six-foot obscuring fence at subdivision entrance.
- No similar obscuring fences identified in neighborhood.
- Four-foot chain link fence could be installed, by right.
- Alternative options that would provide privacy and block noise.
- Further dimensional setback from sidewalk.

Moved by: Miller  
Support by: Brooks

**RESOLVED**, To postpone the variance request to allow the applicant to discuss with the Building Official and fully understand alternative options.

Yes: Abitheira, Brooks, Frisen, Miller  
No: Schuster

### **MOTION CARRIED**

It was the consensus of the Board to consider Agenda items 4.B, 4.C and 4.D collectively.

- B. **APPEAL REQUEST, TROY OUTDOOR, LLC AND CROSSROADS OUTDOOR LLC/1654 LIVERNOIS, 1654 LIVERNOIS** – An appeal of the Zoning Administrator's November, 2017 Suspension of Sign Permit PSG2017-0009
- C. **APPEAL REQUEST, TROY OUTDOOR, LLC AND CROSSROADS OUTDOOR LLC/ABRO TWELVE PROPERTY, 2888 E MAPLE** – An appeal of the Zoning Administrator's November, 2017 Suspension of Sign Permit PSG2017-0087

D. **APPEAL REQUEST, TROY OUTDOOR, LLC AND CROSSROADS OUTDOOR LLC/AMERICAN LEGION POST 140, 1340 W MAPLE** – An appeal of the Zoning Administrator's November, 2017 Suspension of Sign Permit PSG2017-0088

Mr. Huerta introduced the three appeal requests for three different signs.

Mr. Motzny stated the applicant is appealing a decision of the Zoning & Compliance Specialist that suspended three sign permits for the above referenced properties, or as an alternative, the applicant is seeking a variance to allow the construction of the proposed signs. Mr. Motzny gave a brief history of the appeal requests and a Court decision that the applicant seek administrative remedies before further review by the Court. Mr. Motzny referenced his memorandum dated August 23, 2019 prepared as guidance to the Board as relates to the authority of the Board, procedure for appeal from a decision of a City Official and variances as requested in relation to the current Sign Ordinance.

Attorney Terry Heiss of ADA Legal Group, Grand Rapids, Michigan, was present to represent the applicant. Mr. Heiss referenced Attachments #'s 4-A, 4-B, 4-C, 4-D and 4-E submitted with the appeal application. He addressed:

- Language of the sign moratorium.
  - Prohibits processing of applications.
  - Intent not to revoke sign permits already issued.
  - Distinction between application “process” and “issuance” of permits.
- Timeliness of the sign moratorium; digital signs in construction stage, applicant expenses incurred with tear-down.
- Variance requests in relation to existing Sign Ordinance or Sign Ordinance in effect at time of moratorium.
- No evidence or factual finding digital signs have negative impact, as referenced in City Attorney communication dated December 15, 2017.

There was discussion on:

- Expiration and/or time remaining on sign permits.
- Intent of sign moratorium language.
- Determination of Sign Ordinance applicable if variance requests are acted upon.
- Authority of Board bound by Zoning Board of Appeals procedure.
- Tear-down expenses incurred by applicant.
- Definition of application process; does “process” incorporate subsequent procedural steps applied after permit issuance and toward completion of sign install.
- City Attorney communication reference to negative impact of digital signs.
- Zoning & Compliance Specialist suspension notification with reference to proof of construction on site.
- Consideration of each appeal individually, based on construction status.

Mr. Motzny advised the Board that the language of the moratorium is of significant importance in its consideration and action on the appeal.

Chair Abitheira opened the public hearing.

Andrew Jamoun, 35 E Maple; addressed safety concerns with installation of a digital sign near high-voltage electric line/pole at 1654 Livernois.

Chair Abitheira closed the public hearing.

Mr. Miller acknowledged a safety issue could exist with installation of a digital sign near high-voltage lines but stated the City is not responsible nor does it enforce requirements of DTE or ITC.

Moved by: Miller  
Support by: Frisen

**RESOLVED**, That the **variance requests** for Troy Outdoor LLC and Crossroads Outdoor LLC (Applicant) for the three sign permits located at 1654 Livernois, 1340 W Maple and 2888 E Maple, be **denied**, for the following reasons:

1. The variance would be contrary to the public interest or general purpose and intent of Chapter 85 (Chapter 83); and
2. The variance would adversely affect properties in the immediate vicinity of the proposed sign; and
3. The petitioner has failed to demonstrate any hardship or practical difficulty because:
  - a. Reasonable use can be made of the property without the variance; and
  - b. Public health safety and welfare would not be negatively affected in the absence of the variance; and
  - c. Conforming to the ordinance is not unnecessarily burdensome; and
  - d. There is no evidence of hardship or practical difficulties resulting from the unusual characteristics of the property because there is nothing unusual about the size, shape or configuration of the parcel that would make it unnecessarily burdensome to comply with requirements of the sign ordinance.

Discussion on the motion on the floor.

It was clarified the motion is to deny the variance requests, and a separate motion relating to the appeal of the Zoning & Compliance Specialist decision could follow.

Vote on the motion on the floor.

Yes: Abitheira, Frisen, Miller  
No: Brooks, Schuster

**MOTION CARRIED**

Moved by: Miller  
(refer to Amended Motion below)

**RESOLVED**, That the **appeal of the decision** of the Zoning & Compliance Specialist for the Troy Outdoor LLC and Crossroads Outdoor LLC (Applicant) for the three sign permits located at 1654 Livernois, 1340 W Maple and 2888 E Maple be **denied**, for the following reasons:

1. The appeal would be contrary to the public interest or general purpose and intent of Chapter 85 (Chapter 83); and
2. The appeal would adversely affect properties in the immediate vicinity of the proposed sign; and
3. The petitioner has failed to demonstrate any hardship or practical difficulty because:
  - a. Reasonable use can be made of the property without the appeal; and
  - b. Public health safety and welfare would not be negatively affected in the absence of the appeal; and
  - c. Conforming to the ordinance is not unnecessarily burdensome; and
  - d. There is no evidence of hardship or practical difficulties resulting from the unusual characteristics of the property because there is nothing unusual about the size, shape or configuration of the parcel that would make it unnecessarily burdensome to comply with requirements of the sign ordinance.

Discussion.

Mr. Motzny clarified that a motion to deny the appeal of the decision of the Zoning & Compliance Specialist must meet one of the four criteria in his memorandum dated August 23, 2019.

Mr. Miller amended the motion to read:

Moved by: Miller  
Support by:

**RESOLVED**, That the **appeal of the decision** of the Zoning & Compliance Specialist for the Troy Outdoor LLC and Crossroads Outdoor LLC (the Applicant) for the three sign permits located at 1654 Livernois, 1340 W Maple and 2888 E Maple, be **denied**, for the following reasons:

1. The decision would be arbitrary or capricious.
2. The decision would be based on an erroneous finding of material fact.
3. The decision constituted an abuse of discretion.
4. The decision was based on an erroneous interpretation of the resolution imposing the moratorium.

**MOTION FAILED** for lack of support.

Moved by: Schuster  
Support by: Brooks

**RESOLVED**, That the **appeal of the decision** of the Zoning & Compliance Specialist suspending the three sign permits be granted and the suspension overturned because the decision was based on an erroneous interpretation of the resolution imposing the moratorium.

Discussion on the motion on the floor.

Mr. Schuster addressed his views relating to the interpretation of the moratorium language and the inconclusive definition of a permit application process as relates to the issuance and suspension of a permit.

Mr. Miller said it was clear to him that City Council did not want any digital signs constructed.

Mr. Salim addressed building permits as relates to the process and issuance of permits.

Mr. Motzny stated the motion on the floor, if carried, would rescind the suspension of the three permits and the applicant could essentially move forward with the installation of the signs.

Vote on the motion on the floor.

Yes: Brooks, Frisen, Schuster  
No: Abitheira, Miller

**MOTION CARRIED**

4. COMMUNICATIONS – None

5. PUBLIC COMMENT – None

Giovanni Stefan, 2844 Dover, briefly addressed his opposition to Agenda item #4.A.

6. MISCELLANEOUS BUSINESS – None

7. ADJOURNMENT

The Regular meeting of the Building Code Board of Appeals adjourned at 4:14 p.m.

Respectfully submitted,

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Gary Abitheira, Chair

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Kathy L. Czarnecki, Recording Secretary

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DATE: November 26, 2019  
TO: Building Code Board of Appeals  
FROM: Salim Huerta, City Building Official  
SUBJECT: December 4, BCBA 2019 Meeting

The City Attorney will attend the December 4, 2019, Building Code Board of Appeals Meeting, to summarize the attached memo.

If any members wish to review the September 4, 2019 Agenda Packet, the link is <https://apps.troy.mi.gov/BoardsAndCommittees/OnbaseItem?documentId=5225314>.

The September 4, 2019 Agenda Packet will also be accessible on your laptop during the meeting.

Resolutions will be crafted by the City Attorney at the December 4, 2019 Building Code Board of Appeals meeting,

Attachments:

1. Memo prepared by Lori Grigg Bluhm, City Attorney



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

Date: November 25, 2019

To: Building Code Board of Appeals

From: Lori Grigg Bluhm, City Attorney  
Allan T. Motzny, Assistant City Attorney

Subject: Reconsideration of Vote on Appeal of Troy Outdoor, LLC and Crossroads, LLC

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At your meeting of September 4, 2019, the Building Code Board of Appeals reversed the decision of Paul Evans, Zoning & Compliance Specialist, suspending three sign permits (1654 Livernois, 1340 W. Maple, and 2888 E. Maple). Troy Outdoor, LLC and Crossroads appealed this decision to the Board, challenging Evan's interpretation of the Troy City Council moratorium on signs. Upon information and belief, this Board's 3-2 decision was based, in part, on the legal argument presented by Terry Heiss, legal counsel for the sign company. There was no counter argument, based in part on our office's requirement to remain neutral as legal counsel for the Board. However, once the Troy City Council learned of the Board's decision, it immediately directed the filing of an appeal with the Oakland County Circuit Court. There is currently a stay order, so that the sign permits will not be processed until the appeal is decided.

As the legal representative for both this Board and also the Troy City Council, we are unable to participate in the appeal. As a result, we have engaged outside legal counsel to represent the City of Troy in this appeal, and will also need to hire outside legal counsel to represent this Board. The legal counsel hired to pursue this appeal in the Oakland County Circuit Court will be present at the December 4, 2019 BCBA meeting, and will be able to answer any questions you have. Additionally, legal counsel for Troy Outdoor, LLC and Crossroads has also been notified. If the appeal proceeds, then legal counsel will also need to be hired to represent this Board. We have reached out to attorney Greg Need, who has the expertise to handle this matter, and he has verified that he has no conflicts and he is prepared to appear on behalf of the Building Code Board of Appeals upon this Board's approval. Both attorneys have agreed to handle this matter at a significantly reduced municipal rate upon this Board's approval.

In order to avoid the appellate process, this Board could reconsider the 3-2 decision of September 4, 2019. Any such motion for reconsideration would need to be moved by someone on the prevailing side (Brooks, Frisen, or Schuster). If moved and approved, then the Board could then revisit the information presented in the September agenda packet, and make its decision as to whether to grant or deny the applicant's appeal. As noted in our previous memo, this Board may only modify or reverse the decision of City official Paul Evans if one or more of the following requirements are met:

1. The decision was arbitrary or capricious.
2. The decision was based on an erroneous finding of material fact.
3. The decision constituted an abuse of discretion; or
4. The decision was based on an erroneous interpretation of the resolution imposing the moratorium.

**CITY OF TROY  
MICHIGAN  
PUBLIC NOTICE  
BUILDING CODE BOARD OF APPEALS**

In accordance with the provisions of the Michigan State Law, Notice is hereby given that the Building Code Board of Appeals of the City of Troy will hold Public Meetings in the City Hall, 500 West Big Beaver Road, Troy, Michigan, 248.524.3364, on the following dates:

**2020 BUILDING BOARD OF APPEALS**

January 8	July 1
February 5	August 5
March 6	September 2
April 1	October 7
May 6	November 4
June 3	December 2

All meetings are generally held at 3:00 p.m. in the Council Board Room of the City Hall Building and are open to the public.

This notice is hereby posted as required by Section 4 of the Open Meetings Act (MCLA 15.261 et seq.)

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Salim Huerta  
Building Official

Posted: November 13, 2019

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