

BOARD OF ADJUSTMENT CASE REPORT

STR: 0433

Case Number: **BOA-22371**

CZM: 31

CD: N/A

A-P#: N/A

HEARING DATE: 03/13/2018 1:00 PM

APPLICANT: Andrew Shank-Eller and Detrich

ACTION REQUESTED: Appeal of a written Zoning Code Interpretation by the Planning and Development Director (Sec. 70.140).

RELEVANT PREVIOUS ACTIONS:

None.

LOCATION: N/A

STAFF COMMENTS:

In the attached (see Exhibit 1) *Zoning Code Interpretation*, the Planning and Development Director issued an interpretation of the 1200 ft. spacing requirement for off-premise outdoor signs established in **Section 60.130-C** of the Code, see below. The requested appeal of the *Zoning Code Interpretation* is not associated with a site or lot in the City of Tulsa.

Section 60.130-C

The required separation distance between off-premise outdoor advertising signs must be measured in a straight line from the center of the respective off-premise outdoor advertising sign structures, as located on the ground.

The applicant is before the Board appealing the *Zoning Code Interpretation* attached to this case report. The applicant has provided the Board with comments and records related to the requested appeal; these records are attached to this case report for the Board's review.

Section 70.090 Zoning Code Interpretations

70.090-A Purpose and Applicability

1. Day-to-day responsibility for administering and interpreting the provisions of this zoning code, including the zoning map, rests with the development administrator and land use administrator, whose decisions may be appealed to the board of adjustment, in accordance with the procedures of Section 70.140.

2. Occasionally, the zoning code may not sufficiently address an issue that arises in administering or interpreting the zoning code. In those cases, the development administrator and land use administrator may elect to issue, or a citizen may file an application for, a written zoning code interpretation to guide in future decision-making.

Zoning Code Interpretations Authority, 70.090-B

The planning and development director is authorized to issue written interpretations pursuant to this section or to delegate that authority to the land use administrator or the development administrator, based on which office has primary responsibility under this zoning code for administering the provisions in question. The planning and development director is also authorized to refer the matter to the board of adjustment for an interpretation or for guidance in making an interpretation.

Appeals of written interpretations issued pursuant to this section may be taken to the board of adjustment in accordance with the appeal procedures of Section 70.140.

Appeal Procedures - Hearing and Final Decision, 70.140-G

1. The board of adjustment must hold a public hearing on the appeal.
2. Following the close of the public hearing, the board of adjustment must make its findings and act on the appeal.
3. In exercising the appeal power, the board of adjustment has all the powers of the administrative official from whom the appeal is taken. The board of adjustment may affirm or may, upon the concurring vote of at least 3 members, reverse, wholly or in part, or modify the decision being appealed.
4. In acting on the appeal, the board of adjustment must grant to the official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant.

Appeal Procedures - Review Criteria, 70.140-H

The decision being appealed may be reversed or wholly or partly modified only if the board of adjustment finds that the land use administrator, the development administrator or other administrative official erred.



PLANNING & DEVELOPMENT
DEPARTMENT

Exhibit 1

November 6, 2017

Mr. Andrew A. Shank
Eller & Detrich
2727 East 21st Street, Suite 200
Tulsa, OK 74114-3533

Re: Zoning Code Interpretation #2017-02
Spacing requirements for outdoor advertising signs

Dear Mr. Shank:

The question you pose in your September 27, 2017 letter is whether a permitted sign (or sign alteration) should be granted the same consideration as an "existing" sign when verifying spacing requirements for placement (or conversion) of another sign. In your letter you state "*Consideration of signs that may potentially be erected at some uncertain point in the future (whether or not they have been issued a permit) is undoubtedly improper and ignores the plain language of the standard set forth by the Code.*" I agree with much of this statement however it is negated by the parenthetical reference to the issuance of a valid permit. Once a permit has been issued, the City has granted a right to construct or alter a sign and has recognized an applicant's intent to do so. A permit represents a real project that is no longer a hypothetical condition. The timeline associated with a permit is not "some uncertain point in the future." Applicants have 180 days to initiate work; and to then undertake permitted work without significant lapses in activity until that work is completed, inspected and approved. Every applicant seeks and should enjoy fair and equal treatment in this regard.

If a project is permitted but the applicant fails to act, causing the permit to expire, other requests should be considered. However, until that occurs, issuance of approvals for other signs would only put the City in a position of having issued one or more permits in violation of the Zoning Code. Issuing permits for construction that is known to be non-conforming or could become non-conforming due to other properly issued permits, is not appropriate. The City cannot issue a permit for a structure that does not conform to the Zoning Code:

Section 1.070 Compliance Required

1.070-A Land may not be used for any purpose other than one that is allowed by the provisions of this zoning code.

1.070-B A building or structure may not be erected, located, moved, reconstructed, extended or structurally altered except as allowed by this zoning code.

1.070-C Buildings, structures and land may be used and occupied only in compliance with the provisions of this zoning code.

1.070-D All lots created or modified must comply with all applicable provisions of this zoning code.

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The Code advises further that any conflicting regulations are to be resolved or addressed in a very specific manner:

Section 1.080 Conflicting Provisions

1.080-B Conflict with Other City Regulations

If the provisions of this zoning code are inconsistent with one another or if they conflict with provisions found in other adopted ordinances or regulations of the city, the more restrictive provision governs unless otherwise expressly stated. The more restrictive provision is the one that imposes more stringent controls.

This means the City cannot operate in a vacuum. When we have knowledge of other actions or permits that affect or would be affected by a requested action (permit, spacing verification, etc.) it would be irresponsible to act in a manner that does not recognize this information.

Interpretation:

To improve this situation and ensure administration of the regulations matches the stated intent staff will undertake the following:

- Work with the Board of Adjustment staff to address the standard language for motions related to sign spacing verification; and
- Review code language with City legal staff to determine if it is appropriate to recommend amendments that will provide greater clarification related to this matter.

70.090-G Appeal of decision

Appeals of written interpretations issued pursuant to this section may be taken to the board of adjustment in accordance with the appeal procedures of Section 70.140.

Sincerely,



Dawn T. Warrick, AICP
Planning & Development Director

cc: Yuen Ho
Bob Kolibas
Susan Miller
Janine VanValkenburgh

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November 15, 2017

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VIA HAND DELIVERY & E-MAIL:

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Director of Planning & Development
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Tulsa, Oklahoma 74103
dwarrick@cityoftulsa.org

FILED
CITY OF TULSA
STATE OF OKLAHOMA
2017 NOV 15 PM 4 28
MICHELLE R. WILSON
CITY CLERK

Re: Appeal of Administrative Decision
Zoning Code Interpretation #2017-02
Spacing Requirements for Outdoor Advertising Signs

Dear Ms. Warrick,

By this letter and pursuant to Section 70.140 of the Tulsa Zoning Code (the "Code"), I am filing with you, in your capacity as both the land use administrator and the administrative official who issued the decision, our appeal of the above-referenced zoning code interpretation (the "Interpretation"). The Interpretation found that in determining whether or not to approve the spacing verification of a proposed sign, INCOG staff and the Board of Adjustment (the "Board") may and/or must consider **both** signs that exist at the time of the application and signs that have not been erected but have only been issued a permit by the City. The basis for this appeal is that the Section 60.130-C.2. of the Code specifically and expressly states:

The required separation distance between off-premise outdoor advertising signs must be measured in a straight line from the center of the respective off-premise outdoor advertising sign structures, **as located on the ground**. (emphasis added).

The **plain language** of the Code clearly does not contemplate verifying spacing as between signs that are not physically located on the ground at the time an application is before the Board.



The justification provided by the Interpretation for considering permitted but not yet erected signs is that a permit “represents a real project that is no longer a hypothetical condition” and “applicants have 180 days to initiate work” after a permit is issued. Further, the Interpretation states that when the City has “knowledge of other actions or permits that affect or would be affected by a requested action, it would be irresponsible to act in a manner that does not recognize this information.” ***This reasoning impermissibly ignores the plain language of the measurement provisions of the Code*** that clearly references existing signs located on the ground only.

Furthermore, the City’s own permitting policies contradict the Interpretation, which read in pertinent part, as follows:

Every permit issued shall become invalid unless the work authorized by such permit is started within 180 days its issuance.... ***The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each.*** (emphasis added).

The City’s ability to grant potentially endless extensions for permits creates uncertainty and inconsistency for applicants seeking spacing verification. Consideration of signs that may potentially be erected at some uncertain point in the future, even when a permit has been issued, is not consistent with the plain language of the Code or the traditional practice of the Board. The Board considers the verification based on the facts as they ***presently exist***, subject to the Board’s action becoming null and void should another sign be ***erected*** prior to the Applicant’s sign.

Therefore, I respectfully submit this Appeal of the Interpretation and request transmittal of the record to the Board of Adjustment. Should you have any questions, please do not hesitate to call.

Sincerely,

ELLER & DETRICH
A Professional Corporation



Andrew A. Shank

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September 27, 2017

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VIA HAND DELIVERY & E-MAIL:

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Director of Planning & Development
City of Tulsa
175 E. 2nd St., 4th Floor
Tulsa, Oklahoma 74103
dwarrick@cityoftulsa.org

Re: Request for Tulsa Zoning Code (the "Code") Interpretation

Dear Ms. Warrick,

By way of this letter, we respectfully request an interpretation of the Code from you in your capacity as the Planning and Development Director, pursuant to Section 70.090-A.1 of the Code. The requested interpretation is for a determination that the 1,200-foot spacing requirement for off-premise outdoor advertising signs, set forth in Section 60.080-F.5.a (traditional/static outdoor advertising signs) and Section 60.100-K (digital signs), is measured as between the proposed sign and *signs that exist* at the time of spacing verification by the Board of Adjustment.

Section 60.130-C.2. states:

The required separation distance between off-premise outdoor advertising signs must be measured in a straight line from the center of the respective off-premise outdoor advertising sign structures, *as located on the ground*. (emphasis added).

This section, by its own plain language, cannot apply to signs that have simply been issued a permit but have not been erected, because they are not "located on the ground." However, recent discussions with INCOG staff have brought to light that in consideration of these spacing requirements, signs that have only been issued a permit are a factor in staff's (and perhaps the Board's) analysis of the spacing verification.



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The measurement provisions of the Code plainly state that any required separation distance must be measured from the center of the sign structures as located *on the ground*. It is clearly a measurement between an Applicant's proposed sign and any *existing* signs at the time of spacing verification. Consideration of signs that may potentially be erected at some uncertain point in the future (whether or not they have been issued a permit) is undoubtedly improper and ignores the plain language of the standard set forth by the Code.


The Board of Adjustment has traditionally agreed with our requested interpretation of the Code. The language the Board includes in verifying the outdoor advertising spacing requirements of the Code is as follows:

"I move that based upon the facts in this matter as they *presently exist*, we accept the applicant's verification of spacing between outdoor advertising signs subject to the action of the Board being null and void should another outdoor advertising sign *be erected* within the required spacing radius prior to this sign."

Therefore, we respectfully request an interpretation of the Code to resolve the inconsistent application of the spacing requirements and avert any future confusion to an Applicant. Should you have any questions or need any additional information, please do not hesitate to call. Thank you for your time and attention to this matter.

Sincerely,

ELLER & DETRICH
A Professional Corporation



Andrew A. Shank