

Zoning Board of Appeals
Regular Meeting
Madison Heights, Michigan
December 1, 2022

A Regular Meeting of the Madison Heights Zoning Board of Appeals was called to order by Chairman Kimble on December 1, 2022 at 7:30 p.m. in the Fire Station #1, Training Room, 31313 Brush Street, Madison Heights, Michigan.

Present: Chair Kimble and members: Aaron, Barragan, Corbett, Holder, Loranger, Marentette, and Oglesby

Absent: Kehoe and Thompson

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

22-30. Minutes

Motion by Councilwoman Aaron, seconded by Ms. Holder, to approve the Zoning Board of Appeals Meeting Minutes of November 3, 2022, as amended:

called to order by Vice-Chairman Thompson on November 3, 2022...

Yeas: Aaron, Barragan, Holder, Loranger, and Marentette

Nays: None

Abstain: Corbett, Oglesby and Kimble

Absent: Kehoe and Thompson

Motion Carried.

22-31. PZBA #22-10, 29370 Stephenson Highway.

The petitioner, International Outdoor, Inc., requests three (3) variances from city sign regulations, Section 10.511(IV)(E) pertaining to billboards. The applicant requests variances from Section 10.511(IV)(E)(2) pertaining to minimum billboard spacing requirements and 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 29370 Stephenson Highway (tax parcel # 44-25-11-377-014) and is zoned M-1, Light Industrial.

Chair Kimble opened the public hearing at 8:20 p.m. to hear comments on application #22-10.

There being no comments on application #22-10, Chair Kimble closed the public hearing at 8:21 p.m.

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

REQUEST

The applicant, International Outdoors, Inc., requests three (3) variances from the city's billboard regulations, Section 10.511(IV)(E). The subject property is located at 29370 Stephenson Highway (tax parcel #44-25-11-377-014) and is zoned M-1, Light Industrial.

The applicant proposes to install one (1) two-sided digital billboard along the west side of I-75, and requests variances from the following sections of the Zoning Ordinance:

- Section 10.511(IV)(E)(2): Billboards shall not be less than 2,500 feet apart (two variances); and
- Section 10.511(IV)(E)(7): Billboards are deemed to constitute a principal use of a lot.

Note that the applicant is not the current property owner. However, the current property owner has signed the ZBA application, as required.

Separation Variance

Per Section 10.511(IV)(E)(2) of the Madison Heights Zoning Ordinance, billboards shall not be less than 2,500 feet apart. The proposed billboard location is 2,205 feet from an existing billboard to the south and 2,395 feet from an existing billboard to the north. Therefore, the applicant requests variances of 295 feet and 105 feet respectively from the 2,500- foot separation requirement.

Principal Use Variance

Per Section 10.511(IV)(E)(7) of the Zoning Ordinance, billboards shall be considered the principal use of a lot. Because the property at 29370 Stephenson Highway is already improved with a principal industrial use and structure, a new billboard would be considered an accessory use of the property. The Zoning Ordinance requires the applicant to divide the parcel and create a stand-alone parcel for the billboard. The applicant requests a variance from this section to allow for the proposed billboard to be constructed on the same parcel as the existing industrial use/building.

SITE PLAN REVIEW COMMITTEE (SPRC) ACTION

City staff presented the variance application to the Site Plan Review Committee at their November 16th, 2022, meeting. The SPRC had no additional comments regarding the proposed billboard location.

STAFF 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 1.65 acres in area, is of a regular rectangular shape, and has a width of approximately 100 feet. Staff finds these property characteristics to be fairly standard within the M-1 District, especially along the Stephenson Highway industrial corridor.

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 spacing and principal use requirements in the absence of truly unique property conditions could substantially impair the intent and effectiveness of the Zoning Ordinance. The City's billboard spacing requirements 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 Planning Commission and City Council.

Staff notes that the proposed billboard location is approximately four hundred (400) feet from the Red Run Park Manufactured Housing Community to the south. It is possible that the digital billboard, if constructed, could be visible from portions of the Red Run neighborhood.

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 buffering 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.

Randy Oram, President of International Outdoor, Inc., gave a PowerPoint presentation for his sign variance application. Mr. Oram reviewed the spacing variance request and the principal use of property variance request. Mr. Oram provided a memorandum response to the City Planning Staff Report for this case, which was not provided in time to be included in the agenda packet.

Assistant City Attorney Burns addressed the Board regarding public policy pertaining to billboards, billboard technology upgrades, and the Highway Advertising Act pertaining to billboard signs.

The Board members and applicant Randy Oram further discussed available billboard sign locations in the city, dimensional variance, separation variance, principal use variance, sign ordinance changes in 2010, and the Highway Advertising Act.

Ms. Holder stated that she was involved with the Zoning Board of Appeals when previous billboard variance requests were considered, and that previous variance cases should not have a bearing on tonight's meeting.

Chairman Kimble stated that he had opposed previous billboard variance requests, and that he believes that billboards present a visual danger to drivers. Mr. Oram stated that a previous study addressed safety concerns related to billboards, which was not included within the submittal.

Councilwoman Aaron asked for clarification regarding the principal use variance request. Planner Lonnerstater clarified the difference between a principal use and accessory use, and the need for a lot split. Assistant Attorney Burns clarified that the applicant is willing to apply for a lot split.

Ms. Barragan inquired about the applicant's approval from MDOT. Mr. Oram stated that MDOT did approve the billboard location and could provide a copy of the permits to staff, if desired. Ms. Barragan stated that the Highway Advertising Act allows municipalities to enact stricter requirements than the State, and Madison Heights does have stricter requirements as permitted.

The Board discussed previous billboard cases. Planner Lonnerstater responded that previous billboard variance cases in front of this ZBA involved sites that were already improved with billboards; those cases dealt with upgrading existing static billboard displays to digital displays.

Mr. Loranger stated that the variances, if granted, could undermine the City's Zoning Ordinance, undermine the ability of the City to regulate land uses, and set a negative precedent. Mr. Oram responded that the City had already set a precedent with previous variance cases.

Ms. Marentette inquired about the existing business on the property. Mr. Oram clarified that they have a lease agreement with the current property owner.

Motion by Mr. Lornager, seconded by Ms. Corbett, to deny the applicant's request for a variance from the City's zoning requirement that billboards shall not be less than 2,500 feet apart; from this 2,500-foot separation requirement, the applicant requests variances of 295 feet to the north and 105 feet to the south of the proposed use. In accordance with Section 10.804(2) of the City's zoning ordinance, the Board finds that the applicant has not demonstrated that a topographical condition or extraordinary conditions create exceptional practical difficulties or exceptional undue hardship.

upon the property owner. Additionally, the Board finds that per Section 10.805 of the City's zoning ordinance granting the requested variance would be detrimental to the situated district and adjoining districts as well as would substantially impair the intent and purposes of the Ordinance. The factual basis for the variance denial is based upon the Board's concurrence with the staff review of the applicant's request submitted as a November 23, 2022, memorandum which shall be incorporated into the Minutes of this Meeting as well as the testimony and commentary made during this hearing by the applicant, city staff and members of this Board that provide weight to this denial.

Yeas: Aaron, Barragan, Corbett, Holder, Loranger, Marentette, Oglesby, and Kimble

Nays: None

Absent: Kehoe and Thompson

Motion Carried.

Motion by Ms. Corbett, seconded by Mr. Oglesby, to deny the applicant's request for a variance from the City's zoning requirement that a billboard must be the principal use of a lot. In accordance with Section 10.804(2) of the City's zoning ordinance, the Board finds that the applicant has not demonstrated that a topographical condition or extraordinary conditions create exceptional practical difficulties or exceptional undue hardship upon the property owner. Additionally, the Board finds that per Section 10.805 granting the requested variance would interfere with the orderly development of the situated district and adjacent districts as well as substantially impair the intent and purposes of the Ordinance. The factual basis for the variance denial is based upon the Board's concurrence with the staff review of the applicant's request submitted as a November 23, 2022, memorandum which shall be incorporated into the Minutes of this Meeting as well as the testimony and commentary made during this hearing by the applicant, city staff and members of this Board that provide weight to this denial.

Yeas: Aaron, Barragan, Corbett, Holder, Loranger, Marentette, Oglesby, and Kimble

Nays: None

Absent: Kehoe and Thompson

Motion Carried.

22-32. Excuse Member(s).

Motion by Mr. Oglesby, seconded by Councilwoman Aaron, to excuse Vice-Chair Thompson from tonight's meeting.

Yeas: Aaron, Corbett, Holder, Loranger, Marentette, Barragan, Rodgers, and Thompson

Nays: None

Absent: Kehoe and Thompson

Motion Carried.

22-33. Excuse Member(s).

Motion by Ms. Corbett, seconded by Councilwoman Aaron, to excuse Ms. Kehoe from tonight's meeting.

Yeas: Aaron, Corbett, Holder, Loranger, Marentette, Barragan, Rodgers, and Thompson
Nays: None
Absent: Kehoe and Thompson
Motion Carried.

22-34. Adjournment

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

Yeas: Aaron, Corbett, Holder, Loranger, Marentette, Barragan, Rodgers, and Thompson
Nays: None
Absent: Kehoe and Thompson
Motion Carried.

There being no further business, Chair Kimble, adjourned the meeting at 9:03 p.m.

Phommady A. Boucher
Clerk of the Board