



City of Fraser

Building & Code Enforcement Department

AGENDA

CITY OF FRASER ZONING BOARD OF APPEALS – (VIRTUAL MEETING)

MUNICIPAL BUILDING ~ 33000 GARFIELD ~ PHONE: 586-293-3100

THURSDAY MAY 6, 2021 at 7:00pm

1. **Call Meeting to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of Agenda**
5. **Approval of Minutes –**
 - a. **December 3, 2020**
6. **Formal Statement**
7. **Old Business**
8. **Public Hearings**

A. APPEAL #20-01: VARIANCE REQUEST / HAPPY'S PIZZA WALL SIGN

BY REASON OF: SECTION 32-85-2. D. OF THE FRASER ZONING ORDINANCE APPLIES TO WALL SIGNS IN THE GC GENERAL COMMERCIAL ZONING DISTRICT.

PURPOSE OF REQUEST: TO OBTAIN VARIANCES FROM ZONING ORDINANCE STANDARDS TO EXCEED THE BUILDING WALL SIGN ALLOWABLE AREA BY APPROXIMATELY 25.3 SQUARE FEET (57.3 SQUARE FEET REQUESTED; 32 SQUARE FEET ALLOWED) AND; TO EXCEED THE NUMBER OF ALLOWABLE WALL SIGNAGE (3 WALL SIGNS REQUESTED; 1 WALL SIGN ALLOWED).

PROPERTY IN QUESTION: 31896 GROESBECK HIGHWAY, FRASER MICHIGAN, 48026.

B. APPEAL #20-02: VARIANCE REQUEST / BEST TIRES WALL SIGN

BY REASON OF: SECTION 32-85-2.E. OF THE FRASER ZONING ORDINANCE APPLIES TO WALL SIGNS IN THE IC INDUSTRIAL CONTROLLED ZONING DISTRICT.

PURPOSE OF REQUEST: TO OBTAIN A VARIANCE FROM ZONING ORDINANCE STANDARD TO EXCEED THE BUILDING WALL SIGN ALLOWABLE AREA BY APPROXIMATELY 28 SQUARE FEET (60 SQUARE FEET REQUESTED; 32 SQUARE FEET ALLOWED).

PROPERTY IN QUESTION: 33733 GROESBECK HIGHWAY, FRASER MICHIGAN, 48026.

C. APPEAL #20-03: VARIANCE REQUEST / 34861 EBERLEIN DRIVE

SECTION NUMBER: SECTION 28-107 OF THE FRASER TRAFFIC AND VEHICLE CODE APPLIES TO PARKING COMMERCIAL VEHICLES IN RESIDENTIAL ZONING DISTRICTS; SECTION 28-109 PROVIDES AUTHORITY TO THE ZONING BOARD OF APPEALS TO GRANT VARIANCES UNDER CERTAIN CIRCUMSTANCES.



City of Fraser

Building & Code Enforcement Department

PURPOSE OF REQUEST: TO OBTAIN A VARIANCE FROM ORDINANCE STANDARDS TO PARK COMMERCIAL VEHICLE IN THE SIDE YARD OF RESIDENTIAL PROPERTY NOT IN AN ENCLOSED BUILDING.

PROPERTY IN QUESTION: 34861 EBERLEIN DRIVE, FRASER MICHIGAN, 48026

9. New Business

A. ELECTION OF OFFICERS

10. Unfinished Business

11. Planning Commission Liaison

12. Public to be Heard

13. Adjournment

The Michigan Department of Health and Human Services issued an order on March 19, 2021, that limits indoor gatherings at non-residential venues, and the Michigan Department of Labor and Economic Opportunity issued emergency rules regarding remote work by employees when feasible. In addition, the City of Fraser has declared a local state of emergency, due to the ongoing COVID-19 pandemic. To ensure against violating the indoor gathering restrictions, and in the interest of achieving the goal expressed in the MDHHS order and the MDLEO rules to protect the public health, particularly during a local state of emergency, the Fraser Zoning Board of Appeals will meet electronically on May 6, 2021 in accordance with the Open Meetings Act, using Zoom for videoconferencing and public access.

This notice is required to ensure that those wishing to observe and/or participate in the meeting have the opportunity to do so. The public can participate via the Zoom application, internet access via the Zoom website, and/or via telephone using the Zoom telephone number and meeting ID. The public will be able to hear Zoning Board of Appeals members and will be permitted to speak for up to five minutes during the public participation portion(s) of the agenda. Please note that callers/viewers will automatically be muted, and must remain muted until called upon to speak by the Chair. Written comments will be accepted prior to the date and time (no later than 4:30pm on the day of the meeting) by the Building Department at zoning@micityoffraser.com, which is the method by which members of the public may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting. Public Hearing comments will be heard during any Public Hearing that is conducted during the meeting, and other comments will be heard or reviewed during public participation. In the event of a change in the status of statewide or local states of emergency, the Zoning Board of Appeals meeting may be changed from a remote meeting to a live in-person meeting to be held at Fraser City Hall, 33000 Garfield Road, Fraser, MI 48026, on the same date and at the same time. The City will post notice of any change in method of conducting the meeting from a remote meeting to an in-person live meeting, and/or any change in the meeting place for this meeting, to the City's website at www.ci.fraser.mi.us. Interested parties should periodically check for such changes or contact the City Clerk's Office at (586) 293-3100.



City of Fraser

Building & Code Enforcement Department

Pertinent information relating to the proposed variance requests may be reviewed at the Fraser Building Department during regular business hours which are 8:00 a.m. to 4:30 p.m., Monday through Friday at the Fraser City Hall, 33000 Garfield Road, Fraser, Michigan. Questions regarding the appeals can be directed to the Planner, c/o Building Department at 586-293-3100, extension 154. Written comments may be submitted to the Fraser Building Department at 33000 Garfield Road, Fraser, Michigan 48026, or by email to the Building Department at zoning@micityoffraser.com up to 4:30 p.m. of the meeting date.

ZOOM MEETING DETAILS

Topic: Zoning Board of Appeals Meeting

Time: May 6, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/82058913745>

Meeting ID: 820 5891 3745

Passcode: 768215

One tap mobile

+19292056099,,82058913745# US (New York)

+13017158592,,82058913745# US (Washington DC)

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 820 5891 3745

Find your local number: <https://us02web.zoom.us/j/82058913745>

**CITY OF FRASER, MICHIGAN
ZONING BOARD OF APPEALS
THURSDAY, December 3, 2020 – 7:00PM
MINUTES DRAFT**

Present: Chairman Stimac; Members: Chimenti, Farina, Hunt, Logan, Menendez

Excused Absence: Member Burley

Also Present: Alyssa Albright, City Attorney (O'Reilly Rancilio)
Dylan Church, City Attorney (O'Reilly Rancilio)
Donald DeNault, City Attorney (O'Reilly Rancilio)
Danielle Bouchard, City Planner (McKenna)
Sarah Traxler, City Planner (McKenna)

1. Call Meeting to Order

Chairman Stimac called the meeting to order at 7:04 PM

2. Pledge of Allegiance

3. Roll Call	Chairman	Stimac	Present
	Members:	Burley	Absent
		Chimenti	Present
		Farina	Present
		Hunt	Present
		Logan	Present
		Menendez	Present

4. Approval of Agenda as presented - Regular Meeting of Thursday, December 3, 2020

Motion by Member: MENENDEZ (TO APPROVE) **Support by Member:** HUNT

To: Approve the agenda of December 3, 2020 as presented.

AYES 6 NAYS 0 MOTION CARRIED.

5. Approval of Minutes as amended – August 6, 2020

Motion by Member: FARINA (APPROVE) **Support by Member:** LOGAN

To: Approve the August 6, 2020 minutes as amended.

AYES 6 NAYS 0 MOTION CARRIED.

6. Formal Statement: Chairman Stimac gave a formal statement relative to the powers of the Zoning Board of Appeals and the facts and conditions for granting appeals.

7. Public Hearings: None.

8. New Business:

A. Approval of the 2021 Zoning Board of Appeals Meeting Calendar.

To: Approve the 2021 Zoning Board of Appeals Meeting Calendar as printed.

AYES 6 NAYS 0 MOTION CARRIED.

**CITY OF FRASER, MICHIGAN
ZONING BOARD OF APPEALS
THURSDAY, December 3, 2020 – 7:00PM
MINUTES DRAFT**

B. Zoning Board of Appeals Recommendation of Appointments (Hunt and Logan).

To: Recommend that City Council reappoint Members HUNT and LOGAN to the City of Fraser Zoning Board of Appeals for a term to expire on December 31, 2023.

AYES 6 NAYS 0 MOTION CARRIED.

9. Unfinished Business. None.

10. Planning Commission Liaison

FARINA noted that the City of Fraser Planning Commission held a meeting on Wednesday, December 2, 2020. The main topic of discussion at the meeting was the City of Fraser 2020 Master Plan. FARINA suggested that if ZBA Members are interested in attending a small group meeting to discuss the Master Plan to contact TRAXLER for details.

11. Public to be Heard: None.

12. Adjournment

Motion by Member: MENENDEZ (TO ADJOURN) **Support by Member:** FARINA

To: Adjourn the meeting on December 3, 2020 at 7:30 pm.

AYES 6 NAYS 0 MOTION CARRIED.

ZBA Secretary, Rosanne Menendez

Recording Secretary, Danielle Bouchard, Associate Planner, McKenna

Appeal #20-01:

Variance Request, Happy's Pizza Wall Sign
31896 Groesbeck Hwy.



April 26, 2021

Hon. Members of the Zoning Board of Appeals
City of Fraser
33000 Garfield Road
Fraser, Michigan 48026

SUBJECT: ZBA REPORT

#21-01 VARIANCE REQUEST / HAPPY'S PIZZA WALL SIGNAGE

APPLICANT: GLOBAL SIGNS ON BEHALF OF HAPPY'S PIZZA

SECTION: SECTION 32-85-2. D. OF THE FRASER ZONING ORDINANCE APPLIES TO WALL SIGNS IN THE GC GENERAL COMMERCIAL ZONING DISTRICT.

LOCATION: 31896 GROESBECK, FRASER MICHIGAN, 48026.

REQUEST: TO OBTAIN VARIANCES FROM ZONING ORDINANCE STANDARDS INCLUDING:

TO EXCEED THE BUILDING WALL SIGN ALLOWABLE AREA BY APPROXIMATELY 25.3 SQUARE FEET (57.3 SQUARE FEET REQUESTED; 32 SQUARE FEET ALLOWED) AND;

TO EXCEED THE NUMBER OF ALLOWABLE WALL SIGNAGE (3 WALL SIGNS REQUESTED; 1 WALL SIGN ALLOWED).

Dear Members of the Zoning Board of Appeals:

We have reviewed the above referenced application for a sign permit, and – as it does not meet the requirements of the code – have prepared the following report, which identifies the relevant facts about the property and the proposal. The report also provides our professional opinion about how the relevant sections of the ordinance that guide the ZBA's decisions apply to this requested variance.

VARIANCE REQUEST SUMMARY

Happy's Pizza, located at 31896 Groesbeck Highway (southeast corner of Groesbeck and Masonic in a multi-tenant building), is proposing to:

1. North Façade: Add an additional logo wall sign of approximately 9.8 square feet in size to the front of their tenant space (see sign #1 on the diagram page 2). The logo wall sign is proposed to be placed adjacent to the previously approved business identification wall sign.
2. West Façade: Construct an additional logo wall sign (sign #2 on the diagram) of approximately 9.8 square feet in size and a business wall sign (sign #3 on the diagram) of approximately 47.5 square feet in size to the west side of their tenant space fronting Groesbeck Highway.

The total amount of requested square footage for the additional signage is approximately 57.3 square feet. In the GC, General Commercial District, a total of 32 square feet is permitted. Therefore, the applicant is requesting an exception to Section 32-85.2.b.2 of the City's Zoning Ordinance by a total of 25.3 square feet.

HEADQUARTERS

235 East Main Street
Suite 105
Northville, Michigan 48167

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F 248.596.0930
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Further, Section 32-85.S specifies that tenants in the GC District are permitted one wall sign; there is currently one wall sign already in place. With the proposed addition of the logo on the north building face, as well as the proposed logo and business identification sign on the west building face, Happy's Pizza is requesting a total of three additional wall signs – which, combined with the one existing sign, would total four wall signs if approved. Thus, the applicant is requesting to three non-permitted wall signs).

ADMINISTRATIVE FACT STATEMENTS

The subject Happy's Pizza site is located in a multi-tenant commercial development that sits at the southeast corner at the Groesbeck Highway and Masonic Road intersection. The applicant proposes three (3) additional wall signs for Happy's Pizza. The signs are proposed for the north and west building elevations.

ZONING BOARD OF APPEALS VARIANCES AND BOARD ACTION RESTRICTIONS

The ZBA is a body of limited powers. §32-228 explains how Fraser administers variance requests. Where there are practical difficulties or unnecessary hardships in the way of enforcing the zoning ordinance, the ZBA may grant appeals to vary or modify any zoning provisions that apply to dimensional standards like construction, structural changes in equipment, or alteration of buildings or structures. The ZBA's actions must uphold the zoning ordinance, secure public safety, and provide substantial justice for all property owners.

The ZBA must consider whether the property in question exhibits practical difficulty, like geographical or topographical conditions that impair its improvements without the modifications requested.

*The ZBA must find evidence of EACH of the following facts in §32-228(a)(2) to grant a variance. Our comments related to the proposal follow each clause in **bold**.*



Figure 1 - Aerial view of development requesting the wall sign variances. RED arrows indicate facades proposed for wall signs.

- a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question or as to the intended use of the property that do not apply generally to other properties in the same zoning district.

The subject site is located on a corner lot. None of the standards in Section 32-85 (d) permit extra signage for corner lots. However – for context – corner lots zoned Community Business District are permitted to have two (2) wall signs which would allow additional wall signs. If approved, the proposed sign variance application for the subject site would result in a total of four wall signs.



- b. That such variance is necessary for the preservation and enjoyment of a substantial property right like that possessed by other properties in the same vicinity. The possibility of increased financial return shall not of itself be deemed enough to warrant a variance.

The variance could be argued as necessary for the preservation and enjoyment of a substantial property right like that possessed by other properties in the same vicinity. However, it should be noted that other nearby properties zoned CG along Groesbeck Highway appear to have signage located solely on the front of the building. In most cases, buildings zoned CG within the same vicinity are front-facing to Groesbeck Highway, and therefore side-facing signage is likely not necessary for those sites.

- c. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this chapter or the public interest.

The authorizing of such variances will likely not be of substantial detriment to adjacent properties. Specifically, the Zoning Board of Appeals may consider light and visual impacts of the subject proposal.

- d. That the conditions or situation of the specific piece of property, or the intended use of the property for which the variance is sought, is not of so general or recurrent in nature as to create a general rule for such condition or situation.

The situation could be applicable for other corner lots in the CG Commercial General Zoning District.

- e. That the modification to setback, location, site or building requirements is sponsored by the Planning Commission for a specific proposal that benefits the City by providing better design or efficient use of the site or results in a more creative development (all fees to be paid by the applicant).

The Planning Commission did not sponsor this proposal as a part of a site plan and/or special land use approval.

- f. That phasing of required site plan improvements may be warranted because the cost of such improvements is relatively high in relation to the total cost of the applicant's development or addition. Planning Commission recommendations shall be required, together with a financial security in the amount of the deferred improvements.

The applicant cannot meet the zoning ordinance's standards through phasing or deferment; therefore, the scenario in subsection f. does not apply.



CONCLUSIONS

Given the application review as noted above, McKenna recommends the following criteria to be taken into consideration:

1. If approved, the amount of wall signage located on the subject site will exceed the permitted number of wall signs per the CG District. Currently, the CG District permits one (1) wall sign per tenant space. The proposed variance will result in a total of four (4) wall signs.
2. If approved, the resulting wall signage would exceed the permitted square footage requirement for the CG District by approximately 25.3 square feet.

Please let me know if you have any questions. We will attend the ZBA meeting on May 6, 2021.

Respectfully,

Danielle Bouchard
Senior Planner

Cc: Applicants
City Manager
Building Official
City Attorneys



CITY OF FRASER
APPLICATION FOR APPEAL
ZONING BOARD OF APPEALS

Office Use Only

APPEAL # _____

DATE OF MTG. _____

DATE REC'D _____

RECEIPT #: _____

CIRCLE ALL THAT APPLY:

VARIANCE

APPEAL

TEMPORARY

INTERPRETATION

GENERAL LOCATION OF PROPERTY:

ADDRESS 31896 Grosbeck Rd CROSS STREETS: _____

LEGAL DESCRIPTION (Lot number, subdivision, metes/bounds or attach on a separate sheet):

Pizzeria

BASIS FOR REQUEST: (Hardship or practical difficulty imposed by Ordinance):

SECTION OR ORDINANCE INVOLVED: Sec. 32-85

ZONING DISTRICT OF PROPERTY: General Business District

APPLICANT

NAME AND ADDRESSES OF PARTIES OF INTEREST AND/OR APPLICANT SETTING FORTH THE LEGAL INTEREST IN SAID PREMISES:

APPLICANT: Global Signs & Awning

ADDRESS: 22907 Deguindre Rd

PHONE: (248) 658-0780 INTEREST: Contractor

APPLICANT: _____

ADDRESS: _____

I (We) hereby request a hearing on the above-mentioned matter before the City of Fraser Zoning board of Appeals. The undersigned swear(s) the foregoing statements and answers herein contained and accompanied information and data are in all respects true and complete. I (we) grant permission to Members of the Zoning Board of Appeals and to the City of Fraser Administration to enter the land in order to view the outside premises in preparation for hearing our case.

Signature of Applicant: Axel Sitto Date: 3-5-21

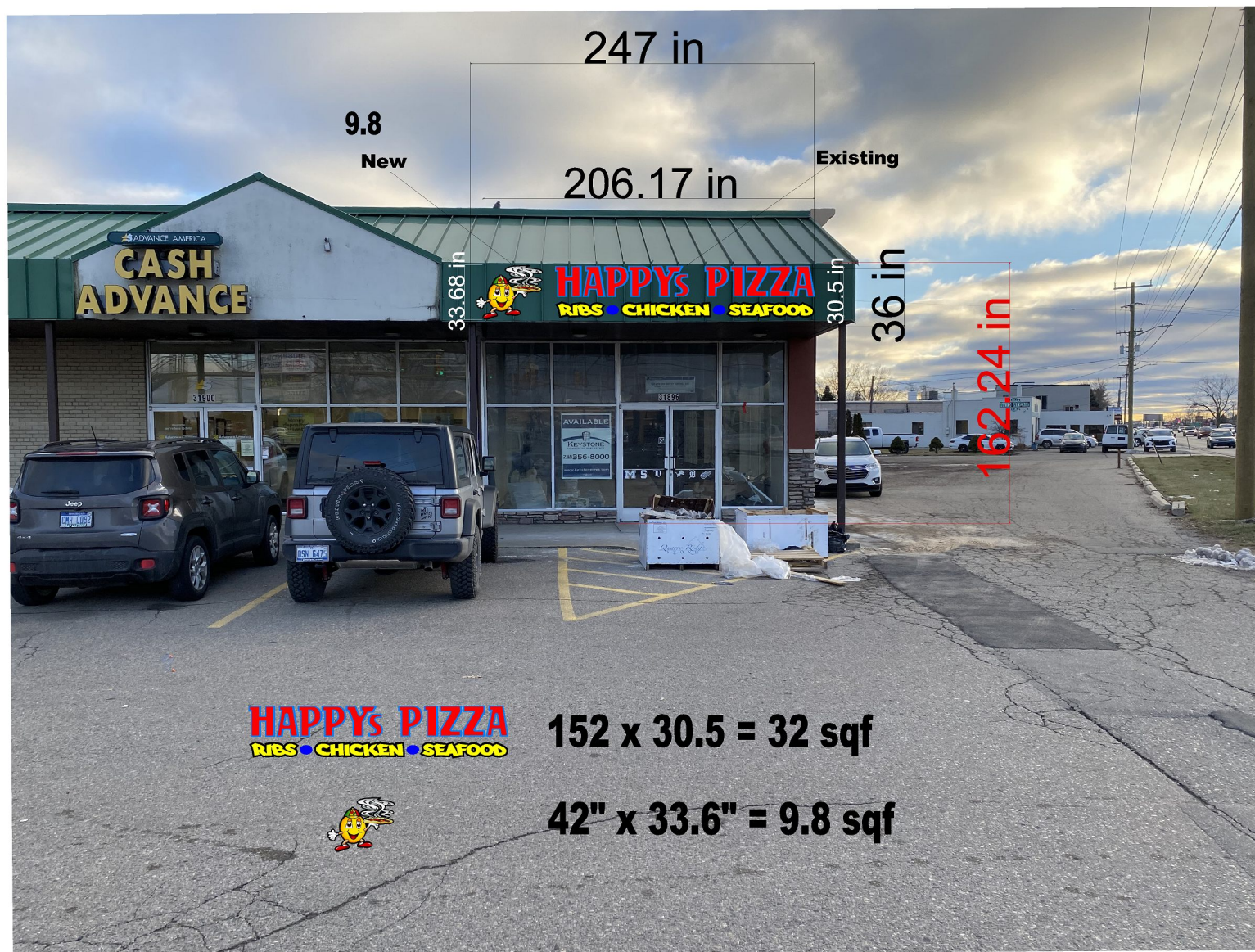
Signature of legal property owner (if not applicant): Happy Asfar Date: 3-5-21

Global signs & Awning
22907 Dequindre rd
Hazel Park, MI 48030

To Whom it may concerns,

We global signs and awning contractors for Happy's pizza located at 31896 Grosebeck requesting a variance of adding a logo of our business next to the wall sign over the front entrance as an additional to the existing and also a 2nd sign on the side of the building to improve our business in which is very hard for people to find us driving north on grosebeck, we appreciate your help in advance .

Best Regards,
Eddie Sitto - contractor



6" x 1/2"
Toggle bolts (butterfly)

Dibond
back

Raceway

Acrylic Face

LED illumination

Power Supply

1" Trim Jewlite

0.40 Channel Coil Aluminum

Wall

Sign Area: 32 sq ft

SIGN SPECS

- White Plexiglass faces w/ Vinyl
- .040mil Black aluminum letter sides
- 1" Trim (Jewlite)
- 1/8" dibond letter backing
- Light source: LED



Project: Happys Pizza

Address: 31896 Grosbeck Rd

**Customer
Approval:**

Date: 1-13-21

**Tel: (248) 658-0780
Fax: (248) 658-0781**

globalsigns1@yahoo.com

www.globalsignsandawnings.com

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BONDED - INSURED - LICENSED



Toggle bolts (butterfly)

6" x 1/2" Every 30"

Dibond
back

Raceway

Acrylic Face

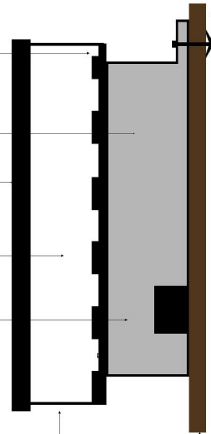
LED illumination

Power Supply

1" Trim Jewlite

0.40 Channel Coil Aluminum

Wall



Sign Area: 47.5 sq ft

SIGN SPECS

- White Plexiglass faces w/ Vinyl
- .040mil Black aluminum letter sides
- 1" Trim (Jewlite)
- 1/8" dibond letter backing
- Light source: LED

Project: Happy's Pizza

Address: 31896 Grosebeck

Customer
Approval:

Date: 3-5-21

Tel: (248) 658-0780
Fax: (248) 658-0781

globalsigns1@yahoo.com

www.globalsignsandawnings.com

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BONDED - INSURED - LICENSED



Building

Grosebeck Ave

107

Appeal #20-02:

Variance Request, Best Tires
33733 Groesbeck Hwy.



MCKENNA

April 27, 2021

Hon. Members of the Zoning Board of Appeals
City of Fraser
33000 Garfield Road
Fraser, Michigan 48026

SUBJECT: ZBA REPORT

#21-02 VARIANCE REQUEST / BEST TIRES WALL SIGNAGE

APPLICANT: NEW GENERATION SIGNS ON BEHALF OF BEST TIRES

**SECTION: SECTION 32-85-2.B. AND SECTION 32-85-2.E. OF THE FRASER ZONING ORDINANCE
APPLY TO WALL SIGNS IN THE IC INDUSTRIAL CONTROLLED ZONING DISTRICT.**

LOCATION: 33733 GROESBECK, FRASER MICHIGAN, 48026

**REQUEST: TO OBTAIN A VARIANCE FROM ZONING ORDINANCE STANDARDS, SPECIFICALLY:
TO EXCEED THE BUILDING WALL SIGN ALLOWABLE AREA BY APPROXIMATELY 28
SQUARE FEET (60 SQUARE FEET REQUESTED; 32 SQUARE FEET ALLOWED)**

Dear Members of the Zoning Board of Appeals:

We have reviewed the above referenced application for a sign permit, and – as it does not meet the requirements of the code - have prepared the following report. The report identifies the relevant facts about the property and the proposal. The report also provides our professional opinion about how the relevant sections of the ordinance that guide the ZBA's decisions apply to this requested variance.

VARIANCE REQUEST SUMMARY

Best Tires, located at 33733 Groesbeck Highway is proposing to:

1. Mount a 60 square foot wall sign on the east façade of their tenant space fronting Groesbeck Highway.

The total amount of requested square footage for the wall sign is approximately 60 square feet (15' x 4'). Best Tires is located within the IC, Industrial Controlled District, but is subject to the sign code's standards for "*Office and Neighborhood Commercial Districts*".

Section 32-85-2.B notes that a total of 32 square feet is permitted for a wall sign located on a tenant space within the office or neighborhood commercial districts. Therefore, Best Tires is requesting a variance of 28 square feet.

ADMINISTRATIVE FACT STATEMENTS

The site on which the applicant operates their business is located on Groesbeck Highway near the intersection of Groesbeck Highway and Kelly Road in a multi-tenant building, shared with FinishMaster Incorporated. The front of the building faces Groesbeck Highway and the Best Tires spaces includes approximately 45 feet of storefront width (the whole building is approximately 78 feet wide).

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235 East Main Street
Suite 105
Northville, Michigan 48167

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ZONING BOARD OF APPEALS VARIANCES AND BOARD ACTION RESTRICTIONS

The ZBA is a body of limited powers. §32-228 explains how Fraser administers variance requests. Where there are practical difficulties or unnecessary hardships in the way of enforcing the zoning ordinance, the ZBA may grant appeals to vary or modify zoning provisions that apply to dimensional standards.

The ZBA's actions must uphold the zoning ordinance, secure public safety, and provide substantial justice for all property owners. The ZBA must consider whether the property in question has practical difficulty, like geographical or topographical conditions that impair its improvements without the modifications requested.



The ZBA must find evidence of EACH of the following facts in §32-228(a)(2) to grant a variance.

Our comments related to the proposal follow each clause in **bold**.

- a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question or as to the intended use of the property that do not apply generally to other properties in the same zoning district.

Prior to this review, the applicant mounted the non-compliant wall sign on the building. The subject site is not located on a corner lot and appears to be similarly situated to other properties along the Groesbeck Highway corridor.

- b. That such variance is necessary for the preservation and enjoyment of a substantial property right like that possessed by other properties in the same vicinity. The possibility of increased financial return shall not of itself be deemed enough to warrant a variance.

Other properties surrounding the subject site are largely zoned IR, Industrial Restricted or IC, Industrial Controlled. A small area of several parcels located at the south corner of Groesbeck Highway and Kelly Road – across the street from the subject site – are zoned CG, Commercial General. The three parcels zoned CG across Groesbeck Highway from the subject site do not have any wall mounted signage. However, it should be noted that the adjoining FinishMaster tenant space includes a wall mounted sign on the building fronting Groesbeck Highway.



- c. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this chapter or the public interest.

The authorizing of such variances will likely not be of substantial detriment to adjacent properties. Specifically, the Zoning Board of Appeals may consider light and visual impacts of the subject proposal.

- d. That the conditions or situation of the specific piece of property, or the intended use of the property for which the variance is sought, is not of so general or recurrent in nature as to create a general rule for such condition or situation.

The situation could be applicable for other corner industrially-zoned lots with commercial uses.

- e. That the modification to setback, location, site or building requirements is sponsored by the Planning Commission for a specific proposal that benefits the City by providing better design or efficient use of the site or results in a more creative development (all fees to be paid by the applicant).

The Planning Commission did not sponsor this proposal as a part of a site plan and/or special land use approval.

- f. That phasing of required site plan improvements may be warranted because the cost of such improvements is relatively high in relation to the total cost of the applicant's development or addition. Planning Commission recommendations shall be required, together with a financial security in the amount of the deferred improvements.

The applicant cannot meet the zoning ordinance's standards through phasing or deferment; therefore, the scenario in subsection f. does not apply.

CONCLUSIONS

Given the application review as noted above, McKenna recommends the following criteria to be taken into consideration:

1. If approved, the amount of wall signage located on the subject site will exceed the permitted square footage allotted for tenant spaces by approximately 28 square feet (32 square feet allowed, 60 square feet requested).

Please let me know if you have any questions. We will attend the ZBA meeting on May 6, 2021.

Respectfully,

Danielle Bouchard
Senior Planner

Cc: Applicant
City Manager
Building Official
City Attorneys

Property Information

Address: 33733 GROESBECK

[Related...](#) Parcel Number: 03-11-32-427-003

Owner: ARTHURS. JOHN

[1. Permit Summary](#)

[2. Applicant Information](#)

[3. Application Names](#)

[4. Estimated Fees](#)

[5. Messages \(0\)](#)

[6. Attached Documents](#)

[7. Disclaimers](#)

Applicant Information

Applicant: NEW GENERATION SIGN [View Applicant](#)

Address: 11391 E. 8 MILE RD

City/State/Zip: WARREN, MI 48089

Phone: (586) 759 5706

Contractor Information

Contractor: NEW GENERATION SIGN [View Contractor](#)

Federal ID:

Licensee:

Insurance Carrier:

[Update Contractor's
Insurance Information](#)

Insurance Policy Number:

Date Insured:

Date Insurance Expires:

Contact Information

Contact: Steve Rayes

Email: mark@isignsmich.com

Phone: 5867595706

Web Username: ngs

Parcel Owner: ARTHURS. JOHN

Property Information

Address: [33733 GROESBECK](#)

[Related...](#) Parcel Number: [03-11-32-427-003](#)

Owner: [ARTHURS. JOHN](#)

[1. Permit Summary](#)

[2. Applicant Information](#)

[3. Application Names](#)

[4. Estimated Fees](#)

[5. Messages \(0\)](#)

[6. Attached Documents](#)

[7. Disclaimers](#)

Property and Permit Details

Property Address: [33733 GROESBECK](#) Owner Name: [ARTHURS. JOHN](#)

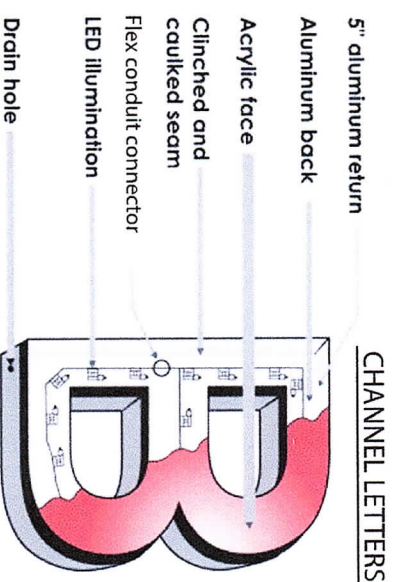
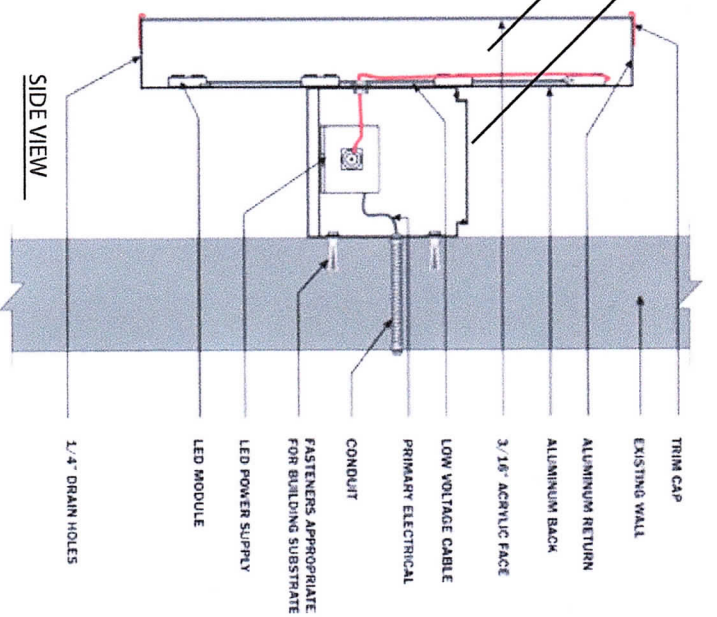
Parcel Number: [03-11-32-427-003](#) Permit Type: [Zoning](#)

Permit Details: [<Click here...>](#) Project: [<None>](#)

Work Description

Requesting a Variance for a 60 sq ft. Wall Sign for Best Tires at a Industrial Zoned Building Site. The Wall Sign is comparably sized to FinishMaster on the same Wall. same Wall Elevation.

5" Raceway Depth
5" Channel Depth



BUILDING HEIGHT - 20'
BUILDING WIDTH - 45'

SIGN CLEARANCE - 15'
SIGN SQ.FT - 60

FAST SIGNS

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248-602-3702

www.fastsigns.com/2099

2099 @fastsigns.com

3957 Baldwin Rd.

Auburn Hills, MI 48326

PROJECT NAME BEST TIRES DATE 10/05/2020
PROJECT LOCATION 33733 Groesbeck Hwy, Fraser, MI 48026

CLIENT APPROVAL _____
LANDLORD APPROVAL _____



Appeal #20-03:

Variance Request, Commercial Vehicle
34861 Eberlein Drive



MCKENNA

April 27, 2021

Hon. Members of the Zoning Board of Appeals
City of Fraser
33000 Garfield Road
Fraser, Michigan 48026

SUBJECT: ZBA REPORT

#21-03 VARIANCE REQUEST / 34861 EBERLEIN DRIVE COMMERCIAL VEHICLE PARKING

APPLICANT: JOSEPH A. DEPERRO III, RESIDENT OF 34861 EBERLEIN DRIVE

**SECTION: SECTION 28-107 OF THE FRASER CODE OF ORDINANCES APPLIES TO PARKING
COMMERCIAL VEHICLES IN RESIDENTIAL ZONING DISTRICTS**

LOCATION: 34861 EBERLEIN DRIVE, FRASER MICHIGAN, 48026

REQUEST: TO OBTAIN A VARIANCE FROM CODE STANDARDS, SPECIFICALLY:

**TO PARK A COMMERCIAL VEHICLE IN THE SIDE YARD OF RESIDENTIAL HOME IN AN
UNENCLOSED STRUCTURE**

Dear Members of the Zoning Board of Appeals:

We reviewed the above referenced application and prepared the following report. The report identifies the relevant facts about the property and the proposal. The report also provides our professional opinion about how the relevant sections of the ordinance that guide the ZBA's decisions apply to this requested variance.

VARIANCE REQUEST SUMMARY

The applicant, a resident of the property located at 36861 Eberlein Drive, is proposing to:

1. Park a commercial vehicle in the side yard of their residential home in an unenclosed structure.

The applicant received a code violation for parking a commercial vehicle in the side yard of the residential property facing Eberlein Drive. Section 28-107(b) of the City of Fraser Zoning Ordinance states "...no person shall park or store any commercial vehicle or equipment on private property in a residential district other than in an enclosed building."

ADMINISTRATIVE FACT STATEMENTS

The subject site is zoned RM, Residential Medium-One Family. In general, the property is located south of 15 Mile Road just east of the Hayes Road and 15 Mile Road intersection. The home is located on a residential neighborhood street with a cul-de-sac between Hayes Road and Hidden Pine Drive.

HEADQUARTERS

235 East Main Street
Suite 105
Northville, Michigan 48167

O 248.596.0920
F 248.596.0930
MCKA.COM

Communities for real life.



ZONING BOARD OF APPEALS VARIANCES AND BOARD ACTION RESTRICTIONS

The ZBA is a body of limited powers. In this case, Section 28-109 designates that the Zoning Board of Appeals has the power to grant a variance from the standards of Article VII, "Commercial Vehicles and Commercial Equipment", which includes the above-referenced prohibition concerning commercial vehicles and equipment on private properties within residential districts. Specifically, the evaluation criteria that are provided state that

"The requirements of this article may be modified or varied by the zoning board of appeals of the city provided evidence is presented establishing that because of topography or other physical conditions of the property not caused by the applicant, enforcement of the provisions hereunder would create unusual or undue hardship."

Thus, the must find evidence of one of the following facts to grant a variance.

Our comments related to the proposal follow each clause in **bold**.

- a. That evidence has been presented establishing that a topographic characteristic of the property not caused by the applicant exists, thereby creating unusual or undue hardship were the subject provisions enforced.



No evidence related to topography has been presented.

- b. That evidence has been presented establishing that physical conditions of the property not caused by the applicant exist, thereby creating unusual or undue hardship were the subject provisions enforced.

The applicant has supplied statements related to the building on the subject site being too small to house the commercial vehicle, but no evidence related to physical conditions of the property itself have been presented.



CONCLUSIONS

Given the application review as noted above, McKenna recommends the following criteria to be taken into consideration:

1. If approved, the applicant would be permitted to park/store their commercial vehicle on the side yard of their residential property located in the RM District.

Please let me know if you have any questions. We will attend the ZBA meeting on May 6, 2021.

Respectfully,

Danielle Bouchard
Senior Planner

Cc: Applicant
City Manager
Building Official
City Attorneys



**CITY OF FRASER
APPLICATION FOR APPEAL
ZONING BOARD OF APPEALS**

Office Use Only

APPEAL # _____

DATE OF MTG. _____

DATE REC'D _____

RECEIPT #: _____

CIRCLE ALL THAT APPLY:

VARIANCE

APPEAL

TEMPORARY

INTERPRETATION

GENERAL LOCATION OF PROPERTY:

ADDRESS 34861 Eberlein Dr CROSS STREETS: 15 mile + Hayso

LEGAL DESCRIPTION (Lot number, subdivision, metes/bounds or attach on a separate sheet):

Whispering Pines Sub, Lot 18. L 124 P 29-30

BASIS FOR REQUEST: (Hardship or practical difficulty imposed by Ordinance):

Hardship + practical difficulty

SECTION OR ORDINANCE INVOLVED: Article VII Section 28-107

ZONING DISTRICT OF PROPERTY: Residential

APPLICANT

NAME AND ADDRESSES OF PARTIES OF INTEREST AND/OR APPLICANT SETTING FORTH THE LEGAL INTEREST IN SAID PREMISES:

APPLICANT: Joseph A. DePerio III

ADDRESS: 34861 Eberlein Dr

PHONE: 313-236-2146 INTEREST: _____

APPLICANT: _____

ADDRESS: _____

I (We) hereby request a hearing on the above-mentioned matter before the City of Fraser Zoning board of Appeals. The undersigned swear(s) the foregoing statements and answers herein contained and accompanied information and data are in all respects true and complete. I (we) grant permission to Members of the Zoning Board of Appeals and to the City of Fraser Administration to enter the land in order to view the outside premises in preparation for hearing our case.

Signature of Applicant: [Signature] Date: 3/29/21

Signature of legal property owner (if not applicant): _____ Date: _____

Joseph A. DePerro III

34861 Eberlein Dr.
Fraser, MI 48026
(313) 236-2146
joedeperro@yahoo.com

March 30, 2021

City of Fraser-Zoning Board of Appeals

33000 Garfield Rd.
Fraser, MI 48026

To Whom It May Concern,

I am writing to you today regarding the ordinance of commercial vehicle storage on private property within the city of Fraser.
(ARTICLE VII. - COMMERCIAL VEHICLES AND COMMERCIAL EQUIPMENT
,Sec. 28-107)

(I am employed by Rotor Electric of Michigan and am required to use a commercial work van for my position and responsibilities with the company. My role within the company requires me to be able to leave with little notice at times to respond to emergency electrical situations for critical infrastructure. The work van also stores the equipment necessary for me to perform my job on a daily basis. I have measured our garage and also my work van, unfortunately the work van does not fit in an enclosed area required by the ordinance. Not being able to have my work van on my private property presents a major problem for the livelihood of my family and would cause unnecessary hardship for our family as well as practical difficulty on a daily basis. If I am unable to keep the work van on my property I am in the position to not perform my responsibilities within my employer and therefore may lose unemployment. My position within Rotor Electric depends on the access of my work van.

I am requesting the Zoning Board to please review the documentation provided and presented and ultimately grant a variance that would allow for my work van to be stored on my private property at 34861 Eberlein Dr. I will not park or store the van on the street.

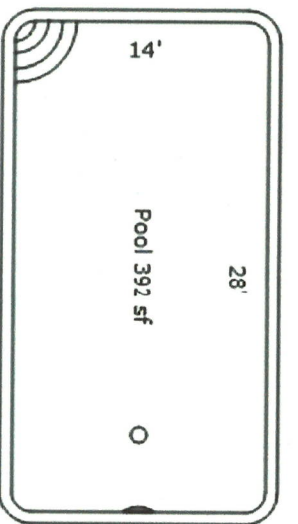
Sincerely,

Joseph A. DePerro III

Shed
64.0 sf

34861 EBERLEIN, FRASER, MI
03-11-101-013

ork
hicle is
rked on
ncreate



Conc Slab
913 sf

45'

50'

Conc Slab
650.0 sf

OH 1/STY
18.0 sf

2.2' 7.0'

PAVERS
360.0 sf

15'

15'

26.0'

17.0'

1s FR/B
607.0 sf

37.0'

1 STY/BSMT
608.0 sf
Cathedral Ceiling

19.0'

32.0'

2s FR/B
896.0 sf

11.0'

15.0'

in C/P
60.0 sf
12'

14.0'

Garage
483.0 FT²

23.0'

Field Vis
Sketch

VAN

G2500 Regular

Length

135 / 3434

224 / 5696

79.2 / 2012

84.6 / 2148

G3500 Regular

Length

135 / 3434

224 / 5696

79.2 / 2012

84.5 / 2146









ZBA Rules of Procedure:

Reference for Election of Officers

CITY OF FRASER

ZONING BOARD OF APPEALS RULES OF PROCEDURE

Adopted – August 20, 2004 (entitled Zoning Board of Appeals By-Laws)

Amended – November 7, 2019 (entitled Zoning Board of Appeals Rules of Procedure)

ARTICLE I ESTABLISHMENT AND PURPOSE

Section 1. Creation.

Public Act 110 of 2006, as amended from time to time, empowers the City Council of the City of Fraser to establish a Zoning Board of Appeals. The Council adopted Chapter 32 of the Fraser Code – also known as the City's Zoning Ordinance – effective October 23, 1975. Article XIV of Chapter 32 provides for the establishment of a Zoning Board of Appeals which is authorized to perform duties and exercise powers as provided in Public Act 110 in such a way that the spirit of the City's Zoning Ordinance is observed, public safety secured, and substantial justice done.

Section 2. Powers and Authority.

A. The Board functions as a quasi-judicial body with specific powers and limitations as outlined in the various sections of the Zoning Ordinance. The Zoning Ordinance sets the standards the Board must apply in making any decisions. Only the courts may modify or reverse a decision of the Board.

B. The major areas of authority of the Board are:

1. Ordinance interpretation;
2. Appeals of administrative determination;
3. Use variances;
4. Non-use variances; and
5. Temporary structures, signs, and uses.

C. The Zoning Ordinance regulations are designed to protect the rights of all property owners. The Board has authority to modify the requirements of the Zoning Ordinance in situations where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Zoning Ordinance. The Board also has the authority to interpret the Zoning Ordinance and consider appeals of administrative decisions made under the Zoning Ordinance. In addition, the Board may permit the erection of structures and signs and uses of land for which temporary use approval has been denied by the City.

ARTICLE II ORGANIZATION OF THE BOARD

Section 1: Membership.

A. By ordinance, the Board of Zoning Appeals shall consist of seven (7) members. Under the Michigan Zoning Enabling Act, each member must be an elector of the City and each member shall be appointed for a term of three (3) years. Terms shall be staggered as nearly as possible to provide for the appointment of an equal number of appointments each year.

B. A Board member may continue to serve beyond the expiration date of his/her term until a successor is appointed by the City Council if he/she is willing and able to continue to serve.

Section 2: Officers of the Board.

A. The officers of the Board shall consist of a Chairperson, Vice-Chairperson, and Secretary.

B. The Board may provide for such other officers as it deems necessary and desirable for the conduct of business and in accordance with statutes of the State of Michigan.

Section 3: City Administrative Assistance.

The City Manager or a duly-appointed representative shall assist the Board as requested. The City shall provide staff to assist the Board and its Secretary in carrying out their functions.

Section 4: Collective Body.

The Board shall act collectively on all matters. No member shall officially represent the Board, either orally or in writing, unless authorized by the Board.

Section 5: Written Legal Opinions.

Any Board member may, through a majority vote of the Board members present at any regular or special meeting, request a written legal opinion regarding Board business from the City Attorney. All Board members shall receive a copy of such legal opinion. Legal opinions will be filed with the official Zoning Board of Appeals files.

ARTICLE III BOARD OFFICERS

Section 1: Election Notice.

The secretary shall give formal notice of election of officers to the Board in writing at least one (1) week prior to the first regularly scheduled meeting in January.

Section 2: Nomination.

Officers shall be nominated orally at the election meeting, which shall be held at the first scheduled meeting in January or, if no meeting is held, the first meeting of the Board thereafter. Only those members present for the election are eligible for nomination. However, the election may be postponed by a majority of those present in order to allow an opportunity for additional members to be present. In such instance, if willing and able, officers shall continue to serve in their roles until their successors are elected.

Section 3: Acceptance of Nomination.

Nominees shall accept or decline the nomination prior to the vote for such office.

Section 4: Election of Officers.

A. Election for each office shall be held immediately after nominations for that office.

B. The election shall be by oral vote.

C. A simple majority of the Board members voting is needed to elect an officer.

D. In the case of two consecutive tie votes for an office, the election for that office shall be postponed until the next regular meeting.

E. In the event only one Board member is nominated for any office, the Board may dispense with the voting process and declare that position filled by acclamation.

Section 5: Special Elections.

A. A special election shall be held to fill a vacancy to the position of Vice Chairperson or Secretary.

B. Special elections shall follow the regular election procedure as set forth herein, except that the date shall be set by the Board.

Section 6: Term of Office.

A. All officers shall serve for a term of one (1) year or until successors are elected.

B. All current officers of the Board shall be eligible for re-election or for any vacancy of office.

C. No member of the Board shall hold more than one elected office at any given time.

Section 7: Vacancy.

A. Pursuant to the City Charter, a member's position will be declared vacant by the City Council:

1. If the member is found guilty by a competent tribunal of any act constituting misconduct in office.
2. If the member misses four (4) consecutive Board meetings, or twenty-five percent (25%) of the Board's meetings in any fiscal year of the City, unless such absences shall be excused by the Board and the reason entered in the record at the time of each absence.
3. If the member is removed by the City Council for any reason specified by state law for removal of city officers by the governor or for misconduct in office under the provisions of the City Charter.
4. For any reason specified by state law or by the City Charter as creating a vacancy in office.

**ARTICLE IV
OFFICER VACANCIES**

Section 1: Vacancy of the Office of Chairperson.

A. In the event of a vacancy in the office of Chairperson, the Vice-Chairperson shall become the Chairperson of the Board for the balance of the Chairperson's term of office.

B. The Vice-Chairperson, upon becoming Chairperson and accepting the duties of the Chairperson, vacates the office of Vice-Chairperson. In such instance, the Board shall elect a new Vice-Chairperson to fill the existing vacancy in accordance with the officer election process set forth in these Rules.

Section 2: Vacancy in the Office of Vice-Chairperson.

In the event of a vacancy in the office of Vice-Chairperson not caused by the Vice-Chairperson accepting the office of Chairperson, the Board shall elect a new Vice-Chairperson to fill the existing vacancy in accordance with the officer election process set forth in these Rules.

Section 3: Vacancy in the Office of Secretary.

In the event of a vacancy in the office of Secretary, the Board shall elect a new Vice-Chairperson to fill the existing vacancy in accordance with the officer election process set forth in these Rules.

ARTICLE V DUTIES OF OFFICERS

Section 1: Chairperson.

A. The Chairperson shall be the chief executive officer of the Board and shall preside at all meetings of the Board. The Chairperson shall appoint all committees or advisory committees established and provided for by the Board and shall be an ex-officio member of all committees.

B. The Chairperson shall have the right and duty to vote as a Board member on all matters before the Board.

C. The Chairperson shall have the right to introduce a motion as any other Board member.

D. The Chairperson shall attest to the official minutes.

E. The Chairperson shall perform all the additional duties and responsibilities which are a normal part of that office.

Section 2: Vice-Chairperson.

A. The Vice-Chairperson shall assume all duties of the Chairperson during any period of absence or disability of the Chairperson.

B. The Vice-Chairperson shall work with the City Administration to prepare an annual report in accordance with Article IX.

Section 3: Secretary.

A. The Secretary shall, with the assistance of the City staff, keep the minutes and records of the Board, prepare the agenda of regular and special meetings with the Chairperson, provide notice of meetings to Board members, notify the City Clerk relative to the proper and legal notice of hearings, receive and respond to correspondence as directed by the Board, maintain records of attendance for members of the Board, affix his/her signature to all correspondence, arrange publications on behalf of the Board, and perform such other duties as are normally carried out by the Secretary.

B. The Secretary shall sign official minutes approved by the Board, routine correspondence of the Board, and other documents requiring certification. Resolutions approved by the Board shall be signed by the Secretary and the Chairperson.

C. If the elected Secretary is not in attendance at a meeting, the Chairperson may appoint a temporary Secretary to perform the duties of Secretary at that meeting.

D. In the event of the absence or inability of the Chairperson and the Vice-Chairperson to discharge the duties of the Chairperson, the Secretary shall appoint a temporary Chairperson.

E. The Secretary shall call the roll for all roll call votes, and shall track affirmative and negative votes for all motions to assist the Chairperson with determining whether the measure passes or fails.

ARTICLE VI MEETINGS

Section 1: Regular Meetings.

A. Regular meetings of the Zoning Board of Appeals shall be scheduled for the first Thursday of each month at a time and place designated by the Board, unless the Board cancels the meeting for lack of a quorum or a lack of business to be conducted. Within 10 days after the first meeting of the Board in each calendar year, a public notice stating the dates, times, and places of the Board's regular meetings shall be posted in accordance with the Open Meetings Act.

B. Public notice of all meetings of the Board shall be given in accordance with the Open Meetings Act.

C. All regular meeting dates shall be set for the following calendar year no later than the month of December.

D. All Board members shall receive notice of each regular meeting at least six (6) days in advance. Such notice may be provided in hard copy form or via electronic mail, at each member's discretion, and shall include:

1. An Agenda for the meeting.
2. All documents submitted by each applicant.
3. Any back-up materials prepared or relied upon by the Administration.

Section 2: Special Meetings.

A. Special meetings may be held as called by the Chairperson or by any three Board members.

B. The Chairperson shall set the agenda for the special meeting.

C. For special meetings, each member of the Board shall receive at least five (5) days' notice as to the time, place, and purpose of the meeting. This notice requirement may be waived if the special meeting is called at a meeting where all members are present. At all special meetings where notice has been given, the business of the meeting shall be limited to the subjects contained in the notice and no other business may be considered by the Board unless all of the members are in attendance and agree by majority vote to consider additional items.

D. Public notice of any special meeting shall be posted in accordance with the Open Meetings Act.

Section 3: Conduct/Format of Meetings.

All meetings are subject to the following rules:

A. All meetings shall be open to the public and held in a place available to the public, except closed sessions held in accordance with the Open Meetings Act.

B. All notices of such public meetings shall be published or posted as required by the Open Meetings Act.

C. All persons shall be permitted to attend any meeting and may not be excluded, except for a breach of the peace committed at such meeting.

D. Any person attending a meeting, unless excluded under the preceding Section, may speak in accordance with established rules of the Board.

E. Any person attending a meeting may tape record, videotape, broadcast live on radio, or telecast live on television the proceedings of the Board, subject to the rules established in Section 7 below.

F. Any person attending a meeting may speak upon an item during the public hearing portion for such case. To receive additional or new information, the Chairperson may re-open the public hearing on a particular item after it has been previously closed.

G. A quorum shall consist of four (4) members. In the absence of a quorum, the Board members present at the meeting shall adjourn the meeting to the next regular meeting date with an open agenda. The agenda must be republished if the adjournment is greater than thirty-six (36) hours.

H. All decisions of the Board shall be initiated by motion. The vote upon all dispositive motions following a public hearing shall be by roll call vote.

I. Written notice of the meeting shall be mailed to each petitioner or a designated representative.

J. All persons to whom real property is assessed within 300 feet of the premises, and all occupants of structures within 300 feet of the premises, as determined by assessment records, shall be notified by regular mail of the scheduled hearing, regardless of whether the property or structure is located in the zoning jurisdiction. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different persons, 1 occupant of each unit or spatial area shall be given notice. If a single structure contains more than 4 dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure. All notices shall be given not less than 15 days before the date the request will be considered.

K. An agenda for each meeting shall be sent to the City Council, City Manager, City Attorney, Recording Secretary, and all appropriate department heads.

L. Any person disrupting the proceedings shall be subject to removal by the Chairperson. A person shall have no right of appeal from such an order.

M. Order of Business:

1. Call meeting to order/Pledge of Allegiance;
2. Roll Call;
3. Approval of Agenda;
4. Formal Statement by the Chair;
5. Old Business (postponed cases);
6. Public Hearings (each case);
7. New Business of the Board;
8. Unfinished Business of the Board;
9. Planning Commission Liaison Member Report;
10. Public Participation;
11. Approval of Minutes;
12. Members' Comments and Items of Interest; and
13. Adjournment.

The Chairperson may modify this Order of Business with the concurrence of the majority of Board members present.

Section 4: Formal Statement.

The Chairperson shall outline the requirements of the Zoning Ordinance for the Board to grant relief and the public hearing process to be used by the Board for new cases during this portion of the Order of Business.

Section 5: Public Participation.

A. The Chairperson may impose a three (3) minute time limitation on public participation by each speaker.

B. The Chairperson may request any person disrupting the meeting to leave the meeting room. If such person does not leave, the meeting may be recessed until the disturbance has been quelled and/or the disruptive person removed.

C. The Chairperson may limit comments to matters relating to the functions of the Board.

Section 6: Public Hearing.

A. Public Hearing Procedure:

1. Introductions by Chairperson;

2. Presentation of facts by Administration;
3. Presentation by Applicant;
4. Direct questions from the Board to Applicant;
5. Open public hearing to audience;
6. Close public hearing to audience;
7. Direct questions by Board to Applicant and any other persons, as necessary;
8. Final summation by Applicant;
9. Call for motion:
 - a. Motion;
 - b. Second;
 - c. Discussion on motion; and
 - d. Vote.

Section 7: Rules Relating to Recording or Broadcasting of Proceedings.

A. A person may tape record, videotape, broadcast live on radio, or telecast live on television the proceedings of the Board at a public meeting in accordance with the following rules designed to minimize interference or disruption of the meeting:

1. The person recording, videotaping, or broadcasting shall either be seated in the audience, or shall locate himself/herself) and his or her equipment so as to not interfere with the conduct of the meeting, the viewing of (or being able to hear) the meeting by persons in the audience, others who are also recording or broadcasting under these rules, or with the cable casting of the meeting by the City cable TV staff broadcasting for residents of the City. In no instance shall a person with recording equipment stand between the podium and the Council table during the proceedings of the Board.
2. The person recording, videotaping, or broadcasting the Board meeting shall not use artificial lighting other than that provided in the Council Chambers for cable casting.
3. The person recording, videotaping, or broadcasting the proceedings shall not move around or make any noises that disrupt, disturb, or interfere with the conduct of, or ability to see and hear, the meeting.
4. Any person recording, videotaping, or broadcasting the proceedings of the Board in a manner which violates these rules or in any other manner that disrupts the conduct of the meeting or the rights of others may be asked by the

Chairperson to either discontinue the activity, relocate, alter the way that the activity is being conducted, or leave the meeting. If such person does not comply with the request of the Chairperson, the meeting may be recessed until the activity has discontinued or the disruptive person and his or her equipment is removed.

Section 8: Minutes.

A. The recording Secretary of the Board shall keep minutes of each meeting showing the date, time, place, members present, members absent, the substance of comments made by Board members and members of the public, any decisions made at an open meeting, and the purpose for which a closed session is held. All roll call votes taken at the meeting shall be recorded.

B. Approved minutes (except those relating to a closed session) shall be public records available from the City Clerk's office and on the City's website. A reasonable charge for copying the minutes in accordance with established City policies may be imposed.

C. Proposed minutes shall be available for public inspection within eight (8) business days after the meeting to which they pertain. Approved minutes shall be available for public inspection within five (5) days after approval.

D. Corrections in the minutes shall be made at the next meeting after the meeting to which they pertain, and shall be made available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

Section 9: Closed Session.

Closed sessions may be held only for purposes specifically authorized in the Open Meetings Act, and only if the required vote is taken at the open meeting. The Board shall publicly state the reason for recessing or adjourning to closed session, and a separate set of minutes shall be taken by the Board Secretary and retained as required by the Open Meetings Act.

Section 10: Notice of Decision.

A copy of the Board's decision in each case shall be transmitted to the applicant or appellant and to the Building Official as set forth in Section 32-226(c) of the Zoning Ordinance. The decision of the Board is not final until the expiration of five (5) days from the date of entry of the order, unless the Board finds the immediate effect of the order is necessary to prevent the deprivation of property or personal rights and certifies such finding on the record.

ARTICLE VII PROCEDURAL RULES

Section 1: Parliamentary Authority (Governing Rules).

Unless in conflict with these Rules, the Zoning Ordinance, Public Act 110, or the Open Meetings Act, "Robert's Rules of Parliamentary Procedure" (current edition) shall govern the conduct of the meetings of the Board of Zoning Appeals.

Section 2: Motion to Approve.

A. The affirmative vote of a majority of the members of the Board is necessary to reverse any order, requirement, decision, or determination of any administrative official; to decide in favor of the applicant on any matter upon which the Board is required to pass under the Zoning Ordinance; or to effect any non-use variance under the Zoning Ordinance.

B. The affirmative vote of 2/3 of the members of the Board is required to approve any use variance.

Section 3: Motion to Deny.

The concurring vote of a simple majority of the members of the Board is necessary to deny a request.

Section 4: Effect of Failure to Obtain Required Vote.

If the Applicant fails to obtain the affirmative votes required to approve the request, and no other motion is made and adopted, the Applicant's request is deemed denied. If a motion to deny fails to obtain a majority vote of the members of the Board, and no motion to approve is made and adopted, the Petitioner's request is deemed denied. However, because attendance by all members at a subsequent meeting could alter the outcome, the Board may postpone action in such a case, by a majority of the members present, in order to try to reach a dispositive vote.

Section 5: Motion on Floor.

While a motion is on the floor for consideration and discussion by the Board, the Applicant may not speak, interject, or comment without first obtaining the consent of the Chairperson. However, this rule shall not prevent the answering of a question directed to the Applicant by a member of the Board while the motion is on the floor.

Section 6: Reconsideration/Rescission.

A. A motion to reconsider a motion that has already been decided can only be made by a member of the Board who voted on the prevailing side of the original motion at the meeting at which the action was taken. A person who abstains from a vote or is absent from the vote shall be deemed to be on the prevailing side.

B. Any member of the Board may second such a motion.

C. The Board shall not hold a rehearing on a case unless specifically authorized by ordinance or required by law.

D. A motion to rescind or amend a prior Board action may be considered by the Board in accordance with Robert's Rules. Because of the possibility that a decision on a matter could later be rescinded, the Board should refrain from denying any request with less than four (4) votes in favor of the denial.

Section 7: Calling the Question.

A. **Intent.** To close debate immediately on the pending motion and bring it to a vote.

B. **Form.** "I move to call the question" or "I move to close debate."

1. The motion maker must first have the floor;
2. Requires a second;
3. Must be approved by a 2/3 majority;
4. Undebatable and takes precedence over all motions and requires an immediate vote on the main motion if approved, provided each Board member has had one (1) opportunity to speak on the main motion.

Section 8: Motion to Postpone.

A. **Intent.** To postpone action to another date which is established at the time of the motion.

B. **Form.** "I move to postpone Case _____ ZBA to _____ (date)."

1. It needs support;
2. It takes precedence over a motion on the floor at the time;
3. It is debatable; and
4. It must be approved by a simple majority.

Section 9: Voting.

Each member of the Board present shall have the right and duty to vote on all motions, absent a conflict of interest that requires or warrants abstention.

Section 10: Tie Vote.

A tie vote shall render a request denied for failure to achieve the required number of affirmative votes, unless a subsequent motion is made that is inconsistent with denial (for example, a motion to postpone, table, or approve a different request).

Section 11: Abstention.

Abstention shall not be counted as an affirmative or negative vote provided, however, if abstention results in the Applicant failing to obtain the required number of votes for approval, the request is deemed denied unless a subsequent motion is made that is inconsistent with denial (for example, a motion to postpone).

ARTICLE VIII FUNCTIONS OF THE BOARD

Section 1: Ordinance Interpretations.

The Board has the authority to interpret the Zoning Ordinance text and maps and all matters relating to the Zoning Ordinance as to the meaning and intent of any provision or map which is a part of the Zoning Ordinance. The affirmative vote of a majority of the members of the Board is necessary to find in favor of an applicant challenging an administrative interpretation of the City or seeking an interpretation that the City is unable to provide. The Board shall interpret the provisions of the Zoning Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the map fixing the several zoning districts accompanying and made a part of the Zoning Ordinance, in those cases where the street layout actually on the ground varies from the street layout as shown on the aforesaid map.

Section 2: Appeals of Administrative Decisions.

The Board has the authority to hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit decision, or refusal by the Zoning Administrator in administering or enforcing the provisions of the Zoning Ordinance. The affirmative vote of a majority of the members of the Board is necessary to find in favor of an applicant challenging an administrative decision of the City.

Section 3: Non-Use Variances.

If there are practical difficulties in the way of carrying out the strict letter of the Zoning Ordinance, the Board may vary or modify any of its provisions relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the Zoning Ordinance or to any other nonuse-related standard in the Zoning Ordinance so that the spirit of the Zoning Ordinance shall be observed, public safety secured, and substantial justice done.

Non-use variances are concerned with changes in a lot's, yard's, or structure's area, height, setback, floor area requirements, percentage of lot coverage, and other dimensional and area characteristics. An applicant must present competent, material, and substantial evidence upon which the Board finds that a practical difficulty has been established, and no variance may be approved unless the Board finds that all of the following facts and conditions exist:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district.
2. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
3. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of the Zoning Ordinance or the public interest.
4. That the conditions or situation of the specific piece of property is not of such a general or recurrent nature as to create a general rule for such condition or situation.
5. That the practical difficulty is not the result of the applicant or applicant's predecessor owner's action.

Alternatively, no variance shall be authorized unless the Board finds that either of the following facts and conditions exist independently of the preceding facts and conditions:

1. That the modification to setback, location, site, or building requirements is sponsored by the Planning Commission for a specific proposal that benefits the City by providing better design

or efficient use of the site or results in a more creative development.

2. That phasing of required site plan improvements may be warranted, based on Planning Commission recommendations, because the cost of such improvements are relatively high in relation to the total cost of the applicant's development or addition.

Section 4: Use Variances.

A Use Variance permits uses of land the Zoning Ordinance otherwise prohibits. Use variances are to be granted sparingly because the determination regarding the uses of land in the City is a legislative function vested in the City Council. Use variances require a finding of unnecessary hardship, which the applicant must establish by competent, material, and substantial evidence, and no use variance may be approved unless the Board finds that all of the following facts and conditions exist:

1. That the property cannot reasonably be used in a manner consistent with the existing zoning.
2. That the applicant's plight is due to exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties in the same zoning district.
3. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
4. That the use authorized by the variance will not alter the essential character of the locality, will not be of substantial detriment to adjacent property, and will not materially impair the intent and purpose of the Zoning Ordinance or the public interest.
5. That the hardship is not the result of the applicant's or the applicant's predecessor owner's actions.
6. That the conditions or situation of the specific piece of property, or the intended use of the property for which the use variance is sought, is not of such a general or recurrent in nature as to create a general rule for such condition or situation.

7. That the unnecessary hardship is not the result of the applicant or applicant's predecessor owner's action.

Section 5: Conditions of Approval.

The Zoning Board of Appeals may impose conditions upon an affirmative decision. Reasonable conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the grant of variance, to protect the natural environment and to conserve natural resources and energy, to insure compatibility with adjacent land uses, and to promote use of land in a socially and economically desirable manner.

In authorizing a variance, the Board may attach thereto such conditions regarding the location, character, or landscaping as are reasonably necessary to the furtherance of the intent and spirit of the Zoning Ordinance and the protection of the public interest. Conditions imposed shall meet all of the following standards:

1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration, residents and land owners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intended purpose of the zoning regulations.

The conditions imposed with respect to the grant of a variance shall be recorded in the record of the approval actions and shall remain unchanged except upon the mutual consent of the Zoning Board of Appeals and the land owner. The Zoning Board of Appeals shall maintain a record of changes granted and the conditions. As a condition of approval, the applicant and/or property owner shall be required to record the variance with the Register of Deeds so that future owners are on notice of the variance that was granted and the conditions applicable thereto.

Section 6: Finality.

The decision of the Zoning Board of Appeals is final and may only be appealed in accordance with state law.

ARTICLE IX ANNUAL REPORT

The Vice-Chairperson of the Board shall, by April 15 of the following year, prepare and submit to the Board for approval, and submit to the City Council a written report on the administration and enforcement of the Zoning Ordinance during the previous calendar year, as well as recommendations of the Board for amendments or supplements to the Zoning Ordinance. The report shall include the following:

1. Number of cases heard;
2. Number of cases approved and denied;
3. Pending items;
4. Number of meetings held and average length;
5. Type of requests and number; and
6. Attendance.

ARTICLE X

Section 1: Amendment of Rules of Procedure.

With the exception of provisions required by law or ordinance, these Rules, in whole or in part, may be altered, amended, added to, or repealed by a majority vote of the Board at any regular or special meeting provided that notice of all proposed alterations, amendments, additions, or repeals shall be submitted to all members of the Board at least seven (7) days before the regular or special meeting of the Board at which they are to be considered.