

CITY OF  
**PORTAGE**

*A Place for Opportunities to Grow*

# ZONING BOARD OF APPEALS

July 12, 2010

# CITY OF PORTAGE ZONING BOARD OF APPEALS

Monday, July 12, 2010

(7:00 pm)

Portage City Hall

Council Chambers

## PLEDGE OF ALLEGIANCE

## APPROVAL OF MINUTES:

- \* June 8, 2010

## OLD BUSINESS:

## NEW BUSINESS:

- \* ZBA #10-01, McDonald's Restaurant, 6925 South Westnedge Avenue, and Paul Nystrom, Dykema Gossett, PLLC, on behalf of Golden Arch Realty Corporation: Requesting a) an appeal of the administrative decision denying a sign permit application to replace the pole of the existing nonconforming McDonald's Restaurant freestanding sign and an interpretation that Sections 42-541(A) and 42-544(B) of the Zoning Code authorize replacement of the sign pole; or b) a variance from the Zoning Code to modify an existing nonconforming freestanding sign.
- \* ZBA #10-02, Sam's Club, 7021 South Westnedge Avenue, WD Partners, on behalf of Sam's R.E. Business Trust: Requesting a variance to change a 140 square foot sign panel on a 224 square foot nonconforming freestanding sign for the Sam's Club store

## STATEMENT OF CITIZENS:

## ADJOURNMENT:

## MATERIALS TRANSMITTED

Star (\*) indicates printed material within the agenda packet

**CITY OF PORTAGE ZONING BOARD OF APPEALS**  
Minutes of Meeting – June 14, 2010

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Approximately 5 people were in the audience.

**MEMBERS PRESENT:** Henry Kerr, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianne Singer, Donald Mordas

**MEMBERS EXCUSED:** Timothy Bunch, Daniel Rhodus

**MEMBERS ABSENT:** David Felicijan

**IN ATTENDANCE:** Vicki Georgeau, Deputy Director of Neighborhood Services, Charles Bear, Assistant City Attorney

**APPROVAL OF THE MINUTES:** Linenger moved, and Schimmel seconded a motion to approve the May 10, 2010 minutes with one revision. Upon voice vote, motion was approved 6-0.

**NEW BUSINESS:**

**ZBA# 09-22, 10095 South 12<sup>th</sup> Street:** Staff summarized the request for a) approval for a private stable with one horse on 1.2 acres where a minimum two acres is required; b) a variance from the required 125 foot setback for manure to be located 45 feet from the north, south and east property lines; c) a variance to retain a 576 square foot detached accessory building and construct an attached 216 square foot lean-to structure, which exceeds the permitted accessory building area by 312 square feet; d) a variance to permit the raising of 10 chickens on a 1.2 acre parcel where 10 acres is required for general agriculture/farm; or e) a Temporary Use Permit to keep the chickens for a 12-month period (with the option to request one 12-month extension). Valerie Masasi was present to explain her request, and noted that she understood the pole barn met code when she purchased the property, and would like permission to have a horse, which will be partially pastured on the neighboring property to the south and wishes to retain 10 chickens with a coop adjacent to the rear of her home. The applicant indicates the neighbors are in full support of her request. Kerr inquired if a written agreement exists with the property owner to the south exists to allow the horse to pasture on the neighbors property. The applicant and property owner to the south indicated no, but both agreed a written agreement could be developed. Singer inquired regarding the purpose of storing manure on the property. The applicant indicated manure for one horse would not smell, would be used for garden soil and otherwise biodegrade. In response to Linenger, the applicant verified there is no horse on the property now, that the cement floor in the detached garage would be problematic for housing a horse, and that she has no plans to remove mature trees that screen her property from the neighbors and US 131. In response to Seyburn, the applicant verified the house is two-stories and is 1,056 square feet in area on the ground floor.

A public hearing was opened. Sandy Eldridge, 10105 South 12<sup>th</sup> Street, spoke in strong support of all the requested approvals and variances, and that a written agreement to allow the horse on her property would be no problem as she previously owned a horse for many years. There being no further comments, public hearing was closed.

A motion was made by Linenger, supported by Singer, to grant a) approval for a private stable with one horse on 1.2 acres where a minimum two acres is required; b) a variance from the required 125 foot setback for manure to be located 45 feet from the north, south and east property lines; c) a variance to retain a 576 square foot detached accessory building and construct an attached 216 square foot lean-to structure, which exceeds the permitted accessory building area by 312 square feet; d) a variance to permit the raising of 10 chickens on a 1.2 acre parcel where 10 acres is required for general agriculture/farm, with the following conditions: 1) no removal of mature trees that serve as a screen for the proposed lean to and pole barn and manure storage location, 2) a building permit is obtained for the pole barn and lean-to, and 3) upon withdrawal of permission from the neighbor to the south to allow the horse to pasture on the property, that the horse be removed. The practical difficulty for the above requests being: for the private stable and manure location - no interference with the rights and enjoyment of neighboring properties, the proximity of U.S. 131, the location of mature trees and rural character of vicinity, and the unusual shape/narrow width of the property, and the permission of adjacent property owner to the south to utilize their property for horse pasture area; for the accessory building and lean-to - the proximity of U.S. 131, and location of mature trees; and for

the chickens – the rural character of vicinity and existing location of screening and adjacency to the home. In addition, there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the rural character of the property; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to use the property for agricultural purposes, which is similar to that possessed by other properties in the same zoning district and vicinity; the immediate practical difficulty causing the need for the pole barn variance was not created by the applicant; the variances will not be detrimental to adjacent property and the surrounding neighborhood; and the variances will not materially impair the intent and purpose of the Zoning Ordinance, and adjacent property owners are in support of the request and the adjacent property owner to the south has granted permission to allow the horse to pasture on their property. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. After further discussion and upon roll call vote (Linenger-Yes, Kerr-Yes, Schimmel-Yes, Mordas-Yes, Singer-Yes, Seyburn-Yes,) motion carried 6-0.

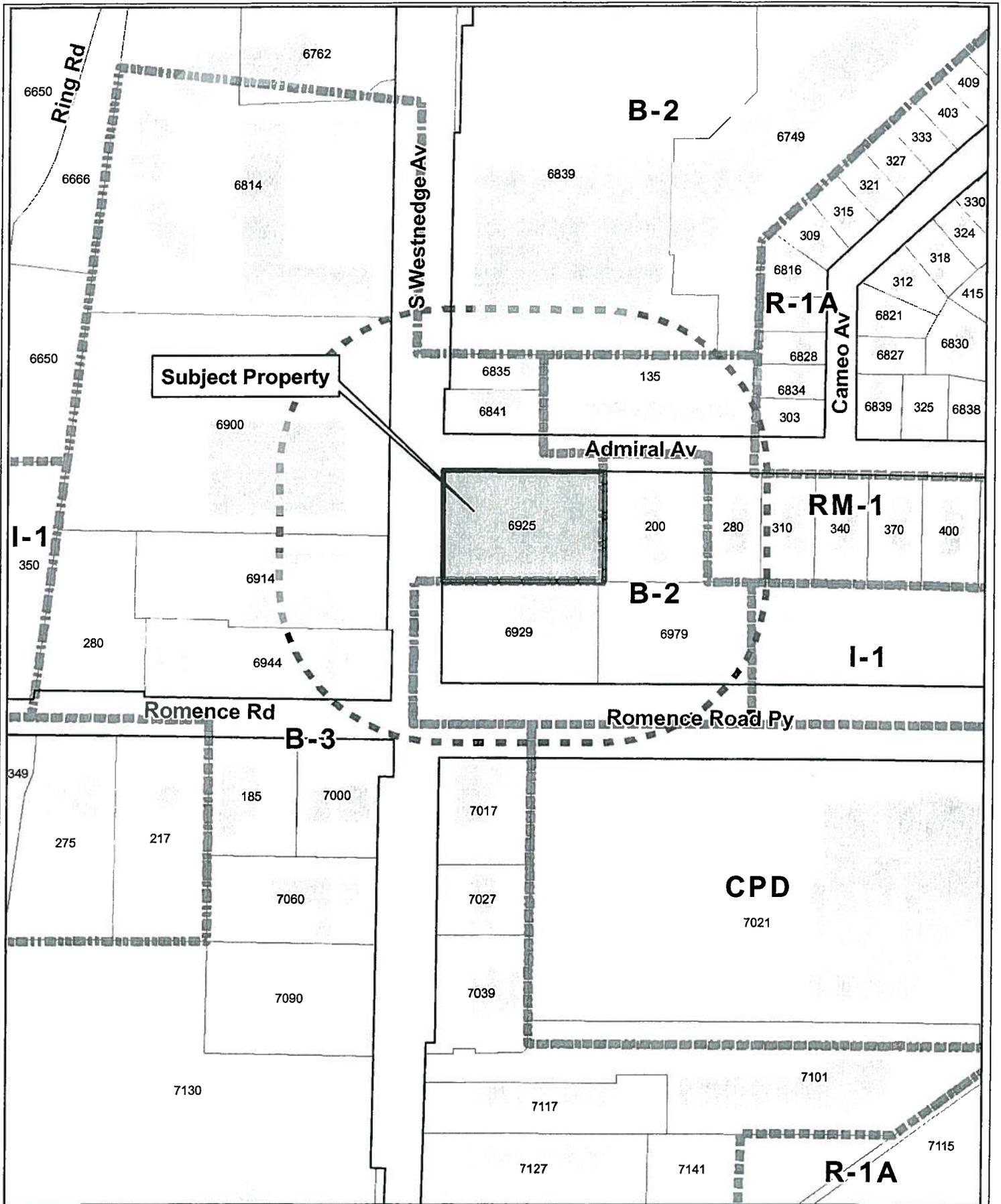
**ELECTION OF OFFICERS:** Linenger nominated Kerr for Chair, and Schimmel for Secretary. Schimmel nominated Linenger for Vice-Chair. Upon roll call vote, (Linenger-Yes, Kerr-Yes, Schimmel-Yes, Mordas-Yes, Singer-Yes, Seyburn-Yes,) the nominated slate of officers was approved 6-0.

**STATEMENT OF CITIZENS:** Staff indicated that Board member Rhodus inquired and expressed concern over the roof signs at the Shamrock Montessori School at 7508 Oakland Drive, noting that the shamrock was painted over into a circle shape and that a smaller shamrock was painted on the roof near the chimney. Staff further indicated that a letter has been provided to the property owner in an effort to resolve the matter. Kerr noted a concern regarding the for real estate signs at Milham Meadows Apartments on the corner of Oakland Drive and West Milham Avenue. Staff indicated it was understood that the sign meets code requirements, but that smaller signs have been erected periodically, and enforcement action has occurred in this regard.

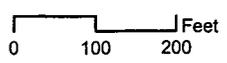
**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 7:38 p.m.

Respectfully submitted,

Vicki Georgeau, AICP  
Deputy Director of Neighborhood Services



**Subject Property**



**ZBA 10-01**  
**6925 SOUTH WESTNEDGE AVENUE**

300' Notification  
 Subject Property  
 Zoning Boundary

**ZONING BOARD OF APPEALS APPLICATION**

**FOR COMPLETION BY APPLICANT**

Application Date June 4, 2010

Name of Applicant Paul L. Nystrom, Esq.  
Print

  
Signature

Applicant's Address 39577 Woodward Ave., Suite 300,  
Bloomfield Hills, MI 48304

Phone No. (248) 203-0855

Name of Property Owner (if different from Applicant) McDonald's Corporation

Address 1021 Karl Greimel Dr., #200, Brighton, MI 48116

Phone No. (810) 225-4593

Address of Property that is the subject of this Application:

Street Address 6925 S. Westnedge

For Platted Property: Lot \_\_\_\_\_ of \_\_\_\_\_ Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.] Please see Exhibit G.

Applicant's interest in Property that is the subject of this Application: Mr. Nystrom is legal counsel for McDonald's Corporation, the owner of the Property.

Application Fee \_\_\_\_\_ (Residential Uses) \$330.00 (All Other Uses)

Type of Appeal (Please check one of the following **bold choices** and provide the requested information):

**xx Variance from Zoning Ordinance:** Article 4 Section 42-544 Paragraph B, C  
Regarding: Use \_\_\_\_\_ Area \_\_\_\_\_ Yards \_\_\_\_\_  
Setbacks: \_\_\_\_\_ Parking \_\_\_\_\_ Other X \_\_\_\_\_

Reason for Request (Also complete page 2 of application): McDonald's alternatively seeks a variance to allow it to replace the pole upon which its freestanding sign sits. Please refer to page 2 of this Application as well as the letter that accompanied this Application.

**xx Appeal of Administrative Decision:** Article 4 Section 42-544(B) Paragraph \_\_\_\_\_

Reason for Request: The City denied McDonald's application for a sign permit to replace the pole upon which its freestanding sign sits. However, the City's Sign Ordinance does not prohibit replacement of the pole. Please refer to the letter that accompanied this Application for further information.

**xx Interpretation of the Zoning Ordinance:** Article 4 Section 42-541(A)(1) & 42-544(B) Paragraph \_\_\_\_\_

Reason for Request: The City denied McDonald's application for a sign permit to replace the pole upon which its freestanding sign sits. However, the City's Sign Ordinance does not prohibit replacement of the pole. McDonald's seeks an interpretation of ordinance sections 42-541(A)(1) and 544(B) as to whether they allow McDonald's to replace the pole. Please refer to the letter that accompanied this Application for further information.

\_\_\_\_\_ A Temporary Permit for: Building \_\_\_\_\_ Use \_\_\_\_\_ Other Approval \_\_\_\_\_  
Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Reason for Request: \_\_\_\_\_

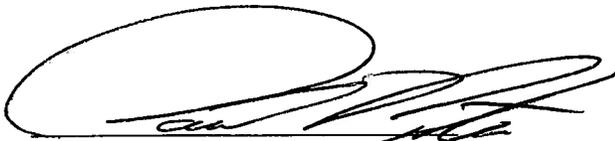
**FOR STAFF USE**

Application Number: 10/01	Filing Date: 6/7/2010	Tentative Hearing Date: 7/12/2010
Previous Application Filed Regarding This Property: None		

### Reason For Variance

McDonald's alternatively seeks a variance under sections 42-544(C)(1) and (2). Attached to this Application please find responses to the questions below. Please also refer to the letter accompanying this Application for further information regarding McDonald's request and the reasons for the variance.

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)
5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)
6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)
7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)



Signature of Applicant

June 4, 2010

\_\_\_\_\_  
Date

BH01\1165361.1  
ID\PLN - 087795/0037

## Reason For Variance

Section 42-544(C) of the City's Sign Ordinance permits the ZBA to grant variances related to the alteration or maintenance of a nonconforming sign on the basis that (1) the standards of section 42-622(B)(1) are met, OR (2) the granting of a variance will reduce the degree of nonconformity of an existing sign. McDonald's seeks a variance on both grounds, which are addressed in detail in McDonald's letter. However, McDonald's also provides answers to the questions set forth on page three of the Application as follows:

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance.

McDonald's studies have shown that consumers use two glances in determining whether to stop at a restaurant. They first look for signage, and then they look at the building. McDonald's restaurant is set back approximately 150 feet from the roadway. This makes its sign that much more important because it is less visible than other buildings closer to the roadway. In fact, the business to the immediate North of McDonald's restaurant is Merlin Muffler. That building is significantly closer to Westnedge than McDonald's. This prevents those driving vehicles South on Westnedge from seeing McDonald's restaurant until they are virtually in front of it. There are also several large trees between McDonald's and Merlin Muffler that block the view of the restaurant and would also block the view of a sign smaller than the existing Sign.

Further, there is also a traffic safety issue to be considered. The Sign is visible from a distance, despite the referenced trees and other structures that affect its visibility. It allows customers to recognize the location of the restaurant in sufficient time to move into the proper lane and make a safe turn into the restaurant. If signage is decreased, customers in vehicles will have less time to recognize the Sign and respond, and will require more time looking for the Sign. While the speed limit on Westnedge at this location is 35 miles per hour, vehicles commonly travel 45 miles per hour or more. A smaller and lower sign which is hidden from view by trees and adjacent buildings will cause motorists to make last second maneuvers to avoid driving past the restaurant.

2. Are the physical characteristics you explained above unique and not shared by neighboring properties?

Yes. The building to the North, the Merlin's Muffler, is significantly closer to Westnedge than McDonald's restaurant. The building to the South, Riley's Auto Parts, also has a lesser setback from Westnedge than McDonald's, albeit to a lesser extent.

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance?

McDonald's has been operating its restaurant since it opened in November 1973 with the existing Sign. As stated, the sign is critical to McDonald's success in Portage, including its ability to attract customers and generate sales. Please refer to the section of the letter accompanying this Application regarding "The Importance of the Sign to McDonald's Business".

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area?

In order to address the corrosion of the pole, the pole must be replaced. Therefore, the requested variance is the minimum variance necessary to remedy this issue. Replacement of the pole will have no effect on property owners in the area as the Sign will remain the same.

5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area.

McDonald's has been operating its restaurant since 1973 with this same Sign. A variance will not impact or alter the character of any adjacent properties or the surrounding neighborhood as nothing will change with regard to the Sign's location, size or height.

6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area.

As stated, McDonald's has been operating its restaurant since 1973 with this same Sign and a variance will not impact any adjacent properties or the surrounding neighborhood as nothing will change with regard to the Sign's location, size or height. Therefore, there will be no increased traffic congestion, noise, or other concerns or dangers to the property or the area if a variance is granted.

7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner?

The difficulty or hardship was not created by McDonald's or the prior property owner. When McDonald's installed the Sign, it met applicable ordinance provisions. The Sign is nonconforming only because the Sign Ordinance was subsequently adopted implementing limits on height and size of signs. In addition, the visibility issues created by the adjacent building, from which Merlin's Muffler is being operated, were not created by McDonald's and McDonald's has been precluded by the City from trimming the trees in the right of way to the North of the restaurant. Therefore, McDonald's did nothing to create this difficulty or hardship.

8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance.

As stated, a variance will not change the Sign to any extent, with the exception of the sign possibly being moved East five (5) feet, which would be supported by the ordinance. The Sign will not be replaced, and it will not be enlarged or its height increased. Further, as the Sign Ordinance does not prohibit replacement of the pole, the ordinance would not be impacted in any event.

Accordingly, McDonald's meets the requirements for a variance under section 42-622(B).



RECEIVED

JUL 01 2010

COMMUNITY DEVELOPMENT

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**Paul L. Nystrom**

Direct Dial: (248) 203-0855

Email: PNYSTROM@DYKEMA.COM

**Via Federal Express**

June 30, 2010

City of Portage Zoning Board of Appeals  
7900 South Westnedge Avenue  
Portage, MI 49002

Re: Zoning Board of Appeals Application Regarding Denial of Sign Permit for McDonald's  
Restaurant located at 6925 South Westnedge

Dear Zoning Board of Appeals:

Please allow this letter to serve as a supplement to McDonald's June 4, 2010 Zoning Board of Appeals Application and, specifically, to McDonald's request for a variance. In its Application, McDonald's stated that it would be willing to move the existing sign back five additional feet from South Westnedge as a condition of a variance. The purpose of this letter is to advise the Board of alternative conditions McDonald's would be willing to agree to if a variance is granted. In order to reduce the degree of nonconformity of the sign, if a variance is granted, McDonald's is willing to agree not to erect a second freestanding sign on its property along Admiral Avenue as authorized by the Sign Ordinance, and also to reduce the size of its existing sign by 41%.

#### **Agreement Not to Erect a Second Sign**

McDonald's property consists of a corner lot fronting South Westnedge and Admiral Avenue. The City's Sign Ordinance states that zoning lots with in excess of 320 feet of frontage may have one additional freestanding sign. See section 42-552(A), (C) and (D) of the Sign Ordinance, Exhibit A. As shown on the site plan attached to McDonald's application, McDonald's property has 210 feet of frontage on South Westnedge and 350 feet on Admiral. Therefore, McDonald's is authorized to erect a second freestanding sign on its property up to 120 square feet in size along Admiral Avenue. If McDonald's were to add a second sign, McDonald's could have up to 514 square feet of signage using a box measurement, versus the 394 square feet it currently has.

Therefore, by agreeing not to erect a second sign, McDonald's would be reducing the degree of nonconformity by ensuring that the square footage of its signage is not increased.

## Reduction of the Sign's Size

In addition to agreeing not to erect a second sign up to 120 square feet, McDonald's is also willing to reduce the size of its sign by 41%. The City's Community Development Department has indicated that the size of the sign is the most important factor as compared to setback and height. Despite the negative impact this would have on McDonald's business, and its substantial cost to McDonald's, McDonald's is willing to replace the existing sign with what is referred to as a "90/200" sign (the "Proposed Sign"). Diagrams of the Proposed Sign with measurements are attached as Exhibit B.

The Proposed Sign is 127.91 actual square feet. Thus, it is less than the 204 combined square feet of signage allowed by the Sign Ordinance if McDonald's were to erect two conforming signs. While the Proposed Sign is 311 square feet if you draw a box around it, that number does not remotely reflect the true size of the sign. While the Sign Ordinance uses the box method for sign area measurement because it is an easy method to apply, in reality, McDonald's signs have very little mass in the upper parts of the signs where the arches are located and a lot of open space. In fact, with regard to the Proposed Sign, the actual sign surfaces account for only 41% of a box drawn around the sign. Therefore, 59% of the box, or 183 square feet, is simply open space.

The Proposed Sign has much less mass than the existing sign. As can be seen in the attached diagrams, the Proposed Sign consists of longer arches on the top and a much smaller red rectangular area on the bottom. The red rectangular area is only three (3) feet in height and twenty (20) feet in width, for a total of 60 square feet. In comparison, the existing sign's red rectangular area is 7.2 feet in height and twenty (20) feet in width, for a total of 144 square feet. In fact, the actual square footage of the entire Proposed Sign (127.91 sq. ft.) is 10 feet less than the red portion of the existing sign alone that does not include the arches. Accordingly, the Proposed Sign would be a substantial reduction in size from the existing sign. The chart below provides a comparison of the two signs:

	<u>Existing Sign</u>	<u>Proposed Sign</u>	<u>% Size Reduction</u>
Total actual sign area:	213.61 sq ft	127.91 sq ft	41%
Area of red portion of sign:	137 sq.ft.	61.5 sq.ft.	55%
Boxed sign area:	394 sq. ft.	311.7 sq ft.	21%

Accordingly, while McDonald's strongly believes that the Sign Ordinance allows it to replace the pole upon which its sign sits, if the Board were to consider granting a variance, McDonald's is willing to agree not to install a second freestanding sign on its property along Admiral Avenue as allowed by the ordinance, and to reduce the size of its existing sign by 41% by erecting a 90-200 series sign. McDonald's would prefer to keep the sign in its existing location as moving it would result in the sign overhanging the parking area and would result in significant expense to relocate the foundation and alter landscaping. In addition, the sign would remain at the same overall height as the existing sign.

Lastly, I have enclosed several additional photographs demonstrating the importance of McDonald's signage and how a reduction in the size or height of the sign would make it difficult for motorists to notice both the sign and the restaurant. These photographs are attached as Exhibit C.

Thank you for your attention and consideration and I look forward to discussing this matter with you during the upcoming July hearing.

Very truly yours,

~~DYKEMA GOSSETT PLLC~~



Paul L. Nystrom  
PLN/srk

**EXHIBIT A**

attached. The combined total of wall signs shall not exceed 100 square feet per street frontage. If no freestanding sign is used, the percentage of total wall area for wall signs may be increased by 33 percent per street frontage. Lots with dual frontage may not combine permissible signs for one frontage with another frontage for the purpose of placing the combined area of signs on one frontage.

C. In addition to the sign area allowed in this subsection, one additional freestanding sign may be erected at each vehicular entrance to identify the development and facilities located in an OTR zone therein, provided that such sign:

1. Does not exceed 50 square feet in area per side;
2. Is ten feet from any property line; and
3. Does not exceed 15 feet in height.

(Ord. No. 03-01 (Exh. A, § 42-629.1), 2-18-2003)

Sec. 42-551. B-1, local business district.

In a B-1 local business district:

A. One freestanding accessory sign per zoning lot is permitted, not exceeding one square foot for each 2 1/2 feet of lot frontage, with a minimum sign size of 32 square feet, provided that the sign may not exceed 50 square feet in area for a lot less than 300 feet wide. A zoning lot in excess of 300 feet wide may have one additional sign based upon the ratio of one square foot of sign area per each 2 1/2 feet of lot frontage over the initial 300 feet of frontage. The maximum size for any one sign is 50 square feet. Where multiple-use zoning lots are involved, for each additional use on a zoning lot beyond the initial use, eight additional square feet of sign area is permitted, the total area of all signs not to exceed 50 percent over the sign size originally permitted for the lot. Where the zoning lot abuts a one-family residential district, the setback distance shall be increased such that one foot of horizontal distance from the residential area is provided for each square foot of sign permitted on the lot, provided that all such signs:

1. Are at least ten feet from any property line; and
2. Do not exceed 15 feet in height.

B. For each use on a zoning lot, there is permitted a wall sign or signs, the combined area of which does not exceed 15 percent of the total area of the wall to which the sign or signs are attached. The combined total of wall signs shall not exceed 100 square feet per street frontage. If no freestanding sign is used, the percentage of total wall area for wall signs may be increased by 33 percent per street frontage. Lots with dual frontage may not combine permissible signs for one frontage with another frontage for the purpose of placing the combined area of signs on one frontage.

(Ord. No. 03-01 (Exh. A, § 42-629.2), 2-18-2003)

Sec. 42-552. B-2, community business; B-3, general business; and CPD, commercial planned development districts.

In a B-2, community business district, B-3, general business district, or a CPD, commercial planned development district:

A. For each zoning lot, there is permitted one freestanding accessory sign, up to 50 square feet in area per side, for lots 125 feet or less in width, to be increased at a ratio of one square foot per each 2 1/2 feet of lot frontage in excess of the initial 125 feet, up to a lot 300 feet wide. A zoning lot having in excess of 320 feet of frontage may have one additional sign based upon the same

ratio of one square foot of sign area for each 2 feet of lot frontage over the initial 320 feet of frontage. The maximum size for any one sign is 120 square feet.

B. When multiple-use zoning lots are involved, for each additional use on the zoning lot beyond the initial use, 15 square feet of sign area is permitted, the total area of freestanding signs not to exceed 50 percent over the sign size originally permitted for the lot.

C. For a lot with frontages on more than one street, each frontage may be treated as a separate frontage for the purpose of establishing permitted freestanding sign area and number.

D. For a corner lot, the distance between permitted freestanding signs shall be not less than 100 feet, as measured along the property lines, but in no case shall there be a distance of less than 70 feet between such signs. Each such sign shall be oriented to the street frontage it serves. If one freestanding sign is used, then the percentage of freestanding sign area permitted on one street frontage may be increased 100 percent to a maximum of 120 square feet in area per side, provided that such sign is oriented equally to both street frontages.

E. Where a zoning lot is permitted to have more than one freestanding accessory sign under this section, the distance between such freestanding signs shall not be less than 300 feet.

F. Signs may not exceed 25 feet in height.

G. Signs must be at least ten feet from any property line.

H. For each use on a zoning lot, there are permitted wall signs, the combined area of which shall not exceed 15 percent of the total area of the wall to which the signs are attached. The total shall not exceed 100 square feet per street frontage. If no freestanding sign is used, the percentage of total wall area for wall signs may be increased by 33 percent per street frontage. Lots with dual frontages may not combine permissible signs for one frontage with another frontage for the purpose of placing a combined area of sign area on one frontage.

I. In addition to that permitted in subsection H above, the permitted wall sign area may be increased if the criteria listed below is satisfied:

1. For buildings with wall frontage on a public or private street that exceeds 200 lineal feet:

TABLE INSET:

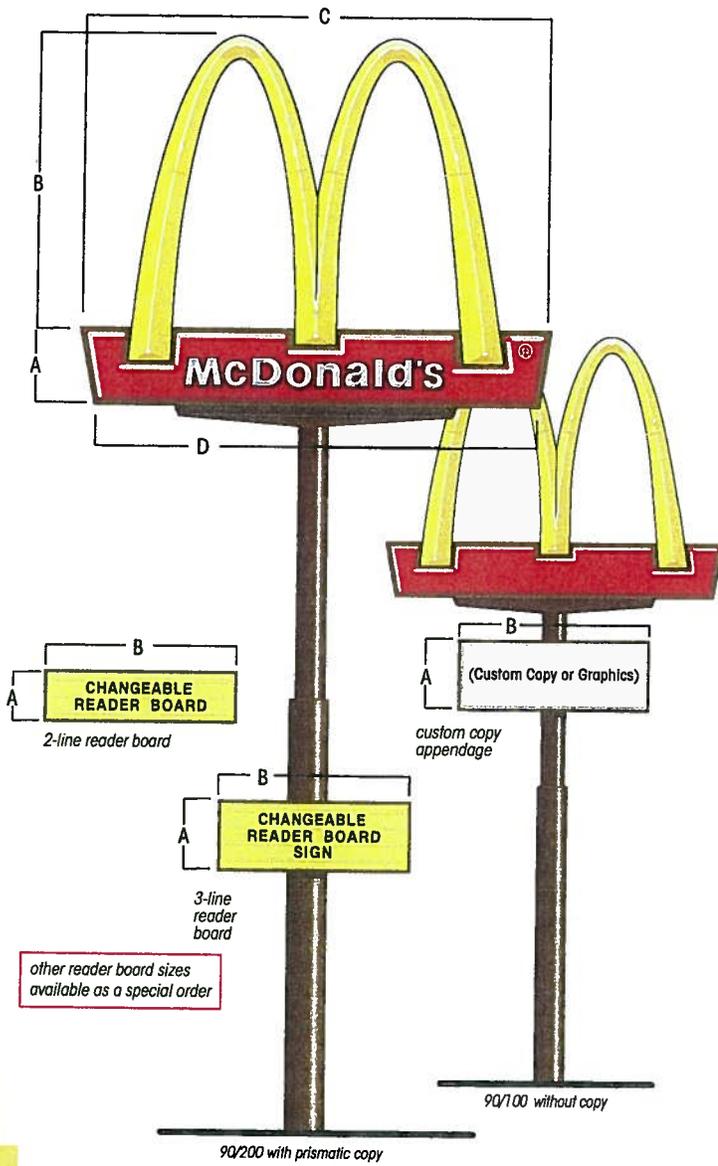
Wall (in lineal feet)	Additional Sign Area Permitted (in square feet)
200--300	50
300--400	75
400--500	100
Greater than 500	125

2. For buildings with wall frontage on a public or private street that exceeds 200 lineal feet and with a setback greater than 300 feet from a public or private street:

TABLE INSET:

Building Setback (in feet)	Additional Sign Area (in square feet)
300--400	50

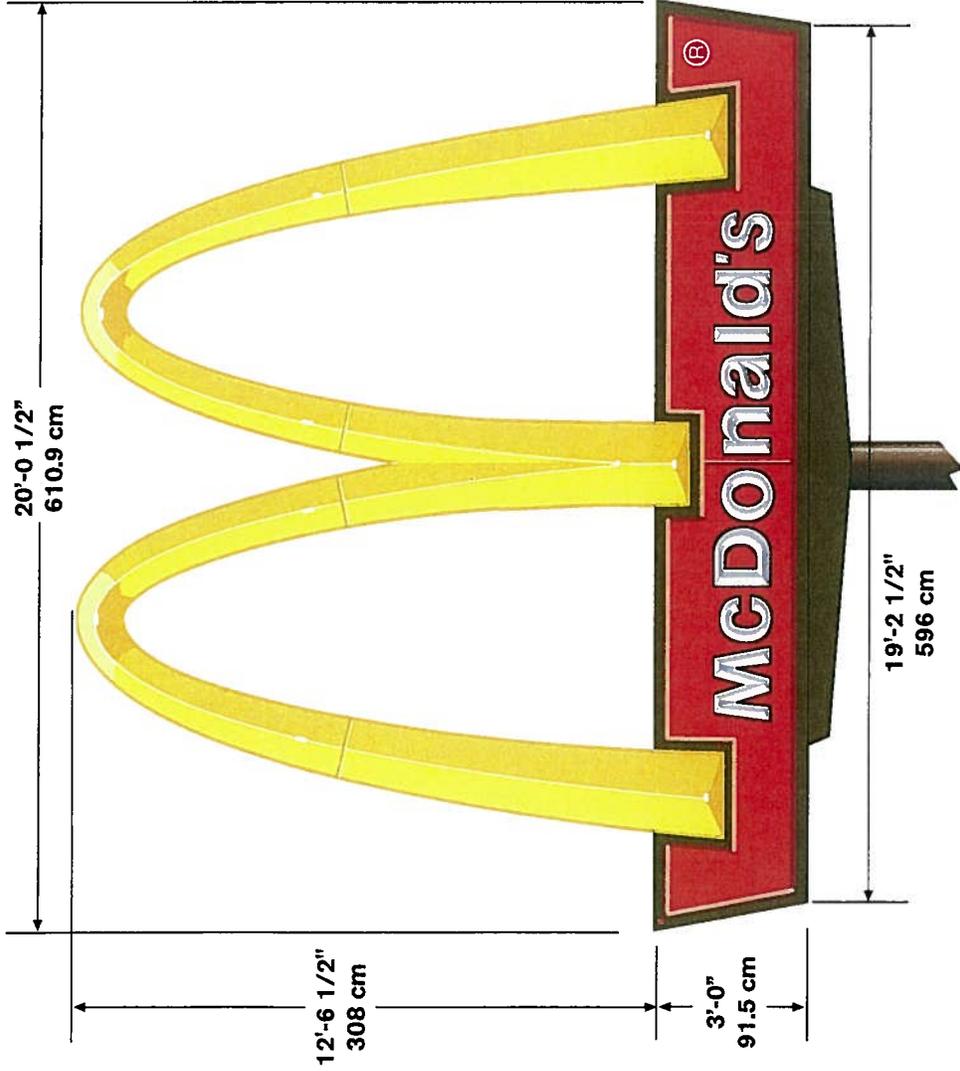
**EXHIBIT B**



## 90 series signs

sign size	90-200
A	3' - 0"
B	12' - 6½"
C	20' - ½"
D	19' - 2½"
actual sq. ft.	127.91
boxed sq. ft.	311.7
amps	47.9
circuits req.	4(20)

## 90/200 Road Sign



**Illumination:**

Mercury vapor lamps  
14 HR-175 DX-39  
6 HR-400 DX-33

**Electrical:**

Arch- 24.5 Amps 120V 60Hz  
Base- 23.4 Amps 120V 60Hz

**Ballast:**

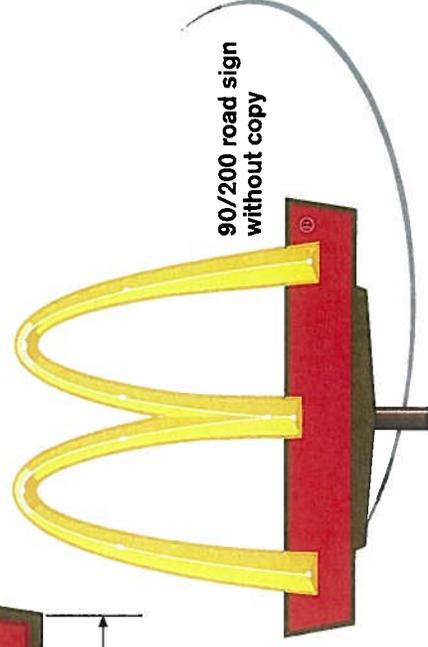
14 Universal #1110-245-S-C-TC  
6 Universal #1110-247-S-C-TC

**Ship Weight:**

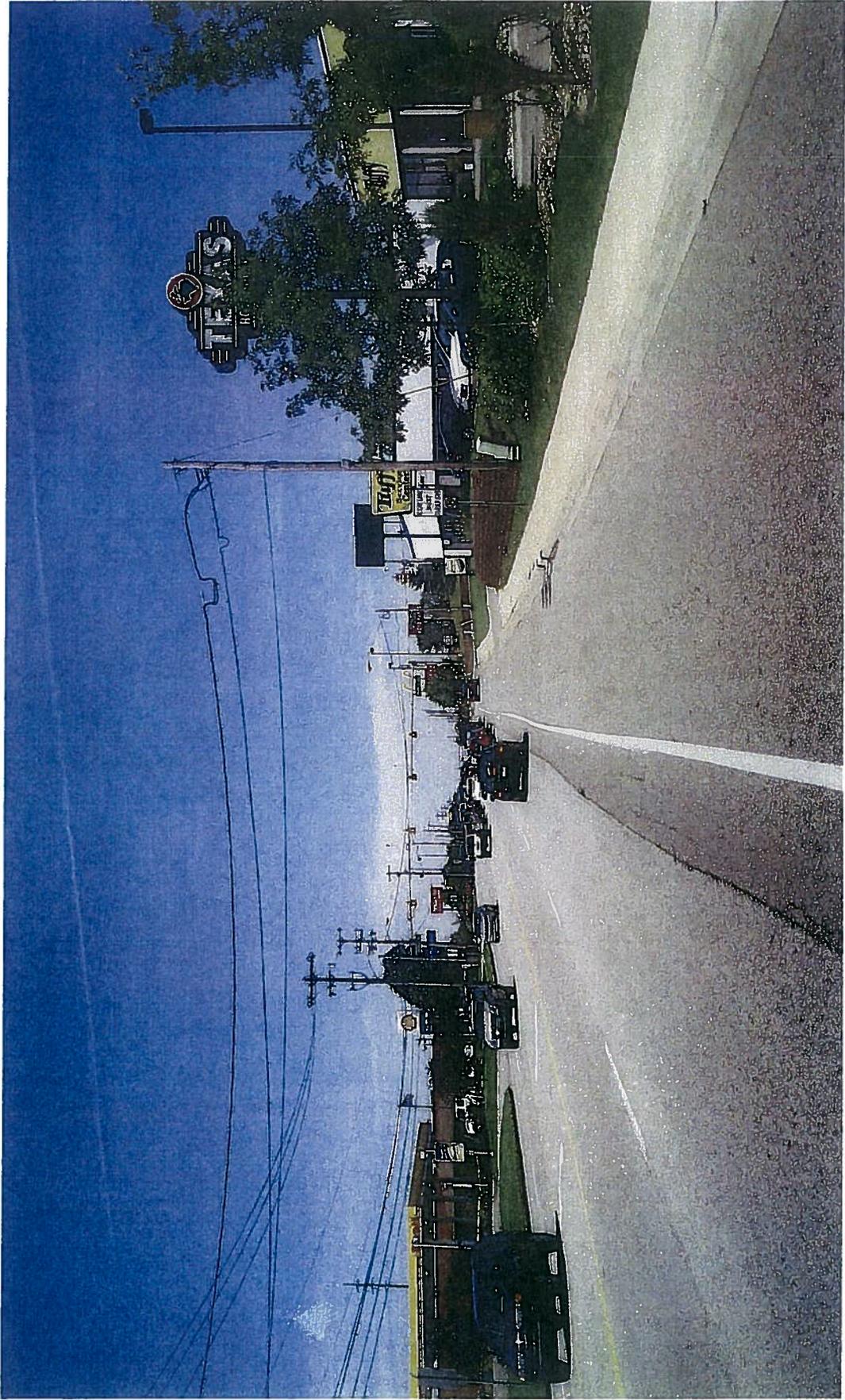
4155 lbs.

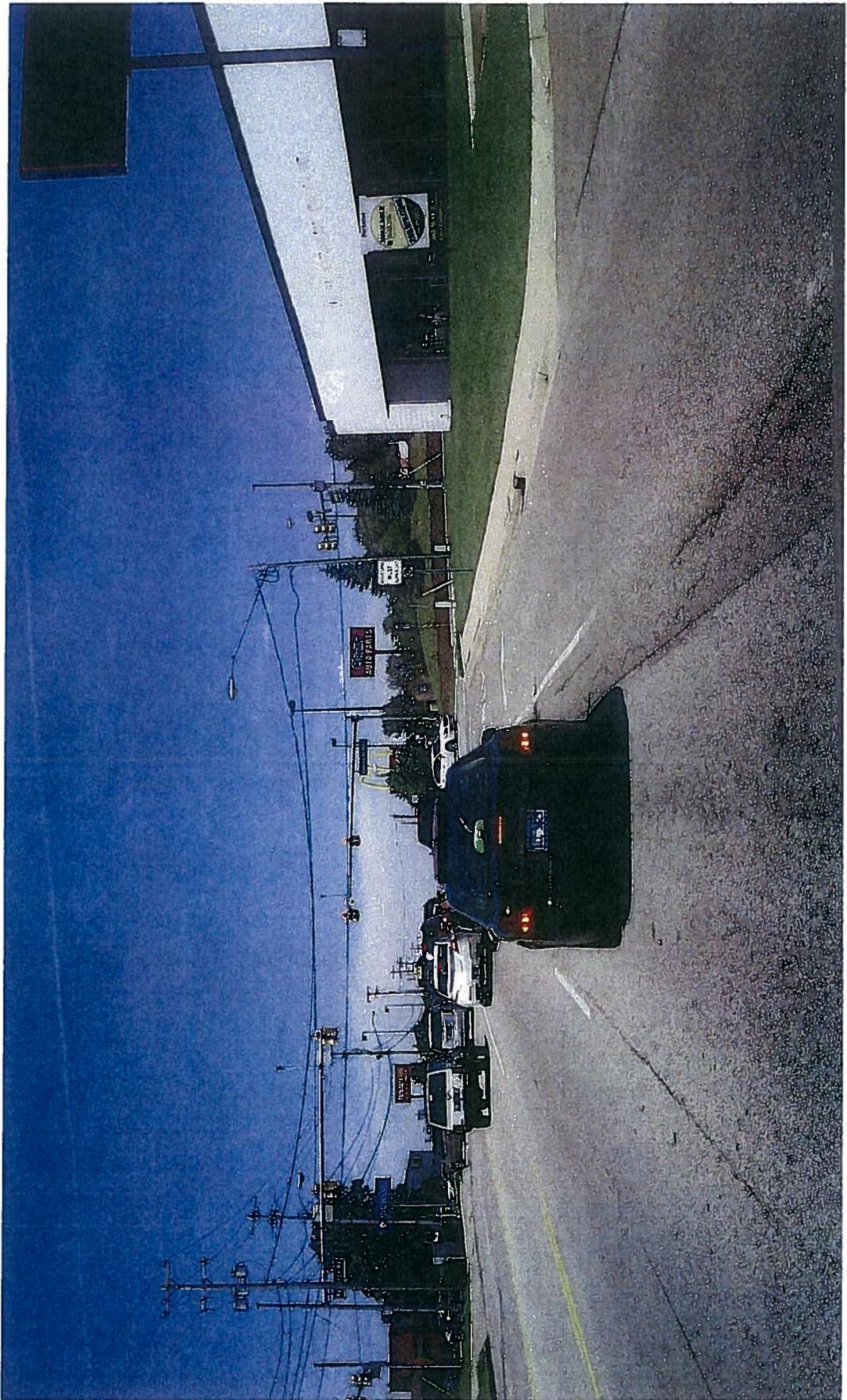
**Other:**

- Available with or without McDonald's prismatic copy
- Recommend prismatic copy on signs under 40' overall height



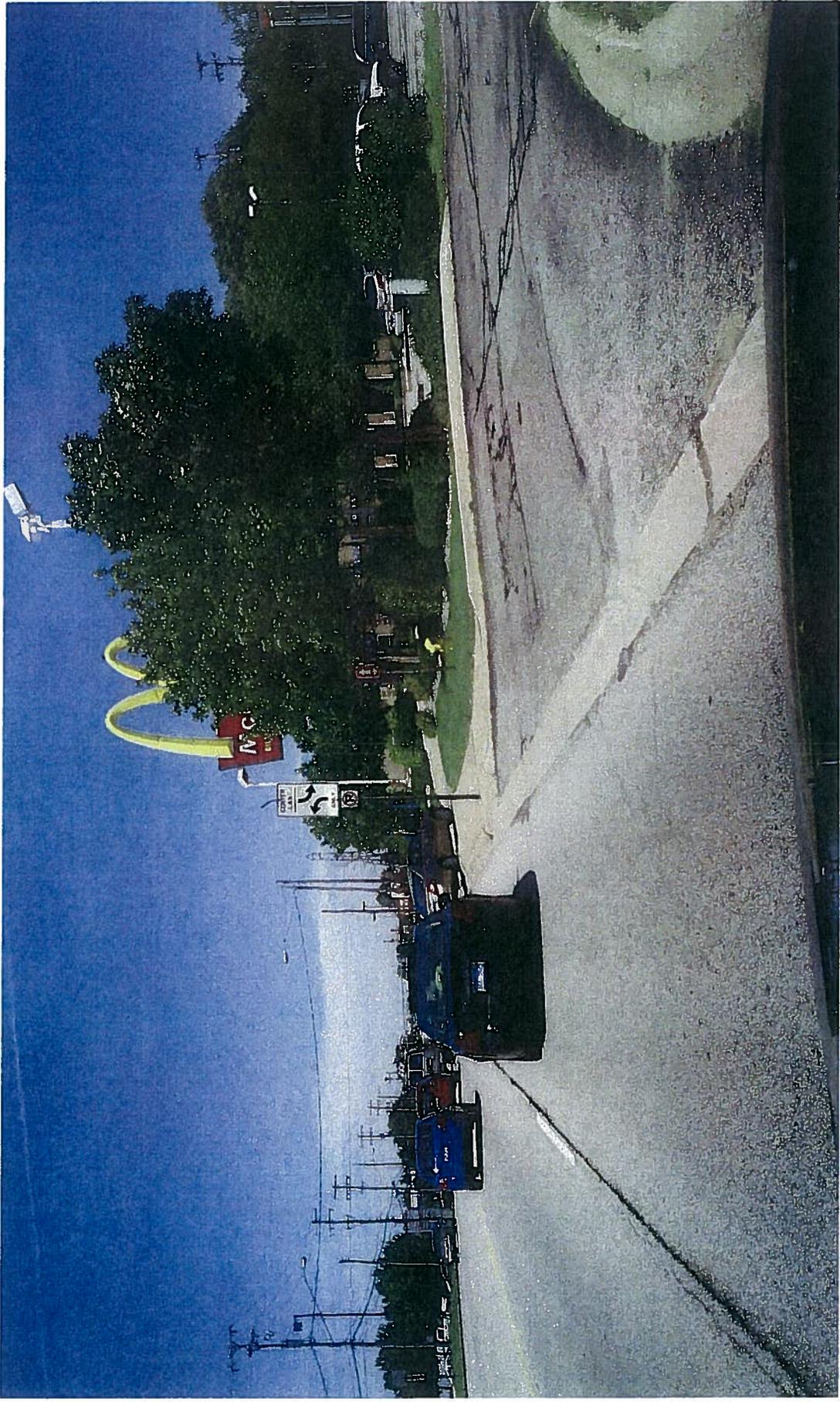
**EXHIBIT C**

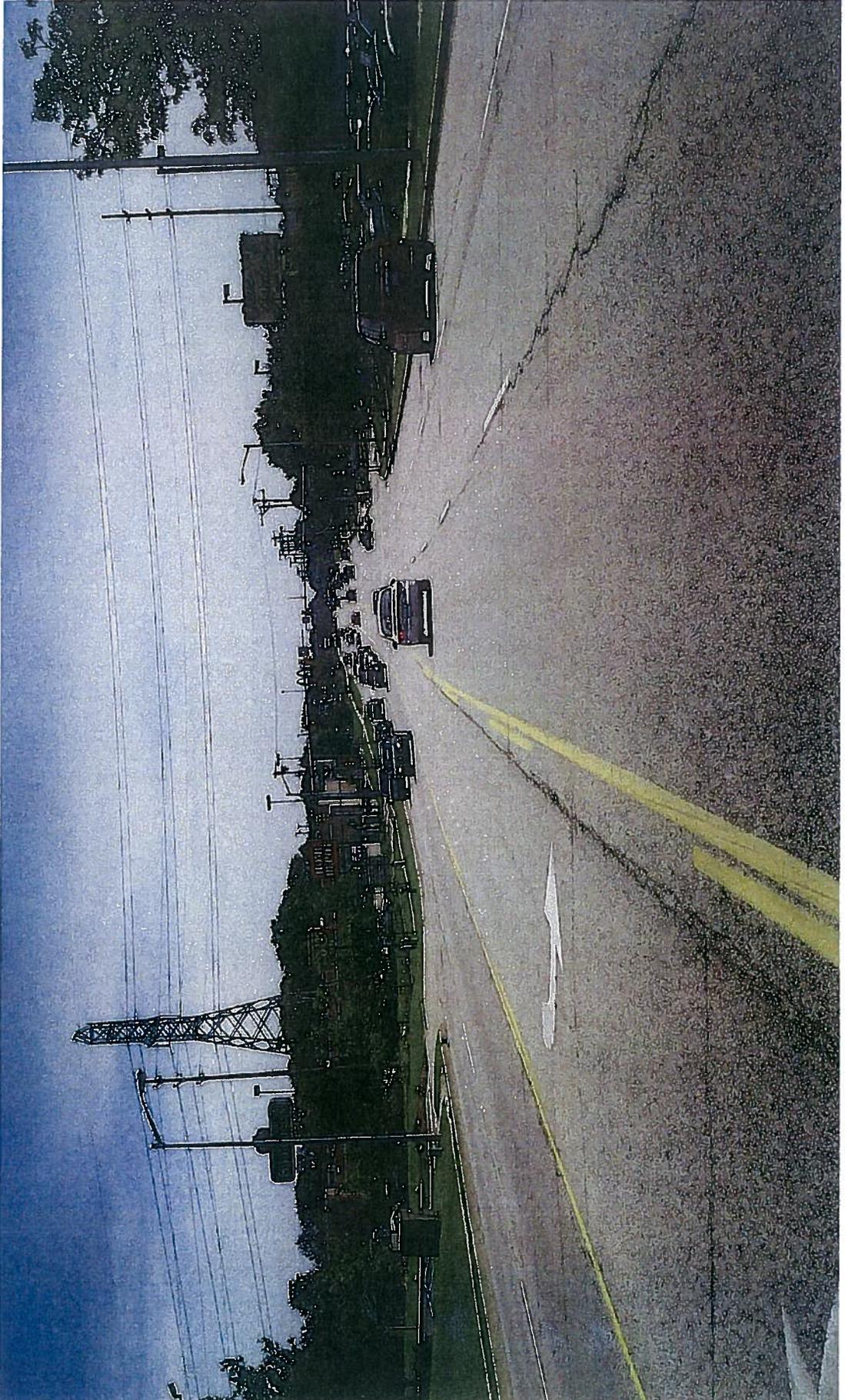


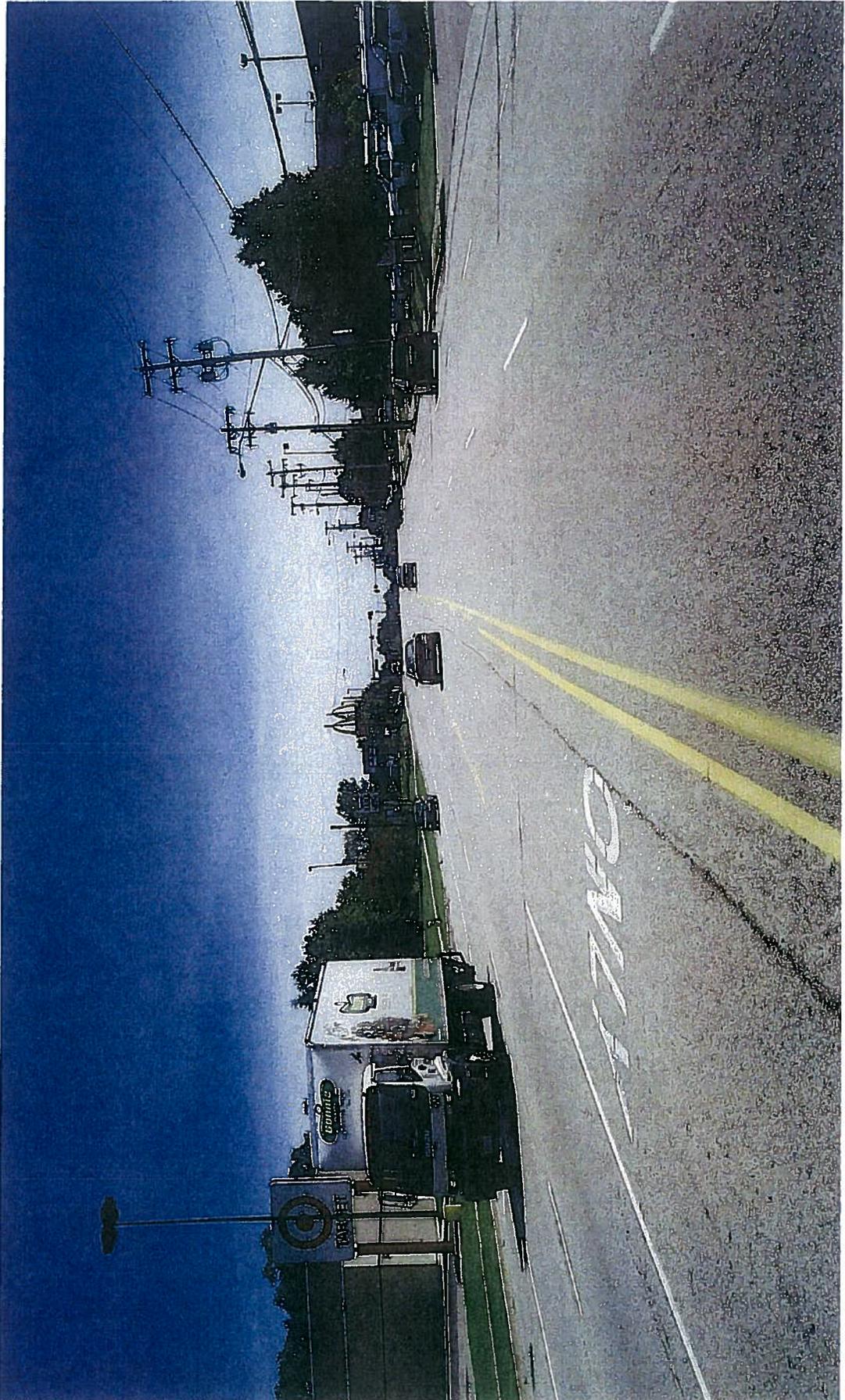


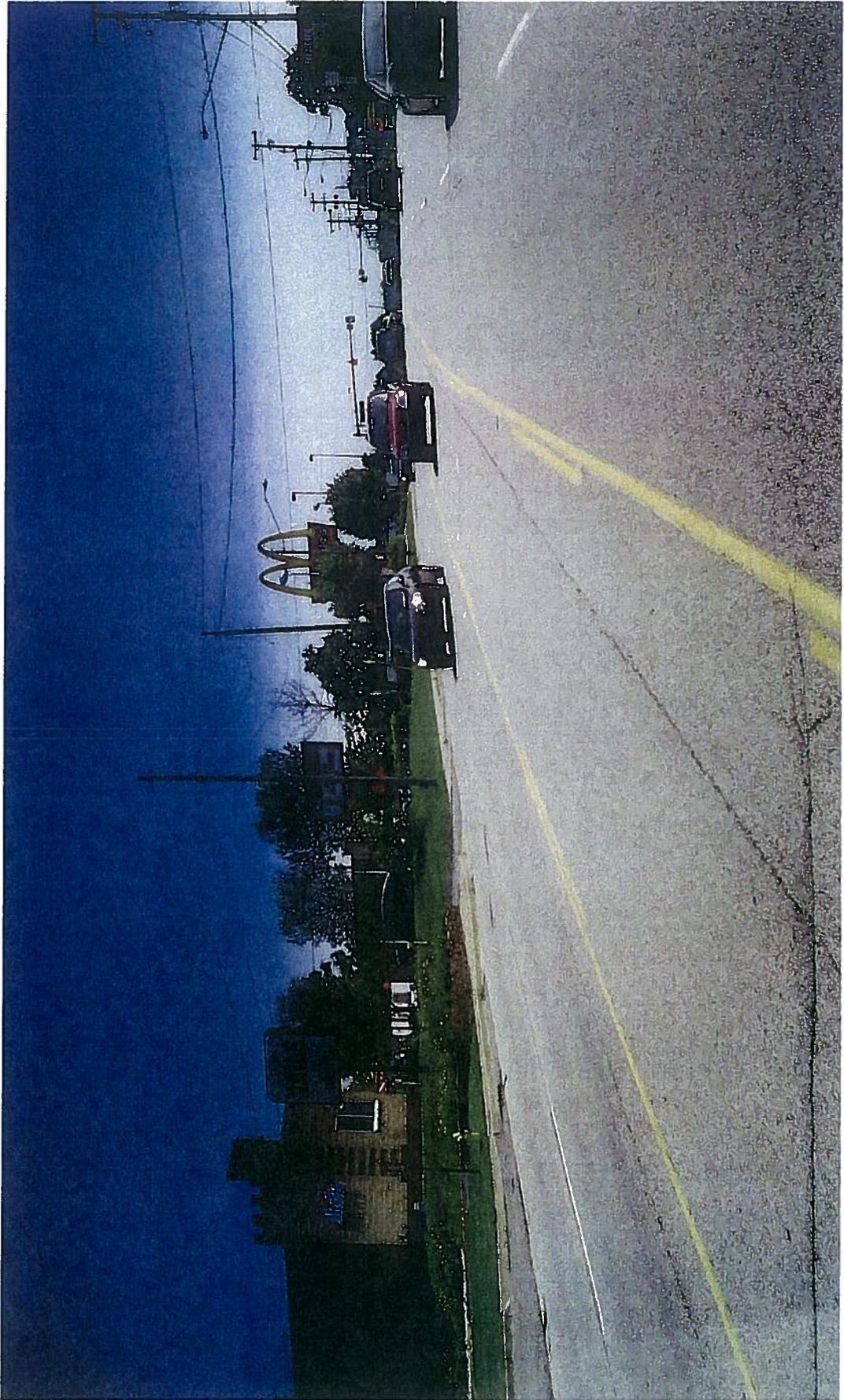
















RECEIVED

JUN 7 2010

COMMUNITY DEVELOPMENT

Dykema Gossett PLLC  
Suite 300  
39577 Woodward Avenue  
Bloomfield Hills, Michigan 48304

WWW.DYKEMA.COM

Tel: (248) 203-0700

Fax: (248) 203-0763

**Paul L. Nystrom**

Direct Dial: (248) 203-0855

Email: PNYSTROM@DYKEMA.COM

**Via Federal Express**

June 4, 2010

City of Portage Zoning Board of Appeals  
7900 South Westnedge Avenue  
Portage, MI 49002

Re: Zoning Board of Appeals Application Regarding Denial of Sign Permit for McDonald's Restaurant located at 6925 South Westnedge

Dear Zoning Board of Appeals:

Enclosed please find a Zoning Board of Appeals Application being submitted on behalf of McDonald's Corporation ("McDonald's"). The Application relates to McDonald's freestanding sign located at 6925 South Westnedge Avenue (the "Sign"). As stated in the Application, McDonald's is appealing an administrative decision denying its application for a sign permit to replace the pole upon which the Sign sits, and is seeking an interpretation of Chapter 42, Article 4, Sections 42-541(A) and 544(B), of the City's Code of Ordinances, as to whether those sections authorize McDonald's to replace the pole. In the alternative, McDonald's seeks a variance under Section 42-544(C)(1) and (2).

**McDonald's Application For A Sign Permit To Replace the Pole**

McDonald's Sign has existed in its present location since McDonald's restaurant first opened its doors for business almost 37 years ago on November 23, 1973. As might be expected, and for reasons that will be discussed, the Sign is extremely important to McDonald's business and to its continued success in Portage. However, corrosion has occurred near the base of the steel pole upon which the Sign is erected. McDonald's would like to have City Sign Erectors of Grand Rapids replace the pole with an identical pole of the same appearance, size, height and material. Photos of the Sign and the pole are attached as Exhibit A. Replacement of the pole will not affect the Sign itself, including its location, height or appearance, and the Sign will simply be re-installed onto the new pole.

McDonald's Sign is a legal nonconforming sign, as it is larger and taller than what the City's current Sign Ordinance allows. However, the Sign Ordinance, Article 4, Division 6, Subdivision 2, of the City's Code of Ordinances (the "Sign Ordinance"), authorizes McDonald's to replace the pole despite this nonconformity. Therefore, on May 4, 2010, following a meeting with City administration, McDonald's submitted an application for a sign permit to allow it to

replace the pole. A copy of the Application and the various materials submitted with it are attached as Exhibit B. On May 24, 2010, McDonald's received a May 21 letter from Jeffrey Erickson, Director of Neighborhood Services, denying McDonald's application. A copy of the letter is attached as Exhibit C. The basis for the denial of the application was not provided in the letter or during a subsequent telephone call with City administration.

The present appeal is being filed as a result of that denial.

### **The Sign**

As stated, the Sign has existed in its current location since November 1973. It is thirty-six (36) feet in overall height. While the total area of the sign is 394 square feet using the method by which a sign is enclosed in a box, in reality, it is 213 square feet when the actual surfaces of the sign are measured. The sign also has an electronic reader board that is 73 inches wide by 28 inches in height. The sign sits on a steel pole that is anchored to a concrete foundation. *See* Sign dimensions attached as Exhibit D.

Based on the attached site plans and measurements taken, the leading edge of the sign closest to Westnedge Avenue is five (5) feet from an easement for highway purposes, nine (9) feet from the leading edge of the sidewalk, and seventeen (17) feet from the leading edge of Westnedge Avenue. The property line, however, is located within Westnedge, and is 55 feet from the leading edge of the sign. *See* site plans attached as Exhibits B and E. The Sign Ordinance provides that "signs must be at least ten feet from any property line." *See* section 42-552(G).

### **The Importance of the Sign to McDonald's Business**

McDonald's relies heavily upon visibility-driven and impulse-driven customer visits. Research has shown that up to 70% of McDonald's customers are driven by impulse and decide to visit a McDonald's at the spur of the moment while on the road, which is directly driven by signage and visible brand identity. Therefore, reducing the size, height and/or location of McDonald's sign would dramatically harm McDonald's business in Portage.

The following are some relevant facts determined from research:

- With regard to customers defined by McDonald's as "Frequent Visitors", 33% of their visits are driven by the impulse of easily visible signs.
- With regard to customers defined by McDonald's as "Moderately Frequent Visitors", 50% of their visits are driven by the impulse of easily visible signage.
- With regard to "First-Time" McDonald's customers, 100% of their first visits are driven by the impulse of easily visible signs.

These facts highlight the importance of signage that is visible to all of McDonald's customers.

Additionally, making changes to signage at existing McDonald's restaurants has been measured by McDonald's in over 60 real-life examples. Such changes have had substantial impacts on McDonald's sales:

<u>Description of Signage Change</u>	<u>Sales Volume Change</u>	
	<u>Extreme</u>	<u>Average</u>
Increase sign size and/or height	+25%	+12%
Increase existing sign height	+22%	+5%
Add a sign	+15%	+6%
<b>Decrease sign size and/or height</b>	<b>-15%</b>	<b>-7%</b>

Based on McDonald's studies, decreasing the existing sign's height and/or size would result in a significant decrease in McDonald's annual sales volumes and cause a significant loss of profit each year. This would have a substantial negative impact on McDonald's restaurant, and reduced customer visits and sales could result in McDonald's requiring less employees to work at the restaurant. It would also reduce the amount of sales taxes paid to the State of Michigan, which could impact municipalities including Portage.

For these reasons, McDonald's Sign is critically important to its success in Portage and McDonald's seeks only to replace the pole upon the Sign sits, without any changes to the Sign.

**I. Appeal of Permit Application Denial and Request for Interpretation of Sections 42-541(A)(1) and 544(B) of The Sign Ordinance.**

As stated in its Application, McDonald's is appealing the City's denial of its permit application and seeking an interpretation of ordinance sections 42-541(A)(1) and 544(B) as to whether they allow McDonald's to replace the pole upon which its Sign sits. It is McDonald's position that these sections allow McDonald's to replace the pole. If the intent of the Sign Ordinance is determined to be unclear, the benefit of doubt must go to the property owner and, therefore, the language must be interpreted in favor of McDonald's. See City of Portage ordinance section 42-622(C)(1)(d); *Fremont Township v McGarvie*, 164 Mich App 611 (1988), *Township of Peacock v Panetta*, 81 Mich App 733 (1978).

To the extent that the City's decision to deny McDonald's permit application was based on a determination that replacement of the pole would constitute a structural alteration of a legal nonconforming sign, such a determination would be erroneous and contrary to the Sign Ordinance. While the sign is a legal nonconforming sign, the section of the Sign Ordinance addressing nonconforming signs, section 42-544(B), does not apply to the sign's pole. Section 42-544(B) states that no nonconforming sign shall be structurally altered so as to prolong the life of the sign. The term "sign", as defined in section 42-541(A)(1), does not include the pole upon which the sign sits:

a name, identification, description, illustration or device, illuminated or non-illuminated, which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise or any emblem, painting, banner, pennant, placard or temporary sign designated to advertise, identify or convey information, with the exception of window displays and national, state and local government flags. For the purposes of sign removal, the term "sign" includes a sign structure. [Underline added.]

(Sections 42-544(B) and 541(A)(1) are attached as Exhibit F.)

Therefore, as defined, the term "sign" does not include a sign's pole. The last sentence of the definition confirms this. That sentence provides that a sign structure is included in the definition of the term sign only for purposes of sign removal. Accordingly, unless dealing with removal of a sign, which is addressed in section 42-542(H), which involves signs ordered to be removed, and which is not at issue with regard to the enclosed application, the ordinance specifically states that the term sign does not include a structure such as a pole.

Further, the Sign Ordinance defines the term "freestanding sign" as "a sign erected on a freestanding frame, mast or pole and not attached to a building." [Underline added.] Therefore, a freestanding sign is defined as a sign that sits on a pole, and the pole is not included as a part of the sign. In addition, section 42-542(B)(1), which addresses sign measurements, states that the area of a sign "exclud[es] the necessary supports or uprights on which the sign is placed", again confirming that a pole is not part of a sign. See Exhibit F. The City's sign permit application even requires a scaled drawing or photo of the "sign and support structure", again clarifying that a sign's pole or other support structure is not included as part of the sign as defined by the ordinance. See Application, Exhibit B.

The City's Code of Ordinances does define the term sign to include its pole in Chapter 42, Article 11, Section 42-1273. While that definition is inapplicable to the enclosed permit

application as the definitions in Section 42-541 apply, it is nonetheless insightful. That section defines sign to mean "any medium, including its structure and component parts, which is used or intended to be used to attract attention . . ." [Underline added.] Accordingly, while the Code defines the term sign to include a sign's pole in other articles, it has specifically excluded poles and other support structures from its definition of sign in the Sign Ordinance.

Therefore, while Section 42-544 precludes a nonconforming sign from being structurally altered so as to prolong its life, this prohibition relates only to structural alterations of signs, and does not preclude replacement of poles upon which signs sit. As stated, the Sign itself will not be structurally altered.

Further, even if the Sign Ordinance did prohibit structural alterations of a sign and its supporting pole, simply replacing the pole would constitute maintenance versus a structural alteration. The ordinance does not define the term "structural alteration." Undefined terms in ordinances must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions. *Halloran v Bhan*, 470 Mich 572 (2004). *The American Heritage Dictionary* defines "alter" as "to change or make different; modify." Dictionary.com defines them as "to make different in some particular, as size, style, course, or the like", and "to change, become different or modified". The pole will be replaced with an identical pole. Therefore, it will be no different in size, style, material, or otherwise.

In *Kopietz v Village of Clarkston*, unpublished opinion of the Michigan Court of Appeals decided May 6, 1997 (Docket No. 185309), the Michigan Court of Appeals determined the meaning of "structural alterations," which was used but not defined in a zoning ordinance providing that an existing nonconforming structure may not be structurally altered. The Court held that "a structural alteration is any change in an existing structure which would expand the size of the structure, significantly change the outside dimensions of the structure, or which would effectively convert the building into a different structure." The Court held that changes to the interior of a nonconforming building that did not enlarge the building or change its outside dimensions did not constitute "structural changes."

As stated, replacement of the pole will not enlarge or change the size or dimensions of the pole to any extent, and it will not change the pole into a different use. Accordingly, even if section 42-544 applied to the pole at issue, replacement of the pole would not constitute a structural alteration and the sign ordinance does not prohibit such replacement.

While the Sign Ordinance is clear with respect to allowing McDonald's to replace the pole, as stated, if the intent of the Sign Ordinance is determined to be unclear, the language must be interpreted in favor of McDonald's. See City of Portage ordinance section 42-622(C)(1)(d); *Fremont Township v McGarvie*, 164 Mich App 611 (1988), *Township of Peacock v Panetta*, 81 Mich App 733 (1978).

For the forgoing reasons, McDonald's requests that the Board interpret the Sign Ordinance as allowing McDonald's to replace the pole at issue, reverse the decision denying McDonald's permit application, and grant McDonald's its requested permit.

## **II. McDonald's Alternately Seeks a Variance.**

While the Sign Ordinance authorizes McDonald's to replace the pole, to the extent that the Board disagrees, McDonald's alternatively seeks a variance under sections 42-544(C)(1) and (2).

Section 42-544(C) of the Sign Ordinance permits the ZBA to grant variances related to the alteration or maintenance of a nonconforming sign on the basis that (1) the standards of section 42-622(B)(1) are met, OR (2) the granting of a variance will reduce the degree of nonconformity of an existing sign. McDonald's will address section 544(C)(2) first.

### Section 42-544(C)(2)

While the Sign Ordinance does not prohibit McDonald's from replacing the pole, McDonald's would be willing to move the Sign five (5) feet to the East when it replaces the pole. This would cause the Sign to meet the ten (10) feet setback requirement as characterized by the City. This would also meet the City's desire to reduce the degree of nonconformity of the Sign, while also not resulting in any structural changes to the Sign itself.

To the extent that the City considers granting a variance conditioned upon reducing the height or size of the Sign, such conditions would not be practical or reasonable. The pole is 14 feet 1 inch from the ground to the bottom of the reader board. Lowering the Sign could create visibility issues and, depending on how much it were to be lowered, the Sign would look as if it were practically sitting on the ground. It would also greatly affect the visibility of the Sign.

Reducing the size of the Sign would require McDonald's to remove the Sign and replace it with another sign at great cost. It would also have a significant impact on McDonald's sales and ability to attract customers and would affect the amount of sales tax paid to the State of Michigan and hence the amount of state revenue provided to municipalities including Portage. Therefore, these are conditions that would not be practical or agreeable.

### Section 42-544(C)(1)

McDonald's also meets the requirements of section 42-622(B), which provide a separate basis for the grant of a variance:

a. Exceptional or extraordinary circumstances: McDonald's studies have shown that consumers use two glances in determining whether to stop at a restaurant. They first look for signage, and then they look at the building. *See* Exhibit F. McDonald's restaurant is set back

approximately 150 feet from the roadway. This makes its sign that much more important because it is less visible than other buildings closer to the roadway. In fact, the business to the immediate North of McDonald's restaurant is Merlin Muffler. That building is significantly closer to Westnedge than McDonald's. The building to the South, Riley's Auto Parts, also has a lesser setback from Westnedge than McDonald's, albeit to a lesser extent. This prevents those in vehicles from seeing McDonald's restaurant when travelling South until they are virtually in front of it. There are also several large trees between McDonald's and Merlin Muffler that block the view of the restaurant and would also block the view of a sign smaller than the existing Sign. (See Exhibits A and E.)

Further, there is also a traffic safety issue to be considered. The Sign is visible from a distance, despite trees and other structures that affect its visibility. It allows customers to recognize the location of the restaurant in sufficient time to move into the proper lane and make a safe turn into the restaurant. If signage is decreased, customers in vehicles will have less time to recognize the Sign and respond, and will require more time looking for the Sign. While the speed limit on Westnedge at this location is 35 miles per hour, vehicles commonly travel 45 miles per hour or more. A smaller and lower sign which is also hidden from view by trees and adjacent buildings will cause motorists to make last second maneuvers to avoid driving past the restaurant.

b. Necessary for Preservation and Enjoyment of Substantial Property Right:

McDonald's has been operating its restaurant since it opened in November 1973 with the existing Sign. As stated, the sign is critical to McDonald's success in Portage, including its ability to attract customers and generate sales. Please refer to the section above regarding "The Importance of the Sign to McDonald's Business".

c. Variance Not Detrimental to Adjacent Property and Surrounding Neighborhood:

As stated, McDonald's has been operating its restaurant since 1973 with this same Sign. A variance will not impact any adjacent properties or the surrounding neighborhood as nothing will change with regard to the Sign's location, size or height.

d. No Material Impairment of Intent and Purpose of Zoning Ordinance:

As stated, a variance will not change the Sign to any extent, with the exception of the sign possibly being moved East five (5) feet, which would be supported by the ordinance. The Sign will not be replaced, and it will not be enlarged or its height increased. Further, as the Sign Ordinance does not prohibit replacement of the pole, the ordinance would not be impacted in any event.

e. Practical Difficulty Requiring Variance Not Caused By McDonald's:

When McDonald's installed the Sign, it met applicable ordinance provisions. The Sign is nonconforming only because the Sign Ordinance was subsequently adopted implementing limits on height and size of signs. In addition, the adjacent property to the North with a Merlin Muffler being operated was not developed by McDonald's and McDonald's has been precluded by the City from trimming the trees in the right of way to the North of the restaurant. Therefore, McDonald's did nothing to create any practical difficulties.

Accordingly, McDonald's meets the requirements for a variance under section 42-622(B).

**Requested Relief**

For the reasons stated in this letter and in McDonald's Application, McDonald's requests that the ZBA reverse the denial of McDonald's sign permit application and grant McDonald's a permit authorizing it to replace the pole at issue. McDonald's also requests that the ZBA interpret Sections 42-541(A)(1) and 42-544(B) to allow poles upon which legal nonconforming signs are erected to be replaced. In the alternative, McDonald's requests a variance allowing it to replace the pole.

Thank you for your attention and consideration and I look forward to discussing this matter with you at the July ZBA hearing.

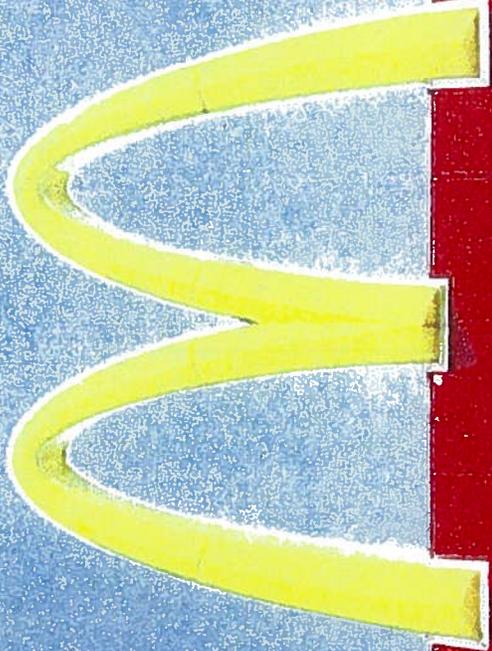
Very truly yours,

**DYKEMA GOSSETT LLC**

  
Paul L. Nystrom  
PLN/srk

Enclosures

**EXHIBIT A**

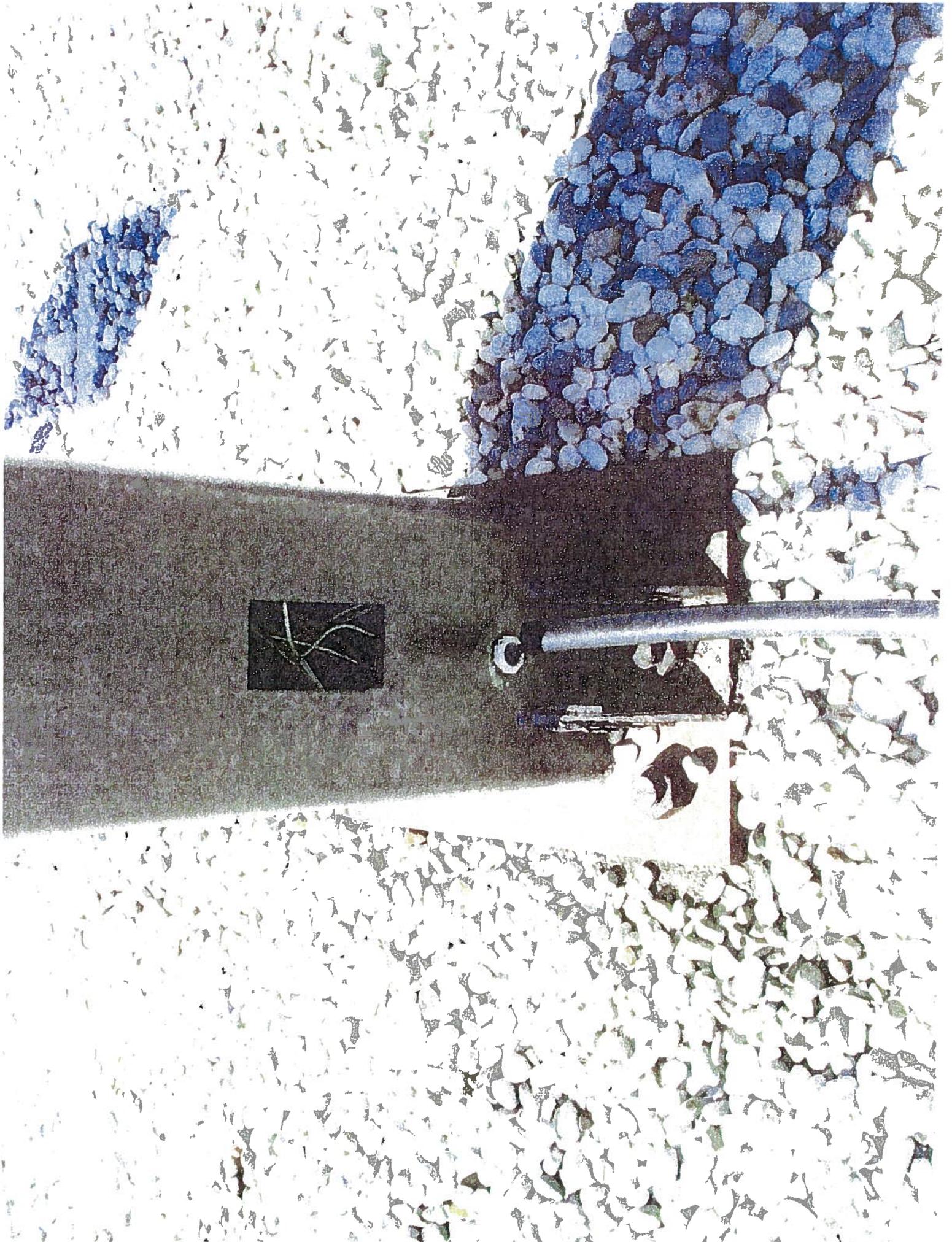


**McDonald's**  
BILLIONS AND BILLIONS SERVED

OPEN 24 HOURS

DRIVE THRU  
**24**  
Hours







**EXHIBIT B**



Dykema Gossett PLLC  
Suite 300  
39577 Woodward Avenue  
Bloomfield Hills, Michigan 48304

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Tel: (248) 203-0700

Fax: (248) 203-0763

**Paul L. Nystrom**

Direct Dial: (248) 203-0855

Email: PNYSTROM@DYKEMA.COM

**Via Federal Express**

May 4, 2010

Ms. Vicki Georgeau  
Deputy Director of Neighborhood Services  
Department of Community Development  
City of Portage  
7900 South Westnedge Avenue  
Portage, MI 49002

Re: Application for Sign Permit Regarding McDonald's Restaurant located at 6925 South Westnedge

Dear Ms. Georgeau:

I represent McDonald's Corporation ("McDonald's"). Enclosed please find an application for a sign permit being submitted on behalf of McDonald's with regard to its freestanding sign located at the above-referenced restaurant. McDonald's intends to have City Sign Erectors replace the pole on which the sign sits with a pole that is identical in appearance, size, height and material. Replacement of the pole is being done as a result of some corrosion on the base of the pole. Photos of the sign and the pole are attached to the application, along with further materials supporting the application. The replacement of the pole will not affect the location or height of the existing sign, which will be re-installed on the new pole. The City's Sign Ordinance, Article 4, Division 6, Subdivision 2, of the City's Code of Ordinances (the "Sign Ordinance"), authorizes McDonald's to replace the pole, and McDonald's requests that the City grant the application and issue a permit.

To the extent that the City seeks to characterize the replacement of the pole as a structural alteration of a legal nonconforming sign, such a characterization would be incorrect and contrary to the Sign Ordinance. While the sign is a legal nonconforming sign, the section of the Sign Ordinance addressing nonconforming signs, section 42-544, does not apply to the sign's pole. Section 42-544 states that no nonconforming sign shall be structurally altered so as to prolong the life of the sign. The term "sign" is defined in section 42-541 as follows:

a name, identification, description, illustration or device,  
illuminated or non-illuminated, which is visible from any public  
place or is located on private property and exposed to the public

and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise or any emblem, painting, banner, pennant, placard or temporary sign designated to advertise, identify or convey information, with the exception of window displays and national, state and local government flags. For the purposes of sign removal, the term "sign" includes a sign structure. [Underline added.]

Therefore, as defined, the term "sign" does not include a sign's pole. The last sentence of the definition confirms this. That sentence provides that a sign structure is included in the definition of the term sign only for purposes of sign removal. Accordingly, unless dealing with removal of a sign, which is addressed in section 42-542(H) and which is not at issue with regard to the enclosed application, the ordinance specifically states that the term sign does not include a structure such as a pole. Further, the Sign Ordinance defines the term "freestanding sign" as "a sign erected on a freestanding frame, mast or pole and not attached to a building." Therefore, a freestanding sign is defined as a sign that sits on a pole, and the pole is not included as a part of the sign. In addition, the City's sign permit application provides for a scaled drawing or photo of the "sign and support structure", again clarifying that a sign's pole is not included as part of the sign as defined by the ordinance.

The City's Code of Ordinances does define the term sign to include its pole in Chapter 42, Article 11, Section 42-1273. While that definition is inapplicable to the enclosed permit application, it is nonetheless insightful. That section defines sign to mean "any medium, including its structure and component parts, which is used or intended to be used to attract attention . . ." [Emphasis added.] Accordingly, while the City has defined the term sign to include a sign's pole in other articles, it has specifically excluded poles and other support structures from its definition of sign in the Sign Ordinance. Therefore, while Section 42-544 precludes a nonconforming sign from being structurally altered so as to prolong its life, this prohibition relates only to structural alterations of signs, and does not preclude replacement of poles upon which signs sit.

Further, even if the Sign Ordinance did prohibit structural alterations of a sign and its supporting pole, simply replacing the pole would constitute maintenance of the pole versus a structural alteration. The ordinance does not define the term "structural alteration." Undefined terms in ordinances must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions. *Halloran v Bhan*, 470 Mich 572 (2004). *The American Heritage Dictionary* defines "alter" as "to change or make different; modify." Dictionary.com defines them as "to make different in some particular, as size, style, course, or the like", and "to change, become different or modified". The pole will be replaced with an identical pole. Therefore, it will be no different in size, style, material, or otherwise.

# DyKEMA

Ms. Vicki Georgeau  
May 4, 2010  
Page 3

In *Kopietz v Village of Clarkston*, unpublished opinion of the Michigan Court of Appeals decided May 6, 1997 (Docket No. 185309), the Michigan Court of Appeals determined the meaning of "structural alterations," which was used but not defined in a zoning ordinance providing that an existing nonconforming structure may not be structurally altered. The Court held that "a structural alteration is any change in an existing structure which would expand the size of the structure, significantly change the outside dimensions of the structure, or which would effectively convert the building into a different structure." The Court held that changes to the interior of a nonconforming building that did not enlarge the building or change its outside dimensions did not constitute "structural changes."

As stated, replacement of the pole will not enlarge or change the size or dimensions of the pole to any extent, and it will not change the pole into a different use. Accordingly, even if section 42-544 applied to the pole at issue, replacement of the pole would not constitute a structural alteration and the sign ordinance does not prohibit such replacement.

It is worth mentioning that while the Sign Ordinance is clear with respect to allowing McDonald's to replace the pole, if the intent of the Sign Ordinance was unclear, the benefit of doubt must go to the property owner and, therefore, the language must be interpreted in favor of McDonald's. See section 42-622(C)(1)(d); *Fremont Township v McGarvie*, 164 Mich App 611 (1988), *Township of Peacock v Panetta*, 81 Mich App 733 (1978). McDonald's is, therefore, authorized to replace the pole that is the subject of the enclosed permit application.

For the reasons stated herein, McDonald's requests that the enclosed sign permit application be granted and a sign permit be issued so that McDonald's can have City Sign Erectors replace the pole at issue as authorized by the Sign Ordinance. Thank you for your attention to this matter and I look forward to the City's issuance of a permit.

Very truly yours,

DYKEMA GOSSETT LLC



Paul L. Nystrom  
PLN/srk

Enclosures



Application Information

Project Address: 6925 S. WESTNEDGE
Owner Name: Mc DONALD'S CORP Address: 1021 KARL GREIMEL DR ST2
City: BRIGHTON State: MI Zip: 48116 Phone: 734-335-9003
Description of Work: REMOVE + REPLACE STEEL POLE THAT SIGN IS ATTACHED TO.
Completion date or display date(s): Zoning District: B3
Contractor Name: CITY SIGN ERECTORS Address: 2824 3 MILE RD NW
City: GRAND RAPIDS State: MI Zip: 49534 Phone: 616-791-0016 Fax: 791-1011
Applicant or Contractor Signature: [Signature] Date: 4/21/10

Required Sign Information

Permanent Freestanding Sign(s) (may include a Changeable Copy Board); AND Temporary Sign(s)

- A scaled plot plan showing locations of existing and proposed sign(s). Please include location, setback from property lines, distance between signs and sign height. NOTE: setback is measured from the leading edge of the sign. Property lines must be staked for verification when the site inspection is performed by the city.

Plot Plan complete: (Y) N

- A scaled drawing/picture showing new sign(s) face, type, dimension of sign and support structure, and total sign height. NOTE: sign height is measured from adjacent street grade or top of curb to highest point of sign(s).

Sign Drawing/Picture complete: Y N

- Number of signs: 1 Area (per sign) 213.61 SQ. FT.
Type of Construction FABRICATED ALUMINUM + ACRYLIC Illumination: internal (checked) external
Changeable copy board: (Y) N Area (per sign side) 14.19 SQ. FT.

Permanent or Temporary Wall Sign(s): N/A

- A scaled drawing showing locations of existing and proposed sign(s) including wall dimensions, location(s) and height(s). Also, submit a scaled drawing/picture of the wall sign with dimensions.

Location Drawing/Sign Picture complete: Y N

- Number of signs: Area (per sign)
Type of Construction Illumination: internal external

## Required Permit Fees

<u>Sign Type</u>	<u>Quantity</u>	<u>Fee</u>
Permanent Freestanding	1	\$110.00 per application, address or tenant
Changeable Copy Board*	N/A	\$110.00 per application, address or tenant
Permanent Wall	N/A	\$110.00 per application, address or tenant
Temporary Sign(s)	N/A	\$55.00 per application, address or tenant
Directional(s)	N/A	\$55.00 per application, address or tenant

Note: \* no fee if installed with new or replacement freestanding sign.

**TOTAL CHARGES:**

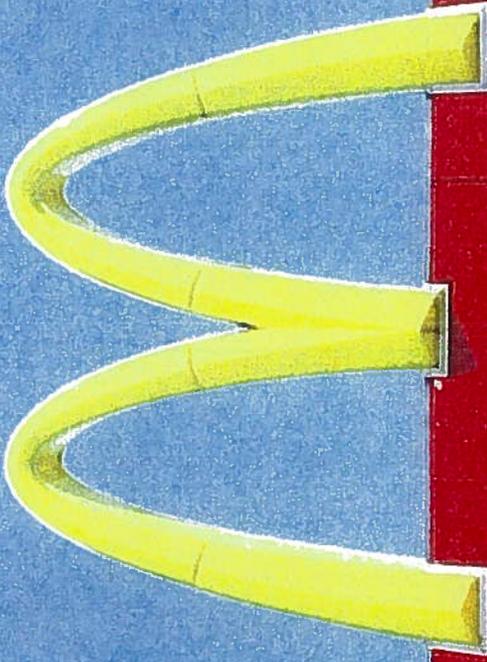
\$110.00

### Sign Permit, Construction and Inspection Reminders

1. Applicant or owner must call the Department of Community Development at 269-329-4477 or 269-329-4466 to request an inspection once sign is installed.
2. Electrical permits are required for all: new wall signs (including within mall), change-out of signs on existing buildings, and new circuits to freestanding signs (does not include change of sign panels). For other signs, electrical inspector will determine electrical permit requirements per applicable code provisions.
3. Michigan Law requires that you must contact *MISS DIG* three working days before you break ground.

***DIAL MISS DIG at 1-800-482-7171***

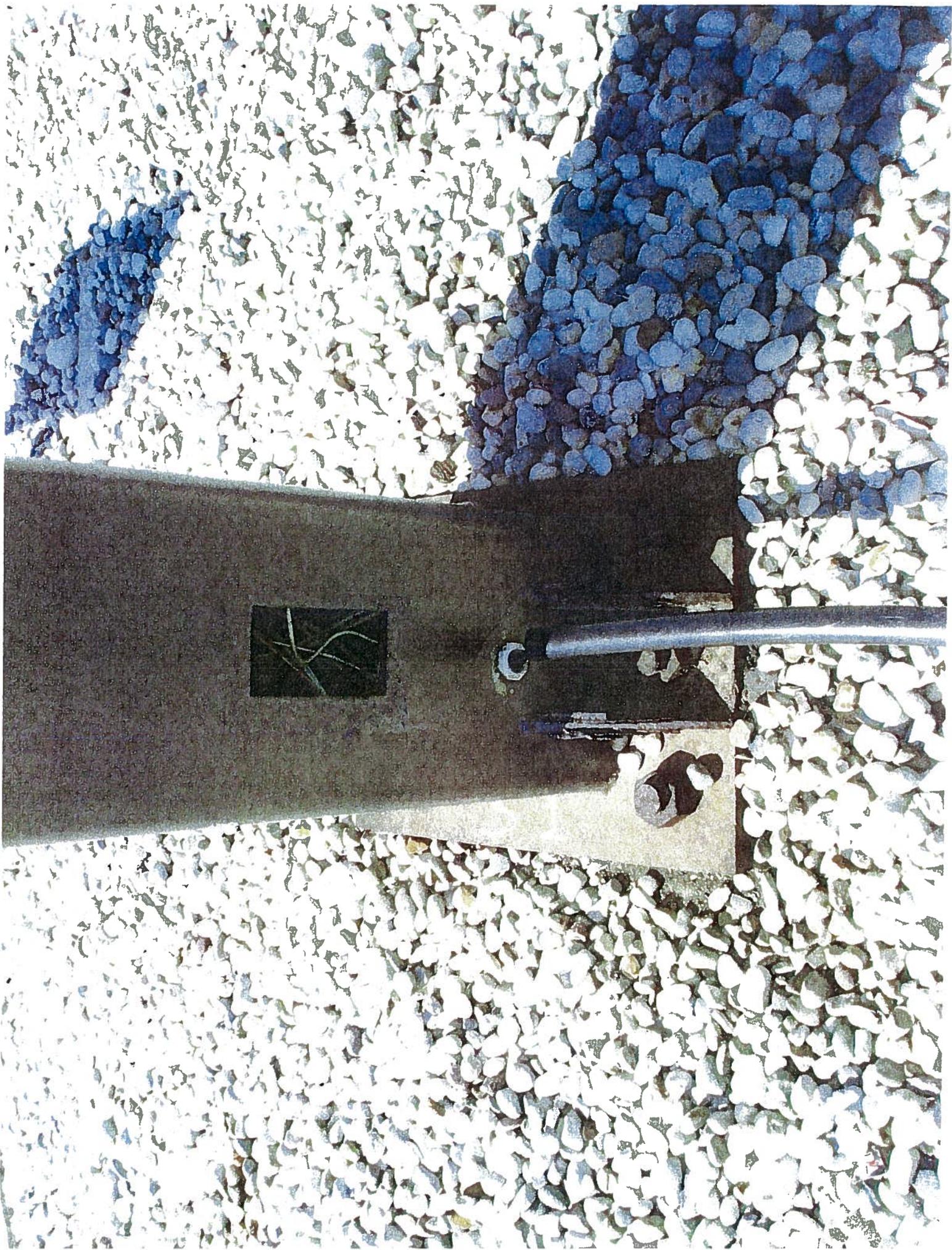
4. The sign permit that is obtained will expire and become null and void if the building or work authorized is not commenced within 180 days from the date of issuance, or if the building or work authorized is suspended or abandoned for a period of 180 days, per Michigan Law.
5. Please read and review the City of Portage Sign Permit after it is issued for important information.

  
**McDonald's**  
BILLIONS AND BILLIONS SERVED

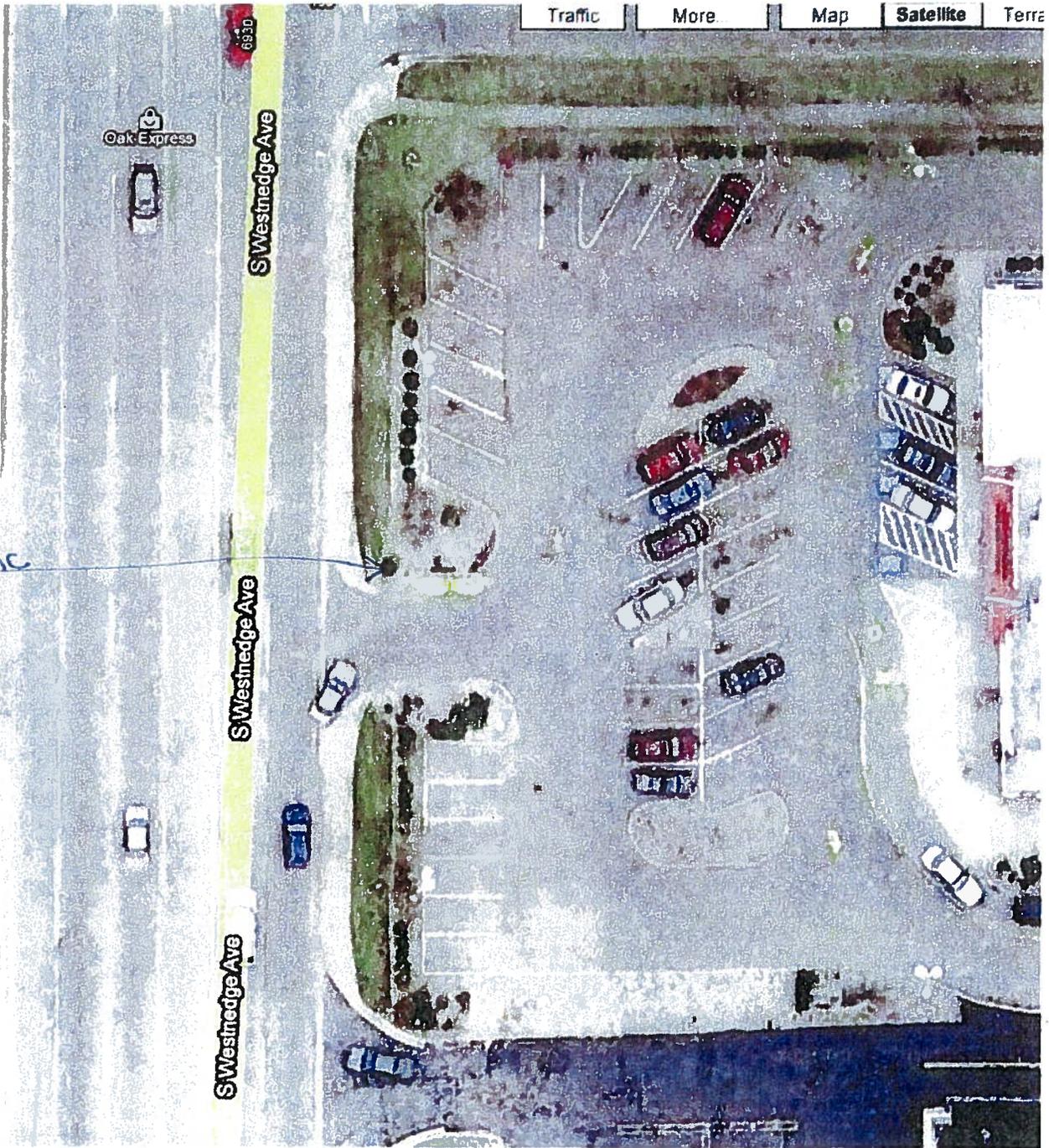
OPEN

DRIVE THRU  
**24**  
HOURS  
OPEN

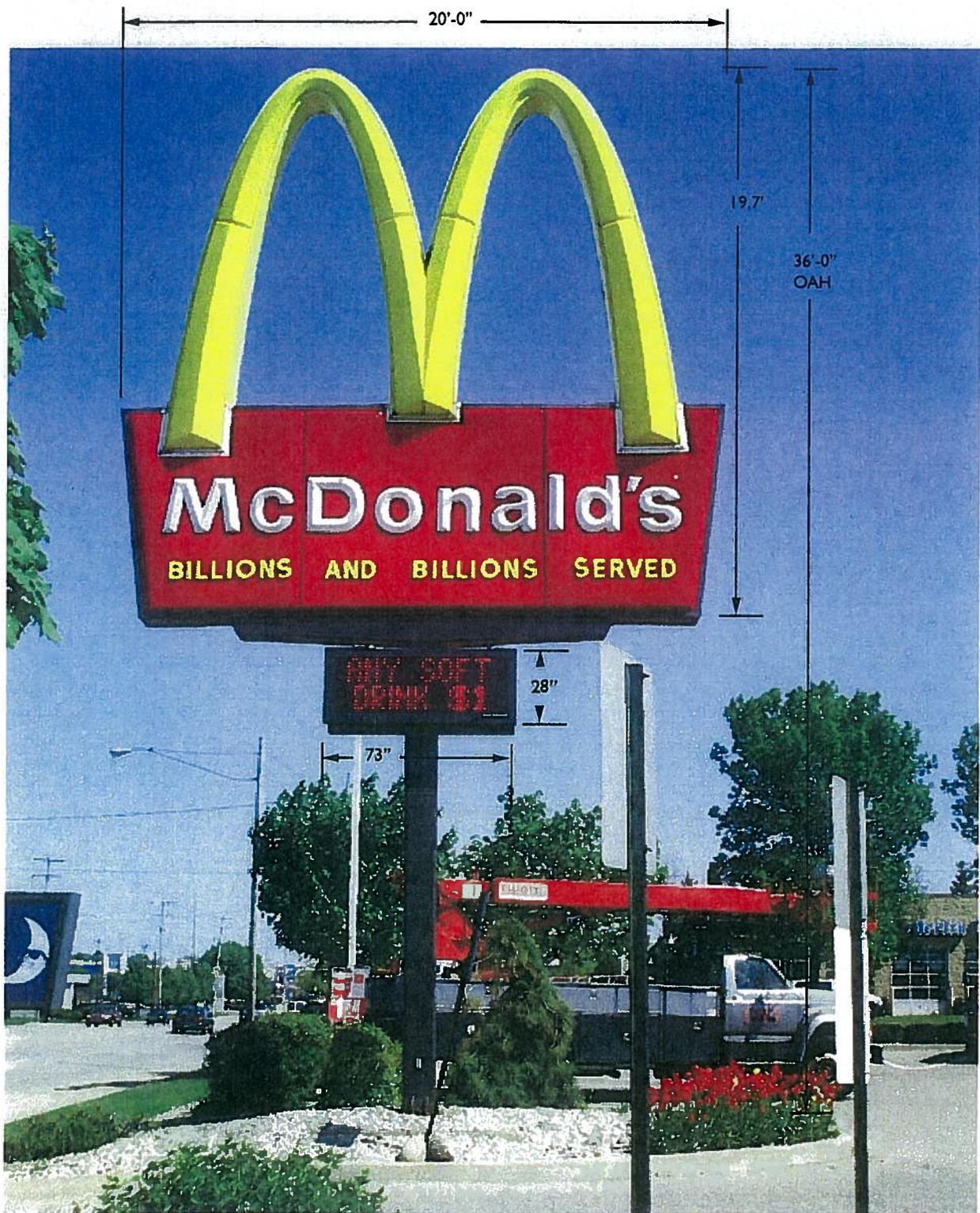








\* SITE PLAN ENCLOSED  
SHOWS SET BACKS OF SIGN - ON DRAWING EXISTING SIGN WAS EXISTING  
PUBLIC R.O.W. BACK IN 1997 WHEN SITE PLAN  
WAS DRAWN.

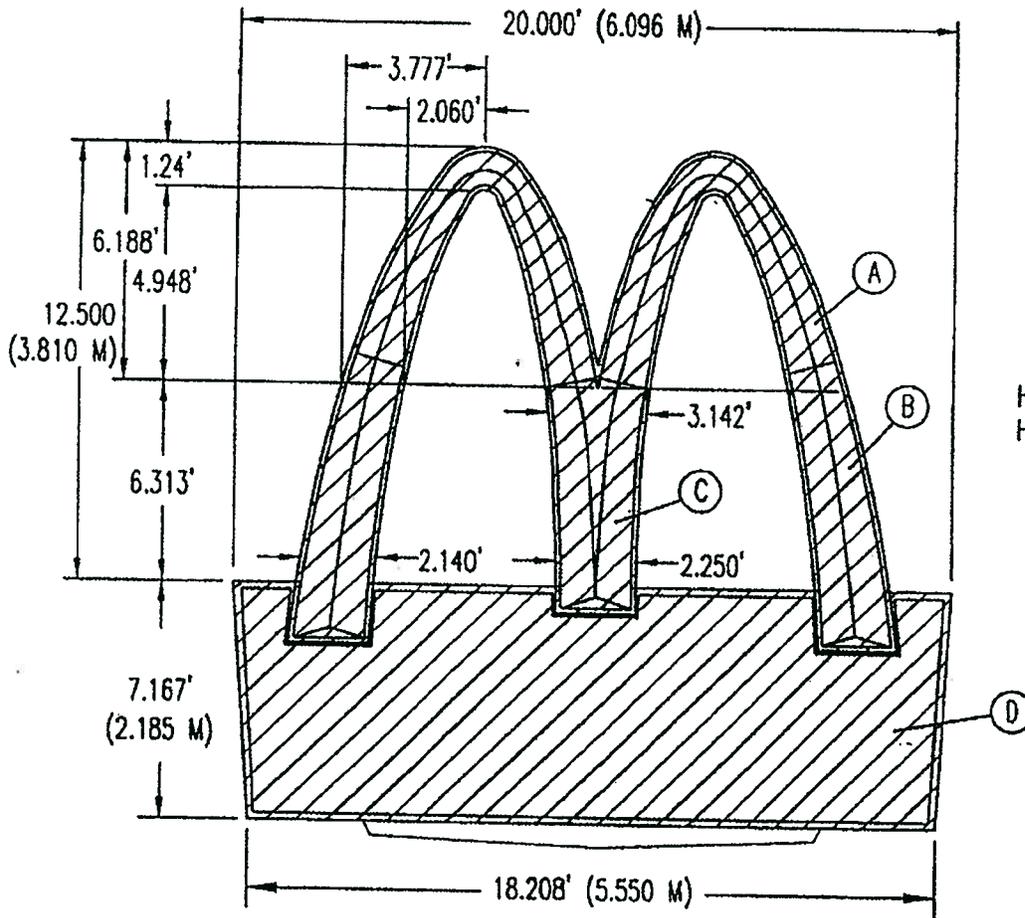
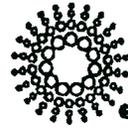


Scale 3/8" = 1'-0"

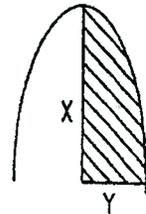
Date: 4.30.10	Revisions:
Customer: McDonalds - Portage	
Salesperson: Tracy Rogers	



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PARABOLA AREA SHOWN  
SHADED =  $\frac{2}{3} X Y$



HATCHED AREA OF SIGN  
HAS BEEN CALCULATED

- (A) USE AREA OF PARABOLA FORMULA TO APPROXIMATE ARCHES.

$$A \text{ AREA} = \frac{2}{3} X Y - \frac{2}{3} X_1 Y_1$$

$$A = \frac{2}{3} (6.188')(3.777') - \frac{2}{3} (4.948')(2.060')$$

$$A = .67(23.372') - .67(10.193')$$

$$A = 15.659' - 6.829'$$

$$A = 8.83 \text{ SQ FT PER}$$

- (B) APPROXIMATE ARCH LEG

$$B \text{ AREA} = \text{LENGTH} \times \text{AVERAGE WIDTH}$$

$$B = (6.313') \left( \frac{1.717' + 2.140'}{2} \right)$$

$$B = (6.313')(1.93')$$

$$B = 12.175 \text{ SQ FT PER LEG}$$

- (C) APPROXIMATE CENTER ARCH LEG

$$C = \text{LENGTH} \times \text{AVERAGE WIDTH}$$

$$C = (6.313') \left( \frac{3.142' + 2.250'}{2} \right)$$

$$C = (6.313')(2.696')$$

$$C = 17.02 \text{ SQ FT}$$

- (D) BASE AREA

$$D \text{ AREA} = \text{LENGTH} \times \text{WIDTH} + \text{BOTTOM TRIANGLES}$$

$$D = (7.167')(18.208') + 2[(.896')(7.167')(5)]$$

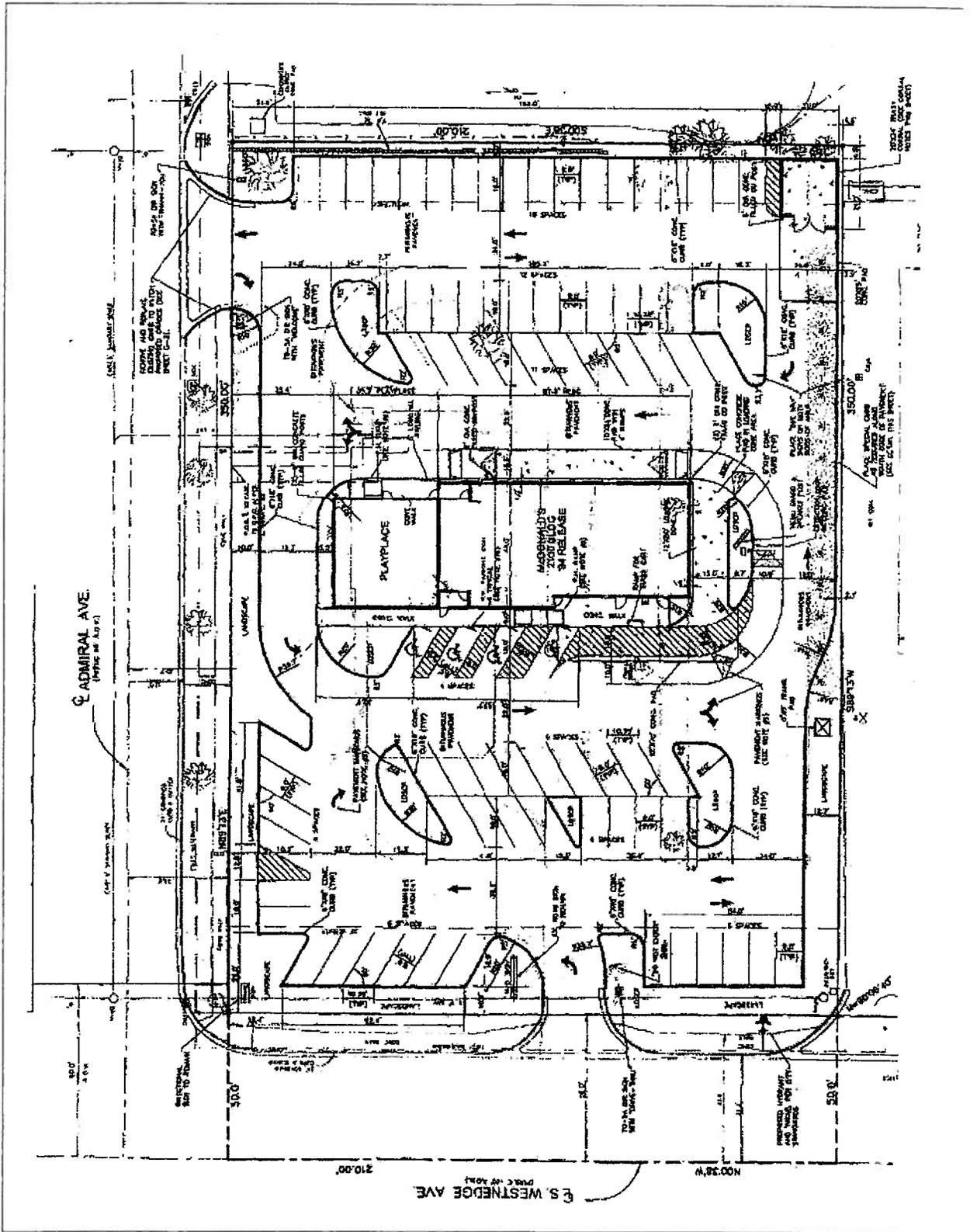
$$D = 130.5' + 6.42'$$

$$D = 136.92 \text{ SQ FT}$$

$$\text{TOTAL AREA} = 4(A) + 2(B) + C + D$$

$$TA = 4(8.83') + 2(12.175') + 17.02' + 136.92'$$

$$TA = 213.61$$



**EXHIBIT C**

May 21, 2010

Paul Nystrom  
Dykema Gossett PLLC  
Suite 300  
39577 Woodward Avenue  
Bloomfield Hills, MI 48304

RE: McDonald's Restaurant freestanding sign permit application, 6925 South Westnedge Avenue

Dear Mr. Nystrom:

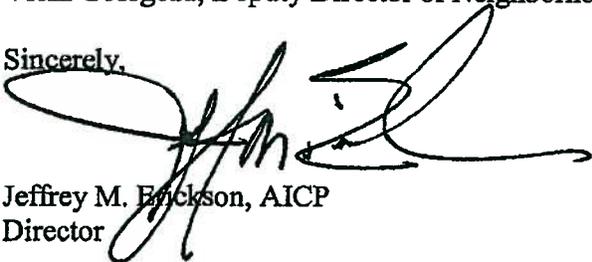
Thank you for your May 4, 2010 letter and sign permit application involving the freestanding sign at McDonald's Restaurant, 6925 South Westnedge Avenue.

The sign permit application and your letter has been reviewed by the Department of Community Development and Office of the City Attorney. The proposal to change the freestanding sign pole, which is legally nonconforming in regard to the required setback, maximum height and maximum area, cannot be administratively approved.

Consistent with the provisions of the Zoning Ordinance, your client has available options including submission of an application for a variance from the requirements. Please advise as to how you wish to proceed at your earliest convenience.

If you have any questions or comments in regard to this matter, please feel free to contact me or Vicki Georgeau, Deputy Director of Neighborhood Services at 269-329-4477.

Sincerely,



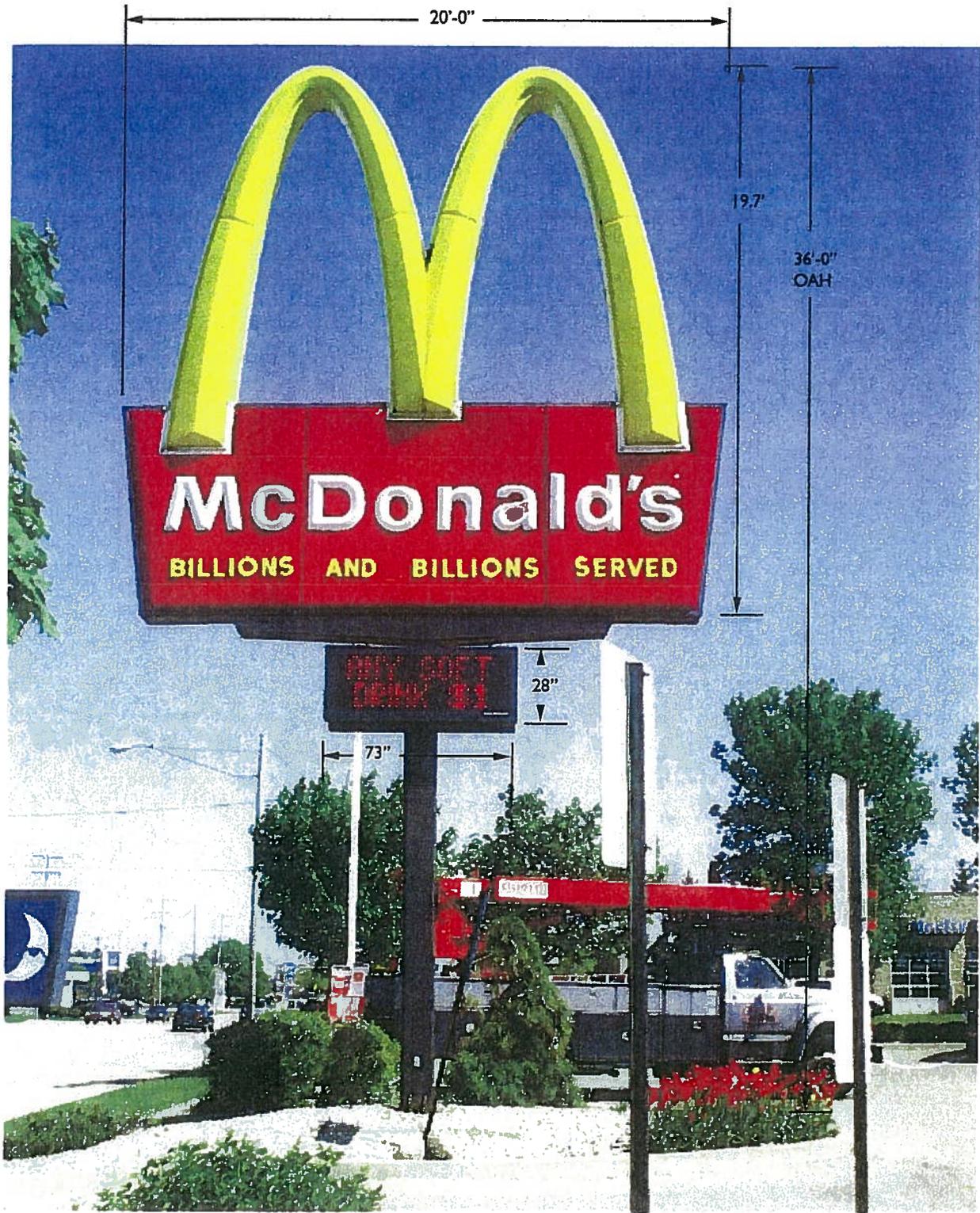
Jeffrey M. Erickson, AICP  
Director

Ec: Deputy Director Georgeau

S:\2009-2010 Department Files\Address Files\WESTNEDGE\6000 BLOCK\2010 05 21 JME S Westnedge, 6925 (McD's sign).doc

**MAY 24 2010**

**EXHIBIT D**



Scale 3/8" = 1'-0"

Date: 4.30.10	Revisions:
Customer: McDonalds - Portage	
Salesperson: Tracy Rogers	



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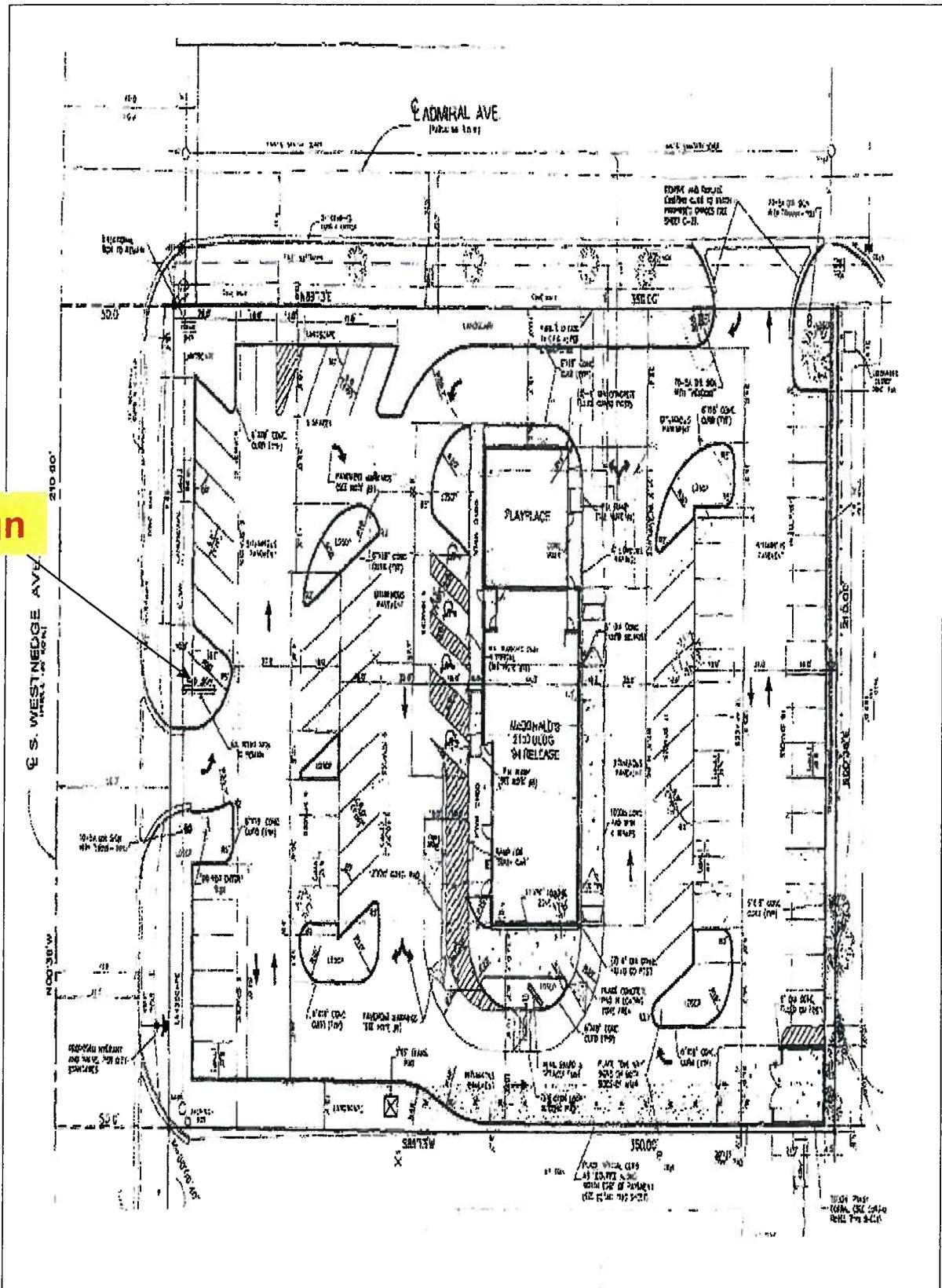
**EXHIBIT E**

From 10  
Landing  
216-744



5-10-08  
From 10  
Landing  
216-744

TRAVELER SERVICE CENTER  
FROM 10-10-08 10:10 AM  
DAYS 10-10-08



Sign

# 6925 S Westnedge Ave

**McDonald's Property**

**Merlin Muffler**

**Admiral Ave**

S Westnedge Ave

S Westnedge Ave

6900

5610 B

171'  
6835

171'  
1814231

1814231

300' (350')

6925

100 (350)

206 (336)

6979

481.67'

84.74'

396'

66'

1180.5'  
82.5'

148.5'

100'

210'

210'

202'

210'

208'

210'

175.80'

50'

192.96'

192.96'

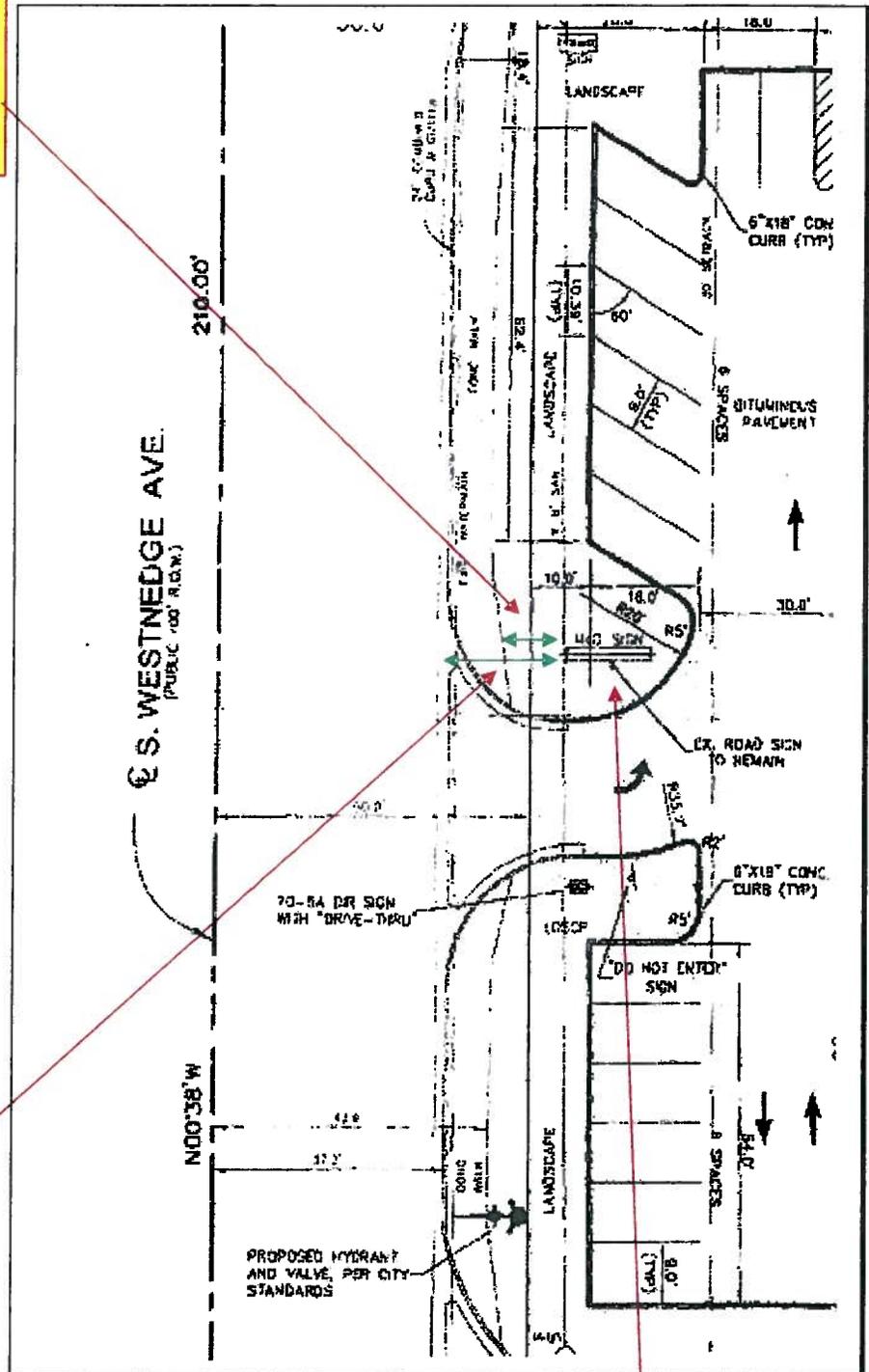
0

190 ft

This map is neither a legally recorded map nor a survey and should not be used as one. This map is a compilation of records information and data located in various city, county, state and federal offices and other sources regarding the area shown, and it is to be used for reference purposes only. Please contact the City/County for current property assessment information. The user of this map acknowledges that the City/County shall not be liable for any damages, and expressly waives all claims, and agrees to defend, indemnify, and hold harmless the City/County from any and all claims brought by the User, its employees or agents, or third parties which arise out of the User's access or use of data provided. IN OTHER WORDS, USE AT YOUR OWN RISK!!

Distance from leading edge of the Sign to sidewalk = 9 feet

Distance from leading edge of the Sign to Westnedge = 17 feet



Sign

**EXHIBIT F**

distractions, it is recognized that sign regulations provide business with equal opportunity to attract the public. However, oversized, projecting or crowded signs can lead to pedestrian and driver confusion and distraction, and endanger the public health, safety and welfare.

C. It is further recognized that:

1. Signs should be able to reasonably convey their message;
2. Users of property should have reasonable freedom to determine the placement, construction, size, and design of signs as well as the location of buildings; and
3. Sign needs may vary based on particular circumstances.

D. It is further recognized that regulations for signs, especially number, size and placement, are desirable in order to:

1. Prevent or limit traffic or pedestrian accidents, injuries, deaths, and property damages resulting from obstructed vision, distraction or confusion to the public or to emergency safety personnel;
2. Minimize the risk of damage and injuries from signs that are dilapidated, wind blown, electric shock hazards, etc.;
3. Achieve some uniformity in the size, number and placement of signs;
4. Enhance the aesthetics of the community;
5. Prevent blight;
6. Encourage equality among business and property, and;
7. Otherwise protect the public health, safety, peace and general welfare.

E. Further, it is recognized that special circumstances or events may create a need for temporary signs for a limited and reasonable period of time.

(Ord. No. 03-01 (Exh. A, § 42-620), 2-18-2003)

### **Sec. 42-541. Definitions.**

A. Sign.

1. A "sign" is considered a name, identification, description, illustration or device, illuminated or non-illuminated, which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise or any emblem, painting, banner, pennant, placard or temporary sign designated to advertise, identify or convey information, with the exception of window displays and national, state and local government flags. For the purpose of sign removal, the term "sign" includes a sign structure.

2. A "sign face" is defined as the area of the sign which displays the name, identification, description, illustration or device which directs attention to a product, service, place, activity, person, institution, business or solicitation. A sign face does not include any portion of the structural support of the sign.

B. Types of signs referred to in this subdivision are defined as follows:

1. Accessory sign: An advertising sign relating in subject matter to the main or principal use of the premises.
2. Awning/canopy sign: Identification sign attached to a marquee, canopy or awning

projecting from and supported by the building.

3. **Banner:** A sign made of cloth or a similar flexible material bearing a name, design, motto or other form of advertisement, identification or information that is secured to the support structure on all corners and/or sides. A flag, pennant or standard may be considered a "banner," provided that it meets the definition of banner.

4. **Construction sign:** A temporary sign naming the builder/contractor during active construction.

5. **Development sign:** A temporary sign naming a developer, contractor or subcontractor, engineer, architect, broker or financial institution involved in development of property or a building.

6. **Directional sign:** A sign that serves only to designate the location or direction of any place, area, or activity.

7. **Freestanding sign:** A sign erected on a freestanding frame, mast or pole and not attached to a building.

8. **Household goods sign:** A temporary sign for the advertising of household goods or produce.

9. **Identification sign:** A sign that identifies the business, owner or resident.

10. **Nonaccessory sign:** A sign which directs attention to a business or service offered or existing elsewhere than upon the same lot where the sign is displayed.

11. **Nonconforming sign:** A sign which lawfully occupied a building or land on the effective date of this article, that does not currently conform to the sign regulations of the district in which it is located.

12. **Obsolete sign and abandoned sign:** A sign that no longer advertises a bona fide business, owner, product, person or activity.

13. **Election campaign sign:** A sign related to a candidate for political office or an issue to be determined at an official federal, state, county, school or municipal election.

14. **Public event sign:** A temporary sign advertising or identifying a noncommercial public service event of community-wide interest.

15. **Real estate sign:** A sign pertaining to the sale, lease or rental of land or a building.

16. **Temporary sign:** Any sign that is not constructed or intended for long term use and is not permanently attached to a building or structure.

17. **Wall sign:** A sign attached directly to the exterior wall of a building extending not more than 18 inches from the wall, with the face of the sign running parallel to the plane of the building wall to which it is attached. Awning and/or canopy signs are considered wall signs for the purposes of calculating the total area. Awning and/or canopy signs may project more than 18 inches from the wall to which they are attached.

18. **Electronic message display:** A sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means. The definitions below (a) through (e) are used in conjunction with an electronic message display ("EMD"):

a. **Dissolve.** A mode of message transition on an electronic message display accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.

b. **Fade.** A mode of message transition on an electronic message display

accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

- c. Frame. A complete, static display screen on an electronic message display.
- d. Frame effect. A visual effect on an electronic message display applied to a single frame to attract the attention of viewers.
- e. Transition. A visual effect used on an electronic message display to change from one message to another.

(Ord. No. 03-01 (Exh. A, § 42-621), 2-18-2003; Amend. of 10-2-2007)

### **Sec. 42-542. General requirements.**

A. Unless not required by this article, all signs shall be required to obtain a permit from the director of community development.

B. Sign measurements:

1. The entire area within a circle or four-sided polygon enclosing the extreme limits of writing, representation, emblem, or any figure of similar character. This area shall also include any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed; excluding the necessary supports or uprights on which the sign is placed.
2. Separated sign elements, not part of any frame, or separated by other material or color forming an integral part of the display that may be used to differentiate such sign from the background against which it is placed, shall have each element of the sign calculated separately for the purposes of determining the total area. The signs elements shall not exceed the total sign display permitted by the district in which it is located.
3. The height of a sign is measured from the adjacent street grade or upper surface of the nearest street curb other than an elevated roadway that permits the greatest height to the highest point of such sign.
4. For the purpose of property line setbacks, the setback distance for a freestanding sign shall be measured from that portion of the sign closest to the property line.
5. The sign areas for wall signs shall be determined by taking that portion of the front wall of the building applicable to each tenant space, and computing sign requirements for that portion of the total wall.

### **GRAPHIC LINK:[Click here](#)**

C. All references to the term "lot width," "lot frontage" or "frontage" for the purposes of calculating allowable freestanding sign area shall require that width or frontage be on a public dedicated right-of-way and be measured at the front lot line, notwithstanding the definition and use of these terms in division 2 and division 3 of this article.

D. Signs not permitted.

1. A sign not expressly permitted by this article is prohibited.
2. No person shall erect or maintain a sign which moves or which has moving or animated parts or images, whether the movement is caused by machinery, electronics, wind or otherwise, including swaying signs, except for an EMD as defined in section 42-541, Definitions, and as specified in section 42-542, General requirements.

**Sec. 42-544. Nonconforming signs.**

A. A lawfully erected sign, the maintenance of which is made unlawful by this article, may continue to be maintained exactly as such existed at the time when the maintenance thereof became otherwise unlawful under this article.

B. No nonconforming sign shall:

1. Be changed to another nonconforming sign;
2. Have any change made in the words or symbols used or the message displayed on the sign, unless the sign is a nonaccessory advertising sign or a bulletin board or similar type of sign specifically designed for periodic changes of message;
3. Be structurally altered so as to prolong the life of the sign or change the shape, size, type or design of the sign;
4. Be reestablished after the activity, business or use to which it relates has been discontinued for 30 days or longer; or
5. Be reestablished after damage by accident, vandalism or an act of God if the damage requires repair of the structural supports as a result of failure or collapse of the footings, columns or other structural supports as determined by the director
6. Be continued after any substantial improvement has taken place on the site or within or involving the main building. For purposes of this subsection, substantial improvement shall mean any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 25 percent of the market value of the structure or site improvement (such as the parking lot, site landscaping, sidewalks, or other substantial site element), either before the improvement or repair is started or, if the structure or site improvement has been damaged and is being restored, before the damage occurred. Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not such alteration affects the external dimensions of the structure and when parking areas or other significant site improvement is first undertaken.

C. The zoning board of appeals may permit variances from subsection B, above, or variances related to the alteration or maintenance of a nonconforming sign, only upon the following grounds:

1. The standards of section 42-622.B.1 are met; or
2. That granting of a variance will reduce the degree of nonconformity of an existing sign; or
3. The granting of a variance will result in the removal of a nonconforming sign and replacement by a sign that, while not meeting the requirements of this article, are, nonetheless, in keeping with the spirit and purpose of this article.

D. Variances. A sign erected as a result of a lawful grant of a variance by the zoning board of appeals shall be subject to the same restrictions and requirements which apply to nonconforming signs in subsection B above and other provisions of this Code.

E. Notwithstanding the provisions of subsection B, above, the face of a nonconforming sign may be changed provided that the owner of the sign and owner of the zoning lot upon which the sign is located (if different from the owner of the sign) shall enter into a written agreement with the city which shall be recorded with the county register of deeds by the owner of the sign and the owner of the zoning lot, and which shall state all of the following:

1. In exchange for the opportunity to change the face of the sign as often as desired, the entire nonconforming sign, which includes the entire face and structure, shall be removed within five years of entering into the agreement.
  2. At the conclusion of the five years, the owner of the sign and the owner of the zoning lot shall be responsible for the entire removal of the sign.
  3. The owner of the sign and the owner of the zoning lot (including subsequent owners) waive their rights to request variances from the zoning board of appeals a variance from the agreement or any other ordinance provision governing the sign.
  4. The agreement shall run with the land and become binding upon any subsequent owners of the sign and zoning lot.
  5. The replacement sign, itself nonconforming in any way, may not be erected at the conclusion of the five years.
  6. A lien against the zoning lot and any structure on the zoning lot, in the amount of 1 1/2 times the estimated cost of removing the nonconforming sign at the time the agreement is entered into (as established by the director on the date of the agreement) shall come into existence five years after entering into the agreement and remain in effect until the sign is removed.
- (Ord. No. 03-01 (Exh. A, § 42-624), 2-18-2003)

## **DIVISION 7. ZONING BOARD OF APPEALS\***

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**\*State law references:** Board of appeals, MCL 125.585 et seq., MSA 5.2935 et seq.

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### **Sec. 42-620. Creation and membership.**

- A. There is hereby established a zoning board of appeals, which shall perform its duties and exercise its powers as provided in the Zoning Act.
  - B. The board shall consist of seven members appointed by the council. Each member shall hold office for a three-year term.
  - C. Alternates:
    1. The council may appoint not more than two alternate members for the same term as regular members of the board.
    2. An alternate member may be called to sit as a regular member of the board in the absence of a regular member or to serve in place of a regular member for the purpose of reaching a decision in a case where the regular member has abstained for reasons of conflict of interest.
    3. The alternate member having been called shall serve on the board until a final decision is made on the application for which the member was called.
    4. When serving as a member, an alternate member shall have the same voting rights as a regular member of the board.
- (Ord. No. 03-01 (Exh. A, § 42-700), 2-18-2003)

### **Sec. 42-621. Meetings and procedures.**

- A. All meetings of the zoning board of appeals shall be held at the call of the chairperson or at any time as the board may determine.
  1. Four members of the board shall constitute a quorum for the conduct of its business.

**EXHIBIT G**



**TO:** Zoning Board of Appeals **DATE:** July 2, 2010

**FROM:** Jeffrey M. Erickson, Director of Community Development

**SUBJECT:** ZBA #10-02, Paul Nystrom, Dykema Gossett, PLLC, on behalf of Golden Arch Realty Corporation; 6925 South Westnedge Avenue; B-3, General Business

**CODE SECTION:** 42-622(A), Appeals, p. CD 42:140.1; 42-622(C), Interpretations, p. CD 42:140.2  
42-544, Non-conforming Signs, p. CD 42:128-129  
42-552, B-3, General Business district signs, p. 42:130.2-131

**APPEAL:** Requesting a) an appeal of the administrative decision denying a sign permit application to replace the pole of the existing nonconforming McDonald's restaurant freestanding sign and an interpretation that Sections 42-541(A) and 42-544(B) of the City Code of Ordinances authorize replacement of the sign pole; or b) a variance to modify an existing nonconforming freestanding sign.

**STAFF RECOMMENDATION:** The applicant is requesting the above appeal, interpretation or a variance per the enclosed application and submitted materials. The 1.7 acre corner parcel is improved with a McDonald's restaurant, off-street parking and related facilities. The freestanding sign is nonconforming, as the setback is five feet, the height is 36 feet, and the sign is 408 square feet in area (including a 14 square foot electronic message display). The zoning lot is permitted an 84 square foot sign on South Westnedge Avenue, and a 120 square foot freestanding sign on Admiral Avenue. If a single freestanding sign were erected on the corner and oriented per requirements, a 160 square foot sign could be established.

With regard to request a), the applicant proposes to replace the sign pole due to erosion at the base of the sign pole. The applicant contends that an error was made in the decision to deny a sign permit, and requests a favorable interpretation that the Zoning Code does not prohibit replacement of the sign pole.

The sign regulations of City of Portage Code of Ordinances are found in two Articles of the Code, Chapter 42, Article 4, and Chapter 42, Article 11. Both Articles address signs, have the same purpose, and must be applied together. (See the opinion letter from the Assistant City Attorney, included in the materials.) As a result, Section 42-1273 which defines a sign as "...any medium, *including its structure and component parts*, which is used or intended to be used to attract attention to the subject matter for advertising purposes" (emphasis supplied) applies to the zoning code provisions of the sign regulations found in Article 4, as well as to the provisions of Article 11. A nonconforming sign for the purposes of Section 42-544(B)(3) then includes the sign structure or pole supporting the sign.

Section 42-544(B)(3) states that no nonconforming sign shall “[B]e structurally altered so as to prolong the life of the sign...”. If the sign pole is replaced to address corrosion, then such replacement is prolonging the life of the sign. In addition, Section 42-544(A) requires that a nonconforming sign be maintained exactly as such existed. A new pole structural element is not maintaining the sign exactly how the sign existed. Repairs to the existing sign pole would constitute maintenance, rather than replacement of the sign pole which is a structural alteration.

The sign provisions of the Zoning Code are clear. A “sign” includes a sign pole. Replacement of a sign pole is a structural alteration and is not maintenance. No error was made in the denial of the sign permit application and the interpretation requested by the applicant is inconsistent with the intent and purpose of the enacted sign regulations.

The applicant also presents a variance request. The proposal to relocate the very large, tall sign and forego a sign on Admiral Avenue that has never been contemplated is wholly insufficient to be considered a reduction in the degree of nonconformity consistent with the ordinance. The structurally altered and replaced sign would still be nearly four times greater, and the height nearly 1½ times higher, than otherwise permitted for other competing fast food restaurants. Signage that is allowed by the Zoning Code is based on accepted regulatory principles (lot width, configuration, number of business tenants, and so forth) in the effort to ensure fairness and consistency. From the perspective of staff, the sign photos from the applicant’s June 30<sup>th</sup> supplement illustrate how much larger the McDonald’s sign is in comparison to other signs in the vicinity. Also, in 1998 McDonald’s redeveloped the site, moved the restaurant back an additional 80 feet from South Westnedge Avenue and configured the building improvements on the zoning lot: This expressed disadvantage was planned by McDonald’s. Additionally, the city has not precluded McDonald’s from tree trimming to ensure visibility of the existing, or other, freestanding sign.

Conforming alternatives for permitted signs including Admiral Avenue are available to the applicant as are options to reduce the degree of nonconformity of the existing sign. It is also inappropriate to negotiate at the meeting issues related to sign size, location and height because careful and considered evaluation of any request is essential. The applicant is encouraged to erect signage that complies with the Zoning Code, or submit a variance application that can be reasonably considered to justify a variance based on the grounds established in the Zoning Code for nonconforming signs.

**PRACTICAL  
DIFFICULTY:**

None noted by staff. See attached Board Suggested Motion Form.

RANDALL L. BROWN  
& ASSOCIATES, PLC

ATTORNEYS AND COUNSELORS AT LAW

RANDALL L. BROWN  
CHARLES R. BEAR  
JULIE A. BRADFIELD

DENNIS E. KORDISH (1996-2008)

July 2, 2010

1662 EAST CENTRE AVENUE  
PORTAGE, MICHIGAN 49002

TELEPHONE (269) 323-8812  
FACSIMILE (269) 323-0055  
brownandassociates@att.net

Mr. Jeffery Erickson, Director  
Community Development  
City of Portage  
7900 S. Westnedge Ave.  
Portage, MI 49002

Re: **McDonald's Restaurant Sign Permit**

Dear Jeff:

You have asked for my opinion in regard to the request of McDonald's Restaurant for an interpretation of Portage Code of Ordinances Section 42-541(A)(1) and 42-544(B). In a letter addressed to the City of Portage Zoning Board of Appeals on June 4, 2010, McDonald's attorney argued that the term "sign" as defined and used in these Sections does not include a pole supporting the sign. This interpretation is incorrect. McDonald's is seeking to interpret Section 42-544(B) based upon only a limited portion of the sign regulations in the Code of Ordinances. In fact, the sign regulations of City of Portage Code of Ordinances are found in two articles of Chapter 42 of the Code, Article 11 and Article 4, Division 6, Subdivision 2. Both of these articles relate to signs, and both have the same purpose.<sup>1</sup> As a result, consistent with the established rules for construing the meaning of ordinances, both articles regulating signs must be read together and in harmony with each other. In other words, an interpretation of the zoning provisions with regard to signs found in Article 4, Division 6, Subdivision 2 cannot be made without taking into consideration the provisions of Article 11. By reading both Articles together, it is clear that for the purposes of 42-544(B) the term "sign" includes the sign structure or pole, and that replacement of the pole supporting a nonconforming sign is prohibited.

Over the years, courts have established rules for interpreting statutes and legislative enactments. The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances; the goal in interpreting ordinances is to give effect to the intent of the enactors, and this is done by examining the plain

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<sup>1</sup> Although these two articles address somewhat different aspects of sign regulation (Article 11 in general addresses construction of signs, and Article 4, Division 6, subdivision 2 addresses zoning related issues of signs) both articles have the same subject matter and the same purpose. As stated in Section 42-1271 the purpose of Article 11 is "...to provide minimum standards to safeguard life, health, property and public welfare by regulating and controlling the design, quality of materials, construction, location, electrification and maintenance of all signs and sign structures not located in a building." Section 42-540 states that Article 4, Division 6, subdivision 2 is "...intended to regulate the use, construction, reconstruction, placement and design of signs in order to protect the public health, safety, peace and general welfare."

language of the enactment. Ferguson v. City of Lincoln Park, 264 Mich App 93, 694 NW2d 61 (2004). Effect must be given to all provisions of an ordinance if possible. Ordinances and charter provisions should be construed together and in harmony with each other whenever possible. In this regard, one part of an ordinance must not be construed to render another part nugatory or of no effect, and the same rule applies to words in construing a sentence. If language employed in an ordinance is plain, certain, and unambiguous, a bare reading suffices, and no interpretation is necessary People v. Detroit Edison Co., 16 Mich App 423, 168 NW2d 320 (1969). When alternative interpretations are possible, a court must ascribe to the legislature the most probable and reasonable intention. Oakland Schools Board of Education v. Superintendent of Public Instruction, 392 Mich 613, 619; 221 NW2d 345 (1974). Stated another way, statutes and ordinances must be construed to avoid absurd or unreasonable results. In the Matter of Karen Marable, 90 Mich App 7, 10; 282 NW2d 221 (1979).

Where two or more ordinances relate to the same subject or have the same purpose, they are considered *in pari materia* and must be read together to determine legislative intent. Ordinances relate to the same subject if they relate to the same person or thing or the same class of persons or things. It is not necessary that the ordinances be enacted at the same time or even refer to each other to be read *in pari materia*. Houghton Lake Area Tourism & Convention Bureau v. Wood, 255 Mich App 127 (2003). Article 11 and Article 4, Division 6, Subdivision 2, then must be read together to determine the intent of the City Council with regard to any questions of interpretation of the provisions of either Article.

Applying the above referenced rules of construction, the definition of sign found in Section 42-541(A)(1)<sup>2</sup> and the definitions found in 42-1273<sup>3</sup> must be read together in harmony with each other. By doing so, it is clear that City Council intended the term "sign" as used in the sign regulation of the Code to include the sign structure that supports the sign because the term "sign" is expressly defined in Section 42-1273 to include its structure. By definition, "sign structure" may be a single pole as is the case with the McDonald's sign which is the subject of the appeal and variance request. For the purposes of Section 42-544 a nonconforming sign includes the sign structure

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<sup>2</sup> Portage Code of Ordinances Section 42-541(A)(1) provides: A "sign" is considered a name, identification, description, illustration or device, illuminated or non-illuminated, which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise or any emblem, painting, banner, pennant, placard or temporary sign designated to advertise, identify or convey information, with the exception of window displays and national, state and local government flags. For the purpose of sign removal, the term "sign" includes a sign structure.

<sup>3</sup> Portage Code of Ordinances Section 42-1273 provides in part as follows:

*Sign* means any medium, including its structure and component parts, which is used or intended to be used to attract attention to the subject matter for advertising purposes.

*Sign structure* means a structure which supports or is capable of supporting a sign as defined in this section. A sign structure may be a single pole and may or may not be an integral part of a building.

*Structure* means that which is built or constructed, an edifice or building of any kind, or a piece of work artificially built up or composed of parts joined together in some definite manner.

because the definition of sign makes no distinction between conforming and nonconforming signs.

McDonald's has argued that even if Section 42-544 prohibits structural alteration of a nonconforming sign and supporting pole, replacement of the pole is merely maintenance, and not a structural alteration. In support of this argument McDonald's asserts that the phrase "structurally altered" as used in this section, should be interpreted to mean a change in an existing structure which would expand the size of the structure, significantly change the outside dimensions of the structure or which would effectively convert the building into a different structure, based upon an unpublished Michigan Court of Appeals opinion. This interpretation is inapplicable in the context of the Portage sign ordinance.

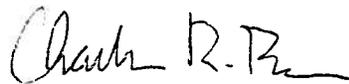
Section 42-544(B)(3) contains two prohibitions for nonconforming signs: first, no nonconforming sign may be structurally altered so as to prolong the life of the sign; and second, the shape, size, type or design of the nonconforming sign may not be changed. Because Section 42-544(B)(3) deals with a nonconforming structure or use, it must be interpreted consistent with the stated intention of the City Council with regard to nonconforming lots, buildings, uses and structures. In that regard, Section 42-133 of the Code states, "[I]t is the intent of this article to permit nonconforming lots, buildings, structures or uses to continue until they are removed, but not to encourage their survival." The City Council, by inserting the word "or" between the phrase "be structurally altered so as to prolong the life of the sign" and the phrase "change the shape, size, type or design of the sign" stated its intention that structural alteration so as to prolong the life of the sign was a distinct violation from changing the shape size type or design of the sign. McDonald's interpretation of "structurally altered" would make the clause containing the second prohibition either redundant or meaningless, contrary to the rules of construction, and would be contrary to the stated intention of Council with regard to not encouraging the survival of nonconforming uses and structures.

The word "altered" as used in this section is not defined in the Code. The term "alter" is defined as, "...to change or make different; modify." The American Heritage Dictionary of the English Language, Fourth Edition, Copyright 2009. Since "sign structure" is a defined term in the Code, it is clear that the phrase "structurally altered" means changing or making the structure of the sign different in some way. Changing the sign pole to replace a pole that is deteriorating makes the structure of the sign different in some way and is unquestionably a structural alteration to prolong the life of the sign prohibited by Section 42-544(B)(3).

Replacing the pole supporting the nonconforming sign is not maintenance. Maintenance is defined as, "...the work of keeping something in proper condition; upkeep." The American Heritage Dictionary of the English Language, Fourth Edition, Copyright 2009. Sanding the rust off the support pole and painting it is an example of maintenance. Replacing the support pole is not. This interpretation of the term maintenance is supported by Section 42-1274(e) of the sign regulations which provides that: "[A]ll signs, together with all of their supports, braces, guys and anchors, shall be kept in repair and in a proper state of preservation. The display surfaces of all signs shall be kept neatly painted or posted at all times". Keeping the support pole in a proper state of preservation does not include replacement of the support pole since "preservation" is defined to mean "...to keep in perfect or unaltered condition; maintain unchanged." The American Heritage Dictionary of the English Language, Fourth Edition, Copyright 2009.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Charles R. Bear". The signature is written in a cursive style with a long horizontal flourish at the end.

Charles R. Bear  
Assistant City Attorney

CRB/jat

cc: Maurice S. Evans  
Vicki Georgeau ✓

Z:\Jody\PORTAGE\OPINIONS\2010\2010-42.doc

**SUGGESTED NON-USE VARIANCE MOTION FORM**

Mr. Chairman:

I move, in regard to ZBA # \_\_\_\_\_, the application by \_\_\_\_\_  
for a variance from \_\_\_\_\_  
\_\_\_\_\_

**be:**

**a. granted** for all of the following reasons:

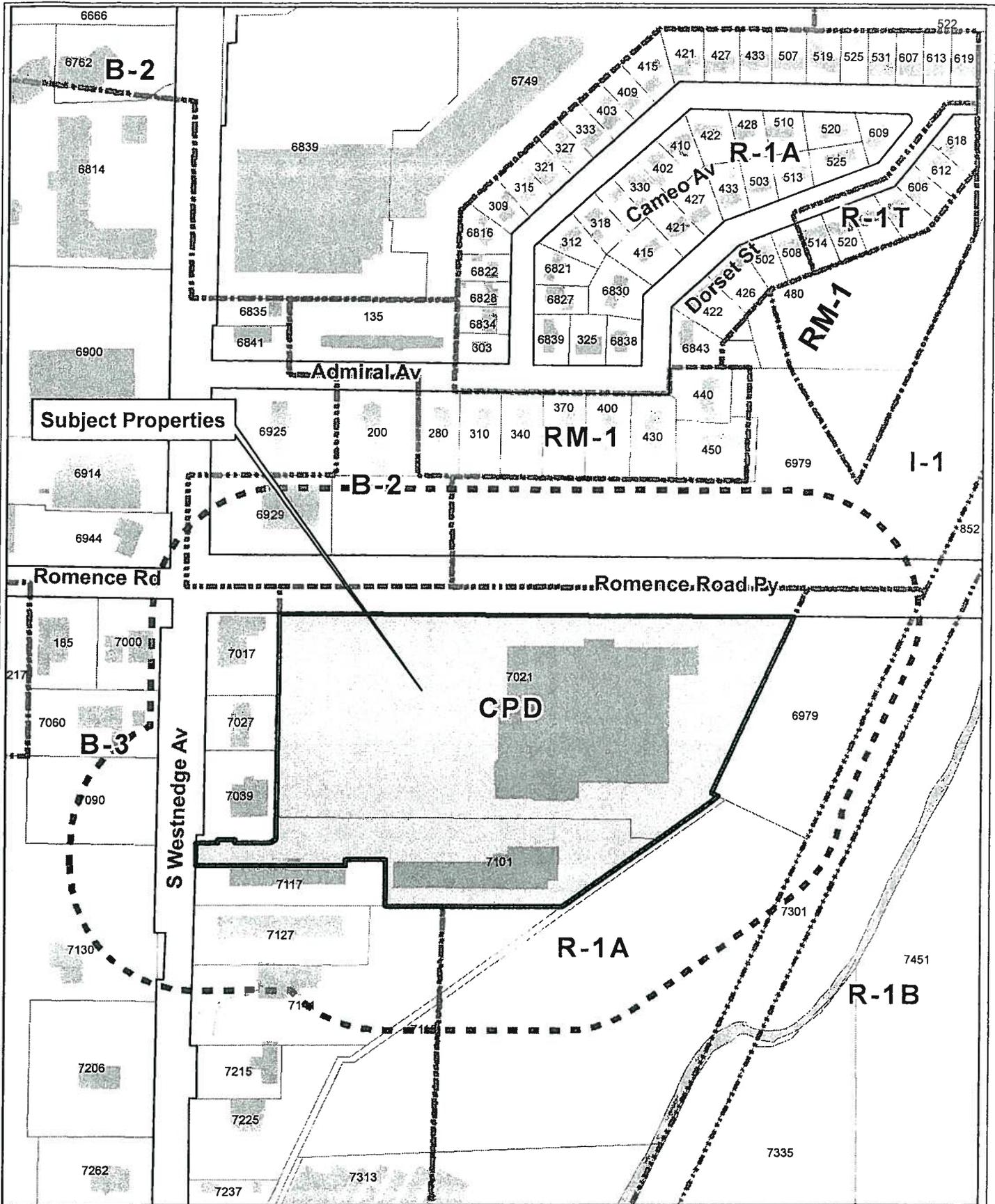
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include \_\_\_\_\_;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to \_\_\_\_\_, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

**-or-**

**b. denied** for one of more of the following reasons:

- 1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;
- 2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as \_\_\_\_\_.
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

**c. In addition**, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**



0 100 200 Feet



# ZBA 10-02

7021, 7101 S. WESTNEDGE AVENUE

	Zoning Boundary
	300' Notification
	Subject Property

RECEIVED

JUN 08 2010

CITY OF  
**PORTAGE**  
*A Place for Opportunities to Grow*

COMMUNITY DEVELOPMENT  
Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 6/4/10

Name of Applicant RYAN SHRIMPLIN, WD PARTNERS [Signature]  
Print Signature

Applicant's Address 7007 DISCOVERY BLVD. Phone No. (614) 634-7402

Name of Property Owner (if different from Applicant) DUBLIN, OH 43017 SAM'S R.E. BUSINESS TRUST

Address 2001 S.E. 10TH ST. Phone No. (479) 204-2702

Address of the Property that is the subject of this Application: BENTONVILLE, AR 72716

Street Address 7021 S. WESTNEDGE AVE.

For Platted Property: Lot \_\_\_\_\_ of \_\_\_\_\_ Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: AGENT FOR OWNER

Application Fee \_\_\_\_\_ (Residential Uses) \$330.00 (All Other Uses)

Type of Appeal (Please check one of the following bold choices and provide the requested information):

**Variance from Zoning Ordinance:** Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_  
Regarding: Use \_\_\_\_\_ Area \_\_\_\_\_ Yards \_\_\_\_\_  
Setbacks \_\_\_\_\_ Parking \_\_\_\_\_ Other \_\_\_\_\_

Reason for Request (Also complete page 2 of application): FREESTANDING SIGN FACE CHANGE  
(FACE DIMENSIONS WILL BE SAME AS EXISTING)

Appeal of Administrative Decision: Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Reason for Request: \_\_\_\_\_

Interpretation of the Zoning Ordinance: Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Reason for Request: \_\_\_\_\_

A Temporary Permit for: Building \_\_\_\_\_ Use \_\_\_\_\_ Other Approval \_\_\_\_\_

Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Reason for Request: \_\_\_\_\_

FOR STAFF USE

Application Number:	Filing Date:	Tentative Hearing Date:
Previous Application Filed Regarding This Property:		

RECEIVED

JUN 08 2010

COMMUNITY DEVELOPMENT

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)

NOT APPLICABLE. VARIANCE REQUEST IS FOR SIGN FACE CHANGE.

2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)

NOT APPLICABLE.

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)

YES AND NO. DENIAL OF THE VARIANCE WOULD ALLOW REASONABLE USE OF THE PROPERTY AS A BUSINESS, BUT IT WOULD IMPOSE AN UNREASONABLE RESTRICTION ON THE ABILITY TO UPDATE THE SIGN LOGO & INFORMATION.

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)

THE VARIANCE BEING REQUESTED IS THE MINIMUM NECESSARY TO ALLEVIATE THE UNREASONABLE RESTRICTION STATED ABOVE.

5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)

THE REQUEST IS FOR A SIGN FACE CHANGE, WHICH HAS LITTLE OR NO IMPACT ON ADJACENT PROPERTIES WHICH HAVE THE SAME OR EVEN LESSER RESTRICTIONS.

6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)

NOT APPLICABLE. THE SIGN FACE CHANGE, IF APPROVED, WILL COMPLY WITH OTHER CODE REQUIREMENTS AND NOT CREATE ANY OF THE AFOREMENTIONED CONDITIONS.

7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)

THE PRACTICAL DIFFICULTY IS DUE TO THE REQUIREMENT THAT ANY ALTERATION TO A SIGN APPROVED BY VARIANCE HAS TO BE APPROVED AS A NEW VARIANCE.

8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)

THE GRANTING OF THE VARIANCE WILL ALLOW THE OWNER TO UPDATE ITS SIGN FACE IN THE SAME MANNER OTHER BUSINESSES ARE ALLOWED TO DO SO UNDER THE ZONING ORDINANCE.

[Signature]  
Signature of Applicant

6/4/10  
Date



# Remodel Design

Jennifer Petersen, Design Manager

2001 SE 10th Street  
Bentonville, AR 72716-0550  
Phone 479.204.2702  
Fax 479.273.8350  
jennifer.petersen@wal-mart.com

June 1, 2010

City of Portage  
7900 S. Westnedge Ave.  
Portage, MI 49002

**RECEIVED**

JUN 08 2010

COMMUNITY DEVELOPMENT

Re: Sam's Club Special Project @ 7021 S. Westnedge Ave.

To Whom It May Concern:

As a representative of Sam's Real Estate Business Trust, this letter serves as authorization for WD Partners to act as the agent for all planning, zoning, and permitting matters pertaining to this project.

Should you have any questions or require additional information, please contact me at 479-204-2702.

Sincerely,

Jennifer Petersen  
Design Manager  
Walmart



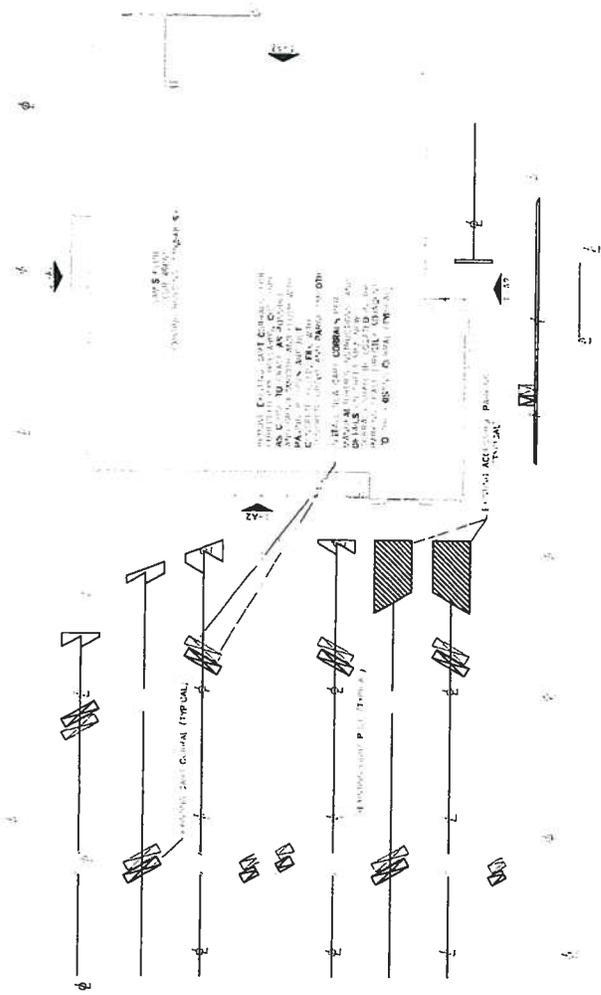
Existing Multi-tenant Sign



Proposed Multi-tenant Sign

SOUTH WESTEDGE AVENUE

ROMENCE ROAD PARKWAY



1 SITE PLAN

NOTE: ALL INFORMATION IS FOR INFORMATION ONLY. THIS PLAN IS NOT TO BE USED AS A BASIS FOR ANY LEGAL ACTION. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

**RECEIVED**  
 JUN 08 2010  
 COMMUNITY DEVELOPMENT



wd

March 16, 2010 | Portage, MI: Club 6661

Not to Scale

Site

6

**TO:** Zoning Board of Appeals **DATE:** July 2, 2010

**FROM:** Jeffrey M. Erickson, Director of Community Development

**SUBJECT:** ZBA #10-02; WD Partners, on behalf of Sam's R.E. Business Trust, 7021 and 7101 South Westnedge Avenue; CPD, Commercial Planned Development, and B-3 General Business

**CODE SECTION:** 42-544 (Nonconforming signs); p. CD42:128-129  
42-552 (Signage) B-2, B-3, and CPD; p. CD42:130.2-131

**APPEAL:** Requesting a variance to change a 140 square foot sign panel on a 224 square foot nonconforming freestanding sign.

**STAFF RECOM-  
MENDATION:**

The applicant is requesting the above variance per the enclosed application, letter of explanation, and site and sign sketch. The zoning lot includes 7021 and 7101 South Westnedge Avenue, comprises 16 acres, has frontage and entrances on both South Westnedge Avenue and Romence Road Parkway, and is zoned CPD Commercial Planned Development and B-3, General Business. The zoning lot is improved with two buildings and accessory parking and related facilities. There is one 224 square feet freestanding sign for the zoning lot, located at the South Westnedge Avenue access drive as indicated on the site sketch. The main anchor tenant panel, dedicated to Sam's Club, is 140 square feet and the remaining 84 square feet are dedicated to tenants in the multi-tenant retail building.

The zoning lot permits a total of three freestanding signs (one on South Westnedge Avenue at 75 square feet and two 180 square foot signs along Romence Road parkway). In May 2005, Sam's Club was granted a variance (minutes attached) to erect a 260 square foot sign on the South Westnedge Avenue frontage where only a 75 square foot sign was permitted. The single, unified sign was erected at the South Westnedge Avenue entrance in order to identify it as the main entrance, and to preserve the character and aesthetic appearance of Romence Road Parkway. As conditions of approval, no freestanding signs along Romence Road Parkway are permitted, and the Board authorized changes to the six tenant panels without Board approval after staff review and permit.

The proposed sign panel change will not alter the size or shape of the existing sign, but will allow the planned Sam's Club logo update. In addition to the proposed alteration to the freestanding sign, Sam's Club will also update existing wall signage with permitted wall signs. Staff recommends approval of the freestanding sign variance subject to the same conditions.

**PRACTICAL  
DIFFICULTY:**

A single development sign on South Westnedge Avenue better directs traffic to South Westnedge Avenue and preserves the character/aesthetics of Romence Road Parkway.

CITY OF PORTAGE ZONING BOARD OF APPEALS  
Minutes of Meeting – May 9, 2005

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Approximately 15 people were in the audience.

MEMBERS PRESENT: Clyde Flora, Henry Kerr, Robert Linenger, Betty Schimmel, Wayne Stoffer

MEMBERS EXCUSED: Fred Bindemann

MEMBERS ABSENT: Ed VanderVries

IN ATTENDANCE: Charlie Bear, Assistant City Attorney, Vicki Georgeau, Deputy Director of Neighborhood Services, Jeff Mais, Zoning & Codes Administrator

APPROVAL OF MINUTES: A motion was made by Flora, seconded by Stoffer to approve the April 11, 2005 minutes, with the correction that with regard to ZBA 04-26, the minutes should reflect that Kerr voted yes and Flora had voted no. Upon roll call vote, the motion passed 5-0.

OLD BUSINESS: Kerr noted with regard to ZBA 04-29; Jack Arnold of VanDam & Krusinga Building & Restoration on behalf of Robert Erikson, 619 South Shore Drive, the application had been withdrawn.

NEW BUSINESS:

ZBA 04-28; EyeGlass World, 6714 South Westnedge Avenue. Rachel Foster was present on behalf of Eyeglass World to explain the request for a 25-foot front yard setback variance from a JL Hudson Drive, a private street, to permit development of a 4,063 square foot retail building. Ms. Foster explained the narrow width along JL Hudson Drive made it difficult to meet the required 75 foot setback, that a 25-foot variance was necessary for use of the property and that the hardship was not self-created, rather stemmed from the change to the Zoning Code.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Flora, seconded by Stoffer to approve a 25-foot front yard setback variance from JL Hudson Drive the practical difficulty being the legal nonconforming status of the lot, and location on a private street. Upon roll call vote: Linenger – Yes, Flora – Yes, Kerr – Yes, Stoffer – Yes, Schimmel – Yes. Motion passed 5-0.

ZBA 04-32; Wal-Mart Stores, Inc. and PlazaCorp Realty Advisors, Inc., 7111, 7117 South Westnedge Avenue, and 280 Romence Road Parkway. Ben Yore of PlazaCorp was present to explain the requests for a) a variance to establish a portion of required off-street parking that is on the same zoning lot but in a different business zoning district, b) a variance to permit one 260 square foot freestanding sign on South Westnedge Avenue where one 75 square foot sign is permitted, and two, 180 square foot signs are permitted on Romence Road Parkway, and c) a variance from the 10-foot setback to locate a freestanding sign five feet from the north property line. A letter was received from Robert Matko, CEO on behalf of Wal-Mart Stores, Inc. which indicated the variance request, to permit 386 square feet of wall signage where 300 square feet is permitted, was withdrawn. Mr. Yore explained with regard to the sign setback that the hardship was due to the requirement to have a dedicated right turn lane. Kerr asked if the applicant owned the property to the north. Attorney Dave Smith indicated that the property to the north is owned by Westnedge and Romence, LLC, a different owner and entity. In response from an inquiry from Kerr, staff explained that the actual property configuration has not been finalized and will require approval of a lot line adjustment by the city. In addition, a shift or jog of the property line to meet the sign setback would involve only a minor site plan amendment. Mr. Yore said that while the city has not finalized the property lines, the parties involved in the development have finalized purchase agreements that can not be changed. Stoffer observed the applicant's hardship appeared self-created.

Mr. Yore provided an overview of the request for 23 parking spaces for the PlazaCorp building on the same zoning lot but within the CPD, Commercial Planned Development zoning district. In response to an inquiry from Mr. Kerr, staff explained that the required parking is provided for the PlazaCorp building within the B-3, General Business

district, but that PlazaCorp wanted additional parking dedicated for a potential future addition or more intensive use, such as a successful restaurant, on the CPD-zoned portion of the zoning lot.

A public hearing was opened. Tim Timmons of Meyer C. Weiner Co., representing Sam's Club, noted that city and developer have worked cooperatively to develop the Sam's Club, PlazaCorp plan as well incorporating other adjacent uses and this request was a final detail in the overall development review/approval process. As no other public comments were received, the public hearing was closed.

A motion was made by Flora, seconded by Schimmel, to approve a variance to establish a portion of required off-street parking that is on the same zoning lot but in a different business zoning district, due to the provision of 23 parking spaces on same zoning lot but in a different zoning district, because the intent of the ordinance is met, and because the variance will provide flexibility for future development. Upon roll call vote: Linenger – Yes, Flora – Yes, Kerr – Yes, Stoffer – Yes, Schimmel – Yes. Motion passed 5-0.

With regard to the request for the freestanding sign area variance, Mr. Yore indicated the developer has been sensitive to the traffic and visual impact on Romence Road Parkway, and is requesting a larger single freestanding sign on South Westnedge instead of a total of three signs, 90 square feet on South Westnedge and two signs totaling 360 square feet on Romence Road Parkway. Stoffer clarified that the height of the proposed sign is 24.5 feet, and asked what the height of the Second Time Around Furniture Store sign was. Staff indicated approximately 25-30 feet and noted the sign is nonconforming and is scheduled to be removed in August 2007 via a five-year nonconforming sign agreement, if not earlier, when the property is redeveloped.

A public hearing was opened. Jim Reinholt, 7141 South Westnedge Avenue, noted concern that the proposed sign would impact the visibility of other signs nearby. Further, he requested clarification that no signs are proposed on Romence Road Parkway. Staff indicated yes. Al Rowe, 7127 South Westnedge also noted concern that their sign would also be obstructed from view. He also noted that the building height was modified to mount wall signs high upon it, and now the developer wants a freestanding sign size variance. Flora noted that the proposed sign will setback considerably from the road and should not obstruct the view of other signs in the vicinity. In response to an inquiry from Schimmel, staff clarified the maximum size of a sign is 180 square feet plus 15 square feet of changeable copy board. Stoffer noted that the overall size of the sign is much larger when considering the columns and brick base. Staff clarified that with the new definition of sign area in the Zoning Code, sign supports are excluded from the size sign calculations. Tim Timmons, Meyer C. Weiner Co. indicated that the development is considerably larger than others in the vicinity and thus the sign should be larger. As no other public comments were received, the public hearing was closed.

A motion was made by Flora, seconded by Stoffer, to approve a 260 square foot freestanding sign on South Westnedge Avenue where a 75 square foot sign is permitted, provided that no freestanding signs be permitted on Romence Road Parkway, and that changes to the six tenant sign panels, as shown on the sign sketch, be permitted without Board approval after staff review and permit, the practical difficulty being that a single development sign on South Westnedge Avenue will better direct traffic to South Westnedge Avenue and preserve the character/aesthetics of Romence Road Parkway. Upon roll call vote: Linenger – Yes, Flora – Yes, Kerr – Yes, Stoffer – Yes, Schimmel – Yes. Motion passed 5-0.

With regard to the sign setback, Attorney Smith clarified that the hardship arose from attempts to meet city requirements, and when two different property owners are involved, it is difficult to negotiate changes to lot lines. Further, Mr. Smith indicated that the setback is not from South Westnedge Avenue, but rather a side yard setback that will have minimal impact in relation to the scope of this big development project. Kerr asked if the property lines have changed over the course of negotiating the land purchase agreements. Mr. Smith indicated that they will be changed by the time of closing. Kerr observed that the site designers should have anticipated a dedicated right turn lane. Stoffer asked about traffic issues regarding the development and if additional changes were anticipated. Staff indicated such issues have been reviewed by the Planning Commission. Tim Timmons indicated that the site plan and property lines have been modified several times over the course of review by the city, and additional changes at this time, even if minor, were problematic.

A public hearing was opened. No comments were received for or against the request. The public hearing was closed.

A motion was made by Flora, seconded by Kerr, to grant a variance from the 10-foot setback to locate a freestanding sign five feet from the north property line, as the conforming alternative is based on negotiations with other owners that can not change the location of the sign and the variance would not negatively impact the adjacent properties. Upon roll call vote: Linenger – No, Flora – Yes, Kerr – No, Stoffer – No, Schimmel – Yes. Motion failed 2-3.

ZBA 04-33; The Home Depot, 6685 S. Westnedge Avenue. Erik Bilicki was present to request a modification to a Temporary Use Permit to store/display merchandise along the north and west sides of the building annually between March 15<sup>th</sup> and September 15<sup>th</sup>. In response to an inquiry from Kerr, staff explained that the modification was before the Board due to the significant expansion of the requested outdoor storage/display areas since the applicant's previous approval. Kerr and Stoffer asked if staff has standards for the areas allowed for these types of applications. Staff responded that the main focus was to limit items with an industrial character, such as pallets, bagged goods and large items in racks. The applicant indicated they were not in agreement with the staff recommendation and that the outdoor storage of tractors and items on pallets was needed for convenience and safety to customers. Todd Rehr, Home Depot noted that the area for fence panels on the north side of the store and tractor storage on the front of the store was previously approved. Kerr noted that over the years the city has received complaints about excessive noise on the back and north side of the building. In response to an inquiry from Linenger, staff indicated previous approval was granted to stack tractors three high. Mr. Rehr noted a significant decrease in business over last year due to inability to merchandise project size quantities of product.

A public hearing was opened. Don Vertoff, of Plainwell, Michigan, said that plants need space outside and actually make the stores more attractive. Mr. Vertoff said that if a corral in the parking lot was allowed, it would help Home Depot as they tend stock more merchandise than they often have room for. As no other public comments were received, the public hearing was closed.

A motion was made by Flora, seconded by Linenger, to approve the Temporary Use Permit with the modification that Area A be eliminated and fence "display" be relocated to Areas B and C, that all "display" materials are to be relocated to areas B through G, that all pallet, "wrapped" pallet, rack storage (including tractor racks) are not permitted, and Areas F and G in front of the nursery be limited to display of live plants, paver samples, assembled grills only, and finally, the following conditions are required 1) no other outdoor display/storage be permitted outside of the proposed temporary use areas unless a business special event permit is obtained; 2) hours of operation coincide with regular store operation hours; 3) no outdoor storage of bagged goods, pallets of pavers, landscape block and rack storage; 4) renewal of the permit shall be subject to review by city staff on an annual basis. Upon roll call vote of the original motion, Linenger – Yes, Flora – Yes, Kerr – Yes, Stoffer – Yes, Schimmel – Yes. Motion passed 5-0.

ZBA 04-34; Jeremy Morris, 3424 Wedgewood Drive. William and Jeremy Morris were present to explain the request for a) an interpretation that providing music lessons as a home occupation does not generate vehicular traffic beyond that normally generated by homes in a residential neighborhood, or b) a variance from the condition that a home occupation not generate traffic beyond that normally generated by homes in a residential neighborhood for providing music lessons, or c) an appeal of the administrative decision to deny the home occupation permit. Mr. Morris explained the music lessons have been taught for over 20 years with no problems, and that a petition has been signed by 45 neighbors in support of the music lessons. Mr. Morris indicated that there are practical difficulties with regard to operation of the home occupation in another location. In response to an inquiry from Kerr, staff explained that the home occupation permit was submitted after the city responded to a citizen complaint about parking. Kerr inquired if the traffic generated by the music lessons is similar to that of a day care home. Staff explained the traffic was similar to that of a group day care home. Mr. Morris noted that the home occupation had an average of 5 students per day, and some walk to the lessons. Further, Mr. Morris explained that the driveway is more than large enough to accommodate parking for students and that there is no audible noise outside the dwelling

**SUGGESTED NON-USE VARIANCE MOTION FORM**

Mr. Chairman:

I move, in regard to ZBA # \_\_\_\_\_, the application by \_\_\_\_\_  
for a variance from \_\_\_\_\_  
\_\_\_\_\_

**be:**

**a. granted** for all of the following reasons:

- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include \_\_\_\_\_;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to \_\_\_\_\_, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

**-or-**

**b. denied** for one of more of the following reasons:

- 1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;
- 2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as \_\_\_\_\_;
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

**c. In addition**, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**