

Chair Abitheira called the Regular meeting of the Building Code Board of Appeals to order at 3:00 p.m. on November 1, 2023 in the Council Chamber of Troy City Hall.

1. ROLL CALL

Members Present

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

Members Absent

- Matthew Dziurman

Support Staff Present

- Paul Evans, Zoning & Compliance Specialist
- Allan Motzny, Assistant City Attorney
- Kathy L. Czarnecki, Recording Secretary

2. APPROVAL OF MINUTES – November 2, 2022

- Moved by: Brooks
- Support by: Frisen

RESOLVED, To approve the minutes of the November 2, 2022 Regular meeting as submitted.

- Yes: All present (4)
- Absent: Dziurman

MOTION CARRIED

3. HEARING OF CASES

A. **VARIANCE REQUEST, 2625 W. MAPLE, DERRICK ZAJAC**

- a. Appeals the Zoning Administrator’s denial of a sign permit application.

Mr. Evans said the applicant is appealing the denial of the sign application for 2625 W. Maple. He referenced the zoning overlay and surrounding zoning. Mr. Evans said the applicant’s request was to place the sign at the corner of 2625 W. Maple but the message of the sign is for the property behind with the address of 2685 W. Maple. Mr. Evans said denial was based on the City Code which defines the request as an off premise sign that is prohibited in all zoning districts.

There was discussion, some comments related to:

- Frontage along 2685 W. Maple.
- Ownership of parcels located at 2745 and 2625 W. Maple.
- City Standards relating to off premise signs.

Mr. Motzny referenced his memorandum dated October 4, 2023 regarding the appeal of the proposed Regency at Troy (Ciena Healthcare) sign. He addressed the definition of an off premise sign and the procedure for an administrative appeal. He said that the Board may only modify or reverse the decision of the City Administration if one or more of the four (4) requirements as cited in his memorandum are met.

Mr. Evans said the Assistant City Attorney's memorandum cites several sections of the Sign Ordinance to which the Board can reference during its deliberation.

Present were John Gaber, legal representative for the applicant, and Derrick Zajac, Director of Construction and Property Management for Ciena Healthcare.

Mr. Gaber said it is believed the interpretation of the Sign Ordinance is inaccurate and the administrative decision is based on an erroneous interpretation of the Sign Ordinance. He addressed the intent of the Sign Ordinance noted in its Preamble to reduce the proliferation of signs and said that is the intent of the applicant. The applicant is proposing one sign that would identify all three parcels and serve as a directional sign for the healthcare facility in the rear. Mr. Gaber said they agree the sign is an off premise sign but do not agree that it is a prohibitive off premise sign.

Mr. Gaber addressed the appeal as relates to the proposed message on the sign. He contends the message on the sign is not commercial in nature but merely contains the name of the healthcare facility for directional purposes to the Regency at Troy. He contends prohibition of the sign does not apply because the sign is to identify a location as one would for a residential development and does not convey or communicate a message.

Mr. Zajac mentioned the sign was approved originally at the time of site plan approval. He said the configuration of the three parcels is confusing to drivers whose destination is the healthcare facility that sits behind trees to the rear. Mr. Zajac said the owner of the healthcare facility sold the front two parcels during construction of the building. He voiced concern of the building's visibility to the elderly, their visitors and emergency assistance. He referenced a recent incident where EMS questioned the location of the healthcare facility. Mr. Zajac said a sign cannot be placed along the frontage of the healthcare facility because of the existing sidewalk and setback.

Mr. Evans confirmed that site plan approval does not convey approval of a sign.

It was acknowledged that no representatives of the two outlot parcels are present at today’s meeting.

There was discussion, some comments related to:

- Limitations to place sign on Ciena Healthcare frontage due to existing sidewalk, curb, required setbacks.
- Three panel sign would service all three parcels.
- Recorded easement declaration assigning the rights to construct and maintain a sign and the rights of other parties to utilize sign panels. (copy provided to Assistant City Attorney)
- Each parcel can place its individual sign.
- Any combination of shared signs among the three parcels would create a similar off premise legality issue.
- Width of driveway (45 feet).
- Dimensions of the proposed sign.
- Configuration of the property as relates to the lot split(s), sale of parcels by healthcare facility owner.
- Configuration of the property as relates to the Zoning Ordinance requirements.

PUBLIC HEARING OPENED

Paul Machesky, legal representative for property owner at 2565 W. Maple; addressed concerns with the number of signs that could be erected, ongoing litigation with parcels as relates to flooding, ownership and future use of the outlots. He said it appears none of the four (4) requirements have been met to overturn the administrative decision.

PUBLIC HEARING CLOSED

Mr. Motzny said any ongoing litigation associated with any of the parcels is not a matter of deliberation in an appeal process.

Moved by: Miller
Support by: Frisen

RESOLVED, That the Building Code Board of Appeals **denies** the appeal of the decision of the City Official regarding this sign.

Yes: All present (4)
Absent: Dziurman

MOTION CARRIED

- b. A variance to allow an off-premise sign.

Mr. Evans stated he had nothing more to add to his previous presentation.

Mr. Gaber asked the Board's consideration for a variance to allow an off premise sign at 2625 W. Maple. He addressed the request as relates to the five (5) criteria set forth in Section 85.01.08 B 1. Key elements addressed related to the configuration, size and depth of the property, lack of visibility of the healthcare facility from Maple Road, and minimization of signage. He said directional identification of the healthcare facility will promote the public health, safety and welfare of the surrounding area and that the request is not of a personal nature of the applicant or owner. Mr. Gaber said placement of a 45 foot sign is not a reality because of the diminished size of the property as a result of meeting City standards for the driveway.

Mr. Gaber addressed the Assistant City Attorney's interpretation of Section 85.01.08 B 2 that the proposed sign would increase the number of signs allowed by more than 25%.

There was discussion, some comments related to:

- Recorded easement associated with all three parcels:
 - Rights of property owner(s) Muhammad Qazi and Troy Senior Leasing LLC to place sign(s) on property(ies).
 - Does recorded easement place a limit on the number of signs?
- Compliance with Section 85.01.08 B (d); characteristics of the property must not have been created by the owner of the premises, a previous owner, or the applicant.

PUBLIC HEARING OPENED

Paul Machesky, legal representative for property owner at 2565 W. Maple; stated it appears clear the applicant created the situation by not providing enough property to place a sign on their premises and then selling off two parcels, that the future uses of the two outlots is speculative at this time and that there is no need for a variance because the three-story healthcare facility is visible from Maple.

PUBLIC HEARING CLOSED

Mr. Evans confirmed that the applicant could place a sign on site that is equivalent to 10% of the north façade area of the building. He said a sign could be placed on the third floor of the building.

Ms. Brooks said the applicant pointed out clearly the concern of the building visibility when he shared EMS questioned its location. She said that signage on the building itself is a good alternative for a created situated by the owner(s).

Mr. Frisen addressed each requirement of Section 85.01.08 B, a-e, in relation to the variance request before the Board. He said he understands the intent of the applicant, but the request does not come close to checking off the boxes to grant the variance.

Moved by: Frisen
Support by: Miller

RESOLVED, To **deny** the request for a variance based on the following requirements not being met:

- (b) The characteristics which make compliance with the requirements of this Chapter difficult must be related to the premises for which the variance is sought, not some other location.
- (c) The characteristics which make compliance with the requirements of this Chapter difficult shall not be of a personal nature.
- (d) the characteristics which make compliance with the requirements of this Chapter difficult must not have been created by the owner of the premises, a previous owner, or the applicant.

Yes: All present (4)
Absent: Dziurman

MOTION CARRIED

4. COMMUNICATIONS – 2024 Meeting Schedule

After a brief discussion on the meeting dates for 2024, the following resolution was offered.

Moved by: Frisen
Support by: Abitheira

RESOLVED, To **adopt** the proposed meeting dates as presented with the exception to change the proposed August meeting date to August 14.

Yes: All present (4)
Absent: Dziurman

MOTION CARRIED

5. PUBLIC COMMENT

There was no one present who wished to speak.

6. MISCELLANEOUS BUSINESS

Mr. Miller announced his official retirement date is May 31, 2024.

A brief discussion followed on the City Manager position, vacancy and term expirations of the Building Code Board of Appeals (BCBA).

7. ADJOURNMENT

The Regular meeting of the Building Code Board of Appeals adjourned at 3:57 p.m.

Respectfully submitted,



Gary Abitheira, Chair



Kathy L. Gzarnecki, Recording Secretary