



ZONING BOARD OF APPEALS

July 13, 2015

CITY OF PORTAGE ZONING BOARD OF APPEALS

Agenda

Monday, July 13, 2015

(7:00 pm)

Portage City Hall
Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES:

- * June 8, 2015 meeting

OLD BUSINESS:

NEW BUSINESS:

- * ZBA #15-01. Great Lakes Self Storage 1. LLC, 800 Gladys Street and 6529 Naomi Street: Requesting a variance from the conflicting land use screening requirements along the southwest portion of the site, between the Cross Creek Self Storage facility and the nonconforming single family residence located at 6527 Naomi Street.
- * ZBA #15-02. Nick's Gyros, 7540 South Westnedge: Requesting a Temporary use permit to operate a mobile food trailer at 7540 South Westnedge Avenue from July 14, 2015 through December 31, 2015.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS

 DRAFT

Minutes of Meeting – June 8, 2015

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. Seven people were in the audience.

MEMBERS PRESENT: Glenn Smith, Phillip Schaefer, Jeffrey Bright, Chad Learned, Lowell Seyburn, Michael Robbe, John Byrnes, and Alexander Philipp.

MEMBERS EXCUSED: Randall Schau

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

APPROVAL OF THE MINUTES: Learned moved and Schaefer seconded a motion to approve the May 11, 2015 minutes as submitted. Upon voice vote, the motion was approved 7-0.

ELECTION OF OFFICERS: A motion was made by Seyburn, seconded by Learned, to keep Bright as Chair, Schaefer as Vice Chair, and Smith as Secretary. Upon roll call vote: Smith-Yes, Phillip-Yes, Schaefer-Yes, Robbe-Yes, Bright-Yes, Learned-Yes, Seyburn-Yes. The motion passed 7-0

NEW BUSINESS:

ZBA #14-26. Cheryl Butler, 10650 South Westnedge Avenue: Seyburn stated he had a conflict of interest, would not be participating in deliberations, and stepped off the dais. Mais summarized the request for a variance from the public street frontage requirement to obtain a building permit. Cheryl Butler stated that she is Trustee for the late Everett and Virginia Floyd, and is endeavoring to sell the subject property to close the estate. Ms. Butler then summarized her May 7, 2015 letter to the Board. Learned inquired if the applicant had considered the conforming alternative. Ms. Butler said the costs associated with providing public street access exceeded the money in the trust and that the co-owner of Outlot A, Katherine Maxey, was also not agreeable to it. Smith noted a copy of the Access and Maintenance Agreement between the co-owners of Outlot A had been provided by the applicant as part of the supplemental agenda, and inquired if the document had been recorded. Ms. Butler responded no. Smith recommended they should record it. Schaefer stated he has dealt with problems associated with private access issues for many years and based on his experiences was convinced providing public access was a much better option for promoting orderly development.

The public hearing was opened. A letter by Lowell Seyburn, 10546 South Westnedge Avenue in support of the requested variance was read. Attorney Bear advised the Board to disregard the third paragraph in its deliberations, as it spoke to the actions of the Board and that Mr. Seyburn should not address the Board during the public hearing as it may create the appearance of impropriety. Mr. Seyburn stated he had a conflict of interest and was therefore not participating in the Board's deliberations, but had the right as a citizen to express his opinions. Chairman Bright stated he would allow Mr. Seyburn to speak as a citizen. Katherine Maxey, 376 Matteson Court, stated they have had no problems with the shared access driveway through Outlot A for the 14 years she has owned the property, even without a formal access agreement. Mr. Seyburn noted the city permits flag lots, which allow long driveways that sometimes have access over other properties. Schaefer stated Ms. Maxey's property would sell one day and when that happened there would be pressure to create more lots and with future owners more potential for emergency access problems. Mr. Seyburn stated the city controls all access while there is no public access, and without it any future splits would require the Board's approval. Bruce Ettwein, 10713 South Westnedge Avenue, spoke in favor of the request. Cliff Floyd, son of Everett and Virginia Floyd, spoke in favor of the request. The public hearing was closed.

Learned noted the adjacent property at 10632 South Westnedge Avenue was not developed and asked if the applicant had attempted to obtain access from there. Ms. Butler said they had but the owner was not agreeable. Robbe inquired if the Board approved the variance allowing someone to build a house, would another variance be necessary to construct an accessory building too. Mais stated no, the applicant was essentially seeking permission from the Board to consider the property a buildable lot. A motion was made by Robbe, seconded by Smith, to grant a variance from the public street frontage requirement to obtain a building permit for the following reasons: 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 the lack of public street access but access is provided via private drive; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to develop a 6.8 acre residential property; the immediate practical difficulty causing the need for the variance request was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood, and; the variance will not materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Smith-Yes, Phillip-Yes, Schaefer-No, Robbe-Yes, Bright-Yes, Learned-Yes, Byrnes-Yes. The motion passed 7-0.

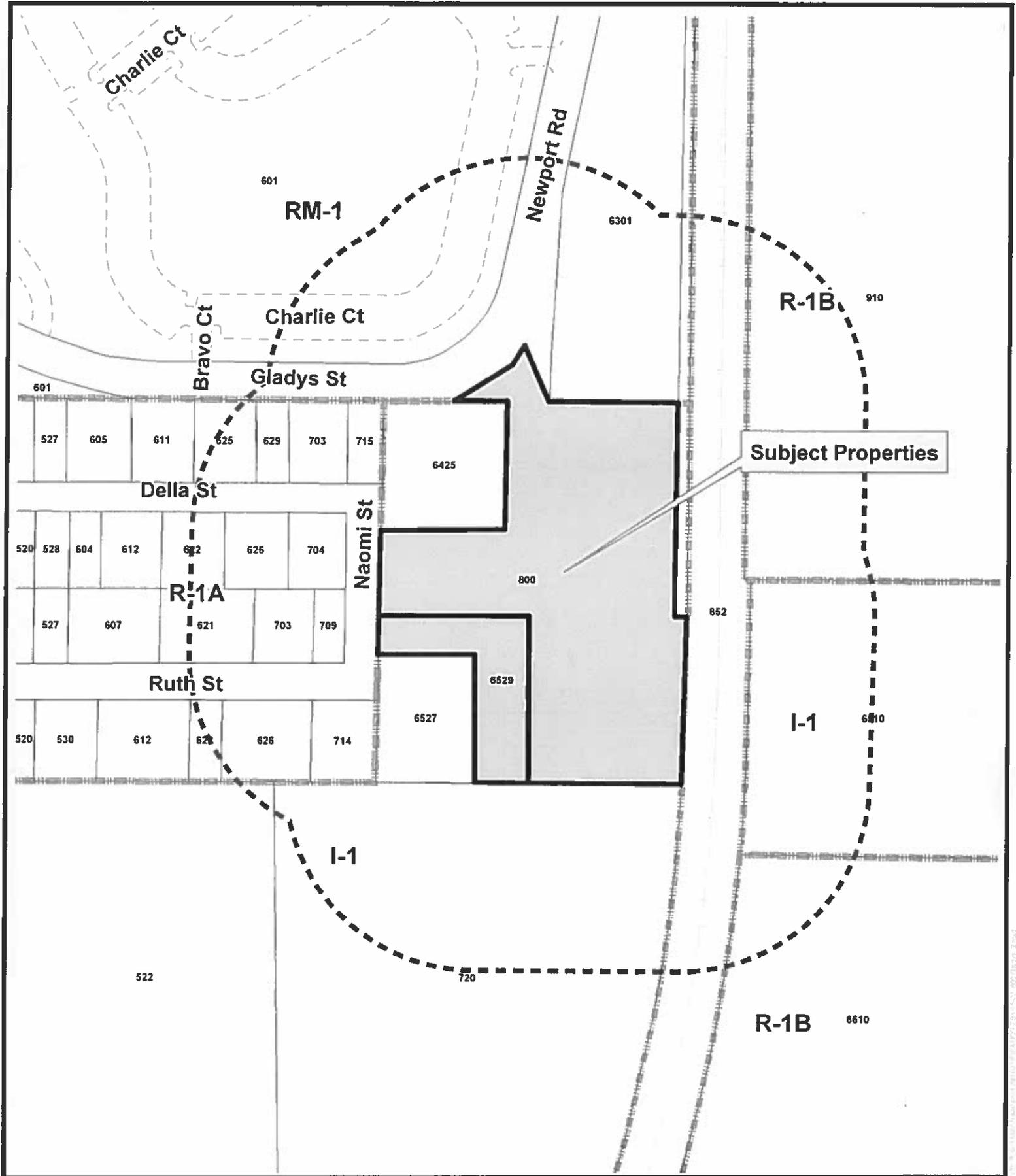
OTHER BUSINESS: None.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



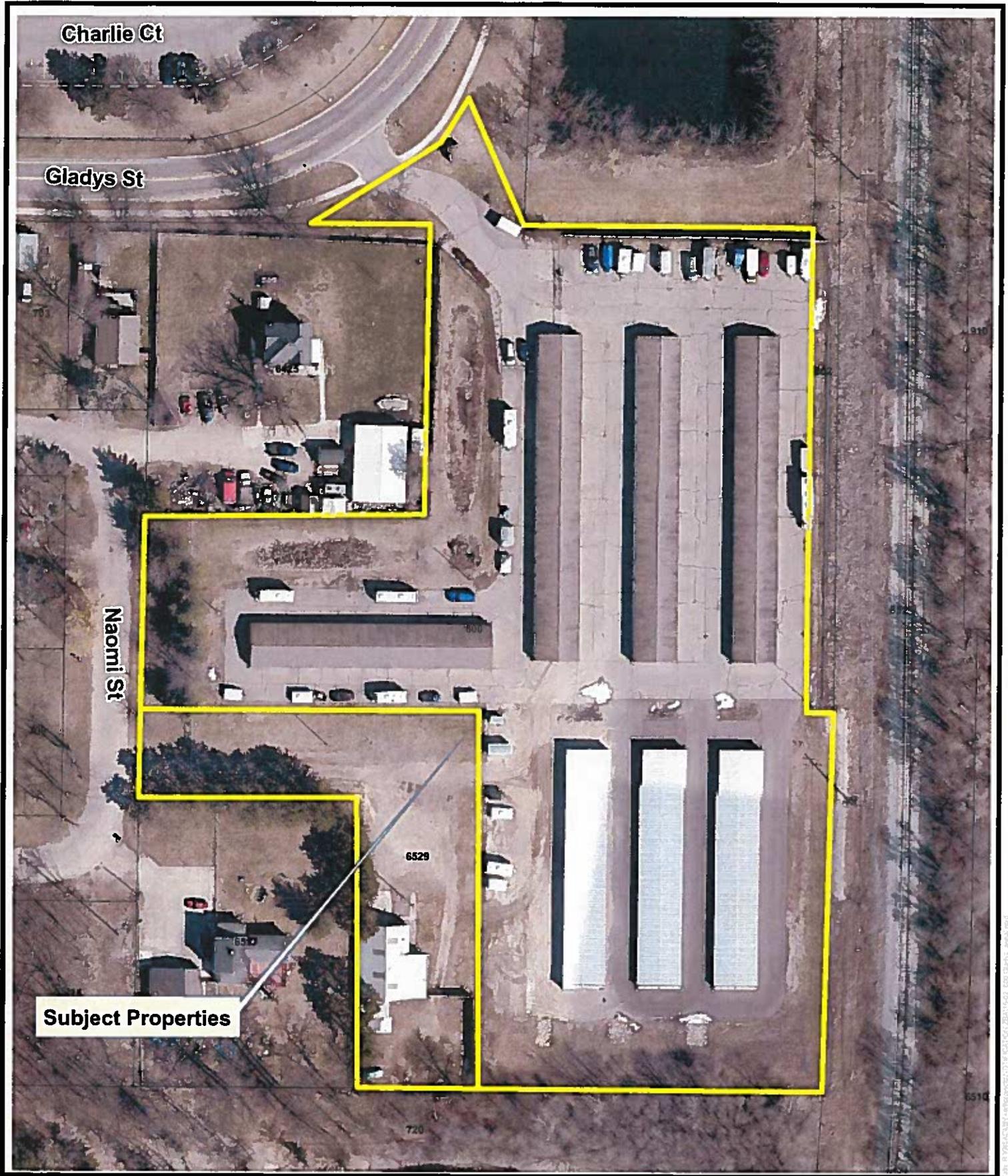
Legend

-  Subject Properties
-  Notification Area
-  Zoning Boundary

ZBA 15-01
 800 Gladys Street, 6529 Naomi Street



1 inch = 200 feet



Legend
Subject Properties

Aerial Photography

800 Gladys Street, 6529 Naomi Street



1 inch = 90 feet

RECEIVED
MAY 29 2015
COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date May 29, 2015
 Name of Applicant Great Lakes Self Storage 1, LLC *Scott Carter* (Scott Carter)
Print Signature
 Applicant's Address 729 Academy Street, Kalamazoo, MI 49007 Phone No. (269) 381-4641
 Name of Property Owner (if different from Applicant) (same as applicant)
 Address (see above) Phone No. (see above)
 Address of the Property that is the subject of this Application:
 Street Address 800 Gladys Street, Portage, MI 49002
 For Platted Property: Lot n/a of n/a Plat
 [If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.] (see attached)
 Applicant's interest in Property that is the subject of this Application: Applicant is the property owner.

Application Fee n/a (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 4 Section 42-573 Paragraph A, B, & C
 Regarding: Use _____ Area _____ Yards _____
 Setbacks _____ Parking _____ Other Fencing

Reason for Request (Also complete page 2 of application): Residential dwelling in I-1 zone district is situated to the southwest of Self Storage Facility. Six foot tall screening fence not appropriate in this situation.

n/a Appeal of Administrative Decision: Article _____ Section _____ Paragraph _____
 Reason for Request: _____

n/a Interpretation of the Zoning Ordinance: Article _____ Section _____ Paragraph _____
 Reason for Request: _____

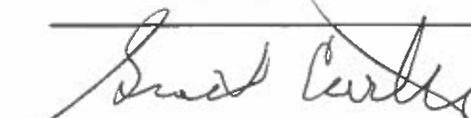
n/a A Temporary Permit for: Building _____ Use _____ Other Approval _____
 Article _____ Section _____ Paragraph _____
 Reason for Request: _____

FOR STAFF USE

Application Number: <u>15-01</u>	Filing Date: <u>5/29</u>	Tentative Hearing Date: <u>7/13/15</u>
Previous Application Filed Regarding This Property:		

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.)
Narrow space (about 12 foot wide from new building to property line) with the west wall of the new building at 9'4" high operating as if a 6 foot tall board on board fence. Additionally, there are multiple mature trees near property line which would shade any additional plantings.
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
Yes, they are unique because the neighbor's property has a fence and trees in addition to our fence and trees. The neighbor's home has a vegetable garden on near the property line and a 6' fence and shrubs would block more sunlight than the trees do now.
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
The Self Storage property and the existing dwelling can be used whether the 6' tall is installed or not installed. The issue is that fence installation and maintenance would be problematic.
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.)
It is the minimum necessary and is also logical and just to the abutting property owner.
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.)
The new building's west wall would be exposed over a 6 foot tall fence and therefore would be less attractive from the neighbor's property because of neighbor's 5 foot fence, our 6 foot chain link fence, and a board on board screening fence.
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.)
Not applicable because no traffic of any kind between the two properties, and there would be no impact on flood potential, fire hazard, etc.
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.)
Applicant built the previous building per the City approved Site Plan and made a modification to the fence by filling in the space where an antiquated building was tore down.
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
The 9'4" tall west wall of the new building (which has no windows of other architectural features) operates as if it were the same or better than a 6' tall wood fence.


Signature of Applicant (Scott Carter)

May 29, 2015
Date

PARCEL DESCRIPTION:

Land situated in the City of Portage, County of Kalamazoo, State of Michigan.

Parcel 1:

Part of the Southwest 1/4 of Section 10, Town 3 South, Range 11 West, described as: Commencing at the Northwest corner of said Section 10; thence South on the West line of said Section 10 a distance of 2396.4 feet; thence North 89°45' East 2145.0 feet; thence South 342.0 feet; thence North 89°45' East 242.20 feet to the point of beginning of the land herein described; thence South 268.50 feet; thence North 89°45' East 245.54 feet more or less to the West line of the Norfolk Southern Railroad (formerly New York Central Railroad); thence Northeasterly along the West line of said railroad right of way to a point, said point being North 89°45' East 248.75 feet more or less from the point of beginning; thence South 89°45' West 248.75 feet more or less to the point of beginning.

Together with an easement described as: Commencing at the Northwest corner of Section 10, Town 3 South, Range 11 West; thence South on the West line of said Section 10 a distance of 2369.4 feet; thence North 89°45' East 2145.0 feet; thence South 367.0 feet to the point of beginning of the easement herein described; thence North 89°45'00" East 242.20 feet; thence South 00°00'00" West 35.00 feet; thence South 89°45'00" West 242.20 feet to the East right of way line of Naomi Street; thence North 00°00'00" East on said right of way line 35.00 feet to the point of beginning.

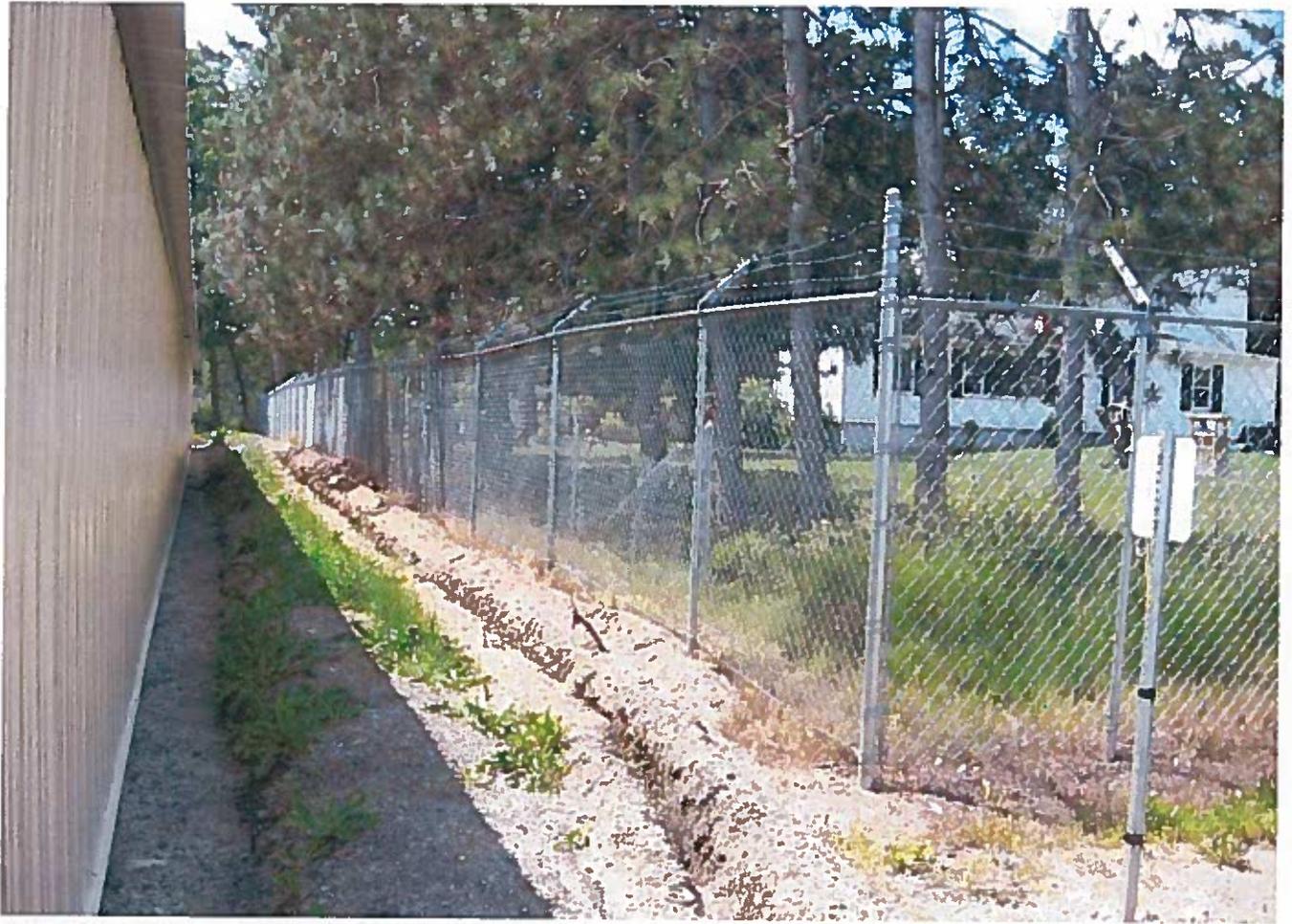
Also: Part of the West 1/2 of Section 10, Town 3 South, Range 11 West described as: Commencing at the Northwest corner of said Section 10, according to the Plat of Early Home Park as recorded in Liber 10 of Plats on page 25, Kalamazoo County Records; thence South along the West line of said Section, 2369.40 feet according to the plat thereof to the North line of Early Home Park; thence North 89°45'00" East, along said North line, 2145.00 feet according to the plat thereof to the Northeast corner of Early Home Park; thence South along the East line of said Plat, 205.78 feet to the point of beginning of the land herein described; thence continuing South along said East line, 136.22 feet; thence North 89°45'00" East, 474.90 feet to a line which is 16.5 feet Westerly of and parallel to the Westerly right of way line of the Penn Central Railroad; thence North 00°14'00" West along the last described line, 342.00 feet; thence South 89°45'00" West, 274.50 feet; thence South parallel with the East line of said plat, 205.78 feet; thence South 89°45'00" West, 199.00 feet to the place of beginning.

Also: Part of the Northwest 1/4 of Section 10, Town 3 South, Range 11 West, City of Portage, Kalamazoo County, Michigan, described as: Commencing at the North 1/4 post of said Section 10; thence North 89°51'00" West on the North line of said Section 10 a distance of 120.65 feet; thence South 00°10'19" East 1260.00 feet; thence South 89°51'00" East 82.50 feet; thence South 00°10'19" East 60.00 feet; thence North 89°51'00" West 16.50 feet; thence South 00°10'19" East 967.47 feet; thence South 89°48'26" West 310.99 feet to the point of beginning of the land herein described; thence South 23°32'38" East 71.87 feet to the North line of Early Home Park, as monumented, extended, and according to the plat thereof as recorded in Liber 10 of Plats, page 25, Kalamazoo County Records; thence South 89°47'24" West (recorded as South 89°45' West) on said North line, as monumented, extended, 151.50 feet; thence North 57°36'25" East 109.68 feet; thence North 32°06'16" East 37.23 feet; thence South 23°32'38" East 26.02 feet to the point of beginning. Assumed the North line of said Section 10 to bear North 89°51'00" West.

Parcel 2:

Commencing at the Northwest 1/4 of Section 10, Town 3 South, Range 11 West, at a point 2369.4 feet South of the Northwest corner of said Section 10; thence North 89°45' East 2145.0 feet; thence South 342.0 feet for the point of beginning; thence continuing South 60 feet; thence North 89°45' East 155.04 feet; thence South 208.5 feet; thence North 89°45' East 87.16 feet; thence North 268.50 feet; thence South 89°45' West 245.20 feet to the point of beginning.







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

FROM: Vicki Georgeau, ^{VG} Director of Community Development

SUBJECT: ZBA #15-01, Great Lakes Self Storage, 800 Gladys Street and 6529 Naomi Street, I-1, Light Industrial

CODE SECTION: 42-573, Conflicting Land Use Screening, p. CD42:134.

APPEAL: Requesting a variance from the conflicting land use screening requirements along the southwest portion of the site, between the Cross Creek Self Storage facility and the nonconforming single family residence located at 6527 Naomi Street.

STAFF RECOMMENDATION: The applicant is requesting the above referenced variance per the enclosed application, letter of explanation, site plan and other related materials. The approximate 5.0 acre zoning lot, which includes 800 Gladys Street and 6529 Naomi Street, is zoned I-1, light industrial and occupied by the Cross Creek Self Storage facility and associated improvements.

On November 13, 2014, a site plan was approved to construct an approximate 11,000 square foot self-storage building along the southwest portion of the zoning lot (on the parcel addressed as 6529 Naomi Street). As information for the Board, the applicant purchased this parcel in 2008 with the intention of future expansion of the Cross Creek Self Storage facility. The previously existing automobile repair and servicing building located at 6529 Naomi Street was demolished in 2014 in preparation for construction of the self-storage building: The attached aerial photograph identifies this former automobile repair business, before demolition and construction of the new self-storage building. Since expansion of the Cross Creek Self Storage facility occurred adjacent to the nonconforming single family residence located at 6527 Naomi Street, conflicting land use screening is required. Screening identified on the approved site plan included a six-foot tall screening fence, 10-foot greenstrip and deciduous tree plantings every 30-feet.

As indicated by the applicant, a six-foot tall chain link security fence with razor wire is present along the perimeter property line of the self-storage facility. Additionally, a secondary fence (combination chain link and metal siding) ranging in height from 4-5 feet tall has also been constructed along the north and east sides of the nonconforming single family residential parcel located at 6547 Naomi Street. Finally, large mature pine trees that overhang the shared property line are also present along the north and east sides of the 6547 Naomi Street parcel. Photographs of these areas are attached with the application materials.

While the approved site plan identifies the required conflicting land use screening, construction of the six-foot tall wooden screening fence along the southwest portion of the self-storage facility would result in three different fences being situated

within a few feet of each other. Additionally and since the large pine trees present on the adjacent nonconforming residential parcel overhang the shared property line, installation of deciduous tree plantings within the 10-foot greenstrip area appears to be problematic with inadequate overhead canopy space for these trees to grow. As indicated by the applicant, the newly constructed 11,000 square foot self-storage building essentially serves as a 200-foot long, 9-foot tall screening wall with no windows, doors or other openings facing the nonconforming single family parcel. Additionally, the self-storage facility itself is a low intensity land use with minimal impacts to the adjacent nonconforming single family residence. The presence of the newly constructed self-storage building combined with the existing fences, mature pine trees and low intensity land use appears to meet the spirit and intent of the ordinance and will provide adequate screening/buffering to the adjacent nonconforming single family residence until such time that this property redevelops with a light industrial land use. If the variance is granted by the Board, it is recommended that the variance is conditioned upon no outdoor storage or other activity occur between the building and property line at 6527 Naomi Street.

**PRACTICAL
DIFFICULTY:**

Presence of existing fences and mature pine trees; Location and orientation of newly constructed self-storage building; Low intensity self-storage facility land use; Adjacent nonconforming single family residence. See suggested motion form.

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:

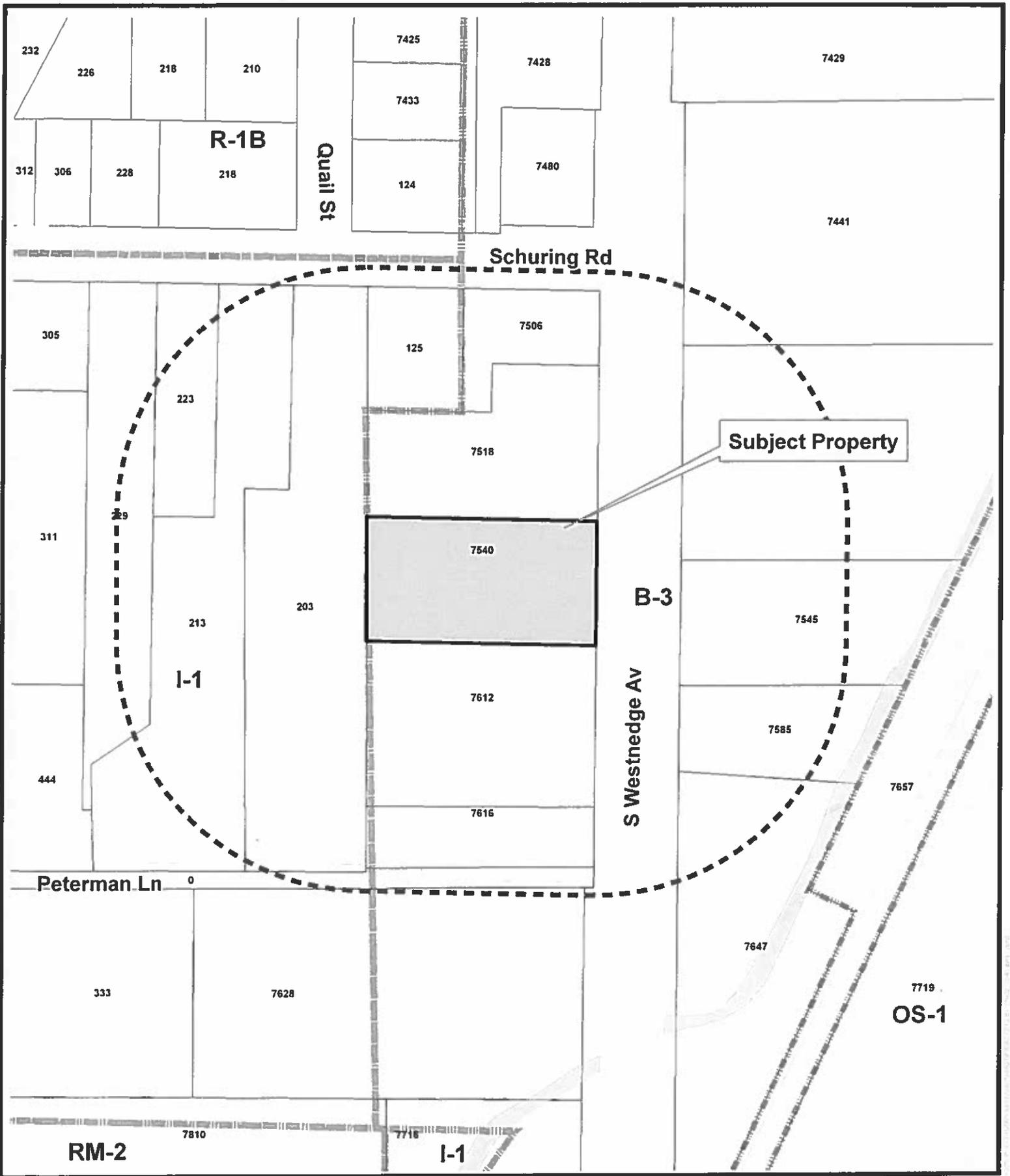
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right 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.**



Subject Property

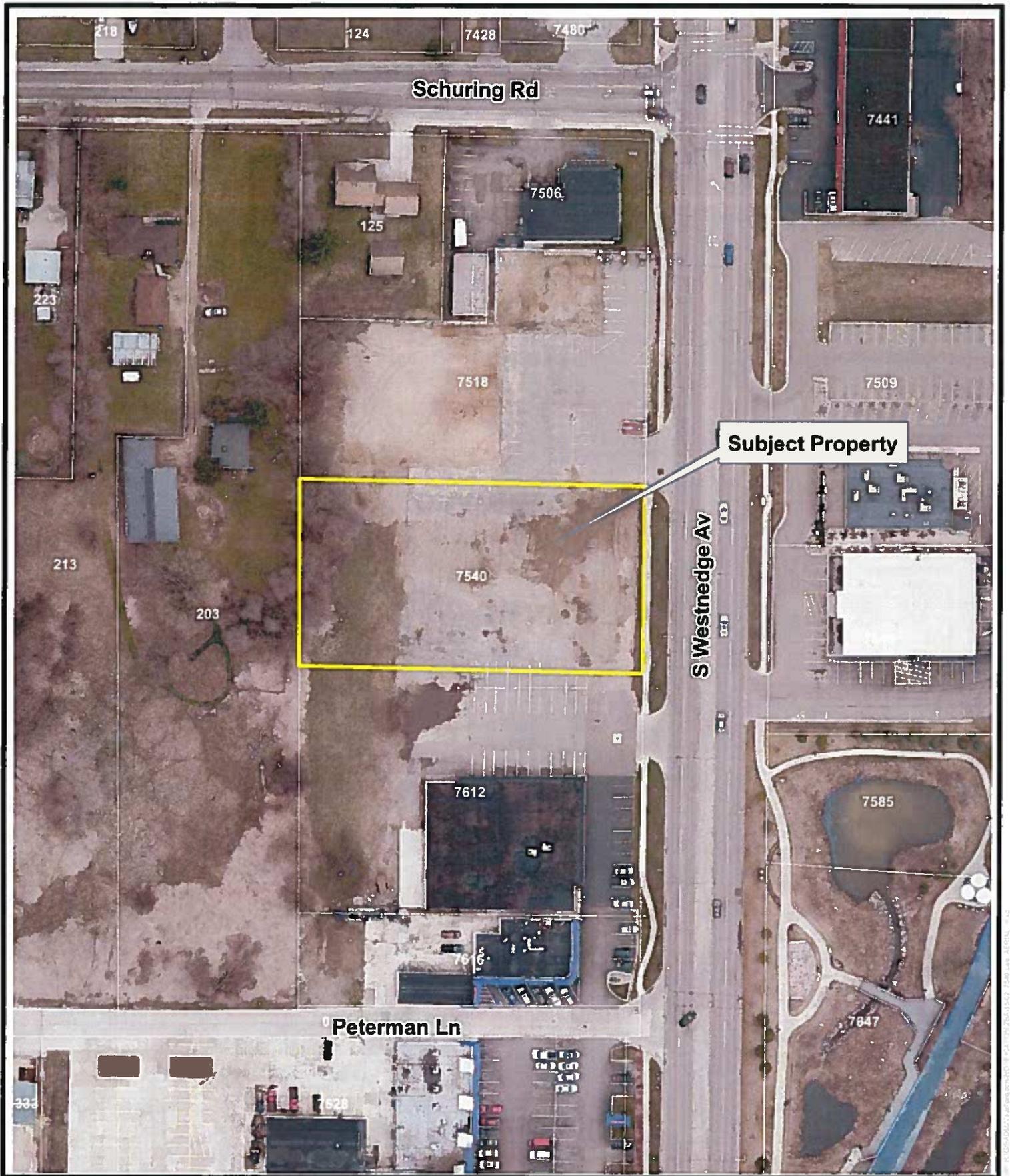
Legend

-  Subject Property
-  Notification Area
-  Zoning Boundary

ZBA 15-02
7540 South Westnedge Avenue



1 inch = 150 feet



Aerial Photography
7540 South Westnedge Avenue



1 inch = 102 feet

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 6/5/2015
 Name of Applicant Nick's Gyro's Nick Sambright
Print Signature
 Applicant's Address 781 Lenox, Portage Phone No. 269-532-9616
 Name of Property Owner (if different from Applicant) M3 Westwedge / Bill Cebola
 Address 4401 Glenrose Terrace Phone No. 269-207-1024

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

Street Address 7540 S. Westwedge
 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: Use for parking a food trailer and serving food to customers.

Application Fee _____ (Residential Uses) _____ (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): _____

 Appeal of Administrative Decision: Article _____ Section _____ Paragraph _____

Reason for Request: _____

 Interpretation of the Zoning Ordinance: Article _____ Section _____ Paragraph _____

Reason for Request: _____

A Temporary Permit for: Building _____ Use Other Approval _____
 Article _____ Section _____ Paragraph _____

Reason for Request: Temporary use for food trailer serving location

FOR STAFF USE

Application Number: <u>15-02</u>	Filing Date: <u>6/8/15</u>	Tentative Hearing Date: <u>7/13/15</u>
Previous Application Filed Regarding This Property:		

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.)

N/A

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

N/A

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

N/A

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.)

N/A

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.)

Food Trucks and trailers are a very popular trend in many areas of the country.

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.)

Its highly unlikely my trailer will affect the traffic on South Westnedge.

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.)

N/A

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

Nick Soubry
Signature of Applicant

6/8/15
Date

Nick's Gyro's
Nicholas Lambright, Owner
781 Lenox Ave
Portage, MI 49024

June 4th, 2015

RECEIVED

JUN 08 2015

COMMUNITY DEVELOPMENT

Portage Zoning Board of Appeals
7900 S. Westnedge
Portage, MI 49024

I am requesting a Temporary Permit for 7540 S. Westnedge in order to use the property for my food trailer. The use would be to park my trailer on in the morning, set up tables to serve and seat customers, and parking for their vehicles. We will cook and serve food during the day, usually from 10:00am until 8:00pm, Monday through Saturday. Occasionally these hours vary depending on business and if we have other festivals or catering events to take the trailer to. Every night the trailer will be removed and stored at a different location.

My trailer is 24' x 8' and is fully functional as a standalone kitchen. It has a built in generator that is very quiet and a bathroom for staff. It has been inspected by Kalamazoo County Department of Community Health and issued a Special Transitory Food Unit license. We currently serve about 100 customers in a day, but hope that number increases. Currently we are operating in a parking lot directly across the street under a Business Special Events permit.

It is my intention to operate this trailer into the fall or early winter as weather permits. So I am requesting a period of time until the end of December, 2015. I have attached a not to scale drawing of my plans for parking, the location of the trailer, and picnic tables. The trailer has three serving windows and on this site we will probably use two, one to order from and one to receive your food. There will be garbage containers for trash and the property will be cleaned daily. I plan on putting caution tape along the leading edge of the parking areas in order to delineate it.

Thank you for your consideration



Nick Lambright



City of Portage Map Document




 1:900
Map Publication:
 Thu Jun 4 2015 02:52:06 PM

Disclaimer:

This map does not represent a survey or legal document and is provided on an "as is" basis. City of Portage expresses no warranty for the information displayed on this map document.



Nicks Gyros
DAMN FRESH, DAMN GOOD

Nicks Gyros

AUTHENTIC GYRO

TO: Zoning Board of Appeals **DATE:** July 2, 2015
FROM: Vicki Georgeau, ^{VJ} Director of Community Development
SUBJECT: ZBA #15-2, Nick's Gyros, 7540 South Westnedge Avenue, B-3, General Business
CODE SECTION: 42-622(D), Temporary Uses, p. CD42:140.3
APPEAL: Requesting a Temporary Use Permit to operate a mobile food trailer at 7540 South Westnedge Avenue from July 14, 2015 through December 31, 2015.
STAFF RECOMMENDATION:

The applicant is requesting the above referenced Temporary Use Permit per the enclosed application, site sketch and related materials. The 0.9 acre parcel is currently undeveloped and listed for sale. The property is zoned B-3, General Business, and is adjacent to an undeveloped commercial property to the north (currently accommodating Meyer Wood Products, a Temporary Use), commercial property to the south, commercial property to the east (across the street), and to a nonconforming residence, zoned I-1 Light Industrial, to the west.

The applicant has been previously issued a Business Special Event (BSE) permit to operate Nick's Gyros at 7545 South Westnedge Avenue from May 18th to June 14th. On June 16th, a subsequent BSE permit was approved that allowed the food trailer to relocate to 8108 Shaver Road to operate for another 28-day period. At the conclusion of the event at 8108 Shaver Road, the applicant proposes to relocate to 7540 South Westnedge for a five and a half month period, beginning July 14 through the end of the year. Operation at 7540 South Westnedge Avenue would be conducted in a similar manner to the approved BSE permits, setting up a food trailer, waste receptacle, and three picnic tables, between the hours of 10 a.m. through 8 p.m. and with the trailer removed at the end of each day. As additional information for the Board, the maximum permitted 28 days available annually for BSE permits at 7540 South Westnedge Avenue have already been used for fireworks sales at this location.

Mobile food trucks or trailers are not specifically regulated by the Zoning Code, but have had the option of applying for a BSE permit for periods up to 28 days a year on a commercial zoning lot. While Portage does not have specific ordinance provisions for mobile food trucks/trailers, many other communities including Michigan communities have adopted such regulations. In general mobile food trucks/trailers are most often limited to commercial areas and require a permit, include provisions for trash disposal, health department approval, length of time at any given location, and separation requirements from brick and mortar restaurants. For example, Kalamazoo requires a 150 foot distance from existing restaurants, whereas Grand Blanc Township requires 500 feet. Grand Rapids allows the Planning Commission to consider distance separation from existing restaurants when evaluating a special land use permit.

As measured from property line to property line, the proposed Nick's Gyros mobile food trailer will be approximately 100 feet from Main Street Pub, 170 feet from Jimmy Johns/Dunkin Donuts and 200 feet from Colonial Kitchen. All three restaurant

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APPEAL: Requesting a Temporary Use Permit to operate a mobile food trailer at 7540 South Westnedge Avenue from July 14, 2015 through December 31, 2015.

STAFF RECOMMENDATION: The applicant is requesting the above referenced Temporary Use Permit per the enclosed application, site sketch and related materials. The 0.9 acre parcel is currently undeveloped and listed for sale. The property is zoned B-3, General Business, and is adjacent to an undeveloped commercial property to the north (currently accommodating Meyer Wood Products, a Temporary Use), commercial property to the south, commercial property to the east (across the street), and to a nonconforming residence, zoned I-1 Light Industrial, to the west.

The applicant has been previously issued a Business Special Event (BSE) permit to operate Nick's Gyros at 7545 South Westnedge Avenue from May 18th to June 14th. On June 16th, a subsequent BSE permit was approved that allowed the food trailer to relocate to 8108 Shaver Road to operate for another 28-day period. At the conclusion of the event at 8108 Shaver Road, the applicant proposes to relocate to 7540 South Westnedge for a five and a half month period, beginning July 14 through the end of the year. Operation at 7540 South Westnedge Avenue would be conducted in a similar manner to the approved BSE permits, setting up a food trailer, waste receptacle, and three picnic tables, between the hours of 10 a.m. through 8 p.m. and with the trailer removed at the end of each day. As additional information for the Board, the maximum permitted 28 days available annually for BSE permits at 7540 South Westnedge Avenue have already been used for fireworks sales at this location.

Mobile food trucks or trailers are not specifically regulated by the Zoning Code, but have had the option of applying for a BSE permit for periods up to 28 days a year on a commercial zoning lot. While Portage does not have specific ordinance provisions for mobile food trucks/trailers, many other communities including Michigan communities have adopted such regulations. In general mobile food trucks/trailers are most often limited to commercial areas and require a permit, include provisions for trash disposal, health department approval, length of time at any given location, and separation requirements from brick and mortar restaurants. For example, Kalamazoo requires a 150 foot distance from existing restaurants, whereas Grand Blanc Township requires 500 feet. Grand Rapids allows the Planning Commission to consider distance separation from existing restaurants when evaluating a special land use permit.

As measured from property line to property line, the proposed Nick's Gyros mobile food trailer will be approximately 100 feet from Main Street Pub, 170 feet from Jimmy Johns/Dunkin Donuts and 200 feet from Colonial Kitchen. All three restaurant

uses have received notice of this public hearing and can comment on the proposed application.

The applicant is requesting to park the food trailer at the same location (when not moved to special events such as a weekend festival at the Arcadia Creek festival site in downtown Kalamazoo) for six months. Although mobile food vendors can add to placemaking efforts, they can oftentimes compete with established brick and mortar restaurants which have a much higher overhead cost. Food trucks/trailers are most commonly “mobile” and move from site to site. Section 42-622(D)(2)(c), Temporary Uses states that the “use shall be in harmony with the general intent of the district.” Consequently, staff is of the opinion the Board should consider a lesser time period of 60 days for the requested Temporary Use permit. As noted above, the applicant has the option of obtaining BSE permits at other locations in the community consistent with the intent of a mobile food vendor operation. Therefore, staff recommends the Temporary Use permit for Nick’s Gyros, 7540 South Westnedge Avenue be approved subject to the following conditions:

1. The Temporary Use be approved from July 14, 2015 through September 15, 2015.
2. The food trailer be licensed by the Kalamazoo County Department of Health and Community Services.
3. Food trailer tables and off-street parking set-up be consistent with the submitted site sketch.
4. Hours of operation be limited to 10:00 a.m. to 8:00 p.m. Monday through Saturday.
5. The site be kept free from trash and refuse.
6. Temporary signage be limited to one sign not exceeding 40 square feet.
7. There be no sound amplifying equipment with the exception of a portable generator which must meet the requirements of Chapter 24, Article 4 (Noise)
8. The trailer must be setback 30 feet from the east (front) property line.

**PRACTICAL
DIFFICULTY:** Not applicable for Temporary Use.

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