

OWOSSO
Zoning Board of Appeals



Regular Meeting
9:30am, April 21, 2015
Owosso City Council Chambers

AGENDA
Owosso Zoning Board of Appeals

Tuesday, April 21, 2015 at 9:30 a.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

CALL MEETING TO ORDER:

ROLL CALL:

APPROVAL OF AGENDA: April 21, 2015

APPROVAL OF MINUTES: February 17, 2015

SITE INSPECTIONS: None

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from February 17, 2015
3. Class A Nonconforming Use application & materials – 1302 W. Main
4. Affidavit of notice

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

1. Class A nonconforming use designation – 1302 W. Main (resolution)

BUSINESS ITEMS:

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: Next regular meeting will be on Tuesday, May 19, 2015 if any requests are received.

Commissioners, please call Marty at 725-0540 if you will be unable to attend the meeting on Tuesday, April 21, 2015

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500]. The City of Owosso website is: www.ci.owosso.mi.us



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ (989) 725-0599 ▪ FAX (989) 723-8854

DATE: April 13, 2015
TO: Chairman Horton and the Owosso ZBA
FROM: Susan Montenegro, Asst. City Manager/Dir. of Community Development
RE: Zoning Board of Appeals Meeting: April 21, 2015

The Zoning Board of Appeals shall convene in the city council chambers at 9:30 a.m. on Tuesday, April 21, 2015 to hear a petition for a Class A Nonconforming Use designation. The property seeking the designation is located at 1302 W. Main Street, parcel number 050-537-000-042-00. The property is zoned for local business use in the B-1 zoning district.

According to Section 38-378:

Before an application for Class A designation for a nonconforming use can be processed, the zoning board of appeals shall review each application to ensure, beyond a reasonable doubt, that the following standards are met:

- That the continuance of the use would not be contrary to the public health, safety or welfare or the spirit of this chapter.
- That the use or structure does not and is not likely to significantly decrease the value of nearby properties.
- That the use or structure was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this chapter with which the use or structure does not conform.

The zoning board of appeals shall approve Class A designation for nonconforming uses that comply with the standards and procedures of this section. The decision of the board of appeals shall be in writing and shall set forth the findings and reasons on which it is based. The board of appeals shall attach conditions, where necessary, to assure that the use or structure does not become contrary to the public health, safety or welfare or the spirit and purpose of this chapter. In addition, no vested interest shall arise out of a Class A designation.

I am including a copy of the nonconforming use from the Code of Ordinances for your reference. Please read through this so you are familiar with the regulations since we do not review these requests on a regular basis.

Summarily, subject to deliberation and findings of the ZBA, as well as the public hearing, staff finding is to allow this petition.

That is all for now. Please go through the rest of your packet contents and **RSVP for the meeting**. Please contact me if you have any questions, comments, or other feedback at susan.montenegro@ci.owosso.mi.us or on my cell at 989.890.1394. I look forward to seeing you all on the 21st.

Affirmative Resolutions
Owosso Zoning Board of Appeals

Tuesday, April 21, 2015, 9:30 a.m.
Owosso City Council Chambers, 301 W Main St.,
Owosso, MI

Resolution 150421-01

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby approves the agenda of April 21, 2015 as presented.

Ayes: _____
Nays: _____

Approved:____ Denied:____

Resolution 150421-02

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby approves the minutes of February 17, 2015 as presented.

Ayes: _____
Nays: _____

Approved:____ Denied:____

Resolution 150421-03

Motion: _____
Support: _____

Whereas, the Owosso Zoning Board of Appeals, after reviewing the case for 1302 W. Main, parcel number 050-537-000-042-00, hereby makes the following findings:

1. _____
2. _____
3. _____

Based upon those findings, the Owosso ZBA hereby approves/denies the designation of a class a nonconforming use as described in the attached petition, conditioned on the following:

1. _____
2. _____
3. _____

Ayes: _____
Nays: _____

Approved:____ Denied:____

Resolution 1450421-04

Motion: _____

Support: _____

The Owosso Zoning Board of Appeals hereby adjourns the April 21, 2015 meeting, effective at _____ a.m.

Ayes: _____

Nays: _____

Approved: _____

Denied: _____

MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
FEBRUARY 17, 2015 at 9:30 AM
CITY COUNCIL CHAMBERS

The meeting was called to order by Vice Chairman Christopher Eveleth at 9:34 a.m.

Roll call was taken by Recording Secretary Marty Stinson.

MEMBERS PRESENT: Vice-Chairman Christopher Eveleth, Secretary Daniel Jozwiak, Board Member Alternate John Horvath.

MEMBERS ABSENT: Chairman Randy Horton, Board Members Kent Telesz; William Wascher; and Alternate Matt Grubb.

OTHERS PRESENT: Ms. Susan Montenegro, Assistant City Manager and Director of Community Development; Mr. Michael Colpetzer, Spicer Group; Mr. Scott Perrin and Ms. Julie Wright of Perrin Construction; Mr. Nathan Hemenway and Mr. Marc Irvine of Machine Tool and Gear.

AGENDA: IT WAS MOVED BY BOARD MEMBER JOZWIAK AND SUPPORTED BY BOARD MEMBER HORVATH TO APPROVE THE AGENDA FOR THE MEETING OF FEBRUARY 17, 2015 WITH THE ADDITION FOR THE APPROVAL OF THE MINUTES OF JUNE 17, 2014.

YEAS: ALL. MOTION CARRIED.

MINUTES: IT WAS MOVED BY BOARD MEMBER JOZWIAK AND SUPPORTED BY BOARD MEMBER HORVATH TO APPROVE THE MINUTES OF THE MEETING OF OCTOBER 21, 2014 AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

MINUTES: IT WAS MOVED BY BOARD MEMBER HORVATH AND SUPPORTED BY BOARD MEMBER JOZWIAK TO APPROVE THE MINUTES OF THE MEETING OF JUNE 17, 2014 AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from October 21, 2014
3. Variance request application & materials – 401 S. Chestnut Street
4. Affidavit of notice

COMMISSIONER/PUBLIC COMMENTS: None.

PUBLIC HEARINGS: NONUSE VARIANCE REQUEST – 401 S. CHESTNUT # 2015-01

Ms. Susan Montenegro, Assistant City Manager and Director of Community Development introduced Mr. Scott Perrin of Perrin Construction; Mr. Michael Colpetzer, Spicer Group; and Mr. Nathan Hemenway and Mr. Marc Irvine of Machine Tool and Gear. There was no public in attendance for the public hearing. Ms. Montenegro stated the variance was a request for a reduction in the number of parking spaces from what the city code requires for the size of the addition they are planning to construct. By ordinance they would need to construct 152 spaces. They are requesting to only construct 100 spaces as the most employees they have at any one shift is 71.

Mr. Colpetzer handed out topo maps of the property in question and said it was not necessary to make such a large impervious area and create more runoff water. Board discussion followed.

MOTION BY BOARD MEMBER HORVATH, SUPPORTED BY BOARD MEMBER JOZWIAK THAT AFTER REVIEWING THE CASE FOR 401 S. CHESTNUT STREET, PARCEL NUMBER 050-546-000-017-00, THE ZONING BOARD OF APPEALS HEREBY MAKES THE FOLLOWING FINDINGS:

draft

1. THE REQUEST IS NOT SELF-CREATED, BUT RATHER CREATED BY OUTDATED ORDINANCE REQUIREMENT.
2. THE REQUEST WOULD CREATE A PRACTICAL DIFFICULTY BECAUSE THERE WILL ONLY BE 71 EMPLOYEES USING THE LOT AT ANY GIVEN TIME RATHER THAN THE REQUIRED BY ORDINANCE 152 SPACES.

BASED ON THOSE FINDINGS, THE OWOSSO ZONING BOARD OF APPEALS HEREBY APPROVES THE PETITION TO PERMIT THE NONUSE VARIANCE REQUEST AS DESCRIBED IN THE PETITION APPLICATION.

AYES: HORVATH, JOZWIAK, AND EVELETH.

NAYS: NONE

ABSENT: HORTON, TELESZ, AND WASCHER.

MOTION CARRIED.

MOTION BY BOARD MEMBER JOZWIAK, SUPPORTED BY BOARD MEMBER HORVATH THAT THE PLANNING COMMISSION REVIEW AND GIVE TO STAFF TO REVIEW AND UPDATE THE PARKING ORDINANCE TO MEET CURRENT STANDARDS.

AYES: HORVATH, JOZWIAK, AND EVELETH

NAYS: NONE

ABSENT: HORTON, TELESZ, AND WASCHER.

MOTION CARRIED.

COMMISSIONER/PUBLIC COMMENTS: None

ADJOURNMENT:

MOTION BY BOARD MEMBER JOZWIAK, SUPPORTED BY BOARD MEMBER HORVATH TO ADJOURN AT 9:48 A.M. UNTIL THE NEXT REGULARLY SCHEDULED MEETING ON TUESDAY, MARCH 17, 2015, IF ANY REQUESTS ARE RECEIVED.

YEAS: ALL. MOTION CARRIED.

Dan Jozwiak, Secretary

m.m.s

Sec. 38-378. - Nonconforming uses.

- (a) Intent. It is the intent of this section to permit the continuance of a lawful use of any building or land existing at the effective date of this section, although such use of land or structures may not conform with the provisions of this chapter.

There are two (2) types of nonconforming uses, Class A and Class B.

Class A nonconforming uses or structures are those which have been so designated by the zoning board of appeals, after application by the person having interest in the property or the zoning administrator. Where Class A nonconforming uses are identified, it is the intent of this section to provide for their continuance, so long as they fulfill the requirements in this section.

Class B nonconforming uses or structures are all nonconforming uses or structures not designated as Class A. It is the intent of this section not to encourage the survival of Class B nonconforming uses or structures. Class B nonconforming uses or structures shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other uses or structures prohibited elsewhere in the same district.

The continuance of all nonconforming uses and structures within the city shall be subject to the conditions and requirements set forth in this section.

- (b) Procedures for obtaining Class A designation. Any application for a Class A designation for a nonconforming use permit for any land or structural use permitted under this article shall be submitted and processed under the following procedures:
- (1) A written application shall be filed with the zoning board of appeals setting forth the name and address of the applicant, giving a legal description of the property to which the application pertains and including such other information as may be necessary to enable the board of appeals to make a determination of the matter.
 - (2) The zoning board of appeals may require the furnishing of such additional information as it considers necessary.
 - (3) A notice of hearing and subsequent hearing procedures shall be given in accordance with the procedures outlined in section 38-502(e).

Before an application for Class A designation for a nonconforming use can be processed, the zoning board of appeals shall review each application to ensure, beyond a reasonable doubt, that the following standards are met:

- (4) That the continuance of the use would not be contrary to the public health, safety or welfare or the spirit of this chapter.
 - (5) That the use or structure does not and is not likely to significantly decrease the value of nearby properties.
 - (6) That the use or structure was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this chapter with which the use or structure does not conform.
- (c) Approval of Class A designation. The zoning board of appeals shall approve Class A designation for nonconforming uses that comply with the standards and procedures of this section. The decision of the board of appeals shall be in writing and shall set forth the findings and reasons on which it is based. The board of appeals shall attach conditions, where necessary, to assure that the use or structure does not become contrary to the public health, safety or welfare or the spirit and purpose of this chapter. In addition, no vested interest shall arise out of a Class A designation.
- (d) Revocation of Class A designation. Any Class A designation shall be revoked, following the same procedure required for designation, upon a finding that as a result of any change of conditions or circumstances the use or structure no longer qualifies for Class A designation.

- (e) Regulations pertaining to Class A nonconforming uses and structures. A Class A nonconforming use or structure shall not be repaired, restored, extended, enlarged, moved or substituted for except in accord with the following requirements:
- (1) This chapter shall not prohibit the repair, improvement or modernization of a Class A nonconforming structure to correct deterioration, obsolescence, depreciation and wear, provided that such repair does not exceed an aggregate cost of fifty (50) percent of the structure's replacement cost. Repairs, improvements or modernization in excess of fifty (50) percent of the structure's replacement cost may be permitted by the zoning board of appeals, provided the structure will still meet the qualifications of a Class A nonconforming use or structure.
 - (2) Any Class A nonconforming use or structure damaged by fire, explosion, flood, erosion or other means may be restored, rebuilt or repaired, provided that such restoration does not exceed fifty (50) percent of the structure's pre-catastrophe replacement cost as determined by a qualified appraiser. Restoration of a Class A nonconforming use or structure damaged in excess of fifty (50) percent of the structure's pre-catastrophe replacement cost may be permitted by the zoning board of appeals, provided the restored structure would still meet the qualifications of a Class A nonconforming use or structure. However, no Class A nonconforming structure damaged in a floodplain or other areas of recurring natural hazards in excess of fifty (50) percent of the structure's pre-catastrophe replacement shall be rebuilt except in full compliance with this chapter.
 - (3) Structural changes, including enlargement or extension of a Class A nonconforming structure or use, may be permitted by the zoning board of appeals, except when such extension or enlargement would be incompatible with surrounding land uses or when the structural change would be inconsistent with the intent of this chapter. No extension or enlargement of a Class A nonconforming use or structure shall be approved if approval would result in violation of the setback, side yard or bulk requirements of this chapter.
 - (4) A Class A nonconforming use may be substituted for a similar nonconforming use or structure when the zoning board of appeals determines that the substitution would improve the property, would not increase the structure's or use's nonconformity, or when the substitution would not be contrary to the intent of this chapter.
- (f) Regulations pertaining to Class B nonconforming uses and structures. It is a purpose of this chapter to eliminate Class B nonconforming uses and structures as rapidly as is permitted by law without payment of compensation. A Class B nonconforming use or structure shall not be repaired, restored, extended, enlarged or substituted for except in accord with the following requirements:
- (1) Minor repairs or maintenance of a Class B nonconforming use or structure in order to keep it structurally safe and sound are permitted. A Class B nonconforming use or structure shall not be repaired, improved or remodeled when such repair or improvement exceeds twenty-five (25) percent of the structure's replacement cost. The replacement cost shall be determined, prior to any repairs or improvements, by a qualified appraiser. If a Class B nonconforming use or structure is changed to conform with this chapter, the limitations on repairs or improvements shall not apply.
 - (2) Any Class B nonconforming use or structure damaged by fire, explosion, flood, erosion or other means shall not be rebuilt, repaired or reconstructed if damaged in excess of fifty (50) percent of the structure's pre-catastrophe replacement cost, except when the use or structure would fully comply with the requirements of this chapter.
 - (3) No Class B nonconforming use or structure shall be enlarged, extended or structurally altered, nor shall the nonconforming use be changed to a substantially different nonconforming use.
 - (4) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment to this chapter.

- (5) No Class B nonconforming use or structure shall be permitted to continue in existence if it was unlawful at the time it was established.
- (6) A Class B nonconforming structure or use may be substituted for by a conforming use or structure, or by a use or structure which meets the requirements of a Class A nonconforming use, when the zoning board of appeals determines that the substitution would not increase the nonconformity of the use or structure or be contrary to the public health, safety and welfare and the intent of this chapter.
- (g) Determination of replacement cost. The replacement cost of repairing, restoring or improving a Class A or B nonconforming use or structure, excluding contents, damaged by fire, explosion, flood, erosion or other means, shall be made on the basis of an appraisal by a qualified individual designated by the zoning board of appeals. The cost of such determination shall be borne by the zoning administrator after:
 - (1) Receiving an estimate of the structural damage from the city fire chief;
 - (2) Receiving a figure representing the difference between the pre-catastrophe market value of the structure and the post-catastrophe value, as determined by the assessing officer for the city;
 - (3) Dividing the sum of the figures derived in subsection (1) from the fire chief and subsection (2) from the assessing officer by two (2).
- (h) Nonconforming lots of record. Any nonconforming lot of record or nonconforming lot described in a deed or land contract executed and delivered prior to the effective date of this chapter or an amendment thereto shall be used only for a use permitted in this chapter. If the use of a nonconforming lot requires a variation of the setback or yard requirements of this chapter in excess of fifteen (15) percent of the requirement, then such use shall be permitted after review of a site plan by the zoning board of appeals under the terms of this chapter. The board may amend the site plan to achieve an objective for reasonableness of the fit of the land use on the available land. The zoning board of appeals shall have the authority to amend structural dimensions and site layout to achieve this objective. The standards to be applied by the zoning board of appeals, in reviewing the site plan, shall be the applicable standards stated in section 38-504(3). The reduction by fifteen (15) percent or less of dimensional requirements for lawful nonconforming lots may be granted by the zoning administrator. When the minimum dimensional requirements of this chapter can be met by the combination of two (2) or more nonconforming contiguous lots owned by the same person, said lots may be combined for use and no variance is necessary.
- (i) Discontinuance or abandonment. Whenever a nonconforming use has been discontinued for twelve (12) consecutive months, or for eighteen (18) months during any three-year period, such discontinuance shall be considered conclusive evidence of an intention to abandonment; the nonconforming use shall not be reestablished, and any future use shall be in conformity with the provisions of this chapter.
- (j) Changing uses. If no structural alterations are made, the board of appeals may, upon an appeal, authorize a change from one (1) nonconforming use to another nonconforming use, provided the proposed use would be more suitable to the zoning district in which it is located than the nonconforming use which is being replaced. Whenever a nonconforming use has been changed to a more nearly conforming use or to a conforming use, such use shall not revert or be changed back to a nonconforming or less conforming use.
- (k) Termination of nonconforming land use. Class B nonconforming uses of land existing at the effective date of this chapter, where no building is located, may be continued, provided that the nonconforming land use shall be terminated and converted to conform with the provisions of this chapter within three (3) years after the effective date of this section, and provided further that the nonconforming land use shall not in any way be expanded or extended during this three-year interval, either on the same property or adjoining property.
- (l) Illegal nonconforming uses. Nonconforming uses of buildings or land existing at the effective date of this section established without a building permit, or those nonconforming uses which cannot be

proved conclusively as existing prior to the effective date of this section shall be declared illegal nonconforming uses and shall be discontinued within a period of three (3) years following the effective date of this section, subject to the review and approval of the city council.

- (m) District changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one (1) district to another district of another classification, the provision of this section shall also apply to any existing uses that become nonconforming as a result of the boundary changes.
- (n) Elimination of nonconforming uses. In accordance with Act 207, Public Acts of the State of Michigan of 1921, as amended, the city council may acquire properties on which nonconforming buildings or uses are located, by condemnation or other means, and may remove such uses or such uses may be used by the city for a public use. The net cost of such acquisition may be assessed against a benefiting district or may be paid from other sources of revenue.
- (o) Uses under exception provisions not nonconforming uses. Any use for which a special exception is permitted as provided in this chapter shall not be deemed a nonconforming use but shall, without further action, be deemed a conforming use in such district.
- (p) Change of tenancy or ownership. There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, structures and land in combination.

(Code 1977, § 5.78; Ord. No. 459, § 1, 4-3-89; Ord. No. 619, § 1, 9-16-02)

State Law reference— Nonconforming uses and structures, MCL 125.583a.

CITY OF OWOSSO
ZONING BOARD OF APPEALS
REQUEST FOR HEARING

NOTE TO APPLICANTS:

1. All applications received by the 25th of the month will be heard on the 3rd Tuesday of the following month at 9:30 a.m., lower level of City Hall.
2. The applicant, or legal representative of the applicant, must be present at the Public Hearing for action to be taken.
3. In order that this application may be processed, the applicant must complete Page 1 of this form and make payment of \$300.00 to the City Treasurer's Office to cover costs the City incurs. Checks are to be made out to "City of Owosso".
4. Questions about this application may be directed to (989) 725-0540.

Request is hereby made to the City of Owosso for a hearing before the Zoning Board of Appeals for one or more of the following:

- Variance
- Administrative Interpretation
- Class A Non-Conforming Status or Expansion
- Appeal of Staff or "Board" Decision
- Exception/Special Approval

APPLICANT: Richard Merling
ADDRESS: 1518 Hiawatha dr LOCATION OF APPEAL: 1302 W. Main St.
Owosso, MI 48867 Owosso, MI 48867
PHONE NO.: (989) 948-5382 DATE APPEAL FILED: 3-31-15

APPEAL: (Indicate all data pertinent to this case, both present and proposed.)

Please see attached

If this is a variance request, indicate how the strict enforcement of the Zoning Ordinance would result in practical difficulty to the property owner, and how this difficulty is peculiar to the property.
(Note: For a dimensional variance it is necessary to submit a site plan with this application.)

Please see attached

I hereby state that all above statements and any attached documents are true and correct to the best of my knowledge.

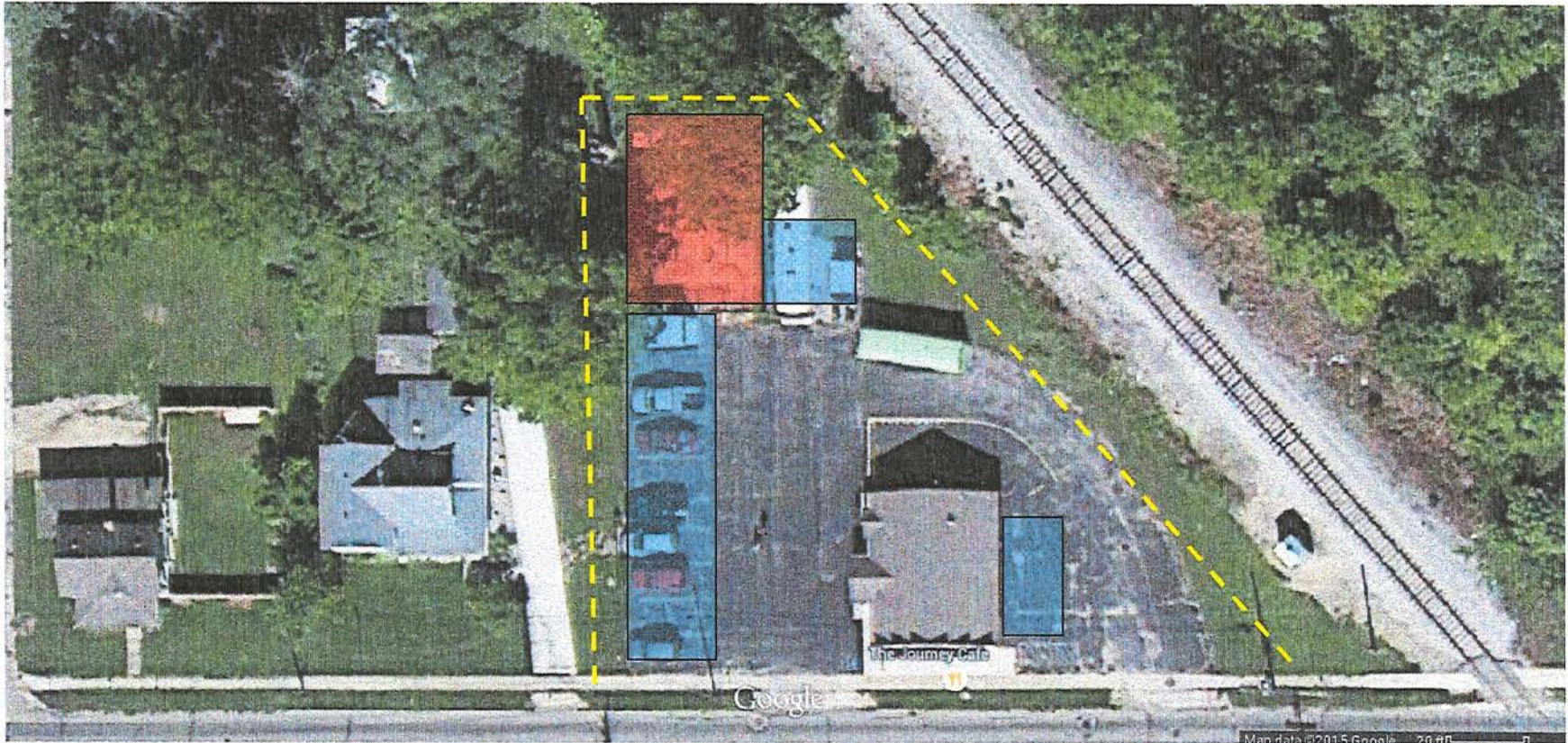
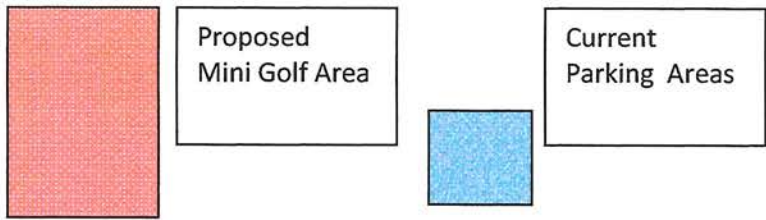

Signature of Applicant

Richard Merling
Journey café
1302 W Main St
Owosso, MI 48867
(989)948-5382

Appeal:

I am requesting a variance on the zoning for the property located at 1302 W main Street, Owosso, mi 48867. The property is currently zoned B1 and I would like to have it rezoned B2 to accommodate the inclusion of outdoor activities on the property. As the owner of the property and the Journey café, the business currently operating on the premises, I am in the process of changing the name and the focus of the business and would like to include a small miniature golf course in the fenced in area located at the back of the property. The miniature golf would be for patrons of the business.

The strict enforcement of the zoning would not allow for a miniature golf course on the property due to the proximity of residential properties in the neighborhood. Zoning B2 stipulates that recreational activities must be more than 300 feet from residential properties. The property located at 1302 W main is bordered on 2 sides by commercial properties and there are 3 properties that may fall within the zoning restrictions on the north and west sides of the property. While I understand the intent and reason for limiting outdoor recreational activity in residential areas I am requesting the variance because I believe that it would hinder the potential of the business that I am seeking to establish. In addition, allowing for a miniature golf course would not create noise levels that would be considered a nuisance to the residents in the adjoining properties. I would argue that the traffic on M21 (Main St) and the train tracks that run along the property would create considerably more noise than the proposed miniature golf.



Journey Café
1302 W, Main Street