

**CITY OF GERMANTOWN BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD AUGUST 14, 2017**

The City of Germantown Board of Zoning Appeals met on August 14, 2017 at 7:00 p.m. in the City Building Council Chambers.

MEMBERS PRESENT:

The following members were present at the Call to Order: Mr. Hutchinson, Mrs. Izor, Mr. Jones, Mr. Richter, and Mr. Treiber.

MEMBERS ABSENT:

There were no absent members.

ALSO PRESENT:

Also present were Mr. Brian Wafzig, Council Liaison; Mr. David Wilson of Wilson Sign, Applicant for Case# 17-04; Mr. Dave Wilson of Wilson Sign; Mr. Clay Alsip, Property Owner for Case# 17-04; and Keith Brane, City Planner.

CONSIDER APPROVAL OF THE MINUTES OF THE JULY 10, 2017 BZA MEETING:

On a motion by Mr. Hutchinson, seconded by Mr. Jones, it was moved to approve the minutes of the July 10, 2017 meeting. On call of the roll: Mr. Hutchinson, yes; Mr. Jones, yes; Mrs. Izor, yes; Mr. Richter; abstain; and Mr. Treiber, yes. Motion carried.

PUBLIC HEARINGS:

Mr. Jones swore in those citizens of the community who would be giving testimony.

VARIANCE APPLICATION 17-04

Mr. Jones said this hearing is for variance application# 17-04 made by Wilson Sign Company for property owner Mr. Clayton Alsip, 2603 Dayton Germantown Pike, Germantown, Ohio requesting a variance to allow construction of an illuminated sign with an electronic message board component.

Mr. David Wilson of Wilson Sign Company said they are looking to install an illuminated sign with an electronic message center at Mr. Alsip's property on Rt. 4.

Mr. Brane summarized the staff report: On 5/17/17 Mr. Alsip made application for the illuminated electronic sign; GCO Section 1139.03 (a) does not permit the electronic message board component of the proposed sign. Mr. Alsip was informed of the situation and provided the option of to proceed before the BZA or appealing the interpretation leading to the denial. The application is on variance paperwork but the appeal is that the code is not being interpreted correctly. I discussed it with Mr. Alsip and we felt "intermittent" was the insurmountable part of the code that didn't allow the sign. They don't want the sign to flash or roll, they just want to put messages up that hold. A lot of folks have these signs with a lot of rules attached to them and I have recommended approval subject to several conditions as follows:

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1. Specific zoning approval to utilize a detached sign containing an intermittent light or lights (electronic message board) explicitly based on the submitted site plan and graphics is granted.
2. The sign shall employ only light emitting a light of constant intensity and shall not be illuminated by or contain flashing, rotating or moving light or lights.
3. The sign shall be illuminated/lighted only to the minimum level required for nighttime readability.
4. The sign shall not produce any apparent motion of the visual image, including but not limited to, illusion of moving objects, moving patterns or bands of light, expanding or contracting shapes, rotation or any similar effect of animation.
5. Visual images generated by the electronic message board component of the sign shall remain static (hold) for a minimum of six (6) seconds.
6. The sign shall contain a default design that will freeze (hold) the illumination in one position if a malfunction occurs.

Mr. Brane said within the justification, the folks feel it is similar to size to others located in the area and a recognizable sign is needed to properly identify the property. They have provided a landscaped area around the bottom of the sign and the leading edge of the sign will be 32 feet back from the road.

Mr. Jones opened the public hearing at 7:08 p.m.

Mr. Jones asked Mr. Brane if the proposed sign was for a specific use on the property; there is a collision center there, correct?

Mr. Clayton Alsip, owner of the subject property, said there are actually two business addresses there and I have a tenant currently in the front. Mr. Jones asked the collision center? Mr. Alsip said yes, called Flying Squirrel. Part of the reason I want to do this is there are electronic message centers all over town and I took pictures tonight. Every gas station, bank, and several businesses have a flashing "open" sign with flashing colors.

Mr. Jones asked what the other use on the property was. Mr. Alsip said per zoning it can be used for a body shop, a garage, anything the zoning would permit. There is 5,000 square feet available. Mr. Jones said the sign would be for an anticipated use. Mr. Alsip said it is for use by the current tenant and future tenants. I am not happy with the sign the current tenant put up and I don't think anybody in the city is.

Mr. Jones said the bank has an intermittent sign and it is in violation; the gas station signs normally don't move. If there are properties in violation, that's something the zoning inspector can handle. There are a number of issues before we can discuss it; one, you are asking for a use variance. The code specifically says the sign can't be intermittent, have motion or the appearance of motion. Ohio law says for a use variance there has to be an unnecessary hardship created, whereas if you don't allow the use variance, that basically it's a taking and the use of the property becomes financially unviable. That's a Supreme Court decision and I guess those standards are higher than a practical difficulty. The

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positive side in granting a variance is you can attach conditions, and Mr. Brane has proposed a number of conditions which can be modified by consensus of the board. Proposed changes to the zoning code which will go before Council would allow for an intermittent change; no motion but a change in the electronic message at a certain interval that is safe according to traffic studies. My concern is we are talking about a use variance and the standards are much more challenging.

Mr. Jones asked Mr. Brane if the rest of the proposed sign met current code. Mr. Brane said yes; a very conservative sign. Mr. Jones said you proposed landscaping to delineate the sign from traffic conflict. Mr. Wilson said it will be rock and gravel in an enclosed area.

Mr. Jones said my idea is that; not being able to show an unnecessary hardship. Mr. Alsip said without having a decent sign or being able to install a sign, you can't attract a good business that generates income tax for the city. Everybody has seen the sign and that's the kind of tenants you get which does create a hardship for me. Mr. Jones said I don't have a problem with static signs even if it's changeable copy; the issue at hand is the electronic part of it. I will propose a possible solution if you will hear me out. I am in agreement with most of the conditions except number 5) *visual images generated by the electronic message board component of the sign shall remain static (hold) for a minimum of six (6) seconds*; if the variance could be granted with all the conditions but instead of six (6) seconds, the condition is modified so the message couldn't change for 24 (twenty-four) hours until such a time that the current code changes permit otherwise.

Mr. Wilson said you are saying the scrolling message similar to what the bank has now. Mr. Jones said I'm saying you can't have that moving and the bank has a problem with that. Code enforcement needs to go out and say that message can't move. To me, if the message changed once per day, that is not intermittent. That's the way the gas stations change; the old price rolls off and the new price rolls on. The bank does have an issue; studies show a scrolling message is not safe for vehicular traffic.

Mr. Treiber said I think it would be wise to show the sign will not be in the right of way; something that shows where the sign is in relationship to the road. Mr. Wilson said it will be 33 feet back. Mr. Treiber said the plan should have some detail that shows that.

Mr. Alsip asked if they would be allowed to show time and temperature. Mr. Jones said we can't regulate by content. Mr. Wilson said you're concerned the time and temperature will change throughout the day; the code says it is permitted. Mr. Brane said the code states that no sign shall revolve, rotate, roll, or otherwise make use of motion but this does not apply to public service messages such as time, temperature, or other similar services. Mr. Jones said so you're saying you want an intermittent change only for time and temperature. Mr. Wilson said time, temperature, or other similar services such as T-ball sign-ups or the football games – things like that. Mr. Jones said if you put something up such as time and temperature and the code allows it, that's fine; all I know is the code says you can't have a sign that has an intermittent change. That's more restrictive and when there's a conflict in the code, my understanding is you take the standard that is more restrictive.

There was discussion regarding other signs around the city and the interpretation of intermittent as it is used in the code.

Mr. Hutchinson asked what the intent for the sign was; were you going to have it scroll. Mr. Wilson said no; the first thing will be a "for lease" sign on there.

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Mr. Alsip said that will be the first thing, then I will turn it over to the tenants. I'm really embarrassed by the sign there now and I'm trying to do something that will help the city. We can work with the city on the Pretzel Festival, the Saturday Night Out, we have stuff we can offer and I'm willing to work with the once every 24 hours, if we are allowed to put the time and temperature up there more often.

Mrs. Izor asked if there was a way to reasonably compromise; for example there are signs that say open and then closed. Those change twice a day. Mr. Jones said the code allows certain types of signs without a permit.

Mr. Jones said another issue which concerns me is you have an application for a sign and it says future tenant. Mr. Alsip said there will be two tenants and we've made so it will be changeable copy so if a tenant comes and goes, we don't have painted plywood signs. That's an entrance to Germantown and most people coming into Germantown come that way. Mr. Jones said the limits are another quarter mile out.

There was further discussion regarding the interpretation of intermittent.

Mr. Hutchinson asked Mr. Alsip what his thinking was as far as changes. Mr. Alsip said on that stretch of road, I feel 30 to 60 seconds is fine. Six seconds is fast; that is the code in Dayton and everywhere else. Mr. Hutchinson said for right now, you are not going to have much up there; right? Mr. Alsip said no; right now I have vacant space and I haven't worked out what I will do for the current tenants. I don't like the current sign on my property; it's a disgrace. We looked in the code and didn't see anything prohibiting an LED message center.

Mr. Jones asked if there was anything in the code prohibiting LED. Mr. Brane said no; your lighting source can be LED as long as it emits constant light. Mr. Jones said so we don't have anything in our code that prohibits electronic message centers. Mr. Alsip said the code also allows time and temperature. Mr. Jones said the problem is you can't have an intermittent sign which is the more restrictive part of that code.

Mr. Hutchinson asked Mr. Wilson if he had run into this before in other communities. Mr. Wilson said yes, we've been through variances. In almost all the communities around now, you don't get a variance for a message center unless you want to put up a larger message center than what you are allowed square footage for. Mr. Hutchinson said most communities allow message centers based on some conditions; we realize the scrolling and the flashing is taking to Las Vegas and that's not what we are after.

Mr. Alsip said right, and we don't have a whole lot there. This is not a cheap venture and nobody has spent this kind of money out on Rt. 4. Mr. Jones said we're not talking about the cost or the content, we are talking about a use because you can't have an accessory use without a principal use and the application says future tenant.

Mrs. Izor asked when construction on the sign would be completed. Mr. Wilson said 3 or 4 weeks, but we still have to apply for building permits. Mr. Jones said everything about the building of the sign meets current code; what we are talking about is how you want to use the electronic portion.

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Mr. Alsip said if you agree to let us do time and temperature as it is in the code, and the same message that won't change for 24 hours but we can rotate the time and temperature, I'm happy with that until the code gets reviewed. Mr. Jones said I appreciate your comments but we can't negotiate for a decision.

Mr. Treiber said I'm happy with what Mr. Jones suggested, a 24 hour message with no time and temperature because the city is going to look at this within the next few months. Mr. Richter said there is a lot of interest in this particular area. I can't say what direction Council will go, more restrictive or less restrictive, but I think it will be much clearer and there will be some specific guidance.

Mrs. Izor asked what the font size would be in the active area of the message board. Mr. Wilson said it's basically one to four lines. Mrs. Izor said you could potentially display several messages. We are placing a lot of emphasis on the changing of the messages but it's a big area and you could stack one on top of the other and change them every 24 hours. And it does say in the code that time and temperature are handled separately as long as it adheres to the code otherwise.

Mr. Jones said the code doesn't say the message can't change for an electronic reader board; that could be for technology that hasn't been invented yet. That is why the code is silent on the type of sign. The issue is the constant change. Whichever council adopted it said there is a concern with frequent, irregular changes in a sign message and it's a safety issue.

Mr. Wilson (Jr.) asked what is meant by similar services in section 1139.03 (b). Mr. Jones said the board doesn't address any type of content; if the law director or whoever interprets that it is permitted, that's a separate issue. We are talking about an application for a sign where the applicant wants the sign content to be intermittent.

Mrs. Izor said can we reasonably define intermittent; he has two businesses that could potentially be there, it is a business sign for businesses that could be open eight to ten hours a day, if you allow each business to change their sign once a day, that would be twice.

On a motion by Mr. Jones, seconded by Mr. Richter, it was moved to approve Variance Application #17-04 with the conditions set forth in the recommendation on pages two and three of the staff report with a modification to condition number five: instead of *visual images generated by the electronic message board component of the sign shall remain static (hold) for a minimum of six (6) seconds*, condition number five will be changed to *visual images generated by the electronic message board component of the sign shall remain static (hold) for a minimum of a 24 (twenty-four) hour period regardless of when that starts and stops*. On call of the roll: Mr. Jones, yes; Mr. Richter, yes; Mrs. Izor, yes; Mr. Hutchinson, yes; and Mr. Treiber, yes. Motion carried.

Mr. Jones thanked the applicant for coming in and suggested they check with the Clerk of Council to see when any proposed legislation for Chapter 1139 is going to go before Council. He said my understanding is a first reading will be in early September. The Clerk can give you a schedule of when they anticipate that legislation will become law. Mr. Wilson asked if there would be a public meeting where we can speak up. Mr. Jones said yes.

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BUSINESS:

Mr. Jones said the Planning Commission is looking into this with input and we've come up with a draft. I'm still making minor changes but it will allow for an intermittent change. The proposed code will have three categories: signs that are permitted without a permit, signs that are permitted with a permit; and signs that are prohibited. It expressly lays all that out.

Mr. Richter said I looked at Centerville's change back when LED was first coming out and looking at their code, they actually have brightness meters where they go out and measure. Mr. Jones said that's another issue; what's feasible for the city staff to regulate.

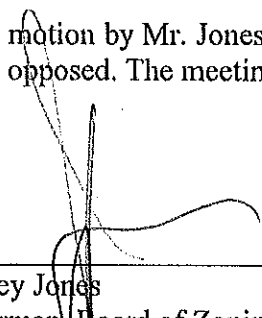
Mr. Treiber asked if the signs automatically controlled when the sign dims or gets brighter. Mr. Brane said it should have an electric eye that tells it when it's nighttime and to go to a minimum brightness; that's why we put that condition in. Mr. Treiber asked if there was a certain standard. Mr. Brane said maybe 1.5 foot-candles. Mr. Jones said you let the industry regulate itself; if there is an instance where a sign is too bright, you call the building inspector to bring a light meter and measure.

Mr. Jones said in the new code there will be a balance with more practical regulation but in some ways it will be more restrictive, specifically on the height of signs and the type of signs.

The board discussed types of signs and lighting of the signs.


ADJOURNMENT:

On a motion by Mr. Jones, seconded by Mr. Treiber, it was moved to adjourn. All were in favor; none were opposed. The meeting adjourned at 8:10 p.m.



Jeffrey Jones
Chairman, Board of Zoning Appeals

10 DEC 17



Keith A. Brane
City Planner

**CITY OF GERMANTOWN BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD DECEMBER 11, 2017**

The City of Germantown Board of Zoning Appeals met on December 11, 2017 at 7:00 p.m. in the City Building Council Chambers.

MEMBERS PRESENT:

The following members were present at the Call to Order: Mr. Hutchinson, Mrs. Izor, Mr. Jones, Mr. Richter, and Mr. Treiber.

MEMBERS ABSENT:

There were no absent members.

ALSO PRESENT:

Also present were: Mr. Reed, Council Liaison; Mr. Betley, KAP Signs; and Mr. Brane, City Planner.

CONSIDER APPROVAL OF THE MINUTES OF THE AUGUST 14, 2017 BZA MEETING:

On a motion by Mr. Treiber, seconded by Mr. Richter, it was moved to approve the minutes of the August 14, 2017 meeting as written. On call of the roll: Mr. Richter, yes; Mr. Hutchinson, yes; Mrs. Izor, yes; Mr. Treiber, yes; and Mr. Jones, yes. Motion carried.

PUBLIC HEARINGS: VARIANCE APPLICATION 17-05

Mr. Jones said we have one case tonight, variance application# 17-05 made by KAP Sign for the property at 2323 Dayton-Germantown Pike within Triangle Station to appeal Section 1139.10 (a) Business Signs of the Planning and Zoning Code of the City of Germantown. If granted the variance would allow an attached wall sign that exceeds one square foot of area for each lineal foot of lot frontage. He asked the applicant to come forward and give a summary of their proposal.

Mr. Alex Betley of KAP Signs, 1608 Kuntz Rd., Dayton, Ohio said we are representing Dollar Tree who would like to have signage on their building that would be visible from the road. The building is on an angle, hard to see and set back a pretty good distance. Dollar Tree is proposing a sign that is slightly larger in size than what is normally allowed at that building so they can attract a customer base. They do not have a free-standing sign at the road, so their signage is necessary to let people know they are there.

Mr. Jones opened the public hearing at 7:04 p.m. and asked if there were anyone in the audience wishing to speak in favor of or in opposition to the proposal. Seeing none, Mr. Jones closed the public hearing at 7:05 p.m. and asked the board members if they has any questions or comments.

Mr. Hutchinson asked if a sign would be on the road. Mr. Betley said there is a spot on the Triangle Station shared sign which is very small.

Mr. Jones said my concern is not with the application so much, but with the difficulty presented by the zoning code. Planning Commission has made a number of recommendations which I believe council will be reviewing next month. The requirement of the formula that's used that permits a certain

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amount of wall signage is based on the frontage along the right of way which in practice is difficult because you have a multi-use building with multiple tenants and based on the formula, there is no logical way to actually calculate what's permitted based on street frontage. It has nothing to do with the space being used. When I look at the other businesses there, I don't think this sign is out of character. The other issue, and I can't speak for council, but I'm hoping this sign code is going to change soon and this will become a non-issue. In my opinion, all those things together, I don't have any concerns. It's not out of scale or character with the existing signs in that development.

Mrs. Izor asked if we knew the size of the letters because it seems, architecturally, it is out of scale. It seems like they are competing and the next guy will want a larger sign. Mr. Jones said if you look at the logo in conjunction with the architectural features, I don't see it out of character.

Mr. Brane said this is not a cabinet sign, it is acrylic channel cut letters individually mounted on a raceway which is a very expensive sign. Mr. Jones asked how far out the letter extended. Mr. Brane said 5 or 6 inches maybe. Mr. Betley said 5 ½ inches.

Mrs. Izor asked if this would be internally lit. Mr. Brane said yes.

Mr. Hutchinson said these are about 3 foot high letters and in looking at the businesses that are there, no one comes close except for the market and it's just the "M". What I don't want to see is if we let this one do this then everybody wants to have a great big sign out in front of their building. The two buildings that probably are not penalized where they are sitting is the Dollar Tree and the Market. Seeing the businesses in the back is extremely difficult. I think this sign goes a little bit overboard.

Mrs. Izor said Mr. Brane, you said the sign was slightly larger than what was required and I'm confused; if the sign is 4 inches bigger how is that really a monetary hardship on the business. How tall are these letters supposed to be that you need to expand their size? Mr. Brane said the way it's worded in the code: The variance is to allow the total area of the attached business sign to exceed one square foot of area for each linear foot of lot width. As Mr. Jones stated, it ties it to the lot; the proposed code ties the sign to the actual occupied building frontage. They thought we meant occupied building frontage and that's what they did their calculation on. They probably could have had a lot bigger sign than what they are applying for.

Mrs. Izor said I understand the rules are the rules. I think that signage is definitely out of control and I don't really think there is a direct correlation between the size of your sign and the business or monetary hardship it causes a business. I don't think anyone has presented any information that ties those two together. If we feel it is within reason, that's fine; I just think in general the signage out there is beyond reasonable scale.

Mr. Jones said if you look at some of the other business signs they probably have more total area than these cut out letters.

Mrs. Izor said my issue is not necessarily the size; it's just the development. Maybe we have some guidelines for all the businesses that go into that development so you don't have such a collage or mish-mash of signs and they all adhere to some sort of similar style.

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Mr. Brane said usually acrylic channel cut letters mounted on a raceway is something a private developer requires in their own development. I did forget to ask the owner of the development if he supports that but I would imagine he does. They have their own internal regulations that just requires it to be a nicer sign so I'm going to guess he was okay with the little bit of additional area. This was just one of those deals where I felt insufficiently comfortable to approve it administratively and feeling it should come to the board since you are more familiar with what you want as a city. I explained the confusion to the property owner and this is a stop gap to get us to the new code which I believe allows 1.25 square feet based on the occupied store frontage which is appropriate.

On a motion by Mr. Jones, seconded by Mr. Hutchinson, it was moved to approve variance application# 17-05 made by KAP Sign to allow a 102.08 square foot wall sign for the property located at 2323 Dayton-Germantown Pike. On call of the roll; Mr. Jones, yes; Mr. Hutchinson, yes; Mr. Treiber, no; Mr. Richter, yes; and Mrs. Izor, no. Motion carried.

BUSINESS:

Mr. Jones said what we are doing at Planning Commission is talking about different parts of the zoning code. The sign code was one of two proposals we wanted submitted to Council as a separate chapters, then we'll submit the rest of the chapters when we get done. The Signage Chapter, 1139, and then a new chapter I've been working on which is an adult entertainment ordinance that is based on the State of Ohio Attorney General model. The Signage goes before Council in January and I'm hoping we'll have less problems in the future. Mr. Brane said the Signage has had its first reading, the second reading will be at the first meeting in January, and then at the expiration of a 30-day period it will become effective.

ADJOURNMENT:

With no further business, the meeting was adjourned at 7:27 p.m.

Jeffrey Jones
Chairman, Board of Zoning Appeals

Keith A. Brane
City Planner