



July 12, 2022

To: City of Bloomington City Council  
City of Bloomington Planning Commission  
City of Bloomington Staff

Re: Sign Variance Request: 7800 Picture Drive, Bloomington Minnesota

On behalf of Schmitt HQ 125, LLC ("Schmitt"), I am respectfully submitting these variance requests relating to the existing sign at 7800 Picture Drive in Bloomington ("Property"). Specifically, Schmitt is seeking the following variances:

1. Increasing the height of the existing sign to 24 feet. The sign height is actually 23'9", but Schmitt is hoping to leave itself with a few inches of flexibility because of slight variations during construction.
2. Decreasing the setback from the east property line to 10'0".
3. Decreasing the setback from the south property line to 14'0".<sup>1</sup>

Schmitt is a 125-year-old Minnesota based company that is in the process of moving its headquarters to the Property – the former Lifetouch location. The planned grand opening is this summer. The property has an existing sign along 494 depicted below:

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<sup>1</sup> Again, Schmitt is requesting a few inches more than the existing setbacks simply due to variations in measurements. It does *not* plan to move the sign.

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The sign currently measures 23'9" and is approximately 10'6" and 14'3" from the east and south property lines. The sign is a legal non-conforming use and under Minn. Stat. Sec. 462.357 1.e and may therefore be "replaced."

Schmitt's plan for its headquarters includes updating the sign with a new cabinet, but keeping the same location and height as the existing sign. More specifically, Schmitt is updating the cabinet so it can accommodate the updated messaging options with more modern technology. Also, the new sign will be more energy efficient. The *current* sign is lit with floods, and the *new* sign will be converted to more energy efficient backlit with LED lights.

We do not have sufficient background to explain why the sign appears to exceed the *current* height limitation of 20 feet. Schmitt presumes that the sign was conforming to the applicable codes at the time it was constructed. Historic pictures appear to show a sign in that location, but we are unable to verify height from the information that is publicly available. The same is true for the existing setbacks. However, we believe that the setback distance from 494 is the result of MnDOT's acquisition of a portion of the property for highway purposes. Again, Schmitt did not own the property at the time of the MnDOT project. To the best of our knowledge the sign is a legal non-conforming use. The City's Zoning letter (attached hereto as Exhibit B) includes



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alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

These factors are all discussed in the context of the City's requirements. Many of these responses refer back to an August 12, 2021, Zoning letter ("Zoning Letter") for the Property that is attached hereto as Exhibit B. The factors in Section 2.85.04 of the City Code are below along with a discussion of each one.

- (1) Zoning variances may only be approved when:
  - (A) The variance is in harmony with the general purposes and intent of the ordinance.

The Property is zoned CO-1(PD), Commercial Office (Planned Development). The following is incorporated from the Zoning Letter. A sign in this zoning district is in conformance with the district and the existing sign will not be moved or enlarged. According to the City from the Zoning Letter:

Schmitt intends to renovate and use the Property for its headquarters office space, retail and storage/warehousing related to its operations. The Property is zoned CO-1. Office uses are permitted in a CO-1 district in the City. The retail component is a permitted provisional use as an "arts" use in the CO-1 district because it is primarily devoted to the permitted principal use (office) and has a common in-door access to the permitted office use. Schmitt has advised the City that both the office use and the provisional retail use will have storage, warehousing and repairs related to the sale and servicing of musical instruments. Storage, warehousing and repairs is a permitted use to the extent to which it is customarily incidental to the office and retail operations.

Schmitt has communicated that Shutterfly and Lifetouch have continuously used the building for the storage and warehousing of equipment even after its day to day operations at the Property were discontinued and has submitted photos as evidence (Exhibit B). Storage and warehousing was a legal nonconforming use of the Property by Shutterfly/Lifetouch. City Codes and State law allow the continuation of legally nonconforming uses provided the use does not lapse for a period of one year or greater. Planning staff is not aware of information contradicting the continuous use of the building for storage and warehousing. To the extent the uses are not otherwise permitted, Schmitt is entitled to continue any pre-existing legal non-conforming use that has not ceased for a period of one year or more.

- (B) The variance is consistent with the Comprehensive Plan.

The property is guided Office (see Zoning Letter). Signs are consistent with an Office use.

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- (C) The applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. Economic considerations alone do not constitute practical difficulties.

According to Minnesota Statutes 462.357: "Practical difficulties," means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance. Schmitt proposes to use the property in a reasonable manner – for its corporate headquarters. Regarding the sign, the size and dimensions are the same as the existing sign **but** the technology is more energy efficient LED lighting with new modern technology.

- (D) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

Schmitt proposes to use the sign in essentially the same manner as it has been used for approximately 50 years. The size and dimensions of the “box” are not changing. The sign is along a major interstate highway and will not have any additional impact on any surrounding residential uses and is entirely consistent with other commercial uses along the freeway.

- (E) The plight of the landowner is due to circumstances unique to the property not created by the landowner.

Schmitt acquired the Property almost a year ago. Schmitt did not establish the existing location of the sign. It appears that the setback distances may be the result (at least in part) of MnDOT’s expansion of the highway. Based on the Zoning Letter, the sign was permitted in approximately 1968. Schmitt presumes that the sign was in conformance with the City Code at that time. This situation is unique because the sign is pre-existing, the zoning issues are a function in part of a highway expansion and the height was presumably permitted at the time the sign was constructed. While economic considerations *alone* cannot be a basis for a variance, it is worth pointing out that the cost to move the sign and relocate it will cost more than \$80,000.00. This is an excessive cost given the limited variances requested and the multi-million dollar investment that Schmitt is bringing to the community.

- (F) The variance if granted will not alter the essential character of the locality.

See responses above. The uses proposed by Schmitt for the Property are consistent with the City’s code.

- (2) Sign size variances may only be approved when:

- (A) The sign will have an appearance which will not adversely affect or detract from neighboring property.

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According to the City's Zoning Letter (Exhibit B):

The adjoining property use, zoning and Comprehensive Plan designations are:

<b>Direction</b>	<b>Use</b>	<b>Zoning</b>	<b>Comprehensive Plan</b>
North	Office and Parking	CS-1	Office
South	Apartments and open space	RM-50(PD) and SC	High Density Residential
East	Hotel	CS-1	Community Commercial
West	Office	CO-1	Office

The property adjacent to the sign in question is an existing interstate highway. The size and location of the existing sign are not changing, and the new sign will not detract from any existing neighborhood. The property to the east (the Sheraton) is zoned Office and is used for Office (see Zoning Letter) and appears to have a sign that is taller than the existing and proposed Schmitt sign. The property to the west is an office building. The property to the south is zoned RM-50(PD) and SC and is high density residential. The sign appears to be nearly 400 feet from the front of the residential building and again, the size and dimension of the sign is not changing. The sign will not be visible to the property to the North because of the existing building. The entire side of the freeway where the sign is located is subject to high voltage transmission towers that are significantly taller than the existing sign.

- (B) The sign will be of such size that it will not deter or affect the motoring public on roads or highways adjacent to the placement of the sign.

The sign will be the same size as the existing sign but has modern technology.

- (C) That, because of the topographic and physical conditions of the land, structures, or surrounding built-up area, strict enforcement of Chapter 19 or 21 of this code would deprive the applicant of the reasonable use of a sign for the purpose of identifying his or her business to the public.

The built-up area already includes the existing building and the existing sign. The use of an already pre-existing sign for a more modern sign is a reasonable use.

- (3) Sign placement variances may only be approved when:

- (A) The placement of the sign will not be at a location which will have an adverse effect in appearance, height or location on neighboring properties.

See response to (2)(A) above.

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- (B) The placement of the sign will not be at a location which will adversely affect, deter or detract the motoring public on adjacent streets or highways.

See response to (2)(B) above. The new sign itself will no be larger than the existing sign. The “box” is the same size and Schmitt believes that there will be no distraction or effect on the motoring public.

- (C) Strict compliance with the provision of Chapter 19 or 21 of this code relating to the placement of signs would deprive the applicant of the reasonable use of the sign for such land or building.

See response to (1) (D) above.

- (D) That, because of the topographic or physical conditions relating to the land, structure, or surrounding built-up areas, strict enforcement of the placement of a sign under Chapter 19 or 21 of this code would result in depriving the applicant of a reasonable placement of the sign on the land or building consistent with the purpose of the sign.

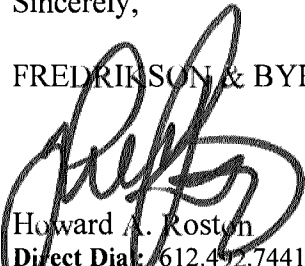
See response to (2) (C) above.

Schmitt respectfully requests that the City both recognize that Schmitt enjoys a legal non-conforming right to implement the sign modifications identified on Exhibit A and grant the variances requested above. Ultimately, Schmitt has more than demonstrated the practical difficulties associated with the existing height and location of the sign and the reasonable request for the variances.

We would be happy to answer any questions.

Sincerely,

FREDRIKSON & BYRON, P.A.



Howard A. Roston  
Direct Dial: 612.492.7441  
Email: hroston@fredlaw.com

Encls.

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**Exhibit A**  
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