

**APPLICATION FOR APPEAL TO THE
BOARD OF ZONING APPEALS
OF SYCAMORE TOWNSHIP, OHIO**

Date Submitted: February 26, 2014
Property Address:.... 7840 Montgomery Road
Cincinnati, Ohio 45236
Applicant: Richard B. Tranter, Esq.
Owner: LCA-Vision Inc.

ATTACHMENT

Richard B. Tranter, Esq. (the "Applicant") submits this Application for Appeal to the Board of Zoning Appeals for Sycamore Township, Ohio on behalf of LCA-Vision Inc., the owner of the subject property (the "Owner").

On December 16, 2013, the Applicant submitted a Commercial Zoning Certificate Application to the Department of Planning and Zoning of Sycamore Township, Ohio (the "Department") requested a determination that the window decals affixed to the building located at 7840 Montgomery Road in Kenwood (the "Building") constitute an art display which is not subject to the restrictions applicable to signs found in Chapter 13 of the Sycamore Township Zoning Resolution (the "Resolution").¹ The Commercial Zoning Certificate Application was designated by the Department as Zoning Permit Application SYZ-13-312 ("Application SYZ-13-312," a copy of which is attached hereto as Exhibit 1).

On February 10, 2014, the Department denied the Application SYZ-13-312 by letter to the Applicant ("Denial Letter," a copy of which is attached hereto as Exhibit 2). In relevant part, the Denial Letter stated:

The Office of Planning and Zoning considers the proposed window decals forming the image of an eye on the face of the building to be a sign, advertising the business therein. The 80 feet by 25 feet sign greatly exceeds the size permitted by the Sycamore Township Zoning Resolution for the "E" Retail Zoning District and is therefore refused.

Application SYZ-13-312 was therefore denied because: (i) the window image was deemed by the Department to be a sign, not a work of art, and (ii) the size of the window image exceeded

¹ As noted in the Commercial Zoning Certificate Application, the Owner removed the decals in November 2012 as they had fallen into a state of disrepair. However, the Owner removed the decals with the intention of replacing them with a similar image of the same dimensions, and plans to do so as soon as the weather permits.

the limitations applicable to signs under the Resolution. The sole issue the Applicant raises in this Appeal is the Department's determination as to (i) above.

The image, which is made up of a collection of coordinated decals, covers the windows on the northeast face of the Building. Collectively, the decals form the image of a woman's eye that is approximately 80 feet wide by 25 feet high. The image does not include text or registered marks of any kind.²

Works of art "which in no way identify a product or business logo" are not signs as defined in the Resolution.³ The image at issue here constitutes a work of art because it does not identify a product or business logo. While the image may draw attention to the Building, that alone does not make the image a sign. For much the same reason, the image is not transformed into a sign merely because vision services are performed in the Building. This same image—which has been a recognized Kenwood landmark for nearly two decades⁴—would be deemed a work of art on any other business in the area, and it does not lose this character merely because it appears on the Building.

In summary, the window image on the Building is not a sign, but rather a work of art. The Applicant therefore asks that the Board of Zoning Appeals (i) overrule the decision of the Department and (ii) find that the window image is a work art that is not subject to the limitations applicable to signs as set forth in the Resolution.

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² Pictures of the original and proposed replacement window images can be found as Exhibits B and C, respectively, to Application SYZ-13-312 (Exhibit 1 hereto).

³ Resolution § 13-3D.

⁴ The decals were first put up in 1997.