



BOARD OF ZONING APPEALS MEETING SUMMARY

Tuesday, April 6, 2021, at 6 PM

Virtual Meeting via Zoom and broadcasted live on the City Facebook Page
Westminster, Maryland 21157

A meeting of the Westminster Board of Zoning Appeals was held virtually via Zoom and broadcasted live on the City Facebook Page, on April 6, 2021, at 6 PM.

Chair Ed Cramer, Vice-Chair Larry Berent, and Board Member Brenda Frazier were present. Also, in attendance was Board Attorney Karen Ruff, City Attorney Elissa Levan. City staff members Mark Depo and Andrew Gray. Howard Bitzel, Andrew Graham, Adam Knubel, Matt Malone, Bob Pollokoff, Kelly Shaffer Miller, Mark Small, Roger Sullivan, and Logan Yox were also present.

At 6:00 PM, Chair Cramer called the meeting to order.

Chair Cramer requested a motion to approve the meeting summary of March 17, 2021. Board Member Frazier moved to approve the meeting summary of March 17, 2021. Vice-Chair Berent seconded the motion. The motion passed 3-0.

Chair Cramer opened the public hearing for Case No. 21-02. The Chair stated the purpose of the hearing and read the following case title into the record:

An application by 150 Grappling LLC, the applicant and property owner Tuc Rentals LLC, requesting approval of a special exception to operate a Private indoor recreational facilities, subject to the requirements of § 164-155.2., use to be located at 7 Tuc Road, Suite G, Westminster, Maryland pursuant to Zoning Ordinance Article X: I-R Restricted Industrial Zone, Section 164-54K. Special Exceptions.

The Chair swore in all parties who wished to testify.

Mr. Gray provided background information on the case. Pursuant to Zoning Ordinance Section 164-169, Criteria for special exception determination, "In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition."

Furthermore, Zoning Administration recommends that the Board of Zoning Appeals conditionally approve the proposed Special Exception use based on City staff confirmation that the property meets parking requirements as contained in the City Zoning Ordinance.

Mr. Gray submitted into the record the Application as Exhibit #1 and the Staff Report as Exhibit #2.

Chair Cramer opened testimony for the Applicant.

Mr. Yox provided information on the nature of the business, which teaches grappling techniques for non-striking self-defense and martial arts. Mr. Yox stated that he agrees with staff regarding the non-issue of the lot size.

Mr. Yox went on to discuss the parking requirements, stating that Auto Plus is primarily used for warehousing supplies; therefore, the amount of parking required for that business is more than adequate for its daily use.

Chair Cramer asked if the parking lot had designated spots for each business. Mr. Yox affirmed they were not assigned, and the lot was open parking.

Vice-Chair Berent referenced Zoning Ordinance Section 164-169B. and asked if the facility will have an immediate impact on the adjacent businesses and properties. Mr. Yox stated the surrounding properties were either County-owned or City-owned and the only time the parking lot is full is during the City's FallFest event.

Vice-Chair Berent asked if there would be negative impact on the surrounding properties. Mr. Yox confirmed there would not.

Vice-Chair Berent asked about the closest public street to access the business. Mr. Yox stated that Tuc Road was immediately adjacent to the property with access to and from Route 27 directly, so traffic would not have any adverse effects on surrounding properties.

Chair Cramer asked if Mr. Yox received a copy of the Staff Summary, stating that issues were presented by staff to be addressed by the applicant. Mr. Yox reviewed the summary list and did not list any problems with the issues posed by staff. He further stated that 150 Grappling was named because the business will only take on a maximum of 150 members.

Board Member Frazier asked for confirmation that the proposed business was going in where a previous business had conducted similar activity. Mr. Yox confirmed the preceding business was a physical therapy clinic, and prior to that was a retail facility; both previous businesses were small and did not negatively impact the adjacent properties.

Mr. Gray stated that staff will work with the applicant on parking requirements as set by the Board if conditionally approved.

Chair Cramer closed testimony at 7:28pm.

Vice-Chair Berent moved to approve the application, conditioned upon meeting the City's parking requirements. Board Member Frazier seconded the motion. The motion passed unanimously, 3-0.

Chair Cramer opened the public hearing for Case No. 21-03. The Chair stated the purpose of the hearing and read the following case title into the record:

An appeal by Mission BBQ regarding a zoning determination made by the City of Westminster's Director of Community Planning and Development related to the use of an existing off-premises freestanding sign for property located at the One Forty Village Shopping Center, Lot 4 (Acct. ID 07-063318), pursuant to Zoning Ordinance Section 164-161A.(1) and Section 164-121A.

Mr. Depo provided background on the case, stating that the Appellant is appealing the January 26, 2021 Zoning Administrator's determination in which the Zoning Administrator responded to a request to use an off-premise freestanding business sign by the Appellant. He also provided information from the Staff Report.

Chair Cramer asked Ms. Ruff to confirm the Appellant has no standing in the case. Ms. Ruff confirmed, stating that if no standing is found, then the hearing need not be continued. Chair Cramer asked Ms. Miller to address the issue of standing prior to opening to Board Members.

Ms. Miller, present on behalf of the applicant, stated that Mission BBQ, the lessor of the building, and the property owner are both listed on the application and represent the aggrieved party together.

Mr. Cramer asked Mr. Depo what other remedies and administrative processes were available to the applicant prior to coming before the Board. Mr. Depo stated that the other options included (1) removal of the existing non-conforming sign by placing the requested sign on the premises as long as it met the requirements. (2) Another option was a boundary line adjustment to relocate the requested sign on the premises since the Mission BBQ property and adjacent property were owned by the same entity. Furthermore, the City does not have any record of the previous Friendly's Restaurant getting approval for the off-premises sign in question.

Ms. Miller stated that County records show an approved electrical permit from 1998 for the sign in question. Mr. Depo responded that the Site Plan for Friendly's only approved the wall mounted signage and did not approve any signage to be placed off-site.

Ms. Levan added that without documents to support Ms. Miller's statement that the record exists, even if not in the City's possession, that it was not actual evidence. Whereas City staff's search of records was evidence that no such documents exist.

Chair Cramer asked for confirmation of the applicant having standing. Ms. Ruff noted the difference between administrative review versus judicial review and that Mr. Depo has articulated the latter in his testimony. Standing for an administrative appeal is not quite as stringent, so the capability of the applicant to come before the Board is in question.

Ms. Levan noted that the Zoning Ordinance states that the application must be signed by the property owner to address the issue of standing. Ms. Miller provided documentation confirming that the property owner did sign the appeal application. Ms. Miller had authored a letter regarding the zoning appeal that was signed by herself on behalf of Mission BBQ and the property owner.

Chair Cramer asked Ms. Ruff if Mission BBQ, as the lessor, has standing in this case. Ms. Miller added that most of these types of applications are brought forward with the lessor and with the property owner's signature and consent. Ms. Ruff stated that the request for interpretation did not list the owner in the letter, aside from in the copied list at the bottom. She further stated that when Mr. Depo accepted and responded to the request, there was no indication that Mission BBQ did not meet the requirements to receive a response. Mr. Depo affirmed.

Mr. Depo stated his stance that the appellant should have been the property owner. Ms. Miller disagreed, stating that Maryland law recognizes lessees hold bearing in situations directly involving the property they are renting.

Mr. Depo then stated that Mission BBQ has met the amount of allowable signage required for a variance. Ms. Miller countered, stating that the actual square footage submitted with the application was altered by withdrawal of the square footage variance request because the on-building signage already approved and installed still allows for, if approved, to revitalize the pylon sign without needing any additional variance.

Chair Cramer asked the Board if the applicant has the standing to move forward with presenting its case. The Board Members unanimously agreed that the applicant has standing in the case.

Mr. Depo continued his presentation of the case details. He stated that pursuant to Section 164-125B, no non-conforming sign shall be worded to advertise any other use than what was advertised at the time it became non-conforming. Because of this, the sign could not be used again after the Friendly's use and pursuant to Section 164-125D and 164-126 should be removed.

Chair Cramer asked if the sign was ever brought forward as non-conforming when in use by Friendly's. Mr. Depo stated he only became aware of the situation with this case and the Friendly's use no longer existed, so the sign was no longer advertising that business.

Chair Cramer asked for clarification that the non-conforming sign actually exists on Lot 2 of the subdivision. Mr. Depo stated that Lot 4 has the business and a free-standing sign was to be located on Lot 1, so the applicant was required to redraw the property line so that the sign was located on Lot 4 on the same property as the business it was advertising.

Vice-Chair Berent asked Ms. Ruff about Mr. Depo's definition of premises and whether it was all-inclusive. Since the signage lot and restaurant lots are owned by the same property owner, if they can be considered one property. Ms. Ruff replied that a normal dictionary definition should be used when a term is undefined. Mr. Depo added that the A Planner's Dictionary is recommended by the American Planning Association and is based on land use zoning definitions.

Mr. Depo stated that the Zoning Administrator requests that the BZA give considerable weight to the Zoning Administrator's interpretation and determination of the Zoning Ordinance, which the Zoning Administrator is responsible for administering, and uphold and wholly affirm the January 26, 2021 Zoning Determination and deny the appeal.

Mr. Depo requested the Appellant's request for appeal application and pre-hearing statement, as well as the Staff Report and its attachments be placed into record. Chair Cramer confirmed.

Ms. Ruff provided the plain meaning rule as it relates to the statutory construction as it effects the intent of the legislation.

Board Member Frazier asked what was located on the same premises as the off-premises sign. Mr. Depo stated that the remainder of the shopping center is located on the same property.

Chair Cramer swore in all parties who wished to testify.

Ms. Miller began her presentation by outlining the standard of review as written in the Rules of Order and Procedure for the Board. She summarized that it was a question of whether the Board can interpret the ambiguous language in the Code regarding the definition of "premises" to allow the sign. She then outlined each of the lots on the entire commonly owned property, stating that the sign on the lot adjacent to Mission BBQ was just beyond the lot line.

Ms. Miller called on Robert Pollokoff, present on behalf of Fedder Management Corporation for 140 Village LLC, the owner of the shopping center. She asked for his confirmation on the layout of the shopping center lots; he confirmed that and the historical use of the current Mission BBQ lot.

Ms. Miller asked if he or any of the property owners were aware that the sign was a non-conforming use. Mr. Pollokoff stated no party was made aware it was non-conforming. Chair Cramer asked if Mr. Pollokoff knew who originally constructed the sign. Mr. Pollokoff was unaware of its original constructor.

Ms. Miller called Roger Sullivan, general counsel to Mission BBQ. Ms. Miller asked if this sign was the only *free-standing sign to which Mission BBQ has access to under its agreement with the landlord*. Mr. Sullivan confirmed, adding that they do not have a right to use the larger shopping center sign.

Ms. Miller asked if Mr. Sullivan was aware of the options presented by Mr. Depo. Mr. Sullivan confirmed, stating that they were options in theory. He explained that they are technical options that entailed significant cost, landlord approval, and commercially unreasonable. Ms. Miller asked if the project was already over budget. Mr. Sullivan stated that this is the 101st store and it took over two years to open, as opposed to four to six months, and costs for the project have been significantly more than expected due to municipal obligations.

Chair Cramer reiterated Mr. Sullivan's statement that use of the existing sign was the hope and expectation, asking if it was investigated in advance. Mr. Sullivan affirmed it was, stating that the lease included the existing signage for Mission BBQ to use. The lot line runs between the two and makes it impermissible per Mr. Depo; however, being used for 50 years uninterrupted by previous tenants, it was the hope and expectation of Mission BBQ to continue using it for the same lot.

Chair Cramer asked if use of the sign was included on the Site Plan submitted to the City. Mr. Sullivan confirmed, stating that it was also on the Friendly's site plan. In his experience, signage approval is typically not requested during the site plan review process.

Ms. Miller called Adam Knubel and Andrew Graham, on behalf of Apple Signs, questioning if approved, does the sign comply with the square footage requirements of the Code without requiring a variance. Mr. Knubel affirmed and provided the applicable calculations.

Chair Cramer asked if the decision to reduce the on-building signage was in part due to using the standalone sign. Mr. Knubel confirmed the applicant wanted to leave room in its sign request to include that as well.

Ms. Miller presented her closing arguments, adding that looking at the ordinance as a whole is important to looking at intent. She provided Section 164-117 which states the purpose and intent of the sign code article. She also provided Section 164-121 related to business signs. Ms. Miller likened an off-premises sign as a billboard style sign and argued that this request was not like a billboard. She concluded by stating that there will be no precedent set if the Board approves this request and there has been no negative communication from the community regarding the project as a whole.

Mr. Depo reiterated Section 164-121 regarding the definition of a business sign. He also refuted that the decision the Board makes on this case will, in fact, set precedence for future cases as well. Mr. Depo stated that the applicant was aware of the status of the off-premises sign not being approved; staff requested it be removed in the initial site plan review. Mr. Depo concluded, stating that the Appellant has not provided sufficient information to demonstrate error on the part of the Zoning Administrator's determination.

Ms. Levan commented that the decision made by the Board today would set a precedence for future cases that might be similar in nature. Specifically, how the word "premises" is defined. She stated that there was no evidence that the existing non-conforming sign was advertising the business on the adjacent property. She also stated that if the word "premises" is defined to include multiple properties, then it loses all meaning.

Ms. Miller reiterated that the request was for the Board to review the information as the Zoning Administrator and make a decision based on what is being presented.

Mr. Gray read one comment received on the Facebook live-feed from Victoria Simons Beder.

Chair Cramer read a comment letter received from Joe Dominick. He also read another letter received from Greg Pecoraro. Both letters were entered into the record as Exhibits 4 and 5, respectively.

Chair Cramer closed testimony.

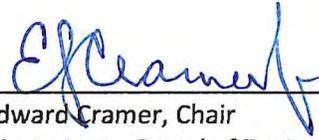
Board Member Frazier stated it was her understanding that a premises is defined by the entire area of land owned by one organization; in this case, it would be the entire shopping center.

Vice-Chair Berent agreed, adding that the premises is not defined by leased property. He added that if the sign was included in the Site Plan, it should have been addressed during the initial review process.

Chair Cramer noted that the property owner joined the application with Mission BBQ, and the sign is clearly on the premises owned by 140 Village Limited Liability Partnership. He disagreed with the statement that approving this case would create a new off-premises free-standing sign type, adding that it was a minor distance to consider.

Vice-Chair Berent moved that the Board grants that the Appellant has standing to appeal the Zoning Administrator's decision on the matter presented and overturn the decision made by the Zoning Administrator by authorizing the use of the off-premises sign by Mission BBQ. Board Member Frazier seconded the motion. The motion passed unanimously, 3-0.

Chair Cramer made a motion to adjourn the meeting. The Board adjourned at 8:56 PM.



Edward Cramer, Chair
Westminster Board of Zoning Appeals