

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
DRAFT MINUTES OF A REGULAR MEETING HELD DECEMBER 12, 2023 AT
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

PUBLIC HEARING - VARIANCE: HCD PROPERTIES LLC

Sign Impressions, on behalf of HCD Properties LLC, was requesting two sign variances pertaining to new on-site signage for an industrial property located at 3680 Stadium Park Way. Both variances were requesting relief from Section 55.90 of the zoning ordinance which governs the use, area, type height, and number of signs allowed for industrial land uses.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, December 12, 2023, beginning at approximately 3:00 p.m.

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

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

Call to Order

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

Approval of Agenda

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

Ms. Farmer made a motion to approve the agenda as presented. Mr. Jachym seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item.

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of November 14, 2023

Chairperson Smith asked if there were changes to the minutes of November 14, 2023.

It was noted the vote on page seven needed correction to reflect that Mr. Smith voted “no” on the motion rather than “yes” and that Mr. Williams voted “yes” rather than “no.”

The Chair asked for a motion.

Ms. Farmer made a motion to approve the Minutes of November 14, 2023 as presented with the noted correction. Mr. Smith seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item, opened the meeting for public hearing, and asked Ms. Lubbert for her presentation.

PUBLIC HEARING - VARIANCE: HCD PROPERTIES LLC

Sign Impressions, on behalf of HCD Properties LLC, was requesting two sign variances pertaining to new on-site signage for an industrial property located at 3680 Stadium Park Way. Both variances requested relief from Section 55.90 of the zoning ordinance which governs the use, area, type height, and number of signs allowed for industrial land uses.

Ms. Lubbert presented an overview, explaining Sign Impressions, on behalf of HCD Properties LLC, was requesting two sign variances pertaining to new on-site signage for an industrial property located at 3680 Stadium Park Way (parcel no. 05-35-155-050), in the I-1 Industrial District. Both variances requested relief from Section 55.90 of the zoning ordinance which governs the use, area, type, height, and number of signs allowed for industrial land uses. For **Request A**, the applicant asked for a variance to establish a wall sign that is 105.33 square feet in sign area where only 50 square feet is permitted. In **Request B**, the applicant requested a variance for the proposed wall sign to be mounted at 30’ in height, exceeding the maximum permitted mounting height of 20’.

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

SECTION 55.90: Industrial Land Uses

Ms. Lubbert reported the applicant provided the following rationale for the two variance requests from Section 55.90. She noted further rationale supporting such could be found in the letter of intent submitted by the applicant.

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

- **“Criteria 3 Unique Physical Circumstances**

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

The building is very large, 34’ tall x 165’ long. Proper visibility requires a larger sign.

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

Ms. Lubbert reviewed and provided staff analysis of the Standards of Review:

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

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

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

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

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

Request B) FlavorSum received formal approval from the Zoning Board of Appeals on August 23, 2022, to construct a 30,000+ square foot building at the subject property. The building addition is 34’ tall. The zoning ordinance only

allows for wall signs to be placed at a maximum mounting height of 20' above grade. Due to the building's height, the applicant requested a variance to mount the wall sign at 30' above grade. It is typical for a wall sign to be mounted near the top of any building. In this case, the zoning ordinance would restrict any type of wall sign exceeding a mounting height of 20'.

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

Comment: **Request A)** As the building addition is 165' long and 34' tall, it can be expected that a larger sign area is desired to match the building's scale. The building is also set back 220' from the center of the Stadium Drive street right-of-way, or rather 165' from the front yard property line, which also plays a factor into the need for a greater sign area due to the distance from Stadium Drive. However, the applicant can still propose adequate signage that meets the sign area requirements outlined in the zoning ordinance. The wall sign could also be relocated onto the original portion of the principal building which is not as tall or long as the new building addition, though equally as far from Stadium Drive.

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

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

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

Request A) Ascension Borgess, 2520 Robert Jones Way, September 28, 2021: Ascension Borgess requested a variance to increase the sign area of their wall mounted signs. The applicant indicated the request was to help to provide reasonable identification. Some of the unique physical circumstances included that the property has frontage on two major roads, there is a substantial amount

of preserved open space adjacent to the building, and the building is set back a significant distance from the roads. Therefore, wall signs larger than 50 square feet may be deemed appropriate for visibility. The ZBA granted the variance to increase the sign area for the wall sign on the south side of the building to 131.4 square feet in area and the wall sign on the west side of the building to 205.5 square feet in area, where the ordinance allows a sign area of 50 square feet.

Request B) Ascension Borgess, 2520 Robert Jones Way, September 28, 2021:

Ascension Borgess requested a variance to increase the height of their south and west facing wall mounted signs. The applicant mentioned the request was to help to provide adequate signage in an appropriate location given that the building height ranges anywhere from 30'-47' tall. The increase mounting height of the signage would provide visibility from US-131 and Drake Road and would help guide patients and their families to the site. The ZBA granted the variance to increase the mounting height for the wall sign on the south side of the building to be mounted at a height of 33' above grade and the wall sign on the west side of the building to be mounted at a height of 30' above grade, where the zoning ordinance allows a maximum mounting height of 20 feet.

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

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

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

Comment: **Requests A & B)** The increased sign area is not intrusive to motorists or any surrounding properties. The sign area requested could be argued to suit the 165' wide elevation the wall sign is proposed to be mounted on. Additionally, it is fairly common for businesses to have their wall signs near the top of their respected building. The zoning ordinance allows for a maximum wall mounting height of 20', whereas the proposed signs would be mounted at 30' in height above grade. This request is to mount the subject wall sign 10' higher than what is allowed by code. Placing signage higher on a taller building to match this practice will not negatively impact members of the public. This has been implemented elsewhere

at other businesses and has shown no negative effects. Neither variance request will negatively impact the health, safety, and welfare of others.

Ms. Lubbert provided possible actions the Zoning Board of Appeals might take and the findings of fact relevant to the requested variance based on staff analysis.

POSSIBLE ACTIONS

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

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

- Support of variance approval for **Request A**
 - There are Unique Physical Circumstances. The property is located on a 55 mph five-lane roadway. The higher speeds in this area in combination with the setback of the building warrants a larger sized wall sign to provide appropriate advertisement to commuters on such traveled way.
 - There is substantial justice. There is one previous case from two years ago in which an industrial-office development is granted a variance to allow for a significantly larger wall sign.
 - Public health, safety, and welfare will be secured.
- Support of variance denial for **Request A**
 - The variance request is a hardship that is self-created, as the applicant is not required to install a larger sign nor was required to set the building back an additional 100'.
 - Reasonable use of the property would still exist if the variance were denied.
 - Reasonable options for compliance are available.
- Support of variance approval for **Request B**
 - FlavorSum received formal approval from the Zoning Board of Appeals on August 23, 2022 which allowed the applicant to construct the building this size and height, presenting a unique physical circumstance. The zoning ordinance was not originally written with taller buildings in mind.
 - There is one previous case in which a taller, industrial building was granted a variance to allow for a greater mounting height for wall signs.
 - If the variance was granted, it would not negatively impact the health, safety, and welfare of the public.
- Support of variance denial for **Request B**
 - Conformance is not unnecessarily burdensome as other options for compliance are available. The wall sign could be relocated and mounted at a height which would comply with ordinance requirements on the portion of the principal building that predated the 2022 building addition which possesses a south elevation facing Stadium Drive.

- Visibility of the wall sign will be maintained regardless of height. Reasonable use of the property exists if the variance is denied.
- The request for the variance is a self-created hardship.

She provided 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 there being unique physical circumstances with the property in question, minimum necessary for substantial justice, and approval will not negatively impact the health, safety, and welfare of the public.

2. Variance Denial for Request A

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

3. Variance Approval for Request B

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

4. Variance Denial for Request B

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

Chairperson Smith asked if there were questions from board members.

Ms. Farmer asked what the difference was between this situation and the Robert Jones Parkway medical building that serves hundreds of patients each day. She did not understand the physical disadvantage for wayfinding. It could be argued that the restriction of 50 feet could be a visual disadvantage.

Ms. Lubbert indicated the FlavorSum property has frontage on two different roads and is set back the double required distance from the road. She noted they do have a monument sign.

Ms. Farmer commented the applicant chose the distance from the road, a self-created hardship and compared the amount of daily traffic of Robert Jones Way to that of FlavorSum in light of the substantial justice consideration.

Ms. Lubbert noted the uses are clinical vs. industrial, she suggested not focusing on that too much; it is more about the physical environment. Substantial justice should be considered regarding how past precedent was considered. She added that the medical building also received a variance for a second wall sign, where only one was permitted. This industrial request is only for the size and placement.

Attorney Porter added substantial justice should provide equal protection; the applicant should be treated the same as a former applicant.

Mr. Gould noted the board has revisited taller buildings requirements related to signage and he thought the ordinance was being rewritten to address that issue.

Ms. Lubbert said updating the signage height requirements is on the to-do list.

Attorney Porter said a number of commercial properties have the same issues.

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

Mr. Paul Havenaar, representing Sign Impressions, indicated 50 square feet for a sign that is 220 feet from the road is too small as well as being too small for the size of the building regardless of setback. He listed other local jurisdictions and their requirements, all larger than what Oshtemo allows. He also noted it is a safety issue. Truckers often miss the turn off to get to the back warehouses and have to turn around. The existing electrical box nearby makes the existing sign difficult to see.

He compared the requested sign to other larger business signs around the neighborhood and noted some also have signs mounted higher up on the building and that they are not obtrusive. Sign height is allowed regardless of placement on the building. Signs halfway up on buildings do not look good. The trees on the FlavorSum site, planted to Township requirements, will restrict visibility of a sign as they grow if, placed where currently required.

Ms. Farmer said any motion should include clear reasons as supplied by the Planning Director and asked Mr. Havenaar what method he used to compare industrial buildings' requirements to those of commercial buildings.

Mr. Havenaar said they tried to compare the ratio for larger buildings in the Township, most of which are commercial.

A representative of FlavorSum explained this location will have more traffic as they will be adding more employees, including more truck drivers and more warehouse employees. There will be more truck traffic including semis to deliver raw materials and take shipments out.

Ms. Lubbert clarified the pictures of commercial buildings provided for comparison are covered by the ordinance under different zoning and types of uses. Industrial classifications have more restrictions. She noted a large number of commercial buildings have asked for larger signs and most requests have been approved.

Attorney Porter said information regarding granted requests for commercial buildings were relevant to the discussion and confirmed the Board can take those decisions into account.

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

Mr. Smith said he supported both requests: size and location for the purpose stated; the request is similar to other accommodations approved and he did not see the difference between this request and the one from Borgess.

Mr. Gould agreed, saying buildings will continue to get taller and adjustments in ordinance will need to be made to accommodate them.

Mr. Williams concurred with their comments.

Attorney Porter confirmed there is no height restriction for buildings in the Township other than for residential districts.

Hearing no further comments, Chairperson Smith noted there seemed to be board consensus and asked for two motions.

Ms. Farmer **made a motion** to approve Request A, a variance to establish a wall sign that is 105.33 square feet in sign area where only 50 square feet is permitted, based on meeting the criteria of unique physical circumstances, substantial justice and public health, safety and welfare. Mr. Williams **seconded the motion**. The **motion was approved** unanimously.

Ms. Farmer **made a motion** to approve Request B, a variance to allow the proposed wall sign to be mounted at 30 feet in height, exceeding the maximum permitted mounting height of 20 feet, based on meeting the criteria of unique physical circumstances, substantial justice and public health, safety and welfare. Mr. Gould **seconded the motion**. The **motion was approved** unanimously.

Chairperson Smith moved to the next agenda item.

Other Updates and Business

Ms. Lubbert noted this would be her last meeting prior to her resignation from her position at the Township on December 21, and announced this would also be Chairperson Smith's last meeting as she was resigning from the ZBA. Chairman Smith was presented with a certificate of appreciation. Members thanked them both for their service and told them they would be missed.

Ms. Lubbert noted the ZBA would need to elect new officers at the first meeting in 2024.

Mr. Williams asked whether the ZBA could request that audience members remove headgear during the Pledge of Allegiance out of respect.

Attorney Porter said it is up to the Township Board to set meeting standards, but will look into what might be required or requested for the future.

Mr. Jachym noted he is an alternate member of the ZBA and asked what that meant as to his duties/restrictions.

Attorney Porter said they are the same as any other member.

Mr. Williams indicated he would be interested in chairing the ZBA in 2024.

Adjournment

Chairperson Smith noted the Zoning Board of Appeals had exhausted its agenda. There being no other business, she adjourned the meeting at approximately 4:06 p.m.

Minutes prepared:
December 13, 2023

Minutes approved:
_____, 2023

DRAFT