

MANLEY BURKE

A LEGAL PROFESSIONAL ASSOCIATION

ROBERT E. MANLEY (1935-2006)

TIMOTHY M. BURKE
SEAN P. CALLAN*
JOHN E. CHRISTOPHER*

JACKLYN D. OLINGER
KATHLEEN F. RYAN***
PATRICK K. HOGAN*
MICAH E. KAMRASS
AMY M. HEBBELER

225 WEST COURT STREET
CINCINNATI 45202-1098
TELEPHONE: (513) 721-5525
TOLL FREE: (800) 708-0798
FACSIMILE: (513) 721-4268

kryan@manleyburke.com

COUNSEL

WILLIAM A. MCCLAIN (1913-2014)

GARY MOORE EBY*
GEORGE F. MOELLER

*Also admitted in Kentucky
***Also Urban Planner

August 28, 2017

Board of Zoning Appeals
Sycamore Township
8450 Kenwood Road
Cincinnati, Ohio 45236

***Re: Appeal of 8-9-17 Notice of Violation of Planning & Zoning Official,
7292 Kenwood Road, Case No. SYCC170304***

Dear Members of the Board of Zoning Appeals,

This letter is provided on behalf of Gurm Gurdarshan, Trustee, owner of the property at 7292 Kenwood Road ("Subject Property"). The owner hereby appeals the August 9, 2017 Notice of Violation for the Subject Property issued by Planning & Zoning Official Harry Holbrook finding violations as under the Zoning and Property Maintenance Codes. A notice of the appealed decision is attached to this letter.

More specifically, the notices of violation of the Sycamore Township Zoning Resolution ("SZR") and Sycamore Township Property Maintenance Code ("SPMC") within the 8-9-17 notice which are being appealed are as follows:

- Remove billboard from property, SZR § 13-6.1;
- Remove abandoned sign frame along Kenwood Road, SZR § 13-4.3;
- Repair wooden deck on side of property, SPMC § 304.2;
- Repair siding and trim on building, SPMC § 304.6; and
- Repair wooden deck on side of property, SPMC § 306.1.

1. Billboard and sign frame on Subject Property, SZR §§ 13-6.1 and 13-4.3

First, Applicant respectfully requests that the BZA stay the proceedings regarding the billboard and sign frame, as these precise issues are already before the Court of Common Pleas in Case No. A1602447 by way of a preliminary and permanent injunction that would require the removal of both the billboard and the sign frame along Kenwood Road. The Court will either find for Plaintiff Township, and effect the same result sought by the Planning and Zoning official here; or, the Court will find for the Defendant, and determine that one or both signs are lawfully in existence. Because both signs are part of this litigation, claim and/or issue preclusion will bar any determination of issues and any claims made by the Township and its BZA.

Claim preclusion, which applies to administrative bodies, including Boards of Zoning Appeal, consists of four elements:

1. A prior final, valid decision on the merits by a court of competent jurisdiction;
2. a second action involving the same parties or their privies as the first;
3. a second action raising claims that were or could have been litigated in the first action; and
4. a second action arising out of the transaction or occurrence that was the subject matter of the previous action.

Portage County Bd. of Comm'rs v. City of Akron, 109 Ohio St. 3d 106 (Ohio 2006), quoting *Hapgood v. Warren*, 127 F.3d 490, 493 (6th Cir. 1997).

The Ohio Supreme Court set forth the standard for res judicata in *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 653 N.E.2d 226, at paragraph one of the syllabus: "[A] valid, final judgment rendered [846 N.E.2d 495] upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action."

Because the precise issues regarding the signage are before the Court at this time, with the same parties, same property, same signs, and same facts, the current case in Court will bar any

subsequent action taken by this BZA. The Board should reverse and/or stay Mr. Holbrook's August 9, 2017 notice of violation as to the signage pending outcome of the litigation.

The signs are legal nonconforming uses which were in place prior to the enactment of the SZR. Specifically as to the billboard, R.C. 519.20 states that "outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, or trade, or lands used for agricultural purposes."

The gist of the Township's complaint regarding the Billboard has historically been that "removal of the billboard" was a condition of occupancy as part of the E Retail District/SPI overlay district site plan approval and thus its ongoing existence renders the property in violation of the site plan conditions and zoning resolution. The Notice of Violation is not entirely clear as to whether this is the basis of its finding of violation at this time, but we assume it is. Because (1) the rear sign is a billboard; (2) it is a legal nonconforming use; (3) it is protected by R.C. 519.20; (4) per RC 519.20 the Township lacked authority to impose the condition that they remove the billboard as part of the PUD site plan approval; (5) the billboard has been continuously maintained, (6) the structure is in good shape and poses no threat to the public health, safety, and general welfare in that regard; and (7) requiring removal is a burden on freedom of expression (political and/or commercial).there is absolutely no basis for the removal of the billboard.

The Township zoning resolution Chapter 13 has in each of the Office/Retail/Industrial District subsections a statement that for Billboard regulations for that district, see Section 13-16 (§§ 13-11.4, 13-12.5, and 13-13.4, respectively).

When you go to 13-16 as directed by the sign regulations for Retail, Office, and Industrial district properties, it provides that nonconforming billboards may stay, provides the spacing/state permit requirements for newly constructed billboards, and that's about it.

It doesn't expressly state which districts billboards are allowed in. Maybe it's implying they're allowed in all the districts zoned for industry, business, or trade, consistent with 519.20.

Imposing a special-interest overlay district does not allow the Township authority to remove legal nonconforming billboards.

In fact, in the SPI Overlay Chapter, it states that the Township trustees may relax or “further restrict the underlying zoning districts regulations for land use, lot area, coverage, density, floor area, setback, parking, height, fencing, landscaping or other specific development standards for specific SPI Districts upon finding that the conditions peculiar to such district and the achievement of adopted community plans require supplemental regulations.”

This provision doesn’t allow Trustees to further restrict billboards in an E/SPI district given the limitations placed upon township regulation of billboards in 519.20.

Unless we are missing something, it appears that the only place where the Trustees have adopted regulations that “further restrict” the underlying E District billboards is via the House of Brows site plan approved by the Resolution.

There is no instance where the Township has explained that there are conditions peculiar to this district that justifies outright prohibition of billboards on this site while otherwise allowing them in the E district.

Additionally, Dr. Sohi, who is not the owner of the Subject Property, signed the 2013 application for the PUD site plan, and the billboard removal condition that was a part of the final decision for that application was added without the knowledge of Dr. Sohi or owner.

2. Wooden deck repair, SPMC §§ 304.2 and 306.1

The SPMC requires that the deck at issue be structurally sound and in good repair. The property owner finds that the issuance of the violations regarding the side deck are arbitrary. The deck is in good repair and is structurally sound. Mr. Holbrook has produced nothing but a single photograph of the deck and does not specify how, if at all, the deck violates the provisions of the SPMC he cites.

3. Siding and trim on building, SPMC §§ 304.6

MANLEY BURKE

A LEGAL PROFESSIONAL ASSOCIATION

Board of Zoning Appeals

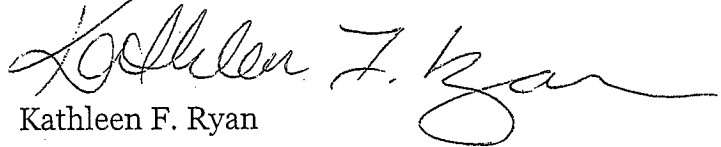
August 28, 2017

Page 5

Applicant respectfully requests a stay on enforcement of this provision, as property owner is currently seeking bids to get this repair performed and will do so as expediently as possible. The notice requires that violations referenced in the August 9, 2017 Notice be resolved by August 16, 2017. This time frame is not a realistic time frame in which to get the proper contractors to bid and complete the project.

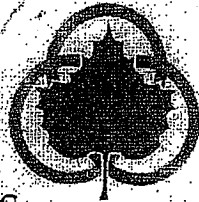
It is for the above-stated reasons that applicant respectfully requests the Board of Zoning Appeals overturn the August 9, 2017 decision of the planning and zoning official as to the Notices of Violation at the Subject Property.

Sincerely,



Kathleen F. Ryan

N:\CLIENTS\Sohi\Corres\Sycamore Twp BZA 8-28-17 Appeal of PZ Officer KFR_final.doc



**SYCAMORE
TOWNSHIP**

Hamilton County, OH

8540 Kenwood Road
Sycamore Twp, OH
45236-2010
PH (513) 791-8447
FX (513) 792-8564

Board of Trustees
Thomas J. Weldman
Cliff W. Bishop
Dennis W. Connor

Fiscal Officer
Robert C. Porter III

Law Director
R. Douglas Miller

Administrator
Greg Bickford, AICP

Superintendent
Tracy Kellums

Fire Chief
Rob Penny

Zoning Administrator
Harry L. Holbert, Jr.

**Parks & Recreation
Director**
Mike McKeown

August 09, 2017

GURM GURDARSHAN TR
5 CAMARGO CANYON
CINCINNATI OH 45243

NOTICE OF VIOLATION

RE: Sycamore Township Code Violations

Case: SYCC170304
Parcel ID: 060000800073
Via certified and ordinary mail

To Whom It May Concern:

An inspection of the property located at 7292 KENWOOD RD in Sycamore Township, Ohio found it to be in violation of the Sycamore Township Zoning Resolution and/or the International Property Maintenance Code. You are hereby requested to resolve the noted violations immediately in compliance with the requirements of the Sycamore Township Zoning Resolution and/or the International Property Maintenance Code. In order to avoid further action you must comply with the inspector's written remedies listed under each violation attached to this letter. You have the right to appeal this order pursuant to Chapter 22 of the Sycamore Township Zoning Resolution or Section 111 of the Sycamore Township Property Maintenance Code, as applicable.

FAILURE TO COMPLY WILL RESULT IN LEGAL ACTION BEING TAKEN

A follow-up inspection will occur seven (7) days from the date of this notice. If said violation(s) is (are) not corrected by 08/16/2017 at 12:00 noon local time, Sycamore Township will be forced to pursue all possible legal remedies against you, including but not limited to, the following: a request may be made to the Sycamore Township Board of Trustees for the property to be declared a nuisance; and you may be cited to the Hamilton County Municipal Court where a fine of up to \$1000.00, plus the costs of court per violation could be levied against you; the issue may be abated, and the costs assessed against the property as a lien. Please feel free to contact me if you have any questions.

Sincerely,

Harry Holbert
Sycamore Township
Planning & Zoning Official
hholbert@sycamoretownship.org
Phone#: (513) 792-7252
Fax#: (513) 792-8571

Sycamore Township Zoning Resolution and/or International Property Maintenance Code(s) Violated:

12-4.7 Wheel Stops and Continuous Curbs

Wheel stops or continuous curbs shall be provided, located, and designed to protect required screening devices and landscaping and pedestrian ways from damage or encroachment of vehicles and to provide necessary traffic control in the parking area.

(a) Wheel Stops. Each wheel stop shall be a singular block of reinforced concrete, stone, or other durable material six inches (6") in height, six inches (6") in width, and eight feet (8') in length. Wheel stops shall be placed as shown in Figure 12-4B and securely attached to the ground and may be used only at the end of parking stalls.

(b) Continuous Curbs. Continuous curbs shall be made of asphalt, concrete, or stone, and shall be a minimum of six inches (6") in height and six inches (6") in width. They shall form a non-interrupted edge around all landscaped areas adjacent to parking and turn-around areas which are not protected by wheel stops.

(c) Placement. The wheel stop or continuous curb shall be located a minimum of four feet (4') from any structures, buildings, walls, or plant material, excluding groundcover (as shown in Figure 12-4C) to prevent a vehicle from driving onto the landscape area or hitting any structure or plant material at the edge of the parking area. The mature size of the plant material shall be specified to determine if the landscape meets the setback requirements.

(d) Stall Dimensions. Where continuous curbs are used, the paved area of the parking stall length required in Table 12-4 and illustrated in Figure 12-4A (Dimension 'C') may be reduced by two and one-half feet (2') as shown in Figure 12-4D provided that the vehicle overhang will not encroach on pedestrian circulation or the required setback for desirable plant growth. Where wheel stops are used, the paved area of the parking stall length required in Table 12-4 and illustrated in Figure 12-4A (Dimension 'C') shall not be reduced.

Recommended Actions For Compliance:

PARKING STOPS MUST BE PLACED PROPERLY

13-16.1 Zoning Certificate Required

Unless expressly exempted, no off-site advertising sign shall be erected, constructed, permanently enlarged, expanded, materially altered, relocated or reconstructed unless a Sign Zoning Certificate evidencing the compliance of such sign with the provisions of this Chapter shall have first been issued by the Zoning Inspector.

Recommended Actions For Compliance:

REMOVE BILLBOARD FROM PROPERTY

13-4.3 Nonconforming or Noncomplying Signs

Signs existing on or before the effective date of this resolution that do not conform with the standards in this Chapter are considered nonconforming and shall be subject to the following provisions. If the size of an existing sign face or the size of the overall structure is increased; the structure is relocated; the structure is replaced; the structure is abandoned, does not advertise an occupied building, or the structure is damaged requiring replacement of any part of the structure or attached cabinet then said sign shall be ordered removed or brought into full compliance with this Chapter by the Zoning Inspector.

Recommended Actions For Compliance:

REMOVE ABANDONED SIGN FRAME ALONG KENWOOD ROAD

304.2 Protective treatment. All exterior surfaces, including but not limited to doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather-resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

Recommended Actions For Compliance:

REPAIR WOODEN DECK ON SIDE OF PROPERTY

304.6 Exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

Recommended Actions For Compliance:

REPAIR SIDING AND TRIM ON BUILDING

306.1 General. The components of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition.

Recommended Actions For Compliance:

REPAIR WOODEN DECK ON SIDE OF PROPERTY

