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Board of Adjustment Staff Report

TO: BOARD OF ADJUSTMENT

FROM: SAMANTHA NOVOTNY, PLANNER I *SN*
 (480) 503-6602, SAMANTHA.NOVOTNY@GILBERTAZ.GOV

THROUGH: ASHLEE MACDONALD, AICP, PRINCIPAL PLANNER *Am*
 (480) 503-6748, ASHLEE.MACDONALD@GILBERTAZ.GOV

MEETING DATE: MAY 24, 2023

SUBJECT: AP23-02 (V22-07) APPEAL TO THE BOARD OF ADJUSTMENT OF THE ZONING HEARING OFFICER’S DENIAL DECISION REGARDING A VARIANCE REQUEST TO INCREASE MONUMENT SIGNAGE DIMENSIONS AT VALOR CHRISTIAN CENTER 3015 E WARNER ROAD.

STRATEGIC INITIATIVE:	N/A
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RECOMMENDED MOTION

Move to uphold the denial decision of the Zoning Hearing Officer in variance case V22-07, which requested to increase the signage of one (1) monument sign along Warner Road. The property is located at 3015 E Warner Road and is zoned Single Family-8 (SF-8).

APPLICANT

Company: Provident Law
 Name: Erik Stanley
 Address: 14646 N Kierland Blvd, Scottsdale, AZ 85254
 Phone: (480) 388-3343
 Email: erik@providentlawyers.com

BACKGROUND/DISCUSSION

History

Date	Description
<i>July 30, 1996</i>	Town Council adopted Ordinance No. 988 (A96-6), which annexed approximately 190 acres into the Town jurisdiction, which included the subject site.
<i>September 11, 1997</i>	The Design Review Board approved DR97-53 for the Celebration Christian Center. This approval has since expired.
<i>December 9, 1999</i>	The Design Review Board approved DR99-109 for the Celebration Christian Center. This approval has since expired.
<i>February 1, 2005</i>	Town Council reclassified all properties with the Town of Gilbert to zoning districts in the 2005 Land Development Code. The subject site was reclassified from R1-8 to SF-8.
<i>November 10, 2005</i>	The Design Review Board approved DR05-63, a site plan, grading and drainage plan, elevations, landscaping, architecture, and lighting plan for a conceptual 4-phase church master plan along with Phase I for Oasis Family Church.
<i>September 11, 2008</i>	The Design Review Board approved DR05-63-S, a Comprehensive Sign Program for Oasis Family Church.
<i>August 9, 2018</i>	Staff administratively approved DR05-63-A, a picnic ramada addition for Valor Christian Center.
<i>February 2, 2022</i>	The Planning Commission reviewed GP21-07 and Z21-09, a request to rezone from SF-8 to NC, as a Study Session item.
<i>March 8, 2023</i>	The Zoning Hearing Officer heard and denied V22-07, a variance request for Valor Christian Center.

Original Request

The variance (V22-07) was a request to deviate from the Town Of Gilbert Land Development Code (LDC) requirements contained in Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for electronic changing message display.

The Zoning Hearing Officer (ZHO) heard case V22-07 at a hearing on March 8, 2023, and concluded the required four Findings of Fact from LDC Section 6.5.3 had not been met, and therefore denied the request. The variance staff report, hearing

minutes, and ZHO's notice of decision and findings are listed as attachments #3, #4, and #5 respectively.

Appeal Discussion

The applicant is appealing the ZHO decision and findings. The grounds upon which the appellant has requested an appeal to the ZHO's finding, pursuant to ARS § 9-462.06.G and LDC Section 6.2.12, is attached to this report as attachment #2 and is as follows:

“The Church clarified at the hearing before the ZHO that it was willing to accept the following conditions on a variance:

- A limit of a freestanding monument sign 12 feet in height with a 60 square foot maximum sign area. The Church's variance application sought a variance for a sign with a height of 14 feet and 64 square feet of sign area.
- A limit of only one freestanding monument sign, as described above, instead of the three additional monument signs currently allowed to the Church in the SF-8 District.
- A limit that the freestanding monument sign described above would be located only along Warner Road.”

Based on the above conditions suggested by the applicant, staff's position has not changed. The findings per LDC Section 6.5.3 are listed here, along with the reasons why staff considers that the findings are or are not met in this case:

A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;

The reasons described in the project narrative would not qualify as a special circumstance. Staff finds the property shape is not irregular. The building being set farther back to the southern area was a phasing plan choice and not a product of special circumstance due to size, shape or topography. The front setback in the SF-8 zoning district is 20 feet, and there was no encumbrance found that required the building to be set farther back than the 20 feet.

Staff informed the applicant of some examples that are considered special circumstances, such as:

- Utility easements or infrastructure in an abnormal location
- Irregular-shaped lots
- Private/civil encumbrances and restrictions on land use and development

- Being in a floodplain zone
- Developing on difficult topography, such as sunken or steep terrain.

Such circumstances were not applicable to the subject site, and the applicant has not provided evidence of other types of special circumstances. The applicant is concerned that smaller signage is not visible enough to high-speed motorists or to those traveling westbound. Staff has suggested to maximize the current sign allowance, as is shown in the table below, rather than pursue the variance:

	Existing On Site	Maximum Allowance
Height	5 feet	8 feet
Sign Area	22 square feet	32 square feet
Number	1	3

It is important to note that the LDC defines Sign Area as the area for copy and graphics, and does not include structural supports, monument base, and architectural features. Staff believes this allows room for flexibility needed for copy and graphics while still maintaining a smaller scale at 32 square feet in a residential zoning district. In researching Town records, there are no other examples of *place of worship* uses in a residential zoning district that have signage greater than what is allowed through the sign code.

Staff finds that special circumstances not present. Staff finds that the strict application of the Land Development Code would not deprive the specific property of privileges enjoyed by similar property in the SF-8 zoning district.

B. Such special circumstances were not created by the current or previous owner or applicants;

Prior to the variance request, the applicant pursued a rezoning request to change from SF-8 to Neighborhood Commercial (NC). Staff brought forth the rezoning request to a Study Session with the Planning Commission, who found the NC rezoning to be an appropriate request for the area. However, staff and Planning Commission advised the applicant and property owner to carefully review the differences between SF-8 and NC before pursuing a finalization of the rezoning. Upon realizing the differences and potential limitations of changing from SF-8 to NC, the applicant paused the rezoning request because certain provisions were found to be too limiting as compared to their existing zoning. One example of this is that the NC district limits building square footage to 25,000 square feet, while their original master plan approvals allowed upwards of 42,000 square feet in the SF-8 district.

In the narrative, the special circumstances are claimed to be due to the mere existence of the LDC’s sign code provisions. Staff is of the opinion that the existence of the LDC is not evidence of special circumstances. There are many pros and cons to each zoning district that should be carefully weighed if a property owner is to consider changing zoning districts. The analysis of the pros and cons does not equal to being a special circumstance. The applicant has not provided other evidence of special circumstances thus far.

Staff finds that the special circumstances present are “self-imposed”.

C. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and

The applicant believes the property is unique due to being residentially zoned while simultaneously containing characteristics of a commercial property. Additionally, the narrative goes on to say the property to the east is zoned General Commercial (GC) and is allowed to have increased signage dimensions, therefore the church property should also be allowed the same rights due to the commercial nature.

However, the church property is in a residential zoning district (SF-8), and granting a larger sign would be out of character with the residential properties to the north, south, and west, and would be out of character for their zoning district. A *place of worship* use in a residential zone is not a unique development scenario in the Town of Gilbert. The LDC has purposeful provisions that ensure non-residential uses are developed at a smaller scale as compared to a typical commercial zoning district. The provisions are incorporated throughout the body of the code, and the LDC also states in Section 3.2.6, “Non-residential uses in a residential district provide neighborhood services and have been determined to be complimentary, in scale, hours of operation, and intensity, with minimal impact to the surrounding neighborhoods.”

Staff researched Town records for comparable properties with an identical situation i.e. a *place of worship* use in residential zoning. Staff found at least nine properties, but there are no records for variance or design review approvals of freestanding signs that are larger than the sign code regulations.

Name*	Zoning District
Desert Gateway Baptist Church	SF-43
Gilbert Presbyterian Church	SF-10
Heritage Free Will Baptist Church	SF-35

LDS Ward Church	SF-35
Mission Community Church	SF-6
New Hope Community Church	SF-7
St. Annie's Catholic Church	SF-15
Trinity New Life Church	SF-D
Two Rivers Church	SF-8

*Name in Town records may differ from current name

This reinforces Staff's opinion that granting the variance and overturning the decision would permit special privileges inconsistent with typical non-residential uses in residential zoning districts that have developed in conformance with LDC standards.

Staff finds the variance would grant special privileges inconsistent with limitations on nearby or comparable properties.

D. The variance will not be materially detrimental to persons residing or working in the vicinity, to abutting property, to the neighborhood, or the public welfare in general.

The narrative statements largely focus on wanting to increase the sign size. Staff believes this is still possible. The existing sign is smaller than what is allowed in the sign code. Therefore, if a larger sign is desired, the applicant should make use of the sign code maximum allowances for freestanding monument signs.

Although staff agrees that if a rezoning to NC were to be granted, the larger sign dimensions would be allowed by right and would not be a detrimental addition to the Town's welfare. However, the fact remains that the church use is in the SF-8 zoning district. As such, a church use in a residential zone is not a unique development scenario and is specifically planned for with provisions to regulate the scale of development and impact within a residential zoning district. Without evidence of special circumstances, a granting of this variance does not meet the intent and purpose of the SF-8 district if the use is to develop in a manner that becomes more commercial in nature.

Staff finds that the proposed variance will be detrimental to the enjoyment of adjacent properties, land uses or the greater community's welfare and safety.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, an official notice was posted in all the required public places within the

Town, and neighborhood notice was provided per the requirements of the LDC Section 6.2.6.

Staff received one phone call from a resident stating their desire for the Board of Adjustment to uphold the ZHO's denial decision.

STAFF RECOMMENDATION

Staff recommends the Board of Adjustment uphold the Zoning Hearing Officer's denial decision.

Respectfully submitted,



Samantha Novotny
Planner I

Attachments and Enclosures:

1. Notice of Public Hearing
2. Applicant's Appeal Narrative
3. V22-07 Variance Hearing Staff Report
4. V22-07 Variance Hearing Meeting Minutes
5. V22-07 Variance Notice of Decision and Findings

AP23-02 Valor Christian Center - Appeal of ZHO to BOA

Notice Attachment 1 - Notice of Public Hearing

BOARD OF ADJUSTMENT DATE:

Wednesday, May 24, 2023 TIME: 5:00 PM*

LOCATION: Council Chambers
Municipal Building I
50 East Civic Center Drive

*Call Planning Division to verify date and time: (480) 503-6602

The application is available to the public for review at the Town of Gilbert Planning Division Monday - Thursday 7AM - 6PM. Staff reports and the agenda are available prior to the meeting at www.gilbertaz.gov/departments/development-services/planning/planning-commission

REQUESTED ACTION:

AP23-02 VALOR CHRISTIAN CENTER: Appeal to the Town of Gilbert Board of Adjustment from the Town of Gilbert Zoning Hearing Officer's denial of a Variance (V22-07) request to increase the signage of one (1) monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing Message Display. The property is located at 3015 E Warner Road and is zoned Single Family-8 (SF-8). The Board of Adjustment may uphold the denial by the Zoning Hearing Officer or may grant the Variance. If granted, the Board of Adjustment may impose conditions on the Variance.

SITE LOCATION:



APPLICANT: Provident Law
CONTACT: Erik Stanley
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Erik Stanley

Attorney

erik@providentlawyers.com

April 14, 2023

Case Number: V22-07

Applicant: Valor Christian Center

Grounds for Appeal from Decision of Zoning Hearing Officer

Valor Christian Center (the “Church”) appeals from the decision of the Zoning Hearing Officer (“ZHO”) that was issued on March 16, 2023 denying it a variance for a free standing monument sign. For the reasons stated below, the Board of Adjustment should reverse the decision of the ZHO and should grant the requested variance.

The Church clarified at the hearing before the ZHO that it was willing to accept the following conditions on a variance:

- A limit of a freestanding monument sign 12 feet in height with a 60 square foot maximum sign area.¹
- A limit of only one freestanding monument sign, as described above, instead of the three additional monument signs currently allowed to the Church in the SF-8 District.
- A limit that the freestanding monument sign described above would be located only along Warner Road.

The Church is still willing to accept these conditions on a variance in this appeal.

¹ The Church’s variance application sought a variance for a sign with a height of 14 feet and 64 square feet of sign area.

Background

Valor Christian Center applied for a variance for a larger electronic sign along Warner Road. Specifically, the Church sought a variance to have one freestanding monument sign on its Property that is 14 feet in height and that has 64 square feet allotted to an Electronic Changing Message Display. The variance application was for one freestanding monument sign.

Valor Christian Center's Property (the "Property") is a 6.06-acre parcel at the intersection of East Warner Road and South Claiborne Avenue. A church sanctuary building and a parking lot currently exist on the Southwest corner of the Property.

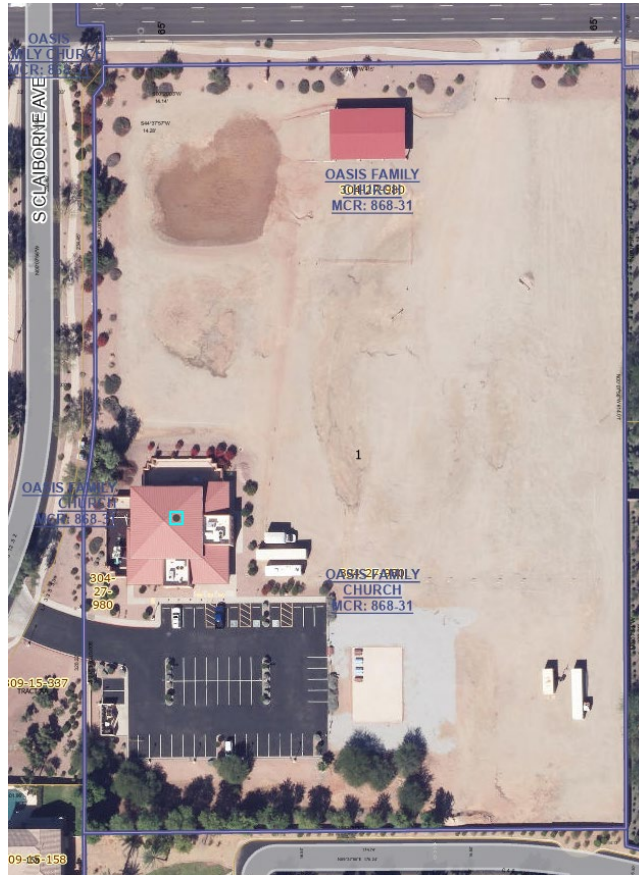
The Property is currently zoned SF-8 with a General Plan Land Use Classification of Residential 3.5-5 du/ac. Within the Church's current zoning district, a freestanding monument sign is allowed but only at a maximum height of 8 feet. Additionally, an Electronic Changing Messaging Display is allowed as a non-residential use in a residential district, but the maximum signage area allowed is 32 square feet. The Church submitted the Variance Application because the limitations on the sign height and signage area would defeat the ability for the Church to have a sign that can be seen by passing motorists on Warner Road and the Property's particular characteristics and the surrounding properties lend themselves to a sign of the type the Church is proposing.

The Church offers the following grounds for appeal from the Zoning Hearing Officer's decision denying its Variance Application.

- 1. The Church presented evidence showing why, due to special circumstances applicable to the property, including its size, shape, topography, location or surroundings, strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by other property owners of the same classification in the same zoning district.**

The Church's Property is over 6 acres and the main church building is set back from Warner Road such that it almost cannot be seen from Warner Road. See aerial photo below:





The Church currently has one small sign along Warner Road as depicted below:



The size and shape of the Property combined with the setback of the main church building counsel for a larger sign along Warner Road that can be seen. Moreover, traffic passing along



Warner Road will have a difficult time seeing a smaller electronic changing message display sign that advertises events and church activities.

Warner Road is a major arterial which the General Plan defines as “high capacity roadways that carry large volumes of traffic between areas of high residential density, employment, retail and commercial land uses.” The speed limit along Warner Road in front of the Church is 45 mph and, because the Church’s main entrance is off Claiborn Avenue and not directly from Warner Road, vehicles traveling by the Church’s Property will not be able to see an electronic changing message display at 45 mph that is only 16 square feet (the current limit of an ECM display). At a limit of 16 square feet, the Church will be severely limited in the messages it can display to passing motorists. Similar properties where buildings are located as far back from a main arterial should be allowed to draw attention to events and messages happening on the Property through larger signs such as the size the Church applies for in this Application.

Even though the current code allows for 3 freestanding monument signs, the size of the allowed signs are small and are not visible from Warner Road as motorists pass by. When the Church’s original monument sign was installed, there was no obstruction of landscaping vegetation and Warner Road was two lanes with no median divider. Traffic was closer and a shorter sign could be more easily seen. The speed limit along Warner Road is now 45mph, not 25 or 35, and most traffic passes by the Church Property at average speeds of 50 or more. Additionally, there are not two lanes of slow-moving traffic as originally existed, but Warner Road now has six lanes of moving traffic at much further distances from the Church’s Property. Instead of having three very small freestanding monument signs, the Church requests a variance for only one larger freestanding monument sign that can be seen by passing motorists and that provides the Church the opportunity to effectively communicate its message.

The Zoning Hearing Officer’s decision focused on the fact that the property was rectangular and “regular-shaped and unencumbered by any significant factors related to its surroundings.” This assertion, however, ignores the actual physical characteristics of the property at issue and the surrounding factor, the primary one being the traffic speeds along Warner Road that changed after the Church had been there for several years. The Church’s approved site plan for the property was made at a time when the area was fields, mostly undeveloped, and the size of monument sign allowed by the Code could be seen by passing traffic. That has all changed now.

Moreover, the Church has heard from several people, including even some who live in the neighborhood next to the church, who have not seen the Church’s current monument sign because of Warner Road being divided, the sign’s lack of height to be seen over landscaping, and because of the speed at which passing traffic goes by the Church.



2. Evidence showing that the requested variance will not constitute a grant of special privileges inconsistent with limitations upon other properties in the vicinity and district in which the property is located.

The Church's Property is unique in that, even though it is residentially zoned, it contains characteristics of a commercially zoned property. It is a large piece of property and much of it is currently unused. The Property contains over 425 feet of frontage on Warner Road and serves as a transition from the GC properties to the East of the Church to the residential properties to the West of the Church. An ECM Display sign is already allowed in the SF-8 district where the Church's Property is located thus such a sign, even at the slightly larger scale proposed by the Church would not be inconsistent with the other properties in the vicinity and district where the Church's Property is located.

The property directly to the East of the Church is zoned General Commercial (GC) and contains many of the same physical characteristics of the Church's property. It is rectangular in shape and the primary building is set back from Warner Road as depicted in the aerial photograph below:



The GC property to the East already has permission for an ECM changing free-standing monument sign that is 12 feet high and 60 square feet of the sign can be devoted to the ECM display. See LDC Table 5.6.11.C.1. Thus, the Property directly to the East of the Church's property, that shares many of the same physical characteristics could have the sign the Church seeks a variance for. But mere feet away, the Church cannot have the same sign.

3. Evidence that the special circumstances applicable to the property were or are not self-imposed by the current or previous property owner or applicant.

The special circumstances that exist are a result of the Town's sign code and the physical changes to the surrounding area (namely, Warner Road being widened and the speed limit increased), and are not self-imposed by the Church. The Town developed around the Church making it more difficult to see and know the church exists. The Church has not changed since the building was located and built in 2008.

Indeed, if the Property were zoned commercial, the Church would be able to have a larger ECM display sign as allowed in commercially zoned properties (one of which is mere feet to the East). However, the Church finds itself in a double bind. It had originally begun pursuing a rezone of its Property to Neighborhood Commercial (NC) but learned that it would be required to give up the amount of square footage it would be able to have in a proposed expansion. The original approval the Church has from the Town would allow 42,204 square feet of building coverage. However, to rezone its Property to NC, the Church would be limited to 25,000 square feet of building coverage. Town staff prepared a report proposing approval of the Church's application to rezone its Property to NC, thus acknowledging that the Church's Property meets the requirements to be zoned NC and to have a 12 foot high ECM Display sign with a maximum sign area of 60 square feet. It was only when the Church learned that it would have to give up its proposed already-approved expansion plans that it turned to this Variance Application and has put its rezoning application on hold. The Church should not be required to give up already approved square footage of buildings it wants to build in the future just to have a larger sign that the Town staff acknowledges it could have and that the staff acknowledges the Property is suited for. In short, the requirements of the Town's code have imposed the current state of affairs on the Church and the burden is not self-imposed.



4. Evidence showing why granting the variance:

a. Substantially meets the intent and purpose of the zoning district in which the property is located

Granting the variance will meet the intent and purpose of the SF-8 district. The Land Development Code allows for places of worship in the SF-8 district and also allows for ECM Display signs as non-residential use of residentially zoned property. Thus, the Code already has determined that use of residentially zoned property and ECM signage associated with that use meets the purpose and intent of the SF-8 zoning district.

b. Will not be detrimental to the health, safety, and general welfare of persons living or working in the neighborhood

A larger sign with ECM Display along Warner Road will not be detrimental to the health, safety, and general welfare of the persons living and working in the neighborhood. The Church has sufficient frontage and space along Warner Road to locate the sign so that it does not shine light directly to nearby houses and the Church will abide by the Code's requirement that the ECM Display sign not have a brightness level greater than 0.3 foot candles above ambient light conditions at the property line as measured by foot candle meter. See §5.6.10(D)(2)(c). Moreover, the fact that a sign of the type and size the Church is requesting in its variance application could be located as of right mere feet away from the Church's property proves that the Church's requested sign will not be detrimental.

c. Will not be detrimental to the general welfare of the Town

There is no indication or argument that a larger sign for the Church along Warner Road will in any way pose a detriment to the general welfare of the Town. In fact, it will contribute to the general welfare of the Town. The Church is committed to being a good neighbor and Town citizen. It holds events for the Town throughout the year including an antique car show, yard sales, Easter Egg hunts, Trunk or Treat at Halloween, and numerous other events for the community. Allowing a larger sign will contribute to Goal CM-3 of the General Plan to "Foster Vibrant Gathering Places," and to CM-7 of the General Plan to "Bring us Together." Specifically, Policy 25 of Goal CM-7 is to "Expand and promote opportunities for all residents to connect socially and participate fully in the vitality of Gilbert." The Church is an important part of the way residents of Gilbert connect socially as evidenced by the events the Church has for the community. A larger sign will contribute to the general welfare of the Town.



d. Is the least amount of relief necessary to permit use of the property similar to other properties in the district

Granting the Variance Application is the least amount of relief necessary. The Town's willingness to acknowledge that the Church could rezone its Property to NC, make no other physical changes to its Property, and thereby install a larger sign that is allowed in commercial districts is an acknowledgment that the Church could have a larger sign such as what it requests here in this Application. But rezoning to NC allows for a more intensive use of the Church's Property than leaving the zoning as it is currently and simply allowing a variance for one larger sign along Warner Road. The Church should not be put to the choice of limiting its building coverage to 25,000 square feet on such a large piece of Property in exchange for having a larger sign along Warner Road. This Variance Application is the least intrusive way for the Church to maintain its Property and its approved plans while having a larger sign that other similar properties are allowed to have.

Allowing this variance is also the least amount of relief necessary because it allows the Church one larger sign as opposed to three smaller signs. The Church has a Property of over 261,000 square feet. It has over 425 feet of frontage along Warner Road. The Church is willing to give up its three additional monument signs and remove its current monument sign as a condition of granting the variance. A grant of the variance requested by the Church will be less intensive because it would result in fewer signs along Warner Road.





Variance Staff Report

TO: ZONING HEARING OFFICER

FROM: SAMANTHA NOVOTNY, PLANNER I *SN*
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THROUGH: ASHLEE MACDONALD, AICP, PRINCIPAL PLANNER *Am*
(480) 503-6748, ASHLEE.MACDONALD@GILBERTAZ.GOV

MEETING DATE: MARCH 8, 2023

SUBJECT: V22-07 VALOR CHRISTIAN CENTER: REQUEST TO DEVIATE FROM THE TOWN OF GILBERT LAND DEVELOPMENT CODE (LDC) REQUIREMENTS CONTAINED IN SECTION 5.6 SIGN REGULATIONS TO INCREASE THE SIGNAGE DIMENSIONS OF ONE (1) FREESTANDING MONUMENT SIGN ALONG WARNER ROAD FROM EIGHT (8) FEET IN HEIGHT AND THIRTY-TWO (32) SQUARE FEET IN SIGN AREA TO FOURTEEN (14) FEET IN HEIGHT AND SIXTY-FOUR (64) SQUARE FEET IN SIGN AREA ALLOTTED FOR ELECTRONIC CHANGING MESSAGE DISPLAY. THE SUBJECT REAL PROPERTY IS LOCATED AT 3015 E WARNER ROAD, WHICH IS ZONED SINGLE FAMILY-8 (SF-8).

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

Unable to make the Findings of Fact, and deny V22-07 Valor Christian Center: Request to deviate from the Town Of Gilbert Land Development Code (LDC) requirements contained in Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8)

feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing Message Display. The subject real property is located at 3015 E Warner Road, which is zoned Single Family-8 (SF-8).

APPLICANT

Company: Provident Law
 Name: Erik Stanley
 Address: 14646 N Kierland Blvd, Scottsdale, AZ 85254
 Phone: (480) 388-3343
 Email: erik@providentlawyers.com

BACKGROUND/DISCUSSION

History

Date	Description
<i>July 30, 1996</i>	Town Council adopted Ordinance No. 988 (A96-6), which annexed approximately 190 acres into the Town jurisdiction, which included the subject site.
<i>September 11, 1997</i>	The Design Review Board approved DR97-53 for the Celebration Christian Center. This approval has since expired.
<i>December 9, 1999</i>	The Design Review Board approved DR99-109 for the Celebration Christian Center. This approval has since expired.
<i>February 1, 2005</i>	Town Council reclassified all properties with the Town of Gilbert to zoning districts in the 2005 Land Development Code. The subject site was reclassified from R1-8 to SF-8.
<i>November 10, 2005</i>	The Design Review Board approved DR05-63, a site plan, grading and drainage plan, elevations, landscaping, architecture, and lighting plan for a conceptual 4-phase church master plan along with Phase I for Oasis Family Church.
<i>September 11, 2008</i>	The Design Review Board approved DR05-63-S, a Comprehensive Sign Program for Oasis Family Church.
<i>August 9, 2018</i>	Staff administratively approved DR05-63-A, a picnic ramada addition for Valor Christian Center.
<i>February 2, 2022</i>	The Planning Commission reviewed GP21-07 and Z21-09 as a Study Session item.

Overview

The subject site is comprised of approximately 6.7 acres generally located at the southeast corner of Claiborne Avenue and Warner Road in the Single Family-8 (SF-8) zoning district. The existing use is a church and is considered a non-residential use in a residential zoning district. The Land Development Code (LDC) provides for non-residential uses in residential zoning districts in various sections of the code. The applicant is requesting to address Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing Message Display. A project narrative has been provided in the attachments, which explains how the applicant believes the variance request meets the Findings of Fact.

Surrounding Land Use & Zoning Designations:

	Existing Land Use Classification	Existing Zoning	Existing Use
North	Residential >3.5-5 DU/acre	Single Family-6 (SF-6)	Warner Road, then residential homes
South	Residential >5-8 DU/acre	Single Family-Detached (SF-D)	Residential homes
East	General Commercial	General Commercial (GC)	Vacant land and Life Storage
West	Residential >3.5-5 DU/acre	Single Family-8 (SF-8)	Claiborne Avenue, then residential homes
Site	Residential >3.5-5 DU/acre	Single Family-8 (SF-8)	Valor Christian Center and partial improvements and vacant land

Project Data Table

	Freestanding Monument Sign of a Non-Residential Use in a Residential District	Proposed
Maximum Number	1 for any lot or parcel with a min. of 100 feet of street frontage 1 additional Monument Sign is permitted for any lot or parcel with street frontage ≥250 feet but <400 feet	1

	1 additional Monument Sign is permitted for each additional 300 feet of street frontage Based on the linear frontage along Warner Road, 3 monument signs are allowed; 1 sign is allowed along Claiborne Avenue	
Maximum Height	8 feet	14 feet
Design	Solid Base	
Manual Changing Message	½ of the sign area may be used for MCM display	
Electronic Changing Message	½ of the sign area may be used for ECM display	All of the sign area will be used
Maximum Sign Area	32 square feet; only one side is counted	64 square feet
Setback from Right-of-Way	3 feet	3 feet

FINDINGS

In order to approve a variance, the Zoning Hearing Officer is required to make four findings per Section 6.5.3 of the LDC. The findings are listed here, along with the reasons why staff considers that the findings are or are not met in this case. These findings are:

A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;

The reasons described in the project narrative would not qualify as a special circumstance. Staff finds the property shape is not irregular. The building being set farther back to the southern area was a phasing plan choice and not a product of special circumstance due to size, shape or topography. The front setback in the SF-8 zoning district is 20 feet, and there was no encumbrance found that required the building to be set farther back than the 20 feet.

Staff informed the applicant of some examples that are considered special circumstances, such as:

- Utility easements or infrastructure in an abnormal location
- Irregular-shaped lots
- Private/civil encumbrances and restrictions on land use and development
- Being in a floodplain zone
- Developing on difficult topography, such as sunken or steep terrain.

Such circumstances were not applicable to the subject site, and the applicant has not provided evidence of other types of special circumstances. The applicant is concerned that smaller signage is not visible enough to high-speed motorists. Even on arterial roads adjacent to commercial zoning districts, the maximum signage allowance is 12 feet and 60 square feet, whereas the applicant is requesting more than what is allowed in a commercial zoning district (i.e. requesting 14 feet in height and 64 square feet). Staff has suggested to maximize the current sign allowance, as is shown in the table below, rather than pursue the variance:

	Existing On Site	Maximum Allowance
Height	5 feet	8 feet
Sign Area	22 square feet	32 square feet
Number	1	3

During the review, the applicant acknowledged staff’s suggestion and respectfully declined.

Staff finds that special circumstances not present. Staff finds that the strict application of the Land Development Code would not deprive the specific property of privileges enjoyed by similar property in the SF-8 zoning district.

B. Such special circumstances were not created by the current or previous owner or applicants;

Prior to the variance request, the applicant pursued a rezoning request to change from SF-8 to Neighborhood Commercial (NC). Staff brought forth the rezoning request to a Study Session with the Planning Commission, who found the NC rezoning to be an appropriate request for the area. However, staff and Planning Commission advised the applicant and property owner to carefully review the differences between SF-8 and NC before pursuing a finalization of the rezoning. Upon realizing the differences and potential limitations of changing from SF-8 to NC, the applicant paused the rezoning request because certain provisions were found to be too limiting as compared to their existing zoning. One example of this

is that the NC district limits building square footage to 25,000 square feet, while their original master plan approvals allowed upwards of 42,000 square feet in the SF-8 district.

In the narrative, the special circumstances are claimed to be due to the mere existence of the LDC's sign code provisions. Staff is of the opinion that the existence of the LDC is not evidence of special circumstances. There are many pros and cons to each zoning district that should be carefully weighed if a property owner is to consider changing zoning districts. The analysis of the pros and cons does not equal to being a special circumstance. The applicant has not provided other evidence of special circumstances thus far.

Staff finds that the special circumstances present are "self-imposed".

C. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and

The applicant believes the property is unique due to being residentially zoned while simultaneously containing characteristics of a commercial property. Additionally, the narrative goes on to say that a larger sign would not be out of character with the neighboring properties or the current zoning district.

A church use in a residential zone is not a unique development scenario in the Town of Gilbert. Staff has found at least nine churches in residential zones in Town records. The LDC is equipped to regulate such scenarios with specific provisions designed to maintain development at a smaller scale as compared to a typical commercial zoning district. The LDC states "Non-residential uses in a residential district provide neighborhood services and have been determined to be complimentary, in scale, hours of operation, and intensity, with minimal impact to the surrounding neighborhoods."

Staff finds the variance would grant special privileges inconsistent with limitations on nearby or comparable properties.

D. The variance will not be materially detrimental to persons residing or working in the vicinity, to abutting property, to the neighborhood, or the public welfare in general.

The narrative statements largely focus on wanting to increase the sign size. Staff believes this is still possible. The existing sign is smaller than what is allowed in the

sign code. Therefore, if a larger sign is desired, the applicant should make use of the sign code maximum allowances for freestanding monument signs.

Although staff agrees that if a rezoning to NC were to be granted, the larger sign dimensions would be allowed by right and would not be a detrimental addition. However, the applicant is requesting dimensions larger (14 feet in height and 64 square feet in sign area) than is allowed in commercial zoning, and that the entire sign area be allowed for Electronic Changing Message Display. The LDC only allows in commercial zoning districts for 12 feet in height and 64 square feet in sign area, and only ½ the sign area for Electronic Changing Message Display. Staff is of the opinion that the requested dimensions are larger than the least amount of relief necessary and would be negatively impactful to abutting properties.

Staff finds that the proposed variance will be detrimental to the enjoyment of adjacent properties, land uses or the greater community's welfare and safety.

Pursuant to the above analysis, Staff finds the variance request does not meet all the four (4) findings required by LDC Section 6.5.3 and ARS § 9-462.06.G.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, an official notice was posted in all the required public places within the Town, and neighborhood notice was provided per the requirements of the LDC Section 6.2.6.

Staff has not received public comment at this time.

PROPOSITION 207

An agreement to “Waive Claims for Diminution in Value” pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site, in conformance with the Town of Gilbert LDC. This waiver is located in the case file.

STAFF RECOMMENDATION

Make the determination that the Findings of Fact are not met, and deny V22-07 Valor Christian Center: Request to deviate from the Town Of Gilbert LDC requirements contained in Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing

Message Display. The subject real property is located at 3015 E Warner Road, which is zoned Single Family-8.

Should the Zoning Hearing Officer be inclined to make the findings and approve the variance request, it should be subject to the following condition:

1. The variance only modifies those standards specifically identified; all other standards of the Land Development Code must be met.

Respectfully submitted,



Samantha Novotny
Planner I

Attachments and Enclosures:

- 1) Notice of Public Hearing/Vicinity Map
- 2) Aerial Photo
- 3) Applicant's Narrative
- 4) Sign Elevation/Rendering

Notice of Public Hearing

V22-07 Valor Christian Center
Attachment 1: Notice of Public Hearing

VARIANCE HEARING DATE:

Wednesday, March 8, 2023* TIME: 5:00 PM

LOCATION: Council Chambers
Municipal Building I
50 East Civic Center Drive

*Call Planning Division to verify date and time: (480) 503-6602

The application is available to the public for review at the Town of Gilbert Planning Division Monday - Thursday 7AM - 6PM.

REQUESTED ACTION:

V22-07 VALOR CHRISTIAN CENTER: Request to deviate from the Town Of Gilbert Land Development Code (LDC) requirements contained in Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing Message Display. The subject real property is located at 3015 E Warner Road, which is zoned Single Family-8 (SF-8).

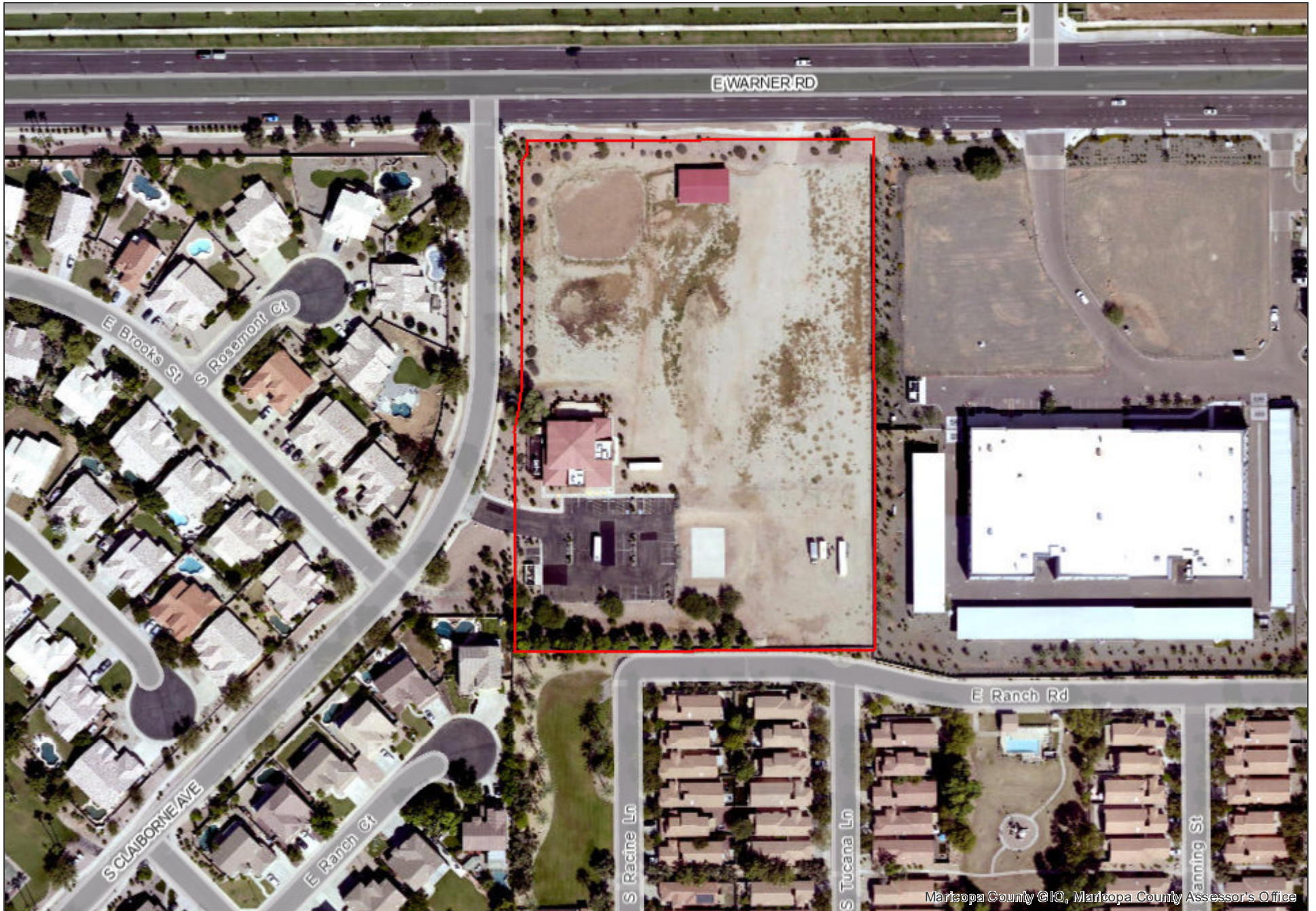
SITE LOCATION:



APPLICANT: Provident Law
CONTACT: Erik Stanley
ADDRESS: 14646 N Kierland Blvd
Scottsdale, AZ 85254

TELEPHONE: (480) 388-3343
EMAIL: erik@providentlawyers.com

Aerial Photo





PROVIDENT LAW

February 1, 2023

PROVIDENT LAW®
14646 N. Kierland Blvd, Suite 230
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602-753-1270 (Fax)
www.providentlawyers.com

Erik Stanley
Attorney
erik@providentlawyers.com

**Project Narrative for Valor Christian Center Variance
Application**

Valor Christian Center (the “Church”) applies for a variance for a larger electronic sign along Warner Road. Specifically, the Church seeks a variance to have one freestanding monument sign on its Property that is 14 feet in height and that has 64 square feet allotted to an Electronic Changing Message Display. This variance application will only apply to one freestanding monument sign.

Valor Christian Center’s Property (the “Property”) is a 6.06-acre parcel at the intersection of East Warner Road and South Claiborne Avenue. A church sanctuary building and a parking lot



currently exist on the Southwest corner of the Property as depicted in the aerial below:

The Property is currently zoned SF-8 with a General Plan Land Use Classification of Residential 3.5-5 du/ac. Within the Church's current zoning district, a freestanding monument sign is allowed but only at a maximum height of 8 feet. Additionally, an Electronic Changing Messaging Display is allowed as a non-residential use in a residential district, but the maximum signage area allowed is 32 square feet. The Church is submitting this Variance Application because the limitations on the sign height and signage area would defeat the ability for the Church to have a sign that can be seen by passing motorists on Warner Road and the Property's particular characteristics lend themselves to a sign of the type the Church is proposing.

The Church offers the following evidence in support of its Variance Application:

- 1. Evidence showing why, due to special circumstances applicable to the property, including its size, shape, topography, location or surroundings, strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by other property owners of the same classification in the same zoning district.**

The Church's Property is over 6 acres and the main church building is set back from Warner Road such that it almost cannot be seen from Warner Road. The Church currently has one small sign along Warner Road as depicted below:



The size and shape of the Property combined with the setback of the main church building counsel for a larger sign along Warner Road that can be seen. Moreover, traffic passing along Warner Road will have a difficult time seeing a smaller electronic changing message display sign that advertises events and church activities. Warner Road is a major arterial which the General Plan defines as "high capacity roadways that carry large volumes of traffic between areas of high residential density, employment, retail and commercial land uses." The speed limit along Warner Road in front of the Church is 45 mph and, because the Church's main entrance is off Claiborn Avenue and not directly from Warner Road, vehicles traveling by the Church's Property will not be able to see an electronic changing message display at 45 mph that is only 16 square feet (the current limit of an ECM display). At a limit of 16 square feet, the Church will be severely limited in the messages it can display to passing motorists. Similar properties where

buildings are located as far back from a main arterial should be allowed to draw attention to events and messages happening on the Property through larger signs such as the size the Church applies for in this Application.

2. Evidence showing that the requested variance will not constitute a grant of special privileges inconsistent with limitations upon other properties in the vicinity and district in which the property is located.

The Church's Property is unique in that, even though it is residentially zoned, it contains characteristics of a commercially zoned property. It is a large piece of property and much of it is currently unused. The Property contains over 425 feet of frontage on Warner Road and serves as a transition from the GC properties to the East of the Church to the residential properties to the West of the Church. An ECM Display sign is already allowed in the SF-8 district where the Church's Property is located thus such a sign, even at the slightly larger scale proposed by the Church would not be inconsistent with the other properties in the vicinity and district where the Church's Property is located.

3. Evidence that the special circumstances applicable to the property were or are not self-imposed by the current or previous property owner or applicant.

The special circumstances that exist are a result of the Town's sign code and are not self-imposed by the Church. Indeed, if the Property were zoned commercial the Church would be able to have a larger ECM display sign as allowed in commercially zoned properties. However, the Church finds itself in a double bind. It had originally begun pursuing a rezone of its Property to Neighborhood Commercial (NC) but learned that it would be required to give up the amount of square footage it would be able to have in a proposed expansion. The original approval the Church has from the Town would allow 42,204 square feet of building coverage. However, to rezone its Property, the Church would be limited to 25,000 square feet of building coverage in the NC zoning district. Town staff prepared a report proposing approval of the Church's application to rezone its Property to NC, thus acknowledging that the Church's Property meets the requirements to be zoned NC and to have a 14 foot high ECM Display sign with a maximum sign area of 64 square feet. It was only when the Church learned that it would have to give up its proposed expansion plans that it turned to this Variance Application and has put its rezoning application on hold. The Church should not be required to give up square footage of buildings it wants to build in the future just to have a larger sign that the Town staff acknowledges it could have and that the staff acknowledges the Property is suited for. In short, the requirements of the Town's code have imposed the current state of affairs on the Church and the burden is not self-imposed.



4. Evidence showing why granting the variance:

a. Substantially meets the intent and purpose of the zoning district in which the property is located

Granting the variance will meet the intent and purpose of the SF-8 district. The Land Development Code allows for places of worship in the SF-8 district and also allows for ECM Display signs as non-residential use of residentially zoned property. Thus, the Code already has determine that use of residentially zoned property and signage associated with that use meets the purpose and intent of the SF-8 zoning district.

b. Will not be detrimental to the health, safety, and general welfare of persons living or working in the neighborhood

A larger sign with ECM Display along Warner Road will not be detrimental to the health, safety, and general welfare of the persons living and working in the neighborhood. The Church has sufficient frontage and space along Warner Road to locate the sign so that it does not shine light directly to nearby houses and the Church will abide by the Code's requirement that the ECM Display sign not have a brightness level greater than 0.3 foot candles above ambient light conditions at the property line as measured by foot candle meter. See §5.6.10(D)(2)(c).

c. Will not be detrimental to the general welfare of the Town

There is no indication or argument that a larger sign for the Church along Warner Road will in any way pose a detriment to the general welfare of the Town. In fact, it will contribute to the general welfare of the Town. The Church is committed to being a good neighbor and Town citizen. It holds events for the Town throughout the year including an antique car show, yard sales, Easter Egg hunts, Trunk or Treat at Halloween, and numerous other events for the community. Allowing a larger sign will contribute to Goal CM-3 of the General Plan to "Foster Vibrant Gathering Places," and to CM-7 of the General Plan to "Bring us Together." Specifically, Policy 25 of Goal CM-7 is to "Expand and promote opportunities for all residents to connect socially and participate fully in the vitality of Gilbert." The Church is an important part of the way resident of Gilbert connect socially as evidenced by the events the Church has for the community. A larger sign will contribute to the general welfare of the Town.

d. Is the least amount of relief necessary to permit use of the property similar to other properties in the district

Granting the Variance Application is the least amount of relief necessary. The Town's willingness to acknowledge that the Church could rezone its Property to NC, make no other physical changes



to its Property, and thereby install a larger sign that is allowed in commercial districts is an acknowledgment that the Church could have a larger sign such as what it requests here in this Application. But rezoning to NC allows for a more intensive use of the Church's Property than leaving the zoning as it is currently and simply allowing a variance for one larger sign along Warner Road. Allowing this variance is also the least amount of relief necessary because it allows the Church one larger sign as opposed to three smaller signs.

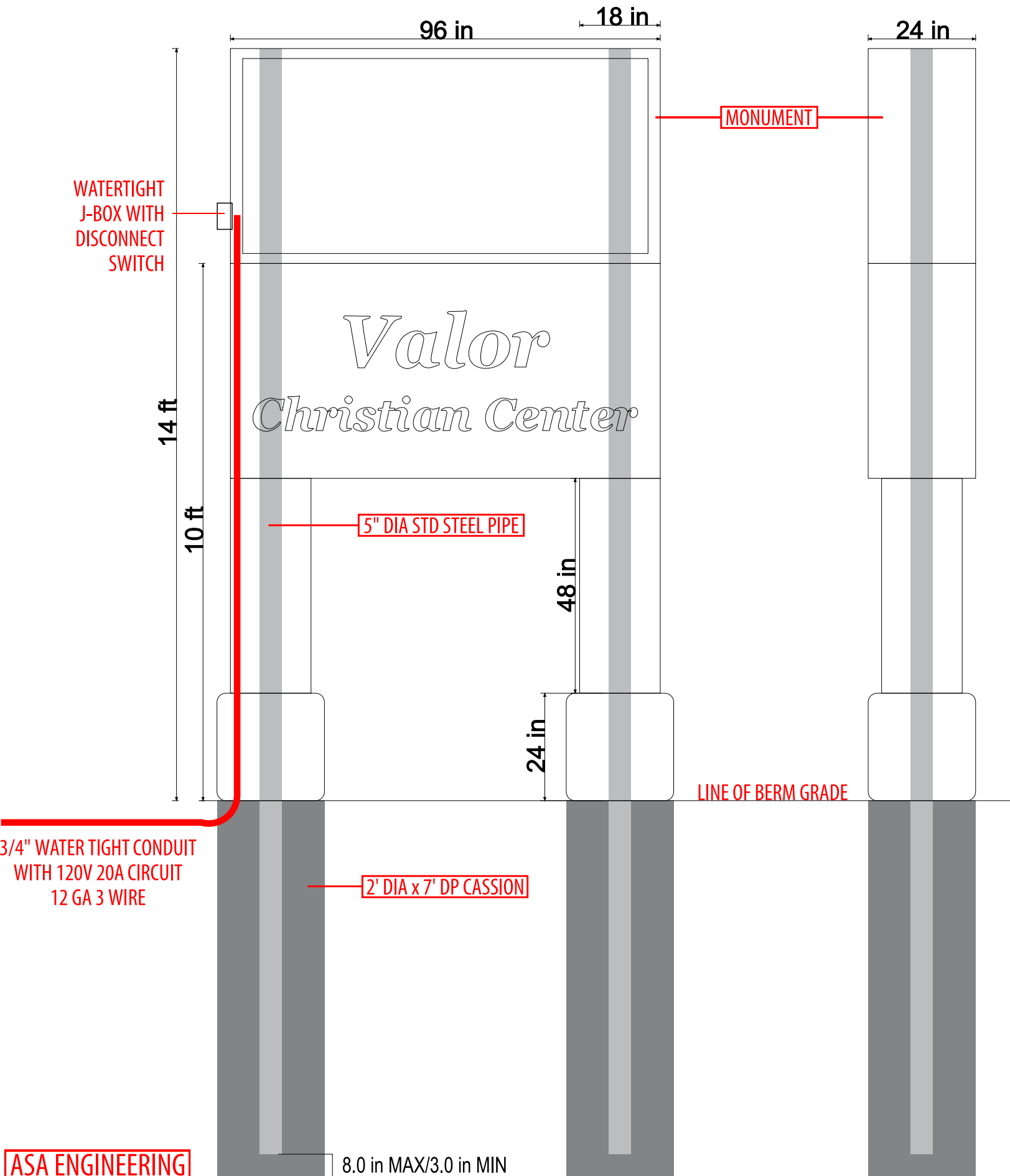
The Church has a Property of over 261,000 square feet. It has over 425 feet of frontage along Warner Road. When the current church building was constructed, it was built as part of a larger plan with the anticipation of further development of the Property which was approved by the Town. However, the Church's economic conditions have prevented the next phases of development from starting, this leaving most of the Church's Property as vacant land with the actual building set back quite a distance from Warner Road.

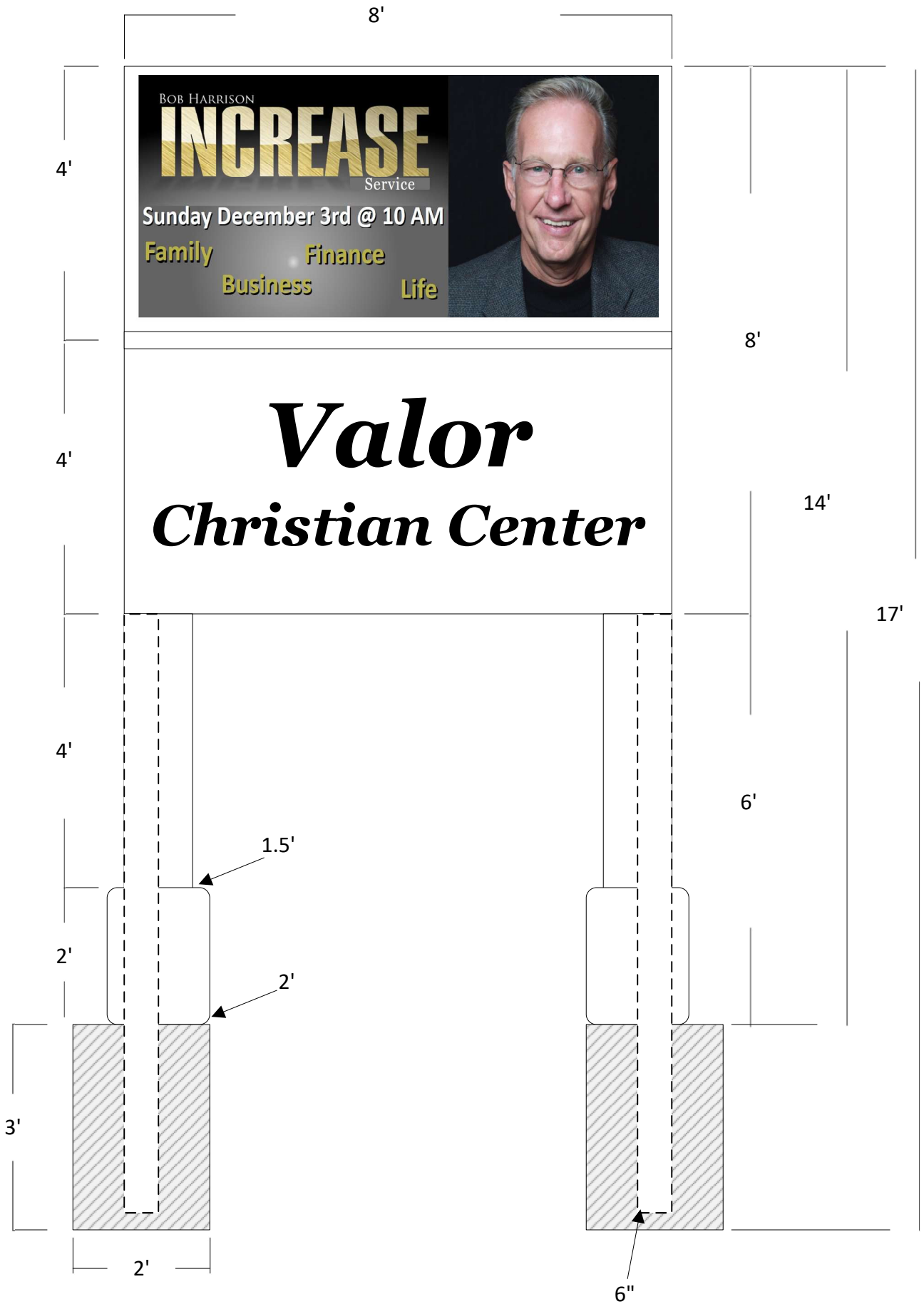
Even though the current code allows for 3 freestanding monument signs, the size of the allowed signs are small and are not visible from Warner Road as motorists pass by. When the original monument sign was installed, there was no obstruction of landscaping vegetation and Warner Road was two lanes with no median divider. Traffic was closer and a shorter sign could be more easily seen. The speed limit along Warner Road is now 45mph, not 25 or 35, and most traffic passes by the Church Property at average speeds of 50 or more. Additionally, there are not two lanes of slow-moving traffic as originally existed, but Warner Road now has six lanes of moving traffic at much further distances from the Church's Property. Instead of having three very small freestanding monument signs, the Church requests a variance for only one larger freestanding monument sign that can be seen by passing motorists and that provides the Church the opportunity to effectively communicate its message.

The Church should not be put to the choice of limiting its building coverage to 25,000 square feet on such a large piece of Property in exchange for having a larger sign along Warner Road. This Variance Application is the least intrusive way for the Church to maintain its Property and its approved plans while having a larger sign that other similar properties are allowed to have.



FRONT ELEVATION





**AP23-02 Valor Christian Center - Appeal of ZHO to BOA
Attachment 4 - V22-07 Variance Hearing Meeting Minutes**

**TOWN OF GILBERT
VARIANCE HEARING
GILBERT MUNICIPAL CENTER
COUNCIL CHAMBERS
50 E. CIVIC CENTER DRIVE
GILBERT, ARIZONA
MARCH 8, 2023**

ATTENDANCE

**Mitesh V. Patel, Dickinson Wright PLLC, Zoning
Hearing Officer
Samantha Novotny, Planner I
Ashlee MacDonald, Principal Planner
Veronica Gonzalez, Principal Planner
Eva Cutro, Planning Manager
Alena Jorquez, Assistant Town Attorney
Tracey Asher, Administrative Assistant III**

APPLICANT

**Erik Stanley, Provident Law
Pastor Scott Whitwam**

CALL TO ORDER

Zoning Hearing Officer Mitesh V. Patel called the Variance Hearing to order at 5:16 P.M.

PUBLIC HEARING

During the Public Hearing, anyone wishing to comment in support of or in opposition to a Public Hearing item may do so. Once the hearing is closed, there will be no further public comment unless requested by the Zoning Hearing Officer.

- 1. V22-07 VALOR CHRISTIAN CENTER: Request to deviate from the Town Of Gilbert Land Development Code (LDC) requirements contained in Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing Message Display. The subject real property is located at 3015 E Warner Road, which is zoned Single Family-8 (SF-8).**

Samantha Novotny, Planner I, presented Case V22-07 Valor Christian Center. The subject site is comprised of approximately 6.7 acres generally located at the southeast corner of Claiborne Avenue and Warner Road in the Single Family-8 (SF-8) zoning district. The existing use is a church and is considered a non-residential use in a residential zoning district. The

Variance Hearing Meeting
March 8, 2023

Land Development Code (LDC) provides for non-residential uses in residential zoning districts in various sections of the code. The applicant is requesting to address Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing Message Display. A project narrative has been provided in the attachments, which explains how the applicant believes the variance request meets the Findings of Fact.

In order to approve a variance, the Zoning Hearing Officer is required to make four findings per Section 6.5.3 of the LDC. Planner Novotny discussed each of the findings along with the reasons why staff considers that the findings are not met in this case. These findings are:

- A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;***

Staff finds that special circumstances are not present. Staff finds that the strict application of the Land Development Code would not deprive the specific property of privileges enjoyed by similar property in the SF-8 zoning district.

The reasons described in the project narrative would not qualify as a special circumstance. Staff finds the property shape is not irregular. The building being set farther back to the southern area was a phasing plan choice and not a product of special circumstance due to size, shape, or topography. The front setback in the SF-8 zoning district is 20 feet, and there was no encumbrance found that required the building to be set farther back than the 20 feet.

Staff informed the applicant of some examples that are considered special circumstances, such as:

- Utility easements or infrastructure in an abnormal location
- Irregular-shaped lots
- Private/civil encumbrances and restrictions on land use and development
- Being in a floodplain zone
- Developing on difficult topography, such as sunken or steep terrain

Such circumstances were not applicable to the subject site, and the applicant has not provided evidence of other types of special circumstances. The applicant is concerned that smaller signage is not visible enough to high-speed motorists. Even on arterial roads adjacent to commercial zoning districts, the maximum signage allowance is 12 feet and 60 square feet, whereas the applicant is requesting more than what is allowed in a commercial zoning district (i.e., requesting 14 feet in height and 64 square feet). Staff has suggested to

Variance Hearing Meeting

March 8, 2023

maximize the current sign allowance, as is shown in the table below, rather than pursue the variance:

	Existing On Site	Maximum Allowance
Height	5 feet	8 feet
Sign Area	22 square feet	32 square feet
Number	1	3

During the review, the applicant acknowledged staff’s suggestion and respectfully declined.

B. Such special circumstances were not created by the current or previous owner or applicants;

Staff finds that the special circumstances present are “self-imposed”.

Prior to the variance request, the applicant pursued a rezoning request to change from SF-8 to Neighborhood Commercial (NC). Staff brought forth the rezoning request to a Study Session with the Planning Commission, who found the NC rezoning to be an appropriate request for the area. However, staff and Planning Commission advised the applicant and property owner to carefully review the differences between SF-8 and NC before pursuing a finalization of the rezoning. Upon realizing the differences and potential limitations of changing from SF-8 to NC, the applicant paused the rezoning request because certain provisions were found to be too limiting as compared to their existing zoning. One example of this is that the NC district limits building square footage to 25,000 square feet, while their original master plan approvals allowed upwards of 42,000 square feet in the SF-8 district.

In the narrative, the special circumstances are claimed to be due to the mere existence of the LDC’s sign code provisions. Staff is of the opinion that the existence of the LDC is not evidence of special circumstances. There are many pros and cons to each zoning district that should be carefully weighed if a property owner is to consider changing zoning districts. The analysis of the pros and cons does not equal to being a special circumstance. The applicant has not provided other evidence of special circumstances thus far.

C. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;

Staff finds the variance would grant special privileges inconsistent with limitations on nearby or comparable properties.

The applicant believes the property is unique due to being residentially zoned while simultaneously containing characteristics of a commercial property. Additionally, the

narrative goes on to say that a larger sign would not be out of character with the neighboring properties or the current zoning district.

A church use in a residential zone is not a unique development scenario in the Town of Gilbert. Staff has found at least nine churches in residential zones in Town records. The LDC is equipped to regulate such scenarios with specific provisions designed to maintain development at a smaller scale as compared to a typical commercial zoning district. The LDC states “Non-residential uses in a residential district provide neighborhood services and have been determined to be complimentary in scale, hours of operation, and intensity, with minimal impact to the surrounding neighborhoods.”

D. *The variance will not be materially detrimental to persons residing or working in the vicinity, to abutting property, to the neighborhood, or the public welfare in general.*

Staff finds that the proposed variance will be detrimental to the enjoyment of adjacent properties, land uses, or the greater community’s welfare and safety.

The narrative statements largely focus on wanting to increase the sign size. Staff believes this is still possible. The existing sign is smaller than what is allowed in the sign code. Therefore, if a larger sign is desired, the applicant should make use of the sign code maximum allowances for freestanding monument signs.

Although staff agrees that if a rezoning to NC were to be granted, the larger sign dimensions would be allowed by right and would not be a detrimental addition. However, the applicant is requesting dimensions larger (14 feet in height and 64 square feet in sign area) than is allowed in commercial zoning, and that the entire sign area be allowed for Electronic Changing Message Display. The LDC only allows in commercial zoning districts for 12 feet in height and 64 square feet in sign area, and only ½ the sign area for Electronic Changing Message Display. Staff is of the opinion that the requested dimensions are larger than the least amount of relief necessary and would be negatively impactful to abutting properties.

Pursuant to the above analysis, staff finds the variance request does not meet all the four (4) findings required by LDC Section 6.5.3 and ARS § 9-462.06.G.

Planner Novotny covered public input that was received prior to the hearing. One neighbor was concerned the electronic display would impact the neighborhood by advertising beyond the seasonal or special event. Another neighbor was concerned a large sign would be too distracting to motorists.

STAFF RECOMMENDATION

Make the determination that the Findings of Fact are not met, and deny V22-07 Valor Christian Center: Request to deviate from the Town Of Gilbert LDC requirements contained in Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for Electronic Changing Message Display. The subject real property is located at 3015 E Warner Road, which is zoned Single Family-8.

Should the Zoning Hearing Officer be inclined to make the findings and approve the variance request, it should be subject to the following condition:

1. The variance only modifies those standards specifically identified; all other standards of the Land Development Code must be met.

PROPERTY OWNER INPUT

Erik Stanley of Provident Law, representing the applicant, introduced himself and Pastor Scott Whitwam. He stated that the church respectfully disagrees with the staff recommendation and feels it meets the standards for the variance as per the LDC, Section 6.5.2. He covered each of the four findings from the applicant's perspective. The church has been on the site for a long time, and there were fields surrounding the area at the time, with speed limits at 35 miles per hour. Warner Road was eventually widened to six lanes with a grass median, and the speed limit is now 45 miles per hour with traffic traveling upwards of those speeds. The characteristics of the property were changed by the development of the area surrounding the church; it is more difficult to see the sign and church in passing. The church itself has not changed since it was built in 2008. The church put a pause on the rezoning from Single Family-8 (SF-8) to Neighborhood Commercial (NC), so as not to be limited to 25,000 square feet. The physical characteristics of the property and nothing else would have changed if the rezoning were undertaken; however, the larger sign would have been permitted. The church does not believe they should give up their approved development rights in order to achieve a larger sign. Directly to the east of the church, there is a storage facility zoned GC, with a similar-sized frontage and parcel size. That particular property could have a sign like the church is requesting. It would not be a granting of special privilege because the storage facility is a neighboring use. There is no evidence of a sign being detrimental to the neighborhood or surrounding area. A neighborhood meeting was held, and there was no opposition to the sign. The church answered questions of all those in attendance to the neighborhood meeting and is committed to working with the neighbors. The church is looking to replace its current monument sign; this is not in addition. One large sign is believe to be less detrimental than 4 smaller signs. The church would be happy with a 12-foot sign with 60 square feet, but part of the variance is to have electronic changing message on both sides of the sign to be seen by traffic travelling in both directions.

Pastor Scott Whitwam stated that the church has had a good working relationship with the Town of Gilbert since the property was acquired in 1996. There was always the intent of developing this as a church location. They have worked with the past 3 mayors to be better community members. The only purpose of the sign is to reach the community and continue to carry on the mission of making a difference in Gilbert.

HEARING OFFICER COMMENTS AND QUESTIONS

Zoning Hearing Officer Mitesh V. Patel noted that there is a comprehensive sign plan from 2008, and the existing sign appears to match that plan. He asked if the other three signs, two along Warner Road and one along Claiborne Avenue, would adhere to the sign plan or be the full size as indicated in Column 1. Planner Samantha Novotny responded that the applicant is allowed by right what is specified in Column 1; however, they would have to go through an administrative amendment to amend the sign plan.

Zoning Hearing Officer Mitesh V. Patel asked if any of the other nine places of worship in residential zoned districts enjoy signage rights greater than what is permitted by their underlying zoning district. Planner Samantha Novotny responded that they do not.

Zoning Hearing Officer Mitesh V. Patel asked if there are any other non-residential uses in the residential area surrounding this property, and if so, what are their signage rights. Planner Samantha Novotny responded that there is at least one; Gilbert Christian Schools at Greenfield Road and Superstition Drive. She does not know about the signage, but a variance request of this type is irregular.

Zoning Hearing Officer Mitesh V. Patel requested confirmation that the sign rendering is a mockup, and what is being requested is a 60 square-foot changing sign. Pastor Scott Whitwam responded that it is a mockup, and the overall dimensions of the sign are in the variance request, 32 square feet on each side.

Zoning Hearing Officer Mitesh V. Patel requested confirmation that the request is for a single sign to replace the existing sign, and that no other sign would be placed on Warner Road or Claiborne Avenue. Erik Stanley confirmed.

PUBLIC COMMENT

Resident David Wilkins spoke in opposition to the sign and shared photos of the proposed location of the sign from Warner Road. It would be helpful if the sign could be moved further toward the commercial zoning area and away from the residential area. The electronic sign could give a Vegas feel, which does not fit with the neighborhood. He and his adjoining neighbors are not in favor.

Resident Pat Warner stated that she works with a landscaping crew, and no one who comes upon the business from the street can see their existing sign nor other signs for special events. Having an additional sign on Claiborne Avenue would still be too small and is not

visible due to the current landscaping. She appreciates that the community is growing and would like to see the church grow too.

Associate Pastor Thor Standholt stated that businesses have signs to promote who they are and what they have to offer. The Valor Christian Center offers spiritual guidance and events to bless the community and church. An electronic sign will allow the Center to announce upcoming events and stop putting banners on poles. The variance would allow the Center to have a sign big enough for people to see it especially the drivers on Warner Road going very fast. We'd like to get along with everyone and help the community in any way we can.

Resident Mark Fitch expressed concern with the electronic messaging sign, as there is nothing like this in the area. The neighborhood would be faced with looking at it 24/7. The existing sign could be bigger according to code and has been overgrown with weeds for some time. The concern is the electronic signage would be advertising for events beyond season events or non-church events. Homes are a big investment, and a consistent electronic sign could affect the homes values. There are not homes directly across from the storage facility so that could be an area for a sign, but the proposed location is right across the street from homes.

Resident Doralise Liddell stated that currently the land is zoned SF-8. If the applicants would like to rezone, that is a process they would need to follow. Allowing the variance for this sign would be detrimental to the Town of Gilbert as it sets a precedent, which I am against in my neighborhood. This is the purpose of the sign ordinance and Land Development Code. The applicant has not proved any of the four necessary findings, and approving the variance would grant a privilege that no other church in residential zoning has.

Resident Devon Kling stated that she lives in the area and there is a large shipping container next to her house with the words "CHURCH" and a cross spray-painted on it, with letters approximately five feet high. She does not believe they are aesthetically pleasing. There is a high school down Higley Road, and many students walk along Warner Road to and from school. A large, lit, moving sign could potentially distract drivers and could be unsafe for student pedestrians.

Erik Stanley of Provident Law was given time to respond to public comments. He stated that the church does not intend to put the sign in the same location as the existing sign, should the variance be approved, but rather in the middle of the property, closer to general commercial. Anything advertised on the sign would be church events designed to benefit the community, with many of the proceeds going toward veterans, youths, and the church. The general commercial could have a sign like this, which dispels the concern about distraction for drivers.

ADJOURN

With no further business, Zoning Hearing Officer Mitesh V. Patel adjourned the meeting at 6:06 P.M.

Variance Hearing Meeting

March 8, 2023

AP23-02 Valor Christian Center - Appeal of ZHO to BOA
Attachment 5 - V22-07 Variance Notice of Decision and Findings



March 16, 2023

Provident Law
Erik Stanley
14646 N Kierland Blvd
Scottsdale, AZ 85254

RE: Variance/Notice of Decision: V22-07 Valor Christian Center

On March 8, 2023, the Zoning Hearing Officer, having heard all of the evidence and having reviewed the file in the above application for a variance, hereby denies the variance request for case V22-07.

Pursuant to Section 6.2.12 of the Land Development Code, the decision of the Zoning Hearing Officer may be appealed by the owner of the property that is the subject of the decision, any other person aggrieved by the final decision who has standing to appeal pursuant to Arizona law, a member of the Town Council, the Town Manager, or the Director of Planning. Decisions of the Zoning Hearing Officer are appealed to the Gilbert Board of Adjustment. Appeals must be filed in writing with the Development Services Division, 90 East Civic Center Drive, Gilbert, Arizona 85296 within 30 calendar days of the decision. *See LDC § 6.5.2.*

If you have any questions regarding this variance, please contact Samantha Novotny at 480-503-6602 or by email at Samantha.Novotny@gilbertaz.gov.

Sincerely,

A handwritten signature in blue ink that reads "Eva Cutro".

Eva Cutro, AICP
Planning Services Manager

Attachment: Findings of Fact

FINDINGS OF FACT FOR VARIANCE APPLICATIONS

CASE NUMBER: V22-07 Valor Christian Center – Monument Signage

APPLICANT NAME: Erik Stanley

REQUESTED VARIANCE: Request to deviate from the Town Of Gilbert Land Development Code (LDC) requirements contained in Section 5.6 Sign Regulations to increase the signage dimensions of one (1) freestanding monument sign along Warner Road from eight (8) feet in height and thirty-two (32) square feet in sign area to fourteen (14) feet in height and sixty-four (64) square feet in sign area allotted for electronic changing message display.

PROPERTY DESCRIPTION: The subject real property is located at 3015 E Warner Road, which is zoned Single Family-8 (SF-8).

DECISION: The Hearing Officer, having heard all the evidence before it and having reviewed the file in the above application for a variance, hereby denies the variance application

FINDINGS: The Hearing Officer makes the following findings:

1. Special circumstances of the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district are not present. Specifically:

The subject property is regular-shaped and unencumbered by any significant factors relating to its surroundings. The applicant contends that the setback of the main church building counsels for a larger sign along Warner Road to provide for improved visibility. However, the subject parcel is 6.7 acres in size and generally rectangular in shape. The current location of the main church building was not dictated by property specific site features, but instead was a phasing decision in the planned development of the parcel. The applicant also posits that traffic passing along Warner Road will have a difficult time seeing a smaller sign due to the high volume and speed of vehicles. Traffic on Warner Road, however, is not specific to the subject site, and strict application of the zoning ordinance does not deprive the applicant of any privileges enjoyed

by properties of the same classification. Finally, the applicant makes a novel argument that other properties that are setback far from main arterial roads should similarly be allowed larger signs than permitted by the zoning ordinance. This argument, however, does not address the specific criteria for a variance with respect to the subject site, and does not address whether the property is being deprived of privileges currently enjoyed by properties of the same classification in the same zoning district.

2. The claimed special circumstances applicable to the property were created by the current or previous owner or applicant and are the result of personal inconvenience or financial hardship. Specifically:

As noted above, the location of the main church building was a phasing decision in the development of the 6.7 acre parcel by the current or previous owner. The applicant, however, states that the special circumstances that exist are the result of the Town's Land Development Code, and not self-imposed by the applicant. The applicant also argues that because the Town staff would support a rezoning of the property to a Neighborhood Commercial (NC) classification, then a variance for increased signage is warranted. The applicant's arguments are not on point. The existence of municipal regulations are not special circumstances specific to the subject property, but apply to all properties in the Town's jurisdiction. Further, signage privileges available in other zoning classifications are not considered when evaluating a variance. Rather, special circumstances must exist that deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district. The applicant has not pointed to any properties of the same classification in the same zoning district that enjoy privileges not available to the subject property.

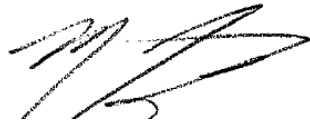
3. The variance constitutes a grant of special privileges inconsistent with the limitations upon other properties in the zone and vicinity in which such property is located. Specifically:

Granting of the applicant's variance request would grant special privileges that are inconsistent with the limitations upon other properties in the zone and vicinity in which the subject property is located. Specifically, the Town has identified at least nine places of worship located in residential zones. The Town's Land Development Code specifically provides for signage for these non-residential uses

in residential districts. Granting of this variance request would serve as a grant of a special privilege not enjoyed by similarly situated properties.

4. The authorizing of the application will be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general because:

The applicant's requested variance would permit a sign 14 foot tall, with 64 square feet of electronic changing message area. Not only is such a sign not permitted in a residential district, a sign of these dimensions and features is not permitted in any of the Town's zoning districts, including the Town's commercial districts. Granting the applicant's variance would negatively impact abutting and nearby properties, and would be contrary to the public welfare in that the Town's Land Development Code is specifically designed to provide for less intensive signage in residential districts.



Mitesh V. Patel
Hearing Officer

March 16, 2023
Date