



CITY OF MADISON HEIGHTS COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT ZONING BOARD OF APPEALS (ZBA) APPLICATION

WHAT IS THE ROLE OF THE ZONING BOARD OF APPEALS (ZBA)?

Refer to **Section 14.05 (Zoning Board of Appeals)** of the Zoning Ordinance for the full administrative function, organization and processes associated with the Zoning Board of appeals.

The Michigan Zoning Enabling Act (Act 110 of 2206, as amended) clearly specifies the duties and responsibilities of the ZBA. In Madison Heights, the ZBA has the following primary functions:

1. To hear and decide requests for non-use (dimensional) **variances** from the strict application of the Zoning Ordinance.
2. To hear and decide **appeals** of administrative decisions made in implementing the Zoning Ordinance.
3. To **interpret** the provisions of the Zoning Ordinance.
4. To allow alteration of certain **non-conforming** uses, sites, and buildings.

NON-USE (DIMENSIONAL) VARIANCES

Refer to **Section 15.06** for full Zoning Ordinance standards pertaining to dimensional variances. The variance process is meant to provide limited relief from the requirements of the Zoning Ordinance in order to address extraordinary, exceptional, or unique conditions or circumstances that were not created by the property owner. A non-use, or dimensional, variance is one that permits a building, structure, or site element to be placed on a parcel in a way that does not satisfy minimum Zoning Ordinance requirements. Generally, dimensional variances relate to setbacks, lot area or width, building height, parking or landscaping standards, or design standards. The Madison Heights Zoning Ordinance does **not** permit use variances (or variances that permits a parcel or building to be used in a way that would not otherwise be allowed in the zoning district).

In order for a dimensional variance to be approved, the applicant must prove, and the ZBA must find, that there is a practical difficulty relating the property. In granting a variance, the ZBA shall find that **all** of the following requirements have been met by the applicant's petition:

- A. Strict compliance with area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose, and would thereby render the conformity unnecessarily burdensome for other than financial reasons; and

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- B. A variance will provide and preserve a substantial property right similar to that possessed by other properties within the same zoning district and in the neighboring areas, provided that possible increased financial return shall not of itself be deemed sufficient to warrant a variance; and
- C. The plight of the owner is due to the unique circumstances of the property, such as the shape of the parcel, unique topographic or environmental conditions, or any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary; and
- D. The requested variance is the minimum amount necessary to permit reasonable use of the land, building, or structure; and
- E. The authorization of such variances will not be of substantial detriment to adjacent properties and will not materially impair the intent and purpose of the Zoning Ordinance or the public health, safety, and general welfare of the community; and
- F. The need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).

ADMINISTRATIVE APPEALS

Refer to **Section 15.06** for full Zoning Ordinance standards pertaining to administrative appeals. The ZBA has the power to hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, permit, decision, or interpretation made by the Planning and Zoning Administrator, zoning enforcement officer, or any other administrative official, board or commission in carrying out or enforcing any provision of the Zoning Ordinance, except where the Zoning Ordinance prohibits ZBA action (e.g. direct appeal to Circuit Court).

An appeal shall be filed with the Planning and Zoning Administrator within **thirty (30) days** from the date listed on the Notice of Action referring to the order, requirement, decision, or determination which is the subject of the appeal.

ZONING INTERPRETATION

Refer to **14.05** for full Zoning Ordinance standards pertaining to interpretations. The ZBA has the power to interpret the regulations of the Zoning Ordinance or zoning map where it is alleged that certain regulations or are not clear or could have more than one meaning, or where there is a question as to the location of any boundary line between zoning districts.

NON-CONFORMING USES.

Refer to **Section 13.01** for full Zoning Ordinance standards pertaining to alterations of nonconforming uses. The ZBA may allow an expansion or enlargement of a nonconforming use, or the conversion to another use which is less intensive than the existing use, provided that it is conclusively shown that such extension, enlargement, or conversion: 1) will not further reduce the value or otherwise limit the lawful use of adjacent properties; 2) will retain the character and environment of abutting premises; 3) will not materially increase or perpetuate the nuisance aspects of the use upon adjacent uses; and 4) will satisfy remaining requirements of Section 15.06 of the Zoning Ordinance.

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PRE-APPLICATION CONFERENCE (OPTIONAL)

At the option of the applicant, prior to the submittal of a formal ZBA application, the applicant may submit a conceptual plan to the Community & Economic Development Department to be reviewed by the Planning and Zoning Administrator. The purpose of the pre-application conference is to discuss the review procedures, design elements, and ordinance requirements. At this conference, the Planning and Zoning Administrator may provide the applicant with an advisory opinion as to whether the application meets the substantive requirements for ZBA submittal. The City's comments during a pre-application conference shall be advisory in nature only and shall not constitute a recommendation of approval regarding the application. An applicant may request that a pre-application conference take place at a meeting of the Technical Review Committee, upon payment of a fee established by City Council.

COMPLETE APPLICATION REQUIRED

The ZBA Application will not be processed by staff until it has been verified that all required information has been provided with the application. Incomplete applications may be returned. Please carefully review the Checklist included within this application to see those items that must be included with a complete application submittal.

NOTICE OF PUBLIC HEARING AND ZONING BOARD OF APPEALS MEETING

Public hearing notices are required for all Zoning Board of Appeals applications. Staff will prepare the public hearing notice for publication in a local newspaper and mailers for surrounding property owners (if applicable), in accordance with the Zoning Ordinance and the Michigan Zoning Enabling Act.

The Zoning Board of Appeals will hold a public hearing at a regularly-scheduled meeting, unless a Special Meeting is scheduled. The ZBA Meeting Schedule and Submittal Calendar is attached to this application packet.

The applicant, or a designated representative **MUST BE PRESENT** at the meeting in which the case is being reviewed or the request may be postponed due to lack of representation.

APPROVAL PERIOD AND RESUBMITTAL

No order of the ZBA permitting the erection or alteration of buildings shall be valid for a period longer than one year unless a building permit for such project is obtained within such period and is commenced and proceeds to completion accordance with the terms of the permit. No order of the ZBA permitting a use of a building or premises shall be valid for a period longer than one year unless such use is established within such period.

No application for a variance which has been denied in whole or in part by the ZBA shall be re-submitted for a period of one year from such denial, except on the ground of new evidence or proof of changed conditions.

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APPEALS

An appeal of a ZBA decision shall be taken to Circuit Court within a time period specified in the Michigan Zoning Enabling Act. No decision or condition related to a Special Land Use application may be appealed to the Zoning Board of Appeals

ZBA REVIEW PROCESS

REFER TO SECTIONS 14.05 AND 15.05 OF THE ZONING ORDINANCE FOR FULL PROCESS, STANDARDS, AND REQUIREMENTS FOR ZONING BOARD OF APPEALS APPLICATIONS.

SUBMITTAL REQUIREMENTS

- (a) One (1) copy of the completed Zoning Board of Appeals Application, including the ZBA Review Standards Response Form, and all additional required attachments.
- (b) **For dimensional variances or alterations of non-conforming uses**, two (2) 8.5" x 11" copies and a digital (PDF) copy of the conceptual site plan or plot plan, properly scaled, showing: dimensions from street/property lines, sidewalks, building on site and on adjoining properties, easements, and other facilities, structures, and site conditions pertaining to the variance or alteration request. (Refer to Checklist included in this application).
- (c) **For appeals**, a copy of the Notice of Action, meeting minutes, and/or notice of violation for the zoning decision being appealed.
- (d) All applicable fees as established by City Council
- (e) OPTIONAL: Additional helpful information pertaining to the request, including but not limited to, photographs of the property or structure, letters of support, etc.

**Submit complete application to Community and Economic Development Department:
300 W. Thirteen Mile Road, Madison Heights, MI 48071**



CITY OF MADISON HEIGHTS
COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT
ZONING BOARD OF APPEALS (ZBA) APPLICATION

I. APPLICANT INFORMATION

Applicant Hang Phonrath (Kim Nhung Superfood Inc)
Applicant Address ~~29411 John R Road~~ 29305 John R Road
City Madison Heights State MI ZIP 48071
Interest in Property (owner, tenant, option, etc.) Business Owner
Contact Person Han Phonrath
Telephone Number 720-234-0505 Email Address hang@knsuperfood.com

II. PROPERTY INFORMATION (IF APPLICABLE)

Property Address ~~30925 Dequindre Rd.~~ 29305 John R Road
Tax ID ~~44-99-12-008-025~~ 44-25-11-476-022 Zoning District B2
Owner Name (if different than applicant) William Gershenson
Address 876 Horace Brown Dr.
City Madison Heights State MI Zip 48071
Telephone Number 248-417-3913 Email Address wgershenson@mmdco.com

III. CONSULTANT INFORMATION (IF APPLICABLE)

Name _____ Company _____
Address _____
City _____ State _____ Zip _____
Telephone Number _____ Email Address _____

IV. NATURE OF REQUEST

- Dimensional (Non-Use) Variance
- Appeal of Administrative Decision
- Zoning Text or Map Interpretation
- Alteration of Non-Conforming Use

Brief Description of Request

Variance to allow additional 29.25 sq.ft. sign for "EATERY"

Required Attachments: Refer to ZBA Review Standards Response Form and Checklist (attached).

V. APPLICANT CERTIFICATION

I (we) the undersigned do hereby apply to the City of Madison Heights for review and approval of the above-described Zoning Board of Appeals application. Applicant(s) and the property owner(s) do hereby consent to city staff to assess the property for purposes of evaluating the site for requested action(s). I hereby affirm that all of the information submitted with and including this application are correct and truthful to the best of my knowledge.

Printed Name Hang Phonrath Signature _____ Date _____

VI. PROPERTY OWNER CERTIFICATION

By signing below, I (property owner) understand that the application to the City of Madison Heights has been made for land use matters to be considered and decision made by the Zoning Board of Appeals that will affect use of my property. I hereby affirm that all of the information submitted with and including this application are correct and truthful to the best of my knowledge.

IF YOU ARE NOT THE PROPERTY OWNER, YOU MUST HAVE THE PROPERTY OWNER PROVIDE A NOTARIZED SIGNATURE, BELOW, OR PROVIDE A NOTARIZED LETTER OF AUTHORIZATION OR NOTARIZED POWER OF ATTORNEY AUTHORIZING YOU TO ACT ON THEIR BEHALF.

Printed Name William Gershenson Signature *WJ* Date 2/7/25

Notary for Property Owner:

Subscribed and sworn before me, this 7th day of February, 2025.

A Notary Public in and for Macomb County, Michigan.

Notary Name (Print): Kenisha Lee

Notary Signature: *K Lee*

My Commission Expires: 08/24/2028

Notary Stamp



STAFF USE ONLY [DO NOT ACCEPT INCOMPLETE APPLICATIONS]

| | |
|---|----------------------------------|
| FILING FEE: _____ | ZBA NO.: PZBA # _____ |
| ➤ DIMENSIONAL VARIANCE/NON-CONFORMING USE: | DATE APPLICATION RECEIVED: _____ |
| ○ Single-Family: \$300 | RECEIVED BY: _____ |
| ○ Multi-Family/Non-Residential: \$400 + \$300 per additional variance | |
| ➤ Appeal/Interpretation: \$400 | |

ZONING BOARD OF APPEALS (ZBA): REVIEW STANDARDS RESPONSE FORM

Section 15.06 of the Zoning Ordinance contains review standards and criteria for variances and appeals. Please provide responses to the following review standards for consideration by staff and the Zoning Board of Appeals. (Provide additional separate sheets, if necessary).

Please fill out ONLY the section below that applies to your request.

SECTION A: APPEAL OF ADMINISTRATIVE DECISION

Check here for an Appeal of Administrative Decision (Section 15.06 of Zoning Ordinance)

1. Date of Decision Being Appealed: _____

2. Decision Making Entity:

Planning and Zoning
Administrator

Planning
Commission

Code
Enforcement

Other: _____

3. Applicant's Reason for Appeal: Describe the decision being appealed and how the decision was made contrary to the proper requirements and standards of the Zoning Ordinance.

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4. Provide copy of the Notice of Action, notice of violation, and/or meeting minutes for the zoning decision being appealed.

SECTION B: ZONING TEXT OR MAP INTERPRETATION

Check here for a Zoning Text or Map Interpretation (Section 15.06 of Zoning Ordinance)

1. If requesting a text interpretation, provide Section numbers of Zoning Ordinance to be interpreted:

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2. Please describe the request and what needs to be clarified or interpreted by the ZBA.

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SECTION C: ALTERATION OF NONCONFORMING USE

Check here for an Alteration of a Nonconforming Use (Section 13.01 of Zoning Ordinance)

1. Describe the existing nonconforming use and the plans for alteration/expansion.

2. Describe how the alterations will not further reduce the value or otherwise limit the lawful use of adjacent properties.

3. Describe how the alterations will retain the character and environment of abutting premises.

4. Describe how the alterations will not materially increase or perpetuate the nuisance aspects of the use upon adjacent uses.

5. Provide conceptual site plan or plot plan, properly scaled, showing: dimensions from street/property lines, sidewalks, building on site and on adjoining properties, easements, and other facilities, structures, and site conditions pertaining to the variance or alteration request. (Refer to Checklist included in this application).

SECTION D: DIMENSIONAL (NON-USE) VARIANCE

Check here for a Dimensional (Non-Use) Variance (Section 15.06 of Zoning Ordinance)

1. List Section number(s) from which a variance is requested:

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2. Provide a description of the proposed work and why the anticipated variances are needed.

Installation of a wall sign (29.25 sq.ft.) "EATERY" over the second entrance at 29411 John R. The Kim Nhung Superfood already used the allowed 150 sq.ft. before we knew the EATERY sign was needed.

3. Explain how strict compliance with area, setbacks, frontage, height, bulk, density, or other dimensional standards would unreasonably prevent the owner from using the property for a permitted purpose, thereby rendering the conformity unnecessarily burdensome for other than financial reasons.

Compliance would not allow the other tenant (Eatery) any signage for their business.

4. Explain how a variance would provide and preserve a substantial property right similar to that possessed by other properties within the same zoning district and in the neighboring area, provided that possible increased financial return is not of itself deemed sufficient to warrant a variance.

Allowing the variance would give the Eatery representation on the exterior of the building allowing customers to know where to enter the building.

5. Explain how the plight of the owner is due to the unique circumstances of the property, such as the shape of the parcel, unique topographic environmental conditions, or other physical situation(s) on the land, building, or structure.

The setback from John R is 437 feet and a sign in the window will not be visible.

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6. Explain how the requested variance(s) is/are the minimum amount necessary to permit reasonable use of the land, building, or structure.

The size of the sign proposed will hopefully allow visibility of Eatery from the street or at least the back of the parking lot. It is 437 feet from John R and the building.

7. Describe how the authorization of such variance will not be of substantial detriment to adjacent properties and will not materially impair the intent and purposes of the Zoning Ordinance or the public health, safety, and general welfare of the community.

Approval of the variance will not be a detriment to adjacent properties. It is a smaller sign and will not interfere with the activity of other businesses in the complex.

8. Describe how the need for the variance(s) is not the result of actions of the property owner or previous property owners.

9. Provide conceptual site plan or plot plan, properly scaled, showing: dimensions from street/property lines, sidewalks, building on site and on adjoining properties, easements, and other facilities, structures, and site conditions pertaining to the variance or alteration request. (Refer to Checklist included in this application).

ZBA: SUBMITTAL CHECKLIST

The following items are required for a complete Zoning Board of Appeals application. Incomplete applications will not be processed.

- Completed Zoning Board of Appeals application and submittal of required fee.
- Completed ZBA Review Standards Response Form.
- For dimensional variances or alterations of non-conforming uses:** two (2) 8.5" x 11" copies and a digital (PDF) copy of the conceptual site plan or plot plan, properly scaled, showing:
 - Boundary lines and setback dimensions.
 - Existing building location.
 - Proposed buildings and site improvement/changes.
 - Proposed easements, utilities, or other facilities.
 - Additional site conditions pertaining to the variance or alteration request.
- For appeals:** a copy of the Notice of Action, meeting minutes, and/or notice of violation for the zoning decision being appealed.
- OPTIONAL:** Additional information pertinent to the request, including photographs of the property or structure, letters of support, etc.

The Planning and Zoning Administrator may waive particular ZBA application submittal items upon a determination that such items are not necessary to or pertinent to the requested action.

**MADISON HEIGHTS ZONING BOARD OF APPEALS
2025 MEETING SCHEDULE**

First Thursday of each month at 7:30 p.m. (unless otherwise noted or canceled)

Council Chambers – 300 W. 13 Mile Road (unless otherwise noted)
Madison Heights, MI 48071

| MEETING DATE | APPLICATION DEADLINE (By close of business) | NOTICES PUBLISHED |
|---------------------------------|--|----------------------------|
| JANUARY – NO MEETING | -- | -- |
| February 6th | January 13 th | January 22 nd |
| March 6th | February 10 th | February 19 th |
| April 3rd | March 10 th | March 19 th |
| May 1st | April 7 th | April 16 th |
| June 5th | May 5 th | May 14 th |
| JULY - NO MEETING | -- | -- |
| August 7th | July 14 th | July 23 rd |
| September 4th | August 11 th | August 20 th |
| October 2nd | September 8 th | September 17 th |
| November 6th | October 6 th | October 15 th |
| December 4th | November 3 rd | November 12 th |

Adopted: December 5th, 2024