

**WALTON BOARD OF ADJUSTMENT
WALTON SENIOR CENTER
BUSINESS MEETING
November 3, 2016
6:00 P.M.**

Mr. Turner, Chairman, called the meeting to order at 6:00 P.M.

BOARD MEMBERS PRESENT:

Mr. Steve Turner, Chairman
Mr. Michael Bryan
Mr. Thomas Luebbe
Mr. Edward Sedor

BOARD MEMBERS NOT PRESENT

Mr. Robin Baker

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

APPROVAL OF MINUTES:

Mr. Turner stated the Board members received copies of the minutes of the Walton Board of Adjustment meeting of September 6, 2016. Mr. Luebbe moved that they be approved as written and Mr. Sedor seconded the motion. Mr. Turner asked for a vote and it carried unanimously.

AGENDA ITEMS:

Mr. Morgan asked if the second item on the agenda could be heard first? He was expecting Mr. Baker to be present and would like to give him some more time to show up. He would like to have him present from the beginning of the discussion since the request was tabled at the last meeting. The applicant for agenda item #1 indicated he was agreeable.

2. **Request of One Stop Signs for a Conditional Use Permit to allow Arby's to have an electronic message center on their monument sign. The approximate 1.23 acre lot is located at 205 Mary Grubbs Highway, Walton, Kentucky and is currently zoned Commercial Two (C-2).**

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Turner said he noticed that Walton Pharmacy's electronic message center (EMC) is scrolling messages. Mr. Luebbe said that was the problem with these type of signs. They need constant zoning enforcement. Mr. Morgan said Planning Commission Staff handles the enforcement. He would make the Zoning Enforcement Officer aware of the issue.

Mr. Turner asked if the applicant would like to make a presentation? Mr. Justen Scalf, with One Stop Signs, said he was present with John Chamberlain, with Arby's. He passed out an exhibit, which showed the dimensions of the current sign (see Exhibit #1). He believes the sign was not constructed per the approved permit because Arby's used a different contractor to do the masonry work. He was not aware of the final outcome. Depending on the outcome of this meeting, they will alter the sign to match the approved sign permit or alter it per the submitted drawing with the EMC. He believes Arby's intentionally left the masonry base shorter so the sign could accommodate the electronic message board at a future date. Regardless of the outcome, they will need to alter the brick base.

Arby's wants the EMC so they can advertise menu items and special events. The viewable area of the EMC will be 24" x 72" and it can display a maximum of 4 lines of 5" characters. The 5" characters would be visible from 250' away. The sign will display messages in a 19 mm pixel pitch and will have a photocell or dimmer to comply with code. It will only display messages for Arby's. He read over the sign code and saw that 5 seconds is the minimum required hold time between messages. He would be agreeable to a 10 second hold time as recommended by Staff. He believes Arby's intent is to post each message for a minimum of 30 seconds. The sign will not flash, scroll, or have any animation. The intent of the sign is to get the most visibility on the block. He doesn't know if this will create a precedent for other businesses to ask for electronic signs. However, he believes the Board would be protected by the 660' spacing requirement that's included in the zoning code. He added that Kentucky Transportation Cabinet has no issues with the sign. The email from them is included in the Staff Report. He offered to answer any questions.

Mr. Turner asked if anybody else in the audience wanted to speak regarding the request? There was no response. Mr. Turner asked if any of the Board members had questions for the applicant?

Mr. Sedor asked if Arby's had an electronic sign in Carrollton that was similar to the one that was being proposed? Mr. Scalf responded that was correct.

Mr. Sedor said everybody understands that the sign is being proposed in the middle of a commercial district. His concern is what is coming next? For example, there is a new auto parts store being built across the street. Will they want an electronic sign? Mr. Luebbe said that is his concern as well. All the businesses want to have the "most visibility on the block" to draw customers in. He is sure McDonald's, Taco Bell, and Auto Zone also want the most visibility. From his perspective, the competition between businesses will be even if they all have freestanding signs without electronic message boards. This would also stop the area from looking trashy. Mr. Scalf said he believes that electronic signs look cleaner and are more convenient than manually changeable signs. Mr. Luebbe said he understands the convenience factor. Mr. Turner said to him it gets back to the passage from the Comprehensive Plan stating that signs should not be used as a means to compete for motorist attention. This seems to be exactly what they are doing. Mr. Luebbe agreed. Mr. Scalf said the purpose of signage is to identify a business and gather attention. The code allows this type of signage as a Conditional Use so he has to believe there is the potential for it.

Mr. Luebbe said the sign that exists today only has three lines of manually changeable text. He understands how this would limit Arby's. Arby's Sign Permit approval allows them to have five lines of manually changeable text. Arby's would have more space to advertise their specials if they constructed the sign per the Permit. Mr. Morgan said the sign could be made even larger. The Permit was for a 10' tall and 70.67 square foot monument sign and the code would allow a 10' tall, 100 square foot monument sign. Mr. Luebbe said that would allow them to advertise even more things. Mr. Scalf said Arby's would be able to advertise in a larger area if the sign were made larger but they will not be able to display as many messages if they do not construct an electronic sign. A manually changeable sign will not be changed by an employee even three times a day. Mr. Luebbe said he understands that but it is on par with all the other restaurant signage in the area.

Mr. Turner said he understands the lure of electronic message signs. However, it is a matter of not getting them to compete for motorist attention. Mr. Scalf said Arby's would be losing because they are not 30' tall and the EMC is not 32 square feet in area. He said the Walton Pharmacy sign sets the precedent in the area. Mr. Morgan said the Walton Pharmacy sign was constructed before Walton Towne Center Subdivision existed. The sign code allowed that parcel to have a 30' tall sign because it was not part of a shopping center or Planned Development. The Walton Board of Adjustment approved the EMC on the sign in 2003. Mr. Luebbe said they cannot change the Walton Pharmacy approval at this point. They can only move forward. He would fully expect Taco Bell and McDonald's to come forward with similar proposals if they approve this application. This will put the Board in a difficult situation. Do they approve Arby's and not the others or do they approve them all? They could have a situation where they have four electronic signs in very close proximity to one another. Mr. Scalf said the signs would not meet the 660' spacing requirement. Mr. Luebbe said they could ask to reduce the spacing with a Variance application. He would prefer to stop the electronic signs at this point. Mr. Scalf said he is sure that McDonald's and Taco Bell reviewed the sign code before they constructed their buildings. He questioned why they didn't ask for EMCs at that time? He cannot speculate what the other businesses will do.

Mr. Turner asked what the EMC could display? He knows it cannot have running or scrolling messages or animation affects. He asked if pictures would be permitted? Mr. Morgan responded still photos would be permitted unless there was a condition prohibiting them. Mr. Scalf said Arby's would be willing to accept a condition that the sign would display text only. Mr. Turner said he is very hesitant to permit an electronic sign in this area for the reasons that were stated earlier. He would feel better about the proposal if it were limited to text messages only and the required message hold time was 30 seconds. Mr. Luebbe said that would still concern him because the managers and employees working in the store still program the sign. Once there are problems, the Board is waiting on the County to enforce the conditions. He thinks it is easier not to approve electronic signs at all. This keeps the signage consistent and everything looks nice. He notices electronic signs in the county that are not following their conditions. Mr. Turner said the Hovian Homes electronic sign is still advertising "rent me" on I-71/75. Mr. Morgan said the Zoning Enforcement officer has been in contact with them but they are not changing the sign.

Mr. Sedor said he thinks this type of signage is inevitable. He believes there will be a lot more of these signs in 5 years. They have the choice to deal with the sign now while they

are Board and imposing proper conditions or justing say no. Mr. Luebbe said his hope is that whoever is on the Board 5 years from now would continue to follow their guidelines the same way. Mr. Sedor said electronic signs are clearly the way of the future. He sees them on billboards all the way from Kentucky to Florida on I-75.

Mr. Scalf said there are already electronic signs on this strip. Both fuel centers have electronic price panels. He doesn't believe this sign will tarnish the region. Electronic signs are cleaner and more reliable. An example, would be after a snow storm or wind event. Mr. Turner replied he doesn't see electronic signs as being sloppier than manually changeable signs. They bring different issues and are not permitted by right. Mr. Bryan said he agrees with Mr. Scalf. He doesn't have a problem with the proposal because there are already other electronic signs in the area.

Mr. Scalf acknowledged that some businesses that have electronic signs violate their conditions. He said he would make the Arby's team well aware of any conditions that are imposed on an approval. He has full faith that Arby's would comply with their conditions.

Mr. Luebbe said the issue to him is the passage from the Comprehensive Plan that was included in Staff Report. He read the passage and stated the proposed sign would be competing for motorist attention. He believes their existing sign is adequate. He understands that there are other electronic signs in the area but he was not on the Board when they were approved.

Mr. Turner asked if somebody on the Board would like to make a motion? Mr. Luebbe made a motion to deny the request based on their discussion and Mr. Turner seconded the motion. Mr. Turner asked for a roll call vote and Mr. Luebbe and Mr. Turner voted "yes" and Mr. Sedor and Mr. Bryan voted "no". The vote was 2-2 so the motion did not carry.

Mr. Turner asked if the Board would like to keep discussing the matter? Mr. Sedor said billboards and signs drive him nuts. He was in a governmental agency that controlled the distance between billboards. He doesn't believe LED signs are appropriate in some areas but feels that they can be appropriate in commercial areas. The only reason businesses install signs is to draw motorists attention. The only issue he has with this sign is that it is the first thing you see when you get off the interstate exit ramp. The Marathon and Dairy Queen signs are further back and are not in your direct line of sight. He came close to voting for denial for this reason.

Mr. Luebbe said the zoning regulations do not permit these signs by right. They are asking for a Conditional Use to allow this sign in their town. There is a reason why these types of signs are Conditional Uses.

Mr. Turner said he feels that the playing field is pretty level, with the exemption of Walton Pharmacy. He feels that this proposal would un-level the playing field. Mr. Sedor questioned what they would do if Arby's, McDonald's, and Taco Bell were all asking for electronic signs at the same time? Mr. Luebbe said he would be saying no.

Mr. Baker arrived at the meeting at this time.

Mr. Wilson asked Mr. Baker if he had read the Staff Report and was familiar with the request? Mr. Baker said he had read the Staff Report but would like to get some highlights of the discussion to date. Mr. Scalf and Mr. Morgan summarized the discussion that had occurred.

Mr. Sedor said a Conditional Use is not forbidden. It just means that certain conditions have to be put on the use. Mr. Morgan said a Conditional Use needs to be analyzed by the Board of Adjustment to determine if the use is appropriate at a subject location. The Board does this by analyzing the Conditional Use Permit criteria. He added that a certain Conditional Use may be appropriate at one location but not another. Things like the setting and adjoining uses can have a bearing on whether the Conditional Use is appropriate. With any Conditional Use Permit, the Board can impose reasonable conditions on an approval.

Mr. Turner said one of the reservations the Board has is how many other requests will come in if they approve this request? Mr. Luebbe added the Board also needs to consider if they would be comfortable with approving an electronic sign for Arby's but not McDonald's. Mr. Scalf indicated that the 660' spacing requirement is already articulated in the regulations. Mr. Luebbe said they can ask to reduce that requirement by submitting a Variance.

Mr. Luebbe said another thing that concerned him was the fact that many of the electronic message boards do not operate per their approvals. Many of them are constant enforcement issues. He thinks it's easier to turn them down then deal with the enforcement.

Mr. Baker asked if the sign would only be used to advertise Arby's specials? Mr. Scalf replied that was correct. He added that he would be willing to agree to conditions that would limit the EMC to text messages only and require a 30 or 60 second message hold time. The EMC is a priority because the manually changeable copy sign can only realistically advertise 1 special per day.

Mr. Baker asked how far away McDonald's and Taco Bell's sign were from the Arby's sign? Mr. Morgan said the Arby's sign is 1,175' from the Walton Pharmacy sign. He doesn't believe another business could ask for an electronic sign between Arby's and Walton Pharmacy without asking for a Conditional Use Permit and Variance. The Variance would be needed to reduce the 660' spacing requirement between electronic signs.

Mr. Baker asked if the sign would be limited to one color? Mr. Luebbe said they hadn't addressed that because the first motion was to deny the request and the vote was 2-2. Mr. Scalf said they would agree to a condition limiting the sign to one color (monochrome) if multiple colors is a concern. He added their priority is to get text messages to the street.

Mr. Bryan said the Board could hypothetically deny another application if the sign was within 660' of another electronic sign. Mr. Luebbe said that would be giving the approval to Arby's because they were first. Mr. Scalf said that rule was articulated in the code because they didn't want a high density of these signs in a given area. That rule draws a line in the sand. Mr. Turner said another rule in the sand is that these signs should not be competing for motorist attention per the Comprehensive Plan.

Mr. Scalf said he understands that signage is not supposed to compete for motorist attention. He doesn't feel the sign does this because they are complying with the height limitation, square footage requirements, and pixel pitch requirements. He thinks he mis-spoke earlier when he said that Arby's wanted to be the most visible on the block. He believes that is the goal of every business.

Mr. Turner said he remains concerned about other electronic sign not following their approvals and the headaches of trying to get them to conform. Mr. Luebbe said that is why it would be easier to stop it before it became a problem. Mr. Scalf said he doesn't think it is fair to penalize Arby's because other companies aren't following their approvals.

Mr. Turner said he wouldn't be opposed to the request if it were conditioned properly. They could condition it so the sign is basically what they have now but with infrequently changing electronic messages. However, his concern remains about policing the sign through code enforcement. Mr. Sedor said that the public would need to speak up and report the violations.

Mr. Luebbe said it is evident that the business is an Arby's and that they have daily specials. They are just like McDonald's and Taco Bell because they all have daily specials. He believes the request shouldn't be approved because their signs are all on an even playing field and look nice. He wishes they could go back and not allow the Walton Pharmacy sign but he wasn't on the Board then. Mr. Turner added that most of the general public do not know what the rules are on electronic signs.

Mr. Sedor said it would be easier to say no to this sign and move on. However, they are almost in the year 2017 and he feels that these type of signs, if done properly, should be approved in commercial districts. An example of a LED sign being done properly is the new Crossroads Church sign on Mall Road. Most people probably don't realize that it contains an LED panel on top of the sign. Directly across the street is the worst LED sign that he has ever seen. It reminds him of signs he has seen in Las Vegas. Mr. Luebbe added the Beechmont Road area in Cincinnati is battling sign issues everyday because they approved a lot of bad things. He thinks they are in a great situation to control things in this corridor. This doesn't mean that Arby's cannot advertise or draw their customers in. It just means their signage cannot be gaudy.

Mr. Sedor asked Mr. Luebbe what he would want an LED sign to look like if he had to approve one? Mr. Luebbe said it would contain no movement, have monochromatic messages, and be dim.

Mr. Turner asked if anyone would like to make a motion? Mr. Luebbe made a motion to deny the application based on the discussion and Mr. Turner seconded the motion. Mr. Turner asked for a roll call vote. Mr. Luebbe and Mr. Turner voted "yes" and Mr. Bryan, Mr. Baker, and Mr. Sedor voted "no". The motion to deny failed 3-2.

Mr. Luebbe said if they are not going to deny it then what restrictions are they going to put on it? Mr. Sedor said he would like to see text only, no pictures, no movement, monochromatic messages, dimming, and pixel pitch requirements. Mr. Morgan recommended they look at Staff Comment #5 and edit it as needed.

Mr. Sedor made a motion to approve the request with the following conditions:

- 1. The sign shall be constructed as presented unless modified by other conditions below.**
- 2. The electronic message center shall only display messages in red monochrome text on a black background.**
- 3. Electronic messages shall be held for a minimum of 30 seconds and shall not contain any apparent visual motion (running messages, scrolling messages, flashing messages, moving patterns or boards of light, animation effects, videos, live feeds, etc.) or still photos.**
- 4. Messages shall be displayed with a 19 mm pixel pitch or better resolution.**
- 5. The sign shall be equipped with a photocell and the electronic copy shall dim as the sky gets darker.**
- 6. The property owner shall work with the City of Walton and Boone County Planning Commission Staff to resolve any lighting issues (brightness, glare, etc.) that are caused by the subject sign on public rights-of-way.**
- 7. The electronic message center shall not be used to advertise off-premise businesses.**

Mr. Bryan seconded the motion. Mr. Turner asked for a roll call vote and Mr. Sedor, Mr. Baker, and Mr. Bryan voted "yes" and Mr. Turner and Mr. Luebbe voted "no". The motion carried by a 3-2 vote.

- 1. Request of Quality Signs for a Conditional Use Permit to allow Walton Christian Church to alter the conditions from their 6/16/16 Conditional Use Permit approval. The request would allow the church to have a full color electronic message board on their monument sign. The approximate 1.45 acre lot is located at 50 S. Main Street, Walton, Kentucky and is currently zoned Public Facilities (PF) and Suburban Residential One (SR-1).**

Staff Member, Todd Morgan, AICP, said the request was tabled at the last meeting. He offered to give a quick overview of the Staff Report since all five Board members were not present at the last meeting. He indicated the Board approved Walton Christian Church's Conditional Use Permit request on 6/16/16 and allowed them to have an electronic message board. Page 1 of the Staff Report outlines the conditions that were imposed on the approval. They are asking the Board to reconsider the conditions because they would like to have a full color message board.

Mr. Luebbe asked if the original Conditional Use Permit is up for discussion again or do they get the first approval again no matter what. Mr. Morgan replied that the church gets the first approval no matter what. The approval runs with the land. Mr. Wilson agreed.

Mr. Luebbe said the 6/16/16 church approval is very similar to the Arby's approval.

Mr. Morgan said they changed the dimensions of the sign with the new application. The proposal would allow a 4'-8" tall and 18.33 square foot sign. The viewable area of

the electronic message center is 2' x 4'. The 6/16/16 proposal showed the sign would be 5'-6" tall and 22.5 square feet in area. The viewable area of the electronic message was 2' x 4'.

Mr. Morgan showed a zoning map of the property and indicated the subject location is zoned Public Facilities (PF). Electronic message boards are conditional uses in this zone. He showed the 2035 Future Land Use Map and indicated the property is forecasted for Public/Institutional uses. The Board needs to analyze this and the Future Land Use Development Guideline which is outlined on page 3 of the Staff Report. He added what makes this request different is the property is located within the limits of the South Main Street National Register Historic District. He stated that he submitted a description of the district into the record at the 6/16/16 meeting. He reviewed the topography, pictures of the site, and pictures of adjoining properties. He said he would not review the Staff comments again unless someone had specific questions. The 6/16/16 meeting minutes were sent out to the Board members and were approved this evening. Hopefully everybody has reviewed them. He indicated that Mr. Sedor emailed him a letter that he had received from Mayor Carnahan and some of the Council Members regarding the request (see Exhibit 2). Mr. Luebbe asked who requested the letter? Mr. Morgan said the Board asked the applicant to contact the Mayor and Council at the last meeting since they adopted the Walton Main Street Strategic Plan. Mr. Wilson asked the applicant and Pastor if they had seen the letter? They indicated they had. Mr. Morgan said the other thing the Board asked the applicant to do was to check out some other national historic districts throughout the country to see what types of electronic signage had been permitted in them.

Pastor Kevin Russell, with Walton Christian Church, reviewed four different pictures (see Exhibit 3) showing electronic signs in historic districts. The first was Reading Feed, in Reading, Ohio. The sign was constructed in 2008. The second picture shows an electronic sign that is located in a historic district in downtown Louisville. The third picture shows the old St. George Church, in Clifton. The church is on the National Register of Historic Places. The church reopened earlier this year as Crossroad Church. The third picture shows the building before it was occupied by Crossroads Church. The fourth photo shows a 16 mm full color electronic sign (sign is partially hidden by telephone pole) that was constructed by Crossroads Church. He said that sign is a very comparable because it's a full color electronic sign for a church in a historic district. The sign isn't grandfathered because it was recently constructed.

Mr. Sedor said the LED sign that Crossroads Church constructed on Mall Road was very well done. It's hard to tell that it is an LED sign. He added the worst electronic sign he has ever seen is located directly across the street. Pastor Russell said the proposed sign would have the same appearance as the Crossroads Church sign. It will be very steady and have the appearance of a stationary board.

Mr. Luebbe said the biggest difference between the last proposal and this one is the location. One location is a business corridor and the other is a historic district. The church has already received approval to construct an electronic sign that is equivalent to the Arby's sign they just approved. The Board would be allowing a higher level (full color) electronic message board in the historic district if they approved this request.

Mr. Sedor said the current approval would allow the church to display a picture. Mr. Turner said it would have to be a still photo and monochrome in color. Mr. Morgan agreed. Mr. Luebbe said then their approval is already one step above Arby's. Mr. Sedor agreed. He added that this application is to allow the church to display full color messages. Pastor Russell agreed.

Mr. Diersing, with Quality Signs, said the proposal is not for a flashing sign. The code prohibits flashing, scrolling, etc. He fully believes the sign will be used properly and will not be identified as an electronic sign. It will be much cleaner and crisper than a manually changeable copy sign. He indicated that Quality Signs installed the Reading Feed Mill EMC in 2008 and the only service call they received was due to a truck backing into it.

Mr. Sedor said the original approval limited to church to displaying electronic messages in white or amber copy with black backgrounds. The conditions also indicate that nothing can flash, scroll, or move and the message hold time is a minimum of 5 seconds. He said the approval does not prohibit still photos. Mr. Morgan agreed but indicated the photos would need to be in white or amber copy. Mr. Sedor said he is not in favor of making any changes to the church's 6/16/16 approval.

Mr. Sedor made a motion to deny the application and Mr. Luebbe seconded the motion. Mr. Turner asked for a roll call vote. Mr. Turner, Mr. Luebbe, and Mr. Sedor voted "yes" and Mr. Baker and Mr. Bryan voted "no". The motion carried 3-2.

OTHER

No other business was discussed.

ADJOURNMENT

Mr. Turner asked for a motion to adjourn the meeting. Mr. Luebbe so moved and Mr. Bryan seconded the motion. The motion carried by unanimous consent and the meeting adjourned at 7:29 P.M.

APPROVED

Steve Turner
Chairman

Attest:

Todd K. Morgan, AICP
Senior Planner, Zoning Services

Exhibits

1. Dimensioned Drawing of Arby's Existing Sign
2. 9/15/16 Email from Ed Sedor
3. Photos Submitted by Pastor Russell