

Town of Brownsburg

Board of Zoning Appeals

Project Synopsis

TO: Board of Zoning Appeals; Tricia Leminger
FROM: Todd A. Barker, AICP
DATE: August 21, 2012
RE: CASE # BZDV 8-12-1112 / 2012 -06BZA C & S, Inc.

GENERAL INFORMATION:

APPLICANT: C & S, Inc. (Represented by: Ben Comer)

STATUS OF APPLICATION: Pending a hearing before the Board of Zoning Appeals

REQUESTED ACTION: Approval of a Development Standard Variance

DATE OF APPLICATION: August 15, 2012

PURPOSE: To increase the total number of signs permitted on a lot in the C-3 district.

ORDINANCE: §155.297(B)(3)

(B) *Provisions for signs in business, commercial and industrial districts, other than unified centers.* The following signs may be placed in business, commercial and industrial districts by permit and subject to the restrictions and limitations specified in this division (B). Where a sign is permitted in a district, it shall only be allowed if the following conditions are met.

(3) There shall be no more than three (3) signs located on any lot.

PROPERTY ADDRESS: 1355 N. Green Street, Brownsburg, IN 46112

PARCEL ID: 32-07-02-200-012.000-026

EXISTING ZONING: C-3 Commercial

UTILITIES:

WATER:	Town of Brownsburg
SANITARY:	Town of Brownsburg
STORMWATER:	Town of Brownsburg

EXISTING SURROUNDING ZONING:

NORTH:	C-3 Commercial
SOUTH:	C-2 Commercial
EAST:	C-3 Commercial
WEST:	C-3 Commercial

EXISTING USES:

NORTH:	Professional Service, physicians
SOUTH:	Vacant Land
EAST:	Multi Family Residential
WEST:	Restaurant; Convenience Store

NEIGHBORHOOD CHARACTERISTICS:

Located north of I-74, south of County Road 700 N, and along State Road 267, this parcel is surrounded by a wide range of uses, primarily related to its proximity to the interstate. Uses along this corridor include automotive service; retail (convenience store); and some professional offices (physicians, etc.). Directly east of the subject parcel lies the Brownsburg Pointe Apartments, consisting of multiple-family dwellings.

TOTAL PARCEL SIZE:

1.01 AC

COMPREHENSIVE PLAN DESIGNATION:

The Land Use Plan within the Town of Brownsburg 2012 Comprehensive Plan identifies this area as "Regional Commercial".

THOROUGHFARE PLAN:

The Town of Brownsburg 2020 Thoroughfare Plan identifies North Green Street as a "Primary Arterial".

GREENWAYS MASTER PLAN:

The Greenways Master Plan of 2008 recommends a Multi-Use Trail along this segment of the North Green Street corridor.

PUBLIC NOTICE:

Notice was published one time in the Hendricks County Flyer on August 29, 2012.

PUBLIC HEARING DATES:

September 10, 2012

PUBLIC COMMENTS:

No written comments have been received as of the date of this report.

STATUTORY REQUIREMENTS/ FACTORS TO BE CONSIDERED:

The requirements for issuing a Developments Standards Variance are outlined in the zoning ordinance and by Indiana Code §36-7-4-918.5. It is the responsibility of the Applicant to provide evidence that proves their request complies with the three points listed below.

DEVELOPMENTS STANDARDS VARIANCE

Variances of use from the terms of this Ordinance may be approved only upon a determination in writing that the following apply:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The strict application of the terms of this Ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought.

PREVIOUS ACTIONS ON-SITE:

Ord. 1989-09 | Annexation
1989-02P | Zoning Map Amendment to "GB/C-2"

PREVIOUS ACTION- SURROUNDING AREA:

2000-01P | Brownsburg Pointe Apartments - Site Plan Review
2002-11P | Brownsburg Pointe Townhomes - Zoning Map Amendment

SUPPLEMENTARY DOCUMENTATION INSERT:

- | | |
|--|-------------|
| ▪ APPLICATION | EXHIBIT - A |
| ▪ DETAILED STATEMENT OF REASON | EXHIBIT - B |
| ▪ LETTER OF INTENT | EXHIBIT - C |
| ▪ ZONING MAP | EXHIBIT - D |
| ▪ AERIAL INSERTS | EXHIBIT - E |
| ▪ SITE PHOTOS (PROPERTY AS WELL AS SURROUNDING PROPERTIES) | EXHIBIT - F |

EXHIBIT – B
DETAILED STATEMENT OF REASONS

DETAILED STATEMENT OF REASONS

This document is a part of the Application for Variance from the Development Standards to apply to the property located at 1355 N Green Street, Brownsburg, IN.

We understand that the Board's findings shall be based upon the following statutory requirements:

Dimensional Variance – Variances from the development standards of the zoning ordinance may be approved only upon a determination in writing that:

- 1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community because the Variance is for one (1) more sign than the Ordinance allows, which 16 square foot sign has been in place since 1991 as an eighth (8th) sign on the property without issue, and which sign is located on the building and therefore will not be a distraction or clutter to the North State Road 267 corridor; and
- 2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the subject sign is a 16-square foot wall sign that has been in place since 1991 as an eighth (8th) sign on the property, which has not to date and will not in the future devalue the adjacent properties, as it is virtually undetectable from neighboring properties; furthermore, the sign is located on the building and therefore will not be a competitive disadvantage to other commercial properties located on the North State Road 267 corridor; and
- 3) the strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property because the subject sign identifies the brand of store as "Circle S", which is separate and distinct from Citgo fuel being sold on the premises; this distinction is of particular importance in the fuel industry, so customers and suppliers can identify the store as not only a Citgo fuel station, but also a Circle S store for promotions and other store offerings.

I hereby assert that this petition addresses the above criteria.

Ben Comer,
Attorney for Petitioner

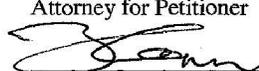
 8/31/12
Date

EXHIBIT – C
LETTER OF INTENT

Letter of Intent
Citgo Gas Station
1355 N Green Street, Brownsburg, IN

C and S, Inc., as owner and operator of the Citgo gas station located at 1355 N Green Street, Brownsburg, has petitioned the Brownsburg Board of Zoning Appeals for a sign variance. After many years operating with grandfathered signage, the owner is updating their signage to Citgo's new design. Historically, this property has had eight (8) signs on the property. The Town ordinance now allows three (3) total signs. Petitioner is willing to reduce the amount of signs from eight to four, thereby cutting the historical number of signs in half. The requested signage would be: one pole sign; two canopy signs; one wall sign on the building. The plan requires Petitioner to remove four canopy signs, the net result being a fifty percent (50%) reduction in overall signage on this property.

The landowner and business owner hereby respectfully request the Town of Brownsburg for a sign Variance to allow a total of four (4) signs on the property.

Respectfully submitted,



Ben Comer,
Attorney for Petitioner

EXHIBIT – D
ZONING MAP

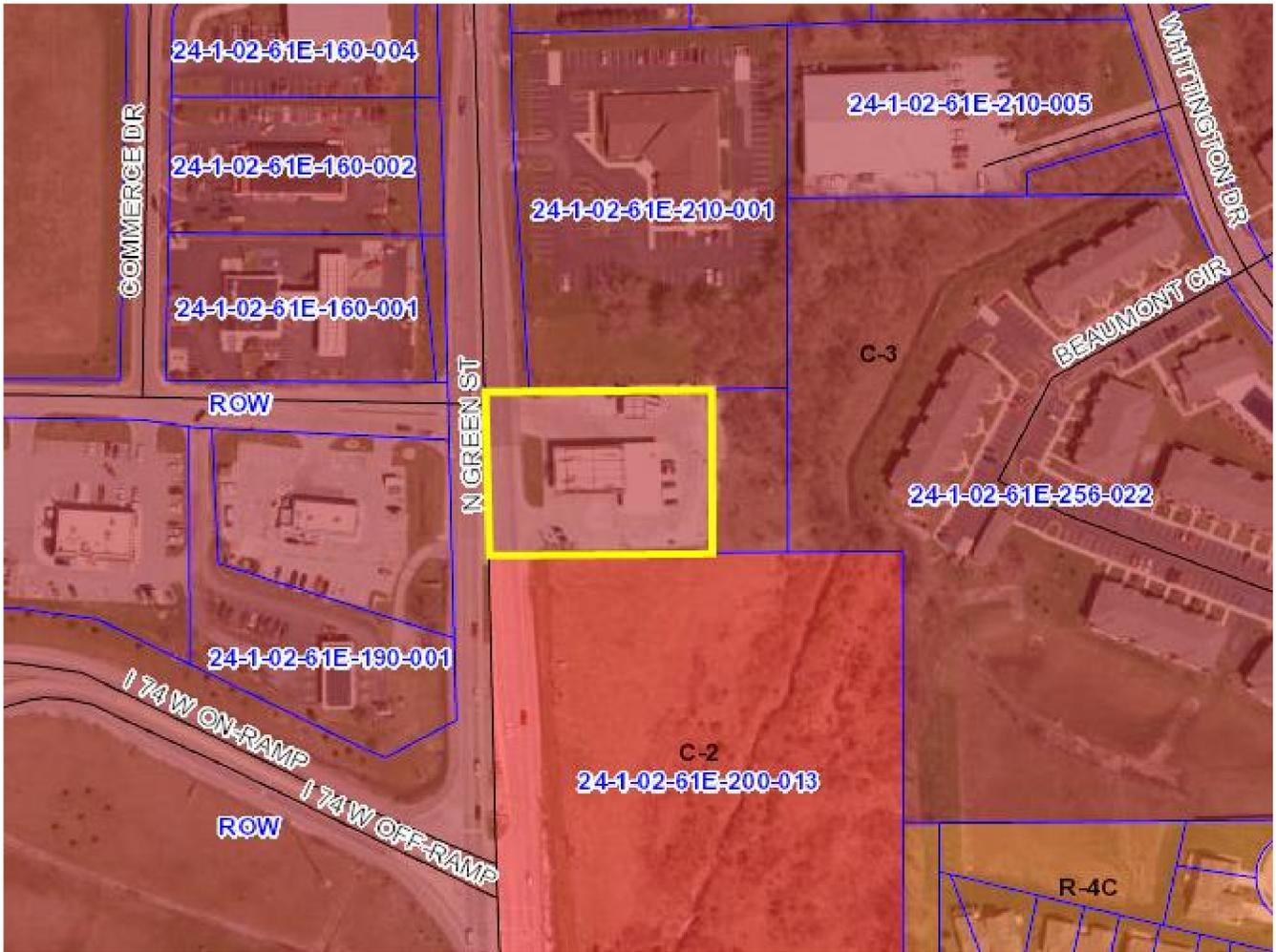


EXHIBIT – E
AERIAL



EXHIBIT – F
SITE PHOTOS



West Elevation of building (from N. Green St.)



North Elevation of building

EXHIBIT – F *continued*
SITE PHOTOS



South Elevation of front canopy



Sign on South Elevation of front canopy.



Sign on North Elevation of front canopy.

STAFF ANALYSIS:

The site subject to this case is one property north of I-74 on the east side of State Road 267 (N. Green Street). According to records found by Staff, this property was developed as a Phillips 66[®] gas station prior to 1986 and has maintained similar uses under various identities over the past 26 years.

Currently the site of a Citgo[®] gas station and Circle S[®], a convenience store, the property has historically included a varying number of signs. Recently, Citgo underwent a process to update its existing signage to accommodate its new branding and corporate image, which required the removal and replacement of 6 of the eight existing signs on-site.

Pursuant to §155.297(B)(3) of the Brownsburg Zoning Ordinance, each lot in town is limited to a total of three signs. Of and by itself, this provision does not require immediate compliance when signs are altered, however §155.295(E)(7)(c) provides that all *“Nonconforming signs which are structurally altered, relocated or replaced shall comply immediately with all provisions of this [Zoning Ordinance].”* Therefore anytime signs are removed, or damaged by 50% or more of their value, they are required to come into compliance with the terms of the ordinance.

When Citgo removed their existing signs, the *Nonconforming* status of each sign became void, thereby requiring a variance for any additional signs above three (3) in quantity, permitted by the Zoning Ordinance.

The Applicant has stated in his Detailed Statement of Reasons that he would like to keep and maintain four (4) signs, total, on the property. Therefore this request is to increase the total permitted signs on-site by one additional sign. While it is the opinion of Staff that the Applicant has provided sufficient evidence in response to Findings #1 and #2 of State Statute, we do not believe Finding #3 adequately identifies a *practical difficulty* created in conjunction with the subject location if the full terms of the Zoning Ordinance are applied thereto.

Below is an excerpt from the Indiana Planning and Zoning Laws Annotated, 2011 Edition in reference to Ind. Code 36-7-4-918.5:

In the case *“Town of Munster Board of Zoning Appeals v. Abrinko”*, the Indiana Court of Appeals held that *“Courts applying the standard of practical difficulties generally require an area variance petitioner to prove significant economic injury from the enforcement of the zoning ordinance[.]”* – Town of Munster Bd. Of Zoning Appeals v. Abrinko, App.2009, 905 N.E.2d 488.

The application and Detailed Statement of Reasons, now before the Board of Zoning Appeals, lacks evidence which would give rise to support an approval of the requested variance as they relate to Finding #3. There is no evidence, other than potential increased profit, which supports the “importance” of identifying both business entities on the site, which entities coexist and complement each other by the very nature of their business. Furthermore the Applicant has failed to provide evidence that supports why one of the three (3) signs permitted under §155.297(B)(3) cannot be used to identify both entities.

RECOMMENDATIONS:

Based upon the analysis of the submitted information by the Applicant, the Dimensional Variance (Development Standards) sections of the zoning ordinance and my comments above, it is our opinion that this request has NOT SATISFIED the requirements for approval of a Development Standards Variance pursuant to §155.036(F)(2)(b) of the Brownsburg Municipal Code and statutory regulations of Ind. Code 36-7-4-918.5.

STAFF CONTACT:

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