

IN THE MATTER OF : BEFORE THE LOWER ALLEN TOWNSHIP
THE APPLICATION OF : ZONING HEARING BOARD
CAPITAL PLAZA ASSOCIATES : CUMBERLAND COUNTY, PENNSYLVANIA
:
: DOCKET NO. 2020-03

DECISION AFFIRMING DETERMINATION OF THE ZONING OFFICER

The Applicant appealed a determination of the zoning officer.
A hearing was held before the Board on June 18, 2020.

FINDINGS OF FACT

1. Notice of the hearing was properly advertised, the subject property was posted, and all property owners required to be notified of the hearing were notified in accordance with the Codified Ordinances.

2. The Applicant is Capital Plaza Associates, 6465 Village Lane, Suite 7, Macungie, PA 18062.

3. The Applicant is the owner of the subject property, which is a parcel of land in a C-4 zoning district, developed with a shopping Center known as Capital City Plaza, 3401 Hartzdale Drive, Camp Hill, PA.

4. In 1992, a free-standing sign was installed on the subject property along Hartzdale Drive, generally in front of the building now occupied by the Excitement Superstores.

5. As of August 4, 2019, the sign consisted of three support poles, two support cabinets, and four plastic message panels, each measuring three feet in height and twelve feet in length. The panels were configured as a pair, one above the other. The top panel contained fixed lettering, and the bottom panel allowed for manually changed messaging, used in advertising for Excitement Video.

6. The area of the sign was 72 square feet, legally nonconforming because the current ordinance restricts the pertinent sign area to 40 square feet.

7. On or about August 4, 2019, Applicant's tenant, operator of Excitement Smokin and Excitement Adult Superstore, or its contractor, without first obtaining a required permit, removed the support cabinets and sign panels.

8. The top cabinets and panels were replaced by new cabinets and panels, measuring three feet in height and twelve feet in width, with fixed messaging. The bottom cabinets and panels were replaced with four components, having a combined height of 37.75 inches and a combined width of 151 inches, for an area of 39.58 square feet. These components are designed to allow changeable digital messaging.

9. By letter dated December 6, 2019, John M. Eby, Building and Zoning Coordinator for the Township, notified Applicant that

an after the fact permit application by the sign contractor for the newly erected sign was denied because the protection afforded the nonconforming sign was forfeited by its voluntary removal and the new sign area exceeded the allowable 40 square feet, and directed removal of the unapproved signs.

10. Applicant filed an appeal of the determination of the Building and Zoning Coordinator.

11. Gaspare DiCarlo, an owner of Capital Plaza Associates, verbally approved the tenant's request to make the sign digital, with the understanding that the tenant would first secure all necessary township permits and approvals.

12. Mr. DiCarlo did not request to review plans or specifications for the sign project, or require the tenant to show compliance with township requirements before undertaking the project, but provided funds for payment to the sign contractor.

13. Applicant contends that it is an innocent victim of the tenant's or sign contractor's conduct, and requests that the Coordinator's determination be reversed to allow Applicant to continue to have a sign of 72 square feet in area.

14. At the hearing, party status was afforded to Global Video, Inc. and David Betesh, owner/operator of the Excitement Smokin and Excitement Adult Superstore at 3401 Hartzdale Drive, who appeared through Daniel P. Rowley, Esquire.

15. Applicant alternatively requested variance relief, but withdrew the request during the hearing, and offered no evidence in support of it.

16. The Township of Lower Allen appeared through its solicitor, Steven P. Miner, Esquire.

CONCLUSIONS OF LAW

1. Under Sections 220-266 and 220-269(B) (5) and (C) of the Codified Ordinances, the Zoning Hearing Board has jurisdiction to hear and decide an appeal from a determination of the zoning officer.

2. Prior to its removal in August of 2019, the sign on the subject property was legally nonconforming in sign area under section 220-249(A) of the Codified Ordinances.

3. The structure supporting the copy panels was intentionally and voluntarily removed and replaced, and the new bottom copy panels are larger than those which were removed.

4. The Applicant failed to exercise due diligence to protect its rights in the nonconforming sign.

5. The nonconforming sign was not damaged by fire, explosion, windstorm or other sudden natural or criminal act, and

may not be reconstructed or restored under section 220-249(B)(1) of the Codified Ordinances.

6. The replacement sign exceeds the Sign Table area restriction of 40 square feet.

DECISION

Based upon the foregoing findings and conclusions, and in consideration of the testimony and evidence presented to the Board, the Board hereby upholds and affirms the determination of the zoning officer.

LOWER ALLEN TOWNSHIP ZONING
HEARING BOARD



Date: _____

6-26-2020

Solicitor