



STAFF REPORT
BOARD OF ADJUSTMENT
For the February 17, 2016 meeting

TO: Board of Adjustment members
FROM: Sheena Nuetzman, Planning Director
SUBJECT: APL01-16: Appeal to the Zoning Administrator's decision as it relates to a sign code violation

GENERAL INFORMATION

Appellant: Herbert Garrison
Maple Vape
6555 University Avenue
Windsor Heights, IA 50324

Property Owner: Clay Cook
9956 Swanson Blvd
Clive, IA 50325

Zoning: TC, Town Center

Location: Maple Vape, 6555 University Avenue

SUPPORTING INFORMATION (see separate supporting documentation)

Location



ACTION REQUESTED

To make an interpretive review of Zoning Code, Section 175 for permitting procedures as well as signage compatibility.

RELEVANT CASE HISTORY

On August 19, 2015 the Board of Adjustment reviewed a Conditional Use Permit Request for the subject property. At the time, the applicant was operating a vaporizer shop with a tobacco license at 6555 University Avenue, formally Front Row. The applicant requested a conditional use permit to allow for the operation of a bar in addition to the vaporizer business. Staff recommended approval of the conditional use permit with a condition that the outside storage in the back of the building be removed. The Board of Adjustment approved the conditional use permit on August 19, 2015.

SIGNAGE CASE HISTORY

July 26, 2015

The applicant applied for a sign permit application for what staff had understood to be one sign. One of the signs was one that was to be removed from the former Apple Valley business location to be erected at the new location, 6555 University Avenue. The applicant indicated the sign was to be erected on the east wall of the building with a total square feet of 35.6'. Staff approved the permit with the understanding that the old Front Row signs were going to be removed as shown in a picture provided by the applicant. Removal of the entire sign case is what was understood, not just the face. Staff informed the applicant of maximum allowable square feet allowed on the building, which is 100 square feet. The Front Row sign cases could have remained on the building, but new faces still require a permit and must follow current sign code regulations.

Permitted sign on East wall:



Signs in question:

East wall



South wall



December 16, 2015

A complaint was made that informed staff of the recent face changes made to the old Front Row sign cases. The complainant stated the owner had installed new sign faces with their business name written on it in wax crayon; which the complainant went on to say that method of sign is usually reserved for inside an establishment to advertise drink specials or the like. The complainant referenced code section 175.06 in that signs must be made of “materials of permanency” and believed the sign was not in conformance with that section.

December 17, 2015

Staff made the investigation and determined the new sign faces were in violation with section 175.08: *General Permit Procedures* as a permit had not been pulled for the new faces. On the same day, staff issued a letter to the property owner requiring a permit be applied for within seven days from the date of the letter.

December 28, 2015

Staff received an email from the applicant stating he was in receipt of the letter. The applicant stated that when he turned the sign permit in, he explained to staff that he was keeping the existing signage and adding the one sign that staff had approved. This seemed to be where the miscommunication started. Staff then responded stating that new sign faces would still require a permit to be reviewed for square feet compliance, materials being used and compatibility with other signs and structures on the building. Staff also informed the applicant that the new faces installed are not compatible with the sign that had already been approved, but further review would be needed with a permit application. Staff gave the applicant the following options for compliance: (1) remove the sign faces from the existing boxes and apply for a permit for new faces to be compatible to the top east sign for review or; (2) remove the east sign that had already been approved and apply for a sign permit for the existing sign cases to install new faces for review. Staff stated credit can be applied to the new permits from the previous one pulled and paid for.

December 30, 2015

A notice of violation and order to abate letter was issued as staff had not been in receipt of a sign permit application for the two new faces. The order stated the two new faces must be removed by January 8, 2016 to prevent further enforcement action. The letter also stated the applicant had the right to appeal the Zoning Administrator’s decision.

January 6, 2016

A written notice from the applicant was received stating the request for an appeal to the notice of violation. The applicant was made aware that a completed application must be filed by January 25, 2016 to meet the deadline requirements for the February 17, 2016 Board of Adjustment meeting date.

January 25, 2016

An official application to appeal the Zoning Administrator’s decision was filed.

APPLICABLE SECTIONS

The following are applicable sections of the Zoning Ordinance as it pertains to this appeal.

177.09 PROCEDURE FOR APPEALS.

1. Appeals shall be made to the Board of Adjustment through the office of the Zoning Administrator in written form as determined by the Zoning Administrator. The Board shall fix a reasonable time for the hearing of the appeal and shall decide the appeal within 30 days of the date of the public hearing. An appeal stays all proceedings in furtherance of the action, unless the Zoning Administrator certifies to the Board that by reason of the facts stated in the certificate, a stay would, in the opinion of the Zoning Administrator, cause imminent peril to life or property.

2. The Board shall provide a minimum of ten days notice of a public hearing on any question before it. Notice of the hearing shall be posted in a conspicuous place on or near the property on which the application has been made; and provided by publication in a newspaper of general circulation in the City; mailed notice to property owners within 200 feet of the subject property; and by written notice to the appealing party.

3. Upon the public hearing, any party may appear in person or by agent or attorney. The concurring vote of four out of five members of such board as so composed shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation in such ordinance.

177.10 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

The Board of Adjustment shall have only the following powers and duties:

1. Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decisions or determination made by the Zoning Administrator in the enforcement of this Zoning Code or any regulation relating to the location or soundness of structures.

5. Board has Powers of Zoning Administrator on Appeals; Reversing Decisions of Zoning Administrator. In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Zoning Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions, or determination as ought to be made, and to that end shall have the powers of the Zoning Administrator from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Zoning Code, or to effect any variation in the application of this Zoning Code.

177.11 APPEALS FROM THE BOARD OF ADJUSTMENT.

Any person or any board, taxpayer, officer, department, board or bureau of the City aggrieved by any decision of the Board of Adjustment may seek review of such decision by a court of record in the manner provided by the laws of the State and particularly by Chapter 414, Code of Iowa.

RELEVANT SIGN CODE SECTIONS

175.06 USE OF COMPATIBLE MATERIALS.

All signs, excluding temporary signs, shall be constructed of materials that are similar to those used on the principal building. Such signage shall be dominated with materials of permanency and strength and shall be compatible with other structures and signs in the development.

175.08 GENERAL PERMIT PROCEDURES.

Any installation, modification, or expansion of any sign which is not exempt from the provisions of this chapter shall be subject to the following permit procedure prior to installation.

1. Maintenance of Valid Sign Permit. The owner of a property containing signs requiring a permit under this Zoning Code shall at all times maintain in force a sign permit for such property. Sign permits may be issued for individual zoned lots, tenants, or sign owners. A sign permit may be revoked if the sign is not maintained in good condition.
2. Sign Permit Applications. All applications for sign permits shall be submitted to the Zoning Administrator in accordance with application specifications established by the Zoning Administrator.
3. Application Fees. Each application for a sign permit shall be accompanied by any applicable fees, which shall be established by the Council from time to time by resolution.
4. Action. Within ten working days of the submission of a complete application for a sign permit, the Zoning Administrator shall either: A. Issue the sign permit, if the sign conforms to the provisions of this chapter. B. Reject the sign permit if the sign that is the subject of the application fails in any way to conform with the requirements of this chapter.
5. Permit Expiration. If a permanent sign is not constructed in accordance with an approved permit within six months of the date of approval, such permit shall lapse. Permits on non-permanent signs lapse in accordance with the timeline identified on the permit. Temporary sign permits are for a period of 30 days with a maximum of two renewals. The number of renewals may be extended by the Zoning Administrator for additional renewals, as deemed appropriate. Promotional sign permits are for a period of one year.
6. Assignment of Sign Permits. A current and valid sign permit shall be freely assignable to a successor as owner of the property or holder of a business license for the same premises.

Table 175-4

Permitted Signs by Numbers, Dimensions and Locations

Each individual sign shall comply with the regulations for maximum quantity, maximum size, minimum setbacks, and height limits shown in this table:

Zoning District:	R-1 R-2 R-3 MH	R-4	O	CC Note 1 Note 3	GC Note 1 Note 3	UC Note 2 Note 3	TC Note 2 Note 3	LI
Detached Signs								
Number Permitted Per Premises	1	1	1	NA	NA	1	1	NA
Per Feet of Frontage	NA	NA	NA	1 per 300	1 per 200	NA	NA	1 per 200
Maximum Size* (square feet)	32*	48*	75*	90	90	90	90	90
Maximum Height (feet) of Structure Above Ground	10	10	10	10	10	10	10	10
Front Yard Setback (feet)	5	10	10	10	5	10	10	0
Side Yard Setback (feet)	10	10	10	5	5	10	10	0
Attached Signs								
Maximum Size* (square feet)	32*	48*	75	150	150	150	100	200
Percentage of Street Façade	NA	NA	20%	20%	20%	20%	20%	25%
* For those uses only permitted a sufficient maximum sign area in Table 175-3.								

CONCLUSIONS

The applicant was given options for compliance and has been stated in this staff report:

1. Remove the sign faces from the existing boxes and apply for a permit for new faces to be compatible to the top east sign for review or;
2. Remove the east sign that had already been approved and apply for a sign permit for the existing sign cases to install new faces for review.

Options for Board:

1. Make determination no action is needed.
2. Affirm decision by the Zoning Administrator that a sign permit is needed and that the existing sign faces do not meet Section 175.06.