APPLICATION VAR19-04

VARIANCE REQUEST - 1414 HIGHWAY Z

Application: VAR19-04
Owner: Wentzville Memorial VFW Post #5327
Applicant: Michal Giunta

Variance Requested:
1. A request to vary Section 405.475.A.1 of the Ordinances of St. Charles County (OSCCMo); to allow for the display of an electronic sign in the A, Agricultural District, which is not permitted; and
2. A request to vary Section 405.490.B of the Ordinances of St. Charles County (OSCCMo); to allow the sign to operate so that it is flashing, which is not permitted.

Property Zoning: A, Agricultural District
Area: 8.57 acres
Location: Approximately 320 feet south of the intersection of Highway Z and Peruque Hills Parkway, adjacent to the City of Wentzville

Council District: 2
Account No.: 726270B000

CONTENTS:

➢ Staff Recommendation Report & Site Photos
➢ Aerial photo
➢ Zoning map
➢ Topographical Map
➢ Applicant’s Statement of Hardship
➢ Site Plan
➢ Photos of Property Submitted by the Applicant
➢ Applicant’s Request to Withdraw Rezoning Application and Proceed with Variance Request dated 12/02/19
➢ Letters Received:
  • Opposition - Jason Durham
  • Support – Bryan Spencer, State Representative 63rd District
  • Support – Adam Schnelting, State Representative 104th District
  • Support – Randy Pietzman, State Representative 41st District
  • Support – Nick Schroer, Missouri House of Representatives District 107
  • Support – Jeff Porter, Missouri House of Representatives, District 42
  • Support – William Eigel, Missouri Senate District 23
  • Support – Senator Robert Onder, Missouri Senate District 2
  • Support – Ron Hicks, State Representative District 102
  • Support – Justin Hill, State Representative District 108
  • Support – Tony Lovasco, State Representative District 64
  • Support – John Wiemann, Speaker Pro Tem VFW Post #5327
UPDATED BOARD OF ZONING ADJUSTMENT REPORT

To: County Board of Zoning Adjustment
Prepared by: Robert Myers, AICP
Application No.: VAR19-04
Date: December 23, 2019

BACKGROUND

Owners/Applicant: Wentzville Memorial VFW Post #5327

Requested Actions: 1. To vary Section 405.475.A.1 of the Ordinances of St. Charles County (OSCCMo); to allow for the display of an electronic sign in the A, Agricultural District, which is not permitted; and
2. To vary Section 405.490.B of the Ordinances of St. Charles County (OSCCMo); to allow the sign to operate so that it is flashing, which is not permitted.

Zoning: A, Agricultural District
Location: 1414 Highway Z, Approximately 320 feet south of the intersection of Highway Z and Peruque Hills Parkway, adjacent to the City of Wentzville.
Size: 8.57 acres
Current Land Use: Institutional (Wentzville Memorial VFW Post #5327)

Adjacent Land Use and Zoning:

<table>
<thead>
<tr>
<th>Direction</th>
<th>Zoning</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>PD-R, Planned Development Residential (City of Wentzville Zoning)</td>
<td>Single Family Dwelling Units</td>
</tr>
<tr>
<td>East</td>
<td>A, Agricultural District</td>
<td>Single Family Dwelling Unit</td>
</tr>
<tr>
<td>South</td>
<td>A, Agricultural District</td>
<td>Single Family Dwelling Unit</td>
</tr>
<tr>
<td>West</td>
<td>R-1C, Single Family Residential (City of Wentzville Zoning)</td>
<td>Single Family Dwelling Unit</td>
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Request Summary:
The applicant proposes to continue to use the new electronic message center that was erected without sign permits. The applicant would like to also be able to flash the sign to be able to generate revenue.
Site Characteristics:
The parcel has been developed with a VFW meeting hall, parking lot, and memorial park. It is immediately adjacent the City of Wentzville.

The land that is in the City contains two large and dense residential subdivisions and a state highway. (Highway Z). Land to the south and east is rural in nature and contains one single family dwelling. The sign is located on top of a hill near the Highway.

Relevant Property History:
In December 1989, the County issued a conditional use permit (CUP 313) for the VFW Post to operate a private club in the A, Agricultural Zoning District. The VFW Post operates under this CUP.

The applicant applied for the variances after receiving a notice of violation issued by Saint Charles County (File number 19-003747). The applicant had erected this new electronic message center without a permit.

These variance were introduced at the September 2019 Board of Zoning Adjustment meeting, but at the request of the applicant, the Board tabled the application so that the applicant could instead pursue an application to rezone the property to C1, Neighborhood Business District. Under the County’s zoning regulations, a digital sign could be approved in the C1 District but not operated with less than 10-second hold times between messages. The applicant submitted a rezoning application to the County but recently withdrew that request.

Applicant’s Statement of Hardship:
The applicant states they replaced an 11-year-old sign with regular light bulbs with a sign with LED light display for clarity and upkeep of the VFW Post. They state that without the sign they will lose revenue and that would cause a hardship to their members.

COUNTY STAFF ANALYSIS

Driver distraction. An important governmental interest in regulating digital signs and billboards is that driver distraction can be a significant traffic hazard. Drivers can be distracted by a variety of ways, including texting while driving, cell phones, navigation systems, and digital signs and billboards. A 2006 study conducted by the National Highway Safety Administration shows that drivers who take their eyes off the road for more than two seconds are far more likely to suffer a crash or near crash. In order to mitigate the potential of digital signs and billboards to distract drivers, states and many local jurisdictions have enacted standards to prohibit moving images and to control brightness.
Hold time between images. Under the Federal Highway Beautification Act (23 USC 131), as a requirement for receiving Federal transportation funding, states must adopt and administer specific limitations along routes which are part of the Federal-aid highway system. As part of this Act “intermittent”, “flashing”, or “moving” lights along these routes are prohibited.

In a September 25, 2007 memorandum, the Federal Highway Administration provided official guidance to state Departments of Transportation as to whether or not digital signs/billboards would be considered “intermittent” or “flashing” lights. The memorandum counsels that the Federal Highway Administration would recommend a hold time of 8 seconds (or greater), and a transition time between images of no more than 1-2 seconds as complying with the Highway Beautification Act.

The applicant may have to obtain a permit from MoDOT to erect their sign. If the County issues a variance to allow the sign, MoDOT may still refuse the sign permit. Below are the pertinent state statutes that regulate this type of sign along state highway right of way:

Per MODOT's Outdoor Advertising summary book that covers RSMo 226.500 to 226.600 and 7 CSR 10-6, the following regulations apply:

- Per RSMo 226.540.1.a states “No revolving or rotating beam or beacon of light that simulates any emergency light or device shall be permitted as part of any sign. No flashing, intermittent, or moving light or lights will be permitted except scoreboards and other illuminated signs designating public service information, such as time, date, or temperature, or similar information, will be allowed; tri-vision, projection, and other changeable message signs shall be allowed subject to Missouri highways and transportation commission regulations.”

- Per RSMo 226.520.5 Permitted Signs states “Outdoor advertising for tourist-oriented businesses, and scoreboards used in sporting events or other electronic signs with changeable messages which are not prohibited by federal regulations or local ordinances. . .”

Saint Charles County’s sign code requires a 10-second hold time between images for Electronic Display On-Premise Signs, and such signs are only allowed in commercial and industrial zoning districts.

VARIANCE CRITERIA:

Under Section 405.590.C of the County Code, the Board of Zoning Adjustment may vary the strict application of a regulation if the property owner proves that the property has met all four of the following criteria:

1. The variance is requested due to unique circumstances inherent to the specific piece of property and not to personal considerations of the property owner.

No exceptional situation or condition applies to this property that would dictate the use of a digital sign as opposed to a traditional sign. The VFW’s application indicates that not granting the requested variances would cause a hardship to its members but does not
state that it would result from unique circumstances inherent to this specific property. The VFW Hall has alternative means of expression but has a preference for electronic/digital signage. Also, no situation unique to the property would dictate that digital messages be allowed with less than 10-second delay between messages.

2. The variance is not needed as the result of an affirmative act of the property owner that could have been avoided through a different course of action.

The applicant could have applied for a sign permit which would have alerted them to requirements to erect a sign in the A, Agricultural District. The applicant could also rezone the property to a commercial zoning district which would allow approval of a digital sign with a 10-second delay between messages. The applicant applied to rezone the property but then withdrew their request prior to the public hearing before the Planning & Zoning Commission.

3. The variance would not merely grant a special benefit to the property beyond what is enjoyed by other properties regulated by the same set of zoning regulations.

Granting a variance would create a special benefit to the property owners because other properties in the A, Agricultural District could not use electronic/digital signage.

4. The application of such non-use regulation would result in practical difficulties to the property owner. In determining whether “practical difficulties” exist, relevant factors to consider include whether, or to what degree, the owner can pursue the permitted use without a variance; the financial hardship to the property owner from the strict application of the regulation; how substantial the variance request is in relation to the regulation; whether the difficulty can be obviated by some method other than a variance; and whether such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning regulations as embodied in the Unified Development Ordinance and maps.

County staff would view granting of one or both variances as a substantial detriment to the public good and as impairing the intent, purpose, and integrity of the zoning regulations. The public good would be impaired by allowing a flashing sign. The County’s 10-second hold time between messages conforms to State and Federal laws and regulations to eliminate flashing and intermittent signs along the Federal-aid highway system and is also adopted to reduce driver distraction and promote public safety. Second, the variance would allow the introduction of an electronic/digital sign within an area now zoned agricultural and residential. And third, the zoning regulations would be undermined because granting a variance would create a precedent whereby the owners of other noncommercial and non industrial properties can claim the necessity to operate electronic/digital signage.
STAFF RECOMMENDATION:
The options of the Board of Zoning Adjustment are to:

- Approve the requested variance without conditions
- Approve the requested variance with conditions, or
- Deny the requested variance.

County staff recommends that the Board of Zoning Adjustment deny both variances as having not met any of the four variance criteria of Section 405.590.C and based on the above information.

It is requested that the Board vote on each variance separately.

If the Board should decide to approve one or both variances, staff recommends the following conditions:

1. The variances shall be valid for only the subject freestanding sign; and
2. A copy of the Missouri Department of Transportation sign permit shall be submitted with the application for the County sign permit. Should MoDOT determine that no State sign permit is required, a letter from that agency shall be required stating such.

If deciding to approve the variance to eliminate the 10-second hold time between images, the Board should also consider adding a condition to impose an alternative minimum hold time to minimize traffic hazards caused by flashing and intermittent lights.
Sign as installed
Installed sign from across Highway Z
VAR 19-04 - Topography

Subject Property
Statement of Hardship

The VFW has change the 11 year old sign from existing regular light bulbs to LED Lights on our signage for the clarity and upkeep of the VFW Post. We as a Non-Profit Organization have provided to the public and veterans a service to the St. Charles and Wentzville Community for the good of the order a place for boy scouts, events for the public to enjoy, for the community service work program, VOD, and Patriots Pen for students and teaches in our schools, for Memorial Services, for the POW Run For the Wall Events for the last 31 years in which the Fire Department Mayor of Wentzville, Police and Other Elective Officials have provided support. Without this sign we lose Revenue and that is the Hardship to the people.
SKETCH OF SIGN LOCATION  
NOT TO SCALE  
VFW POST 5327  
DETAIL  
1414 HIGHWAY Z  
N.T.S.  
WENTZVILLE M  
63385
Photos of Property Submitted by Applicant
Photos of Property Submitted by Applicant
Photos of Property Submitted by Applicant
VFW Post 5327 respectfully withdraws from Zoning request. Per Post Membership would like to continue with Boa request. With draw from rezoning per cost and other issues.

Respectfully,

Jeff Bornefeld  
Commander  
VFW Post 5327
I won’t be able to attend the hearing on this matter but would like to cast a vote to have the sign removed. I’m sitting in my living room right now _with my blinds closed_ and can still see the green sign through the gap between the edge of my vertical blinds and my sliding door. With my blinds open, I can read every word on the sign sitting on my couch. It does not belong in a residential area and we ask that it be removed immediately.

Jason Durham
1226 Peruque Ridge Dr, Wentzville, MO 63385
To Whom It May Concern:

As a Representative in Wentzville, I recognize the value of the VFW Post 5327, and the importance of serving our veterans and our communities. I write you today to express my support in VFW Post 5327 and their efforts to keep their sign. The location of the sign is not a distraction to other drivers, and there are many similar signs in the area.

Veterans of Foreign Wars Post has been at the same location in Wentzville since 1979. The sign became lighted 11 years ago and changed to LED bulbs a year ago. It does not have flashing lights, it is over 50ft from the road, and doesn’t have any safety concerns.

As an Auxiliary member of Post 5327, I regularly visit the Post. I would like to convey my commitment and support to VFW Post 5327 on 1414 Highway Z, Wentzville, MO 63385 and their initiative to keep their sign outside the VFW Post 5327.

If you have any further questions regarding this matter, feel free to contact my office at 573-751-1460.

Sincerely,

Bryan Spencer
State Representative for the 63rd District
September 10, 2019

To Whom It May Concern:

I would like to convey my commitment and support to VFW Post 5327 on 1414 Highway Z, Wentzville, MO 63385 and their initiative to keep their sign outside the VFW Post 5327.

Veterans of Foreign Wars Post has been at the same location in Wentzville since 1979. The sign became lighted 11 years ago and changed to LED bulbs a year ago. It does not have flashing lights, it is over 50ft from the road, and doesn’t have any safety concerns.

As a Representative in St. Charles, I have visited the location for many different events and I recognize the value of the VFW Post 5327, and the importance of serving our veterans and our communities. The location of the sign is not a distraction to other drivers, and there are many similar signs in the area. I write you today to express my support in VFW Post 5327 and their efforts to keep their sign.

If you have any further questions regarding this matter, feel free to contact my office at 573-751-2250.

Sincerely,

[Signature]

Adam Schnelting
State Representative for the 104th District
September 10, 2019

To Whom It May Concern:

I am writing this letter to express my support of the current sign that is being used by St. Charles County VFW, Post 5327.

This post is located on Hwy Z and I do not see why this sign would be any cause of concern to the City or other entities.

Again, I am in full support of the post being able to continue using their current sign.

If you have further questions on this issue don’t hesitate to call my office at (573) 751-9459.

Sincerely,

Rep. Randy Pietzman
District 41
September 10, 2019

To Whom It May Concern,

The Missouri Veterans of Foreign Wars has a rich tradition of serving veterans, military families and their local communities. Therefore, with this letter I confirm my support of VFW Post 5327 and their right to continue using their current sign.

Post 5327 has been in the same location for 40 years and has had a lighted sign for over 11 years. While they updated to LED bulbs a year ago, their sign does not have flashing lights, is over 50 feet from the road, and doesn’t cause any distraction or safety hazard.

As a staunch supporter of our veterans, I fully support VFW Post 5327’s right to retain their current sign.

Respectfully,

Nick Schroer
Missouri House of Representatives – HD 107
September 10, 2019

St. Charles County Council
100 N. Third St.
Suite 124
St. Charles, MO 63301

Dear Council Members,

I would like to convey my commitment and support to the Veterans of Foreign Wars (VFW) of Wentzville and their initiative to keep their sign outside the VFW Post 5327 on Highway Z.

As you know, the purpose of the VFW is to serve our veterans and promote Americanism by means of education in patriotism. VFW Post 5327 has been serving disabled veterans, and their families, of all war in matters of government compensation and pension claims, hospitalization, civil services and employment needs at this very location since 1983.

As State Representative of the southern portions of St. Charles County, specifically New Melle and Augusta, I recognize the tremendous value of the VFW Post and its constructive service to our community.

Furthermore, the location of their sign is not a distraction to drivers and there are multiple similar signs in this area. I write to you today to express my support in VFW Post 5327 on Highway Z and their efforts to keep their sign, and in its original place. Thank you for your time and consideration in this matter.

Best regards,

Jeff Porter
Missouri State Representative
House District 42
St. Charles County Council  
201 N. Second St.  
St. Charles, MO 63301

Dear Council Chairman White and Council Members,

I write to you today in support of VFW Post 5327, the location of which is 1414 Highway Z in Wentzville, retaining possession of their lighted building sign. It has come to my attention that the City of Wentzville apparently is requesting and/or requiring the VFW Post’s lighted sign to be removed for no reason which involves public or private safety concerns; does not disrupt neighboring residents; nor is an issue of aesthetics.

My specific request is that as you explore this issue please keep in mind several things: this VFW post has served the community for more than three decades; that the lighted sign has been a part of the building for more than 11 years; and, perhaps most important of all, the purpose of all VFW Posts it to “to speed rehabilitation of the nation's disabled and needy veterans, assist veterans' widows and orphans and the dependents of needy or disabled veterans, and promote Americanism by means of education in patriotism and by constructive service to local communities.”

As you can imagine the VFW Post members take great pride in their service to veterans in the surrounding community. I cannot imagine any current, significant reason for the city to push forward with this type of interference with a local philanthropic organization.

Thank you for taking up my request and for all you do for Saint Charles County.

Sincerely,

William C. Eigel  
Senate District 23

Cc: Senator Bob Onder  
Representative Bryan Spencer  
VFW Post 5327 Commander Jeff Bornefeld
September 11, 2019

St. Charles County Council
100 N. Third St.
Suite 124
St. Charles, MO 63301

Re: Wentzville Memorial VFW Post #5327

To Whom It May Concern:

This letter is to support the Wentzville Memorial VFW Post #5327 and their request to allow use of an electronic sign on their property located at 1414 Hwy Z, Wentzville, MO 63385. This sign replaced the previous eleven year old sign, in hopes of saving energy cost and boosting revenue.

The Wentzville Memorial VFW Post #5327 was chartered in 1983. The support they provide to veterans and their families plays an important role not only in the lives of those veterans, but also in the community. As a nonprofit organization the services they provide are made possible by revenues and volunteer work.

The services provided by the VFW are a great asset to my district and to the entire state. Thank you for your consideration. I strongly support their request and hope you will consider authorizing the use of their sign.

Sincerely,

Bob Onder
Senator Robert F. (Bob) Onder
State Senator – District 2
Dear Saint Charles County Council,

It has been brought to my attention that the Veterans of Foreign Wars Hall 5327 has faced intense scrutiny simply for updating a sign on their property to LED lighting. This is a sign that has been on the property since 1979. It has been a lighted sign for 11 years. During all that time, there were no complaints. The sign is not a safety concern, it is fifty feet from the highway. The VFW is a respectable organization which honors our military heroes and provides incredible value to our Greater St. Charles County community. In order to respect the men and women that have served our country, I believe we should respect the property rights of VFW #5327 and allow them to have their sign.

Sincerely,

Ron Hicks
District 102
Chair - Special Committee on Homeland Security

cc: VFW 5327
Dear Councilmembers,

Please accept this letter as evidence of my strong support for the Veterans of Foreign Wars of Wentzville. It has come to my attention that various complaints have been made against this specific post regarding a sign near Highway Z.

There are nearly 2 million members of this tremendous organization. Their mission is to foster camaraderie among United States veterans of overseas conflicts and to serve our veterans, the military and our communities. The VFW ensures that veterans are respected for their service, always receive their earned entitlements, and are recognized for the sacrifices they and their loved ones have made on behalf of this great country.

We must do everything in our power to make our region as welcoming and accepting of veterans as possible. I have visited this specific post many times and I can assure you that the sign is not an issue. This post has been at this same location since 1979, long before nearby development. There are also similar signs up and down Highway Z.

The American Legion’s success depends entirely on active membership, participation and volunteerism. When local organizations harass the VFW with petty complaints, it directly hurts their ability to organize and fulfill their grassroots campaign.

I strongly advise the St. Charles County Council to support the post and dismiss these complaints.

Very Sincerely,

Justin Hill
State Representative
District 108
MISSOURI HOUSE OF REPRESENTATIVES
Tony Lovasco
State Representative
District 64

September 11, 2019

I support Veterans of Foreign Wars Post 5327 on Highway Z in St. Charles County, and their ability to keep their sign outside on their property without harassment from neighboring municipal authorities.

The VFW was founded with the sacred purpose of honoring and serving those have gone far from home to fight for our United States. Post 5327 has been serving veterans, service members and the local community in St. Charles County since 1979.

As a Representative in St. Charles County, I recognize the value of VFW Post 5327 and the importance of serving out veterans and our communities. The location of the Sign is not a distraction to other drivers, and is not a nuisance to the neighboring residential communities. Therefore, I write you to express my support of VFW Post 5327 and their efforts to keep their sign.

Sincerely,

Tony Lovasco
State Representative, District 64
September 11, 2019

St. Charles County Council
201 N Second St.
St. Charles, MO 63301

Dear Council Members;

I write in support of the VFW Post 5327 on Highway Z in St. Charles County, and their initiative to keep the sign outside their Post.

The Post has endeavored to update this sign since 1979 in order to keep it attractive, not a distraction for drivers, and comport in design with similar signs in the area.

This VFW Post is an important part of our community and provides a valuable service for our citizens.

I strongly express my support for their efforts to keep their sign.

Respectfully,

John D. Wiemann
Speaker Pro Temp

cc: VFW Post 5327