charter township
osbtemo

## NOTICE

OSHTEMO CHARTER TOWNSHIP ZONING BOARD OF APPEALS

REGULAR MEETING - VIRTUAL
Participate through this Zoom link: https://us02web.zoom.us/i/81985374325

Or by calling: 1-929-205-6099
Meeting ID: 81985374325
(Refer to the www.oshtemo.org Home Page or page 3 of this packet for additional Virtual Meeting Information)
TUESDAY, SEPTEMBER 28, 2021
3:00 P.M.
AGENDA

1. Call to Order
2. Roll Call and Remote Location Identification
3. Pledge of Allegiance
4. Approval of Agenda
5. Approval of Minutes: June $22^{\text {nd }}, 2021$
6. Public Hearing - Variance, Ascension Barges Cancer Center Signage

RWL Sign, on behalf of Ascension Borgess Cancer Center, is requesting four variances pertaining to onsite signage for their new medical office facility located at 2520 Robert Jones Way.
7. Public Hearing - Variance, Wolthuis Deck

Richard Wolthuis is requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a $16^{\prime} \times 29^{\prime}$ deck on the rear of the principal building located at 6291 Torrington Road.
8. Public Hearing - Variance, Schneck Fence

Jamie Schneck is requesting 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 $6^{\prime}$ tall privacy fence within the front yard setbacks at 10294 W KL Avenue.
9. Public Comment
10. Other Updates and Business
11. Adjournment

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), walkin 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 8:00 am-5:00 pm, and on Friday 8:00 am-1:00 pm. 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 |  |  |
| :---: | :---: | :---: |
| Supervisor |  |  |
| Libby Heiny-Cogswell | 216-5220 | libbyhc@oshtemo.org |
| Clerk |  |  |
| Dusty Farmer | 216-5224 | dfarmer@oshtemo.org |
| Treasurer |  |  |
| Clare Buszka | 216-5221 | cbuszka@oshtemo.org |
| Trustees |  |  |
| Cheri L. Bell | 372-2275 | cbell@oshtemo.org |
| Kristin Cole | 375-4260 | kcole@oshtemo.org |
| Zak Ford | 271-5513 | zford@oshtemo.org |
| Kizzy Bradford | 375-4260 | kbradford@oshtemo.org |


| Township Department Information Assessor: |  |  |
| :---: | :---: | :---: |
| Kristine Biddle | 216-5225 | assessor@oshtemo.org |
| Fire Chief: |  |  |
| Mark Barnes | 375-0487 | mbarnes @ oshtemo.org |
| Ordinance Enf: |  |  |
| Rick Suwarsky | 216-5227 | rsuwarsky@oshtemo.org |
| Parks Director: |  |  |
| Karen High | 216-5233 | khigh@oshtemo.org |
| Rental Info | 216-5224 | oshtemo@ oshtemo.org |
| Planning Director: |  |  |
| Iris Lubbert | 216-5223 | ilubbert@oshtemo.org |
| Public Works: |  |  |
| Marc Elliott | 216-5236 | melliott@oshtemo.org |

## Zoom Instructions for Participants

## Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to "Join via computer" as well as phone numbers for a conference call option. It will also include the 11-digit MeetingID.

## To join the videoconference:

1. At the start time of the meeting, click on this link to join via computer. You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on "Test Computer Audio." Once you are satisfied that your audio works, click on "Join audio by computer."

You may also join a meeting without the link by going to join.zoom.us on any browser and enteringthis Meeting ID: $\mathbf{8 1 9} \mathbf{8 5 3 7} \mathbf{4 3 2 5}$

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet, or smartphone then you can join via conference call by following instructions below.

## To join the conference by phone:

1. On your phone, dial the teleconferencing number: 1-929-205-6099
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: 8198537 4325\#

Participant controls in the lower-left corner of the Zoom screen:


Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participantsduring the meeting):

- Participants - opens a pop-out screen that includes a "Raise Hand" icon that you may use to raise a virtual hand. This will be used to indicate that you want to make a publiccomment.
- Chat - opens pop-up screen that allows participants to post comments during the meeting.
If you are attending the meeting by phone, to use the "Raise Hand" feature press *9 on your touchtone keypad.
Public comments will be handled by the "Raise Hand" method as instructed above within Participant Controls.
Closed Caption:



## Turn on Closed Caption:

Using the icons at the bottom of the Zoom screen:

1. Click on the "Live Transcription" button.
2. Then select "Show Subtitle".

This page has been intentionally left blank for printing purposes.

## OSHTEMO CHARTER TOWNSHIP

ZONING BOARD OF APPEALS
DRAFT MINUTES OF A VIRTUAL MEETING HELD JUNE 22, 2021

## Agenda

## Public Hearing - Sign Variance Requests <br> Consideration of the application of SignArt, Inc., on behalf of Advia Credit Union for Multiple Sign Variances for a New Multi-Tenant Commercial Center

Property: 6400 W Main Street, Parcel Number 05-14-255-010; 6404 W Main Street, Parcel Number 05-14-255-050
Zoning: C: Local Business District
Section(s): Section 55.80-Commercial and Office Land Uses
Section 57.130(D) - Character and Placement

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, June 22, 2021, beginning at approximately 3:00 p.m.

MEMBERS PRESENT: Neil Sikora, Chair
Dusty Farmer (arrived at 3:08 as the public hearing began)
Fred Gould
Micki Maxwell
Anita Smith, Vice Chair
Louis Williams
(All attending within Oshtemo Township)
MEMBER ABSENT: Ollie Chambers
Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Colten Hutson, Zoning Administrator, and Martha Coash, Meeting Transcriptionist.

Guests present included Steve VanderSloot, SignArt, Inc. and Advia representatives Cheryl DeBoer and Chad Farrer.

## Call to Order and Pledge of Allegiance

Chairperson Sikora called the meeting to order and invited those present to join 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 MAY 25, 2021

The Chair asked if there were any additions, deletions, or corrections to the minutes of May 25, 2021. Hearing none, he asked for a motion.

Ms. Maxwell made a motion to approve the Minutes of May 25, 2021, as presented. Mr. Gould seconded the motion. The motion was approved unanimously by roll call vote.

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

## PUBLIC HEARING - SIGN VARIANCE REQUESTS CONSIDERATION OF THE APPLICATION OF SIGNART, INC., ON BEHALF OF ADVIA CREDIT UNION FOR MULTIPLE SIGN VARIANCES FOR A NEW MULTITENANT COMMERCIAL CENTER

Mr. Hutson indicated Sign Art, Inc., on behalf of the Advia Credit Union, was requesting three separate variances pertaining to on-site signage and building address numbers. For Request A, the applicant was requesting relief from Section 55.80 of the zoning ordinance which governs the use, area, type, height, and number of signs allowed for a commercial or office land use, to establish a pylon sign that is 23 '4" in height where only 20 ' is permitted, 144 SF in area where only 60 SF is permitted, and a sign support area of 72 SF where only 43 SF is permitted. In Request B, the applicant was requesting relief from Section 55.80 of the zoning ordinance to allow the proposed wall signs to be mounted at approximately 50 ' in height, exceeding the maximum permitted mounting height of 30'. For Request C, the applicant was requesting relief from Section 57.130(D) of the zoning ordinance which dictates the character size and placement of address building numbers based on the building setback distance from public right-of-way, to mount the building numbers at 47' in height whereas only a maximum mounting height of $25^{\prime}$ is allowed.

He said the Advia Credit Union site is located on the north side of W Main Street between $\mathrm{N} 10^{\text {th }}$ Street and $\mathrm{N} 9^{\text {th }}$ Street. The subject property spans over 38 acres and has approximately 1,300 ' of road frontage adjacent to W Main Street. 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 three variances for their proposal for relief from Section 55.80: Commercial and Office Land Uses and Section 57.130(D): Character and Placement.

SECTION 55.80: Commercial and Office Land Uses and SECTION 57.130(D): Character and Placement

Mr. Hutson explained the applicant provided the following rationale for the variance requests from Section 55.80 and Section 57.130(D):
"Advia Credit Union is in the final stages of constructing their unique corporate headquarters. The 150,000 square foot, three-story facility is situated on 38 acres, possesses over 1,300 linear feet of road frontage, and a building setback of approximately 400 linear feet from tremendously wide West Main right-of-way. It will include a full service branch, ATM, night deposit box, meeting and event rooms, and retail space for up to five (5) commercial retail tenants. Given the uniqueness of this mixed-use development, the proposed sign plan requests a sign deviation to provide reasonable identification for Advia Credit Union as well future commercial retail tenants."

## STANDARDS OF REVIEW - STAFF ANALYSIS

Mr. Hutson explained the Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty and said he would address each of the three variance requests separately:

- 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.


## MR. HUTSON FIRST ADDRESSED VARIANCE REQUEST A:

## (A: Unique Physical Circumstances)

The 38 -acre parcel has approximately 1,300 ' of road frontage adjacent to W Main Street. The subject sign is proposed to be placed immediately west of the entrance on W Main Street and to be setback approximately 10 ' from the front property line. The sign is proposed to be located on a small outlot adjacent to the site's entrance that Advia Credit Union also owns. It should be noted that as offsite signage is not permitted, the outlot in question will need to be combined with the Advia site if the sign is to be placed at this location. The proposed pylon sign will encompass signage for Advia Credit Union in addition to the five commercial tenants located at this site. W Main Street is a five-lane highway with a speed limit of 50 mph in this area. It could be argued that a 60 SF multi-tenant pylon sign in this location is at a visual disadvantage compared to a normal 60 SF pylon sign representing one business due to the speeds in this area. However, all businesses on W Main Street share the same disadvantage. Even though Advia Credit Union has a significantly large building and significant frontage on W Main Street there are no major physical limitations which warrant the pylon sign to exceed the size and height requirements outlined in the zoning ordinance for commercial and office land uses. There are no
significant elevation changes as the area where the sign is proposed is relatively flat. The sign will have the same setback requirements compared to any other sign adjacent to W Main Street that is representing a commercial enterprise. There is no easement interference or topographical issues which warrant a 23 '4" tall pylon sign that is 144 SF in sign area. If the proposed sign is to be placed on the outlot, independent of whether this variance is approved or not, parcels 05-14-255-010 and 05-14-255-050 will need to be combined.

## (A: Unnecessarily Burdensome)

The proposed pylon sign will not represent one commercial business, but rather a total of six. Since Advia Credit Union is hosting five tenants, it can be expected that a larger sign area and sign height are desired. However, the applicant can still propose adequate signage that encompasses each business while meeting the height, sign area, and sign support area requirements outlined in the zoning ordinance. It can be argued that conformance is not unnecessarily burdensome, and that denial of the variance would not take away from the reasonable use of the property.

## (A: Substantial Justice)

In researching past ZBA decisions regarding sign size relief for commercial developments, Planning Department staff identified two comparable cases. These findings are described below.

1. Gesmundo, LLC, Parcel ID: 05-25-240-009 (Northwest Corner of Stadium Drive and Drake Road), May 26, 2015: The applicant requested a sign variance to allow the installation of a multi-tenant sign with a sign area of 172 SF , which is 88 SF greater than what the code allows. This request also included a variance for the overall sign height of 32 ', which is 12 ' taller than the maximum permitted. Based on the previously approved variances for multi-tenant centers, and considering the unique nature of the site, its size, and its location on a major arterial, the Zoning Board of Appeals approved the request to allow the applicant a larger sign square footage and taller sign height.
2. West Main Mall, Parcel ID:3905-13-430-036, March 09, 2004: The applicant requested a sign variance to allow an increase in the sign area and height for a pylon sign on W Main Street to service a multitenant commercial center. The applicant requested to increase the total height of the existing sign from 25' to 30', and to expand the sign area by an additional 67 SF. Based on variances approved in the late 1990's for West Century Center and Maple Hill Mall, the Zoning Board of Appeals approved the request to allow the applicant the same larger sign square footage that was permitted to its competitors. The
property's limited visibility from W Main Street was also considered a reason for approval.

## (A: Self-Created Hardship)

It is the applicant's desire to create a pylon sign with an overall sign area that is two and a half times the maximum size allowed per ordinance. The applicant proposed a pylon sign that exceeds that maximum height allowed per ordinance. It is also the applicant's desire to have a pylon sign with supports and uprights that exceed the maximum area allowed by the code. Installing a pylon sign that is out of compliance with all aspects of the zoning ordinance is not required nor necessary. The request is a selfcreated hardship.

## (A: Public Safety and Welfare)

The proposed pylon sign is approximately 144 SF in area. The maximum sign area allowed for commercial developments of this nature is a total of 60 SF. This means that the pylon sign is nearly two and a half times the sign area allowed by code. The subject sign is proposed to be $23^{\prime} 4$ " tall and have a sign support area of 72 SF. Based on the proposed sign, the code would only allow a maximum height of 20 ' and a sign support area of 43 SF. Although the sign would follow the same setback requirements compared to any other commercial sign, a sign this large may potentially distract motorists and will set a precedence for future requests.

## MR. HUTSON THEN ADDRESSED STANDARDS OF APPROVAL FOR VARIANCE REQUEST B:

(B: Unique Physical Circumstances)
Advia Credit Union received formal approval from the Planning Commission on February 28, 2019, to construct a 150,000 SF building at the subject property. The building is three-stories and is 53 ' tall. The zoning ordinance only allows for wall signs to be placed at a maximum mounting height of 30 ' above grade. Due to the building's height, the applicant was requesting a variance to mount the wall signs at approximately 50' above grade. It is common for wall signs to be mounted near the top of any building. The scale of the approved 150,000 SF, three story building is unique.

## (B: Unnecessarily Burdensome)

Other than the handful of hotels in the Township, there are no buildings that have a height similar to the subject building. The building is approximately 53' tall. If the variance request for the wall signs is denied for a mounting height of approximately 50 ', the wall signs would need to
be placed at half of the vertical distance of the building between windows. As noted previously, it is common practice to place walls signs near the top of a building. However, it can be argued that if the variance for the wall signs was denied, that reasonable use of the property would still exist.

## (B: Substantial Justice)

In researching past ZBA decisions regarding mounting height for wall signs in commercial developments, Planning Department staff identified two comparable cases. These findings are described below.

1. 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.
2. Best Western; 2575 South 11 ${ }^{\text {th }}$ 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 $S 11^{\text {th }}$ Street.

## (B: Self-Created Hardship)

The applicant proposed to design their building to be 53' tall for their corporate headquarters and host five tenant spaces. However, it can be argued that when Section 55.80 of the zoning ordinance was adopted that it did not consider the mounting height for wall signs on a building of this size. Again, the subject building is one of few buildings in the Township that exceeds the height of 30', which also serves as the maximum mounting height allowed per ordinance. The zoning ordinance does not have a maximum building height allowed for commercial developments. The applicant followed all requirements outlined in the zoning ordinance while developing the site.

## (B: Public Safety and Welfare)

It is common for a business to have their wall signs near the top of their respected building. The code allows for a maximum wall mounting height of 30', whereas the proposed signs would be mounted at approximately 50'. This request will not negatively impact anyone in the community.

## MR. HUTSON THEN ADDRESSED STANDARDS OF APPROVAL FOR VARIANCE REQUEST C:

## (C: Unique Physical Circumstances)

Address numbers on buildings are a general requirement for any given development going through the formal review process. More importantly, placement of the building numbers which identifies the address of the structure is a safety requirement in terms of emergency responders. The Advia building was approved at approximately 53' in height. The zoning ordinance only allows for buildings with a setback of this nature to have their building numbers mounted at a maximum height of 25 '. The applicant is requesting to mount the building numbers at a height of 47'. The scale of the approved building is unique.

## (C: Unnecessarily Burdensome)

Section 57.130(D) of the zoning ordinance requires buildings with a large enough building setback from the public right-of-way to have their building address numbers placed at a mounting height of 25 ' or less. At the time this section of the zoning ordinance was adopted, staff did not consider additional ordinance requirements pertaining to buildings of this scale. However, the ordinance does offer a provision for the placement of address numbers that cannot meet the height requirements noting that in those instances the addressing shall be placed on a freestanding sign between the structure and the road and visible from the road. Compliance is not unnecessarily burdensome.

## (C: Substantial Justice)

In researching past ZBA decisions regarding mounting height for building address numbers, Planning Department staff was unable to identify any comparable cases. Section 57.130(D) of the ordinance is relatively new and was adopted in 2019.

## (C: Self-Created Hardship)

Like the language of Request B, the applicant proposed to design their building to be 53' tall. However, it can also be argued that when Section 57.130(D) of the zoning ordinance was adopted that it did not consider the mounting height for building numbers on a building of this size. The code only allows for a maximum
mounting height of 25 ' for buildings in which are set back a great distance from adjacent public right-of-way. The zoning ordinance does not have a maximum height allowed for buildings within commercial developments. The applicant constructed a building at 53' in height under the allowable parameters of the zoning ordinance. However, as noted previously, the code does offer a provision for the placement of address numbers that cannot meet the height requirements outlined in the code, noting that in those instances the addressing shall be placed on a freestanding sign between the structure and the road and visible from the road. It is the applicant's desire to place the building numbers on the building rather than on a freestanding sign. The request is a self-created hardship.

## (C: Public Safety and Welfare)

For building numbers, the code allows for a maximum mounting height of 25' depending on how far the building is setback from the public right-of-way. The height of the building is double the vertical distance than what the code allows as the building numbers are proposed to be mounted at approximately 47'. In terms of fire and safety, it is important for emergency responders to have a visual of the building numbers to locate a structure. The Fire Marshal is satisfied with the proposed positioning of the building numbers as they are placed in a recommended location on a building. As a condition of approval, however, the Fire Marshal would like to request that the building numbers be installed with the same backlighting used for the proposed wall signs due to fire and safety reasons. Approving this variance request would not negatively affect the health, safety, and welfare of the public.

## POSSIBLE ACTIONS

Mr. Hutson indicated 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

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

- Support of variance approval for Request A

0 The property is located on a 50 mph five-lane highway. The higher speeds in this area warrants a larger sized sign to provide appropriate advertisement to commuters on such traveled way.
o There are two previous cases in which multi-tenant centers were granted a variance to allow for significantly larger pylon signs. One of which was also on W Main Street.

- Support of variance denial for Request A
o There are no major physical limitations to have a larger sign.
o The variance request is a hardship that is self-created, as the applicant is not required to install a larger sign.
o Reasonable use of the property would still exist if the variance were denied.
o Reasonable options for compliance are available
- Support of variance approval for Request B
o Advia Credit Union received formal approval from the Planning Commission on February 28, 2019, which allowed the applicant to construct the building this size and height, presenting a unique physical circumstance.
o There are two previous cases in which buildings of a similar height were granted a variance to allow for a greater mounting height for wall signs.
0 If the variance were granted, it would not negatively impact the health, safety, and welfare of the community.
- Support of variance denial for Request B
o Reasonable use of the property exists if the variance is denied.
o The request for the variance is a self-created hardship.
- Support of variance approval for Request C
o Approval of the variance would not negatively impact the health, safety, and welfare of the community, only enhance it. The Fire Marshal is satisfied with the proposal.
o Advia Credit Union received formal approval from the Planning Commission on February 28, 2019, which allowed the applicant to construct the building this size and height, presenting a unique physical circumstance.
- Support of variance denial for Request $\mathbf{C}$

0 It is the applicant's desire to place the building numbers on the building rather than on a freestanding sign. The request for the variance is a self-created hardship
o Reasonable use of the property exists if the variance is denied.
o Reasonable options for compliance are available.

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

## 1. Variance Approval for Request $A$

The Zoning Board of Appeals approves the variance request due to the sign representing a multi-tenant commercial center and minimum necessary for substantial justice with condition that a land combination is submitted and approved by the Township.

## 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.
2. Variance Approval for Request B

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

## 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.
3. Variance Approval for Request C

The Zoning Board of Appeals approves the variance request due to unique physical circumstances of the property in question and approval will not negatively impact the health, safety, and welfare of the public with condition that the building address numbers be illuminated for visual purposes. Such illumination shall meet zoning ordinance requirements.

## Variance Denial for Request C

The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship, reasonable options for compliance are available, and reasonable use of the property exists if the variance is denied.

Mr. Hutson indicated the applicant team wished to propose an alternative to Request $A$ in response to the staff report.

Attorney Porter reminded the Board of the scope of its authority, saying it is appropriate for the applicant to suggest an alternative proposal and in response the Board may grant a lesser deviation, but not more than the original request.

Chairperson Sikora asked if there were questions for Mr. Hutson.
Ms. Maxwell asked how the applicant wished to change Variance Request A.
Ms. Lubbert indicated Mr. Steve VanderSloot would address that in detail.
Mr. Williams asked how far the pylon would be located from West Main Street.
Mr. Hutson said the pylon would be 10 feet from the public right-of-way.
Ms. Lubbert noted 10 feet is standard and would meet requirements.

Ms. Smith asked how the requested wall sign location compared to the approved wall sign deviation at the Holiday Inn. She stressed there should be consistency.

Ms. Lubbert responded that the proposed wall sign is three feet down from the top of the building; The Holiday Inn sign is five feet down.

Mr. Gould was concerned about the fall zone since the sign is 10 feet from the public right of way. He wanted to be sure if a storm came through it would not fall in the right-of-way. He also asked if the Planning Commission knew there would be tenant signs when they approved the building.

Mr. Hutson indicated the Planning Commission was aware of the multi-tenant use of the building and would have known of the respective signage.

Attorney Porter said fall zone language is applicable to towers, not signs.
Ms. Maxwell confirmed with Attorney Porter the sign for five tenants meets code and what was approved by the Planning Commission.

Mr. Gould said at some point the size of larger buildings being proposed needs to be looked at to see if all ordinances are complied with or there will be a lot of variance requests. Taller buildings were not considered when ordinances were originally adopted.

Ms. Farmer said during presentations of variance requests, different buildings' requests approved in history have been given as a prerequisite for approval. It has been the desire to reduce the amount and size of signage in the Township. Just because a variance was approved does not mean that fifteen years later that decision should dictate approval.

Attorney Porter indicated prior decisions are relative as to substantial justice. Other approvals for buildings with similar structures is pertinent. The governing body does not necessarily have to approve a request because of a historical decision, but it does have to take prior decisions into account. When applying the facts of this case, if you think it is similar to other requests, substantial justice does weigh in favor of granting a variance.

Chairperson Sikora added if it is determined a prior decision was bad, that should not mean a current request has to be approved. Substantial Justice is just one of five criteria.

Attorney Porter agreed all five criteria are factors that need to be weighed when making a factual decision. Maybe substantial justice is discounted because of recent decisions.

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

Mr. Steve VanderSloot, SignArt, said he would like to clarify a couple of areas from the staff report and noted Ms. Cheryl DeBoer, President and CEO of Advia, and Mr. Chad Farrer, also with Advia were present.

Regarding Request $A$, he said he believes the nature of the request for a multitenant area wall sign is conservative in approach and size. Each commercial tenant will be allowed 20 square feet. He felt it would be unfair to group Advia with other businesses along West Main Street. He explained the lighting will be indirect halo lighting. He noted the comment in the staff report that suggested the size of the sign might be distracting to drivers was not evidentiary, in fact a sign that is too small is really the problem when drivers are looking for a business.

He indicated the alternative to the original proposal for Request A would not change the sign area request, but that they would consider a reduction of the height to 20 feet and the masonry base requirement to 43 square feet.

Mr. VanderSloot noted the 10 foot setback at the property line right-of-way actually results in the sign being 65 feet back from the nearest traffic light, which is significant.

He addressed Mr. Gould's question about illumination saying the illumination will be from the back and will only illuminate the lettering itself for both the Advia and tenant portions of the sign. The background color will remain monochromatic, dark grey to blend with the building in the Advia way.

In response to a question from Ms. Maxwell, he assured her there would be no electronic message center included on the sign and that in fact, at 35 rebranded Advia locations all electronic message centers were removed.

He answered a question from Mr. Williams who wondered if the base of the sign would be illuminated, saying the masonry for the base would match the building façade and that there would be no lighting of the base to his knowledge. He indicated the base size is dictated by setback.

Mr. VanderSloot had no comments regarding Variance Requests B and C.
Chairperson Sikora confirmed with Mr. VanderSloot that the only deviation to the ordinance if the second "A" alternative were approved, would be in the area change from 60 square feet, allowed by ordinance, to 144 square feet. The sign height would be at the allowed 20 feet rather than the requested 23 feet, 4 inches, and the base would be 43 square feet rather than the requested 72 square feet.

Ms. Cheryl DeBoer indicated the difference from the original request is a three foot difference in height. They still prefer the original height of 23 feet, 4 inches, but if there needs to be a change, that is their compromise proposal. They feel the sign is minimalistic. They own all 38 acres at the site and if it were to be developed differently,
there could potentially be many more signs. She noted Advia requested and paid for the traffic light to be installed at their entrance to slow down traffic. This is a unique situation due to the size of the building. She said she thinks the building itself looks beautiful and as greenery is added and matures, it will be more beautiful over time. They plan to add a walking path and pond to the campus and wish it to be soothing. She added the sign name needs to be at the top of the building to be visible but not obtrusive. With 38 acres and a 150,000 square foot building, the sign will not look out of place. She noted there will be a way finder sign near Meijer, rather than another pylon sign.

Mr. VanderSloot explained in a perfect world Advia would prefer not to have to share a sign with tenants, but tenants have to "check a box" for free-standing signs and a grade is assigned for how good the sign is - traffic count is valuable. This will be a tasteful, adequate sign.

Mr. Farrer indicated the sign structure was designed and sealed with an engineer registered with the State of Michigan to ensure Michigan code compliance. He noted the sign will be sturdy in high winds.

Mr. VanderSloot explained at night the reverse channel letters will be lighted from the back and reflect an understated look. He said an example of this type of lighting can be seen on Stryker Instruments signs, which are attractive, low key and complementary.

Ms. Maxwell asked if the applicant was changing their request for variance "A" or if the original request was still in place.

Ms. DeBoer said they still want the original request approved, but were providing an alternative. She noted the difference would mean they would remove two courses of stone from the base, the original request would include five courses, the alternative would include three courses.

Hearing no further comments from the applicant, he moved to Board Deliberations.

Ms. Maxwell felt the size of the building requires more gravitas and proportional signage and supported the original variance request for $A$. She supported both B and C.

Mr. Gould agreed with her and commented the project is tastefully designed and as it is completed will be a good addition to the neighborhood. He thanked Advia for building their world-wide headquarters in Oshtemo Township and showing their confidence in the community.

Ms. Smith felt if less than five feet below the top of the building is allowed, then the ordinance needs to be changed. There should be a standard set. If we are saying freestyle is ok, the ordinance should reflect that. Conformity is needed. More and more companies will be building larger buildings and without standards, that will generate more and more variance requests. The Holiday Inn variance for sign height was a
different situation. It was approved so people could see it from the highway. There should be different standards for different height buildings

Mr. Williams agreed that an ordinance needs to be consistent for all businesses.
Attorney Porter said he understood the frustration and said one solution could be to say a sign would not exceed the height of a building. He suggested the ZBA could ask the Planning Commission to take this issue up in the future, but this was not an issue for the ZBA at this meeting.

Chairperson Sikora said he liked the change in the "new A" which would make it easier for him to consider. He felt B and C were good additions and that Advia made a good case. He confirmed the option offered by Advia for "A" is still 144 square feet in area, but brings the height down three feet.

Both Ms. Maxwell and Mr. Gould felt it was more proportional to leave the height at 23 feet 4 inches, but said they could vote for the alternative with the height of 20 feet.

Ms. Farmer supported the shorter sign alternative for "A" and supported both "B" and "C" as proposed.

Attorney Porter suggested two motions be made: one for "A," and one for "B" and " $C$ " together.

Mr. Williams made a motion to approve the alternative " A " variance request from Advia for a pylon sign 20 feet in height (adjusted down from 23 feet, 4" to meet ordinance requirements), 144 square feet in area (variance) and a sign support area of 43 square feet (adjusted down from 72 square feet to meet ordinance requirements) for reasons as set forth in the Staff Report:
o The property is located on a 50 mph five-lane highway. The higher speeds in this area warrant a larger sized sign to provide appropriate advertisement to commuters on such traveled way.
o There are two previous cases in which multi-tenant centers were granted a variance to allow for significantly larger pylon signs. One of which was also on W Main Street.
Ms. Farmer seconded the motion. The motion was approved unanimously by roll call vote.

Chairperson Sikora made a motion to approve Variance Request "B" to mount proposed wall signs at approximately 50 feet in height,( based on unique physical circumstances of the property in question, minimum necessary for substantial justice, and approval will not negatively impact the health, safety, and welfare of the public) and Variance Request "C" to mount the building numbers at 47 feet in height as requested, (based on unique physical circumstances of the property in question and approval will not negatively impact the health, safety, and welfare of the public with the condition that the building address numbers be
illuminated for visual purposes. Such illumination shall meet zoning ordinance requirements.)

Ms. Farmer seconded the motion. The motion was approved 5-1, by roll call vote, with Ms. Smith voting No.

## Public Comment on Non-Agenda Items

There were no comments from the public.

## Other Updates and Business

Chairperson Sikora indicated it was the consensus of the group to ask the Planning Commission to review the sign ordinance again in consideration of the discussion earlier in the meeting regarding sign height requirements.

Ms. Maxwell noted she would be absent from the scheduled July meeting.

## Adjournment

Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:45 p.m.

Minutes prepared:
June 23, 2021
Minutes approved:
$\qquad$ 2021

This page has been intentionally left blank for printing purposes.

Mtg Date: September 28, 2021
To: Oshtemo Township Zoning Board of Appeals
From: Karen High, Zoning Administrator

Applicant: RWL Sign Company, Jason Headley

Owner: Ascension Borgess Cancer Center

Property: 2520 Robert Jones Way, Parcel Number 05-25-435-001

Zoning: BRP: Business and Research Park

Request: $\quad$ Request for Multiple Sign Variances for New Medical Office Building

Section(s): Section 55.90 - Industrial Land Uses

## OVERVIEW:

RWL Sign, on behalf of Ascension Borgess Cancer Center, is requesting four variances pertaining to onsite signage for their new medical office facility. The 20,000 square foot medical office building is located on an eight-acre lot outlined in red at right. 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.


## SUMMARY OF REQUEST:

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, shown on the next page. 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 an industrial park
or industrial-office development. 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.

The approved site plan for Ascension Borgess Cancer Center is shown below. Proposed sign locations are indicated in red. The numbers correspond to the building elevations on the next page and the table of variance requests on page four.


It should be noted that 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 the 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 that the incorrect section of code was used to design the sign package. Despite this, the applicant wishes 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 is requesting permission to have four wall signs where only one wall sign is permitted. In Request $\mathbf{B}$, the applicant is requesting permission for the four proposed wall signs to exceed the 50 square foot maximum area permitted. In Request $\mathbf{C}$, the applicant is requesting that each of the four proposed wall signs be allowed to exceed the 20 foot maximum mounting height. In Request D, the applicant is requesting a ground sign that is six foot in height where the maximum permitted height is five foot.

Details of each variance request are as follows:

| Wall <br> sign | Building <br> wall | Is Wall Sign <br> permitted? | Area <br> permitted per <br> ordinance | Proposed wall <br> sign area | Height permitted <br> per ordinance | Proposed wall <br> sign height |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 1 | South | Yes | 50 SF | 131.4 SF <br> Variance <br> Request B | $20^{\prime}$ | $33^{\prime}$ <br> Variance <br> Request C |
| 2 | West | No - Variance <br> Request A | 0 SF | 205.5 SF <br> Variance <br> Request B | Not permitted | $30^{\prime}$ <br> Variance <br> Request C |
| 3 | East | No - Variance <br> Request A | 0 SF | 131.4 SF <br> Variance <br> Request B | Not permitted | $39^{\prime}$ <br> Variance <br> Request C |
| 4 | North | No-Variance <br> Request A | 0 SF | 131.4 SF <br> Variance <br> Request B | Not permitted | $28^{\prime}$ <br> Variance <br> Request C |


| Ground <br> sign | Ground sign area <br> permitted per ordinance | Proposed ground sign <br> area | Ground sign height <br> permitted per <br> ordinance | Proposed ground sign height |
| :---: | :---: | :---: | :---: | :---: |
| 5 | 40 SF | 40 SF | $5^{\prime}$ | $6^{\prime}$ |

The owner has 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."

The complete letter from the owner is included in the attachments, as well as a variance request review form submitted by the applicant.

## 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: 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 is 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 height of the building could be considered a unique circumstance.

Request D) The ground sign is 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.

It should also be noted that 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?
Comment: 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).

Comment: 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 $50^{\prime}$ in height, $20^{\prime}$
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 $45^{\prime}$ and located in proximity to US-131. The applicant proposed to place their wall signs at a height of approximately $40^{\prime}, 10^{\prime}$ 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 $5^{\prime}$ below the roofline/parapet wall of the building to which the sign is attached.
3. Best Western; 2575 South 11 ${ }^{\text {th }}$ 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 $30^{\prime}$ to $39^{\prime}$ but not the western wall sign facing $S 11^{\text {th }}$ 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?

Comment: 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?
Comment: 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 are to be lit halo illumination. An example is shown at right. 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.

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.

## 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 (number of wall signs)

0 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.
0 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)

0 The variance request is a hardship that is self-created.
0 Reasonable use of the property would still exist if the variance is denied.
o Reasonable options for compliance are available.

- Support of variance approval for Request B (area of wall signs)

0 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)
o The variance request is a hardship that is self-created.
o Reasonable use of the property would still exist if the variance is denied.
o Reasonable options for compliance are available.
- Support of variance approval for Request C (height of wall signs)
o 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.
o 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)
o The variance request is a hardship that is self-created.
o Reasonable use of the property would still exist if the variance is denied.
o Reasonable options for compliance are available.
- Support of variance approval for Request D (height of ground sign)
o There are unique physical circumstances: Staff is unaware of findings of fact in this regard.
- Support of variance denial for Request D (height of ground sign)
o There are no major physical limitations on this portion of the site.
o The variance request is a hardship that is self-created, as the applicant is not required to install a taller ground sign than permitted.
o Reasonable use of the property would still exist if the variance is denied.
o Reasonable options for compliance are available
Possible motions for the Zoning Board of Appeals to consider include:

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).

Attachments: application, site plan and sign graphics, letter of intent, variance request review form, WMU approval letter, and minutes for the substantial justice cases
7275 W. Main Street, Kalamazoo, Michigan 49009-9334
Phone: 269-216-5223 Fax: 269-375-7180
PLEASE PRINT
PROJECT NAME \& ADDRESS ASCEN SION BORGESS ONCOLOGY CENTER
2520 ROBERT JONES WAY
PLANNING \& ZONING APPLICATION
Applicant Name: JASON HEADLEY

| Company | RWL SIGN CO. |  |
| :---: | :---: | :---: |
|  | 6185 WEST KL AVE | TIIS SPACO |
| Address | KALAMAZ00, MI 49009 | $\text { } \because \because O R$ |
|  |  | '0yNSIUP |
| E-mail | JASON@RWLSIGN.com | USS: |
| Telephone | $269-372-3629 \times 6$ | ONI.Y |
| Interest in | operty Contractor |  |

OWNER*:
Name $\qquad$ Fee Amount $\qquad$ WARREN, MI 48092 Escrow Amount $\qquad$
Email DALE.CHARTERS@MED×CEL.COM
Phone \& Fax 269-552-600S

NATURE OF THE REQUEST: (Please check the appropriate item(s))
_Planning Escrow-1042
_Site Plan Review-1088
—Administrative Site Plan Review-1086
_Special Exception Use-1085
_Zoning Variance-1092
—_Ste Condominium-1084
_Accessory Building Review-1083

| Land Division-1090 |
| :--- |
| —_Subdivision Plat Review-1089 |
| _Rezoning-1091 |
| Х Interpretation-1082 |
| —Text Amendment-1081 |
| X Sign Deviation-1080 |
| Other: |

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary):
REQUEST $1-205.5 \not \mathrm{Al}$ WAL SIGN AND $3-131.4$ \#1
WAU SIGNS TO IDENTIFY THE ONCOLOGY CENTER.
1- 54 पू MONUMENT SIGN.

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):
WESTERN MICHIGAN UNIVERSITY BUSINESS, TECHNOLOGY AND
RESEARCH PARK 2 UNIT 1 SPLIT/COMBINED ON $11 / 24 / 2020$
FROM OS -25-430-010
PARCEL NUMBER: 3905-25-435-001
ADDRESS OF PROPERTY: 2520 ROBERT JONES WAY
PRESENT USE OF THE PROPERTY: VACANT - NEW CONSTRUCTION


NAMES) \& ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:

Name (s)
Addresses)
$\square$

## SIGNATURES

$I$ (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning \& Zoning Application, I (we) grant permission for Oshtemo Township officials and agents io enter the subject property of the application as part of completing the reviews necessary to process the application.


Owner's Signature (*If different from Applicant)


Date $8 / 9 / 2021$

Paysion thadly, $\qquad$ Date

Copies 10:
Applicomi-1
Clerk -1
Deputy Clerk -1
Deputy Clerk
Allorney-
Assessor -1
Planning Secretary - Original
HOshtemo-SBSUUsersLLindulluINDAIPlanuingiForms

Exterior Site Map


Sign Recommendation

Existing
Sign Type:
Quantity:
Location:
Illumination:
Approx. Size:
$\mathrm{H}:$
$\mathrm{W}:$
OAH:
HOG:
Comment:

Action:

## Recommended

Sign Type:
Sign Code:
Quantity:
Attachment:
Illumination:
Approx. Size:
H:
W:
OAH:

Add New

Comment: With a size 24 ", we are breaking clear space rules by $4^{\prime \prime}$
1
Internal
2'-0"
30'-0 1/8"
$4^{\prime}-49 / 16^{\prime \prime}$


South Elevation


## Ascension Borgess

Sign Recommendation

Existing
Sign Type:
Quantity:
Location:
Illumination:
Approx. Size:
$\mathrm{H}:$
$\mathrm{W}:$
OAH:
HOG:
Comment:

Action:
Add New

Recommended
Sign Type: Channel Letters
Sign Code: ASC-CL-H-AB-C-30
Quantity:
Attachment:
Illumination:
Approx. Size:
H:
W:
OAH
Comment: With a size 30 ", we are breaking clear space rules by $2^{\prime \prime}$.
$2^{\prime-6 "}$
37'-6 1/8"
5'-5 3/4"


West Elevation


Rendering

Ascension Borgess

Sign Recommendation

Existing
Sign Type:
Quantity:
Location:
Illumination:
Approx. Size:
$\mathrm{H}:$
$\mathrm{W}:$
OAH:
OAH:
Comment:

Action:
Add New

Recommended
Sign Type:
Sign Code:
Quantity:
Attachment:
Illumination:
Approx. Size:
H:
W:
OAH:
Comment: With a size 24 ", we are breaking clear space rules by 4


East Elevation


Rendering

## Ascension Borgess

Sign Recommendation

Existing
Sign Type:
Quantity:
Location:
Illumination:
Approx. Size:
H :
W:
OAH:
HOG:
Comment:

Action:
Add New

Recommended
Sign Type:
Sign Code:
Quantity:
Attachent
Illumination:
Approx. Size:
H:
W:
OAH
Comment: With a size $24^{\prime \prime}$, we are breaking clear space rules by 4


North Elevation


Rendering

Sign Recommendation

Existing
Sign Type: None Existing
Quantity:
Location:
Illumination:
Approx. Size:
H:
W:
OAH:
HOG:
Comment:

Action: Add New

Recommended
Sign Type:
Sign Code:
Quantity: $\quad 1$
Attachment: Base/Plinth
Illumination: Interna
Approx. Size:
H: 6'
W: $\quad 8^{8-9 "}$
OAH: $\quad 8-10$
Comment:

Technical Survey: Required
Code Compliant: XXX


Ascension

## Ascension

## Borgess

September 7, 2021

Iris Lubbert, AICP
Planning Director for Oshtemo Charter Township
7275 W. Main Street
Kalamazoo, MI 49009
RE: Ascension Borgess Cancer Center - 2520 Robert Jones Way, Oshtemo Township
Dear Ms. Lubbert,
I first want to convey our sincere appreciation to you and Oshtemo Township for your leadership and support for our new 40,000 square foot Ascension Borgess Cancer Center. 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.

Western Michigan University has expressed their support for our sign variance.
On behalf of Ascension Borgess, please accept our request for approval of the sign variance at your September 28 Zoning Board of Appeals meeting.

If you have any questions, please feel free to contact Mark Yagerlener, Real Estate Director, at 248.798.8919.


PetenU. Bergmann,FACHE
Southwest Regional President
Ascension Michigan

1535 Gull Road, MSB 405
Kalamazoo, MI 49048-1652

## ZONING BOARD OF APPEALS - VARIANCE REQUEST REVIEW FORM

The Board is required by law to consider the following, and only the following, criteria when deciding on an application for a nonuse variance. When making a motion on a variance, each of the following criteria must be clearly addressed in order to document how the Board's decision was made. Please fill in the lines below and verbally state how these criteria are, or are not, met.

Case: $\qquad$
$\qquad$
Date. $019 / 2021$

Criteria 1: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available? Please note that economic hardship cannot be considered.

## Yes. this tenant is the first of it's kind in the btr park. THERE will be a

No: LARGE NUMBER OF PATIENTS, SOME REQUIRING AMBULANCE TRANSPORTATION CLEAR BUILDING IDENTIFICATION is NECESSARY - 50 DA AT $20^{\prime}$ O.A.H. IS
Criteria 2: Substantial Justice
Is the decision consistent with past decisions of the ZBA (precedence)?
Yes: $N / A$ this tenant is the first within the bTr park (in oshtemo)
No: THE PROPERTY DOES NOT HAVE RULES ON SIGNAGE AUOWANCE IN THE ORDINANCE. THE MINUTES FROM 2BA 12-17-2019 CONSIDER PROPERTY A
Criteria 3: Unique Physical Circumstances
BUSINESS PARK.
Are there unique physical limitations or conditions which prevent compliance?
(VES: THIS PROPERTY HAS FRONTAGE ON THREE ROADS (ROBERT JONES,
NO: DRAKE ROAD, US BI) AND CCEAR SIGNAGE WIL HELP PATIENTS FIND THE FACIUTY.
Criteria 4: Self-Created Hardship
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?
Yes: THE APPLICANT DID NOT CREATE THE HARDSHIP. THERE IS A
NO. LACK OF A CLEAR ZONING ORDINANCE IN RELATION TO SIGNAGE. WHERE IN THE ORDINANCE IS THE ZONING OF BTR PARK CALLED Criteria 5: Public Safety and Welfare OUT AS INDUSTRIAL, WHY IS IT NOT COMMERCVAL? f granted, will the spirit of the ordinance be observed, and public safety and welfare secured?
Yes: THIS is THE 1 Ist LOCATION WITH IN THE BTR PARK PROVIDING A PUBLIC
No: SERVICE, CANCER SCRGCNING AND TREATMENT, APPROVING THE REQUESTED SIGNAGE WILL HELP PATIENTS FIND THE FACILITY EASILY.
Based on the review of the criteria listed above the Zoning Board of Appeals rules to Approve / Deny the variance request.

| From: | Colleen D Scarff |
| :---: | :---: |
| To: | Iris Lubbert; Colten Hutson; Karen High |
| Subject: | FW: [EXTERNAL] Ascension Oncology BTR Park Oshtemo, MI |
| Date: | Thursday, August 26, 2021 1:05:41 PM |
| Attachments: | 6.12520 Robert Jones Way bb.pdf |
|  | 49287 - MON-CUST-BW-NI.pdf |
|  | 49287 - MON-CUST-BW-NI-SL.pdf |
|  | RbinsMI-CL-H-B-CAB-24X222.pdf |

## CAUTION: External Email

Good afternoon,

Below is notification of the Ascension Borgess submitted sign plan for the BTR2 park. The attached files are the final versions that were approved.

If you need anything further please let me know.

Regards,

Colleen

Colleen D. Scarff
Associate Vice President for Business \& Finance
Western Michigan University
3080 Seibert Administration Building
(269)387-4268

From: Colleen D Scarff
Sent: Thursday, August 26, 2021 1:00 PM
To: David Selby [dselby@agi.net](mailto:dselby@agi.net); Chris Ragan [cragan@agi.net](mailto:cragan@agi.net)
Subject: RE: [EXTERNAL] Ascension Oncology BTR Park Oshtemo, MI

Good morning Chris and David,

The BTR2 design review committee has approved the signage plan submitted for Ascension Borgess. As there have been changes submitted I wanted to summarize what specifically has been approved and am including as attachments:

- Original plan submitted - location of signs on building and monument sign
- Monument sign - second submission (no BTR logo required but size and material requirements met)
- Signs affixed to the building - second submission with only change from led lighting to halo/indirect lighting.

If I have missed any specific item that you need me to clarify please just let me know. If there are other individuals you would like me to forward to I am happy to do so. I will also be sending a letter to Oshtemo Township with our approval.

Regards,

Colleen

Colleen D. Scarff
Associate Vice President for Business \& Finance
Western Michigan University
3080 Seibert Administration Building
(269)387-4268

## OSHTEMO CHARTER TOWNSHIP

ZONING BOARD OF APPEALS
DRAFT MINUTES OF A VIRTUAL MEETING HELD JUNE 22, 2021

## Agenda

## Public Hearing - Sign Variance Requests <br> Consideration of the application of SignArt, Inc., on behalf of Advia Credit Union for Multiple Sign Variances for a New Multi-Tenant Commercial Center

Property: 6400 W Main Street, Parcel Number 05-14-255-010; 6404 W Main Street, Parcel Number 05-14-255-050
Zoning: C: Local Business District
Section(s): Section 55.80-Commercial and Office Land Uses
Section 57.130(D) - Character and Placement

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, June 22, 2021, beginning at approximately 3:00 p.m.

MEMBERS PRESENT: Neil Sikora, Chair
Dusty Farmer (arrived at 3:08 as the public hearing began)
Fred Gould
Micki Maxwell
Anita Smith, Vice Chair
Louis Williams
(All attending within Oshtemo Township)
MEMBER ABSENT: Ollie Chambers
Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Colten Hutson, Zoning Administrator, and Martha Coash, Meeting Transcriptionist.

Guests present included Steve VanderSloot, SignArt, Inc. and Advia representatives Cheryl DeBoer and Chad Farrer.

## Call to Order and Pledge of Allegiance

Chairperson Sikora called the meeting to order and invited those present to join 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 MAY 25, 2021

The Chair asked if there were any additions, deletions, or corrections to the minutes of May 25, 2021. Hearing none, he asked for a motion.

Ms. Maxwell made a motion to approve the Minutes of May 25, 2021, as presented. Mr. Gould seconded the motion. The motion was approved unanimously by roll call vote.

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

## PUBLIC HEARING - SIGN VARIANCE REQUESTS CONSIDERATION OF THE APPLICATION OF SIGNART, INC., ON BEHALF OF ADVIA CREDIT UNION FOR MULTIPLE SIGN VARIANCES FOR A NEW MULTITENANT COMMERCIAL CENTER

Mr. Hutson indicated Sign Art, Inc., on behalf of the Advia Credit Union, was requesting three separate variances pertaining to on-site signage and building address numbers. For Request A, the applicant was requesting relief from Section 55.80 of the zoning ordinance which governs the use, area, type, height, and number of signs allowed for a commercial or office land use, to establish a pylon sign that is 23 '4" in height where only 20 ' is permitted, 144 SF in area where only 60 SF is permitted, and a sign support area of 72 SF where only 43 SF is permitted. In Request B, the applicant was requesting relief from Section 55.80 of the zoning ordinance to allow the proposed wall signs to be mounted at approximately 50 ' in height, exceeding the maximum permitted mounting height of 30'. For Request C, the applicant was requesting relief from Section 57.130(D) of the zoning ordinance which dictates the character size and placement of address building numbers based on the building setback distance from public right-of-way, to mount the building numbers at 47' in height whereas only a maximum mounting height of $25^{\prime}$ is allowed.

He said the Advia Credit Union site is located on the north side of W Main Street between $\mathrm{N} 10^{\text {th }}$ Street and $\mathrm{N} 9^{\text {th }}$ Street. The subject property spans over 38 acres and has approximately 1,300 ' of road frontage adjacent to W Main Street. 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 three variances for their proposal for relief from Section 55.80: Commercial and Office Land Uses and Section 57.130(D): Character and Placement.

SECTION 55.80: Commercial and Office Land Uses and SECTION 57.130(D): Character and Placement

Mr. Hutson explained the applicant provided the following rationale for the variance requests from Section 55.80 and Section 57.130(D):
"Advia Credit Union is in the final stages of constructing their unique corporate headquarters. The 150,000 square foot, three-story facility is situated on 38 acres, possesses over 1,300 linear feet of road frontage, and a building setback of approximately 400 linear feet from tremendously wide West Main right-of-way. It will include a full service branch, ATM, night deposit box, meeting and event rooms, and retail space for up to five (5) commercial retail tenants. Given the uniqueness of this mixed-use development, the proposed sign plan requests a sign deviation to provide reasonable identification for Advia Credit Union as well future commercial retail tenants."

## STANDARDS OF REVIEW - STAFF ANALYSIS

Mr. Hutson explained the Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty and said he would address each of the three variance requests separately:

- 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.


## MR. HUTSON FIRST ADDRESSED VARIANCE REQUEST A:

## (A: Unique Physical Circumstances)

The 38 -acre parcel has approximately 1,300 ' of road frontage adjacent to W Main Street. The subject sign is proposed to be placed immediately west of the entrance on W Main Street and to be setback approximately 10 ' from the front property line. The sign is proposed to be located on a small outlot adjacent to the site's entrance that Advia Credit Union also owns. It should be noted that as offsite signage is not permitted, the outlot in question will need to be combined with the Advia site if the sign is to be placed at this location. The proposed pylon sign will encompass signage for Advia Credit Union in addition to the five commercial tenants located at this site. W Main Street is a five-lane highway with a speed limit of 50 mph in this area. It could be argued that a 60 SF multi-tenant pylon sign in this location is at a visual disadvantage compared to a normal 60 SF pylon sign representing one business due to the speeds in this area. However, all businesses on W Main Street share the same disadvantage. Even though Advia Credit Union has a significantly large building and significant frontage on W Main Street there are no major physical limitations which warrant the pylon sign to exceed the size and height requirements outlined in the zoning ordinance for commercial and office land uses. There are no
significant elevation changes as the area where the sign is proposed is relatively flat. The sign will have the same setback requirements compared to any other sign adjacent to W Main Street that is representing a commercial enterprise. There is no easement interference or topographical issues which warrant a $23^{\prime} 4$ " tall pylon sign that is 144 SF in sign area. If the proposed sign is to be placed on the outlot, independent of whether this variance is approved or not, parcels 05-14-255-010 and 05-14-255-050 will need to be combined.

## (A: Unnecessarily Burdensome)

The proposed pylon sign will not represent one commercial business, but rather a total of six. Since Advia Credit Union is hosting five tenants, it can be expected that a larger sign area and sign height are desired. However, the applicant can still propose adequate signage that encompasses each business while meeting the height, sign area, and sign support area requirements outlined in the zoning ordinance. It can be argued that conformance is not unnecessarily burdensome, and that denial of the variance would not take away from the reasonable use of the property.

## (A: Substantial Justice)

In researching past ZBA decisions regarding sign size relief for commercial developments, Planning Department staff identified two comparable cases. These findings are described below.

1. Gesmundo, LLC, Parcel ID: 05-25-240-009 (Northwest Corner of Stadium Drive and Drake Road), May 26, 2015: The applicant requested a sign variance to allow the installation of a multi-tenant sign with a sign area of 172 SF , which is 88 SF greater than what the code allows. This request also included a variance for the overall sign height of 32 ', which is 12 ' taller than the maximum permitted. Based on the previously approved variances for multi-tenant centers, and considering the unique nature of the site, its size, and its location on a major arterial, the Zoning Board of Appeals approved the request to allow the applicant a larger sign square footage and taller sign height.
2. West Main Mall, Parcel ID:3905-13-430-036, March 09, 2004: The applicant requested a sign variance to allow an increase in the sign area and height for a pylon sign on W Main Street to service a multitenant commercial center. The applicant requested to increase the total height of the existing sign from 25' to 30', and to expand the sign area by an additional 67 SF. Based on variances approved in the late 1990's for West Century Center and Maple Hill Mall, the Zoning Board of Appeals approved the request to allow the applicant the same larger sign square footage that was permitted to its competitors. The
property's limited visibility from W Main Street was also considered a reason for approval.

## (A: Self-Created Hardship)

It is the applicant's desire to create a pylon sign with an overall sign area that is two and a half times the maximum size allowed per ordinance. The applicant proposed a pylon sign that exceeds that maximum height allowed per ordinance. It is also the applicant's desire to have a pylon sign with supports and uprights that exceed the maximum area allowed by the code. Installing a pylon sign that is out of compliance with all aspects of the zoning ordinance is not required nor necessary. The request is a selfcreated hardship.

## (A: Public Safety and Welfare)

The proposed pylon sign is approximately 144 SF in area. The maximum sign area allowed for commercial developments of this nature is a total of 60 SF. This means that the pylon sign is nearly two and a half times the sign area allowed by code. The subject sign is proposed to be $23^{\prime} 4$ " tall and have a sign support area of 72 SF. Based on the proposed sign, the code would only allow a maximum height of 20 ' and a sign support area of 43 SF. Although the sign would follow the same setback requirements compared to any other commercial sign, a sign this large may potentially distract motorists and will set a precedence for future requests.

## MR. HUTSON THEN ADDRESSED STANDARDS OF APPROVAL FOR VARIANCE REQUEST B:

(B: Unique Physical Circumstances)
Advia Credit Union received formal approval from the Planning Commission on February 28, 2019, to construct a 150,000 SF building at the subject property. The building is three-stories and is 53 ' tall. The zoning ordinance only allows for wall signs to be placed at a maximum mounting height of 30 ' above grade. Due to the building's height, the applicant was requesting a variance to mount the wall signs at approximately 50' above grade. It is common for wall signs to be mounted near the top of any building. The scale of the approved 150,000 SF, three story building is unique.

## (B: Unnecessarily Burdensome)

Other than the handful of hotels in the Township, there are no buildings that have a height similar to the subject building. The building is approximately 53' tall. If the variance request for the wall signs is denied for a mounting height of approximately 50 ', the wall signs would need to
be placed at half of the vertical distance of the building between windows. As noted previously, it is common practice to place walls signs near the top of a building. However, it can be argued that if the variance for the wall signs was denied, that reasonable use of the property would still exist.

## (B: Substantial Justice)

In researching past ZBA decisions regarding mounting height for wall signs in commercial developments, Planning Department staff identified two comparable cases. These findings are described below.

1. 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.
2. Best Western; 2575 South 11 ${ }^{\text {th }}$ 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 $S 11^{\text {th }}$ Street.

## (B: Self-Created Hardship)

The applicant proposed to design their building to be 53' tall for their corporate headquarters and host five tenant spaces. However, it can be argued that when Section 55.80 of the zoning ordinance was adopted that it did not consider the mounting height for wall signs on a building of this size. Again, the subject building is one of few buildings in the Township that exceeds the height of 30', which also serves as the maximum mounting height allowed per ordinance. The zoning ordinance does not have a maximum building height allowed for commercial developments. The applicant followed all requirements outlined in the zoning ordinance while developing the site.

## (B: Public Safety and Welfare)

It is common for a business to have their wall signs near the top of their respected building. The code allows for a maximum wall mounting height of 30', whereas the proposed signs would be mounted at approximately 50'. This request will not negatively impact anyone in the community.

## MR. HUTSON THEN ADDRESSED STANDARDS OF APPROVAL FOR VARIANCE REQUEST C:

## (C: Unique Physical Circumstances)

Address numbers on buildings are a general requirement for any given development going through the formal review process. More importantly, placement of the building numbers which identifies the address of the structure is a safety requirement in terms of emergency responders. The Advia building was approved at approximately 53' in height. The zoning ordinance only allows for buildings with a setback of this nature to have their building numbers mounted at a maximum height of 25 '. The applicant is requesting to mount the building numbers at a height of 47'. The scale of the approved building is unique.

## (C: Unnecessarily Burdensome)

Section 57.130(D) of the zoning ordinance requires buildings with a large enough building setback from the public right-of-way to have their building address numbers placed at a mounting height of 25 ' or less. At the time this section of the zoning ordinance was adopted, staff did not consider additional ordinance requirements pertaining to buildings of this scale. However, the ordinance does offer a provision for the placement of address numbers that cannot meet the height requirements noting that in those instances the addressing shall be placed on a freestanding sign between the structure and the road and visible from the road. Compliance is not unnecessarily burdensome.

## (C: Substantial Justice)

In researching past ZBA decisions regarding mounting height for building address numbers, Planning Department staff was unable to identify any comparable cases. Section 57.130(D) of the ordinance is relatively new and was adopted in 2019.

## (C: Self-Created Hardship)

Like the language of Request B, the applicant proposed to design their building to be 53' tall. However, it can also be argued that when Section 57.130(D) of the zoning ordinance was adopted that it did not consider the mounting height for building numbers on a building of this size. The code only allows for a maximum
mounting height of 25 ' for buildings in which are set back a great distance from adjacent public right-of-way. The zoning ordinance does not have a maximum height allowed for buildings within commercial developments. The applicant constructed a building at 53' in height under the allowable parameters of the zoning ordinance. However, as noted previously, the code does offer a provision for the placement of address numbers that cannot meet the height requirements outlined in the code, noting that in those instances the addressing shall be placed on a freestanding sign between the structure and the road and visible from the road. It is the applicant's desire to place the building numbers on the building rather than on a freestanding sign. The request is a self-created hardship.

## (C: Public Safety and Welfare)

For building numbers, the code allows for a maximum mounting height of 25' depending on how far the building is setback from the public right-of-way. The height of the building is double the vertical distance than what the code allows as the building numbers are proposed to be mounted at approximately 47'. In terms of fire and safety, it is important for emergency responders to have a visual of the building numbers to locate a structure. The Fire Marshal is satisfied with the proposed positioning of the building numbers as they are placed in a recommended location on a building. As a condition of approval, however, the Fire Marshal would like to request that the building numbers be installed with the same backlighting used for the proposed wall signs due to fire and safety reasons. Approving this variance request would not negatively affect the health, safety, and welfare of the public.

## POSSIBLE ACTIONS

Mr. Hutson indicated 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

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

- Support of variance approval for Request A

0 The property is located on a 50 mph five-lane highway. The higher speeds in this area warrants a larger sized sign to provide appropriate advertisement to commuters on such traveled way.
o There are two previous cases in which multi-tenant centers were granted a variance to allow for significantly larger pylon signs. One of which was also on W Main Street.

- Support of variance denial for Request A
o There are no major physical limitations to have a larger sign.
o The variance request is a hardship that is self-created, as the applicant is not required to install a larger sign.
o Reasonable use of the property would still exist if the variance were denied.
o Reasonable options for compliance are available
- Support of variance approval for Request B
o Advia Credit Union received formal approval from the Planning Commission on February 28, 2019, which allowed the applicant to construct the building this size and height, presenting a unique physical circumstance.
o There are two previous cases in which buildings of a similar height were granted a variance to allow for a greater mounting height for wall signs.
0 If the variance were granted, it would not negatively impact the health, safety, and welfare of the community.
- Support of variance denial for Request B
o Reasonable use of the property exists if the variance is denied.
o The request for the variance is a self-created hardship.
- Support of variance approval for Request C
o Approval of the variance would not negatively impact the health, safety, and welfare of the community, only enhance it. The Fire Marshal is satisfied with the proposal.
o Advia Credit Union received formal approval from the Planning Commission on February 28, 2019, which allowed the applicant to construct the building this size and height, presenting a unique physical circumstance.
- Support of variance denial for Request $\mathbf{C}$

0 It is the applicant's desire to place the building numbers on the building rather than on a freestanding sign. The request for the variance is a self-created hardship
o Reasonable use of the property exists if the variance is denied.
o Reasonable options for compliance are available.

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

## 1. Variance Approval for Request $A$

The Zoning Board of Appeals approves the variance request due to the sign representing a multi-tenant commercial center and minimum necessary for substantial justice with condition that a land combination is submitted and approved by the Township.

## 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.
2. Variance Approval for Request B

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

## 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.
3. Variance Approval for Request C

The Zoning Board of Appeals approves the variance request due to unique physical circumstances of the property in question and approval will not negatively impact the health, safety, and welfare of the public with condition that the building address numbers be illuminated for visual purposes. Such illumination shall meet zoning ordinance requirements.

## Variance Denial for Request C

The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship, reasonable options for compliance are available, and reasonable use of the property exists if the variance is denied.

Mr. Hutson indicated the applicant team wished to propose an alternative to Request A in response to the staff report.

Attorney Porter reminded the Board of the scope of its authority, saying it is appropriate for the applicant to suggest an alternative proposal and in response the Board may grant a lesser deviation, but not more than the original request.

Chairperson Sikora asked if there were questions for Mr. Hutson.
Ms. Maxwell asked how the applicant wished to change Variance Request A.
Ms. Lubbert indicated Mr. Steve VanderSloot would address that in detail.
Mr. Williams asked how far the pylon would be located from West Main Street.
Mr. Hutson said the pylon would be 10 feet from the public right-of-way.
Ms. Lubbert noted 10 feet is standard and would meet requirements.

Ms. Smith asked how the requested wall sign location compared to the approved wall sign deviation at the Holiday Inn. She stressed there should be consistency.

Ms. Lubbert responded that the proposed wall sign is three feet down from the top of the building; The Holiday Inn sign is five feet down.

Mr. Gould was concerned about the fall zone since the sign is 10 feet from the public right of way. He wanted to be sure if a storm came through it would not fall in the right-of-way. He also asked if the Planning Commission knew there would be tenant signs when they approved the building.

Mr. Hutson indicated the Planning Commission was aware of the multi-tenant use of the building and would have known of the respective signage.

Attorney Porter said fall zone language is applicable to towers, not signs.
Ms. Maxwell confirmed with Attorney Porter the sign for five tenants meets code and what was approved by the Planning Commission.

Mr. Gould said at some point the size of larger buildings being proposed needs to be looked at to see if all ordinances are complied with or there will be a lot of variance requests. Taller buildings were not considered when ordinances were originally adopted.

Ms. Farmer said during presentations of variance requests, different buildings' requests approved in history have been given as a prerequisite for approval. It has been the desire to reduce the amount and size of signage in the Township. Just because a variance was approved does not mean that fifteen years later that decision should dictate approval.

Attorney Porter indicated prior decisions are relative as to substantial justice. Other approvals for buildings with similar structures is pertinent. The governing body does not necessarily have to approve a request because of a historical decision, but it does have to take prior decisions into account. When applying the facts of this case, if you think it is similar to other requests, substantial justice does weigh in favor of granting a variance.

Chairperson Sikora added if it is determined a prior decision was bad, that should not mean a current request has to be approved. Substantial Justice is just one of five criteria.

Attorney Porter agreed all five criteria are factors that need to be weighed when making a factual decision. Maybe substantial justice is discounted because of recent decisions.

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

Mr. Steve VanderSloot, SignArt, said he would like to clarify a couple of areas from the staff report and noted Ms. Cheryl DeBoer, President and CEO of Advia, and Mr. Chad Farrer, also with Advia were present.

Regarding Request $A$, he said he believes the nature of the request for a multitenant area wall sign is conservative in approach and size. Each commercial tenant will be allowed 20 square feet. He felt it would be unfair to group Advia with other businesses along West Main Street. He explained the lighting will be indirect halo lighting. He noted the comment in the staff report that suggested the size of the sign might be distracting to drivers was not evidentiary, in fact a sign that is too small is really the problem when drivers are looking for a business.

He indicated the alternative to the original proposal for Request A would not change the sign area request, but that they would consider a reduction of the height to 20 feet and the masonry base requirement to 43 square feet.

Mr. VanderSloot noted the 10 foot setback at the property line right-of-way actually results in the sign being 65 feet back from the nearest traffic light, which is significant.

He addressed Mr. Gould's question about illumination saying the illumination will be from the back and will only illuminate the lettering itself for both the Advia and tenant portions of the sign. The background color will remain monochromatic, dark grey to blend with the building in the Advia way.

In response to a question from Ms. Maxwell, he assured her there would be no electronic message center included on the sign and that in fact, at 35 rebranded Advia locations all electronic message centers were removed.

He answered a question from Mr. Williams who wondered if the base of the sign would be illuminated, saying the masonry for the base would match the building façade and that there would be no lighting of the base to his knowledge. He indicated the base size is dictated by setback.

Mr. VanderSloot had no comments regarding Variance Requests B and C.
Chairperson Sikora confirmed with Mr. VanderSloot that the only deviation to the ordinance if the second "A" alternative were approved, would be in the area change from 60 square feet, allowed by ordinance, to 144 square feet. The sign height would be at the allowed 20 feet rather than the requested 23 feet, 4 inches, and the base would be 43 square feet rather than the requested 72 square feet.

Ms. Cheryl DeBoer indicated the difference from the original request is a three foot difference in height. They still prefer the original height of 23 feet, 4 inches, but if there needs to be a change, that is their compromise proposal. They feel the sign is minimalistic. They own all 38 acres at the site and if it were to be developed differently,
there could potentially be many more signs. She noted Advia requested and paid for the traffic light to be installed at their entrance to slow down traffic. This is a unique situation due to the size of the building. She said she thinks the building itself looks beautiful and as greenery is added and matures, it will be more beautiful over time. They plan to add a walking path and pond to the campus and wish it to be soothing. She added the sign name needs to be at the top of the building to be visible but not obtrusive. With 38 acres and a 150,000 square foot building, the sign will not look out of place. She noted there will be a way finder sign near Meijer, rather than another pylon sign.

Mr. VanderSloot explained in a perfect world Advia would prefer not to have to share a sign with tenants, but tenants have to "check a box" for free-standing signs and a grade is assigned for how good the sign is - traffic count is valuable. This will be a tasteful, adequate sign.

Mr. Farrer indicated the sign structure was designed and sealed with an engineer registered with the State of Michigan to ensure Michigan code compliance. He noted the sign will be sturdy in high winds.

Mr. VanderSloot explained at night the reverse channel letters will be lighted from the back and reflect an understated look. He said an example of this type of lighting can be seen on Stryker Instruments signs, which are attractive, low key and complementary.

Ms. Maxwell asked if the applicant was changing their request for variance "A" or if the original request was still in place.

Ms. DeBoer said they still want the original request approved, but were providing an alternative. She noted the difference would mean they would remove two courses of stone from the base, the original request would include five courses, the alternative would include three courses.

Hearing no further comments from the applicant, he moved to Board Deliberations.

Ms. Maxwell felt the size of the building requires more gravitas and proportional signage and supported the original variance request for $A$. She supported both B and C.

Mr. Gould agreed with her and commented the project is tastefully designed and as it is completed will be a good addition to the neighborhood. He thanked Advia for building their world-wide headquarters in Oshtemo Township and showing their confidence in the community.

Ms. Smith felt if less than five feet below the top of the building is allowed, then the ordinance needs to be changed. There should be a standard set. If we are saying freestyle is ok, the ordinance should reflect that. Conformity is needed. More and more companies will be building larger buildings and without standards, that will generate more and more variance requests. The Holiday Inn variance for sign height was a
different situation. It was approved so people could see it from the highway. There should be different standards for different height buildings

Mr. Williams agreed that an ordinance needs to be consistent for all businesses.
Attorney Porter said he understood the frustration and said one solution could be to say a sign would not exceed the height of a building. He suggested the ZBA could ask the Planning Commission to take this issue up in the future, but this was not an issue for the ZBA at this meeting.

Chairperson Sikora said he liked the change in the "new A" which would make it easier for him to consider. He felt B and C were good additions and that Advia made a good case. He confirmed the option offered by Advia for "A" is still 144 square feet in area, but brings the height down three feet.

Both Ms. Maxwell and Mr. Gould felt it was more proportional to leave the height at 23 feet 4 inches, but said they could vote for the alternative with the height of 20 feet.

Ms. Farmer supported the shorter sign alternative for "A" and supported both "B" and "C" as proposed.

Attorney Porter suggested two motions be made: one for "A," and one for "B" and " $C$ " together.

Mr. Williams made a motion to approve the alternative " A " variance request from Advia for a pylon sign 20 feet in height (adjusted down from 23 feet, 4" to meet ordinance requirements), 144 square feet in area (variance) and a sign support area of 43 square feet (adjusted down from 72 square feet to meet ordinance requirements) for reasons as set forth in the Staff Report:
o The property is located on a 50 mph five-lane highway. The higher speeds in this area warrant a larger sized sign to provide appropriate advertisement to commuters on such traveled way.
o There are two previous cases in which multi-tenant centers were granted a variance to allow for significantly larger pylon signs. One of which was also on W Main Street.
Ms. Farmer seconded the motion. The motion was approved unanimously by roll call vote.

Chairperson Sikora made a motion to approve Variance Request "B" to mount proposed wall signs at approximately 50 feet in height,( based on unique physical circumstances of the property in question, minimum necessary for substantial justice, and approval will not negatively impact the health, safety, and welfare of the public) and Variance Request " $\mathbf{C}$ " to mount the building numbers at 47 feet in height as requested, (based on unique physical circumstances of the property in question and approval will not negatively impact the health, safety, and welfare of the public with the condition that the building address numbers be
illuminated for visual purposes. Such illumination shall meet zoning ordinance requirements.)

Ms. Farmer seconded the motion. The motion was approved 5-1, by roll call vote, with Ms. Smith voting No.

## Public Comment on Non-Agenda Items

There were no comments from the public.

## Other Updates and Business

Chairperson Sikora indicated it was the consensus of the group to ask the Planning Commission to review the sign ordinance again in consideration of the discussion earlier in the meeting regarding sign height requirements.

Ms. Maxwell noted she would be absent from the scheduled July meeting.

## Adjournment

Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:45 p.m.

Minutes prepared:
June 23, 2021
Minutes approved:
$\qquad$ 2021

MINUTES OF A WORK SESSION AND PLANNING COMMISSION MEETING
HELD JULY 26, 2018

## PLANNING COMMISSION WORK SESSION

## Agenda

DISCUSSION OF ZONING ORDINANCE RE-ORGANIZATION
a. Re-Organized Code - Distribution of Notebooks
b. Agritourism

A work session of the Oshtemo Charter Township Planning Commission was held on Thursday, July 26, 2018, commencing at approximately 6:05 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Cheri Bell, Chairperson
Fred Antosz
Dusty Farmer, Secretary
Micki Maxwell
Mary Smith
Bruce VanderWeele, Vice Chairperson
MEMBERS ABSENT: Ollie Chambers
Also present were Julie Johnston, Planning Director, James Porter, Attorney, and one interested person.
a. Re-Organized Code - Distribution of Notebooks

Ms. Johnston outlined the contents of the notebooks, indicting the re-organized Ordinance has been completed. She pointed out to the Board members how each tab of the notebook was a larger grouping of the Ordinance, for example all of the Zoning Districts are now organized separate from the Overlay Zones. She then noted each tab has a table of contents if there was more than one Article located within the tab.

Ms. Johnston had several questions related to the re-organized ordinance she posed to the Board members. These included the following:

1. Discussion of "motorized vehicle roadways," which is included in a larger use group in the RR: Rural Residential District but not within this same use group in other residential districts. The Board decided to remove this use from the RR District and consider writing language at a later date within the industrial district.
2. Several ordinances have a heading called "limitations" or "design standards," which generally outline development standards for that particular zoning district. The Board decided to change all of these headings to "Development Standards."
3. Discussion was had regarding Special Exception Uses (now called Special Land Uses), which were included in the old Section 60.000 but were not specifically called out in the zoning districts in which they were permitted. It was decided to add these uses to the individual zoning districts.
4. Finally, Ms. Johnston indicated she added some information to the Special Land Uses Article called "Review Criteria." The intent was to improve the criteria the Planning Commission would use in deciding whether a use should be approved. The Board members discussed the recommended language and made suggested changes to be reviewed at the August $9^{\text {th }}$ meeting.

Ms. Johnston went on to discuss next steps, which would include a review at the August $9^{\text {th }}$ meeting and then a public hearing at the first September meeting. She also indicated she would speak with Supervisor Heiny-Cogswell about getting the reorganized ordinance on the Township Board's work session agenda in September.
b. Agritourism

Having exhausted the time allowed for the work session, Agritourism was tabled until the next work session.

The Planning Commission work session ended at approximately 7:00 p.m.

## Agenda

PUBLIC HEARING: SPECIAL EXCEPTION USE - DIMENSIONAL DEPARTURE FROM THE SIGN ORDINANCE CONSIDERATION OF A DIMENSIONAL DEPARTURE REQUEST BY ALLIED SIGNS, INC., ON BEHALF OF OSHTEMO HOTELS, LLC, FROM SECTION 76.170 OF THE TOWNSHIP ZONING ORDINANCE, TO PLACE THE TOP OF A WALL SIGN HIGHER THAN THE PERMITTED 30 FEET, PER SECTION 60.405 OF THEPLANNED UNIT DEVELOPMENT ORDINANCE. THE SUBJECT PROPERTY IS LOCATED AT

PUBLIC HEARING: SPECIAL EXCEPTION USE - TEMPORARY OUTDOOR EVENT CONSIDERATION OF AN APPLICATION FROM THE LAWTON RIDGE WINERY TO ALLOW A FOOD TRUCK AT 8456 STADIUM DRIVE IN THE I-1: INDUSTRIAL DISTRICT. PARCEL NO. 3905-33-402-161.

SITE PLAN REVIEW: LANGELAND FUNERAL HOME
CONSIDERATION OF AN APPLICATION FROM THE LONG ISLAND PARTNERSHIIP TO DEVELOP A NEW CREMATORIUM AT 3926 SOUTH 9TH STREET IN THE VC: VILLAGE COMMERCIAL DISTRICT. PARCEL NO. 3905-35-330-018.

A meeting of the Oshtemo Charter Township Planning Commission was held on Thursday, July 26, 2018, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Cheri Bell, Chairperson
Fred Antosz
Micki Maxwell
Dusty Farmer, Secretary Bruce VanderWeele, Vice Chairperson Mary Smith
MEMBER ABSENT: Ollie Chambers

Also present were Julie Johnston, Planning Director, James Porter, Attorney, Martha Coash, Meeting Transcriptionist, and nine interested persons.

## Call to Order

The meeting was called to order by Chairperson Bell at approximately 7:10 p.m.

## Pledge of Allegiance

Chairperson Bell invited those in attendance to recite the Pledge of Allegiance.

## Approval of the Agenda

Chairperson Bell asked if there were any additions or deletions to the agenda.
Hearing none, she asked for a motion.
Mr. Antosz made a motion to approve the agenda as presented. Mr. VanderWeele supported the motion. The motion was approved unanimously.

## Public Comment on Non-Agenda Items

There were no public comments on non-agenda items.
Approval of the Minutes of the Work Session and Regular Meeting of June 28, 2018

Chairperson Bell asked if there were additions, deletions or corrections to the Minutes of either the Work Session or the Regular Meeting of June 28, 2018.

Hearing none, Chairperson Bell asked for a motion.
Mr. VanderWeele made a motion to approve the minutes of the Work Session and the Regular Meeting of June 28, 2018 as presented. Mr. Antosz supported the motion. The motion was approved unanimously.

## PUBLIC HEARING: SPECIAL EXCEPTION USE - DIMENSIONAL DEPARTURE FROM THE SIGN ORDINANCE <br> CONSIDERATION OF A DIMENSIONAL DEPARTURE REQUEST BY ALLIED SIGNS, INC., ON BEHALF OF OSHTEMO HOTELS, LLC, FROM SECTION 76.170 OF THE TOWNSHIP ZONING ORDINANCE, TO PLACE THE TOP OF A WALL SIGN HIGHER THAN THE PERMITTED 30 FEET, PER SECTION 60.405 OF THEPLANNED UNIT DEVELOPMENT ORDINANCE. THE SUBJECT PROPERTY IS LOCATED AT 5724 WEST MAIN STREET, KALAMAZOO, MI 490098, WITHIN THE C: LOCAL BUSINESS DISTRICT. PARCEL NO. 3905-13-130-030.

Chairperson Bell moved to the next item on the agenda and asked Ms. Johnston for her presentation.

Ms. Johnston indicated the applicant, Oshtemo Hotels, LLC, submitted a request to the Zoning Board of Appeals for a variance to allow a wall sign at a height taller than the permitted maximum. The building in question is the Holiday Inn Express currently under construction within the Westgate Planned Unit Development (PUD) located at the northeast corner of US131 and West Main Street. The Westgate PUD is zoned C: Local Business District with a PUD overlay. Per the Sign and Billboard Ordinance requirements, Section 76.170 , wall signs for hotels are restricted to a maximum height of 30 feet.

The applicant was seeking a variance from Section 76.170 to allow the placement of two wall signs located near the top of the Holiday Inn Express building, which has a maximum height of 45 feet 4 inches. Both the west and south facing signs would have a maximum wall sign height of approximately 39 feet 11 inches, 9 feet 11 inches above the maximum allowed placement for a sign.

The applicant indicated the variance was needed due to the distances the building is setback from both US131 and West Main Street. They intend to construct
only two signs when four are allowed and plan to located them facing US131 and West Main Street. The request was to ensure maximum visibility for the two planned signs.

During discussions with the Zoning Board of Appeals, Staff pointed out the hotels are located within a planned unit development, which has a mechanism for dimensional departures from the code. Section 60.405 of the PUD ordinance allows the Planning Commission to grant dimensional departures from the ordinance if the departure meets the purpose and intent of the PUD ordinance. After much discussion regarding the variance and the PUD ordinance, the Zoning Board of Appeals made a motion to refer the request to the Planning Commission, indicating the PUD ordinance was a more appropriate tool as the Westgate development could be reviewed more holistically.

She noted developers are often attracted to PUDs because of this inherent flexibility, but the departures should be beneficial to the development's patrons and the community in general.

For this particular request, Ms. Johnston explained the applicant contended:

1. Allowing the signs to be closer to the roof of the building will increase visibility for motorists passing on West Main Street and US131.
2. The wall signs will be the main signs for the hotels; ground mounted signs will be incorporated into the entire Westgate development, with no stand-alone ground mounted signage for the hotels.
3. The location of the signs near the top of the building is typical to the Holiday Inn brand and standard in the hotel industry.
4. The Holiday Inn brand normally develops signs on three sides of the building, the applicant is only asking for two wall signs to limit the light pollution to the residential neighbors to the east.
5. As the first project in the Westgate PUD, other developments may obscure the sign, particularly the one facing West Main Street, if it was placed at the 30 -foot height. The taller elevation helps to alleviate this concern.

Ms. Johnston said the thought-provoking component of this request was the disparity in the Zoning Ordinance between heights of buildings and placement of signs. Building height in Oshtemo Township is based solely on the ability to meet setbacks. On the other hand, the Sign Ordinance limits height to 30 -feet, not allowing signs to develop at a proportional height to the stature of the building, clearly seen with this application. The property in question was of a large enough size to allow setbacks to accommodate the approximate 46 -foot-tall structure. Placing the signs at the 30 -foot height would locate them more at the third-floor level of the structure then the top floor, where it is more expected and generally the industry standard.

She said in the past, the Planning Commission has granted departures from the sign ordinance for another commercial PUDs. The Corner@Drake property received a departure for Trader Joe's to allow three wall signs when only two were permitted and for the height of the ground sign on Drake Road to allow accommodations for many of the internal PUD uses. In both cases, it was determined that the dimensional departures made for a more coordinated, cohesive, and user-friendly commercial development meeting the spirit and intent of the PUD ordinance.

An argument could be made that the 145-foot utility corridor located between the PUD and the right-of-way of US131 represents a unique condition in this area. Without this dedicated utility corridor, the Westgate PUD and the hotel would have more direct frontage on US131. The distance of the hotels from US131 pavement is approximately 375 feet and 1,700 from the pavement of West Main Street. With these distances, locating the sign at a height of 39 feet 11 inches as opposed to 30 feet would not likely be a noticeable difference.

To conclude, she said the intent of the PUD ordinance is to allow flexibility within the development that promotes more creativity and imaginative design. The second Holiday Inn building, currently under construction and not included in the applicant's original application, reaches a maximum height of 67 feet. Locating the wall sign at 30 feet, or the approximate mid-point to the building, would not only be out of character to the standard sign placement, it would also look awkward on the structure. Allowing the signs to be raised to a point closer to the roof line is more in keeping with generally accepted placement of a wall sign. In addition, due to the scale of the development, 86acres, and its setbacks from the major thoroughfares, it is not likely that the increased height would be considered out of character.

While the current application is only for the Holiday Inn Express, it is very likely that this same request will be made for both hotels, if not other later developments within the PUD. She suggested the Planning Commission consider reviewing this request not just for the current application, but for the entirety of the PUD. The difficulty with that review is the unknown extent of future development, for example how tall future structures will be.

Ms. Johnston said Staff recommended the Planning Commission allow a dimensional departure for the height of wall signs within the Westgate PUD. The departure will not impede public health, safety, and welfare, and would be in keeping with the flexibility allowed within the PUD ordinance. Staff's recommendation is as follows:

For those buildings with heights taller than 35 feet within the Westgate PUD, the top of any wall sign, including its superstructure, shall be no higher than five feet below the roofline/parapet wall of the building to which the sign is attached.

She said in the future, as other buildings are developed over 35 feet in the Westgate PUD, this would apply.

Chairperson Bell thanked Ms. Johnston for her report and asked whether there were questions from the Board.

Answering a question from Ms. Smith regarding whether there would be freestanding post signs for this project, Ms. Johnston said pole signs would be permitted by Ordinance, but that isn't the intent by the developer, though a post sign may be possible on West Main or Maple Hill Drive. This request is about the placement of wall signs.

Ms. Farmer asked if the Planning Department wants to revisit the sign ordinance again and whether it could be hired out.

Ms. Johnston said it needs to be addressed and will be after the agritourism ordinance has been completed. Even if hired out, work on it is still a few months out and must be included in the Planning Commission schedule.

Chairperson Bell noted that it is likely that when the Sign Ordinance was written there were no buildings taller than 30 feet in the Township.

Ms. Johnston said several ZBA members were ready to approve the variance, but the group felt that because the development is in the PUD, which has provision allowing dimensional departures, it would be better for the Planning Commission to consider the entire PUD then review variance after variance for sign height.

Attorney Porter agreed, saying the ZBA thought the PC should look at the whole PUD rather than end up with multiple variance requests. He said Ms. Johnston's proposal would provide more consistent and uniform decisions.

Hearing no further questions, Chairperson Bell asked whether the applicant wished to speak.

Mr. Patrick Stieber, Allied Signs Inc., 33650 Giftos, Clinton Township, said he felt an oversight in the code itself was the reason they were here. The signs meet Ordinance requirements except for the height requested. They need to be visible from U.S.-131. He said Holiday Inn would be the next hotel to be built in the PUD and they would have the same situation. The sign fits well with the hotel design and image of the new Holiday Inn hotels and he felt the recommendation should be approved.

Mr. Phil Sarkasian, Amerilodge, 8988 Royce Drive, Sterling Heights, said the hotel has vast corporate experience and will be a good neighbor. He indicated a pole sign will not be included in the plans. He noted a letter of support from AVB and asked for consistency with other communities. Only two wall signs are requested so the apartment complex to the east will not be affected. The lights are not bright enough to cause light pollution so will cause no harm. The project will stimulate the PUD.

There were no other speakers; the Chair moved to Board Deliberations.

Ms. Farmer said neither the letter of support from the builder nor consistency with other Townships were of concern to her. She is more concerned with the neighbors. Consistency within the PUD is important and felt an overall decision within the PUD was needed.

Chairperson Bell said what stood out to her was the PC approval of the sign at the Corner@Drake.

Attorney Porter said it is true that consistency in decisions is important. It there are different standards approved for PUD, standards must be articulated with reasons for the decision. The criteria in this case may be different than the Corner@Drake situation. Different PUDs can have different decisions, but there need to be good reasons for treating them differently.

Ms. Farmer noted the signs on the hotel will not face residential area that is immediately adjacent to the hotel.

Chairperson Bell said sensitivity is needed regarding the location of signs; Feedback is not always positive about this development and care needs to be taken when making decisions so people understand why the PC is doing what it is doing.

Ms. Farmer said Westport feedback indicates concern about more traffic noise as the PUD is developed.

Mr. VanderWeele explained the ZBA was very much in favor of approving the sign variance, but felt the PC was the better route to take to avoid further variances and indicated his support for the recommendation.

Mr. Antosz commented the visibility of signage from 131 is impacted by Consumers Power equipment being in the way.

Chairperson Bell determined there were no further comments and asked for a motion.

Ms. Farmer made a motion to approve the recommendation from Staff to allow a dimensional departure for the height of wall signs within the Westgate PUD as follows: "For those buildings with heights taller than 35 feet within the Westgate PUD, the top of any wall sign, including its superstructure, shall be no higher than five feet below the roofline/parapet wall of the building to which the sign is attached." Mr. VanderWeele supported the motion. The motion was approved unanimously.

Agenda

# BEST WESTERN - VALLEY CITY SIGN - SIGN DEVIATIONS - 2575 SOUTH $11^{\text {TH }}$ STREET - (PARCEL NO. 3905-25-405-020) 

A special meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, March 17, 2009, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Duane McClung
Dave Bushouse
Robert Anderson
Cheri Bell
Neil Sikora, Alternate
MEMBERS ABSENT: Roger Taylor Mike Smith, Alternate

Also present were Mary Lynn Bugge, Senior Planner; James W. Porter, Township Attorney, and one other interested person.

## Call to Order/Pledge of Allegiance

The meeting was called to order by Mr. McClung, the Vice Chair, and the "Pledge of Allegiance" was recited.

## Election of Officers

Mr. McClung said the next item on the Agenda was the election of officers for 2009. Ms. Bell made a motion to nominate Duane McClung as Chairman. The motion was seconded by Mr. Anderson. The Vice Chairman asked if there were any other nominations, and hearing none, closed the nominations for Chairman.

Mr. McClung said he would entertain a motion for Vice Chair. Mr. Bushouse made a motion to nominate Robert Anderson as Vice Chair. The motion was seconded by Ms. Bell. Mr. McClung asked if there were any other nominations. Hearing none, he called for a vote on both motions for the offices of Chairman and Vice Chair, as submitted. The motions carried unanimously in favor of the officers submitted.

## Minutes

The Chairman stated that the next item on the Agenda was the approval of the minutes of November 18, 2008. Ms. Bell noted, on page 5, paragraph 6, located in the middle of the page, that there is a reference to Mr. Anderson asking what percentage of the apartments were rented and inquiring whether the building was needed, when it was she who had asked. The Chairman asked if there were any other changes. Hearing none, Ms. Bell moved to approve the minutes, as revised. The motion was seconded by Mr. Anderson. The Chairman called for a vote on the motion, and the motion passed unanimously.

## BEST WESTERN - VALLEY CITY SIGN - SIGN DEVIATIONS - 2575 SOUTH 11프 STREET - (PARCEL NO. 3905-25-405-020)

The Chairman said the next item was a request for sign deviations for Best Western hotel submitted by Valley City Sign. The subject property is formerly known as the Hawthorn Suites located at 2575 S. $11^{\text {th }}$ Street, Parcel No. 3905-25-405-020. The Chairman asked to hear from the Planning Department. Ms. Bugge submitted her report to the Zoning Board of Appeals dated March 17, 2009, and is incorporated herein by reference.

Ms. Bugge began by noting that the requests relating to the oversized pylon sign on the east side had been withdrawn from the application. Therefore, the request for a second pylon sign was not needed. Therefore, she said she would focus specifically on the other requested deviations, specifically, the west wall sign and the east wall signs. She said on the west wall, the applicant is requesting a height deviation of eight (8) feet. Ms. Bugge noted that on the east wall, a nine (9) foot height deviation for the Best Western sign was being requested, along with a .6 square foot sign area deviation. With regard to the LED message center on the east wall, the applicant is requesting an eight (8) foot height deviation and a 95 square foot deviation on the requested sign area size. Ms. Bugge then proceeded with her report, comparing and contrasting the proposed request to others which had been granted under previous Zoning Ordinance provisions.

At the conclusion of Ms. Bugge's report, the Chairman asked if there were any questions of Ms. Bugge. Hearing none, he asked to hear from the applicant.

Ms. Melanie Gray of Valley City Sign, on behalf of Best Western, introduced herself to the Board. Ms. Gray explained the two pylon signs were removed from their
proposal to bring the property more into conformance with the Township Zoning Ordinance. She said they needed the sign height increase, particularly on the east side of the building, in order to be visible from U.S. 131. She said she realized that the subject property did not abut U.S. 131, but was similarly situated to other hotels and motels in the area, and in order to be equally competitive, the deviations on height and size were necessary.

Ms. Gray then took the Board through a review of photographs showing the proposed signs on the subject building. Ms. Gray specifically noted the fact that, given the trees, as well as the other buildings fronting on U.S. 131, it was absolutely necessary to have the sign displayed on the fourth floor versus the third floor in order to be visible by the motoring public traveling on U.S. 131.

Ms. Gray also provided photographs to the Board of other hotels and motels in the area, reiterating the fact that she felt to be competitive with others bordering or near U.S. 131, the applicant needed the requested deviations. She did concede that on the front sign, there was not a compelling reason, other than aesthetics, that the sign needed to be located on the fourth floor level.

The Chairman asked if there were any questions of the applicant or Ms. Bugge.
Mr. Benson asked for a recap on the proposed deviations. Ms. Bugge directed him to page 2 of her report, specifically citing the request for the two wall signs on the east side of the building, as well as the one wall sign on the west side of the building.

The Chairman asked if there were any further questions. He noted that there was no public to comment, and therefore, asked for Board deliberations.

Mr. Anderson said he thought it was important for the applicant to be seen from the highway, and therefore, he would not object to the proposed height increases. The Chairman asked if that was on the highway side of the building. Mr. Anderson indicated it was.

Mr. Sikora said he thought the signs needed to be visible from the highway, but he was somewhat concerned by the fact that the subject property did not immediately abut the highway. Mr. Bushouse said, in the last few years, in his travels, many of the hotels and motels were not putting up large highway signs anymore, and he did not see a need for the sign deviations. He also noted that the Hotel could use the highway travel directory signs which were available to the motoring public on the interstate highways.

The Chairman said he, unlike Mr. Bushouse, did like to see the large signs to know where he was going when he left the interstate. Therefore, he felt that the signs were necessary.

Ms. Bell asked if the height provisions for signs had been increased. Ms. Bugge said that the wall sign height was increased to 30 feet just a couple of years ago. Ms. Bell expressed some concern about granting additional height deviations.

Ms. Gray asked if she could respond. She explained to the Board that, since they were not asking for a pylon sign on the east side, she thought what they were requesting, in the way of sign height deviation and area, was reasonable and would only match what the competitors already had in the area. Ms. Bugge pointed out that the applicant could utilize LED display in their pylon sign on $11^{\text {th }}$ Street and on their wall signs as long as they met the permitted size.

Ms. Bell asked if they could take each request one at a time. The Chairman said he thought that would be appropriate. Ms. Bell said, given that they could have a LED display on the $11^{\text {th }}$ Street sign, she certainly would not support adding 95 square feet of LED sign on the east side of the building. However, she noted that, given the topography and the Westwood Park buildings, she thought the fourth floor location for the sign on the east side of the building was appropriate.

Mr. Sikora asked if she would favor the LED sign. Ms. Bell indicated she would not. He asked if she would favor the requested height of the sign on the east side of the building, to which Ms. Bell indicated that she would.

Mr. Anderson said he agreed with Ms. Bell; he would approve the increased height and wall sign area on the east side, but not the LED sign.

With that, the Chairman said he would entertain a motion. Ms. Bell made a motion to permit one sign on the east wall of the subject building to have a nine (9) foot height deviation to 39 feet and a sign area of 69.6 square feet, but deny the LED sign on the east side of the building for the reasons stated in the record. The motion was seconded by Mr. Anderson. The Chairman called for a vote on the motion. The motion passed unanimously.

The Chairman asked about the height of the sign on the west wall. Mr. Anderson said he thought it looked better at the increased height. Ms. Bell said if the decision was based on symmetry, that would be true, but there were no justifiable reasons set forth in the record. Mr. Bushouse said he saw no reason to grant a deviation for the wall sign on $11^{\text {th }}$ Street. Mr. Anderson made a motion to deny the request for an increase in wall sign height on the west side of the building, and leave it at 30 feet. Mr. Sikora seconded the motion. The Chairman called for further discussion, and hearing none, called for a vote on the motion. The motion passed unanimously.

## Public Comment on Non-Agenda Items

None.

## Adjournment

Hearing no further business, the meeting was adjourned at approximately 4:05 p.m.

Minutes Prepared:
March 24, 2009
Minutes Approved:
, 2009

This page has been intentionally left blank for printing purposes.

Mtg Date: September 28, 2021

To: $\quad$ Oshtemo Township Zoning Board of Appeals
From: Colten Hutson, Zoning Administrator
Applicant: Richard Wolthuis
Owner: $\quad$ Richard \& Sheri Wolthuis Trust

Property: 6291 Torrington Road, Parcel Number 05-11-402-541
Zoning: R2: Residence District
Request: A variance to allow a 12' reduction of the 15' required rear yard setback in order to construct a 16 ' x 29 deck.

Section(s): Section 50.60: Setback Provisions

## OVERVIEW:

The applicant is requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a $16^{\prime} \times 29^{\prime}$ 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 $15^{\prime}$. If approved, the variance would permit a deck that will protrude $12^{\prime}$ 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 $15^{\prime}$ from the rear property line, leaving $0^{\prime}$ of buildable area outside of the required $15^{\prime}$ rear yard setback in the southwest corner. Currently, there is a $16^{\prime} \times 29^{\prime}$ deck on the rear side of the principal building that was unlawfully constructed in late June of this year. Above is a visual illustrating the previous deck and the new $16^{\prime} \times 29^{\prime}$ deck. It should be noted that 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.

## SECTION 50.60: SETBACK PROVISIONS

The applicant has 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 in which are attached to this staff report.

- "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)
o6473 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. See attached photos and diagrams of the original deck and new
 replacement deck."
- "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 dropoff 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. I have attached several pictures of the new deck and orientation to the neighboring properties."
- "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."



## 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.

Staff has analyzed the request against these principles and offer 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: 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 $80^{\prime}$. 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?
Comment: 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, an example of a potential land swap is shown in the image to the right. 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).
Comment: In researching past Zoning Board of Appeals decisions regarding setback relief for a principal building's deck from the rear yard setback, Planning Department 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 $12^{\prime} \times 14^{\prime}$ allseason room in place of the existing $11^{\prime} 8^{\prime \prime} \times 11^{\prime \prime} 8^{\prime \prime}$ deck. The existing wooden deck, part of the original construction, protruded 4 ' into the 10 ' rear setback. The variance was requested to allow a $5^{\prime} 6^{\prime \prime}$ rear yard setback. A feature that was heavily discussed was that this principal building's rear
 yard abutted $30^{\prime}$ 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 $12^{\prime} \times 24^{\prime}$ deck. If approved, the $12^{\prime} \times 24^{\prime}$ deck would protrude into the $10^{\prime}$ rear yard setback by $6^{\prime}$. The existing $4^{\prime}$ 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 $\mathrm{N} 9^{\text {th }}$ 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?

Comment: The purpose of the request stems from when the applicant demolished his old deck to construct a new 16' x $29^{\prime}$ 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. If the property owner went through the appropriate review process with the Township and the Southwest Michigan Building Authority, this issue could have been avoided. 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 $12^{\prime}$ into the required $15^{\prime}$ 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?
Comment: 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 that 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. For example, the Zoning Ordinance requires that there is a minimum 10’ separation between structures; this separation is also applicable from structures, like decks, on neighboring properties. If that property owner ever wished to install a shed in their rear yard, they would need to place said she an additional $4^{\prime}$ inward in order to manage 10 in separation. 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.

## 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
- 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 $16^{\prime} \times 29^{\prime}$ 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.

Attachments: Application, Letters of Intent, Site Plan, Photos, and Public Comment.

This page has been intentionally left blank for printing purposes.


PROJECT NAME \& ADDRESS

7275 W. Main Street, Kalamazoo, Michigan 49009-9334
Phone: 269-216-5223 Fax: 269-375-7180

## PLEASE PRINT

Deck setback variance application

PLANNING \& ZONING APPLICATION


OWNER*:
Name Richard Woithuis + Shavi Wothais Trust
Address

Email

$\qquad$

NATURE OF THE REQUEST: (Please check the appropriate item(s))
_Planning Escrow-1042
_Site Plan Review-1088
__Administrative Site Plan Review-1086
Special Exception Use-1085
Zoning Variance-1092
-Site Condominium-1084
__Accessory Building Review-1083

Land Division-1090
Subdivision Plat Review-1089
Rezoning-1091
_Interpretation-1082
__Text Amendment-1081
__Sign Deviation-1080
_Other: $\qquad$

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary):
$\qquad$

## LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):



PARCEL NUMBER: 3905- $\qquad$
ADDRESS OF PROPERTY:


PRESENT USE OF THE PROPERTY:
 PRESENT ZONINGk-Resic) ential SIZE OF PROPERTY . 52 acre

## NAMES) \& ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:



## SIGNATURES

$I$ (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning \& Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.


Date


Copies to:
Planning -1
Applicant -1 Clerk -1 Deputy Clerk -1 Attorney-1

## PLEASE ATTACH ALL REQUIRED DOCUMENTS

Assessor - 1 Planning Secretary - Original

॥Oshtemo-SBS\Users\LindaILLINDA\Planning\FORMS

## Lot line setback variance request for replacement deck

I am requesting a lot line setback variance from Section 50.60 of the Zoning Ordinance for a replacement deck that was constructed on the south side of our home.

This new deck replaced the original deck that was constructed and approved when my home was built in 1986. The original deck wrapped around the southwest corner of my home and extended to approximately 3 ft . from both the west and south property lines.

The new deck is positioned directly behind our house and no longer hugs the property lines but does not fully meet the current setback requirement of 15 ft .

I have attached diagrams to identify the location of the original deck and the new replacement deck.


The Board is required by law to consider the following, and only the following, criteria when deciding on an application for a nonuse variance. When making a motion on a variance, each of the following criteria must be clearly addressed in order to document how the Board's decision was made. Please fill in the lines below and verbally state how these criteria are, or are not, met.

Case: $\qquad$ Date: 8/6/2021

Criteria 1: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available? Please note that economic hardship cannot be considered.

## No:

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.
Criteria 2: Substantial Justice
Is the decision consistent with past decisions of the ZBA (precedence)?

## Yes:

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. See attached photos and diagrams of the original deck and new replacement deck.

## Yes:

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 dropoff 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.

I have attached several pictures of the new deck and orientation to the neighboring properties.

## Criteria 4: Self-Created Hardship

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

## No:

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.

## Criteria 5: Public Safety and Welfare

If granted, will the spirit of the ordinance be observed, and public safety and welfare secured?

## Yes:

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.

Based on the review of the criteria listed above the Zoning Board of Appeals rules to _Approve I Deny the variance request.

## Zoning Board:

I would like to provide some additional comments regarding the setback variance request for the deck in our backyard.

My wife and I now realize that the new deck violates strict compliance with the 15 ft backyard setback ordinance. I would ask that the board consider the "spirit" of the ordinance and approve a variance for our new deck.

Our original deck built and approved in 1986 had deteriorated and needed repair. We decided to rebuild the deck including shifting the location to be more aligned with our back door and allow a better view of the sidelot to the east which we had purchased a couple of years ago. The original deck was within 3 ft of the property lines to the south and west. The new deck is now approximately (on average) about 10 ft from the south property line and well over 15 ft to the west property line.

Many of the earlier Westport subdivision lots were smaller in size or odd shaped which makes it difficult to now meet all of the current zoning ordinances. Per Colton, he could not find the original setback rules for the Westport subdivision. Our lot is only 108 ft deep on the west side, which makes it impossible to comply with the current 15 ft rear lot setback for a deck structure located on the southwest side of our lot.

Per strict compliance to the ordinances, we could have resurfaced/repaired the original deck which was 3 ft from the south and west property lines. We could have also chosen to build several $10 \mathrm{ft} \times 14 \mathrm{ft}$ sheds 3 ft from the back property line. Neither of these seem to meet the spirit of the setback rules and would be much less attractive to us and our neighbors.

I would also like to mention our longstanding support of Oshtemo Township. We have resided at 6291 Torrington since 1986. I have worked in Oshtemo township for over 20 years. I am also part owner of 2 businesses located in Oshtemo Township - Aunalytics (formerly Secant Technologies), and Level Data.

Thank you for considering our request for the zoning variance.

Dick \& Sheri Wolthuis


information made

$E$







To whom it may concern; Oshtemo Township,
I am a long-time resident of the Township, residing at 6328 Old Log Trail. I am writing this letter at the request of my neighbor, Dick Wolthuis, whose back-yard property line abuts my back-yard property line. I am aware that neighbor Dick recently replaced his former back-yard deck with a new back-yard deck. I was aware of this project beforehand and had no objections. I have also learned that Dick is having a dispute with the Township because his new deck is apparently too close to my back-yard property line. I wish the Township to know that I have no objection to the placement or size of Dicks's new deck, including its proximity to my back-yard property line. I must also say that I'm surprised the Township has disputed the size and placement of Dick's new deck, as the new deck is no closer to my property line than the old deck (which had been there for many years) which the new deck replaced, and as far as I know the Township had never before objected to the placement/proximity or size of Dick's old deck. I understand that building permits are typically required for such projects (though I know many Township residents are not aware of such requirements), and I believe Dick now understands that too. Nevertheless, I wanted to make it perfectly clear to the Township that I have no objection to Dick's new deck and it would seem to me that - rather than requiring the deck be destroyed or modified, or that you and Dick possibly risk a legal dispute - that an exception would be appropriate in this case. I provide you this information and my opinion as a long-time Oshtemo Township resident.

Sincerely,


Stella Baker
Mtg Date: September 28, 2021
To: Oshtemo Township Zoning Board of Appeals
From: Colten Hutson, Zoning Administrator
Applicant: Jamie Schneck
Owner: Jamie \& Justin Schneck

Property: 10294 W KL Avenue, Parcel Number 05-19-270-010
Zoning: RR: Residence District
Request: A variance to allow a $6^{\prime}$ tall privacy fence within the front yard setback adjacent to W KL Avenue and Almena Drive.

## Section(s): Section 57.60: Fences

## OVERVIEW:

The applicant is requesting relief from Section 57.60 of the Zoning Ordinance which governs fence height for all parcels, lots, and building sites within the Township in order to construct a 6 ' tall privacy fence within the front yard setback at 10294 W KL Avenue. Section 57.60 of the Zoning Ordinance restricts the height of fences within the front yard setback to a maximum height of 4 ' when located within a low density zoning classification. With 10294 W KL Avenue carrying the zoning designation of RR: Residence District, the maximum fence height allowed within the front yard setback is 4'. If approved, the variance would permit a fence that will be 2' higher than what is allowed within the front yard setback per code. An aerial of the site under consideration is outlined in light blue in the image to the right.


10294 W KL Avenue is a half-acre parcel located within the southwest quadrant of the Township. The subject parcel has only three property lines, two of which possess frontage along two heavily used
roadways. The property in question fronts W KL Avenue to its south and fronts Almena Drive to its north, which are both 55 mph roadways. If a property has frontage along two roadways, for example such as corner lots within a subdivision, by code said property has two front yards and front yard setbacks need to be followed along those roadways.

It should be noted that a $6^{\prime}$ tall privacy fence was unlawfully constructed within the front yard setback adjacent to Almena Drive by a previous owner of the property in early 2020. The new property owners, Jamie and Justin Schneck, are requesting a variance to keep the recently constructed $6^{\prime}$ tall fence along with extending said fence throughout the majority of the frontage adjacent to Almena Drive and W KL Avenue. The existing 6 ' tall fence is a dog-eared wood picket fence and if granted a variance, the existing $6^{\prime}$ tall fence would remain unchanged as the fence extension would be made up of the same wood panel materials. A photo of the proposed fence can be found on the immediate right.


## SECTION 57.60: Fences

The applicant has 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 in which are attached to this staff report.

- "Part of our purchase agreement with the Ambroso's, the lovely family that bought and renovated the property in 2019/2020, was for them to start a privacy fence for us to complete after we moved in."
- "The main agreement for the fence came about for fear of being on a busy corner with our two (2) dogs who love for us to play fetch with them. The Ambroso's graciously agreed to start X amount of fencing for us since Justin and I decided we would like to have the maximum amount of the yard fenced for enjoyment with the dogs, future child(ren) and for entertaining. Once we moved in, we realized that having the privacy fence will also help with lights shining into our home as drivers pass the house during the night. Said fencing will allow for more privacy both in the home and in the backyard, I have noted that when driving northeast on Almena, driver can see directly into our home through our large bay windows. Allowing for a six (6) foot privacy fence to be installed as much around the property as possible would assist us with all the problems listed above."
- "We are aware of past incidents that have taken place at the Almena Drive and W KL Avenue intersection and want to ensure the safety of drivers travel along this road, while also having the privacy from it that we thought we could achieve when we purchased the property."


## 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.

Staff has analyzed the request against these principles and offer the following information to the Zoning Board of Appeals.

## Standards of Approval of a Nonuse Variance (practical difficulty): <br> Standard: Unique Physical Circumstances <br> Are there unique physical limitations or conditions which prevent compliance?

Comment: 10294 W KL Avenue has road frontage along Almena Drive to its north and W KL Avenue to its south. Unlike many other corner parcels, lots, and building sites within the Township, the site is unique in that it only has a total of three property lines. Almena Drive and W KL Avenue are two 55 mph roadways with high traffic volumes. It should be noted that although W KL Avenue is a 55 mph road, the traveled way currently ends once it reaches Almena Drive as the intersection was reconfigured in recent years by the Kalamazoo County Road Commission. Since there is a stop sign on W KL Avenue at the T intersection, vehicles will be slowing down if heading westbound and will be beginning to accelerate traveling eastbound, therefore not reaching the 55 mph speed limit. The terrain is relatively flat throughout the site. There are no physical limitations such as a ditch or slope on the outskirts of the site.

It should be noted that the site's overall size and configuration does limit what can be done on this property. Both Almena Drive and W KL Avenue have larger front yard setbacks compared to the setbacks required along a standard residential street. For reference, the setback standard for residential roads is typically $30^{\prime}$ from the edge of the right-of-way. Almena Drive's setback is 120 ' from the center of the public right-of-way. W KL Avenue's setback is 70 ' from the edge of the public right-of-way. These larger front yard setbacks combined from both W KL Avenue and Almena Drive completely consumes the compacted property. See visual at the top of the next page. Due to these setback restrictions, a $6^{\prime}$ tall privacy fence cannot be erected anywhere on the subject property. However, a 4' tall fence can be constructed to comply with the Oshtemo Township Zoning Ordinance.


## Standard: Conformance Unnecessarily Burdensome

Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?
Comment: A fence, though 2' shorter than what the applicant has proposed, could still be installed to provide the desired security for the property owner's pets and family, as referenced in their letter of intent. A fence that is $4^{\prime}$ in height would comply with the Zoning Ordinance and would still allow for some privacy. A fence for residential property is not required to be installed by the Zoning Ordinance. A single-family home is a permissible use within the RR: Residence District as reasonable use of the property would be maintained if the subject variance request was denied by the Zoning Board of Appeals. 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).

Comment: In researching past Zoning Board of Appeals decisions regarding the request for relief from fence height requirements, Planning Department staff was unable to identify any similar case. This is most likely the first variance request of its kind for said relief as there are not many parcels within the Township that possess of only three property lines, two of which being front yard property lines properties in which also have a large front yard setback, and reside along a designated roadway having a $70^{\prime}$ or even a 120 ' setback.

Standard:

## Self-Created Hardship

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

Comment: The initial reason a variance is being requested is due to a previous owner of the subject property unlawfully installing a $6^{\prime}$ tall fence within a front yard setback. With that being said, the current property owner wishes to keep and extend the unlawful nonconforming fence within the front yard setback on both street frontages. A fence is not a required nor necessary amenity. This is a self-created hardship.

## Standard: Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?
Comment: The Kalamazoo County Road Commission has adopted standards in regards to clear vision for motorists when approaching intersections. This standard is called the Clear Vision Triangle. The Clear Vision Triangle is implemented to provide safe passage and adequate clear vision for motorists by either eliminating or minimizing any obstructions protruding into the public right-of-way. Such standards were developed under AASHTO requirements, or more commonly known as the American Association of State Highways and Transportation Officials.

Township staff met with personnel from the Kalamazoo County Road Commission on-site earlier in the month to ensure that clear vision would be maintained if the variance request is approved as proposed. For 55 mph roadways, the Kalamazoo County Road Commission requires a clear vision path of at least 610' without any obstructions. A measurement was taken beginning at the south side of the edge of the traveled way adjacent to the T intersection located at W KL Avenue and Almena Drive spanning 610' to

the end point location, shown in the image below, traveling northeast bound on Almena Drive. Township staff and personnel from the Kalamazoo County Road Commission were able to confirm that the proposed $6^{\prime}$ tall fence would not obstruct the clear vision triangle for motorists. Through this verification process, it does not appear that a $6^{\prime}$ tall fence as proposed would endanger any members of the public. If the Zoning Board of Appeals approved this request, the health, safety, and welfare for public members would remain intact. It should be noted that approval of this variance request will set a precedent for similar cases in the future. Visuals of the field visit can be found as an attachment to this staff report.

Lastly, the importance of setbacks for any type of structure should be mentioned. Setbacks provide a form of privacy and security between adjacent uses and property owners, help reinforce desired and consistent community aesthetics, and also are established for safety purposes. Once reason why the ordinance requires that a fence can only be a maximum height of $4^{\prime}$ in a front yard is so that emergency services can see the address numbers on the residential structure. Moreover, another reason as to why a fence can only be $30^{\prime \prime}$ in height when within $20^{\prime}$ from the adjacent public right-of-way of an intersection is so that clear visions for motorists can be accommodated for. Although fences may be placed on the property line, setbacks still factor in as a key role as it pertains to the permitted height.

## 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
- The site only has three property lines, two of which being front yard property lines by code. The properties configuration and setbacks from both adjacent public rights-of-way do not permit a $6^{\prime}$ tall fence to be placed anywhere on the property which can be considered a unique physical limitation.
- There would be no negative impact to the safety of the public as a $6^{\prime}$ tall fence in the proposed location will not be obstructing the clear vision of motorists.
- Support of variance denial
- There are no unique physical limitations that prevent compliance with the Zoning Ordinance.
- Conformance is not unnecessarily burdensome, as a 4' tall fence may be installed within both front yard setbacks in order to comply with the Zoning Ordinance.
- The variance for a 6 ' tall fence is a self-created hardship.
- Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A fence is not a required nor a necessary amenity.
- The 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 proposal not negatively impacting the health, safety, and welfare of the public as well as the parcel's unique configuration.
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 no substantial justice was found.
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 specific sections of the requested fencing.

Attachments: Application, Letters of Intent, Site Plan, and Site Photos.

This page has been intentionally left blank for printing purposes.

PROJECT NAME \& ADDRESS

## PLEASE PRINT

6 Foot Privacy Fence: 10294 W KL Ave

PLANNING \& ZONING APPLICATION

| Applicant Name : Jamie \& Justin Schneck |
| :---: |
| Company |
| Address 10294 W KL Ave |
| Kalamazoo, MI 49009 |
| E-mail jamie@sharplawgroup.com |
| Telephone 269-330-9992 Fax |
| Interest in Property |

OWNER*:

| Name | Jamie \& Justin Schneck |
| :---: | :---: |
| Address | 10294 W KL Ave |
|  | Kalamazoo, MI 49009 |
| Email | jamie@sharplawgroup.com |
|  | 269-330-9992 |



Fee Amount
Escrow Amount $\qquad$

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

Planning Escrow-1042
Site Plan Review-1088
Administrative Site Plan Review-1086
Special Exception Use-1085
$\searrow$ Zoning Variance-1092
Site Condominium-1084
__Accessory Building Review-1083

Land Division-1090
_Subdivision Plat Review-1089
_Rezoning-1091
Interpretation-1082
_Text Amendment-1081
_Sign Deviation-1080
_Other: $\qquad$

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary):
To continue building a 6ft privacy fence along Almena for the enjoyment of our property

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

Property sits on the triangular corner of W KL Avenue and Almena Drive

PARCEL NUMBER: 3905- $\qquad$
ADDRESS OF PROPERTY: 10294 W KL Ave
PRESENT USE OF THE PROPERTY: Single Family Home
PRESENT ZONING SIZE OF PROPERTY 1.125 acres

NAME(S) \& ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:


#### Abstract

Name(s) Address(es)

\section*{SIGNATURES} $I$ (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning \& Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.




6312 West Main St. Kalamazoo, MI 49009

P: (269) 978-6560
F: (269) 903-2420
www.sharplawgroup.com

Oshtemo Zoning Board

RE: Justin and Jamie Schneck: 10294 W KL Ave., Kalamazoo, MI 49009

To Whom It May Concern:

My husband Justin and I purchased the property located at 10294 W KL in Oshtemo Township on Monday, November 2, 2020, after several grueling months of searching and fighting for a new home. Part of our purchase agreement with the Ambroso's, the lovely family that bought and renovated the property in 2019/2020, was for them to start a privacy fence for us to complete after we moved in.

The main agreement for the fence came about for fear of being on a busy corner with our two (2) dogs who love for us to play fetch with them. The Ambroso's graciously agreed to start $X$ amount of fencing for us since Justin and I decided we would like to have the maximum amount of the yard fenced for enjoyment with the dogs, future child(ren) and for entertaining. Once we moved in, we realized that having the privacy fence will also help with lights shining into our home as drivers pass the house during the night. Said fencing will allow for more privacy both in the home and in the backyard, I have noted that when driving northeast on Almena, driver can see directly into our home through our large bay windows. Allowing for a six (6) foot privacy fence to be installed as much around the property as possible would assist us with all the problems listed above.

Justin and I (we) are requesting to continue the installation of our six (6) foot privacy fence towards the intersection of Almena Drive and W KL Avenue, keeping the six (6) foot fence 30 feet away from the intersection, which is well more than the 20 foot away from intersection ordinance for six (6) foot fencing. We are aware of past incidents that have taken place at the Almena Drive and W KL Avenue intersection and want to ensure the safety of drivers travel along this road, while also having the privacy from it that we thought we could achieve when we purchased the property. I would like to note that neither my husband, Justin, nor myself, were made aware of any issues that pertained to the fence before, during, or after the sale of the home by the builders or their realtors or the township, until Officer Rick Suwarsky emailed me after seeing we were continuing the fence along the back of our property, on Almena.


Jamie \& Justin Schneck

# VARIENCE RESUBMITTAL 

Justin \& Jamie Schneck 10294 W KL Avenue<br>Kalamazoo, MI 49009

My husband and I were made aware of some comments that the Oshtemo Tech Review Committee had regarding our variance request for our fence. We wanted to address those comments for the board and hope to clear up any more questions or concerns there might be.

The first comment was in regards to our fence and the intersection: Section 57.60 (B.2.) of the Zoning Ordinance outlines that fences on corner properties cannot be more than 30 inches in height if placed within 20 feet of the intersection of the abutting public rights-of-way. Since this code section was solely implemented for the safety of the public, the site plan will need to be amended as the plan illustrates a 6 foot tall fence within 20 feet from the edge of abutting public rights-of-way (example showing vision triangle location attached). Please note that the Zoning Board of Appeals cannot grant a variance in which supersedes the public's safety. Please modify accordingly.
I am unsure if it was looked over or if there was confusion from our rough outline drawing, we did address this issue in our Letter of Intent that was originally submitted, but I will try my best to clarify. In an informational photograph sent to us from Colton Hutson describing fence locations and heights, I have included a new rough outline drawing for fence placement using the photograph sent to us from Mr. Hutson. As we had stated in our Letter of Intent, we are aware of prior events that have caused this intersection to be changed and are wanting to add this fence safely to the area for privacy and the protection of ourselves, our animals, and our future children, I feel that bringing the fence 30 feet in from the right-of-way of the intersection would allow for enough vision clearance in all seasons.

The second comment was in regards to using an image showing how the KL intersection has been reconfigured verses using the older image, as mentioned above, I have included such provided to me from Mr. Hutson.

The third comment was asking for material type and encouraging photos of the current fence. Both the current fence and the extension we are adding are classic Dog-Eared Wood Pickets with wood support cross beam and wood posts, the wooden posts are being cemented into their holes and support beams/pickets secured with appropriate nails. I have also included a few pictures of the current fence for reference of material.

Please let us know if there are any further questions or concerns.











