

**IN THE BLUE ASH CITY COUNCIL
BLUE ASH, OHIO**

In Re: Appeal of Mike and Tobi Iacono : **CITY COUNCIL’S FINDINGS OF**
(10816 Millington Court) : **FACT AND CONCLUSIONS OF LAW**
: **AFFIRMING THE BLUE ASH BOARD**
: **OF ZONING APPEALS’ FEBRUARY**
: **12, 2018 DECISION AND DENYING**
: **APPELLANTS’ APPEAL**

I. THE CASE AND THE APPEAL

This matter came before Blue Ash City Council on April 12, 2018. Appellants Mike and Tobi Iacono (the “Iaconos”) appealed the February 12, 2018 decision of the Blue Ash Board of Zoning Appeals (“BZA”). The BZA granted a variance allowing the Iaconos to enlarge their existing ground sign – which already exceeded the size and dimension limitations imposed by the Blue Ash Code of Ordinances – from 114 square feet to 153.5 square feet.

But, the BZA conditioned the variance. The larger 153.5-square-foot-sign could not include an electronic message face. As a result, the Iaconos could then either install the larger sign, without the electronic message face, or keep their current sign. In fact, the BZA’s variance, as granted, was one of the proposals submitted by the Iaconos themselves. Nevertheless, the Iaconos appealed to City Council. They ask Council to affirm the variance granting the larger sign face. But they also want Council to reverse the BZA’s decision and to allow the electronic message board too.

II. THE BZA DECISION

Under the Blue Ash Code of Ordinances (the “Blue Ash Code”), ground signs in the Blue Ash North Zoning District cannot exceed 100 square feet. Currently, the Iaconos’ sign is 114 square feet. They sought a variance from the BZA to enlarge the sign to either 168 square feet or, at minimum, 153.5 square feet, depending on which of their proposals, if

any, the BZA granted. They included three proposed options. The first two contained an electronic message component. The third did not.

On February 12, 2018, the BZA conducted a hearing on the Iaconos' variance request. After swearing in the witnesses, the BZA heard testimony from the Iaconos. No public comment was offered, and no person testified against or otherwise opposed the variance.

The BZA considered all the testimony and arguments, as well as other information elicited from questions posed to the Iaconos. The BZA voted 5-0 to approve the variance on the condition that the larger 153.5-square-foot sign not include an electronic message face. The BZA selected option number three proposed by the Iaconos.

III. THE APPEAL TO CITY COUNCIL

The Iaconos appealed the BZA's decision by letter dated March 2, 2018. In compliance with Blue Ash Code § 1133.03(b), City Council set the public hearing for the appeal for April 12, 2018. The hearing was conducted on April 12.

A. The Testimony

At the outset of the hearing, Mayor Adamec explained the process to the parties. The hearing then proceeded in accordance with Ohio law and R.C. 2506.03. The Iaconos presented their own testimony and offered a 12-page packet of exhibits (in addition to a 26-page packet they submitted at the BZA hearing). The Iaconos proposed three options for a new sign at their property. All three well-exceeded the size and dimension limitations allowed by the Code of Ordinances. The first two options were slightly larger and also contained an electronic message board. No other witness testified, either to support or to oppose, the appeal.

B. The Vote

After closing the appeal hearing, City Council voted 5-2 to deny the Iaconos' appeal, affirming the BZA's decision approving the sign variance on the condition that the larger 153.5-square-foot sign not include an electronic message face. City Council then directed the City Solicitor to prepare Findings of Fact and Conclusions of Law consistent with these votes.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In reaching these decisions, City Council makes the following Findings of Fact and Conclusions of Law:

A. Findings of Fact

1. The Iaconos own the property at 10816 Millington Court, Blue Ash, Ohio 45242 (the "Property"), which houses their company, Iacono Creative Event Production. The Property is used as an event production center and has four tenants, with room for a "few more."
2. The Property abuts Interstate 71 ("I-71").
3. The Property is located in the Blue Ash North Zoning District.
4. The Iaconos purchased the Property in September 2017.
5. At the time the Iaconos purchased the Property (and still currently), under Blue Ash Code § 1143.04, ground signs in that district cannot exceed 100 square feet in area.
6. At the time the Iaconos purchased the Property, there was an existing ground sign measuring 114 square feet. Thus, the existing sign is already a legal, non-conforming use.

7. According to the Iaconos, the purpose of the existing sign, and the larger sign they seek, is to identify the building and its tenants, so they can more effectively market the Property and the businesses there.

8. The Iaconos applied for a variance to change the sign. Although they proposed three options, their preferred variance included: (1) a larger sign, measuring 168¹ square feet; and (2) an electronic message board.

9. Before the BZA, the Iaconos proposed three signs to meet their desired needs: (1) a 168-square-foot electronic sign; (2) a 168-square-foot electronic sign with a backlit illuminated panel; and (3) a 153.5-square-foot sign with a backlit illuminated panel (the “Options”).²

10. Options (1) and (2), which contained the electronic LED display, were designed to list the Property’s tenants.

11. The Iaconos desired the larger sign with an electronic message board to market the Property’s tenants and to increase visibility along I-71. They believed the existing sign was too low and not visible as a result of three purported obstructions: a chain link fence, the highway guardrails, and trees.

12. Michael Iacono testified that the height of the sign was their main priority.

13. The BZA questioned the Iaconos at the hearing about how the tenants would be listed on the proposed sign. Michael Iacono testified that the proposed LED in Options (1) and (2) would list the tenants in a series, which would change hourly.

14. Michael Iacono also stated the extra sign area the Iaconos were seeking in all three proposed options would be large enough to include all the Property’s tenants on the

¹ The Iaconos represented the proposed sign in Options (1) and (2) was 168 square feet in some of their evidentiary materials and 167 square feet in others. Option (3) was a 153.5-square-foot sign.

sign face. Importantly, the Iaconos admit they can display the names of the Property's tenants on the extra sign area granted by the size variance, even without an electronic message board.

15. No other sign in Blue Ash both exceeds the size and dimension limitations **and** contains an electronic message board.

16. The BZA voted 5-0 to grant the Iaconos' request for a variance for a 153.5-square-foot-sign, enlarging a sign that already exceeded the square footage requirements. The BZA conditioned that approval on the Iaconos' not installing an electronic message component (the Iaconos' Option (3)).

17. The Iaconos appealed the BZA's decision to City Council by letter dated March 2, 2018.

18. True and accurate copies of the minutes memorializing the BZA hearing were submitted to City Council. They were approved on April 9.

19. City Council set the appeal hearing for April 12 in compliance with the Code of Ordinances.

20. The appeal hearing was conducted on April 12. (After they are approved by Council, the minutes of the hearing will be made a part of the record.)

21. After conducting the hearing in accordance with law, City Council voted 5-2 to deny the Iaconos' appeal and to affirm the BZA's decision granting the variance on the condition that the larger 153.5-square-foot sign not include an electronic message face.

22. On May 10, 2018, City Council reconvened to memorialize its decision in these Findings of Fact and Conclusions of Law.

² Any electronic message face must be approved by the Planning Commission. See Blue Ash Code § 1143.07.

B. Conclusions of Law

23. Under Blue Ash Code § 1143.04(c)(1), “[g]round signs shall not exceed 100 square feet in area”

24. Generally, ground sign size and dimension limitations are intended to ensure that such signs do not overwhelm front yard areas and to encourage consistency among sites in the same district.

25. The Blue Ash Code of Ordinances does not provide any specific signage exceptions or allowances for properties that abut, or have exposure to, highways or interstates, such as the Property here.

26. The Blue Ash Code of Ordinances does, however, allow the BZA to grant variances. The BZA can grant a variance outright, grant a variance in part and deny it in part, or deny it outright. *See* Blue Ash Code § 1127.07(a)(7).

27. Under Blue Ash Code § 1127.07, the BZA “may authorize area variances from the terms of the Zoning Code that are not contrary to the public interest.” In deciding whether to grant, to grant in part and deny in part, or to deny a variance, the BZA considers ten factors. *See* Blue Ash Code § 1127.07(a)(4).

28. Analyzing those factors, Council affirms the BZA’s decision:

- a. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Blue Ash Code § 1127.07(a)(4)(A).

The Iaconos did not present any evidence that their Property had any special conditions or circumstances entitling them to both a larger sign and an electronic message board.

- b. Whether the property in question will yield a reasonable rate of return or whether there can be any beneficial use of the property without the variance. Blue Ash Code § 1127.07(a)(4)(B).

There can be beneficial use of the Property without the expanded variance. The significantly larger sign approved by the BZA (153.5 square feet) addresses the Iaconos' visibility concerns from the highway and ensures that no obstructions block its view.

Indeed, their main concern and priority was the sign's size, not the electronic component. Also, the Iaconos testified the larger sign they sought (which was granted) would enable them to list and market all the tenants at the Property. Indeed, that is why they wanted a sign of that size in the first place. Tellingly, the variance the BZA granted was an option proposed and submitted by the Iaconos – Option (3). Clearly then, the Iaconos believed a 153.5-square-foot sign, even without an electronic message board, would be beneficial for the Property and allow them to display the tenants too.

- c. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures. Blue Ash Code § 1127.07(a)(4)(C).

The variance granted by the BZA is substantial. The BZA allowed the Iaconos to enlarge a sign that already exceeded the 100-square-foot limitation. Now, rather than 114 square feet, the sign is permitted to be 153.5 square feet, a 53.5% increase over the Code's limits. And, the variance the Iaconos want – an even larger sign (168 square feet, which would be a 68% increase over the Code's limits) plus an electronic message face – is not the minimum necessary to make reasonable use of the Property. As noted above in ¶ 28(b), the Iaconos proposed an option that did not include the electronic component. Admittedly, the larger 153.5-square-foot sign already allows them to do what the electronic message board would do – namely, list and market the Property's tenants.

- d. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance. Blue Ash Code § 1127.07(a)(4)(D).

This factor does not weigh in favor of either granting or denying the variance. The zoning district in which the Property is situated might not be drastically altered by the larger, electronic sign. But, no other sign in Blue Ash both exceeds the size and dimension limitations and contains an electronic message board.

- e. Whether the variance would adversely affect the delivery of government services such as water, sewer, or trash pickup. Blue Ash Code § 1127.07(a)(4)(E).

This factor cuts in favor of the Iaconos. The 153.5-square-foot sign with an electronic message board component would not impact the delivery of government services.

- f. Whether the property owner purchased the property with knowledge of the zoning restrictions. Blue Ash Code § 1127.07(a)(4)(F).

When the Iaconos purchased the Property in September 2017, Blue Ash Code § 1143.04 prohibited ground signs in that district from exceeding 100 square feet. Section 1143.04 is still in effect. Either way, the Iaconos were on notice of the restrictions and are not entitled to anything beyond those limitations. *See Village of Terrace Park v. Anderson Twp. Bd. of Zoning Appeals*, 1st Dist. Hamilton No. C-140741, 2015-Ohio-4602, ¶ 35 (“a commercial property owner cannot receive a use variance for self-imposed hardships where the property owner purchased the property with knowledge of the zoning limitations”); *Angustia v. City of Findlay*, 3d Dist. Hancock No. 5-84-21, 1985 Ohio App. LEXIS 8676, *7-8 (Aug. 26, 1985) (“any person who purchases zoned property with knowledge, or chargeable knowledge, of the limitations placed on its use by the zoning

legislation existing at the time of purchase, has no standing to, and is estopped from, complaining about such existing limitations on its use”).

- g. Whether special conditions or circumstances exist as a result of actions of the owner. Blue Ash Code § 1127.07(a)(4)(G).

This factor does not weigh in favor of either granting or denying the variance.

- h. Whether the property owner’s predicament feasibly can be obviated through some method other than a variance. Blue Ash Code § 1127.07(a)(4)(H).

See ¶ 28(b)-(c), above. Yes, the Iaconos’ predicament – the purportedly low visibility of their current 114-square foot sign and desire to list and market the Property’s tenants – can feasibly be obviated by the 153.5-square-foot sign granted by the BZA. The larger sign, *which was approved*, was their main concern. Admittedly, that larger sign has enough space to list all the tenants; an electronic message board is not needed for that. The variance as granted by the BZA – the larger sign with just a backlit panel rather than an electronic message face – feasibly solved the Iaconos’ concerns. Or, presumably, they would not have proposed a 153.5-square-foot, non-electronic sign as an option to the BZA in the first place.

- i. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance. Blue Ash Code § 1127.07(a)(4)(I).

Limitations on the size and dimensions of signage are intended to ensure that signs do not overwhelm front yard areas and to encourage consistency among sites in the same district. The BZA’s approved variance already allows for a sign that is 53.5% larger than is permitted by Blue Ash Code § 1143.04. And, there would be no consistency among sites in the same district if the electronic message board were allowed in addition to the larger sign. No other sign in Blue Ash both exceeds the size and dimension limitations and contains an electronic message board. The Iaconos’ desired sign would be a first.

- j. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district. Blue Ash Code § 1127.07(a)(4)(J).

As set forth above, if approved, this sign would be the only one in Blue Ash exceeding the size and dimension limitations **and** containing an electronic message board. Therefore, the Iaconos' desired variance would confer a special privilege no one else in Blue Ash enjoys.

29. A board of zoning appeals “maintains wide latitude in deciding whether to grant or deny a variance.” *N. Fork Props. v. Bath Twp.*, 9th Dist. Summit No. 23312, 2007-Ohio-243, ¶ 22, citing *Schomaeker v. First Natl. Bank*, 66 Ohio St.2d 304, 421 N.E.d 530 (1981); *Phillips v. City of Westlake Bd. of Zoning Appeals*, 8th Dist. Cuyahoga No. 92051, 2009-Ohio-2489, ¶ 33 (“A zoning board or planning commission which is given the power to grant variances is vested with a wide discretion with which the courts will not interfere unless that discretion is abused.”); *see also Vill. of Terrace Park*, 2015-Ohio-4602 at ¶ 13 (“a zoning board’s decision is presumed to be valid, and the burden is upon the party contesting the board’s determination to prove otherwise”).

30. Having considered all the testimony, exhibits, and arguments, the record from the BZA, and the factors under the Code of Ordinances, and for the reasons set forth above, Council affirms the BZA’s decision approving a variance for a 153.5-square-foot sign, on the condition that this larger sign cannot have an electronic message face.

31. Having made the above Findings of Fact and Conclusions of Law, and having considered all the testimony and arguments presented, City Council hereby denies the Iaconos’ appeal of the BZA’s decision granting their variance in part by a 5-2 vote.

32. In accordance with this vote, and the BZA’s decision, the Iaconos are hereby granted a variance to construct a 153.5-square-foot sign on the condition that no electronic

message component is included, as set forth in their proposed Option (3). This variance does not entitle the Iaconos to construct any other sign. If the Iaconos build any sign other than that approved by this variance, the City will take appropriate enforcement action.

IT IS SO ORDERED.

DATE: _____

Linda Bauer, Council Member

Tom Adamec, Mayor

Joe Leet, Council Member

Lee Czerwonka, Council Member

Pramod Jhaveri, Council Member

Jeff Capell, Council Member

Marc Sirkin, Vice-Mayor