

## GENERAL INFORMATION

Applicant:	Schmitt Music (owner)
Location:	7800 Picture Drive
Request:	Variances to: <ol style="list-style-type: none"><li>1) Reduce the setback from 20 feet to 14 feet along I-494 and from 20 feet to 10 feet along Picture Drive for an existing monument sign to be converted to an electronic graphic display sign; and</li><li>2) Increase the sign height from 20 feet to 24 feet for an existing monument sign to be converted to an electronic graphic display sign.</li></ol>
Existing Land Use and Zoning:	Retail, warehousing, and office building (under construction); zoned CO-1(PD)
Surrounding Land Use and Zoning:	North – Hospitality and office; zoned CS-1 South – Interstate 494 East – Hospitality; zoned CS-1 West – Office; zoned CO-1
Comprehensive Plan Designation:	Office

## HISTORY

Planning Manager Action:	03/08/2022 – Approved minor revisions to final development plans for the Schmitt Music company headquarters renovation at 7800 Picture Drive (Case PL2022-33).
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## CHRONOLOGY

Planning Commission	08/18/2022	Recommended the City Council approve the setback variances and deny the height variance to convert an existing monument sign to an electronic graphic display sign.
City Council	08/29/2022	Hearings, Resolutions, and Ordinances agenda item

## DEADLINE FOR AGENCY ACTION

Application Date:	07/12/2022
60 Days:	09/10/2022
120 Days:	11/09/2022
<b>Applicable Deadline:</b>	<b>09/10/2022</b>
Newspaper Notification:	Confirmed – (08/04/22 Sun Current – 10-day notice)
Direct Mail Notification:	Confirmed – (200 buffer – 10-day notice)

## STAFF CONTACT

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## PROPOSAL

Schmitt Music acquired the former Lifetouch facility at 7800 Picture Drive. In March, the applicant received approval for an interior and exterior remodeling project to convert the vacant Lifetouch building into their company headquarters. In addition to Schmitt Music's office, there will be retail and warehousing components.

The applicant proposes three variances from City Code to allow an existing sign at 7800 Picture Drive to be converted to an electronic graphic display sign. Two variances relate to sign setback requirements along Picture Drive and Interstate 494. The third variance relates to the sign's overall height. The sign is legally non-conforming today. Due to staff's ability to make the required variance findings for sign placement, staff recommends approving the variances for sign setbacks. However, being unable to make the required findings for the sign height, staff recommends denying the height variance.

## ANALYSIS

The existing sign was Code compliant when installed in conjunction with the original structure in 1968. At that time, City Code Section 10.03(E) allowed freestanding signs up to 40 feet above grade. The City Code was amended on August 19, 1996, to reduce the maximum height of signs in this Sign District to 20 feet (Ordinance 1996-40). With the Minnesota Department of Transportation (MnDOT) acquiring right-of-way for Interstate 494 in 1971, the sign became substantially closer to the property lines resulting in non-compliance with setback requirements. The applicant requests a variance to allow the sign to be modified within the size and setback originally approved.

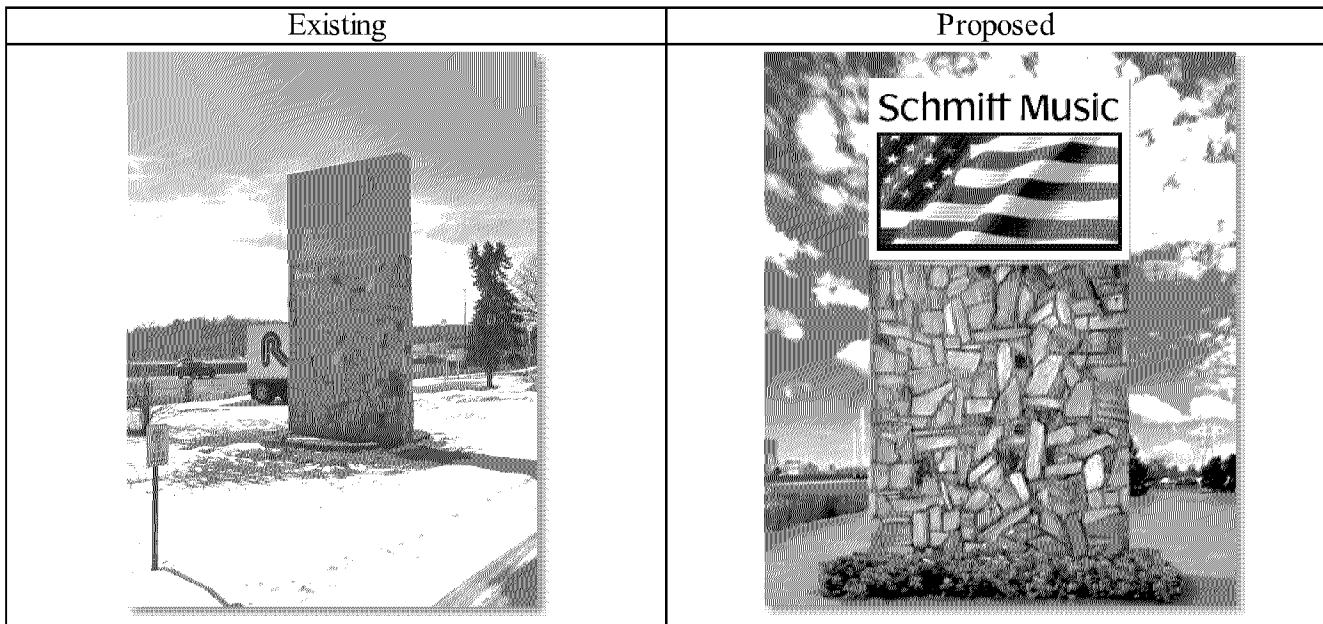
Determining City Code compliance for signs is a technical exercise. Determining compliance is more challenging when an applicant wants to convert an existing sign from a traditional monument sign to an electronic graphic sign. The conversion to an electronic sign triggers compliance with City Code – a sign “face change” with equivalent materials would only require a routine sign permit and no variances.

The existing monument sign, as seen in Image 1 below, is “legally non-conforming.” When the Minnesota Department of Transportation (MnDOT) acquired the right-of-way for Interstate 494, the sign became substantially closer to the property lines. At the time of land acquisition, a variance should have been processed to eliminate the non-conformity. That was not common practice at that time. The setback issue is not the result of the owner’s actions and staff supports the setback variance request. It has been the City’s common practice to support variances that are needed because of right-of-way acquisition and is supported by the Findings of Fact.

The sign does not meet the following sign standards:

	Code Requirement	Proposed
<b>Minimum Sign Setback – East</b>	20 feet	10 feet
<b>Minimum Sign Setback – South</b>	20 feet	14 feet
<b>Maximum Sign Height</b>	20 feet	24 feet

**Image 1:** Existing and Proposed Monument Sign



Regarding the sign change, sign *maintenance* is permitted on legally non-conforming signs. The City Code is clear that converting a sign to an electronic graphic display, however, is not sign

maintenance. Below is the City Code Section (19.108(f)) that details what is and is not considered maintenance.

(f) *Maintenance of signs.*

- (1) *Maintenance required.* All signs and sign structures shall be kept in good repair and in a proper state of maintenance.
- (2) *Activities considered to be maintenance.* Maintenance shall include activities such as replacing lamps, replacing ballast in freestanding signs, replacing transformers in building identification signs, painting the pole of freestanding signs and the cabinet of freestanding or building identification signs, replacing or repairing the sign face, including H-bars and retainers behind the face, replacing trim and replacement of sign fasteners, nuts and washers. A maintained sign structure shall have a sign face.
- (3) *Items not considered maintenance.* The following items are not considered maintenance and shall require that the sign be brought into conformance with all requirements with this Article X.
  - (A) Said maintenance shall not include any changes made to the size, height, light intensity or bulk of the sign or the temporary or permanent removal of the sign for the repair or replacement of the cabinet or any part thereof, not including the face.
  - (B) Said maintenance shall not include changes in poles, structural supports, bases or shrouds, footings or anchor bolts, moving the sign for any reason, change or replacement of the interior and/or exterior cabinet frame (excluding trim) and removal of any part of the signs for maintenance except the sign face. For building signs, maintenance shall not include change in the size of channel letters or any change or replacement of returns or housing except for the sign face and trim. For single face cabinet signs, maintenance shall not include changes or replacement of the interior and/or exterior cabinets nor the cabinet support structures.

An electronic display sign is permitted at the Schmitt Music property, but it must comply with all City Code requirements. Staff is unaware if the bulk (thickness) of the proposed sign is greater than the existing sign. Electronic signs are often, but not always, thicker than traditional signs. However, the light intensity would increase – electronic graphic display signs have greater lighting intensity than traditional illuminated signs. So much so that the City Code has a higher sign brightness allowance for electronic display signs. Brightness is measured in NITS, or candelas per square meter. For the Schmitt Music site, a traditional illuminated freestanding sign is limited to 300 nits, whereas an electronic graphic sign is limited to 500 nits.

Staff agrees with the applicant that it is not an unreasonable request to replace the existing sign with an electronic sign. That said, staff does not believe the sign height variance meets the required

Findings of Fact. There are two primary areas where the proposed variance is inconsistent with the Findings of Fact:

1. Code complying alternatives. Staff does not believe the practical difficulties test has been met. There are several alternatives the applicant could implement without the need for a variance:
  - a. Sign face change – Schmitt Music could install a new sign face within the existing sign cabinet.
  - b. Upgrade to LED lighting – the applicant’s project description describes the need to install modern equipment and technology for energy efficiency purposes. Modern illumination may be implemented without the need for a variance. Lighting, both inter and exterior, is routinely upgraded to current technology. City Code does not preclude the applicant from increasing the energy efficiency of the illuminated sign by upgrading to LED technology. Presumably, an electronic graphic display sign consumes more energy than a static, illuminated sign.
  - c. Reduce sign height – should the setback variance be approved, the applicant could remove the 3’9” from the overall height of the sign to be within the 20-foot maximum.
  - d. Construct a new sign – the Schmitt music site has 545 feet of Interstate 494 frontage. This provides ample opportunities to construct a highly visible, Code-complying sign along that frontage.
2. Reasonable use of the property. Denying the ability to convert the sign to an electronic graphic display sign does not deprive the applicant of the reasonable use of a sign to identify Schmitt Music to the public. Sign visibility at the site is excellent. The site’s grade is relatively flat with a slight increase in elevation from the highway to the building. Relative to Interstate 494, the sign’s elevation is slightly higher. The sign is visible from both east and westbound traffic. A height variance is not necessary to identify the site as Schmitt Music.

Ultimately, should the City Council conclude that a 24-foot-tall sign is appropriate, staff would recommend that the City Code be amended so that there is uniform treatment of similar properties with respect to sign height. The Planning Commission concluded the proposed height variance did not meet the required findings to recommend approval. That said, the Commission generally agreed that this type of conversion for an existing legally non-conforming sign should be permitted by City Code. City staff is actively working on a Sign Code rewrite to simplify and modernize signage standards.

**FINDINGS**

**Required Variance Findings for *Sign Placement (Setbacks)* – Section 2.85.04(g)(1)(A-F)**

Zoning variances may only be approved when:

Required Finding	Finding Outcome/Discussion
(A) ... The variance is in harmony	<b>Finding Made</b> – the setback standards intent is to ensure

with the general purposes and intent of the ordinance.	appropriate separation between property boundaries and physical or visual encumbrances. The existing setback is in harmony with the purpose of the City Code.
(B) ... The variance is consistent with the Comprehensive Plan.	<b>Finding Made</b> – the variance is not in conflict with the Comprehensive Plan. Commercial uses typically have freestanding signage to improve visibility.
(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	<b>Finding Made</b> – the practical difficulty was created when the right-of-way was acquired by MnDOT for Interstate 494 thereby reducing the distance between the sign and property boundaries and making the sign legally non-conforming.
(D) ... The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.	<b>Finding Made</b> – the existing sign has not been relocated since it was originally constructed. What was once a compliant sign was made non-compliant with right-of-way acquisition.
(E) ... The plight of the landowner is due to circumstances unique to the property not created by the landowner.	<b>Finding Made</b> – the non-conformity was not created by the landowner. Right-of-way acquisition after a site is developed is a unique circumstance that supports the approval of the setback variances.
(F) ... The variance if granted will not alter the essential character of the locality.	<b>Finding Made</b> – the sign is not proposed to be relocated. The essential character would remain the same.

**Required Variance Findings for Sign Placement (Setbacks) – Section 2.85.04(g)(3)(A-D)**

Sign placement variances may only be approved when:

<b>Required Finding</b>	<b>Finding Outcome/Discussion</b>
(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.	<b>Finding Made</b> – the sign is not proposed to be relocated. The existing sign does not have an adverse effect in appearance or location.
(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.	<b>Finding Made</b> – the sign’s location is generally consistent with commercial signs along the Interstate 494 corridor. The placement does not have an adverse impact to 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.	<b>Finding Made</b> – the non-conformity was not created by the landowner. Retaining an existing freestanding sign that is legally non-conforming is reasonable.
(D) ... That, because of the	<b>Finding Made</b> – built up areas, more specifically the

<p>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.</p>	<p>planned expansion of Interstate 494, led to a conforming sign becoming non-conforming. Requiring existing signage to be relocated following right-of-way acquisition is unreasonable.</p>
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**Required Variance Findings for Sign Size (Height) – Section 2.85.04(g)(1)(A-F)**

Zoning variances may only be approved when:

<b>Required Finding</b>	<b>Finding Outcome/Discussion</b>
(A) ... The variance is in harmony with the general purposes and intent of the ordinance.	<b>Finding Made</b> – the City Code makes allowances for electronic signs. Converting an existing is in harmony with the ordinance.
(B) ... The variance is consistent with the Comprehensive Plan.	<b>Finding Made</b> – the variance is not in conflict with the Comprehensive Plan. Commercial uses typically have freestanding signage to improve visibility. Electronic signs are desirable for their increased visibility.
(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	<b>Finding Not Made</b> – The applicant has not established the existence of practical difficulties in meeting the 20-foot height limit that are not economic in nature. Although more expensive, there are Code-complying alternatives to the variance: the height of the existing sign could be reduced to bring the sign into compliance, the sign face could be replaced, or an entirely new sign could be constructed that meets City Code height requirements.
(D) ... The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.	<b>Finding Made</b> – the property use as office, retail, and inventory storage is reasonable and permitted by City Code.
(E) ... The plight of the landowner is due to circumstances unique to the property not created by the landowner.	<b>Finding Not Made</b> – the owner’s desire for an electronic graphic display sign creates the need for a height variance. There are Code-complying alternatives, albeit not the owner’s preference.
(F) ... The variance if granted will not alter the essential character of the locality.	<b>Finding Made</b> – the proposed sign height and sign area would remain the same. There are electronic signs along Interstate 494 – the essential character would not be altered.

**Required Variance Findings for Sign Size (Height) – Section 2.85.04(g)(2)(A-C)**

Sign size variances may only be approved when:

<b>Required Finding</b>	<b>Finding Outcome/Discussion</b>
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<p>(A) ... The sign will have an appearance which will not adversely affect or detract from neighboring property.</p>	<p><b>Finding Made</b> – the proposed sign height and sign area would remain the same. There are electronic signs along Interstate 494 – the essential character would not be altered. The distance between the sign and residential uses on the other side of Interstate 494 is significant.</p>
<p>(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.</p>	<p><b>Finding Made</b> – the proposed sign height and sign area would remain the same. There are electronic signs along Interstate 494. Provided the sign complies with brightness and graphic dwell time requirements, there would not be a negative impact on the motoring public.</p>
<p>(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.</p>	<p><b>Finding Not Made</b> – while not the applicant’s preference, the sign face could be changed without the need for a variance. A new sign, meeting all City Code requirements, could be proposed and permitted. Not permitting an electronic graphic sign does not deprive the owner reasonable use of the sign. The existing monument sign is well positioned relative to Interstate 494 and is highly visible.</p>

**RECOMMENDATION**

The Planning Commission and staff recommend the following motions:

In Case PL2022-149, having been able to make the required findings, I move to adopt the resolution approving variances to freestanding sign setback requirements for an existing freestanding sign at 7800 Picture Drive.

In Case PL2022-149, having been unable to make the required findings in Section 2.85.04(g)(1)(C and E) and in Section 2.85.04(g)(2)(C), I move to continue consideration to the September 12, 2022 City Council meeting and direct staff to prepare a resolution of denial for a variance to freestanding height requirements for an existing freestanding sign at 7800 Picture Drive.