

Village of Onekama

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Blarney Castle Oil Company

Re: Dimensional Variance Request – Sign

Parcel(s) #51-41-100-091-00, 51-41-100-091-05, 51-41-100-095-00, and 51-41-025-011-26

Property Address: 5357 Main Street, Onekama, Michigan 49675

STAFF REPORT

Request Narrative

After making application and providing the required documentation the applicant was issued a Special Use Permit on December 21, 2016. Previously, the Village Planning Commission conducted the required public hearing on October 12, 2016 and made a recommendation of approval to the Village Council based upon their findings of fact and conclusions. The Village Council subsequently acted upon the recommendation and approved the issuance of the Special Use Permit based upon their (Councils) findings and conclusions.

Note: The Planning Commission and the Council did not waive the Zoning Ordinance provision(s) requiring that signage be only in compliance with Article 10, Section 1015, more specifically, Section 1015.A.3.b requiring the sign to be on or attached to the building wall. Therefore, the applicant cannot install / erect the proposed freestanding sign as and where shown on the site plan. The foregoing provision (as well as other language) was adopted by the Village Council on March 9, 2016.

The Zoning Administrator received the initial application requesting a variance from the zoning ordinance on December 23, 2016 within the specified time frame noted in Article 96, Section 9604.B. The application fee (Check #308163 dated December 23, 2016) was received by the Village shortly thereafter.

Upon receipt and initial review, it was noted by the Zoning Administrator that the application lacked sufficient detail that would allow the Zoning Board of Appeals to make an informed decision. The application failed to address the very first standard in Article 96, Section 9604.C.1 and did not provide a site plan or other visual elements detailing sign size, design, or other structural elements.

The information required to deem the application complete was received by the Zoning Administrator on January 27, 2016.

The applicant is requesting a variance to the provisions of the ordinance that were amended by Ordinance No. 01 of 2016 no longer allowing free-standing signs in the Commercial Residential District / Portage Lake Overlay Zone.

Signs on non-residential parcels in the Commercial Residential District: (ordinance excerpt)

a. shall be subject to advance review and approval by the Zoning Administrator concerning only size, number, location, maintenance requirements, and, where applicable, compliance with Section 1008 and Section 1015.A.4 below;

b. shall be limited to one sign on or attached to each building wall, except that each business located in a building may have one sign on or attached to each building wall; [Amended by Ordinance Number 01 of 2016, effective March 18, 2016]

9604 [please see applicant's answers to the following standards / attached document]

C. A non-use variance from the terms of this Ordinance regarding a structure or parcel shall not be granted unless, after considering all the record evidence submitted at a Public Hearing held under this Article, a majority of the Regular Members and Alternate Members called to serve as a Board Member votes to concur with written findings that the following standards have been met:

1. Special conditions and circumstances exist which are peculiar to the parcel or structure involved and which are not applicable generally to other parcels or structures in the same Zoning District.

- *The zoning board of appeals may wish to consider that fuel stations have historically used free-standing elevated signs to make the consumer aware of price. Strict compliance with Section 1015.A.3.b requiring the sign to be on or attached to the building wall would require the installation of at least 3 individual signs attached to the north, east, and west face(s) of the structure in order to provide the same visual effect as one (1) free-standing sign.*

2. The special conditions and circumstances required to be demonstrated in Section 9604.C.1 do not result from the actions of the requesting person.

- *The structure has historically been used as a grocery store / market. At the time of site plan approval the applicant had taken no actions to affect the special conditions or circumstances of the captioned property.*

3. A literal interpretation of the provisions of this Ordinance would deprive the requesting person of rights commonly enjoyed by owners of other properties in the same Zoning District under this Ordinance.

- *If the appellant were to be required to comply, they would be deprived of the right to the highly visible signage that they currently enjoy at their two proximate locations, while other businesses continue to enjoy their current status as 'nonconforming'. This is always a burdensome standard and presents unintended consequences when new ordinances are*

implemented. The intent of the free standing sign is to be able to continue to enjoy similar rights and visibility as other commercial establishments in the same zoning district.

4. The non-use variance, as granted, is in harmony with the general purpose and intent of this Ordinance, is not injurious to the neighborhood or otherwise detrimental to the public safety, and is the minimum variance that will provide substantial justice to the applicant by allowing reasonable use of the structure or parcel.

- **ARTICLE 50: COMMERCIAL RESIDENTIAL DISTRICT 5001.**

It is the intent of this district to provide for an established commercial residential district and a downtown business area in certain parts of the Village, to promote a compatible arrangement of land uses for businesses and homes and to keep commercial areas free from detrimental uses.

The zoning board of appeals must find that the granting of the variance will be injurious to the neighborhood or otherwise detrimental to the public safety in order to find this standard as not being met.

5. The grant of the non-use variance is appropriate because there are practical difficulties in carrying out the strict letter of this Ordinance, the spirit of this Ordinance is observed, public safety is secured and substantial justice is done.

- *The appellant proposes the variance in lieu of the practical difficulties that would imposed by compliance [multiple signs]. The spirit of the ordinance will be observed by insuring that there are no undue distractions for motorists traversing M-22, ensuring public safety and providing 'substantial justice' by allowing a property right to be continued.*

The Michigan Court of Appeals has applied the following principles in dimensional variance court cases, which **collectively** amount to the showing of a practical difficulty:

- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use, or would render conformity necessarily burdensome;
- The particular request, or a lesser relaxation of ordinance standard, would provide substantial justice to the landowner and neighbors;
- The plight is due to unique circumstances of property and is not shared by neighboring properties in the same zone; and
- The problem is not self-created.

There may be additional standards that apply in a community's zoning ordinance.

The zoning board of appeals must make **written** 'findings' and 'conclusions' that support any decision rendered.