



MEMORANDUM

Date: March 31st 2023
To: City of Madison Heights Zoning Board of Appeals
From: Matt Lonnerstater, AICP – City Planner
Subject: Billboard Variances
PZBA 23-04 – 53 E. Ten Mile Rd.

REQUEST

The applicant, *International Outdoors, Inc.*, requests four (4) variances from the city's billboard regulations, Section 10.511(IV)(E). The subject property is located at 53 E. Ten Mile Road (tax parcel #44-25-24-355-030) and is zoned M-1, Light Industrial.

The applicant proposes to install one (1) two-sided static billboard adjacent to the south side of I-696, and requests variances from the following sections of the Zoning Ordinance:

- *Section 10.511(IV)(E)(1): A billboard shall not be located within any required setback of such parcel; and*
- *Section 10.511(IV)(E)(1): [...] such billboard shall not be placed on a parcel having any other structure within 100 feet of the billboard; and*
- *Section 10.511(IV)(E)(2): Billboards shall not be less than 2,500 feet apart; and*
- *Section 10.511(IV)(E)(7): Billboards are deemed to constitute a principal use of a lot.*

The applicant is not the current property owner. However, the current property owner has signed the ZBA application, as required.

Setback Variance

Per Section 10.511(IV)(E)(1) of the Madison Heights Zoning Ordinance, a billboard shall not be located within any required setback of such parcel. The subject property is a double-frontage lot, which is defined as, *"any interior lot having frontages on two more or less parallel streets as distinguished from a corner lot. In the case of a row of double frontage lots, all sides of said lots adjacent to streets shall be considered frontage, and front yards shall be provided as required."*

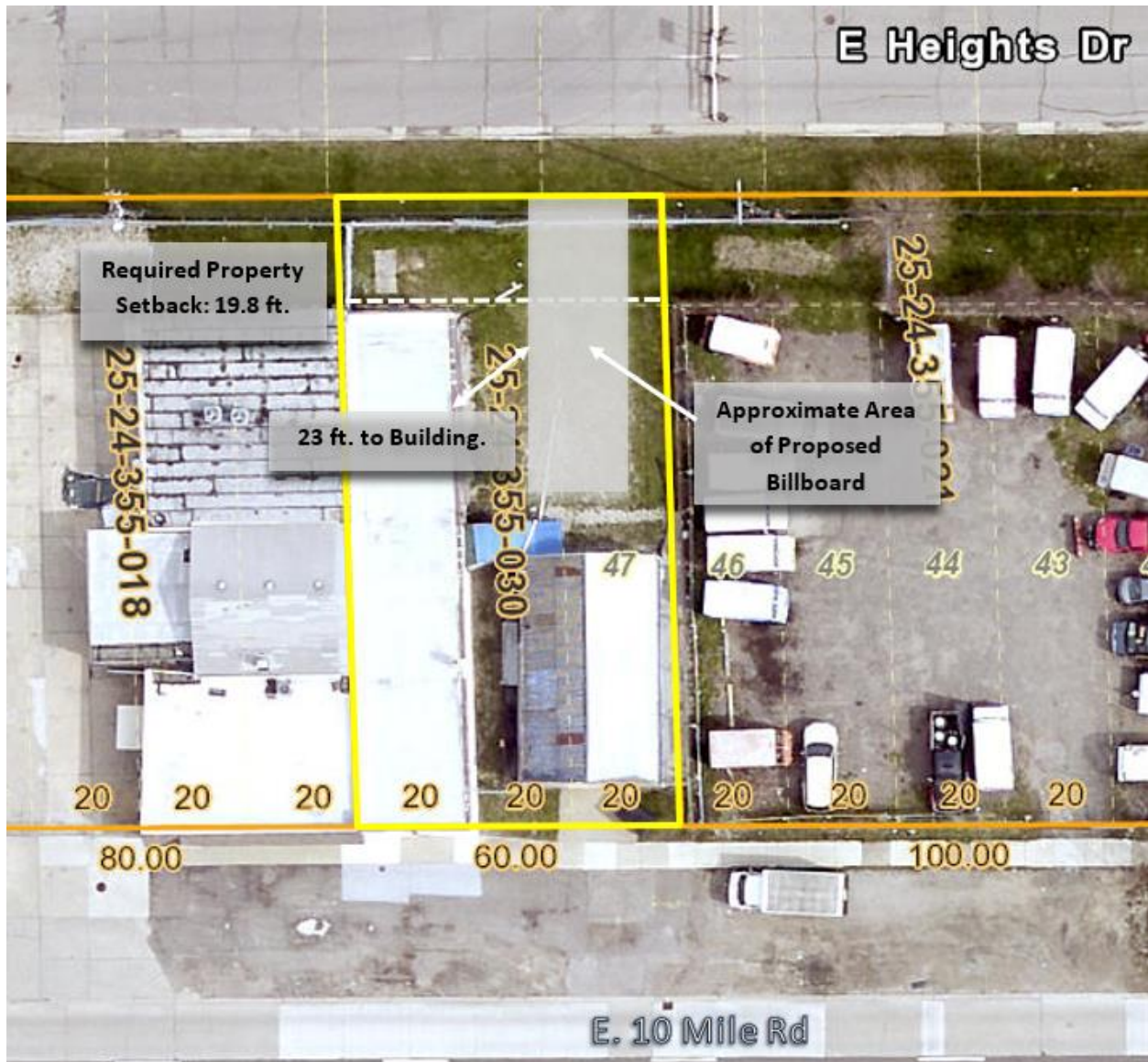
Per the Schedule of Regulations, Section 10.400 and 10.401, the minimum front yard setback for the M-1 district is 50 feet. However, footnote (e) states, *"where the front yards of 50 percent or more of the principal structures in any block in existence at the time of passage of this Ordinance, within the district zoned and on the same side of the street, are less than the minimum front yard indicated above, then any building subsequently erected on that side of the street shall not be less and need not be greater than the average depth of the front yards of said structure."* Staff notes five (5) structures along E. Heights Drive

between John R. Road and Battelle Street and calculates the average front yard setback from E. Heights Street to be 19.8 feet. With a zero-foot front yard setback, the proposed billboard fails to meet the setback requirement. Therefore, the applicant requests a front yard setback variance of 19.8 feet.

Structure Setback Variance

Per Section 10.511(IV)(E)(1) of the Madison Heights Zoning Ordinance, a billboard shall not be placed within 100 feet of an existing structure on the parcel. The subject property is improved with an existing principal industrial building and detached accessory building. The billboard is proposed to be placed 23 feet from the existing principal building, failing to meet Ordinance requirements. Therefore, the applicant requests a variance of 77 feet from the structure setback requirement. Required setbacks are illustrated in the graphic below:

53 E. Ten Mile Road – Required Setbacks and Proposed Billboard



*Note: Setback lines are approximate
Source: Oakland County Property Gateway*

Separation Variance

Per Section 10.511(IV)(E)(2) of the Madison Heights Zoning Ordinance, billboards shall not be less than 2,500 feet apart. The Billboards Map at the end of this report illustrates the 2,500-foot separation radii from each existing billboard. The proposed billboard is within 2,500 feet of three (3) existing billboards, per the chart below:

Existing Billboard Location	Distance from Proposed Billboard	Required Variance
E. Heights Dr./W. 10 Mile	1,125 ft.	1,375 ft.
John R/W. Hudson Ave	1,165 ft.	1,335 ft.
John R/Couzens Ave.	2,265 ft.	235 ft.

The applicant has formally requested the variances of 1,375 feet and 235 feet from the 2,500 ft. requirement. However, an additional variance of 1,335 feet will be required to erect the proposed billboard, as the applicant has not addressed the existing billboard at John R and W. Hudson Ave.

Principal Use Variance

Per Section 10.511(IV)(E)(7) of the Zoning Ordinance, billboards shall be considered the principal use of a lot. Because the property at 53 E. Ten Mile Road is already improved with a principal building and detached accessory structure, a new billboard would be considered an accessory use of the property. The Zoning Ordinance requires the applicant to divide the parcel and create a stand-alone parcel for the billboard. The applicant requests a variance from this section to allow for the proposed billboard to be constructed on the same parcel as the existing buildings.

STAFF ANALYSIS

Within their application, the applicant states that they have obtained a permit from the State of Michigan for the proposed billboard. Note that the state requires 1,000 feet of separation between static billboards, whereas Madison Heights requires 2,500 feet. Per the Highway Advertising Act of 1972 (PA 106 of 1927), *“a county, city, village, township or charter township may enact ordinances to regulate and control the operation, size, lighting, and spacing of signs and sign structures [...] [...] An ordinance or code adopted by a county, city village, township, or charter township that regulates the operation, size, lighting, or spacing of signs and sign structures and that is more stringent than the laws of this state is not made void by this act.”*

Madison Height’s stringent billboard spacing requirements were put in place to prevent the proliferation of billboards and are in compliance with the Highway Advertising Act.

The applicant has not addressed the principal use variance or structure setback variances, nor provided a justification for such variances.

On the block where the subject parcel is located, the average building setback from E. Heights Drive is 19.8 feet. With a setback of 0 feet, the proposed billboard would be placed closer E. Heights Drive than any existing building on the block. Staff finds that this would grant a special privilege to the property owner not granted to other property owners.

VARIANCE FINDINGS

Section 10.804(2) outlines criteria for reviewing variance requests. The applicant has provided responses to the variance criteria within their application. Staff findings are provided below:

- *Whereby 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.*

Staff Finding: Staff does not find the subject property itself to contain exceptional conditions that would unreasonably restrict the use of the property. Staff finds that the conditions of the property would not result in a practical difficulty for the property owner.

The property is currently utilized for an industrial use, and can continue to be utilized, expanded, or redeveloped for permitted M-1 industrial uses. The subject parcel is approximately 0.16 acres in area, is of a regular rectangular shape, and has a width of approximately 60 feet. Staff finds these property characteristics to be fairly standard within the M-1 District, especially along E. 10 Mile Road.

While staff acknowledges that the City's billboard separation requirement may restrict the erection of new billboards within city limits unless existing billboards are removed, this is a restriction that applies equally to all properties within Madison Heights. Staff finds that the applicant's inability to legally meet the billboard spacing requirement is not due to an exceptional condition tied to the subject property, but rather due to the general condition that there are a limited number of available billboard locations left within the City.

The applicant requests a variance from the principal use requirement, but has not provided justification in favor of the variance request. The variance request from the principal use standard does not appear to relate to a unique condition of the property. Further, the applicant seeks relief from an administrative process that is applied equally to all properties. As such, staff does not find the existence of a valid practical difficulty.

- *Such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this ordinance.*

Staff Finding: Staff finds that the granting of the requested variances could substantially impair the intent and effectiveness of the Zoning Ordinance.

Staff believes that granting variances to the billboard setback, spacing and principal use requirements could substantially impair the intent and effectiveness of the Zoning Ordinance. The City's billboard setback, spacing, and principal use requirement were put in place to regulate the siting of large billboards within Madison Heights. If the City of Madison Heights is interested in permitting additional billboards within city limits and/or reducing billboard spacing, setback and principal use requirements, staff believes that the appropriate mechanism is to amend the Zoning Ordinance standards via the zoning text amendment process.

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.*

Staff Finding: Staff finds that the provisions of the Zoning Ordinance would not deprive the applicant of rights commonly enjoyed by others in the same zoning district.

Each property owner within Madison Heights is subject to the same billboard setback, spacing and principal use requirements. The property owner has the ability to develop and redevelop the property per M-1, Light Industrial standards.

With a setback of 0 feet, the proposed billboard would be placed closer E. Heights Drive than any existing building on the block. Contrary to this standard, staff finds that a property setback variance would actually grant a special privilege to the property owner not afforded to other property owners.

Staff acknowledges that prior Zoning Boards of Appeals have granted billboard separation and principal use variances in the past. However, these prior cases (as denoted within the applicant's application packet) can be differentiated from this case in that they all involved upgrading *existing* non-conforming billboards that were originally constructed prior to the adoption of the city's billboard ordinance. Alternatively, the ZBA case at hand involves the construction of a brand new billboard where none had previously-existed. Further, per Section 10.805, "*each case before the Zoning Board of Appeals 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.*" Staff recommends that the Zoning Board of Appeals base their decision on facts and findings only pertaining to this unique case.

- *The special conditions and/or circumstances are not a result of the applicant.*

Staff Finding: As previously discussed, staff does not find special conditions or circumstances pertaining to the property itself. Unique circumstances relating to the property, if found by the ZBA, are the result of the applicant's desire to construct a billboard use on the property rather than a use permitted by right or by special approval within the M-1 zoning district.

- *The variance is the minimum variance necessary to provide relief to the applicant.*

Staff Finding: Staff finds that the variance request is not warranted due to the absence of a valid practical difficulty.

- *In the absence of a variance, the property could not be used in a manner permitted by the Ordinance.*

Staff Finding: Staff finds that, in the absence of a variance, the property could continue to be utilized for, and redeveloped with, permitted M-1 industrial uses.

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

SITE PLAN REVIEW COMMITTEE (SPRC) ACTION

City staff presented the variance application to the Site Plan Review Committee at their March 8th, 2023, meeting. The SPRC had no additional comments regarding the proposed billboard location.

ZBA ACTION

Any ZBA motion should include findings of fact relating to the variance criteria listed in Sections 10.804(2) and 10.805, as outlined in the ‘Variance Findings’ section of this report. 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.

If the ZBA moves to approve all requested variances, an additional 1,335 ft billboard spacing requirement should be incorporated into the motion.

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.*

Section 10.511(IV)E – Billboards

(E) Billboards:

- (1) *Billboards shall be permitted only on parcels abutting interstate highways or freeways in the M-1 and M-2 zoning districts provided that such billboard shall not be placed on a parcel having any other structure within 100 feet of the billboard, and no other structure shall be placed on the parcel within 100 feet of the billboard, except that minimum distances from other billboards shall be regulated as set forth in subsection (2) following. A billboard shall not be located within any required setback of such parcel.*
- (2) *Billboards shall not be less than 2,500 feet apart. A double face (back to back) or a V-type structure shall be considered a single billboard provided the two faces are not separated by more than ten feet, or the interior angle does not exceed 20 degrees, whichever is applicable.*
- (3) *The total surface area, facing in the same direction, of any billboard, shall not exceed 700 square feet and shall be contained on a single panel.*
- (4) *Billboards shall not exceed 60 feet in height from the adjacent grade.*
- (5) *Billboards shall not be erected on the roof of any building.*

- (6) *Billboards with any form of changeable messages, including but not limited to mechanical or electronic means, shall conform to the timing requirements contained in section 10.511(III)(A)(7).*
- (7) *Billboards are deemed to constitute a principal use of a lot.*

