

**ESCANABA ZONING BOARD OF APPEALS
ROOM C101, CITY HALL, ESCANABA, MI
TUESDAY, JUNE 6, 2017**

A meeting of the Escanaba Zoning Board of Appeals was held on Tuesday, June 6, 2017, at 6:00 p.m. at the City Hall, 410 Ludington Street, Escanaba, MI 49829.

PRESENT: Chairman Jon Liss, Members William DeHaan, Joe Klem, Brian Thorsen, and Dennis Renken, Code Official Blaine DeGrave, and Executive Assistant Lisa Glish

ALSO PRESENT: Rick LaFave from Lamar Advertising, Jamie and Jennifer Spriks of Gene's Towing, and Attorney James Viau

ABSENT: Member Mark Hannemann

Meeting called to order at 6:00 p.m. by Chairman Jon Liss

ROLL CALL

Executive Assistant Lisa Glish conducted the roll call.

APPROVAL/CORRECTION OF THE SEPTEMBER 1, 2015 BOARD OF APPEALS MINUTES

A motion was made by Member Klem, seconded by Member DeHaan, to approve the November 2, 2016 meeting minutes as submitted. Ayes were unanimous.

APPROVAL/ADJUSTMENTS TO THE AGENDA

A motion was made by Member DeHaan, seconded by Member Klem, to approve the June 6, 2017 meeting agenda as submitted. Ayes were unanimous.

CONFLICT OF INTEREST DECLARATIONS

None.

UNFINISHED BUSINESS

1. Rules of Procedure: General Rules 2.9 – Election of Officers.

Blaine DeGrave stated during the first regularly scheduled meeting of the new calendar year the Board of Appeals shall hold an election of Officers for the positions of Chairperson and Vice-Chairperson.

Chairperson Liss opened the floor to nominations for the position of Chairperson. Chairperson Liss moved to elect Member William DeHaan as the next Chairperson.

Member DeHaan accepted the nomination.

A motion was made by Chairperson Liss, seconded by Member Renken to elect Member William DeHaan for the position of Chairperson. Ayes were unanimous.

Chairperson DeHaan opened the floor to nominations for the position of Vice-Chairperson. Member Liss moved to elect himself as the next Vice Chairperson.

A motion was made by Member Liss, seconded by Member Renken to elect Member Jon Liss for the position of Vice-Chairperson. Ayes were unanimous.

PUBLIC HEARING

Blaine DeGrave stated that a Public Hearing will take place concerning 711 Stephenson Avenue for a Use Variance of a Sign Ordinance. He went on to state a hearing on a request from Lamar Advertising of Gladstone, for the a Use Variance to Section 2012.3 Outdoor Advertising Sign Free Area of the City of Escanaba's Sign Ordinance which would allow for the removal of an existing Outdoor Advertising Sign and installation/relocation of a new Outdoor Advertising Sign of the property located at 711 Stephenson Avenue.

**CITY OF ESCANABA
REQUEST FOR NEW OUTDOOR ADVERTISING SIGN
CASE NO. BOA-060617-01**

REFERENCE: 711 Stephenson Avenue Escanaba, Michigan

DATE: June 6, 2017

PROPERTY OWNER/APPLICANT ADDRESS:

Lamar Advertising/Gene's Towing
711 Stephenson Avenue
Escanaba, MI 49829

TYPE OF REQUEST:

Sign Permit Denial Appeal

LEGAL DESCRIPTION:

Part of the SE ¼ of the SW ¼ Section 19 T39N, R22W City of Escanaba, Delta County, Michigan

CURRENT ZONING:

Light Manufacturing "F" District

SUBJECT ORDINANCE:

City of Escanaba Sign Ordinance

Section 2012; Regulations for Outdoor Advertising Signs

Subsection 2012.3 Outdoor Advertising Sign Free Area: Notwithstanding any other provision of the Sign Ordinance, no Outdoor Advertising Sign shall be relocated or newly constructed in any of the following areas:

- (A) Stephenson Avenue
- (B) South Lincoln Rd south of Ludington Street to City limit

- (C) Danforth Road From US2 to City Limit
- (D) North 30th Street from Ludington Street to Danforth Road
- (E) 3rd Avenue North from North 10th Street to North 30th Street
- (F) 1st Avenue North from North 4th Street to North 10th Street

DESCRIPTION OF PROPOSED SIGN REQUEST

Mr. Jamie R. Spriks/Gene’s Towing, is the owner of the property. Lamar Advertising, representing the owner, is requesting consideration to remove an existing Outdoor Advertising Sign (billboard) which is now located within a parking/entry area of their newly constructed building and to relocate/install a new sign with a reduced single face/non-illuminated Outdoor Advertising Sign to the South edge of the property.

PROPOSED FINDING OF FACTS:

- A. Lamar Advertising has applied for a sign permit to relocate/construct a new Outdoor Advertising Sign at 711 Stephenson Avenue.
- B. A site plan has been included as required with the application.
- C. Application Fees have been paid.
- D. An existing two (2) sided Outdoor Advertising Sign is now located within the parking area directly in front of the new building and is proposed to be removed. (**Attachment A**)
- E. A new single face/non illuminated sign (**Example Attachment B**) is being requested to replace this sign and be relocated on the property due the construction of the new building and parking area (**Attachment C**)
- F. The new sign location will be within an Outdoor Advertising Sign Free Area of Stephenson Avenue which does not permit new signage per Section 2012.3 Outdoor Advertising Sign Free Area as stated.

POWERS AND DUTIES OF THE BOARD OF APPEALS

The Board shall have the power to hear and decide on appeals where it is alleged that there is an error in any order, requirement, decision, determination or interpretation by the Code Official. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of the appeal and shall make an order, requirement, decision, or determination as in the board's opinion ought to be made concerning the property. If there are practical difficulties or unnecessary hardship in carrying out the strict letter of the ordinance, the Board of Appeals may, in passing on appeals, grant a variance in any of the provisions relating to the construction, or structural changes in, equipment, or alteration of buildings or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

VARIANCE REVIEW CRITERIA

The Board shall have the power to authorize specific variances or departures from this Sign Ordinance, if all of the basic conditions are satisfied, and if there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Sign Ordinance. A variance from the use requirements of this ordinance may only be granted if it is determined that all basic conditions have been satisfied and that there is an unnecessary hardship created by those use restrictions.

BASIC CONDITIONS

- A. The spirit of the Sign Ordinance shall be observed, public safety secured and substantial justice done.

- B. There is no substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
- C. The difficulty or hardship relating to the property is not so general or recurrent in nature that the formulation of a general regulation for such conditions is preferable.
- D. The practical difficulties or unnecessary hardships are unique to the property under consideration and not to the general neighborhood, and shall apply only to property that is under the control of the applicant.
- E. It shall be necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
- F. There is a clear showing of an unnecessary hardship in that the property as a whole cannot reasonably be put to a use authorized by this Sign Ordinance.
- G. The alleged hardship or difficulty is not solely economic, and is based on the reasonable use of a particular parcel of land.
- H. It may be denied where the alleged practical difficulties or unnecessary hardships resulted from an act of the applicant, or a person in privy or concert with the applicant.

STAFF RECOMMENDATIONS, FINDINGS AND COMMENTS:

The Board of Appeals does not have the authority to alter or change the requirements of the Sign Ordinance without first establishing that the aforementioned demonstrations of hardship exists and that the situation is not self-created. Provided, however, that in interpreting and applying the provisions of the Ordinance, the requirements shall be deemed to be the spirit and intent of the Ordinance and would not constitute the granting of a special privilege. The Board of Appeals must determine if there is a hardship or difficulty which is not a result of an act, created or inherited by the owner and is not solely economic in nature.

As this Stephenson Avenue corridor does not allow New Outdoor Advertising Signs city staff is not recommending approval of the proposed relocation and placement of this new Outdoor Advertising Sign. It is also believed that any hardship or difficulty was self-created or inherited by the purchase of the property, would constitute the granting of a special privilege and is also economic in nature. The following sections of the Sign Ordinance also support a denial of the appeal.

1. **Section 2012.2 Existing Outdoor Advertising Signs Structure and Faces, (B) Not be structurally altered so as to prolong the life of the sign.** Comment: This sign will be a brand new sign and would be prolonging the life of the sign at this location.
2. **Section 2012.3 Outdoor Advertising Sign Free Area; notwithstanding any other provision of the Sign Ordinance, no outdoor advertising sign shall be relocated or newly constructed in any of the following areas: (A) Stephenson Avenue.** Comment: This area is designated as an Outdoor Advertising Sign free area and does not allow new signage of this type.
3. **Section 2012.7 Development Criteria. The complete Outdoor Advertising Sign application shall be reviewed for compliance with the development criteria set forth in this Ordinance. New outdoor advertising signs must be developed in accordance with the following standards: (E) Spacing, (1) Four hundred feet from any residential district or commercial district.** Comment: There is a residential district within 400' of this new sign position. (Attachment D "D") **(4) One hundred feet from an existing building.** Comment: There are multiple buildings within 100' of this new sign position. (Attachment D "E") **(5) Two hundred feet from any intersection.** Comment: There is an intersection within 200' of this new sign position. (Attachment D "F")

BACKUP INFORMATION:

1. Sign Permit Application
2. Denial Letter
3. Appeals application/letter of authorization
4. Site Plan
5. Photos (Attachment “A”, “B”, “C”, “D”)
6. Assessor Property Card
7. 300’ radius property owner/tenant notification letter
8. 300’ radius labels
9. Hard/Paper copy of Section 2012 Regulation for Outdoor Advertising signs.



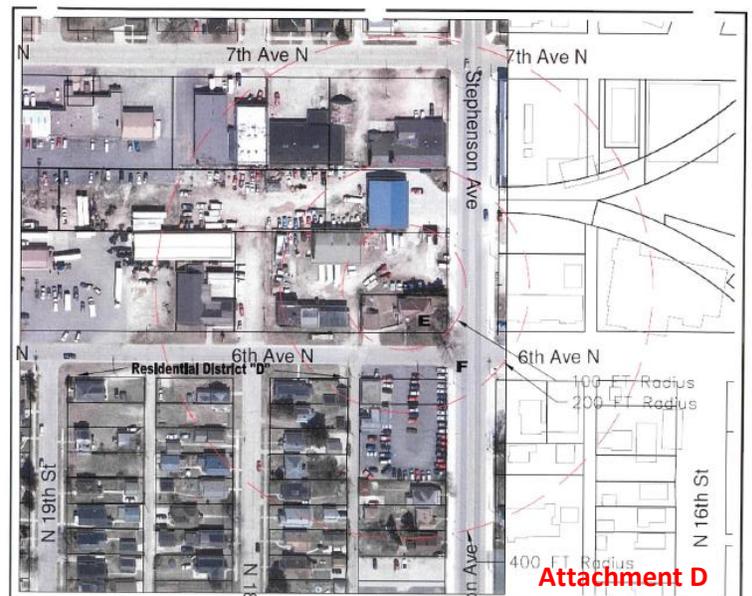
Attachment A



Attachment B



Attachment C



Attachment D

Chairperson DeHaan opened the floor to general comment on the proposed Use Variance.

Rick LaFave from Lamar Advertising stated that he represents the company asking for the Use Variance. Mr. LaFave explained that he is looking to compromise with Gene’s Towing/Jamie Spriks concerning the sign that is located in the middle of his new parking lot/work area. He went onto explain that this sign has been in its current location since 1985 and it is currently a two faced sign. He went onto state that they are proposing to move the sign 40-50 feet away from its currently location to be directly on the property line, 10 feet from the hedge line, and remove one of the sign faces, making it a one-faced sign only. Mr. LaFave then stated that the

new sign would also not have any lights on it, and due to the proposed location he does not feel as though it will block passerby view and does not feel there would be any complaints made by the public. He went onto state that if the Variance is not granted, they plan to leave the sign where it is there is no additional plans to remove the sign until it expires in ten (10) years.

Chairperson DeHaan called for any further comment. Attorney James Viau approached the Board.

Attorney James Viau introduced himself as the representative for Jamie Spriks in this case. Attorney Viau explained that in the agreement between Lamar and Spriks by moving the sign they would sign a contract that would have the sign in its new place until August 2, 2021 where at that time it will be removed completely, and if it stays in its current place it would remain for the next ten (10) years. Attorney Viau explained the unnecessary hardships that he feels that Mr. Spriks and his staff are currently dealing with by parking equipment, merchandise, etc. on one side of the sign and then having to move those items to access the other side when something is needed. He also stated that he feels the sign in the current location is a safety hazard to oncoming traffic and workers. Attorney Viau also stated that by moving the sign, and reducing it to be only one face, Lamar and Spriks will both be losing revenue and no economic gains will be made in the proposed deal.

Member Renken commented that he before the meeting he took a ride through lot where the sign and Gene's Towing is located. He went onto state that he feels the sign creates a major obstacle and hazard, and that he feels moving the sign to the tree line would be a sensible way to solve this issue.

Vice-Chairperson Liss commented that he also took a ride through the lot using his regular sized pick-up truck and has the same feelings as Chairperson Renken.

Member Klem stated that he mirrors the opinions of Member Renken and Vice-Chairperson Liss.

Member Thorsen stated that he feels the Board should follow the current Sign Ordinance that is already set in place, due to it being written for a purpose. He agrees that the sign should be gone, but he does not feel as though the variance should be granted to allow the construction of another sign.

Chairperson DeHaan stated that Cities have Planning Commissions to constantly review appropriate uses in neighborhoods and for properties; and that he feels as though the Board of Appeals should follow those Ordinances set by the Planning Commission, therefor in this case he does not feel it would be appropriate to grant a variance to allow the sign to be moved.

A motion was made by Member Thorsen, seconded by Chairperson DeHaan, to deny the Use Variance request to relocate/reinstall the sign that is currently located at 711 Stephenson Avenue.

A rollcall vote was called for by Chairperson DeHaan, votes were as follows:

Vice-Chairperson Liss – Ney

Chairperson DeHaan – Aye

Member Klem – Ney

Thorsen – Aye

Renken – Ney

Chairperson DeHaan stated that the motion failed during rollcall vote with two (2) Ayes to three (3) Nays.

Chairperson DeHaan questioned Attorney Viau if there is any type of an agreement that states specific date that Lamar and Spriks have agreed to.

Attorney Viau then submitted a copy of the proposed agreement that was made between Lamar and Spriks, noting that only his signature is on the paper because he did not have the copy with both him and Attorney Russell Hall (Attorney for Lamar Advertising) due to it coming from Attorney Hall's office and he faxed it back to Hall's office. He stated that a copy with both signatures is available through his office, but the copy submitted is the only copy he had on him for the meeting.

Chairperson DeHaan read the Interim Settlement Agreement into record:

FROM DEGRAND REARDON HALL 9067967555 (TUE) JAN 31 2017 10:26/ST. 10:25/No. 9302063141 P 2

STATE OF MICHIGAN
IN THE 47TH CIRCUIT COURT FOR THE COUNTY OF DELTA

LAMAR ADVERTISING,
Plaintiff,
vs.
JAMIE R. SPRIKS, an individual, and
JAMIE R. SPRIKS, INC., a Michigan corporation
Defendants.

File No.: 16-23341-CK
Hon. John B. Economopoulos

DeGRAND, REARDON & HALL, P.C.
Russell W. Hall (P34800)
Attorneys for Plaintiff
517 Ludington Street
Escanaba, MI 49829
(906) 786-6009

VIAU & CHAPEKIS, P.C.
James J. Viau (P43335)
Attorney for Defendants
808 Ludington Street
Escanaba, MI 49829
(906) 786-2277

INTERIM SETTLEMENT AGREEMENT AND STIPULATION TO ADJOURN HEARING

The undersigned parties, by and through their attorneys, have stipulated to an interim settlement agreement. The settlement agreement would require Lamar to relocate and rebuild a single sided structure on or near the south property line of what was formerly the Brandt property. The expiration of the lease for that property would be August 2, 2021 and the lease payment amount would be reduced to \$450.00 on an annual basis. However, this settlement is contingent upon approval of the City of Escanaba Planning Commission which will have to grant a variance. Since it will not be before the planning commission prior to the February 2, 2017 hearing, then the parties request that the trial be adjourned from February 2, 2017 for a period of 60 days. During the 60-day period, the Defendants will allow the Plaintiff access to the signs for routine maintenance upon 24-hour prior verbal or written notice. The Defendants agree not to interfere with said routine maintenance.

Dated: _____, 2017

Russell W. Hall (P34800)
Attorney for Plaintiff

Dated: 1/31/17, 2017

James J. Viau
James J. Viau (P43335)
Attorney for Defendants

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E-Mail: degrandlaw@gmail.com

Blaine DeGrave stated that the agreement was made by Attorney Russell Hall of DeGrand, Reardon and Hall, P.C., in which this is the same law firm that represents the City of Escanaba. DeGrave went onto state that due to this conflict is why the City Attorney Ralph “B.K.” Peterson was unable to attend the meeting.

Chairperson DeHaan questioned Blaine DeGrave if he had any knowledge that the agreement existed before the meeting. Blaine DeGrave stated he had not.

A motion was made by Vice-Chairperson Liss, seconded by Member Renken to grant the Use Variance to move the sign with the condition that the sign must be removed on August 2, 2021 and no further sign lease agreements may be made to extend the life of the sign in the new location.

A rollcall vote was called for by Chairperson DeHaan, votes were as follows:

Vice-Chairperson Liss – Aye

Chairperson DeHaan – Ney

Member Klem – Aye

Thorsen – Aye

Renken – Aye

Chairperson DeHaan stated that the motion passed during rollcall vote with four (4) Ayes to one (1) Ney, and that the variance is granted.

ADJOURNMENT

A motion was made by Vice-Chairperson Liss, seconded by Member Klem, to adjourn the meeting. Ayes were unanimous.

The meeting adjourned at 6:50 p.m.

William DeHaan, Chairperson
Escanaba Zoning Board of Appeals

Blaine DeGrave, Ex-Officio
City of Escanaba