

CITY OF
PORTAGE

A Place for Opportunities to Grow

ZONING BOARD OF APPEALS

September 10, 2012

CITY OF PORTAGE ZONING BOARD OF APPEALS

Monday, September 10, 2012

(7:00 pm)

Portage City Hall
Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES:

- * August 13, 2012
- * August 20, 2012

OLD BUSINESS:

NEW BUSINESS:

- * ZBA# 12-05, A n' D Signs, LLC, on behalf of Walters-Dimmick Petroleum, 5126 Portage Road: requesting a three square-foot variance to replace an existing Shell Oil freestanding sign with a new 66 square-foot sign where a maximum 63 square-foot sign is permitted.
- * ZBA# 12-06, Roger and Nancy Kortokrax, 7141 South Westnedge Avenue: requesting a Temporary Use Permit to allow outdoor sales of agricultural products from September 28, 2012 through October 31, 2012, and annually thereafter.
- * ZBA# 12-08, PlazaCorp Realty Advisors, 6503 and 6513 South Westnedge Avenue: requesting a variance of four parking spaces to allow 61 parking spaces where 65 parking spaces are required by the Zoning Code.

OTHER BUSINESS:

Election of officers

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 – August 13, 2012

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

MEMBERS PRESENT: Timothy Bunch, Doug Rhodus, Betty Schimmel, Lowell Seyburn, Michael Robbe, Mariana Singer, and Glenn Smith.

MEMBERS EXCUSED: Jeffrey Bright, Rob Linenger

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 July 9, 2012 minutes with one change. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA #12-01, 550 Ring Road: Staff summarized the request for a Temporary Use Permit to allow outdoor furniture sales from August 22, 2012 through October 30, 2012. Mike O’Grady stated Art Van was requesting the Temporary Use Permit because they were undergoing a significant interior store remodel over the next several months and wanted to be able to continue to conduct sales while the project was underway.

A public hearing was opened. Ryan Simpson with the Kalamazoo Regional Chamber of Commerce spoke in favor of the request. The public hearing was closed.

A motion was made by Bunch, seconded by Singer, to grant a Temporary Use Permit to allow outdoor furniture sales from August 22, 2012 through October 30, 2012, conditioned upon: 1) a 2A:10ABC fire extinguisher is provided and placed in a conspicuous location; 2) ‘no smoking’ signs be placed on all tent sides; and 3) a 20-foot separation be required between tents, tent parts, buildings and vehicles. Upon roll call vote: Bunch-Yes, Schimmel-Yes, Robbe – Yes, Seyburn-Yes, Singer-Yes, Smith-Yes, Rhodus-Yes. Motion passed 7-0.

ZBA #12-02, 6925 South Westnedge Avenue: Staff summarized the request for 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. Paul Nystrom was present on behalf of the applicant and stated McDonald’s was proposing to significantly reduce the freestanding sign’s degree of nonconformity. Mr. Nystrom stated marketing research showed the size of the sign had a direct impact on impulse sales and that the proposed sign’s height and area were the minimum necessary due to the trees near the street partially obstructing its visibility.

A public hearing was opened. No one spoke for or against the request. The public hearing was closed.

A motion was made by Bunch, seconded by Smith, to grant a variance 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; conditioned upon: 1) no freestanding sign be erected on Admiral Avenue; 2) the sign be erected prior to the commencement of construction of the site and building improvements proposed on the April 20, 2012

site plan; 3) and 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. The granting of the variance will result in the removal of a nonconforming sign and replaced by a sign that, while not meeting the requirements of the Zoning Code is nonetheless in keeping with its spirit and intent. 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. Upon roll call vote: Upon roll call vote: Bunch-Yes, Schimmel-Yes, Robbe – No, Seyburn-Yes, Singer-Yes, Smith-Yes, Rhodus-Yes. Motion passed 6-1.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 7:39 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator

CITY OF PORTAGE ZONING BOARD OF APPEALS

 **DRAFT**

Minutes of Special Meeting – August 20, 2012

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

MEMBERS PRESENT: Timothy Bunch, Rob Linenger, Doug Rhodus, Lowell Seyburn, Michael Robbe, Mariana Singer, and Glenn Smith.

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator and Randy Brown, City Attorney

NEW BUSINESS:

ZBA #12-03, 2728 East Shore Drive: Staff summarized the request for a variance to construct a 12-foot by 26-foot garage addition 22 feet from the front (north) property line, where a minimum 27-foot front yard setback is required. Mr. Joseph Kuchenbuch stated they have two teens who will soon be driving and that the side-entry garage configuration creates difficulties with backing out into the driveway. The applicant stated the proposed garage addition would make it easier to back out onto the driveway without having other vehicles in the driveway to bump into. Linenger inquired if the applicant had considered a lesser variance and converting the existing single stall door to a double door design. The applicant stated they wanted to keep the proposed design consistent with the existing garage design. Linenger inquired if they considered pouring a driveway addition in the same location as the proposed garage to assist with backing out. The applicant stated they felt their proposal was preferable aesthetically. Singer inquired how the applicant's practical difficulty differed from neighboring properties. Mr. Kuchenbuch stated they had a side-entry garage, that most other properties along East Shore had vacant land across the street where they did not, and noted that other houses on the lake had three stall garages. Bunch inquired of staff if a variance would be necessary for a driveway extension in the same location as the proposed garage. Staff stated no.

A public hearing was opened. A letter stating no objection to the request signed by: Dave Beranek, 2719 East Shore Drive; Rick Hesse, 2802 East Shore Drive; Scott Gignac, 2722 East Shore Drive; and Tamara Ludwig, 2803 East Shore Drive, was read into the record. The public hearing was closed.

A motion was made by Smith, seconded by Robbe, to grant a variance to construct a 12-foot by 26-foot garage addition 22 feet from the front (north) property line, where a minimum 27-foot front yard setback is required. The practical difficulties being the ability to house three vehicles and reduction of parking along the street. Upon roll call vote: Bunch-No, Rhodus-No, Robbe-Yes, Seyburn-No, Singer-No, Smith-Yes, Linenger-No. Motion failed 5-2.

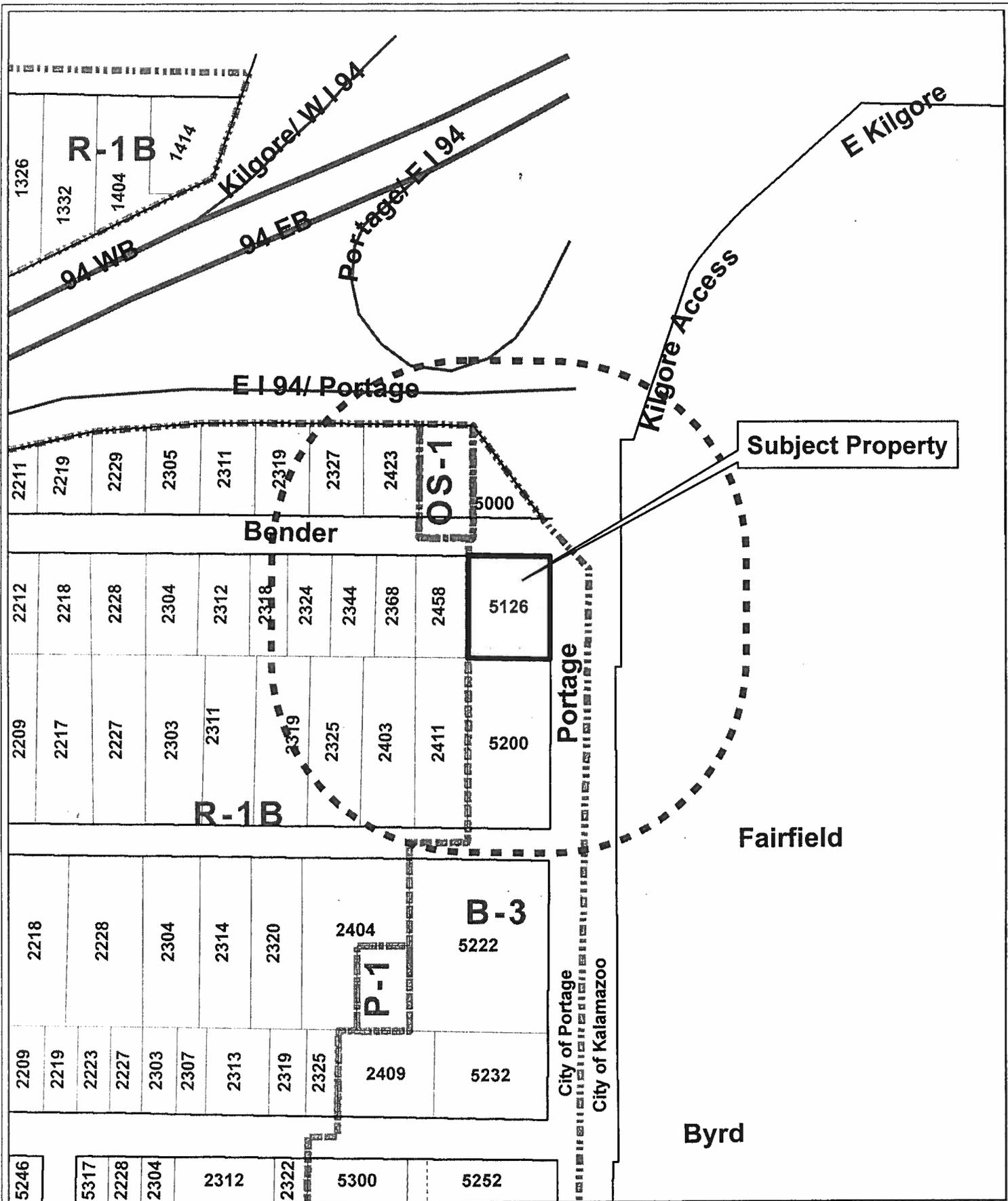
A motion was made by Singer, seconded by Seyburn, to deny a variance to construct a 12-foot by 26-foot garage addition 22 feet from the front (north) property line, where a minimum 27-foot front yard setback is required, as there are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the zoning district. 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. Upon Roll call vote: Bunch-Yes, Rhodus-Yes, Robbe-No, Seyburn-Yes, Singer-Yes, Smith-No, Linenger-Yes. Motion passed 5-2.

STATEMENT OF CITIZENS:

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:41 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



Subject Property

Fairfield

Byrd

ZBA 12-05
5126 Portage Road



1 inch = 200 feet

Legend

-  Subject Property
-  300' Notification Boundary
-  Zoning Boundary

RECEIVED

AUG 13 2012

CITY OF
PORTAGE
A Place for Opportunities to Grow

COMMUNITY DEVELOPMENT
Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 8-13-12

Name of Applicant AND Signs LLC And Richards
Print Signature

Applicant's Address 1035 E STATE ST Phone No. _____

Name of Property Owner (if different from Applicant) Watters Dimmick Petroleum

Address 1620 S KALAMAZOO AVE MARSHALL MI Phone No. 1-269-781-4654

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

Street Address 5126 Portage Rd Kalamazoo MI 49002

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: Sign Installation

Application Fee _____ (Residential Uses) \$ 330⁰⁰ (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 Sign Installation

Reason for Request (Also complete page 2 of application): 3.36 sq Feet

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: <u>12-5</u>	Filing Date: <u>8/13</u>	Tentative Hearing Date: <u>9/10/</u>
Previous Application Filed Regarding This Property: <u>87-87(A+B); 66-01</u>		

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COMMUNITY DEVELOPMENT

Reason For Variance

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

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.)

Decrease in 6' Existing Signage is 72', New Signage is 66'

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.)

New Signs From Manufacturer are limited to size due to corporate standards. Signs have been built @ 66 sq ft and 62.64 are allowed

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

New sign is 6 sq feet smaller than the existing signage


Signature of Applicant

8/13/12
Date

8/22/2012

A n' D Signs LLC.

To Whom it May Concern:

This letter is to outline the dimensions of the price sign. The LED section is 24" H and the V-power section is 18" H. The total sq. footage of this sign is 30 sq. feet. The total sq. footage of the top sign is 36 sq. feet. For a total of 66 sq. feet. Currently the sign measures 72 sq. feet.

The reason for the change is to promote safety for the employees. The Shell Corp. regulates the signage program and only gives options for WDP to choose from.

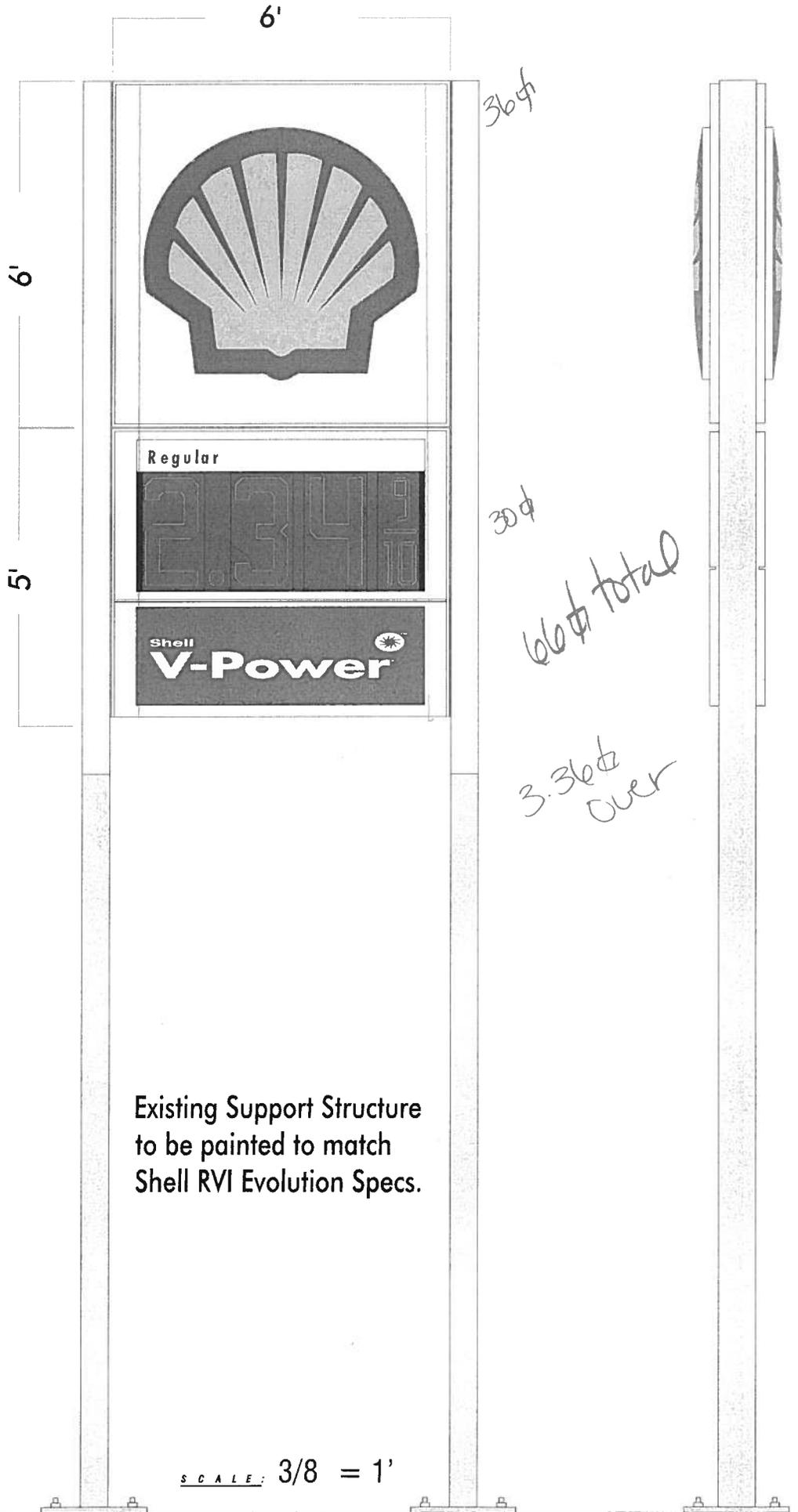
Thank you

Andy Rhodes

A n' D Signs LLC.



**RVI Evolution
Global from RVI**



Existing Support Structure
to be painted to match
Shell RVI Evolution Specs.

SCALE: 3/8" = 1'



SIGN COMPANY
www.FederalHealth.com

1500 North Bolton • Jacksonville, Texas 75766
(903) 589-2100 • Fax (903) 589-2101

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Building Quality Signage Since 1901

- Revisions:
- 1
 - 2
 - 3
 - 4
 - 5
 - 6

Account Rep: **Dan Hull**

Project Manager: **S. Rowell**

Drawn By: **Mike Lees**

Project / Location:

**SHELL
RVI Evolution**

Underwriters Laboratories Inc. ELECTRICAL TO USE U.L. LISTED COMPONENTS AND SHALL MEET ALL N.E.C. STANDARDS
ALL ELECTRICAL SIGNS ARE TO COMPLY WITH U.L. 48 AND ARTICLE 608 OF THE N.E.C. STANDARDS, INCLUDING THE PROPER GROUNDING AND BONDING OF ALL SIGNS

Client Approval/Date:

Landlord Approval/Date:

This original drawing is provided as part of a planned project and is not to be exhibited, copied or reproduced without the written permission of Federal Health Sign Company LLC or its authorized agent. © 2008
Colors Depicted In This Rendering May Not Match Actual Material Finishes. Refer To Product Samples For Exact Color Match.

Job Number: **SG121879**

Date: **4.9.12**

File Name: **SG121879_e**

Sheet Number: **1** Of **1**

Design Number:

TO: Zoning Board of Appeals **DATE:** August 31, 2012
FROM: Vicki Georgeau, ^{VA} Director of Community Development
SUBJECT: ZBA #12-05; A n' D Signs, LLC, on behalf of Walters-Dimmick Petroleum, 5126 Portage Road; B-3, General Business
CODE SECTION: 42-552(A); B-3 Freestanding Signs; p. CD42:130.2

APPEAL: Requesting a three square-foot variance to replace an existing Shell Oil freestanding sign with a new 66 square foot sign where a maximum 63 square foot sign is permitted.

STAFF RECOMMENDATION: The applicant requests the above variance per the enclosed application and sign sketch. The 0.47 acre zoning lot has 157 feet of street frontage on Portage Road, 132 feet of frontage on Bender Road and is improved with a 2,246 square foot commercial building, gasoline pumps/canopy, off street parking, a legally non-conforming highway sign, and associated improvements. The property is zoned B-3, General Business. The property to the north is zoned B-3/OS-1 and occupied by an office building and the property to the south is also zoned B-3 and occupied by a restaurant. To the west, the property is zoned R-1B, One-family Residential and occupied by a residential dwelling.

The existing 72 square foot freestanding sign is comprised of a 36 square foot Shell identification panel and a 36 square foot changeable copy board. The existing sign is conforming because it does not include an Electronic Message Display (EMD). Based on the Portage Road frontage, the Zoning Code permits a 63 square foot sign plus an additional 15 square feet of changeable copy board area if no EMD is utilized. The proposed sign is 66 square feet in area and includes an EMD display and exceeds the permitted 63 square foot sign area. The EMD sign panel is proposed to display gas prices which change frequently. The sign meets all other Zoning Code requirements including height and setback regulations.

Upon submittal of the sign permit application, staff advised the applicant of the maximum area allowed. As indicated by the applicant, the new sign panels have already been manufactured per corporate standards, which total 66 square feet in area. Shell is changing out all existing manual changeable copy boards with EMD signs to promote employee safety. The applicant also notes the area of the proposed sign is six square feet smaller than the existing sign. In addition, many gas stations are moving towards the use of EMD versus manual changeable copy board for gas price sign panels.

While a different standard for signs with EMD panels exists, the proposed sign will be smaller in area than the existing sign and is proposed to promote employee safety (ease in modifying the sign message). The three square foot variance is minimal, will not adversely impact adjacent property, and will not impair the spirit and intent of the ordinance. For the reasons noted above, the variance can be recommended.

PRACTICAL DIFFICULTY: Reduction in the sign area; use of EMD technology to promote safety. 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:

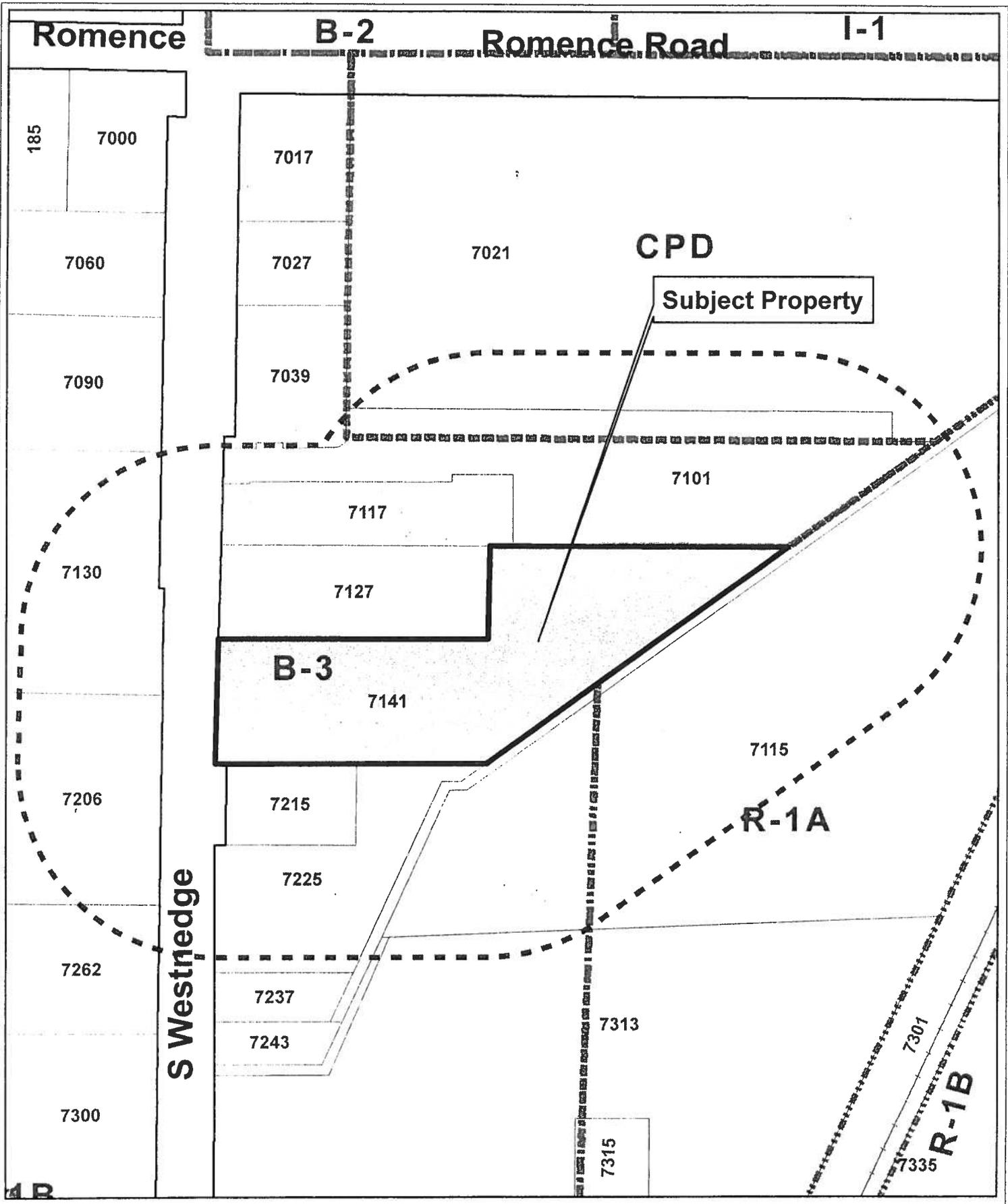
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right 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.**



Subject Property



1 inch = 200 feet

ZBA 12-06
7141 South Westnedge Avenue

Legend

-  300' Notification Boundary
-  ZBA11-15
-  Zoning Boundary

AUG 13 2012

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Department of Community Development

CITY OF PORTAGE A Place for Opportunities to Grow

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 8-13-12
Name of Applicant Nancy Kortokrax, Roger Kortokrax
Applicant's Address 655 18th St, Otsego, MI 49078
Name of Property Owner Playtime Billiards, James + Beth Reinhold
Address 7141 S. Westnedge Ave

Address of the Property that is the subject of this Application:
Street Address 7141 S. Westnedge Ave
For Platted Property: Lot of Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]
Applicant's interest in Property that is the subject of this Application: Temporary Use Permit

Application Fee (Residential Uses) 330.00 (All Other Uses)

Type of Appeal (Please check one of the following bold choices and provide the requested information):
Variance from Zoning Ordinance: Article Section Paragraph
Regarding: Use Area Yards
Setbacks Parking Other

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

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 (12-6), Filing Date (8/13), Tentative Hearing Date (9/10/12), Previous Application Filed Regarding This Property (ZBA 11-15)

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COMMUNITY DEVELOPMENT

Reason For Variance

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

See attached letter

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

See attached letter

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 letter

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 letter

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 letter

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 letter

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 letter

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

See attached letter

Roger Kortokrey
Nancy Kortokrey
Signature of Applicant

8-13-12
Date

Roger & Nancy Kortokrax
655 18TH Street
Otsego, MI 49078
(269) 694-6591

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COMMUNITY DEVELOPMENT

August 12, 2012

City of Portage
Department of Community Development
Zoning & Codes Administrator
7900 S. Westnedge Avenue
Portage, MI 49002

Dear Zoning & Codes Administrator:

Please consider this our written permission for a Temporary Use Permit in the parking lot at 7141 S. Westnedge Avenue (Playtime Billiards).

The permit is necessary in order to sell pumpkins, squash, gourds and other fall agricultural items for the period of September 28th thru October 31st, 2012. The Property owner of Playtime Billiards has given the attached permission for use of the property.

A rectangular area not larger than 50' wide x 100' long would be used, and would be enclosed for safety by use of tables and straw bales. The agricultural items would be placed within the enclosed space, using a farm/Halloween/Thanksgiving type theme with an overtone suitable for all ages. There is more than sufficient parking available. The area would be kept neat and clean at all times.

In 1995, the portage Board of Appeals granted us a Permit to use the property at 6355 S. Westnedge (the vacant Kmart parking lot). However, that property is no longer available due to future construction for a new business. We would have the same setup as the past 17 years, and would comply with all City of Portage ordinances and requirements. We have thoroughly enjoyed working in Portage, have made many friends, and look forward to returning this fall.

Please forward the Permit to 655 18th Street, Otsego, MI 49078. If you have questions, please call. Thank you for all your help and consideration.

Sincerely,



Roger and Nancy Kortokrax

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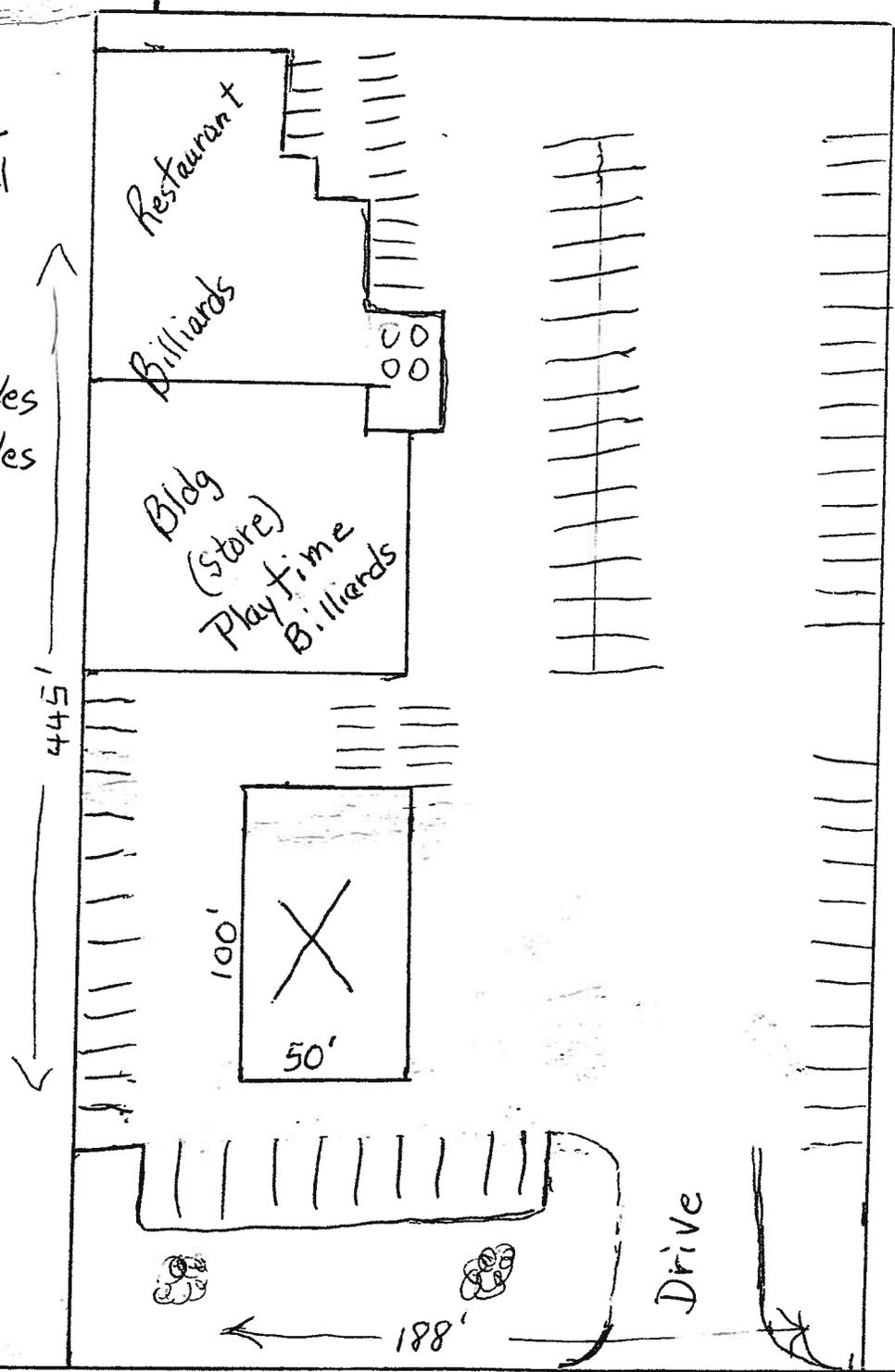
AUG 13 2012

COMMUNITY DEVELOPMENT

Playtime Billiards Property

X = enclosed area for agricultural Sales

perimeter enclosed w/ tables and straw bales



S. Westnedge (7141)

**Playtime Billiards
7141 S. Westnedge Avenue
Portage, MI 49002
(269) 217-0572**

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AUG 13 2012
COMMUNITY DEVELOPMENT

August 12, 2010

**Zoning & Codes Administrator
City of Portage
Department of Community Development
7900 S. Westnedge Avenue
Portage, MI 49002**

**RE: Approval for Special Event or Temporary Use Permit at Playtime
Billiards (7141 S. Westnedge Avenue)**

Dear Zoning & Codes Administrator:

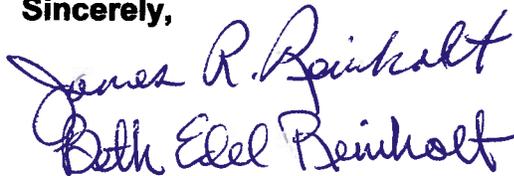
This letter is to serve for Roger and Nancy Kortokrax to lease space in the parking lot of Playtime Billiards (7141 S. Westnedge Avenue). The purpose of this permit would be to sell pumpkins, squash, and fall agricultural related items for the period of September 28, 2012 through October 31, 2012.

The event will be set up in a manner so as not to impair my ongoing business activities or any traffic pattern associated with Playtime Billiards.

A Special Event or Temporary Use Permit is requested, whichever is applicable. This would be annual permission, contingent upon my approval.

City of Portage authorization would be greatly appreciated.

Sincerely,



Playtime Billiards, Owner

C Roger & Nancy Kortokrax

TO: Zoning Board of Appeals **DATE:** August 31, 2012
FROM: Vicki Georgeau, ~~Director~~ Director of Community Development
SUBJECT: ZBA #12-06, Roger and Nancy Kortokrax, 7141 South Westnedge Avenue, B-3
General Business

CODE SECTION: 42-622(D), Temporary Uses, p. 42:140.3.

APPEAL: Requesting a Temporary Use Permit to allow outdoor sales of fall agricultural products from September 28, 2012 through October 31, 2012, and annually thereafter.

**STAFF RECOM-
MENDATION:**

The applicant is requesting the above referenced Temporary Use Permit per the enclosed application and site sketch. The 3.5 acre site is improved with a 9,624 square-foot commercial building (Playtime Billiards) and off-street parking lot. The property is zoned B-3, General Business, and is adjacent to other commercial uses.

The applicant received a Temporary Use Permit in 1995 (ZBA 94-74) for annual fall agricultural products sales in the parking lot of the former K Mart at 6355 South Westnedge Avenue. Due to the redevelopment efforts currently in process for that location, the site is no longer available. The applicant has now obtained permission to conduct their seasonal sales in the off-street parking lot at 7141 South Westnedge Avenue from September 28th, through October 31, 2012, and annually thereafter. One Business Special Event has already been conducted on the subject zoning lot, utilizing 10 of the 28 days available for the calendar year. Because the proposed dates of operation (35 days) would exceed the maximum allowable as a Business Special Event (28 days), a Temporary Use Permit is requested.

The proposed event would be conducted in a manner similar to their previously approved Temporary Use Permit. Pumpkins, squash and other agricultural items would be placed in a 50 by 100-foot sales area in the west parking lot, cordoned off with straw bales and tables. The hours of operation would be limited to 8:00 a.m. to 10:00 p.m. Monday through Saturday, and 9:00 a.m. to 9:30 p.m. on Sunday. No additional signage is proposed.

As noted above, the applicant has conducted numerous outdoor sales events over the years and staff reports no enforcement issues in connection with the operation of these events. The off-street parking lot is underutilized, particularly on the west side, as most patrons park on the south side near the building's main entrance. 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. It is recommended the Temporary Use Permit be granted, conditioned upon the following: 1) not more than one Temporary Use Permit be granted for this zoning lot per calendar year; and 2) the Temporary Use be subject to administrative review on an annual basis.

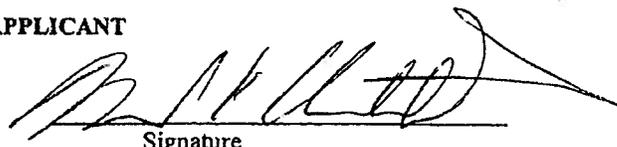
**PRACTICAL
DIFFICULTY:**

Not applicable.

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 AUG 22 2012
 COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 8/13/2012
 Name of Applicant Mark Chilcott/PlazaCorp Realty Advisors 
 Print Signature
 Applicant's Address 211 E Water Street, Kalamazoo, MI, 49007 Phone No. 269-383-5775
 Name of Property Owner (if different from Applicant) Westnedge & Della, LLC
 Address 6503 S. Westnedge, Portage MI Phone No. 269-383-5775

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

Street Address 6503 S. Westnedge, 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: Authorized Agent for property and Westnedge & Ruth, LLC located at 6513 S. Westnedge.

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 42 Section 523 Paragraph _____
 Regarding: Use _____ Area _____ Yards _____
 Setbacks _____ Parking X Other _____

Reason for Request (Also complete page 2 of application): Four (4) space Parking Variance, which will enable Westnedge & Della to fill 1740 Square Feet that has been vacant since the construction of the building in 2007.

_____ **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

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 to response to question 1

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

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 to response to question 3

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 to response to question 4

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 to response to question 5

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 to response to question 6

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 to response to question 7

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


Signature of Applicant

8/13/2012
Date

Reason For Variance

1. The Property is unique due to the initial development plan (see Question 7 for explanation), which limited depth. The building and related parking facility was sized for an Allcare Dental and T-Mobile ("Original Tenant's").
2. The physical property depth and related building coverage are limited due to immediate residential adjacency.

The physical characteristics of the vacant premises (subject of proposed Parking Variance) are unique (see attached floor plan). Landlord was forced to create an "L"-shaped (like a flag) premises to accommodate the floor plan needs of Eyemart (Eyemart was not the original intended user for the building - see Question 7). A food related use is best suited for the "L" shaped premises.

The use and related parking needs for the Sandwich Shop and Men's Wearhouse are unique (see Cover Letter for a more detailed explanation)

3. No, the property can't be used to its full potential (highest and best use and economics) without the four (4) space parking variance. The zoning district permits fast food, which is the highest and best use for the vacant "L" shaped premises
4. Yes, the variance is the minimum necessary to permit the proposed fast food use and a lesser and/or no variance would result in continued vacancy and related economic hardship.

5. The Westnedge corridor is the primary regional shopping district in Southwest Michigan. All adjacent uses located on the Westnedge corridor have like commercial uses. The parking variance does not change the intensity or character of the Westnedge corridor.
6. The Property is bordered by Della Street to the north and Ruth Street to the south. There is a reciprocal access and parking agreement between Westnedge & Della, LLC., and Westnedge & Ruth, LLC. The Ruth Street/Westnedge intersection has a sophisticated light to handle all traffic movements, including those going to and from the Cross Roads Mall.

Attached, please find parking count information taken during "peak times" for Men's Wearhouse and Eyemart. The counts demonstrate that even during peak parking times, there are still many free parking spaces for the vacant space. Further, the zoning ordinance requires us to have 20 spaces for Men's Wearhouse; however, our parking count demonstrates that no more than 10 cars (including employee cars) were in the Men's Wearhouse lot during their peak times.

7. The unique circumstances surrounding the development of this Property include:
 -
 - Allied Capital (via an affiliated entity) was the previous owner of the Westnedge & Della Property. Allied procured leases with Allcare Dental and T-Mobile and obtained the site plan approval for the Property.
 - Westnedge & Della, LLC purchased the property along with all rights to leases, governmental approvals, etc., and constructed the site and building improvements.

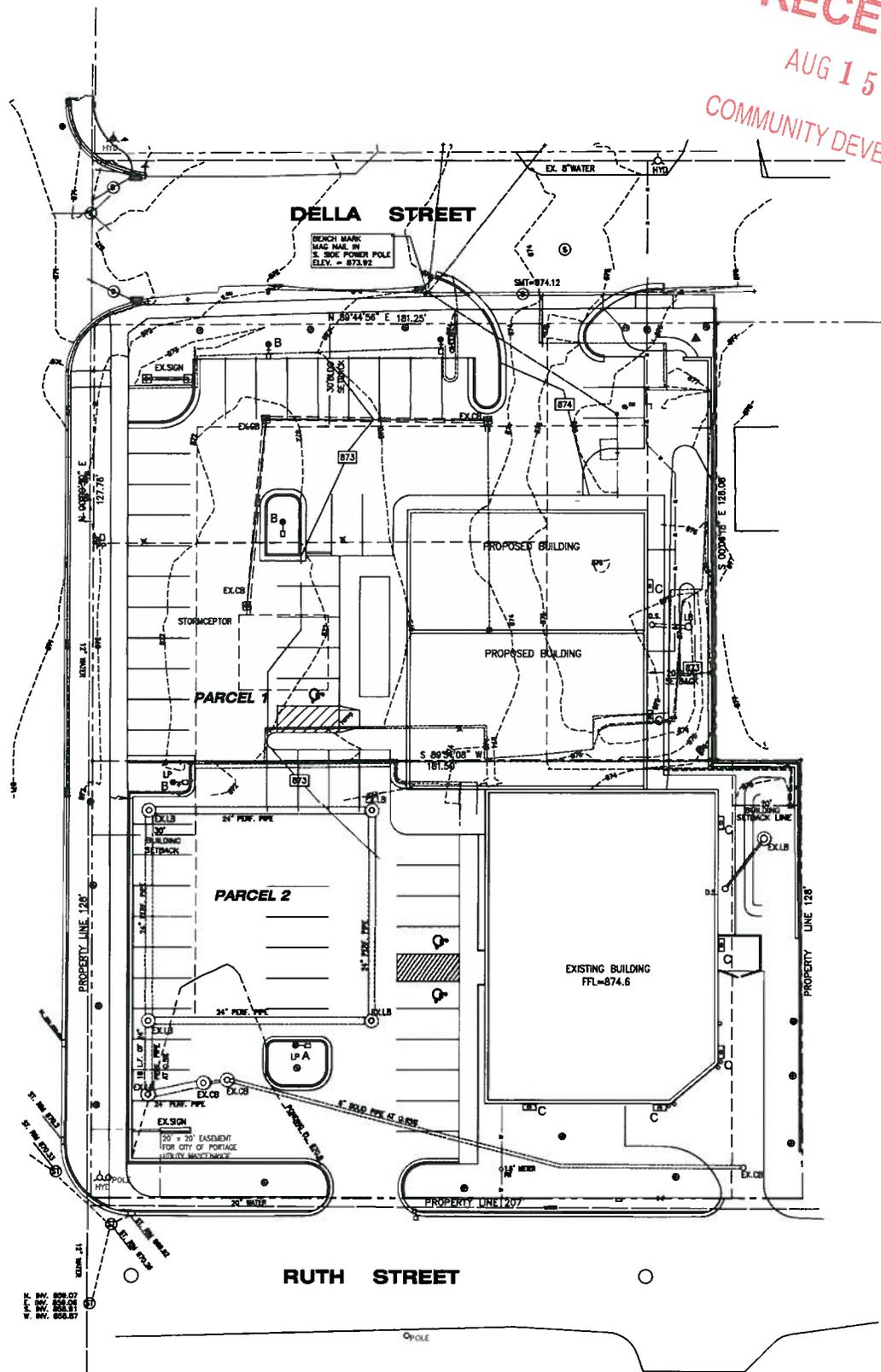
- During construction, T-Mobile froze their national expansion and backed out of their lease.
- When the building was ready for delivery to Allcare, Allcare notified Westnedge & Della that it was having financial difficulty and could not accept possession of the premises. This resulted in a protracted legal workout with Allcare.
- Hence, Westnedge & Della purchase from Allied Capital a “turnkey” investment that was fully tenanted with all governmental approvals in place and then ended up with a fully constructed and vacant building. We went from what was to be a successful investment to a distressed property.
- Eyemart expressed strong interest in the property at slightly lower economics than Allcare. Eyemart’s floor plan requirements necessitated reconfiguration of the Allcare space, which resulted in the funky “L” shaped premises, which is the subject of this application.
- Years of leasing effort and many rejections from traditional retailers (due to “L” shaped premises and economics) led Westnedge & Della back to the quest of a unique food user.

8. Spirit and Intent of the Ordinance. The parking variance is consistent with the spirit and intent of the Zoning Ordinance.

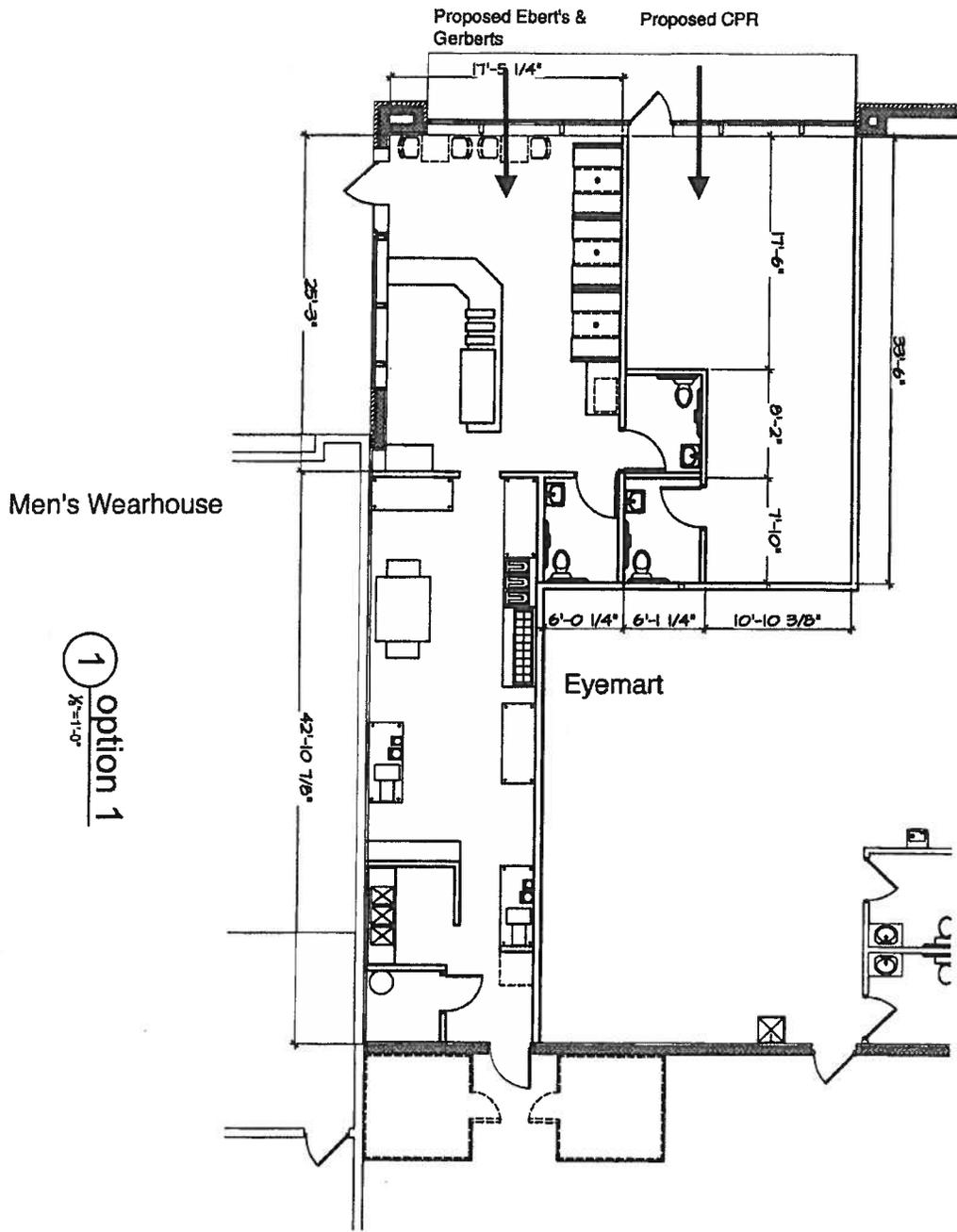
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AUG 15 2012
COMMUNITY DEVELOPMENT

WESTNEDGE AVENUE

WEST 1/4 POST
SECTION 10
T.3 S, R. 11 W



RUTH STREET



1
 1/8"=1'-0"
 option 1

SHEET NO. A-1	SHEET NAME OPTION 1 SCALE N.T.S. PROJECT NUMBER 122	DATE 0-15-12 DESIGNER Pepp's Group	PROJECT NAME PLAZA CORP REALTY INVESTORS Restaurant 10000	DATE 01/11/12 <small>This document and the subject matter and design contained therein is preliminary and is not to be used or reproduced without prior and specific written permission.</small>	M3 ARCHITECTS <small>10000 10000 10000</small>
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000000Parking at Peak Times

<u>Time</u>	Men's Wearhouse Lot	Eye-Mart Lot	Total	Total Space Available	Open Spaces
Thursday 7/26/2012					
5:00 P.M.	6	18	24	61	37
5:15 P.M.	8	19	27	61	34
5:30 P.M.	6	15	21	61	40
Friday 7/27/2012					
2:00 P.M.	4	16	20	61	41
2:15 P.M.	7	14	21	61	40
2:30 P.M.	6	17	23	61	38
Monday 7/31/2012					
12:00 P.M.	5	12	17	61	44
12:15 P.M.	8	11	19	61	42
12:30 P.M.	7	14	21	61	40
Wednesday 8/15/2012					
12:00 P.M.	3	9	12	61	49
12:15 P.M.	3	10	13	61	48
12:30 P.M.	4	14	18	61	43
Thursday 8/15/2012					
5:00 P.M.	13	15	28	61	33
5:15 P.M.	11	13	24	61	37
5:30 P.M.	11	14	25	61	36
Saturday 8/25/2012					
12:00 P.M.	12	17	29	61	32
12:15 P.M.	12	15	27	61	34
12:30 P.M.	13	14	27	61	34
Sunday 8/26/2012					
12:00 P.M.	14	0	14	61	47
12:15 P.M.	15	0	15	61	46
12:30 P.M.	13	0	13	61	48

**Westnedge & Della, LLC and Westnedge & Ruth, LLC
Required Parking Space Analysis**

Tenant	Use Category	Useable SF	Parking Spaces Required	
			E&G Takeout	E&G Restaurant
Erbert & Gerbert's ("E&G")		520	21	7
CPR	Retail	399	3	3
Men's Wearhouse	Retail	2972	20	20
Eyemart	Retail	1424	9	9
	Med Office	1171	12	12
Total Spaces Required Per Ordinance:			65	51
Total Parking Spaces on Combined Property"			61	59
Variance:			-4	+8

Parking Ratio:

Fast Food Takeout	1/25 SF
Fast Food Sitdown	1/75 SF
Retail	1/150 SF
Medical Office	1/100 SF



RECEIVED
AUG 22 2012
COMMUNITY DEVELOPMENT

August 13, 2012

Mr. Mike West
City of Portage
7900 South Westnedge Avenue
Portage, Michigan 49002

Re: Four (4) Parking Space Variance, 6503 South Westnedge Avenue, Portage, Michigan

Dear Mike:

PlazaCorp Realty Advisors, Inc., on behalf of Westnedge & Della, LLC and Westnedge & Ruth, LLC (Jeff Nicholson has common ownership between both LLC's), is requesting a four (4) parking space variance. The parking variance will enable Westnedge & Della, LLC., to transform the property from a negative cash flowing distressed asset to a profitable property (a substantial economic right) by tenating an "L" shaped 1,740 square foot space (this space has been vacant since construction in 2007). The proposed users for the "L" shaped space include the following:

1. **Erbert & Gerbert's Sandwich Shop.** Erbert & Gerbert's is a Wisconsin based soup and deli sandwich Franchise and this will be their first Michigan location. Approximately 60% of sales come from sit down patrons/delivery and the remaining 40% is takeout (this statistic was provided by the Franchisor).
2. **CPR (Cell Phone Repair).** CPR is a Georgia based Franchise that specializes in the repair of cell phone, iPhones, iPods, game systems, etc. This will be the first CPR to locate In Western Michigan.

There are two *exceptional circumstances* related to this request that are important to understand:

1. **Previous Property Owner.** Neither Westnedge & Della, LLC or Westnedge & Ruth, LLC created the practical difficulty that necessitates the parking variance. Allied Capital (through an affiliate entity) was the previous property owner and original developer for the property. Allied procured leases with Allcare Dental and T-Mobile and also procured City of Portage site plan approval for the property. Westnedge & Della purchased this "turnkey" investment opportunity from Allied. Things quickly went downhill after the purchase as elaborated in a chronology provided in Response No. 7 of the Application.

MANAGEMENT • DEVELOPMENT • BROKERAGE • LEASING

211 E. Water St., Ste. 201
Kalamazoo, Michigan 49007
Phone: (269) 383-5775
Fax: (269) 383-5774

PLAZACORP REALTY ADVISORS, INC.

www.PlazaCorp.net

506 West Church Street
Ozark, Missouri 65721
Phone: (417) 581-4374
Fax: (417) 581-4389

2. **Men's Wearhouse – Exceptional Parking Circumstances.** Men's Wearhouse is the sole tenant on the Westnedge & Ruth property. Westnedge & Ruth, LLC built the building for Men's Wearhouse in 1996. Men's Wearhouse extended the lease in 2011 for an additional 10 years with additional rights to renew/extend the term. The Zoning Ordinance requires 20 parking spaces; however, multiple parking counts (which were affirmed by Men's Wearhouse) demonstrate that no more than 10 cars (including employees) were in the Men's Wearhouse lot during peak times.

Men's Wearhouse does not use all of its required spaces and even during peak times, there is an average excess of 10 parking spaces. This provides an actual physical solution for all off-street parking needs for all users (existing and proposed) at the property. When you take into account that 60% of Ebert & Gerbert's business is sit down/delivery and take out (the take-out classification changes the required parking ratio from 1/75 SF to 1/25 SF) business accounts for the remaining 40% of sales, this further reduces the actual physical spaces needed for the restaurant. Thus, the parking variance is needed only to satisfy the Zoning Ordinance, the actual physical parking needs at the site are already met/satisfied.

Westnedge & Della, LLC and Westnedge & Ruth, LLC are currently managed by PlazaCorp. PlazaCorp manages approximately 800,000 square feet of self-developed retail, office and mixed-use properties with the heaviest proportion of these holdings in Western Michigan. PlazaCorp understands its Tenant's parking needs and carefully regulates off-street parking at all of its Property's. Plaza has communicated with Men's Wearhouse and Eyemart concerning the proposed variance and neither feels that it will be detrimental to their business. In the unlikely event that Men's Wearhouse vacates its space, PlazaCorp will target its re-tenanting efforts towards uses that would fall within the parking capacity at the Property.

Applicant respectfully requests the approval of the four (4) parking space variance based on: exceptional circumstances; the practical difficulty was not created by current Owner(s); the parking variance will not be detrimental to existing Tenants and adjacent property; the parking variance will enable Applicant to enjoy a substantial property right; and, all of this is within the intent and purpose of the Zoning Ordinance.

Sincerely,
PlazaCorp Realty Advisors, Inc.



Mark K. Chilcott
Vice President and
Authorized Agent

6425

117

Della St

S Westnedge Av

352

215

249

6503

122

EARLY HOME PARK

252

14155

6513

125

307

Ruth St

6525

Vicinity Map



TO: Zoning Board of Appeals **DATE:** August 31, 2012
FROM: Vicki Georgeau, ¹²Director of Community Development
SUBJECT: ZBA #12-08; PlazaCorp Realty Advisors, 6503 and 6513 South Westnedge Avenue; B-3, General Business

CODE SECTION: 42-520; Off-Street Parking and Loading; p. CD42:115
42-523(C)(2); Schedule of Off-Street Parking Requirements; p. CD 42:119-120

APPEAL: Requesting a variance of four parking spaces to allow 61 parking spaces where 65 parking spaces are required by the Zoning Code.

**STAFF RECOM-
MENDATION:**

The applicant has requested the variance per the enclosed application, supporting materials and site sketch. The 1.14 acre zoning lot is located along the east side of South Westnedge Avenue, between Della Street and Ruth Street, and is improved with an approximate 11,742 square foot commercial building (built in 1996 and 2008), off street parking, and associated improvements. The property is zoned B-3, general business.

Current tenancy within the building includes Men's Wearhouse, which has occupied the southern 6,002 square feet since 1996, and Eyemart Express, which occupies the northern 4,000 square feet. The remaining 1,742 square feet of this building has remained vacant since its construction in 2008. The applicant desires to lease this remaining vacant portion of the building to a restaurant tenant (Erbert & Gerbert's Sandwich Shop) and retail tenant (CPR – Cell Phone Repair). The Zoning Code requires 65 spaces for the existing/proposed tenants within the building (Men's Wearhouse = 20 spaces; Eyemart Express = 21 spaces; Ebert & Gerbert's = 21 spaces, CPR = 3 spaces). The applicant is proposing to provide a total of 61 parking spaces for the zoning lot.

The applicant indicates Men's Wearhouse is a specialized use that utilizes less parking than is required by the Zoning Code. Observations by the applicant and recent parking counts at the Men's Wearhouse site have indicated between 3-15 vehicles (including employee cars) are present at the site during peak hours. Additionally, the applicant anticipates the proposed restaurant tenant (Ebert & Gerbert's) will utilize less than the Zoning Code established 21 parking spaces given the estimated percentage of sit-down versus take-out patronage associated with the business. Given the characteristics of the existing and proposed tenants, the applicant indicates a total of 61 parking spaces is sufficient for the overall commercial building. With regard to the property characteristics in particular, the applicant indicates the remaining tenant space configuration presents a practical difficulty with regards to leasing. The applicant has indicated any future change in tenants will be evaluated based upon available parking at the site. Additionally, if parking demand exceeds projections, the applicant has indicated arrangements for off-site employee parking (on an adjacent commercial property) can be made.

Conforming alternatives to provide the four required parking spaces are feasible, but not practical due site operational characteristics. For example, two parking spaces could be located at the south end of the building, one at the north end of the building, and one additional space can be accommodated within the parking lot interior. However, this arrangement may adversely impact loading and refuse container areas on the north and south ends of the building, would require relocation of interior parking lot islands and necessitate the removal of existing trees. The variance involves a minimal reduction in the required parking (approximately 6%) and given the existing/proposed tenants, is not anticipated to create an adverse impact on adjacent properties. Finally, the variance will not materially impair the intent or purpose of the Zoning Code. Based on the above, the variance can be recommended, conditioned upon administrative review of parking requirements for future changes in tenancy for the zoning lot.

PRACTICAL

DIFFICULTY: Unique characteristics of initial development, parking needs of existing/proposed tenants.

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.**