

**ZONING BOARD OF APPEALS**  
**Wednesday January 19, 2011**  
**6:30 P.M. – City Council Chambers**  
**Rockford City Hall, 425 East State Street**

**Present:**

**ZBA Members:** Aaron Magdziarz  
Alicia Neubauer  
Dennis Olson  
Dan Roszkowski  
Scott Sanders  
Craig Sockwell  
Julio Salgado

**Staff:** Kerry Partridge – City Attorney  
Todd Cagnoni, Deputy Director - Construction Services Division  
Jon Hollander, City Engineer - Public Works  
Marcy Leach – Public Works  
Jessica Roberts – Planner II – Construction Services Division

**Others:** Alderman Wasco, Alderman Beach  
Kathy Berg, Stenographer  
Applicants and Interested Parties

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Jessica Roberts explained the format of the meeting will follow the Boards Rules of Procedure generally outlined as:

The Chairman will call the address of the application.

- The Applicant or representatives are to come forward and be sworn in.
- The Applicant or representative will present their request before the Board
- The Board will ask any questions they may have regarding this application.
- The Chairman will then ask if there are any supporters and then objectors. Objectors or Interested Parties are to come forward at that time, be sworn in by the Chairman, and give their name and address to the Liquor Advisory Board secretary and the stenographer
- The Objector or Interested Party will present all their concerns, objections and questions to the Applicant regarding the application.
- The Board will ask any questions they may have of the Objector or Interested Party.
- The Applicant will have an opportunity to rebut the concerns/questions of the Objector or Interested Party
- No further discussion from the Objector or Interested Party will occur after the rebuttal of the Applicant.
- The Board will then discuss the application and a vote will be taken.

It was further explained to the public in attendance, applicants, objectors and interested parties that this meeting is not a final vote on any item. The date of the Codes & Regulations meeting was given as Monday, January 31, at 4:45 PM in Conference Room A of this building as the second vote on these items. The public in attendance, applicants, objectors and interested parties were instructed that they could contact Jessica Roberts in the Zoning Office for any further information and that her phone number was listed on the top of the agenda which was made available to all those in attendance. The City's web site for minutes of this meeting is listed on the agenda as well.

The meeting was called to order at 6:45 PM. A **MOTION** was made by Aaron Magdziarz to **APPROVE** the minutes of the December 21, 2010 meeting as submitted. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 7-0.

A **MOTION** was made by Craig Sockwell to lay over item ZBA #045-10, 220 S. Madison Street and Walnut Street as well as ZBA #033-10, 810 S. Main Street per the request of the applicants and staff. The Motion was **SECONDED** by Aaron Magdziarz and **CARRIED** by a vote of 7-0.

Dan Roszkowski added that item ZBA #046-10, 1435 Broadway has been withdrawn from the agenda at the request of the applicant.

**ZBA 047-10**  
Applicant  
Ward 12

**3600 North Main Street**

CorPro Screentech

**Special Use Permit** for an on-premise electronic graphic display sign that exceeds the allowable 36 square feet to 70 square feet on an existing free-standing sign in a C-2, Limited Commercial Zoning District

A Special Use Permit for an on-premise electronic graphic display sign that exceeds the allowable 36 square feet to 70 square feet on an existing free-standing sign in a C-2, Limited Commercial Zoning District. The property is located on the southeast corner of Riverside Boulevard and North Main Street. Staff recommendation was for approval with conditions.

The applicant, Glen Avery of CorPro Screentech stated that he is requesting a variance for a larger version of the sign which has tentatively been approved by the City. He stated that the request is larger due to setback issues and that the existing sign is very old very large and in need of repair. He stated that they are upgrading to a message center. The property owner would like to show a living room set on the screen. He added that what is there now is a center section at five feet tall. He said the existing sign is old and difficult to repair which prompted the owner to spend the money on the electronic sign on one side, the side that faces the bridge, hoping to improve business. He said that the other side will not have a message board because it would be blocked by McDonalds, which is why we would like it a little bit larger.

Dennis Olson asked whether the owner will have clearance to rent the sign to others.

Glen Avery stated no.

Scott Sanders asked if the application is for the display area only of the sign not overall increasing the sign.

Glen Avery stated yes.

Scott Sanders asked what will become of the lower portion of the sign, whether it would be used.

Mr. Avery said only for a short period of time. He stated that there will be no point in maintaining the lower portion but they are keeping the changeable signs because it is there. He added that once the owners starts the electronic sign they will realize the advantage to it and stop using the letters on the bottom at some point all together.

Scott Sanders asked whether the board can put some sort of a time period or sunset clause on the lower portion.

Alicia Neubauer asked what happens to the additional measurement on the signage.

Glen Avery stated that they are blacked out panels.

Dan Roszkowski stated that it was not too large in size.

Scott Sanders added that it was an improvement.

**Objectors and Interested Parties:**

No objectors or interested parties were present.

Alicia Neubauer asked if the board was going to allow for a transition or not. Scott Sanders stated that if we approve the sign the lower part of sign shall be gone in six months or one year.

Dan Roszkowski stated that approving the sign will reduce the size. While the board is still agreeing with the height, we have stated that we want to fix the signage in the City one sign at a time. He added that they may as well fix this one the best we can.

A **MOTION** was made by Craig Sockwell to **APPROVE** the Special Use Permit for an on-premise electronic graphic display sign that exceeds the allowable 36 square feet to 70 square feet on an existing free-standing sign in a C-2, Limited Commercial Zoning District with the added condition 3. Removal of the lower 1/3 sign within the year. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 7-0.

Approval is subject to the following conditions:

1. Meeting all applicable fire and building codes.
2. That the sign shall be for on-premise advertising.
3. Removal of the lower 1/3 of the sign within one year of approval of a Special Use Permit.

**Approval of this Special Use Permit is based upon the following findings:**

1. **The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.**
2. **The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood.**
3. **The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the C-2 District.**
4. **Adequate utilities, access roads, drainage and/or necessary facilities have been provided.**
5. **Adequate measures have been taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.**
6. **The special use shall conform to the applicable regulations of the C-2 District in which it is located.**

**ZBA 048-10**

Applicant

Ward 4

**2750 N. Mulford Road & 5921 Allerton Drive**

Atty. Mario Tarara / Creekside Homes Assoc.

Appeal of Zoning Ordinance Interpretation Issues

An appeal application was filed by Attorney Mario Tarara on behalf of the Creekside Homes Association. The item comes before the Board for a determination as to whether Creekside's appeal was filed in a timely manner pursuant to the City of Rockford Zoning Ordinance.

Attorney Kerry Partridge stated that the appeal is of an administrative decision. Attorney Tarara is here representing the appellant and Attorney Manning is representing Christian Life. Attorney Partridge stated that the statement shall be limited to two issues, whether his client has an aggrieved status in zoning or whether the appeal he filed was in a timely manner. Attorney Partridge stated that tonight the hearing is not whether it is right or not, but the issue is for the two stated issues. He stated that there is no time limit; Attorney Manning can ask questions of Attorney Tarara and Attorney Tarara can rebut in the end.

Attorney Tarara stated that the first issue is of the timeliness of filing. He stated that he would challenge as to whether the application was timely filed. The State Statute allows for 45 days from which the grievance was taken. He stated that the decision was on the November 12th letter from Mr. Cagnoni. He added that the memorandum suggests that Creekside home owners and the City established emails back and forth. It is our position that when Mr. Cagnoni attended the meeting he stated that they must submit a list of concerns to staff in order to review and address. Over a period of a few weeks consideration was still going on and the final answer had not been reached. The final notice was completed and sent in the November 12<sup>th</sup> memorandum. As you can see from the appeal letter dated December 27, 2010, our filing was in fact within 45 days of that memo date. He stated that waiting for the final decision should not be held against the parties waiting for the decision of staff. Attorney Tarara stated the second issue is the argument of the aggrieved parties. We received the notice on the timeliness but we did not get notice of the aggrieved party until January 4, 2011. He added that they are an aggrieved party and they have the right to attest the situation. One of the conditions on the original permit was the building access to Allerton Drive. At the time the special use permit was being considered in 1980 the owners, in exchange for the conditions, waived their objections. The conditions that were waived is an action that aggrieves the owners and is directly related. Moreover, the project and access will have direct impacts among the association; the association's pool property near the access point would put traffic next to the association. Additionally, the lighting will put lights on the pool property. We do have a direct interest on the enjoyment and use on our property. We ask that the board support these two issues.

Attorney Donald Manning of McGreevy Williams represented Christian life retirement center. He added that this is not a question of whether it is fair, just, and equitable. He added that there is a question of legal jurisdiction and whether there is a type of administrative action to give rise to the board. He stated that there is not. The building is about 55 percent complete, mechanical, electrical, driveway, sidewalk, and curb are complete. He stated that it is now under legal attack. Under Illinois law once permits are issued my client gains a vested interest and right. There is nothing under the law to revoke the approval or issue a stop work order by the City. The permit was legally issued and relied upon by my client. Because we have these vested rights it highlights the absurdity. The fundamental assumption seeking the opinion from the zoning staff can give rise to the appeal. It is not, the way they can do, it is provision that allows the attorney to seek opinion of a staff member and appeal the decision, no provision under Illinois Law allows you to invent a process to escape the fact of the timeliness. The permit was given in June. There is simply no claim or cause of action asking the zoning officer interpretation. This is untimely as a matter of law. The permit was issued in June a person has 45 day to challenge. Even with the 45 days we know from the administrative record they knew in July that the permit had been issued and staff had given the opinion in July. Mr. Tarara had blown the jurisdiction time frame.

Dan Roszkowski asked when construction started.

Attorney Manning stated not later than the early part of July.

Attorney Partridge asked both Attorneys to stipulate that construction of the project began in July. Both confirmed this to be correct.

Attorney Tarara stated that he would like to comment on the dispute of the time frame. He added that the relief sought from the parties is not the removal of the building but the main issue is the access point.

Attorney Manning waived his rebuttal.

Scott Sanders asked Todd Cagnoni if the issues were exclusive to the building permit or was that the only or final step in this project seeking approval from the City. There was no other approval sought beyond June 22, 2010 building permit.

Todd Cagnoni stated, not that I am aware of.

Scott Sanders asked whether it drug out beyond that.

Todd Cagnoni answered no.

Dennis Olson asked when staff says that the 45 day started.

Todd Cagnoni stated after reviewing and interpreting the ordinance as in the past. The permit was issued in June 22, 2010 and that is when the clock starts.

Dennis Olson asked how they would know when the permit was issued.

Todd Cagnoni stated that it is reasonable to start the clock on June 22, 2010 but maybe a later date as well. When we reviewed the record and correspondence we know when they were aware of the construction. We know that the date of July 26, 2010 because Frank Tarara had called and inquired what was taking place and what happened and there were additional emails indicating that. Later in the week we received a direct email. They wanted the City's position with regards to the building permit. I responded to the email on Monday, in time so they could take it to their meeting. Within a week there was a response to Rob Belles, Frank Tarara, Attorney Tarara, and Attorney Bruce Ross-Shannon, as well as Alderman Wasco. This was on August 22, 2010. They were made aware of, at a minimum in writing via staff email; even then the 45 days would have lapsed. Yes, I attended the association meeting and reiterated staffs position. Much of it was explaining and answering questions. Yes, I stated they could put all their comments in writing and I would review along with other City staff. However, I did not waive the 45 days nor would I have the authority to waive. A month had passed and I had responded to their letter a little less than a month. I took all information and discussed with the legal department but by no means did I interpret the request that the 45 days would be waived. That would have been beyond my rights and would have affected other property owners' rights. If that was the intent of the zoning ordinance someone could ask my opinion on the permissibility of some building permits five years later and then submit an appeal.

Dennis Olson asked legal counsel of the aggrieved status.

Attorney Partridge stated that Creekside is an adjacent property owner and the aggrieved status is a close enough call that the benefit of doubt would probably go to Creekside. However, the timeliness of the staff appeal would be not. Attorney Partridge added that although there is time for discovery, this was still beyond that timeframe. Dan Roszkowski stated that even if you go to the September 20, 2010 date it still does not hit it.

Dennis Olson asked whether the underlying issue is the Allerton Drive access.

Todd Cagnoni stated that is what they have stated today.

Alicia Neubauer asked when the Special Use Permit was granted for the project and whether that was a stipulation.

Todd Cagnoni stated that the question is somewhat getting into the substantive issues.

Kerry Partridge stated that the Special Use Permit was issued in 1980 and there are issues to whether it had lapsed or not. There is a good possibility that the special use is no longer in effect.

A **MOTION** was made by Dennis Olson dismissing the application indicating that the application does not meet the timeframe and is not timely. The Motion was **SECONDED** by Scott Sanders.

Kerry Partridge stated that the decision is a final administrative decision.  
The Motion CARRIED with a 7-0 vote.

A **MOTION** was made by Alicia Neubauer to adjourn the meeting. The Motion was **SECONDED** by Craig Sockwell and CARRIED by a vote of 7-0. The meeting was adjourned at 7:25 p.m.

Respectfully Submitted by  
Jessica Roberts, AICP, Planner II  
Construction Services Division