

# **Staff Analysis**

## **V24-0038 / DME Southridge Village**

### **Zoning Board of Adjustment**

#### **REQUEST:**

Hold a public hearing and consider a variance request from Chapter 33 Signs and Advertising Devices of the Code of Ordinances, specifically Section 33.14.2(d)(2) as it relates to the maximum number of on-premise ground signs permitted based on street frontage on a freeway, located on an approximately 10.78 acre premise 725 feet southeast of the intersection of Lillian B Miller Parkway and S I-35 E.

#### **APPLICANT:**

Aaron Bennion of Denton Municipal Electric

#### **BACKGROUND:**

The Southridge Village Center is a single premise consisting of three (3) lots with approximately 760 feet of street frontage on S I-35E service road. Currently, there are three (3) existing on-premise, ground signs on the premise.

A single premise is defined by Chapter 33 as “the lot or contiguous area of real property which encompasses all the buildings, structures, appurtenances and land devoted to a common use, such as a shopping center or a business occupying and using multiple contiguous lots” for any developed property (33-2). The Southridge Village Center consists of three lots owned by different owners that share a parking lot in common use. Currently, there is one on-premise ground sign on each lot.

The existing signs are legally nonconforming because they were approved upon original installation, but no longer comply with the City’s current sign regulations. The oldest sign was approved in 2001, a sign refacing application was approved for a second sign in 2004, and a third sign was approved in 2012. 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. Therefore, the elements of nonconformity that were previously legal and could have stayed in perpetuity at the originally approved locations, are viewed as new signs due to the changing location and now necessitate a variance.

Per Chapter 33.14.2(d)(2), any premise may have one ground sign, and premises with more than five hundred (500) feet of street frontage on a freeway may have one (1) additional on-premise ground sign for each additional five hundred feet of frontage, or fraction thereof. The subject premise has approximately 760 feet of street frontage; and therefore, it is allowed two (2) on-premise ground signs according to the current regulations. An additional 241 feet or more of street frontage would be required to allow all three existing signs to be relocated per current regulations.

The signs are being relocated due to Texas Department of Transportation’s (TxDOT) widening of S I-35 E and the subsequent required relocation 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 time with TxDOT’s project schedule. DME is installing overhead power lines along the edge of the S I-35 E right-of-way that require a separation distance of 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 locations for the relocated signs that are acceptable to the owners 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.



Figure 1 – Highway frontage of Southridge Village shopping center with existing sign locations (blue dots), proposed sign locations (green dots), and highway frontage distance (yellow line) shown.

	<b>Current Regulations</b>	<b>Proposed</b>	<b>Difference</b>
<b>Number of On-Premises Ground Signs Permitted on the Premise</b>	1 sign permitted, plus one sign for each additional 500 feet of frontage or fraction thereof. 760 feet of frontage = <b>2 signs</b>	<b>3</b>	<b>+1</b>

## CONSIDERATIONS:

1. The applicant is proposing for the relocated signs to be in compliance with all the requirements of Chapter 33 outside of this variance request related to the number of on-premise signs.

The maximum height allowed for signs is 40 feet; since the sign details for the Planet Fitness sign (Exhibit 6) reflect the sign height at more than 40 feet it is important to clarify how this is allowed without an additional variance being required. The Code of Ordinances allows for the height to be measured from either the ground level, I-35 principal lane, or I-35 frontage road, whichever allows for the greater height. Two of the signs (Exhibit 5 and 7) are less than 40 feet tall when measured from the ground. The third sign is 40 feet tall when measured from the principal lane of I-35, which is 5 feet higher than the ground level of the third sign (Exhibit 6).

2. Section 33.6 of the Code of Ordinances states 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.*

TxDOT is requiring DME to 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 conditions on them. This process would have not required the signs 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 lot owners by requiring the removal of one their existing, legally nonconforming signs that under the normal process would not have needed to be removed.

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

The intent of the sign regulations in Chapter 33 of the Code of Ordinances is to balance several important and competing interests, including the constitutional right to free speech and the public interests in safety and esthetics, including controlling visual clutter. The variance would not increase visual clutter along S I-35 E, but rather maintain the interstate's aesthetics since the variance would allow for the existing signs to continue to exist, just in a slightly different location than they are today to not interfere with vital, city infrastructure. Unlike similar premises that are typically on one lot and would advertise multiple tenants on one sign, this premises is made of multiple lots with different property owners each with a sign to advertise their respective business. No new signs to what exist 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. The signs will have to be relocated regardless of the Board's decision. These actions by state and local governmental entities (not the property owner's actions) are requiring the existing signs to be relocated and thus creating the need for the variance request in order to allow all three signs to be reinstalled on their respective lots.

- 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 adjacent public infrastructure improvements and not solely for personal convenience, financial hardship, or reasons unrelated to the property. The applicant is requesting to place one additional sign on the premises than what is allowed by Chapter 33 to maintain the total number of signs that is on the premise today.

**RECOMMENDATION:**

Staff recommends approval of the request for a variance to install a third on-premises ground sign, because it meets all of the criteria for approval in Section 33.6 of the Code of Ordinances.