

Board of Adjustment Staff Report

Meeting Date: June 22nd, 2023
Location: 10893 Sunset Hills Plaza
Applicant: Paul Mullen
Description: A-21-23- 10893 Sunset Hills Plaza (Paul Mullen): A request for a variance to install a wall sign on a non-residential business located on a corner lot, on a wall not facing a street or road.

SUMMARY:

Paul Mullen on behalf of El Agave restaurant is requesting a variance from Appendix D of the City of Sunset Hills Code of Ordinances to install a sign on the western wall of a restaurant. Currently the restaurant has approval to install one wall sign on the southern wall and approval to install a ground sign north of the building.

Section 5.a.2.a states that; *“Each non residential building occupied by one (1) person or business shall be allowed a maximum of one hundred (100) square feet of total signage, which may include wall signs, ground signs, or poles signs, providing that the conditions of this ordinance be met. No one sign shall exceed fifty (50) square feet. Wall signs cannot exceed ten (10) percent of the total wall area. For businesses located on corner lots, one (1) such sign is permitted facing each street or roadside of the building.*

The applicant has submitted a sign permit application to install a sign on the western wall of the building. The western wall does not face a street or roadside, thus City staff may not approve the sign permit application.

SITE HISTORY:

In 1992 a Conditional Use Permit (CUP) was approved, and the existing restaurant was constructed the same year. The restaurant has had numerous signs installed over the years. In January of 2022, a Conditional Use Permit and Amended Development Plan were approved for the site which included the approval for an outdoor patio located north of the building. The applicant of the CUP and Amended Development Plan (El Agave) is the same restaurant requesting this variance.

BOARD OF ADJUSTMENT POWERS AND RESPONSIBILITIES:

In consideration of a request for a variance, the Board of Adjustment is required to follow Missouri State Statute and Sunset Hills code requirements. **Chapter 89 of the Missouri Revised Statutes states, "In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the construction or alteration of buildings or structures or the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done..." (emphasis added).**

APPLICANT REQUEST:

The Applicant has provided a statement of hardship, practical difficulty, or other information warranting action by the Board for consideration which is included in the Board of Adjustment packet.

The Applicant is requesting a variance to install a sign attached to a wall that does not face a road or street, as required by code. The proposed sign is generally positioned above the front entrance to the restaurant as depicted in (Figure 1)



Figure 1: Proposed Sign Location

REVIEW OF VARIANCE REQUEST:

The Public Works Department has reviewed the request and submits the following information for the Board’s consideration during review.

As established Appendix D (Sign Regulations) of the City of Sunset Hills Code of Ordinances; *“Each non-residential building occupied by one (1) person or business shall be allowed a maximum of one hundred (100) square feet of total signage, which may include wall signs, ground signs, or poles signs, providing that the conditions of this ordinance be met. No one sign shall exceed fifty (50) square feet. Wall signs cannot exceed ten (10) percent of the total wall area. For businesses located on corner lots, one (1) such sign is permitted facing each street or roadside of the building.”*

In addition, Appendix D also states; *Retail businesses which are located at the intersection of two (2) roadways having frontage on each of the intersecting roadways shall be allowed a maximum of two hundred (200) square feet of total signage, provided, that no one sign is larger than one hundred (100) square feet”*

The applicant currently has two signs approved. The first is a ground sign that is north of the building, and the second is a wall sign located on the south of the building. The applicant is permitted to install a sign on the north or east wall, as each of those walls also face a road/street. The applicant is requesting to install a sign on the western wall which does not face a road/street. Figure 2 is an image depicting the general location of the approved signs and the general location of the proposed sign.



Figure 2: Spatial Location of Restaurant Signage

Section 10.3.2 of the City of Sunset Hills' UDO states: The Board of Adjustment may grant variances from the strict application of this Ordinance when by reason of the strict application of this Ordinance or Amendments thereto would result in unusual difficulty or unreasonable hardship upon the owner of said property; provided that such variance can be granted without substantial impairment of the intent, purpose and integrity of this ordinance. It is further provided that this provision shall not permit the Board of Adjustment to permit a use of land not authorized by the provisions of this ordinance for a specific zoning district or to increase the height or volume of a building or structure or to increase the density of development beyond that permitted by this ordinance for any zoning district.

Before granting a variance, there must be a finding by the Board of Adjustment that **all** of the following conditions exist:

1. That if the owner complied with the provisions of this ordinance, the owner would not be able to make any reasonable use of the property which is permitted in the district in which the property is located.

Staff Comment: If the owner complied with the provisions of this ordinance, they would be able to make use of the property as it currently exists.

2. That the difficulties or hardships are peculiar to the property in question in contrast with those of other properties in the same district.

Staff Comment: The subject site is a commercial property along a major corridor which includes frontage and visibility from many locations. In accordance to St. Louis County Geographic Information Systems (GIS), the ground that serves restaurant is approximately 4 foot lower in elevation compared to Watson Road to the north.

3. That the hardship was not the result of the applicant's own action and is not merely financial or pecuniary.

Staff Comment: There is no known evidence that the hardship was put on the applicant but instead a desire by the Applicant to increase visibility along the Watson Corridor and those entering the site from the parking lot.

4. That the issuance of a variance will not be detrimental to the public welfare or health or injurious to other property.

Staff Comment: There is no known evidence that the issuance of the variance would be detrimental to the public welfare or health or injurious to other property.

PREVIOUS SIGN ON WESTERN FACADE:

City records indicate and Google “Street View” imagery demonstrate a sign has previously been located on the western wall (same wall the applicant is requesting) of the restaurant known as IHOP. There are various reasons why a sign could have previously been approved on the wall including, but not limited to a different zoning code, sign criteria or approval in error. It is important to note that Section 11 of Appendix D (Sign Regulations) states that a sign legally existing under prior ordinances, but which violate ordinance today may continue until changing the facing, surface, lettering, message or logo constitutes a new sign and is not allowed. Thus a previous sign approved on the west wall does not permit a new sign on the west wall.

It should also be noted that Section 10.3.3 of the City’s Unified Development Ordinance (UDO) states the existence of any non-conforming situation anywhere in the City shall not itself be considered grounds for the issuance of a variance to the regulations applicable to other property. Thus, if other properties have a non-residential building on a corner lot and they also have a sign on a wall not facing a road/street, this would not be grounds for the issuance of a variance for the subject site.

DECISIONS ON VARIANCE APPLICATIONS:

No variation granted by the Board of Adjustment shall be valid for a period longer than six months from the date on which it grants the variation, unless within such period:

- a) A building permit or other required permit is obtained and the construction, alteration, or moving of the structure is commenced.
- b) If a building or other permit is not required, the construction of the project for which the variation was required is commenced.

EXHIBITS:

1. Application to the Board of Adjustment
2. Staff Report
3. Petitioner's Information
 - a. Applicant's Narrative
 - b. Sign Detail
4. Public Hearing Information
 - a. Public Notice
 - b. Notification Mailing List