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# Grant of Use Variance for Billboard Approved in Area That Bans Off-Site Advertising

## FACTS:

In 1999, the City of Detroit amended its zoning ordinance to ban off-site advertising signs in a portion of the city referred to as the Grand Boulevard overlay zone. In 2011, International Outdoor Inc., (IO) purchased a small parcel of vacant property measuring 30 feet by 184 feet, located within the overlay zone. In 2015, IO requested a permit to erect a billboard on the property. The city's planning department denied the application, referring to the overlay zone.

IO appealed to the City of Detroit's Board of Zoning Appeals (the BZA) requesting a hardship variance. IO asserted that the city's ordinance rendered the property unfit for any reasonable or economically feasible use due to its size and shape. The BZA granted the variance and the city appealed to the circuit court.

The circuit court agreed with the BZA, noting that although IO purchased the property with knowledge of the ban on off-site advertising, IO had taken no action to physically alter the property, creating the hardship. The city appealed to the Michigan Court of Appeals.

## QUESTION:

Did the BZA have the authority to grant a use variance in the overlay zone?

## ANSWER:

The Michigan Court of Appeals answered "yes," citing MCL 125.3604 and the provisions of the city's ordinance banning advertising signs within the overlay zone. The Court concluded that the BZA has broad powers to provide relief for a landowner who proves an economic hardship so long as no other permitted or conditional use is economically feasible.

## QUESTION:

Did IO establish that it was deprived of all reasonable economic use of the property and that the ordinance imposed a hardship meriting a use variance?

## ANSWER:

The Michigan Court of Appeals again answered "yes," based, in part, on the 4-part test set forth in *Janssen v Holland Charter Twp Zoning Bd of Appeals*, 252 Mich App 197 (2002). The Court found that the small, unusual parcel at issue could not be reasonably used in a manner consistent with existing zoning, that the landowner's plight was due to unique circumstances and not to general conditions in the neighborhood that may reflect the unreasonableness of the zoning, and that the use variance would alter the essential character of the locality. The only issue was whether the purchase of the property after the adoption of the overlay zone created a "self-imposed" or "self-created" hardship. The Court of Appeals declined to extend the self-created hardship rule to all instances where a landowner "simply purchases" the property with knowledge of an ordinance's restrictions. "IO simply purchased the property at a time when there was no permitted reasonable use and took a business risk that the BZA would grant a variance to erect the billboard in the overlay zone." A dissent was filed by one of the Court of Appeals judges.

*City of Detroit v City of Detroit Board of Zoning Appeals*, No. 339018 (October 23, 2018)

## New League Medical Marihuana Report Aims to Help Communities Choose

