



# ZONING BOARD OF APPEALS

October 12, 2015

# CITY OF PORTAGE ZONING BOARD OF APPEALS

## Agenda

Monday, October 12, 2015

(7:00 pm)

Portage City Hall

Council Chambers

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### APPROVAL OF MINUTES:

- \* September 14, 2015 meeting

### OLD BUSINESS:

### NEW BUSINESS:

- \* ZBA #15-05, Jay Sharma, 5905 South Westnedge Avenue and 119 Colonial Avenue: In conjunction with renovations to the front (west) building facade, the applicant is requesting the following:
  - a. A use variance to permit refuse dumpsters in the P-1 zoned portion of the site; and
  - b. A dimensional variance to permit a 3-foot parking lot setback/greenstrip along South Westnedge Avenue where 10 feet is required; and
  - c. Dimensional variances to permit parking lot setback/greenstrip areas along Colonial Avenue as follows: i) ranging from 2-9 feet in the B-3 zoned portion of the site where 10 feet is required; and ii) a 2-foot parking lot setback/greenstrip in the P-1 zoned portion of the site where 27 feet is required (as shown in Sheet A2); or
  - d. Dimensional variances to permit parking lot setback/greenstrip areas along Colonial Avenue as follows: i) a 7-foot greenstrip in the B-3 zoned portion of the site where 10 feet is required; and ii) a 7-foot greenstrip in the P-1 zoned portion of the site where 27 feet is required (as shown in Sheet A3)

### OTHER BUSINESS:

### STATEMENT OF CITIZENS:

### ADJOURNMENT:

Star (\*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – September 14, 2015

 DRAFT

The City of Portage Zoning Board of Appeals meeting was called to order by Jeffrey Bright at 7:00 p.m. in the Council Chambers. Four people were in the audience.

**MEMBERS PRESENT:** Glenn Smith, Jeffrey Bright, Michael Robbe, John Byrnes, Phillip Schaefer, Chadwick Learned, Randall Schau, and Alexander Philipp.

**MEMBERS EXCUSED:** A motion was made by Learned, seconded by Smith to excuse Lowell Seyburn. Upon voice vote, motion was approved 7-0.

**IN ATTENDANCE:** Jeff Mais, Zoning & Codes Administrator and Charlie Bear, Assistant City Attorney.

**APPROVAL OF THE MINUTES:** Learned moved and Philip seconded a motion to approve the July 13, 2015 minutes as submitted. Upon voice vote, the motion was approved 7-0.

**NEW BUSINESS:**

**ZBA #15-3, Allied Signs on behalf of Earth Fare, 531 West Kilgore Road, 5024, 5036, 5050, 5070 South Westnedge Avenue:** Mais summarized the request for a variance to erect a 125 square-foot wall sign on the west elevation where no additional signage is permitted. Patrick Stieber with Allied Signs stated the sign is needed to help identify the business to traffic using the Lowe's Kilgore Road access drive. Mr. Stieber stated the building's setback is also a visibility issue. Philipp inquired if there was some reason the freestanding sign on Kilgore was ineffective. Mr. Stieber responded their panel was small. Schau noted the freestanding sign identifying Earth Fare is located just west of the second Kilgore Road access drive and if motorists travelling east on Kilgore Road miss the first drive, there is a second entrance drive that can be used as they approach South Westnedge. Bright inquired if the applicant had investigated allocating sign area from one of the other walls to the west elevation. Mr. Stieber stated they had but considered all of the signage on the east and north elevations necessary due to the setbacks.

The public hearing was opened. No one spoke for or against the request. The public hearing was closed.

Schaefer stated he has been to Earth Fare several times and based on the amount of business he observed, it seemed people were not having problems finding the location. Smith stated the building did have a large setback but noted they received extra wall signage and the freestanding sign was quite visible to eastbound West Kilgore traffic. A motion was made by Smith, seconded by Schaeffer, to deny a variance to erect a 125 square-foot wall sign on the west elevation where no additional signage is permitted for the following reasons: there are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district; the variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available, such as erecting directional signs; the variance would be detrimental to adjacent property and the surrounding neighborhood, and; the variance would materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Smith-Yes, Philipp-Yes, Robbe-Yes, Bright-Yes, Learned-yes, Schau-Yes, Schaeffer-Yes. The motion passed 7-0.

**ZBA #15-4, 204, 212, 220 West Milham Avenue:** Mais summarized the request for a variance from the parking requirements to provide 96 off-street parking spaces where a minimum 114 spaces are required. The applicant, Mark Tomasik, provided a letter dated September 8, 2015 to the Victory Baptist Church, 308 West Milham Avenue, proposing a lease agreement to use 18 church parking spaces for the applicant's employees Mondays through Saturdays during operating business hours. The applicant also provided an email response from the church minister dated September 14, 2015 indicating tentative agreement, pending church board approval. Mr. Tomasik stated the business owner, Larry Walt, currently operates several other facilities in the state with comparable building area that provide fewer parking spaces than the proposed plan with no parking problems. Mr. Tomasik stated they needed fewer spaces than required by city code because of the staggered employee schedules and the same salon-spa employees perform multiple tasks in different locations in the building. Consequently, all the styling chairs will not be in use at the same time.

Schau inquired if the applicant had looked at different parking configurations to maximize the number of spaces. Mr. Tomasik responded yes. Learned requested clarification concerning the lease agreement with the church. Mais stated staff suggested the applicant could investigate the possibility of a parking agreement with neighboring properties as a potential condition should the Board approve the variance. Such an arrangement could serve as a means to address overflow parking in the event the applicant's parking projections prove incorrect. Schau inquired if code permitted parking on someone else's property. Mais stated no, but in this instance the Board may find it meets the spirit and intent of the code. Attorney Bear stated a condition requiring an applicant to provide parking on someone else's property was problematic, as the church property could, for example, be sold to someone who may not consent to continue the parking agreement. Learned noted the parking standards might change with different occupancy in the future. Mais stated staff had considered this and if the building's occupancy were to change to general retail or office, the parking requirements would decrease. However, a combination of more intensive uses was a possibility as well. Learned inquired if the Board were to grant the variance, could a use requiring more parking locate there. After conferring with Attorney Bear, Mais responded the appeal was specifically to provide 96 parking spaces where 114 spaces are required and that if future occupants wished to locate there requiring a greater number of parking spaces than 114, they would need Board approval to do so.

The public hearing was opened. Larry Walt reiterated he has operated similar stores successfully for many years with less parking than the proposed plan. Mr. Walt added if the Board wanted him to enter into a lease agreement with the church for 18 parking spaces he had no objections, but thought it very unlikely they would ever be needed. There being no further comments, the public hearing was closed.

Robbe noted the applicant had conforming alternatives available and could simply reduce the number of chairs to meet code. Bright stated he appreciated staff's efforts to work with the applicant in devising possible solutions. Schau stated if the characteristics of the applicant's business operations were to be considered a practical difficulty, then it is essentially a self-created hardship. A motion was made by Learned, seconded by Schaeffer, to grant a variance from the parking requirements to provide 96 off-street parking spaces where a minimum 114 spaces are required with the condition that staff may, at its discretion at any time during the next two years, require the applicant to enter into a parking agreement for 18 spaces with the owner of 308 West Milham Avenue if they find parking to become a problem, for the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district which include the unique nature of the applicant's business that requires less parking; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to run a business that will not create a hardship for the public which is similar to that possessed by other properties in the vicinity; the variance will not be detrimental to adjacent property and the surrounding neighborhood, and; and the variance will not impair the intent and purpose of the Zoning Code. Upon roll call vote: Smith-Yes, Philipp-Yes, Robbe-No, Bright-Yes, Schau-No, Schaeffer-Yes, Learned-Yes. The motion passed 5-2.

**OTHER BUSINESS:** Mais announced interested citizens could comment on the 10-year capital improvement program either online or at the 7 p.m. community open house at City Hall on September 28, 2015. Interested parties could also attend the Portage 2025 Renewal event at Portage Central High School on October 3, from 9 a.m. to 2 p.m.

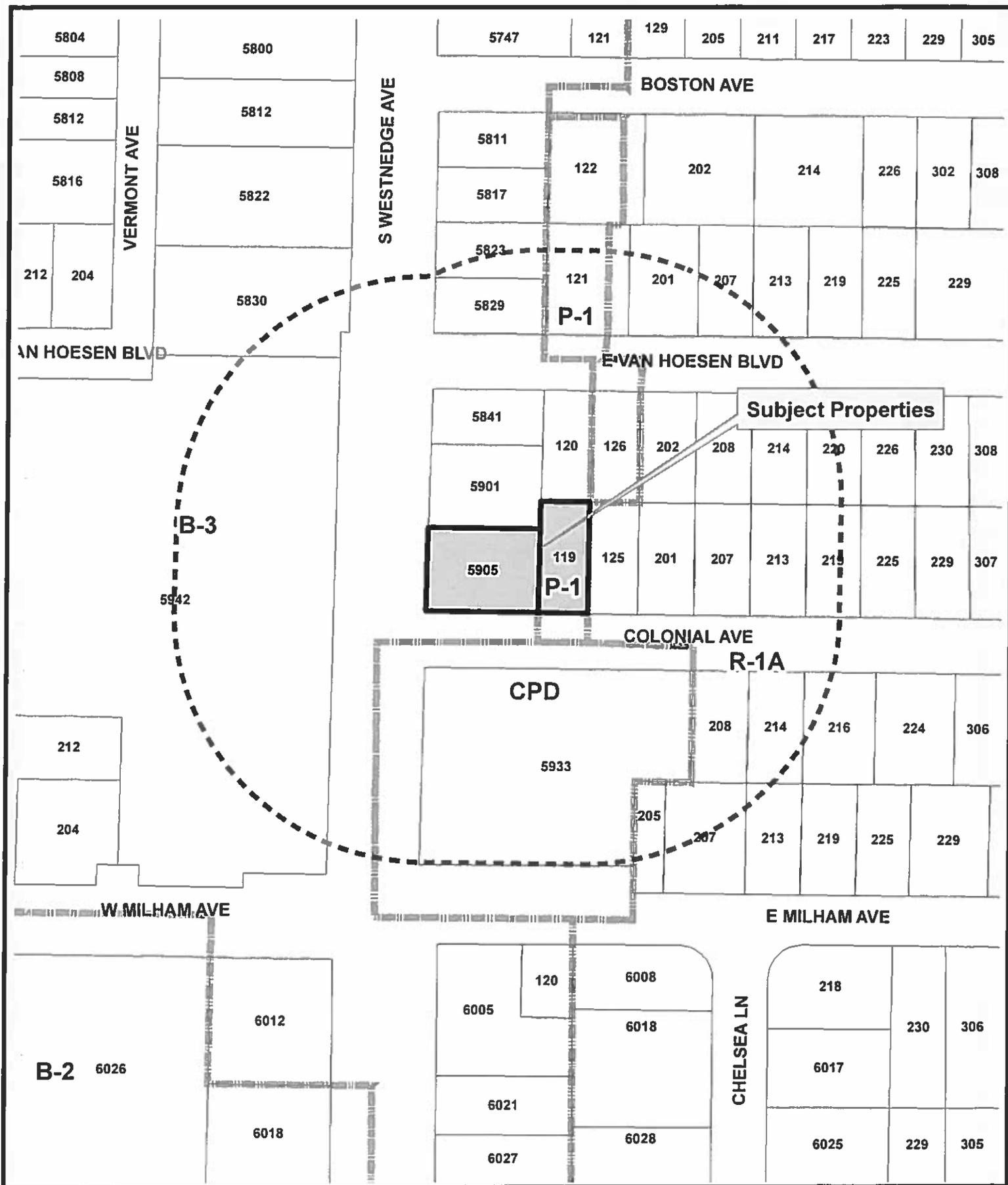
Chairman Bright stated he was running for City Council but would continue to serve on the Board, and would step down in the event he is elected.

**STATEMENT OF CITIZENS:** None.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 8:33 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator



**Legend**

- Zoning Boundary
- Subject Properties

ZBA 15-05  
 5905 South Westnedge Avenue  
 119 Colonial Avenue



1 inch = 150 feet



**RECEIVED**  
 SEP 11 2015  
 COMMUNITY DEVELOPMENT

### ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 09/11/2015

Name of Applicant JAY SHARMA Jay Sharma  
Signature

Applicant's Address 5905 S. Westnedge Phone No. 269 806 5905

Name of Property Owner (if different from Applicant) \_\_\_\_\_

Address 6804 VERONICA ST KALAMAZOO MI 49009 Phone No. \_\_\_\_\_

Address of the Property that is the subject of this Application:

Street Address 5905 S. Westnedge Ave S 119 COLONIAL

For Platted Property: Lot \_\_\_\_\_ of \_\_\_\_\_ Plat \_\_\_\_\_

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: Self Businesses -  
HIRFMAN'S PARTY STORE & WORLD OF SPICES

Application Fee \_\_\_\_\_ (Residential Uses) \$330.00 (All Other Uses)

Type of Appeal (Please check one of the following bold choices and provide the requested information):

**Variance from Zoning Ordinance:** Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Regarding: Use \_\_\_\_\_ Area \_\_\_\_\_ Yards \_\_\_\_\_

Setbacks \_\_\_\_\_ Parking \_\_\_\_\_ Other \_\_\_\_\_

Reason for Request (Also complete page 2 of application): SEE ATTACHED LETTER

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**Appeal of Administrative Decision:** Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Reason for Request: \_\_\_\_\_

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**Interpretation of the Zoning Ordinance:** Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Reason for Request: \_\_\_\_\_

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**A Temporary Permit for:** Building \_\_\_\_\_ Use \_\_\_\_\_ Other Approval \_\_\_\_\_

Article \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Reason for Request: \_\_\_\_\_

FOR STAFF USE

Application Number: <u>15-05</u>	Filing Date: <u>9/11/15</u>	Tentative Hearing Date: <u>10/12/15</u>
Previous Application Filed Regarding This Property: <u>0426AB</u>		

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)

SEE ATTACHED LETTER & Meeting Note with  
Community Development.

2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)

SEE ATTACHED LETTER

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)

YES. - IT IS EXTREMELY DIFFICULT  
TO OPERATE THE BUSINESS.

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)

YES - PLEASE SEE ATTACHED LETTER &  
PICTURES SUBMITTED

5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)

PLS. SEE ATTACHED LETTER & SIMILAR  
PROPERTIES ~~AD~~ IN THE CITY OF PORTAGE

6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)

ACTUALLY THIS WOULD HELP AVOID LOT OF  
PARKING ISSUES & FIGHTS AMONG GENERAL  
PUBLIC VISITING THESE LOCATIONS.

7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)

THIS HARDSHIP WAS CREATED  
WHEN OUR BUSINESS HAD TO RELOCATE FOR  
CITY OF PORTAGE DEVELOPMENT

8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)

PLEASE REVIEW ATTACHED LETTERS, SIMILAR  
DEVELOPMENTS AROUND S. WESTNEDGE & CITY

Jay Sharne  
Signature of Applicant

09/11/2015  
Date

# DUMPSTER RELOCATION FOR: HOFFMANS PARTY STORE

5905 S. WESTNEDGE AVE  
AND 119 COLONIAL AVE  
PORTAGE, MI 49024



DATE: 11/11/11  
PROJECT: HOFFMANS PARTY STORE  
DRAWN BY: J. V. VANDERKAM  
CHECKED BY: J. V. VANDERKAM  
SCALE: AS SHOWN  
THIS DRAWING IS THE PROPERTY OF M3 ARCHITECTS AND SHALL REMAIN CONFIDENTIAL. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR REPRODUCTION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF M3 ARCHITECTS IS STRICTLY PROHIBITED.

WESTNEDGE PROPERTY

DATE: 11/11/11  
PROJECT: HOFFMANS PARTY STORE  
DRAWN BY: J. V. VANDERKAM  
CHECKED BY: J. V. VANDERKAM  
SCALE: AS SHOWN  
THIS DRAWING IS THE PROPERTY OF M3 ARCHITECTS AND SHALL REMAIN CONFIDENTIAL. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR REPRODUCTION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF M3 ARCHITECTS IS STRICTLY PROHIBITED.

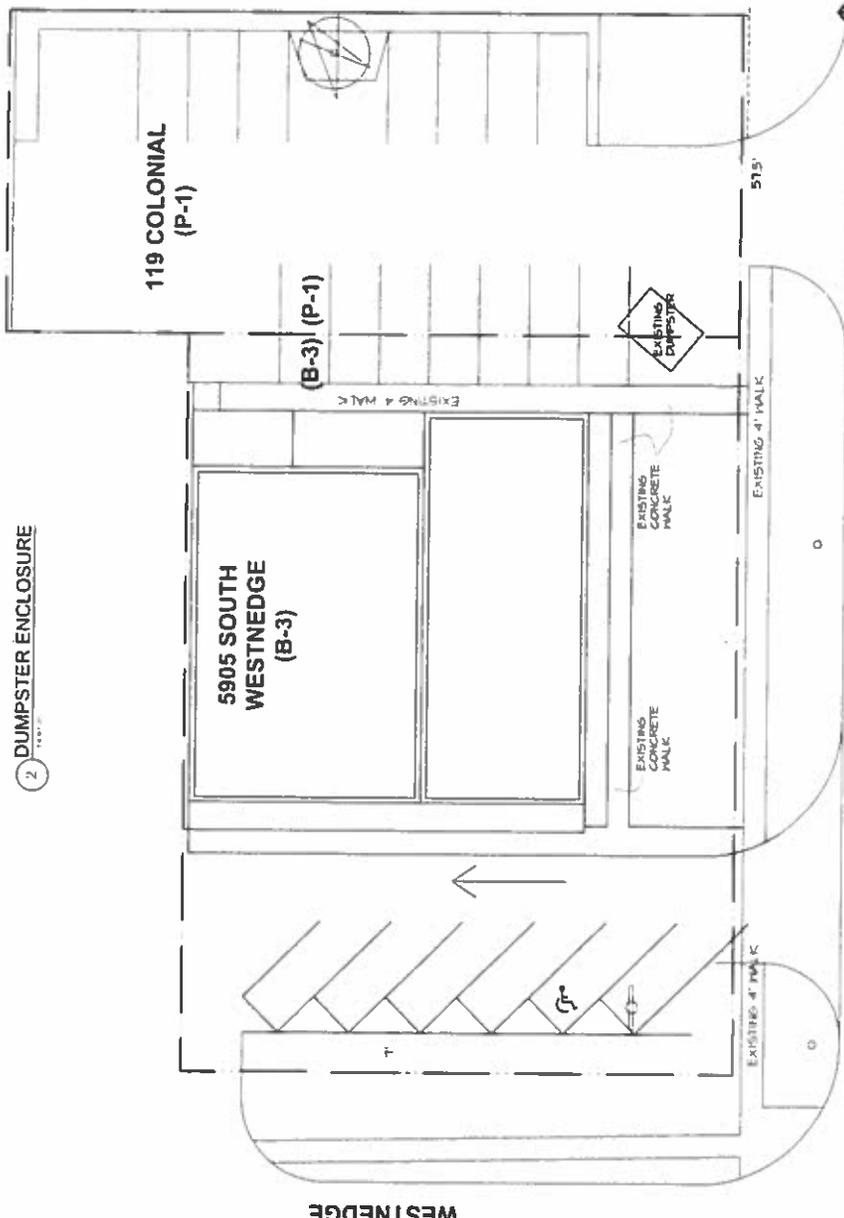
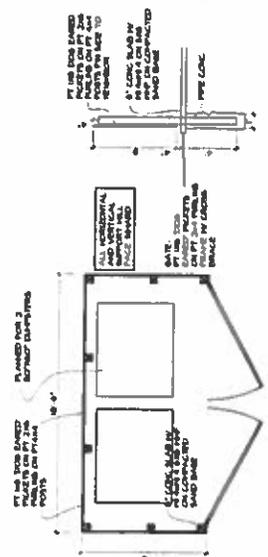
A1

## ARCHITECTURAL A-1 COVER SHEET AND SITE PLAN

- NOTES:**
1. SEE ALL NOTES ON ALL SHEETS OF THIS SET.
  2. ZONING: ZONING DISTRICT: Z-1 (COMMERCIAL) - 119 COLONIAL AVE, PORTAGE, MI 49024.
  3. EXISTING LAND USE: RETAIL CORNER.
  4. SITE ADDRESS: 5905 S. WESTNEDGE AVE, PORTAGE, MI 49024.
  5. THIS PLAN SHOWS THE EXISTING AND PROPOSED DUMPSTER LOCATIONS AND THE PROPOSED DUMPSTER ENCLOSURE.
  6. THE DUMPSTER ENCLOSURE SHALL BE CONSTRUCTED OF 4" CONCRETE BLOCK WITH A 1/2" THICK Gypsum BOARD INTERIOR FINISH AND A 1/2" THICK Gypsum BOARD EXTERIOR FINISH.
  7. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.
  8. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.
  9. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.
  10. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.

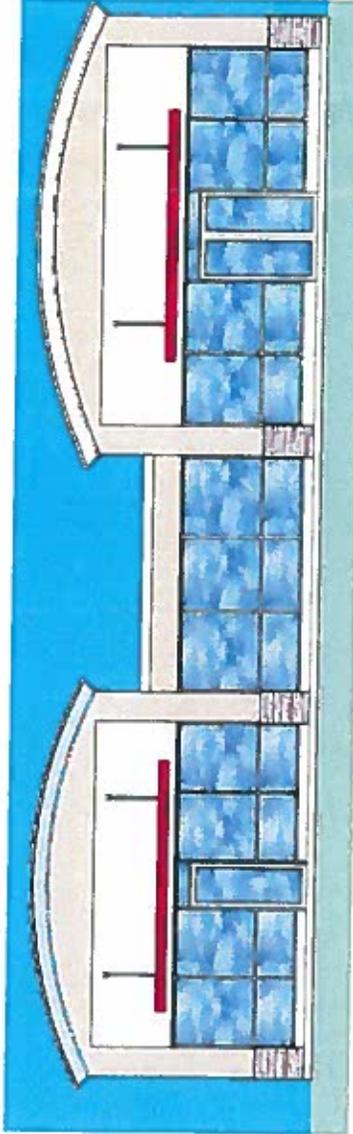
- REVISIONS:**
1. REVISION 1: 11/11/11 - INITIAL DESIGN.
  2. REVISION 2: 11/11/11 - REVISION 1.
  3. REVISION 3: 11/11/11 - REVISION 2.
  4. REVISION 4: 11/11/11 - REVISION 3.
  5. REVISION 5: 11/11/11 - REVISION 4.
  6. REVISION 6: 11/11/11 - REVISION 5.
  7. REVISION 7: 11/11/11 - REVISION 6.
  8. REVISION 8: 11/11/11 - REVISION 7.
  9. REVISION 9: 11/11/11 - REVISION 8.
  10. REVISION 10: 11/11/11 - REVISION 9.

- GENERAL NOTES:**
1. THE DUMPSTER ENCLOSURE SHALL BE CONSTRUCTED OF 4" CONCRETE BLOCK WITH A 1/2" THICK Gypsum BOARD INTERIOR FINISH AND A 1/2" THICK Gypsum BOARD EXTERIOR FINISH.
  2. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.
  3. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.
  4. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.
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  10. THE DUMPSTER ENCLOSURE SHALL BE 10' HIGH AND 10' WIDE.

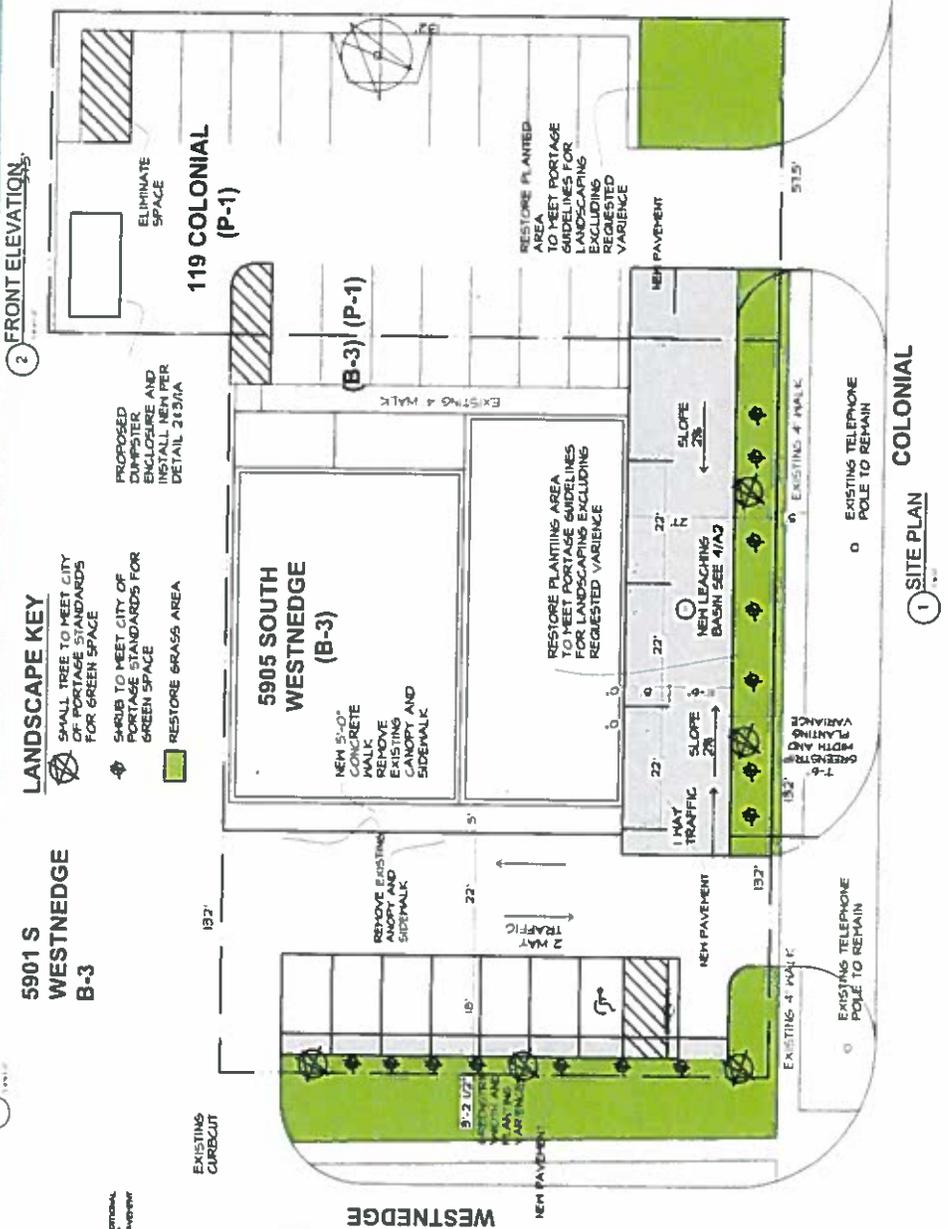


1 EXISTING CONDITIONS SITE PLAN





**PARKING REQUIREMENTS**  
 21 SPACES REQUIRED  
 26 SPOTS PROVIDED

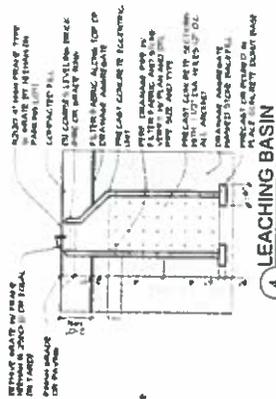


- VARIANCE REQUESTS**
- 1 10' GREEN STRIP ALONGS WESTLEDGE
  - 2 10' GREEN STRIP ALONGS COLONIAL
  - 3 PARKING CLOSER THAN 20' FROM FRONT OF (P-1)
  - 4 DUMPSTER LOCATION

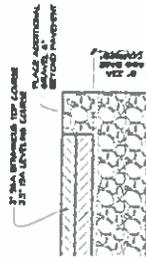
**1 SITE PLAN**

**2 FRONT ELEVATION**

- LANDSCAPE KEY**
- SMALL TREE TO MEET CITY OF PORTAGE STANDARDS FOR GREEN SPACE
  - SHRUB TO MEET CITY OF PORTAGE STANDARDS FOR GREEN SPACE
  - RESTORE GRASS AREA



**5901 S WESTLEDGE B-3**



**3 ASPHALT SECTION**

September 10, 2015

To  
Vicki Georgeau  
Mike West  
City Of Portage  
Portage, Michigan

RECEIVED  
SEP 30 2015  
COMMUNITY DEVELOPMENT

RE : 5905 S. Westnedge Ave and 119 Colonial Ave - ( Hoffman's Party Store and World Of Spices )

Hello Vicki and Mike,

Thanks for taking a time to meet with me and Matt Bastos in reference to Hoffman's Party Store and World Of Spices Parking lot and new façade renovations. Your help and guidance is always appreciated.

Please note following, along with attached documentation, for 5905 S. Westnedge Ave (Hoffman's Party Store).

1. As discussed, since we have moved from across the street for the city of portage – S. Westnedge Expansion project in 2000, our business and personal life has become challenging and extremely stressful. We were put into 1200 Sq. feet store from 4500 sq. feet store we had at 5840 S. Westnedge. We currently have approximately 2,200 SF store after remodeling and adding middle tenant space. At the time and afterwards, we have always done what the city officials wanted us to do and have cooperated. This has put tremendous financial strain and have personal health issues for me and my wife Neha. For the business perspective, finally both our business are settled. As I mentioned to you, this has brought several operational challenges to us. The main challenge being the parking for our customers. We have constant complaints from our customers and there are several fender/bender accidents in the parking because of the way it is laid out (Angled parking). We have parking in the back but no one wants to park in the back. Now we have adjacent building where AT & T will relocate. As the Westnedge ave progresses, these are the challenges small business like our face. With a busy store like AT & T, we can only imagine how their customers will park in our parking area and take additional spaces – we only have 5 or 6 spaces up front. On top of that – their parking is parallel to Westnedge Vs. Hoffman's Parking is angled. This also creates a major bottle neck for the people who wants to use colonial ave to go on Milham ( which we always encourage our customers to do to reduce load on Westnedge ) or wants to go to Walgreens next door. These are only the tip of the problems we experience day after day !!! Vicki – I really appreciate that you visited this site and experienced the problem yourself. We have been living with such issues for years and now it is

physically impossible to manage and we need help and guidance from the City of Portage as soon as possible.

2. With above MAJOR Problem at this location – We discussed few options as follow. These options are based on the observations and other retail/commercial parcels along S. Westnedge and around city of Portage. Also, we did agree that the right of way line along S. Westnedge is not consistent and is kind of in a zig zag pattern. Also, from North of W. Milham & S. Westnedge, the pattern of right of way line – on East of Westnedge - changes dramatically and there are no reasons or logical explanations for this to happen. We also do not know how the lay out changed when third traffic lane & turning lane were added on west of S. Westnedge – the result of which forced us to move out of our original location.

**Option 1** – This option shows One row of 90 degree parking and two way traffic along the west side with additional parking on south side as shown. There will be 2 parking spaces on South West and two parking spaces on South East side of the property. This will be less accommodating option for our businesses. The whole purpose of this remodeling of both our stores and parking lot is to have maximum parking spaces in front of the building and connect front and back parking lots by providing a direct connection on South Side of the building so that if someone wants to park on south the side of the building and if that area is full, they can drive towards back parking lot and use the back parking lot. Currently, NO ONE parks in the back parking lot since they don't know probably we have additional spaces.

**Option 2.** – This is the option we discussed and Vicki had recommended to submit. This option includes one row of 90 degree parking and two way traffic along the west side and parallel parking along south side of the building and a maneuvering one way lane towards East to exit out towards Colonial Ave as shown on sheet A3. This will tremendously help our business to reduce number of accidents within parking lot. This will also help to reduce traffic load on S. Westnedge Ave – which is a major issue for Traffic Engineering department of City of Portage. We will provide additional signage to direct traffic this way in this area – as recommended by Jeff Mais and Mike West. We all had agreed that this option addresses the major intent of this request – connecting back parking lot to the front parking lot. This is more expensive option for us but we request to consider this for all of the above reasons.

The refuse dumpster/enclosure will also be relocated to the northwest corner of 119 Colonial Ave (P-1).

Please attach to our application a few example properties and pictures that I had submitted to Mike West during one of our recent meetings. While I know each and every property has special/unique characteristics, what I have observed is that they have very attractive parking layouts I would like to request to know how each and every one of these properties could do this wonderful lay out and parking. We would like to get the same consideration that major developer or retail stores get. We are the small business and small businesses are the core of the community and city development. Our business is Convenience store business and easy in and out parking is extremely important for our business to thrive and survive. Our customers shop at our store because of the short time they have or do not want to stand in line at major stores. As discussed, we have all new development around our store and ours is the only old building which needs a face lift. We would like to do a new façade and new parking area. This will make S. Westnedge Ave business corridor more attractive to general public. I would also like to know similar situations that City has experienced in the past and how these issues have been resolved.

Please review this as soon as possible and let us know what is the next step. We would like to complete this project this year when weather is still decent and do not want to drag into winter or next year.

Thank you for your time, consideration and help.

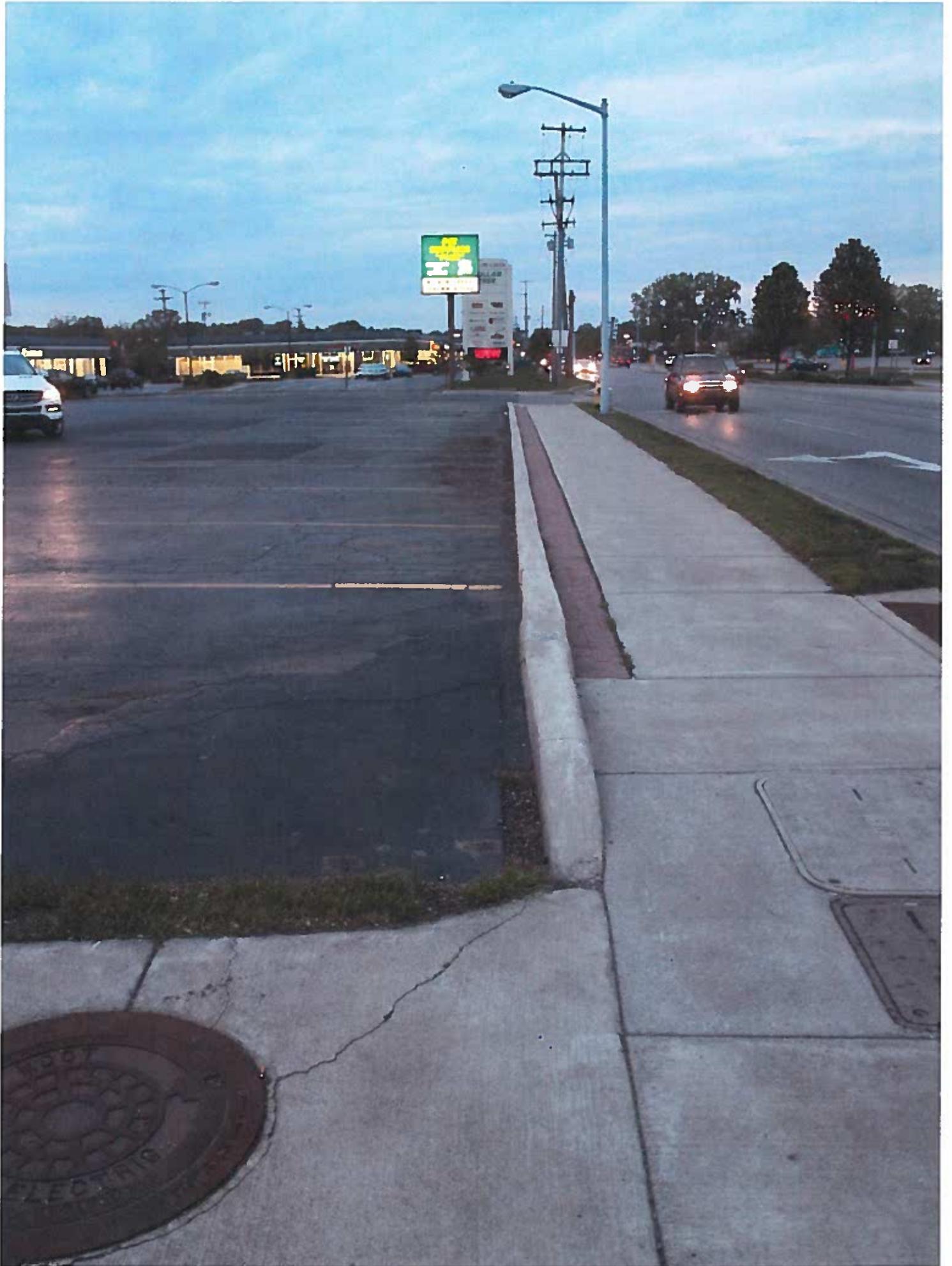
Sincerely,

A handwritten signature in cursive script that reads "Jay Sharma". The signature is written in black ink and is positioned above the printed name.

Jay Sharma.

[Jay.hoffmans@gmail.com](mailto:Jay.hoffmans@gmail.com)

(269) 806 – 5905.







**SHERWIN  
WILLIAMS.**

**MATTRESS MART**

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**TO:** Zoning Board of Appeals **DATE:** October 2, 2015

**FROM:** Vicki Georgeau, <sup>VJ</sup> Director of Community Development

**SUBJECT:** ZBA #15-05, Jay Sharma, 5905 South Westnedge Avenue, B-3, General Business; and 119 Colonial Avenue; P-1, Vehicular Parking

**CODE SECTION:** 42-572.A.1, Parking Lot Setback/Greenstrip in B-3 District; p. CD42:133.  
42-433.I, Site Development Requirements in P-1 District; p. CD42:108  
42-431.A, Principal Permitted Uses in P-1 District; p. CD42-107

**APPEAL:** In conjunction with renovations to the front (west) building facade, the applicant is requesting the following:

- A use variance to permit refuse dumpsters in the P-1 zoned portion of the site; and
- A dimensional variance to permit a 3-foot parking lot setback/greenstrip along South Westnedge Avenue where 10 feet is required; and
- Dimensional variances to permit parking lot setback/greenstrip areas along Colonial Avenue as follows: i) ranging from 2-9 feet in the B-3 zoned portion of the site where 10 feet is required; and ii) a 2-foot parking lot setback/greenstrip in the P-1 zoned portion of the site where 27 feet is required (as shown in Sheet A2); or
- Dimensional variances to permit parking lot setback/greenstrip areas along Colonial Avenue as follows: i) a 7-foot greenstrip in the B-3 zoned portion of the site where 10 feet is required; and ii) a 7-foot greenstrip in the P-1 zoned portion of the site where 27 feet is required (as shown in Sheet A3)

**STAFF RECOMMENDATION:**

The applicant is requesting consideration of two proposals, shown on Sheets A2 and A3, which are further explained per the enclosed application, letter of explanation and photos. The site design shown on Sheet A3 is preferred by the applicant and would require approval of variances a, b and d above. The site design shown on Sheet A2 would require approval of variances a, b and c above. The approximate 0.5 acre zoning lot, which includes two parcels, contains split zoning with 5905 South Westnedge Avenue zoned B-3, general business and 119 Colonial Avenue zoned P-1, vehicular parking. The site is occupied by an approximate 4,800 square foot retail building and associated site improvement with two tenants: Hoffman's Party Store and World of Spices. As information for the Board, the applicant purchased the subject properties in 2000 and relocated the Hoffman's Party Store business to its present location.

On January 6, 1983, the Planning Commission approved a site plan that allowed construction of an approximate 2,000 square foot building addition along the south side of the existing building and a new parking lot on the P-1 zoned portion of the site (119 Colonial Avenue parcel). The 1983 approved site plan identified a grass storm water retention area along the south side of the building and a 27-foot parking lot setback/greenstrip area along the north side of Colonial Avenue, on the P-1 zoned portion of the zoning lot. Based on review of historic aerial photographs, the grass storm water retention area and 27-foot greenstrip area were filled with gravel sometime after 2002.

The applicant indicates the variances requested would alleviate significant business operation and site functionality concerns by: 1) relocating the dumpsters to the northwest corner of the P-1 zoned portion of the site, improving the functionality of the rear parking lot and reducing the impact on the adjacent residential neighborhood (variance request a); and 2) creating an improved, two-way traffic flow pattern with 90-degree parking along the South Westnedge Avenue portion of the site where there is currently a one-way traffic flow with angled parking (variance request b). Sheets A2 and A3 show two options for additional parking along the south side of the building (variance requests c and d respectively), which the applicant indicates is needed to meet the parking demand. Sheet A2 illustrates two additional 90-degree parking spaces south of the building in the front parking lot and two additional 90-degree parking spaces south of the building in the rear parking lot. Sheet A3, which illustrates the applicant's preferred site configuration for additional parking south of the building, provides three additional parallel parking spaces along the south side of the building and a paved maneuvering lane connection from the front parking lot to the rear parking lot along the Colonial Avenue portion of the site.

With regard to variance request a) the site has unique, physical circumstances that present an unnecessary hardship and operational difficulties for the retail tenants. The zoning lot consists of two separate parcels with different/split B-3 and P-1 zoning. Required placement of a dumpster enclosure at the rear of the building and also within the B-3 portion of the property results in it being conspicuously located near the Colonial Avenue frontage and in view of the public right-of-way and neighborhood. The existing dumpster location also reduces the utility of the rear parking lot. The requested variance will not alter the essential character of the neighborhood, and will result in a relocated the dumpster adjacent to the recently redeveloped commercial site to the north (which included 120 East Van Hoesen Boulevard, 5841 and 5901 South Westnedge Avenue), further away from the dwelling at 125 Colonial Avenue, and also away from public view. The hardship is not self-created because the zoning pattern and building location were already established when the applicant acquired the property. Furthermore, it is not believed the variance will materially impair the intent of the Zoning Code. For the reasons noted above, approval of variance a) is recommended.

With regard to variance request b), the location of the existing building in proximity to South Westnedge Avenue presents a practical difficulty in providing adequate parking and maneuvering in front of the building, adjacent to the main building entry. Concurrent with the building façade renovation, the covered walkway will be removed and the sidewalk width along the front of the building will be reduced to provide additional maneuvering space to alter the parking from a one-way angled parking configuration to a two-way 90 degree parking arrangement. This arrangement will reduce the width of the current, non-conforming parking lot setback/greenstrip from 7 feet to 3 feet. However, the reconfigured 90 degree parking with a two-way maneuvering lane will improve traffic flow and safety, and the applicant has requested the minimum variance necessary to accommodate the parking lot redesign. For the reasons noted above, approval of variance request b) is recommended. The applicant is aware that greenstrip landscaping consistent with ordinance requirements (1 tree/30-feet and a 36 inch high hedge of shrubs) will be required along the South Westnedge Avenue.

With regard to variance requests c) and d), the applicant has indicated that parking is limited in front of the building and that while there is additional parking available on the rear (east) side of the site, from Colonial Avenue, this area is not readily visible or easily accessible to patrons of the businesses. As noted above, under variance request c), additional 90-degree parking spaces would be provided south of the building: two in the front parking lot and two

in the rear parking lot. Under variance request d), three additional parallel parking spaces would be provided along the south side of the building and a paved maneuvering lane connection from the front parking lot to the rear parking lot would be provided. The applicant prefers variance request d) as it provides a connection between the front and rear parking lots, and is anticipated to increase use of the rear parking area. With either variance request c) or d), the applicant is aware that greenstrip landscaping consistent with ordinance requirements (1 tree/30-feet and a 36 inch high hedge of shrubs) will be required along Colonial Avenue. If variance request c) is approved, the on-site storm water basin will be restored and planted with grass. If variance request d) is approved, the on-site storm water will need to be redesigned and placed underground. In addition, if variance request d) is approved, the parallel parking should be relocated away from the building and adjacent to the Colonial Avenue greenstrip for accessibility purposes.

Conforming alternatives for both variance requests c) and d) along Colonial Avenue appear to be available to the applicant. For example, the applicant could improve and enhance the rear parking lot and store entrances, and utilize signs directing customers to the rear parking lot to encourage increased use of this parking area. Alternatively, the World of Spices main entrance could be re-oriented to the rear of the building. Re-orientation of this store entrance should further encourage customer use of the underutilized rear parking lot, thereby freeing up more parking on the west side for party store patrons. While it is understood that the size of the site and location of the building present challenges for the retail operations, the alternatives noted above appear to be viable options that would alleviate the parking challenges, while also improving the site aesthetics. If the Board finds a practical difficulty exists, variance request c) or d) can be authorized.

**UNNECESSARY  
HARDSHIP/  
PRACTICAL  
DIFFICULTY:**

Variance request a) Split zoning of property (B-3/P-1); reduced utility of the rear parking lot in the P-1 district. See suggested motion form for variance request a).

Variance request b) Location of existing building; limited parking/one-way traffic flow along front of building.

Variance request c) and d). None noted by staff. Size/configuration of property, location of parking noted by applicant.

See suggested motion form for variance requests b) and c) or d).

**SUGGESTED USE VARIANCE MOTION FORM**

Mr. Chairman:

I move, in regard to ZBA # \_\_\_\_\_, the application by \_\_\_\_\_  
for a variance from \_\_\_\_\_  
\_\_\_\_\_

**be:**

**a. granted** for all of the following reasons:

- 1a. That the condition, location, or situation of the specific piece of property or of the intended use of the property is unique to that property and the zoning district in which it is located, which include \_\_\_\_\_  
\_\_\_\_\_
- 2a. That the building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located, due to \_\_\_\_\_  
\_\_\_\_\_
- 3a. That the use variance will not alter the essential character of the neighborhood or the intent of the comprehensive plan, nor be a detriment to adjacent properties.
- 4a. The variance will not materially impair the intent and purpose of this article or the district in which the property is located.
- 5a. That the immediate unnecessary hardship causing the need for the variance request was not created by the applicant.

**-OR-**

**b. denied** for one of more of the following reasons:

- 1a. The condition, location, or situation of the specific piece of property or of the intended use of the property is not unique to that property and the zoning district in which it is located.
- 2a. The building, structure or land can be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located.
- 3a. The use variance may alter the essential character of the neighborhood or the intent of the comprehensive plan, and may be a detriment to adjacent properties.
- 4a. The variance will materially impair the intent and purpose of this article or the district in which the property is located.
- 5a. The immediate unnecessary hardship causing the need for the variance request was created by the applicant.

**c. In addition**, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**

**SUGGESTED NON-USE VARIANCE MOTION FORM**

Mr. Chairman:

I move, in regard to ZBA # \_\_\_\_\_, the application by \_\_\_\_\_  
for a variance from \_\_\_\_\_

**be:**

**a. granted** for all of the following reasons:

- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include \_\_\_\_\_;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to \_\_\_\_\_, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

**-Or-**

**b. denied** for one of more of the following reasons:

- 1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;
- 2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as \_\_\_\_\_;
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

**c. In addition**, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**