

**GARFIELD TOWNSHIP
ZONING BOARD OF APPEALS**

**IN RE: SONNY'S BODY SHOP
ON REMAND TO THE GARFIELD TOWNSHIP ZONING BOARD OF APPEALS
FROM GRAND TRAVERSE COUNTY CIRCUIT COURT CASE # 15-30775-AA.**

**APPLICATION FOR VARIANCE AND/OR INTERPRETATION
OF THE GARFIELD TOWNSHIP ZONING ORDINANCE
AS APPLIED TO SONNY'S BODY SHOP**

I. Introduction and Background Regarding Sonny's Body Shop.

This proceeding is before the Garfield Township Zoning Board of Appeals on remand from the Grand Traverse County Circuit Court. Applicants Cass Avenue Properties LLC and Sonny's Body Shop (collectively "Sonny's" hereafter) seek a determination from this ZBA to permit Sonny's to maintain concrete which extends into the minimum front yard.

Sonny's has been in operation for more than 34 years in the Grand Traverse area. Between 1980 and 2013, Sonny's operated from 1774 Cass Hartman Court, in Garfield Township. It does more than \$2.4 million in business each year. It has consistently employed more than 13 area residents during the last four years. Sonny's primary competitors include Bill Marsh and Robinson's Auto Body.

In 2013, the Sonny's owners, Doug Rice and Robert Valteau, determined that the business had outgrown the outdated facility at 1774 Cass Hartman Court. They considered potential options, including renovation of its 1774 Cass Hartman facility and moving to another location outside of Garfield Township. In 2013, Sonny's decided to purchase the former Cook Sheet Metal facility and to upgrade it to meet their need for a new, state of the art auto body shop. Sonny's purchased the premises on September 1, 2013.

Sonny's invested substantial time and money to design its new facility. It hired an architect, Fred Campbell, to assist in the process. It obtained permission from the Township to construct the buildings and structures it desired to improve the premises. The design included an "estimate bay" on the west side of the existing building.

The estimate bay is an important part of Sonny's operation. It serves as the first impression to customers visiting Sonny's, where employees greet customers, inspect vehicles and perform estimates. When repairs are completed, Sonny's uses the estimate bay to show the repair work to customers, and return the vehicle to its customer.¹ Estimate bays are crucial to the operation of an auto body shop, particularly in northern climates where weather conditions vary dramatically and days are short in the winter. Estimate bays are common among newer independent body shops because they help those businesses compete with larger auto dealers which offer dedicated customer greeting and waiting, inspection, and delivery areas. Sonny's considers this estimate bay as a necessary component for its body shop.

II. Background Regarding Prior Proceedings.

Township staff correctly determined Sonny's proposed improvements were permitted by right in the MUIBD district. Staff issued a Land Use Permit on December 10, 2013 for the plans submitted by Sonny's. See **Exhibit 7**. The estimate bay and its garage doors were approved as a use by right in the MUIBD district.

The Township planner and zoning administrator objected, however, to a driveway from the south side of the estimate bay to the pre-existing paved areas on the south side of the building. This drive is necessary to permit cars to travel from the estimate bay toward the pre-existing drive and parking area on the south side of the building, and to exit onto Cass Hartman Road from the south side

¹ The improvements from Sonny's former location include many components other than an estimate bay, but the focus of the ZBA's involvement in this instance is on the driveways and vehicular travel to and from the estimate bay to Cass Hartman Court. Therefore, the applicants have targeted this element specifically.

of the premises.² It also permits vehicles to travel from the estimate bay to the south parking area without having enter Cass Hartman Court to do so.

Before approving the land use permit, the planner proposed Sonny's implement a much more expensive improvement, and move its offices to a different location on the lot. This proposal was simply too expensive and less convenient than Sonny's could agree to.

During construction, Sonny's met with Chuck Korn and Rob Larrea. They discussed the proposed extension of the pre-existing drive to the south side of the estimate by. Sonny's explained this new concrete would extend concrete from the pre-existing sidewalk within the front yard beyond the estimate bay, and would allow vehicles to and across a paved section of drive in traveling to the south parking lot and Cass Hartman Court. Sonny's understood from this conversation the Township would allow this small area of new concrete to connect to the pre-existing drive to the south bay door. Based on this conversation, Sonny's directed its contractor to pour the additional concrete area to complete the expanded drive south of the estimate bay.

The following basic facts are important to the Board's analysis:

1. There is 288.5 square feet of concrete newly poured which is located within the minimum front yard setback that did not previously exist;
2. No part of the 288.5 square feet of concrete is closer to the road than the pre-existing concrete sidewalk;
3. The 288.5 square feet of concrete expanded the width of the pre-existing sidewalk within the front yard setback just over 10 feet;
4. The 288.5 square feet of concrete expanded the length of the pre-existing driveway by 22 feet within the minimum front yard setback.

² Mr. Larrea apparently based his objection on the premise that the proposed concrete drive violated the minimum front yard setback.

5. Vehicles will travel out of the south door of the estimate bay to gain access to the preexisting parking lot on the south side of the building.
6. Vehicles will travel out of the south door of the estimate bay on the south side of the building to egress from the south door of the estimate bay to Cass Hartman Court.

When Ms. Kopriva learned new concrete had been poured, she issued a violation letter to Sonny's. See **Exhibit 9**. That violation letter failed to identify any specific provision of the Garfield Township Zoning Ordinance (GTZO) which Sonny's violated. See Exhibit 9.

Sonny's submitted a variance request to the ZBA. As the ZBA is now aware, staff objected to the variance. The variance process was flawed because neither staff nor Sonny's analyzed important issues and facts which should have been considered by the ZBA before acting on the variance request. The ZBA denied the variance request under Section 5.4 of the GTZO. See **Exhibits 13 and 14**.

Sonny's appealed that decision to the Grand Traverse County Circuit Court. Before pursuing that appeal in earnest, Sonny's attempted to work with the Township to reach a mutually agreeable solution. Neither staff nor Township counsel entertained Sonny's offer. Sonny's then pursued its appeal.

Both Sonny's and the Township submitted significant briefs regarding the facts and legal issues. After the submission of these papers, Judge Power held a full hearing on Sonny's appeal on June 8, 2015, and he issued his opinion from the bench.

At the conclusion of the appeal, Judge Power remanded the following issues to this body for further consideration:

- "1. Interpret the term "necessary drive" as it applies to the drive exiting/entering the south side of the Appellant's estimate bay; and
2. The GTZBA shall determine whether the drive exiting/entering the south side of the Appellant's estimate bay may be permitted as an extension of a nonconforming use under Section 7.7.5."

See **Exhibit 16.** Judge Power's decision from the bench was more explicit than the actual order:

12 "However, there are two other issues, one of
13 which was sort of raised before the board and the other
14 of which maybe they'd like to.

15 That is, first, is whether this is a "necessary
16 drive." Now, there is been some discussion of how
17 critically important something must be to be "necessary"
18 since two entrances to the same property seem to be
19 routinely accepted you would think the standard for
20 necessity is pretty low. So, they might find this is a
21 necessary drive, and but that's something the Board of
22 Zoning Appeals should be asked to consider, it's a
23 definition, it's within the problems of their
24 consideration.

25 The other one is that there was a walkway or
1 paved concrete strip out of the building before this
2 estimation bay was built. The drive that's in question
3 was poured over that, over the same area, and is somewhat
4 larger and there is a question of whether that was a
5 pre-existing use, and if so would this be a permitted
6 expansion. The zoning ordinance does seem to take a
7 somewhat liberal view of expansions and so that might be
8 something they would consider.

9 Indeed, the findings that were made in finding
10 C, E and F would seem to be the findings that are
11 necessary to permit the expansion of a variance, but I
12 think we should let the Board of Zoning Appeals make an
13 official finding on that.

14 And, so, the two issues of whether this is a
15 necessary drive and whether this is a permitted expansion

16 of a non-confirming use we'll remand to the Board of
17 Zoning Appeals pursuant to 7.122, the Court Rule, and I
18 think it's (G)(1)(b), if they want to they can consider
19 this approach to the problem.

20 So, we'll affirm the denial of the variance and
21 remand for consideration the other two issues, more
22 formal consideration. I think they sort of considered
23 the expansion of the non-conforming use, but I don't
24 think they explicitly did that and I think it would be
25 better if they were allowed that opportunity. So we'll"

See **Exhibit 17**, Appeal Transcript, pp. 46-47. This Board should take the opportunity given to it by the Court to "do the right thing", and approve the new concrete drive as a necessary drive pursuant to Section 6.9.12(4)(a) and/or as a lawful expansion of a pre-existing use under Section 7.7.5.

III. Substantive Facts Regarding the Property, Improvements, and Driveway.

The property is located within the MUIBD district. The MUIBD provisions of the GTZO are attached as **Exhibit 18**. The Schedule of Regulations is attached as **Exhibit 19**. The GTZO establishes a 40 foot front yard setback in the MUIBD district. The GTZO measures the front yard setback from the road right of way, not the paved cul-de-sac. GTZO Sections 3.2 and 6.15. Because the cul-de-sac right of way extends beyond the paved portion of the street, the minimum setback stretches far into the lot interior. However, neither the MUIBD district, nor GTZO, generally offered specific relief to parcels which are adversely affected by the existence of a setback.

1824 Cass Hartman Court is situated with its front yard located on a cul-de-sac. Due to the arc of the cul-de-sac, the 40 foot front yard setback effects this property much more than if the lot were a traditional shape or had a straight front lot line. The 40 foot front yard setback arcs substantially into Sonny's lot, to a point where it almost reaches the estimate bay constructed on the site. The result is

that buildings at Sonny's property must be located further from the center line of the road than other parcels along the road (except for parcels on the cul-de-sac).

Despite this disparate impact, Sonny's complied with the GTZO requirements when it improved the premises. It did not seek a variance or special use to violate the front yard setback even though one may have been warranted.

The estimate bay permitted by right has two garage doors on opposite sides. Sonny's customers will enter the premises from Cass Hartman Court, cross the preexisting driveway on the north side of its property, turn right, and then drive across the driveway to the north door of the estimate bay.

Sonny's employees and customers will use the estimate bay to view vehicles and communicate regarding customers' vehicles. After customers and employees have completed their inspection of a vehicle, the customer will then pull forward through the north door of the estimate bay opposite the point of entry. The vehicle will then drive from the estimate bay, across the south driveway to access Cass Hartman Court. This plan of vehicular travel is an integral part of Sonny's operation. It allows Sonny's to use the estimate bay efficiently, and to provide a valuable service and convenience to its customers during inclement weather. This configuration also provides the best way to provide safe, convenient, and efficient vehicular access to and from the estimate bay.

As a vehicle proceeds from the south estimate bay door to Cass Hartman Court or the south parking area, it will drive across the 288.5 square feet in question. This 288.5 square feet of concrete is not a parking or loading area. Its sole purpose is to provide vehicular and pedestrian access to the premises.

IV. The Auto-Body Shop And Estimate Bay Are Consistent With The Spirit And Intent Of The GTZO And Permitted By Right Within The MUIBD Zoning District.

The overriding questions presented to this Board are twofold. First, does a concrete driveway in the front yard violate the 40 foot minimum front yard setback where it is important to the underlying business? Second, if it does violate the GTZO, should the concrete driveway be permitted as an extension of a prior lawful use?

The GTZO governs structures and uses of property in the Township. Section 6.1.4, Scope of Regulations. of the GTZO expressly states:

“Scope of Regulations: No building or structure, or part thereof, shall be erected, moved, constructed, or altered, and no new use or change in use shall be made unless in conformity with the provisions of this Ordinance and with the regulations specified for the district in which it is located”.

Sonny’s Premises at issue is located within the MUIBD district. The intent of the MUIBD district is to permit a variety of uses, including industrial. GTZO Section 6.9.1 provides:

“The intent of the MUIBD is to recognize the shift from a manufacturing-based economy to a service-based economy by accommodating the demand for retail and office spaces while not precluding traditional industrial uses. Accordingly, this MUIBD district has been developed in place of a traditional industrial district as a flexible zoning district that permits a variety of compatible uses within particular sites and between neighboring parcels.

It should be recognized that though non-industrial uses may be permitted in the district, the principal intent of the district is to remain industrial in nature. Accordingly, persons considering a non-industrial use of a property should be aware of potential industrial impacts upon their property, including but not limited to noise, dust, or vibration. In considering development applications, the Township will attempt to limit these adverse impacts.”

It is clear the district was designed to be a flexible area to accommodate industrial and commercial uses. A view of Cass Hartman Court confirms the types of structures and land uses along Cass Hartman Court are predominantly industrial. The Board members are invited to view the area. A Google map of the road can be viewed at:

<https://www.google.com/maps/place/Cass+Hartman+Ct,+Traverse+City,+MI+49685/@44.7133984,-85.6248183,477m/data=!3m2!1e3!4b1!4m2!3m1!1s0x881e3315ad19975f:0xedd7072111a7f028>.

This map depicts more than one driveway for almost every building along Cass Hartman Court.

The MUIBD districts (both General and Limited) expressly establish Auto Service businesses such as Sonny's as a Use Permitted by Right. See GTZO Sections 6.9.7 and 6.9.9. As the ZBA considers this matter, it is important it view the underlying facts and circumstances with an eye toward Sonny's status as the very type of business for which the MUIBD was created.

Activities within the MUIBD district are to occur within an enclosed building(s). See GTZO 6.9.12(1). Sonny's estimate bay is consistent with this requirement. Customers enter the north driveway, pull into the estimate bay and park within the enclosed bay, where Sonny's will greet the customer and inspect the vehicle. After completing an inspection and/or estimate, the customer will then drive forward out the south door and pull onto the 288.5 square feet of concrete toward the pre-existing drive and then to Cass Hartman Court. This 288.5 square feet of concrete is far better for the Township, Sonny's and its customers than would be a dirt path leading from the south bay door to the pre-existing drive.

The GTZO encourages owners to keep front yards clear of storage or "clutter". GTZO Section 6.9.12(2) states:

"(2) Outdoor Storage:

- a. Outdoor storage shall not be permitted between the front lot line and the front of the primary building or within any required setback.
- b. All outdoor storage shall be effectively screened by a solid, uniformly finished wall or fence with solid entrance and exit gates. Such fence or wall shall be at least five (5) feet in height, but in no case shall the fence be lower than the enclosed storage. Alternatively, the Planning Commission or Zoning Administrator may approve the use of landscaping treatment, together with or in place of a fence or wall that will provide equal or better screening of the outdoor storage".

Sonny's does not use any part of its front yard for storage, parking, or similar activities. The MUIBD district furthers that intent at Section 6.9.12(4)(a), which provides:

"(4) Yards in this District shall conform to the following standards:

- a. Except for landscape improvements and necessary drives and walks, the front yard shall remain clear, and shall not be used for parking, loading, or accessory structures. Side and rear yards, except for any landscaping buffer as required elsewhere in this ordinance, may be used for parking and loading.”

This provision is also clearly intended to keep front yards clear of “stuff”, where feasible. The C-1 district contains very similar language.³ Sonny’s does not park or store materials in its front yard, it constructed an addition which complies with the front yard setbacks, and it conducts its business activities inside. It has done the best it could reasonably do to construct a facility permitted by right within the MUIBD district. The ZBA must now determine whether it will interpret the GTZO in a reasonable manner in light of the facts and circumstances before it.

V. The driveway is not prohibited by the GTZO.

GTZO Section 3.2 defines “driveway”:

Driveway: A means of access for vehicles from a right-of-way to private property.

The term driveway must encompass reasonable ingress and egress to a private property. What constitutes “reasonable” ingress and egress is not defined by the GTZO. However, it is clear the GTZO does not define a driveway as a building or structure (those types of improvement are not permitted within the front yard setback without a variance or special use permit. The following definitions are relevant:

Building: Any structure, either temporary or permanent, having a roof and used or built for the shelter or enclosure of persons, animals, chattels or property of any kind. This shall include tents, awnings and vehicles situated on private property and used for purposes of a building, whether or not mounted on wheels.

Driveway: A means of access for vehicles from a right-of-way to private property.

³ The use of land within the C-1 District also confirms the intention of the GTZO to keep front yards free from parking, loading, or accessory structures:

“(d) Front yards in the C-1 District shall be appropriately landscaped and maintained and, except for necessary drives and walks, it shall not be used for parking, loading, or accessory structures.”

Setback: The minimum required distance between the property line and the building line.

Building Lines: A line defining the minimum front, side and rear yard requirements outside of which no building or structure may be located.

Yard, Front: A yard, extending across the front of the lot between the side lot lines and measured between the front line of the lot and the building line.

Yard: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein. The measurement of the yard shall be construed as the minimum horizontal distance between a lot line and a building line.

Lot, Front of: The lot line, which is the front street line of the principal street or right-of-way providing access to the lot.

Street Line: The legal line of demarcation between a street and abutting land.

Structure: A structure is any production or piece of material artificially built up and composed of parts joined together in some definite manner, any construction, including dwellings, garages, buildings, mobile homes, signs and sign boards, towers, poles, antennae, landfills, walls, weirs, jetties, pipes or other like objects, but not including fences.

See Section 3.2 of the GTZO. There is no question that all buildings and structures on Sonny's premises are outside of the minimum front yard and comply with the GTZO.

The Schedule of Regulations establishes a general 40 foot minimum front yard setback within the MUIBD. See GTZO Section 6.15. In order to assert a violation of the GTZO, the Township must first conclude the driveway is a prohibited improvement. There is no plain language for the Township to reach that conclusion. At the initial proceeding and on appeal to the circuit court, the Township asserted the new concrete was inconsistent with the requirement that front yards be kept clear, and cited GTZO section 6.9.12(4) in support. Section 6.9.12(4)(a) is the operative section of the MUIBD:

“(4) Yards in this District shall conform to the following standards:

- a. Except for landscape improvements and necessary drives and walks, the front yard shall remain clear, and shall not be used for parking, loading, or accessory structures. Side and rear yards, except for any landscaping

buffer as required elsewhere in this ordinance, may be used for parking and loading.”

The language does not, on its face, prohibit a driveway within the front yard setback. The words “shall remain clear” does not, on its face, prohibit concrete, gravel, pavers, asphalt, paint or other groundcover. Judge Power agreed:

12 “Now, I had a preliminary question, even if
13 there were no variance granted, how does this violate the
14 zoning ordinance, it’s not a structure, I mean a building
15 anyway, it’s just flat ground which they put concrete
16 over and they are going to drive over, what part of the
17 ordinance – why is that a violation of the ordinance?
18 why is that a violation of the setback?

19 MS. ZEITS: It violates the setback, your
20 Honor, because in the district where the property is
21 located, which is the mixed use – mixed use industrial
22 business district, Section 6.912 Sub 4 says yards in this
23 district shall conform to the following standards.

24 THE COURT: Okay.

25 What’s the cite again?

* * * *

1 THE COURT: All right. Okay. It says here,
2 except for landscaping and necessary drives and walks,
3 front yards shall remain clear.

4 Now, what about this prohibits having an open
5 area with a hard surface on it?

6 MS. ZEITS: It remains clear, meaning nothing
7 shall be placed in the front yard setback other than
8 necessary –

9 THE COURT: Because you look across it there is
10 nothing there, it’s clear, there is nothing there. Let’s

11 say there was dirt, could they – I mean, dirt there, I
12 mean God put that there, that’s a pre-existing use so to
13 speak and could they just drive out and drive across the
14 dirt?

15 MS. ZEITS: No, I don’t believe under their
16 ordinance. I think in order for – Sara, if you could
17 correct me.

18 THE COURT: It says, shall remain clear, you
19 can’t be any clearer than pre-existing dirt.”

* * * *

24 “THE COURT: But if they drive out over dirt or
25 if they install grass, which is permitted, and they drive
1 out over the grass that would seem to not violate this
2 particular provision.

3 MS. ZEITS: It would not violate this
4 particular provision, your Honor, because it’s grass.

5 THE COURT: There you are, plant grass don’t
6 water it very much.”

See Exhibit 17, Appeal Transcript, pp. 12-14 and 18-19.

Read reasonably, the GTZO as a whole intends to prohibit constant parking or storage within the minimum front yard, in an effort to reduce “clutter” and “stuff” from accumulating within the minimum front yard.⁴ That goal would be consistent with the Township’s interest in maintaining an aesthetic appeal in front yards.⁵ Section 6.9.12(4)(a) should be interpreted by this ZBA to discourage

⁴ Interestingly, in this application, Sonny’s is permitted to park cars on the north side of the estimate bay, closer to the centerline of Cass Hartman Court than the 288.5 square feet in question due to the use of the applicable setback. See photos of Sonny’s premises.

⁵ The GTZO elsewhere expressly excludes the word “driveway” from a “structure”. The phrase “buffer yard” is defined as a yard containing no “structure” or “driveway”.

Buffer Yard: An area long and parallel to a property line *within which no structures, driveways, parking, signs or other such uses may be located unless specifically permitted by this Ordinance*. A yard area occupied by plant materials, fences, walls or other landscape devices designed to effectively mitigate to a

parking, storage, and accessory buildings within the front yard. That result is supported the specific language of the MUIBD District. An interpretation more restrictive would appear to contradict the purposes of the MUIBD district to accommodate industrial uses in a flexible manner.⁶

It is reasonable for Sonny's to provide its customers with a safe, efficient and effective experience at a new body shop. The ingress and egress driveways from its estimate bay is integral to that purpose. Sonny's designed a building to compete in the marketplace. Bill Marsh and Robinson's Auto Body are Sonny's closest competitors. Sonny's did not design a building to have it become obsolete in a year. It designed a building to help it compete in the local market for years to come.

Garfield Township has encouraged this very use on this property. Where interpreting a zoning ordinance to determine the extent of a restriction on the use of property, the language must be interpreted in favor of the property owner where doubt exists regarding legislative intent. *Talcott v Midland*, 150 Mich App 143 (1985). A ZBA must also reasonably construe a zoning ordinance with regard to the object sought to be attained in the overall structure of the zoning scheme. *Szhuba v Charter Township of Avon*, 128 Mich App 402 (1983).

VI. The New Concrete Is Necessary For The Reasonable Use Of The Property As An Auto Body Shop.

The Township staff not only reached the conclusion a driveway was prohibited under Section 6.9.12(4)(a) despite the lack of any clear language to that effect, it must also have concluded the driveway was not "necessary" to reach a conclusion the new 288.5 square feet of concrete violated the GTZO. This conclusion is not warranted under the facts and circumstances of this case.

substantial degree the negative impact which occurs between conflicting land uses and major thoroughfares. (emphasis added).

See GTZO Section 3.2.

⁶ Most properties along Cass-Hartman Court are industrial in their nature and contain more multiple driveways within their front yards. At least two of the uses consist of operations having 4 or more driveways. Many of those driveways are routinely occupied with parked trailers or vehicles.

There are many properties in Garfield Township served by more than one driveway. There are many served by “U” shaped driveways. Were the GTZO interpreted to permit only a single point of ingress and egress many commercial and industrial properties in Garfield Township would immediately be placed in violation of the of the GTZO. Most of the properties along Cass Hartman Court have multiple driveways in front yards. Some of these driveways are used for parking and storage. <https://www.google.com/maps/place/Cass+Hartman+Ct,+Traverse+City,+MI+49685/@44.7133984,-85.6248183,477m/data=!3m2!1e3!4b1!4m2!3m1!1s0x881e3315ad19975f:0xedd7072111a7f028>. In this context, the ZBA must determine whether it is unreasonable for Sonny’s to use two driveways to accommodate access to its auto body shop.

The Township argued on appeal a high threshold of “necessity” was required. It claimed necessary meant “absolutely needed.” That conclusion is inconsistent with the GTZO, common sense, and the character of improvements along Cass-Hartman Court specifically, and Garfield Township generally. Judge Power agreed the language could not reasonably be interpreted as the Township asserted.⁷

Instead, the term “necessary” in this context should be viewed with an eye toward the spirit, intent, and overriding purposes of the GTZO. The MUIBD encourages the premises to be used as a body shop. An estimate bay is an integral part of an auto body shop. It is also important to provide for the convenient, safe, and efficient ingress and egress of vehicles to and from the premises. To accomplish this, Sonny’s used the pre-existing driveway and parking lot on the south side of the

⁷ “THE COURT: Necessary drive is not the issue they touched on in their decision, so shouldn’t we send it back to them, give them a chance to do the right thing by your standards or address the issue, maybe they will find it’s not appropriate.

MR. FOX: And, I would suggest we don’t need to send it back because we already know the outcome, Ms. Zeits has already told us what that means.

THE COURT: That assumes that those board members are going to hop to when staff tells them to jump, they might, but not always.”

See Exhibit 17, Appeal Transcript, p. 32.

building to connect to the south door of the estimate bay.⁸ The new concrete was reasonably necessary to complete this mode of egress and it would be illogical to render useless a portion of the building permitted by right under the GTZO.

For these reasons, the word “necessary”, at least in this situation, must be interpreted in the context of the business being conducted, the immediately surrounding area, and the zoning district in which it is located. It is unreasonable to apply a severely restrictive interpretation of a “necessary drive” to Sonny’s property because it would contradict the clear intent of the GTZO to establish an auto service business on the property in question. Where the legislative intent of a zoning ordinance is in doubt, it should be construed in favor of the property owner. See *Macenas v. Village of Michiana*, 160 Mich App 72 (1987).

Further, there is no language in the GTZO which expressly precludes the construction of a concrete drive within the front yard setback. In fact, the GTZO itself expressly permits the construction of “drives” within a front yard:

“(4) Yards in this District shall conform to the following standards:

- a. Except for landscape improvements and necessary drives and walks, the front yard shall remain clear, and shall not be used for parking, loading, or accessory structures. Side and rear yards, except for any landscaping buffer as required elsewhere in this ordinance, may be used for parking and loading.” (emphasis added)

The use of the plural form of “drive” is important, as there was no intent to treat a second drive to a building differently than the first.

The result is consistent with common sense and other properties in Garfield Township, including those in Sonny’s immediate vicinity. Tractors and trailers are routinely parked on driveways along Cass Hartman Court. This includes the properties on the same cul-de-sac.

⁸ Were the concrete removed, vehicles would travel via a dirt, grass or ground area over this 288.5 square feet.

The GTZO cannot reasonably be read to allow only those drives absolutely necessary to conduct a business. Were that the case, no property could have more than one drive. The GTZO does not limit property to a single drive, however, as Section 6.9.12(4) expressly permits more than one by the plural form “drives”. The plural form prevents the term “necessary” to be construed to mean only those “absolutely needed” to gain access to a premises are permitted within the front yard. Were that intended, the GTZO would have allowed “no more than one necessary drive”.

A reasonable interpretation of the GTZO will permit driveways reasonably related to the underlying business or structure. There are numerous properties in Garfield Township that are served by “U-shaped” driveways in their front yard, and many more which have more than one driveway across a front yard. The property located on the same cul-de-sac (1867 Cass Hartman Court) has driveway access, and at least 2 more truck loading docks all within its front yard. Sonny’s respectfully submits it would be unreasonable to prevent its body shop from being saved by the driveway in question.

There is a substantial landscape improvement within the front yard setback expressly permitted by GTZO Section 6.9.12(4)(a). That landscape improvement serves a valuable aesthetic purpose. However, it is clearly not as important to the business operation of Sonny’s as vehicular ingress and egress to its estimate bay. It would be unreasonable to interpret the landscape as appropriate within the front yard, but prevent the use of an estimate bay integral to Sonny’s business.

VII. The Concrete Drive Should Have Been Permitted By The ZBA As The Extension Of A Prior Nonconforming Use.

The GTZO expressly permits preexisting structures and uses to continue by right in the MUIBD:

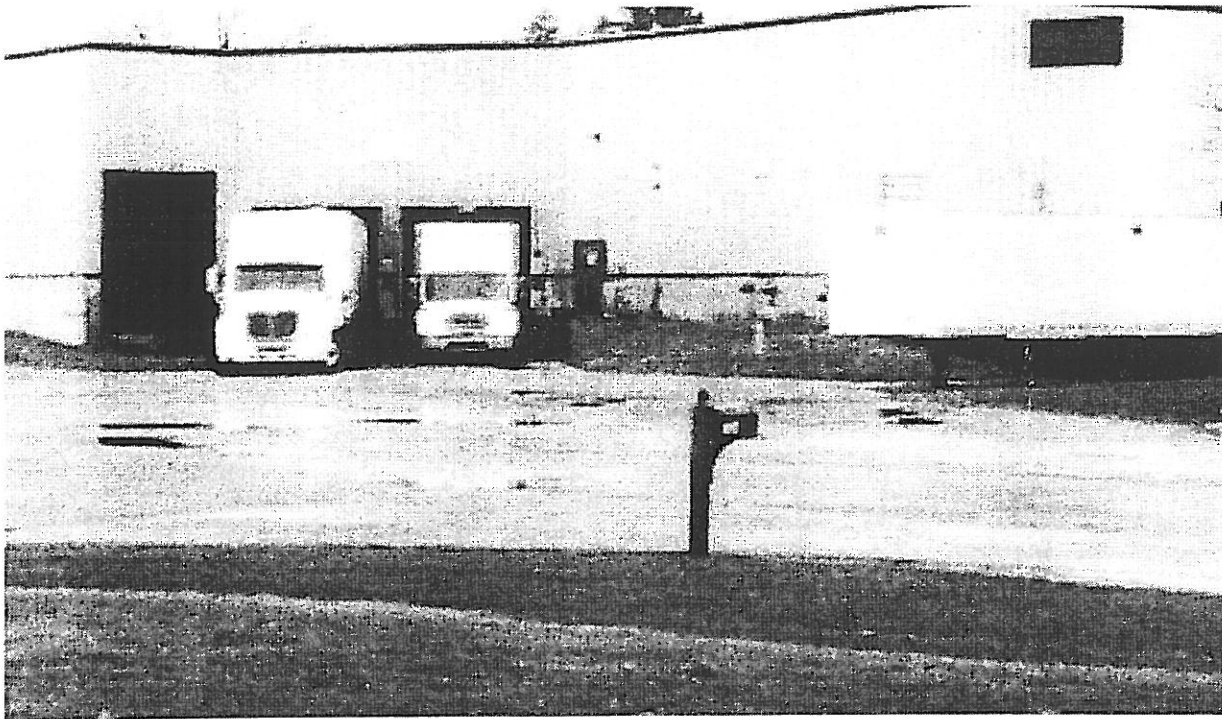
Section 6.9.4 Existing Structures and Uses

Any use or structure that legally existed on the date of adoption of this section shall be permitted to continue, including necessary maintenance of any structure. In the instance of an event beyond the control of a landowner necessitating the replacement of a portion

or the entirety of a nonconforming structure, such replacement shall be recognized for the purpose of this district to be permitted by right provided all requirements governing a non-conforming use or structure, including applicable ZBA procedures, are deemed to be satisfied.

The new concrete expansion is located between the preexisting sidewalk and the interior of the lot. The concrete is no closer to the front lot line than the existing sidewalk which was expanded. The new concrete measures approximately 22 feet long by 10.5 feet wide. It is 288.5 square feet in total.

There are many examples of front yard encroachments far more significant in the immediate area. For instance, the property across the cul-de-sac from Sonny's, at 1867 Cass Hartman Court, uses driveways for storage of trailers much closer to Cass Hartman Court than the drive at issue.



The sidewalk, asphalt drive and parking areas on the south side of the building were in place and encroached the 40 foot minimum front yard before Sonny's ever purchased the building. As a result, those improvements are permitted to continue even if inconsistent with the current GTZO. The

additional 288.5 square feet of concrete expanded the drive such that vehicles may drive over a concrete surface when existing the estimate bay.

This concrete is not detrimental to the Township or Sonny's neighbors. Its sole purpose is to span the width of the south estimate bay door for pedestrian and vehicular ingress and egress of the south side of the estimate bay. The concrete does not reach further toward Cass Hartman Court than what previously existed. Instead, the new piece of the drive starts at the edge of the sidewalk and extends toward the building and away from the road.

The prior minutes of the ZBA decision confirm the ZBA considered the existing portion of the driveway as a nonconforming use:

"Architect Fred Campbell presented a request for a variance for what is a 365 square feet piece of concrete encroaching in the front setback of Sonny's Auto Body. The original property did have a non-conforming sidewalk at the edge of the building in the front yard setback."

The GTZO expressly contemplates the expansion of nonconforming uses within the MUIBD:

"Section 6.9.5 Expansion of Legal Existing Use

An existing use lawfully established prior to the adoption of Section 6.9 shall be permitted to expand, subject to review in accordance with any applicable Site Plan Review standards, and only to the extent of the property boundaries as established on January 11, 2011. Any Special Use review criteria that would otherwise be required for the establishment of a new use may be waived in whole or in part by the Director of Planning."

Article VII, Supplemental Regulations, Section 7.7.5 of the GTZO provides a favorable standard of review to property owners who wish to expand a nonconforming use:

"Section 7.7.5 Extension of Nonconforming Use or Structure

The extension of any nonconforming use or addition to any nonconforming structure for the purpose of extending such nonconforming use or structure throughout all or a portion of a given lot or parcel of land shall not be permitted unless the Board of Appeals shall first determine that such extension shall not be inimical to public health, safety or welfare, particularly with regard to surrounding property owners."

This ZBA made findings at its December 17, 2014 meeting which should have been sufficient

to permit the expansion under Section 7.7.5:

- “c. The variance will not be contrary to the public interest or to the intent and purpose of this Ordinance. Relief can be granted in such a fashion that the spirit of the Ordinance will be observed, and public safety and welfare secured.

The board members found that this standard has been met because the additional concrete does not affect public safety and is small in area. (Exhibit F)

* * *

- f. Issuance of the variance will not cause a substantial adverse effect upon property values in the immediate vicinity or in the zoning district in which the property of the applicant is located.

The board members found that this standard has been met as the drive will not cause substantial adverse effects because others in the same neighborhood have done the same thing and the property is located near the end of a cul-de-sac so there is limited traffic. (Exhibit D and F)

- e. Granting of the variance applied for would do substantial justice to the applicant, as well as to other property owners in the district, or a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The board members found that this standard has been met and gives substantial justice to the applicant because the variance would allow for the property owners to continue using the unapproved drive as they wish. (Exhibit F)”

See **Exhibit 14**, ZBA Decision and Order. Judge Power decided to give the ZBA the opportunity to make the correct decision. See Exhibit 17, pp. 46-47.

The result of the ZBA’s prior decision reached the questions presented by Section 7.7.5 Those findings concluded the newly poured concrete is not inimical to the health, safety and welfare of the public in general. To the contrary, the ZBA expressly found that “the additional concrete does not effect public safety and is small in area.” It found “the drive will not cause substantial adverse effects because others in the same neighborhood have done the same thing, and the property is located near the end of a cul-de-sac, so there is limited traffic.” The ZBA found the concrete would provide

substantial justice to Sonny's because it would allow the Applicant to continue to use the drive as they wish. Further, not one surrounding property owner has claimed the new concrete will adversely effect them (much less be inimical to their health, safety or welfare!).

The ZBA's findings above then are equally applicable to an analysis under Section 7.7.5. The word "inimical" is not defined by the GTZO. The term is defined as follows:

Full Definition of INIMICAL

1 a : being adverse often by reason of hostility or malevolence <forces inimical to democracy>

2 a : having the disposition of an enemy : HOSTILE <*inimical* factions>

b : reflecting or indicating hostility : UNFRIENDLY <his father's *inimical* glare>

-- **in·im·i·cal·ly** *adverb*

See inimical defined for English-language learners »

See inimical defined for kids »

<http://www.merriam-webster.com/dictionary/inimical?show=0&t=1422483446>.

These findings are an express recognition that the additional concrete is not inimical to public health, safety or welfare, particularly with regard to surrounding property owners. The ZBA was not directed to consider Sonny's application under Section 7.7.5., but had it done so, the outcome is clear.

It is clear 288.5 square feet of concrete is not hostile to the public health, safety, and welfare of the Township or the immediately surrounding properties. The photographs of the property in its current state reflect the dramatic improvement in the aesthetics of the property over the former Cooke Sheet Metal building. The premises is more aesthetically appealing than most properties along Cass Hartman Court. Similarly, the health and safety of Township residents and customers of Sonny's and its neighbors will be better served by customers exiting south from the estimate bay than turning in a tight radius or reversing direction from the north entry.

BISHOP & HEINTZ, P.C.

Dated: September 3, 2015

By: 

Steven R. Fox (P52390)

Attorney for Applicant

440 W. Front at Oak, P.O. Box 707

Traverse City, MI 49685

(231) 946-4100

INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Parcel Number 28-05-062-007-00 – Assessor Record Card
2	Notice of Public Hearing, Map of Property, and 300' mailing list
3	Zoning Board of Appeals Application
4	December 14, 2014 Staff Report
5	2010 Aerial – Parcel Map
6	May 8, 2014 Aerial Photo of Property
7	December 10, 2013 Land Use Permit
8	October 24, 2013 Land Use Permit Application
9	October 22, 2014 Letter of Violation
10	Draft Findings of Fact
11	December 17, 2014 memo from R. Larrea to ZBA Members
12	January 7, 2015 Zoning Board of Appeals Agenda, draft minutes for December 17, 2014 meeting, draft Decision and Order in Case #2014-02, and Exhibit List
13	Signed December 17, 2014 minutes
14	Signed Decision and Order, Case #2014-02
15	Draft January 7, 2015 minutes
16	Signed Order (6/24/15), Case No. 15-30775-AA
17	Appeal Transcript, June 8, 2015 Hearing
18	MIUBD Provisions, GTZO Section 6.9.12
19	Schedule of Regulations, GTZO Section 6.15
20	February 13, 2015 Correspondence from Sonny's counsel to Chuck Korn and Sara Kopriva

Appendix A - Garfield Township Zoning Ordinance effective 12/17/15

EXHIBIT 1

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Liber & Page	Verified By	Prct. Trans.
COOK BLODGETT & ASSOC	CASS AVENUE PROPERTIES LLC	350,000	09/20/2013	WD	ARMS-LENGTH	2013R-17916	BUYER	100.0
KENNETH B COOK CO	COOK BLODGETT & ASSOC	86,666	06/12/1996	WD	INVALID SALE	11108/453		50.0
Property Address								
1824 CASS HARTMAN CT								
Owner's Name/Address								
CASS AVENUE PROPERTIES LLC								
1774 CASS HARTMAN COURT								
TRAVERSE CITY MI 49685								

Tax Description

LOT 7 BOARDMAN VALLEY IND PARK SUBD.

Comments/Influences

Improvements

Dirt Road

Gravel Road

Paved Road

Storm Sewer

Sidewalk

Water

Sewer

Electric

Gas

Curb

Street Lights

Standard Utilities

Underground Utils.

Topography of

Site

Level

Rolling

Low

High

Landscaped

Swamp

Wooded

Pond

Waterfront

Ravine

Wetland

Flood Plain

Exhibit C

r. Copyright (c) 1999 - 2009.
Township of Garfield, County
verse, Michigan

Who When What
ALD 12/02/2014 PICTOMETRY
MW 05/25/2010 INSPECTED

* Factors *

Description Frontage Depth Front Rate & Adj. Reason

INDUSTRIAL INDUSTRIAL 1.00 92760 Sqft 1.00000 100

2.13 Total Acres Total Est. Land Value =

Land Improvement Cost Estimates

Description Rate CountyMult. Size %Good Cash Value

D/W/P: Asphalt Paving 1.61 1.00 11850 50 9,539

D/W/P: 3.5 Concrete 3.44 1.00 323 50 556

D/W/P: 3.5 Concrete 3.44 1.00 10686 95 34,922

Retaining Wall: Precast, Ret. 9.88 1.00 329 95 3,088

Total Estimated Land Improvements True Cash Value = 48,105

Year	Land Value	Building Value	Assessed Value	Board of Review	Tribunal/Other	Taxable Value
2015	46,400	209,000	255,400			213,072C
2014	23,400	137,400	160,800			160,800S
2013	39,100	145,100	184,200			184,200S
2012	76,150	121,000	197,150			197,150S

tion herein deemed reliable but not guaranteed***

Desc. of Bldg/Section: BODY SHOP - 2014
 Calculator Occupancy: Industrial, Light Manufacturing
 Class: S Quality: Average Calculator Cost Computations
 <<<<< Percent Adj: +0 >>>>>

Base Rate for Upper Floors = 30.90
 (10) Heating system: Space Heaters, Gas with Fan Cost/SqFt: 0.00 82%
 (10) Heating system: Package Heating & Cooling Cost/SqFt: 5.25 18%
 Adjusted Square Foot Cost for Upper Floors = 31.84
 Combined Heating System adjustment: 0.94 100%

1 Stories
 Average Height per Story: 14
 Ave. Floor Area: 18,185
 Refined Square Foot Cost for Upper Floors: 30.38
 Number of Stories Multiplier: 1.000
 Height per Story Multiplier: 1.000
 Perim. Multiplier: 0.954

County Multiplier: 1.36, Final Square Foot Cost for Upper Floors = 41.317
 Total Floor Area: 18,185
 Base Cost New of Upper Floors = 751,349
 18,185 Sq.Ft. of Sprinklers @ 1.65, County Mult.: 1.36 Cost New = 40,807

Eff. Age: 25 Phy. %Good/Abnr. Phy./Func./Econ./Overall %Good: 53 /100/100/100/53.0
 Reproduction/Replacement Cost = 792,155
 Total Depreciated Cost = 419,843

Unit in Place Items Rate Quantity Cnty Arch %Good Depr. Cost
 /C116/YARI/PATR/ALUOSBEA 7.88 83 1.36 1.00 53 471
 <<<<< Calculations too long. See Valuation printout for complete pricing. >>>>>

(1) Electric and Lighting: (39) Miscellaneous:

(11) Electric and Lighting:

Outlets: Fixtures:

(13) Roof Structure: Slope=0

(14) Roof Cover:

(40) Exterior Wall: Thickness Bsmnt Insul.

(7) Interior:

(8) Plumbing:

(9) Sprinklers:

(10) Heating and Cooling:

X Gas Coal Oil Stoker Hand Fired Boiler

(2) Foundation: 1 Footings

X Poured Conc Brick/Stone Block

(3) Frame:

(4) Floor Structure:

(5) Floor Cover:

(6) Ceiling:

1978 Year Built
 2014 Remodeled
 16 Overall Bldg Height
 Comments:
 1983, 1985 & 1995 ADDNS
 Area #1: Type #1: Office (No Rates)
 Area #2: Type #2: Office (No Rates)
 Area: 18185
 Type: Low

(1) Excavation/Site Prep:

(2) Foundation: 1 Footings

X Poured Conc Brick/Stone Block

(3) Frame:

(4) Floor Structure:

(5) Floor Cover:

(6) Ceiling:

SKETCH/AREA TABLE ADDENDUM

Parcel No 05-062-007-00

File No 05-062-007-00

Property Address 1824 CASS HARTMAN CT

City TRAVERSE CITY

County **GRAND TRAVERSE** State **MI**

Zip 49685

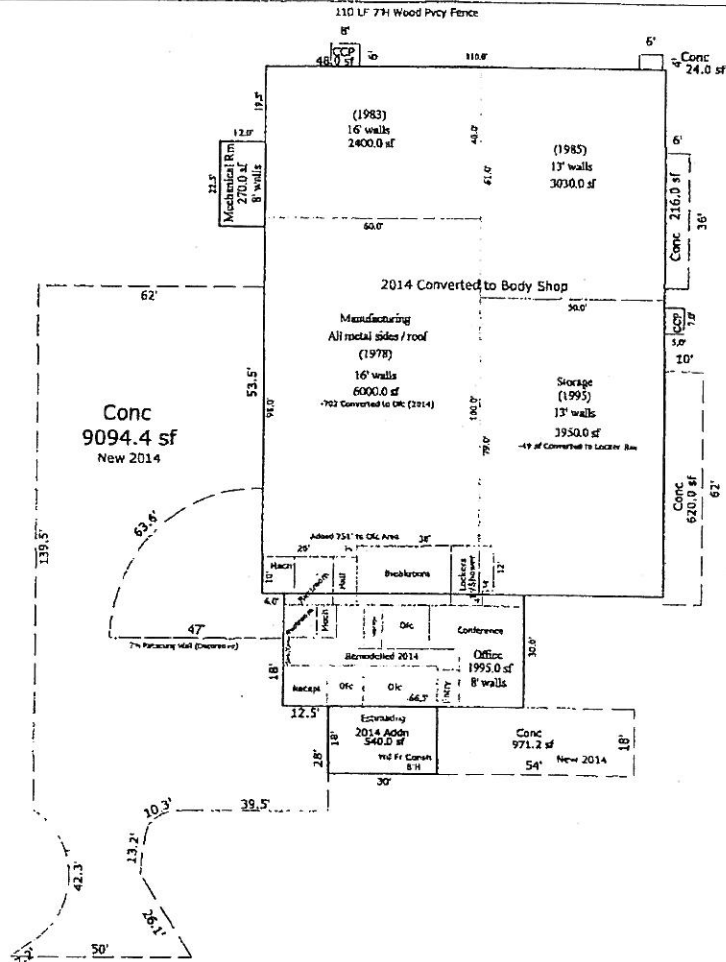
Owner **CASS AVENUE PROPERTIES LLC**

Client

Appraiser Name

SUBJECT

IMPROVEMENTS SKETCH



Comments:

Scale: 1" = 20'

AREA CALCULATIONS SUMMARY					
Code	Description	Factor	Net Size	Perimeter	Net Totals
GBAL	2014 Addn	1.00	540.00	96.0	540.00
P/PConc	Conc	1.00	971.24	144.0	
	Conc	1.00	620.00	144.0	
	Conc	1.00	216.00	84.0	
	Conc	1.00	24.00	20.0	
	Conc	1.00	9094.37	612.7	10925.62
P/PCCP	CCP	1.00	48.00	28.0	48.00

ACTIONS

EXHIBIT 2

CHARTER TOWNSHIP OF GARFIELD

Zoning Board of Appeals

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the Garfield Township Zoning Board of Appeals will hold a public hearing at their regular meeting on December 17, 2014 at 7:00 p.m. The hearing will take place at the Garfield Township Hall, located at 3848 Veterans Drive, Traverse City, Michigan 49684.

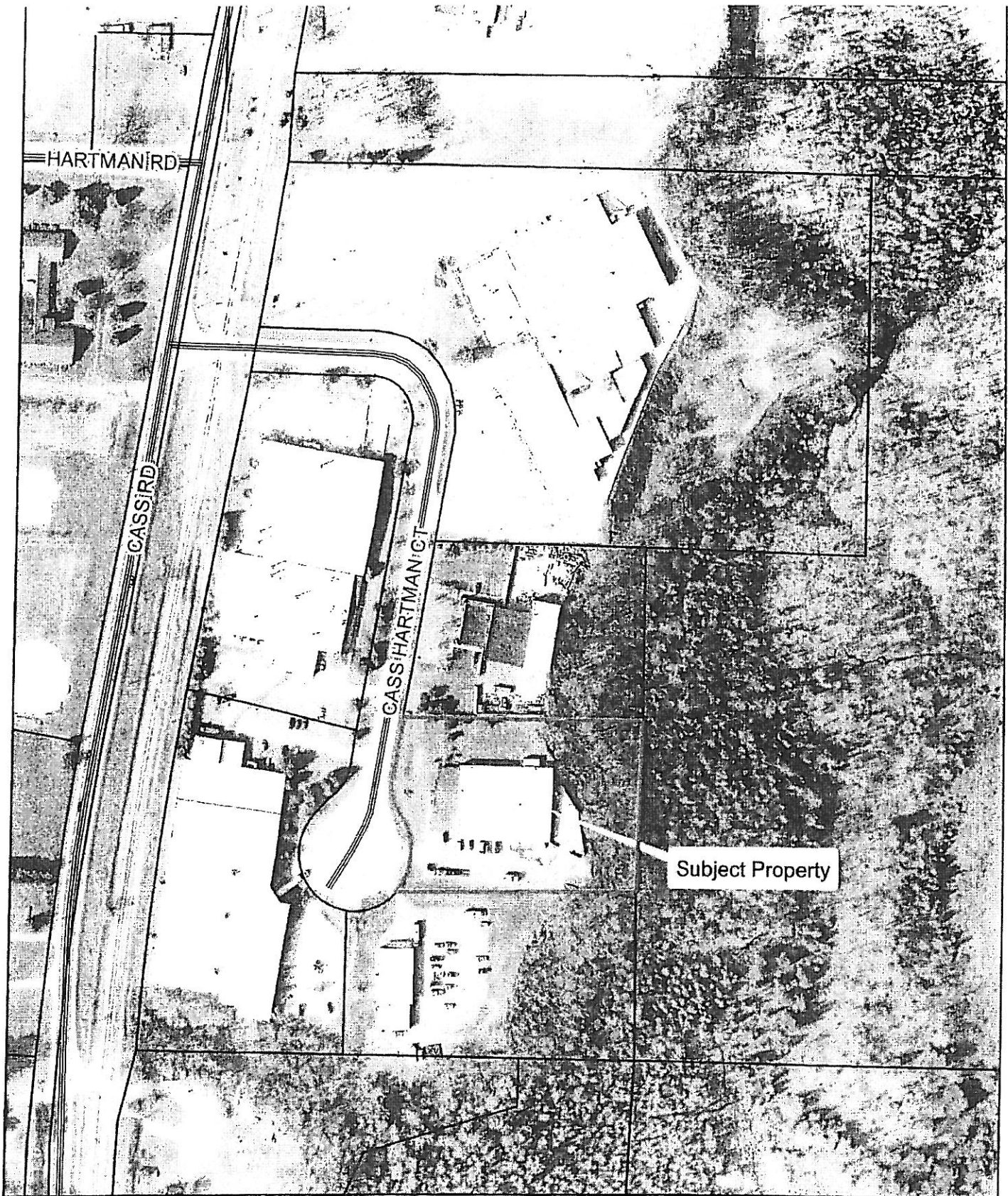
The hearing is for a request made by JML Design Group on behalf of Cass Avenue Properties, LLC (Sonny's Body Shop) for a variance from the Garfield Township Zoning Ordinance, Sections 6.9.12(4), Use Requirements, Yards, and 6.15, Schedule of Regulations. The request is for a variance from the 40 foot setback required for all parking areas and unnecessary drives. The property is located in the MUIBD-L (Mixed Use Industrial Business District-Limited) zoning district at 1824 Cass Hartman Ct, parcel no. 28-05-062-007-00.

A copy of the application, zoning ordinance and zoning map may be inspected at the Township Offices between the hours of 7:30 am and 6:00 pm Monday through Thursday. All persons and Counsel will have the right to speak at the Public Hearing. Any written comments with respect to this application may be submitted to the Township Zoning Department by mail or in person during regular office hours and location as stated above or during the Public Hearing. The Township telephone number is: 231/941-1640.

Kent Rozycki – Secretary
Garfield Township Zoning Board of Appeals
3848 Veterans Drive
Traverse City, MI 49684

Sara Kopriva – Zoning Administrator
Garfield Township
3848 Veterans Drive
Traverse City, MI 49684

Garfield Township will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities upon the provision of reasonable advance notice to Garfield Township. Individuals with disabilities requiring auxiliary aids or services should contact Garfield Township by writing or calling Kay Schumacher, Clerk, at: 231/941-1620, or TDD 231/922-4412.



Parcel Map

2010 Aerial

This map is based on digital databases prepared by the Charter Township of Garfield. The Township does not warrant, expressly or irrgladly, or accept any responsibility for any errors, omissions, or that the information contained in the map or the digital databases is currently or positionally accurate.

Garfield Charter Township
3848 Veterans Drive
Traverse City, MI 49684
Phone: 231.941.1620
Fax: 231.941.1688
www.garfield-twp.com



NOT TO SCALE



NOT A LEGAL SURVEY

Zoning Dept 12/1/2014



05-062-008-00

Denro Properties LLC
723 Quail Ridge
Traverse City, MI 49686

05-022-002-10

Garfield Charter Township
3848 Veterans Dr
Traverse City, MI 49684

05-062-002-01

Britten Capital LLC
2322 Cass Rd
Traverse City, MI 49684

05-062-006-00

Cass Avenue Properties LLC
8753 Lake Ann Rd
Traverse City, MI 49650

05-062-007-00

Cass Avenue Properties LLC
1774 Cass Hartman Ct
Traverse City, MI 49685

05-062-002-02

C&U Properties LLC
3680 Cass Rd
Traverse City, MI 49684

05-022-008-00

Occupant
1874 Cass Hartman Ct
Traverse City, MI 49685

05-022-002-10

Occupant
3000 Racquet Club Dr
Traverse City, MI 49684

05-062-002-01

Occupant
1923 Cass Hartman Ct
Traverse City, MI 49685

05-062-006-00

Occupant
1774 Cass Hartman Ct
Traverse City, MI 49685

05-062-007-00

Occupant
1824 Cass Hartman Ct
Traverse City, MI 49685

05-062-002-02

Occupant
1867 Cass Hartman Ct
Traverse City, MI 49685

EXHIBIT 3



Charter Township of Garfield

Grand Traverse County

3848 VETERANS DRIVE
TRAVERSE CITY, MICHIGAN 49684
PH: (231) 941-1620 • FAX: (231) 941-1588

Case # 2014-02

RECEIVED
NOV 12 2014
ZONING

ZONING BOARD OF APPEALS APPLICATION

1. Owner / Applicant information

Cass Avenue Properties, LLC

Owner:

1824 Cass Hartman Ct.

Address:

Traverse City, Michigan 49685

City, State, Zip Code

(231) 941-1196

Phone Numbers

JML Design Group, Ltd.

Applicant:

225 E. 16th Street, Suite B

Address:

Traverse City, Michigan 49684

City, State, Zip Code

(231) 947-9019

Phone Numbers

2. Property Information:

a. Property Address: 1824 Cass Hartman Ct.

b. Property Location: Sonny's Body Shop

c. Lot # _____ Subdivision Name: _____

d. Parcel ID# 28-05- 062-007-00

e. Current Zoning: _____

f. Current Use: Automotive Repair Facility

3. Purpose For Request:

Variance _____ Appeal _____ Interpretation _____ Review _____


Other _____ Please explain request / List section(s) related to request: _____

Exhibit E

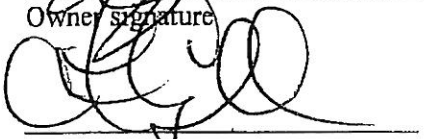
5-26-09

Affidavit:

The undersigned affirms that he/she or they is (are) the owner, or authorized agent of the owner, and that the answers and statements herein contained and the information submitted are in all respects true and correct. In addition, the undersigned represents that he/she or they is authorized and does hereby grant a right of entry to Township officials for the purpose of inspecting the premises and uses thereon for the sole purpose of gathering information regarding the request.



Owner signature



Applicants signature

11/6/14

Date

11/6/14

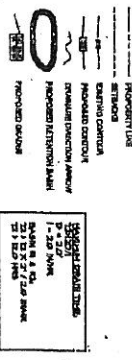
Date

Any party aggrieved by the decision of the Zoning Board of Appeals may appeal the decision to circuit court. An Appeal of the decision shall be filed in accordance with PA 110 of 2006, as amended.

DRAINAGE AND GRADING NOTES

1. THE SITE DRAINAGE INCLUDING THE BUILDING CONTROLS TO BE USED ON THE LOT. THE DRAINAGE SHALL BE RESPONSIBLE FOR THE PROTECTION AND PROTECTION OF THE BUILDING AND THE LOT. THE DRAINAGE SHALL BE RESPONSIBLE FOR THE PROTECTION AND PROTECTION OF THE BUILDING AND THE LOT.
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LEGEND



CL CASS HARTMAN CT

CAUTION

RETENTION BASIN TABLE

Basin	Volume	Area	Depth	Flow	Retention
1	1000	100	10	100	100
2	2000	200	20	200	200
3	3000	300	30	300	300
4	4000	400	40	400	400
5	5000	500	50	500	500
6	6000	600	60	600	600
7	7000	700	70	700	700
8	8000	800	80	800	800
9	9000	900	90	900	900
10	10000	1000	100	1000	1000

PROPOSED SITE PLAN

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

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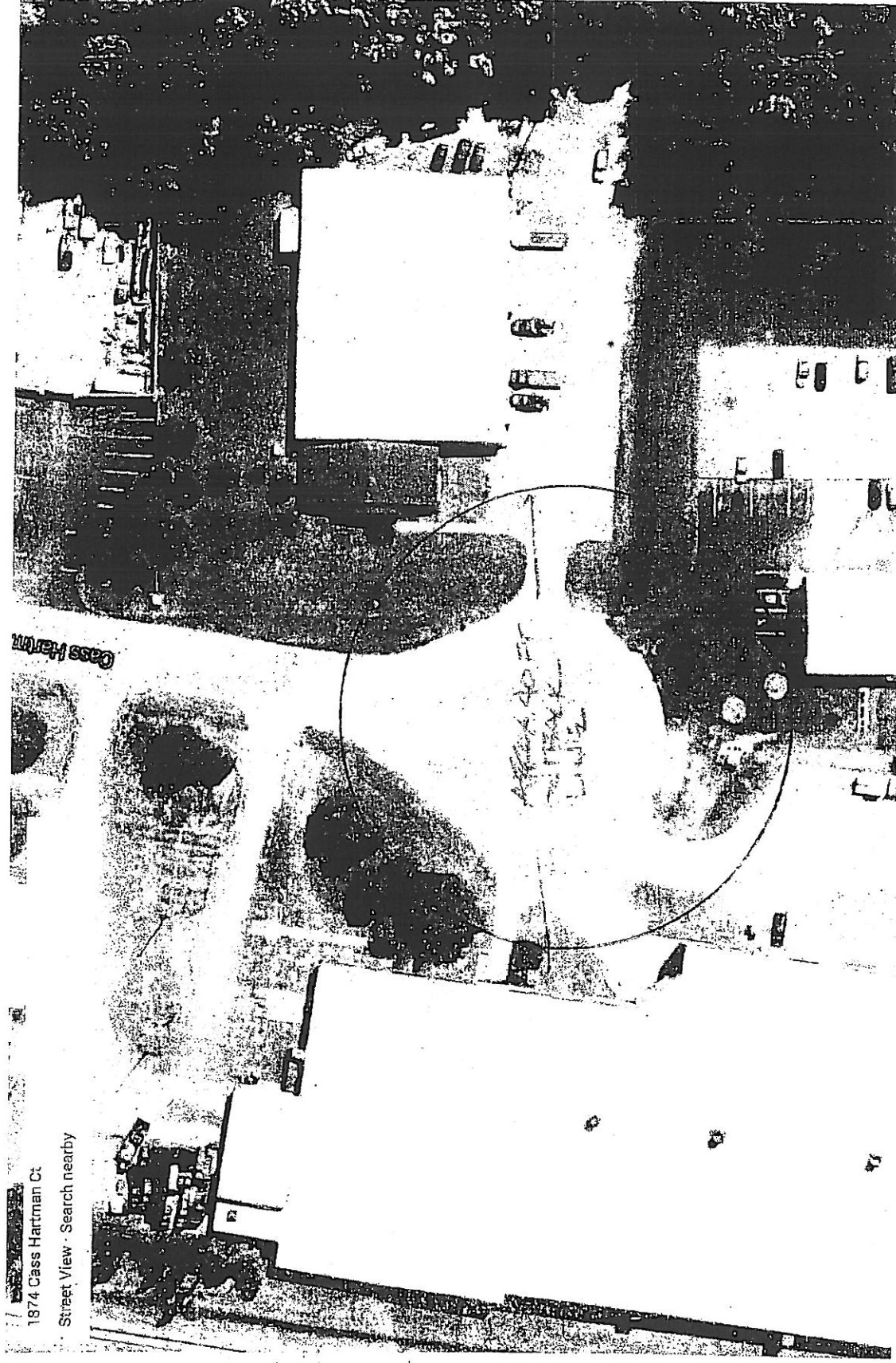
LOT 244

LOT 245

LOT 246

LOT 247

LOT



Map data ©2014 Google 50 ft





Design Group, Ltd.

"Excellence is our Hallmark"

225 E. 16th Street, Suite B • Traverse City, MI 49684 • Phone: (231) 947-9019 • Fax: (231) 947-8738

November 6, 2014

Zoning Board of Appeals
Charter Township of Garfield
3848 Veterans Drive
Traverse City, Michigan 49684

Re: Sonny's Body Shop
1824 Cass-Hartman Court

Dear Members of the Board:

Please review and consider the following request to allow an additional 365 s.f. of driveway within the front yard setback. The need for the variance is due to the uniqueness of the property being located on a cul-de-sac of an industrial subdivision. The cul-de-sac is located at the end of Cass-Hartman Court. The properties immediately affected by the cul-de-sac are 1824, 1774 and 1867 Cass-Hartman Court.

The original Sonny's Auto Body was located at 1774 Cass-Hartman Court and had a regular parking space, a handicapped parking space, and the driveway providing access to the parking spaces, existing within the front yard setback. The area of non-conformance was approximately 1,480 s.f. (identified in yellow on exhibit). It is not known whether a variance was ever granted for this condition.

Sonny's purchased the adjacent building located at 1824 Cass-Hartman Court and moved from the original property. The new building, formerly occupied by Cooke Sheet Metal, had several parking spaces, a 6'-0" sidewalk and the driveway access to the same, existing within the front yard setback. The total area of non-conformance is approximately 2,393 s.f. (identified in yellow on exhibit). It is not known whether a variance was ever granted for this condition. The construction of the vehicle inspection bay addition was started in late November of 2013. The issue of the new driveway being contained within the front yard setback was identified prior to the Land Use Permit being issued. The driveway was removed from the drawing and access was proposed to be provided from the North side, only. In this manner the Land Use Permit was issued and construction commenced. During the construction, the owner had a conversation with Rob Larrea and Chuck Korn with regards to the existing non-conforming condition with the sidewalk and parking. Permission was verbally given to add the 496 s.f. of driveway (This represented an addition of only 365 s.f., as 131 s.f. of sidewalk already existed). With the construction, moving, and maintaining a business, the request for a variance was

Exhibit F

overlooked. This point was recently identified during a site inspection by Sara Kopriva on 10/22/14.

The property located at 1867 Cass-Hartman Court has parking, driveway access, and (2) truck loading docks contained within the front yard setback. The exact quantity is not known as there is no defined separation from the cul-de-sac (refer to exhibit). It is also not known whether a variance was granted.

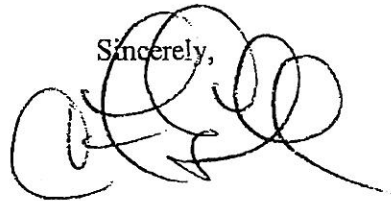
The cul-de-sac is peculiar to Cass-Hartman Court, if the road were to be extended through to the South, the front yard setback would not be violated. The variance is not contrary to public interest or to the intent of the ordinance. As a dead end road Cass-Hartman Court is not a well traveled road, Cass-Hartman Court is truly a destination based road.

The vehicle inspection bay addition was intended as a drive through building. The backing up of traffic from the addition, in lieu of pulling over 365 s.f. of additional concrete would constitute a more hazardous safety condition than granting a variance for a subdivision that is largely driveways and parking lots to begin with.

The granting of the variance would be consistent with the adjacent neighbors conditions, even though a variance may or may not have been priorly granted.

Thank you for your consideration in this matter. If there should be any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'C.F. Campbell', written over the word 'Sincerely,'.

C.F. Campbell

CFC/nr

EXHIBIT 4



Charter Township of Garfield

Grand Traverse County

3848 VETERANS DRIVE
TRAVERSE CITY, MICHIGAN 49684
PH: (231) 941-1620 • FAX: (231) 941-1588

ZONING BOARD OF APPEALS STAFF REPORT

To: Zoning Board of Appeals
From: Sara Kopriva, ACIP, Zoning Administrator
Date: December 4, 2014

Meeting Date:	December 17, 2014
Case #: 2014-02	Front Yard Setback Variance
Owner:	Cass Avenue Properties, LLC (Sonny's Body Shop)
Agent:	JML Design Group
Property ID #:	062-007-00
Property Location:	1824 Cass Hartman Ct
Zoning District:	MUIBD-L, Mixed Use Industrial Business District-Limited

Request

The applicant is requesting an after-the-fact variance from the required 40 ft setback for all parking and unnecessary drives to install a drive located in the setback area (Exhibit F).

Parcel Overview

This parcel is located on Cass Hartman Ct off Cass Rd near Hartman road (Exhibit D). It is approximately 2.17 acres and zoned Mixed Use Industrial Business District (Exhibit C and A). This property is relatively flat on the west side and falls off on the east side. (Exhibit D, H, and Site Visit) In December 2013, a permit was pulled to convert the building to an auto body shop and an addition for an estimation area (Exhibit J).

Staff Comments

When the project was first proposed it included the drive that is now the subject of this appeal. The architect and owner were informed that they could not put the drive in the front setback and it would have to be removed or redesigned so it was not in the 40 foot front yard setback. The architect then submitted a new drawing, removing the drive and garage door associated with it. The land use permit was issued with the understanding that all cars that entered the new portion of the building would be required to back out and not pull through the building (Exhibit L, F, and J)

Upon inspection for a final occupancy permit it was found that the property owners changed their plans back to the originally proposed with the drive through building and were occupying the structure without an occupancy permit. The owner did not apply to revised their plans or for a variance until they were unable to obtain their certificate of occupancy (Exhibit H, I and K).

Exhibit G

The Zoning Ordinance requires that the front yard setback shall remain clear except for landscaping, and necessary drives and walks. This area shall not be used for any storage, parking or accessory structures (Section 6.15 (i) and 6.9.12(4), Sections included below) (Exhibit A)

SECTION 6.15 SCHEDULE OF REGULATIONS

SECTION 6.15.1 SCHEDULE LIMITING HEIGHT, BULK, DENSITY, AND AREA BY ZONING DISTRICT:

(continued)

Item No.	Zoning District	Minimum Zoning Lot or Land Use Size per Dwelling Unit		Maximum Height of Structures		Minimum Yard Set Back (Per Lot in Feet)			Maximum % Lot Areas Covered By All Structures	Minimum Cross Section
		Area in Square Feet	Width in Feet	Height - Stories	Height in Feet	Front	Each Side	Rear	Percent	Width in Feet
(6)	C-1 Local Business	10,000	70	2	28	25(D)	(E)	30	-	
(7)	C-1-O Professional & Comm. Office	10,000	70	2	22	25(D)	20	30	-	24
(8)	C-2 General Business	15,000	100	2 1/2	35	40(F) (G)	(E)	(E)	-	
(9)	C-3 Highway Service	10,000	100	2	28	50	20	30	--	
(10)	C-4 Planned Shopping Center	(H)	(H)	(H)	(H)	(H)	(H)	30	--	
(11)	MUIBD Mixed Use Industrial Business District	-	150	3	40	40(I)	15	20	-	
(12)	A-1 Agricultural	1 acre (A,K,P)	110	2 1/2	35(1)	30	20	35	(S)	24
(13)	P-1 Vehicular Parking	(H)	(H)	(H)	(H)	(H)	(H)	(H)	-	

- (i) Except for landscape improvements and necessary drives and walks, the front yard shall remain clear and shall not be used for storage, parking or accessory structures

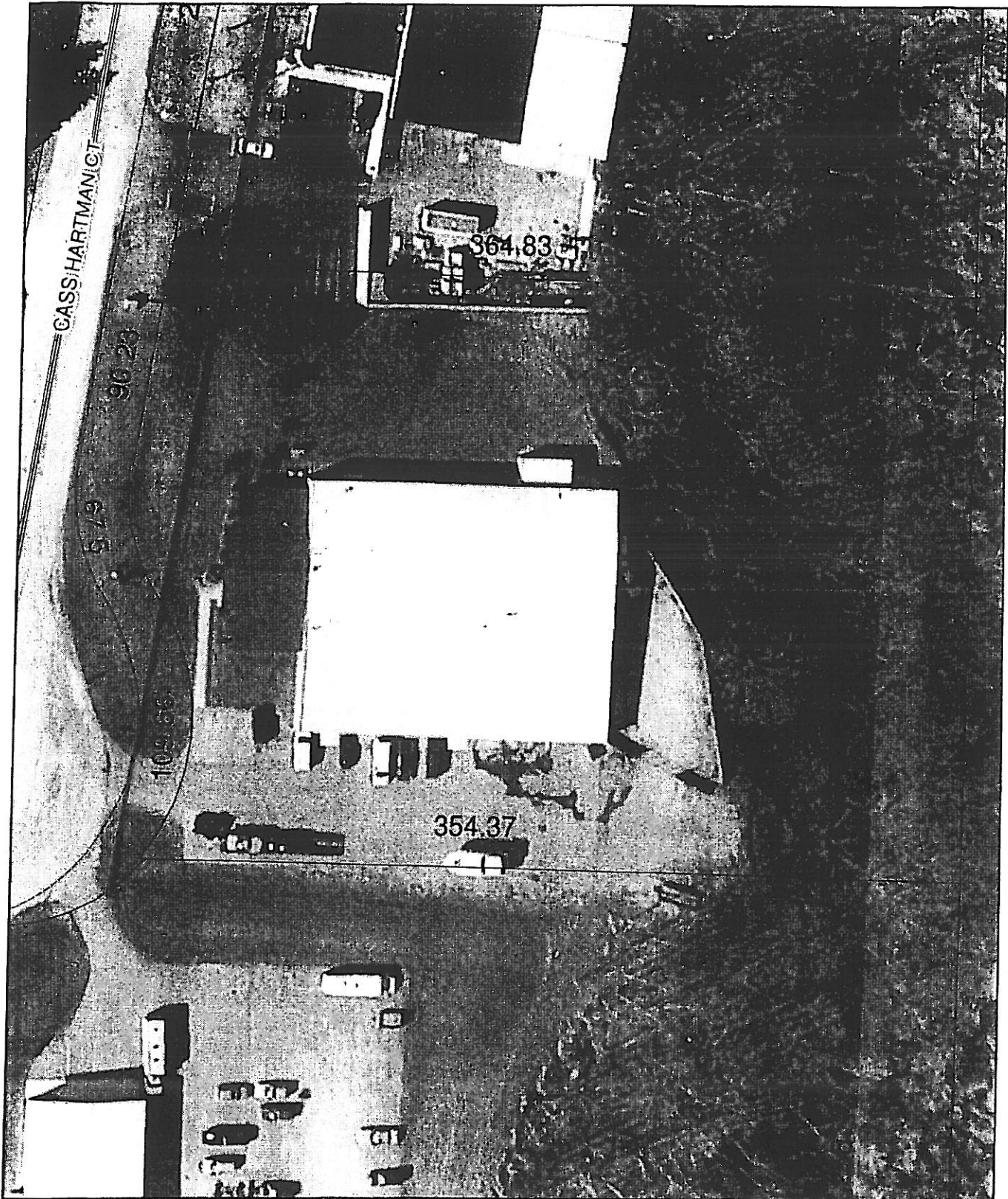
Section 6.9. 12 Use Requirements

In addition to the following requirements, all principal permitted uses and special land uses shall comply with all applicable provisions of the Zoning Ordinance, including but not limited to bulk, density, lighting, landscaping, parking, and setbacks.

- (4) Yards in this District shall conform to the following standards:
- Except for landscape improvements and necessary drives and walks, the front yard shall remain clear, and shall not be used for parking, loading, or accessory structures. Side and rear yards, except for any landscaping buffer as required elsewhere in this ordinance, may be used for parking and loading.

No past ZBA cases have been found for this property.

EXHIBIT 5



Parcel Map

2010 Aerial

This map is based on digital databases prepared by the Charter Township of Garfield. The Township does not warrant, expressly or irrgladly, or accept any responsibility for any errors, omissions, or that the information contained in the map or the digital databases is currently or positionally accurate.

Garfield Charter Township

3848 Veterans Drive

Traverse City, MI 49684

Phone: 231.941.1620

Fax: 231.941.1688

www.garfield-twp.com

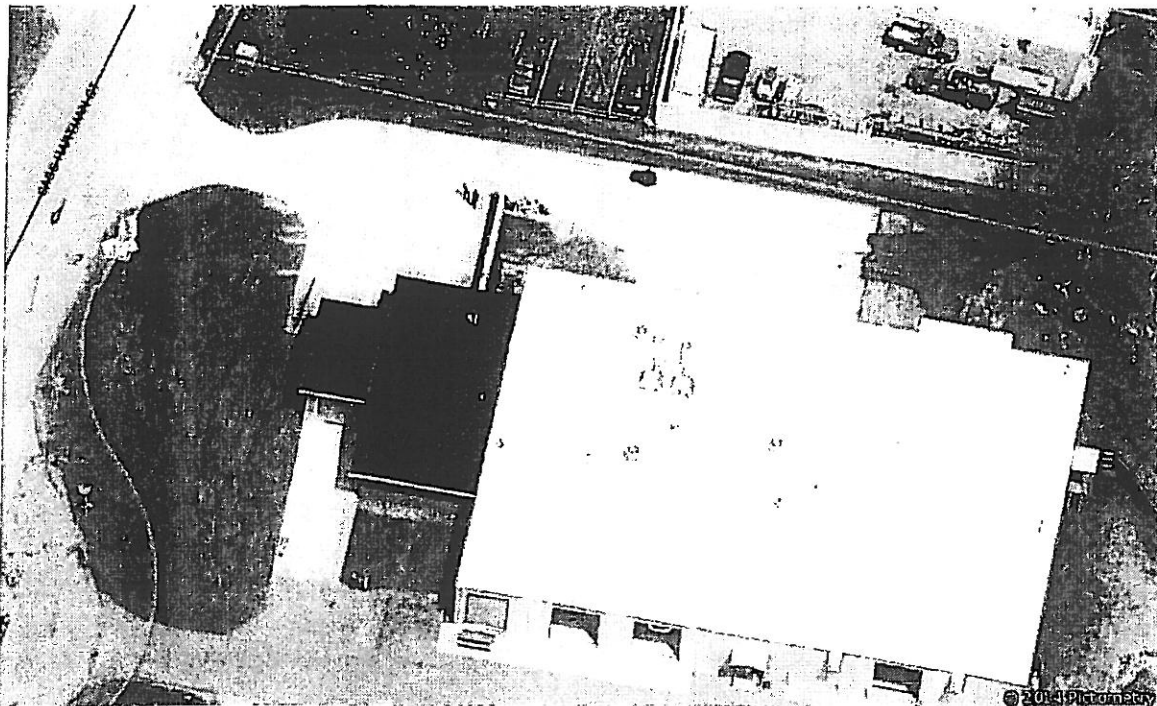


NOT TO SCALE



NOT A LEGAL SUI
Zoning I

EXHIBIT 6



Sonny's

Print Date: 10/22/2014
Image Date: 05/08/2014
Level: Neighborhood

Exhibit I

EXHIBIT 7

GARFIELD TOWNSHIP3848 VETERANS DR
TRAVERSE CITY, MI 49684

Permit Type: LAND USE

Permit No: PZ2013-163

ZONING DEPARTMENT Phone: (231) 941-1620 Fax: (231) 941-1588

Hours: Monday-Thursday 7:30am - 6:00pm

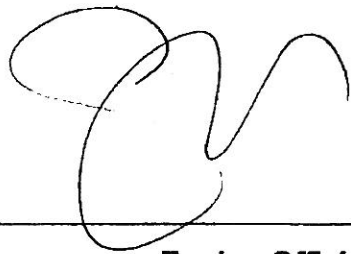
1774 CASS HARTMAN CT 05-062-006-00 <i>(05)</i>	Location	CASS AVENUE PROPERTIES LLC 8753 LAKE ANN RD LAKE ANN MI 49650	Owner
Issued: 12/10/2013 Expires: 12/10/2014 PLEASE CALL (231)941-1620 FOR AN INSPECTION 24 HOURS IN ADVANCE		CASS AVENUE PROPERTIES LLC 8753 LAKE ANN RD LAKE ANN MI 49650	Applicant

Work Description: CONSTRUCT ADDITION ACCORDING TO PLANS SUBMITTED AND RECEIVED ON DEC 10 2013

ALL LIGHTING TO COMPLY WITH ZONING REQUIREMENTS

CONTINGENT ON STORM WATER FINALIZATION PRIOR TO OCCUPANCY PERMIT

Permit Item	Work Type	No. of Items	Item Total
COM ADD/ALTER/REPAIR	STANDARD ITEM	540.00	50.00



Zoning Official

Fee Total: \$50.00

LAND USE PERMIT

Zoning District: MI-L

THIS PERMIT IS ONLY FOR THE WORK DESCRIBED AND DOES NOT GRANT PERMISSION TO THE OWNER, APPLICANT OR CONTRACTOR FOR ADDITIONAL OR RELATED WORK FOR WHICH OTHER PERMITS ARE REQUIRED. THIS PERMIT WILL EXPIRE AND BECOME NULL AND VOID IF THE PERMITTED WORK IS NOT STARTED WITHIN 365 DAYS OF THE ISSUANCE OF THIS PERMIT. IT IS ASSUMED THAT THE PROPOSED WORK HAS BEEN AUTHORIZED BY THE OWNER AND THAT THE APPLICANT OR CONTRACTOR HAS BEEN GIVEN THE AUTHORITY TO APPLY FOR SAID PERMIT. THE PERMIT, OWNER, CONTRACTOR AND APPLICANT AGREE TO CONFORM TO ALL APPLICABLE TOWNSHIP ORDINANCES AND LAWS OF THE STATE OF MICHIGAN.

Exhibit J

EXHIBIT 8



Charter Township of Garfield

Grand Traverse County

3848 VETERANS DRIVE
TRAVERSE CITY, MICHIGAN 49684
PH: (231) 941-1620 • FAX: (231) 941-1588

www.Garfield-twp.com

SE Review
002-007-00

LAND USE PERMIT APPLICATION

1) Owner / Applicant Information

Sonny's Body Shop
Owner: _____
1774 Cass Hartman Ct.
Address: _____
Traverse City, Michigan 49685
City, State, Zip Code _____
(231) 941-1137
Phone Numbers _____

JML Design Group, Ltd/C.F. Campbell
Applicant: _____
1874 Cass Hartman Ct. Ste. B
Address: _____
Traverse City, Michigan 49685
City, State, Zip Code _____
(231) 947-9019
Phone Numbers _____

An applicant who is acting as the authorized agent for the owner of the property listed above shall provide a date of birth and Drivers License number.

Date of Birth

Drivers License #

2) Property Information

Property Address: 1824 Cass Hartman Ct.
Parcel ID #: 28-05- 062-007-00
Subdivision Name: _____ Lot # _____
Proposed Use: _____ Current Use: _____

3) Request

Single Family Home: _____ Duplex: _____ Multi-Family: _____ Change of Use _____
Commercial Building: ☒ Industrial Building: _____ Grading: _____ Road _____
Accessory Structure: _____ Addition: _____ Deck: _____ Other: _____
Description: _____

----- Application continued on the other side -----

10-4-2011

4) **Permits:**

The following agency permits are required (if applicable) prior to the issuance of a Land Use Permit and at the time of submittal of the application:

- Soil Erosion Permit from Drain Commissioners office
- Health Department (well/septic) or DPW Permit (water /sewer)
- Driveway Permit (Road Commission or M-DOT)
- Any required MDNRE permits

5) **Dimensional Site Plan:**

Please provide a detailed sketch is required, which includes all structures on the property, proposed structures with dimensions, parcel dimensions, setbacks, Road Right of Way, and height.

6) **Affidavit:**

The undersigned affirms that he/she or they is (are) the owner, or authorized agent of the owner, involved in the application and all of the information submitted in this application, including any supplemental information, is in all respects true and correct. The undersigned further acknowledges that willful misrepresentation of information will terminate this permit application and any permit associated with this document.

_____ Owner signature	_____ Print Name	_____ Date
<u>C.F. Campbell</u> Applicants signature <i>MC</i>	<u>C.F. Campbell</u> Print Name	<u>10/24/13</u> Date

Land Use Permits are valid for one year

A minimum 24 hour review period is required for all land use permit applications.

The issuance of a Land Use Permit does not negate the need to acquire a Building Permit.

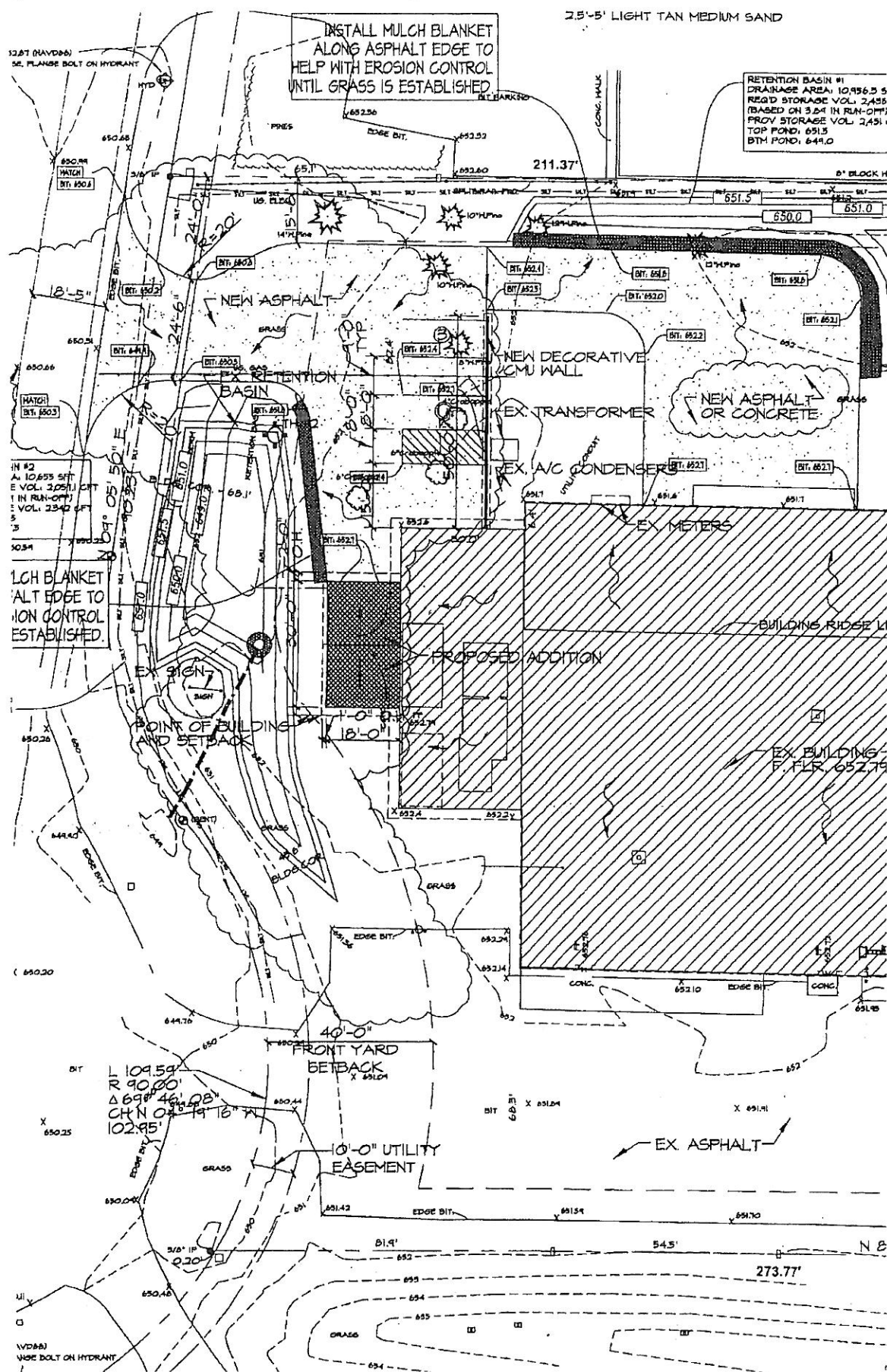


EXHIBIT 9



Charter Township of Garfield

Grand Traverse County

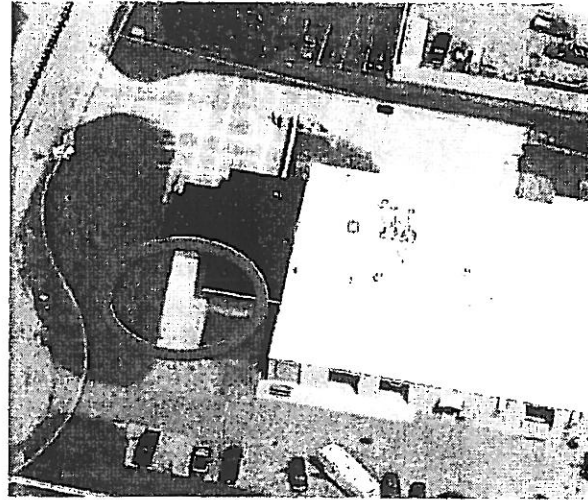
3848 VETERANS DRIVE
TRAVERSE CITY, MICHIGAN 49684
PH: (231) 941-1620 • FAX: (231) 941-1588

LETTER OF VIOLATION

10/22/2014

SONNY'S BODY SHOP
1824 CASS HARTMAN CT
TRAVERSE CITY, MI 49685

**RE: New Construction/ Violation of Approved
Site Plan at 1824 CASS HARTMAN CT, Parcel
Number 05-062-007-00**



Dear Sonny's Body Shop,

During your site inspection to obtain occupancy for your new addition, it was found that you have constructed a concrete driveway in the front yard setback. This is the same driveway that you were informed, prior to permits, would not be permitted by the Zoning Ordinance. At this time you are unable to obtain any type of certificate of occupancy with this violation.

In addition, while at the site, the portion of building covered by this permit was being used without an occupancy permit. It is a violation of the Ordinance to occupy a structure without first obtaining a Certificate of Occupancy.

You have 14 days to correct this violation by removing this drive from the property. Failure to correct this violation will result in a municipal civil infraction for constructing the drive in the setback and a municipal civil infraction for occupying a structure without proper approvals.

Municipal civil infractions require appearance before the Grand Traverse County Magistrate and a fine, if voluntary compliance is not achieved.

Thank you for your immediate attention to this matter. If you have any questions regarding this information please do not hesitate to contact the Zoning Department.

Sincerely,

Sara Kopriva, AICP
Zoning Administrator

Cc: Fred Campbell, Architect
Carl Studzinski, Building Official

Exhibit K

EXHIBIT 10

Variance Request 2014-02
Front Yard Drive Setback Variance

The ZBA will have to decide if the applicants request is reasonable and if it can meet the standards to grant a variance.

The following remarks are intended to initiate conversation and are not intended to influence the outcome of the request. The ZBA will be required to answer the questions that are relevant to the request as part of the findings of fact. Below are findings below both for and against the request that may assist you in your discussions.

Before any nonuse variance is granted, all of the following standards shall be satisfied.

- a. The need for the request variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography that differentiate the property from other properties in the zoning district.**

Sample Findings In Favor

1. The Zoning Board of Appeals finds
2. The Zoning Board of Appeals finds

Sample Findings Against

1. The Zoning Board of Appeals finds that there is nothing unique about this property. It is similar to other properties in the same zoning district. (Exhibit D and F)
2. The Zoning Board of Appeals finds that the lot has a large level area, is not narrow or shallow, and does not have any water on it. (Exhibit H)

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

- b. **The need for the requested variance is not self-created, and is not the result of action taken by the property owners.**

Sample Findings in Favor

1. The Zoning Board of Appeals finds that the current property owners did not build the structure in its current location. (Exhibit C and F)
2. The Zoning Board of Appeals finds

Sample Findings Against

1. The Zoning Board of Appeals finds that this is self created because the building could be built without the drive. (Exhibit J and L)
2. The Zoning Board of Appeals finds that the variance request is a result of action taken by the property owner. The property owner wanted to do the addition with this drive after recently purchasing the property. (Exhibit F, J, K, and L)
3. The Zoning Board of Appeals finds

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

- c. **The variance will not be contrary to the public interest or to the intent and purpose of this Ordinance. Relief can be granted in such a fashion that the spirit of the Ordinance will be observed, and public safety and welfare secured.**

Sample Findings in Favor

1. The Zoning Board of Appeals finds
2. The Zoning Board of Appeals finds

Sample Findings Against

1. The Zoning Board of Appeals finds that the variance is contrary to public interest and intent because it is not unique to the property. (Exhibit A and F)
2. The Zoning Board of Appeals finds

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

- d. **Compliance with the strict letter of the regulations governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.**

Sample Findings in Favor

1. The Zoning Board of Appeals finds having customers back out the building is a safety hazard and pulling through is more appropriate. (Exhibit F)
2. The Zoning Board of Appeals finds

Sample Findings Against

1. The Zoning Board of Appeals finds that the property owner can use the property in the same way as intended. Their customers would have to back out of the building and not pull forward. (Exhibit J and L)
2. The Zoning Board of Appeals finds

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

- e. **Granting of the variance applied for would do substantial justice to the applicant, as well as to other property owners in the district, or a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.**

Sample Findings in Favor

1. The Zoning Board of Appeals finds that the variance would allow for the property owner to continue to use the unapproved drive as they wish (Exhibit F)
2. The Zoning Board of Appeals finds

Sample Findings Against

1. The Zoning Board of Appeals finds that the variance would not do substantial justice to other property owners because they are required to comply with the Zoning Ordinance on similar lots. (Exhibit A)
2. The Zoning Board of Appeals finds

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

- f. **Issuance of the variance will not cause a substantial adverse effect upon property values in the immediate vicinity or in the zoning district in which the property of the applicant is located.**

Sample Findings in Favor

1. The Zoning Board of Appeals finds that the drive will not cause substantial adverse effects because others in the same neighborhood have done the same thing. (Exhibit F)
2. The Zoning Board of Appeals finds that the property is located near the end of a cul-de-sac so there is limited traffic. (Exhibit D and F)

Sample Findings Against

1. The Zoning Board of Appeals finds
2. The Zoning Board of Appeals finds

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

- g. **Is not where the specific conditions relating to the property are so general or recurrent in nature, as to make the formulation of a general regulation for such conditions reasonably practical.**

Sample Findings in Favor

1. The Zoning Board of Appeals finds
2. The Zoning Board of Appeals finds

Sample Findings Against

1. The Zoning Board of Appeals finds that this MUIBD zoned property is similar in topography, shape, building location, and parking to many other MUIBD zoned property. (Exhibit F, D, and site visits)
2. The Zoning Board of Appeals finds

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

- h. The variance will relate only to the property that is under the control of the applicant, and the lot or parcel of land is a legal lot or parcel of record, or has been legally established.

Sample Findings in Favor

1. The Zoning Board of Appeals finds that the parcel is owned by the applicant and was legally platted. (Exhibit C)
2. The Zoning Board of Appeals finds

Sample Findings Against

1. The Zoning Board of Appeals finds
2. The Zoning Board of Appeals finds

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, we conclude that this standard **HAS / HAS NOT** been met.

Possible Motion:

Motion to:

GRANT the request for variance from Sections 6.9.12(4) and 6.15 to allow for a drive in the front yard setback as requested, based upon the finding that all the standards for approval in Section 5.4 of the Zoning Ordinance have been met with the following conditions:

DENY the request for variance from Sections 6.9.12(4) and 6.15 to allow for a drive in the front yard setback as requested, based upon the finding that all the standards for approval in Section 5.4 of the Zoning Ordinance have been not been met.

EXHIBIT 11



Charter Township of Garfield

Grand Traverse County

3848 VETERANS DRIVE
TRAVERSE CITY, MICHIGAN 49684
PH: (231) 941-1620 • FAX: (231) 941-1588

MEMORANDUM

Meeting Date: December 17, 2014
To: ZBA Members
From: Rob Larrea – Director of Planning
Case #: 2014-02 Front Yard Setback Variance
Owner: Sonny's Body Shop
Agent: Fred Campbell
Property Location: 1824 Cass-Hartman Court
Zoning District: MUIBD - L

This memorandum is intended to supplement the staff report and findings which were provided to the ZBA in advance of tonight's variance request.

On its own, the applicant's request letter dated November 6, 2014 describes why this request should be denied.

In the third paragraph, the applicant states that *"The issue of the new driveway being contained within the front yard setback was identified prior to the Land Use Permit being issued. The driveway was removed from the drawing.... In this manner the Land Use Permit was issued and construction commenced."* This statement in itself acknowledges that the design as originally proposed, and as constructed, violates the zoning ordinance. It was only upon correction of the site plans indicating full zoning ordinance compliance that a land use permit was issued.

Furthermore, the applicant states that following a later conversation the owner was verbally given permission to add the driveway. This statement is false, as even in a written statement, the authority to grant a variance lies with the Zoning Board of Appeals, not with appointed or elected officials. This was made clear to the applicant but the service drive was constructed regardless.

In review of any variance request the ZBA must weigh the standards for determination. The Zoning Administrator has prepared findings for your consideration for each of these standards. Upon review of the findings it is clear that this is not a unique circumstance, that the hardship was self created, and that this is a deliberate violation of the Zoning Ordinance. Approval of the variance application will set an extremely negative precedent, not only for construction within a front yard setback but for approval of an after-the-fact variance request.

It is my strong recommendation that this request be denied.

Respectfully,

Rob Larrea, AICP
Director of Planning

Exhibit N

EXHIBIT 12

**CHARTER TOWNSHIP OF GARFIELD
ZONING BOARD OF APPEALS MEETING**

Wednesday, January 7, 2015 @ 7:00 p.m.
Garfield Township Hall
3848 Veterans Drive
Traverse City, MI 49684

A G E N D A

Call meeting to order
Roll call of Board Members

1. Election of officers (chairman, vice-chairman, secretary)
2. Review and approval of the Agenda and declaration of a Conflict of Interest
3. Minutes – December 17, 2014
4. Decision and Order – Case # 2014-02- Sonny's Body Shop
5. Items for next agenda
6. Public Comment
7. Adjournment

The Garfield Township Board will provide necessary reasonable auxiliary aids and services, such as signers for hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities upon the provision of reasonable advance notice to the Garfield Township Board. Individuals with Disabilities requiring auxiliary aids or services should contact the Garfield Township Board by writing or calling Kay Schumacher, Clerk, Ph: (231) 941-1620, or TDD #922-4412.

Charter Township of Garfield
Zoning Board of Appeals Meeting

Wednesday, December 17, 2014 @ 7:00pm
Garfield Township Hall
3848 Veterans Drive
Traverse City, MI 49684

Rick Smith called the meeting to order at 7:00pm.

Board Members Present: Uithol, Featherstone, Yelencich, Smith

Absent and Excused: Rozycki

Staff Present: Sara Kopriva

1. **Review and approval of the agenda and declaration of a Conflict of Interest**
Yelencich moved and Uithol seconded to approve the agenda.

Yeas: Yelencich, Uithol, Featherstone, Smith
Nays: None

2. **Minutes – November 19, 2014**
Uithol moved and Yelencich seconded to approve the minutes of November 19, 2014 as amended changing the word "supported" in item #2 to "seconded."

Yeas: Uithol, Yelencich, Featherstone, Smith
Nays: None

3. **Decision and Order – Case #2014-01 – Britten**
Featherstone moved and Yelencich seconded to approve the Decision and Order for Case #2014-01.

Yeas: Featherstone, Yelencich, Uithol, Smith
Nays: None

4. **Public Hearing**

- a. **Case #2014-02 Sonny's Body Shop, Front Yard Setback Variance**
The applicant is requesting an after-the-fact variance from the required 40 foot setback for all parking and unnecessary drives to install a drive located in the setback area. The parcel is located on Cass Hartman Ct. off of Cass Road near Hartman Road. It is approximately 2.17 acres and zoned Mixed Use Industrial Business District. This property is relatively flat on the west side and falls off on the east side. In December 2013, a permit was pulled to convert the building to an auto body shop and an

addition for an estimation area. Architect Fred Campbell presented a request for a variance for what is a 365 square feet piece of concrete encroaching in the front setback of Sonny's Auto Body. The original property did have a non-conforming sidewalk at the edge of the building in the front yard setback. When the original plan was approved in 2013, the concrete was not on the plan. Board members discussed the matter and thought that the project could have been done without a variance, that staff could not give approval to violate the Ordinance. Chair Smith opened the Public Hearing at 7:22 PM and seeing no one wishing to speak, closed the public hearing. Kopriva asked to add a memo from Rob Larrea dated December 17, 2014 to the exhibits list as Exhibit N.

Board members went through the draft Findings of Facts for the proposed variance.

- a. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* due to the fact that there is nothing unique about this property. It is similar to other properties in the same zoning district. The lot has a large level area, is not narrow or shallow, and does not have any water on it. (Exhibits D, F and H)
- b. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* because the building could have been built without the drive and the variance request is a result of action taken by the property owner. The property owner wanted to do the addition with this drive after recently purchasing the property. (Exhibits F, J, K, and L)
- c. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Been Met* because the additional concrete does not affect public safety and is small in area. (Exhibit F)
- d. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* as strict conformance of the restrictions governing setbacks need to be adhered to and also that the property owner could use the property as intended by backing out of the building and not pulling forward. (Exhibit J and L)
- e. After careful consideration of the facts and evidence as presented

to the Garfield Township Zoning Board of Appeals, the board concluded that this *Standard Has Been Met* and gives substantial justice to the applicant because the variance would allow for the property owner to continue to use the unapproved drive as they wish. (Exhibit F)

- f. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that *this Standard Has Been Met* because others in the same neighborhood have done the same thing and the property is located near the end of a cul-de-sac so there is limited traffic. (Exhibit F)
- g. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* due to the fact that this MUIBD zoned property is similar in topography, shape, building location and parking to many other MUIBD zoned property. (exhibits F, D and site visits).
- h. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Been Met* due to the fact that the parcel is owned by the applicant and was legally platted. (Exhibit C)

Featherstone moved and Yelencich seconded to DENY the request for variance from Sections 6.9.12(4) and 6.15 to allow for a drive in the front yard setback as requested, based upon the finding that all the standards for approval in Section 5.4 of the Zoning Ordinance have not been met.

Yeas: Featherstone, Yelencich, Uithol, Smith

Nays: None

5. **Other Business**

a. Meeting Calendar 2015

Kopriva said the meeting schedule for 2015 was in front of Board members for approval and the meetings would still be held on the third Wednesday of each month.

Yelencich moved and Uithol seconded to approve the Meeting Calendar for the Zoning Board of Appeals for 2015.

Yeas: Yelencich, Uithol, Featherstone, Smith

Nays: None

Kopriva said that there will be a special meeting in January in place of the regular meeting and thanked Featherstone for his service to the ZBA.

6. Public Comment

None

7. Adjournment

Featherstone moved to adjourn the meeting at 7:34pm.

Kent Rozycki, Secretary
Zoning Board of Appeals
3848 Veterans Drive
Traverse City, MI 49684

GARFIELD TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Meeting Date:	December 17, 2014
Case #: 2014-02	Front Yard Setback variance
Owner:	Cass Avenue Properties-Sonny's Body Shop
Agent:	Fred Campbell- JML Design Group
Property ID #:	062-007-00
Property Location:	1824 Cass Hartman Ct
Zoning District:	MUIBD-L, Mixed Use Industrial Business District-Limited

PROPERTY DESCRIPTION

LOT 7 BOARDMAN VALLEY IND PARK SUBD.

PROPERTY BACKGROUND

This parcel is located on Cass Hartman Ct off Cass Rd near Hartman road (Exhibit D). It is approximately 2.17 acres and zoned Mixed Use Industrial Business District (Exhibit C and A). This property is relatively flat on the west side and falls off on the east side. (Exhibit D, H, and Site Visit) In December 2013, a permit was pulled to convert the building to an auto body shop and an addition for an estimation area (Exhibit J).

APPLICANT REQUEST

The applicant is requesting an after-the-fact variance from the required 40 ft setback for all parking and unnecessary drives to install a drive located in the setback area (Exhibit F). Additional information on the request can be found in the staff report (Exhibit G).

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, and following a public hearing, as required by law and held on December 17, 2014 the Board states as follows:

FINDINGS

- a. The need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography that differentiate the property from other properties in the zoning district.

The board members found that this standard has not been met due to the fact that there is nothing unique about this property. It is similar to other properties in the same zoning district. The lot has a large level area, is not narrow or shallow, and does not have any water on it. (Exhibits D, F, and H)

- b. The need for the requested variance is not self-created, and is not the result of action taken by the property owners.

The board members found that this standard has not been met because the building could have been built without the drive and the variance request is a result of action taken by the property owner. The property owner wanted to do the addition with this drive after recently purchasing the property that was functioning as a commercial operation. (Exhibits F, J, K, and L)

- c. The variance will not be contrary to the public interest or to the intent and purpose of this Ordinance. Relief can be granted in such a fashion that the spirit of the Ordinance will be observed, and public safety and welfare secured.

The board members found that this standard has been met because the additional concrete does not affect public safety and is small in area. (Exhibit F)

- d. Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The board members found that this standard has not been met because the property owner can use the property in the same way as intended. Their customers would have to back out of the building and not pull forward. (Exhibit J and L)

- e. Granting of the variance applied for would do substantial justice to the applicant, as well as to other property owners in the district, or a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The board members found that this standard has been met and gives substantial justice to the applicant because the variance would allow for the property owner to continue using the unapproved drive as they wish. (Exhibit F)

- f. Issuance of the variance will not cause a substantial adverse effect upon property values in the immediate vicinity or in the zoning district in which the property of the applicant is located.

The board members found that this standard has been met as the drive will not cause substantial adverse effects because others in the same neighborhood have done the same thing and the property is located near the end of a cul-de-sac so there is limited traffic. (Exhibit D and F)

- g. Is not where the specific conditions relating to the property are so general or recurrent in nature, as to make the formulation of a general regulation for such conditions reasonably practical.

The board members found that this standard has not been met due to the fact that this MUIBD zoned property is similar in topography, shape, building location, and parking to many other MUIBD zoned property. (Exhibits F, D, and site visits)

- h. The variance will relate only to the property that is under the control of the applicant, and the lot or parcel of land is a legal lot or parcel of record, or has been legally established.

The board members found that this standard has been met due to the fact that the parcel is owned by the applicant and was legally platted. (Exhibit C)

DECISION

Based on the findings above, upon motion, seconded and passed, the Zoning Board of Appeals finds THAT the request for variance from Section 6.9.12(4) and 6.15 Schedule of Regulations, of the Charter Township of Garfield Zoning Ordinance, shall be denied based on the fact that the general standards for granting such request have not been met.

ORDER

DENY the request for variance from Sections 6.9.12(4) and 6.15 to allow for a drive in the front yard setback as requested, based upon the finding that all the standards for approval in Section 5.4 of the Zoning Ordinance have not been met.

DECISION AND ORDER ADOPTED

January 7, 2015

Rick Smith - Chairman
Zoning Board of Appeals
3848 Veterans Drive
Traverse City, MI

Exhibit List
FINAL

Case # 2014-02
Sonny's Body Shop

- A. Garfield Township Zoning Ordinance
- B. Garfield Township Master Plan
- C. Property Record Card
- D. Published notice including map of property and 300 ft mailing list
- E. Application (submitted by Applicant)
- F. Letter with attachments explaining request, dated November 6, 2014 (submitted by Applicant)
- G. Staff Report
- H. 2010 Aerial Photo
- I. 2014 Aerial Photo
- J. Land Use Permit 2013-163 with drawings
- K. Letter of Violation, dated October 22, 2014
- L. Email between Rob Larrea and Fred Campbell regarding project, dated November 20, 2013
- M. Draft Findings of Fact
- N. Memo from Rob Larrea, dated December 17, 2014

EXHIBIT 13

Charter Township of Garfield
Zoning Board of Appeals Meeting

Wednesday, December 17, 2014 @ 7:00pm
Garfield Township Hall
3848 Veterans Drive
Traverse City, MI 49684

Rick Smith called the meeting to order at 7:00pm.

Board Members Present: Uithol, Featherstone, Yelencich, Smith

Absent and Excused: Rozycki

Staff Present: Sara Kopriva

1. **Review and approval of the agenda and declaration of a Conflict of Interest**
Yelencich moved and Uithol seconded to approve the agenda.

Yeas: Yelencich, Uithol, Featherstone, Smith
Nays: None

2. **Minutes – November 19, 2014**
Uithol moved and Yelencich seconded to approve the minutes of November 19, 2014 as amended changing the word "supported" in item #2 to "seconded."

Yeas: Uithol, Yelencich, Featherstone, Smith
Nays: None

3. **Decision and Order – Case #2014-01 – Britten**
Featherstone moved and Yelencich seconded to approve the Decision and Order for Case #2014-01.

Yeas: Featherstone, Yelencich, Uithol, Smith
Nays: None

4. **Public Hearing**

- a. **Case #2014-02 Sonny's Body Shop, Front Yard Setback Variance**
The applicant is requesting an after-the-fact variance from the required 40 foot setback for all parking and unnecessary drives to install a drive located in the setback area. The parcel is located on Cass Hartman Ct. off of Cass Road near Hartman Road. It is approximately 2.17 acres and zoned Mixed Use Industrial Business District. This property is relatively flat on the west side and falls off on the east side. In December 2013, a permit was pulled to convert the building to an auto body shop and an

addition for an estimation area. Architect Fred Campbell presented a request for a variance for what is a 365 square feet piece of concrete encroaching in the front setback of Sonny's Auto Body. The original property did have a non-conforming sidewalk at the edge of the building in the front yard setback. When the original plan was approved in 2013, the concrete was not on the plan. Board members discussed the matter and thought that the project could have been done without a variance, that staff could not give approval to violate the Ordinance. Chair Smith opened the Public Hearing at 7:22 PM and seeing no one wishing to speak, closed the public hearing. Kopriva asked to add a memo from Rob Larrea dated December 17, 2014 to the exhibits list as Exhibit N.

Board members went through the draft Findings of Facts for the proposed variance.

- a. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* due to the fact that there is nothing unique about this property. It is similar to other properties in the same zoning district. The lot has a large level area, is not narrow or shallow, and does not have any water on it. (Exhibits D, F and H)
- b. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* because the building could have been built without the drive and the variance request is a result of action taken by the property owner. The property owner wanted to do the addition with this drive after recently purchasing the property. (Exhibits F, J, K, and L)
- c. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Been Met* because the additional concrete does not affect public safety and is small in area. (Exhibit F)
- d. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* as strict conformance of the restrictions governing setbacks need to be adhered to and also that the property owner could use the property as intended by backing out of the building and not pulling forward. (Exhibit J and L)
- e. After careful consideration of the facts and evidence as presented

to the Garfield Township Zoning Board of Appeals, the board concluded that this *Standard Has Been Met* and gives substantial justice to the applicant because the variance would allow for the property owner to continue to use the unapproved drive as they wish. (Exhibit F)

- f. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that *this Standard Has Been Met* because others in the same neighborhood have done the same thing and the property is located near the end of a cul-de-sac so there is limited traffic. (Exhibit F)
- g. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Not Been Met* due to the fact that this MUIBD zoned property is similar in topography, shape, building location and parking to many other MUIBD zoned property. (exhibits F, D and site visits).
- h. After careful consideration of the facts and evidence as presented to the Garfield Township Zoning Board of Appeals, the board concluded that the *Standard Has Been Met* due to the fact that the parcel is owned by the applicant and was legally platted. (Exhibit C)

Featherstone moved and Yelencich seconded to DENY the request for variance from Sections 6.9.12(4) and 6.15 to allow for a drive in the front yard setback as requested, based upon the finding that all the standards for approval in Section 5.4 of the Zoning Ordinance have not been met.

Yeas: Featherstone, Yelencich, Uithol, Smith

Nays: None

5. Other Business

a. Meeting Calendar 2015

Kopriva said the meeting schedule for 2015 was in front of Board members for approval and the meetings would still be held on the third Wednesday of each month.

Yelencich moved and Uithol seconded to approve the Meeting Calendar for the Zoning Board of Appeals for 2015.

Yeas: Yelencich, Uithol, Featherstone, Smith

Nays: None

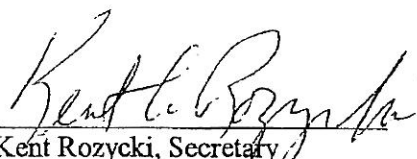
Kopriva said that there will be a special meeting in January in place of the regular meeting and thanked Featherstone for his service to the ZBA.

6. Public Comment

None

7. Adjournment

Featherstone moved to adjourn the meeting at 7:34pm.



Kent Rozycki, Secretary
Zoning Board of Appeals
3848 Veterans Drive
Traverse City, MI 49684

EXHIBIT 14

GARFIELD TOWNSHIP
ZONING BOARD OF APPEALS
DECISION AND ORDER

Meeting Date:	December 17, 2014
Case #: 2014-02	Front Yard Setback variance
Owner:	Cass Avenue Properties-Sonny's Body Shop
Agent:	Fred Campbell- JML Design Group
Property ID #:	062-007-00
Property Location:	1824 Cass Hartman Ct
Zoning District:	MUIBD-L, Mixed Use Industrial Business District-Limited

PROPERTY DESCRIPTION

LOT 7 BOARDMAN VALLEY IND PARK SUBD.

PROPERTY BACKGROUND

This parcel is located on Cass Hartman Ct off Cass Rd near Hartman road (Exhibit D). It is approximately 2.17 acres and zoned Mixed Use Industrial Business District (Exhibit C and A). This property is relatively flat on the west side and falls off on the east side. (Exhibit D, H, and Site Visit) In December 2013, a permit was pulled to convert the building to an auto body shop and an addition for an estimation area (Exhibit J).

APPLICANT REQUEST

The applicant is requesting an after-the-fact variance from the required 40 ft setback for all parking and unnecessary drives to install a drive located in the setback area (Exhibit F). Additional information on the request can be found in the staff report (Exhibit G).

After careful consideration of the facts and evidence presented to the Garfield Township Zoning Board of Appeals, and following a public hearing, as required by law and held on December 17, 2014 the Board states as follows:

FINDINGS

- a. The need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography that differentiate the property from other properties in the zoning district.

The board members found that this standard has not been met due to the fact that there is nothing unique about this property. It is similar to other properties in the same zoning district. The lot has a large level area, is not narrow or shallow, and does not have any water on it. (Exhibits D, F, and H)

- b. The need for the requested variance is not self-created, and is not the result of action taken by the property owners.

The board members found that this standard has not been met because the building could have been built without the drive and the variance request is a result of action taken by the property owner. The property owner wanted to do the addition with this drive after recently purchasing the property that was functioning as a commercial operation. (Exhibits F, J, K, and L)

- c. The variance will not be contrary to the public interest or to the intent and purpose of this Ordinance. Relief can be granted in such a fashion that the spirit of the Ordinance will be observed, and public safety and welfare secured.

The board members found that this standard has been met because the additional concrete does not affect public safety and is small in area. (Exhibit F)

- d. Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The board members found that this standard has not been met because the property owner can use the property in the same way as intended. Their customers would have to back out of the building and not pull forward. (Exhibit J and L)

- e. Granting of the variance applied for would do substantial justice to the applicant, as well as to other property owners in the district, or a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The board members found that this standard has been met and gives substantial justice to the applicant because the variance would allow for the property owner to continue using the unapproved drive as they wish. (Exhibit F)

- f. Issuance of the variance will not cause a substantial adverse effect upon property values in the immediate vicinity or in the zoning district in which the property of the applicant is located.

The board members found that this standard has been met as the drive will not cause substantial adverse effects because others in the same neighborhood have done the same thing and the property is located near the end of a cul-de-sac so there is limited traffic. (Exhibit D and F)

- g. Is not where the specific conditions relating to the property are so general or recurrent in nature, as to make the formulation of a general regulation for such conditions reasonably practical.

The board members found that this standard has not been met due to the fact that this MUIBD zoned property is similar in topography, shape, building location, and parking to many other MUIBD zoned property. (Exhibits F, D, and site visits)

- h. The variance will relate only to the property that is under the control of the applicant, and the lot or parcel of land is a legal lot or parcel of record, or has been legally established.

The board members found that this standard has been met due to the fact that the parcel is owned by the applicant and was legally platted. (Exhibit C)

DECISION

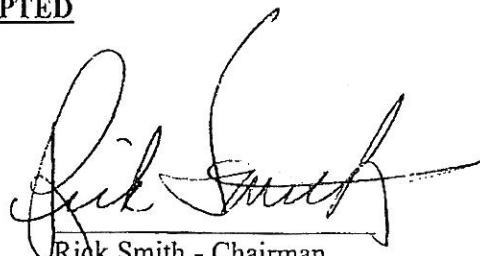
Based on the findings above, upon motion, seconded and passed, the Zoning Board of Appeals finds THAT the request for variance from Section 6.9.12(4) and 6.15 Schedule of Regulations, of the Charter Township of Garfield Zoning Ordinance, shall be denied based on the fact that the general standards for granting such request have not been met.

ORDER

DENY the request for variance from Sections 6.9.12(4) and 6.15 to allow for a drive in the front yard setback as requested, based upon the finding that all the standards for approval in Section 5.4 of the Zoning Ordinance have not been met.

DECISION AND ORDER ADOPTED

January 7, 2015

A handwritten signature in black ink, appearing to read "Rick Smith", written over a horizontal line.

Rick Smith - Chairman
Zoning Board of Appeals
3848 Veterans Drive
Traverse City, MI

Exhibit List
FINAL

Case # 2014-02
Sonny's Body Shop

- A. Garfield Township Zoning Ordinance
- B. Garfield Township Master Plan
- C. Property Record Card
- D. Published notice including map of property and 300 ft mailing list
- E. Application (submitted by Applicant)
- F. Letter with attachments explaining request, dated November 6, 2014 (submitted by Applicant)
- G. Staff Report
- H. 2010 Aerial Photo
- I. 2014 Aerial Photo
- J. Land Use Permit 2013-163 with drawings
- K. Letter of Violation, dated October 22, 2014
- L. Email between Rob Larrea and Fred Campbell regarding project, dated November 20, 2013
- M. Draft Findings of Fact
- N. Memo from Rob Larrea, dated December 17, 2014

EXHIBIT 15

Charter Township of Garfield
Zoning Board of Appeals
January 7, 2015

Present: Steve Duell, Kent Rozycki, Joe Yelencich, Gil Uithol, Rick Smith
Absent and Excused: None
Staff Present: Sara Kopriva, Zoning Administrator

There were no members of the public present.

Call meeting to Order: The meeting was called to order at 7:00 pm by Chairman Smith at the Township Hall, 3848 Veterans Dr, Traverse City, MI 49684

1. Election of Officers

Yelencich nominated Smith as Chair. Smith accepted.
Uithol nominated Yelencich as Vice Chair. Yelencich accepted.
Uithol nominated Rozycki as Secretary. Rozycki accepted.

Roll call vote to accept nominations: Yea: Duell, Rozycki, Yelencich, Uithol, Smith. Nay: None

2. Agenda

Agenda was reviewed and adopted by consensus.

3. Minutes

Motion by Yelencich and seconded by Uithol to approve the minutes of the December 17, 2014 Zoning Board of Appeals minutes as presented. Motion approved unanimously.

4. Decision and Order- Case #2014-02- Sonny's Body Shop

Motion by Uithol and seconded by Yelencich to approve decision and order for case #2014-02 as presented. Motion carried unanimously.

5. Items for Next Agenda

There will not be a meeting on January 20, 2015 and to date nothing has been submitted for the February meeting.

6. Public Comment

There was none.

7. Adjournment

Motion by Duell and seconded by Yelencich to adjourn at 7:08 pm. Motion carried unanimously.

Kent Rozycki, Secretary
Zoning Board of Appeals
3848 Veterans Drive
Traverse City, MI 49684

EXHIBIT 16

FILED

Bonnie Scheele

Grand Traverse 13th Circuit Court
06/24/2015

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

SONNY'S BODY SHOP, ROBERT VALLEAU,
and DOUGLAS RICE,

Plaintiffs/Appellants,

vs.

File No. 15-30775-AA

GARFIELD TOWNSHIP,

Defendant/Appellee,

Steven R. Fox (P52390)
David Cvengros (P48504)
BISHOP & HEINTZ, P.C.
Attorney for Plaintiffs/Appellants
440 W. Front at Oak, P.O. Box 707
Traverse City, MI 49685-0707
(231) 946-4100

Karrie Zeits (P60559)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Defendant/Appellee
Garfield Township
101 N. Park St., Suite 100
Traverse City, MI 49684
(231) 929-4878

ORDER

At a session of said Court held in the County of Grand Traverse,
State of Michigan, on the 8th day of June, 2015.

PRESENT: HONORABLE THOMAS G. POWER
CIRCUIT COURT JUDGE

THE COURT, having read the briefs filed by the parties in this matter and having
conducted a hearing on June 8, 2015, and being otherwise fully advised in the premises:


For the reasons stated on the record IT IS ORDERED:

1. The GTZBA's decision to deny a non-use variance under Section 5.4 of the Garfield Township Zoning Ordinance is affirmed.
2. Pursuant to this Court's authority under MCR 7.112 and 7.216(5) and (9), and under the Michigan Zoning Enabling Act, this Court remands to the Garfield Township Zoning Board of Appeals (GTZBA) for consideration of the following:
 - a. Interpret the term "necessary drive" as it applies to the drive exiting/entering the south side of the Appellant's estimate bay;
 - b. The GTZBA shall determine whether the drive exiting/entering the south side of the Appellant's estimate bay may be permitted as an extension of a nonconforming use under Section 7.7.5; and
 - c. The GTZBA shall schedule a hearing on these matters and attempt to conclude these matters within 120 days from the date of this Order.

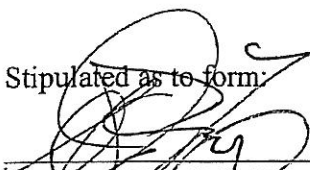
This Order resolves the last pending claim and closes the case. The Court retains jurisdiction to make such supplementary orders as shall be reasonably necessary to effectuate this Order.



Date: _____, 2015

06/24/2015
05:09AM


THOMAS G. POWER, CIRCUIT COURT JUDGE, P24270
HON. THOMAS G. POWER
Circuit Court Judge

Stipulated as to form:


Steven R. Fox (P52390)
Bishop & Heintz, P.C.
Attorneys for Plaintiffs/Appellants


Karrie Zeits (P60559) *attorney at law*
Smith Haughey Rice & Roegge
Attorneys for Defendant/Appellee 

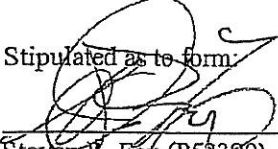
1. The GTZBA's decision to deny a non-use variance under Section 5.4 of the Garfield Township Zoning Ordinance is affirmed.
2. Pursuant to this Court's authority under MCR 7.112 and 7.216(5) and (9), and under the Michigan Zoning Enabling Act, this Court remands to the Garfield Township Zoning Board of Appeals (GTZBA) for consideration of the following:
 - a. Interpret the term "necessary drive" as it applies to the drive exiting/entering the south side of the Appellant's estimate bay;
 - b. The GTZBA shall determine whether the drive exiting/entering the south side of the Appellant's estimate bay may be permitted as an extension of a nonconforming use under Section 7.7.5; and
 - c. The GTZBA shall schedule a hearing on these matters and attempt to conclude these matters within 120 days from the date of this Order.

This Order resolves the last pending claim and closes the case. The Court retains jurisdiction to make such supplementary orders as shall be reasonably necessary to effectuate this Order.

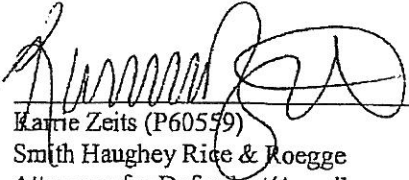
Date: _____, 2015

HON. THOMAS G. POWER
Circuit Court Judge

Stipulated as to form:



Steven R. Fox (P52390)
Bishop & Heintz, P.C.
Attorneys for Plaintiffs/Appellants



Karrie Zeits (P60559)
Smith Haughey Rice & Roegge
Attorneys for Defendant/Appellee