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Wade D. Watson

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BZA Staff Report

To: EDINBURGH BOARD OF ZONING APPEALS

From: Wade D. Watson, Planning Director

Date: April 6, 2022

Re: Case ZB 2022-04V REQUEST FOR VARIANCE FROM DEVELOPMENT STANDARDS

GENERAL INFORMATION:

Applicant: Jesus Colin Diaz
8735 W State Road 252
Edinburgh, IN 46124

Property Address: 8735 W State Road 252, Edinburgh, IN 46124

Property Owner: CHARM PETROLEUM INC
Jagjit Singh
8733 W State Road 252
Edinburgh, IN 46124

Property Number: 73-13-35-100-009.000-025

Legal Description: E2 NW 35 11 5

Acreage: 1.24 acre (approximately 55,130 Square Feet.)

Lot Size: 180' X 333' (approximately)

Zoning: RB (Roadside Business)

Land Use: Commercial (Bonkerz Marathon & El Torito Grill, Mexican Fast Food)

FEMA Flood Plain: Subject Property does not exist in a designated flood area

SURROUNDING ZONING:

North: RB & R-1:
South: R-3:
East: RB:
West: RB:

SURROUNDING LAND USE:

Commercial and Vacant Land
Amos' Timbergate Subdivision & Golf Course
Vacant Land
Commercial and Vacant Land

REQUEST:

Case ZB 2022-04V: Petitioner is requesting a Variance from the requirements of Title XV; Chapter 156; Division 6, §156.210 (3) of the Town of Edinburgh Zoning Ordinance to allow an existing, non-conforming roadside pole sign to be used to advertise a Mexican Fast-Food Restaurant.

PUBLIC NOTICES:

Petitioner has satisfied all documentation requirements, legal and public notifications specified in the Town of Edinburgh Zoning Board of Appeals Application Packet for Variance/Special Exception.

PURPOSE OF STANDARDS:

The purpose of Division 6; Sign Regulations is to regulate all signs in the incorporated area of Edinburgh, so as to protect the general public and promote traffic safety and public health. These ordinances establish regulations for on-premise and off-premise sign standards for all zoning districts within the Town. These standards were developed to protect the community from excessive signage that could diminish the aesthetic appeal of the entrances and highways surrounding the community.

CASE HISTORY:

This case is in consideration of an existing non-conforming sign the petitioner is requesting to use to advertise a Mexican Fast-Food Restaurant which recently opened at this location. The location of this sign and the size of the sign are not compliant with the standards established for either a pole sign or a ground sign within this zoning district and has not been used for advertisement in excess of twelve months.

This two-sided pole sign has an overall height of ninety-six (96) inches; its height above the ground is thirty-five (35) inches and its print face area is forty-six (46) by sixty-one (61) inches (approximately nineteen and one-half (19.5) square feet). It exists approximately thirty-six (36) feet south from the edge of the pavement of SR 252 and approximately on (or very near) the east property line.

In March of 2011 the Town of Edinburgh issued a sign permit for this location to Quiznos Sub for an “Exterior Sign Package”. However, in review of the documentation retained with the issuance of said permit, there were no submittals identifying anything other than a wall sign on the building. There was no indication of a pole or a ground sign. My investigation could not confirm when this pole sign was installed.



§156.132 establishes that Plan Commission approval for signage shall be necessary prior to the issuance of any improvement location permit in the S.R. 252 Corridor Overlay Zone Districts. No records were found to indicate that Plan Commission approval was granted for this signage. No records were found for an improvement permit being issued for this sign.

According to Google Earth's historic images, in June of 2014, the pole sign was being used to advertise Deli Sub Pizza. In the historic images of June 2019, the print area was blank.

The Building & Zoning Official issued a notice of violation for this non-compliant sign on December 13, 2021. Following the notice of violation, the petitioner submitted an application for sign permit the pole sign and on December 28, 2021 was given a written notification that the sign permit could not be issued due to the non-conforming status of this structure. The applicant has stated that he would remove the sign from this structure pending the outcome of a permit application and board consideration, however the sign has not been removed.

CONSIDERATIONS:

Consideration for the following Development Standards of the Town of Edinburgh Zoning Ordinance should be reviewed when considering this variance request:

1. §156.171 establishes regulations for Non-Conforming Uses of Land and Structures Subsection (5) states: "When a non-conforming use of land, a structure, or structure and premises in combination, is discontinued or abandoned for twelve (12) consecutive months, the structure or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located, except as permitted by the Board of Zoning Appeals."

Therefore, consideration to allow the use of this non-conforming structure is before the Board of Zoning Appeals for decision.

2. §156.201 (1) establishes the requirement of a Sign Permit stating: "Except as otherwise provided herein, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign within the Edinburgh jurisdiction, or cause the same to be done without first obtaining a sign permit for each sign from the Edinburgh Building Commissioner."
3. §156.202 (8) which requires the removal of an Abandoned Sign, stating: "A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises".
4. §156.134 (2) establishes that all signs, (except private traffic direction signs) are prohibited in the required greenbelt areas. In §156.131, the "corridor greenbelt" is defined as: "That portion of the front yard of a lot that is immediately adjacent and parallel to the right-of-way of (US 31 and SR 252) having a minimum depth of thirty (30) feet from the street right-of-way line."

Based on a review of the July 2019 Construction Plans for the SR 252 project, the sign appears to exist within corridor greenbelt.

5. §156.210 (3) establishes the location and dimensions for signs within the districts zoned as RB:
 - a. Ground or Pole Signs - The bottom of the signage area for all pole signs shall be no lower than nine (9) feet from the existing lot grade; the top of the signage area for all ground signs shall be no higher than four (4) feet from the existing lot grade.
 - b. Ground or pole signs shall be not closer to the side property line than a distance equal to thirty-five (35) percent of the frontage of the property upon which said sign is to be located, but in no event shall such sign be closer than fifteen (15) feet.

6. §156.134 (1) requires signage in the U.S. 31 and S.R. 252 Corridor Overlay Zone Districts to be an integral part of the architectural and landscaping plan.
7. §156.134 (6 b) requires the distance between signs within the U.S. 31 and S.R. 252 Corridor Overlay Zone Districts, “shall be a minimum spacing of one hundred (100) feet between any pole or ground signs.” The subject pole sign exists approximately nine (9) feet from the Marathon Pole Sign on this lot.
8. §156.210 establishes sign standards for RB Districts. §156.210 (1) (b) establishes permitted signs for Strip Shopping Centers; subsection 1) a. states: “One pole sign shall be permitted along each street or highway right-of-way abutting such enclosed mall shopping center.” This section encourages multiple businesses existing at one location or parcel to advertise on a single pole or ground sign.
9. §156.210 (2) establishes standards for signs advertising more than one business.

STAFF ANALYSIS:

- Plan Commission Approval for this sign was not issued prior to its installation. (The petitioner should provide evidence of such approval if issued by the Edinburgh Plan Commission prior to its installation on this property.)
- No improvement permit was issued for the installation of the sign by the Edinburgh Planning Department. (The petitioner should provide evidence of such permit if it were issued by the Edinburgh Planning Department prior to its installation on this property.)
- This sign does not conform to the size and location signage standards established for the Highway Corridor Overlay District or the existing RB Zoning District.
- The property exists within a prime gateway into the community and at the entrance of Timbergate Golf Course Community. The excessive signs on this property diminishes the aesthetic appeal of the entrances and highways surrounding the community.

CRITERIA FOR DECISIONS:

(The petitioner will need to address the Criteria for Decisions in their presentation**)** In taking action on all variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of the Indiana Code. The Board may grant a variance from development standards and limitations of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.5) that:

1. **General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.**

STAFF FINDINGS: The approval of this variance will be injurious to the public health, safety or general welfare by failing to comply with the established height standards for motorist exiting the service station. Further, a reduction in the number of signs in the Highway Corridor improves the general welfare of the community by maintaining the greenbelt standards to enhance the visually presentation of the town to both citizens and visitors.

2. **Adjacent Property:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

STAFF FINDINGS: Adjacent properties to the subject property will be affected in a substantially adverse manner by diminishing the aesthetic appeal of the gateway entrance and highway into the community.

3. **Practical Difficulty:** The strict application of the terms of the ordinance will result in a practical difficulty in the use of the property. (This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.)

STAFF FINDINGS: The strict application of the ordinance will not result in a practical difficulty in the use of this property. The Edinburgh Ordinance provides for this signage to be placed on the existing pole sign structure on the property. (The petitioner should explain how the strict application of these ordinances results in a practical difficulty in the use of the property.)

STAFF RECOMMENDATION

Based on these investigation findings, staff recommends **DENIAL** of the petition. Staff recommends the Board of Zoning Appeals require the removal of this non-conforming sign per §156.202 (8) which requires “a sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises.”

Should the petitioner choose to use an additional sign to advertise the Mexican Fast-Food business, that they make application to the Edinburgh Plan Commission for the additional signage in compliance with the established standards of both the Highway Corridor Overlay District and the Roadside Business District.

Should the board choose to approve the variance request, staff recommends the sign structure be cleaned, scraped, primed, and painted.

Respectively Submitted,



Wade D. Watson, Planning Director
Town of Edinburgh