



AGENDA FOR BOARD OF APPEALS

A Board of Appeals meeting will be held on **Tuesday, August 12, 2025 at 12:00 PM**
in the **Council Chambers at City Hall, 819 Superior Avenue, Tomah, WI.**

Join Zoom Meeting

<https://us06web.zoom.us/j/7689466740pwd=dEdLR2hXK0ZYMk1qNU5vNFllwMzdSZz09&omn=81531078288>

Meeting ID: 768 946 6740 Passcode: Tomah2020

AGENDA

A. Call to Order - Roll Call

B. Discussion and approval of the Ignite Dispensary variance application

ADJOURNMENT

NOTICE: It is possible that a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information. No action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice. Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact Nicole Jacobs, City Clerk, at 819 Superior Avenue, Tomah, WI 54660.

Variance Application

City of Tomah Board of Appeals

Part 1: General information and alternatives analysis

To be completed jointly by the applicant and zoning staff.

Date filed 7/22/2025 ☐ \$ 125.00 fee paid (payable to the City of Tomah) at the Treasure's window

	Owner/agent	Contractor
Name	MWRCD LLC	
Address	24714 Embay Ave Tomah, WI 54660	
Phone	Jim Frei : 608-567-9305	

Address 111 W Andres St Tax parcel number 286-02651-0800

Lot area & dimensions: 32,921.03 sq. ft., _____ x _____ ft.

Zoning district B-2 Highway District

**Legal description if property is undeveloped

Current use & improvements:

Commercial property with retail business,
Ignite Dispensary & Cigar

Description of any prior petition for appeal, variance or conditional use:

None Known

Description and location of all nonconforming structures & uses on the property:

Pre-existing freestanding pole sign installed in 1995. No structural changes have been made since original installation. Sign is located approximately 18-feet from right-of-way (Andres St).

Ordinance standard from which variance is being sought (section number and text):

Municipal code 52-152: "The area of the sign shall not be permitted within 20-feet of the right-of-way line of the street."

Describe the variance requested:

To allow the existing sign structure to remain at 18-feet from the right-of-way, 2-feet short of the 20-foot setback requirements, so that the new sign faces (see design attached) may be installed. No other modifications such as size, height, etc. will be made or proposed.

Type of variance requested:

_____ use variance – permits a landowner to put a property to an otherwise prohibited use.

X area variance – provides an increment of relief (normally small) from a physical dimensional restriction such as a building height or setback.

Describe the effects on the property if the variance is not granted:

Requiring removal of the existing sign would impose an unnecessary financial and logistical burden on the property owner. This sign structure has existed since the 1990's without issue, and no structural alterations Alternatives are proposed.

Describe alternatives to your proposal such as other locations, designs and construction techniques. Attach a site map showing alternatives you considered in each category below.

- a. Alternatives you considered that comply with existing standards. If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

No feasible alternatives for property owner.

- b. Alternatives you considered that require a lesser variance and reasons you rejected them. If you reject such alternatives, provide the reasons you rejected them.

No feasible alternatives for property owner.

Page 3 of 7

Part 2: Three-Step Test

To qualify for a variance, the applicant must demonstrate that their property meets the following three requirements.

1) Unique property limitations (To be completed by the applicant)

Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.

Do unique physical characteristics of your property prevent compliance with the ordinance?

- ☒ Yes. Where are they located on your property? Please show the boundaries of these features on the site map that you used to describe alternatives you considered. *An electrical permit was issued for the original installation, and electrical was laid beneath the paved road.*
- ☐ No. A variance cannot be granted.

2) No Harm to Public Interests (To be completed by zoning staff)

A variance may not be granted which results in harm to public interests. In applying this test, the zoning board must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- *Public health, safety and welfare*
- *Water quality*
- *Fish and wildlife habitat*
- *Natural scenic beauty*
- *Minimization of property damages*
- *Provision of efficient public facilities and utilities*
- *Achievement of eventual compliance for nonconforming uses, structures and lots*
- *Any other public interest issues*

Ordinance purpose:

Purpose(s) of standard from which variance is requested:

Analysis of impacts

Discuss impacts that would result if the variance was granted. For each impact, describe potential mitigation measures and the extent to which they reduce project impact (completely, somewhat, or minor). Mitigation measures must address each impact with reasonable assurance that it will be reduced to an insignificant level in the short term, long term and cumulatively.

Short term impacts: (through the completion of construction)

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Long term impacts: (after construction is completed)

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Cumulative impacts: (What would happen if a similar variance request was granted for many properties?)

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Will granting the variance harm the public interest?

- ☐ Yes. A variance cannot be granted.
- ☐ No. Mitigation measures described above will be implemented to protect the public interest.

3) Unnecessary hardship (To be completed by the applicant)

An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new *Ziervogel* and *Waushara County* decisions.
- For a use variance, unnecessary hardship exists only if the property owner shows that they would have no reasonable use of the property without a variance.

Note: While Wisconsin Statutes do not specifically prohibit *use variances*, there are a number of practical reasons why they are not advisable:

- Unnecessary hardship must be established in order to qualify for a variance. This means that without the variance, no reasonable use can be made of the property.
- Many applications for use variances are in fact administrative appeals. Often the zoning board is asked to determine whether a proposed use is included within the meaning of a particular permitted or conditional use or whether it is sufficiently distinct as to exclude it from the ordinance language. Such a decision is not a *use variance* but an appeal of the administrator's interpretation of ordinance text.
- Zoning amendments are a more comprehensive approach than use variances. Elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses or may undermine land use plan and ordinance objectives. Towns have meaningful input (veto power) for zoning amendments to general zoning ordinances.
 - Zoning map amendments can change zoning district boundaries so as to allow uses provided in other zoning districts.
 - Zoning text amendments can add (or delete) permitted or conditional uses allowed in each zoning district.

Is unnecessary hardship present?

☒ Yes. Describe: New Property owner is expected to take on the burden of the previous owner not being within compliance of the Municipal code, despite city of Tomah issuing a permit for electrical work for this structure in 1995.

☐ No. A variance cannot be granted.

Part 3: Construction Plans

To be completed and submitted by the applicant.

Attach construction plans detailing:

- ☐ Property lines
- ☐ Vegetation removal proposed
- ☐ Contour lines (2 ft. interval)
- ☐ Ordinary high water mark if located in a Wetland/Shoreland Zoning District
- ☐ Floodplain & wetland boundaries
- ☒ Dimensions, locations & setbacks of existing & proposed structures (see Attached)
- ☐ Utilities, roadways & easements
- ☐ Location & extent of filling/grading
- ☐ Location & type of erosion control measures
- ☐ Any other construction related to your request
- ☐ Anticipated project start date

I certify that the information I have provided in this application is true and accurate.

Signed: (applicant/agent/owner) _____

Date: 7/22/25

Remit to:

Nicholas Morales

Economic Development and Zoning Director

819 Superior Ave.

Tomah, WI, 54660

(608)374-7479

nmorales@tomahwi.gov

Property Owner:

MWRCD LLC

24714 Embay Ave, Tomah, WI 54660

Business Owner: Ignite Dispensary Tomah LLC

Timothy Frey

612-599-9000

761 W Beaverbrook Ave, Suite 4

Spooner, WI 54801

Site Address:

Ignite Dispensary Tomah LLC

111 W Andres St

Tomah, WI 54660

Existing sign structure is located near the intersection of N Superior Avenue and W Andres Street, 18 feet from the right-of-way line of Andres street. This sign structure is currently being used to identify the business, Ignite Dispensary & Cigar, located at 111 W Andres St.

Per the Tomah Municipal code 52-152, “No part of any freestanding sign shall be closer than 20 feet to any public right-of-way”, we are requesting a variance to this as the pre-existing sign structure is 18 feet from the right-of-way line, only a 2 foot deviation from the 20 foot requirement.

This variance, upon aproval, would allow the business owner to replace the sign faces of the pre-exisiting freestanding structure. There are no structural alterations of size or dimensions being proposed by current owner.

This pole sign has existed since 1995, when the current ordinance was put in place in 1993. The current property owner is now expected to take on the burden of the previous owner’s noncompliance. The city of Tomah granted an electrical permit for the electric run under the paved road for this pole sign.

Ignite Dispensary is new to this area and we make sure to do everything by the books, within compliance, which is an expensive venture where it matters. We've worked hard to refresh the building that has sat vacant for years, as well as integrate into the community and share our mission of providing education and high quality products to customers. Submitting this variance is important to us in that we do not have the necessary funds to a reverse the negligent decision of others 30 years ago.

We greatly appreciate your attention and consideration in this matter, and hope we will be able to continue serving the community with the momentum we've built.







