

CITY OF

PORTAGE

A Place for Opportunities to Grow

**ZONING BOARD
OF APPEALS**

April 11, 2011

CITY OF PORTAGE ZONING BOARD OF APPEALS

Monday, April 11, 2011

(7:00 pm)

Portage City Hall

Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES:

- * March 14, 2011

OLD BUSINESS:

NEW BUSINESS:

- * ZBA# 10-15, 710 East Milham Avenue: James Hall, on behalf of Edward Rose Associates, LLC, is requesting a variance to replace an existing 61 square foot Walnut Trail nonconforming non-accessory sign with a new 29 square foot sign.

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – March 14, 2011

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

MEMBERS PRESENT: Timothy Bunch, David Felicijan, Rob Linenger, Betty Schimmel, Marianne Singer, Lowell Seyburn, Daniel Rhodus, Jeff Bright

MEMBERS EXCUSED: Donald Mordas

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator, Charles Bear, Assistant City Attorney

APPROVAL OF THE MINUTES: Felicijan moved and Bunch seconded a motion to approve the February 14, 2011 minutes as submitted. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA# 10-12, 408 Schuring Road: Staff summarized the request for a variance from the home occupation standards to allow the operation of a woodcraft home-based business in a detached accessory building. Kevin and Amy Braat, were present to explain the request for KAB CNC Creations. Mr. Braat stated they have conducted woodcrafts as a hobby for several years in the barn, and recently acquired a new piece of machinery and now wish to expand their hobby into a home occupation. Bunch inquired if the operation would produce airborne sawdust and if the new equipment would produce significantly more noise. Mr. Braat stated they have a dust collector and the new CNC router would not produce noise beyond current levels.

A public hearing was opened. A letter of support from D&D Greenhouses, 326 Schuring Road, was read. There being no further comments, the public hearing was closed.

A motion was made by Felicijan, supported by Bunch, to grant a variance from the home occupation standards to allow the operation of a woodcraft home-based business in a detached accessory building at 408 Schuring Road for the following reasons: there are exceptional circumstances applying to the property which include the residence is nonconforming in an I-1, Light Industrial zone, and there are adjacent industrial uses to the north, south and east; the variance will not be detrimental to adjacent property as the applicant has been operating woodcraft equipment for several years without any complaints from neighbors; and the variance will not materially impair the intent and purpose of the zoning ordinance. 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. Upon roll call vote: Linenger-Yes, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Bunch-Yes, Seyburn-Yes, Rhodus-Yes, the motion carried 7-0.

ZBA# 10-13, 3810 West Centre: Staff summarized the request to replace the sign panels on an existing nonconforming freestanding sign. Jerry Tillman with Sign Art was present on behalf of the applicant to answer questions. Bunch inquired if the sign was illuminated. Mr. Tillman said yes.

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

A motion was made by Singer, supported by Seyburn to grant a variance to replace the sign panels on an existing nonconforming sign for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply to other properties in the same zoning district, which include the limited front yard area, the existing landscaping, the location of the existing sidewalk, and the removal or relocation of the existing monument sign presents practical difficulties for the 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. Upon roll call vote: Linenger-Yes, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Bunch-Yes, Seyburn-Yes, Rhodus-Yes, the motion carried 7-0.

ZBA# 10-14, 741 West Kilgore Road: Staff summarized the request for approval to operate a group child care home on the property. Donna Lerversee stated she has operated a family child care business at home for over 20 years and was present to answer any questions. Felicijan inquired what the hours of operation are. Ms. Lerversee stated 6:30 am to 5:30 pm. Rhodus inquired if there was adequate parking and if not what the city could do about it if the board approved the request. Ms. Lerversee stated she has never had a problem with parking or traffic. Staff stated the city could ask Ms. Lerversee to provide more parking, however, the property currently met the parking requirements for group day care businesses reviewed under the more commonly applied 42-182(I)(6) standards (Special Land Use in a residential zone), and based on the experiences from numerous other group child day care operations approved by the Planning Commission, did not anticipate problems with parking at this location.

A public hearing was opened. Gary Marcy read a letter from Reva Williams, 809 West Kilgore Road, in support of the request. A letter from The Hinman Company stating they supported the request, provided the approval did not add any additional burdens on the development and/or rezoning of their adjacent property. There being no further comment the public hearing was closed.

After additional discussion, a motion was made by Felicijan, and supported by Bunch to approve a group child care home at 741 West Kilgore Road, based on the findings that no prior complaints have been received, no structural alterations are proposed, the accessory group child care home is more consistent with the OS-1 district, and the expanded child care use is not anticipated to prolong the nonconforming residential use of the property. Upon roll call vote: Linenger-Yes, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Bunch-Yes, Seyburn-Yes, Rhodus-Yes, the motion carried 7-0.

STATEMENT OF CITIZENS:

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 7:40 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator

RECEIVED

MAR 14 2011

COMMUNITY DEVELOPMENT

CITY OF PORTAGE A Place for Opportunities to Grow

Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date MARCH 14, 2011
Name of Applicant JAMES R. HALL, AGENT
Applicant's Address 6101 NEWPORT RD., PORTAGE, MI 49002
Name of Property Owner (if different from Applicant) EDWARD ROSE ASSOCIATES, LLC
Address SAME

Address of the Property that is the subject of this Application:
Street Address SOUTHWEST CORNER OF MILLHAM AVE. & NEWPORT RD. INTERSECTION
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, THE DEVELOPER OF THE WALNUT TRAIL OFFICE COMPLEX & WALNUT TRAIL APARTMENTS
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):
[X] Variance from Zoning Ordinance: Article 42 Section 544 Paragraph B
Regarding: Use Area Yards
Setbacks Parking Other [X]

Reason for Request (Also complete page 2 of application): REPLACE AN EXISTING NON CONFORMING SIGN

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

Table with 3 columns: Application Number (10000013), Filing Date (3/14/11), Tentative Hearing Date (4/11/11)

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.)
THE 6+ ACRE SITE IS IRREGULARLY SHAPED WITH LIMITED FRONTAGE ON MILHAM AVE.
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
DUE TO THE LIMITED FRONTAGE 3 OF THE 6 OFFICES HAVE FRONTAGE ALONG MILHAM AVE THE EXCEPTIONS ARE AUTO OWNERS & THE APPLICANTS TWO OFFICES - THE WALNUT TRAIL OFFICE CENTER & THE NEWPORT OFFICE BLDG. WALNUT TRAIL APARTMENTS ARE LOCATED 700 FT. SOUTH OF MILHAM AVE
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. HOWEVER, THE SIGN GIVES CLARITY AND DIRECTION TO THOSE OFFICES AND THE APARTMENTS THAT DO NOT HAVE FRONTAGE ON MILHAM AVE.
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.)
YES, THE PROPOSED SIGN STRUCTURE IS SMALLER THAN THE EXISTING STRUCTURE. IT WILL READ THE SAME WITH LARGER BLOCK STYLE LETTERS FOR EASIER IDENTIFICATION.
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 EXISTING SIGN HAS BEEN IN PLACE SINCE 1978 BEFORE ANY SURROUNDING PARCELS WERE DEVELOPED. IT HAS BEEN USEFUL IN GIVING A LOCATION DESCRIPTION & DIRECTIONS.
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.)
SAME AS #5.
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 SIGN WAS INSTALLED IN 1978 WHEN EDWARD ROSE ASSOCIATES OWNED THE PROPERTY. THE PROPERTY, WHERE THE SIGN IS LOCATED, WAS SOLD TO YEO & YEO, INC. IN 1989 WITH A PERPETUAL EASEMENT - PLEASE SEE ATTACHED STATEMENT OF REASON
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
THE SPIRIT & INTENT OF THE ORDINANCE IS TO PROVIDE IDENTIFICATION IN A SAFE, CONSISTENT AND FAIR MANNER. THE PROPOSED REPLACEMENT OF THIS SIGN AT THE SAME LOCATION DOES NOT CAUSE A SAFETY CONCERN, BUT ACTS AS AN IDENTIFIER AND GIVES DIRECTION TO AN AREA.

James R. Hall, AGENT
Signature of Applicant JAMES R. HALL

March 11, 2011
Date

STATEMENT OF REASON

RE: WALNUT TRAIL SIGN AT MILHAM AVENUE

This statement is written regarding the Walnut Trail Apartments sign located in the southwest corner of the Milham Avenue and Newport Road intersection.

The sign has been in place for approximately 33 years and is in need of extensive repairs or replacement. We, Edward Rose Associates, Inc., would like to replace this sign with something a little more contemporary and fitting with the surrounding offices.

Staff has informed us that "any future modifications to this sign would require it to be relocated to either 6100 Newport Road or 601 Alfa Court, or a variance would have to be obtained from the Zoning Board of Appeals". Staff further states that the reason for this is that the sign is no longer located on the zoning lot of the office or the apartment complex it identifies and because of this it has become a nonconforming sign.

We disagree that the sign only identifies our properties. It also identifies the Walnut Trail Office Complex that has other offices - Auto Owners Insurance, Yeo & Yeo, Inc., Michigan Commerce Bank, the Newport Office Building and the Walnut Trail Office Center. Yeo & Yeo owns the property that the sign sets upon. When Edward Rose Associates sold the property to Yeo & Yeo, Inc. in 1989 a perpetual easement was executed with Yeo & Yeo, Inc. for the care and maintenance of the sign. (see attached copy).

A short history of the development of this site may help explain how this sign became nonconforming. When Edward Rose Associates proposed and subsequently received approval for this development in 1978 the parcel consisted of nearly 69 acres of which 57.09 acres were identified for the apartments and 11.63 acres for an office complex and was rezoned RM-1 and OS-1 respectively. This 11.63 acre OS-1 property had frontage on Milham Avenue. (As the development went forward, with street dedications, storm water retention areas and so forth, the current acreage for multifamily is 54.57 acres and 7.22 acres for the office complex.) We owned all the land at that time and built the Walnut Trail sign where it now stands. We built the office, The Walnut Trail Office Center, for ourselves but we did have other tenants as well. We also built five apartment buildings at Walnut Trail and two buildings at Newport Village before the economic downturn occurred in the early 1980s. At that time we quit building nearly everything; Newport Road and Gladys Street were "stubbed" just past the entries into the apartments. An office parcel was sold to Auto Owners Insurance Company in 1980. We slowly started construction again in 1984 continuing until the last apartment buildings were completed in 1990; with that of course, came the completion and dedication of Newport Road and Gladys Street. In 1989, Yeo & Yeo, Inc. purchased the lot north of Auto Owners that fronts on

Milham Avenue on the west side of Newport Road which is when the sign easement referred to earlier was established. Yeo & Yeo, Inc. then sold the westerly end of their property for the dental office now owned by Dr. Wadas. In the fall of 1997, Edward Rose Associates completed the Newport Office Building and shortly thereafter Michigan (formerly Portage) Commerce Bank was opened. All of these offices now comprise The Walnut Trail Office Park Complex.

The Walnut Trail Apartments are a large part of this development and setting back from Milham Avenue as far as they do they have very little visibility. The parcel that consists of the apartments continues to the west until it stops behind the old K-Mart building. It has no visibility from Westnedge Avenue. These apartments do benefit from this sign because of its exposure to Milham Avenue.

JH/amm
3/14/11

Out of 00010-0P50

Per 1416PRO755
Cert 112137

The Grantor(s) Edward Rose Associates, a Michigan copartnership, whose address is 23999 W. Ten Mile Road, Suite A, P.O. Box 937, Southfield, MI 48037 convey(s) and warrant(s) to Yeo & Yeo Buildings, Inc., a Michigan corporation

whose address is P.O. Box 3275, 3023 Davenport, Saginaw, MI 48605 the following described premises situated in the City of Portage, County of Kalamazoo and State of Michigan:

A parcel of land situated in the NW 1/4 of Section 10, Township 3 South, Range 11 West, more particularly described as follows:

Commencing at the North quarter corner of said Section 10; thence North 89°51' West 536.65 feet to the POINT OF BEGINNING of the land hereinafter described; thence South 00°10'19" East 229.33 feet; thence North 89°51' West 276.00 feet; thence South 00°10'19" East 40.00 feet; thence North 89°51' West 70.27 feet; thence North 00°03' East 269.33 feet; thence South 89°51' East 345.22 feet to the point of beginning.

(continued on EXHIBIT A attached hereto and made a part hereof) for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and adequacy of which is hereby acknowledged. Affidavit Filed.

subject to easements and building and use restrictions of record and further subject to the right of way for Milham Road over the northerly 50 feet thereof and further subject to the following:

The property conveyed hereby shall only be used for general office building purposes and related usage. So long as the Grantor owns property immediately (continued on EXHIBIT B attached hereto and made a part hereof)

Dated this 27th day of June 1989 EDWARD ROSE ASSOCIATES, a Michigan copartnership

Signed in presence of: Larry D. Bodoh, Kristi L. Kahl, Sheldon Rose, Managing Partner

STATE OF MICHIGAN }
COUNTY OF Oakland } ss.

The foregoing instrument was acknowledged before me this 27th day of June 19 89 by Sheldon Rose, to me personally known who being by me duly sworn did say that he is the Managing Partner of Edward Rose Associates, a Michigan copartnership, and that the foregoing Warranty Deed was signed on behalf of and as the free act and deed of said copartnership.

Larry D. Bodoh
Notary Public, Oakland County, Michigan
My commission expires March 21, 1991

County Treasurer's Certificate City Treasurer's Certificate

When Recorded Return To: Yeo & Yeo Buildings, Inc. P.O. Box 3275, 3023 Davenport Saginaw, MI 48605
Send Subsequent Tax Bills To: Yeo & Yeo Buildings, Inc. P.O. Box 3275 3023 Davenport Saginaw, MI 48605
Drafted By: Karen E. Werme Business Address: Edward Rose Associates 6100 Newport Road P.O. Box 3015 Kalamazoo, MI 49003

Tax Parcel # Recording Fee Transfer Tax

* TYPE OR PRINT NAMES UNDER SIGNATURES.

STATE OF MICHIGAN
CLERK-REGISTRAR
RECEIVED FOR RECORD
89 JUN 29 PM 2 1989

RECEIVED
MAR 21 2011
COMMUNITY DEVELOPMENT

LIBER 1416PC0756

ATTACHMENT TO A WARRANTY DEED DATED June 27, 1989, WHEREIN EDWARD ROSE ASSOCIATES, A MICHIGAN COPARTNERSHIP, APPEARS AS GRANTOR AND YEO & YEO BUILDINGS, INC., A MICHIGAN CORPORATION, APPEARS AS GRANTEE

EXHIBIT A

LEGAL DESCRIPTION (CONTINUED)

RESERVING THEREFROM, a perpetual easement for the construction, operation, maintenance, reconstruction and landscaping of a sign over the following described portion of the above described parcel:

A parcel of land situated in the NW 1/4 of Section 10, Township 3 South, Range 11 West, more particularly described as follows:

Commencing at the North quarter corner of said Section 10; thence North 89°51' West 536.65 feet to the POINT OF BEGINNING of the easement land herein reserved; thence South 00°10'19" East 100.00 feet; thence North 89°51' West 50.00 feet; thence North 00°10'19" West 100.00 feet; thence South 89°51' East 50.00 feet to the point of beginning. *f*

LIGER 1416PS0757

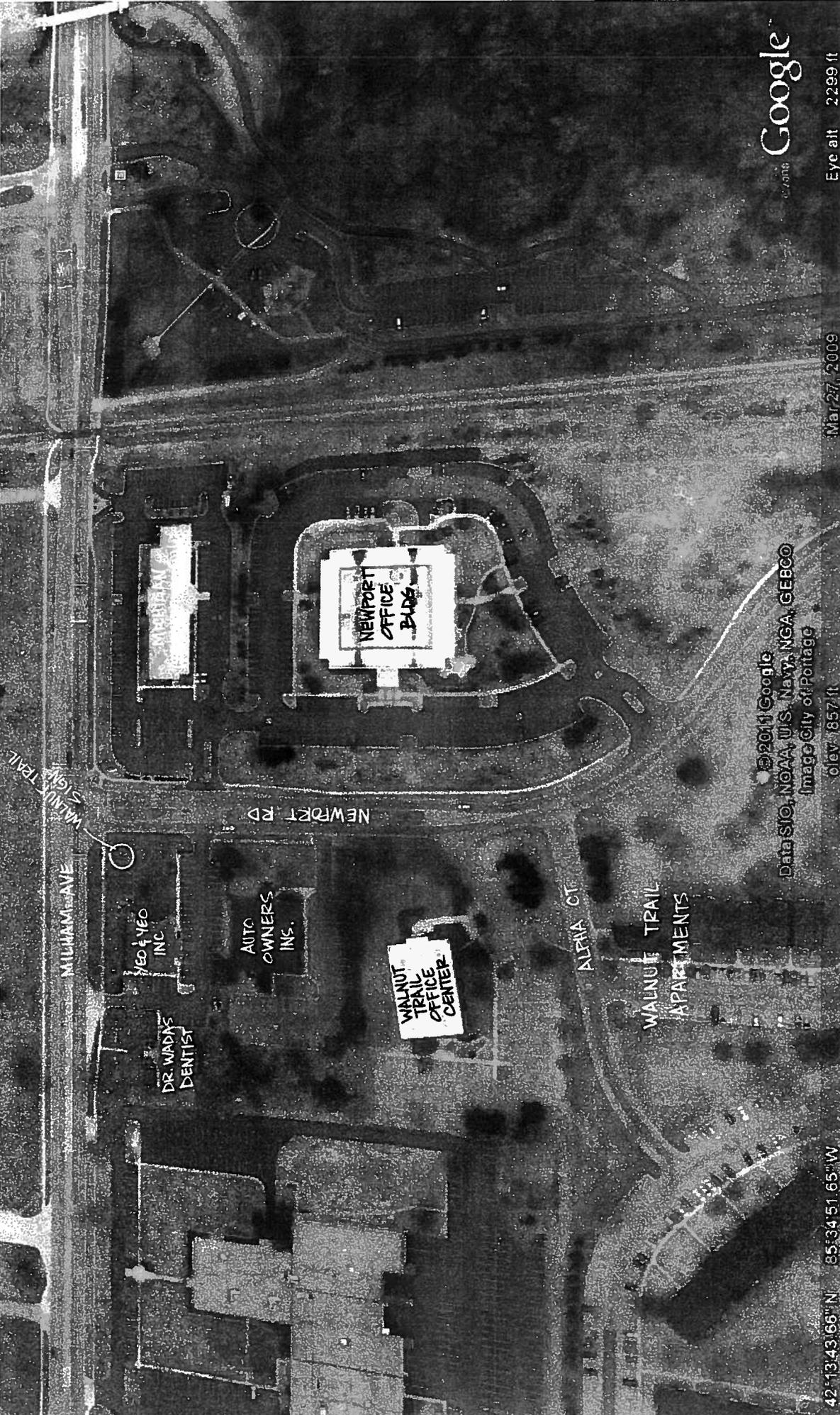
ATTACHMENT TO A WARRANTY DEED DATED June 27, 1989, WHEREIN EDWARD ROSE ASSOCIATES, A MICHIGAN COPARTNERSHIP, APPEARS AS GRANTOR AND YEO & YEO BUILDINGS, INC., A MICHIGAN CORPORATION, APPEARS AS GRANTEE

EXHIBIT B

SUBJECT TO EASEMENTS AND BUILDING AND USE RESTRICTIONS OF RECORD AND FURTHER SUBJECT TO (CONTINUED)

adjacent to the parcel described in this deed, no major architectural or major site improvements shall be performed upon the property conveyed hereunder without the prior written consent of the Grantor, which consent shall not unreasonably be withheld; provided, however, that any request for approval of such improvements shall be deemed approved if there has been a written request to Grantor by certified mail at Grantor's last known address, with no response thereto for a period of thirty (30) days.

J



Google

Eye alt 2,299 ft

© 2011 Google
Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image City of Portage

Mar 27, 2009

elev 1857 ft

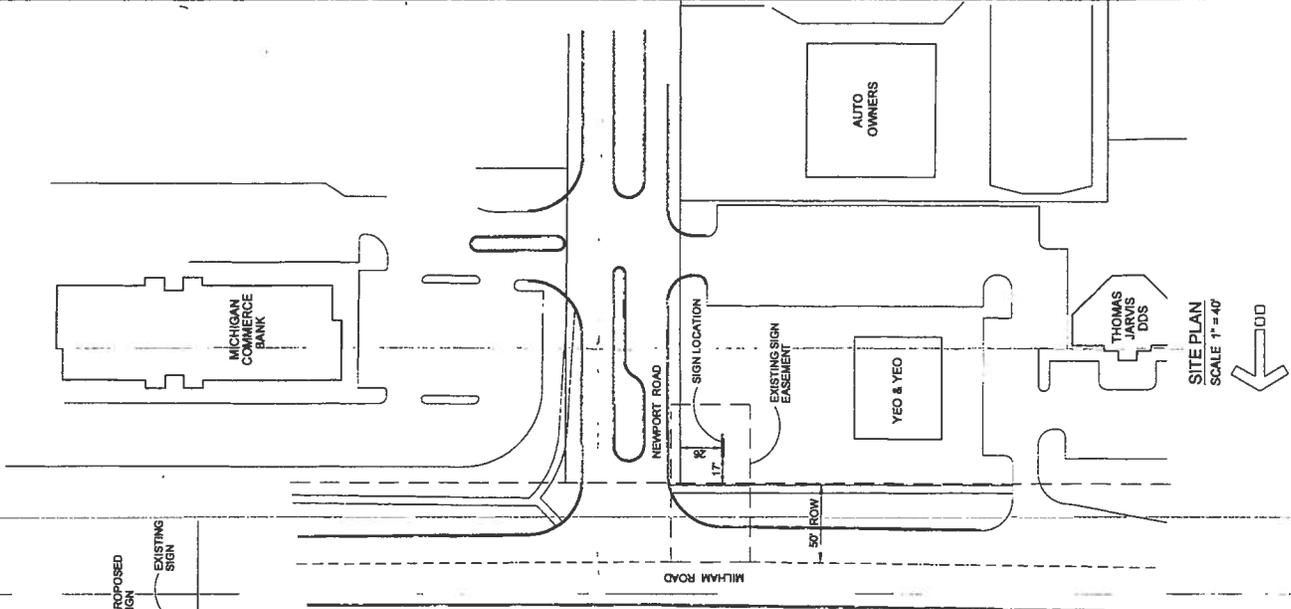
42°13'43.66"N 85°34'51.65"W



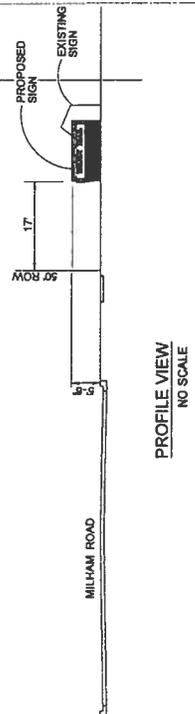
WALNUT TRAIL



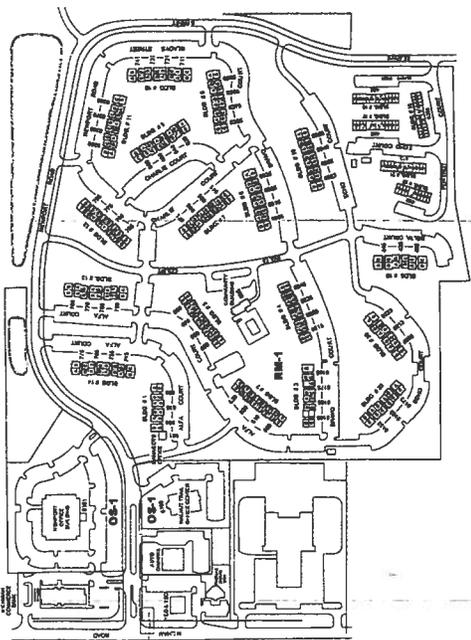
REVISIONS	



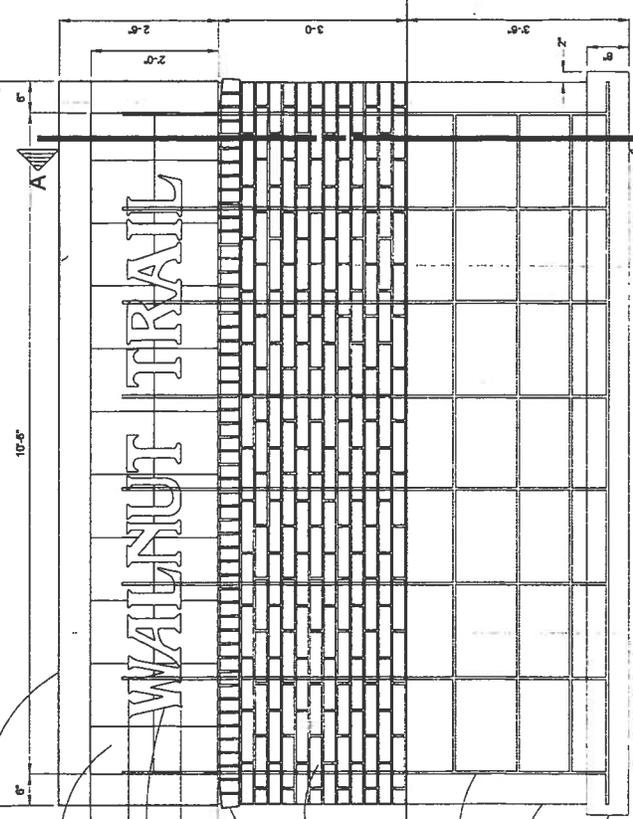
SITE PLAN
 SCALE 1" = 40'
 ← 000



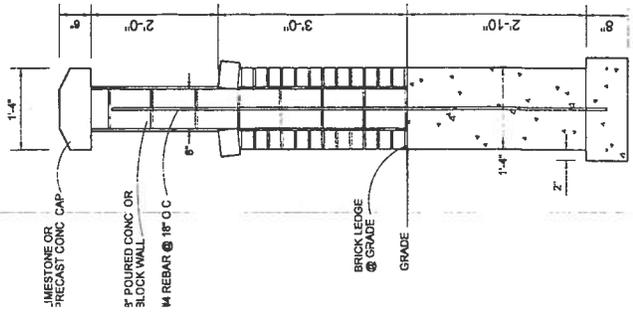
PROFILE VIEW
 NO SCALE



SIGN LOCATION PLAN
 NO SCALE



SIDE ELEVATION
 SCALE 1" = 1'-0"



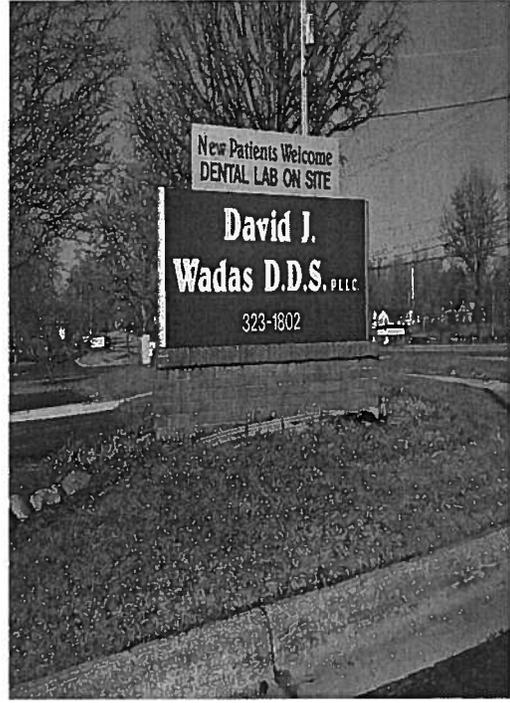
SECTION A-A
 SCALE 1" = 1'-0"

- LINESTONE OR RECAST CONC. CAP & ENDS
- 1/4" REBAR @ 18" O.C. (CENTERED IN WALL)
- POURED CONC. FOUNDATION WALL
- CONC. FOOTINGS
- GRADE
- BRICK TO MATCH BRICK ON CLOSEST BLDG
- BRICK SILL @ 5'-7"
- GOLD RAISED 10" LETTERS
- 12" x 12" BLACK CERAMIC TILE
- 3" POURED CONC. OR BLOCK WALL
- 1/4" REBAR @ 18" O.C.
- BRICK LEDGE @ GRADE
- GRADE

NOTE: SIGN SHALL BE DOUBLE-SIDED



800 E Milham



626 E Milham

710 E Milham



6070 Newport





6100 Newport



6101 Newport

Gladys Street
entrance



TO: Zoning Board of Appeals **DATE:** April 1, 2011
FROM: Jeffrey M. Erickson, Director of Community Development
SUBJECT: ZBA #10-15; James Hall, on behalf of Edward Rose Associates, LLC, 710 East Milham Avenue, OS-1 Office Service.

CODE SECTION: 42-544 B. and C., Nonconforming Signs; p. CD42:128

APPEAL: Requesting a variance to replace an existing 61 square foot Walnut Trail nonconforming non-accessory sign with a new 29 square foot sign.

STAFF RECOMMENDATION: The applicant requests the above variance per the enclosed application and attachments. The 61 square foot Walnut Trail sign is located at the northeast corner of 710 East Milham Avenue. A freestanding sign is located on the west side of the parcel, which identifies the office building as occupied by Yeo & Yeo.

As background, in 1978, Walnut Trail Apartments (601 Alpha Court), Newport Village Apartments (465 Gladys Street) and the Walnut Trail Office Center (6100 Newport Road) were constructed, and the development included land that extended from East Milham Avenue south to Gladys Street. At that time, a conforming Walnut Trail sign was erected in the OS-1 office service-zoned parcel at the corner of East Milham Avenue and Newport Road. Between 1980 and 1989, several land divisions occurred, resulting in the development of parcels now addressed as 6070 Newport Road, and 636 and 710 East Milham Avenue. Michigan Commerce Bank, 800 East Milham Avenue was also constructed. As a result, the original Walnut Trail project, which included office and multiple-family residential land uses, no longer has frontage on East Milham Avenue. While the applicant has an easement for the Walnut Trail sign, which is shown on the 1989-approved site plan for 710 East Milham Avenue, per the Zoning Code, the Walnut Trail sign is now a nonconforming non-accessory sign.

The applicant indicates that while the Walnut Trail properties owned by Edward Rose Associates, LLC, do not have frontage on East Milham Avenue, the office and multiple-family uses within the vicinity are still identified as part of the larger, original Walnut Trail development.

Each office building and apartment element have separate freestanding signs, and only the Walnut Trail/Newport Village sign has design elements similar to the larger Walnut Trail sign located at 710 East Milham Avenue. The land divisions that created the situation that is being experienced by the applicant were accomplished by the applicant about 20 years ago. Options for conforming alternatives are now limited and orienting customers and residents to "Newport Road" would seem appropriate. Nonetheless, if the Board finds that the proposal represents a reduction in the degree of nonconformity and that the replacement sign is more in keeping with the spirit and purpose of the regulations, the variance can be authorized.

PRACTICAL DIFFICULTY: Significantly smaller sign proposal. See Suggested Motion form.

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.**