

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: June 1, 2015

CASE NUMBER

5963

APPLICANT NAME

Advantage Sign Company

LOCATION

5669 U.S. Highway 90 West
(East side of U.S. Highway 90 West, 265' ± North of East Drive)

VARIANCE REQUEST

SIGN: Sign Variance to allow a digital gasoline price sign within approximately 151'± of an R-1, Single-Family Residential District; the Zoning Ordinance does not allow any digital signs within 300' of any residentially zoned property.

ZONING ORDINANCE REQUIREMENT

SIGN: The Zoning Ordinance requires all digital signage to be a minimum of 300' from residentially zoned property in a B-3, Community Business District.

ZONING

B-3, Community Business District

AREA OF PROPERTY

0.6± Acres

TRAFFIC ENGINEERING COMMENTS

This request was not reviewed by Traffic Engineering.

CITY COUNCIL DISTRICT

District 4

ANALYSIS

The applicant is requesting a Sign Variance to allow the placement of a digital gasoline price sign 151'± from the nearest residentially- zoned property. The Zoning Ordinance requires all digital signage to be a minimum of 300' from residentially-zoned property.

Upon review, Staff determined that the proposed signage is less than 300' from property zoned R-1, Single-Family Residential District. The regulations regarding digital signs, as adopted by the City Council on June 4, 2013, require a minimum straight line distance of 300'.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a

literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and that substantial justice is done to the applicant and the surrounding neighborhood.

Variations are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant states:

The purpose of this application is to allow an LED price changer sign at the Exxon Convenience store located at 5669 Hwy 90 Theodore, AL.

The newly adopted ordinance states that LED displays are not allowed within 300' of a residence. The sign will be 91' from the nearest residential property. The price changer does not flash, scroll, animate or change color. It has a constant, one color number.

The owner is opening an existing Exxon store at this location. The existing LED price changer is too small.

All neighboring properties are commercial except a campground.

As mentioned, the applicant is opening an existing gas station and desires to replace the existing digital LED price signs with new digital LED price signs. The applicant states that the current digital price signs are too small, and that the proposed signage will not flash, scroll, animate or change color; the color will remain one constant color. While it is understandable that the applicant desires to have new digital signage to keep with the character of the existing digital signage, there is no apparent hardship presented. Furthermore, no information was provided regarding the size of the existing sign and the size of the proposed sign.

The existing sign is perpendicular to US Highway 90 West, thus its lights are not directed towards the residential area on East Road. The proposed sign would be placed in the same location with the same orientation.

Within the required 300' buffer, the property directly to the North, West, and East of the subject site on US Highway 90 West is commercially zoned, and the property to the Southeast of the subject site is residentially zoned.

It should be further noted that in previous cases regarding digital gasoline pricing signs, the Board has ruled in favor of the applicant's request. Most recently, at the April 6th meeting, the Board approved (with conditions) the replacement of an existing digital gasoline price sign located 190± feet from residentially zoned property at a site located on Dauphin Island Parkway; the request, however, included information regarding the size of the replacement sign. Additionally, if the size of the sign will be increased, evidence of wind load compliance will be required.

RECOMMENDATION: Staff recommends Holdover to the June 8th meeting, with revisions submitted by May 15th, so the following can be addressed:

- 1) Information regarding the size of the existing digital signs;
- 2) Information regarding the size of the proposed digital signs; and
- 3) Submission of wind load compliance information.

Revised for the June 2015 meeting:

This application was heldover from the May 4th Planning Commission meeting due to the additional information that was needed regarding the size of both the existing and the proposed signs, as well as the required wind load calculations for the new sign. At the last meeting, the applicant stated a desire to replace an existing gasoline price sign with a new digital LED gasoline price sign. The applicant now desires to remove the existing sign in its entirety, and to erect a larger, new sign inclusive of a new pole, sign, and the foundation in order to maintain a competitive edge. Per the applicant, the wind load was calculated at 135 mph for the proposed digital LED gasoline price sign; however, it should be noted, if the request is approved, the new sign must comply with all applicable wind load requirements and ratings as adopted by the 2012 International Building Code.

As previously mentioned, the Zoning Ordinance requires that all digital signs be located a minimum of 300' from residentially zoned property in a B-3, Community Business District. The subject site is currently located 151'± from the nearest residentially-zoned property; however, due to the current location and orientation of the existing sign, the lights from the digital LED gasoline price changer are not directed towards the residential properties found on East Road. If approved, the proposed sign would need to be placed in the same location and orientation as the existing sign in order to mitigate any adverse effects to the residences positioned to the Southeast of the subject site and must comply with Section 64-11.2 of the Zoning Ordinance. It should also be noted, that if the request for variance is approved, the applicant must apply for all required building and electrical permits prior to the erection of the proposed signage.

Although the applicant did not indicate a potential hardship to the property, outside of the current signage being small, recent requests for digital LED gasoline signage have been granted due to the rapid change in fuel prices and digital sign technology. It is of the Board's opinion, that the digital sign regulations are not applicable to fuel price signs. In addition, digital price signs, unlike digital readerboards, emit low levels of light emission. The applicant also previously stated that the proposed signage will not flash, scroll, animate or change color, and that its color will remain one constant hue. In keeping with the board's prior interpretations of the Zoning Ordinance and the applicant's compliance with Section 64-11 of the Zoning Ordinance, an approval of the request would seem appropriate.

Lastly, the issue of pricing signs needs to be carefully considered. As review must be content neutral if a business were to solicit a digital pricing sign for a product they sell (any product), the Board would be hard-pressed to deny the request if the current trend continues.

RECOMMENDATION: *Staff recommends to the Board the following findings of fact for Approval:*

- 1) *Approving the variance will not be contrary to the public interest in that the Digital Sign Regulations are not, in the Board's opinion, applicable to fuel price signs;*
- 2) *Special conditions exist and there are hardships which exist (the applicant would not be allowed to use the latest pricing display technology, and the Board is of the opinion that the digital sign regulations are not applicable to fuel price signs) such that the literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and*
- 3) *The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance because proposed digital fuel price signs will not be a detriment to the neighborhood.*

The approval is subject to the following conditions:

- 1) *The proposed sign must be placed in the same location and orientation as the existing sign in order to mitigate any adverse effects to near-by R-1, Single-Family Residential, properties;*
- 2) *Obtainment of the required building and electrical permits prior to sign erection; and*
- 3) *Full compliance with Section 64-11 of the Zoning Ordinance, and all other municipal codes and ordinances.*

LOCATOR MAP



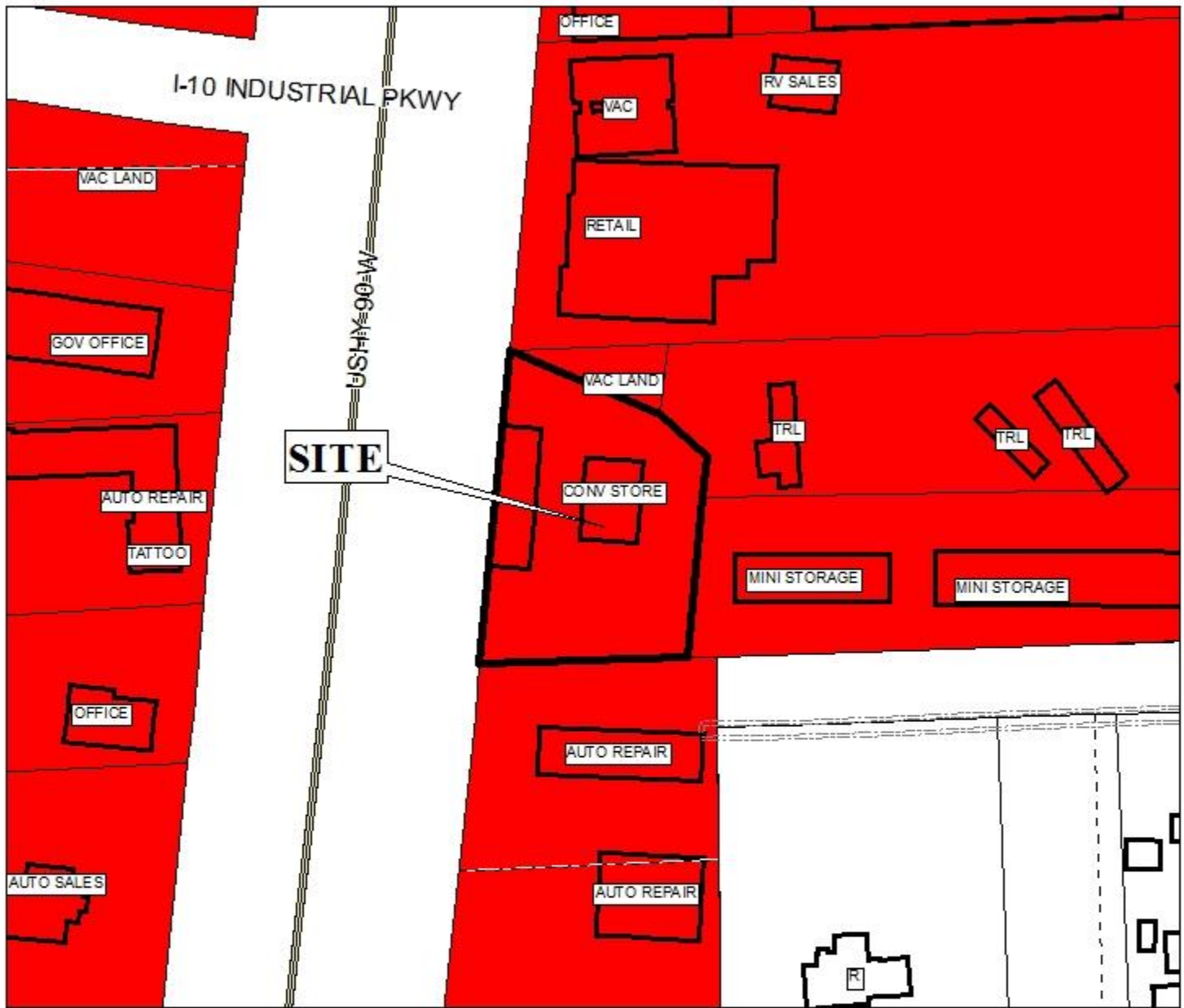
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REQUEST Sign Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial units. Miscellaneous residences lie to the east of the site.

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R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



NTS

**BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING ZONING**



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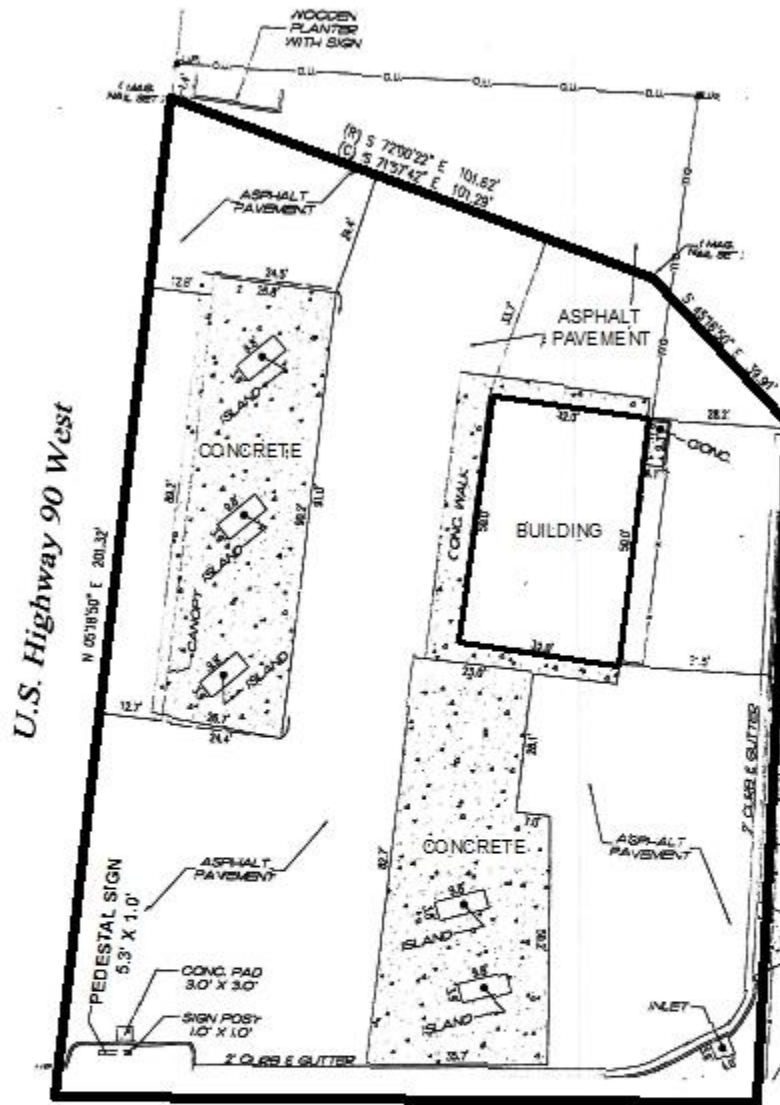
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SITE PLAN



The site plan illustrates the existing building, islands, and sign.

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