

CITY OF TWINSBURG
BOARD OF ZONING APPEALS MINUTES
JUNE 17, 2015

**CITY OF TWINSBURG
BOARD OF BUILDING AND ZONING CODE APPEALS
JUNE 17, 2015**

Present: Messrs: Gary Wilner, Thomas Brown, Brian Davis, Ed Kancler and Neil Rubin

Absent: NONE

Also Present: Mr. Russ Rodic, Building Commissioner
Mr. Sam Scaffide, Council Representative

The Board cited the Pledge of Allegiance.

**CITY OF TWINSBURG
BOARD OF BUILDING AND ZONING CODE APPEALS
WORK SESSION
JUNE 17, 2015**

The Board of Building and Zoning Code Appeals met in a Public Work Session on Wednesday, June 17, 2015. The Chairman, Mr. Rubin called the meeting to order at 6:30 p.m.

Appeal # 04-2015
Variance 1173.33(1)

A public hearing will be conducted at 6:30 pm on June 17, 2015; for the purpose of hearing an appeal for a variance from section 1173.33(1) of the Twinsburg Zoning and Development Regulations which states that no legal nonconforming sign shall be modified or changed. The applicant is proposing a face change and new columns. This appeal is made by Thomas Yankovich of Ellet Neon on behalf of Missionary Baptist Church of 10900 Ravenna Rd.

- Specifically, permission to modify the variance is requested.

Appeal # 05-2015
Variance 1173.15(d)

A public hearing will be conducted at 6:30 pm on June 17, 2015; for the purpose of hearing an appeal for a variance from section 1173.15(d) of the Twinsburg Zoning and Development Regulations which requires a planter sign to have a minimum 10 foot setback from the city right-of-way. The existing foundation to be used is 4.5 feet from the city right-of-way. This appeal is made by Thomas Yankovich of Ellet Neon on behalf of Missionary Baptist Church of 10900 Ravenna Road.

- Specifically, a 5.5 foot setback variance is requested.

**** Appeals # 04-2015 and 05-2015 were presented and discussed together.**

Mr. Rubin read Section 1173.33(1) for the record:

NONCONFIRMING SIGNS

NO LEGAL NONCONFORMING SIGN OR PART THEREOF SHALL BE ALTERED, MODIFIED, CHANGED IN USE IN ANY MANNER WHATSOEVER IN ANY PROCESS OF RECONSTRUCTION, REPAIR, MAINTENANCE OR RESTORATION OF ALL OR A PART THEREOF UNLESS THE ENTIRE SIGN SHALL BE BROUGHT INTO COMPLIANCE WITH ALL OF THE PROVISIONS OF THIS CODE.

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Mr. Rubin explained that the Twinsburg Law Director was asked to give his legal opinion on a conflict in the Code, which is unclear as to whether the BZA has jurisdiction to hear this matter.

- Mr. Maistros, City of Twinsburg Law Director sent the attached memo dated May 13, 2015 regarding jurisdiction on this matter.

Mr. Tom Yankovich with Ellet Sign Company, 3041 E. Waterloo Rd. Akron, Ohio 44312 presented the application for Appeal # 04-2015 for 10900 Ravenna Rd.

- They are seeking approval for one 57" by 77" replacement ground sign.
- They request to display the logo as well as some advertising on the sign.
- The sign would be located in the existing masonry sign structure and electrical feed.
- It would be the same 6 foot height and 27.8 SF total area as the existing sign.

Mr. Kancler asked how many columns are on the existing sign; the literature includes new columns for the signs.

Mr. Yankovich stated that there is a misprint; they would only use the existing columns.

Mr. Yankovich presented drawings from the previous meeting regarding these applications.

- The existing sign structure is located 20' from the side of the road, consisting of 8' green space, 4' sidewalk and 8' from sidewalk.
 - o This is "excessive right of way" at that location.

Mr. Yankovich explained the practical difficulty associated with changing the sign.

- The parcel is located on a busy two lane residential road with a lot of driveways.
- This is a narrow parcel, 147 feet along Ravenna Rd.
 - o Sign visibility is very important.
- There is vegetation on each side parcel which limits sign visibility.

Mr. Kancler clarified that they are proposing changing the use of the sign by removing the old sign, which means that the sign which had the protection of nonconforming use is gone and the new sign must conform to current Code requirements.

Mr. Yankovich stated "Correct".

Mr. Kancler asked what the cost of the sign will be.

Mr. Yankovich replied that he would estimate the cost of the new sign to be \$20,000.00.

Mr. Kancler pointed out that the sign at the Twinsburg Library cost \$35,000.00.

Mr. Yankovich commented that the sign at 10900 Ravenna Rd. is similar to the library sign but will be smaller.

Mr. Kancler asked what capacity of messages it will have.

Mr. Yankovich replied that it will have the same capacity as the sign at the library, but in a smaller matrix.

Mr. Kancler pointed out that there are hundreds of possible messages that can be displayed.

Mr. Yankovich indicated that there is a Code limit of eight seconds per message.

Mr. Kancler noted that allows seven messages per minute.

Mr. Wilner asked if there are variations in letter size and color.

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Mr. Yankovich answered that the sign has a full color display and the Code allows the message to appear, hold for eight seconds and then change to a new message, no flashing or fading is allowed.

- There is the ability for different color copy and images that do not move.

Mr. Yankovich stated that the main concern is the placement for visibility from the road.

Mr. Kancler asked how 5.5' will vastly improve the visibility.

Mr. Yankovich approached the Board with a drawing.

Mr. Rubin asked if any of the trees on the south side of the property belong to the church.

Mr. Yankovich replied that some of the vegetation belongs to the church property but there is heavy vegetation on adjacent property, particularly on the north side.

- They are all deciduous trees.

Mr. Rubin clarified that the applicant is concerned with visibility, particularly on the northwest side of the property: what percent of that vegetation is owned by the church?

Mr. Yankovich stated that he does not know.

Mr. Rubin explained that if the church owns the trees which are blocking the view of the sign, they may be able to remove the trees in order to improve visibility.

Mr. Yankovich indicated that some trees could be removed but that will not do enough to allow good visibility if the sign is moved further from the road.

- This property has much more limited visibility than other parcels with electronic signs in that they are on wider lots, which allow them more control of vegetation and structures in their line of site.
- The building setback also creates difficulty in that drivers are not able to see the building until they are very close to it.
 - o This makes any sign on the building ineffective.
- This ground sign is the only form of identification that the church has available.
- Removing the trees is a possibility but it will impact the residential look of the area.

Mr. Rubin stated that he does not necessarily want to see the trees removed, he is trying to determine what the unnecessary hardship is.

Mr. Kancler pointed out that, in the drawing provided, Mr. Yankovich shows two cars which are stated to be 29' apart appear to be only one car length difference.

Mr. Yankovich explained that there is a study by Penn State regarding sign visibility and creating the standards for the nation's interstate system signage.

- This study created the "cone of visibility" illustrated on the drawing that he gave to the Board.
 - o There is a 10 degree lateral offset from the center line, which means that a motorist looks 10 degrees in each direction and then back to the road.
 - o A sign should be inside of that cone of visibility.
 - o The drawing shows the driver at 326' back when the sign comes into view with the existing sign.
 - o As the sign is setback 10', it is placed outside of the cone of visibility.

Mr. Wilner indicated that an electronic sign will be more visible than the existing unlit sign, even if it is set back 10'.

- Also, the trees are mature with high branches; they do not significantly block the view.

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Mr. Yankovich pointed out that the electronic sign is used to advertise, within eight seconds, what is happening in the church.

- Placing it further from the road makes it harder to read.
- Tree trunks and utility poles also impact the visibility.

Mr. Rubin asked if the sole reason for the applicant's desire for keeping the sign in the existing location is visibility.

Mr. Yankovich replied that there are several reasons;

- Visibility is one.
- Cost of pillars and foundations is another.
 - o He does not know the additional cost of replacing pillars and foundation.

Mr. Kancler stated that the applicant is trying to present a practical difficulty and a hardship.

- The hardship is the extra expense of moving the pillars and concrete foundation, but no financial figures are being presented.

Mr. Rubin explained that the criteria of Code 1173.47(c) are to be used to determine the application for a sign variance.

Mr. Rubin indicated that it would be important for the Board to know what the cost of the new sign on the existing location would be as well as the cost of the sign if it is moved back 5.5'.

Mr. Kancler pointed out that the Code states; PROVIDED HOWEVER, THAT SUCH SPECIAL CIRCUMSTANCES OR CONDITIONS MUST BE PECULIAR TO THE PARTICULAR BUSINESS OR ENTERPRISE TO WHICH THE APPLICANT DESIRES TO DRAW ATTENTION AND DO NOT APPLY GENERALLY TO ALL BUSINESSES OR ENTERPRISES.

It also states; THE VARIANCE WOULD BE IN GENERAL HARMONY WITH THE PURPOSES OF THIS SIGN CODE AND WOULD NOT SPECIFICALLY BE UNJURIOUS TO THE NEIGHBORHOOD IN WHICH THE BUSINESS OR ENTERPRISE TO WHICH THE APPLICANT DESIRES TO DRAW ATTENTION IS LOCATED

And that; THE VARIANCE IS THE MINIMUM ONE NECESSARY TO PERMIT THE APPLICANT TO REASONABLY DRAW ATTENTION TO HIS BUSINESS OR ENTERPRISE.

Mr. Rubin advised that, since the applicant and Board were discussing Section 1199.09 and now need to discuss Section 1173.47(c), the Board can choose to Table the application in order to allow the applicant to obtain comparison costs and address Section 1173.47(c).

Mr. Kancler asked to hear from the members of the public who are present at the meeting.

Ms. Brenda Lang 10877 Ravenna Rd. Twinsburg, Ohio spoke regarding the application for sign variance.

- She indicated a concern for safety if the sign is modified and remains in the current location.
- The current sign sits in her line of sight while in her home office as well as when doing yard work outside.
 - o She feels that moving it 5.5' further from the road will improve her ability to be screened from the sign.
- She has read that there may be changes to the electronic sign ordinance and she does not feel that an electronic sign is appropriate in a location which borders a residential neighborhood.
- She feels that the electronic sign will impact her property value.
 - o It will be a constant disruption with lights, colors and words, not the natural views that she moved here for.

Mr. Rubin indicated that the sign is not a large electronic sign.

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Mr. Rubin reiterated that Ms. Lang does not want the variance granted due to her belief that placement of the sign as proposed will be a disruption to her view and will reduce her property value.

Ms. Lang clarified that her assertion is that it is unsafe to have an electronic sign in a residential neighborhood and that she would not have purchased the house had there been an electronic sign there and she thinks it will be unattractive and will make her uncomfortable.

Mr. Rubin asked if it moves back 5.5', will she feel better about the electronic sign.

Ms. Lang replied that she will feel that the electronic sign ordinance should be changed to not allow electronic signs bordering residential neighborhoods.

- She would also feel that it is less unsafe if placed further from the road.

Mr. Rubin stated that placing it further from the road would require the driver to turn their head further to the side to read the sign.

Ms. Lang asked if the existing sign meets the required 50' setback from any property line.

Mr. Rodic replied that it does meet the requirement on all sides.

Ms. Lang questioned if a variance remains with the land, not the land owner.

Mr. Rubin explained that the variance remains with the property regardless of owner.

Mr. Michael DiCillo, 11296 Palmer Ln. Twinsburg, Ohio member of the City of Twinsburg Architectural Review Board discussed the application for sign variance. He specified that he is speaking of his personal thoughts on the application, not speaking for the ARB.

- He feels that the ARB did not have jurisdiction over the application due to the sign losing its nonconforming status according to Section 1173.33.
- Aside from the need for an administrative appeal process to allow for due process of law, He questions whether any board is able to hear the case.

Mr. Rubin stated that Mr. Maistros determined that both BZA and ARB have jurisdiction to hear the case.

Mr. DiCillo explained that the ARB denied the variance request due to the face of the sign being completely changed, which the Code does not allow.

Mr. Rubin asked if the BZA has jurisdiction to override the ARB.

Mr. Rodic explained that the ARB review is in regard to aesthetics, BZA is considering the setback location.

Mr. Rodic explained that the ARB considered the application prior to Mr. Maistros' determination regarding jurisdiction.

- ARB tabled the application pending Mr. Maistros' decision.
- If BZA grants the variance, the applicant will go to ARB to determine the requirements for an LED sign.

Mr. Rubin clarified that ARB did not deny the application due to the merits of the case; they denied it due to the question of jurisdiction.

Mr. DiCillo stated that 1173.33(a)(1) is clear that a nonconforming sign must be moved to a conforming location prior to allowing any changes to it.

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Mr. DiCillo indicated that he sees the sign only having a difficult view on the eastbound side because there are trees on that side. However, the tree branches are not low on the trees.

- Electronic signs are more visible than lighted signs.

Ms. Vicky DePiere, 10897 Ravenna Rd. Twinsburg, Ohio explained that she lives almost directly across from the church driveway.

- She chose to live in Twinsburg for the beauty of the community.
- They would not have purchased their house if they had known there would be an electronic sign placed across the street.
- She would like the sign to be placed as far from the road as possible.
 - o She often has police lights outside her house due to traffic stops.
 - o These lights wake her and attract her attention and disturb her.
 - o She feels that the light from the sign will be a constant disturbance for her.
- She has a concern with encouraging people to read changing signs while driving.
 - o She feels that people should concentrate on their driving.
 - o Many people walk and bike on Ravenna Rd.
 - o Her children and pets play in the front yard.

Mr. Rubin asked Ms. DePiere to confirm that she would not have bought her house if there had been an electronic sign across the street.

Ms. DePiere stated that is correct.

Ms. Lang reiterated that the neighbors have a concern for the safety of the community in regard to this sign.

Mr. Rubin asked if the sign being 5.5 feet further from the road would make a big difference.

Ms. Lang replied that it would not be a large difference but it would be somewhat better.

- She is concerned that the sign will depreciate the value of her home.
- The church currently does not have adequate parking, with people parking on the grass now.
 - o The Parishioners do not drive safely into and out of the driveway.
- She thinks that the sign attracting more people to the church will increase these problems.

Mr. Yankovich indicated that the property has had a church on it since 1960 and the sign has likely been there the same amount of time without any problems.

- There have been name changes allowed on the sign.
- This building was vacant for a few years, which, if prolonged, could have impacted property values.
- This is a thriving church which is interested in being a good neighbor.

Mr. Rubin adjourned the Board into Executive Session by virtue of Ohio Sunshine Law exception for discussion when the issue is likely to result in litigation.

CITY OF TWINSBURG BOARD OF BUILDING AND ZONING CODE APPEALS MEETING MINUTES JUNE 17, 2015
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The Board of Building and Zoning Code Appeals met on Wednesday, June 17, 2015. The Chairman, Mr. Rubin, called the meeting to order at 7:40p.m.

Mr. Rodic administered the Oath to Mr. Yankovich, Mr. DiCillo, Ms. Lang and Ms. DePiere.

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The applicant and members of the public indicated that they have no changes or additions to their comments.

1. Appeal # 04-2015
Variance 1173.33(1)

- Specifically, permission to modify the variance is requested.

MOTION: I MOVE TO GRANT THE VARIANCE AS REQUESTED.

MR. KANCLER MOVED, MR. DAVIS SECONDED
UPON ROLL CALL, MOTION FAILED UNANIMOUSLY.

Mr. Kancler indicated that 1173.33(a)(1) states NO LEGAL NONCONFORMING SIGN OR PART THEREOF SHALL BE ALTERED, MODIFIED, CHANGED IN USE IN ANY MANNER WHATSOEVER IN ANY PROCESS OF RECONSTRUCTION, REPAIR, MAINTENANCE OR RESTORATION OF ALL OR PART THEREOF UNLESS THE ENTIRE SIGN SHALL BE BROUGHT INTO COMPLIANCE WITH ALL OF THE PROVISIONS OF THIS CODE.

- Under Appeal #04-2015, it is clear that the sign will be changed by 100% in terms of construction and every manner. Therefore, it cannot be considered as a nonconforming sign. The use has been abandoned and therefore, the finding is that a nonconforming use has been abandoned and whatever is going to replace it must be in compliance with the current Code in terms of setback and content.

Mr. Rubin explained that this is regardless of safety, viewing and other concerns; it is focusing on the language of the Code.

2. Appeal # 05-2015
Variance 1173.15(d)

- Specifically, a 5.5 foot setback variance is requested.

MOTION: I MOVE TO GRANT THE VARIANCE AS REQUESTED.

MR. DAVIS MOVED, MR. BROWN SECONDED
UPON ROLL CALL, MOTION FAILED UNANIMOUSLY.

Mr. Kancler explained that these conditions were under consideration of Section 1173.47(c)(1) SPECIAL CIRCUMSTANCES OR CONDITIONS MUST BE PECULIAR TO THE PARTICULAR BUSINESS OR ENTERPRISE TO WHICH THE APPLICANT DESIRES TO DRAW ATTENTION AND DO NOT APPLY GENERALLY TO ALL BUSINESSES OR ENTERPRISES.

- No credible evidence was provided which would indicate that special circumstances exist.
- There was testimony about a cone of visibility; however, there is no difference in what can be observed from the street while traveling north. There is evidence in the exhibits provided by the applicant that the difference while traveling south is one car length.
- The Code requires that the variance, if granted, would be in general harmony with the purposes of the Sign Code and specifically would not be injurious to the neighborhood in which the business or enterprise to which the applicant desires to draw attention is located.
 - o The testimony of property value damage, which a property owner is permitted to testify to has not been contradicted.

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- o The visibility of the sign as proposed would interfere with the value of the properties involved.
- o Therefore, the variance conditions have not been met.

Mr. Rubin indicated that there is an appeal process available, he suggests that the applicant look into that if he is interested in an appeal.

APPROVAL OF MINUTES- Dated May 13, 2015

MOTION: MOTION TO APPROVE MINUTES OF MAY 13, 2015.

MR. BROWN MOVED, MR. WILNER SECONDED
UPON ROLL CALL MOTION PASSED UNANIMOUSLY.

COMMUNICATIONS- NONE

EXCUSE ABSENT MEMBERS- NONE

ADJOURNMENT-

The meeting adjourned at 7:40 p.m.

Neil Rubin, Chairman

Russ Rodic, Building Commissioner

Memo

To: Larry Finch

Russ Rodic

ARB and BZA

Cc: Mayor Procop

From: David M. Maistros, Law Director

Date: May 13, 2015

RE: Sign Variances and Appeals

Please be advised that I have been asked to review the City's Charter and existing codes applicable to the issuance of variances and appeals to the sign regulations.

The City's sign regulations can be found at Chapter 1173 of the Codified Ordinances. This entire Chapter was most recently reviewed and amended in 2009. It is logical to conclude that anyone looking to discover what signs are permitted or prohibited in the City and the regulations thereof would immediately look to Chapter 1173 for direction.

§1173.29 Sign Application and Permit addresses the criteria for when a sign permit is required and the minimum requirements of the application. §1173.29(e) provides that the Building Commissioner and the Architectural Review Board (ARB) shall review the application and drawings to determine if the "proposed sign meets the standards, criteria and furthers the purpose and intent of the Chapter". What if the applicant's request for a sign permit is denied by the Building Commissioner and the ARB? §1173.47(a) Appeals for Variances states "**Any person may appeal to the BZA for a variance from the requirements of this Sign Code.**" This Section goes on to provide specific Conditions for Consideration of BZA when considering a variance from the Sign Regulations (§1173.47(c)) Without question the Sign Regulation clearly states that the BZA has the authority to hear appeals and grant variances to the sign regulations. As previously discussed, the ARB is charged with the initial decision to grant or deny the application. It would be logical to assume that a different Board would be the appellate body to determine variances and appeals.

Confusion sets in when we next look at §1199.09 which establishes the Powers and Duties of the BZA. Specifically, §1199.09(c)(1) states that the "Board shall not possess the authority or power to hear, determine, or grant variances to land use classifications or **signs** as established by this Code". [Note...this section appears to also be in conflict with the general provision of §7.10 of the Charter that states that the BZA "shall have the power to hear and determine appeals from refusal of building and sign permits"]

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Obviously a direct conflict exists between multiple provisions of the City's code and Charter. In order to attempt to bring clarity to the authority of the ARB and BZA as it relates to granting variances and/or appeals to the sign regulations we must look at the intent and purpose of the process.

Among other things the Sign Regulations are designed to protect the residents and business community of the City of Twinsburg by regulating the type, design, location, and size of signs. Like any regulation there exists a designated Board or Department with the power to approve or deny the application. That entity is the Building Commissioner and the ARB (§1173.29) The ARB is the front line for interpreting and applying the sign regulations. They are in the best position to evaluate each application and apply the regulations thereto. It would seem reasonable and logical to also authorize them to determine if a variance would be within the spirit and intent of the regulations they routinely apply and interpret. As such, it is my opinion that the ARB has the authority to grant variances to the sign regulations under the criteria established under §1173.47.

That being said, I am not of the opinion that the ARB shall also be permitted to hear appeals of its own denial of a sign application or grant variances to any existing setback regulations. The BZA is in a much better position with experience to make those determinations. Any applicant that objects to or disagrees with a final decision of the ARB as it relates to the sign regulations shall still retain its right to appeal that decision to the BZA and subsequently a court of competent jurisdiction.