

City of Colorado Springs Planning Commission Minutes

THURSDAY, AUGUST 17, 2017

**CITY HALL CHAMBERS, 107 N. NEVADA AVE
COLORADO SPRINGS, COLORADO 80903**

PRESENT:

Fletcher, Henninger, McDonald, Markewich, Satchell-Smith

ABSENT:

Smith, Walkowski, Raughton, Graham

ALSO IN ATTENDANCE:

Mr. Peter Wysocki, Planning Director

Mr. Marc Smith, City Senior Corporate Attorney

NEW BUSINESS CALENDAR

Item #: 6.A.1: CPC AP 17-00104

Project Name: Appeal of a Notice and Order to Abate at 1624 North Academy Blvd

Planner: Meggan Herington for Kurt Schmitt

STAFF PRESENTATION:

Meggan Herington gave a Power Point presentation outlining the details of the Notice and Order to Abate.

Appellant Presentation:

Kit Jacobson with AIM Home Health, AIM Diagnostics and AIM Integrated Medicine gave a presentation outlining their reasoning for appealing the Notice and Order to Abate.

Questions of the Appellant: None

Supporters: None

Opponents: None

Questions of Staff:

Commissioner Markewich raised questions about the part of the code they were cited for, the number of EMC's, where they were located, what direction they faced, if there was one on each sign of the building, the monument sign's location, and the EMC's only being available for the owner and not tenants. He was concerned information seemed to be missing in there packets for the exact violation.

City Attorney Marc Smith read the code regarding EMC's and banners: 7.4.409(B)(3)(g) reads:
“Temporary signage shall not be prohibited on any property that has an approved EMC”.

Commissioner Markewich discussed possibly siding with the applicant allowing the banners to remain and questioned then if the appellant would have violations of other Code allowances such as not meeting the size allowances. Ms. Herington said the banners weren't allowed per the code and that

prohibition based on the site being permitted for an electronic message center trumped any other Code provisions.

City Attorney Marc Smith provided direction for the Commission on what criteria to use to analyze this situation. The violation was for 7.4.409(B)3(g). Under the Appeals Criteria 7.5.906(A)4(b), one of definitions has to be met, if so move to 7.5.906(A)4(c) for further analysis.

Commissioner Markewich clarified if all areas have to be met or is the ambiguity what they determine. Mr. Smith said essentially yes. They had to determine if the criteria is met in 7.5.906(A)4(b), if it does, it's a violation of the zoning. A strong case would be needed why 7.5.906(A)4(c): *Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.* trumps 7.5.906(A)4(b): *Show that the administrative decision is incorrect because of one or more of the following: (1) It was against the express language of this zoning ordinance, or (2) It was against the express intent of this zoning ordinance, or (3) It is unreasonable, or (4) It is erroneous, or (5) It is clearly contrary to law.*

Commissioner Markewich questioned if the appellant could apply for a variance to allow the banners. Ms. Herington indicated variance application is always an option. A variance would not be supported by staff and therefore could be appealed by the property owner or tenant and the request would still be before the City Planning Commission.

Chair McDonald asked what avenues should new businesses follow and if there was any leeway? Ms. Herington discussed what's allowed per City Code and clarified those options, such as the utilization of window signage, was given to the tenant. Chair McDonald confirmed it was a landlord/tenant issued to be resolved. Ms. Herington indicated that since the property owner applied for the electronic message center and signed the EMC affidavit that it would be a private agreement that determined what allowances they were provided for utilization of the EMC. The owner agreed to no banners and should inform the tenants of the allowances.

Commissioner Markewich asked for verification on how long the signs have been up and how long the code allows for temporary signs explaining that his line of questioning is to find a way to allow the banners to remain for 90-days. Ms. Herington clarified that the banners had been up for approximately 60 days as of the date of the hearing where 90 days is the maximum allowance for temporary signs on properties that do not have electronic message center signs.

Commissioner Markewich suggested a scenario for declining the appeal, having their decision appealed to City Council, thus giving the appellant more time, costing them extra money to file the appeal but getting them to the 90-day goal since they're so close to it now. He stated he was looking for ways get them to the 90-day goal by appealing the City Planning Commission decision to City Council. Ms. Herington indicated that was an option but she wouldn't recommend it because that is against the purpose and intent of the Zoning Code.

Rebuttal: Mr. Jacobson said they just wanted to have the banners up another 30-days and he'd comply with what he needs to. His questioned how a for lease banner remained and wasn't cited since that was a banner too. Commissioner Markewich stated the sign code is relatively new for EMC's and the city has limited resources to monitor signage it could be you're a victim of circumstance and regarding the lease sign, the sign code enforcement officer may have just missed it.

Mr. Jacobson stated where the EMC was located; Chair McDonald confirmed there was a monument sign as well. Ms. Herington explained real estate signs are categorized differently, have different requirements, are categorized separately and allowed to be displayed until the property is sold.

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Motion by Fletcher, seconded by Satchell-Smith on 6.A.1: CPC AP 17-00104 – An **Appeal of a Notice and Order to Abate the sign code violation for multiple illegal temporary banner signs at 1624 North Academy Blvd** – Deny the appeal and uphold the Notice and Order to Abate sign code violation issued at 1624 North Academy Boulevard, based on the finding that the Notice and Order complies with the review criteria as outlined in City Code Section 7.5.906(A)(4)

Aye: Fletcher, Henninger, McDonald, Markewich, Satchell-Smith,

Absent: Smith, Raughton, Walkowski, Graham

No: none **Passed:** 5-0-4