



MEMORANDUM

Report Date: January 2nd, 2026
To: City of Madison Heights Zoning Board of Appeals
Meeting Date: January 8th, 2026
From: Matt Lonnerstater, AICP – City Planner
Subject: PZBA 25-11; 31075 John R Road
Appeal of an Administrative Decision to deny a Certificate of Occupancy

REQUEST

The applicant, Matthew Abro, is appealing an administrative decision made by the City Planner, acting in the capacity of the Planning and Zoning Administrator, to deny a Certificate of Occupancy application for a tobacco/smoke shop at 31075 John R Road.

ZBA AUTHORITY

Per Section 15.06 of the Madison Heights Zoning Ordinance, the Zoning Board of Appeals shall have 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 or board or commission in carrying out or enforcing any provision of the Zoning Ordinance. The concurring decision of a majority of the members of the board shall be necessary to reverse an order, requirement, decision or determination of an administrative officer or body.

Where the ZBA finds that the administrative officer erred in making their decision, the ZBA may reverse a decision, in whole or in part, or may modify a decision.

The ZBA's authority to hear and decide appeals of administrative decisions is derived from the Michigan Zoning Enabling Act ("MZEA") which authorizes the ZBA to, "hear and decide appeals from and review any [decision] made by [a body] charged with enforcement of a zoning ordinance." (MCL 125.3603).

GUIDANCE FOR APPEALS

The Michigan Municipal League's ("MML") Zoning Board of Appeals Handbook offers the following guidance for reviewing administrative appeals:

Although the ZBA may reverse or affirm, wholly or partly, or may modify a prior decision, its powers are generally limited to determining whether or not the official or body making the administrative decision acted properly. The ZBA must recognize that the zoning administrator or planning commission has already made a decision regarding the issue as part of its delegated duties. The role of the ZBA is to determine whether the decision was authorized or supported by the zoning ordinance.

In addition, the ZBA should not treat the appeal as a new decision. Rather, review of the decision should be limited to the information that was available to the body or person who made the decision initially. Allowing testimony or evidence in addition to that previously submitted is inappropriate, unless the zoning ordinance directs otherwise. In those instances where the official or body used proper procedures and standards, the ZBA should uphold the decision, even if the members personally disagree with the result. (Michigan Municipal League – Zoning Board of Appeals Handbook).

BACKGROUND AND FACTS

Subject Property: The subject property is zoned B-1, Neighborhood Business district, and is improved with a strip-retail center featuring multiple tenant spaces.

Appeal Request: The applicant is appealing the decision of the Planning and Zoning Administrator (City Planner) to deny a Certificate of Occupancy application to establish a Tobacco/Smoke Shop at the subject property, 31075 John R Road (Suite C2). A rough timeline of events is provided below:

- **March 19th, 2025:** The applicant applied for a building permit to split an existing retail suite into two white-box suites. The Building Official issued the building permit on March 21st, 2025.
- **July 23rd, 2025:** The applicant submitted revised building plans; one sheet which denotes a “cigar display room”, which were subsequently approved by the Building Official.
- **November 24th, 2025:** The applicant submitted a Certificate of Occupancy application on for “Smokin Bear Tobacco of John R, Inc.” Within the application, the applicant states, “*the space will be used to operate a retail smoke shop. We sell tobacco, cigarettes, cigars, vapes, hookahs, lottery, ashtrays, lighters.*”
- **November 25th, 2025:** The Planning and Zoning Administrator (City Planner) denied the Certificate of Occupancy based on the following findings, as outlined in the email dated November 25th, 2025:
 - The proposed use is defined and classified as a “Tobacco/Smoke Shop” per Section 2.01 of the Zoning Ordinance.
 - Tobacco/Smoke Shops are not a permitted use in the B-1 zoning district, per Section 3.06 of the Zoning Ordinance.
- **November 26th, 2025:** The applicant formally appealed the decision within the 30-day window set for appeals by Section 15.06.

Definition of Tobacco/Smoke Shop: Per Section 2.01 of the Zoning Ordinance, effective on May 29th, 2024, a “Tobacco/Smoke Shop” is defined as, “*a store primarily selling tobacco products and smoking equipment. General retail establishments, including grocery stores, convenience stores, or markets that include tobacco sales as an ancillary use are not included in the definition of a tobacco/smoke shop.*”

The Planning and Zoning Administrator (City Planner) applied this definition when reviewing and acting upon the Certificate of Occupancy application.

Permitted Use Table: Per the Permitted Use Table, Section 3.06 of the Zoning Ordinance, "Tobacco/Smoke Shop" is not a permitted use in the B-1, Neighborhood Business district.

Portion of Permitted Use Table – Section 3.06

Land Use	R-1	R-2	R-3	R-MN	R-MF	O-1	B-1	B-2	B-3	CC	M-1	M-2	H-M	N-P	Use Standards (Section No.)
Personal Service Establishments						P	P	P	P	P*	P	P			
Pharmacy						P	P	P	P	P*	P	P			
Professional Office						P	P	P	P	P*	P	P	P	P	
Restaurant						P	P	P	P	P*	P	P	P	P	
Self-Storage Facility										S			S	S	7.03(40)
Tutoring and Instructional Services						P	P	P	P	P*	P	P			
Tobacco/Smoke Shop or Smoke Lounge										P	P	S*	S	P	7.03(44)
Theater								S	P	P	P*	P	P		
Veterinary Clinic or Animal Grooming						S	S	P	P	P*	P	P			7.03(46)

The Planning and Zoning Administrator (City Planner) referred to this use table when reviewing and acting upon the Certificate of Occupancy application.

Certificate of Occupancy Information: Prior to occupying a commercial space in Madison Heights, all tenants are required to apply for and obtain a Certificate of Occupancy from the Community and Economic Development Department. Per Section 15.03 of the Zoning Ordinance, *"an issued [Certificate of Occupancy] shall certify that the building, structure and use are in compliance with Zoning Ordinance standards."* Further, *"Certificate of Occupancy applications shall be reviewed by the Planning and Zoning Administrator for compliance with the provisions of [the Zoning Ordinance]."*

Certificates of Occupancy are issued once work covered by a building permit, site plan, or any other City-issued permits have been completed in accordance with the permit and once it has been confirmed that the proposed use is in compliance with zoning standards. While an issued building permit establishes that the plans themselves comply with local/state building codes, it does not in and of itself constitute zoning approval, nor does it constitute that the completed work complies with building code prior to an inspection. Page 2 of the Madison Heights Building Permit application states: ISSUANCE OF A PERMIT DOES NOT GUARANTEE COMPLIANCE WITH ANY BUILDING OR OTHER CODE.

Zoning Compliance: The full Zoning Ordinance and zoning map, including the use table, are available for public review on the Madison Heights website. Hard copies are also available for public review at Madison Heights City Hall. City staff, including the Planning and Zoning Administrator (City Planner) are available to answer zoning questions via email, phone or in person during regular business hours.

STAFF COMMENT AND ZBA ACTION

To reiterate, the applicant has appealed the Planning and Zoning Administrator's decision to deny a Certificate of Occupancy for his business. The facts presented in this staff report and the included attachments provide the reasoning for the Planning and Zoning Administrator's decision. This is **not** a variance request, and the criteria for reviewing an appeal differ from that of a variance request. In this case, the Zoning Board of Appeals is tasked with determining whether the Planning and Zoning Administrator (City Planner) made an error in their decision to deny the Certificate of Occupancy. The onus is on the applicant/petitioner to prove that an error was made.

Based on general zoning practice, a reversal or modification of the Planning and Zoning Administrator's decision may be made if the ZBA finds one of the following to be true:

- (1) The decision was arbitrary or capricious; or
- (2) The decision was based on erroneous findings of fact; or
- (3) The decision was a clear abuse of discretion; or
- (4) The decision was based on an erroneous interpretation of the Zoning Ordinance.

The ZBA should not treat the appeal as a new decision. Rather, review of the decision should be limited to the information that was available to the Planning and Zoning Administrator when the decision to deny the Certificate of Occupancy application was made.

Following the consideration of all testimony, documentary evidence, and matters of record, and following the public hearing, the ZBA shall make a determination on the appeal unless an extension of time is agreed to by the applicant and the ZBA. Any ZBA motion, including a decision to either uphold or overturn the decision of the Planning and Zoning Administrator, shall include clear and concise findings of fact relating to the appeal.

Attachments

- Maps
- PZBA 25-11 ZBA application for administrative appeals
- EXHIBIT #1: Certificate of Occupancy application
- EXHIBIT #2: Notice of denial of Certificate of Occupancy
- EXHIBIT #3: Original Building Permit application and plans (PB# 25-112) – March 2025
- EXHIBIT #4: Revised Building Permit plans – July 2025
- Section 3.06 – Permitted Use Table
- Section 15.06 – Variance and Appeals
- Michigan Zoning Enabling Act (MZEA) – Section 125-3603
- Public Hearing Notice

TEMPLATE MOTIONS

AFFIRM/UPHOLD DECISION:

MOVE THAT the Zoning Board of Appeals hereby affirms and upholds the administrative decision of the City Planner, acting in the capacity of the Planning and Zoning Administrator, to deny a Certificate of Occupancy for a tobacco/smoke shop at 31075 John R Road, zoned B-1, Neighborhood Business. This decision is based upon the finding that the Planning and Zoning Administrator acted on the submitted Certificate of Occupancy application in accordance with the Madison Heights Zoning Ordinance.

OVERTURN DECISION:

MOVE THAT the Zoning Board of Appeals hereby overturns the administrative decision of the City Planner, acting in the capacity of the Planning and Zoning Administrator, to deny a Certificate of Occupancy for a tobacco/smoke shop at 31075 John R Road, zone B-1, Neighborhood Business, thereby approving the zoning compliance component of the Certificate of Occupancy application. This decision is based upon the finding that the Planning and Zoning Administrator acted in error, specifically as follows [Include Findings].