

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

# **ZONING BOARD OF APPEALS**

**May 9, 2011**



# **CITY OF PORTAGE ZONING BOARD OF APPEALS**

**Monday, May 9, 2011**

**(7:00 pm)**

**Portage City Hall  
Council Chambers**

## **CALL TO ORDER**

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

## **APPROVAL OF MINUTES:**

- \* April 11, 2011

## **OLD BUSINESS:**

## **NEW BUSINESS:**

- \* ZBA# 10-16, 10027 Oakland Drive: Scot and Dana Smoker, Mystic Creek Brewery/Nature's Dance, are requesting a variance to establish a microbrewery with a 50 seat occupancy restaurant that provides lunch and dinner service in this B-3 general business zone, when a minimum 100 seat occupancy restaurant is required in conjunction with a microbrewery.

## **STATEMENT OF CITIZENS:**

## **ADJOURNMENT:**

## **MATERIALS TRANSMITTED**

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

**CITY OF PORTAGE ZONING BOARD OF APPEALS**  
Minutes of Meeting – April 11, 2011

 **DRAFT**

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. One person was in the audience.

**MEMBERS PRESENT:** Timothy Bunch, David Felicijan, Rob Linenger, Betty Schimmel, Donald Mordas, Lowell Seyburn, Daniel Rhodus, Jeff Bright

**MEMBERS EXCUSED:** Marianna Singer

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

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

**NEW BUSINESS:**

**ZBA# 10-15, 710 East Milham Avenue:** Staff summarized the request for a variance to replace an existing 61 square-foot Walnut Trail nonconforming non-accessory sign with a new 29 square-foot sign. Jim Hall was present on behalf of the applicant, and explained the history of the Walnut Trail development and indicated the original zoning lot consisted of the Walnut Trail and Newport Village Apartments, and also the office developments at what is now 6070 Newport Road, 636 and 710 East Milham Avenue. Mr. Hall stated that while the office properties along East Milham were subsequently sold off, they continue to identify their business location in relation to the Walnut Trail sign. Seyburn observed the proposed replacement sign would be significantly smaller. Felicijan requested clarification on whose property the subject sign was located. Mr. Hall stated the sign was on property now owned by Yeo & Yeo, but the applicant had a perpetual easement to maintain the sign. Rhodus inquired if the city could do more to prevent the creation of nonconformities in situations like this. Staff responded the city had no say in this matter, as zoning lots are determined by property owners and developers. The applicant sold the property at 710 East Milham to Yeo & Yeo, and as new owners/developers they subsequently applied for their own freestanding sign permit, and made their own determination they were a separate zoning lot. Felicijan inquired what the largest sign Walnut Trail could have. Staff clarified that the code permitted no off-premise sign of any size at this location, but the matter before the Board was to decide whether the proposal to replace the existing nonconforming sign with a sign less than half its size was a reduction in nonconformity and in keeping with the spirit and intent of the ordinance.

A public hearing was opened. Susan Wright of Michigan Commerce Bank, 800 East Milham Avenue, spoke in favor of the request. The public hearing was closed.

A motion was made by Seyburn, supported by Bright, to grant a variance to replace an existing 61 square-foot Walnut Trail nonconforming non-accessory sign with a new 29 square-foot sign for the following reasons: there are exceptional circumstances applying to the property which include the sign proposed is half its current size and is necessary for identification; the variance will not be detrimental to adjacent property; 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-No, Mordas-Yes, Bunch-Yes, Seyburn-Yes, Bright-Yes, the motion carried 6-1.

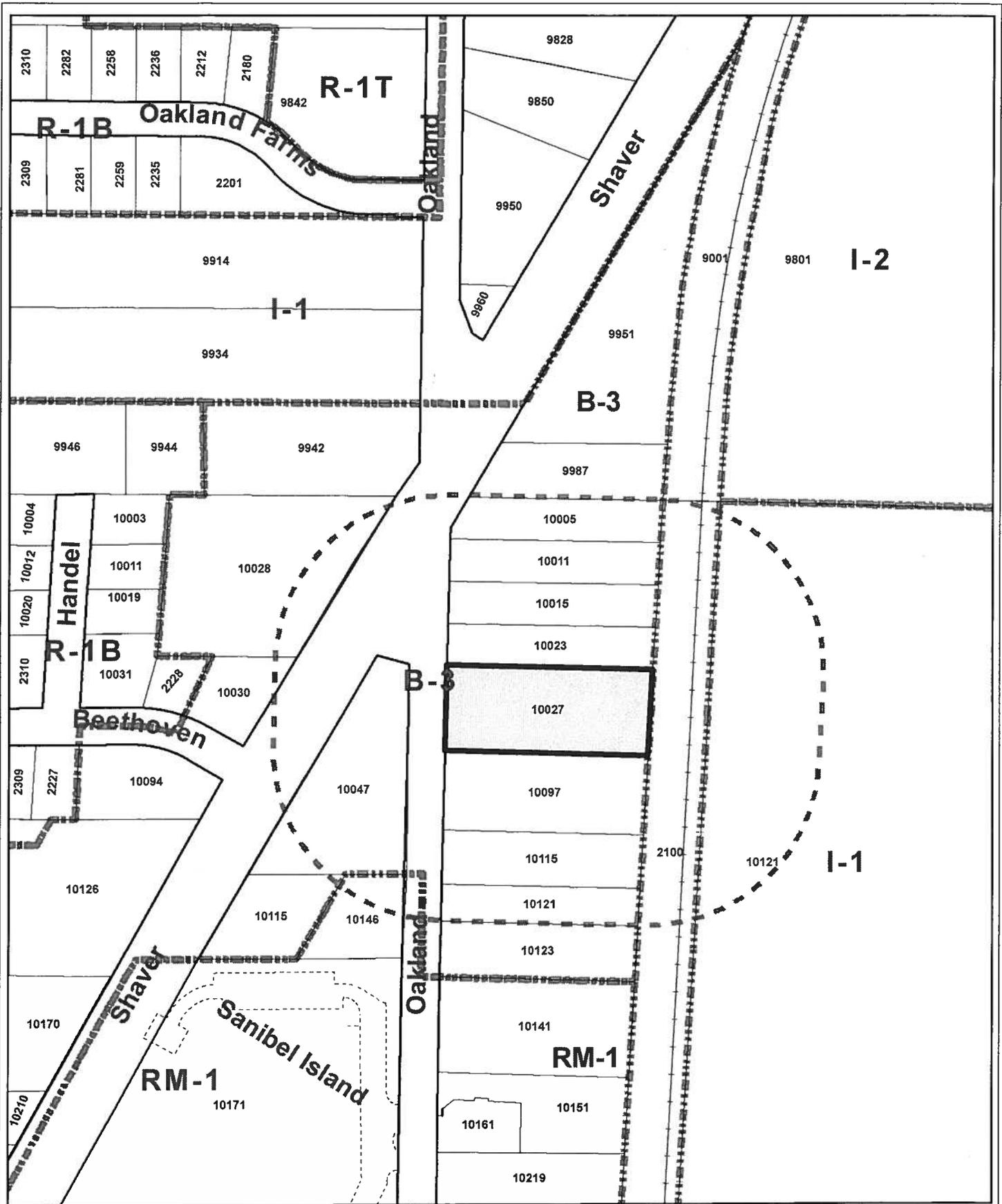
**STATEMENT OF CITIZENS:**

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 7:24 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator





1 inch = 233 feet

## ZBA 10-16 10027 Oakland Drive

**Legend**

- Subject Property
- 300' Notification Boundary
- Zoning Boundary

10-100004

RECEIVED

APR 05 2011

COMMUNITY DEVELOPMENT

Department of Community Development

CITY OF PORTAGE A Place for Opportunities to Grow

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 4-1-11

Name of Applicant SCOT + DANA SMOKER Print

Signature [Handwritten Signature]

Applicant's Address 9693 EAST W AVE VICKSBURG MI 49077

Phone No. 269 649-1174 / 269 649-2950

Name of Property Owner (if different from Applicant) GRANT B + M E SALOMON (Stamp: Shoppe)

Address 10027 OAKLAND DR. PORTAGE MI 49024 Phone No.

Address of the Property that is the subject of this Application:

Street Address 10027 OAKLAND DRIVE PORTAGE MI

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:

Application Fee (Residential Uses) (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 42-262 Paragraph C Regarding: Use Area Yards Setbacks Parking Other

Reason for Request (Also complete page 2 of application):

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 (10-16), Filing Date (4/6/11), Tentative Hearing Date (5/9/11). Row 2: Previous Application Filed Regarding This Property.

### 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.)

SEE ATTACHED

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

SEE ATTACHED

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

SEE ATTACHED

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.)

SEE ATTACHED

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.)

SEE ATTACHED

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.)

SEE ATTACHED

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.)

SEE ATTACHED

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

SEE ATTACHED

  
Signature of Applicant

4-1-11  
Date

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APR 20 2011

COMMUNITY DEVELOPMENT

**\*\*\* Proposed Mystic Creek Brewery/Natures Dance 10027 Oakland Drive,  
Portage, Michigan**

This appeal is in regards to Article \_\_\_\_\_, Section 42-262, Paragraph C, Line 8, Sub line C, exact words ( providing full lunch and dinner ).

The difference between a Microbrewery and a Brewpub are as follows:

A microbrewery's main focus is on producing beer up to 30,000 barrels per year and can multiple facilities so as to not go over that total limit. Microbreweries are allowed to sell to wholesalers and have tap rooms, beer gardens and sell food if they choose as long as they hold the appropriate license.

A Brewpub main focus is on food service along with making beer. The total production can not exceed 5,000 barrels per year. A brewpub can only sell on premises and have one establishment and cannot sell to wholesalers.

We, Scot and Dana Smoker, owners of Natures Dance Therapeutic Massage and Wellness Center, Mystic Creek Brewery and Smoker Builders Inc. are in the process of relocating. We want to relocate Natures Dance Therapeutic Massage and Wellness Center from 10032 Shaver Road Portage, Michigan which we are now leasing and have no room for expansion, to purchase 10027 South Oakland Drive and build an addition to the existing building to include and start Mystic Creek Brewery.

After searching for properties for three years we have put our focus on 10027 South Oakland Drive. The property located at 10027 South Oakland Drive, is 1.25 acres and has a building of 1920 square feet which will become the new Natures Dance Therapeutic Massage and Wellness Center and a new addition that will be built in two phases.

Phase one, we will build a 70 foot by 80 foot building which will house a 40 foot by 70 foot Events Hall and a 40 foot by 70 foot Brewery/ Tap Room/ Restaurant. The Events Hall will be jointly used by Natures Dance and Mystic Creek Brewery and have a seating capacity of 187. It will host and be rented out for such events as Yoga classes, seminars, workshops, networking and corporate meetings, reunions, weddings, music events, beer and food pairing and many more. The events hall will only serve our own beverages with our choice of catering.

The Brewery will grow in stages. Once the purchase of the property is finalized the first stage will begin with filing for all license and permits from the Alcohol and tobacco and Trade Bureau, and the state of Michigan. Getting Natures Dance up and running will take about six weeks and adding the new building will take about one year. The events hall will take a couple of years to be up and running fully. When all license and permits are in order, will start out with five employees serving our own beer mainly onsite with a seating capacity of approximately 50, we will start out only producing approximately 400 barrels for the first year while growing our off site sales through distributors. Our onsite sales will consist of a limited food menu, pints of beer, a Mug Club for our followers, Growlers (half gallon) to go, logo items such as glasses, mugs, T-shirts, etc.

Other microbreweries doing business with a no or limited menus are the most recent Paw Paw Brewing Company in Paw Paw, Schmohz Brewing in Grand Rapids with no menu and with Bells Eccentric Café, down town and Founders Brewery in Grand Rapids with a limited menu along several others across the state and nation.

After the first two years in business, the second stage will begin and consist of an expansion of the brewery building for an additional 40 feet, so a total new building size from start to finish will be 70 foot by 120 foot. The expansion will consist of installing larger brewing equipment to increase our production to about 1000 barrels and changing the existing smaller brewing room/ kitchen into just a kitchen that will be able to add to our menu and serve locally grown and organic healthy food. This will allow us to support our local economy and hire an additional five to ten more employees.

By the third or fourth year we will add a brew on premises for those who would like to try their hand at making beer and a home brewer's supply store.

This location is the ideal place for this combination of business and will without a doubt be great for local growth. This brewery will have the same concept as Saugatuck Brewing Company ( brewery/ hall /restaurant) which has grown to what it is, over the past five years except ours will have a wellness center attached. This brewery will attract many people from around the state and visitors from other states as well. We believe that choosing south Portage not only will allow our businesses to grow but also bring more growth to this part of Portage.

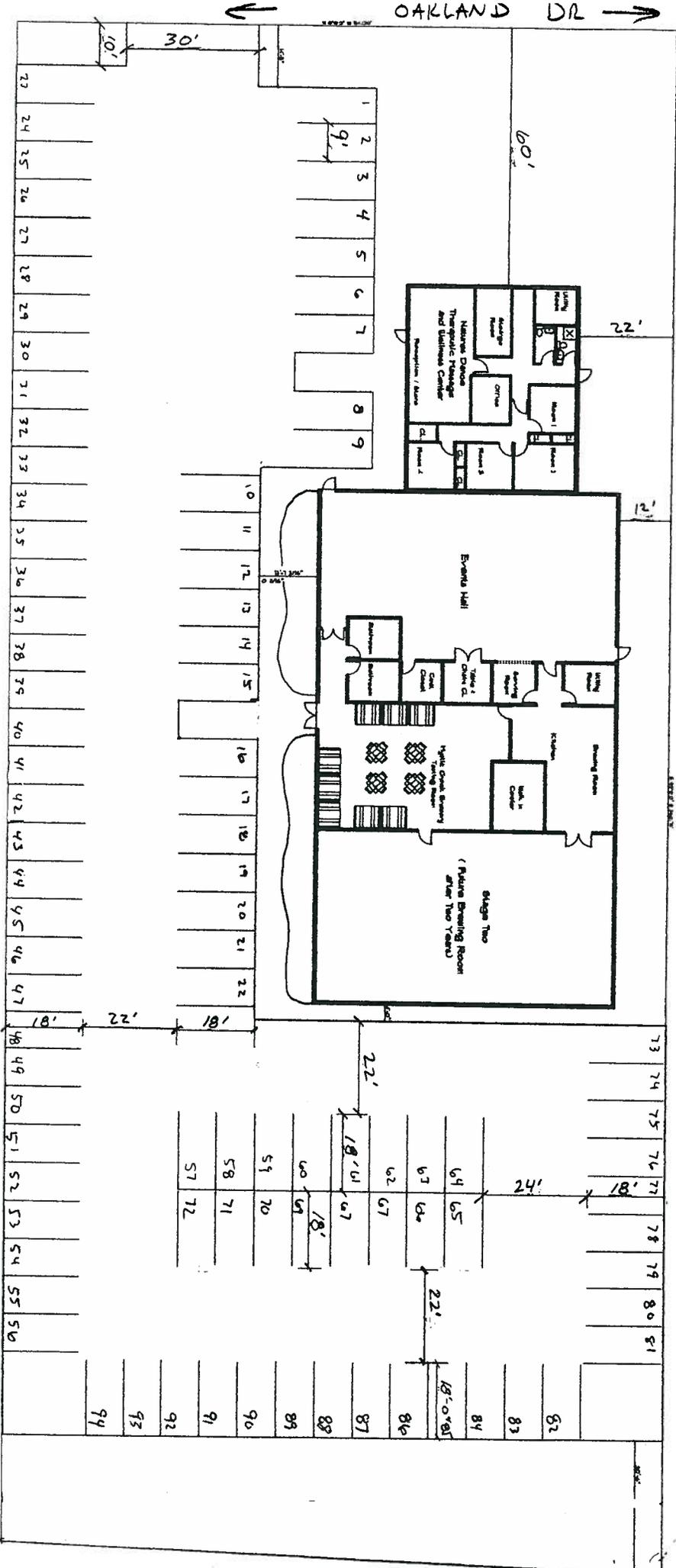
With the funding at this time and wanting to create a place for our high standards, we just need time to build in stages and to build our brands so that we are able to grow into the place that we envision it to be. Your approval at this time will be greatly appreciated and would allow us to proceed to the next step of many, to make this happen.

**Thank You, Scot & Dana Smoker, 4/1/11**

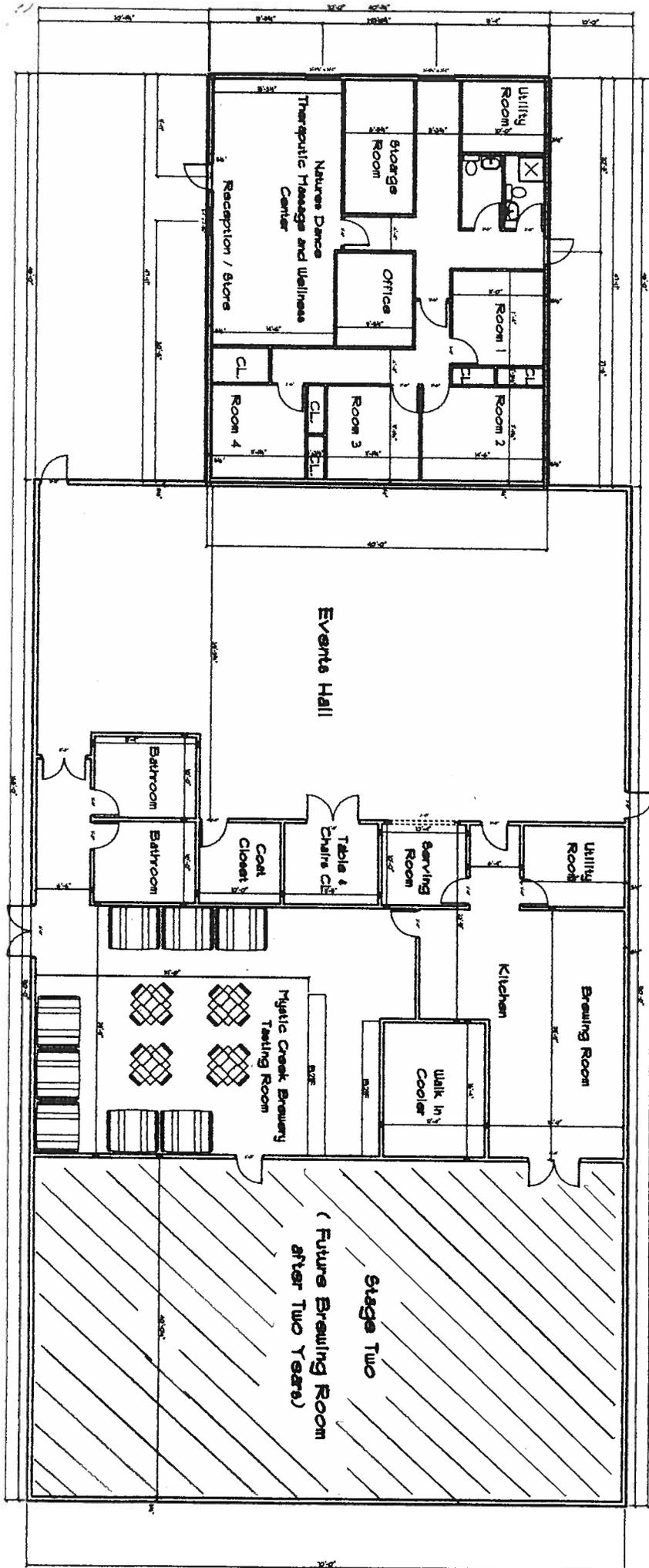


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**APR 20 2011**  
**COMMUNITY DEVELOPMENT**

STYCK CREEK BREWERY & NATURAL DANCE THERAPEUTIC MASSAGE AND WELLNESS CENTER

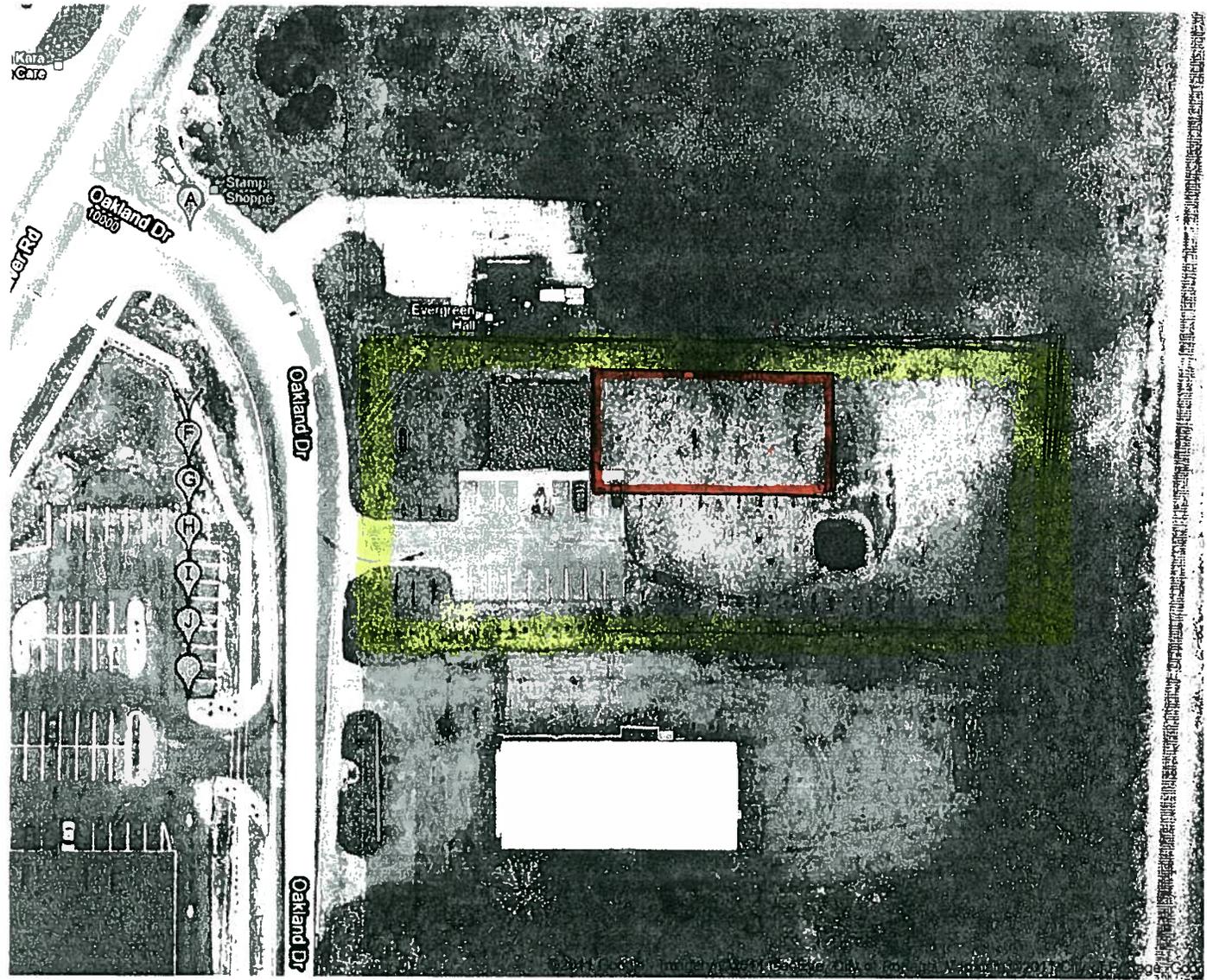


RAILROAD TRACKS →



Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map



Property 10027 OAKLAND DRIVE

PROPOSED BUILDING ADDITION

**TO:** Zoning Board of Appeals  **DATE:** April 29, 2011  
**FROM:** Jeffrey M. Erickson, Director of Community Development  
**SUBJECT:** ZBA #10-16; Scot and Dana Smoker, Mystic Creek Brewery/Nature's Dance,  
10027 Oakland Drive, B-3, General Business.

**CODE SECTION:** 42-262(C)(8)(c) Microbreweries and brew-pubs; p. CD42:76

**APPEAL:** Requesting a variance to establish a microbrewery with a 50 seat occupancy restaurant that provides lunch and dinner service in this B-3, general business zone, when a minimum 100 seat occupancy restaurant is required in conjunction with a microbrewery.

**STAFF RECOMMENDATION:** The applicant requests the above variance per the enclosed application and attachments. The 1.26 acre property is zoned B-3, General Business, and is improved with a 1,920 square-foot commercial building and off-street parking lot constructed in 1998. The property is adjacent to other commercial properties to the north, west and south, and the Norfolk Southern Railroad to the east.

The applicant proposes to establish two businesses at this address. The first business, which is permitted, is named 'Nature's Dance Therapeutic Massage and Wellness Center.' The second business is the subject of this application and involves the microbrewery named the 'Mystic Creek Brewery.' A building addition would accommodate the microbrewery use. The brewery is planned to produce 400 barrels in the first year. The applicant proposes to expand in two phases: Phase 1 will involve construction of an 80-foot by 70-foot hall, brewing room, and tasting room. Limited food offerings will be available to patrons in the tasting room, which will have occupancy for approximately 50 persons; Phase 2, after two years, would involve a larger 40-foot by 70-foot brewing room, with the capacity to produce 1000 barrels per year thereafter, and conversion of the brewing room into a full kitchen providing lunch and dinner service.

A microbrewery or a brew-pub is a permitted use, but requires a Special Land Use Permit. One of the conditions of approval is that a microbrewery, or a brew-pub, include a 100-person/seat restaurant. If a variance is approved, the applicant would proceed to the Planning Commission for Special Land Use and Site Plan approval. The applicant is also working with the State of Michigan licensing process to operate as a "microbrewery".

Section 42-262(8)(c) is intended to differentiate between manufacturing brewing operations and those that are commercial/business in nature. A brewery incorporating larger scale beer production and off-premises distribution operations belongs in an industrial zone. This proposal, however, has commercial characteristics, as the business is premised largely upon on-site business/retail sales, consistent with the intent of the B-3 zone. To ensure that the use is similar in nature to other permitted B-3 uses, it is recommended that the microbrewery production be limited to a maximum of 5000 barrels per year until the restaurant seating capacity is increased to 100 persons.

The variance will not be detrimental to adjacent property and the surrounding neighborhood and will not materially impair the intent and purpose of the Zoning Ordinance. If the Board finds a practical difficulty exists, the variance can be authorized.

**PRACTICAL DIFFICULTY:** Retail-oriented use per the B-3, General Business zone. 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.**