

Staff Analysis

V24-0037 / Old West Café Sign

Zoning Board of Adjustment

REQUEST:

Consider a variance request from Chapter 33 Signs and Advertising Devices of the Code of Ordinances, specifically Section 33.14.2(b)(1) as it relates to the maximum effective area and maximum height of a ground sign permitted along I-35 E

APPLICANT:

Aaron Bennion of Denton Municipal Electric

BACKGROUND:

The subject property is a single premise along the S I-35 E service road approximately 560 feet south of Lillian B Miller Parkway (see Exhibit 3 for location map). A restaurant (Old West Café) is existing on site. There is one (1) existing, on-premises ground sign that has a maximum effective area of 304 sq ft and a maximum height of 48 ft when measured from the ground. Sign details are provided in Exhibit 5.

Per Chapter 33.14.2(b)(1), any premise with street frontage along I-35 E may have ground signs with a maximum effective area of 250 sq ft. The existing sign on the premise has a maximum effective of 304 sq ft which is 54 sq. ft. greater than what is permitted. Chapter 3.14.2(b)(1) also allows ground signs to have a maximum height of 40 ft. Along I-35 E, the height may be measured from either the principal lanes, the frontage road, or the ground, whichever allows the greater height (Chapter 33-12.1(b)(2)). The existing sign on the premise has a maximum height of 42 ft when measured from the elevation of the principal lane, which is 2 ft greater than what is permitted.

The existing sign is legally nonconforming because it was approved upon original installation, but no longer complies with the City’s current sign regulations. The sign has existed onsite since 2001, and the City’s current sign regulations were approved by City Council in 2014. Chapter 33 does not contemplate relocating signs in its regulations for nonconforming signs; therefore, staff had to analyze the relocated sign application as a new sign application. The elements of nonconformity that were previously legal and could have stayed in perpetuity at the originally approved location are viewed as new signs due to the changing location and now necessitate variances as summarized below:

	Current Regulations	Proposed	Difference
Maximum Effective Area of Ground Signs Permitted along I-35 E	250 sq. ft.	304 sq. ft.	+54 sq. ft.

Maximum Height of Ground Signs Permitted along I-35 E	40 ft.	42 ft.	+2 ft.
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The sign is being relocated due to Texas Department of Transportation’s (TxDOT) widening of S I-35 E project and the subsequent relocating of City of Denton utilities by Denton Municipal Electric (DME). TxDOT expanded the scope of their S I-35 E Mayhill Project to include the subject premise in a late revision and directed DME to relocate utilities on a short timeline to keep on track with TxDOT’s project schedule. DME is installing overhead power lines along the edge of the S I-35 E’s right-of-way that require a separation distance of at least 10 ft to the side for non-electrically qualified workers according to the National Electric Safety Code and the Occupational Safety and Health Administration. DME identified a location for the relocated sign that is acceptable to the owner and so that no part of the sign is within 15 feet of the S I-35 E’s right-of-way, meeting the 10-foot separation requirement. See Exhibit 4 for additional information.

CONSIDERATIONS:

1. The applicant is proposing for the relocated sign to be in compliance with all the requirements of Chapter 33 except for the effective area and maximum height, which are the subject of this variance request.
2. Section 33.6 of the Code of Ordinances states the that the Board of Adjustment can grant a variance from a requirement of Chapter 33 if it finds that all of the following criteria are met:
 - a. *Due to some unique condition or feature of the property, which is not generally common to other properties, literal compliance with the sign regulation would cause unnecessary hardship.*

Due to TxDOT’s project timing, DME must relocate utilities on the premises using overhead power lines that conflict with the existing signs. DME’s normal process would have been to acquire easements and relocate the lines underground had TxDOT not placed these time constraints on DME. This process would have not required the sign to be relocated, and the unique conditions attributed to the installation of the overhead power lines on the premises are not common practice.

Literal compliance places an unnecessary hardship on the property owner by requiring the removal of their existing, legally non-conforming sign that, under the standard DME practices, would not have needed to be removed. Literal compliance with the maximum 250-ft effective area and the maximum 40-ft height would require the property owner, who is not responsible for the sign needing to be relocated, to have to purchase an entirely new, smaller, and shorter sign in order to maintain proper spacing from DME’s relocated overhead utility lines.

- b. *The granting of the variance will not violate the spirit or the intent of the ordinance.*

The intent of Chapter 33 is to balance several important and competing interests, including the constitutional right to free speech and the public interests in safety

and aesthetics, including controlling visual clutter. The variance would not increase visual clutter along S I-35 E, but rather maintain the interstate's aesthetics since only the location of the existing sign is changing so that it will not interfere with vital, city infrastructure. No new signs are being requested.

- c. *The condition or feature, which creates the need for the variance, did not result from the property owners' acts.*

The condition creating the need for the variance did not result from the property owners' actions. TxDOT is widening S I-35 E, and the City of Denton via DME is relocating overhead power lines as a part of that project. The sign will have to be removed from its current location regardless of the Board's decision. These actions by state and local governmental entities (not the property owner's actions) are requiring the existing sign to be relocated and thus creating the need for the variance request since the sign is no longer in compliance with the City's sign regulations for effective area and height.

- d. *The Board shall not grant a variance to any applicant solely for personal convenience, financial hardship, or other reasons unrelated to the property. If the Board grants a variance, the variance shall be granted only to the extent that is reasonably necessary to remedy the hardship. The Board may impose conditions relating to the use of the sign for which a variance is granted.*

The variance request is for reasons related to the property and improvements being made to the adjacent interstate highway and not solely for personal convenience, financial hardship, or reasons unrelated to the property. The applicant is requesting to have an increase in the maximum effective area and maximum height for their ground sign allowed by Chapter 33 in order to maintain the same sign that has existed on the property since prior to 2001.

RECOMMENDATION:

Staff recommends approval of the variances for an increase in effective area of 54 feet and increase in height of 2 feet since it meets all the criteria for approval in Chapter 33.6 of Chapter 33 of the Code of Ordinances.