

**WHITLEY COUNTY BOARD OF ZONING APPEALS  
STAFF REPORT**

**19-W-VAR-3      DEVELOPMENT STANDARDS VARIANCE**  
Miller's at Oak Pointe  
411 N. Wolf Road

**APRIL 23, 2019**  
**AGENDA ITEM:    3**

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**SUMMARY OF PROPOSAL**

Current zoning: IPM, Industrial Park/Manufacturing  
Property area: 16.2± acres

The petitioner is requesting a development standards variance to allow the installation of a tall freestanding electronic sign on their property located at 411 North Wolf Road.

The petitioner currently has a freestanding sign with non-functioning LED sign component. The sign was administratively permitted in 2015 in replacement of a taller non-electronic sign at the same location and two other signs elsewhere on the grounds. Approval of a sign package that was more compliant with the code requirements was deemed administratively approvable, although the 10.75' tall sign was still taller than the maximum permissible of 6'.

The request is to replace the existing broken single-color static LED sign of 21 sq. ft. with slightly larger full-color EMC sign of 28.8 sq. ft. The height and static portion of the sign would remain the same. Since the sign code does not address Electronic Message Centers, conversion of signs to EMCs or changes to them, such as the increase in sign face area proposed here, requires a variance to be considered. At the same time, a variance approval for the height of the sign would substantiate the administrative approval in 2015.

**REVIEW CRITERIA**

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

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

The height variance will not likely be injurious to the public health, safety, morals, or general welfare as it, and its predecessor, has been in place for years without notable impacts. Further, if the sign were simply mounted on a pole rather than ground-mounted, it would automatically enjoy a much higher permissible height.

If the electronic part of the sign is regulated to minimize flashing/motion and glare that could cause unusual distraction or harmful brightness, then it too is unlikely to impact the public health, safety, or morals. The granting of a variance for an electronic sign may affect the general welfare, as it could be viewed as a precedent for construction of more electronic signs. If granted, well-defined conditions should be included that reflect the circumstances of the site and the use so that any other requests may be held to similar standards dependent on their particular sites.

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

It is not expected that this variance will adversely affect the use and value of the area adjacent to the property as this sign has effectively in place for four years without significant impacts. The proposed addition of 7.8 sq. ft. of sign face area per side would not be likely to affect the area in any substantially adverse manner.

3. **The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.**

The strict application of the Ordinance terms could result in practical difficulties since the sign structure was already permitted in 2015, and application of the height requirement would result in the removal of much of the sign.

Electronic message centers are becoming more commonplace throughout the country and region, and regulations have been adopted in many communities that effectively mitigate the adverse effects that the digital signs have. If the proposed sign is reasonably regulated to mitigate those effect, the strict application of the code would likely cause practical difficulties.

#### **SUGGESTED CONDITIONS**

If the Board moves to grant the variances, the following are suggested conditions of the approval:

1. The sign shall not appear to flash, undulate, pulse, or portray explosions, fireworks, flashes of light or blinking or chasing lights.
2. Electronic messages may not change more rapidly than once every one and one-half (1.5) seconds.
3. Electronic messages may not require more than ten (10) seconds to display in its entirety.

Date report prepared: April 12, 2019

#### **BOARD OF ZONING APPEALS ACTION**

Motion:

By:

Second by:

<b><i>Vote:</i></b>	<b>Deckard</b>	<b>Denihan</b>	<b>Lopez</b>	<b>Wilkinson</b>	<b>Wright</b>
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					