

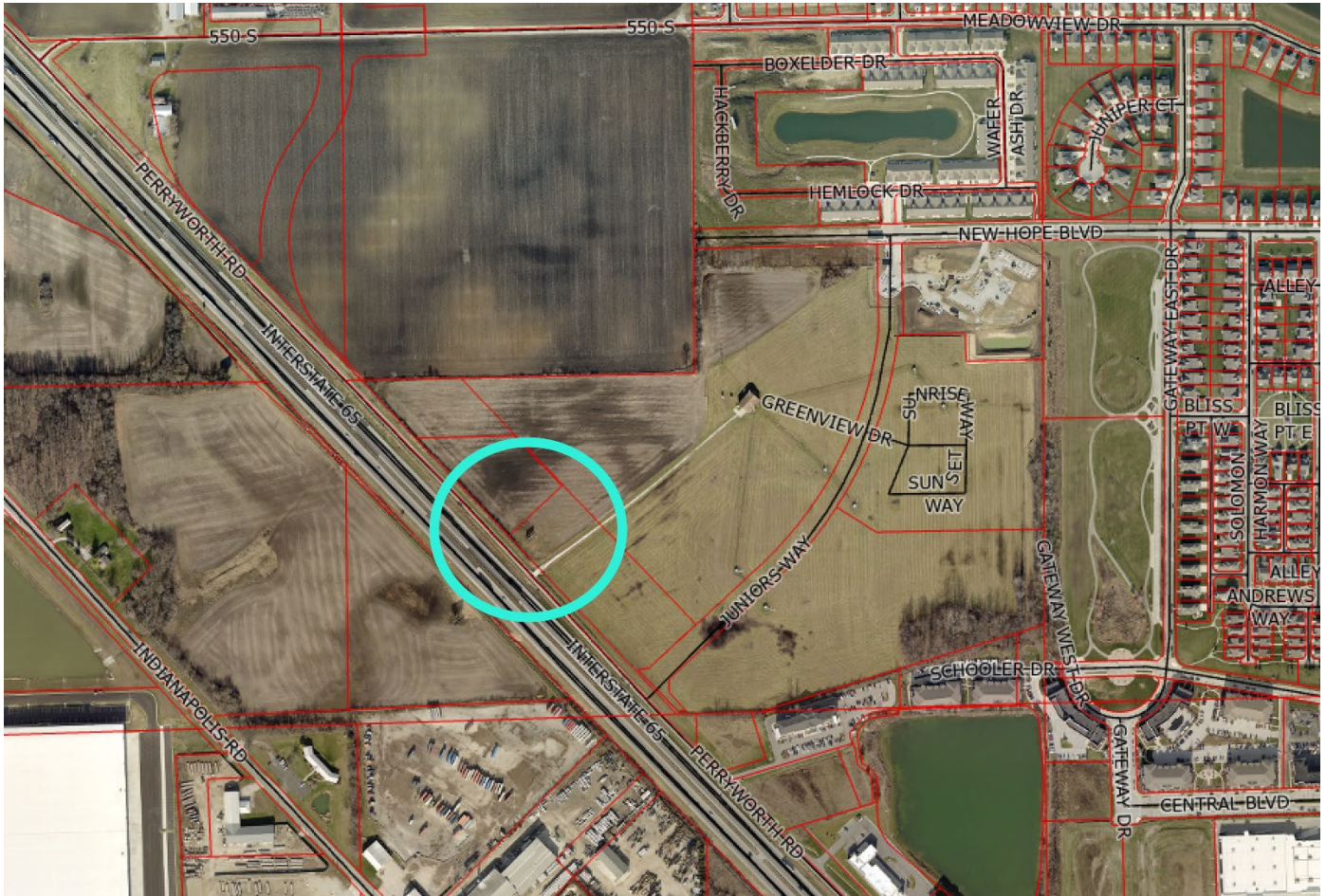


Staff Report BZA21-002-VA

Emmis Parcel Billboard Use Variance

Meeting Date: October 6, 2022

Docket BZA21-002-VA Emmis Parcel Billboard Use Variance. The petitioner is requesting approval of a Use Variance to permit a remodel of an existing billboard on a property. The site in question is located at approximately 5875 Perry Worth Road, more commonly known as the Emmis Property. The owner and the petitioner is Innovative Emmis Indiana Broadcasting LP.



Site Location

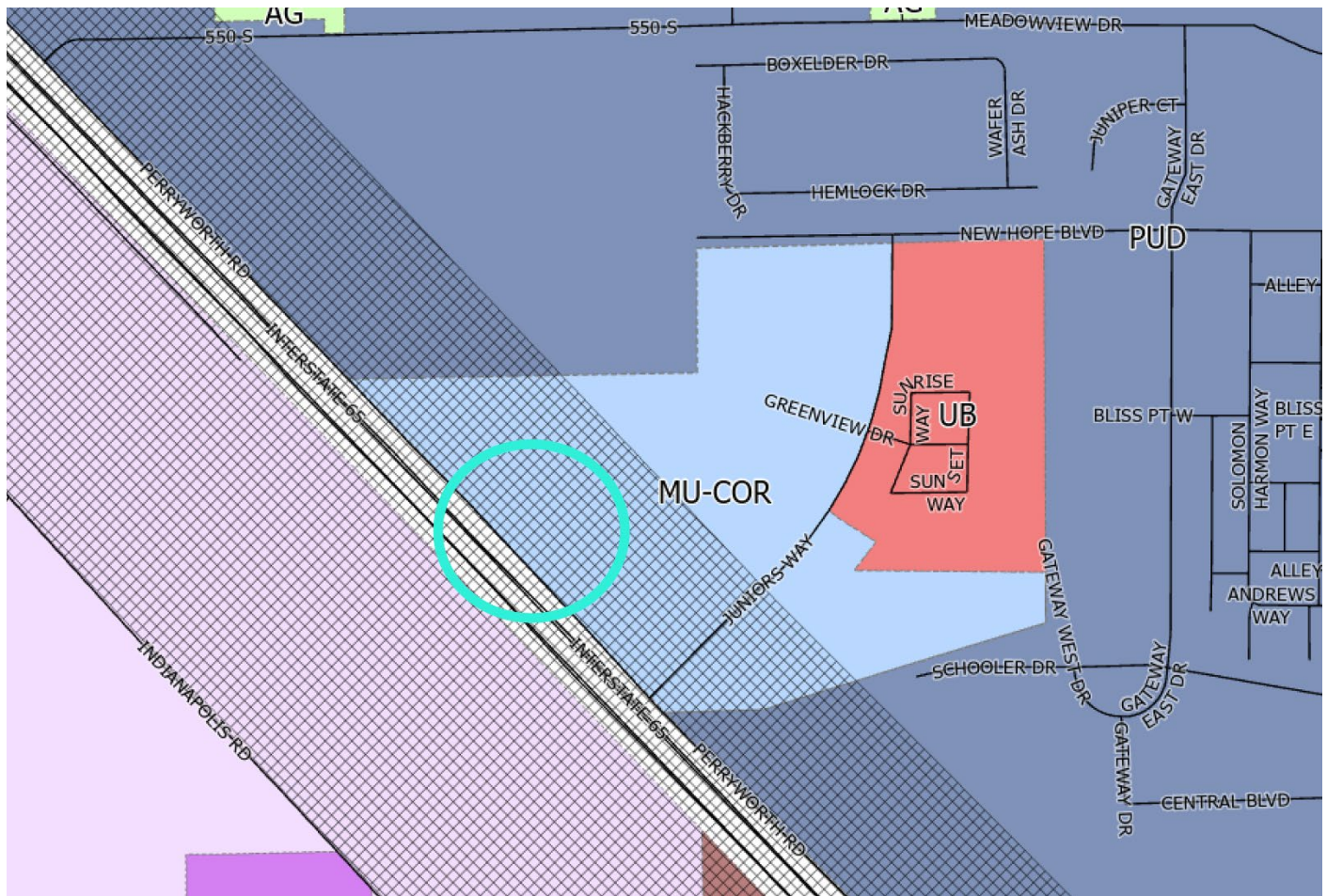
The site is located east side of Perry Worth Road and I-65. The surrounding area is characterized by residential and agriculture uses. The site previously had the Emmis Broadcasting Towers.

Zoning

The site is zoned MU-COR. The MU-COR District is “established to accommodate developments containing a variety of commercial, office, and residential uses. Development in this district requires connection to public water and sewers and development plan approval.” Permitted uses within this district include single family homes, multi-family dwellings, retail sales, restaurants, and offices.

The site is also zoned with the I-65 Corridor Overlay. The I-65 Overlay “is established to provide consistent and coordinated treatment of the properties bordering I-65 within Whitestown. The I-65 Corridor is a premier office and

industrial business location and employment center whose vitality, quality, and character are important to adjacent residents, employees, business owners, taxing districts, and the community as a whole.”



Background and History

1. In July 2018, the Whitestown Plan Commission provided a favorable recommendation for a Zone Amendment from I-1 to UB for the site in question (PC18-015-ZA).
2. In February 2021, the Whitestown Plan Commission provided a favorable recommendation for a Zone Amendment from the UB to the MU-COR zoning classification. (PC20-068-ZA)
3. In July 2021, the Whitestown Plan Commission approved a Primary Plat to subdivide the site in question (PC21-025-PP). The site is currently going through the administrative process to finalize the Secondary Plat and subdivision (PC21-047-SP).
4. In 2021, the applicant submitted a request to relocate and improve the existing billboard in question. In October 2021, the Board of Zoning Appeals approved an indefinite continuance for the item. This same item has now been redocketed.

Unified Development Ordinance

In 2020, the Town Council adopted a new Unified Development Ordinance. The update to the UDO prohibited billboards, meaning existing billboards within Whitestown are now classified as legal non-conforming. The petitioner is requesting a Use Variance from the sign regulations within the Whitestown UDO Section 8.3 as shown below.

Section 8.3 Prohibited Signs. *The following signs are prohibited unless protected by state statute, or otherwise allowed in this chapter:*

- Abandoned signs
- intermittent signs
- scrolling signs

- *Animated signs*
- *Balloon signs*
- **Billboards**
- *Blinking signs*
- *Flashing signs*
- *Inflatable signs*
- *manual changeable copy, temporary*
- *moving signs*
- *pole signs*
- *pennant banner*
- *reflective signs*
- *rotating signs*
- amongst others

Petitioner Request

The applicant is seeking a Use Variance to modernize an existing billboard by removing the existing structure and constructing a new billboard in the same location. The existing billboard was originally installed in 2007 and is supported by three pillars, with dual-face sizes of 10.5 feet by 36 feet at a total height of 20 feet. The proposed, modernized billboard unit will be approximately 15-20' feet higher than the existing billboard, mounted on a monopole with dual face signs approximately 14 feet by 48 feet in size. The area around the support structure is proposed to be landscaped. The existing billboard is illuminated and the proposed modernized billboard will also be illuminated.

	Existing	Proposed	% Change Increase
Height	20 feet	35-40 feet	75-100
Sign Area	378 square feet	672 square feet	78

Petitioner's Proposed Findings

1. The approval of the use variance will not be injurious to the public health, safety, morals, and general welfare of the community because:

The approval of the Use Variance will not be injurious to the public health, safety, morals, and general welfare of the community because the proposal only seeks to replace and modernize an already existing billboard in the same location. There are no objective standards by which to determine (1) if the approval would injure the public health, safety, morals, and general welfare of the community and (2) how the variance will have a positive or neutral effect on the community's health, safety, morals, and welfare. The existing billboard has been located on this property since 2007. The area immediately adjacent to the subject parcel is zoned MU-COR. Continued operation of the billboard will have no change to the impact to adjacent areas. There is no evidence that the billboard has been injurious, in any manner, to the public health, safety, morals, and general welfare of the community as it currently exists.

2. The use and value of the area adjacent to the property included in the Use Variance will not be affected in a substantially adverse manner because:

There is already an existing billboard and adjacent property is being marketed and proposed to be developed for uses consistent with the MU-COR zoning classification. There are no objective standards by which to determine whether the proposed variance would or would not adversely affect the surrounding properties in a substantially adverse manner nor standards by which to determine whether the proposed variance would or would not adversely affect the surrounding properties in a substantially adverse manner. The billboard will continue to provide access to affordable advertising opportunities thus increasing the economic viability of those businesses and their ability to retain and hire employees. A billboard has been located on this property for decades. It is zoned MU-COR and its current use is a vacant parcel with an existing billboard. The adjacent area has been and continues to be developed pursuant to uses allowed under the MU-COR zoning designation. This is not an addition but rather an aesthetic enhancement being reconstructed on a single modern pole meeting current building codes rather than multiple poles. In addition, the surrounding area will be landscaped. To date, there have

been no issues with regard to the operation of the billboard.

3. The need for the Use Variance arise from some conditions peculiar to the property involved, and is more clearly described as:

The need for the Use Variance arises from the limitation in the current UDO that no longer allows for the installation of billboards. However, the UDO is silent as to the replacement and modernization of existing billboards. The topography of the subject real estate and the raising of the I-65 roadbed over the years has impacted the visibility of the billboard. These limitations and factors are above and beyond the control of the owner and are not self-created but actual hardships.

4. The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought, and is more clearly described as:

The hardship created stems from changes to the Zoning Ordinance that limit the development, continued use, and ability to modernize structures to meet current building codes as well as topographical changes to I-65 that limit visibility. Most codes encourage the upgrading of systems, structures, and foundations for safety, security, and for aesthetic concerns. This is an aesthetic enhancement and does not create something that has not been located on the property for the last several decades. There are no objective standards by which to determine whether strict application of the terms of this title will result in practical difficulties in the use of the property.

5. The approval does not interfere substantially with the Comprehensive Plan because:

While the Comprehensive Plan suggests the Town's desire to limit additional billboards within the Town's jurisdiction, the Comprehensive Plan does not address the need to modernize and update existing billboards. There are no objective standards by which to determine whether the proposed variance would or would not interfere substantially with the Comprehensive Plan. The current zoning is MU-COR and the subject real estate is presently used for a billboard, its highest and best use. Adjacent parcels are zoned MU-COR. In addition, a billboard, in some manner, has been located on this real estate for decades. This is not a request for the installation of an additional billboard, but rather a request to modernize and provide aesthetic enhancements to an existing billboard and therefore will not interfere with the Comprehensive Plan's desire to limit the installation of new billboards.

Staff Recommendation

Staff is providing an unfavorable recommendation for the Emmis Billboard Use Variance docket BZA21-002-VA to permit an existing billboard to modernize and increase in size. Staff's recommendation to the Board of Zoning Appeals finds the Use Variance does not comply with the following requirements in UDO Section 11.15 F. 1. and denial be based upon:

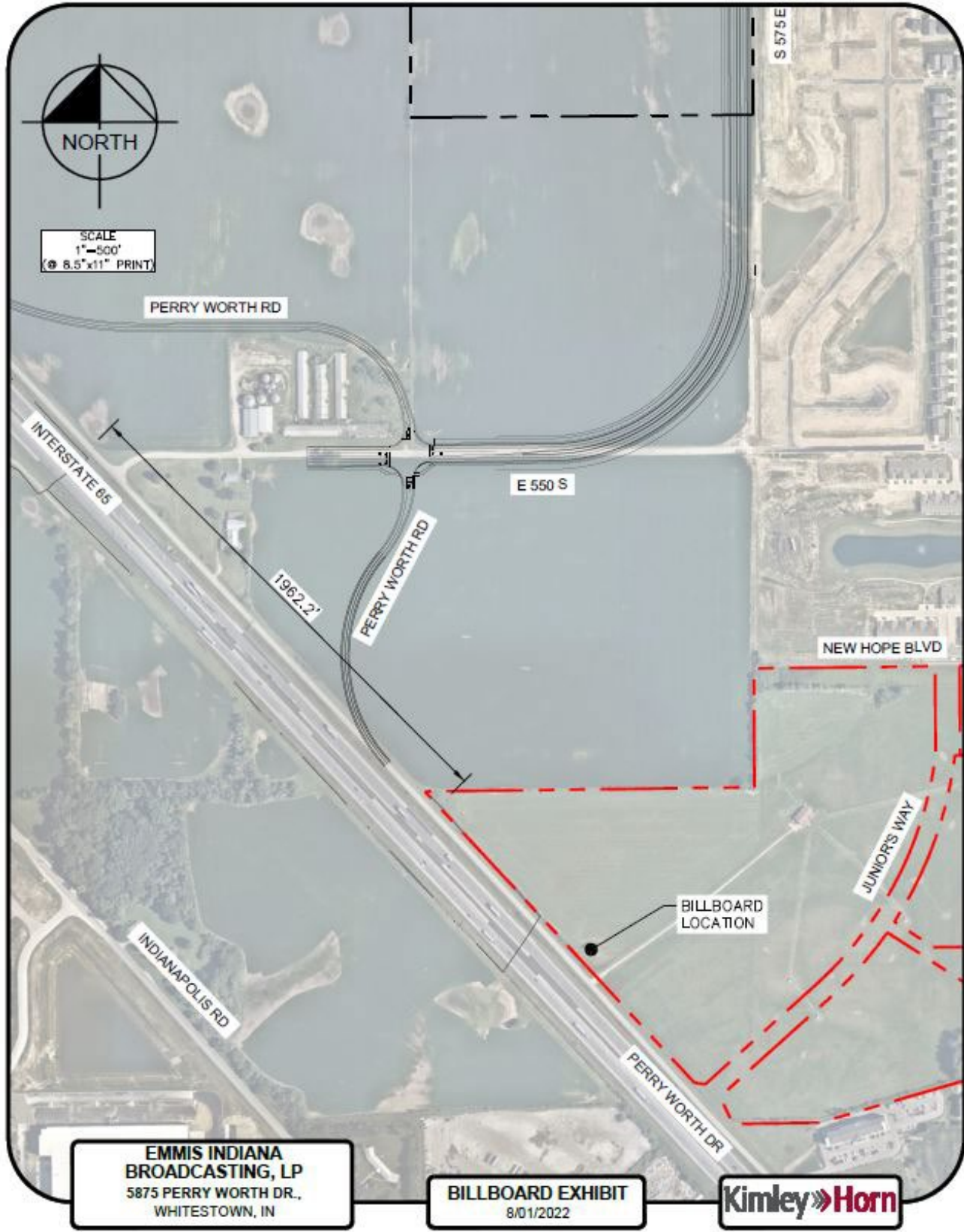
1. The approval of the use variance will be injurious to the public health, safety, morals, and general welfare of the community because: **Allowing the billboard to increase in height and size would be injurious to the public health, safety, morals, and general welfare by increasing the distraction factor to drivers. Approval of the proposed variance would be in contradiction with the stated intent of the ordinance and would exceed the desired limitations for signage throughout the city.**
2. The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because: **Currently a billboard sits on the existing property, increasing the height and size of the billboard would not substantially affect the adjacent property. However, permitting an existing legal non-conforming billboard to be modernized and increase the size may encourage other existing billboards to seek the same opportunity.**
3. The need for the variance does not arise from some condition peculiar to the property involved: **The need for the variance arises from the applicant developing their property. The circumstances are the result of actions of the**

applicant from which relief is sought. The site faces no physical or peculiar condition that would require the billboard to be permitted.

4. The strict application of the terms of the zoning ordinance will not result in unusual and unnecessary hardship as applied to the property for which the variances are sought because: **The need to modernize the billboard is a result of the applicant's actions, not the Unified Development Ordinance. The applicant may repair and maintain the current billboard. Strict application to the terms of the zoning ordinance will bring the site to conformance with the Unified Development Ordinance and does not place an unnecessary or unusual hardship on the applicant.**
5. The approval does interfere substantially with the comprehensive plan: **As part of the Comprehensive Plan Implementation recommendations, the Plan recommends "Updating signage regulations to discourage clutter while providing for a streamlined approval process for new and expanding businesses and institutions." The Unified Development Ordinance's signage standards were updated as recommended by the Comprehensive Plan. The revised UDO does not permit billboards. The Comprehensive Plan continuously promotes wayfinding signage throughout the Town, but makes no mention to encourage billboards.**

If the Board of Zoning Appeals denies the request to remove and replace the billboard, the existing billboard is permitted to exist as-is as legal non-conforming until such time it is removed.

Materials Submitted by the Applicant



I-65 N 0.5 MI. NORTH OF SR 334, FACING SOUTH

PROPOSED



PROJECT NARRATIVE AND EXPLANATION OF ZONING REQUEST

Emmis Indiana Broadcasting LP (“Emmis”) is the owner of a parcel of real estate that is approximately 4.6 acres in size and is generally located east of Perry Worth Road, north of Whitestown Parkway and south of New Hope Boulevard, having a common address of 5875 Perry Worth Road, Whitestown, IN 46075 (the “Real Estate”). The Real Estate is currently zoned MU-COR (Mixed Use – Commercial, Office, Residential).

Emmis is seeking a variance to modernize an existing billboard in conjunction with the continued develop the contiguous real estate along Perry Worth Road. The existing billboard was originally installed in 2007 and is supported by three pillars, with dual-face sizes of 10.5 feet by 36 feet at a total height of 20 feet. The proposed, modernized billboard unit will be approximately 15-20’ feet higher than the existing billboard, mounted on a monopole with dual face signs approximately 14 feet by 48 feet in size. The area around the support structure is proposed to be heavily landscaped. The existing billboard is illuminated and the proposed modernized billboard will also be illuminated.