



CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

December 3, 2024

TO: Dan Lewis, President, City Council

FROM: Alan Varela, Planning Director 
Alan Varela (Dec 4, 2024 09:28 MST)

SUBJECT: AC-24-29, PR-2024-010860, VA-2024-00262: Faith Lutheran Church – Amber Webb appeals the Zoning Hearing Examiner’s decision of DENIAL for a variance of 135 feet to the required 200-foot distance for an illuminated sign to be visible from a Residential zone district.

OVERVIEW

On October 15th, 2024, Juanita Garcia with JAG Planning & Zoning, LLC, agent for the property owner, and Amber Webb with Faith Lutheran Church as the Applicant appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 135 feet to the 200-foot distance for an illuminated sign to be visible from a Residential zone district on a property located at 10000 Spain Rd NE (“subject property”), zoned MX-T.

The ZHE denied the Applicant’s request in a written decision dated October 30, 2024.

The Appellant timely filed an appeal of the ZHE’s decision prior to the appeal deadline of November 14, 2024. The Appellant, Faith Lutheran Church, asserts that the agent testified that the Applicant was willing to institute mitigating measures to ensure that adjacent property owners would not be adversely impacted by the proposed sign. The appellant alleged error and asserted that the ZHE decision and findings are not supported by substantial evidence pursuant to IDO §14-16-6-4-(U)(4)(b).

BASIS FOR APPEAL

IDO §14-16-6-4(U)(4) outlines the applicable criteria for the appeal in determining whether the ZHE erred in its decision:

6-4(U)(4) Criteria for Decision

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes:

6-4(U)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

6-4(U)(4)(b) The decision being appealed is not supported by substantial evidence.

6-4(U)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

STAFF RESPONSE

The reasons for the appeal, excerpted from Appellant's letter, are listed in quotes below, with bulleted, italicized responses from Planning Department staff for the ZHE.

“The appellant believes this finding is not supported by substantial evidence since the appellant did testify of the willingness to institute mitigating measures to ensure that adjacent property owners would not be adversely impacted by the proposed sign.”

IDO 14-16-6-4(U)(4) Criteria for Decision cited for reason for appeal:

1. Per IDO 6-4(U)(4)(b) The ZHE's decision is not supported by substantial evidence.

- *ZHE Finding #9: Based on evidence in the record, the variance will cause significant adverse material impacts on surrounding properties, and therefore does not satisfy IDO Section 14-16-6-6(O)(3)(a). Specifically, opponent neighbors who live directly across Spain Rd NE submitted written correspondence and sworn testimony as to the negative impacts the light from the existing sign has on their quality of life. The existing sign was constructed prior to the IDO effective date and is apparently legally nonconforming. The Application seeks to replace the existing reader board with an LED board, which necessitates the requested variance. Evidence in the record supports a conclusion that the new sign would be at least as bright, if not brighter, than the existing sign. **During testimony, Applicant appeared unwilling to institute mitigating measures, such as dimming or turning off lights during late night hours. [Emphasis added]***

The applicant has two existing signs located on the subject property that were established prior to the IDO's effective date in 2018, and it is possible that they are legally “Nonconforming Structures” pursuant to IDO §14-16-7-1 Definitions: “A structure that does not conform to the IDO requirements for structures in the zone district where its located, for reasons other than the use of the structure, but that did not violate those requirements at the time the structure was constructed. By way of example: a nonconforming structure could be one that violates height, setback, aesthetic, or form requirements.”

Any structure that is defined as nonconforming pursuant to the IDO shall conform to the current IDO standards if the structure's original approved intent is changed or altered. In the Applicant's case, the original sign was defined as an “Illuminated Sign” pursuant to the IDO §14-16-17-1 Definitions: “Any sign that is directly lighted by an on-premises electrical light source, internal or external except light sources specifically and clearly operated for the purposes of lighting the general area in which the sign is located rather than upon the sign itself, including but not limited to luminous tubing signs such as neon signs. All electronic signs are illuminated signs.”

The Applicant is requesting to change one of the two existing signs from “Illuminated Sign” to “Electronic Sign,” defined in IDO §14-16-7-1 as: “A sign that is internally lit to display messages

and images that are changed electronically. The lit sign area may be of various types, including but not limited to flat screen, active display matrix, or a board with a single or multiple lines of text graphics. The light source may vary but is typically Light Emitting Diodes (LED) ” IDO §14-16-6-8(F) regulates the modification of nonconforming signs of any kind. Among other things, modification of the lighting/illumination type and/or conversion of a non-electronic nonconforming sign to an electronic sign is prohibited unless the new or modified sign is allowed and conforms to current IDO requirements. The application indicates that an electronic sign is requested to add a reader board to communicate messages that change on the electronic sign. The IDO’s electronic sign regulations require that messages and images are static, but they are allowed to change as long as they do so no more often than once every 8 seconds and the transition between does not exceed 1 second and does not include any visual effects.

Planning Staff notes that one (1) illuminated sign for non-residential development within 50 feet of a Residential zone district is allowed to remain illuminated between 11:00 PM and sunrise pursuant to IDO §14-16-5-12(E)(5)(b). Spain Road is approximately 65 feet wide, wider than this 50-foot distance requirement from the properties zoned Residential to the north, but there are also other Residential zone districts abutting this premises but located farther from the actual signs themselves. Insofar as the existing signs may be legally nonconforming, the variance would not be needed if 1 of the signs turned off between these hours. If the Applicant wants both signs to remain illuminated, a variance would be needed to the number of illuminated signs allowed on the premises (1) to allow a second illuminated sign to remain illuminated during these hours.

*IDO §14-16- 5-12(E)(5)(c) specifies that illuminated signs in any Mixed-use zone district “**may turn on or off or change its brightness**, provided that all of the following requirements are met...” [emphasis added]. The 200-foot distance separation is one of those requirements along with stipulations that the changing of illumination does not create apparent motion or continuous flashing. Read in whole, this regulation appears to limit having lights turn on and off to draw attention to the sign or changing messages or imagery on an electronic sign when close to residential development, more than just the lighting simply turning on when it gets dark outside and turning off again when it gets light again after sunrise. If the simple act of lighting turning on and off when it gets dark out must follow these requirements, the existing signs may also be nonconforming to the 200-foot distance separation from residential. Regardless, this provision would prohibit electronic signs that flash, create apparent motion, or change brightness, if not all illuminated signs that turn on/off, within 200 feet of Residential zone districts.*

Planning Staff further notes that an electronic sign, in and of itself, is not outright prohibited in this location, as none of the areas specified in §14-16-5-12(H)(2) apply. Further, the IDO does not prohibit electronic signs for non-residential development in Residential zone districts but instead limits their sign area to 25 percent of the total sign area [IDO §14-16-5-12(H)(2)(b)].

Regardless of why the applicable sign(s) may be nonconforming, the applicant’s requested change for one illuminated sign to become an electronic sign initiated the variance request. As the subject property is zoned MX-T (Mixed-use – Transition Zone District) and located less than 200 feet from a Residential zone district R-1C (Residential – Single Family), without the variance such a sign is presumably not allowed under IDO §14-16-5-12(E)(5)(c)1, “The sign is not within 200 feet in any direction of any Residential zone district and visible from that zone district.” Reading all of the relevant sign regulations together is difficult, and there may be conflicts, but the changing of messages on an electronic reader board, which seems to be proposed, appears to be the sign “turn[ing] on or

off or chang[ing] its brightness,” thus triggering the 200-foot distance separation from residential. The sign that is requested to change to an electronic sign is located less than 100 feet from the adjacent residential neighborhood across Spain Road thereby does not comply with the required 200-foot minimum distance separation from any residential zone district.

Public notice and meetings were coordinated by the applicant with the surrounding neighborhood residents, with three (3) property owners of residential properties submitting written opposition to the request. Property owners residing at 5300, 5305 & 5308 Lucille Drive expressed concern over the new signage. Their concerns stem from the existing signage with the proposed changes to electronic signs. The Applicant purchased a light meter to obtain compliance measurements for IDO standards but provided no calibration documentation supporting the measurement or a certified lighting plan.

The Appellant states that they expressed an openness to restrictions on their current lighting situation at the hearing, but Planning staff notes that they did not appear to meet their burden of proof to offer and ensure appropriate mitigation through detailed mitigation measures or other commitments to mitigate the impact of the electronic reader board as expressed by the residential neighbors.

The IDO has some built-in requirements that are intended to avoid or mitigate potential impacts. Pursuant to the IDO §14-16-5-12(H)(4)a, “Electronic signs shall have automatic dimming control, with either photocell (hardwired) or software settings.” Further, IDO §14-16-5(H)(4)(b) specifies, “Electronic signs shall not exceed an illumination level of 0.3-foot candles above ambient light as measure from a distance specified in Table 5-12-6 based on sign area with the light meter held perpendicular to the sign and targeting the color white.” These requirements apply regardless of proximity to residential uses, and whether or not the signs have changing messages or turn on and off. If the ZHE’s denial is overturned or remanded, and a variance granted, it seems reasonable that additional, specific conditions be imposed to mitigate any adverse impacts.

Table 5-12-1: Illumination Measurement Distance

Area of Sign (sq. ft.) ^[1]	Measurement Distance (ft.)	Area of Sign (cont.) ^[1]	Measurement Distance (cont.)
10	32	65	81
15	39	70	84
20	45	75	87
25	50	80	89
30	55	85	92
35	59	90	95
40	63	95	97
45	67	100	100
50	71	300	150
55	74	378	200
60	77	672	250

[1] For signs with an area other than those specifically listed in this table, the measurement distance may be calculated with the following formula: Measurement Distance (ft.) = square root of [Area of Electronic Sign (sq. ft.) x 100].

Despite the above, Planning staff notes that the 200-foot distance separation for illuminated signs that turn on and off is another mechanism built into the IDO that helps mitigate potential adverse impacts of a specific type of illuminated sign. Assuming the proposed electronic sign requires this variance to be located where it is proposed due to an existing nonconformity or the simple nature of the type of sign proposed (one that turns on and off), the ZHE’s denial is reasonable. Planning staff further

believes the ZHE could have denied the request under other review and decision criteria in IDO §14-16-6-6(O)(3)(a) not elaborated in the Official Notice of Decision:

- *Whether there are special circumstances applicable to this lot that are not self-imposed, it is not clear what the extraordinary hardship or practical difficulty is for having or keeping the existing illuminated signs. If the existing sign(s) do not “turn on or off or change [their] brightness,” a variance to the 200-foot distance separation may not be necessary to install new replacement signage, as long as that signage does not include a changing message (which requires lights to turn on or off).*
- *This variance request may undermine the intent and purpose of the IDO. While the IDO standard requested to be varied does not use the word “prohibited,” it uses similar language, stating “The sign is **not within** 200 feet in any direction of any Residential zone district...” [emphasis added]. A variance of any amount to this standard allows such a sign to be placed where the rules otherwise forbid it. Like certain Use-specific Standards in IDO §14-16-4-3 and other requirements throughout the IDO, regulations like this stipulate where certain kinds of development are allowed or unambiguously not allowed, and this standard appears to be more than a simple dimensional standard like setback or height, which are often varied due to unique characteristics of a property and resulting hardships. Varying this standard could undermine the IDO’s intent, especially as it is not clear how any unique circumstances presented relate to the distance between the subject property and the nearby residential uses. Further clarification on this matter may help staff better administer the IDO and make our best recommendations to applicants and decision-makers.*

In conclusion, Planning staff does not view an error in the decision and stands behind ZHE’s denial of this request based on Findings #1-10.

/ Adam Sena /

Adam Sena, Senior Planner
City of Albuquerque Planning Department

/ Michael Vos /

Michael Vos, AICP, Principal Planner
City of Albuquerque Planning Department






10000 Spain Rd NE - Faith Luthern Church Appeal Memo_Final

Final Audit Report

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