

CITY OF  
**PORTAGE**

*A Place for Opportunities to Grow*

# ZONING BOARD OF APPEALS

**August 13, 2012**

# CITY OF PORTAGE ZONING BOARD OF APPEALS

**Monday, August 13, 2012**

**(7:00 pm)**

**Portage City Hall  
Council Chambers**

## **CALL TO ORDER**

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

## **APPROVAL OF MINUTES:**

- \* July 9, 2012

## **OLD BUSINESS:**

## **NEW BUSINESS:**

- \* ZBA# 12-01, Art Van Furniture, 550 Ring Road: requesting a Temporary Use Permit to allow outdoor furniture sales from August 22, 2012 through October 30, 2012.
- \* ZBA# 12-02, Paul Nystrom, Dykema Gossett, PLLC, on behalf of McDonald's Corporation, 6925 South Westnedge Avenue: is requesting variances to replace a nonconforming freestanding sign that would: a) measure 175 square feet in area (including a 17 square foot electronic message display sign) where a maximum 84 square feet is permitted; b) measure 30 feet in height where a maximum 25 feet height is permitted; c) be set back five feet where a minimum 10-foot setback is required; and d) be allowed to continue after substantial site and building improvements have been completed, as proposed in a preliminary site plan dated April 20, 2012

## **OTHER BUSINESS:**

## **STATEMENT OF CITIZENS:**

## **ADJOURNMENT:**

Materials Transmitted

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

CITY OF PORTAGE ZONING BOARD OF APPEALS

DRAFT

Minutes of Meeting – July 9, 2012

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

**MEMBERS PRESENT:** Timothy Bunch, Rob Linenger, Lowell Seyburn, Michael Robbe, Mariana Singer, and Jeffrey Bright.

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

**APPROVAL OF THE MINUTES:** Singer moved and Bright seconded a motion to approve the June 11, 2012 minutes as submitted. Upon voice vote, motion was approved 6-0.

**NEW BUSINESS:**

**ZBA #11-24, 3630 East Shore Drive:** Staff summarized the variance request for a variance to construct a second story addition over the existing nonconforming attached garage four feet from the (west) side property line, where a minimum eight-foot side yard setback is required. Tim Wenzel was present to answer questions.

A public hearing was opened. A letter of support from Rod O'Brien, 9636 East Shore Drive was read, and a letter of support signed by: David & Marla Shires, Dominic & Jennifer Andwan, Chuck & Mary Botsis, Rick & Mary Weilopolski, and Helen Smith was read. The public hearing was closed.

A motion was made by Seyburn, seconded by Robbe, to grant a variance to construct a second story addition over the existing nonconforming attached garage four feet from the (west) side property line, where a minimum eight-foot side yard setback is required for the following reasons: there are exceptional circumstances applying to the property that do not generally apply to other properties in the same zoning district, which include the location of the existing dwelling and floorplan precludes placement of an addition in a practical location; the variance is necessary for the preservation of a substantial property right, the right to use the property as a residence with an appropriate sized dwelling which is similar to that possessed by other properties in the same zoning district and the vicinity; the immediate practical difficulty causing the need for the variance was not created by the applicant; inasmuch as the request is being supported by neighbors, 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, discussions 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. Upon roll call vote: Bunch-Yes, Linenger-Yes, Robbe – Yes, Seyburn-Yes, Singer-Yes, Bright-Yes. Motion passed 6-0.

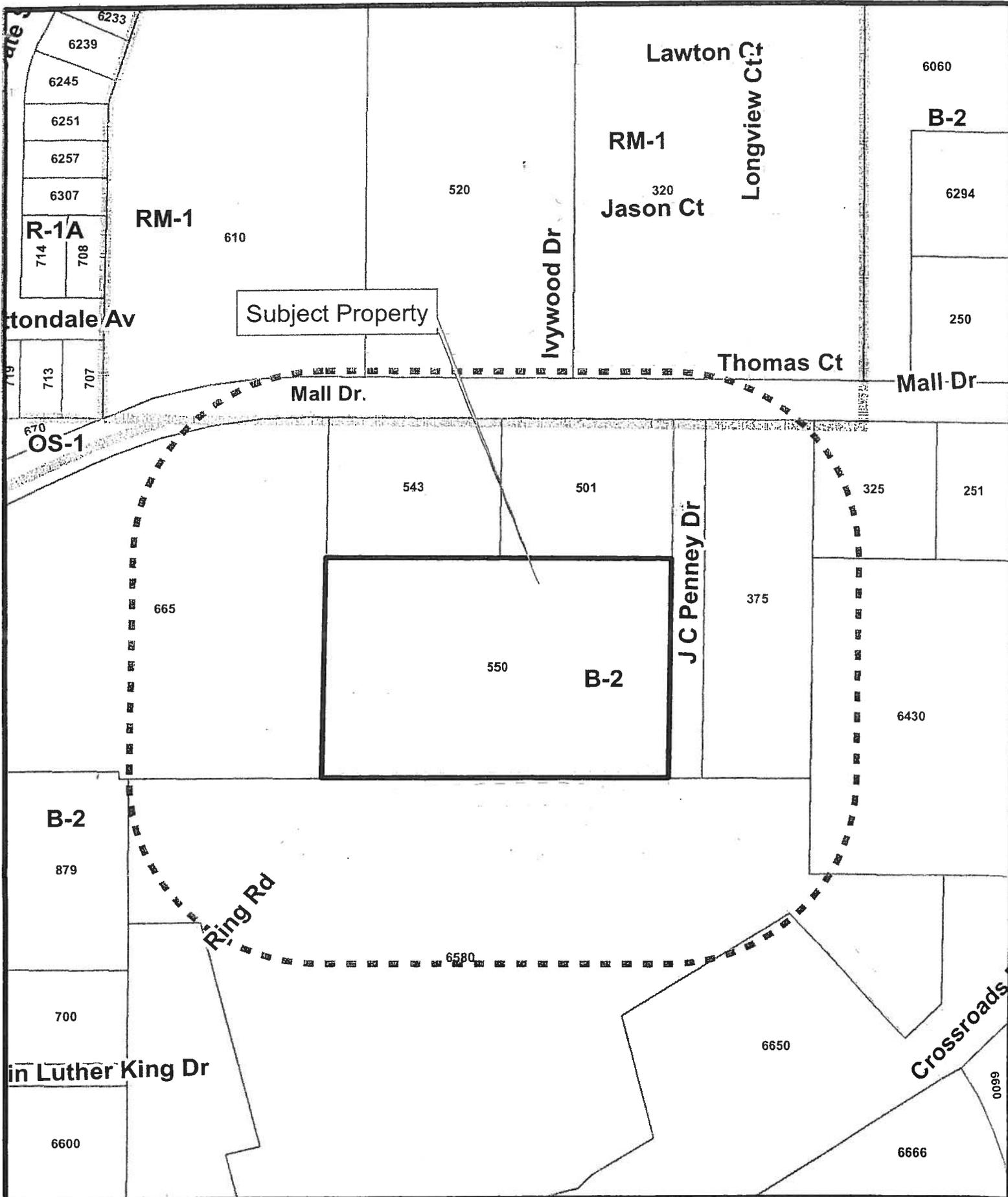
**OTHER BUSINESS:** A motion was made by Bunch, seconded by Singer to postpone the election of officers until the September 10, 2012 meeting. Upon voice vote the motion passed 6-0.

**STATEMENT OF CITIZENS:**

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 7:26 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator



Subject Property

-  Zoning Boundary
-  Subject Properties
-  Notification

# ZBA 12-01

## 550 Ring Road



1 inch = 200 feet

RECEIVED

JUL 18 2012

12-01

COMMUNITY DEVELOPMENT



Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 7/18/12
Name of Applicant Art Van Furniture
Applicant's Address 550 Ring Road
Name of Property Owner (if different from Applicant) n/a
Address
Phone No.

Signature: William Tafelberg
Phone No. 269-323-3222

Address of the Property that is the subject of this Application:
Street Address Same as above
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: Fee Simple owner

Application Fee (Residential Uses) \$330 (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):

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 X Other Approval
Article 42 Section 622 Paragraph D

Reason for Request: To permit outdoor sales while the store is undergoing renovation + a portion of the interior retail space is unusable from 8/22/12 to 10/30/12

FOR STAFF USE

Table with 3 columns: Application Number (12-01), Filing Date (7/18/12), Tentative Hearing Date (8). Row 2: Previous Application Filed Regarding This Property.

Zoning Board of Appeals Application  
Page 2

**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 is 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.)

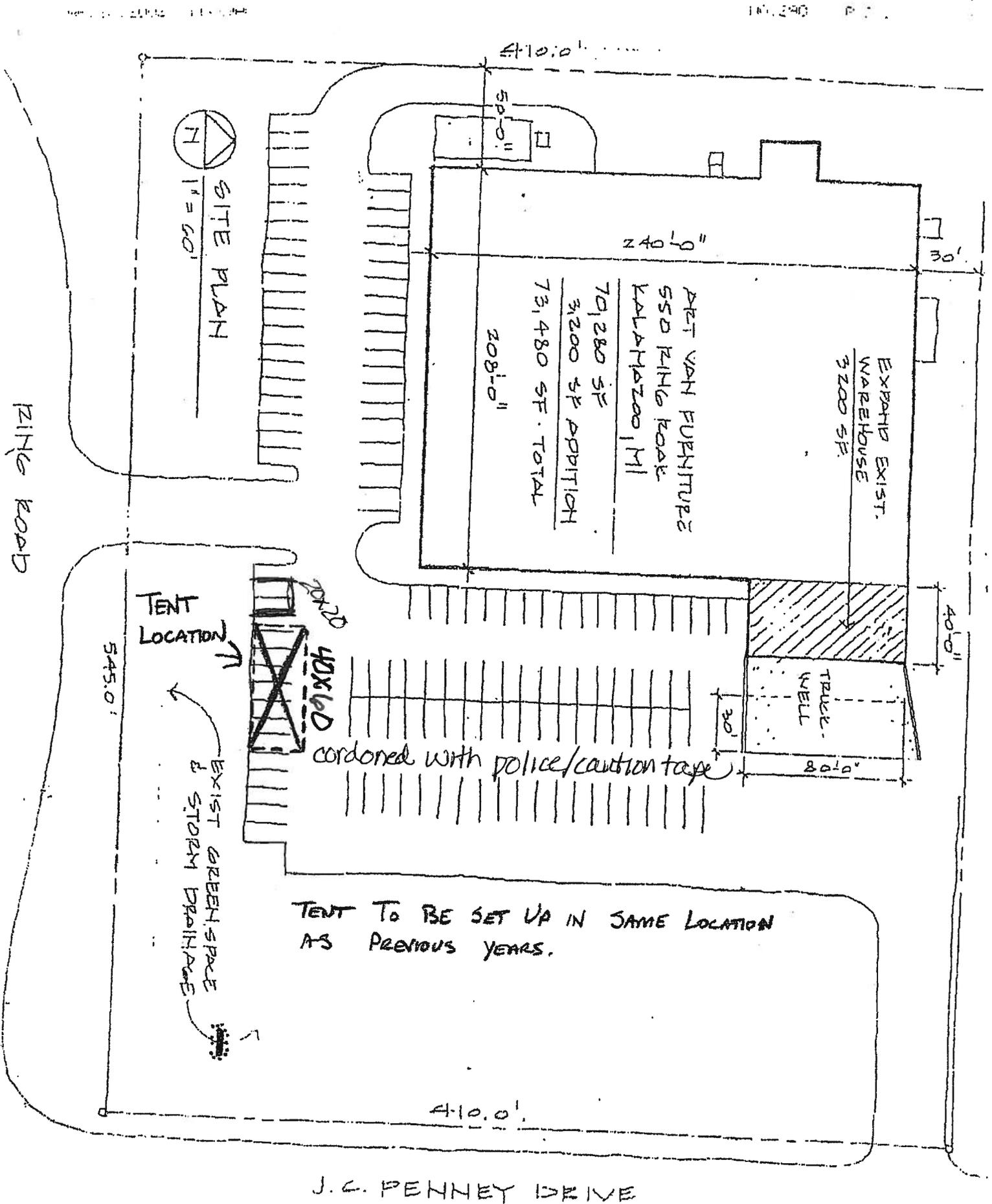
See Attached

William Tafelby  
Signature of Applicant

7/10/12  
Date

**Art Van Furniture Temporary Use Permit Attachment**

1. The Art Van store is currently undergoing a major renovation. During the renovation, a significant portion of the store retail space will be unusable. The work will be done in stages, and affect virtually the entire store. We are seeking a temporary use permit to extend the time period to sell merchandise in outdoor tents.
2. The above circumstance is not shared by neighboring properties since they are not similarly undergoing renovations.
3. The portion of the property that is undergoing renovation work cannot be used for retail purposes during the renovation. During the renovation, a significant portion of the store space will be taken off-line. As a result, that portion of the retail space cannot be used and goods cannot be sold from the space being renovated.
4. Yes, the actual amount of tent space will be less than that portion undergoing renovation, but the temporary use will help to minimize the decrease in retail space.
5. The use will be temporary in nature during the remodel. When the remodel is complete, the temporary use extension will no longer be necessary. The tent sale will be well-run, and not adversely impact the character of the area.
6. The store has had limited duration tent sale permits in the past, and is experienced in handling the flow of traffic during those events.
7. NA
8. The Temporary Use Permit requested is to allow a merchant to continue doing business while it is making improvements in its permanent retail space. The end result will be an improvement to the shopping center and the community. The Temporary Use Permit requested will permit Art Van Furniture to continue its business, allow its commission paid employees to generate earnings, and enable the City of Portage to collect tax revenues, all as a result of this Temporary Use request for business continuation during the renovation work.



**TO:** Zoning Board of Appeals **DATE:** August 3, 2012  
**FROM:** Vicki Georgeau, Director of Community Development  
**SUBJECT:** ZBA #12-01, Art Van Furniture, 550 Ring Road, B-2 Community Business  
**CODE SECTION:** 42-622(D), Temporary Uses, p. 42:140.3.  
**APPEAL:** Requesting a Temporary Use Permit to allow outdoor furniture sales from August 22, 2012 through October 30, 2012.

**STAFF RECOM-  
MENDATION:**

The applicant is requesting the above referenced Temporary Use Permit per the enclosed application and site sketch. The 5.1 acre site is improved with a 50,776 square-foot commercial building occupied by Art Van Furniture and accessory off-street parking lot. The property is zoned B-2, Community Business, and is surrounded by developed commercial properties, also zoned B-2.

The applicant has held annual outdoor furniture sales during the month of August for several years. The outdoor sales have been administratively approved as business special events pursuant to Section 42-132. The applicant has been approved for two special events this year. The first event was held from May 11-21, 2012 and the second event scheduled from August 3-21, 2012 has been administratively approved. As a result, the combined two events have utilized the maximum 28 days per calendar year allowed for the 550 Ring Road zoning lot.

A significant store renovation/remodel this year has been scheduled to coincide with the commencement of the outdoor sales event in August. The construction activities are anticipated to occur from the beginning of August through the end of October and, as a result, portions of the building will be inaccessible and unusable for sales activities. In order to compensate for this temporary loss of interior floor space while store improvements are underway, the applicant requests the Board grant a Temporary Use Permit allowing the continuation of outdoor sales activities from August 22, 2012 through October 30, 2012. The extended outdoor sales activities will be conducted in a 40-foot by 60-foot tent, and a 20-foot by 20-foot tent located near the southeast corner of the parking lot, utilizing 11 off-street parking spaces. Outdoor sales will be conducted in the same manner and location as the previously approved business special event.

As noted above, the applicant has conducted numerous outdoor sales events over the years and staff reports no enforcement issues or problems in connection with the operation of these events. The proposed Temporary Use Permit does not involve permanent structures, use of required parking, additional signage, or any capital improvements, and is consistent with the standards for Temporary Uses. In addition, it is recommended the Temporary Use Permit be granted with the same conditions applied to their business special events: 1) a 2A:10ABC fire extinguisher is provided and placed in a conspicuous location; 2) "no smoking" signs be posted on all tent sides; 3) a 20-foot separation be required between tents, tent parts, buildings and vehicles.

**PRACTICAL  
DIFFICULTY:** Not applicable



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

WWW.DYKEMA.COM

Tel: (248) 203-0700

Fax: (248) 203-0763

**Paul L. Nystrom**

Direct Dial: 248-203-0855

Direct Fax: 248-203-0763

Email: PNystrom@dykema.com

RECEIVED

JUL 20 2012

COMMUNITY DEVELOPMENT

July 19, 2012

**Via Overnight Express**

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

Re: Zoning Board of Appeals Application Regarding 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"), which is located in the City's B-3 General Business zoning district. As stated in the Application, McDonald's seeks a variance under Section 42-544(C) of the City's Sign Ordinance. Specifically, McDonald's seeks a variance from the provisions of Sign Ordinance sections 42-552(A), (F) and (G) regulating the size, height and setback of signs, respectively. McDonald's seeks this variance to allow it to replace its existing Sign with a new sign that is substantially smaller in size and lower in height, at the same location as the existing Sign, although not meeting the size, height and setback requirements of the Sign Ordinance. Replacement of the Sign will substantially reduce its nonconformity from a height and size standpoint. McDonald's proposes reducing the size of the Sign from 394 to 157 square feet, and its height from 36 to 30 feet. McDonald's also seeks a variance from the provisions of 42-544(B)(6) allowing McDonald's to maintain the new sign despite performing construction and improvements on its property to include the addition of a side by side drive-thru, a new exterior, a new Playplace toy, and new seating and decor.

City staff has stated that they fully support and recommend the grant of McDonald's requested variance.

### McDonald's Sign

McDonald's Sign has existed in its present location since McDonald's restaurant first opened its doors for business almost 39 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. Photos and diagrams of the Sign and its location on the property are attached as Exhibit A. The property's legal description is attached as Exhibit B.

McDonald's Sign is a legal nonconforming sign, as it is larger and taller than what the City's current Sign Ordinance allows. The total area of the sign is 394 square feet using the method by which a sign is enclosed in a box. (The Sign is 213 square feet when the actual surfaces of the sign are measured.) The Sign also has an electronic message center that is 73 inches wide by 28 inches in height, or fourteen (14) square feet. The Sign is thirty-six (36) feet in overall height. The Sign sits on a steel pole that is anchored to a concrete foundation. See Sign dimensions attached as Exhibit C.

Based on 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 plan attached as Exhibit D. The Sign Ordinance provides that "signs must be at least ten feet from any property line." See section 42-552(G). However, the City's position is that the Sign has a setback of five feet in its present location.<sup>1</sup>

The Sign has developed some rust at the base of its pole. While the Sign remains structurally sound, it will eventually require a new pole. Further, McDonald's is in the process of seeking approval from the City for the described improvements to its restaurant. These improvements will dramatically increase the attractiveness of the restaurant and benefit McDonald's customers. City staff has taken the position that the Sign must be brought into compliance with the Sign Ordinance if these improvements are made. While McDonald's does not agree that the ordinance requires this, McDonald's and City staff agree that a variance would be an appropriate way to address the Sign.

### **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 signs 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:

---

<sup>1</sup> While McDonald's disagrees, it seeks a variance from the setback requirement in light of the City's position without waiving any arguments.

- 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 a sign that is visible to all of McDonald's customers.

Additionally, making changes to signs 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. The greater the decrease in height and size, the greater the negative impact on the restaurant. Moving the Sign further back from Westnedge would have a similar negative effect. For these reasons, the visibility of McDonald's Sign is critically important.

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

McDonald's seeks a variance pursuant to sections 42-544(C)(1), (2) and (3) of the City's Sign Ordinance. McDonald's seeks a variance from the regulations of ordinance sections 42-552(A), (F) and (G) and 42-544(B)(6), permitting McDonald's to erect a sign that is 30 feet in

height and 157 square feet in size, in the same location as McDonald's existing sign, with an electronic message center no larger than 17 square feet. (The relevant ordinance sections are attached as Exhibit E.) The sign proposed by McDonald's is manufactured by Everbrite and is referred to as a "90-100" sign. Its dimensions are shown in Exhibit F. These signs come in a small number of sizes, and the 90-100 sign is a sign that comes close to the size requirements of the Sign Ordinance. McDonald's installation of its proposed 90-100 sign would result in a 61% reduction of the Sign's size and a substantial six (6) feet reduction in height. The chart below provides a comparison of the size and height of the existing sign, the proposed 90-100 sign, and what is allowed by the Sign Ordinance:

	<u>Existing Sign</u>	<u>Proposed 90-100 Sign</u>	<u>Ordinance Allowance</u>
Sign size (sq. ft.)	394	157	84 (160 if erected on corner)
Sign height (ft.)	36	30	25

Attached as Exhibit G is a graphic comparison of these Signs, comparing their size and height.

Section 42-544(C) of the Sign Ordinance permits the ZBA to grant variances related to nonconforming signs, allowing a nonconforming sign to be replaced with a new 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, 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 the ordinance, are, nonetheless, in keeping with the spirit and purpose of it. McDonald's satisfies all three basis for a variance, and will address section 544(C)(2) first.

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

Granting McDonald's requested variance will substantially reduce the existing Sign's degree of nonconformity. The Sign currently exceeds the ordinance's size allowance by 310 square feet. McDonald's proposed new Sign would only exceed the size allowance by 73 square feet, a 77% reduction in its size nonconformity. Further, the existing Sign exceeds the ordinance's height allowance by 11 feet. McDonald's proposed new Sign would only exceed the height allowance by 5 feet, a 55% reduction in its height nonconformity.

Therefore, McDonald's requested variance satisfies 42-544(C)(2).

#### Section 42-544(C)(3)

For the same reasons, McDonald's requested variance satisfies section 42-544(C)(3) of the ordinance. If the ZBA grants McDonald's requested variance, it will result in the removal of McDonald's existing nonconforming Sign. That Sign will be replaced by a sign that, while not meeting the size and height requirements of the Sign Ordinance, comes very close. By reducing the size of the Sign by 61% or 237 square feet, and its height by six feet, the new sign would be in keeping with the spirit and purpose of the ordinance.

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

McDonald's also meets the requirements of section 42-622(B)(1), which provides yet another 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. There are several large trees that block the view of the restaurant and would also block the view of a sign that complies with the Sign Ordinance's size and height regulations. (See photos of trees blocking view of existing Sign, attached as Exhibit H.) In fact, as shown in the photos, even the large existing Sign at a height of 36 feet is significantly hidden by these trees. Reducing the height and size of the Sign as McDonald's proposes to do would result in the trees blocking the Sign even further. However, if the Sign's height and size are reduced to the requirements of the ordinance, it would be virtually hidden by the trees. These trees were required by the City per its ordinance. The City will not permit McDonald's to replace them with smaller trees that would not block McDonald's sign, necessitating this variance request.

McDonald's restaurant is also set back approximately 150 feet from the roadway. This makes the Sign that much more important because the restaurant is less visible than other buildings closer to South Westnedge. 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. (See photo and diagram attached as Exhibit I.) This prevents those driving on Westnedge from seeing McDonald's restaurant until they are virtually in front of it, making McDonald's Sign, including its size, height and location, that much more critical.

Further, there is also a traffic safety issue to be considered. The current Sign is partially 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 the Sign is decreased in height and size and set back five additional feet to meet the requirements of the ordinance per the City, customers in vehicles will have much 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 much smaller and lower sign further set back and hidden from view by trees and adjacent buildings will cause motorists to make last second maneuvers to avoid driving past the restaurant on this busy road.

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

McDonald's has been operating its restaurant since it opened in November 1973 with its existing Sign. As stated, the Sign is critical to McDonald's success in Portage, including its ability to attract customers and generate sales. The proposed reduction in height and size will have a detrimental impact on the restaurant, but the effect will be less as compared to a sign that complies with the Sign Ordinance's height, size and setback requirements. 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 the Sign at its current size and height and in its current location. A variance will not impact any adjacent properties or the surrounding neighborhood. To the contrary, a variance would result in a substantial reduction in the size and height of the Sign.

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

A variance would not materially impair the intent or purpose of the ordinance. To the contrary, a variance will result in a significant six feet reduction of the Sign's height and a substantial 61% or 237 square feet reduction in its size. A variance is absolutely consistent with the intent and purpose of the Sign Ordinance.

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 the height and size of signs. In addition, the adjacent property to the North blocking the view of McDonald's restaurant, the Merlin Muffler business, was not developed by McDonald's. Further, the trees planted per the City's landscaping ordinance would block the view of the Sign if it is required to meet the size and height requirements of the ordinance. McDonald's was required to plant these trees because of the City's ordinance. They have since grown and block the view of the Sign, and the City will not permit McDonald's to replace them with smaller trees. Therefore, McDonald's did not create or cause these 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 respectfully requests that the ZBA grant a variance allowing it to replace its existing Sign with a new sign that is 157 square feet in size, 30 feet in overall height, in the same location and with the same setback as McDonald's existing Sign, and with an electronic message center that does not exceed 17 square feet in size. McDonald's further requests that the variance allow McDonald's to maintain this new sign despite making the described improvements to its restaurant.

Thank you for your attention to and consideration of McDonald's Application and I look forward to discussing this matter with you at the August ZBA hearing.

Very truly yours,

**DYKEMA GOSSETT PLLC**

  
Paul L. Nystrom

PLN/srs  
Enclosures

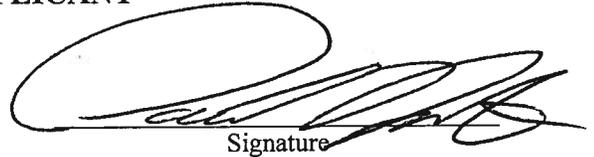
cc: Brian MacKenzie  
Vicki Georgeau, Director of Community Development  
Charles R. Bear, Esq.

**ZONING BOARD OF APPEALS APPLICATION**

**FOR COMPLETION BY APPLICANT**

Application Date July 19, 2012

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 B.

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 Sections 42-552(A)(F) & (G) and 42-544(B)(6) Paragraph \_\_\_\_\_

Regarding: Use \_\_\_\_\_ Area X Yards \_\_\_\_\_  
 Setbacks: X \_\_\_\_\_ Parking \_\_\_\_\_ Other X \_\_\_\_\_

Reason for Request (Also complete page 2 of application): McDonald's seeks a variance to allow it to replace its existing nonconforming freestanding sign with a new sign that is substantially smaller in size and shorter in height, in the same location as its existing sign. Please refer to page 2 of this Application as well as the letter that accompanies this 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: \_\_\_\_\_

---

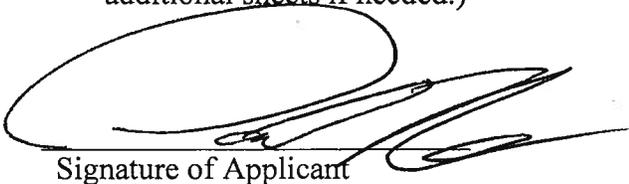
**FOR STAFF USE**

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

### Reason For Variance

McDonald's seeks a variance under sections 42-544(C)(1), (2) and (3) of the City's Sign Ordinance. 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

July 19, 2012

\_\_\_\_\_  
Date

BH01\1571841.2  
ID\PLN - 087795\0037

## Reason For Variance

Section 42-544(C) of the City's Sign Ordinance permits the ZBA to grant variances allowing a nonconforming sign to be replaced with a new 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, 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 article 4, are, nonetheless, in keeping with the spirit and purpose of it. McDonald's seeks a variance on all three 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. There are several large trees that block the view of the restaurant and would also entirely block the view of a sign that complies with the Sign Ordinance's size and height regulations. (See Exhibit H.) In fact, as shown in the photos, even the large existing Sign at a height of 36 feet is significantly hidden by the trees. Reducing the height and size of the Sign as McDonald's proposes to do would result in the trees blocking the Sign even further. However, if the Sign's height and size are reduced to the requirements of the ordinance, it would be virtually hidden by the trees.

McDonald's restaurant is also set back approximately 150 feet from the roadway. This makes the Sign that much more important because the restaurant 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 driving down Westnedge from seeing McDonald's restaurant until they are virtually in front of it.

Further, there is also a traffic safety issue to be considered. The Sign is currently 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 the Sign is decreased in size and height to meet the requirements of the ordinance, and set back five additional feet, 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 much smaller and lower sign further setback from Westnedge and further 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 restaurant.

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?

The requested variance is the minimum variance necessary to prevent McDonald's Sign from being completely hidden by adjacent trees and not visible to customers. Installing a new sign will have no effect on property owners in the area as the new sign will be substantially smaller and lower than the existing Sign.

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 adversely affect adjacent properties or alter the character of the area as the Sign will be in the same location, and will be substantially smaller and lower in 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, but it will be substantially reduced in size and 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 the 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 the trees

that block the view of the Sign were required by the City and have grown over the years. 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, the size of the sign will be reduced by 238 square feet, and its height will be reduced by six feet. These are substantial reductions making the Sign close to complying with the ordinance's size and height requirements.

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

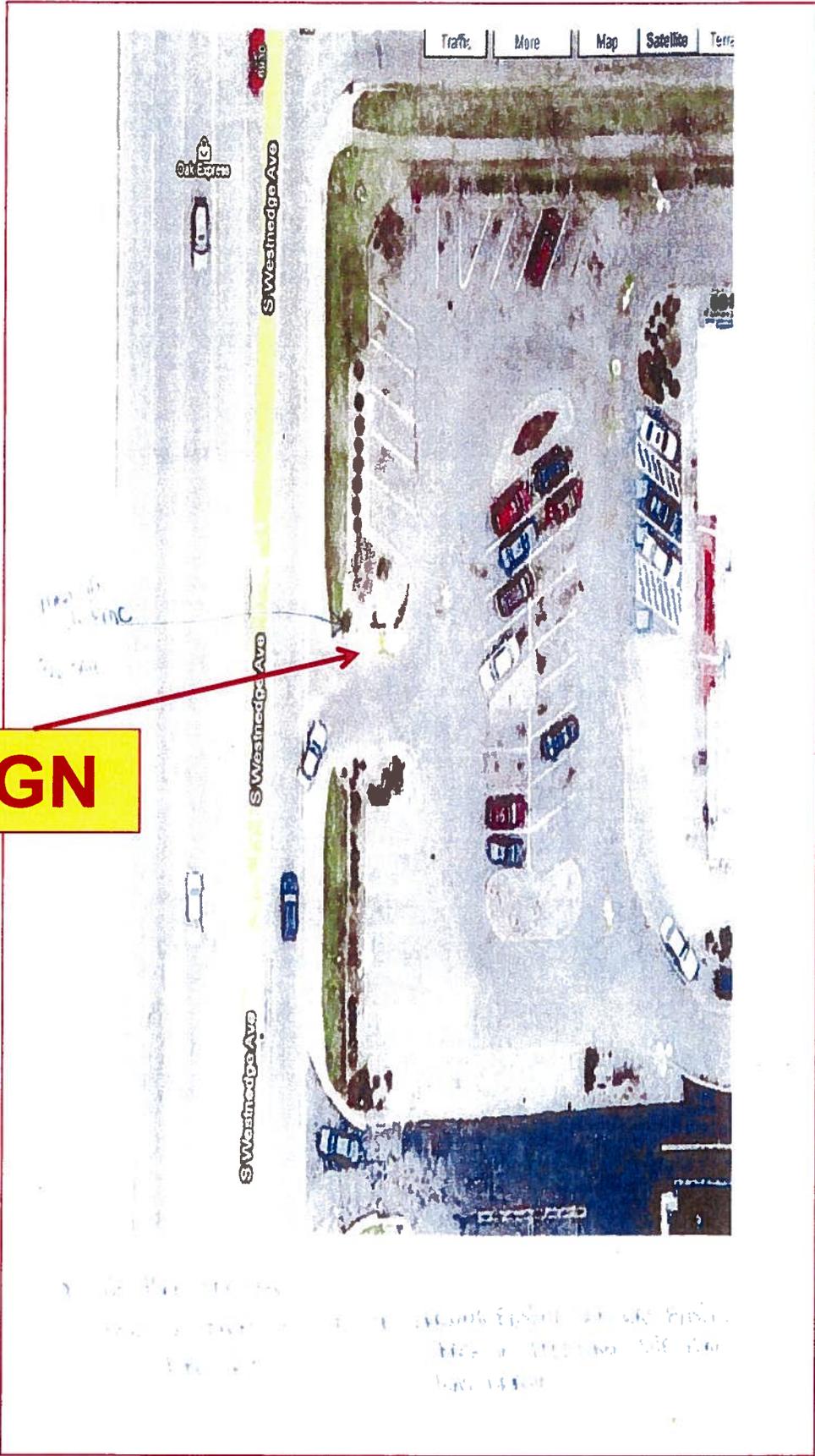
BH01\1171245.1  
IDPLN - 087795/0037

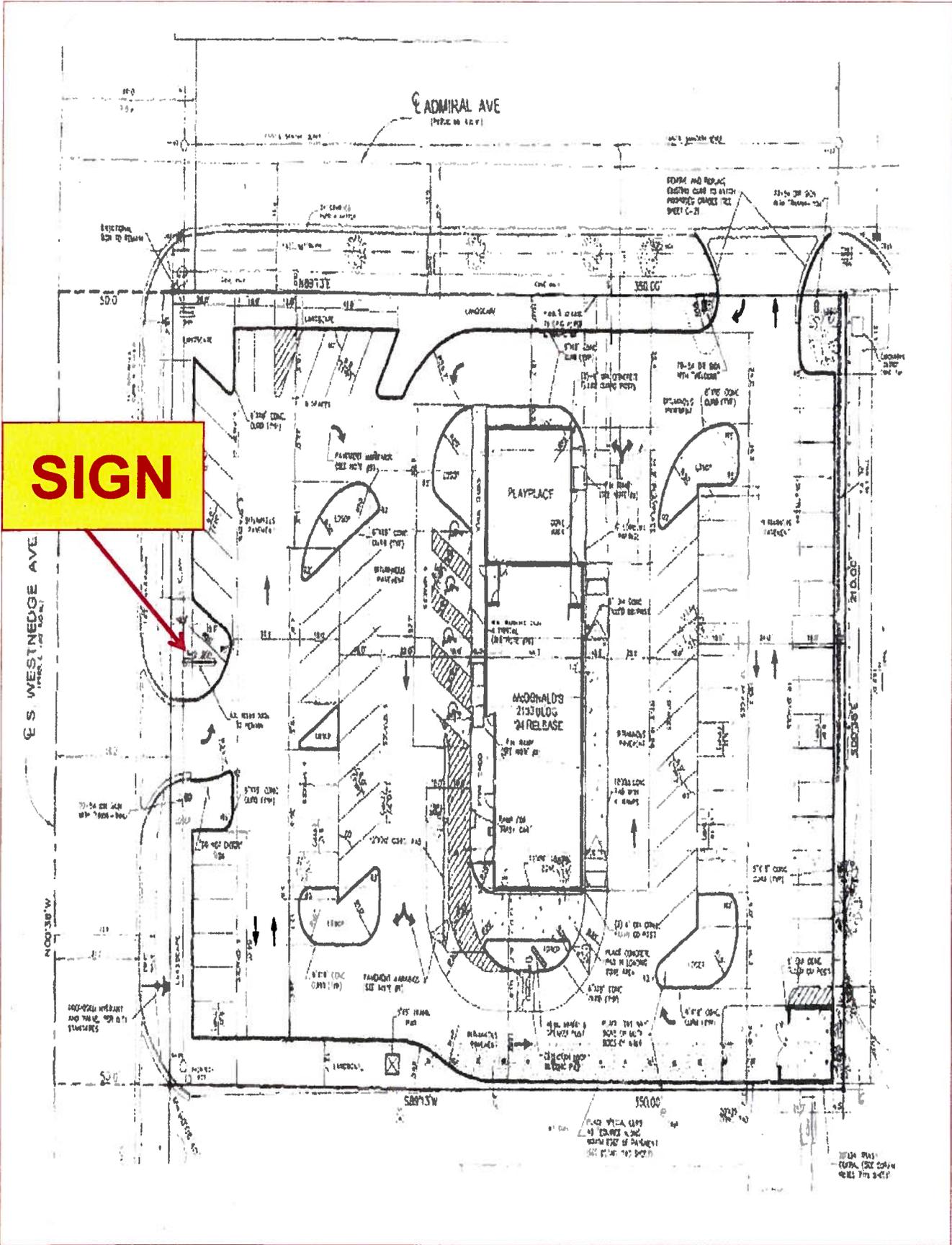
# **EXHIBIT A**



**McDonald's**  
6925 South Westnedge

**SIGN**





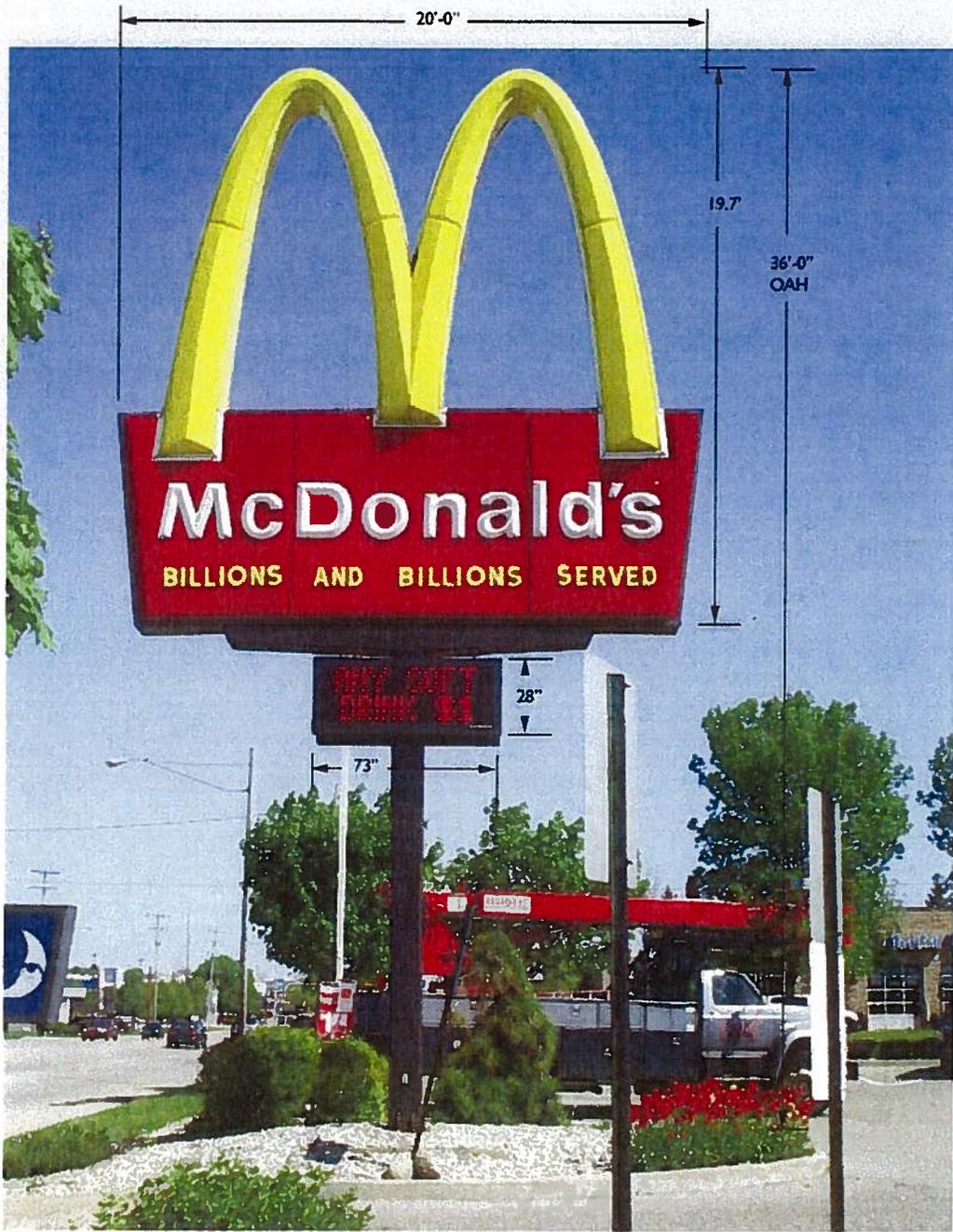
# **EXHIBIT B**

## PROPERTY DESCRIPTION

6925 S. WESTNEDGE

Commencing at the Southwest corner of Section 10, 135, R11W; thence N00'38'W 258.96 feet along the West line of said Section 10 to the Place of Beginning; thence continuing N00'38'W 210.00 feet along said West line to the South line of the plat of "Ramey Park" as recorded in Liber 25 of Plats on page 25 in the Office of the Register of deeds for Kalamazoo County; thence N89'13'E 350.00 feet along said South line; thence S00'38'E 210.00 feet parallel with the West line of said Section; thence S00'13'W 350.00 feet to the Place of Beginning, containing 1.687 acres of land. The Westerly 50.00 feet of the above described parcel being subject to an easement for highway purposes for South Westnedge Avenue. Together with easements and restriction of record. This parcel contains 73,419.8 square feet or 1.687 acres, including right-of-way.

# **EXHIBIT C**



Scale 3/8" = 1'-0"

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



*These designs, details and plans represented herein are the property of City Sign Erectors; specifically developed for your personal use in connection with the project being planned for you by City Sign Erectors. It is not to be shown to anyone outside of your organization, nor are they to be used, reproduced, exhibited or copied in any fashion whatsoever. All or any part of this design (excepting registered trademarks) remains the property of City Sign Erectors.*

2824 3 Mile Rd. NW • Grand Rapids, MI 49534 • Phone 616.791.0016 • FAX 616.791.1011

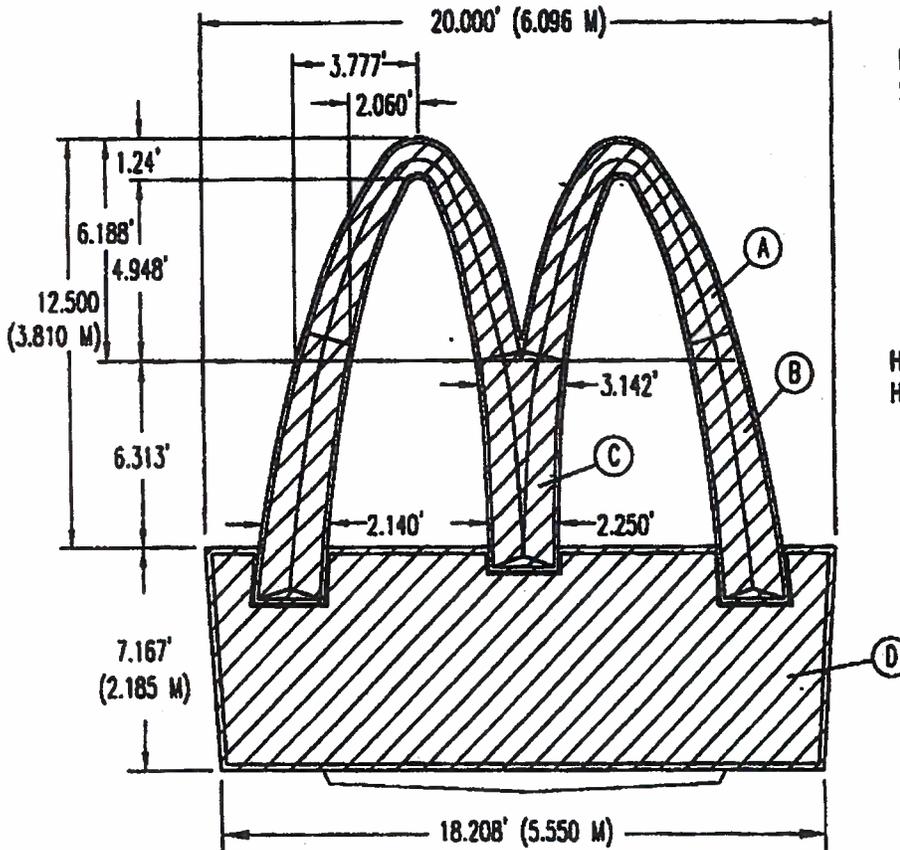
**McDonald's**

70/200 ROAD SIGN



**Everbrite**

315 MARION AVENUE, SOUTH MILWAUKEE, WI 53172-9977  
414-762-8700



- (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

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

$$D = (7.167')(18.208') + 2 \left[ \left( \frac{.896'}{2} \right) (7.167') (.5) \right]$$

$$D = 130.5' + 6.42'$$

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

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

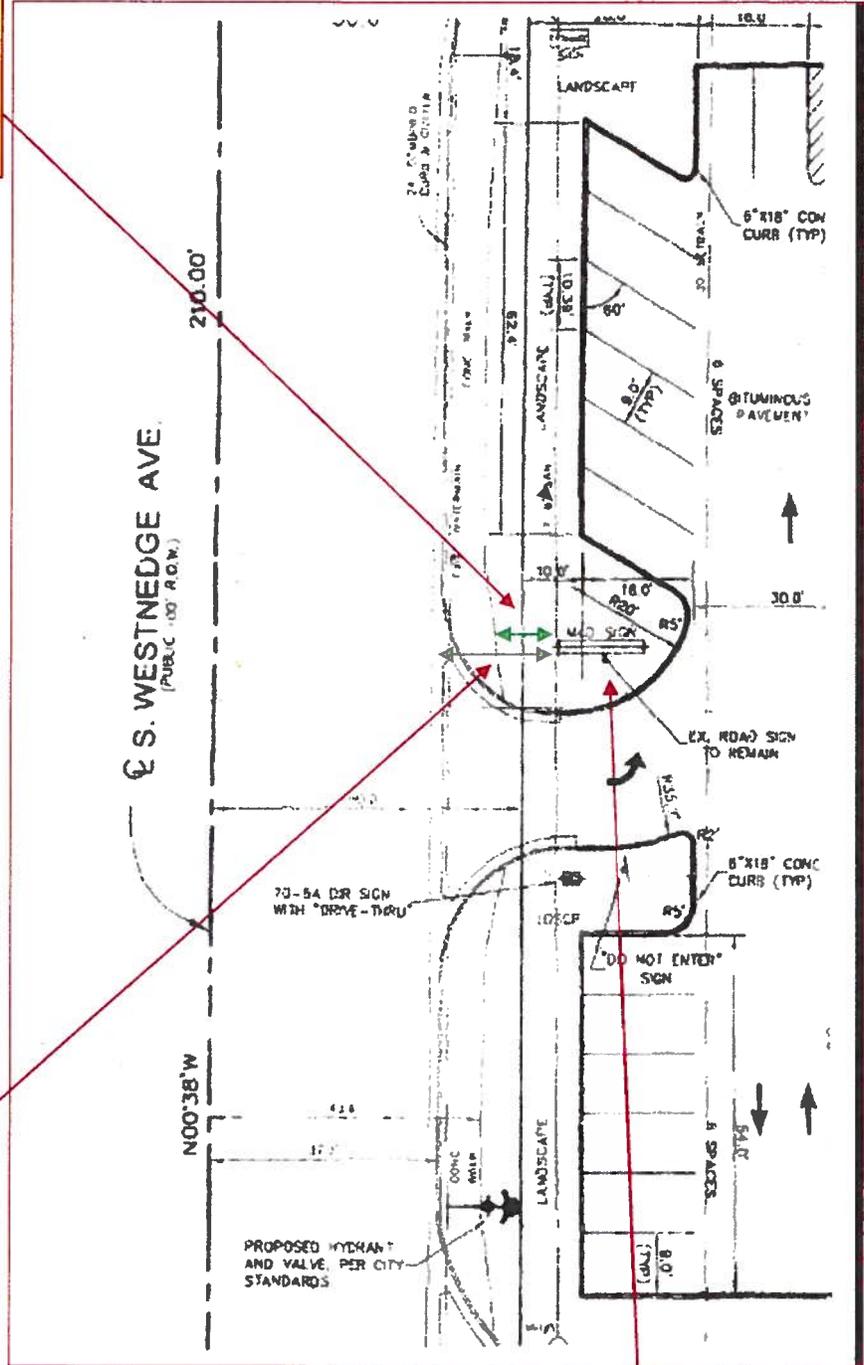
$$\text{TA} = 4(8.83') + 2(12.175') + 17.02' + 136.92'$$

$$\text{TA} = 213.61'$$

# **EXHIBIT D**

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

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



Sign

# **EXHIBIT E**

**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 1½ 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)*

**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 2½ 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 2½ 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:

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:

Building Setback (in feet)	Additional Sign Area (in square feet)
300–400	50
400–500	75
500–600	100
Greater than 600	125

- J. For each zoning lot, there is permitted one banner. For a lot with frontage on more than one street, one banner is permitted for each street frontage. For each zoning lot that exceeds two acres in area, an additional banner is permitted for each two acres. All banners shall be subject to the following conditions:
  - 1. The banner shall be setback ten feet from any property line.
  - 2. The banner shall not exceed 25 feet in height.
  - 3. The banner shall be not less than six feet from the surface of the ground.
  - 4. The banner shall not exceed 20 square feet in area per side.
  - 5.

The banner shall not be attached to the surface of any building, to any existing freestanding sign or to any vehicle, or be stretched between poles or trees.

6. The banner shall not devote more than 50 percent of the total area per side to sign copy.
7. The owner of the zoning or banner shall keep the banner in reasonable repair.

*(Ord. No. 03-01 (Exh. A, § 42-629.3), 2-18-2003; Ord. No. 01-06, 2-14-2006; Ord. No. 11-12, 8-9-2011)*

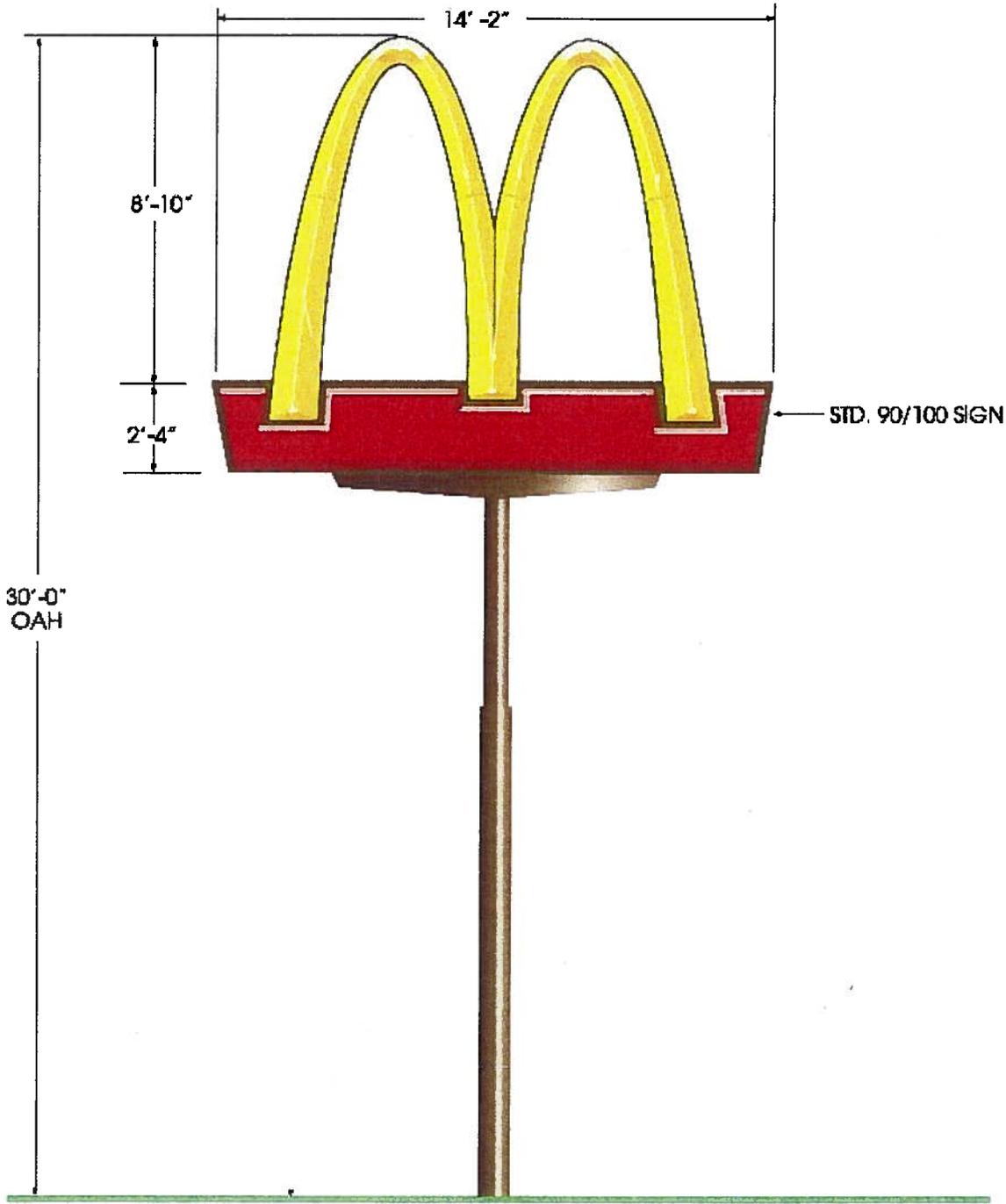
**Sec. 42-553. - I-1, light industrial and I-2, heavy industrial districts.**

In an I-1 light industrial or an I-2 heavy industrial district:

- A. Industrial parks.
  1. One freestanding or wall sign may be erected at each vehicular industrial park entrance to identify the park and facilities therein, provided that such sign:
    - a. Does not exceed 32 square feet in area per side;
    - b. Is ten feet from any property line; and
    - c. Does not exceed 15 feet in height.
  2. One wall sign is permitted per use, not exceeding ten percent of the total area of the wall to which it is attached, to a maximum of 100 square feet.
  3. In addition to the signs allowed in subsection A, 1 and 2 of this section, one freestanding accessory sign is permitted per zoning lot, not to exceed 32 square feet in area per side, provided that such sign:
    - a. Is ten feet from any property line; and
    - b. Does not exceed ten feet in height.
- B. Industrial uses and developments outside industrial park boundaries.
  1. One freestanding accessory sign is permitted per zoning lot, not to exceed 48 square feet in area per side, provided that such sign:
    - a. Is ten feet from any property line; and
    - b. Does not exceed 25 feet in height.
  2. One wall sign is permitted per use, not to exceed ten percent of the total area of the wall to which it is attached, to a maximum of 100 square feet.
- C. Nonaccessory signs. Nonaccessory signs are permitted in I-1 and I-2 districts, subject to the following conditions:
  1. Nonaccessory signs shall be spaced no closer than 1,000 feet between signs on the same side of the right-of-way.
  2. Nonaccessory signs shall have a display surface not to exceed 300 square feet per sign.
  3. Nonaccessory signs shall be located at least 50 feet from abutting properties and at least 500 feet from abutting residential districts.
  4. Nonaccessory signs shall not exceed 40 feet in height.
  5. The setback from the right-of-way line of a nonaccessory sign shall equal 15 percent of the number of square feet of display area on one side of the sign structure, with a minimum of 20 feet.
- D. Corporate flags. One corporate symbol or logo flag is permitted for a zoning lot in the I-1 light industrial and I-2 heavy industrial district, provided that it is flown along with the American flag, state flag, and/or city flag, and it is not larger than four feet by seven feet in size.

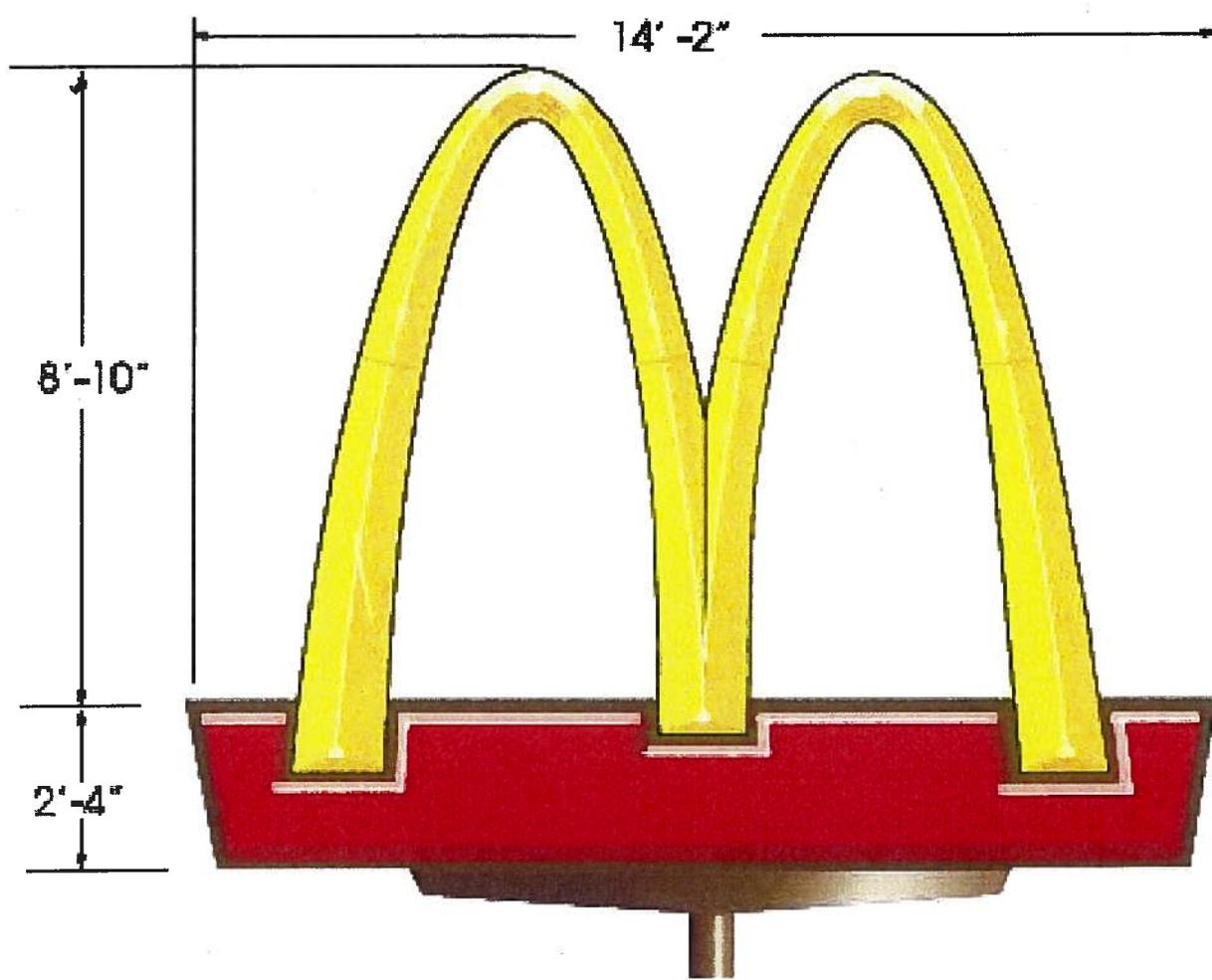
# **EXHIBIT F**

# PROPOSED 90-100 SIGN



157 SQ. FT. Sign @ 30' OAH

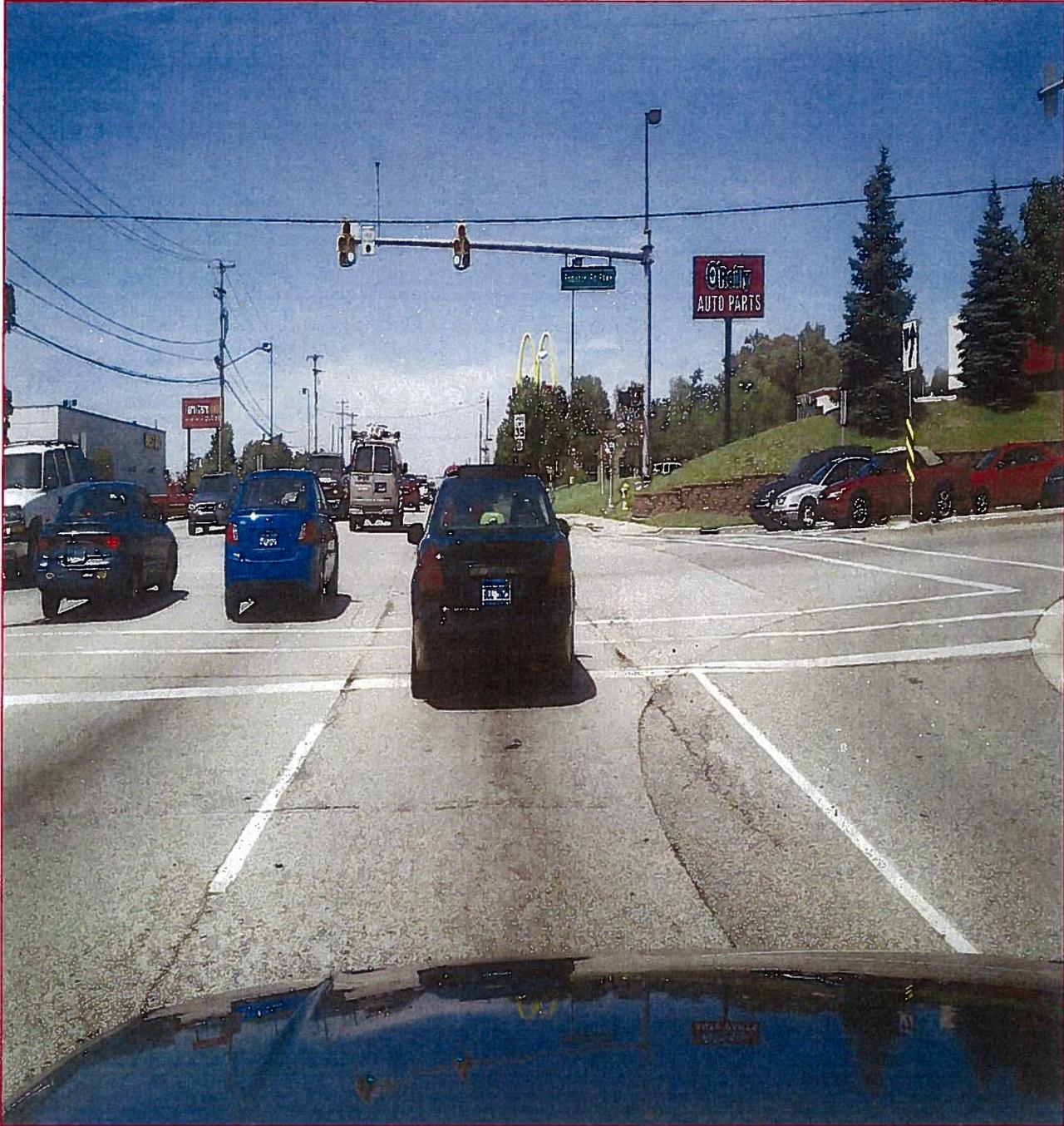
# PROPOSED 90-100 SIGN



# **EXHIBIT G**



# **EXHIBIT H**



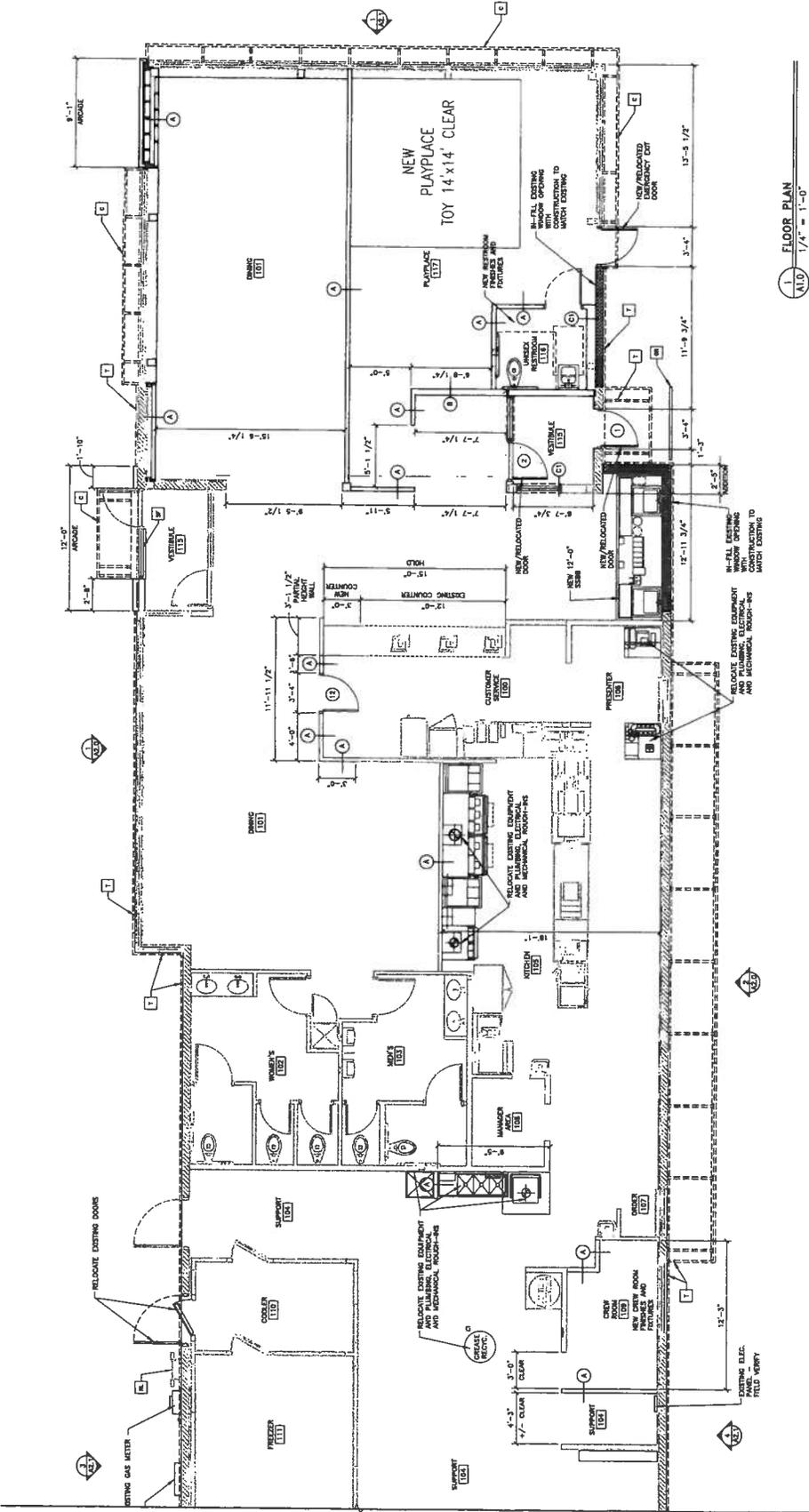


# **EXHIBIT I**





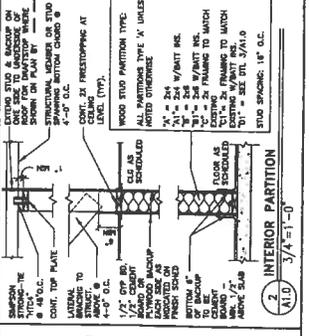




**GENERAL NOTES**  
 1. EXTERIOR DIMENSIONS ARE TO COLUMN REFERENCE LINES AND EXTERIOR TOY TO FACE UNLESS OTHERWISE NOTED. INTERIOR DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
 2. SEE SCHEDULE FOR EXTERIOR WALL ASSEMBLY TYPES. SEE SCHEDULE FOR INTERIOR PARTITION TYPES. INTERIOR PARTITIONS ARE TYPE 'V' UNLESS NOTED OTHERWISE.  
 3. SEE EXTERIOR ELEVATIONS FOR WINDOW TYPES.  
 4. NOT USED.  
 5. SEE SITE PLAN FOR SIDEWALK, RAMPS, ETC.  
 6. GC TO PROVIDE AND INSTALL FINISHES AND METALS. SEE SCHEDULE FOR FINISHES AND METALS. SEE SCHEDULE FOR FINISHES AND METALS. SEE SCHEDULE FOR FINISHES AND METALS.  
 7. ALL MATERIALS TO BE INSTALLED PER LOCAL CODE. SHOP FURNISHED AND MATCHED AT CONTRACTOR'S RISK.  
 8. NOT USED.  
 9. COORDINATE ALL MATERIALS BEHIND THE WALL HANG EQUIPMENT, SHELVEWS, ETC. FOR PROPER INSTALLATION HEIGHTS.

**SYMBOL LEGEND**  
 1. PARTITION TYPE 146 SEE S/A1.0  
 2. KEY NOTE  
 3. DOOR 710 - SEE DOOR SCHEDULE ON A.0

**KEY NOTES**  
 1. CHANGY SYSTEM ABOVE SEE S/A1.2 FOR NOTES  
 2. SEE ROOF PLAN FOR DIMENSIONS  
 3. TRUSS SYSTEM ABOVE SEE S/A1.0 FOR NOTES  
 4. SEE ROOF PLAN FOR DIMENSIONS  
 5. NEW CURB/RAIL - SEE S/A1.1  
 6. EXISTING ROOF LUGGER TO REMAIN - SEE ELEVATIONS.  
 7. NEW STORMWATER SYSTEM - SEE S/A1.0 FOR NOTES - SEE ELEVATIONS.



**LOW PARTITION**  
 1.0 3/4"=1'-0"

**INTERIOR PARTITION**  
 2.0 3/4"=1'-0"

**KEY NOTES**  
 1. COORDINATE CAP ELEVATION WITH DOOR ELEVATION.  
 2. MAKE AS SCHEDULED.  
 3. FLOOR FINISH AS SCHEDULED.  
 4. NOTE: SEE DECOR DIMENSIONS FOR FINISHES AND MATERIALS. COORDINATE WITH ARCHITECTURAL SUBMITTALS ON THESE WALLS.







**TO:** Zoning Board of Appeals **DATE:** August 3, 2012  
**FROM:** Vicki Georgeau, Director of Community Development  
**SUBJECT:** ZBA #12-2; Paul Nystrom, Dykema Gossett, PLLC, on behalf of McDonald's Corporation, 6925 South Westnedge Avenue; B-3, General Business  
**CODE SECTION:** 42-544; Nonconforming Signs; p. CD 42:128-129  
42-552; B-3, General Business district signs; p. CD 42:130.2-131

**APPEAL:** Requesting variances to replace a nonconforming freestanding sign that would: a) measure 175 square feet in area (including a 17 square foot electronic message display sign) where a maximum 84 square feet is permitted; b) measure 30 feet in height where a maximum 25 feet height is permitted; c) be set back five feet where a minimum 10-foot setback is required; and d) be allowed to continue after substantial site and building improvements have been completed, as proposed in a preliminary site plan dated April 20, 2012.

**STAFF RECOMMENDATION:**

The applicant requests the above variances per the enclosed application, photographs, site plan, sign sketch, and other related materials. The 1.7 acre corner parcel was redeveloped by the applicant in 1998 and is improved with a McDonald's restaurant, off-street parking and related facilities. A nonconforming freestanding sign (erected in 1973) is located near the access drive on South Westnedge Avenue. The sign is nonconforming because it exceeds the maximum permitted area and height, and does not meet the minimum property line setback. Specifically, the freestanding sign is 408 square feet in area (including a 14 square foot electronic message display sign), 36 feet in height, and is set back five feet from the front property line.

As background for the Board, the applicant was denied an appeal in July, 2010 (ZBA#10-02 minutes attached) to replace the pole of the existing nonconforming freestanding sign. The applicant was also denied a variance to replace the sign with a new sign that would have measured 326 square feet in area (including an electronic message display), 36 feet in height, with a setback of five feet (as part of the sign variance request, McDonald's agreed to forego a freestanding sign fronting on Admiral Avenue). The applicant subsequently appealed to the Kalamazoo County Circuit Court with regard to sign pole replacement. On January 13, 2011, the Court upheld the Board decision, but McDonald's filed a Motion for Reconsideration in prelude to filing an appeal with the Michigan Court of Appeals. Subsequent to this action, the city and applicant had lengthy negotiations regarding a potential Settlement Agreement. However, on April 24, 2012 McDonald's submitted a site plan for building and site improvements (see attached plan dated April 20, 2012) that include construction of a two-lane drive-through and associated parking lot and landscaping improvements, a new exterior building facade, a new Playplace (toy) structure, dining/seating arrangement and interior décor improvements. Section 42-544(B)(6) of the Zoning Code specifies a nonconforming sign shall not be continued after a substantial improvement has taken place on the site or involving the main building, which exceeds 25 percent of the market value of the structure or site improvement. Because the proposed improvements (with an estimated value of \$300,000) constitute approximately 65% of the current market value of the land improvements and building

(\$464,000 as estimated by the Office of City Assessor), the nonconforming sign would have to be removed if the proposed project were completed. Therefore, subsequent to the submission of the site plan to the city on April 24, 2012, the applicant withdrew its Circuit Court Motion for Reconsideration. At that time, and to facilitate the redevelopment of the site and building, the applicant and city agreed that a preferred approach to resolve the pending litigation was to submit a revised sign variance application to the Board.

Accordingly, the applicant now proposes to replace the freestanding sign with a 30 foot tall, 175 square-foot sign, in the same location five feet from the front property line. In addition, the applicant has requested a variance from Section 42-544(B)(6) of the Zoning Code to allow the proposed replacement sign to continue after completion of the site and building improvements proposed on the April 20, 2012 preliminary site plan.

Concerning requests a) and b), replacing the existing 408 square-foot sign with the proposed 175 square-foot sign constitutes a significant (57%) reduction in degree of nonconformity. In addition, reducing the sign height from 36 feet to 30 feet also constitutes a reasonable reduction in degree of nonconformity, yet maintains sign visibility in relation to the existing mature trees and streetscape along South Westnedge Avenue, as noted important to the applicant. As indicated above, as part of the initial variance request submitted in July 2010, the applicant agreed to forego a freestanding sign fronting on Admiral Avenue. Due to the reduction in degree of nonconformity, variance requests a) and b) are recommended for approval, conditioned upon no freestanding sign being erected on Admiral Avenue.

Concerning request c) the applicant contends placing the sign in a conforming location five feet further east will impair the sign visibility. The applicant notes the existing mature trees, planted in 1998 as required landscaping when the site was redeveloped, obstruct the view of the sign. While the existing trees may create a moderate visibility concern for the freestanding sign, retention of these required trees is also an important site improvement. The requested setback variance is the minimum variance necessary, will not impair the purpose and intent of the ordinance, or have a detrimental impact on surrounding property owners. Therefore, the requested variance can be recommended for approval.

Concerning request d), the proposed replacement sign represents a significant reduction in the degree of nonconformity, and the proposed site and building improvements comprise a desirable investment into the property and community. In order to facilitate the proposed improvement project, the variance can be recommended with the following conditions: 1) the proposed replacement sign be erected prior to the commencement of construction of site and building improvements proposed on the April 20, 2012 site plan; and 2) the variance from Section 42-544(B)(6) is limited to the construction proposed on the April 20, 2012 site plan and provided the site and building improvements are completed within 12 months of the date the variance is granted.

**PRACTICAL  
DIFFICULTY:**

Reduction in the degree of sign nonconformity; sign visibility limitations. See Suggested Motion form.

**CITY OF PORTAGE ZONING BOARD OF APPEALS**  
Minutes of Meeting – July 12, 2010

**COPY**

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:** Timothy Bunch, David Felicijan, Henry Kerr, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianne Singer, Daniel Rhodus

**MEMBERS EXCUSED:** Donald Mordas

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

**APPROVAL OF THE MINUTES:** Felicijan moved and Linenger seconded a motion to approve the June 14, 2010 minutes as submitted. Upon voice vote, motion was approved 7-0.

**NEW BUSINESS:**

**ZBA# 10-01; 6925 South Westnedge Avenue:** Staff summarized the request for 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 also referred to the correspondence from the City Attorney regarding request a). Paul Nystrom was present on behalf of Golden Arch Realty Corporation, and summarized the applicant's arguments, noting the importance of the sign to the McDonald's restaurant business, the need to replace the sign pole which has corrosion at the base. Mr. Nystrom compared the actual sign area to the sign area as defined by the Zoning Code. With regard to the appeal and interpretation, the applicant reiterated his position that a pole is not part of a sign, that the definition of sign in Article 11 is not applicable to Article 4, Zoning, of the City Code, and that when the Zoning Code is unclear, the benefit of the doubt goes to the property owner. With regard to the variance, the applicant notes the degree of nonconformity will be reduced as the setback will meet the code, the sign size will be reduced, and that trees and adjacent buildings block the sign visibility. In addition, the applicant agreed to forego the second sign permitted on Admiral Avenue. In response to Kerr, the applicant noted that the pole supported the sign. Kerr noted without the pole, there can be no freestanding sign. Felicijan asked if the applicant has inspection or other structural reports that indicate the sign pole should be replaced. The applicant indicated for precautionary measures, the applicant desires to replace the pole in the near future. Felicijan asked if the city would allow replacement of the pole if it was determined hazardous. Staff indicated a hazardous condition would have to be addressed, but because the sign is nonconforming, and the ordinance does not allow a structural alteration to the sign. Felicijan asked if the trees along South Westnedge Avenue are required and owned by McDonalds. The applicant indicated yes, and staff indicated the trees are likely part of required site landscaping, and while the trees can be trimmed or replaced, replacement with smaller trees would not be desirable. Schimmel noted that many other McDonald's have much smaller signs and that most customers know where the restaurant is located or can easily find it with cell phone/GPS technology. The applicant indicated most customers buy on a spur of moment view of the sign and/or restaurant building and most people do not have modern GPS technology. Linenger asked where a sign would be located on Admiral, noting very little green space availability. Mr. Nystrom indicated a location had not been previously contemplated, but they would evaluate further if forced to erect a smaller sign on South Westnedge Avenue. In response to Linenger, Assistant City Attorney Bear reviewed the ordinance provisions, and indicated that the Zoning Code is not unclear. Mr. Bear reiterated the points in his correspondence, including that a pole or other support structure is part of a sign, that the intent of the sign regulations in Article 4 reference construction and anchoring of signs, that a freestanding sign includes its pole, that Article 11 of the Land Development regulations is intended to be read together with Article 4, Zoning, and that replacement of the sign pole is a structural alteration that is not permitted for a nonconforming sign. Linenger asked the applicant if an engineer has recommended repairs to the sign pole instead of replacement. The applicant indicated bracing could potentially be accomplished.

A public hearing was opened. As no written or verbal comments were received, the public hearing was closed.

Seyburn noted that the statute encourages nonconforming uses and structures to eventually phase out, and notes that changing the sign pole is more than normal maintenance and would extend the life of the sign. Seyburn also notes that he likes the tall mature trees that have grown over the years and it would be unfortunate if the trees were

removed with smaller trees. In the past, Seyburn recalls that the Board had approved sign variances with a similar reduction in the degree of nonconformity. Staff noted that per the sign area defined in the Zoning Code, the proposed sign would be only 21% smaller than the existing sign. Seyburn noted the Board determines if the reduction meets the intent of the Code, and staff noted that the applicant has a standard 200 square foot sign that may be more acceptable, from a staff perspective. In response to Singer and Linenger, staff confirmed that the proposed sign would be moved to meet the setback, but that the height would remain at 36 feet.

A motion was made by Linenger, supported by Felicijan, to deny an appeal of the administrative decision which denied a sign permit application to replace the pole of the existing nonconforming McDonald's restaurant freestanding sign and the interpretation that Sections 42-541(A) and 42-544(B) of the City Code of Ordinances authorize replacement of the sign pole because a "sign" as defined in the Zoning Code includes the pole and due to a lack of practical difficulty. 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, Felicijan-Yes, Singer-Yes, Seyburn-Yes, Bunch-yes) motion carried 7-0.

A motion was made by Linenger, supported by Felicijan, to deny a variance to modify an existing nonconforming freestanding sign for the following reasons: the variance would materially impair the intent and purpose of the zoning ordinance, the lack of practical difficulty, conforming alternatives are available; and maintenance repairs appear to be necessary and achievable. 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, Felicijan-Yes, Singer-Yes, Seyburn-No, Bunch-Yes) motion carried 6-1.

ZBA# 10-02; 7021 and 7101 South Westnedge Avenue: Staff summarized the request for a variance to change a 140 square foot existing Sam's Club store sign panel on a 224 square foot nonconforming freestanding sign. Staff also reviewed the practical difficulties noted in 2005 when the Board granted a variance for the existing sign, which was conditioned upon no additional signs on Romence Road Parkway. Ryan Shrimplin was present to explain the variance was requested to allow Sam's Club to change its freestanding sign panel consistent with a new corporate logo and that no other changes to the sign would be made. The sign will not be moved, enlarged or otherwise altered. Linenger asked if there is an intent to erect signs on Romence Road Parkway. The applicant indicated no.

A public hearing was opened. As no written or verbal comments were received, the public hearing was closed.

A motion was made by Linenger, supported by Felicijan, to approve a variance to change a 140 square foot existing Sam's Club store sign panel on a 224 square foot nonconforming freestanding sign conditioned upon no additional freestanding signs be located on Romence Road for the following reasons: there are exceptional circumstances applying to the property that include the freestanding sign authorized at the May 9, 2005 ZBA meeting, the variance is necessary for the preservation and enjoyment of a substantial property right, the right to identify the existing business with an update logo; the variance will not be detrimental to adjacent property and the surrounding neighborhood; 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. After further discussion and upon roll call vote (Linenger-Yes, Kerr-Yes, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Seyburn-Yes, Bunch-no) motion carried 7-0.

**STATEMENT OF CITIZENS:** Felicijan apologized for his absences at recent Board meetings.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 8:05 p.m.

Respectfully submitted,

**COPY**

Vicki Georgeau, AICP  
Deputy Director of Neighborhood Services

**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.**