

OSHTEMO CHARTER TOWNSHIP ZONING BOARD OF APPEALS

MINUTES OF MEETING HELD JANUARY 6, 1997

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Agenda

ADAMS OUTDOOR ADVERTISING - VARIANCE REQUEST - BILLBOARD  
REQUIREMENTS (WESTERN MICHIGAN UNIVERSITY)

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A meeting was conducted by the Oshtemo Charter Township Zoning Board of Appeals on Monday, January 6, 1997, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall, pursuant to notice.

MEMBERS PRESENT:     Brian Dylhoff, Chairperson  
                              David Bushouse  
                              Thomas Brodasky  
                              William Saunders  
                              Lara Meeuwse

MEMBERS ABSENT:     None

Also present were Rebecca Harvey, Township Planning and Zoning Department, Patricia R. Mason, Township Attorney, and one (1) other interested person.

**CALL TO ORDER**

The meeting was called to order at 3:04 p.m.

**ELECTIONS**

The Board considered the election of the Chairperson for calendar year 1997. Ms. Meeuwse nominated Mr. Dylhoff to be re-elected as Chairperson. Mr. Saunders seconded the motion. The motion carried unanimously.

The Chairperson welcomed the new member to the Board from the Township Board, David Bushouse.

**MINUTES**

The Board considered the minutes of the meeting of December 2, 1996. The changes proposed by Ms. Harvey were noted. Mr. Brodasky moved to approve the minutes as amended, and Mr. Saunders seconded the motion. The motion carried unanimously.

The Board next considered the minutes of the meeting of December 16, 1996. Mr. Brodasky moved to approve the minutes as amended after having noted the changes suggested by Ms. Harvey. Ms. Meeuwse seconded the motion. The motion carried unanimously.

**ADAMS OUTDOOR ADVERTISING - VARIANCE REQUEST - BILLBOARD REQUIREMENTS (WESTERN MICHIGAN UNIVERSITY)**

The Board considered the application of Tim Wight of Adams Outdoor Advertising, representing Western Michigan University, for variance approval from the 500 sq. ft. size limitation applicable to billboards established by Section 76.155 of the Zoning Ordinance. Variance approval from the locational standards applicable to billboards (Section 76.155) is also required. The subject site is located on the east side of US 131, south of Parkview, and is within the "AG" Agricultural-Rural District Zoning classification.

The applicant was present.

The report of the Planning and Zoning Department is incorporated herein by reference.

Mr. Brodasky questioned Ms. Harvey regarding the standards applicable to billboards along US 131. Ms. Harvey responded that Section 76.155 allows for billboards in the area 150' in width on either side of US 131 in the "C" Local Business District or lower. The Agricultural and Residential Districts were considered "higher" districts than the "C" District. She stated that billboards were not normally allowed in the Agricultural Zone.

Mr. Brodasky questioned the wording of the application, which referenced a meeting by the Zoning Board of Appeals on 12/16/96. Ms. Harvey noted that the applicant had intended to come before the Board at the meeting of December 16, 1996, but the necessary materials had not been submitted to the Township in time to schedule the item for that meeting.

Mr. Wight indicated that Western Michigan University would like to place the billboard on this property in order to "create community awareness." He stated that WMU owns the parcel and that the sign thereon would be owned and maintained by WMU for University use only. The sign may contain advertisements for Miller Auditorium, advertisement welcoming new students or just general advertisement concerning the University. He stated that Adams Outdoor Advertising is only the contractor on the project. He stated that, with regard to the size variance, the applicant stated that the smallest standard panels made by his company were 14' x 48', which would be 672 square feet. A 500-sq.-ft. billboard or smaller would have to be specially made.

The Chairperson stated that he felt the biggest issue was the location of the sign in the Agricultural District. Mr. Brodasky agreed. The applicant responded that he felt the

property was unique because of the surrounding road and highway. He felt that the property was not usable for farming but that it was a good location for signage.

Ms. Meeuwse inquired as to the size of the parcel, and Ms. Harvey responded that it was eight acres in size. Ms. Harvey stated that the eight acres had originally been included by the University in its development plans for the property to the east.

Mr. Bushouse stated that he was not in favor of granting the variance as to location in that he felt it would be undesirable to set a precedent to allow billboards in the Agricultural District. He felt that the applicant could pursue a sign to be located in the City of Kalamazoo on property owned by WMU there. Further, the applicant could seek signage in an appropriate zone within the Township.

Board members inquired whether denial of the locational variance would require denial of the size variance. The Township Attorney responded that, since the applicant could seek rezoning as an option, the Board should consider the two variances separately.

The Chairperson concurred with the comments of Mr. Bushouse.

There was inquiry as to whether the logo portion of the proposed sign design would be included in its square footage, and Ms. Harvey responded that it would be.

There was no public comment offered on the item, and the public hearing was closed.

Ms. Meeuwse indicated that she agreed with the concern that billboards not be permitted in the Agricultural District. Mr. Saunders agreed, stating he felt that there was not much in favor of granting the variance. He felt it was not desirable to locate a billboard in the Agricultural District. As to size, he noted that there were no billboard variances since the Ordinance was adopted in 1984 to allow greater than 500 sq. ft. One such sign had been established since the Ordinance was adopted, and that size was in compliance.

It was noted that previously the Board had considered arguments regarding "standard size" offered by applicants as their reason for seeking a sign size variance. The Board had previously rejected such arguments.

Mr. Brodasky moved to deny the locational variance, i.e., deny permission to establish the billboard within the Agricultural District, for the following reasons:

(1) That compliance was not unnecessarily burdensome in that the applicant had alternative options, such as the opportunity to seek rezoning of this property or to establish such signage on a different parcel within the City of Kalamazoo or elsewhere within the Township. Additionally, the applicant had reasonable use of this property without the variance.

(2) That substantial justice would not be served by granting the variance in that it would set an undesirable precedent in allowing billboards within the Agricultural District. It was noted that no variances to allow billboard signage in the Agricultural District had ever been granted.

(3) That there were no unique physical circumstances of the property requiring the variance.

(4) That the hardship was self-created in that the billboard location was at the applicant's discretion.

(5) That the spirit of the Ordinance would not be observed by granting the variance; and health, safety and welfare would be secured by its denial in that there were other similarly situated agricultural properties which could potentially seek variance if the variance were granted.

Ms. Meeuwse seconded the motion. The motion carried unanimously.

Mr. Saunders moved to deny the size variance with the following reasoning:

(1) That compliance was not unnecessarily burdensome in that the size of the signage was at the applicant's discretion and, even if the 500-sq.-ft. signage was not standard, such signage could be established. It was noted that other signage established after the Ordinance's adoption complied with the size requirement.

(2) That substantial justice would not be afforded by granting the variance in that no previous such variances had been granted.

(3) That there were no unique physical circumstances of the property which would require the size variance, such as limitations on visibility.

(4) That the hardship was self-created in that the size and design were at the applicant's discretion.

(5) That the spirit of the Ordinance and health, safety and welfare would be secured by the denial of the variance.

Mr. Brodasky seconded the motion, and the motion carried unanimously.

#### **OTHER BUSINESS**

The Board considered the 1997 meeting schedule. Ms. Meeuwse moved to adopt the schedule. Mr. Brodasky seconded the motion, and the motion carried unanimously.

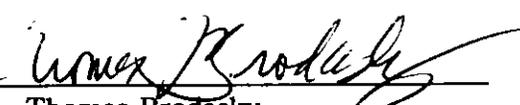
**ADJOURNMENT**

There being no further business to come before the Board, the meeting was adjourned at 3:42 p.m.

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

By:   
Brian Dylhoff, Chairperson

By:   
William Saunders

By:   
Thomas Brodasky

By:   
Lara Meeuwse

By:   
David Bushouse

Minutes Prepared:  
January 7, 1997

Minutes Approved:  
1-20-97

AGENDA:   
MINUTES: ZBA

DATE: January 6, 1997  
SENT: February 12, 1997

ZBA

- Lara M.
  - Dave B.
  - Bill S.
  - Brian
  - Tom B.
- } 1-17-97

PEOPLE

Tim Wight  
Adams Outdoor Advertising  
407 E. Ransom  
Kalamazoo, MI 49007

Home Builders Association  
5700 West Michigan  
Kalamazoo, MI 49009

ZB

- Anna R.
- Marvin
- Lara
- Ken H.
- Millard
- Ted C.
- Wilfred

Oshtemo Business Association  
P.O. Box 1  
Oshtemo, MI 49077

TB

- Fred
- Dave B.
- Marvin
- Norm

OFFICE

- Becky
- Bob
- Marci
- Lois
- Ron
- Tony
- Jim
- Attorney's
- Index
- Elaine

Total



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334  
616-375-4260 FAX 375-7180 TDD 375-7198

## **NOTICE**

### **OSHTEMO TOWNSHIP ZONING BOARD OF APPEALS**

January 6, 1997  
3:00 p.m.

### **AGENDA**

1. Call to Order
2. Election of Chairperson and Secretary
3. Approval of Minutes
  - December 2, 1996
  - December 16, 1996
4. Variance Request - Billboard Requirements

Tim Wight of Adams Outdoor Advertising, representing Western Michigan University, requests Variance Approval from the 500 sq. ft. size limitation applicable to billboards established by Section 76.155, Zoning Ordinance.

Variance Approval from the locational standards applicable to billboards (Section 76.155, Zoning Ordinance) is also required.

Subject site is located on the east side of US-131, south of Parkview, and is within the "AG"-Rural District. (3905-36-230-050)

5. Other Business
6. Adjourn

AGENDA: ZBA  
MINUTES: \_\_\_\_\_

DATE: January 6, 1997  
SENT: December 27, 1997

ZBA

- ~~George~~ Dave B.
- Elaine
- Bill S.
- Brian
- Tom B.

ZB

- Anna R.
- Marvin
- Lara
- Ken H.
- Millard
- Ted C.
- Wilfred

TB

- Fred
- ~~George~~ Dave B.
- Marvin
- Norm

OFFICE

- Becky
- Bob
- Marci
- Lois
- Ron
- Tony
- Jim
- Attorney's
- Index

PEOPLE

Tim Wight  
Adams Outdoor Advertising  
407 E. Ransom  
Kalamazoo, MI 49007  
3 Labels

Dave Person  
Kalamazoo Gazette  
P.O. Box 2007  
Kalamazoo, MI 49003

Cripps & Fontaine Excavating  
2116 West Main  
Kalamazoo, MI 49006

Oshtemo Business Association  
P.O. Box 1  
Oshtemo, MI 49077

Stanley Rakowski  
7151 West "G" Avenue  
Kalamazoo, MI 49009

Home Builders Association  
5700 West Michigan  
Kalamazoo, MI 49009

Fred Langeland  
Balkema Sand & Gravel  
1500 River Street  
Kalamazoo, MI 49001

=====  
=====  
Total



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334  
616-375-4260 FAX 375-7180 TDD 375-7198

**To:** Zoning Board of Appeals

**Meeting Date:** 1-6-97

**From:** Planning/Zoning Department

**Agenda Item:** #4

**Applicant:** Tim Wight, Adams Outdoor Advertising  
Representing Western Michigan University

**Property In Question:** Approximately 8 acres located on the east side of US-131,  
south of Parkview - Section 36.

Reference Vicinity Map

**Zoning District:** "AG"-Rural District

**Request:** Variance Approval - Billboard Requirements

**Ordinance Section(s):** Section 76.155 - Billboards

***Planning/Zoning Department Report:***

***Background Information***

- Applicant requests Variance Approval to locate a 672 sq ft (14 ft x 48 ft) billboard for Western Michigan University on the subject 8 acre site currently owned by Western Michigan University.

Reference Variance Application, Sign Permit Application, and Sign Illustrations

- Section 76.155 permits the placement of a 500 sq ft billboard within the "I-1", "I-2", or "I-3" Industrial Districts or within an area 150 ft in width on either side of US-131 zoned "C" Local Business District or lower, with the following locational conditions:

- : no more than 3 billboards may be located per linear mile of highway (back to back structures shall constitute 2 billboards)
- : no billboard shall be located within 500 ft of a residential zone and/or an existing residence
- Variance approval from the size and locational standards set forth in Section 76.155 - Billboards is required to permit the proposed 672 sq ft billboard on the subject site.
- If variance approval is granted, the proposed billboard will be subject to the Site Plan Review Process set forth in Section 82.000.

**Department Review**

Reference Standards of Approval of a Nonuse Variance ('practical difficulty' criteria):

**1. *Conformance Unnecessarily Burdensome***

- : Are reasonable options for compliance available?
- : Does reasonable use of the property exist with a denial of the variances?
  - The subject site is located within the "AG"-Rural District and is permitted those uses identified in Section 20.200/20.400, Zoning Ordinance.

**2. *Substantial Justice***

- : Consider the existing and permitted signage arrangements on surrounding properties to determine consistency and compatibility with the character of the area.
  - The surrounding area is located within the "AG"-Rural District.
  - The general area is occupied by residential, public/semi-public, and agricultural land use
  - Signage permitted within the "AG"-Rural District is set forth in Sections 76.110 and 76.115.
- : The Board has not considered a variance request from the billboard standards set forth in Section 76.155 since the adoption of the Ordinance in 1984.

**3. *Unique Physical Circumstances***

- : There are no unique physical limitations on the subject site supporting variance approval.

4. *Self-Created Hardship*

: The billboard location was at the applicant's discretion and was designed and developed under the current billboard standards.

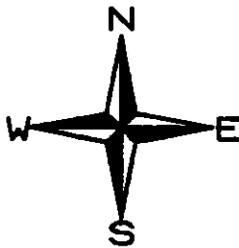
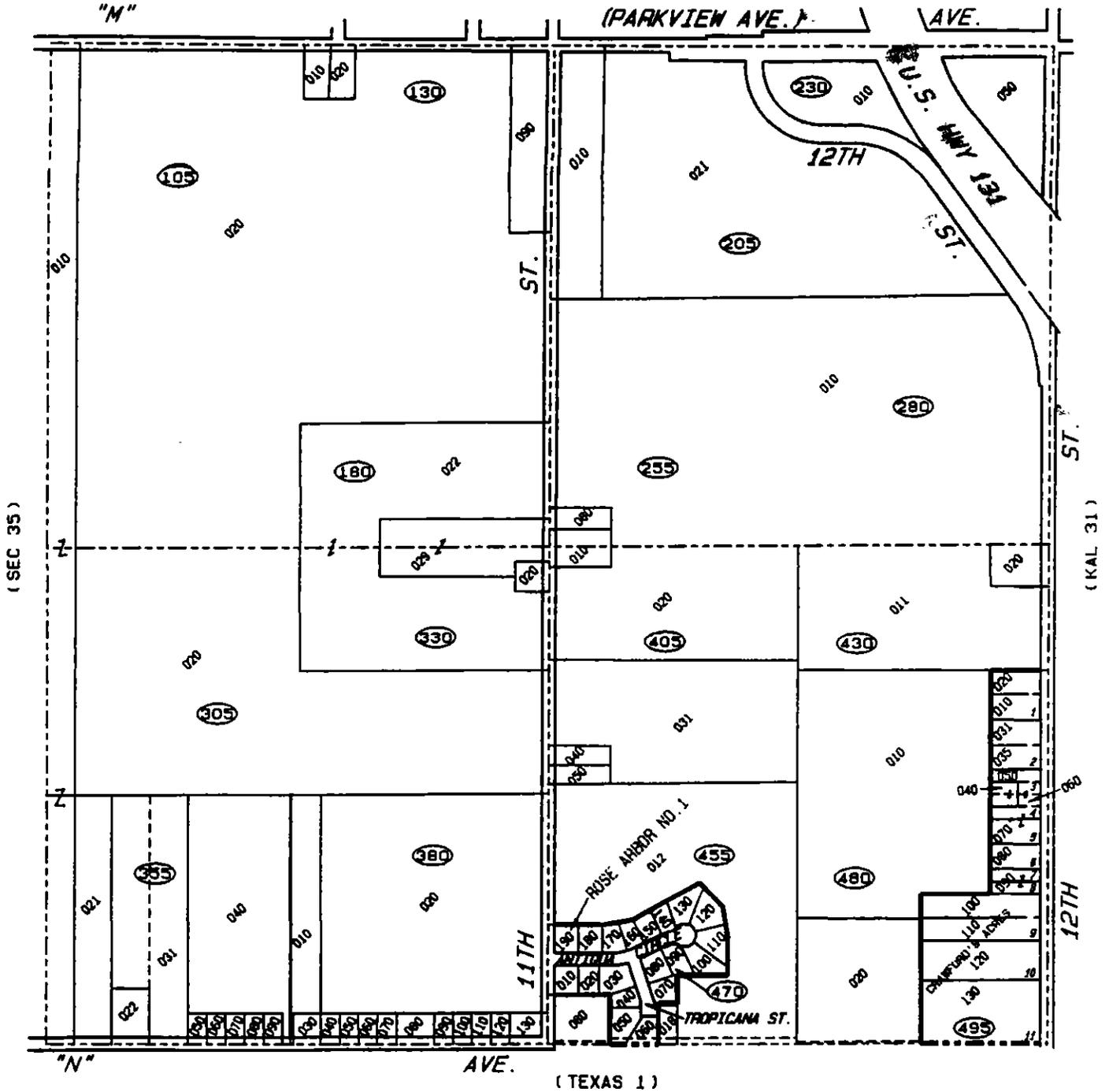
5. *Will the spirit of the Ordinance be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted?*

: Reference Section 20.100, Statement of Purpose - "AG"-Rural District

: Consider the number of properties similarly zoned and located along US-131 and the purpose for the establishment of the locational parameters set forth in Section 76.155.

# SECTION 36

( SEC 25 )



DATE: AUGUST 25, 1993

REVISED DATE: MARCH 11, 1996

PRINTED DATE: MARCH 22, 1996



7275 W. MAIN STREET, KALAMAZOO, MI 49009-933-  
616-375-4260 FAX 375-7180 TDD 375-7192

**REQUEST FOR ZONING BOARD OF APPEALS MEETING**

Date 11/21/96 Present Zoning \_\_\_\_\_ Fee \$100

Land Owner Western Michigan University

Address Walwood Hall - Kalamazoo Phone \_\_\_\_\_

Person Making Request Adams Outdoor Advertising

Address 407 E. Ransom Phone 342-9831

Interest in Property Sign Contractor

Size of Property Involved \_\_\_\_\_

Reason for Request REQUEST A 172' VARIANCE TO  
ERECT A STANDARD 14' X 48' PRIVATELY OWNED  
BILLBOARD. EXISTING CODE ONLY ALLOWS 500'  
WHICH WOULD BE A CUSTOM MADE STRUCTURE  
RATHER THAN THE INDUSTRY STANDARD

CHARTER TOWNSHIP  
OF OSHTEMO  
7275 W. MAIN STREET  
KALAMAZOO, MI 49009  
616-375-4260

11/23/96 JF

447572 ZBA REQ/ADAMS SIGN  
TOTAL PAID

THANK YOU



7275 West Main Street  
Kalamazoo, MI 49009  
(616) 375-4260 Fax (616) 375-7180

**CHARTER TOWNSHIP OF OSHTEMO**  
Sign Permit Application

Location (address) of sign Location Map Attached

Property Owner Western Mich. Univ. Phone # \_\_\_\_\_

Address \_\_\_\_\_

Sign Owner Western Mich Univ. Phone # \_\_\_\_\_

Address \_\_\_\_\_

\*Setback from centerline of road \_\_\_\_\_ feet \*\*Size \_\_\_\_\_ square feet

Advertisement Erect a 500' on 672' Billboard as  
Per ZBA Approval on 12/16/96

Contact for info:

[Signature]  
Signature  
Service Mgr.  
Title



Adams  
Outdoor Advertising

Tim Wight  
Service Manager

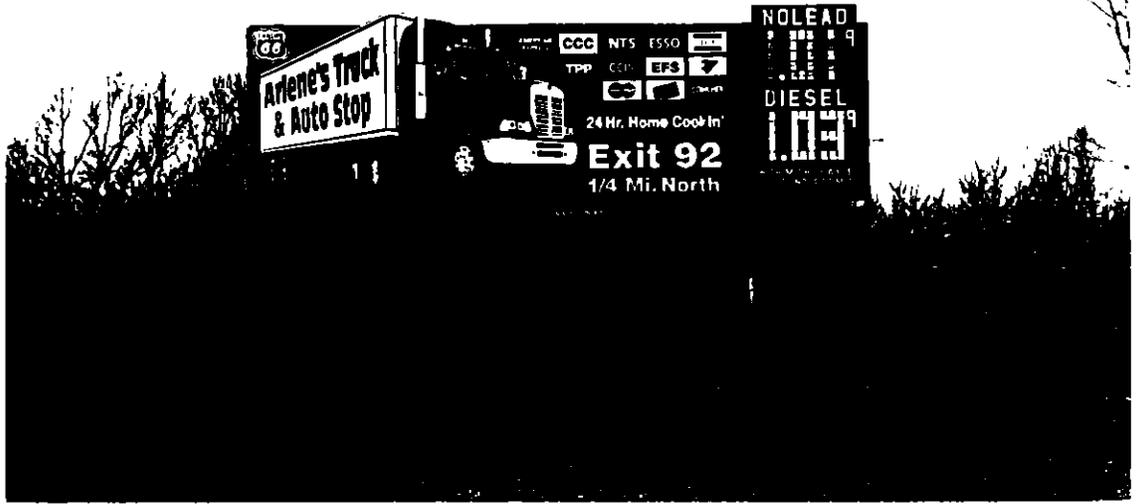
(616) 312-9831 • Fax (616) 312-8

road to the sign. If it is fastened to a building, then state

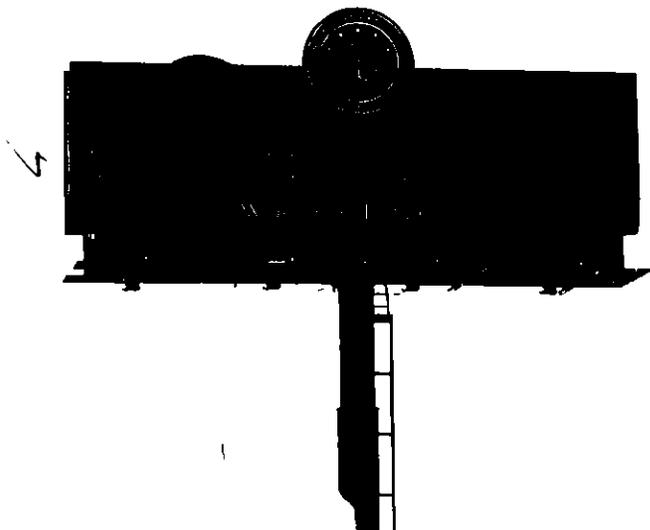
ons to compute square footage. If sign consists of letters, numbers, etc. on roof or wall or structure, use height of letters and length of area covered to compute square footage.



Structure Style (I-BEAM)



Design



REED, STOVER & O'CONNOR, P.C.

MEMORANDUM

**Date:** December 11, 1996

**To:** Oshtemo Charter Township  
Zoning Board of Appeals

ATTORNEY-CLIENT  
PRIVILEGED COMMUNICATION

**From:** Patricia R. Mason

**Re:** Western Michigan University -  
Application for Billboard -  
Immunity from Application  
of Zoning Ordinance

It is our understanding that Western Michigan University has made application to the Township for approval for the establishment of a billboard to advertise the University. The billboard would be established on property which is owned by WMU but which is not a part of the WMU "campus"; the property does not contain dormitory, residence hall, a student center, classroom building or any other educational facility buildings or structures. WMU proposes that the billboard be established on property which is situated in the "AG" Zoning District classification under the Township's Zoning Ordinance.

The question may arise whether WMU is immune or exempt, with regard to the establishment of the billboard, from the application of the Township's Zoning Ordinance. This memorandum is intended to address this issue if it should arise.

Generally, Courts set out to determine the legislature's intent on a case-by-case basis in determining whether a governmental unity or state agency is immune from provisions of the local zoning ordinance.

A university such as WMU has been determined to be "state agency" and immune from local regulation in certain cases. To determine immune status, one should review the

legislation by which WMU enjoys its authority; i.e., Act 48 of 1963 or MCL 390.551 et seq; MSA 15.1120(1) et seq. The pertinent provision of the Act states:

"A board of control shall not borrow money on its general faith and credit, nor create any liens upon its property. A board, after approval by the legislature, may acquire land or acquire or erect buildings, or alter, equip or maintain them, to be used as residence halls, apartments, dining facilities, student centers, health centers, stadiums, athletic fields, gymnasiums, auditoriums, parking structures and other educational facilities. A board may borrow money under such terms and provisions as it deems best to finance such facilities, and shall obligate itself for the repayment thereof, together with interest thereon, solely out of the income and revenues from such facilities, or other such facilities heretofore or hereafter acquired, or from special fees and charges required to be paid by the students deemed by it to be benefited thereby, or any combination thereof." MCL 390.558; MSA 15.1120(8). Emphasis added.

In addition, MCL 390.555; MSA 15.1120(5), authorizes the purchase and possession of real and personal property of every kind.

In the case of Marquette County v Northern Michigan University, 111 Mich App 521 (1981), the Court of Appeals interpreted the language of MCL 390.558; MSA 15.1120(8), to hold that the legislature had given the university "immunity" or "exclusive jurisdiction over the construction of campus buildings."

It seems clear that the Court would find that WMU is not subject to the Township's Zoning Ordinance with regard to the establishment of campus buildings, structures and other educational facilities within the Township. On-site signage would be included, in our opinion.

The present application concerns establishment of an off-site sign/billboard, i.e., not a structure or building on the WMU "campus." A billboard is not a building, residence hall, apartment, dining facility, student center, health center. . .or other educational facility. Therefore, we feel that it is an open argument whether this billboard falls within the

"exclusive jurisdiction" of the university unregulated by the Township's Zoning Ordinance.

Any interpretation has a 50% likelihood of being reversed by the Court, in our opinion.

PRM/jrd

REED, STOVER & O'CONNOR, P.C.

MEMORANDUM

**Date:** December 23, 1996

**To:** Oshtemo Charter Township  
Zoning Board of Appeals

ATTORNEY-CLIENT  
PRIVILEGED COMMUNICATION

**From:** Patricia R. Mason

**Re:** Concord/Long John Silver's - Order Affirming ZBA

Enclosed is a copy of the Court's opinion regarding the Long John Silver's appeal. You will see that the Court affirmed the decision you made. We are very pleased that the Court agreed with our reasoning and will shortly be requesting entry of an injunction to prohibit violation of the variance you granted.

PRM/jrd

FILED

DEC 17 1995

9th JUDICIAL CIRCUIT  
COUNTY OF KALAMAZOO  
KALAMAZOO, MICHIGAN

STATE OF MICHIGAN  
KALAMAZOO COUNTY CIRCUIT COURT

CONCORD ENTERPRISES, INC.  
Appellant,

vs

File Number A 960564AA

OSHTEMO CHARTER TWP, ZONING BOARD,  
Appellee,

---

Order Affirming Zoning Board of Appeals

Appellant seeks Circuit Court review of a decision of the Oshtemo Township Zoning Board of Appeals (ZBA). Appellant owns a fast food restaurant in defendant township. In 1995 it applied for a building permit for exterior renovations to the property, including the lighting. Although the proposed lighting did not comply with the lighting ordinance and appellant's representative was so informed, through an apparent misunderstanding between appellant and appellant's contractor it was installed nevertheless. When appellant was informed that the ordinance had been violated, it applied for a variance. Its application was heard and denied by the ZBA. This appeal followed, appellant claiming that the decision is arbitrary, capricious and unreasonable.

This court presumes the legitimacy of the township ordinance, and the appellant has the burden of establishing unreasonable restrictions on the use of its property. The circuit court scope of review of a zoning board of appeals decision is de novo review of the record. The court is free to draw its own conclusions. The court must review the record and decision of the board to insure that the decision complies with the constitution and laws of the state, is based upon proper procedure, is supported by competent, material and substantial evidence and represents the reasonable exercise of discretion granted to the board. Compton Gravel v Dryden Twp., 125 Mich App 383 (1983)

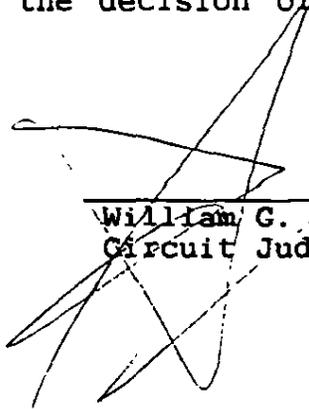
After reviewing the record of the ZBA the court is satisfied that the decision is based on competent, material and substantial evidence. The record demonstrates that the appellant's contractor was informed that the proposed lighting was contrary to the ordinance. On the site plan (Exhibit 9, Record of Exhibits) and on the site plan review sheet (Exhibit 11, Record of Exhibits), applicant was clearly notified by township officials of the violation, and the decision was discussed with applicant's representative. It appears that this was followed by

miscommunications and misunderstandings between the owner and contractor however.

The ZBA considered extensive evidence before denying a variance. It heard from an engineering expert regarding safety and security concerns. The Light Handbook of the Illuminating Engineering Society of North America was consulted. The characteristics and location of the property were considered as was the burden on the owner and whether the hardship was self-created. At least one member of the board visited the scene in the night time and testified to observations. The owner had input into the decision by presenting evidence at the administrative hearing through counsel who represented it. The board also reviewed the effect of the lighting on traffic, patron safety and neighboring properties. Under the circumstances presented, this court would have reached the same conclusion.

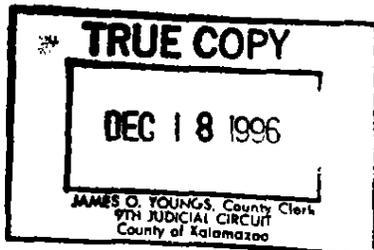
The court therefore concludes that the decision of the ZBA was lawful. Its decision is affirmed.

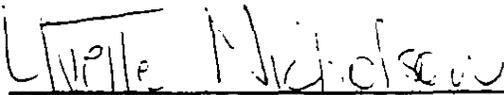
Date: December 17, 1996

  
\_\_\_\_\_  
William G. Schma  
Circuit Judge

cc: Parties or attorneys of record

A copy of the foregoing document was served on the Plaintiff and Defendant, or their attorneys of record, by ordinary mail on December 18, 1996.



  
\_\_\_\_\_  
Yvette Nicholson, Judicial Aide



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334  
616-375-4260 FAX 375-7180 TDD 375-7198

**REQUEST FOR ZONING BOARD OF APPEALS MEETING**

Date 11/21/96 Present Zoning \_\_\_\_\_ Fee \$100

Land Owner WESTERN Michigan University

Address Walwood Hall - Kalamazoo Phone \_\_\_\_\_

Person Making Request Adams Outdoor Advertising

Address 407 E. Ransom Phone 342-9831

Interest in Property Sign Contractor

Size of Property Involved \_\_\_\_\_

Reason for Request REQUEST A 172' Variance to  
Erect a Standard 14' x 48' privately owned  
billboard. Existing code only allows 500'  
which would be a custom made structure  
rather than the industry standard

Western Michigan University

3905-36-230-050

WMU

36-230-010

||

No 0

25-430-010

||

No 0

from Kalamazoo

0450-820 State of Michigan

DNR - P.O. Box 30448

Lansing, MI 48909-7984

1<sup>st</sup> Missionary Baptist Church

0457-260

WMU

Tim Wight  
Adams Outdoor Advertising  
407 E. Ransom  
Kalamazoo, MI 49007

State of Michigan  
Dept. of Natural Resources  
P.O. Box 30448  
Lansing, MI 48909-7984

36-230-050

WMU - BD OF TRUSTEES  
14495 ADMINISTRATION BUILDING  
KALAMAZOO MI 49008

36-230-010

WMU - BD OF TRUSTEES  
14495 ADMINISTRATION BUILDING  
KALAMAZOO MI 49008

25-430-010

WESTERN MICHIGAN UNIVERSITY  
KALAMAZOO MI 49009