



Zoning Board of Appeals Staff Report



Zoning Board of Appeals
TO: (ZBA)

FROM: Amy Steffens, AICP

HEARING DATE: April 12, 2023

SUBJECT: ZBA 23-007

PROJECT SITE: 7749E M-36
TID 15-25-200-068

APPLICANT/ OWNER: Jet Set Group, LLC

PROJECT: Variance application to permit the relocation of a commercial driveway that will not meet the commercial driveway spacing requirements (Section 36-339).

ZONING: VC (Village Center)

Project Description

The applicant is the owner of the previous Roadie's restaurant that was lost to fire in 2014 and has since remained vacant. On February 28, 2023 the applicant submitted a site plan review application for the construction of a 27,461-square foot multi-tenant commercial structure and associated parking.

The proposed project would relocate the existing driveway location approximately 90 feet to the west to accommodate the multi-use building on the west side of the parcel and parking on the east side. The relocated driveway will be approximately 70 feet (centerline to centerline) from the curb cut for the commercial use to the east. Section 36-339 of the Zoning Ordinance requires that

the minimum spacing between two commercial driveways on the same side of the road shall be determined based upon posted speed limits along the parcel frontage. The minimum spacings...are measured from centerline to centerline. The posted speed limit along this stretch of M-36 is 40 miles per hour, which requires a minimum driveway spacing of 225 feet.

“For sites with insufficient street frontage to meet the above criterion, the planning commission may require construction of the driveway along a side street, a shared driveway with an adjacent property, construction of a driveway along the property line farthest from the intersection or require a service/frontage road.”

Prior to issuance of a land use permit for this project, approval of the driveway from the Michigan Department of Transportation will be required.

Standards of Review

In accordance with Section 36-137 of the Hamburg Township Zoning Ordinance, the ZBA’s decision on this matter is to be based on findings of fact to support the standards provided below. The applicable discretionary standards are listed below in **bold typeface**, followed by Staff’s analysis of the request as it relates to these standards. A variance may be granted only if the ZBA finds that all of the following standards are met:

- 1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.**

The need for the variance is due to the size of the existing lot and the location of the existing driveways on properties adjacent to the subject site. The subject site is only 237 feet wide and the location of the existing access to the parking area at 7785 M-36 is on the property boundary. No commercial access driveway on the subject site could meet the separation requirement of 225 feet or greater (section 36-339 (a)(1)).

When the project at 7785 M-36 was approved the Township did not require an easement to allow future adjacent properties to utilize their access point on M-36. Staff will recommend to the Planning Commission that an ingress/egress easement be recorded on the subject site be a condition of site plan approval.

- 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.**

The proposed variance request would allow the applicant to relocate an existing driveway location for the new use on the property. There is no compliant location on this site for a driveway. While the applicant could make use of the existing driveway off of M-36, staff believes that relocating the driveway to the east will make the parking area for the proposed commercial use more efficient.

- 3. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.**

The applicant is not requesting a new curb cut but rather relocating the curb cut to make the site design for a new commercial structure more orderly. The Planning Commission will review the site design during site plan approval. Additionally, MDOT must approve the proposed driveway location.

4. That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.

The subject site is zoned Village Center (VC). Commercial uses are an allowed use in this zoning district. The future land use designation for the subject site is Village Gateway District on the southern portion of the parcel, Industrial uses on the north. The purpose of the Village Gateway district is “to provide for community-wide retail uses while integrating with smaller scale shops.” The proposed use of the site is a multi-tenant commercial building and associated parking.

The existing curb cut that served the previous restaurant is approximately 200 feet from the driveway to the west and 175 from the driveway to the east. There is no location on this site that would comply with the 225-foot minimum driveway spacing requirement.

5. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.

As stated above, the parcel is not able to accommodate a driveway in any location that complies with the minimum driveway spacing requirement.

6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.

This site, zoned Village Center, will be developed and used for its intended purpose with all required site plan approvals. Granting of this variance will not establish a use which is not permitted by right within this district.

7. The requested variance is the minimum necessary to permit reasonable use of the land.

While the existing driveway could be utilized for a commercial use, its placement would limit the reconstruction of an orderly parking lot design that promotes ease of ingress and egress.

Recommendation

Staff recommends the ZBA open the public hearing, take testimony, close the public hearing, evaluate the proposal for conformance with the applicable regulations, and approve or deny the variance application. In the motion to deny or approve the project the ZBA should incorporate the ZBA’s discussion and analysis of the project and the findings in the staff report. The ZBA then should direct staff to prepare a memorialization of the Board’s decision that reflects the Board’s action to accompany the hearing minutes and to be reviewed and approved at the next ZBA hearing.

Example Approval Motion:

The Zoning Board of Appeals approves variance request ZBA 23-007 at 7749 E. M-36 to allow the commercial driveway for this lot to be less than 225 feet from the commercial driveways to the east and the west because the variance request meets variance standards one (1) through seven (7) of Section 36-137 of the Hamburg Township Zoning Ordinance, and a practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at tonight meeting and as presented in the staff report.

Example Denial Motion:

The Zoning Board of Appeals denies variance request ZBA 23-007 at 7749 E. M-36 to allow the commercial driveway for this lot to be less than 225 feet from the commercial driveways to the east and the west because the variance request does not meet variance standards *indicate which findings are not met* of Section 36-137 of the Hamburg Township Zoning Ordinance, and a practical difficulty does not exist on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at tonight meeting and as presented in the staff report.

Exhibits

Exhibit A: Application materials and plans



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P.O. Box 157
10405 Merrill Road
Hamburg, Michigan 48139

**APPLICATION FOR A ZONING BOARD OF APPEALS (ZBA)
VARIANCE/INTERPRETATION
(FEE \$500 plus \$50 each additional)**

1. Date Filed: 3-30-2023
2. Tax ID #: 15-25-200 - 068 Subdivision: N/A Lot No.: N/A
3. Address of Subject Property: 7749 E. M-36, WHITMORE LAKE, MICHIGAN 48189
4. Property Owner: ZANDER COMPANIES, NICHOLAS ZANDER II Phone: (H) _____
 Email Address: zanderindustries@gmail.com (W) (810)691-4308
 Street: 7879 WINANS LAKE RD City BRIGHTON State MI
5. Appellant (If different than owner): SAME Phone: (H) _____
 E-mail Address: _____ (W) _____
 Street: _____ City _____ State _____
6. Year Property was Acquired: 2010 Zoning District: VC Flood Plain NONE
7. Size of Lot: Front 20' Rear 15' Side 1 10' Side 2 10' Sq. Ft. 87,120
11. Dimensions of Existing Structure (s) 1st Floor 0 2nd Floor _____ Garage _____
12. Dimensions of Proposed Structure (s) 1st Floor 27,461 2nd Floor _____ Garage _____
13. Present Use of Property: VACANT
14. Percentage of Existing Structure (s) to be demolished, if any 0 %
15. Has there been any past variances on this property? Yes _____ No X
16. If so, state case # and resolution of variance application _____
17. Please indicate the type of variance or zoning ordinance interpretation requested:

Sec. 36-339. - Driveway spacing standards

The above reference ordinance states for a posted speed limit of 40 mph the minimum driveway spacing is 225'. However, the subject project seeks spacing as shown in the attached which is being reviewed for approval by MDOT. The MDOT permit shall be furnished upon approval.

