

Zoning Board of Appeals
Regular Meeting
Madison Heights, Michigan
April 6, 2023

A Regular Meeting of the Madison Heights Zoning Board of Appeals was called to order by Chairman Kimble on April 6, 2023, at 7:30 p.m. at City Hall - Council Chambers, 300 W. 13 Mile Road, Madison Heights, Michigan.

Present: Chair Kimble, Vice-Chair Thompson, and members: Holder, Loranger, and Oglesby

Absent: Aaron, Corbett, Kehoe, and Marentette

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

23-12. Excuse Member(s)

Motion by Mr. Oglesby, seconded by Mr. Loranger, to excuse Councilwoman Aaron, Ms. Corbett, Ms. Kehoe, and Ms. Marentette from tonight's meeting.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette
Motion Carried.

23-13. Minutes

Motion by Ms. Holder, seconded by Mr. Loranger, to approve the Zoning Board of Appeals Meeting Minutes of January 5, 2023, with an amendment to add Mr. Oglesby as present.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette
Motion Carried.

23-14. Public Comment: For items not listed on the agenda

Chair Kimble opened public comment at 7:33 p.m. and requested that this agenda item be used to hear public comments for any of the three billboard applications.

Doreen Cavill at 544 E. Mahan Avenue, Hazel Park, spoke in opposition to the three billboards that will be located half a mile from her home. She expressed her concerns that the billboard lighting could disrupt migrating birds, animal, and human welfare, and affect the sleeping, mating, and hibernation patterns of the animals. There is already a billboard at the intersection of Couzens and Heights Drive and another one at Dequindre and Progress. Ms. Cavill ask, "If they don't have people to advertise on the Dequindre and Progress billboard, how are they going to get people to advertise on the two billboards they are putting up?" There are subdivisions on both sides of the service drive that will be constantly interrupted with all the billboards, lights and room darkening shades doesn't work. There will be two huge billboards within three tenths of a mile from a subdivision and we don't want 11 Mile to be like 8 Mile. Why do the billboards need to be on the southern end of Madison Heights?

Tim McGinnis at 53 E. 10 Mile Road, Madison Heights, spoke in favor of his application. Mr. McGinnis stated that he is the third-generation owner of the current property. He has a vacant area on his lot that is not in use and is located at the I-75 and I-696 traffic which is highly visible and suitable for billboard advertisements.

City Planner Lonnerstater presented three letters from the public: an opposition letter from Mr. Anthony Rea at 24001 Telegraph Road in Southfield, an opposition letter from Ms. Christine Plumb at 33 E. Brickley Avenue in Hazel Park, and a letter of support from Mr. Tim McGinnis at 53 E. 10 Mile Road in Madison Heights.

Seeing no one wished to comment, Chair Kimble closed the public comment at 7:40 p.m.

23-15. PZBA 23-02: 25780 Commerce Drive

Greg Miller, Real Estate Director of International Outdoor, Stated that International Outdoor has an office in Farmington Hills and they like to be involved in the surrounding communities. Mr. Miller summarized International Outdoor's requests, and stated that they are requesting variances pertaining to minimum setbacks, minimum billboard spacing requirements and requirements that billboards be considered the principal use of a lot. Mr. Miller stated that there is not a billboard in the city that meets the existing billboard ordinance and that, per the ordinance amendment in 2011, there is no location where you can place a billboard that meets all the criteria, so variances are needed. Mr. Miller mentioned that Commerce Drive is a unique parcel that is a triple frontage lot and creates additional setbacks unlike other M-1 and M-2 industrial districts and it has an existing trash enclosure. He stated that the site meets many of the requirements for billboards; it's located on an expressway, zoned properly, it will be over 100 feet from a structure, it meets the size requirement, it will be 60 foot in height, and it won't exceed the roof of the building. Mr. Miller stated that the packet includes an approval from MDOT and a lighting study; there will be three LED lights shining directly onto the billboard and upward into the sky.

City Planner Lonnerstater reviewed the staff report provided in the meeting packet, incorporated herein:

REQUEST

The petitioner, International Outdoor, Inc., requests three (3) variances from city sign regulations, Section 10.511(IV)(E), pertaining to billboards. The applicant requests a variance from Section 10.511(IV)(E)(1) pertaining to minimum setbacks; a variance from Section 10.511(IV)(E)(2) pertaining to minimum billboard spacing requirements; and a variance from Section 10.511(IV)(E)(7) pertaining to the requirement that billboards be considered the principal use of a lot. The subject property is located at 25780 Commerce Drive (tax parcel # 44-25-24-426-038) and is zoned M-1, Light Industrial.

VARIANCE FINDINGS

Section 10.804(2) outlines criteria for reviewing variance requests. The applicant has provided responses to the variance criteria within their application. Staff findings are provided below:

- *Whereby 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, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties.*

Staff Finding: Staff finds that the property is unique regarding its triple frontage, but fails to find how the triple frontage directly results in a practical difficulty or inhibits the ability to erect a billboard. The triple frontage, in and of itself, does not prohibitively restrict use of the property.

The subject property is unique in that it has three (3) frontages and constitutes its own block. However, the applicant has not indicated how this triple-frontage or the 20-foot side yard setback requirement impacts the ability to erect a billboard, nor how they result in a practical difficulty.

The property is currently utilized for an industrial/office use, and can continue to be utilized, expanded, or redeveloped for permitted M-1 industrial and office uses. The subject parcel is relatively large at approximately 2.9 acres.

While staff acknowledges that the City's billboard separation requirement may restrict the erection of new billboards within city limits unless existing billboards are removed, this is a restriction that applies equally to all properties within Madison Heights. New billboards may be erected upon the removal of existing billboards. Staff finds that the applicant's inability to legally meet the billboard spacing requirement is not due to an exceptional condition tied to the subject property, but rather due to the general condition that there are a limited number of available billboard locations left within the City.

The applicant requests a variance from the 'principal use' requirement based upon their claim that the land division process would be, "administratively burdensome." Staff finds that the applicant's variance request stems from a preference to avoid the city's general administrative land division and recording processes; within their application, the applicant states that they are amicable to creating a separate billboard parcel. The variance request from the 'principal use' standard does not relate to a unique condition of the property. Further, the applicant seeks relief from an administrative process that is applied equally to all properties. As such, staff does not find the existence of a valid practical difficulty.

- *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 granting of the requested variances could substantially impair the intent and effectiveness of the Zoning Ordinance.

Staff believes that granting variances to the billboard setback, spacing and principal use requirements could substantially impair the intent and effectiveness of the Zoning Ordinance. The City's billboard setback, spacing, and principal use requirement were put in place to regulate the siting of large billboards within Madison Heights. If the City of Madison Heights is interested in permitting additional billboards within city limits and/or reducing billboard spacing and principal use requirements, staff believes that the appropriate mechanism is to amend the Zoning Ordinance standards via the zoning text amendment process.

Additional standards for reviewing variance cases, as required per the ZBA application, are outlined below:

- *The literal interpretation of the provisions of this ordinance deprives the applicant of rights commonly enjoyed by others in the same zoning district.*

Staff Finding: Staff finds that the provisions of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by others in the same zoning district.

Each property owner within Madison Heights is subject to the same billboard setback, spacing and principal use requirements. The property owner has the ability to develop and redevelop the property per M-1, Light Industrial standards.

Staff acknowledges that prior Zoning Boards of Appeals have granted billboard separation and principal use variances in the past. However, these prior cases (as denoted within the applicant's application packet) can be differentiated from this case in that they all involved upgrading existing non-conforming billboards that were originally constructed prior to the adoption of the city's billboard ordinance. Alternatively, the ZBA case at hand involves the construction of a brand new billboard where none had previously-existed. Further, per Section 10.805, "each case before the Zoning Board of Appeals shall be considered as an individual case and shall conform to the detailed application of the following standards in a manner appropriate to the particular circumstances of such case." Staff recommends that the Zoning Board of Appeals base their decision on facts and findings only pertaining to this unique case.

- *The special conditions and/or circumstances are not a result of the applicant.*

Staff Finding: As previously discussed, while the parcel has unique conditions, the applicant has not adequately argued how such conditions directly restrict the ability to erect a billboard on the property.

- *The variance is the minimum variance necessary to provide relief to the applicant.*

Staff Finding: Staff finds that the variance request is not warranted due to the absence of a valid practical difficulty.

- *In the absence of a variance, the property could not be used in a manner permitted by the Ordinance.*

Staff Finding: Staff finds that, in the absence of a variance, the property could continue to be utilized for, and redeveloped with, permitted M-1 industrial uses.

Additional variance review criteria are contained in Section 10.805, listed at the end of this report.

SITE PLAN REVIEW COMMITTEE (SPRC) ACTION

City staff presented the variance application to the Site Plan Review Committee at their March 8th, 2023, meeting. The SPRC had no additional comments regarding the proposed billboard location.

Chair Kimble opened the public hearing at 7:56 p.m. to hear additional comments on application #23-02.

Doreen Cavill at 544 E. Mahan Avenue, Hazel Park, thanked Mr. Greg Miller for explaining in detail the installation of the billboards. She is currently looking at a big, beautiful sky and will be looking at the back of a billboard if this variance is approved.

Greg Miller, Real Estate Director of International Outdoor, corrected that the billboard will be facing the subdivision.

There being no further comments on application #23-02, Chair Kimble closed the public hearing at 7:59 p.m.

Mr. Oglesby commented that there have been a few billboard requests coming before the board recently and there has become a concern about too much signage in the City of Madison Heights. Mr. Oglesby stated that there is a need to eliminate signage pollution. We need to look out for our residents and maintain the beauty of the city.

Motion by Mr. Loranger, seconded Ms. Holder, considering the purpose of the City's sign ordinance is to protect the health, safety, general welfare, property values, aesthetics, and character of the various neighborhoods of Madison Heights, the applicant's variance requests for 25780 Commerce Drive are DENIED. Per Section 10.804 this Board finds denial does not create an exceptional undue hardship upon the applicant and granting the requested variances would substantially impair the intent and purpose of the community's ordinances. Specifically, Section 10.511(iv)(e)(7) prevents the proliferation of billboards within the City which granting the requested variances would countermand. Per Section 10.805, this Board finds in the interest of traffic safety and community aesthetics to uphold billboard restrictions created by local ordinance thereby denying the variance requests for this parcel. The Board concurs with staff findings presented by the City Planner in the March 30, 2023 memorandum related to these variance requests as additional factual basis for the denial. As the applicant is required to obtain all of the requested variances to install a billboard at 25780 Commerce Drive, all were considered concurrently with the same factual basis. The Board also finds that denial does not deprive the applicant of rights enjoyed by others within the same zoning district and that the City's billboard spacing restrictions, while more stringent, are not prohibited by the State's Highway Advertising Act.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette

Motion Carried.

23-16. PZBA 23-03: 615 E. Ten Mile Road

Chair Kimble opened the public hearing at 8:03 p.m. to hear comments on application #23-03.

Mr. Louis Lindholm, property owner at 615 E. Ten Mile Road, stated that she has owned his property for at least 30 years. Ms. Lindholm stated that the property is ideal for a billboard because it is located off the freeway, near the 696 Service Drive, it's surrounded by industrial buildings, and is close to 10 Mile Road with four lanes. The nearby properties are industrial and not zoned residential; it's not a wildlife rescue refuge.

Doreen Cavill at 544 E. Mahan Avenue, Hazel Park, shared her experience living in Royal Oak near a billboard that had constant advertisement and light changes. She expressed her concerns about the billboards affecting rodents and migrating birds of prey. The neighbors on East Mahan collectively work together to combat rodent problems.

Greg Miller, Real Estate Director of International Outdoor, confirmed that all the billboards are static and not digital with multiple advertisements.

There being no further comments on application #23-03, Chair Kimble closed the public hearing at 8:09 p.m.

Greg Miller, Real Estate Director of International Outdoor, summarized their variance requests. Mr. Miller stated that they are requesting variances pertaining to minimum setbacks, minimum billboard spacing requirements and requirements that billboards be considered the principal use of a lot. He reiterated that the current billboard ordinance goes as far as prohibits billboards. Regarding removal of nonconforming signs, Mr. Miller mentioned that there are references in the packet of billboards in past few years that have come before the board. He stated that they have been removed entirely and put back from the ground up; they do not conform with the ordinance for spacing, height, and size. Mr. Miller stated that billboards are allowed by MDOT and are permitted on US Highways, and said that the 615 E. Ten Mile Road does not require a setback, it's in an industrial area, the billboard will not shine light into the neighborhood, and the back of the billboard will face the Hazel Park direction.

City Planner Lonnerstater reviewed the staff report provided in the meeting packet, incorporated herein:

REQUEST

The petitioner, International Outdoor, Inc., requests three (3) variances from city sign regulations, Section 10.511(IV)(E), pertaining to billboards. The applicant requests a variance from Section 10.511(IV)(E)(1) pertaining to minimum setbacks; a variance from Section 10.511(IV)(E)(2) pertaining to minimum billboard spacing requirements; and a variance from Section 10.511(IV)(E)(7) pertaining to the requirement that billboards be considered the principal use of a lot. The subject property is located at 615 E. Ten Mile Road (tax parcel # 44- 25-24-360-026) and is zoned M-1, Light Industrial.

VARIANCE FINDINGS

Section 10.804(2) outlines criteria for reviewing variance requests. The applicant has provided responses to the variance criteria within their application. Staff findings are provided below:

- *Whereby 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, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties.*

Staff Finding: Staff does not find the subject property itself to contain exceptional conditions that would unreasonably restrict the use of the property. Staff finds that the conditions of the property would not result in a practical difficulty for the property owner.

The property is currently utilized for an industrial use, and can continue to be utilized, expanded, or redeveloped for permitted M-1 industrial uses. The subject parcel is approximately 0.24 acres in area, is of a regular rectangular shape, and has a width of approximately 110 feet. Staff finds these property characteristics to be fairly standard within the M-1 District, especially along E. 10 Mile Road.

While staff acknowledges that the City's billboard separation requirement may restrict the erection of new billboards within city limits unless existing billboards are removed, this is a restriction that applies equally to all properties within Madison Heights. Staff finds that the applicant's inability to legally meet the billboard spacing requirement is not due to an exceptional condition tied to the subject property, but rather due to the general condition that there are a limited number of available billboard locations left within the City.

The applicant requests a variance from the principal use requirement based upon their claim that the land division process would be, "administratively burdensome." Staff finds that the applicant's

variance request stems from a preference to avoid the city's general administrative land division and recording processes; within their application, the applicant states that International Outdoor is amenable to creating a billboard parcel subject to approval of the dimensional spacing variance. The variance request from the principal use standard does not relate to a unique condition of the property. Further, the applicant seeks relief from an administrative process that is applied equally to all properties. As such, staff does not find the existence of a valid practical difficulty.

- *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 granting of the requested variances could substantially impair the intent and effectiveness of the Zoning Ordinance.

Staff believes that granting variances to the billboard structure setback, spacing and principal use requirements could substantially impair the intent and effectiveness of the Zoning Ordinance. The City's billboard setback, spacing, and principal use requirement were put in place to regulate the siting of large billboards within Madison Heights. If the City of Madison Heights is interested in permitting additional billboards within city limits and/or reducing billboard spacing, setback and principal use requirements, staff believes that the appropriate mechanism is to amend the Zoning Ordinance standards via the zoning text amendment process.

Additional standards for reviewing variance cases, as required per the ZBA application, are outlined below:

- *The literal interpretation of the provisions of this ordinance deprives the applicant of rights commonly enjoyed by others in the same zoning district.*

Staff Finding: Staff finds that the provisions of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by others in the same zoning district.

Each property owner within Madison Heights is subject to the same billboard setback, spacing and principal use requirements. The property owner has the ability to develop and redevelop the property per M-1, Light Industrial standards.

Staff acknowledges that prior Zoning Boards of Appeals have granted billboard separation and principal use variances in the past. However, these prior cases (as denoted within the applicant's application packet) can be differentiated from this case in that they all involved upgrading existing non-conforming billboards that were originally constructed prior to the adoption of the city's billboard ordinance. Alternatively, the ZBA case at hand involves the construction of a brand new billboard where none had previously-existed. Further, per Section 10.805, "each case before the Zoning Board of Appeals shall be considered as an individual case and shall conform to the detailed application of the following standards in a manner appropriate to the particular circumstances of such case." Staff recommends that the Zoning Board of Appeals base their decision on facts and findings only pertaining to this unique case.

- *The special conditions and/or circumstances are not a result of the applicant.*

Staff Finding: As previously discussed, staff does not find special conditions or circumstances pertaining to the property itself. Unique circumstances relating to the property, if found by

the ZBA, are the result of the applicant's desire to construct a billboard use on the property rather than a use permitted by right or by special approval within the M-1 zoning district.

- *The variance is the minimum variance necessary to provide relief to the applicant.*

Staff Finding: Staff finds that the variance request is not warranted due to the absence of a valid practical difficulty.

- *In the absence of a variance, the property could not be used in a manner permitted by the Ordinance.*

Staff Finding: Staff finds that, in the absence of a variance, the property could continue to be utilized for, and redeveloped with, permitted M-1 industrial uses.

Additional variance review criteria are contained in Section 10.805, listed at the end of this report.

SITE PLAN REVIEW COMMITTEE (SPRC) ACTION

City staff presented the variance application to the Site Plan Review Committee at their March 8th, 2023, meeting. The SPRC had no additional comments regarding the proposed billboard location.

Mr. Oglesby commented that the ordinance changes were due to the concerns with signs and put in place for specific reasons. He is reluctant to go beyond a reasonable doubt, set a precedence and approve of a hardship.

Motion by Ms. Holder, seconded by Mr. Loranger, considering the purpose of the City's sign ordinance is to protect the health, safety, general welfare, property values, aesthetics, and character of the various neighborhoods of Madison Heights, the applicant's variance requests for 615 E. Ten Mile Road are DENIED. Per Section 10.804 this Board finds denial does not create an exceptional undue hardship upon the applicant and granting the requested variances would substantially impair the intent and purpose of the community's ordinances. Specifically, Section 10.511(iv)(e)(7) prevents the proliferation of billboards within the City which granting the requested variances would countermand. Per Section 10.805, this Board finds in the interest of traffic safety and community aesthetics to uphold billboard restrictions created by local ordinance thereby denying the variance requests for this parcel. The Board concurs with staff findings presented by the City Planner in the March 30, 2023 memorandum related to these variance requests as additional factual basis for the denial. As the applicant is required to obtain all of the requested variances to install a billboard at 615 E. Ten Mile Road, all were considered concurrently with the same factual basis. The Board also finds that denial does not deprive the applicant of rights enjoyed by others within the same zoning district and that the City's billboard spacing restrictions, while more stringent, are not prohibited by the State's Highway Advertising Act. The Board finds that billboards should be required to be a principal use of a parcel as required by the City's zoning ordinance to protect community aesthetics and property values as well as promote public safety. The absence of the requested variances does not impair ability to utilize the property or redevelop it in accordance with the City's M-1 zoning requirements and there are no exceptional topographic or extraordinary conditions that justify granting the applicant's requested variances.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette

Motion Carried.

23-17. PZBA 23-04: 53 E. Ten Mile Road

Chair Kimble opened the public hearing at 8:24 p.m. to hear comments on application #23-04.

Tim McGinnis at 53 E. 10 Mile Road, Madison Heights, inquired about the most recent ordinance change in 2010. He stated that billboards are for businesses to advertise their business to promote business and he would like to have a billboard on his property to generate income. Mr. McGinness referenced existing billboards in support of the applicants variance request.

There being no further comments on application #23-04, Chair Kimble closed the public hearing at 8:28 p.m.

Greg Miller, Real Estate Director of International Outdoor, summarized their variance requests. Mr. Miller stated that International Outdoor is requesting variances pertaining to minimum setbacks, minimum billboard spacing requirements and requirements that billboards be considered the principal use of a lot. Mr. Miller stated that billboards are a form of advertisement for the businesses in the community. Static billboards have the same advertisement consistently and digital billboards have multiple advertisements. He mentioned that this parcel is unique because it has an MDOT approval, and it abuts an expressway, and that the billboards are built above the state requirements for wind, stability, structure, and appearance.

City Planner Lonnerstater reviewed the staff report provided in the meeting packet, incorporated herein:

REQUEST

The petitioner, International Outdoor, Inc., requests four (4) variances from city sign regulations, Section 10.511(IV)(E), pertaining to billboards. The applicant requests two (2) variances from Section 10.511(IV)(E)(1) pertaining to minimum setbacks; a variance from Section 10.511(IV)(E)(2) pertaining to minimum billboard spacing requirements; and a variance from Section 10.511(IV)(E)(7) pertaining to the requirement that billboards be considered the principal use of a lot. The subject property is located at 53 E. Ten Mile Road (tax parcel # 44- 25-24-355-030) and is zoned M-1, Light Industrial.

VARIANCE FINDINGS

Section 10.804(2) outlines criteria for reviewing variance requests. The applicant has provided responses to the variance criteria within their application. Staff findings are provided below:

- *Whereby 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, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties.*

Staff Finding: Staff does not find the subject property itself to contain exceptional conditions that would unreasonably restrict the use of the property. Staff finds that the conditions of the property would not result in a practical difficulty for the property owner.

The property is currently utilized for an industrial use, and can continue to be utilized, expanded, or redeveloped for permitted M-1 industrial uses. The subject parcel is approximately 0.16 acres in area, is of a regular rectangular shape, and has a width of approximately 60 feet. Staff finds these property characteristics to be fairly standard within the M-1 District, especially along E. 10 Mile Road.

While staff acknowledges that the City's billboard separation requirement may restrict the erection of new billboards within city limits unless existing billboards are removed, this is a restriction that applies equally to all properties within Madison Heights. Staff finds that the applicant's inability to legally meet the billboard spacing requirement is not due to an exceptional condition tied to the subject property, but rather due to the general condition that there are a limited number of available billboard locations left within the City.

The applicant requests a variance from the principal use requirement, but has not provided justification in favor of the variance request. The variance request from the principal use standard does not appear to relate to a unique condition of the property. Further, the applicant seeks relief from an administrative process that is applied equally to all properties. As such, staff does not find the existence of a valid practical difficulty.

- *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 granting of the requested variances could substantially impair the intent and effectiveness of the Zoning Ordinance.

Staff believes that granting variances to the billboard setback, spacing and principal use requirements could substantially impair the intent and effectiveness of the Zoning Ordinance. The City's billboard setback, spacing, and principal use requirement were put in place to regulate the siting of large billboards within Madison Heights. If the City of Madison Heights is interested in permitting additional billboards within city limits and/or reducing billboard spacing, setback and principal use requirements, staff believes that the appropriate mechanism is to amend the Zoning Ordinance standards via the zoning text amendment process.

Additional standards for reviewing variance cases, as required per the ZBA application, are outlined below:

- *The literal interpretation of the provisions of this ordinance deprives the applicant of rights commonly enjoyed by others in the same zoning district.*

Staff Finding: Staff finds that the provisions of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by others in the same zoning district.

Each property owner within Madison Heights is subject to the same billboard setback, spacing and principal use requirements. The property owner has the ability to develop and redevelop the property per M-1, Light Industrial standards.

With a setback of 0 feet, the proposed billboard would be placed closer E. Heights Drive than any existing building on the block. Contrary to this standard, staff finds that a property setback variance would actually grant a special privilege to the property owner not afforded to other property owners.

Staff acknowledges that prior Zoning Boards of Appeals have granted billboard separation and principal use variances in the past. However, these prior cases (as denoted within the applicant's application packet) can be differentiated from this case in that they all involved upgrading existing non-conforming billboards that were originally constructed prior to the adoption of the city's billboard ordinance. Alternatively, the ZBA case at hand involves the construction of a brand new billboard where none had previously-existed. Further, per Section 10.805, "each case before the

Zoning Board of Appeals shall be considered as an individual case and shall conform to the detailed application of the following standards in a manner appropriate to the particular circumstances of such case.” Staff recommends that the Zoning Board of Appeals base their decision on facts and findings only pertaining to this unique case.

- *The special conditions and/or circumstances are not a result of the applicant.*

Staff Finding: As previously discussed, staff does not find special conditions or circumstances pertaining to the property itself. Unique circumstances relating to the property, if found by the ZBA, are the result of the applicant’s desire to construct a billboard use on the property rather than a use permitted by right or by special approval within the M-1 zoning district.

- *The variance is the minimum variance necessary to provide relief to the applicant.*

Staff Finding: Staff finds that the variance request is not warranted due to the absence of a valid practical difficulty.

- *In the absence of a variance, the property could not be used in a manner permitted by the Ordinance.*

Staff Finding: Staff finds that, in the absence of a variance, the property could continue to be utilized for, and redeveloped with, permitted M-1 industrial uses.

Additional variance review criteria are contained in Section 10.805, listed at the end of this report.

SITE PLAN REVIEW COMMITTEE (SPRC) ACTION

City staff presented the variance application to the Site Plan Review Committee at their March 8th, 2023, meeting. The SPRC had no additional comments regarding the proposed billboard location.

Ms. Holder explained that Madison Heights is in a unique situation because there are two highways with seven entrance and exit ramps. She stated that the board is pro-business, but public safety is our first priority, and this area is too busy of a location.

Mr. Loranger commented regarding advertisement that people choose not to be advertised to in their phones and emails. It’s likely if the decision on billboards were left up to the residents, they would vote to remove all of them.

Mr. Oglesby added that the congestion in this general area is ridiculous; comments from residents have been tremendous and he’s voicing the concerns of the individuals who’ve spoken with him. He stated that , Once you’ve set a precedent there has to be a very good reason or hardship to go beyond what’s allowed in the ordinance.

Motion by Ms. Holder, seconded by Mr. Loranger, considering the purpose of the City’s sign ordinance is to protect the health, safety, general welfare, property values, aesthetics, and character of the various neighborhoods of Madison Heights, the applicant's variance requests for 53 E. Ten Mile Road are DENIED. Per Section 10.804 this Board finds denial does not create an exceptional undue hardship upon the applicant and granting the requested variances would substantially impair the intent and purpose of the community’s ordinances. Specifically, Section 10.511(iv)(e)(7) prevents the proliferation of billboards within the City which granting the requested variances would countermand. Per Section 10.805, this Board finds in the interest of traffic safety and community aesthetics to uphold billboard restrictions created by local ordinance thereby denying the variance

requests for this parcel. The Board concurs with staff findings presented by the City Planner in the March 30, 2023 memorandum related to these variance requests as additional factual basis for the denial. As the applicant is required to obtain all of the requested variances to install a billboard at 53 E. Ten Mile Road, all were considered concurrently with the same factual basis. The Board also finds that denial does not deprive the applicant of rights enjoyed by others within the same zoning district and that the City's billboard spacing restrictions, while more stringent, are not prohibited by the State's Highway Advertising Act. The Board finds billboards should be required to be a principal use of a parcel as required by the City's zoning ordinance to protect community aesthetics and property values as well as promote public safety. The absence of the requested variances does not impair ability to utilize the property or redevelop it in accordance with the City's M-1 zoning requirements or unreasonably restrict the use of the property and there are no exceptional topographic or extraordinary conditions that justify granting the applicant's requested variances.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette

Motion Carried.

23-18. PZBA 23-05: 1275 & 1301 W. Fourteen Mile Road

Chair Kimble opened the public hearing at 8:46 p.m. to hear comments on application #23-05.

There being no comments on application #23-05, Chair Kimble closed the public hearing at 8:47 p.m.

Attorney Dennis Cowan, Plunkett Cooney Law Office, introduced Ms. Samantha Burgner, the Project Manager at ALRIG USA. Mr Cowan explained that the applicant is requesting variances pertaining to hours of operation, vacuum locations, and roof signs., and state that the strict application of the Ordinance would create a practical difficulty for operations. Attorney Cowan highlighted that the hours of operation start time requested at 7 a.m. although nearby businesses like Tim Hortons, Dunkin' Donuts, McDonald's open earlier; other car washes in the city open at various times including 7 a.m. same as the variance request. He stated that the mixed-use business of El Car Wash and Mojo Donuts are from the State of Florida. Mr. Cowan discussed the ordinance requirement for outdoor vacuums, and that this would require air quality control measures and other expensive items. Mr. Cowan stated that every car wash has outdoor vacuuming stations, and the ordinance gives some discretion particularly near the residential area. This business is in a commercial district and located on Fourteen Mile Road. El Car Wash vacuum station motors are encased in concrete to diminish the noise. The sign request is for letters at 30 inches high to advertise the city and displays "Welcome to Madison Heights." Mr. Cowan closed by stating that El Car Wash is a community orientated business and will have special days where profits go to community organizations, schools, non-profits, youth, and athletic organizations.

Assistant City Attorney Burns recommends that separate motions be made for each variance.

City Planner Lonnerstater reviewed the staff report provided in the meeting packet, incorporated herein:

REQUEST

The petitioner, Samantha Burgner on behalf of ALRIG USA, requests three (3) variances from the city Zoning Ordinance. The applicant requests two (2) variances from Section 10.326(8), use specific standards for auto wash uses, pertaining to hours of operation and vacuum locations; and one (1)

variance from Section 10.511(IV)(A), Prohibited Signs, pertaining to roof signs. The subject property is located at 1275 W. Fourteen Mile Road (tax parcel # 44-25-02-101-046) and 1 1301 W. Fourteen Mile Road (tax parcel # 44-25-02-101-045) and is zoned B-3, General Business.

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: The subject parcel itself does not appear to contain exceptional features as it currently is composed of two conforming B-3 parcels with typical rectangular shapes, both with frontage along an arterial road. The applicant proposes to combine the two parcels into one to accommodate the auto wash use. However, as opposed to many other commercially-zoned properties in the city, the subject property does not directly abut residentially-zoned or used property.

- *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 outdoor vacuuming requirement could present an undue hardship upon the owner of the property as it would require the construction of an additional large, properly ventilated structure on site. Further, staff finds that potential adverse impacts of the auto wash use, such as aesthetics, lighting, and noise, are mitigated by proper site design and the site's distance from residential uses. As such, staff finds that the hours of operation and vacuum variance could be granted without creating substantial detriment to the public good and without substantially impairing the intent of the ordinance.

While the proposed sign is unique, staff finds that it accurately falls under the Zoning Ordinance definition of a "roof sign", which is prohibited in the City. While staff finds the sign could be erected without creating a substantial detriment to the public good, permitting a roof sign could be deemed as impairing the intent and purpose of the sign regulations.

Additional standards for reviewing variance cases, as required per the ZBA application, are outlined below:

- *The literal interpretation of the provisions of this ordinance deprives the applicant of rights commonly enjoyed by others in the same zoning district.*
- *The special conditions and/or circumstances are not a result of the applicant.*
- *The variance is the minimum variance necessary to provide relief to the applicant.*
- *In the absence of a variance, the property could not be used in a manner permitted by the Ordinance.*

Additional variance review criteria are contained in Section 10.805, listed at the end of this report.

SITE PLAN REVIEW COMMITTEE (SPRC) ACTION

The SPRC discussed the variance request at their February 15th, 2023 meeting. The SPRC had no objections to the variance requests.

Mr. Oglesby questioned the applicant if they would accept the roof sign conditions, do what they want to accomplish but not beyond the ordinance and acceptable by both sides.

Ms. Samantha Burgner, Project Manager at ALRIG USA, answered Mr. Oglesby's question that the company would want to understand the look before any approvals or agreements. She answered Ms. Holder's question that the building does propose elements outside of their standards along with the special use approval does add additional cost to the property. Ms. Burgner answered Mr. Loranger's question that there would be no music allowed on site and it would be fully staffed with 5-6 employees. This is a touchless car wash, no one will touch the cars, it's solely for customer service and management of the property. She answered Vice Chair Thompson's question that according to the dimension it's about four feet of the height, the letters itself would fit, and the only element to understand is to safely attach the letters to the building as it's currently expected to sit on top of the structure.

Ms. Holder inquired if the typical plan needs to be changed and increasing the cost be considered a potential hardship.

Mr. Loranger asked if there will be music played at the business.

City Planner Lonnerstater proposed lowering the structural elements of the sign to the existing bridge and removing the need for the roof sign variance.

Vice Chair Thompson suggested moving the sign from above the building and putting in front of the bridge.

Motion by Ms. Holder, second by Mr. Oglesby, the Board approves granting a variance from Section 10.326(8)(c) of the City's Zoning Ordinance to allow for operations of the applicant's car wash from 7:00 am to 10:00 pm. The variance is conditional upon there being no law enforcement actions or resident complaints related to the extended hours of operation and can be revoked upon a determination by Police Chief that this variance creates a nuisance. The City Planner's March 30, 2023 memorandum on the variance request provides a factual basis for the conditional of approval of the applicant's request. The Board finds that, based upon an undue hardship to the applicant and no foreseen detriment to residential or other surrounding districts, the approval meets the standards of 10.804(2) and 10.805.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette

Motion Carried.

Motion Ms, Holder, seconded by Mr. Loranger, the Board approves granting a variance from Section 10.326(8)(q) of the Zoning Ordinance to allow outdoor vacuuming stations on the exterior of a car wash building upon Site Plan approval of such layout. The area for outdoor vacuuming must be screened from 14 Mile Road visibility. The City Planner's March 30, 2023 memorandum on the variance request provides a factual basis for approval of the applicant's request. The Board finds that,

based upon an undue hardship to the applicant and no foreseen detriment to residential or other surrounding districts, the approval meets the standards of 10.804(2) and 10.805.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette

Motion Carried.

Motion by Ms. Holder, seconded by Vice Chair Thompson, the Board approves granting a variance from Section 10.511(IV)(A)(1) of the Zoning Ordinance allowing a roof sign to be erected on the applicant's proposed car wash. Approval is conditional upon applicant stipulating that the sign wording shall only be a community "gateway" message stating explicitly "Welcome to Madison Heights," and that the signage shall be approved by the City's Sign Permit review process prior to installation. Additionally, the variance is conditional in that any alterations to the sign including size, spacing or content after its installation extinguish this variance and the parcel would once again be regulated by the roof sign prohibition of 10.511(iV)(A)(1) or any equivalent zoning ordinances in effect at the time of the violation. The City Planner's March 30, 2023 memorandum on the variance request provides a factual basis for approval of the applicant's request. The Board finds that, based upon the community benefit of the signage and undue hardship on applicant as it utilizes a standardized architectural design for its car wash buildings located across the country as well as there being no foreseen detriment to neighboring parcels or surrounding districts, the approval meets the standards of 10.804(2) and 10.805.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette

Motion Carried.

23-19. New Business

City Planner Lonnerstater mentioned that the Zoning Ordinance Rewrite Committee is in the process of reviewing drafts of the new proposed Zoning Ordinance.

23-20. Adjournment

Motion by Ms. Holder, seconded by Mr. Oglesby, to adjourn the meeting.

Yeas: Holder, Loranger, Oglesby, Thompson, and Kimble

Nays: None

Absent: Aaron, Corbett, Kehoe, and Marentette

Motion Carried.

There being no further business, Chair Kimble, adjourned the meeting at 9:13 p.m.

Phommady A. Boucher
Clerk of the Board