



MEMORANDUM

Report Date: July 28th, 2023
To: City of Madison Heights Zoning Board of Appeals
Meeting Date: August 3rd, 2023
From: Matt Lonnerstater, AICP – City Planner
Subject: Regulated Use – Residential Separation Variance
PZBA 23-09; 31010 John R Road

REQUEST AND BACKGROUND

The applicant, *Goodwill Industries of Greater Detroit on behalf of NADG NNN CPHARM MH_MI LP (property owner)*, requests a variance from Section 10.502[A]3 of the Zoning Ordinance, Regulated Uses, pertaining to the minimum residential separation requirement. The subject property is located at 31010 John R Road (tax parcel # 44-25-01-351-017) and is zoned B-2, Planned Business. The property is located at the northeast corner of John R Road and 13 Mile Road and is improved with a stand-alone commercial structure most recently occupied by CVS Pharmacy.

At the July 10th, 2023 City Council meeting, the applicant received Special Approval, with conditions, to open a Goodwill retail store at the subject property. Per the Zoning Ordinance, the Goodwill retail store is classified as a “used good use” which is subsequently considered a Regulated Use per Section 10.502[A]. Regulated Uses are subject to strict separation requirements, one of which is that they shall not be located within 300 feet of the property line of a lot in residential use or the boundary of a residential zoning district.

The subject property is located directly across 13 Mile Road from the Dover Glen Condominiums, zoned multi-family residential. The distance between the subject property and the residential property, measured from property line to property line, is approximately 120 feet, deficient from Regulated Use standards by 180 feet. **Therefore, the applicant requests a 180-foot variance from the Regulated Use residential separation requirement.** As noted in the approved City Council minutes, one of the conditions of Special Approval is that the applicant apply for and obtain the necessary residential separation variance.

The image on the following page depicts the subject property and the Dover Glen condominiums located across 13 Mile Road.

Residential Separation – 31010 John R Road and Dover Glen Condominiums



Regulated Uses

Because Goodwill sells used and secondhand products, the store is classified as a “used good use” per the Madison Heights Zoning Ordinance. Per **Section 10.502[A]** of the Zoning Ordinance, used good uses are considered a regulated use, which requires Special Approval through City Council. In addition to used good uses, regulated uses include others that have, “*serious objectionable operational characteristics [...]*,” including, but not limited to, tattoo parlors, pawnbrokers, billiard halls, massage parlors, adult theaters, cabarets, and sexually-oriented businesses. Regulated uses are subject to strict siting standards, as follows:

- Shall not be located within 1,000 feet of another regulated use; and
- Shall only be permitted in the B-2 and B-3 zoning districts after Special Approval by City Council; and
- Shall not be located within 300 feet of a church, a school, a residential zoning district or residential use, a public park, or a childcare facility.

City Council granted Special Approval for the Goodwill used good use at their July 10th, 2023 meeting, with conditions. One of the conditions is that Goodwill apply for and obtain the necessary residential separation variance.

STAFF ANALYSIS

The applicant has provided written responses addressing the variance criteria of Section 10.804(2) of the Zoning Ordinance. Per their application, the applicant requests the separation variance primarily due to the following characteristics of the subject property:

Commercial Character: While the property is located across 13 Mile Road from a condominium development, it is immediately adjacent to Sam's Club to the east and other commercial properties at the remaining corners of 13 Mile/John R Road. The corner of 13 Mile and John R Roads is primarily commercial in nature.

Business Location Requirements: Per the applicant, Goodwill's business model has specific requirements for store locations. For example, Goodwill requires a 10-15,000 square foot space that is either a stand-alone building or an end-cap unit on a street that has a minimum daily traffic count of 20,000 vehicles. The applicant has exhausted other opportunities in Madison Heights that meet both Goodwill's business requirements and the City's Regulated Use standards.

Use of Property and Minimum Variance: The applicant cannot use the property without approval of the variance, as the residential separation requirement prevents any used goods use from operating at the site. The 180-foot variance is the minimum necessary to meet the 300 foot residential separation requirement.

VARIANCE FINDINGS

Section 10.804(2) outlines criteria for reviewing variance requests, summarized below:

- ***Exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of the Zoning Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property.***
- ***The strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon, the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this ordinance.***

Additional standards for reviewing variance cases, as required per the ZBA application, are outlined below:

- *The literal interpretation of the provisions of this ordinance deprives the applicant of rights commonly enjoyed by others in the same zoning district.*
- *The special conditions and/or circumstances are not a result of the applicant.*
- *The variance is the minimum variance necessary to provide relief to the applicant.*
- *In the absence of a variance, the property could not be used in a manner permitted by the Ordinance.*

Additional variance review criteria are contained in Section 10.805, listed at the end of this report.

SITE PLAN REVIEW COMMITTEE (SPRC) ACTION

The SPRC discussed the variance request at their July 26th, 2023 meeting. The SPRC had no objections to the variance requests.

ZBA ACTION

Any ZBA motion, including approval and denial, should include findings of fact relating to the variance criteria listed in Sections 10.804(2) and 10.805. Template approval and denial motions are provided below for the ZBA's consideration.

In granting a variance, the ZBA may attach conditions regarding the location, character and other features of the proposed use(s) as it may deem reasonable in furthering the purpose of the Zoning Ordinance.

TEMPLATE MOTIONS

Approval

Move to APPROVE the variance application to permit a used good use, classified as a Regulated Use per Section 10.502[A] of the Zoning Ordinance, at 31010 John R Road within 300 feet of a residentially-zoned and used property, based upon the following findings:

- 1) Used Good Uses are classified as a Regulated Use per Section 10.502[A] of the Zoning Ordinance. Per the Ordinance, Regulated Uses shall not be located within 300 feet of the boundary of a residential zoning district or the property line of a lot in residential use. The subject property is located 120 feet from residential condominiums located across 13 Mile Road.
- 2) Based on extraordinary or exceptional conditions of the subject property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon, the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this ordinance.
- 3) The literal interpretation of the provisions of this ordinance deprives the applicant of rights commonly enjoyed by others in the same zoning district.
- 4) The special conditions and/or circumstances are not a result of the applicant.
- 5) The variance is the minimum variance necessary to provide relief to the applicant.

DENIAL

Move to DENY the variance application to permit a used good use, classified as a Regulated Use per Section 10.502[A] of the Zoning Ordinance, at 31010 John R Road within 300 feet of a residentially-zoned and used property, based upon the following findings:

- 1) Used Good Uses are classified as a Regulated Use per Section 10.502[A] of the Zoning Ordinance. Per the Ordinance, Regulated Uses shall not be located within 300 feet of the boundary of a residential zoning district or the property line of a lot in residential use. The subject property is located 120 feet from residential condominiums located across 13 Mile Road.
- 2) Based on the absence of extraordinary or exceptional conditions of the subject property, the strict application of the regulations enacted would not result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon, the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this ordinance.
- 3) The literal interpretation of the provisions of this ordinance does not deprive the applicant of rights commonly enjoyed by others in the same zoning district.
- 4) The special conditions and/or circumstances are a result of the applicant.
- 5) The variance is not the minimum variance necessary to provide relief to the applicant.

CODE REFERENCES

Sec. 10.804. - Power of zoning board of appeals.

(2) Variance. *To authorize upon an appeal, a variance from the strict applications of the provisions of this Ordinance where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this Ordinance. In granting a variance the board may attach thereto such conditions regarding the location, character and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance. In granting a variance, the board shall state the grounds upon which it justifies the granting of a variance.*

Sec. 10.805. - Standards.

Each case before the city council, zoning board of appeals or plan commission shall be considered as an individual case and shall conform to the detailed application of the following standards in a manner appropriate to the particular circumstances of such case. All uses as listed in any district requiring approval for a permit shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts. Consideration shall be given to the following:

- 1) The location and size of the use.*
- 2) The nature and intensity of the operations involved in or conducted in connection with it. (See section 10-319(4).)*
- 3) Its size, layout and its relation to pedestrian and vehicular traffic to and from the use.*
- 4) The assembly of persons in connection with it will not be hazardous to the neighborhood or be incongruous therewith or conflict with normal traffic of the neighborhood.*
- 5) Taking into account, among other things, convenient routes of pedestrian traffic, particularly of children.*
- 6) Vehicular turning movements in relation to routes of traffic flow, relation to street intersections, site distance and the general character and intensity of development of the neighborhood.*
- 7) The location and height of buildings, the location, the nature and height of walls, fences and the nature and extent of landscaping of the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.*
- 8) The nature, location, size and site layout of the uses shall be such that it will be a harmonious part of the district in which it is situated taking into account, among other things, prevailing shopping habits, convenience of access by prospective patrons, the physical and economic relationship of one type of use to another and related characteristics.*

- 9) *The location, size, intensity and site layout of the use shall be such that its operations will not be objectionable to nearby dwellings, by reason of noise, fumes or flash of lights to a greater degree than is normal with respect to the proximity of commercial to residential uses, not interfere with an adequate supply of light and air, not increase the danger of fire or otherwise endanger the public safety.*

Sec. 10.502[A] – Regulated Uses

[...]

3. Location of Regulated Uses:

- (a) *The establishment of a regulated use as defined under this section within 1,000 feet of another regulated use, measured from property line to property line, is prohibited.*
- (b) *Regulated uses shall be permitted in B-2 and B-3 Districts after special approval by city council, site plan review, if applicable, and obtaining a business license under Chapter 7, if and only if, it is determined that the regulated use meets all other criteria of B-2 and B-3 Districts under the Code of Ordinances and will not be located within 300 feet of the following:*
 - (1) *A church;*
 - (2) *A public or private elementary or secondary school;*
 - (3) *The boundary of a residential zoning district;*
 - (4) *A public park;*
 - (5) *The property line of a lot in residential use;*
 - (6) *A child care facility.*

[...]