CITY OF WINCHESTER, VIRGINIA

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BOARD OF ZONING APPEALS
AGENDA
August 13, 2014 - 4:00 P.M.
Council Chambers - Rouss City Hall

1. **POINTS OF ORDER**

   A. Roll Call
   B. Election of Chairman & Vice Chairman
   B. Approval of Minutes – July 9, 2014
   C. Reading of Correspondence

2. **PUBLIC HEARINGS**

   BZA-14-452 Request of Titan Sign Corporation for a variance pertaining to signage in the B-2 (CE) District pursuant to Section 18-8-6.2 of the Winchester Zoning Ordinance, for the property located at 1041 Berryville Ave *(Map Number 196-08-E-3 - > <01)*, zoned Highway Commercial (B-2) District with Corridor Enhancement (CE) District overlay. The request involves alteration of an existing nonconforming freestanding sign.

3. **NEW BUSINESS**

4. **OLD BUSINESS**

5. **ADJOURN**

WINCHESTER BOARD OF ZONING APPEALS

REPORT AND RECOMMENDATION

ISSUE/BACKGROUND

Case:	BZA-14-452
Applicant:	Winchester East LC.
Location:	1041 Berryville Avenue
Zoning:	Highway Commercial (B-2) with Corridor Enhancement District Overlay
Future Land Use:	Commercial.
Legal Notice:	The request for variance was advertised in the *Winchester Star* on July 30, 2014 and August 6, 2014. The property was required to be posted with a public hearing sign and notices were mailed to property owners within 300' of the subject property.
Applicant's Request:	Request of Titan Sign Corporation for a variance pertaining to signage in the B-2 (CE) district pursuant to Section 18-8-6.2 of the Winchester Zoning Ordinance, for the property located at 1041 Berryville Ave (*Map Number 196-08-E-3*), zoned Highway Commercial (B-2) District with Corridor Enhancement District overlay. The request involves alteration of an existing nonconforming freestanding sign.

DISCUSSION/FINDINGS

The request before the Board of Zoning Appeals is for a variance to allow for the alteration of an existing freestanding sign at 1041 Berryville Avenue, currently occupied by TitleMax.

The subject property is located on the south side of Berryville Avenue and is located within the Highway Commercial (B-2) district with Corridor Enhancement district overlay and is improved with a commercial building and drive-through. The immediately surrounding properties on all sides are similarly zoned. Properties a little further to the southwest are zoned Medium Density Residential (MR) district.

Vicinity Zoning Map

This parcel has been subject of Board of Zoning Appeals review previously in 1984 and 1994. In 1984 C&S Bank requested a variance to allow for a freestanding sign which was not permitted by ordinance to be installed. The Board at the time approved for the freestanding sign and the sign was on the property until 1993 when it was torn down when the bank closed.

In 1994, the BZA approved a variance request for The Marathon Bank for a variance to approve a freestanding sign. The bank argued that a freestanding sign had previously been installed on the property and was only recently removed (in 1993). The Board was favorable to the applicant and granted an approval that was conditioned with the following: “It is approved for the proposed sign and for this use only.” The November 17, 1994 Board approval letter is attached to this packet for your reference.

In the zoning ordinance provisions in 1994, a freestanding sign would not ordinarily have been permitted for this parcel, due to its inclusion with the remainder of Eastgate Plaza as a commercial center. The commercial center at that time and currently to this day has a nearly 300 square foot freestanding sign several hundred feet to the east. At the time of this variance consideration the

property was permitted to have one 150-foot freestanding sign to advertise the various businesses in the center. However, the BZA approved a variance to allow for a separate and additional sign for the bank. Over the years the building was changed to different branches of banks, but it was not until this year that the property changed use and became a TitleMax. The TitleMax use is defined separately from a bank and is considered an alternative financial institution:

1-2-7.1 ALTERNATIVE FINANCIAL INSTITUTION: Any check cashing establishment, motor vehicle title lender, or payday lender, as defined in this Chapter.

1-2-67.1 MOTOR VEHICLE TITLE LENDER: Any establishment engaged in the business of lending money secured by a non-purchase interest in a motor vehicle, and registered with the State Corporation Commission pursuant Code of Virginia §6.2-2200 et. seq.

As a result of this change of use and the condition that was associated with the 1994 BZA approval, the sign may not be modified by-right. As a result the sign contractor, Titan Signs, has requested a variance to modify this previous BZA restriction to allow for the sign to be refaced for the Titlemax business.

Within the applicant's brief letter, a statement is made that "The subject property is NOT included within the commercial center of Eastgate Plaza." However, this determination of whether or not the building is part of the commercial center is consistent with Zoning Administrator interpretations for the last 20 years. As part of the correspondence with the bank in October 1994, the Zoning Administrator at the time articulated that the property was defined as a *Shopping Center* (this definition was ultimately changed to a commercial center in 1996). A copy of this letter is included in this packet.

A *Commercial Center* is defined as the following:

1-2-86.1 COMMERCIAL CENTER: A grouping of commercial enterprises offering a range of retail goods, services and offices with an aggregate of ten thousand square feet or more gross floor area which has two or more of the following characteristics: (a) is designed as a single commercial group, whether or not located on the same lot; (b) is under one common ownership or management, or has one common arrangement for the maintenance of the grounds; (c) is connected by party walls, partitions, covered canopies, or other structural members to form one continuous structure; (d) shares a

common parking area; (e) otherwise presents the appearance of one continuous commercial area.

This parcel and the remainder of Eastgate Plaza meet the definition of Commercial Center under four of the five criterions: A, B, D, E. Only two or more of the criterion must be met in order to fall in the *Commercial Center* designation. As a result of this designation, the Zoning Ordinance does not allow for an individual freestanding sign for this building.

The current Zoning Ordinance provisions for commercial centers provide for the following options:

18-8-6.2 Freestanding Signs. Freestanding signs permitted under this section shall be situated at least one hundred (100) feet apart from each other within the limits of the development. (11/12/96, Case TA-95-09, Ord. No. 030-96)

b. For commercial centers and buildings housing more than three (3) tenants, freestanding signage shall be permitted on the following basis. (12/8/87, Case TA-87-08, Ord. No. 043-87; 11/12/96, Case TA-95-09, Ord. No. 030-96)

1. One sign for every one thousand, two hundred (1200) linear feet of public street frontage. The first such sign shall not exceed one hundred fifty (150) square feet in area nor thirty (30) feet in height, and any additional such signs shall not each exceed seventy-five (75) square feet in area nor twenty-five (25) feet in height; OR,
2. One sign for each public street frontage. The first such sign shall not each exceed seventy five (75) square feet in area nor twenty-five (25) feet in height, and any additional such signs shall not each exceed fifty (50) square feet in area nor twenty (20) feet in height; OR,
3. One sign for each Main Building within the limits of the development. Such sign(s) shall not each exceed twenty- five (25) square feet in area nor six (6) feet in height. For Commercial Centers with at least five hundred (500) linear feet of public street frontage, one sign not exceeding fifty (50) square feet in area nor twenty-five (25) feet in height shall be permitted in addition to the low rise signage.

STAFF ANALYSIS & CONCLUSION

According to Section 20-2 of the Ordinance, the Board of Zoning Appeals is required to make three (3) specific findings in order to approve a variance request. These findings are based on evidence, testimony, and demonstration of certain criteria, which are further defined in Section 20-2-3.1 of the Ordinance.

Section 20-2-3.1: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of

the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

1. **That the strict application of this Ordinance would produce a clearly demonstrable hardship.**
2. **That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.**
3. **That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variances.**

In the applicant's letter, a hardship is claimed due to this parcel being its own separate parcel from the other parts of the Eastgate Plaza. However, as stated above within this staff report, this parcel is by definition part of the *Commercial* Center and therefore in my opinion their argument is moot. However, this is a unique situation due to the fact that when previous variances were granted, the authority and review criteria for BZA's were different than today and historically there was a freestanding sign on the property for the last 30 years, more or less.

As of the date of this staff report, I do not believe that a hardship has been articulated. If the Board were inclined to act favorably on this request, staff has included some possible conditions with a draft favorable motion below, including:

a. The freestanding sign may remain and be altered provided that the modified sign does not project any closer to the road than the existing sign pole base.

b. Should the freestanding sign be removed, any future signage must fully conform to the current Zoning Ordinance provisions of that time.

Note: Staff has received no letters of support or opposition to this application.

POSSIBLE MOTION(S)

2. **MOVE**, that the Board of Zoning Appeals **grant** a variance to Titan Sign Corporation for a variance pertaining to signage in the B-2 (CE) district pursuant to Section 18-8-6.2 of the Winchester Zoning Ordinance, for the property located at 1041 Berryville Ave (*Map Number 196-08-E-3*), zoned Highway Commercial (B-2) District with Corridor Enhancement District overlay, with the following conditions:

    a. The freestanding sign may remain and be altered provided that the modified sign does not project any closer to the road than the existing sign pole base.
    b. Should the freestanding sign be removed, any future signage must fully conform to the current Zoning Ordinance provisions of that time.

    This variance is approved because:

    a. The strict application of this Ordinance would produce a clearly demonstrable hardship.

    b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

    c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

3. **MOVE,** that the Board of Zoning Appeals **deny** a variance to Titan Sign Corporation for a variance pertaining to signage in the B-2 (CE) district pursuant to Section 18-8-6.2 of the Winchester Zoning Ordinance, for the property located at 1041 Berryville Ave (*Map Number*

196-08-E-3), zoned Highway Commercial (B-2) District with Corridor Enhancement District overlay, for the following reasons:

a. (List reasons for denial).

Aaron M. Grisdale, CZA
Director of Zoning and Inspections