

**Zoning Board of Appeals
Regular Meeting
Madison Heights, Michigan
May 5, 2022**

A Regular Meeting of the Madison Heights Zoning Board of Appeals was called to order by Chairman Kimble on May 5, 2022, at 7:33 p.m. in the Municipal Building at 300 West Thirteen Mile Road, Madison Heights, Michigan.

Present: Chair Kimble, Vice-Chair Thompson and members: L. Corbett, Holder, Kehoe, Marentette, Oglesby, Barragan and Rodgers

Absent: Aaron and Ott

Also Present: Assistant City Attorney Burns, City Planner Lonnerstater, and Clerk of the Board Boucher.

All votes taken at today's meeting are roll call votes.

22-10. Excuse Member(s).

Motion by Mr. Oglesby, seconded by Ms. Holder, to excuse Ms. Debra Ott from tonight's meeting.

Yeas: L. Corbett, Holder, Kehoe, Marentette, Olgesby, Thompson, Barragan, Rodgers and Kimble

Nays: None

Absent: Aaron and Ott

Motion Carried.

22-11. Excuse Member(s).

Motion by Mr. Oglesby, seconded by Ms. Holder, to excuse Councilwoman Toya Aaron from tonight's meeting.

Yeas: L. Corbett, Holder, Kehoe, Marentette, Olgesby, Thompson, Barragan, Rodgers and Kimble

Nays: None

Absent: Aaron and Ott

Motion Carried.

22-12. Minutes

Motion by Ms. Holder, seconded by Mr. Oglesby, to adopt the minutes of the Regular Meeting held on March 3, 2022, as printed.

Yeas: Holder, Kehoe, Marentette, Olgesby, Thompson, Barragan, Rodgers and Kimble

Abstain: L. Corbett

Nays: None

Absent: Aaron and Ott

Motion Carried.

22-13. Case # PZBA 22-04: 45 & 47 E. 10 Mile Road

REQUEST: The applicant, Walid Abbod, requests a variance from Section 10.350(c) of the Zoning Ordinance which states, *“not more than one registered primary caregiver shall be permitted to operate at any one parcel located within the Caregiver Marihuana Grow Overlay District.”* The subject property is located at 45 & 47 E. Ten Mile Road (tax parcel # 44-25-24-355-018) and is zoned M-1, Light Industrial.

City Planner Lonnerstater overviewed the staff report and explained that petitioner Walid Abbod, at property address 45 & 47 E. 10 Mile Road, requests a use variance from Section 10.350(c), *Caregiver Marihuana Grow Overlay District requirements*, of the Zoning Ordinance. One (1) existing marihuana caregiver currently operates on the property and the petitioner’s request does not constitute an appeal of an administrative decision.

Attorney Jan Rubinstein from the Rubinstein Law Firm at 30665 Northwestern Hwy, Ste. 165, Farmington Hills, MI 48334, was present on behalf of applicants Stuart Weinstock and Walid Abbod at 45 & 47 E. 10 Mile Road. Per Attorney Rubinstein, Mr. Weinstock purchased the property with the sole intent to create a cannabis business. Mr. Abbod is a caregiver, a renter and has invested in the build out of the property. Per Mr. Rubinstien, this is a unique situation because Mr. Weinstock purchased the property prior to the ordinance change and there are no other properties in a similar location with one parcel West of the Green Zone. Mr. Rubinstein stated that Mr. Abbod has had a business and paid building expenses for the past 3 years; there are no other requests in the same circumstances. Per Mr. Rubinstein, the use would not alter the essential character of the area on 10 Mile Road since there are multiple businesses operating in the same capacity and some are grandfathered in from the new ordinance. Mr. Abbod cannot operate in 4,200 square feet with 72 plants or even with 42 plants if a State Law passes.

Chair Kimble opened the public hearing at 7:50 p.m. to hear comments on application #22-04.

There being no comments on application #22-04, Chair Kimble closed the public hearing at 7:51 p.m.

Assistant City Attorney Tim Burns reported that the City Attorney recommends a strong denial of the variance. The specific concern is that there would be a significant impairment on intent and purpose of all zoning ordinances related to the marijuana industry. There is no dispute that the property is outside of the Marihuana Green Zone and the variance will put the City in a bad position for enforcing the Green Zone if it is granted. The City has established a position of trying to reduce the density of these types of situations by restricting one marihuana caregiver per parcel via the passage of an ordinance addressing the subject matter. The applicant’s approved site plan does reference 2 caregivers being situated within one building on one parcel; but only one marihuana caregiver was in place prior to the ordinance passage that placed the restriction of one caregiver per parcel and restricted placement of these operations to within the City’s designated Marihuana Green Zone. Applicant has only ever had one caregiver in place on the property since the site plan was approved and did not attempt to place a second caregiver on the property until the time limit for preserving a non-conforming property use exemption had expired per State

law and City ordinance. Because applicant never placed the second caregiver on the property it can be argued that applicant never had a pre-existing property right for the second caregiver, but even if he did that non-conforming use has been vacated by lack of use to preserve it. There were no legally binding agreements between the applicant and the City. The applicant does have a legal non-conforming right to have one marihuana caregiver grow operation on the parcel and the City has the right to try to get all properties in the City within conformity of current ordinance as long as preexisting property rights aren't violated. The applicant wasn't using the property legally before or within 6 months after the ordinance change thus waived his rights to that second caregiver on the parcel. The applicant isn't legally permitted to have two marihuana caregivers on one parcel now. The marijuana license grant went through a fair selection process almost 2 years ago and wasn't contested. A new round of a third license is awaiting approval by City Council. Assistant City Attorney Burns mentioned that any new business that legally moved into the city with a caregiver designation will not be able to have more than one caregiver license per parcel and this would be granting an exception no other business can take advantage of.

Attorney Jan Rubinstein stressed that this is a unique situation because the one parcel is located just west of the Green Zone. His client has invested money in building out the property to include security, sprinklers, water devices and lighting. It is not likely there will be a slew of new applicants because there are no additional legal nonconforming uses in this area and none with the proximity of the overlay district.

Applicant Walid Abbod added that when the property was bought in 2019, he was advised to apply for one caregiver license first and due to Covid the City Offices were closed for months at a time. After the approval of the first caregiver license, he returned to apply for a second caregiver license but was advised of an ordinance change in January 2020. Mr. Abbod had plans to expand his business from caregiver to a grow operation and obtain a license through the State of Michigan. He responded to Ms. Marentette's inquiry that he originally inquired about applying for multiple caregiver licenses and was advised to complete one at a time. Mr. Abbod applied for a site plan review for only 47 E. 10 Mile Road and for a single caregiver license.

City Planner Lonnerstater recommends modifying the motion to state "this is not a recommendation; it is the final action."

Mr. Oglesby commented that financials are not considered in the motions, however, setting a precedent and the effect of properties in the area are.

The City Planner's Staff Report is incorporated into the minutes:

REQUEST

The petitioner, *Walid Abbod*, requests a use variance from Section 10.350(c), *Caregiver Marihuana Grow Overlay District requirements*, of the Zoning Ordinance. The petitioner requests a variance to allow for the operation of (1) additional registered primary marihuana caregiver at 45/47 E. 10 Mile Road (tax map # 44-25-24-355-018), zoned M-1, Light Industrial. One (1) existing marihuana caregiver currently operates on the property. If

granted, the use variance would permit two (2) caregiver operations on site. **NOTE:** The petitioner's request does not constitute an appeal of an administrative decision.

BACKGROUND INFORMATION

Per the Caregiver Marihuana Grow Overlay District, Section 10.350 of the Zoning Ordinance, a registered primary caregiver shall not cultivate medical marihuana at a parcel located outside of the Caregiver Marihuana Grow Overlay District. Further, not more than one registered primary caregiver shall be permitted to operate at any one parcel located within the Caregiver Marihuana Grow Overlay District.

The Caregiver Marihuana Grow Overlay District ordinance went into effect on July 13th, 2020. Prior to the effective date of the ordinance, the petitioner applied for and received site plan approval for a marihuana caregiver location and subsequently received an approved Certificate of Occupancy for one (1) caregiver on the property.

Based on the Caregiver ordinance and the associated overlay district map (overlay district boundaries depicted in green on the map below), the subject property is not located within the boundaries of the Caregiver Marihuana Grow Overlay District. Therefore, the existing single caregiver is a legal non-conforming use on the property.



The petitioner's variance request to allow for one (1) additional caregiver operation on the subject property is considered a use variance as new caregivers are not permitted on the property given its location outside of the boundaries of the Caregiver Marihuana Grow Overlay District.

VARIANCE FINDINGS

The petitioner's variance request is to allow for a use not permitted within the underlying zoning district of the property (medical marihuana caregiver). Note that the petitioner has not appealed any administrative decision made by staff.

Based on the *Rules of Procedure for Use Variance Applications* adopted at the ZBA meeting of July 2nd, 1998, the Zoning Board of Appeals may grant use variances upon the petitioner's demonstration that all four of the following criteria are satisfied:

1) Applicant's property cannot be used for the purposes permitted in the zoning district.

Staff Finding: While the property is not located within the boundaries of the Primary Caregiver Marihuana Grow Overlay District, staff finds that the property's underlying zoning of M-1, Light Industrial, permits a range of by-right uses such as, but not limited to, professional offices, medical offices, incubator workspaces, warehousing establishments, and light manufacturing establishments. Staff finds that the petitioner and property owner could reasonably utilize the subject property for one or more of the by-right or special approval uses permitted in the M-1 zoning district.

2) Applicant's plight is due to unique circumstances peculiar to his property and not to general neighborhood conditions.

Staff Finding: The property is not located within the boundaries of the Primary Caregiver Marihuana Grow Overlay District. Therefore, primary caregivers are not a permitted use on the property. The existing single caregiver on site was approved prior to the adoption of the caregiver overlay district ordinance and is therefore a legal non-conforming use. Property owners with parcels located within the boundaries of the caregiver overlay district are permitted a maximum of one (1) caregiver operation per parcel. Staff finds that the petitioner's request for an additional caregiver goes above and beyond the rights granted to adjacent properties within the overlay district and is not due to unique circumstances peculiar to the property.

3) Applicant's suggested use would not alter the essential character of the area.

Staff Finding: The petitioner's request for an additional caregiver would afford the property owner a privilege (two caregivers on one parcel) not granted to properties located legally within the Caregiver Marihuana Grow Overlay District. Staff finds that the increased intensity of grow operations on site, as proposed, could have the effect of altering the character of this stretch of Ten Mile Road.

4) Applicant's problem has not been self-created

Staff Finding: The petitioner's use variance request is the result of a desire to operate two caregivers on the property as opposed to a use permitted in the M-1 district. Therefore, staff finds that the variance request is the result of a self-created problem. In addition to the findings listed above, staff finds that the strict application of the Zoning Ordinance would not place an undue hardship upon the owner of the subject property and that a variance, if granted, would have the effect of impairing the intent and purpose of the Zoning Ordinance.

Additional procedures for reviewing use variance cases are contained in Sections 10.804 and 10.805 of the Zoning Ordinance and the *Rules of Procedure for Use Variance Applications*, all listed at the end of this report.

The SPRC considered the use variance request at their April 20th, 2022. The SPRC recommends denial of the variance as the petitioner's request does not satisfy the rules of procedures of use variance applications, nor the variance criteria of Section 10.804(2) and Section 10.805 of the Zoning Ordinance.

Motion by Ms. Holder, seconded by Vice-Chair Thompson, to **deny** the applicant's request for a use variance to allow two (2) marihuana caregivers to operate on one parcel contrary to current ordinance requirements based upon the Applicant's failure to satisfactorily demonstrate all four of the criteria for the Rules of Procedure for Use Variance Applications, which are: 1) Applicant's property cannot be used for the purposes permitted in the zoning district; 2) Applicant's plight is due to unique circumstances peculiar to his property and not to general neighborhood conditions; 3) Applicant's suggested use would not alter the essential character of the area; and 4) Applicant's problem has not been self-created. Additionally, the ZBA finds that the applicant has not complied with Section 10.804(2) of the City's Zoning Ordinance to prove that there is an exceptional topographic condition or other extraordinary or exceptional condition that provided an undue hardship on the property owner, nor Section 10.805 of the Zoning Ordinance which requires the variance not to be a detriment to the public good or impair the intent and purpose of the City's ordinances.

Yeas: L. Corbett, Holder, Kehoe, Marentette, Olgesby, Thompson, Barragan, Rodgers and Kimble

Nays: None

Absent: Aaron and Ott

Motion Carried.

22-14. Case # PZBA 22-05: 1900 E. 14 Mile Road

REQUEST: The applicant, Joe Ricci, requests a variance from city sign regulations, section 10.511(IV)(C)(4)(c) of the Zoning Ordinance, which limits business signs displayed through glass to a maximum of 25% of the total glass area. The subject property is located at 1900 E. Fourteen Mile Road (tax parcel # 44-25-01-226-038) and is zoned M-1, Light Industrial.

City Planner Lonnerstater overviewed the staff report and explained that petitioner Joe Ricci, at property address 1900 E. 14 Mile Road requests a dimensional variance to cover 100% of the existing window area on the north façade of the building and is zoned M-1, Light Industrial.

Applicant Joe Ricci, owner of Joe Ricci Automotive at 1900 E. 14 Mile Road, presented his application: Mr. Ricci owns six dealerships in six different communities, but this is a unique situation in a Light Industrial district and we are discussing retail. He would like to spruce up the industrial building and captivate the attention of potential customers with an artwork of vehicles in different settings. Mr. Ricci shared photos of business with storefronts that make it obvious of their products and services. He shared photos of business that had sign displays that exceed the 25% maximum coverage of the glass area. Mr. Ricci stated that his variance request is a hardship because of the building, it will not be detrimental to public welfare, the public health safety will not be impaired, it will not

decrease the property value, there is no nuisance, and they will not increase any public expenditure.

Chair Kimble opened the public hearing at 8:22 p.m. to hear comments on application #22-05.

There being no comments on application #22-05, Chair Kimble closed the public hearing at 8:23 p.m.

Ms. L. Corbett commented that the artwork has beautiful details, is esthetically pleasing, cuts down on the glare and reduces the applicant's heat and air condition expenses.

Assistant City Attorney Burns recommends an allowance for pasting of items on the exterior windows. He advised a modification to the motion; based upon a preexisting condition of the windows, the commercial property surrounded by an industrial corridor, it doesn't create a public nuisance to the surrounding neighborhood, and it is in compliance with Section 10.804(2) of the City's Zoning Code.

City Planner Lonnerstater clarified with Mr. Ricci that the vinyl will be applied on the exterior window glass. Mr. Ricci confirmed. Lonnerstater responded to Chair Kimble's inquiry that existing window coverings exceeding the ordinance would be a code enforcement issue.

Mr. Ricci explained the safety glass has an air film in it that may have condensation and reflectiveness will be reduced with the artwork on the outside of the window. He responded to Ms. Marentette that the windows are completely transparent.

Ms. Holder asked if the coverage could be less than 75% because the board has always been very cautious about the maximum coverage of the total glass area for sign variances and not setting a precedent.

The City Planner's Staff Report is incorporated into the minutes:

REQUEST

The applicant, *Joe Ricci*, requests a variance from the maximum sign area requirement for signs displayed through or on glass, Section 10.511(IV)(C)(4)(c). The subject property is located at 1900 E. 14 Mile Road and is zoned M-1, Light Industrial.

STAFF ANALYSIS

Per Section 10.511(IV)(C)(4)(c), total signage placed on the interior window glass of a building shall not cover more than 25% of the total glass area, excluding doors, for that side of the building. The applicant, Joe Ricci, owns an automobile dealership at the subject site and requests a variance to cover 100% of the existing window area on the north façade of the building. The proposed window signage consists of vinyl overlays featuring the images of vehicles for sale.

Based on the renderings provided within the application, the north building façade features seven (7) windows measuring approximately 17.5 square feet each, or a total window area

of approximately 122.5 square feet. Per the 25% requirement, the applicant may display a maximum window sign area of approximately 30.5 square feet by right. The applicant requests 100% window coverage for signage, equating to a variance request of approximately 92 square feet.

VARIANCE FINDINGS

Section 10.804(2) outlines criteria for reviewing variance requests, summarized below with staff comments:

Exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of the Zoning Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property.

Staff Finding: Staff does not find exceptional conditions pertaining to the subject property. The property contains an area of approximately 4 acres, which is generally consistent with industrially zoned properties along 14 Mile Road. The building is set back approximately 50 feet from the 14 Mile Road right-of-way, which is generally consistent with adjacent buildings along this stretch 14 Mile Road. Staff notes that the 25% maximum window coverage standard applies to all commercially zoned properties within Madison Heights, including the B-1, B-2, B-3, O-1, M-1 and M-2 districts.

The strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon, the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this ordinance.

Staff Finding: Staff finds that the strict application of the signage regulations would not result in practical difficulties for the owner of this property. The applicant is afforded opportunities for ground signs, wall signs, and window signs per the Zoning Ordinance consistent with other businesses within commercially zoned properties in the City.

In addition to the findings listed above, staff finds that the requested variance is not the minimum variance necessary and is a direct result of the actions of the applicant.

Additional standards for reviewing variance cases are contained in Section 10.805, listed at the end of this report.

The SPRC considered the variance request at their April 20th, 2022, meeting. The SPRC recommends denial of the variance due to a lack of a practical difficulty and a finding that the variance request is due to an action made by the applicant.

Motion by Ms. L. Corbett, seconded by Ms. Kehoe, to **APPROVE** the applicant's request for a variance of 92 square feet to install 100% coverage of the building's frontage windows with an exterior placed window decorative coating based upon the preexisting placement of the windows within the building prior to the Applicant's ownership, the uniqueness of the

parcel's use and location as a commercial property within an industrial corridor of the City, that the variance would not negatively impact surrounding parcels, and the variance resolves a practical difficulty that had created a hardship for the landowner in compliance with Section 10.804(2) of the City's Zoning Code. Further, the variance request does not create a substantial detriment to the public good or substantially impair the purpose of the ordinance in compliance with Section 10.805.

Yeas: L. Corbett, Holder, Kehoe, Marentette, Olgesby, Thompson, Barragan, Rodgers and Kimble

Nays: None

Absent: Aaron and Ott

Motion Carried.

22-15. Adoption of ZBA Bylaws.

City Planner Lonnerstater clarified that the Zoning Ordinance requires all boards to adopt rules of procedure. As such, staff presented draft ZBA bylaws for consideration. Planner Lonnerstater reviewed the delinquencies policy. The departments make quarterly reports to the City Council who appoints or accepts resignations for members on the various boards.

Assistant City Attorney Burns explained the City is going through an accreditation process through the Redevelopment Ready Communities program and that one of the criteria's is to be in compliance with our third-party review of operating procedures.

Mr. Oglesby confirmed that the rules and procedures are being put in legal form.

Ms. Holder understands the importance having the rules and procedures in place because this board is self-governed and grants variances to applicants. However, additional time to review the draft bylaws is requested.

Motion by Ms. L. Corbett, seconded by Mr. Oglesby, to **postpone** the adoption of the ZBA Bylaws to the next meeting.

Yeas: L. Corbett, Holder, Kehoe, Marentette, Olgesby, Thompson, Barragan, Rodgers and Kimble

Nays: None

Absent: Aaron and Ott

Motion Carried.

22-16. Public Comment: For items not listed on the agenda

Seeing no one wished to comment, Chair Kimble opened and closed the public comment at 8:40 p.m.

22-17. Adjournment.

Motion by Ms. Holder, seconded by Vice-Chair Thompson, to adjourn the meeting.

Yeas: L. Corbett, Holder, Kehoe, Marentette, Olgesby, Thompson, Barragan, Rodgers and Kimble

Nays: None

Absent: Aaron and Ott

Motion Carried.

There being no further business, Chair Kimble, adjourned the meeting at 8:41 p.m.

Phommady A. Boucher
Clerk of the Board