



ZONING Ordinance Appeal

Board of Adjustment Decision

Variance Request

Case Numbers: 560-PA-2016 / 9-BA-2016

Project Name: Green Bee Produce ZA Appeal

Location: 16116 N McDowell Mountain Ranch Rd

Single-Family Residential Multi-Family Residential Commercial Industrial

Section of the Zoning Ordinance to be appealed: 7.928.

Scottsdale Ordinance Requires: When a permit is denied or revoked, the Zoning Administrator shall notify the applicant in writing of reasons for denial/renovation. An applicant who has been denied a permit, or permittee whose permit has been revoked or who objects to any special conditions of the permit, may appeal the action to the Zoning Administrator. Notice of appeal must be given in writing within ten (10) days after notification of denial/revocation. The Zoning Administrator shall set an appeal hearing within ten (10) days after receiving appeal. Within five (5) days of the conclusion of the hearing, the Zoning Administrator will rule on the appeal, giving notice in writing to the aggrieved person. Such decision shall be final.

Applicant's Appeal Request: Appeal of Zoning Administrator's written decision dated June 30, 2016 regarding special event signage for Green Bee Produce, a temporary mobile farmer's market.

Board of Adjustment Decision

Hearing Date: September 7, 2016

Uphold

No Jurisdiction

Overturn

No Standing

Continued to:


Chair Signature

Official signed approved Minutes can be found
at:

<https://eservices.scottsdaleaz.gov/cityclerk/DocumentSearch>

Board of Adjustment Hearing 09/07/2016

Case History

560-PA-2016

9-BA-2016

Appeal of Zoning Administrator's decision

BOARD OF ADJUSTMENT REPORT



Meeting Date: 9/7/2016
Item No.: 4

ACTION

**Green Bee Produce ZA Appeal
9-BA-2016**

Request to consider the following:

Applicant appeal of the Zoning Administrator's written decision dated June 30, 2016 regarding special event signage for Green Bee Produce, a temporary mobile farmer's market.

FARMER'S MARKET OWNER

Green Bee Produce

APPLICANT CONTACT

Aaron Shearer
Green Bee Produce
425-785-5400

LOCATION

McDowell Mountain Ranch Community Center Parking Lot
16116 N. McDowell Mountain Ranch Road

BACKGROUND

History

- In March 2016, the Green Bee Produce Farmer's Market submitted a special event request to hold a farmer's market on various dates, predominantly Sundays beginning in October 2016, located in the parking lot of the McDowell Mountain Ranch Community Center. The farmer's market consists of one vendor with several tent canopies to display and sell produce items. The request was approved in April 2016 and issued a special event permit to allow the markets until the end of April 2017. A condition of the permit limited off site signage to a total of 8 directional signs: 1 directional sign along Paradise Lane, 3 along

McDowell Mountain Ranch Road, 3 along Thompson Peak Parkway and 1 along Bell Road, all located within a one mile radius.

- The event request included a total of 13 signs with proposed locations ranging in distance from on site to up to two miles away from the market. The Special Events Committee (SEC) approved 8 locations, based upon turning radius and located within a one mile distance, but did not approve 5 locations located more than a mile away based upon the long standing interpretation and approach on temporary off premise signage which allows locations deemed necessary for safe traffic flow. Off premise signage may be necessary due to the anticipated event attendance (large volume of vehicles) or event location (hidden, off major streets). The applicant appealed this decision to the Zoning Administrator which upheld the SEC's decision in the letter dated June 30, 2016 (Attachment #1).
- On July 5, 2016 the applicant filed for an appeal of the Zoning Administrator's decision per the provisions of Section 1.805. of the Zoning Ordinance.

Zoning/Development Context

The subject event is a temporary, mobile farmer's market planned to be held beginning in October 2016 on various Sundays from 8am to no later than 2pm in the parking lot of the McDowell Mountain Ranch Community Center located on the northwest corner of McDowell Mountain Ranch Road and Paradise Lane within a residential area.

The zoning for this site is Planned Convenience Center with an Environmentally Sensitive Lands Overlay District (PCoC ESL). This District allows for permitted special events. The zoning to both the north and west is Single Family Residential (R1-5 ESL). The zoning to the east is Single Family Residential (R1-10 ESL & R1-18 ESL). The zoning to the south is Townhouse Residential (R-4 ESL).

Zoning Ordinance Requirements

Section 7.930 of the Zoning Ordinance states that the provisions of Article VIII (Sign Requirements) shall apply to special event signage.

Section 8.537.I.B.5. of the Zoning Ordinance states that temporary off premises directional signs shall be limited in sign area to six square feet for each sign and that the total number and location of such signs shall be approved by the general manager. A general manager position currently doesn't exist in a planning and development capacity and that decision role has been delegated to the Special Events Committee.

Section 7.928. of the Zoning Ordinance allows the decision of any special conditions of the Special Event permit be appealed to the Zoning Administrator. The Zoning Administrator is authorized to enforce and interpret the number and locations of temporary off premises directional signs proposed as part of a Special Event permit application.

Section 1.805. of the Zoning Ordinance allows for an Appeal of the interpretation or decision of the Zoning Administrator to the Board of Adjustment.

Code Enforcement Activity

There has been no recent Code Enforcement activity regarding the proposed special event.

On January 27, 2015, the City received a complaint from a resident related to the Green Bee Farmer's Market off premise signs that were present in the McDowell Mountain Ranch neighborhood over the previous weekend on the event date. Code Enforcement staff went to the site and spoke with the property owner (McDowell Mountain Ranch Community Association) conveying that a Special Event permit was required for any event to occur on site along with approval for any off premise signage. The property owner contacted the Green Bee Farmer's Market owner and relayed the requirements. The Green Bee Farmer's Market owner worked with staff to submit the required documents for the permit approval which was issued on January 30, 2015. The permit conditions allowed for the requested two off-site directional signs along McDowell Mountain Ranch Road.

Community Input

Staff has sent postcards to all property owners within 750 feet of the site and posted a hearing sign on the site. As of the writing of this report, staff has received two phone inquiries regarding the appeal request. One was seeking general information and one resident voiced concerns about the signage. The resident believed there were too many signs in her community, believing that a farmer's market, placed in a local residential setting, caters to the local residents and having multiple signs placed a large distance away, brings additional traffic and attention to her neighborhood, no longer making it a local farmer's market. In addition, she felt they are visually unappealing and obstruct corners where they are placed.

Discussion

A special event is defined as a temporary outdoor use on private property which extends beyond the normal uses and standards allowed by the Zoning Ordinance. In this request, the reoccurring event is held mostly on Sundays and located in the parking lot of the McDowell Mountain Ranch Community Center, surrounded by residential properties. The farmer's market consists of one vendor, several tent canopies, and a variety of produce items for sale.

The owner has requested to be allowed to place several off premises signs on public property within the right of way on planned event dates, in order to promote the market, remind people that it is occurring, and use signs to direct them to the event. Private off-premise signage is not permitted within the city right-of-way.

The Special Events Committee (SEC) gives careful consideration for any proposed event signage, both on site event and off-site directional signs to insure that attendees can locate and be able to identify the event to know when they've arrived. The City's Sign Ordinance is a reflection of the community's desire to ensure thoughtful placement within City boundaries. Unnecessary signage placed to help promote and market the event outside of the area gives a direct advantage to event producers for daily advertising anywhere in the City that all other businesses cannot enjoy. The SEC reviews for consistency in its application to ensure sign placement does not visually impact the physical and natural beauty of the community and stays focused on the need for any off-premise directional signs to allow for safe movement of

vehicles and attendees to enter and exit the event safely. This event has a low volume of anticipated event attendance (few, intermittent vehicles) and is highly visible from the major street (easily located). This is consistent with the application of sign placement associated with other temporary signs.

Applicant's Appeal

The Applicant's Appeal of the Decision to the Zoning Administrator submitted contains two arguments for approval for off premises signage as outlined below:

1. The Special Event Permit provides rights that are not granted to other businesses based upon the temporary nature.
2. The farmer's market is unique and does not compare with any past or present events and should therefore not have created rules or criteria applied to it as the Code is ambiguous in nature and may be interpreted and applied based on each unique situation.

Findings

In a typical request to the Board of Adjustment, the Board must review and determine if the required four (4) findings have been justified to allow a Zoning Variance. In the case of an appeal of the Zoning Administrator decision, such as this one, these findings are not required and the Board of Adjustment will need to:

- Determine whether or not it has jurisdiction over this matter;
- Determine whether the Applicant has standing; and, if the Board first finds that it has jurisdiction over the matter and that the applicant has standing, then the Board shall;
- Discuss the merits of the case to determine whether or not the City's application of requirements for special event signage is arbitrary, capricious or an abuse of discretion.

Staff Recommendation

Staff recommends that the Board of Adjustment find that Zoning Administrator decision was not arbitrary, capricious or an abuse of discretion, and concur with the Zoning Administrator that the temporary, reoccurring off premises directional signage be limited to the locations along McDowell Mountain Ranch Road, Bell Road, Thompson Peak Parkway and Paradise Lane.

APPROVED BY



Cheryl Sumners, Events Manager, Report Author
480-312-7834, csumners@scottsdaleaz.gov

8-22-16

Date



Brad Carr, AICP, Board of Adjustment Liaison
480-312-7713, bcarr@scottsdaleaz.gov

8.22.2016

Date



Tim Curtis, AICP, Current Planning Director
480-312-4210, tcurtis@scottsdaleaz.gov

8/23/2016

Date

ATTACHMENTS

1. Appeal Decision dated June 30, 2016
2. Map of 8 proposed off premise signage locations – April 6, 2016
3. Event/Market Site Plan
4. Applicant Narrative
5. Applicant Evidence



Planning and Development Services

Current Planning

7447 East Indian School Road
Scottsdale, Arizona 85251

June 30, 2016

Aaron Shearer
Green Bee Produce
462 S. Robson
Mesa, AZ 85210
admin@greenbeeproduce.com

Re: Appeal of the Signage Conditions of the Green Bee Farmer's Markets Special Event Permits

Dear Aaron,

Thank you for meeting with me May 23, 2016 to explain your market events and related signage needs. The fresh produce market events that you hold weekly appear to be something welcomed and desired by the community, which is fantastic. At issue is the signage request as part of the special event permits approval.

There are two main purposes for the sign code. The first is for general aesthetics of the city, reducing visual clutter to allow the prevalence of the physical and natural beauty of the community. The second is for traffic safety within the city. Reducing the number of signs visible to motorists promotes greater traffic safety in the community and orderly travel on the roadways. Private off-premise signage is not permitted within the city right-of-way.

The Zoning Ordinance, under Section 8.537., refers to Special Event Signage as needing approval by the general manager (or, the Special Event Committee as delegated by the general manager) and focuses on both on-site event signage and off-site event signage related to directional needs as noted below. My understanding is that on-site event signage has been approved, but at issue is the approved off-site premises directional signage that remains in disagreement.

Sec. 8.537. - Special events and theme amusement parks.

Special events and amusement parks are allowed signs as follows:

I. *General.*

- A. Events/activities which will occur on a designated date or during a limited period of time shall be allowed signage to promote the event/activity. The signage will support, promote and/or advertise the event/activity and may contain the names of a specific agency or business that is sponsoring the event/activity. All signs associated with the event/activity are temporary and must be removed by the date specified by the general manager.
- B. The organization sponsoring the event/activity shall prepare and submit an application, consisting of a complete list and description of all signs, including directional signs, banners, pennants, flags, balloons, lighting, hot/cold air balloons and other features associated with the event/activity, and proposed times for erecting and removing the signs. The application will be reviewed and approved by the general manager.
 1. Names and logos of sponsoring agency(ies) or business(es) shall be limited to twenty (20) percent of the total area of lettering identifying the activity or event.
 2. All banners, pennants and flags shall be limited to twenty-four (24) square feet and shall be suspended no higher than thirty-six (36) feet above grade, except that all banners, pennants and flags suspended over roadways or driveways shall be no higher than eighteen (18) feet above

ATTACHMENT #1

grade and maintain a minimum clearance of fourteen (14) feet. Banners are allowed in the Downtown Area only.

3. All signs, banners, pennants and flags spanning private walkways must maintain a minimum clearance of seven (7) feet six (6) inches.
4. Searchlights are prohibited except in those cases where allowed in Section 7-602 of the zoning ordinance.
5. Temporary off premises directional signs shall be limited in sign area to six (6) square feet for each sign. The total number and location of such signs shall be approved by the general manager.

Currently, the farmer's market is approved for a special event permit at the McDowell Mountain Ranch McDowell Center located at 16116 N. McDowell Mountain Ranch Road. Included in that approval are allowances for off-premise directional signage related to the farmer's market. A total of 8 directional signs are allowed for the farmer's market event, which include signs along McDowell Mountain Ranch Road, Bell Road, and Thompson Peak Parkway north of McDowell Mountain Ranch Road all within a mile radius of the farmer's market. Your request sought 13 total off-premise directional signs to be located within a 2.5 mile radius of the farmer's market.

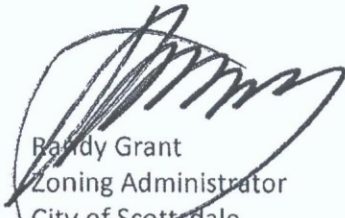
The City of Scottsdale Sign Ordinance, Section 8.102.III., has specific criteria for allowance of signs within the right-of-way or on public property. Those signs relate to signs for traffic management and signs erected by a governmental entity for a governmental purpose. The city has been allowing off-premises traffic directional signage in association with a special event permit, and after careful consideration by the Special Events Committee, when that signage has been shown to align with the traffic directional needs, not advertising needs, of the specific special event, as outlined in Section 8.537.I.B.5. of the Sign Ordinance. The number and location of that signage has followed a policy of reviewing the proposed event against several criteria, including the attendance of the event and traffic safety management needs.

There is careful consideration given for any proposed event signage, both on-site and off-site directional signage, to ensure attendees can locate the event and know when they have arrived. The City understands that event signage is temporary and only erected on event dates. The City needs to ensure that unnecessary signage isn't being placed to help promote and market the event outside of the area and that off-site signage is limited to the directional signage that attendees may need to locate the event. Otherwise, this gives a direct advantage to event producers for daily advertising signage anywhere in the city that all other businesses cannot employ. Special event directional signage is intended to assist motorists going to an event find the event and enter and exit safely. It is not intended to advertise the event to motorists up to 2 miles away.

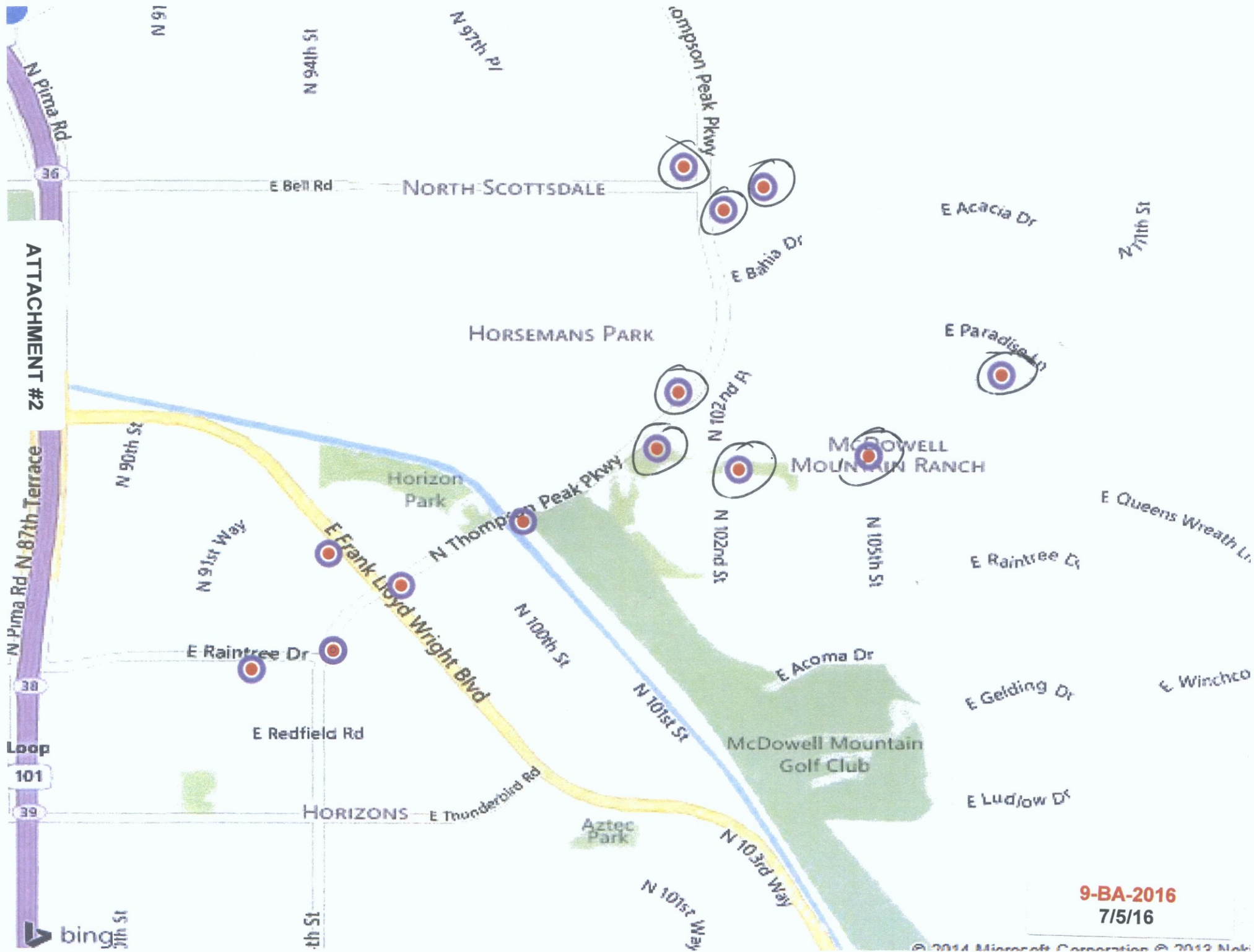
This event is in the same location each week. People who have previously attended the market and those who live in the community can reasonably get to the market without the need for any directional signage. Additionally, if the address of the market event is promoted, people can look on their smart phones or GPS devices to locate the market and find directions as well. I realize there were several letters that commented to the fact that while they knew where the market was, they enjoyed and used the signage as reminders that the market was happening that day. That is not a purpose for permitted directional signage. The City expects that the event producer is helping to promote their market in many ways other than off-site signage (social media, email, printed material, newsletters, community marketing, etc.). Those looking for the market would encounter directional signs within a half mile of the event, which should aid in those seeking assistance for the market location.

The City's Sign Ordinance is a reflection of the community's desire to ensure thoughtful sign placement within its boundaries. The multitude of sign locations can visually detract from the physical and natural beauty of the community and what may be viewed acceptable by some are nuisances to others. Directional signage focuses on traffic safety, which is taken into consideration when reviewing the sign request. It does not incorporate off-site promotion and marketing of the event.

I am unable to provide additional off-premise directional signage approval for the location beyond what was has already been approved by the Special Event Committee for the reasons noted above.



Randy Grant
Zoning Administrator
City of Scottsdale
480-312-2664



ATTACHMENT #2

9-BA-2016
7/5/16

Green Bee Produce Farmer's Market



ATTACHMENT #3

NARRATIVE

July 5, 2016

Applicant: Green Bee Produce

Special Event permit # 67-SE-2016 / 222970

REQUEST: Board of Adjustments Hearing per Section 1.805- appealing Zoning Administrators Decision on Special Event Permit restrictions

Green Bee Produce is a mobile farmers market that hosts farmer's markets on private property in Scottsdale. On April 29, 2016 Green Bee was issued a special event permit (253-PA-2016) with restrictions. Green Bee had requested 5 off site directional signs, which was denied by the Special Events Board. Per section 7.928, Green Bee filled a notice of appeal with the Zoning Administrator. The meeting with the Zoning Administrator was held on May 23, 2016. Per Section 7.928, the Zoning Administrator is required to give a written decision no later than 5 days after the appeal meeting. Despite this specific Code Requirement, and despite 6 written requests over a period of 32 days, finally on June 30th the Zoning Administrator, through Brad Carr (Scottsdale's Senior Planner), issued a decision denying Green Bee's request. Per section 1.805, Green Bee is appealing the Zoning Administrators decision to the Board of Adjustments.

Green Bee will prove at the Board of Adjustments hearing that the Zoning Administrators decision to deny Green Bee's request for 5 off site directional signs is unconstitutional, bias, and an abuse of discretion.

Due to the past issue with the Planning Department deciding (without notice to either party) not to present the BOA with all the supporting documents Green Bee had provided at the review meeting, and instead picking and choosing only the documents they wanted the BOA to see (eliminate the most important documents of Green Bee's case.....) Green Bee has decided to present our supporting information directly to the BOA at the appeal hearing.

Since Scottsdale Senior Planner, Brad Carr, was involved in issuing the Zoning Administrators appeal decision on June 30th, and Mr. Carr is also responsible for making the recommendation to the BOA, there is no point in Green Bee partaking in any pre application / review / informational meetings. Senior Planner, Brad Carr, has already made his decision based off the opinion of the Zoning Administrator, so we already know what the recommendation will state. Therefore, Green Bee waives the right to any pre-hearings or review processes and demands that the City issue their Recommendation based on the knowledge and opinions they have already made.

Furthermore, due to the excessive length of time the Zoning Administrator took to issue a decision (over a month) and the fact that the Planning Department collaborated with the Zoning Administrator to issue his decision, (so there is no extra time needed to conduct the timely pre hearing reviews) there is no reason why Green Bee's appeal can't be scheduled for the next BOA meeting in August 2016. According to section 1.803, as long as the application and request is filed at least 15 days prior to the next BOA meeting, the case may be scheduled to be heard at the next meeting. There is plenty enough time to accommodate that request and still adhere to the legal terms outlined in the Scottsdale City Code.

Thank you,

Green Bee Produce
admin@greenbeeproduce.com

ATTACHMENT #4

9-BA-2016
7/5/16