

Department of Community Planning and Economic Development – Planning Division
Appeal of the Decision of the Zoning Administrator
BZZ-5069

Date: March 3, 2011

Applicant: Ted Mazurek

Address of Property: 3616 Nicollet

Project Name: Appeal of Zoning Administrator decision regarding signage

Contact Person and Phone: Randall Tigue, (612) 259-9211

Planning Staff and Phone: Robert Clarksen, (612) 673-5877

Date Application Deemed Complete: January 6, 2011

End of 60-Day Decision Period: March 7, 2011

End of 120-Day Decision Period: May 6, 2011 (*extension letter sent February 11, 2011*)

Ward: 8 **Neighborhood Organizations:** Kingfield

Appeal of the decision of the Zoning Administrator: that an existing sign for a chiropractic clinic exceeds maximum area of signs for a home occupation.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis: The appellant has filed an appeal of the Zoning Administrator's decision that the existing signage at the subject property exceeds the maximum allotment for signage at a property which serves as both the appellants' residence and a business. The property consists of the appellant's residence and business offices, known as Nicollet Chiropractic Clinic.

The appeal of the Zoning Administrator's decision was originally scheduled for a public hearing before the Board of Adjustment on February 3, 2011. The applicant was not present at the public hearing, and action was taken to continue the hearing to the next scheduled meeting on February 24, 2011. Later, the applicant informed CPED of a prior commitment which required his absence, and requested the Board of Adjustment continue the public hearing an additional cycle, to the March 3, 2011 public hearing. As of the writing of this report, action at the February 24 hearing is pending, although staff expects the request to continue will be granted.

The property is located in the R2B District. In residence districts, this type of business can only be conducted as a home occupation. Section 525.160 of the zoning code provides the following definition for a "*Home Occupation*":

Home occupation. An occupation or profession carried on by a member of the household residing on the premises, conducted as a customary, incidental and accessory use of a dwelling. Also referred to as live-work.

The written statement from the appellant is concerned with whether a notice of non-compliance order issued to the appellant on December 14, 2010 was issued in error. The applicant states "The inspector's notice relies upon the wrong provision" and goes on to suggest the regulation cited in the order was not added to the ordinance until July 17, 2009, making the existing sign a lawful nonconformity. In order for the sign to be lawfully nonconforming, the applicant would need to demonstrate that the sign was legally established. A search of City records does not indicate any sign permits for this address within the year prior to the applicant's contract with the sign company, or at any point thereafter.

The version of the zoning code that was enacted on November 20, 1999, would have been applicable at the time the applicant installed the sign. In his statement of appeal, the appellant suggests this section of the ordinance was adopted in 2009. However, the ordinance was simply amended to remove certain references to chapter 109, which became obsolete due to other changes to the ordinance at the time. Upon comparison, the provision in chapter 543.30 reads virtually the same now as it did when adopted, except for the references to chapter 109. Both the original version from the 1999 ordinance, and the same comment, as amended in 2009, appear below:

543.30 – original version as enacted November 20, 1999

"Compliance with standards. No person shall place, erect or maintain a sign, nor shall a lessee or owner permit property under his or her control to be used for such sign, which does not conform to the requirements of this chapter, Chapter 109, Signs and Billboards, of the Minneapolis Code of Ordinances, and all other applicable regulations."

543.30 - 2009 version, as amended via 2009-Or-056, § 1, 7-17-09

"Compliance with standards. No person shall place, erect or maintain a sign, nor shall a lessee or owner permit property under his or her control to be used for such sign, which does not conform to the requirements of this chapter, Chapter 95, Projections and

Encroachments of the Minneapolis Code of Ordinances, and all other applicable regulations.”

In summary, advertising signs (including on-premise signage) are in general subject to the regulations of chapter 543.30 of the zoning code, which require compliance with said chapter, and “all other applicable regulations”. The general regulations section of the Minneapolis Zoning Code addresses home occupations and establishes 16 standards for a permitted home occupation, including a reference to the number, size, and type of signage allowed in connection with a home based business. Chapter 535.450 states

“Home occupations shall be subject to the following standards”:

(8) Signage shall be restricted to one (1) non-illuminated, flat wall, identification sign not to exceed one (1) square foot in area. On a corner zoning lot, two (2) such signs, one (1) facing each street, shall be allowed.

The applicant was issued an order of non-compliance as each of the two signs existing on the property were in violation of this regulation. Specifically, there is an existing 24” x 48” freestanding sign in the front yard which exceeds the maximum of 1 square foot described in 543.450. Further, the lighted sign (“OPEN”) appearing in the window of the appellants porch is noncompliant with the provision which restricts signage to non-illuminated technology where associated with a home occupation. The applicant has asserted the signs may be a legal nonconforming use if the signs predate the ordinance. However, no documentation was provided to indicate a permit was pulled for either of the two signs located on the property, and thus there is no evidence of any nonconforming rights. The notice of non-compliance issued to the applicant was appropriate in this instance, as the signage could not comply with Zoning Code requirements given these circumstances.

Findings:

1. The property at 3616 Nicollet Avenue is owned by Ted Mazurek, DBA Nicollet Chiropractic Clinic.
2. Advertising signs in general, including on-premise signage, are subject to the regulations of chapter 543.30 of the zoning code, which require compliance with said chapter, and “all other applicable regulations”. (2009-Or-056, § 1, 7-17-09)
3. Item (8) of the home occupations regulations addresses signage accessory to home based businesses, and states “Signage shall be restricted to one (1) non-illuminated, flat wall, identification sign not to exceed one (1) square foot in area.” MCO § 535.450.
4. The applicant has provided documentation (a contract with Sign-A-Rama) indicating the signage was purchased and installed in January of 2001, and paid in full as of April 16, 2001, according to handwritten notations made on the document.
5. City records do not indicate any permits for signage at 3616 Nicollet after 2000.

RECOMMENDATION

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the appeal of the decision of the zoning administrator:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the Zoning Administrator’s decision that an existing sign for a chiropractic clinic exceeds maximum area of signs for a home occupation.

Attachments:

- 1) Appeal statement provided by the applicant.
- 2) Zoning Map
- 3) Zoning Enforcement Status report with photos of existing signage.