



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334
269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

**NOTICE
OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS - REGULAR MEETING**

**MEETING WILL BE HELD IN PERSON
AT OSHTEMO TOWNSHIP HALL
7275 W MAIN STREET**

Masks Are Now Optional in Oshtemo Township Buildings

(Meeting will be available for viewing through <https://www.publicmedianet.org/qavel-to-qavel/oshtemo-township>)

**TUESDAY, DECEMBER 12, 2023
3:00 P.M.**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Approval of Agenda
4. Public Comment on Non-Agenda Items
5. Approval of Minutes: November 14, 2023
6. **Public Hearing - Variance: HCD Properties LLC**
Sign Impressions, on behalf of HCD Properties LLC, is requesting two sign variances pertaining to new on-site signage for an industrial property located at 3680 Stadium Park Way. Both variances are requesting relief from Section 55.90 of the zoning ordinance which governs the use, area, type, height, and number of signs allowed for industrial land uses.
7. Other Updates and Business
8. Adjournment

**Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

- a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.
- b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday, 8 a.m.-1 p.m. and 2-5 p.m., and on Friday, 8 a.m.–1 p.m. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Cheri Bell	216-5220	cbell@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
Clare Buszka	216-5260	cbuszka@oshtemo.org
<u>Trustees</u>		
Neil Sikora	760-6769	nsikora@oshtemo.org
Kristin Cole	375-4260	kcole@oshtemo.org
Zak Ford	271-5513	zford@oshtemo.org
Michael Chapman	375-4260	mchapman@oshtemo.org

Township Department Information			
<u>Assessor:</u>			
Kristine Biddle	216-5225	assessor@oshtemo.org	
<u>Fire Chief:</u>			
Greg McComb	375-0487	gmccomb@oshtemo.org	
<u>Ordinance Enforcement:</u>			
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org	
<u>Parks Director:</u>			
Vanessa Street	216-5233	vstreet@oshtemo.org	
Rental Info	216-5224	oshtemo@oshtemo.org	
<u>Planning Director:</u>			
Iris Lubbert	216-5223	ilubbert@oshtemo.org	
<u>Public Works Director:</u>			
Anna Horner	216-5228	ahorner@oshtemo.org	

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
DRAFT MINUTES OF A REGULAR MEETING HELD NOVEMBER 14, 2023 AT
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

2024 ZONING BOARD MEETING DATES

PUBLIC HEARING – VARIANCE: FRIENDSHIP ANIMAL HOSPITAL

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance in order to construct a new commercial building 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks.

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, November 14, 2023, beginning at approximately 3:02 p.m.

ALL MEMBERS WERE PRESENT: Anita Smith, Chair
Rick Everett
Dusty Farmer
Fred Gould
Harry Jachym
Louis Williams, Vice Chair
Alistair Smith

Also present were Iris Lubbert, Planning Director, Jim Porter, Township Attorney, Leeanna Harris, Zoning Administrator, Martha Coash, Recording Secretary and several guests.

Call to Order

Chairperson Smith called the meeting to order. Those present joined in reciting the Pledge of Allegiance.

Approval of Agenda

Ms. Lubbert indicated there were no changes to the agenda.

Mr. Everett made a motion to approve the agenda as presented. Mr. Smith seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item.

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of March 21, 2023

Chairperson Smith asked if there were changes to the minutes of March 21, 2023. Hearing none, she asked for a motion.

Mr. Smith made a motion to approve the Minutes of March 21, 2023 as presented. Ms. Farmer seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item.

2024 Zoning Board Meeting Dates

Ms. Lubbert provided the proposed meeting dates for the fourth Tuesday of each month with exceptions for holidays or for consistency with the Development Schedule of Applications:

1/23
2/20*
3/26
4/23
5/21*
6/25
7/23
8/20*
9/24
10/22
11/19*
12/17*
1/21/2025

*Dates shifted to avoid holidays or for consistency with the Development Schedule of Applications.

Chairperson Smith suggested moving the December Meeting to the 10th. Members decided to leave it as proposed, in the normal pattern.

Chairperson Smith asked for a motion.

Ms. Farmer made a motion to approve the Zoning Board Meeting Dates for 2024 as presented. Mr. Williams seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item and asked Ms. Harris for her presentation.

PUBLIC HEARING – VARIANCE: FRIENDSHIP ANIMAL HOSPITAL

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance in order to construct a new commercial building at 2999 S. 11th St. 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks.

Ms. Harris said 2999 S. 11th Street, has approximately 119 feet of frontage, is 1.24 acres in size, and is zoned R-3: Residence District. The property is located in the southeast quadrant of the Township, southeast of the Crystal Lane and S. 11th Street intersection.

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance from Section 50.70.E. of the Township Ordinance that governs the minimum distance between any building or structure (that is not a single-family home or duplex) and any rear or side property line abutting property with a single- or two-family residence located in an equivalent or lower zoning classification. Specifically, the Ordinance outlines that the setback distance shall be 50 feet, or a type F greenspace shall be installed, along the property line between the improved area of the subject property and the abutting residence.

2999 S. 11th Street is zoned R-3 and is currently vacant. The property in question is situated between two parcels that are also zoned R-3 but have single-family homes. Generally, the required side yard setback for a new commercial building within an R-3 zoning district is 20 feet or the height of the abutting side of the building at its highest point. However, the presence of single-family homes triggers the increased setback requirements of 50.70.E of the Zoning Ordinance; a 50-foot setback or type F greenspace is required along the adjoining property lines. It should be noted that there is an R-2: Residence District abutting the southeastern portion of 2999 S. 11th Street.

Although Section 50.70. E references a type F greenspace, she noted the referenced type F greenspace was removed from the Landscaping Ordinance when it was last updated. Staff were able to research the earlier version of the Landscaping Ordinance and found the greenspace standards previously in place. Generally, the minimum setback distance required between any building and any rear or side property line is 20 feet or the height of the building, whichever is greater. This request would meet this Ordinance requirement since the proposed building height is 25 feet.

The applicant provided a letter outlining their reasoning for the variance request. In summary, the applicant contends that the required increased setbacks would leave little developable space on this 119-foot-wide parcel making development difficult and therefore this section of the ordinance unnecessarily burdensome. They also note the approval of this request will have no material impact on adjacent property owners. The applicant adds that even though the setback would be decreased, if approved, in order to meet the intent of the ordinance, they “will be landscaping the site very heavily, providing significant screening to all sides of the parcel. The 8- foot evergreens will be staggered in such a way to obstruct the view of the building from not only the R-2 parcel but the adjoining R-3 parcels as well.”

STANDARDS OF REVIEW – STAFF ANALYSIS

Ms. Harris reviewed the principles the Michigan courts have applied for a dimensional variance, which collectively amount to demonstrating a practical difficulty:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.

- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.
- Public safety and welfare.

Ms. Harris indicated Staff analyzed the request against these principles and offered the following information to the Zoning Board of Appeals.

Standards of Approval of a Nonuse Variance (practical difficulty)

*Standard: Unique Physical Circumstances
Are there unique physical limitations or conditions which prevent compliance?*

Comment: 2999 S. 11th Street is currently undeveloped with relatively flat terrain. The ordinance outlines that a parcel within the R-3 district is required to have a minimum frontage of 200 feet and a minimum area of 50,000 square feet. This property's frontage of 119 feet is legal non-conforming. The property's area of 1.24 acres exceeds the ordinance required minimum of 50,000 square feet. The narrower width, almost half what is required, is a unique physical limitation. If the increased setback of 50 feet is strictly enforced for the development of this property, it would only allow a nonresidential structure 19 feet wide or less to be built on this site. It could be argued that the increased setback requirement renders the property essentially undevelopable for any use other than a single-family home or duplex without a setback variance being granted.

*Conformance Unnecessarily Burdensome
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?*

Comment: The matter of building a nonresidential use, specifically a veterinary clinic, on this property is discretionary and reasonable use of the property does still exist as a single- or two-family home; however, the enhanced setbacks from properties abutting those containing single- or two-family homes in equal or lesser zoning classifications severely limits the buildable area of this parcel for any other uses.

Section 50.70 E was originally designed to offer two options for enhanced buffering between uses. The first is a setback of 50 feet and the second is the installation of a type F greenspace (i.e. setback of 35 feet with increased landscaping). The second option is no longer available as the ordinance no longer includes the type F landscaping referenced, leaving the applicant with one less option to develop than previous developers. Even though this option is technically no longer applicable, the Zoning Board of Appeals should consider the original intent of 50.70. E which allowed for a decreased setback, in this case from 50 feet to 35 feet, as long as additional landscaping was provided.

Note: to address the spirit of the ordinance, the applicants have indicated they are willing to provide increased landscaping, to the north, south, and east sides of the parcel. Any proposed landscaping plan will need to be reviewed against the landscaping ordinance and approved by the Planning Commission with the review of the site plan. The Commission should consider this as a condition of approval.

Minimum Necessary for Substantial Justice

*Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).*

Comment: In researching past Zoning Board of Appeals decisions regarding the request for relief from increased setback requirements abutting single- or two-family homes, Planning Department staff were able to identify two similar cases.

1. Spurr Dental, 1624 South Drake Road, 4/8/2002: The applicant sought relief from the supplemental setback requirements from CR: Local Business District classification to adjacent R-3 properties from the Zoning Board of Appeals to allow for the construction of a new office building on the property. Without the variance, the applicants argued, there would be essentially no buildable area resulting since the width of the property is 159 feet with supplemental setback requirements of 85 feet on both the north and south property lines. The Zoning Board of Appeals granted the variance request, allowing the building to be built to the standard commercial office setback requirements and not have to follow the enhanced applicable setbacks, citing that the conformance was unnecessarily burdensome, the hardship was not self-created, and that the spirit and intent of the Ordinance would be observed by the variance.
2. D & R Sports, 8178 West Main Street, 10/6/2014: The applicants sought relief from the supplemental setback requirements for properties abutting residential zoning districts from the Zoning Board of Appeals to allow for the construction of a new storage building. If approved, the new structure was proposed to be located 58 feet from the property line, 33 feet less than required by the supplemental setback provisions. The applicant indicated there was an existing berm fully planted with spruce trees that should completely obstruct the view of the building. The Zoning Board of Appeals granted the variance request given the adjacent use of the property is a unique element and it was unlikely to have a material impact on the adjacent property.

Self-Created Hardship

Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: With the site currently being vacant, it could be argued that the need for the variance requested is self-created. However, the building setbacks for this property severely limit the amount of space available for development. The width of the property is 119 feet, and with the 50-foot setback on both the north and south, it would give only 19 feet to construct a building.

Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?

Comment: The applicant stated they would provide extensive landscape buffering to obscure the site from the properties to the north, south, and east, more similarly aligned with the type F greenspace referenced. If the variance is approved, the

site plan would require the review of the Planning Commission and a public hearing to ensure the proposed use and layout are compatible with the surrounding area. With the willingness to provide additional screening and the safeguards in place through the Planning Commission review, staff does not anticipate that allowing the structure to be built closer to the neighboring properties with single-family homes than is typically allowed would negatively impact the health, safety, or welfare of the neighbors or the community.

POSSIBLE ACTIONS

Ms. Harris suggested Board Members could take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to deny
- Motion to approve with an alternate variance relief (conditions may be attached)

The motion should include the findings of fact relevant to the requested variance. Based on staff analysis, the following findings of fact were presented:

- Support of variance approval
 - There are unique physical limitations (property width).
 - Conformance to the ordinance is unnecessarily burdensome as the enhanced setbacks for properties abutting those containing single- or two-family homes in equal or lesser zoning classifications severely limits the buildable area of this parcel.
 - With increased landscaping/screening, per the original intent of 50.70 E, there would be no negative impact to the health, safety, or welfare of the public by allowing the building to be built with the proposed setbacks.
 - Substantial justice is met as the Zoning Board of Appeals granted setback variances for two similar cases in the past.
- Support of variance denial
 - The necessity of the variance from the enhanced 50 foot setback is a self-created hardship.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval

The Zoning Board of Appeals approves the variance request due to the unique physical limitations that exist, conformance to the ordinance is unnecessarily burdensome and there would be no negative impact to the safety of the public with the condition that enhanced landscaping, reviewed, and approved by the Planning Commission, is installed within the decreased setback areas to meet the intent of Section 50.70.E. and any proposed primary building meets the general zoning setback requirements (in this case, 20 feet or the height of the building, whichever is greater).

2. Variance Denial

The Zoning Board of Appeals denies the variance request due to the proposal being a self-created hardship.

3. Variance Approval and Denial

The Zoning Board of Appeals can choose to approve portions of the requested variance or provide alternate relief. For example, approve a variance for a setback larger than requested but less than the ordinance requires, ex. 35 feet.

Chairperson Smith thanked Ms. Harris for her presentation and asked if Board Members had questions for her. Hearing none, she asked if the applicant wished to speak.

Mr. Walter Hansen, of Building and Design Corporation spoke on behalf of Dr. Laura Billings, and noted the Kalamazoo County Road Commission has approved the proposed location of the drive, and for soil erosion permissions have both been received. He described the intent to develop an office on the property to the north, the extensive landscaping with evergreen trees that is proposed will provide very good screening, noted there would be 400 feet between the back of the residence on the R-2 zoned property and this development, and that approval of the variance would not result in negatively impacting the home directly to the south .

Without the variance, he said it would be almost impossible for any type of office use on the site, specifically citing that no fire truck turnaround would be possible.

Chairperson Smith thanked Mr. Hansen for his comments and opened a public hearing.

Ms. Penny Marsh, 3065 S. 11th Street spoke in opposition to the variance request. Her comments are attached to these minutes in their entirety.

Hearing no further comments, the Chair closed the hearing and moved to Board Deliberations.

Mr. Smith noted that he would be in support of approving the variance as requested with the conditions outlined by staff. He noted the installation of the additional screening and the non-conforming, pre-existing width of the parcel which is a unique limitation.

Ms. Farmer said the request for variance was the result of a self-created hardship and that the ordinance is in place in large part to protect residential properties. The proposed business would be right next to a residence and cited her concern regarding equal or lesser zoning classifications. She noted that as zoning goes with the land, in the future the building might be an entirely different business.

Chairperson Smith also felt the request was based on a self-created hardship.

Mr. Williams encouraged the applicant to take another look at the plan.

Mr. Everett asked whether the site could be used for a residence.

Attorney Porter said it could be used for a single family residence or a duplex.

Hearing no further discussion, Chairperson Smith asked for a motion.

Ms. Farmer **made a motion** to deny the variance request to construct a new commercial building at 2999 S. 11th St. 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks due to the variance request being the result of a self-created hardship. Mr. Williams **seconded the motion**. The

motion was approved and the variance request denied in a roll call vote of 5 – 2. (Roll Call Vote: Mr. Gould – yes; Mr. Jachym – no; Ms. Farmer – yes; Ms. Smith – yes; Mr. Williams – no; Mr. Smith – yes; Mr. Everett – yes.)

Chairperson Smith moved to the next agenda item.

Other Updates and Business

Ms. Lubbert said there will be two items to consider at the December 12 meeting and wished everyone happy holidays.

Ms. Farmer noted this was the first time Ms. Harris had presented to the group and thanked her for a job well done; Chairperson Smith agreed.

Adjournment

Chairperson Smith noted the Zoning Board of Appeals had exhausted its agenda. There being no other business, she adjourned the meeting at approximately 3:44 p.m.

Minutes prepared:
November 15, 2023

Minutes approved:
_____, 2023

DRAFT

Statement to Oshtemo Township Zoning Board of Appeals 11/14/2023
Re: Variance for setback of proposed animal hospital on South 11th Street

We are retired and moved to 3065 South 11th Street on December 14, 2022 to be closer to two of our three sons who live in Kalamazoo. We made the decision to buy this house because we fell in love with the park-like character of our lot. Our property looks like a park with many beautiful mature hardwood trees, including maple, cherry and sassafras. We have already added several native woody shrubs and a white oak sapling to the plantings. If the variance is granted to reduce the animal hospital's setback along our property line, there will be a genuine loss to us in the spectacular views and privacy that our property now affords. Our interest is in maintaining the residential quality of our home's setting and the neighborhood's residential assets as well.

We have reviewed the Standards of Approval of a Nonuse Variance published on the Oshtemo Township website and note the following as they apply to this case:

- Re Standard One – reasonable options for compliance *are* available if the developer is willing to alter the sizes and sitings of the building and parking lot.
- Re Standard Three – there *are* no unique physical limitations or conditions to prevent compliance.
- Re Standard Four – the conditions or circumstances which resulted in the variance request *are* entirely created by the actions (planning & design) of the applicant.
- Re Standard Five – the spirit of the Ordinance will *not* be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted since this neighborhood at this end of South 11th Street is zoned R3 and retains the character of a residential neighborhood.

There are several other nearby Oshtemo Twntp Veterinary clinics:

- Oshtemo Animal Hospital, 6303 Parkview Avenue, 49009 (.9 mile away) *
- Kalamazoo Cat Hospital, 5263 W. KL Avenue, 49009 (1.4 miles away) *
- Pet Vet Family Pet Care Center, 229 S. Drake Rd, 49009 (2.2 miles away) *
- West Main Animal Hospital, 7250 W. Main Street, 49009 (3.8 miles away) *
- Eighth Street Veterinary Care, 624 S. Eighth Street, 49009 (2.9 miles away) *

Consider these facilities' settings, sitings on their lots, surrounding uses, set backs from other properties around them, and tell us what you think!

We do *not* approve of this proposed variance and sincerely hope that you will respect the zoning guidelines for residential setbacks in this case. Thank you for considering our input.

John Klyce and Penny Marsh
3065 South 11th Street, Kalamazoo, MI 49009
269-365-9013

*Distance is from our address/proposed vet clinic address

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December 07, 2023



Mtg Date: December 12, 2023

To: Oshtemo Township Zoning Board of Appeals

From: Colten Hutson, Zoning Administrator

Applicant: Sign Impressions, Paul Havenaar

Owner: HCD Properties LLC

Property: 3680 Stadium Park Way, Parcel Number 05-34-155-050

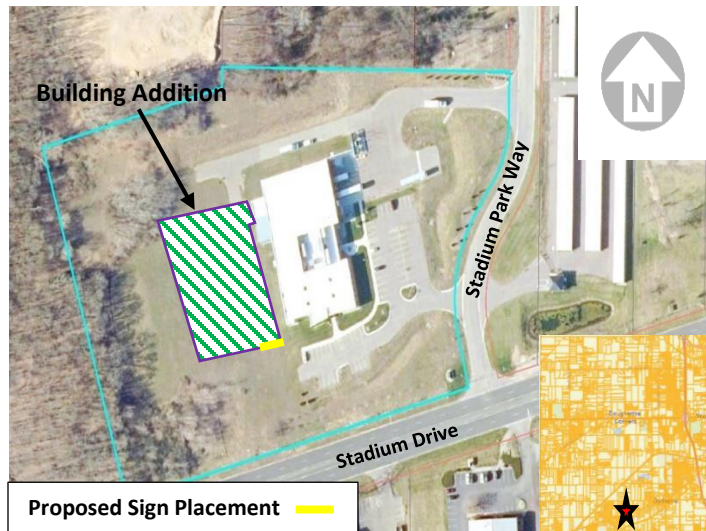
Zoning: I-1: Industrial District

Request: Requesting Two Sign Variances for New Wall Sign

Section(s): Section 55.90 - Industrial Land Uses

OVERVIEW:

Sign Impressions, on behalf of HCD Properties LLC, is requesting two sign variances pertaining to new on-site signage for an industrial property located at 3680 Stadium Park Way. Both variances are requesting relief from Section 55.90 of the zoning ordinance which governs the use, area, type, height, and number of signs allowed for industrial land uses. For **Request A**, the applicant is requesting a variance to establish a wall sign that is 105.33 square feet in sign area where only 50 square feet is permitted. In **Request B**, the applicant is requesting a variance in order for the proposed wall sign to be mounted at 30' in height, exceeding the maximum permitted mounting height of 20'.



The subject 11-acre site is located in the southwest quadrant of the Township and has road frontage adjacent to Stadium Drive and Stadium Park Way. The site currently serves as a manufacturing facility for food flavorings. The purpose of the 30,000+ square foot building addition is to provide additional space for warehouse and cold storage needs. Individual industrial buildings located outside of an industrial-office park are allowed one wall sign and one ground sign. Currently, the subject site only has one ground sign erected. If signage is proposed to differentiate from what the zoning ordinance allows with respects to placement, height, size, and the number of signs, a variance request is required. Since the nature of these requests conflict with the code, the applicant has requested that the Zoning Board of Appeals consider the two variances for their proposal for relief from Section 55.90: Industrial Land Uses.



SECTION 55.90: Industrial Land Uses

The applicant has provided the below rationale for the two variance requests from Section 55.90. Further rationale supporting such can be found in the letter of intent submitted by the applicant which is attached to this staff report.

- **“Criteria 1 Conformance Unnecessarily Burdensome**
 1. The 50 sq ft requirement is significantly too small for the size of the building it will be attached to. Having a sign that you cannot see because it is too small for the size of the building does not benefit anyone in the community.
 2. Having a sign in the middle of the building instead of where it can be seen higher up on the building does not allow for proper visibility.”
- **“Criteria 3 Unique Physical Circumstances**

Are there unique limitations or conditions which prevent compliance? **YES**
The building is very large, 34’ tall x 165’ long. So, to allow for proper visibility a larger sign is needed.

Attached you will find two layouts. One is that of the proposed sign. The other is what is currently allowed by the township without deviation. As you can see, the additional sq footage we are requesting is necessary to ensure that the size of the sign is complimentary to the size of the structure it will be attached to. The layout that depicts the 50 sq ft sign is significantly too small for the size of the structure it will be attached to and visibility to the road will be substantially reduced if visible at all.”



STANDARDS OF REVIEW - STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty, as follows:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.
- Public safety and welfare.

STANDARDS OF APPROVAL OF A NONUSE VARIANCE (PRACTICAL DIFFICULTY):

Standard: Unique Physical Circumstances
Are there unique physical limitations or conditions which prevent compliance?

Comment: **Request A)** The subject property possesses approximately 740' of road frontage adjacent to Stadium Drive and approximately 525' adjacent to Stadium Park Way. The segment of Stadium Drive adjacent to the site is a five-lane roadway with a speed limit of 55 mph and is heavily traveled. Additionally, although the minimum front yard setback required by ordinance is 120' from the center of the street right-of-way, the building addition is set back approximately 220' from the center of the street right-of-way from Stadium Drive. It could be argued that a 50 square foot wall sign in this location is at a visual disadvantage due to the speeds in this area and the enhanced setback from Stadium Drive. Having signage visible from this major arterial would help with wayfinding. There are no significant elevation changes as the grade of the property is relatively flat.

Request B) FlavorSum received formal approval from the Zoning Board of Appeals on August 23, 2022, to construct a 30,000+ square foot building at the subject property. The building addition is 34' tall. The zoning ordinance only allows for wall signs to be placed at a maximum mounting height of 20' above grade. Due to the building's height, the applicant is requesting a variance to mount the wall sign at 30' above grade. It is typical for a wall sign to be mounted near the top of any building. In this case, the zoning ordinance would restrict any type of wall sign exceeding a mounting height of 20'.

Standard: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?

Comment: **Request A)** As the building addition is 165' long and 34' tall, it can be expected that a larger sign area is desired to match the building's scale. The building is also set back 220' from the center of the Stadium Drive street right-of-way, or rather 165' from the front yard property line, which also plays a factor into the need for a greater sign area due to the distance from Stadium Drive. However, the applicant can still propose adequate

signage that meets the sign area requirements outlined in the zoning ordinance. The wall sign could also be relocated onto the original portion of the principal building which is not as tall or long as the new building addition, though equally as far from Stadium Drive.

Request B) Other than the Ascension Borgess industrial-office development, there are few other industrial buildings that have a height similar to the subject building. The building is 34' tall. If the variance request for the wall sign is denied for a mounting height of approximately 30', the wall sign would need to be placed just above the midway point of the building addition. As noted previously, it is common practice to place walls signs near the top of a building. However, the portion of the principal building which existed prior to the 2022 building addition does possess an elevation facing Stadium Drive as well. The top of said elevation as measured from grade is 18' tall, which is 16' shorter than the top of the building addition where the applicant would like the wall sign to be placed. It can be argued that if the variance for the wall sign was denied, the applicant could relocate the wall sign further east on the south elevation facing Stadium Drive and the visual issue in terms of placement for sign height can be avoided. Reasonable use of the property would also still exist.

*Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the Zoning Board of Appeals (ZBA) for consistency (precedence).*

Comment: In researching past ZBA decisions regarding sign relief for industrial developments, Planning Department staff were able to identify one similar request to allow for an increased sign area and increased mounting height for wall signs. A summary of said findings are described below. It should be noted that although there are several similar cases for commercial properties, only the below industrial comparison was found.

Request A) Ascension Borgess, 2520 Robert Jones Way, September 28, 2021: Ascension Borgess requested a variance to increase the sign area of their wall mounted signs. The applicant indicated the request was to help to provide reasonable identification. Some of the unique physical circumstances included that the property has frontage on two major roads, there is a substantial amount of preserved open space adjacent to the building, and the building is set back a significant distance from the roads. Therefore, wall signs larger than 50 square feet may be deemed appropriate for visibility. The ZBA granted the variance to increase the sign area for the wall sign on the south side of the building to be 131.4 square feet in area and the wall sign on the west side of the building to be 205.5 square feet in area, where the ordinance allows a sign area of 50 square feet.

Request B) Ascension Borgess, 2520 Robert Jones Way, September 28, 2021: Ascension Borgess requested a variance to increase the height of their south and west facing wall mounted signs. The applicant mentioned the request was to help to provide adequate signage in an appropriate location given that the building height ranges anywhere from 30'-47' tall. The increase mounting height of the signage would provide visibility from US-131 and Drake Road and would help guide patients and their families to the site. The ZBA granted the variance to increase the mounting height for the wall sign on the south

side of the building to be mounted at a height of 33' above grade and the wall sign on the west side of the building to be mounted at a height of 30' above grade, where the zoning ordinance allows a maximum mounting height of 20 feet.

Standard: Self-Created Hardship
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: Requests A & B) Industrial buildings are often designed to be large, and in this case, large enough to store goods and other materials in the warehouse to be able to operate the business successfully. The zoning ordinance was not originally written with taller buildings in mind. The zoning ordinance does not have a maximum building height allowed for industrial developments. The applicant followed all requirements outlined in the zoning ordinance while developing the site. However, although all businesses on Stadium Drive share the enhanced setback of 120', it was the property owner's decision to set the building back an additional 100' from what the ordinance requires. It is the applicant's desire to establish a wall sign with an overall sign area that is double the maximum size allowed by code. It is also the applicant's desire to install a wall sign that exceeds the maximum mounting height allowed by the zoning ordinance. Installing a wall sign that is out of compliance with all aspects of the zoning ordinance is not required nor necessary. The request is a self-created hardship.

Standard: Public Safety and Welfare
Will the variance request negatively impact the health, safety, and welfare of others?

Comment: Requests A & B) The increased sign area is not intrusive to motorists or any of the surrounding properties. The sign area requested could be argued to suit the 165' wide elevation the wall sign is proposed to be mounted on. Additionally, it is fairly common for businesses to have their wall signs near the top of their respected building. The zoning ordinance allows for a maximum wall mounting height of 20', whereas the proposed signs would be mounted at 30' in height above grade. This request to mount the subject wall sign 10' higher than what is allowed by code. Placing signage higher on a taller building to match this practice will not negatively impact members of the public. This has been implemented elsewhere at other businesses and has shown no negative effects. Neither variance request will negatively impact the health, safety, and welfare of others.

POSSIBLE ACTIONS

The Zoning Board of Appeals may take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval for **Request A**
 - There are Unique Physical Circumstances. The property is located on a 55 mph five-lane roadway. The higher speeds in this area in combination with the setback of the building warrants a larger sized wall sign to provide appropriate advertisement to commuters on such traveled way.
 - There is substantial justice. There is one previous case from two years ago in which an industrial-office development was granted a variance to allow for a significantly larger wall sign.
 - Public health, safety, and welfare will be secured.

- Support of variance denial for **Request A**
 - The variance request is a hardship that is self-created, as the applicant is not required to install a larger sign nor was required to set the building back an additional 100’.
 - Reasonable use of the property would still exist if the variance is denied.
 - Reasonable options for compliance are available.

- Support of variance approval for **Request B**
 - FlavorSum received formal approval from the Zoning Board of Appeals on August 23, 2022 which allowed the applicant to construct the building this size and height, presenting a unique physical circumstance. The zoning ordinance was not originally written with taller buildings in mind.
 - There is one previous case in which a taller, industrial building was granted a variance to allow for a greater mounting height for wall signs.
 - If the variance was granted, it would not negatively impact the health, safety, and welfare of the public.

- Support of variance denial for **Request B**
 - Conformance is not unnecessarily burdensome as other options for compliance are available. The wall sign could be relocated and mounted at a height which would comply with ordinance requirements on the portion of the principal building that predated the 2022 building addition which possesses a south elevation facing Stadium Drive.
 - Visibility of the wall sign will be maintained regardless of height. Reasonable use of the property exists if the variance is denied.
 - The request for the variance is a self-created hardship.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval for **Request A**

The Zoning Board of Appeals approves the variance request due to there being unique physical circumstances with the property in question, minimum necessary for substantial justice, and approval will not negatively impact the health, safety, and welfare of the public.

2. Variance Denial for **Request A**

The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship and conformance with code requirements is not unnecessarily burdensome.

3. Variance Approval for **Request B**

The Zoning Board of Appeals approves the variance request due to there being unique physical circumstances with the property in question, minimum necessary for substantial justice, and approval will not negatively impact the health, safety, and welfare of the public.

4. Variance Denial for **Request B**

The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship and conformance with code requirements is not unnecessarily burdensome.

Attachments: Application, Legal Description, Letter of Intent, Sign Drawings, and Minutes for Substantial Justice

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7275 W. Main Street, Kalamazoo, Michigan 49009-9334
 Phone: 269-375-4260 Fax: 269-375-7180

PLEASE PRINT

PROJECT NAME & ADDRESS

FlavorSum Building Lettering - 3680 Stadium Park Way, Kalamazoo, MI 49009

PLANNING & ZONING APPLICATION

Applicant Name: Paul Havenaar

Company: Sign Impressions

Address: 3929 Ravine Rd

Kalamazoo, MI 49006

E-mail: Paul@SignImpressionsInc.com

Telephone: 269-382-5152 Fax: 269-382-6822

Interest in Property: Signage Contractor

OWNER*:

Name: HCD Properties LLC

Address: 3680 Stadium Park Way

Kalamazoo, MI 49009

E-mail: hinkle.dan@gmail.com

Phone & Fax: 269-720-3135

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

Fee Amount _____

Escrow Amount _____

NATURE OF THE REQUEST: (Please check the appropriate item(s))

- | | |
|---|---|
| <input type="checkbox"/> Pre-Application Review | <input type="checkbox"/> Accessory Building Review – I083 |
| <input type="checkbox"/> Site Plan Review – I088 | <input type="checkbox"/> Rezoning – I091 |
| <input type="checkbox"/> Administrative Site Plan Review – I086 | <input type="checkbox"/> Subdivision Plat Review – I089 |
| <input type="checkbox"/> Special Exception Use – I085 | <input type="checkbox"/> Interpretation – I082 |
| <input checked="" type="checkbox"/> Zoning Variance – I092 | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Site Condominium – I084 | |

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary): Variance for Size of Signage Letters and

and a Variance in Height of Signage Placement

New Addition located on parcel #05-34-155-050

Legal Description:

SEC 34-2-12 COMM AT NW COR TH N89DEG14'34"E ALG N SEC LI 1313.54' TO W LI E 1/2, NW1/4, TH S00DEG34'58"E ALG SD W LI 1329.03' TO POB; TH N89DEG14'37"E 200' TH S00DEG34'58"E 73.90' TH SWLY 106.89' ALG A CURVE TO RT S36DEG05'19"W 55' TH SLY 210.48' ALG A CURVE TO LEFT WI RAD OF 233' AND CH BEARING S10DEG12'32"W 203.40' TH S 15DEG40'15"E 79.75' TO NLY ROW OF STADIUM DR TH S74DEG30'07"W ALG SD ROW 737.25' TH N19DEG16'38"W 581.05' TH N74DEG30'07"E 390.80' TH TH 00DEG34'58"W 31.51' TH N89DEG14'37"E 404.25' TO BEG

[This page left intentionally blank]



**Oshtemo Township – Variance Request
Request for property located at 3680 Stadium Dr Parkway**

Below you will find all the details pertaining to our request for a variance in order to attach a larger sign with more feasible placement on the wall of a new building structure. The address is listed above. It is important to note that the building structure is 34' tall x 165' long.

We are requesting the following:

1. A deviation of 55.33 additional sq ft from the 50 sq ft that is allowed. A total of 105.33 sq ft.
2. A second deviation to raise the letter placement from 20' to 30' to the top of the lettering.

Criteria 1 Conformance Unnecessarily Burdensome

1. The 50 sq ft requirement is significantly too small for the size of the building it will be attached to. Having a sign that you cannot see because it is too small for the size of the building does not benefit anyone in the community.
2. Having a sign in the middle of the building instead of where it can be seen higher up on the building does not allow for proper visibility.

Criteria 2: Substantial Justice

There are many cases in Oshtemo Township where the sign on a business is larger than 50 sq ft. Below are several examples of this.

1. D&R Sports – there are 4 wall signs totaling 217 sq ft.
2. Leader's Marine – Their wall sign is 285 sq ft.
3. Oak Ridge Feed – they have more than 50 sq ft of signage
4. Menards – significantly more than 50 sq ft of signage
5. Meijer – significantly more than 50 sq ft of signage

Criteria 3 Unique Physical Circumstances

Are there unique limitations or conditions which prevent compliance? **YES**

The building is very large, 34' tall x 165' long. So, to allow for proper visibility a larger sign is needed.

Attached you will find two layouts. One is that of the proposed sign. The other is what is currently allowed by the township without deviation. As you can see, the additional sq footage we are requesting is necessary to ensure that the size of the sign is complimentary to the size of the structure it will be attached to. The layout that depicts the 50 sq ft sign is significantly too small for the size of the structure it will be attached to and visibility to the road will be substantially reduced if visible at all.

Criteria 4 Hardship

The building was constructed to the size that it is due to the large amount of inventory that it holds. This is a necessity for the company to conduct business in a way that provides revenue and jobs for members of the community. The purpose of this sign is to assist the company with creating visibility to the community and represent a great place to work.

Criteria 5 – Public Safety

There is no hardship to the public by approving and allowing a larger building sign, as public safety and welfare will be secured. However, by allowing the larger, more visible sign, it will assist the public in viewing what company is housed at that location and will assist with visibility for any vehicles/trucks attempting to navigate to the facility for business related activity.

A handwritten signature in black ink, appearing to read 'Paul Havenaar', with a long horizontal flourish extending to the right.

Paul Havenaar
President Sign Impressions Inc



art per code
 50 sqft sign
 20' max height



Creating Signs That Get Noticed.
Really noticed.

www.signimpressionsinc.com

- Lighted & Non-Lighted Signs
- Sandblasted Wood
- 23k Gold Leaf
- 3-D Carved Lettering
- Screen Printing & Embroidery
- Digital Printing
- Vehicle Lettering & Graphics

JOB DESCRIPTION:

proposed building lettering

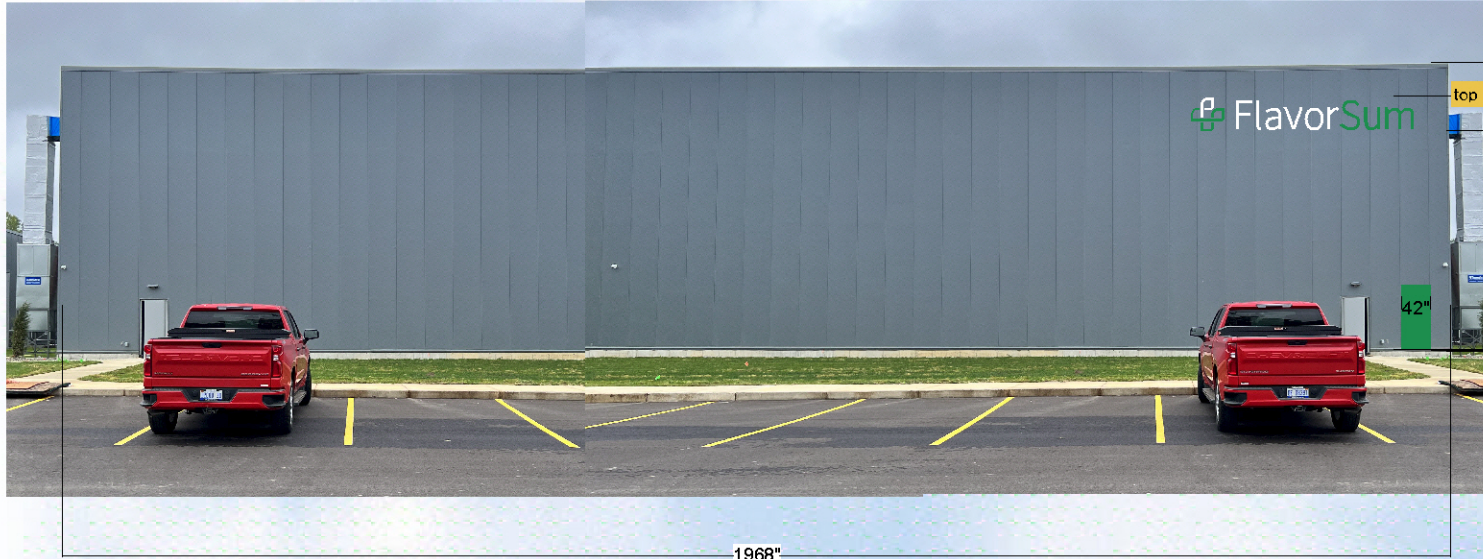
ALL THE IDEAS, DESIGNS, ARRANGEMENTS, DRAWINGS AND SPECIFICATIONS ARE OWNED BY, AND THE PROPERTY OF SIGN IMPRESSIONS INC., KALAMAZOO, MI 49006 AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS, DRAWINGS OR SPECIFICATIONS SHALL BE USED BY OR DISCLOSED TO ANY PERSON, FIRM OR CORPORATION FOR ANY PURPOSE WHATSOEVER WITHOUT THE WRITTEN PERMISSION OF SIGN IMPRESSIONS INC., KALAMAZOO, MI 49006.

DRAWN BY: **PH**

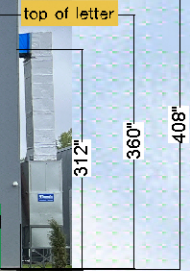
APPROVED BY: 27

ph. 269-382-5152
 3929 Ravine Road, Kalamazoo, MI

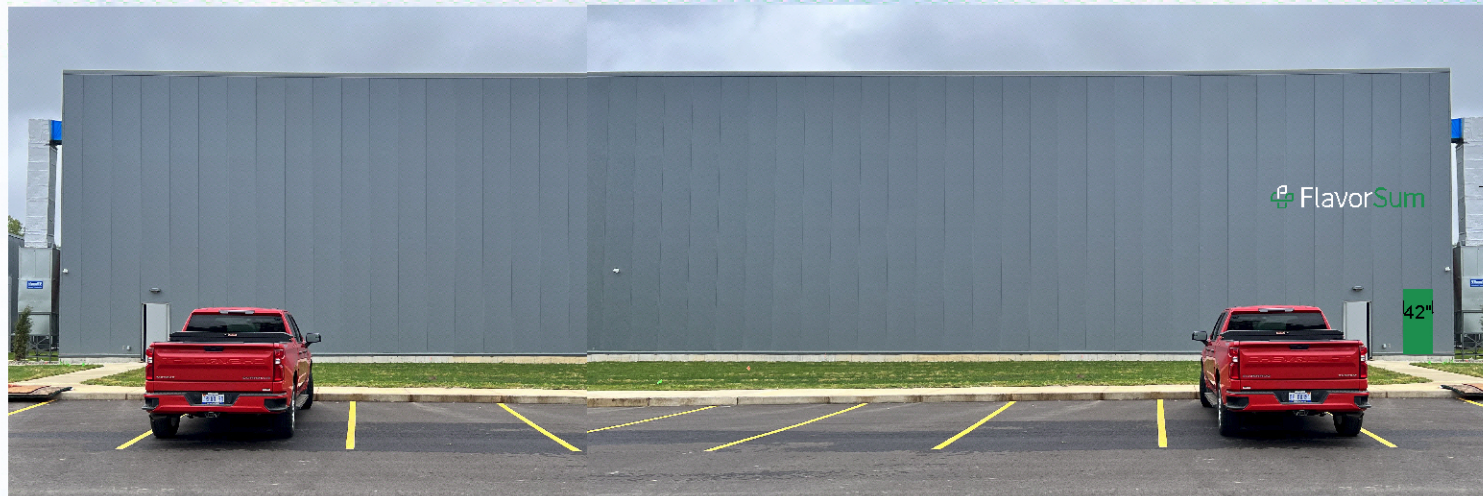
DATE: **10-24-23**



FlavorSum
105.33 sq ft



1968"



art per code
50 sqft sign
20' max height

240"



Creating Signs That Get Noticed.
Really noticed.

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- Lighted & Non-Lighted Signs
- Sandblasted Wood
- 23k Gold Leaf
- 3-D Carved Lettering
- Screen Printing & Embroidery
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proposed building lettering

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ph. 269-382-5152
3929 Ravine Road, Kalamazoo, MI

DRAWN BY: **PH**

APPROVED BY: 28

DATE: **10-24-23**

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A VIRTUAL MEETING HELD SEPTEMBER 28, 2021

Agenda

Public Hearing – Variance Request Ascension Borgess Cancer Center Signage

RWL Sign, on behalf of Ascension Borgess Cancer Center, requested four variances pertaining to on-site signage for their new medical office facility located at 2520 Robert Jones Way. Parcel number 05-25-435-001.

Public Hearing – Variance, Wolthuis Deck

Richard Wolthuis requested relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a 16’ x 29’ deck on the rear of the principal building located at 6291 Torrington Road.

Public Hearing – Variance, Schneck Fence

Jamie Schneck requested relief from Section 57.60 of the Zoning Ordinance which governs fence height for all parcels, lots, and building sites in order to construct a 6’ tall privacy fence within the front yard setbacks at 10294 W. KL Avenue.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, September 28, 2021, beginning at approximately 3:00 p.m.

MEMBERS PRESENT: Neil Sikora, Chair (All attending within Oshtemo Township)
Dusty Farmer
Fred Gould
Micki Maxwell
Anita Smith, Vice Chair
Louis Williams

MEMBER ABSENT: Ollie Chambers

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Colten Hutson, Zoning Administrator, Karen High, Zoning Administrator, and Martha Coash, Meeting Transcriptionist.

Guests present included Adam Davidson, Ascension Borgess Cancer Center, Jason Headley, RWL Sign Co., Dale Charter, ABCC, Richard Wolthuis, and Fred Baker.

Call to Order and Pledge of Allegiance

Chairperson Sikora called the meeting to order and those present joined in reciting the “Pledge of Allegiance.”

APPROVAL OF AGENDA

The Chair determined no agenda changes were needed, let it stand as presented, and moved to the next agenda item.

APPROVAL OF THE MINUTES OF JUNE 22, 2021

The Chair asked if there were any additions, deletions, or corrections to the minutes of June 22, 2021. Ms. Smith suggested changing “he” to “The Chairperson” on page 13. Hearing nothing further, he asked for a motion.

Ms. Maxwell made a motion to approve the Minutes of June 22, 2021, as presented, with the correction as suggested. Ms. Smith seconded the motion. The motion was approved unanimously by roll call vote.

Chairperson Sikora moved to the next agenda item and asked Ms. High for her presentation.

Public Hearing – Variance Request Ascension Borgess Cancer Center Signage RWL Sign, on behalf of Ascension Borgess Cancer Center, requested four variances pertaining to on-site signage for their new medical office facility located at 2520 Robert Jones Way, parcel number 05-25-435-001.

Ms. High explained RWL Sign, on behalf of Ascension Borgess Cancer Center, was requesting four variances pertaining to on-site signage for their new medical office facility. The 20,000 square foot medical office building is located on an eight-acre lot. The property is within BTR 2.0, the 53-acre business, technology and research park developed by Western Michigan University (WMU). The site is accessed from Robert Jones Way and is adjacent to preserved open space fronting on Hwy 131 and Drake Road.

The site is zoned BRP: Business and Research Park. Medical offices are a permitted use in this zoning district. In 2019, the Zoning Board of Appeals approved a site plan for the development of the Ascension Borgess Cancer Center. Construction was recently completed, and the Center is serving patients.

The BRP: Business and Research Park zoning district allows for the development of a “campus-style development including technology, research, light industry, office, life sciences, and development uses”. The zoning designation currently applies only to BTR 2.0. Unique site and building design regulations for this district were developed in conjunction with WMU. All developments within BTR 2.0 must be reviewed and approved by WMU’s design review committee in addition to the Township’s Planning Commission or Zoning Board of Appeals. The WMU design committee approved the signage plan proposed by Ascension Borgess Cancer Center.

Article 55 of the Township Zoning Ordinance regulates signs and billboards. Section 55.90, Schedule C, specifies the use, area, type, height and number of signs permitted for buildings within industrial park or industrial-office developments. Properties in the BRP zoning district are considered industrial-office developments and thus must follow this section of the code. One wall sign and one ground sign are allowed per code for this development. The applicant is proposing four wall signs and one ground sign, which exceeds the number of signs permitted. In addition, the proposed signs exceed Ordinance requirements in terms of height and/or area. The applicant is therefore requesting that the Zoning Board of Appeals consider granting variances for relief from Section 55.90: Industrial Land Uses to allow the proposed signage.

She noted medical offices such as this are also a permitted use in the C: Local Business District. A medical office located in the C District would be permitted four wall signs and one ground sign. The size of permitted wall signs would be significantly larger than those permitted in the BRP district, as the maximum permitted size is based on the length of wall. Mounting height of wall signs in the C district is 30 feet in height and height of ground signs is ten feet. From discussions with the applicant, it appears the incorrect section of code was used to design the sign package. Despite this, the applicant wished to move forward with their proposal which led to this variance request. However, even if the standards for signage within the C District were used, only two of the five proposed signs would meet this section of the ordinance. Variances for sign area and height would be required for three of the proposed signs.

Wall sign 1: South side (main entry), 131.4 square foot sign, 33 foot mounting height

Wall sign 2: West side, 205.5 square foot sign, 30 foot mounting height

Wall sign 3: East side, 131.4 square foot sign, 39 foot mounting height

Wall sign 4: North side, 131.4 square foot sign, 28 foot mounting height

Ground sign 5: Robert Jones Way, 40 square foot sign, 6 foot height

Four separate sign variances are requested. In **Request A**, the applicant was requesting permission to have four wall signs where only one wall sign is permitted. In **Request B**, the applicant was requesting permission for the four proposed wall signs to exceed the 50 square foot maximum area permitted. In **Request C**, the applicant was requesting that each of the four proposed wall signs be allowed to exceed the 20 foot maximum mounting height. In **Request D**, the applicant was requesting a ground sign that is six feet in height where the maximum permitted height is five feet.

The following table detailing each variance request was provided to the Board:

Wall sign	Building wall	Is Wall Sign permitted?	Area permitted per ordinance	Proposed wall sign area	Height permitted per ordinance	Proposed wall sign height
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1	South	Yes	50 SF	131.4 SF Variance Request B	20'	33' Variance Request C
2	West	No – Variance Request A	0 SF	205.5 SF Variance Request B	Not permitted	30' Variance Request C
3	East	No – Variance Request A	0 SF	131.4 SF Variance Request B	Not permitted	39' Variance Request C
4	North	No – Variance Request A	0 SF	131.4 SF Variance Request B	Not permitted	28' Variance Request C

Ground sign	Ground sign area permitted per ordinance	Proposed ground sign area	Ground sign height permitted per ordinance	Proposed ground sign height
5	40 SF	40 SF	5'	6' Variance Request D

Ms. High indicated the owner provided the following reasons for the variance requests from Section 55.90:

“This is a relocation from our prior location at the West Michigan Cancer Center at 200 N. Park Street in downtown Kalamazoo. We chose this site in the Western Michigan University BTR Park 2 for the beautiful and peaceful surroundings for the nature preserve and adjacency to the Asylum Lake Preserve. We are confident the natural beauty will provide a supportive healing environment for our patients seeking treatment for their journey with cancer.

While situated in a natural setting, our location has easy access from the Kalamazoo community and the larger West Michigan community from US-131 and Stadium Drive. Given this is a new patient building in a new business park on a newly named street, we are placing a high priority on signage and wayfinding for patients and their families. Therefore, we are requesting a variance to allow for Ascension Borgess signs on all four sides of the building along with a monument sign on Robert Jones Way. The signs provide visibility along US-131 as well as Drake Road to guide our patients and family to our clinic. We know a cancer diagnosis is emotionally straining and we want to make it as easy and calming as possible for our patients and families to obtain their treatment.”

She explained the Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
 - Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
 - The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
 - The problem is not self-created.
 - Public safety and welfare.
- Ms. High provided staff analysis/comment for each standard.

Standard: Unique Physical Circumstances
Are there unique physical limitations or conditions which prevent compliance?

Requests A & B) The BTR 2.0 business, technology and research park was designed by WMU to permanently preserve a large portion of the property as open space. Some of this open space is located along Hwy 131 and Drake Road adjacent to the subject site. Because of the presence of preserved open space, the building is setback approximately 570 feet from the northbound lane of Hwy 131 and 400 feet from Drake Road. Both of these roads are heavily travelled and have high speed limits. The increased setbacks, combined with high traffic speeds, will make it more difficult for the Cancer Center to be viewed by passing motorists. The presence of preserved open space between the building and the adjacent roadways could be considered a unique physical circumstance. Having signs visible from these major roads would help with wayfinding. It should be noted, however, that the only access to the Cancer Center is from Robert Jones Way, an interior road within BTR 2.0. There is no direct access from Drake Road or Hwy 131, which makes signage facing these roads less critical. Though the building is tall, at 47 feet in height, it is fairly difficult to see from Hwy 131 due to hilly topography. Therefore, any signage will also be difficult to see and may not provide a significant benefit.

Request C) Ascension Borgess received approval from the Zoning Board Appeals on December 17, 2019, to construct a 20,794 square foot building on the subject property. The building is two-stories with an atrium and ranges from 30 to 47 feet tall. The zoning ordinance requires that wall signs in Industrial-Office developments be placed no higher than 20 feet above grade. The applicant was requesting a variance to mount the four wall signs near the top of the building, from 28 feet to 39 feet above grade. If the variance request is denied, the wall signs would need to be placed on the lower half or third of the building. The building height could be considered a unique circumstance.

Request D) The ground sign was proposed to be located ten feet from the edge of right of way of Robert Jones Way, the minimum distance permitted. The land within the right of way and the ten-foot sign setback is slightly mounded then drops lower toward the parking lot. The mounded area blocks the view of the lower portion of the proposed

ground sign. The topography could be considered a unique physical circumstance preventing compliance.

The sign will be erected in an area that is lower than the adjacent street by one foot. Per the ordinance, *sign height is measured from the grade at the adjacent street to the top of the sign*. Therefore, a six-foot-tall sign would meet the five foot tall height requirement because it is being mounted a foot below the street grade. If this variance is approved, the sign will be a total of seven feet tall but because it is mounted a foot below road grade, it will be considered a six-foot-tall sign.

*Standard: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?*

Requests A-D) Conformance is not unnecessarily burdensome. Signage as permitted in the ordinance can adequately identify the Cancer Center. Reasonable options are available, as evidenced by the ‘temporary’ wall sign and ground sign that are currently on the site, both of which are in full conformance with the ordinance. These signs were installed in order to identify the building while awaiting the Zoning Board of Appeals’ consideration of this variance request. However, it should be noted that buildings with frontage along Hwy 131 are typically identified with a sign and it could be argued that this business would be at a disadvantage to others along the highway if it cannot have a sign facing the highway.

*Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the Zoning Board of Appeals (ZBA) for consistency (precedence).*

In researching past ZBA decisions regarding sign relief for industrial-office developments, Planning Department staff did not find a record of similar requests to allow four wall signs where one is permitted, to increase the area or height of wall signs, or to increase the height of a ground sign. However, three commercial developments that requested an increase in mounting heights of wall signs were identified. These cases are described below.

Request C) Planning Department staff identified three comparable cases of past ZBA decisions regarding mounting height for wall signs in commercial developments. These findings are described below.

1. Advia Credit Union, 6400 W Main Street, June 22, 2021: The applicant requested a sign variance to allow wall signs to be mounted at approximately 50’ in height, 20’ higher than the maximum height permitted, on the 150,000 square foot building. The ZBA granted the variance based on size and height of the building, which is unique in the Township, and its significant setback from the road.

2. Holiday Inn Express and Suites, 5724 W Main Street, June 26, 2018: The applicant requested a sign variance to increase the height of their two wall signs. The height of the building was approximately 45' and located in proximity to US-131. The applicant proposed to place their wall signs at a height of approximately 40', 10' above the maximum allowed placement for a sign. Since the site was located within a Planned Unit Development (PUD), the Zoning Board of Appeals made a motion to forward the request for a departure from the sign ordinance to the Planning Commission to be reviewed under the PUD ordinance, outlined in Section 60.405 at the time. On July 26, 2018, the Planning Commission met and approved the request. Following the approval they updated the ordinance allowing the height of wall signs for buildings within the Westgate PUD with heights taller than 35' shall be placed no higher than 5' below the roofline/parapet wall of the building to which the sign is attached.

3. Best Western; 2575 South 11th Street; March 17, 2009: Best Western requested a variance to increase the height of their east and west facing wall signs. The applicant indicated the request was to help increase visibility from US-131 even though the hotel did not directly abut the highway. The ZBA granted the variance for increase height for the eastern wall sign facing US-131 from a mounting height of 30' to 39' but not the western wall sign facing S 11th Street, because they felt the request was not warranted for a sign facing a local street.

Standard: Self-Created Hardship

Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Requests A-D) The applicant has chosen to pursue a signage plan that is out of compliance with all aspects of the zoning ordinance. The request is a self-created hardship.

Standard: Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?

Requests A-D) There are no residences nearby that would be negatively impacted by the proposed signs. However, the Asylum Lake Nature Preserve is located across Drake Road. Excess signage facing Drake Road could be detrimental to the enjoyment of the preserve. The lettering on the proposed wall signs is to be lit halo illumination. The ground sign is to be externally illuminated with a ground light.

Requests A, B, D) The purpose of the sign ordinance is to:

1. Promote the public peace, health, and safety of residents and visitors;
2. Protect the natural beauty and distinctive character of Oshtemo Charter Township;
3. Protect commercial districts from visual chaos and clutter;
4. Provide an environment which fosters growth and development of business;
5. Protect property values;
6. Eliminate distractions which are hazardous to motorists and pedestrians;
7. Protect the public's ability to identify establishments and premises;

8. Protect the public's interest in public buildings, streets, roads and highways and open spaces; and
9. Balance the individual rights of property owners to communicate their message with the public's right to be free of unreasonable distractions and aesthetic intrusions.

Ms. High said the apparent disregard for the permitted number, size, and height of signs is concerning. Oshtemo Township has other industrial-office developments where businesses have followed the sign ordinance. Approving these variances would set a precedent for future industrial-office requests.

Request C) It is common for businesses to have their wall signs near the top of their buildings. Placing signage higher on a taller building to match this practice will not negatively impact the community. This has been implemented elsewhere and shown no negative effects.

Ms. High explained the Board might take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval for **Request A (number of wall signs)**
 - There are unique physical circumstances: the property has frontage on two major roads. Due to the presence of preserved open space, the building is set back a significant distance from the roads. More than one wall sign would help with wayfinding from these major roads.
 - Buildings with frontage along Hwy 131 are commonly identified with a sign. Strict compliance with the ordinance may be considered unnecessarily burdensome.
- Support of variance denial for **Request A (number of wall signs)**
 - The variance request is a hardship that is self-created.
 - Reasonable use of the property would still exist if the variance were denied.
 - Reasonable options for compliance are available.
- Support of variance approval for **Request B (area of wall signs)**
 - There are unique physical circumstances: the property has frontage on two major roads. Due to the presence of preserved open space, the building is set back a significant distance from the roads. Wall signs larger than 50 square feet may be deemed appropriate for visibility.
- Support of variance denial for **Request B (area of wall signs)**

- The variance request is a hardship that is self-created.
- Reasonable use of the property would still exist if the variance were denied.
- Reasonable options for compliance are available.
- Support of variance approval for **Request C (height of wall signs)**
 - There are unique physical circumstances: the building is two-stories with an atrium and ranges from 30 to 47 feet tall. The building is taller than most others in the township.
 - Approval of this request would provide substantial justice. There are previous cases in which buildings of a similar height were granted a variance to allow for a greater mounting height for wall signs.
- Support of variance denial for **Request C (height of wall signs)**
 - The variance request is a hardship that is self-created.
 - Reasonable use of the property would still exist if the variance were denied.
 - Reasonable options for compliance are available.
- Support of variance approval for **Request D (height of ground sign)**
 - Staff is unaware of findings of fact in this regard.
- Support of variance denial for **Request D (height of ground sign)**
 - There are no major physical limitations on this portion of the site.
 - The variance request is a hardship that is self-created, as the applicant is not required to install a taller ground sign than permitted.
 - Reasonable use of the property would still exist if the variance were denied.
 - Reasonable options for compliance are available

She indicated possible motions for the Zoning Board of Appeals to consider:

1. Variance Approval
The Zoning Board of Appeals can choose to approve all of the variance requests for the reasons stated above. No conditions of approval are proposed by Planning staff.
2. Variance Denial
The Zoning Board of Appeals can choose to deny all of the variance requests for the reasons stated above.
3. Variance Approval and Denial
The Zoning Board of Appeals can choose to approve some of the requested variances and deny others, depending on the findings of facts presented. It should be noted that the Zoning Board of Appeals may also approve portions of the

requested variances (for example approve one additional wall sign instead of the three requested).

Chairperson Sikora thanked Ms. High for her report, moved to board questions and asked her if there are actually more than four variance requests being requested.

Ms. High said if each request for each sign is treated separately, 12 variances are being requested, though they are being treated as four.

Ms. Smith asked what disadvantage there might be for the Asylum Lake property?

Ms. High said it was possible lights at night might distract from the natural aspect there. Halo lit illumination of letters on the sign facing that area were being proposed; she was not sure how bright resulting light would be or how distracting to nature lovers.

Attorney Porter noted signs do not require the sharp cutoff of light as do parking lot lights; if they don't surpass the boundaries of the property, they couldn't be seen.

Chairperson Sikora asked about impact on other adjacent properties.

Ms. High said most of the property is preserved open space. Property further north is owned by WMU. South is the rest of the BRP. The corner property at Drake and Stadium will likely develop as commercial.

She indicated although the request was based incorrectly on commercial rather than industrial zoning, the proposal is in excess of zoning requirements for both zones. She indicated the purpose of commercial zoning signage is to attract people from the road; industrial has less traffic and the purpose is not to attract people from the road.

Ms. Maxwell agreed, saying people who are going to industrial properties aren't going to look around, they are there for a purpose and know where they are going.

Hearing no further Board comments, the Chair asked if the applicant wished to speak.

Mr. Adam Davidson, Director of Oncology Services, explained they see about 100 – 150 patients per day and that wayfinding is a problem.

Mr. Jason Headley, RWL Sign Co., acknowledged the application was based on commercial requirements. (55.80) He mentioned differences such as the sign height relative to the height of the building and the nature of the clientele and use of the building as not reflective of a typical industrial situation. He said the building location is beautiful, but a little hidden, which requires clear signage.

He noted WMU reviewed and approved the proposed signage. The halo lit signage is indirect, more subtle and tasteful, outlines the letters and provides less light pollution.

He noted the topography of the site causes visibility problems for signs that will be too low if a variance is not allowed.

Mr. Dale Charter, ABCC, said ambulance drop off and pick up and other modes of transportation are common. They chose the setting for the natural features but need to be easily found.

Chairperson Sikora asked who would see a wall sign on the north side?

Mr. Headley indicated it would be seen by south bound 131 traffic.

There were questions and discussion of what traffic would/could see which signs from various locations.

Ms. Farmer noted the similarity of the property to the Woodbridge property in Portage, saying some of the signs may not be visible when trees are more mature.

The Chair noted there are signs placed on the property already.

Mr. Headley said the permitted signs are temporary and will be removed unless nothing is approved, and they need to become permanent. He noted the monument sign could become permanent, but it would be preferable to elevate it by one foot. There is no sign at Robert Jones Way. The only monument sign will be at the circle drive. It will be important for visitors to know when they are coming up on the entrance.

With no further comments from the applicant, the Chair moved to Public Hearing. Hearing no public comments, he closed the hearing and moved to Board Deliberations.

Ms. Maxwell felt four wall signs are overkill and that approving them would be precedent setting. She said she was ok with the sign height and area size requests.

Ms. Smith felt the circumstances are unique and that it makes sense to have the signs requested for people who are coming from different directions for a specific purpose. In that situation it is critical that patients do not miss the building. There is a great impact on the mental status of patients receiving chemo, a different circumstance than in typical industrial facilities.

Ms. Farmer noted urgent care is not provided at this location. She felt four signs on the building are unnecessary. There is one sign that can be seen from the road at Woodbridge and a wayfinding sign at the driveway. The building is surrounded by trees and cannot be seen, but people are able to find it. She supported the signs facing 131 and Drake. She supported the building sign height request as she felt the topography makes the extra foot of height for the ground sign reasonable.

Chairperson Sikora said he drove around the area and that it was difficult to find Robert Jones Parkway. He agreed with the 131 and Drake Road facing signs, but was concerned with the sign facing north; he was willing to talk about actual area and height.

Mr. Williams agreed with the above comments.

Since there seemed to be consensus on the one ground sign, the Chair asked for a motion on that item.

Ms. Maxwell **made a motion** to approve the variance request to allow the ground sign to exceed the height allowed by one foot due to the unique physical circumstances of the ground topography which drops lower toward the parking lot between the end of the street and the sign location. Ms. Farmer **seconded the motion**. **The motion was approved unanimously by roll call vote.**

Attorney Porter suggested the Board consider both those signs likely to be permitted and those not, within a single motion.

Ms. Farmer **made a motion** to approve the variance request for signs 2 and 3 for number, height and area and to deny the request for signs 1 and 4 for the reasons as indicated in the staff report. Ms. Maxwell **seconded the motion**.

After brief discussion, Ms. Farmer and Ms. Maxwell withdrew the motion.

Mr. Headley was asked whether, if one sign were disapproved, which signs were higher priority.

Mr. Headley said they would like to keep them all, but signs 1, 2, and 3 were highest in priority.

Mr. Charters concurred that they could probably get along without #4, but 1 -3 were important particularly because of the topography.

Ms. High suggested keeping the sign now on the main entrance, which is 20 feet high and 50 square feet as a third sign.

Mr. Charters said that would be a big compromise as the area of the letters is much smaller than 50 square feet.

Mr. Headley asked the Board to keep in mind that the building drops down from the Parkway and that the 50 square foot sign is now not much above road grade.

Ms. High noted the temporary main entrance sign was issued a permit as if it would be permanent. If effective, keeping it permanently could be a compromise.

Chairperson Sikora said he would support keeping sign #1 and approve mounting it higher so you could see it better as you approach the building.

Ms. Farmer asked if the halo lit sign facing the Asylum Preserve would be lit when the building is closed, 24 hours a day.

Mr. Headley said that would be the case.

The Chair indicated he did not think sign #3 would be seen, but felt #1 and #2 would be useful and would also support the height and area increases requested.

Ms. Maxwell agreed, saying she would not support #3 and #4.

Ms. Farmer **made a motion** to approve the variance request for signs #1 and #2, including the height and area requested, based on unique physical circumstances as described in the staff report. She further moved to deny the request for signs #3 and #4 for the following reasons as listed in the staff report:

#s 3 & 4

- The variance request is a hardship that is self-created, as the applicant is not required to install a taller ground sign than permitted.
- Reasonable use of the property would still exist if the variance were denied.
- Reasonable options for compliance are available

#4 There are no major physical limitations on this portion of the site

Ms. Maxwell **seconded the motion.** **The motion was approved unanimously by roll call vote.**

The chair moved to the next agenda item and asked Mr. Hutson for his report.

Public Hearing – Variance, Wolthuis Deck

Richard Wolthuis requested relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a 16' x 29' deck on the rear of the principal building located at 6291 Torrington Road, parcel no. 05-11-402-541.

Mr. Hutson explained the applicant was requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a 16' x 29' deck on the rear of the principal building located at 6291 Torrington Road. Section 50.60 of the Zoning Ordinance requires that any decks, whether attached or detached, located within the R-2: Residence District have a minimum rear yard setback of 15'. If approved, the variance would permit a deck that will protrude 12' feet into the required 15' rear yard setback.

6291 Torrington Road is a half-acre lot located within the northeast quadrant of the Township and resides within the West Port No. 4 plat. The plat itself was originally established on January 16, 1972, with the subject home being constructed later in 1986.

Although the lot is a half-acre in size today, it was not always configured as such. At the time of the lot's creation, 6291 Torrington Road was configured to be approximately 15,000 SF in size. In 2017, the lot was redescribed to acquire the western half of the neighboring lot to the immediate east, gaining an additional 6,500 SF of land. The southwest portion of the principal structure was built approximately 15' from the rear property line, leaving 0' of buildable area outside of the required 15' rear yard setback in the southwest corner. Currently, there is a 16' x 29' deck on the rear side of the principal building that was unlawfully constructed in late June of this year. It cannot be confirmed whether the previous deck was legal nonconforming or not; however, if the previous deck carried a legal nonconforming status, said claim for the current deck under consideration is not applicable per Section 63.40 of the Zoning Ordinance as the status of it being grandfathered is lost since the previous deck was demolished. A completely new deck was erected and relocated elsewhere on-site. As the deck under consideration is considered a new deck, current code standards need to be met.

Mr. Hutson noted the applicant provided the below rationale for this variance request. Further rationale supporting this variance request can be found in the letters of intent submitted by the applicant.

- “Given the location of the back door and shape/size of the backyard, it is unreasonable to locate the deck in another location. I have attached photos to support this.”
- “Similar variance requests were approved by the zoning board for the following properties:
 - 798 Laurel Wood Street, parcel # 05-23-207-045 (8/2020)
 - 6473 Buckham Wood Drive (9/2006)

The original deck built, approved, and in use since 1986 extended to approximately 3 ft from the south and west property lines. The new deck is positioned over 15 ft from the west property lines and averages approx. 10 ft setback from the south property line.

- “My original lot (parcel 208) has a rather odd shape where the west side lot line is only 108.5 ft long and the east lot line is 143 ft. long. When the house was built in 1986, it was situated closer to the west side due to the hill drop-off on the east side of the lot. This resulted in a shortened back yard on the west side and the builder constructing a deck for usable space in the SW corner of my lot. Additionally, the house to the south (6328 Old Log Trail) is built on the east side of their pie shaped lot and the back of the house is oriented to the North East, which places my deck in an unobtrusive location. Strict compliance to the current 15 ft setback from the back property line related to deck construction would unreasonably restrict the use of the shortened southwest corner of my property.
- “As stated under criteria #2, and #3, the new deck is substantially further away from property lines than the original approved deck built in 1986. I had a discussion with a staff person at the Oshtemo Township office approx. 18 months

ago (pre-Covid) about replacing my deck. It was my understanding after this discussion that a building permit would not be required to replace our existing deck.”

- “The new replacement deck will be inspected by the building code inspector and all codes strictly adhered to regarding public safety, health, and welfare. The new deck replaces a rotted old deck, and adds value to our home and the neighborhood. The new deck meets the spirit of the setback ordinance by being placed in an unobtrusive location and much further away from the property line than the original approved deck. Additionally, it is endorsed by the homeowner to the south (the only property that would be impacted by the setback variance request). See attached letter of support from Stella Baker, property owner residing at 6328 Old Log Trail.”

Mr. Hutson analyzed the request against the standards of review and provided the following information to the Board.

*Standard: Unique Physical Circumstances
Are there unique physical limitations or conditions which prevent compliance?*

The residence located at 6291 Torrington Road is constructed relatively close to the rear property line, matching some of the surrounding principal buildings in the neighborhood. The existing positioning of the principal building on-site limits the type of structures that may be erected in the rear yard. The terrain gradually slopes approximately 4' between the western boundary line and the east side of the principal building, a span of 80'. The slope on this site is not substantial enough where it would preclude compliance with the Oshtemo Township Zoning Ordinance. A deck could still be constructed at this site without requesting relief from the rear yard setback.

*Standard: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?*

A deck, though configured in a different way than what the applicant has already constructed, could be built to comply with the Oshtemo Township Zoning Ordinance. It should be noted that prior to this request, the applicant was advised that a land redescription could remedy the setback encroachment. The applicant has options to utilize this site without the need for a variance. Conformance with the code is not unnecessarily burdensome.

*Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).*

In researching past Zoning Board of Appeals decisions regarding setback relief for a principal building's deck from the rear yard setback, Planning staff was able to identify two similar cases.

1. Salbenblatt, 6473 Buckham Wood Drive, 9/26/2006: The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 12' x 14' all-season room in place of the existing 11'8" x 11'8" deck. The existing wooden deck, part of the original construction, protruded 4' into the 10' rear setback. The variance was requested to allow a 5'6" rear yard setback. A feature that was heavily discussed was that this principal building's rear yard abutted 30' of open space, which was owned by the Buckham Highlands Condominium Association, which separated Buckham Highlands from the property to the south. In this case the neighborhood association wished to remain neutral. The Zoning Board of Appeals approved the variance request based on that the request would not negatively impact surrounding properties, and that the 30' open space buffer acts as additional separation, or rear yard, between the site condominium and the unimproved parcel to the immediate south.
2. Gillespie, 798 Laurel Wood Street, 08/25/2020: The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 12' x 24' deck. If approved, the 12' x 24' deck would protrude into the 10' rear yard setback by 6'. The existing 4' x 4' deck was exceptionally small and did not allow for much space if an emergency were to occur and needed to exit through the back door. A unique feature that also factored into this request was that there was a 110' wide buffer of open space between the rear property line and the N 9th Street public right-of-way. The Zoning Board of Appeals approved the variance request, citing that substantial justice from previous cases, retainment of open space, and increased safety with the addition of a larger deck for reasons of granting the request.

Standard: Self-Created Hardship
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

The purpose of the request stems from when the applicant demolished his old deck to construct a new 16' x 29' deck without applying for building permits through the Southwest Michigan Building Authority. Since the subject deck did not go through the permitting process, a review of zoning requirements did not occur. It was the applicant's desire to build a new deck at this location and layout that triggered this variance request. The deck under consideration protrudes 12' into the required 15' rear yard setback. A deck is not a required nor a necessary amenity. This request is a self-created hardship.

Standard: Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?

Setbacks act as a crucial part for any type of structure as they provide a form of security and privacy between adjacent uses and property owners. Setbacks can be considered the breathing room between properties where building restrictions apply. In the applicant's supporting documents, the applicant conveys that the property owner of 6328 Old Log Trail supports the newly constructed deck. Although the owners of said property to the immediate south may endorse the unlawful nonconforming deck, the mentioned property owners will not retain ownership of the property in perpetuity. Ownership of property eventually changes as home ownership acts as a revolving door and therefore should not carry much weight.

It should be noted a future owner of the property to the immediate south may take issue with a variance of this nature as it would prevent them from using their property to its fullest extent. Approval of this variance request will set a precedent for similar cases in the future and jeopardize the integrity and intent of the code's setback regulations which protect the health, safety, and welfare of the public.

Mr. Hutson said the Zoning Board of Appeals might take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
 - Two similar variances were granted approval in 2006 and 2020. It should be noted that both cases had designated open space directly behind them rather than another residential home.
- Support of variance denial
 - There are no unique physical limitations that precludes compliance.
 - Conformance is not unnecessarily burdensome, other locations/configurations for a deck can be explored.
 - The variance for the 16' x 29' deck is a self-created hardship, as the property owner constructed the new deck without any building permits or receiving zoning review.
 - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A deck is not a required nor a necessary amenity.
 - This request goes against the intent and integrity of the Zoning Ordinance which protects the health, safety, and welfare of the public.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval

The Zoning Board of Appeals approves the variance request due to the minimum necessary for substantial justice.

If the Zoning Board of Appeals chooses this motion, staff requests that a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

2. Variance Denial

The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, no unique physical limitations exist, and the request will jeopardize the intent and integrity of the Zoning Ordinance.

Chairperson Sikora thanked Mr. Hutson for his report and asked whether Board members had questions for him.

Ms. Farmer asked for clarification regarding the change from the previous deck.

Ms. Lubbert explained the main objective is to bring non-conformity to conformance. Right now the 12 feet would have to be removed from the current deck to bring it to conformance with current regulations.

Mr. Hutson noted a re-description of property, an agreement between property owners, could be done which would solve the problem without needing a variance.

Attorney Porter said the variance request was not “all or nothing.” The Board could grant less but not more. Granting a 6-1/2 foot variance, for example would have the same effect as no variance, but might leave some deck on the back of the building.

As there were no further questions from the Board, the Chair asked if the applicant wished to speak.

Mr. Richard Wolthuis said the requirement identifies a 12 foot reduction of the 15 foot setback. His property is angled and only the very corner is 3 feet from the lot line. The deck is, on average, approximately 10 feet from the property line as it expands out. The far side of the deck corner is 13-14 feet from the property line.

He referred to the two similar cases cited in the staff report, saying they both were asking for variance because there was not much room in the back yard. They also had open space behind them. He noted the deck was in place when his family moved in, that the corner space is unobtrusive to the rest of the surrounding homes and includes a tree stand and fence. He noted the variance approved in Buckham was fully supported by the

neighborhood association. All of his neighbors within 300 feet fully support keeping the deck, which does not negatively impact anyone and in fact neighbors have said it increases neighborhood value.

The back door to his house is on the west side, so it makes sense to put the deck there. It is true this is a self-created hardship as he did not fully do due diligence to find that a building permit was needed for the deck. He indicated he spoke to someone in the Township office pre-covid telling them of his deck plan and was told there would not be any problem, which he construed to mean he did not need a permit. He apologized for not getting a permit.

He felt the ordinance is quirky, in that he could put up a 10 x 14 shed, or a number of them three feet from his property line without a building inspector or a permit. He wants an attractive deck and to be a good neighbor and feels other similar situations have set precedent for approval of his request.

Chairperson Sikora thanked Mr. Wolthuis for his comments and opened the meeting to public hearing.

Mr. Fred Baker told the Board his property abuts the property in question and he has no objection to the replacement or size including the proximity to his property. The new deck is no closer to his property than the old one. He contended "negligence is doing it knowing it is wrong," and that Mr. Wolthuis did not know he was doing wrong. He asked the Board to grant the variance request that affects no one negatively.

Hearing no further comments, the Chair moved to Board Deliberations.

Ms. Farmer noted both the applicant and neighbor were in attendance, that the Planning staff shared the possibility of redefining the property line and wondered if that might be considered.

Mr. Baker responded there would need to be deeds redrawn and a host of other things as opposed to taking care of the problem right now.

Mr. Wolthuis said it would have to be agreed upon by both parties, that he would not object to that, but would prefer that a variance be granted.

Chairperson Sikora pointed out that time and money are involved with a variance request. He added that if rearranging the property lines could be accomplished, there would be no question in future years and that variance paperwork would not have to be maintained and monitored by the Township.

Ms. Farmer added that the Township's goal is conformance.

Mr. Williams said he had a concern similar to the Chair's if a variance is granted. If in 10 or 15 years the property is up for sale, there would be a potential situation as to

how it is documented, that could cause an issue for the buyer/seller of the property. He wondered if a building permit and associated fees could be made retroactive:

Attorney Porter said if relief is granted it would require an inspection by the building authority and associated fees would need to be paid.

The Chair noted he voted no on the two previous variance requests that were cited in the staff report for substantial justice.

Attorney Porter did not feel the two similar situations cited by staff compared “apples to apples” and that if the Board is inclined to grant relief of any kind in this case, the only justification is that it would be bringing the new deck into more compliance than it was, otherwise an adverse precedent would be set.

Mr. Gould asked what the intent is for setbacks.

Attorney Porter said there are multiple factors, including creating a livable community and safety factors which include fire department access.

Mr. Gould asked if there was some way to give Mr. Wolthuis relief by erecting some kind of barrier at the corner of the property.

Attorney Porter said a variance condition cannot be required.

Ms. Farmer said the Board cannot require neighbors to fix the problem on their own, but they do have the ability to do that without a variance that would go against the Township’s ordinance. Ordinance and zoning are in place with the expectation that people will comply with them.

Attorney Porter agreed.

Mr. Williams acknowledged this is a difficult situation and the Board is sympathetic to the problem but needs to do the right thing.

Chairperson Sikora said it is a big concern to allow a variance that sets a precedent. The easier solution is for the neighbors to adjust lot lines to take care of the problem and both seem amicable to that solution.

The Chair **made a motion** to deny the variance request to allow a 12’ foot reduction of the 15’ required rear yard setback in order to construct a 16’ x 29’ deck based on the following criteria as outlined in the staff report:

- There are no unique physical limitations that precludes compliance.
- Conformance is not unnecessarily burdensome, other locations/configurations for a deck can be explored.

- The variance for the 16' x 29' deck is a self-created hardship, as the property owner constructed the new deck without any building permits or receiving zoning review.
- Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A deck is not a required nor a necessary amenity.
- This request goes against the intent and integrity of the Zoning Ordinance which protects the health, safety, and welfare of the public.

Ms. Maxwell **seconded the motion. The motion was approved unanimously by roll call vote.**

Chairperson Sikora moved to the next item on the agenda and asked Mr. Hutson for his report.

Public Hearing – Variance, Schneck Fence

Jamie Schneck requested relief from Section 57.60 of the Zoning Ordinance which governs fence height for all parcels, lots, and building sites in order to construct a 6' tall privacy fence within the front yard setbacks at 10294 W. KL Avenue.

It was brought to the attention of the Chair that the meeting must end by 6:00PM to allow the Township Board to meet on the Zoom platform. This issue needed to be concluded at a future date. It was agreed a quorum would be possible if the group scheduled a meeting for October 12 at 3:00 p.m.

Ms. Farmer **made a motion** to table this item until the Zoning Board of Appeals meets virtually at 3:00 p.m. on October 12. Mr. Williams **seconded the motion. The motion was approved unanimously.**

Adjournment

Ms. Farmer **made a motion** adjourn the meeting. Mr. Williams **seconded the motion. The motion was approved unanimously.**

The meeting was adjourned at 6:00 p.m.

Minutes prepared:
September 29, 2021

Minutes approved:
October 21, 2021