



CERTIFIED MAIL

Market Properties of Durham, Inc.
c/o Susan Robinson
105 Kemp Road East
Greensboro, NC 27410

**RE: APPEAL
3635 TRAILER DRIVE
MECKLENBURG COUNTY PARCEL ID 045-031-06 (formerly 045-031-04)
CASE NUMBER 2015-047**

Dear Market Properties of Durham, Inc.:

On October 27, 2015, the City of Charlotte Zoning Board of Adjustment ("Board") **upheld** the Zoning Administrator's interpretation that the sign permit issued for the relocation of the outdoor advertising sign at 3635 Trailer Drive was not issued in error.

The Board based its decision on the following findings of fact:

1. The applicant is Market Properties of Durham, Inc. (Represented by Sara (Sally) W. Higgins, Higgins & Owens, PLLC).
2. The applicant appeals the Zoning Administrator's interpretation that sign permit S2833552 was not issued in error for the relocation of an electronic changeable face outdoor advertising sign at 3635 Trailer Drive.
3. Market Properties of Durham, Inc. sold Mecklenburg County tax parcel 045-031-04 in 2007. The current property owner is Trailer Drive Lender, LLC. Market Properties of Durham, Inc. reserved itself a sign easement on the property that is currently under a lease with Adams Outdoor Advertising until November 30, 2015.
4. The outdoor advertising sign originally located on Mecklenburg County tax parcel 045-031-04 has an address of 3635 Trailer Drive.
5. The subject outdoor advertising sign has a valid permit with the Outdoor Advertising/State Maintenance Operations Office of the North Carolina Department of Transportation (NCDOT).
6. NCDOT approved the relocation of the sign as a permitted location within the existing location/site as defined in NCAC 2E.0200(27).
7. On July 23, 2015, the City of Charlotte issued a sign permit to Adams Outdoor Advertising for the relocation of the outdoor advertising sign with an address of 3635 Trailer Drive. Adams Outdoor Advertising owns the subject sign structure. The sign was proposed to be relocated less than 26 feet from its original location on Mecklenburg County tax parcel 045-031-04 onto tax parcel 045-031-06.
8. Woppins, LLC owns the new location Mecklenburg County tax parcel 045-031-06.

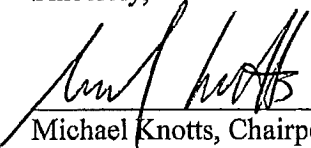
9. *Lamar OCI South Corporation v. Stanley County Zoning Board of Adjustment*, 186 N.C. App. 44, 650 S.E.2d 37 (2007), *aff'd per curiam in part and disc review improvidently allowed in part*, 362 N.C. 670, 669 S.E.2d 322 (2008), held local ordinances which prohibit the relocation of an outdoor advertising sign and/or conflict with the NCDOT relocation regulation are preempted under the local-nullification rule.
10. NCDOT outdoor advertising sign regulations, which allows for the relocation of a sign within the "site location/site," takes precedence over local sign regulations.
11. The validity of the lease agreement between Adams Outdoor Advertising and Market Properties of Durham and Adams Outdoor Advertising and Woppins, LLC was deemed to be irrelevant for the ZBA's consideration and outside the jurisdiction granted by Charlotte City Code Section 5.101(5) of the Zoning Code.
12. Sign permits S2833552 and S1833643 were issued to Adams Outdoor Advertising and owned by Adams.
13. Although applicant retains the rights to the easement on Mecklenburg County tax parcel 045-031-04, applicant's claims regarding the deprivation of property rights and/or takings claim are not before the ZBA.
14. Although the address remained with the sign after movement from Mecklenburg County tax parcel 045-031-04 to Mecklenburg County tax parcel 045-031-06, the ZBA finds it is not erroneous because the address identifies the sign, not the property.
15. Applicants fail to cite any provisions under the Zoning Code wherein they were entitled to notice of the permit issuance.
16. There is no evidence that relocated sign was not in compliance with the Zoning Ordinance.

Based upon the above findings of fact, the Board concludes that the applicant has failed to carry the burden stated in § 5.109(1) of the Ordinance to show an error in the Zoning Administrator's application of the Ordinance and more specifically:

The Zoning Board of Adjustment upholds the Zoning Administrator's interpretation that the sign permit issued for the relocation of an electronic changeable face outdoor advertising sign at 3635 Trailer Drive was not issued in error.

Pursuant to North Carolina General Statutes § 160A-388(e2), the Board's decision in Case No. 2015-047 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days from the date stated below, which is the date when the decision of the Board was filed in the Planning Department/Zoning Administration Division, or within thirty (30) days after receipt of the decision by an aggrieved party who filed a written request for such copy with the Clerk to the Board at the time of the hearing of the case, whichever is later.


Sincerely,


Michael Knotts, Chairperson

11/20/15

Date

FILED WITH PLANNING DEPARTMENT:


Shad Spencer, Zoning Administrator

11/24/15

Date

Cc: Sara W. Higgins, Attorney

AGGRIEVED PARTY'S REQUEST FOR
WRITTEN COPY OF ZONING BOARD OF ADJUSTMENT'S DECISION

NAME Todd Capitano
ADDRESS 4521 Sharon Rd, Suite 350
CITY/STATE/ZIP Charlotte NC 28211
TELEPHONE NUMBER (704) 716-1200

CASE NUMBER 2015-047 HEARING DATE 10/27/15
AGGRIEVED PARTY STATUS Represent Adams Outdoor, holder of
challenged permit.

North Carolina General Statute § 160A-388(e), § 153A-345(e), in part, provides the requirements of time for a petition for review and reads as follows:

Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered or certified mail return receipt requested.

PROCEDURE

1. If the **aggrieved party files a written request** for a copy of the Board's decision with the Secretary of the Board, at the time of the hearing of the Case, that person has **thirty (30) days** from the receipt of the decision of the Board, to **file a petition for review**.
2. If the **aggrieved party does not file a written request**, in accordance with the procedure stated above, for a copy of the Board's decision, that person has **thirty (30) days** from the date the decision of the Board is filed in the Charlotte-Mecklenburg Building Standards Department.

AGGRIEVED PARTY'S REQUEST FOR
WRITTEN COPY OF ZONING BOARD OF ADJUSTMENT'S DECISION

NAME Sally Higgins
ADDRESS 5925 Carnegie Blvd. Suite 530
CITY/STATE/ZIP Charlotte, Nc 28209
TELEPHONE NUMBER (704) 366-4607
CASE NUMBER 2015-047 HEARING DATE 10/27/15
AGGRIEVED PARTY STATUS Counsel for Market Properties of Durham, Inc.

North Carolina General Statute § 160A-388(e), § 153A-345(e), in part, provides the requirements of time for a petition for review and reads as follows:

Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered or certified mail return receipt requested.

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