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**Board of Adjustment  
April 9, 2024  
Staff Report**

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**Application Summary –**

An appeal of Phebe LaMar (attorney), on behalf of MFL Golf, LLC (owner) and Midway Golf and Games, LLC (tenant), seeking approval of a variance to allow the installation of a 80 sq. ft. digital sign on property addressed as 5500 W. Van Horn Tavern Road which is not permitted per Section 29-4.8(c)(12) of the Unified Development Code.

**Site Characteristics**

The subject site is located at the terminus of W. Van Horn Tavern Road approximately 1,800 feet east of its intersection with N. Highway UU and south of Interstate 70 (I-70). The subject site is the location of Midway Golf and Games which is located within the city's corporate limits and is zoned O (Open Space) and M-N (Mixed-use Neighborhood) and contains approximately 107-acres. The principal activities on the site are outdoor entertainment, golf, and a restaurant. The future extension of I-70 Drive Southwest/Van Horn Tavern Road traverse the property along the site's northern boundary.

The subject site has approximately 2,700-feet of roadway frontage along I-70 and is located, on average, 10-feet below the grade of the Interstate. Presently there are no on-site freestanding signs identifying the commercial use on the property along the interstate frontage or along Van Horn Tavern Drive. On-site freestanding signage for the property is governed by the provisions of sec. 29-4.8(f)(1), Table 4.8-8 of the Unified development Code (UDC).

On-site freestanding signage along the site's I-70 frontage may include a sign that contains between 128 sq. ft. to 288 sq. ft. of advertising area and a height of 30-feet to 45-feet. Signage located along the site's W. Van Horn Tavern Road would be restricted to 64 sq. ft. of sign area and a height of 12-feet. Neither sign would be permitted to be animated or digital in nature per sec. 29-4.8(c)(8) & (12) of the UDC.

**Relief Sought and Purpose**

The applicant is seeking approval to permit the installation of a 30-foot tall, 80 sq. ft. 10 mm double-sided Next LED electronic message center (EMC) in one of two possible locations along subject site's I-70 frontage. The proposed sign locations are approximately 110-120-feet south of the site's property line with the I-70 and would be located outside the right-of-way boundary for the future extension of I-70 Drive Southwest/Van Horn Tavern Road. The proposed sign is depicted on the attached Site Plan and Elevations.

An EMC is a sign type capable of displaying digital as well as animated messages to viewers. Pursuant to the definitions within the UDC, an EMC is considered both an animated and digital sign. Such sign types are expressly prohibited per Section 29-4.8(c) items (8) and (12) of the UDC.

According to the variance application and applicant's correspondence, dated February 26, 2024, the requested variance is sought "given the property is on the edge of Columbia, fronting on I-70 and as such, it is an unnecessary hardship to preclude a digital sign in this location". The applicant further provides a response to each variance criteria articulated in sec. 29-6.4(d)(2) noting that there is a digital sign nearby (albeit within Boone County), the business is setback from the interstate unlike other nearby businesses, the site is not located near any residential property, and that the hardship sought to

be resolved was not created by the applicant. The applicant goes on to further state that approval of the variance would not permit a use not otherwise allowed on the property, would not be inconsistent with the Comprehensive Plan, is the least change to address the hardship, would not create harm to the public health, safety, or welfare or be injurious to other properties, and does not change either the maximum height or area of the allowed signage on the site.

The requested variance is specific to the prohibition on the type of sign desired. If approved, this sign would represent the second EMC within the City's corporate limits. The existing EMC is located at the northern end-zone of Faurot Field on property owned by the University of Missouri. The City's regulations as well as the Missouri Department of Transportation rules on signage are unenforceable on property controlled by the University given its exempt statutory status.

## **Variance Analysis –**

### **Summary and Impacts –**

The applicant is seeking a variance from the following regulatory requirements of the Unified Development Code:

### **Prohibited Signs - Section 29-4.8(c), items (8) and (12)**

The applicant is seeking approval to install an 80 sq. ft. 10 mm double-sized Next LED electronic message center (EMC) also known as a "digital sign" which is capable of being animated. Other than the information provided within the applicant's correspondence, dated February 26, 2024, and the graphic depiction of the proposed sign and its possible locations, no additional information has been provided that would offer any sign-specific operational characteristics. An EMC is a sign capable of displaying digital messages as well as animation. Such signage can be controlled to minimize possible distraction to the viewing public by limiting its copy change speed as well as its light emitting intensity. Given the submitted application does not contain any information related to such efforts, it is unclear if such controls have or were considered at the time this application was made.

The City of Columbia has previously considered the legality of digital and animated signs within its corporate limits. Based on review of the legislative record pertaining to Sign Regulations it would appear that in 1985 there was an amendment that authorized display signs to include **electronically operated changing alpha-numeric messages** subject to size restrictions; however, expressly prohibited that such signs have any motion or action or any flashing or color changes. Furthermore, in 1985, animated signs were expressly prohibited within the City's corporate limits.

In 1991, Ordinance 013191 was adopted which amended the definition of display sign and expanded the prohibition on certain sign types within the City. The revision to the definition of "display sign" removed the sign area restrictions and prohibition on motion or action or any flashing or color changes. However, the provisions pertaining to prohibited signs was expanded to include display signs which contained or included **electronically operated changing alpha-numeric messages**.

Since 1991, the Signage Regulations have been further modified. These changes; however, did not relax the prohibition on "animated" or "digital" signs within the City's corporate limits. In 2013, a substantive change in the signage regulations occurred following the adoption of Ordinance 021746. This ordinance modified the then existing definitions for "animated, sign", "display, sign", and "sign" as well as established a new definition for "digital, sign". As part of the revised definitions for "display, sign" and "sign" the previous exception for "animated" signage within a display case or window behind glass and not projecting more than 6-inches from the outside surface of a building were changed such that new signs of this type would be prohibited. This amendment was in response to signage installed

inside a display case within a newly constructed building at the southwest corner of Stadium Boulevard and West Broadway.

Based on staff's evaluation of the past legislative actions pertaining to "animated" and "digital" signs, such as that proposed by the applicant, it would appear City Council has adopted regulations that clearly indicate a disinterest in allowing the introduction of such signage within the City. It should be noted; however, the previous sign regulations did and the current Unified Development Code does permit several types of signs that would be considered by definition to be either "animated" or "digital". Signage such as time and temperature and electronically operated changing numeric message signs (i.e. gas station price signs or Lottery signs) are expressly exempted as being either an "animated" or "digital" sign.

The principal difference between the signage allowed and that proposed by the applicant has to deal with how perceptible the change in the displayed message is and the visual images that may accompany that text. Currently allowed "animated" or "digital" signage has no changeable images and with the exception of a time and temperature displays the changing of the text message is virtually unseen or changed so infrequently as to be perceived as being unseen.

The signage proposed by the applicant has the potential for both text and images being changed at a rate and in a manner significantly more perceptible. The applicant has not offered any proposed limitations on the frequency of possible changes in text or images on the proposed sign. Given signage content is not something that the City can legally regulate, we must be cautious on what type and in what manner we allow on-site advertising to occur such that it's at a scale and type matching community expectations and values. It should be noted, that staff is aware of many complaints relating to the signage associated with the EMC at Faurot Field and that at the southwest corner of Broadway and Stadium.

While perceptibility of potential animated text messages and images from the proposed EMC is of concern, so too is the emission of light from the sign itself. While this location is along the interstate within a generally sparsely populated area of the City such a sign would likely increase illumination levels along this section of the interstate unnecessarily. And while it is likely that the proposed EMC will be equipped with photo-cell technology that will dim the sign such that its illumination is minimally greater than that of the surrounding "night" environment no evidence has been submitted to support this assumption. While the EMC may capable of being dimmed to reduce its "glow", the fact that it will have such an impact upon the surrounding environment further accentuates the differences between this type of sign versus other "animated" or "digital" signs that are permitted. Again, staff is aware of the significant complaints regarding this "glow" effect from the EMC that is located at Faurot Field.

Staff fully acknowledges that technological advancements in EMC signage have occurred since 1991; however, have not been given direction to engage in a study proposing that such signage be permitted within the community. Without such direction or dialogue and given the present prohibition on such signage, approval of the applicant's request irrespective of any proposed limitations is seen as inconsistent with existing and former regulatory policy.

However, should the Board following testimony, find that compelling facts have been presented and approval of the proposed EMC is appropriate, such approval shall be subject to the rules of Title 7 CSR 10-6.040(4)(A-H) of the Rules of Missouri Department of Transportation with respect to outdoor advertising (excerpt attached). These rules pertain to MoDOT accepted standards with respect to EMCs located on zoned and un-zoned properties adjacent to its managed roadways. Such standards, given the absence of any offered by the applicant, are the minimum believed necessary to ensure public safety and welfare are maintained.

Compliance with Variance Criteria -

Staff has reviewed the “General Criteria” for the approval of a variance as articulated in Section 29-6.4(d)(3)(i)(A-E) and 29-6.4(d)(3)(ii) of the UDC. In relation to these criteria, staff finds that:

- A. The requested variance has not been filed to address a particular hardship associated with the property, but rather to seek approval to be authorized to install a type of sign expressly prohibited by the signage standards of the Unified Development Code. The only other EMC that exists within the city similar to that proposed is located on land owned by the University of Missouri which is exempt from the city regulations. No other property within the city’s corporate limits has been issued a permit for an EMC. Other types of digital signs with moving messages, aside from a time and temperature displays, were prohibited as of 2013.

While the subject site is located in a more rural portion of the community on its western boundary and near (within a ¼ mile) of a similar sign the subject parcel is not significant dissimilar from others having frontage along the interstate. The nearby EMC is located within Boone County and is not subject to the city’s regulations. And while the structural improvements located on the subject site are set further away from the interstate right of way than similar parcels, the site’s expansive frontage and allowance for other legally permissible signage offer alternatives to address the need for business identification.

The prohibition on the installation of animated or EMC signs were not created by actions of the applicant; however, were implemented by the City Council as part of its legislative authority following properly advertised public hearings. The prohibitive actions of Council were taken over a series of amendments to the sign regulation, the most recent being in 2013.

- B. Signage is considered a customary accessory feature to any permitted use within city subject to the standards of Section 29-4.8 of the UDC. The subject property is located within the O (Open space) and M-N (Mixed-use Neighborhood) zoning classifications and its present improvements (outdoor recreation and restaurant) are permitted uses. Non-animated and non-digital signs, with the exception of an electronically operated changing numeric message sign, would be permitted. The sign proposed is considered to be both an animated and digital sign by the definitions of Section 29-1.11(a) of the UDC and are expressly prohibited as an accessory feature to any uses within any zoning district of the City per Section 29-4.8 of the UDC.
- C. The Comprehensive Plan does not specifically address the issue of signage; however, it does address the issue of creating “Livable and Sustainable Neighborhoods” as well as identifies “nodes” of appropriate development. The subject site is located within both an “Open Space/Greenbelt District” (approx. 101-acres) and a “Commercial District” (approx. 6-acres) which support the mix of uses on the site. The “Commercial” designation is internal to the overall acreage and is the location of the restaurant, TopGolf facilities, and general administrative functions of Midway Golf and Games. Signage allowed within such districts is governed by a parcel’s zoning classification, type of street frontage, and the wall area facing public streets as well as other sign area and dimensional standards of the sign code. The city’s signage standards have existed since the early 1960’s and have undergone several modifications responsive to changing preferences for business identification and community values.

Animated signs have historically been excluded as permissible signage and digital sign were added to the list of prohibited signs in 1991. In 2013, the City Council further restricted digital signs behind glass from being permitted in response to concerns about the impact that such signs create on the built environment and potential safety hazards. These revisions occurred within the same year that

the Comprehensive Plan was adopted. While not directly correlated, the change in code does appear to speak to the issue of creating more livable environments not impacted by animated or moving signage.

- D. Approval of the proposed variance would be the least change necessary to accommodate the desired signage and is permissible, provided the applicant's testimony is compelling, pursuant to Section 29-6.4(d)(3)(ii) of the UDC. It should be noted; however, the current prohibitions on animated and digital signage were established by City Council through their legislative authority. Typically, the process of modifying legislatively created provisions where no hardship has been proven is to seek a formal text change through a public process. This process often allows for idea exchange between impacted parties, results in more holistic decisions, and establishes more defensible standards that can withstand potential claims that decisions were made arbitrarily.

If the Board is compelled to approve the variance sought, such approval should be conditioned upon the EMC meeting the minimum standards established in Title 7 CSR 10-6.040(4)(A-H) of the Rules of Missouri Department of Transportation with respect to outdoor advertising. These rules address aspects of EMC operation and were developed to ensure public safety and welfare are maintained if EMC installation is to be permitted along MoDOT maintained facilities.

- E. While all types of signage have the potential for creating impacts to the public health, welfare and safety of its citizens, it is staff's concern, that approving an EMC at this location would encourage others to seek similar approvals along the interstate frontage passing through the city. With the exception of the Lottery Sign, east of Stadium Boulevard, and approximately 6 digital price boards for gas stations viable from the 10-miles of interstate centerline passing through the city there are no other "legally" permitted digital sign. The impact of a digital sign being lit 24/7, 365 days a year with messages changing potentially every 10 seconds (8640 times daily) there is significant potential to impact the built environment. While the sign's location would be in a remotely populated portion of the community, the lack of population and other development is not guaranteed long-term. The signage standards as adopted in 1991 and further modified in 2013 clearly express a disinterest in digital and animated on-premise signage.

No assurances have been provided by the applicant as to what type of messaging, animation, or other measures will be taken to restrict and mitigate the potential impact of the proposed EMC. While staff can appreciate the applicant's objective with this application, increase its business presence to potential customers, it appears that the choice to pursue approval of this clearly prohibited signage is more out of convenience and added value than a true hardship. A fixed advertising sign that could be more than 3 times the size of that proposed is likely not as valuable as a smaller sign that has the ability to project multiple messages and draw greater attention. If approved, Midway Golf and Games would be the only facility/business with an EMC within Columbia. The EMC in use at Faurot Field, as noted, is not capable of being regulated by the City or by MoDOT.

### **Recommendation Action –**

Staff can appreciate the applicant's desire to have signage that can enhance their market presence; however, the City has had a long-standing regulatory practice of prohibiting animated and digital signs regardless of the business or organization. Such prohibition serves a greater public purpose and ensures the traveling public is not put at greater risk by distractions, intentional or not, emanating from such displays. And, while the subject site is located in a sparsely populated and developed portion of the City that is not justification in itself that the present regulatory prohibition on such signs creates a hardship. The mere fact that other options exist to address the applicant's business identification needs

offers solutions to what is not presently on-site while at the same time ensuring the integrity of the current regulatory standards are upheld.

While staff is not supportive of granting the variance, should the Board find that compelling evidence has been presented and approval is desired, such approval should be subject to the EMC meeting the minimum standards established in Title 7 CSR 10-6.040(4)(A-H) of the Rules of Missouri Department of Transportation with respect to outdoor advertising.