

Zoning Board of Appeals
Meeting of February 15, 2024
Agenda #3, Legistar #81875

I am writing to clarify a few assertions made in the letter submitted by ACA Smith.

1. Page 1: "Staff considers appeal applications complete when the fee is paid. The appellants paid on December 20, 2023, only after being informed by the Office of the City Attorney that they were not entitled to forgo the fee because they hold public office."

ZBA procedures do not require a fee to be paid before an application is complete. The procedures, B.2., require the submission of a form and the "information and data called for in such form shall be supplied in sufficient detail so as to afford all the information necessary for a clear understanding and considered action by the Board."

Nor do the ordinances require a fee to be paid for an appeal application to be deemed complete. Land development decisions and projects require a fee to be paid: "No Application is complete unless all of the required information is included and all application fees have been paid." MGO 28.181(4)(a). MGO 28.205(5) does not contain a similar provision. While MGO 28.006 does provide for an appeal fee of \$200 owners/owners representatives, this fee is not required for an application to be deemed complete.

2. Page 2: "The November appeal letter does not provide any definitive dates." Also, page 3: "The appellants did not allege the date of the determinations in their appeal letter."

The appeal form does not require any dates, nor do the ZBA procedures.

3. Page 2: "No change in the Administrator's decision regarding the topics alleged in the November appeal letter were made after the Urban Design Commission on July 26, 2023.

Yes, there were changes.

- The staff report for the 7/26 meeting states "the proposed vehicle sales and service window, as designed, is consistent with both the TOD Overlay requirements *in that it is within the existing building structure.*" The 8/16 UDC staff report, in contrast, states the window is consistent with TOD "*in that it is within the existing building structure as a result of the canopy roof addition.*"
This is a substantive change since the issue is whether the vehicle access sales and service drive is "under the building." Being within the existing building is different than being deemed to be within the building due to the addition of a canopy.
- While the UDC staff report said the "canopy roof addition" was compliant with TOD, Zoning staff told Plan Commission at the 8/28 meeting: "The other question about the drive-thru, I do want to just clarify that it is not a canopy."

4. ACA Smith, page 3: "No new determinations were made after the July 23, 2023 Urban Design Commission."

New determinations/decisions were made after the July 26 UDC meeting.

- The only item addressed by the UDC staff report was the drive-thru pick-up window. This is relative to only one of grounds for the Alders' appeal.
- Determinations subsequent to the July 26 UDC meeting include:
 - The new drive-thru structure is not a canopy. (Zoning testimony at the 8/28 PC meeting)
 - Staff note that existing drive-thru infrastructure is not subject to the site standards for automobile infrastructure on the TOD Overlay District. (Staff report)
 - The TOD overlay applies to new auto infrastructure. (Zoning testimony at the 8/28 PC meeting)
 - The drive aisle exists, they are not expanding it, they not making it any more nonconforming than it was, and so that means that it can stay. (Zoning testimony at the 8/28 PC meeting)
 - Our interpretation of the zoning code, is that under the building means under the roof of the building, enclosed inside the building. (Zoning testimony at the 8/28 PC meeting)
 - We do allow existing physical improvements to stay, which is the case with the drive aisle that wraps around the front of the building, because it's a preexisting condition. From Zoning's perspective, there's not a mechanism for us to require them to remove it, because it was there when it was constructed and it complied with the zoning. And that the TOD overlay ordinance doesn't require them to remove it. (Planning staff testimony at the 10/30 Plan Commission meeting, discussing what zoning said – no zoning staff was present)
 - If they're improving this site to increase the drive-way area, south of the building let's say where they are putting in a new window, that complies with the TOD ordinance and is accommodating that ordinance language. If they're expanding that portion, it seems to be consistent with the ordinance. (Planning staff testimony at the 10/30 Plan Commission meeting, discussing what zoning said – no zoning staff was present)

Respectfully Submitted,
Linda Lehnertz