



ZONING BOARD OF APPEALS

April 11, 2016

CITY OF PORTAGE ZONING BOARD OF APPEALS

Agenda

Monday, April 11, 2016

(7:00 pm)

Portage City Hall
Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES

- * March 28, 2016 special meeting

OLD BUSINESS:

- * ZBA #15-11, Christine Pelletier, 4415 Raborn Court: Requesting a variance to b) retain a partially constructed 58-foot by 19-foot (1,102 sq. ft.) two story accessory building in the rear (south) yard that is 19.5 feet in height where a maximum 14-foot height is permitted.
- * ZBA #15-17, Bickford Cottage Assisted Living and Memory Care, 4707 West Milham Avenue: Requesting a variance to retain an approximate 8,400 square foot building addition along the west side of the existing Bickford Cottage facility to within 10-feet of the west property line (side yard) where a 30-foot setback is required.

NEW BUSINESS:

- * ZBA #15-15, Ol' Moose BBQ, 7540 South Westnedge Avenue: Requesting a Temporary Use Permit to operate a mobile food truck at 7540 South Westnedge Avenue from April 12 – June 5, 2016 and July 7 – October 12, 2016.
- * ZBA #15-16, Meyer Wood Products, 7518 South Westnedge Avenue: Requesting a Temporary Use Permit to allow outdoor wood product and accessory building sales from April 29 – October 29, 2016 and April 29 – October 29, 2017.
- * ZBA #15-19, Lynn Van Pelt, 4580 Caribou Street: Requesting a variance to construct a 12-foot by 14-foot three season porch 28 feet from the south (rear) property line where a minimum 40-foot setback is required.
- * ZBA #15-20, Matt Nieuwenhuis, 3221 West Milham Avenue: Requesting variances to reconstruct a historic accessory building that a) is 27.5 feet in height where a minimum 14-foot building height is permitted; b) is 2,600 square feet in area and exceeds the ground floor living area by 1,456 feet; and c) exceeds 20 percent of the required rear yard by 600 feet.
- * ZBA #15-22, Jimmie's BBQ, 5331 South Sprinkle Road: Requesting a Temporary Use Permit to operate an outdoor barbecue grill at 5331 South Sprinkle Road from April 25 – October 25, 2016.

- * ZBA #15-14, Jevin Weyenberg, 8314 Portage Road: Requesting a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 8314 Portage Road; or b) a use variance to operate a medical marihuana patient-caregiver exchange at 8314 Portage Road.

- * ZBA #15-21, Brianna Hill/Jonathan Rockwood, 5090 (5092) South Sprinkle Road: Requesting: a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 5090 Sprinkle Rad; or b) an appeal of the administrative decision to not permit a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road; or c) a use variance to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road; or d) a Temporary Use Permit to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – March 28, 2016

 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. Eleven people were in the audience.

MEMBERS PRESENT: John Byrnes, Phillip Schaefer, Michael Robbe, Jeffrey Bright, Chadwick Learned, Lowell Seyburn, Randall Schau, Jay Eichstaedt, and Alexander Philipp.

MEMBERS EXCUSED:

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

APPROVAL OF THE MINUTES: Schau moved and Learned seconded a motion to approve the February 8, 2016 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #15-13, Mavcon Properties, 9110 Portage Road: Mais summarized the variance requests: a) for a four-foot wide greenstrip where a minimum ten-foot width is required; b) to provide 603 square feet of interior parking lot landscaping where a minimum 1,252 square feet is required; and c) from the requirement to provide a loading/unloading area. Steve Sielatycki, James Daly, and Pat Flanagan were present to answer questions. Mr. Sielatycki stated the variances were needed to accommodate more parking, and the plan to have a four-foot wide greenstrip with knee wall and hedge was consistent with the Lake Center Subarea Plan. Robbe inquired where the sidewalk was on the plans. Mr. Flanagan responded the plans before the Board are conceptual at this stage and did not show the sidewalk, but the formal site plan will show the sidewalk at the north end of the property. Robbe requested clarification of the knee wall and hedge placement. Mr. Flanagan responded it would be along the Portage Road frontage, but the specifics concerning the placement or type of hedge would be reviewed as part of the finalized site plan approval. Bright inquired what purpose the knee wall and hedge served. Mais stated to serve both as a means to separate the parking lot from the street and also for aesthetics. Seyburn inquired if the site plan would be reviewed by staff or by the Planning Commission. West stated that was yet to be determined. Seyburn inquired if the Board could include Planning Commission review of the site plan as a condition. Mais responded yes. Seyburn noted docks appear on the conceptual plan and inquired if the placement of docks was subject to city approval. Mais stated approval of docks on lakes is typically a function of the State. Mr. Sielatycki stated the docks were intended to provide West Lake residents an additional means to park boats at the restaurant without using off-street parking, and was, as already noted, conceptual. Seyburn inquired if the applicant had considered a different configuration for the off-street parking near the north end. Mr. Flanagan stated they had considered a number of different configurations, but settled on the proposed design, as it provided the most spaces while maintaining the required 22-foot maneuvering lane width. Byrnes inquired if the number of traffic lanes along Portage Road might be reduced in the future. Mais responded Portage Road was one of the streets being examined as part of the 'road diet' study, but as yet there were no plans to do so.

The public hearing was opened. A letter from Jean Truitt, 9029 Portage Road was read. The public hearing was closed.

A motion was made by Seyburn, seconded by Schau, to grant variances for: a) a four-foot wide greenstrip where a minimum ten-foot width is required; b) to provide 603 square feet of interior parking lot landscaping where a minimum 1,252 square feet is required; and c) from the requirement to provide a loading/unloading area conditioned upon: 1) installation of a 3-foot high knee-wall and landscape hedge as illustrated on the concept plan; 2) installation of a sidewalk to connect the northeast corner of the parking lot to the southeast corner of the Ames Drive/Portage Road intersection; and 3) that finalized plans for the aforementioned knee-wall/hedge and sidewalk be subject to review and approval by both city staff and the Planning Commission, 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 size

 DRAFT

and configuration of the property and its previous use; the variance is necessary for the preservation and enjoyment of a substantial property right, the right use the property as it presently exists which is similar to that possessed by other properties in the same zoning district and in the vicinity; the immediate practical difficulty causing the need for the variance was not caused 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; and that nothing in this motion shall imply any approval related to the dock depicted in the conceptual plan. In addition, the application and supporting material, 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. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-17, Bickford Cottage Assisted Living and Memory Care, 4707 West Milham Avenue: Mais summarized the variance request to retain an approximate 8,400 square foot building addition along the west side of the existing Bickford Cottage facility to within 10-feet of the west property line (side yard) where a 30-foot setback is required. Bill Crandall was present on behalf of the property owner, Richard Eby, to answer questions. Schau inquired which portion of the building encroaches into the 30-foot setback. Mr. Crandall stated the 80-foot wide addition currently under construction and also where a new dumpster is located. Mr. Crandall added they are about four weeks from completion. Learned inquired if there was need for any traffic on the west side of the addition apart from lawn maintenance. Mr. Crandall responded no. Seyburn inquired how far the addition was from residences to the south. Mr. Crandall stated about 130 feet. Bright inquired if the applicant had approached the property owner to the west about purchasing a portion of the property. Mr. Crandall stated Mr. Eby did approach the owner about purchasing a 20-foot wide portion but the owner was not interested in selling at that time. Bright inquired if the applicant was aware of whether the neighbor had any objections to the 10-foot setback. Mr. Crandall stated the project had already gone through the Planning Commission and the neighbor had not objected during the process at any time. Learned inquired of staff if any objections from the neighbor had been received during the Planning Commission review. Mais stated no.

A public hearing was opened. Phillip Reed, counsel for Michael Busche, the property owner to the west (4721 West Milham Avenue) stated that while an offer had been made to purchase a portion of Mr. Busche's property, he had not responded yet because he was busy trying to evaluate what impact the sale would have on the development of his property. Mr. Reed stated his client approached Mr. Eby with a counter-proposal on March 25, 2016 and suggested a land swap involving a 20-foot wide portion of the southern half of Mr. Busche's property in exchange for a 20-foot wide portion of the northern half of Mr. Eby's property. Mr. Reed stated that while a variance might be the most convenient way to deal with the encroachment, he thought a remedy other than a variance should be the starting point to deal with the situation. Mr. Reed stated his client was not necessarily opposed to the building addition, but wanted the opportunity to explore what impacts a variance or a land exchange would have on the value of his property before the Board moved forward with the variance request. Mr. Reed added that Mr. Eby advised him a 10-foot wide area along the west side of the Bickford Cottage property is zoned B-2 and he questioned if it was accurate. Robbe stated Mr. Busche did not object when the Planning Commission approved the rezoning and the site plan. An error had been made and there were two remedies: obtain a variance or acquire additional land. Robbi indicated it is possible that Mr. Busche's sudden objection to the 10-foot setback (as soon as he learned a variance was needed) might be intended to hold Mr. Eby hostage during negotiations. Mr. Reed disagreed and stated his client was only asking for more time so he could better understand the issues. Seyburn clarified the chronology of events, beginning with the rezoning on January 20, 2015, the special land use permit and site plan approval on March 19, 2015 and notification for the variance request on March 11, 2016. Seyburn inquired asked when the setback error was discovered. West stated it was discovered about three weeks ago and that most uses in OS-1 have a 10-foot setback as shown in the Schedule of Regulations. However, special land uses in the OS-1 district have a 30-foot setback. The Zoning Code was amended in 1983 to provide greater setbacks for large and more intensive land uses of an institutional nature, such as hospitals and colleges, but also included less intensive uses like child daycare centers or assisted living facilities. West added that exceptional circumstances are present and the Board should consider the unique circumstances

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associated with this request. With regard to Mr. Reed's earlier comment, West confirmed the west 10 feet of the Bickford Cottage property is zoned B-2 and was done purposefully to preserve the building area on Mr. Busche's property, which eliminated the requirement for a 75-foot building setback.

Learned stated that although Mr. Busche had no objections earlier, perhaps he may not have known or understood he had an earlier opportunity to object to a 10-foot setback and maybe the Board should consider tabling the request to give both parties an opportunity to reach a compromise. Attorney Bear asked Mr. Reed to clarify what action he was requesting of the Board. Mr. Reed stated his client was asking for more time before the Board moves forward with the request. Bright inquired when the next meeting was scheduled. Mais responded April 11, 2016, but encouraged the Board to move forward with the request tonight and consider whether a side yard setback variance is warranted. Mr. Busche stated he was confused by what was going on and wanted the item tabled to give him more time to understand the issues. Seyburn inquired if the applicant thought there was information being withheld. Mr. Busche said he did not know, but thought the situation was strange. Learned inquired if a postponement to the April 11th meeting would adversely affect the applicant. Mr. Crandall said no, but anything affecting their certificate of occupancy would be a hardship. Schau inquired if staff could issue a certificate of occupancy given the pending nature of the case. Mais stated a permanent certificate of occupancy could not be issued without zoning compliance. Mr. Crandall stated he did not see that their position changing even if the Board tables the matter and asked the Board to move forward with the request tonight. The public hearing was closed.

A motion was made by Seyburn, seconded by Learned to postpone the item until the April 11, 2016 meeting. Upon roll call vote: Philipp-Yes, Robbe-No, Seyburn-Yes, Bright-Yes, Learned-Yes, Schau-No, Schaefer-Yes. The motion passed 5-2.

ZBA #15-18; Dockerty Memory Care, 710 & 732 East Centre Avenue: Mais summarized the requested variances to allow construction of an approximate 31,900 square foot 42-bed memory care facility to a) within 12-feet of the east property line (side yard) where a 30-foot setback is required, and b) within 25-feet of the south property line (rear yard) where a 30-foot setback is required. Tim Dockerty stated in May of 2015 he submitted a conceptual plan for a memory care facility that showed a 10-foot setback. Staff advised that a zoning change from B-1 to OS-1 would be needed and he subsequently requested the property be rezoned to OS-1 in November 2015. It was not, however, until last month when it was discovered a 30 foot setback is needed for a special land use. Robbe inquired what the maximum permitted height and number of stories a building could be in an OS-1 zone. West replied 25 feet and one story.

A public hearing was opened. Gary Crankshaw, 810 East Centre Avenue and Kate Dunckel, 719 Pasma spoke in support of the request. The public hearing was closed.

A motion was made by Learned, seconded by Schau, to approve variances to allow construction of an approximate 31,900 square foot 42-bed memory care facility to a) within 12-feet of the east property line (side yard) where a 30-foot setback is required, and b) within 25-feet of the south property line (rear yard) where a 30-foot setback is required 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 unusual shape of the zoning lot and the surrounding zoning/land use pattern; the variance is 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; the right to develop a property with setbacks similar to other uses in the district; the immediate practical difficulty causing the need for the variance request was not created by the applicant; and the variance would not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, 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 action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Abstained, Bright-Yes, Robbe-No, Schau-Yes, Schaefer-Yes, Byrnes-Yes. The motion passed 6-1-1.

 **DRAFT**

OTHER BUSINESS: Bright stated he understood there may be as many as ten items on the April 11, 2016 agenda and asked which Board members might be available for a special meeting on April 18, 2016 in the event another meeting would be needed to accommodate all the applicants. Schau and Learned indicated they would not be available on that date but all other Board members would be available. Seyburn indicated he will likely not be available for the May 9, 2016 regular meeting.

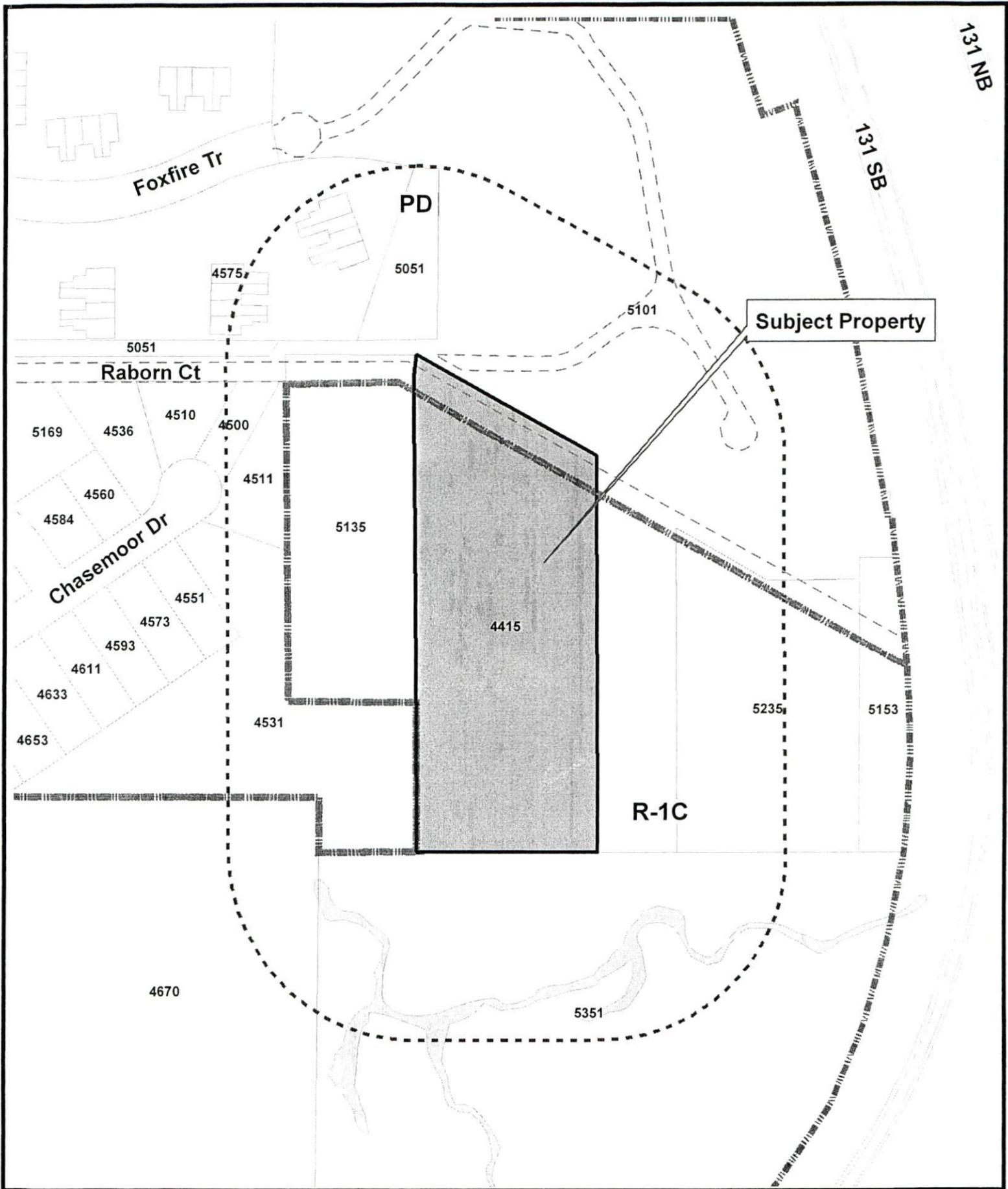
Learned stated he thought the Board should consider amending its rules of procedure concerning potential conflicts of interest and provided proposed language to each Board member for consideration at a future meeting

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



Legend

-  Zoning Boundary
-  Subject Property
-  Notification Area

ZBA 15-11

4415 Raborn Court



1 inch = 200 feet



Legend
[Yellow Outline] Subject Property

Aerial Photography 4415 Raborn Court



1 inch = 100 feet

TO: Zoning Board of Appeals **DATE:** April 1, 2016
FROM: Vicki Georgeau, ^{VG} Director of Community Development
SUBJECT: ZBA #15-11, Christine Pelletier, 4415 Raborn Court; R-1C, One Family Residential.
CODE SECTION: 42-121(B)(1) Accessory Buildings; p. CD42:29

APPEAL: Requesting variances to: a) retain a 13-foot by 13-foot (169 sq. ft.) two-story accessory building in the side (east) yard that is 16 feet in height where a maximum 14-foot height is permitted and; b) retain a partially constructed 58-foot by 19-foot (1,102 sq. ft.) two-story accessory building in the rear (south) yard that is 19.5 feet in height where a maximum 14-foot height is permitted.

STAFF RECOMMENDATION: The Board granted variance a) at the February 8, 2016 meeting, but postponed action on request b) until the April 11, 2016 meeting to give the applicant the opportunity to investigate the extent of work necessary to bring the barn into compliance with code and secure estimates for the same. Per the attached email, the applicant has encountered difficulties and delays in obtaining the necessary information. It is recommended the applicant be afforded additional time to obtain this information, and the item be postponed until the May 9, 2016 hearing.

PRACTICAL DIFFICULTY: Size and topography of property and presence of mature trees, the buildings are not visible to adjacent properties, and location of buildings on property noted by applicant. See suggested motion form.

Jeff Mais

From: Mike & Chris Pelletier <mikeonrock@yahoo.com>
Sent: Tuesday, March 29, 2016 4:24 PM
To: Jeff Mais
Subject: Request for postponement

Dear Board Members:

I have been attempting to get the necessary bids and information for the upcoming meeting on April 11th. Unfortunately there have been some difficulties and delays to acquire the necessary information for you to review before the meeting. I request that the Board would allow a postponement of the meeting until May 9th to give me some additional time to put the information together for your review. Let me know if this is acceptable to you. Thank you.

Sincerely,

Christine Pelletier



RECEIVED
JAN 06 2016

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 1/6/2016
Name of Applicant Christine Pelletier Christine Pelletier
Print Signature
Applicant's Address 4415 Raborn Ct, Portage, MI 49024 Phone No. 269-655-5970
Name of Property Owner (if different from Applicant) _____
Address _____ Phone No. _____

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

Street Address 4415 Raborn Ct, Portage, MI 49024

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: owner

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 41-121 Paragraph B
Regarding: Use Area Yards _____
Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): buildings were built without permits and I would like to keep two of them.

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: _____

FOR STAFF USE

Application Number: <u>20A 15-11</u>	Filing Date: <u>1/6/16</u>	Tentative Hearing Date: <u>2/8/16</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.)
The two buildings I would like to keep were built without permits. (See attached photograph of Barn and Boiler building.) They both exceed the fourteen foot (14') height limit. (See attached sheet)
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
Yes.
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
No, we can't use these two buildings without this variance
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.)
As the buildings have already been built, it is required for reasonable use.
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 buildings are not visible from the road nor from any neighboring structure. These two structures create no adverse affect to my neighbors. (See attached sheet)
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.)
These buildings are not for commercial use. They have no effect on traffic, noise, or other problems.
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.)
My husband and eldest son started construction of the buildings. I had no knowledge of any permit requirements. I moved away after my husband died
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
The intent of the Zoning Ordinance is to make sure the actions of the homeowners are safe and do not unreasonably harm neighbors. I believe (see attached sheet)

Christina Peltier
Signature of Applicant

1/6/2016
Date

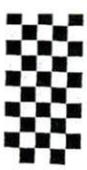
Reason for Variance: (Continued)

1. The square footage of the barn would have required permission from the Planning Committee to build.

5. The buildings were built around 2010. We never had a complaint from anyone regarding these buildings.

7. in 2012. I anticipated my children buying the property. When this did not work as planned, I was forced to evict my children from the home. I am trying to bring the property into compliance with the City of Portage without the unnecessary hardship that removing the buildings would cause.

8. these two structures can meet the spirit of the Portage Zoning Ordinance.



1/26/16

TO: DEPARTMENT OF COMMUNITY DEVELOPMENT
ATTN: VICKI GEORGEAU

SUBJECT: PELLETIER REQUEST FOR VARIANCE

TOTAL PAGES: 2

FROM: KAREN/WAYNE DEBROSKE

PHONE: 269-372-0872

Karen & Wayne DeBroske
4559 Foxfire Trail
Portage, MI 49024
269-491-0102

January 25, 2016

Portage
Department of Community Development
7900 South Westnedge Avenue
Portage, MI 49002

RE: Christine Pelletier, 4415 Raborn Court request for variances

Dear Zoning Board:

I feel there should NOT be a varlance allowed for a) to construct a new building that is 16 ft in height, and b) she should not be allowed a 19.5 ft accessory building as stated in your letter of 1/22/16. We need to avoid the excess bulldings and bulldings over the maximum height. The property is already too unsightly. The ordinances are in place for a reason and we need to follow them to keep up the appearance of our community and neighborhood.

Thank you,


Karen DeBroske


Wayne DeBroske

TO: Zoning Board of Appeals **DATE:** January 29, 2016
FROM: Vicki Georgeau, ¹⁵¹Director of Community Development
SUBJECT: ZBA #15-11, Christine Pelletier, 4415 Raborn Court; R-1C, One Family Residential.
CODE SECTION: 42-121(B)(1) Accessory Buildings; p. CD42:29

APPEAL: Requesting variances to: a) retain a 13-foot by 13-foot (169 sq. ft.) two-story accessory building in the side (east) yard that is 16 feet in height where a maximum 14-foot height is permitted and; b) retain a partially constructed 58-foot by 19-foot (1,102 sq. ft.) two-story accessory building in the rear (south) yard that is 19.5 feet in height where a maximum 14-foot height is permitted.

STAFF RECOMMENDATION:

The applicant is requesting the variance per the enclosed application. The 4.4 acre property is zoned R-1C, One Family Residential, and is adjacent to multiple family dwellings, zoned Planned Development, to the north; undeveloped properties, zoned R-1C to the south; and single family dwellings, zoned R-1C, one family residential, to the east and west. Access is provided from Raborn Court, a private drive. The property is improved with a 2,669 square-foot two-story dwelling (1,630 square feet of living area on the ground floor level) and attached 336 square-foot garage. The house and attached garage were constructed in 1959. In 1969, a permit was issued to construct a 672 square-foot detached garage in the side (west) yard. More recently, several other accessory buildings have been constructed without permits (see attached notated aerial photo) including:

1. 20-foot by 17-foot covered wood storage crib;
2. Partially constructed 24-foot by 32-foot attached greenhouse;
3. 8-foot by 12-foot clapboard shed;
4. Small chicken coop;
5. 6-foot by 8-foot shed;
6. 13-foot by 13-foot two-story accessory building; and
7. Partially constructed 58-foot by 19-foot two-story barn.

The applicant has indicated buildings 1-4 listed above (wood crib, greenhouse, clapboard shed, and chicken coop) will be removed but wishes to retain the 6-foot by 8-foot shed, 13-foot by 13-foot accessory building and 58-foot by 19-foot barn. The applicant will obtain a permit for the 6-foot by 8-foot shed as no special approvals are necessary. Variances to retain the two-story buildings are necessary since the buildings are 16 and 19.5 feet in height, respectively (refer to attached photographs). Additionally, and if the variance is granted, the applicant would next need to obtain approval from the Planning Commission regarding the 1,102 square foot barn since the area of this building, when combined with the total area of the other accessory buildings, will exceed the ground floor of the dwelling by 697 square feet.

While building permits were not obtained, the applicant indicates that due to the size of the property and location of the accessory buildings, the buildings cannot be seen from the street or from neighboring dwellings and the subject property and the adjacent properties are densely wooded. An approximate 18-foot change in elevation exists between Raborn Court at the north end and the barn in the rear (south) yard. The intent of the maximum 14-foot accessory building height is to limit potential negative impacts on neighboring properties. This maximum height requirement is particularly important in more densely developed neighborhoods where dwellings and accessory buildings are in close proximity. The nearest dwelling (5235 Raborn Court) is approximately 270 feet from the 13-foot by 13-foot accessory building and 280 feet from the barn. The size of the subject property, , topography, screening fence, and presence of mature vegetation, effectively screen both buildings from view of adjacent properties.

If the Board finds a practical difficulty exists, the variances may be granted. It is recommended that any variance approval be conditioned upon the following:

1. Obtain a building permit for both structures within 30 days;
2. The buildings be brought into compliance with all applicable building codes within six months; and
3. The 20-foot by 17-foot covered wood storage crib, partially constructed 24-foot by 32-foot attached greenhouse, 8-foot by 12-foot clapboard shed and chicken coop be removed within six months.

**PRACTICAL
DIFFICULTY:**

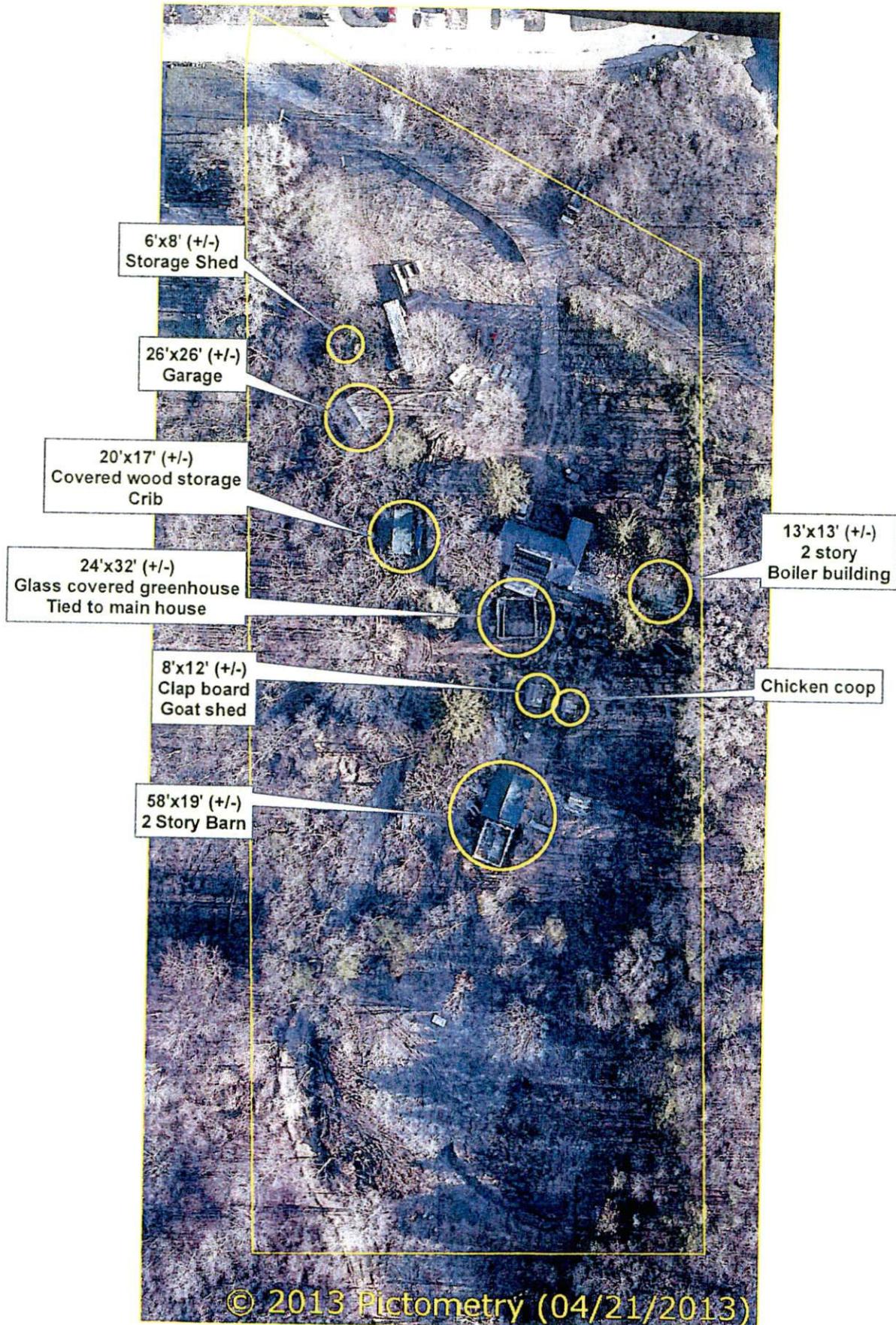
Size and topography of property and presence of mature trees, the buildings are not visible to adjacent properties, and location of buildings on property noted by applicant. See suggested motion form.



Aerial Photography - 2013

4415 Raborn Court

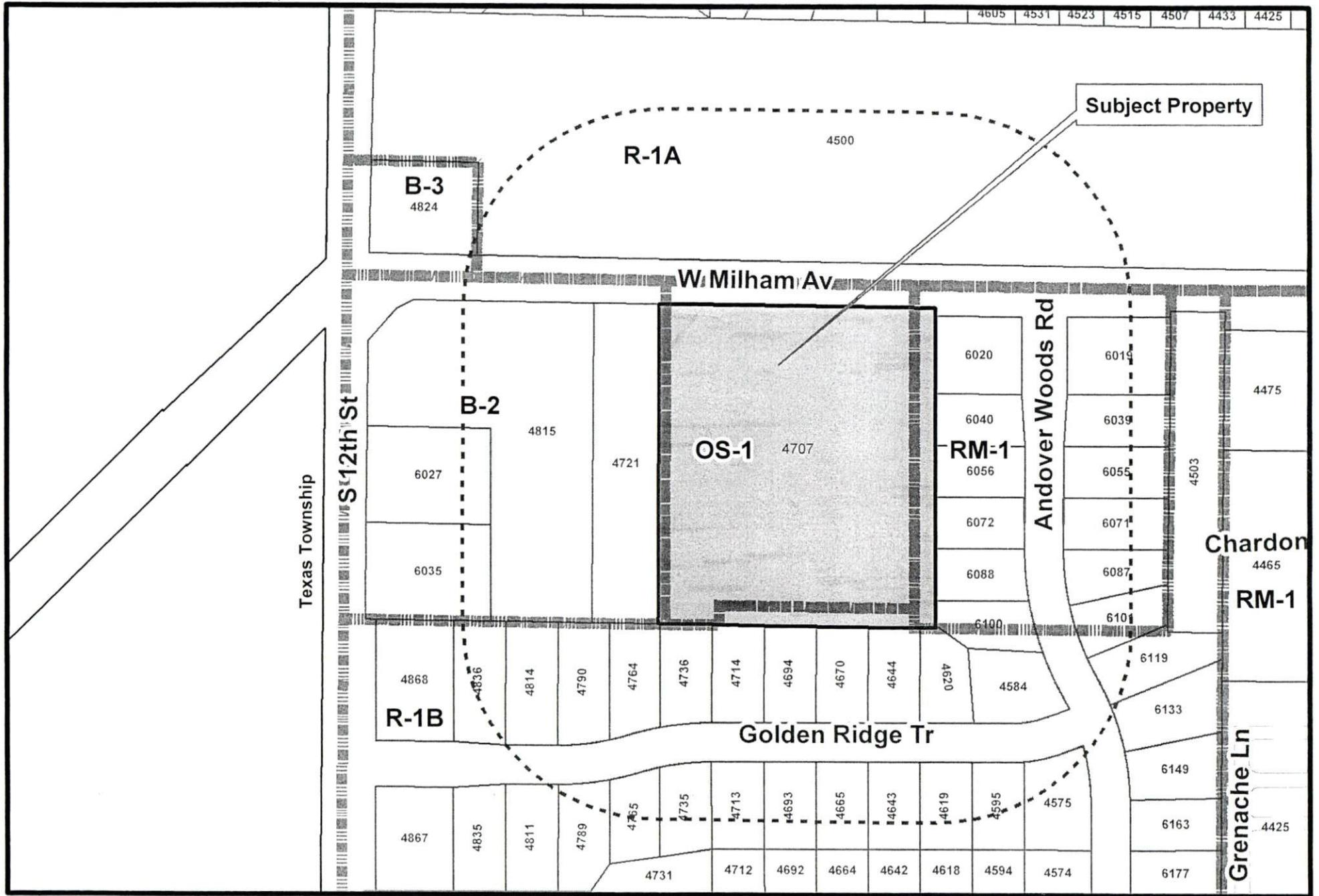
(Overhead)











-  Zoning Boundary
-  Subject Property
-  300' Notification area

ZBA #15-17
4707 West Milham Avenue



1 inch = 200 feet



W Milham Av

Subject Property

4500

4815

4721

6020

6040

6056

6072

6088

6100

4707

4814

4790

4764

4736

4714

4694

4670

4644

4620

4584

Aerial Photo 4707 West Milham Avenue

 Subject Property



Date of Photography: March 2013

1 inch = 100 feet



Department of Community Development

RECEIVED
MAR 02 2016
COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 3/2/2016
Name of Applicant Richard Eby Richard Eby
Print Signature

Applicant's Address 13795 S. Murken, Olathe, Ks Phone No. 913-254-2225

Name of Property Owner (if different from Applicant) HCP Eby Portage MI L.L.C.

Address 1920 Main St, suite 200, Irvine, CA Phone No. 949-407-0414

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

Street Address 4713 W. Melham Av

For Platted Property: Lot _____ of Parcel/ID: 00007-100-0 (see Attached) 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: Developer/Leasee/operator of Bickford Assisted Living residence Also construction manager of expansion

Application Fee _____ (Residential Uses) N/A (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 42-243 Paragraph A (2)

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: _____

FOR STAFF USE

Application Number:	Filing Date:	Tentative Hearing Date:
Previous Application Filed Regarding This Property:		

Reason For Variance *See Attached*

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.)

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

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

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.)

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.)

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.)

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.)

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

Richard Eby

Signature of Applicant

3/2/2016

Date

Land Identification and Description

Parcel ID: 00007-100-0-

Common Address: 4713 W Milham Ave, Portage MI

Legal description:

(A)The land in the City of Portage, County, Kalamazoo, generally described as 4713 West Milham Ave, legally described as Sec 7-3-11, Begin N LI SEC 7 at PT 490.3 ft E of NW COR SD SEC CONT TH E ALG SD N LI 82.5 ft TH S PAR W LI SD SEC 528 ft Th W PAR N LI SD SEC 528 TH W PAR N LIN SD SEC 82.5 FT TH N 528 FT TO PT OF BEG (the "Land");

Reason For Variance (response to questions)

1. The 1 AC Parcel generally described as 4713 W Milham Ave, Portage MI was purchase to allow construction of a memory care addition to the existing Bickford residence at 4707 W. Millham Av. The parcel was rezone from B-2 to OS-1 and a special use and a site plan approved by the City of Portage. When construction was 70% complete it was determined that there was an incorrect interpretation of the setback requirement for a special use within an OS-1 district. The approved site plan and construction documents show a 10 ft. setback along the west property line but has been recently identified as requiring a 30 ft. setback. The building addition currently has a 77 ft. length of building which is 12 ft. from the property line. A zoning variance is being requested to amend the setback requirement from 30 ft. to 10 ft. for the projection of the building, approved and under construction, onto the west property line. See attached "
2. The 1 Ac Parcel generally described as 4713 W Milham Av. was rezoned from B-2 to OS-1 except for the west ten feet (10 ft.) along the west property line. This was done for the convenience and benefit of the parcel to the west of the property line. Maintaining a ten foot wide strip along the east side of the west property as B-2 zoning would allow the west property owner to maintain a 10 building setback. However, the property east of the property line would be required to maintain a 30 foot setback as result of being a special use within OS-1 zoning. This places and unequal and undue burden on the east property owner.
3. The current addition is 70% complete and to achieve a 30 foot setback would require demolition, new architectural plan, city plan review and new construction.
4. The requested zoning variance is to reduce the setback to 10 feet for that portion of the current approved building not in compliance. The 30 foot building setback will remain along the remainder of the property lines.
5. This variance will have NO impact on the adjacent property owner's ability to develop the property. Had the previous B-2 zoning been maintained a building would be permitted to be constructed within 10 feet of the property line, which is the same distance off the property line as the new addition. The Special Use site plan which included the 10 foot setback was approved by the Planning Commission at a public hearing with no opposition from neighboring residence or property owners. The approved single story expansion has a residential finish and severs as a buffer transition between the residential neighborhood to the east and the B-2 zoning west of the property.
6. The Variance has NO impact of traffic. The Memory Care expansion will have less impact on traffic compared to the potential traffic generated by developing the property as B-2.

7. The zoning variance is being requested due to a misinterpretation of the setback requirements during the Entitlement process and Plan Review which resulted in the minor setback intrusion.
8. The building setback requirements are intended to protect adjacent property owner from overcrowding and encroachment along property lines. The previous B-2 zoning, on both sides of the property line, would allow a 10 foot building setback for each owner. The current physical condition meets this intent.

ZONING REQUIREMENTS

ZONING
THE SITE IS ZONED OS-1 (OFFICE SERVICE)
RETRACTED FRONT - 27'
SIDE (EAST) - 10'
SIDE (WEST) - 10'
REAR - 21'

PROPOSED USE
CONVEYING FACILITY
CONSTRUCTION TYPE 2A

PARKING
TOTAL PARKING SPACES REQUIRED:
1 SPACES / 1 HALF ROOM
OR MORE = 1 SPACES

TOTAL ADDITIONAL PARKING PROVIDED = 24 SPACES
ADDITIONAL BARRIERS SPACES REQUIRED = 2
ADDITIONAL BARRIERS SPACES = 2 REQUIRED
ALL BARRIERS SPACES REQUIRED FOR ADA REQUIREMENTS
TYPICAL PARKING SPACE DIMENSION = 9'x18'

BUILDING INFORMATION
THE EXISTING ACCESSORY BUILDING HAS A 24,500 SQ FT
SLAB ON GRADE

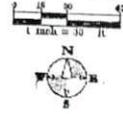
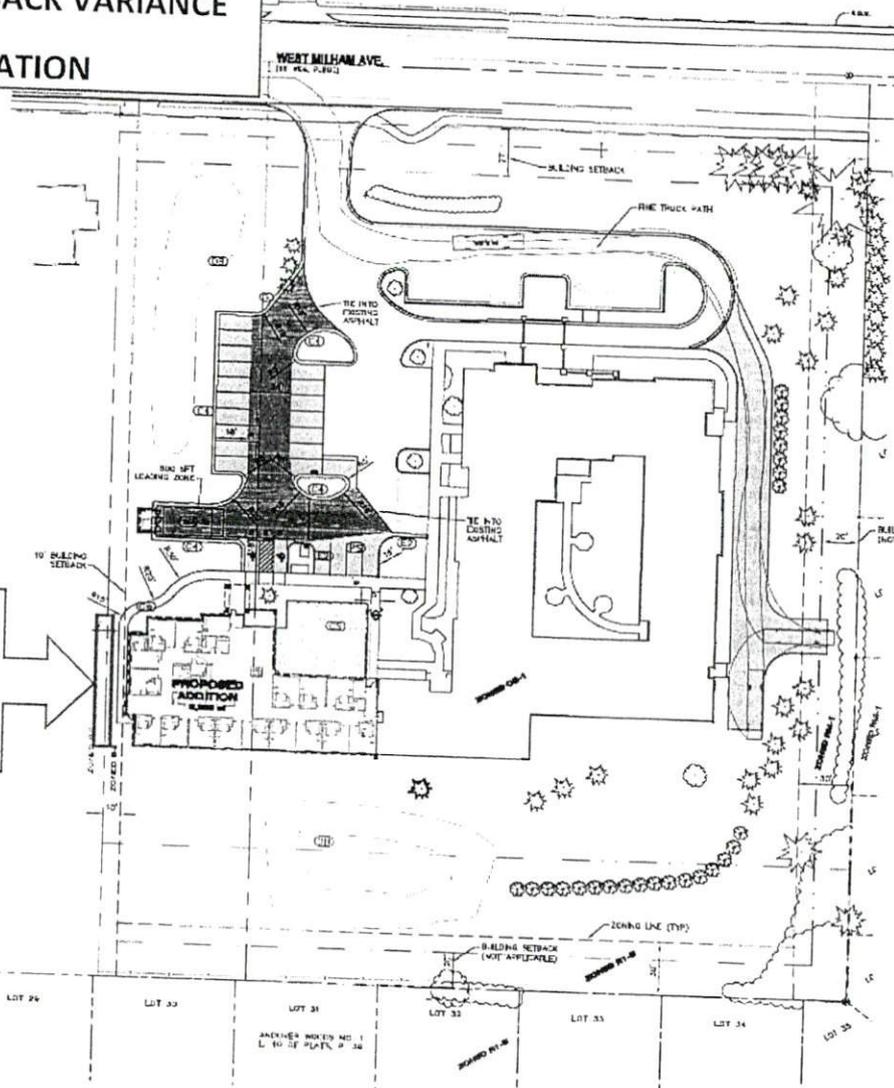
THE PROPOSED BUILDING HAS 8,300 SQ FT SLAB ON GRADE
USE FLOOR PLAN AND ELEVATIONS FOR MORE DETAIL
BUILDING HEIGHT = 22' (EXISTING BUILDING)

INTERIOR LANDSCAPING
ADDITIONAL PARKING 42,144 SQ FT
INTERIOR LANDSCAPE NOT REQUIRED FOR
LOTS SHALL BE 10-18, 18-20, 20-22, 22-24

GENERAL NOTES

1. THE CONTRACTOR SHALL LOCATE ALL ACTIVE UNDERGROUND UTILITIES PRIOR TO STARTING WORK AND SHALL CONTACT HIS SUPPLIERS IN A MANNER AS TO DETERMINE THAT THESE UTILITIES NOT REQUIRING RELOCATION WILL NOT BE DISTURBED.
2. ALL REPAIRED FILL FOR THIS PROJECT SHALL BE SELECTED ENHANCED MATERIAL FROM THE SITE APPROVED BY THE ENGINEER OR CLAY IS GRANULAR MATERIAL FROM BORROW AND SHALL BE THE CONTRACTOR'S RESPONSIBILITY.
3. EXISTING UTILITY LOCATIONS INDICATED ON THESE PLANS, ALL MATERIALS AND WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE MINIMUM REQUIREMENTS OF TRANSPORTATION STANDARD SPECIFICATIONS FOR ALBERTA FOR PAVED PLATE SANITARY SEWER CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND REQUIREMENTS.
4. ALL WORK SHALL CONFORM TO ALL LOCAL, STATE AND FEDERAL LAWS, RULES AND REGULATIONS IN FORCE AT THE TIME OF CONSTRUCTION.
5. FOR PROTECTION OF UNDERGROUND UTILITIES, THE CONTRACTOR SHALL CALL 3-800-862-7171 AT A MINIMUM OF THREE FULL WORKING DAYS EXCLUDING SATURDAYS AND HOLIDAYS PRIOR TO BEGINNING EACH ROUTINE UTILITY WORK. THIS DOES NOT RELIEVE THE CONTRACTOR OF THE RESPONSIBILITY OF NOTIFYING OWNERS WHO MAY NOT BE A PART OF THE "CALL BEFORE YOU DIG" SYSTEM.
6. ANY RETAINMENT OR CONCRETE PAVEMENT, SANITARY SEWER, SANITARY SEWER SERVICE LEAKS, OR STORM SEWER WHICH IS DAMAGED BY THE CONTRACTOR DURING HIS OPERATIONS SHALL BE REPAIRED TO THE OWNER'S SATISFACTION AND AT THE CONTRACTOR'S EXPENSE.
7. INSETS SHALL BE OF 8-METER NOTED AND OF PRECAST CONCRETE TYPE C CATCH BASIN AND INLET COVER TYPES SHALL BE 2.1M DIA. 750MM W/TYPE M1 GRADE OR APPROVED EQUAL. TYPE S SANITARY MANHOLE COVERS SHALL BE 1.2M DIA. 750MM W/TYPE M1 GRADE OR APPROVED EQUAL.
8. IF ANY DRIVING DISCONTINUES, OF THE ENGINEER PRIOR TO COMMENCEMENT.
9. ALL EXTERIOR CONCRETE SHALL BE FINISHED, CURING SEAL.
10. THE CONTRACTOR SHALL REMOVE IN THE RE-GRADING OF LANDSCAPE MATERIAL OF ANY EXCESS SOIL OF THE PROJECT.
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CONSTRUCTING THE 10' BUILDING SETBACK.
12. ALL GRANULAR FILL UNDER THE 10' BUILDING SETBACK SHALL BE ADDED COMPACTING EACH LIFT TO AT LEAST 95% RELATIVE COMPACTION ON EACH LIFT AS INDICATED.
13. ALL COMPACTOR SHALL BE ADDED COMPACTING EACH LIFT TO AT LEAST 95% RELATIVE COMPACTION ON EACH LIFT AS INDICATED.
14. REMOVE AND REPLACE WITH CONTROLLED FILL ANY AREAS THAT HAVE BEEN SETTLED BY RAINS, FREEZING, CONSTRUCTION EQUIPMENT, ETC.
15. ALL CURB RACKS AND ENDINGS ARE TO EDGE OF ST.
16. STORM SEWERS SHALL BE CONCRETE. SOLID WALL, 400MM DIA. 1200MM DEPT. MANHOLE TO 1500MM DIA. TYPE S OR APPROVED EQUAL INSTALLED PER THE REQUIREMENTS OF SUBD AND THE KALAMAZOO COUNTY PLUMBING COMMISSION. MANHOLE TESTING SHALL BE PERFORMED PRIOR TO POURING. USE CONCRETE TYPE WHERE INDICATED.
17. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE MINIMUM MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES, REGULATORY SIGNAGE (IF SPECIFIED) SHALL BE PER THE MCDOT.
18. THE CONTRACTOR SHALL INSTALL YELLOW FENCE AROUND ALL EXCAVATIONS TO BE LEFT OPEN UNDEGRADED AS NEARLY AS POSSIBLE.
19. ALL UNSTABLE SURFACE MATERIAL MUST BE REMOVED TO A MINIMUM DEPTH OF 34" BELOW THE TOP OF THE SUBGRADE OR AS DETERMINED BY THE COUNTY ENGINEER.
20. ALL WORK SHALL COMPLY WITH THE PROVISIONS OF PART 11 OF THE ENGINEER AND SETBACKS ACT (P.A. 431 OF 1994, AS AMENDED) AND AS AMENDED BY THE KALAMAZOO COUNTY ZONING COMMISSION.
21. ALL WATER MAIN SHALL BE CONSTRUCTED TO THE CITY OF KALAMAZOO STANDARDS.

REQUESTED SETBACK VARIANCE ILLUSTRATION



NOTE LEGEND

- EXISTING PAVEMENT
- NEW PAVEMENT
- CONCRETE WALK
- CONCRETE SURFACE
- PARKING STRIP (17'x18')
- DETERMINED
- LIGHT DUTY PAVEMENT
- HEAVY DUTY PAVEMENT
- CONCRETE SIDEWALK PAVEMENT
- CONCRETE CURB AND GUTTER
- FIRE LINES
- FLAT DUNE FOR 30'x30' REPAIR



811 Know what's below. Call before you dig.

ALL UTILITIES AS SHOWN ON THESE PLANS ARE THE PROPERTY OF THE CITY OF KALAMAZOO. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF KALAMAZOO. FIELD WORK PERFORMED BY LANDTECH PROFESSIONAL SERVICES.

Jeffrey A. Stueck, P.E.
10000
2800 S. WEST 11TH AVENUE
KALAMAZOO, MICHIGAN 49008
(269) 342-1100 FAX 269-532-1891
www.landtech.com



DATE: 2/12/20
SCALE: AS SHOWN
PROJECT: BICKFORD COTTAGE BUILDING ADDITION
CLIENT: THE EBY GROUP

LAYOUT PLAN
BICKFORD COTTAGE BUILDING ADDITION
THE EBY GROUP

Sheet Title
Project
Client
2/12/20
C-2

TO: Zoning Board of Appeals **DATE:** March 18, 2016

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

SUBJECT: ZBA #15-17, Bickford Cottage Assisted Living and Memory Care, 4707 West Milham Avenue; OS-1, Office Service with the exception of west 10-feet (B-2, Community Business), east 30-feet (RM-1, Multiple Family Residential) and south 30-feet (R-1B, One Family Residential).

CODE SECTION: 42-243(A)(2), Site Development Requirements, p. CD42:71

APPEAL: Requesting a variance to retain an approximate 8,400 square foot building addition along the west side of the existing Bickford Cottage facility to within 10-feet of the west property line (side yard) where a 30-foot setback is required.

STAFF RECOMMENDATION: The applicant is requesting the above referenced variance per the enclosed application, site plan, and related materials. As information for the Board, the approximate 8,400 square foot building expansion of the Bickford Cottage facility received Planning Commission approval and is currently under construction. A summary of events is provided below.

On January 20, 2015, City Council rezoned the western approximate 1.0 acre of the subject site from B-2, community business to OS-1, office service to facilitate property acquisition and expansion of the Bickford Cottage facility. On March 19, 2015, the Planning Commission approved a special land use permit and site plan to allow construction of the 16-bed memory care addition along the west side of the existing 24,500 square foot Bickford Cottage Assisted Living facility. On October 14, 2015, the Department of Community Development issued a building permit for the memory care addition and construction is nearing completion (occupancy request expected in the next 30-45 days).

The approved site plan for the approximate 8,400 square foot building addition identifies a 10-foot setback from the west property line (side yard) where a 30-foot setback is required. Regrettably, the Department of Community Development did not identify this building setback issue during administrative review of the site plan and subsequently recommended to the Planning Commission approval of the site plan with a portion of the building setback 10-feet from the west property line. While principal permitted uses in the OS-1 district (e.g., office buildings, medical clinics, banks/credit unions, art/photographic studios, personal service establishments) typically have a 10-foot side yard building setback requirement, special land uses in the OS-1 district, with the exception of funeral home related establishments, have a larger 30-foot building setback requirement from all property lines. This requirement is not listed in Section 42-350, Schedule of Regulations, but is contained in Section 42-243, Site Development Requirements in the OS-1 district.

As stated above, the 4.8 acre property is primarily zoned OS-1, office service and occupied by the 24,500 square foot Bickford Cottage Assisted Living facility (constructed in 2005), the approximate 8,400 square foot memory care addition (currently under construction) and associated site improvements. Single family residences located in the Andover Woods subdivision and zoned R-1B, one family residential and RM-1, multiple family residential border the subject site to the south and east, respectively. The adjacent property to the west is vacant land zoned B-2, community business: Future development on this adjacent property will need to maintain a minimum 10-foot side yard building setback from the property line. As information for the Board, the applicant did approach the owner of the adjacent property to the west (4721 West Milham Avenue) to inquire about possibly purchasing an approximate 20-foot wide by 100-foot long strip of property to eliminate the need for the variance request. According to the applicant, the adjacent property owner was not interested in selling the property at this time.

There are unique characteristics and circumstances associated with the property and development project. Although the existing Bickford Cottage building is situated in excess of 130-feet from the south property line, significant grade differences and the presence of a storm water retention pond prevented construction of the addition along the south side of the existing facility. Expansion options to the east and north were also restricted due to limited land area and the presence of existing parking areas and the resident drop-off/pick-up loop. Importantly, only a small portion of the overall 32,900 square foot building encroaches into the 30-foot setback area along the western portion of the site. The approximate 8,400 square foot memory care addition is one-story in height and was constructed with an east-west orientation with the narrow portion of the building (approximately 80-feet in width) facing the west property line. Because of the architectural design, the actual building setback from the west property line varies from between 10-22 feet. Additionally, only two of the 16 memory care living units have windows along the west side of the building: The majority of the windows along with entrance doors are located along the north and south sides of the building addition. According to the applicant, the facility is also highly secured and residents utilize an enclosed outdoor courtyard area located within the middle portion of the existing Bickford Cottage facility for walking and recreation. As such, adequate light, air and ventilation is provided and no building/fire code related issues are present. For the above stated reasons, the building setback variance can be recommended.

**PRACTICAL
DIFFICULTY:**

Significant grade differences along southern portion of site, existing development features, surrounding zoning/land use pattern. 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:

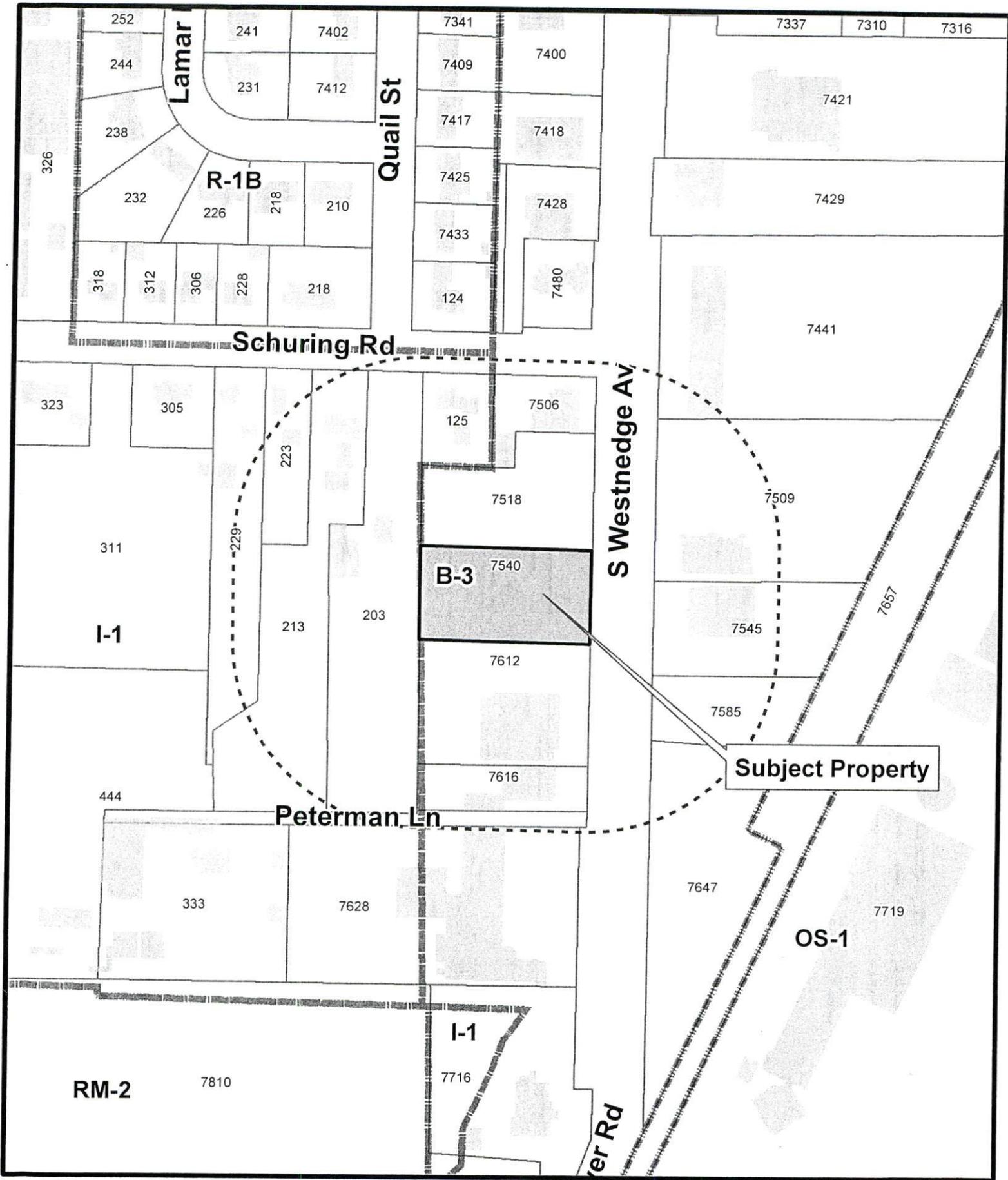
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right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

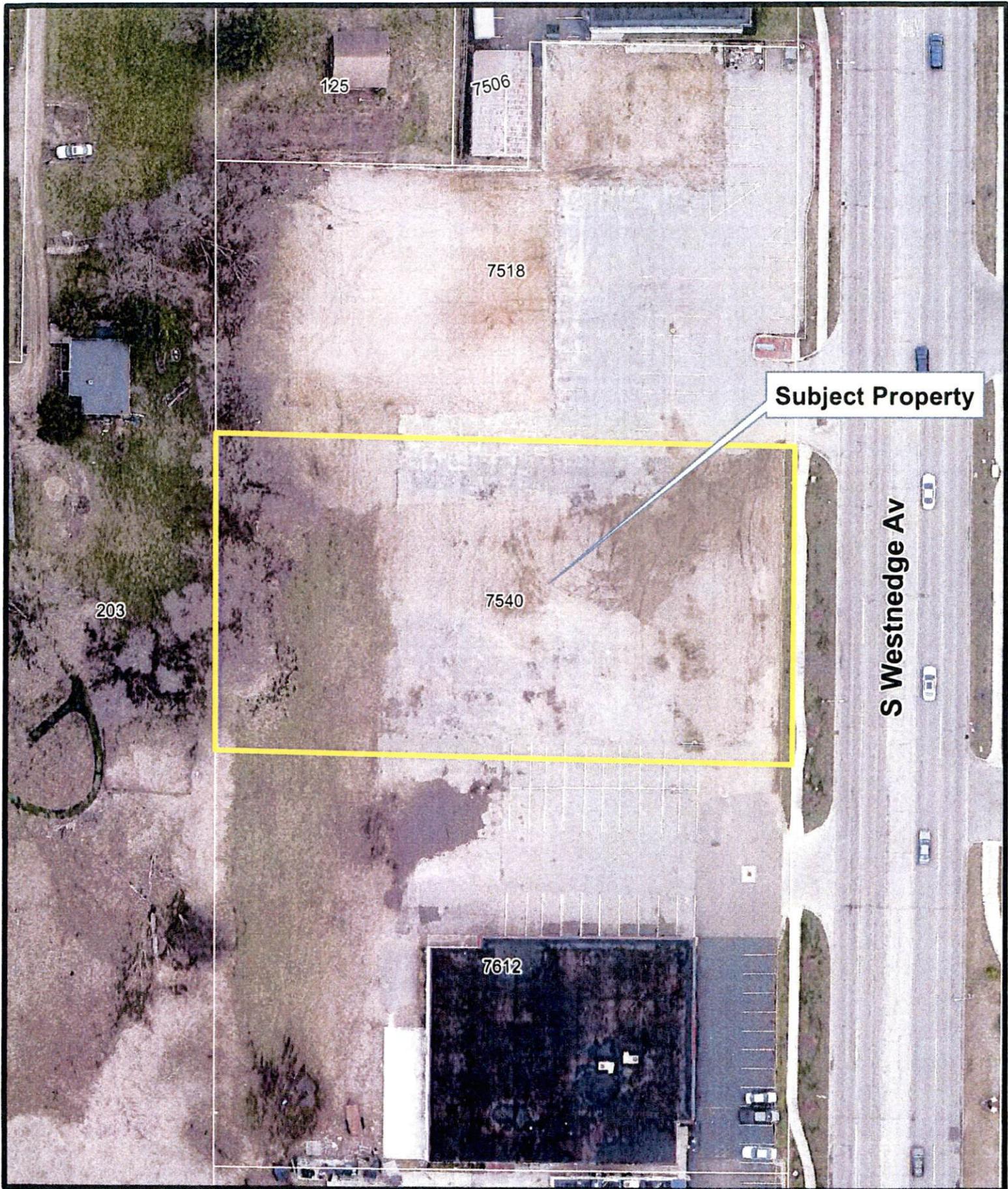


-  Zoning Boundary
-  Subject Property
-  Notification Area

ZBA 15-15
7540 South Westnedge Avenue



1 inch = 200 feet



 Subject Property

Aerial Photography

7540 South Westnedge Avenue



1 Inch = 60 feet



Department of Community Development

RECEIVED

MAR 01 2016

ZONING BOARD OF APPEALS APPLICATION

COMMUNITY DEVELOPMENT

FOR COMPLETION BY APPLICANT

Application Date 3/1/16

Name of Applicant O' Moose BBQ, Hill Ave, K200
Print EST 49009

Chris / Stu
Signature

Applicant's Address 7599 Orchard Hill Ave

Phone No. 269.377.4453

Name of Property Owner (if different from Applicant) Bill Cekola / P.C.C. LLC

Address 6625 Hunters Down, Kalamazoo, 49048

Phone No. 269.207.1024

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

Street Address 7540 S. Westnedge Ave

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: To setup and operate a food truck.

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: To obtain temporary use to operate a food truck at 7540 S. Westnedge from April 12th 2016 - October 12th 2016

FOR STAFF USE

Application Number: <u>15-15</u>	Filing Date: <u>3/1/16</u>	Tentative Hearing Date: <u>4/1/16</u>
Previous Application Filed Regarding This Property: <u>15-2</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.)

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 are growing very rapidly across the country, in many different areas. I feel it will add to the appeal of Portage and enhance the communities culinary spectrum.

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.)

We do not foresee our truck impacting the traffic flow from S. Westnedge Ave. There are 2 entrances/exits to obtain access to the parcel we are requesting variance.

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.)

N/A

Chris Shu
Signature of Applicant

3/1/16
Date

O' Moose BBQ
Christopher Slocum-Chef/Owner
7599 Orchard Hill Ave.
Kalamazoo, MI 49009

March 1st 2016

Portage Zoning Board of Appeals
7900 South Westnedge
Portage, MI 49024

RECEIVED
MAR 04 2016
COMMUNITY DEVELOPMENT

To whom it may concern,

I am writing this letter in lieu of my request to operate my food truck, O' Moose BBQ, at the location 7540 S. Westnedge avenue in Portage Michigan. We would use this parcel to park our food truck, serve and seat our guests. There will also be suggested parking for the individuals that would be dining with us (please see attached). We will prepare some of the product on the truck, but the majority of the cooking will be done at an offsite location or on our mobile smoker trailer. Our hours of operation will be seven (7) days a week from 11 am to 8pm. Please note that these hours could be subject to change if we have an offsite catering or other event to attend. We will be involved in lunchtime live (Fridays from 11-2pm) and we are awaiting the approval from surrounding farmer's markets, so that could affect the hours that we would be in operation at the 7540 S. Westnedge location.

Our truck is 26' 5" long and 8' wide; it is a 98 Champion wheelchair bus with a CAT diesel engine. Our truck is fully functional and licensed to prepare and serve food anywhere in the state of Michigan. Our truck is powered by either a generator or a 30 amp service that we plug directly into. We have a 25 gallon fresh water tank, and a 35 gallon waste water tank. A fully operational hot water heater, three compartment sink and hand washing sink are installed on the unit. The hood system and ansul, have been professionally installed and inspected by the Kalamazoo County Department of Community Health.

It is our intention to operate from April 12th 2016 through the month of October (weather permitting), with the exception of June 6th- July 6th when the fireworks setup will be in place. These dates have been reserved by Bill Cekola for a BSE. We plan to serve 80-100 guests per day and our hopes is that increases once we are established in the great community of Portage. Our ultimate goal is to build a following, provide our community with great BBQ and open a brick & mortar restaurant, to better serve our guests year round.

I have attached an aerial view with drawing depictions, as well as not to scale printout of where we will be setup on the parcel. Our truck will be removed at the conclusion of every business day and stored at a different location. We have allotted trash receptacles for outside the truck and will clean and remove any refuse throughout the day and at the conclusion of business. Caution tape and safety cones will be used to designate the ordering and seating area, as well as the suggested parking area.

Thank you for your time and consideration,


Christopher James Slocum

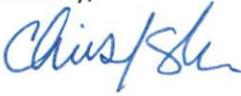
City of Portage
Zoning Board of Appeals
7900 S Westnedge Avenue
Portage, MI 49002

March 25, 2016

To whom it may concern,

O' Moose BBQ will be running a 8,750 watt generator during business hours of 11a.m. to 8p.m. The generators noise level compares to a small push lawnmower. In the event that a neighboring resident finds our equipment to be too loud, I can and will build an enclosure around the generator to deaden the sound.

Sincerely,



Christopher Slocum

City of Portage
Zoning Board of Appeals
7900 S Westnedge Avenue
Portage, MI 49002

March 9, 2016

To whom it may concern,

I, Bill Cekola hereby grant permission to Ol' Moose BBQ and Chris Slocum to lease and use my property at 7540 S. Westnedge Ave. from April 12th 2016 through October 12th 2016, with the exclusion of June 6th 2016 to July 6th 2016 as a location to operate his food truck.

If you have any questions of concerns regarding this correspondence, please feel free to contact me.

Bill Cekola
269.207.1024
bill@jacscekolaspizza.com

Sincerely,

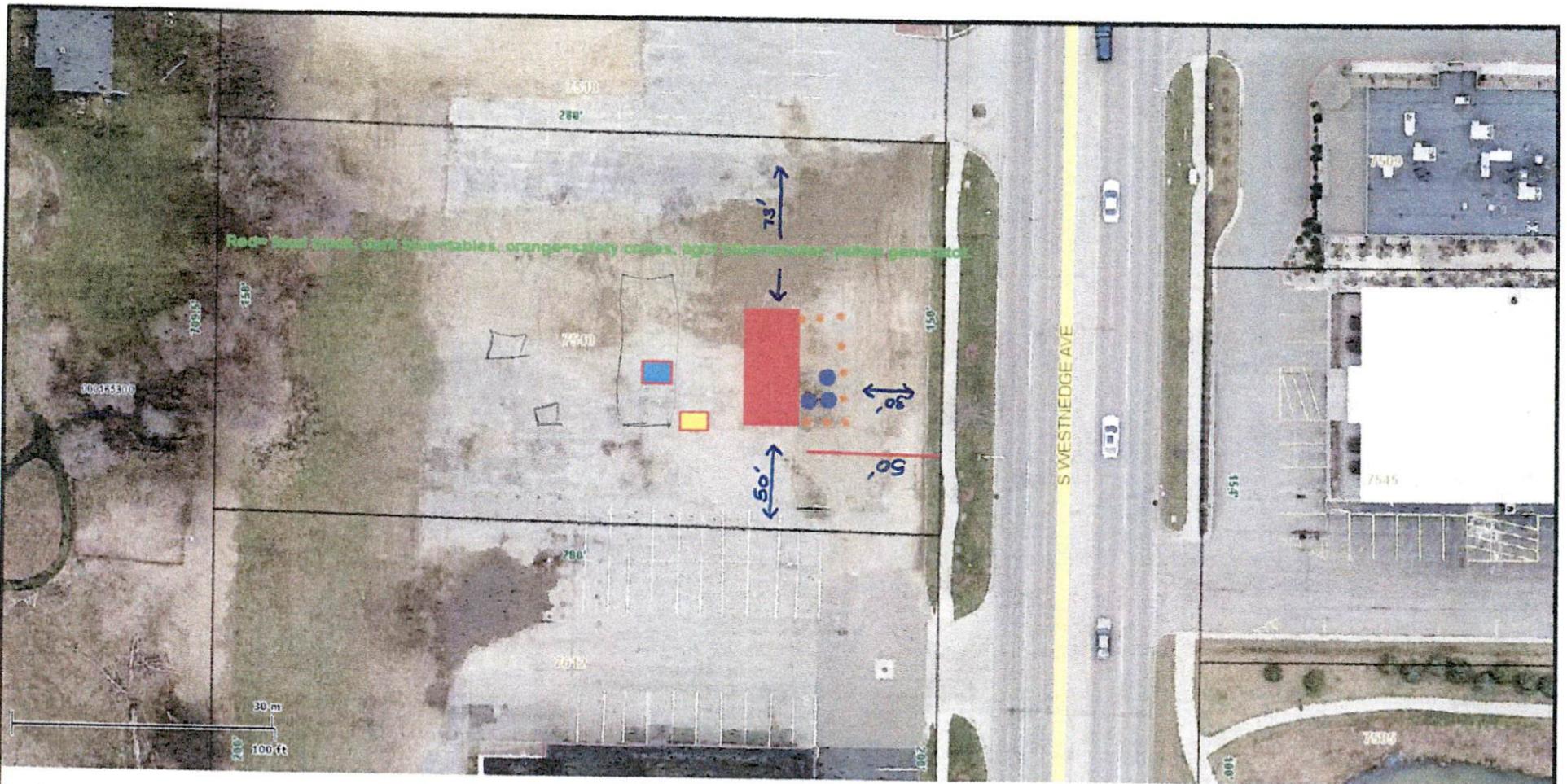
A handwritten signature in black ink, appearing to read "Bill Cekola", written in a cursive style.

Bill Cekola

OL MOOSE BBQ

MENU
Poppingcorn 1.00
Baconchicken sandwich 1.50
Porkchicken sandwich 1.50
Turkey sandwich 1.50
Baconchicken 1.50
Porkchicken 1.50
Turkey 1.50
Baconchicken 1.50
Porkchicken 1.50
Turkey 1.50





City of Portage Map Document



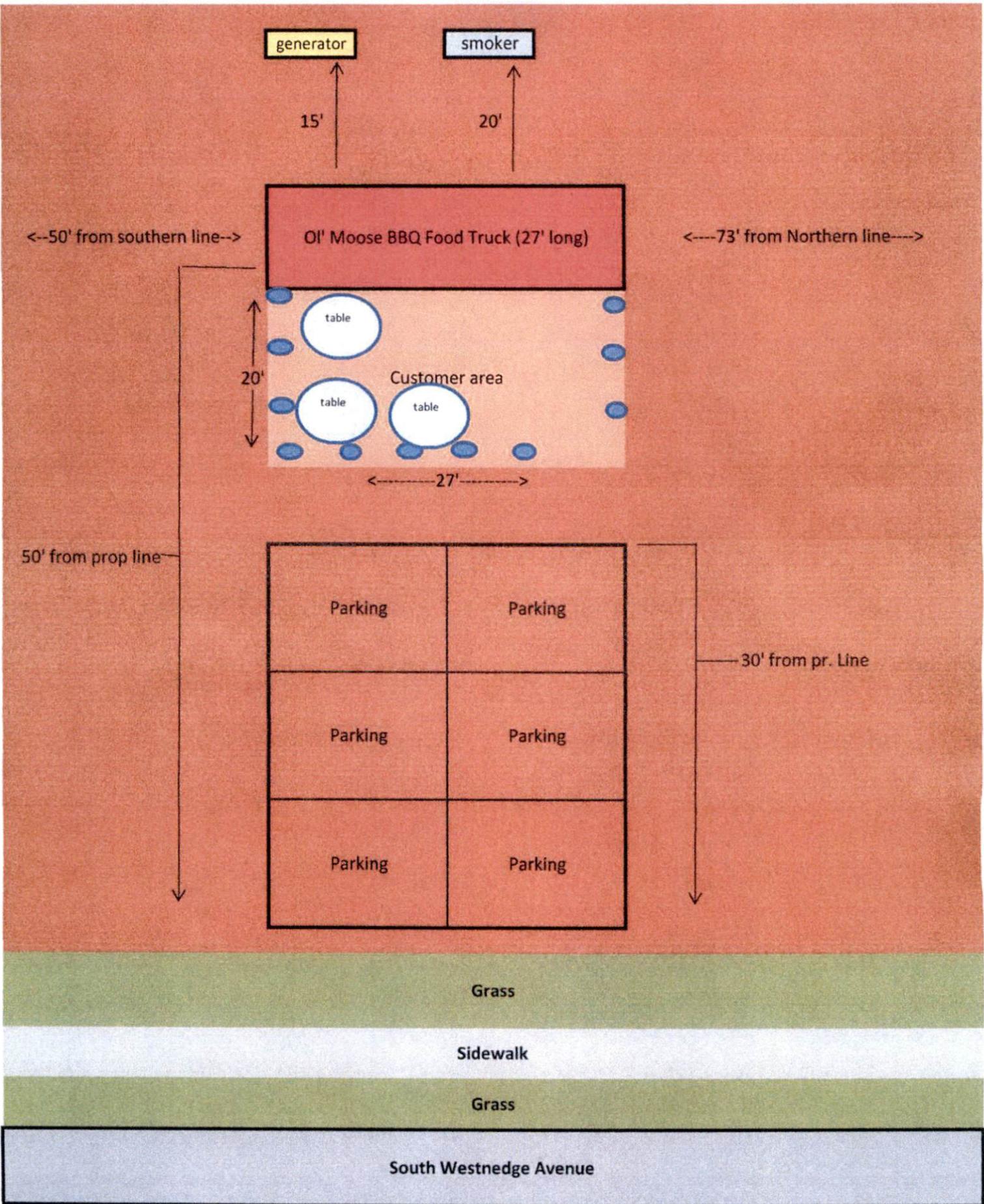
1:900

Map Publication:

Fri Mar 25 2016 03:51:37 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.



generator

smoker

15'

20'

<--50' from southern line-->

Ol' Moose BBQ Food Truck (27' long)

<---73' from Northern line--->

20'

table

table

Customer area

table

<-----27'----->

50' from prop line

Parking

Parking

Parking

Parking

Parking

Parking

30' from pr. Line

Grass

Sidewalk

Grass

South Westnedge Avenue

<-----150'----->

TO: Zoning Board of Appeals **DATE:** April 1, 2016
FROM: Vicki Georgeau, ^{VG} Director of Community Development
SUBJECT: ZBA #15-15, Ol' Moose BBQ, 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 truck at 7540 South Westnedge Avenue from April 12 – June 5, 2016 and July 7 – October 12, 2016.
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 (an application for a Temporary Use Permit for Meyer Wood Products at 7518 South Westnedge, ZBA #15-16 - is also pending on this agenda), 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 proposes to operate a food truck (Ol' Moose BBQ) at 7540 South Westnedge Avenue from April 12 - June 5, 2016, and July 7 - October 12, 2016. As information, the property owner has reserved the use of the property for a fireworks Business Special Event (BSE) between June 6th and July 6th. The food truck would operate 7 days a week from 11:00 a.m. to 8:00 p.m. Three tables will be placed east of the trailer and the customer area will be enclosed by traffic cones. As measured from property line to property line, the proposed Ol' Moose BBQ mobile food trailer will be approximately 300 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. As additional background, the Board approved a food truck Temporary Use Permit last year at this location for a six-month period (Nick's Gyros, ZBA #15-2).

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.

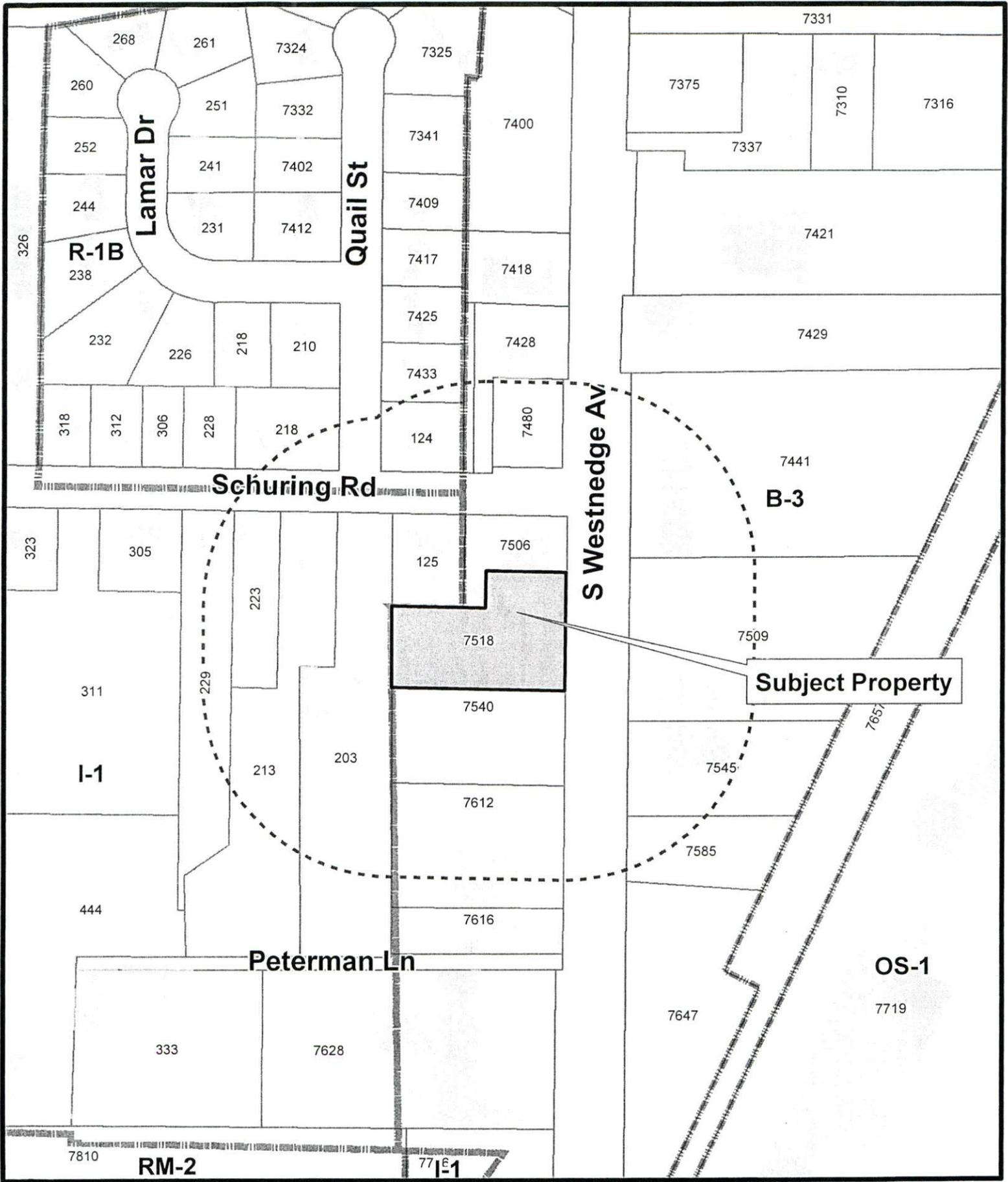
Although mobile food vendors can add to place making efforts, they can also sometimes compete with established brick and mortar restaurants which have a much higher overhead cost. Food trucks/trailers are most commonly “mobile” and move from site to site. Section 42-622(D)(2)(c), Temporary Uses states that the “use shall be in harmony with the general intent of the district and provides standards for approvals. Staff recommends the Temporary Use permit for Ol’ Moose BBQ, 7540 South Westnedge Avenue be approved subject to the following conditions:

1. The operation of the Ol’ Moose BBQ be limited to April 12 – June 5, 2016 and July 7 – October 12, 2016.
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 11:00 a.m. to 8:00 p.m. Monday through Sunday.
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)

PRACTICAL

DIFFICULTY: Not applicable for Temporary Use.

T:\COMMDEV\2015-2016 Department Files\Board Files\Zoning Board\15-15; 7540 SWA\2016 03 15 VG ZBA 15-15 SWA, 7540 (staff rpt).doc

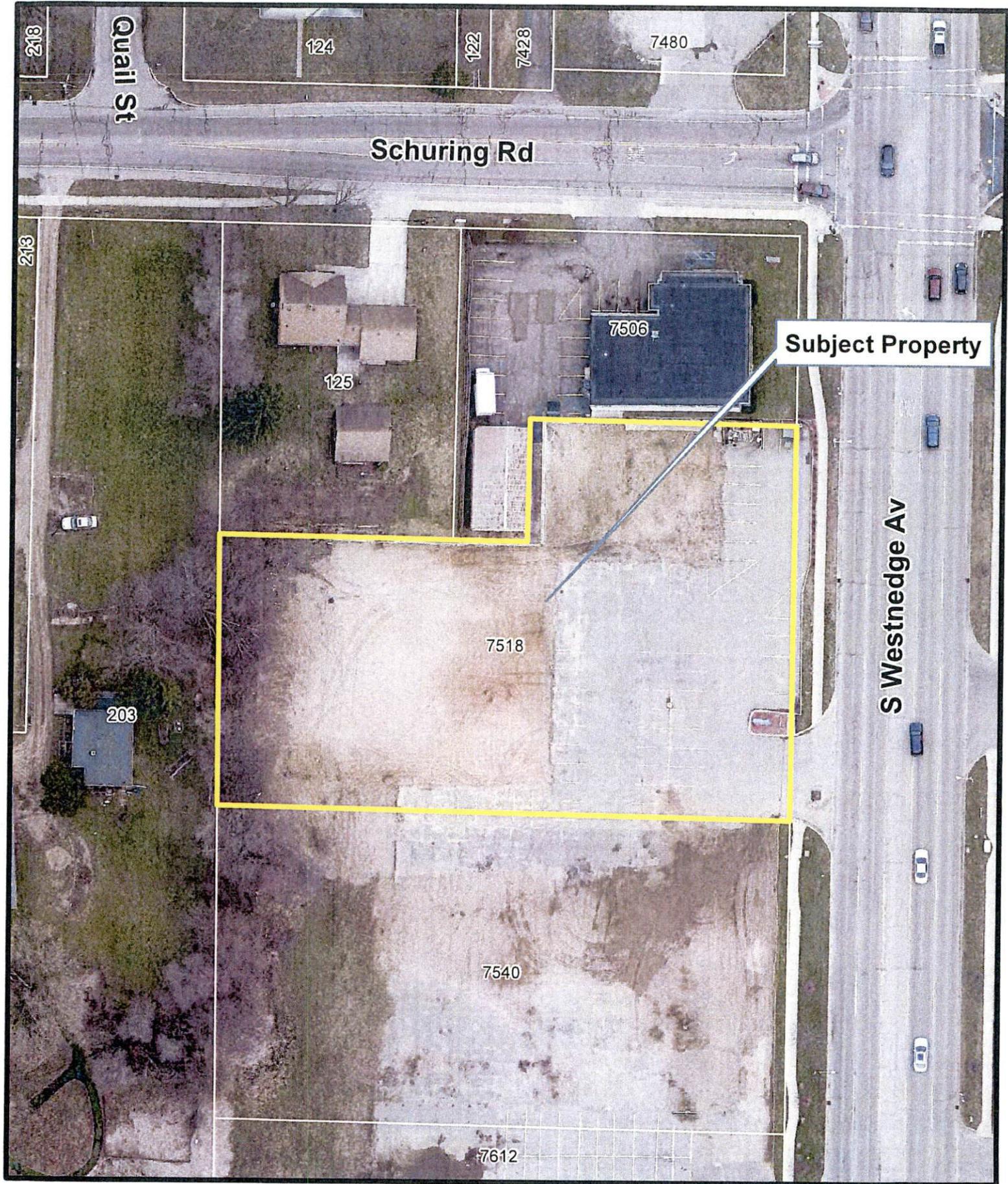


-  Zoning Boundary
-  Subject Property
-  Notification Area

ZBA 15-16
7518 South Westnedge Avenue



1 inch = 200 feet



 Subject Property

Aerial Photography 7518 South Westnedge Avenue



1 inch = 60 feet



RECEIVED

MAR 02 2016

ZONING BOARD OF APPEALS APPLICATION COMMUNITY DEVELOPMENT

FOR COMPLETION BY APPLICANT

Application Date 3-2-16

Name of Applicant ROY MEYER Print

Roy Meyer Signature

Applicant's Address 32180 RED ARROW

Phone No. 269 657-3450

Name of Property Owner (if different from Applicant) PAW PAW MI 49079

Address Phone No.

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

Street Address 7518 S. WESTNEDGE

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: DISPLAY LOT FOR MEYER WOOD PRODUCTS

Application Fee (Residential Uses) (All Other Uses)

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

X Variance from Zoning Ordinance: Article 42 Section 622 Paragraph D. 1 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:

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

Reason for Request: TEMPORARY USE FOR SPECIALITY WOOD PRODUCTS

TO OPERATE FROM APRIL - OCTOBER 2016 + 2017

FOR STAFF USE

Table with 3 columns: Application Number (15-16), Filing Date, Tentative Hearing Date. Row 2: 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.)

SEE ATTACHED

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

SEE ATTACHED

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

SEE ATTACH

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.)

SEE ATTACH

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.)

SEE ATTACH

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.)

SEE ATTACH

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.)

SEE ATTACH

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

SEE ATTACH

Roy D. Meyer
Signature of Applicant

3-2-2016
Date

Roy Meyer-Owner
Meyer Wood Products
32180 Red Arrow Highway
Paw Paw, MI 49079 269-657-3450
March 15, 2016

Portage City Council
7900 South Westnedge Ave
Portage, MI 002

Dear Portage City Council

My name is Roy Meyer and I am the owner of Meyer Wood Products of Paw Paw, Michigan for the past 37 years. I am also a retired school teacher, teaching for 30 years at Lawrence High School. I would like to apply for a six month temporary permit to display my products at 7518 South Westnedge, Portage, MI 49002. My core business product line consists of lawn furniture, storage sheds/gazebos, boat lifts and boat dock. I have previously submitted a sketch of the proposed layout of my product line to be displayed at that site. I have displayed my products at this site for the last two years and have found it to be very successful as it is an excellent location for advertising for me. Meyer Wood Products has displayed product at other southwest Michigan cities and townships in the past, including South Haven, Sister Lakes, Decatur, Grand Rapids and Sandy Pines Resort in Hopkins.

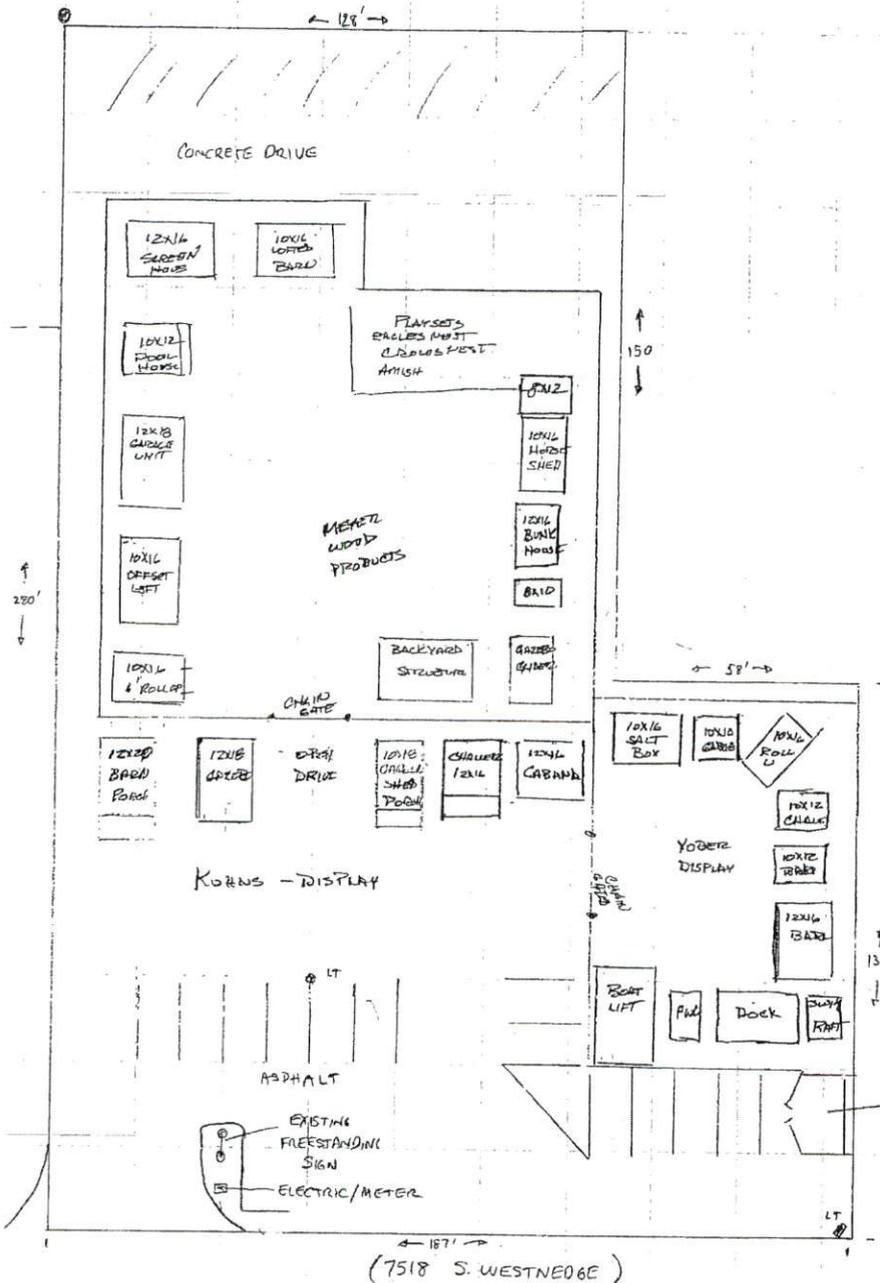
I plan on having 12 or more parking spaces available for customers. I also will be utilizing a lawn care/weed control client to main the property during the permit period. The required amount of liability insurance needed for this type of permit also will be carried by my business. Signage on site will also be per Portage City ordinances and I plan on using display boxes for brochures and product information.

If you have any questions please do not hesitate to contact me as my contact information appears above on the company letterhead. Thank you in advance for your consideration.

Sincerely,



Roy Meyer-Owner
Meyer Wood Products



Bill Cekola
 PCC LLC
 6625 Hunters Down
 Kalamazoo, MI 49048
 (269) 207-1024

Roy Meyer
 Wood Products
 (269) 657-3450

- PARKING SPOTS US09 12+
- LIGHTING EXISTING 2-POLES + FREESTANDING SIGN
- HOURS OPEN 24 HRS / 7-DAY
- EMPLOYEES IF SALES MERIT

(7518 S. WESTNEDGE)

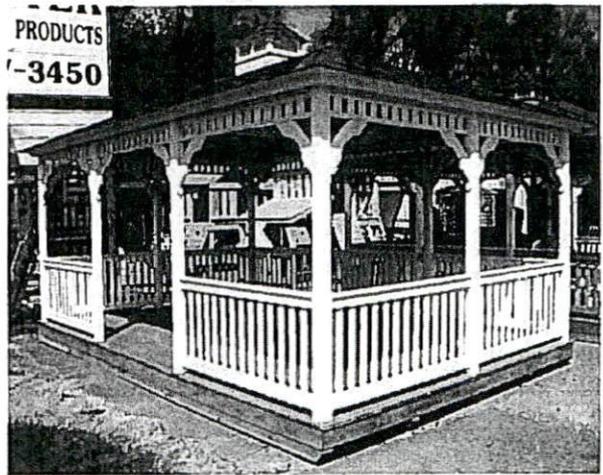
SCALE \square 5' SQ FEET

MEYER WOOD PRODUCTS

Small Gazebo w/Dbl. Roof



12x18 White Gazebo



12x16 Cedar Gazebo



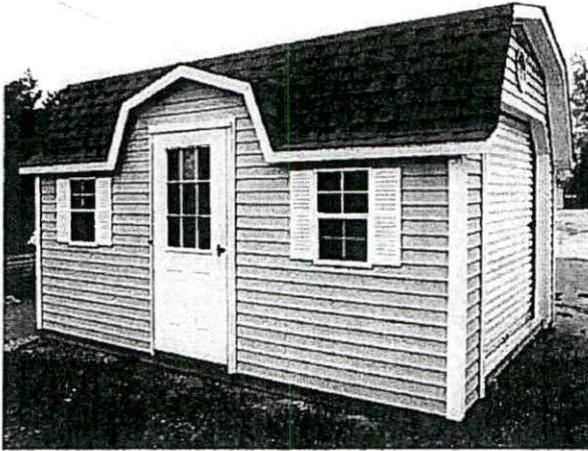
12x26 Screen Room



32180 RED ARROW HIGHWAY., PAW PAW, MI 49079 • 269-657-3450

MEYER WOOD PRODUCTS

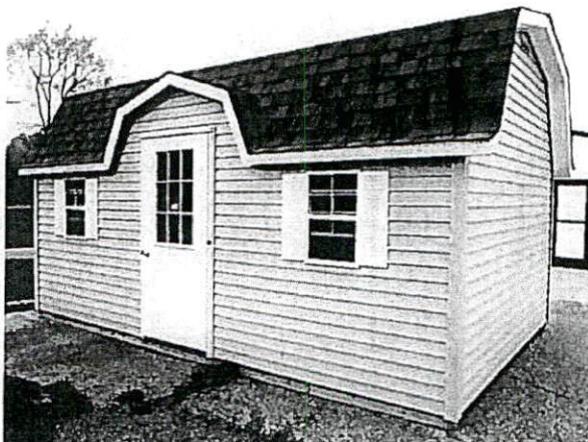
10x16 Gambrel w/ 6' Roll-up Door
(Vinyl)



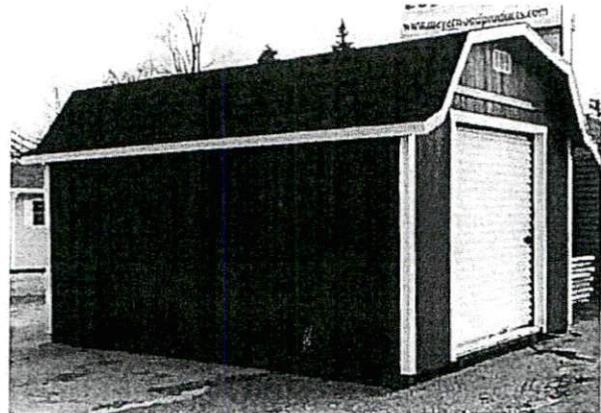
10x16 Gabel w/ 6' Roll-up Door



12x18 Gambrel w/ 8' Roll-up Door
(Vinyl)



12x16 Red Barn



32180 RED ARROW HIGHWAY., PAW PAW, MI 49079 • 269-657-3450

MEYER WOOD PRODUCTS STORAGE BARN 2014 PRICE LIST

STANDARD FEATURES:

- 4x4 Pressure-Treated Runners
- Pressure-Treated 2x4 Floor Joist 16" o.c.
- 5/8" Sturdy Floor T&G Plywood Floor
- 2x4 Wall Studs 16" o.c.
- Duratemp or T-1-11 Plywood Siding
- Primed & Ready to Paint
- 1/2" Plywood Roof Sheathing
- 2x4 Rafters 16" o.c.
- Drip Edge, Felt Paper & 25-Year Shingle
- Pair of 8"x16" Vents on Wood Buildings, or 8' Ridge Vent on Vinyl-Sided Buildings
- 60" Double Doors w/Continuous Hinges
- Locking T-Handle Door Latch
- Hooks & Eyes to Secure Open Doors
- Aluminium Treadplate
- 2-Year Limited Warranty

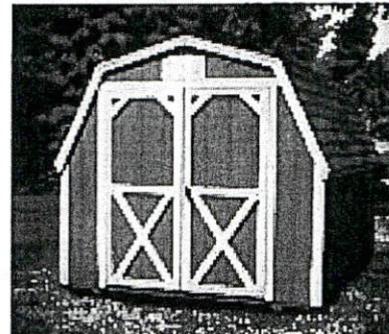
ALL BUILDINGS HAVE \$300 DELIVERY CHARGE

Gambrel Barn

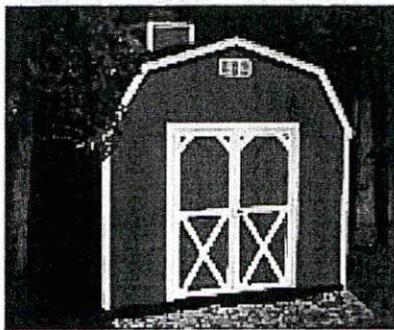
4' High Sidewalls (width x depth)

6x8*	\$1,057	10x10.....	\$1,513
6x10*	\$1,214	10x12.....	\$1,836
6x12*	\$1,327	10x14.....	\$2,034
8x8	\$1,272	10x16.....	\$2,107
8x10.....	\$1,393	10x20.....	\$2,476
8x12.....	\$1,506	12x12.....	\$1,949
		12x14.....	\$2,059
		12x16.....	\$2,352

*Includes a Single 36"-Wide Door



6' High Sidewalls (width x depth)



8x8	\$1,499	12x16.....	\$2,611
8x10.....	\$1,584	12x18.....	\$2,849
8x12.....	\$1,714	12x20.....	\$3,080
10x10.....	\$1,778	12x24.....	\$3,658
10x12.....	\$1,956	14x16.....	\$3,080
10x14.....	\$2,132	14x20.....	\$3,732
10x16.....	\$2,352	14x22.....	\$4,025
10x18.....	\$2,534	14x24.....	\$4,306
10x20.....	\$2,692	14x28.....	\$4,892
12x12.....	\$2,285	14x32.....	\$5,546
12x14.....	\$2,456	14x36.....	\$6,132

32180 RED ARROW HIGHWAY., PAW PAW, MI 49079 • 269-657-3450

TO: Zoning Board of Appeals **DATE:** April 1, 2016

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

SUBJECT: ZBA #15-16, Meyer Wood Products, 7518 South Westnedge Avenue, B-3 General Business

CODE SECTION: 42-622(D), Temporary Uses, p. 42:140.3.

APPEAL: Requesting a Temporary Use Permit to allow outdoor wood product and accessory building sales from April 29 - October 29, 2016 and April 29 - October 29, 2017.

STAFF RECOMMENDATION:

The applicant is requesting the above referenced Temporary Use Permit per the enclosed application, letter of explanation, site sketch and related materials. The 0.95 acre site is zoned B-3, General Business. The two parcels to the north are zoned B-3, General Business (7506 South Westnedge Avenue) and I-1, Light Industrial (125 Schuring Road). The properties to the south (7540 South Westnedge Avenue) and west (203 Schuring Road) are zoned B-3, General Business and I-1, Light Industrial, respectively. The properties located at 125 and 203 Schuring Road are occupied by nonconforming single-family dwellings. To the east, across South Westnedge Avenue, the property is also zoned B-3 and occupied by several retail businesses.

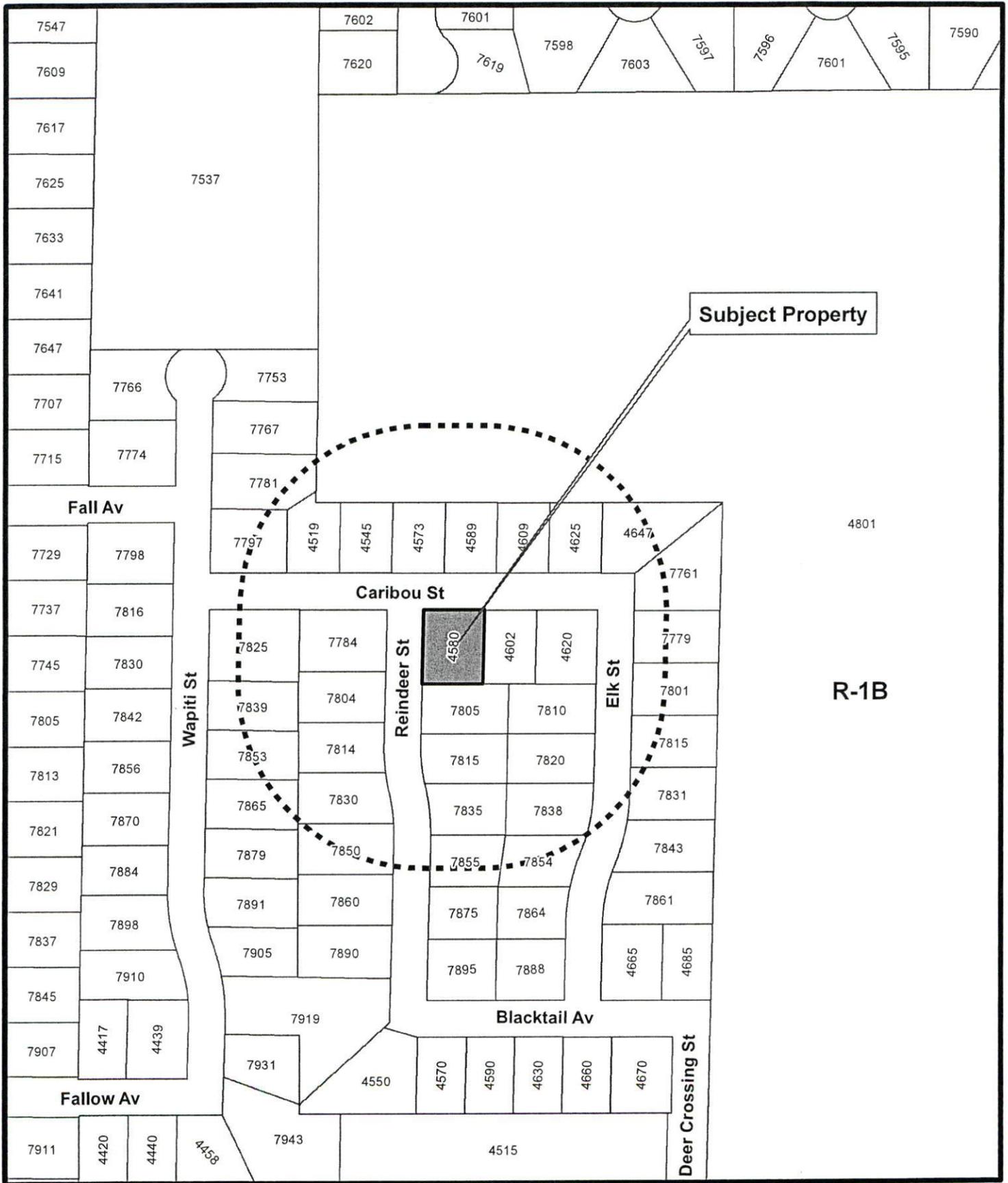
As background, the Board approved a Temporary Use permit (see attached minutes for ZBA #13-13) to allow outdoor wood products and accessory building sales at 7518 South Westnedge Avenue for six month periods in 2014 and in 2015 (subject to city staff review in 2015). The applicant seeks a Temporary Use Permit from April 29 - October 29, 2016 and April 29 - October 29, 2017. Section 42-622(D)(1) limits Temporary Use Permits to periods of up to 12 months with one extension of up to 12 additional months. The Permit has expired and a new Temporary Use Permit must be issued for outdoor wood product sales activities to occur on the vacant property at this location.

The applicant proposes no changes from the previous two years; the display will be unmanned, relying principally on sales literature and contact information for orders, but may have a salesperson periodically present on-site for a few hours at a time during peak times if the volume of sales merits. The grass areas will continue to be maintained for weed control for the duration of the proposed Temporary Use Permit. Vehicular parking will be provided on the existing asphalt, off-street parking lot. The property is currently for sale, and in the event it is sold during the proposed Temporary Use Permit period, the owner will require the Temporary Use to vacate.

The proposed Temporary Use Permit can meet the required setbacks, does not involve permanent structures, use of required parking, or any capital improvements, is consistent with the standards for Temporary Uses and is recommended for approval, with the following conditions: 1) the placement of all inventory meet minimum B-3 zoning district setbacks (30-foot front, 10-foot side, and 20-foot rear), 2) that the permit be subject to administrative review and approval in 2017, and 3) the site must be regularly monitored and maintained by the applicant.

**PRACTICAL
DIFFICULTY:**

Not applicable.



Subject Property

4801

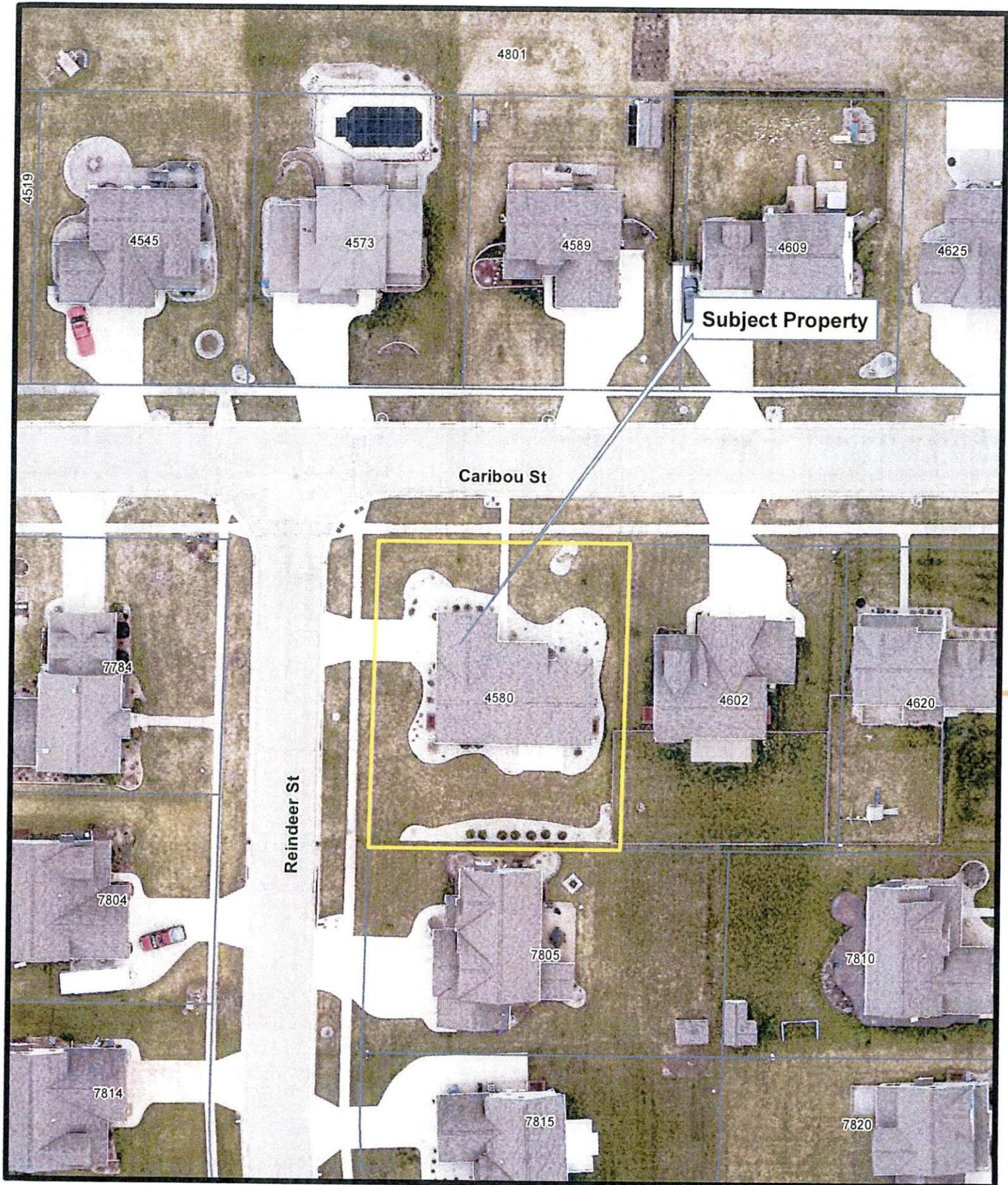
R-1B

-  Zoning Boundary
-  300' Notification
-  4580 Caribou

ZBA: 15-19
4580 Caribou Street



1 inch = 208 feet



ZBA: 15-19
4580 Caribou Street



1 inch = 50 feet

 4580 Caribou

not meeting 4/11
ap due 3/14

Department of Community Development

RECEIVED

MAR 04 2016

COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 3/4/16
 Name of Applicant Lynn VanPelt Signature Lynn VanPelt
Print
 Applicant's Address 4580 Caribou Phone No. 269-986-5678
 Name of Property Owner (if different from Applicant) _____
 Address _____ Phone No. _____
 Address of the Property that is the subject of this Application:
 Street Address 4580 Caribou
 For Platted Property: Lot 59 of Deer Crossing #2 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: owner

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 3 Season Room Area 12'x14'w Yards _____
 Setbacks 28' Parking _____ Other _____
 Reason for Request (Also complete page 2 of application): Build 3 Season porch over existing patio

 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: _____

FOR STAFF USE

Application Number: <u>15-19</u>	Filing Date:	Tentative Hearing Date:
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.)

irregular shape - Corner lot -

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

Majority of lots in Deer Crossing # 2 are deeper - Several other homes in Development have 3-Season porches.

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

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.)

Variance would be minimum necessary as porch would be built on existing patio - no additional area to be used would not cause any hardship to ~~the~~ home behind.

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.)

a buffer is located at back of property that backs up to next house & a fence is being installed

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.)

Does not interfere with any traffic / noise or other concerns -

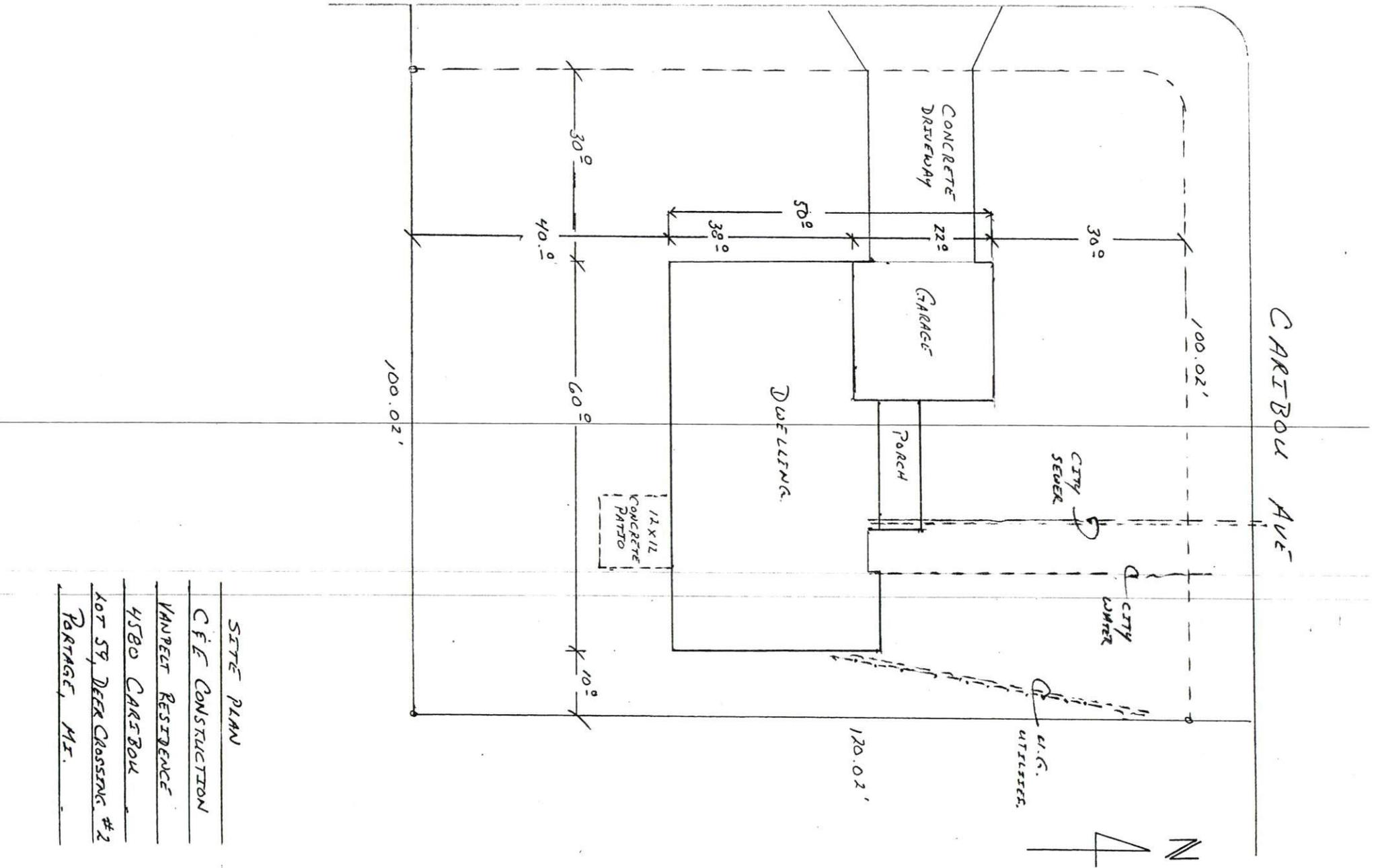
7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)

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

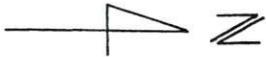

Signature of Applicant

3-3-16
Date

R E H Z D L E R
S K.



CARIBOU AVE



SITTE PLAN
 C E E CONSTRUCTION
 VANBOLT RESIDENCE
 4580 CARIBOU
 LOT 59, DEER CROSSING #2
 PORTAGE, MI.

TO: Zoning Board of Appeals **DATE:** April 1, 2016

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

SUBJECT: ZBA #15-19, Lynn Van Pelt, 4580 Caribou Street; R-1B, One Family Residential.

CODE SECTION: 42-350 Schedule of Regulations; p. CD42:84

APPEAL: Requesting a variance to construct a 12-foot by 14-foot three season porch 28 feet from the south (rear) property line where a minimum 40-foot setback is required.

STAFF RECOMMENDATION:

The applicant is requesting the variance per the enclosed application, and plot plan. The 120-foot deep by 100-foot wide corner lot is zoned R-1B, one family residential and is within a residential neighborhood. The property is improved with a 1,759 square-foot dwelling and 462 square-foot attached garage, constructed for the applicant in 2007.

The applicant proposes to construct a 12-foot wide by 14-foot deep three season porch over the existing patio that would extend to within 28 feet of the south (rear) property line, where a minimum 40-foot setback is required. A variance is therefore requested.

The desire to have a three season porch is understandable, however, this alone does not constitute a practical difficulty. It is apparent the applicant did not consider future construction of an enclosed porch when selecting the house design and location nine years ago. As conforming alternatives, a retractable awning could be installed on the south side of the dwelling, or the existing front porch on the north side could be expanded and screened in. Because conforming alternatives are available, and the immediate practical difficulty causing the need for the variance was created by the applicant, the variance is not recommended.

PRACTICAL DIFFICULTY: None noted by staff. 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:

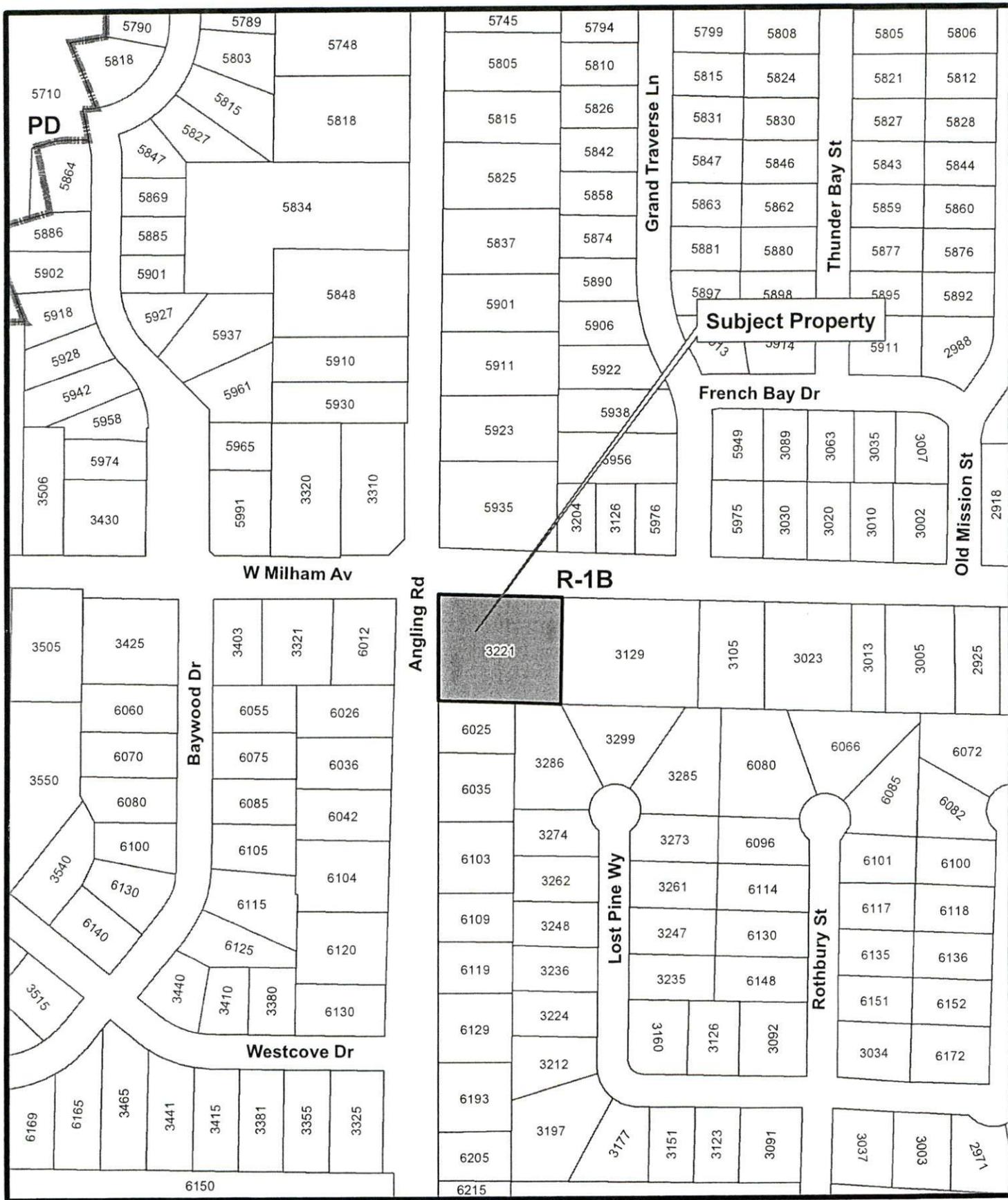
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right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



ZBA: 15-20

3221 W Milham Ave



 3221 W Milham Ave
 Zoning Boundary

1 inch = 250 feet



W Milham Av

Subject Property

Angling Rd

5935

3204

3126

3221

3129

6025

3299

3286

6035

ZBA: 15-20
3221 W Milham Ave



 3221 W Milham Ave

1 inch = 50 feet

RECEIVED

MAR 07 2016

COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 3-7-16
 Name of Applicant Matt Nieuwenhuis 
Print Signature
 Applicant's Address 3221 W. Milham Phone No. 269-207-4972
 Name of Property Owner (if different from Applicant) _____
 Address _____ Phone No. _____

Address of the Property that is the subject of this Application:
 Street Address 3221 W. Milham
 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: ~~Other~~
Replacement Structure Variance

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): Removal & replace mmo of old barn

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: _____

FOR STAFF USE

Application Number: <u>15-20</u>	Filing Date: <u>3/7/16</u>	Tentative Hearing Date: <u>4/11/16</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.)

The existing barn does not meet ordinance now.

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

See attached

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

See attached

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.)

See attached

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.)

See attached

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.)

See attached

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.)

See attached

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

See attached


Signature of Applicant

3-7-16
Date

RECEIVED

MAR 07 2016

COMMUNITY DEVELOPMENT

To the zoning board of appeals:

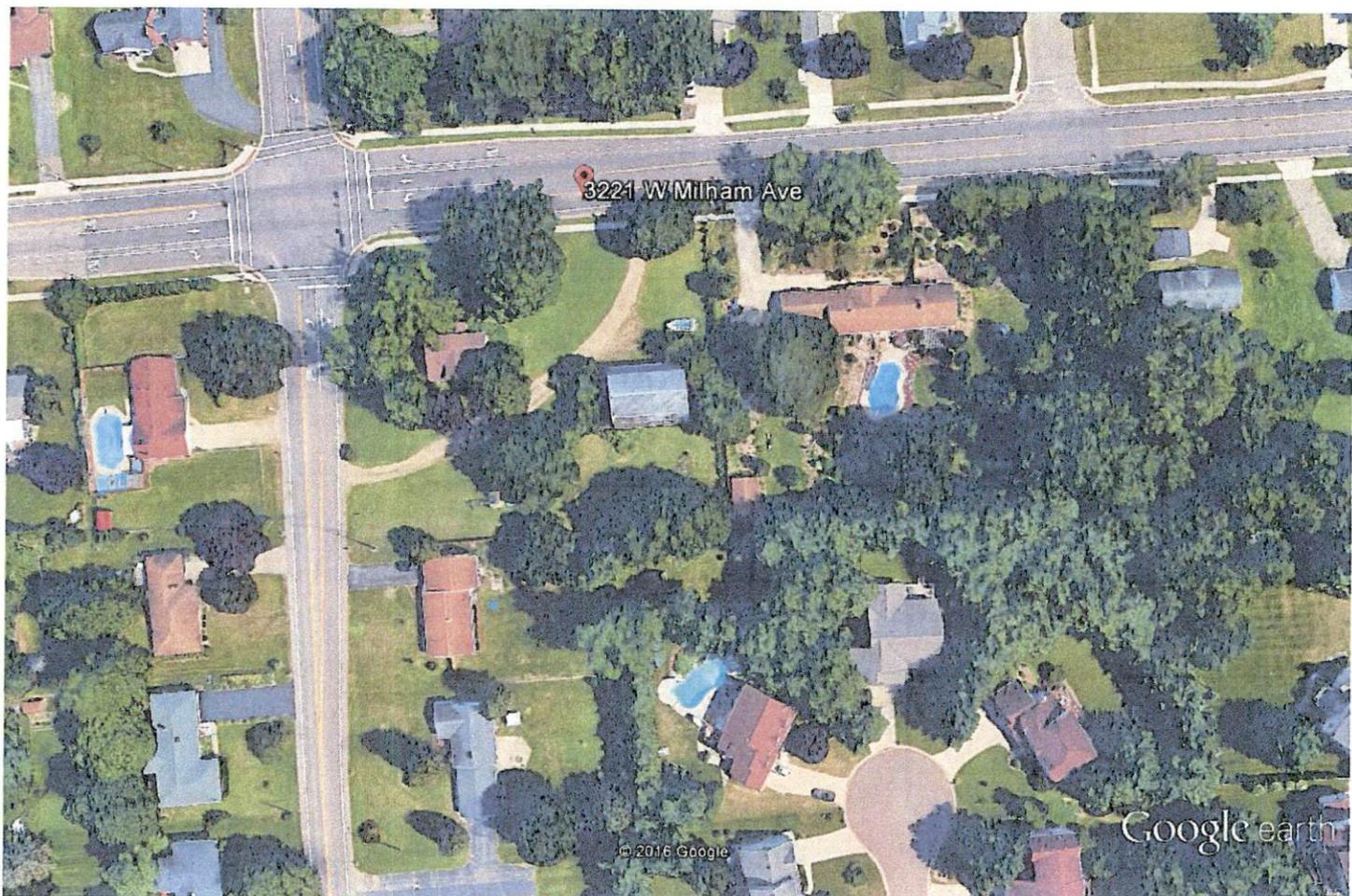
Property 3221 W. Milham Ave.

I have an existing barn that is part of the Portage Historic District. The barn is beyond reasonable financial repair. I, along with the Portage Historic District Commission (HDC), have a new barn plan in place but it will require a variance for size and height ordinance.

The existing barn is 40'x65' and 36' tall. The proposed barn as approved by the HDC will be 24'x30' and 17.75' tall. I would like the variance to be for the original size of the barn. The reason for the smaller replacement is a cost issue. Its looking like this cost restriction might not be an issue come time for construction and I will likely build the barn 24'x50' and 24'tall.

Thank you,

Matthew Nieuwenhuis



Google earth



March 4, 2016

Matthew & Lisa Nieuwenhuis
3221 West Milham Avenue
Portage, MI 49024

RE: February 26, 2015 Application – Barn

Dear Mr. & Mrs. Nieuwenhuis,

As you are aware, the Historic District Commission (HDC) has been considering your application for a Certificate of Appropriateness dated February 26, 2015 over the course of the last year. It is understood that the status of the barn on your historic property at 3221 West Milham has become cause for concern and subject to code enforcement with the Department of Community Development. In an effort to address the HDC's desire to retain the historic nature of your property while addressing the code issues and condition of the barn, you supplied additional information for consideration with your original application on December 2, 2015, January 6 and March 2, 2016. The following is to be considered as a Certificate of Appropriateness for your records.

The HDC has granted approval of your application to address the barn as discussed at the March 2, 2016 meeting. Due to the degraded condition of the existing barn's structural framework and noted costs of repair, it is understood the building will be dismantled while salvageable materials will be recovered for re-use on a newly constructed barn outbuilding. Additional details of the project, as outlined in your attached application, were approved as written (with the north elevation faux doors to operate as sliders to reveal the functional auto door). As discussed during recent HDC meetings, the construction of the new barn outbuilding is dependent upon approval of a zoning variance, of which the HDC is supportive. Please ensure you complete this separate application and approval process with the Department of Community Development.

Further, it was understood from your comments during the March 2nd meeting that the amount of salvageable material and final scale/size of the new barn outbuilding could fluctuate slightly from the details provided in your application. Per the request of the HDC, please provide the Commissioners informational updates once the following four items have been completed: variance application process; barn dismantle; mid-point of new barn construction, and completion of new barn.

Please note as of October 18, 2011, there was an amendment in the Portage City Code. Per Section 38-38 (Article 2), this Certificate of Appropriateness expires on September 2, 2016. If your project requires additional time, please contact the Historic District Commission Staff Liaison at 329-4400 to request a formal extension.

The HDC is always pleased whenever a property owner within the district wishes to make improvements to a historic property without significantly modifying its original appearance and/or structural integrity. However, based on the current situation it was understood this option was not feasible and the HDC appreciates your willingness to find a suitable alternative. I am glad that the HDC was able to work with you and appreciate your efforts in attaining this Certificate of Appropriateness.

Please let me know if I may be of further assistance.

Sincerely,

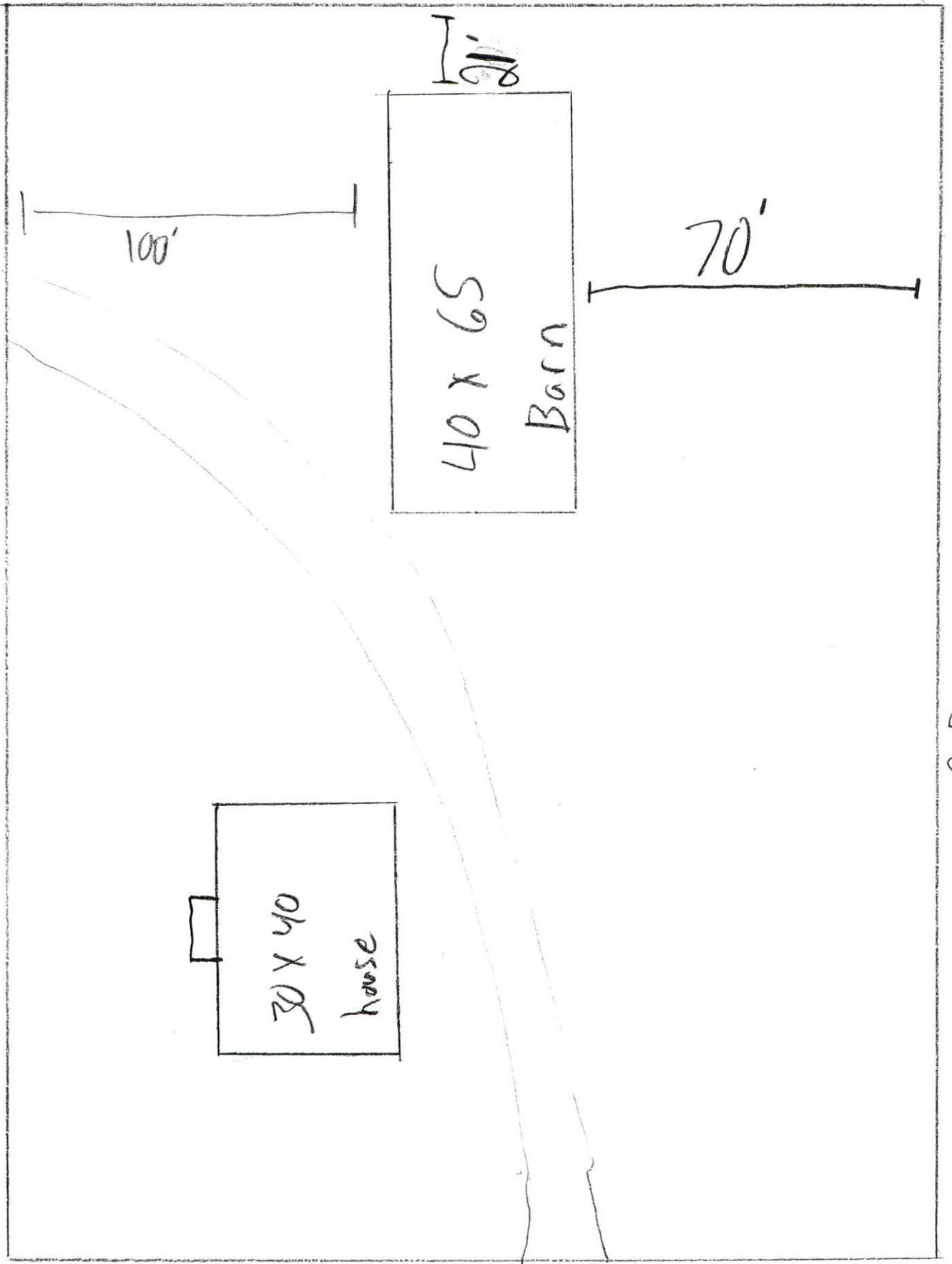


Erica L. Eklov
Administrative Assistant / HDC Staff Liaison

Enclosure

cc: Vicki Georgeau, Director of Community Development
Terry Novak, Deputy Director of Building and Housing Services
Jeff Mais, Zoning and Codes Administration ✓
Historic District Commission Members

3221 W. Milham



750'

Application for Certificate of Appropriateness for Modifications to Historic District Structures

Before construction, alteration, repair, removal or demolition affecting the exterior appearance of a Historic District structure, the property owner or contractor proposing to take such action shall obtain permission to do so from the Historic District Commission (HDC). Permission must be obtained whether or not the work requires a building permit.

The property owner must complete the information requested below and submit plans, drawings and/or pictures sufficient enough to clearly illustrate the proposed actions.

The HDC will review said plans at their regularly scheduled meetings held on a monthly basis. The property owner and/or contractor are invited to attend the meeting. After approval by the HDC, the Commission will issue the property owner a Certificate of Approval. If a building permit is necessary, the Community Development Department will then issue a building permit as long as other requirements for the permit are met. Questions can be directed to Erica Eklov, Administrative Assistant – Office of the City Manager, at 329-4400 or eklove@portagemi.gov.

For assistance in researching appropriate historic home modification tips, please consult the National Park Service's *Preservation Briefs* online at www.nps.gov/hps/tps/briefs/presbhom.htm. For further information, property owners should review Chapter 38 of the City Ordinance.

Name(s) of applicant Matt Nieuwehuis Date 2-2-16

Address of historic property 3221 W. Milham

Telephone number of applicant 269 207 9972

Description of proposed action Remove old barn and replace with a new and smaller barn

Reason for proposed action the barn is past repair and a complete restoration is well over \$100,000.

Materials to be used (please be descriptive as possible) The barn will be a New conventional pole barn with salvaged and New Material. See attached.

Please attach plans, drawings, and/or photos sufficient to clearly illustrate the proposed action.


Signature of Applicant

Faint handwritten notes and stamps, including "MAY 11 2016" and "CITY OF PORTAGE MI" are visible in the bottom left corner.

Proposed action for 3221 w. milham

Removal of existing:

The existing barn will be demolished and all salvageable material will be saved for the new barn.

le: the siding from the north side will be used to recreate the door located on the north side. The diamond vent on the west side will be recreated. I want to reuse a few of the windows from the east side and put them back on the east side. If we can salvage more then is required to accomplish the above tasks the HDC can decide the best place to use the salvaged material.

Replacement structure:

The new barn will be 30'x24'. Walls will be 12' tall and the trusses will be 11'6" tall. It will be a conventional pole barn building. With metal sales pbr panel steel siding. #24 red color with white corners and trim pieces. The soffit will be white aluminum. The roof will be gambrel trusses with ½" plywood and heathered wood architectural shingles to match the house roof. I will put a faux door on the north side made of salvaged wood siding. Also the vent at the peak on the west side. On the east side will be salvaged windows and a new steel service door. On the west side will be a sliding door made out of a wood frame with a metal siding skin. If we salvage enough siding I will cover the door so it matches the faux door on the north side.

Color: Red 24

- ▶ Rib Configuration: Trapezoidal.
 - ▶ Surface Finish: PVDF (Kynar 500) or Acrylic Coated Galvalume.
 - ▶ Color: Contact Metal Sales Manufacturing Corporation for information on color availability.
 - ▶ Testing: Fire Resistance Rating: Complies with UL 263.
- Air Leakage: 0.0148 cfm/sq. ft. when tested according to ASTM E 283.
Water Penetration: None at 6.24 psf when tested according to ASTM E 331.

Technical Properties for 7/8" Corrugated Products:

- ▶ Panel coverage: 34-2/3 inches (880.5 mm).
 - ▶ Rib Height: 7/8 inch (22.2 mm).
 - ▶ Material: Aluminum-zinc alloy-coated steel sheet, ASTM A 792, AZ50, AZ55 or G90 coating designation, structural quality, Grade 50 or Grade 33, 0.018-inch (0.46-mm), 0.0236-inch (0.60-mm), 0.0296-inch (0.75-mm) or 0.0356 inch (0.904-mm) minimum thickness.
 - ▶ Attachment: Exposed direct fastened panel.
 - ▶ Application: Designed for application over open framing or solid substrate.
 - ▶ Rib Configuration: Sinusoidal.
 - ▶ Surface Finish: MS Colorfast45, PVDF (Kynar 500) or Acrylic Coated Galvalume.
 - ▶ Color: Contact Metal Sales Manufacturing Corporation for information on color availability.
 - ▶ Testing: Fire Resistance Rating: Complies with UL 263.
- Air Leakage: 0.004 cfm/sq. ft. when tested according to ASTM E 283.
Water Penetration: None at 12 psf when tested according to ASTM E 331.
- ▶ Approvals: Code and Testing Agency Approvals: Complies with 2010 State of Florida Building Code Approval 9482.1.

Technical Properties for PBR-Panel Products:

- ▶ Panel coverage: 36 inches (914.4 mm).
- ▶ Rib Height: 1-1/4 inches (31.8 mm).
- ▶ Material: Aluminum-zinc alloy-coated steel sheet, ASTM A 792, AZ50, AZ55 or G90 coating designation, structural quality, Grade 50, 0.018-inch (0.46-mm), 0.0236-inch (0.60-mm) or 0.0296-inch (0.75-mm) minimum thickness.
- ▶ Attachment: Exposed direct fastened panel.
- ▶ Application: Designed for application over open framing or solid substrate.
- ▶ Rib Configuration: Trapezoidal.
- ▶ Surface Finish: MS Colorfast45, PVDF (Kynar 500) or Acrylic Coated Galvalume.
- ▶ Color: Contact Metal Sales Manufacturing Corporation for information on color availability.
- ▶ Testing: Fire Resistance Rating: Complies with



Silicon Valley Animal Center, Milpitas, CA

- ▶ Approvals: Code and Testing Agency Approvals: Complies with Miami-Dade County Approval NOA 09-0113.01. Complies with 2010 State of Florida Building Code Approval: 9482.4.

Environmental Considerations

Construction metals generally are readily recyclable at the end of their service life. The raw materials used in manufacture of standing seam panels also come from recycled sources. Pre-consumer and post-consumer recycled content varies. Consult with manufacturer for more information.

Fire Performance

Flame-Spread Index: 25 or less (Class A) or 200 (Class C).

5. INSTALLATION

Handling and Storage

Handle and store product according to Metal Sales Manufacturing Corporation recommendations. Deliver materials in manufacturer's original, unopened, undamaged containers with identification labels intact. Store materials above ground, under water-proof covering, protected from exposure to harmful weather conditions and at temperature and humidity conditions recommended by manufacturer. Provide proper ventilation of metal panel system to prevent condensation build-up between each panel and trim or flashing component. Tilt stack to drain in wet conditions. Remove strippable plastic film before storage under high-heat conditions. Store products in manufacturer's unopened packaging until just prior

to installation. Exercise caution in unloading and handling metal panel system to prevent bending, warping, twisting and surface damage.

Preparation

Install furring, angles, sub-purlins, and other miscellaneous wall panel support members and anchor according to metal wall panel manufacturer's recommendations.

Thermal Insulation Installation

Install polyethylene vapor retarder if required. Install board insulation if required, in compliance with installation requirements in Division 07 Section "Thermal Insulation" requirements. Install blanket insulation if required, in compliance with installation requirements in Division 07 Section "Thermal Insulation."

Metal Wall Panel Installation

Verify that site conditions are acceptable for installation. Do not proceed with installation until unacceptable conditions are corrected. Comply with panel manufacturer's installation instructions including but not limited to special techniques, interface with other work, and integration of systems. Fasten metal wall panels to supports with concealed clips at each standing-seam joint at location, spacing, and using proper fasteners as recommended by panel manufacturer. Comply with installation tolerances as required.

Accessory Installation

Install accessories using techniques recommended by manufacturer and which will assure positive

**Metal Sales
Manufacturing Corporation**

This specification data sheet is provided by Metal Sales Manufacturing Corporation as a technical support tool incident to the sale of its IC72-Panel, 7/8" Corrugated and PBR-Panel metal panel products. Contact Metal Sales for more information on these and other products.
Telephone: 800.406.7387
www.metalsales.us.com

Section 07 42 13 - METAL WALL PANELS

1. PRODUCT NAMES

IC72-Panel, 7/8" Corrugated and PBR-Panel metal wall panels.

2. MANUFACTURER

Metal Sales Manufacturing Corporation
545 South 3rd Street, Suite 200
Louisville, KY 40202
Toll Free: 800.406.7387
Phone: 502.855.4300
Fax: 502.855.4200
Web: www.metalsales.us.com
E-Mail: info@metalsales.us.com

3. PRODUCT DESCRIPTION

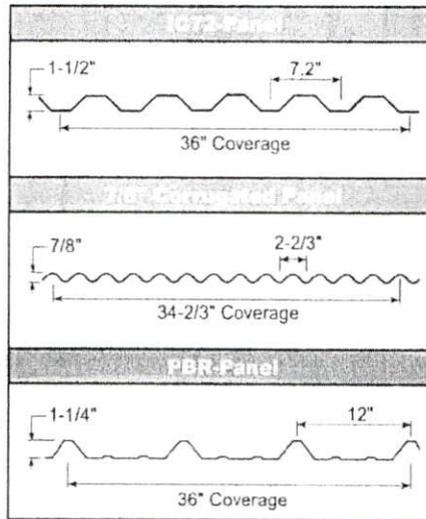
Basic Use

For more than 50 years, Metal Sales has earned a reputation as the premier provider of metal building components and accessories. Metal Sales maintains the industry's largest professional sales and service team, supported by 21 branches located throughout the United States, and offers a full line of high quality metal roof and wall panels for agricultural, commercial, architectural, industrial, and residential projects of every shape and size for both new construction and retrofit applications. Metal Sales is dedicated to leading the metal building component industry, by setting new standards for operating efficiency, product design, active service management and lasting value.

Manufacturer Memberships and Affiliations

CRR - Cool Roof Rating Council
MCA - Metal Construction Association
CSI - Construction Specifications Institute
MRA - Metal Roofing Alliance
NRCA - National Roofing Contractors Association
USGBC - United States Green Building Council
ENERGY STAR® Partner

4. TECHNICAL DATA



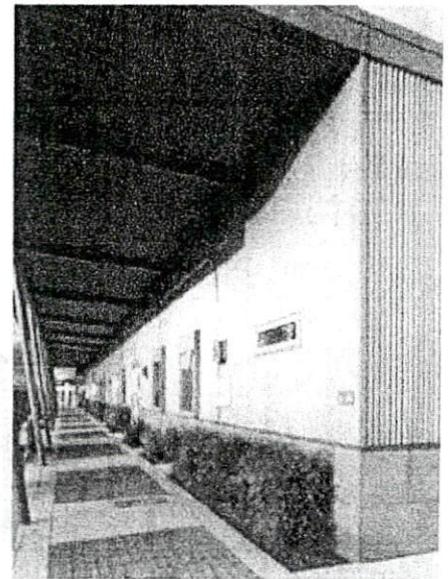
Applicable Standards

- ASTM A 653 – Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.
- ASTM A 792 – Standard Specification for Steel Sheet, 55% Aluminum-Zinc Alloy-Coated by the Hot-Dip Process.
- ASTM A 1011 – Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low-Alloy, High-Strength Low-Alloy with Improved Formability, and Ultra-High Strength.
- ASTM D 2244 – Standard Practice for Calculation of Color Tolerances and Color Differences from Instrumentally Measured Color Coordinates.
- ASTM D 4214 – Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films.
- ASTM E 84 – Standard Test Method for Surface Burning Characteristics of Building Materials.
- ASTM E 283 - Standard Test Method for Determining Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Specimen.
- ASTM E 331- Standard Test Method for Water Penetration of Exterior Windows, Skylights, Doors, and Curtain Walls by Uniform Static Air Pressure Difference.
- UL 263 - Fire Tests of Building Construction and Materials.

Underwriters Laboratories (UL):

Approvals

2010 State of Florida Building Code:



Silicon Valley Animal Center, Milpitas, CA

- Approval 9482.1. (Applies to 7/8" Corrugated product).
 - Approval 9482.4. (Applies to PBR-Panel product)
- Miami-Dade County Approval: NOA 09-0113.01.
(Applies to PBR-Panel product).

Physical Properties:

Test reports are available to design professionals upon request.
Note: Industry designation for material thickness is moving away from "gauge" to decimal thickness in inches. Metal Sales Manufacturing Corporation recommends use of a minimum thickness requirement of 0.018-inch (0.46-mm) instead of 26 gauge, 0.0236-inch (0.60-mm) instead of 24 gauge, 0.0296-inch (0.75-mm) instead of 22 gauge, 0.0356 inch (0.904 mm) instead of 20 gauge and 0.0466 inch (1.184 mm) instead of 18 gauge. For Galvalume, specify AZ50 for painted material or AZ55 for unpainted material. For galvanized, specify G90.

Technical Properties for IC72-Panel Products:

- ▶ Panel coverage: 36 inches (914.4 mm).
- ▶ Rib Height: 1-1/2 inches (38.1 mm).
- ▶ Material: Aluminum-zinc alloy-coated steel sheet, ASTM A 792, AZ50, AZ55, G90 coating designation, structural quality, Grade 50 or Grade 33, 0.0236-inch (0.60-mm), 0.0296-inch (0.75-mm), 0.0356 inch (0.904 mm) minimum thickness.
- ▶ Attachment: Exposed direct fastened panel.
- ▶ Application: Designed for application over open framing or solid substrate.

anchorage to building and weather tight mounting. Provide for thermal movement. Coordinate installation with flashings and other components. For Flashing and Trim, comply with performance requirements, manufacturer's written installation instructions, and the SMACNA "Architectural Sheet Metal Manual." Provide concealed fasteners where possible, and install units to true level. Install work with laps, joints, and seams that will be permanently watertight.

Field Quality Control

If requested by Owner, provide manufacturer's field service consisting of product use recommendations and periodic site visits for inspection of product installation in accordance with manufacturer's instructions.

Precautions, Cleaning and Protection

Touch-up paint is used to cover and protect unexpected scratches on the paint finish that may occur during installation of panel. Touch-up paint will not weather as well or at the same rate as the original system. Test in an area that will not be noticeable. Metallic paint colors are available at an additional charge. Minor differences in color and appearance are normal and to be expected.

To minimize possible differences in appearance, an entire project should be painted at one time, from one batch of paint, using the same application equipment. Additionally, fabricated panels, flat sheet, and flashings should be oriented in the same direction.

After installation remove temporary coverings and protection of adjacent work areas. Repair or replace any installed products that have been damaged. Clean installed panels in accordance with manufacturer's instructions prior to Owner's acceptance. Remove and lawfully dispose of construction debris from Project site. Protect installed product and finish surfaces from damage during construction.

Building Codes

Current data on building code requirements and product compliance may be obtained from Metal Sales Manufacturing Corporation technical support specialists. Installation must comply with the requirements of authority having jurisdiction.

6. AVAILABILITY AND COST

Availability

Metal Sales Manufacturing Corporation products are nationally distributed and supported from 21 convenient locations nationwide, including Alaska. Manufacturer has the ability to ship worldwide. Contact manufacturer for information on local availability.

Cost

Budget installed cost information may be obtained from a local Metal Sales Manufacturing Corporation distributor or directly from the manufacturer.

7. WARRANTY

Special Exposed Panel Finish Warranty: Manufacturer's standard form PVDF (Fluorocarbon System) Warranty for film integrity, chalk rating and fade rating in which manufacturer agrees to repair or replace panels that show evidence of deterioration within specified warranty period. Deterioration shall include but is not limited to color fading of more than 5 Hunter units when tested according to ASTM D 2244, chalking in excess of a No. 8 rating when tested according to ASTM D 4214 or cracking, checking, peeling or failure of paint to adhere to bare metal. Warranty Period for film integrity is 45 years and for chalk and fade rating is 35 years. Metal Sales Manufacturing Corporation warranty excludes surface deterioration due to physical damage and exposure to salt air environments.

Special Exposed Panel Finish Warranty: Manufacturer's standard form (MS Colorfast45) proprietary two coat roll coated System Warranty for film integrity, chalk rating and fade rating in which manufacturer agrees to repair or replace panels that show evidence of deterioration within specified warranty period. Deterioration shall include but is not limited to color fading of more than 5 Hunter units on vertical applications or more than 6 Hunter units on non-vertical applications when tested according to ASTM D 2244, chalking in excess of a No. 8 rating on vertical applications or a No. 7 rating on non-vertical applications when tested according to ASTM D 4214, cracking, checking, peeling or failure of paint to adhere to bare metal, or perforation. Warranty Period for film integrity is 45 years, chalk and fade rating for 30 years, and perforation for 25 years. Metal Sales Manufacturing Corporation warranty excludes surface deterioration due to physical damage and exposure to salt air environments.

8. MAINTENANCE

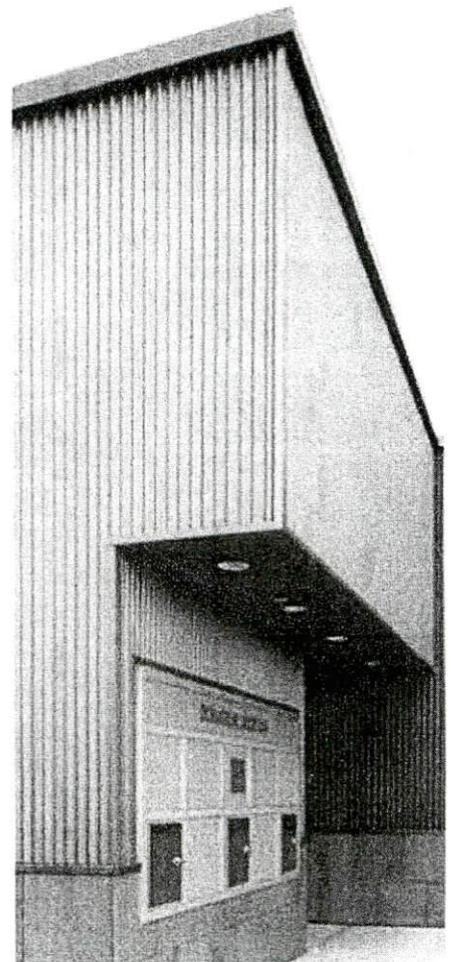
No specific maintenance is required for properly installed Metal Sales Manufacturing Corporation wall panel products. Periodic panel inspection to verify system integrity, drainage functionality and repair of storm damage is advised.

9. TECHNICAL SERVICES

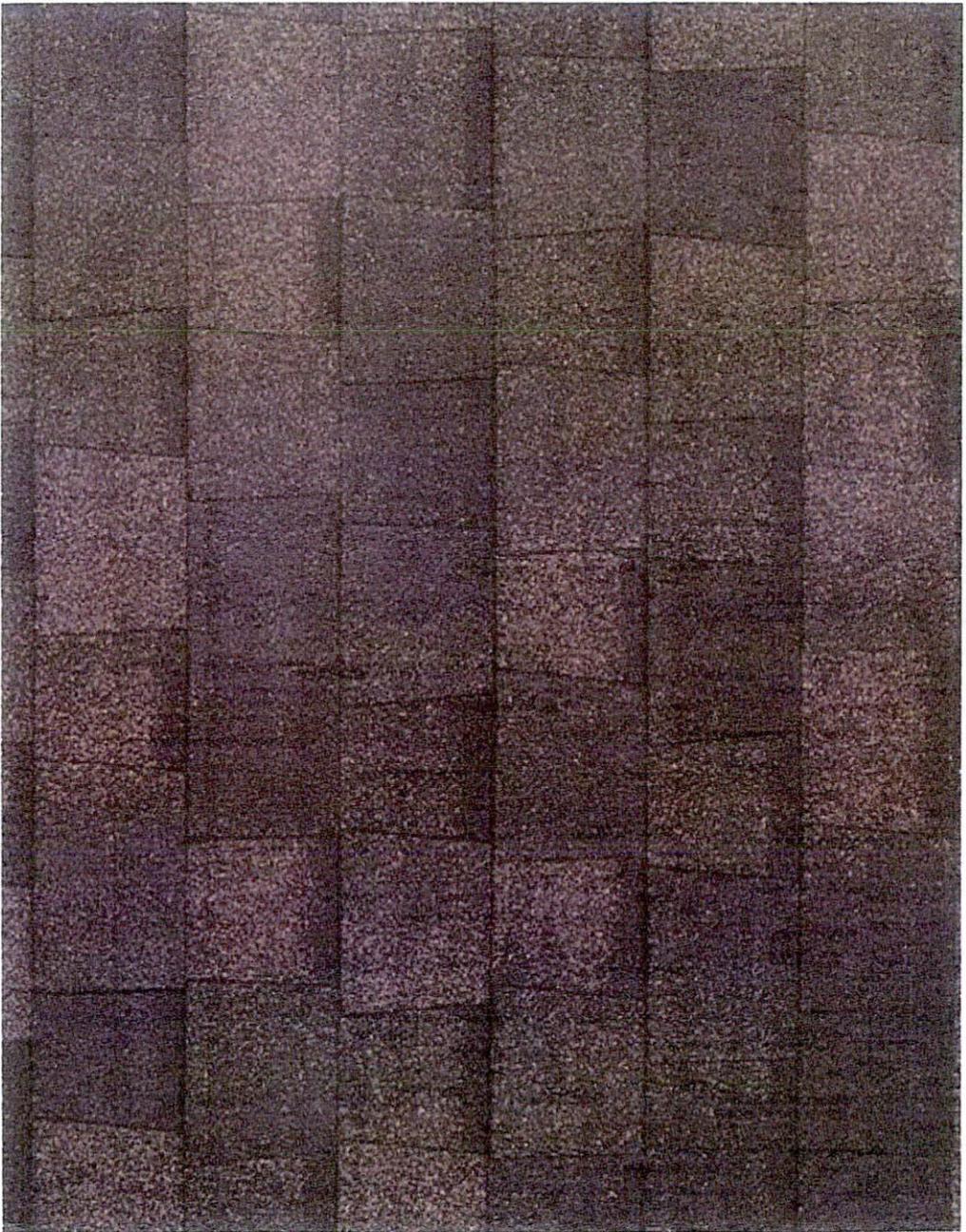
Technical assistance, including more detailed information, product literature, test results, project lists, assistance in preparing project specifications and arrangements for application supervision, is available by contacting Metal Sales.

10. FILING SYSTEMS

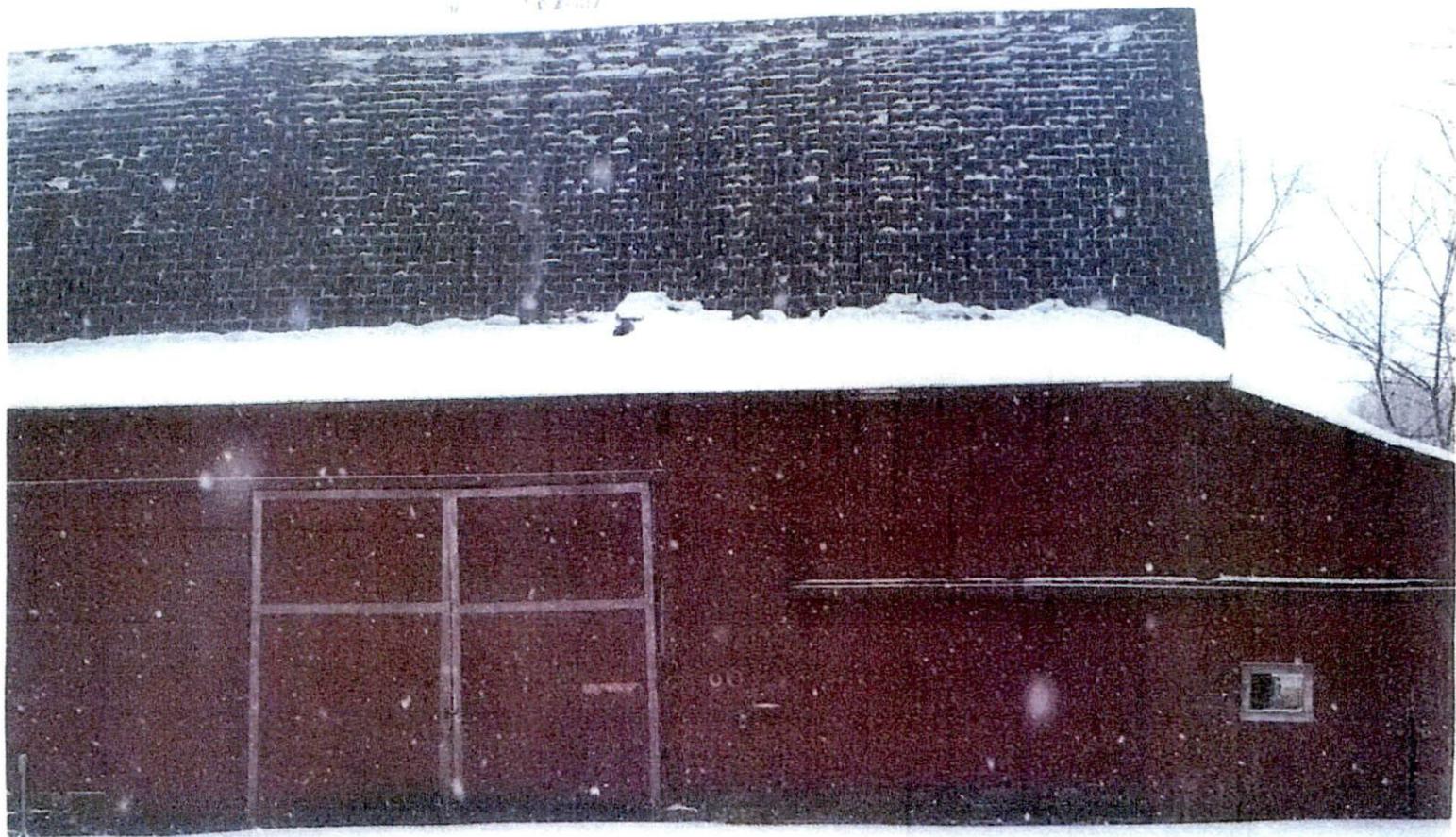
Additional product information is available from the manufacturer upon request. Metal Sales Manufacturing Corporation product information may be found in McGraw-Hill Sweets, ARCAT.

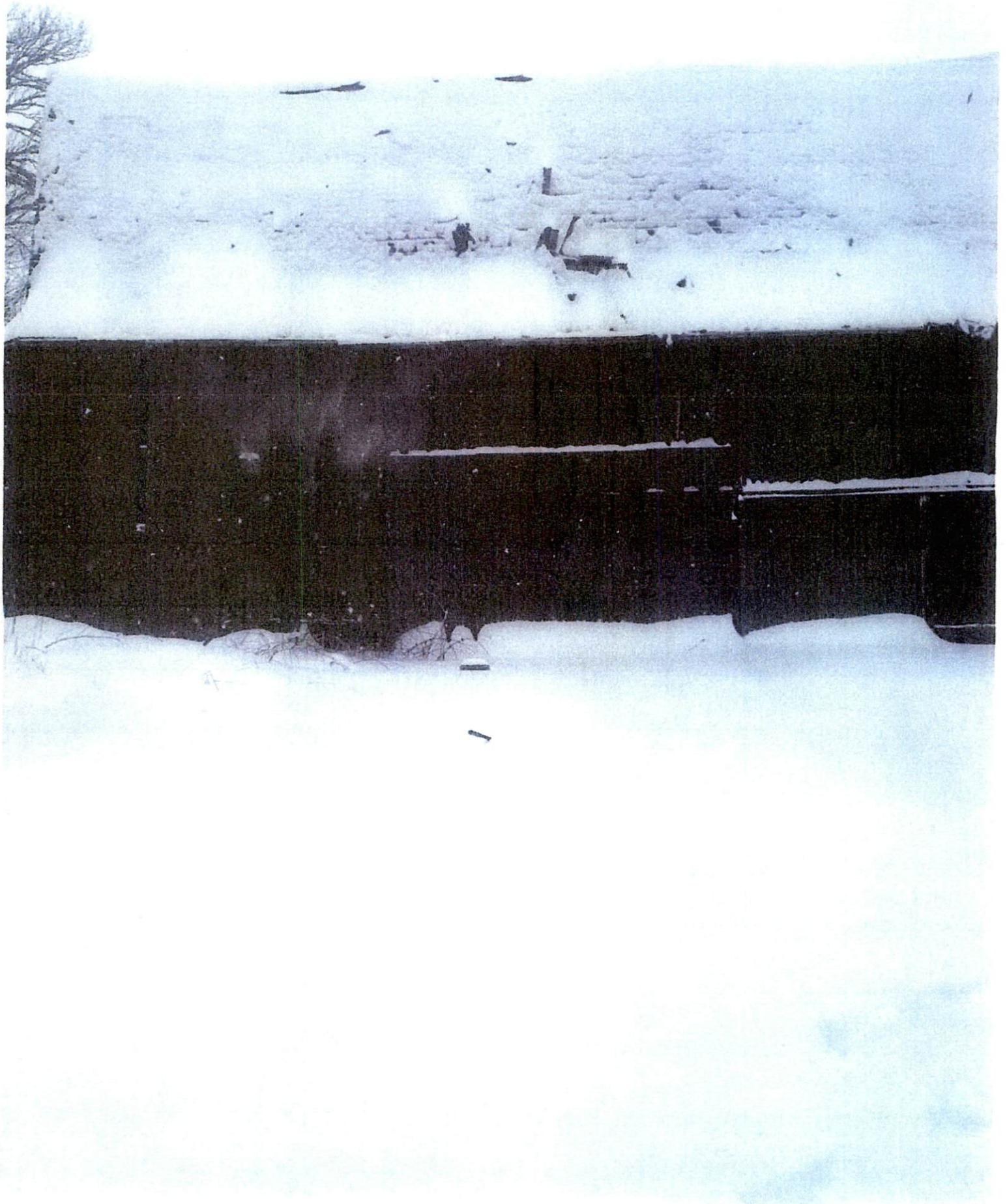


Silicon Valley Animal Center, Milpitas, CA



"Heather Blend" color to
match house





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Outlook

Windows

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Sponsored



High Speed Internet
from AT&T - \$30/mo
for 12 mos. 1-yr term
Plus \$50 Reward Card
See offer details





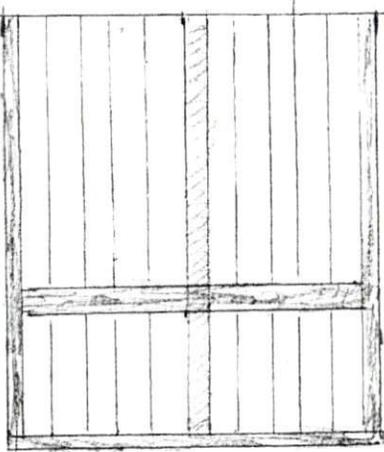
Home Search Maps En Español

Matt

North

36

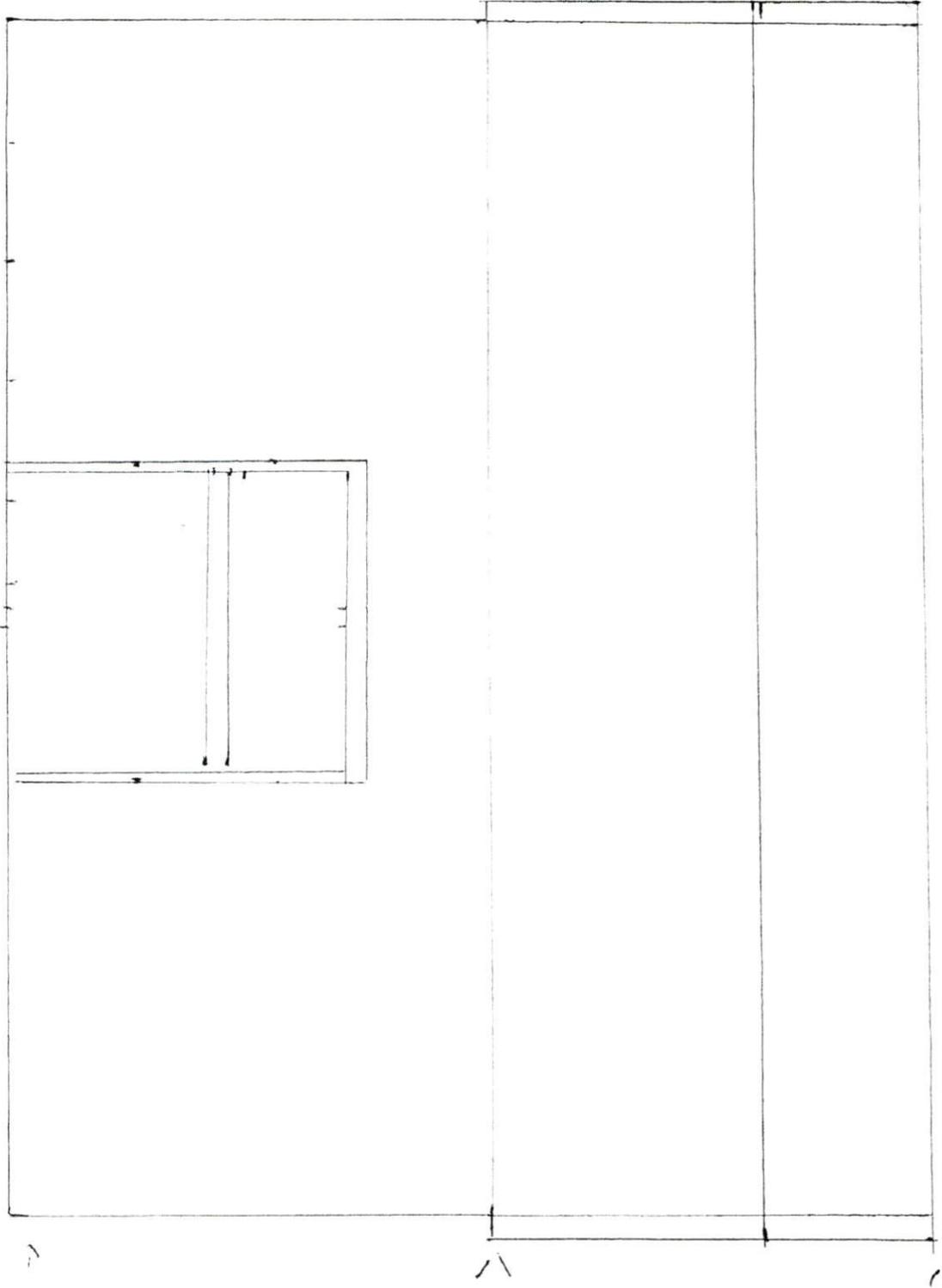
Painted dark
red & white
to match new colors



12'

11'6"

30'



12'

11'6"

11' 6"

Shingled roof

12'

metal siding

South

30'

West

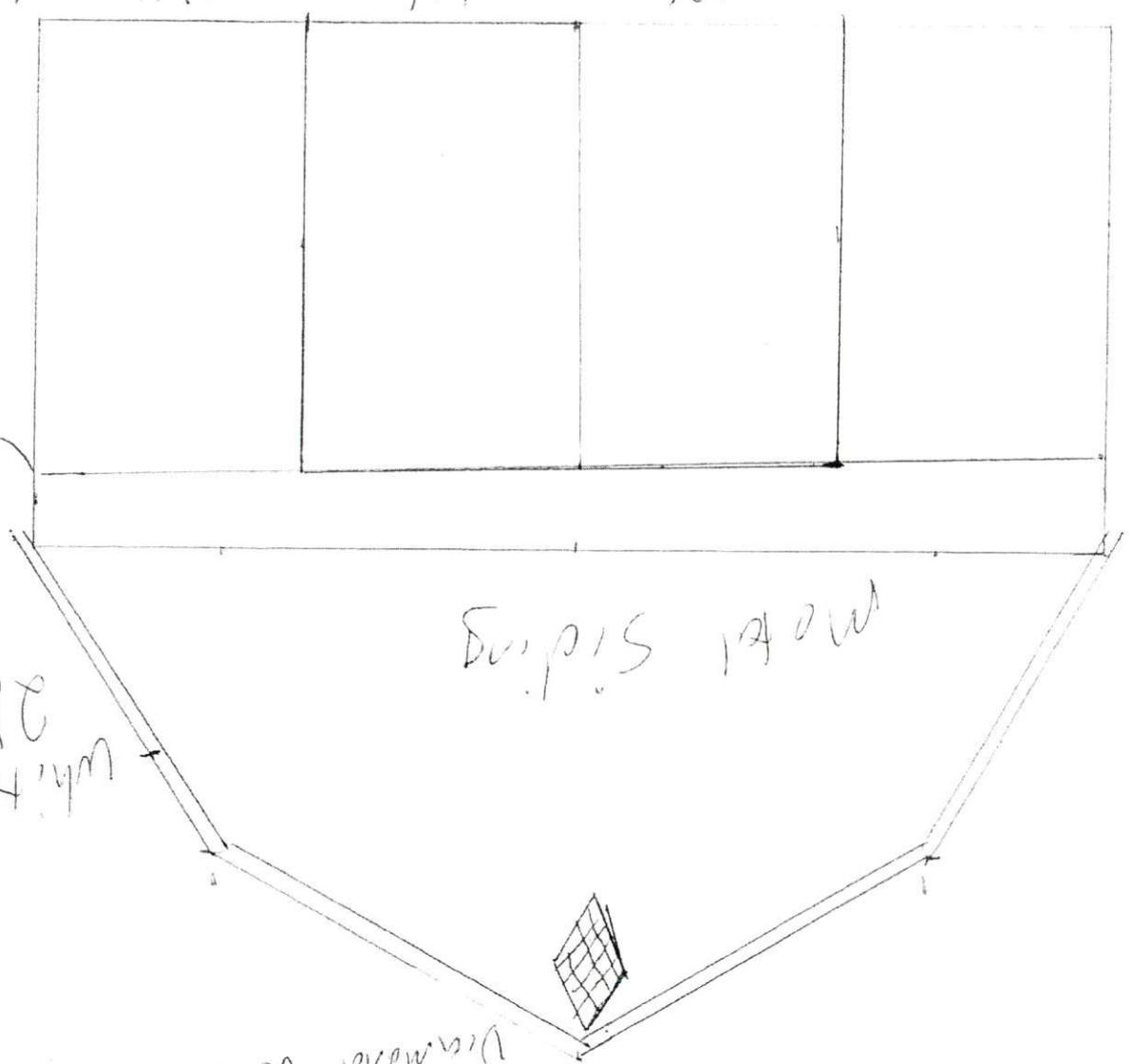
12' wide 10' tall Sliding door

Sliders ca: 15

metal Sliding

white fascia
2x6

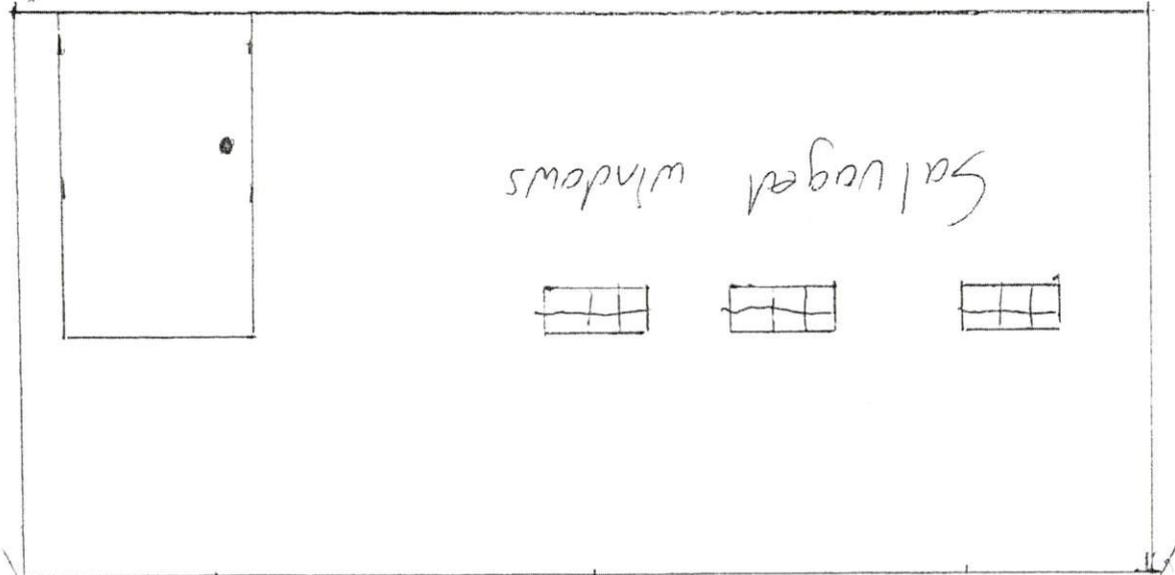
Diamond Vent



Past

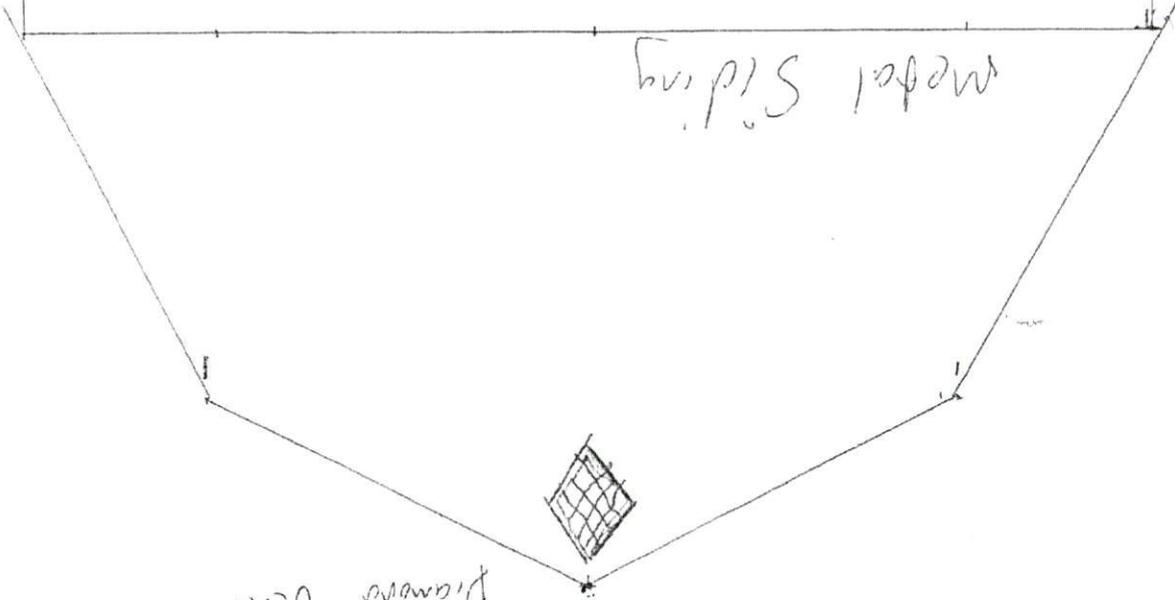
24'

4' Service door



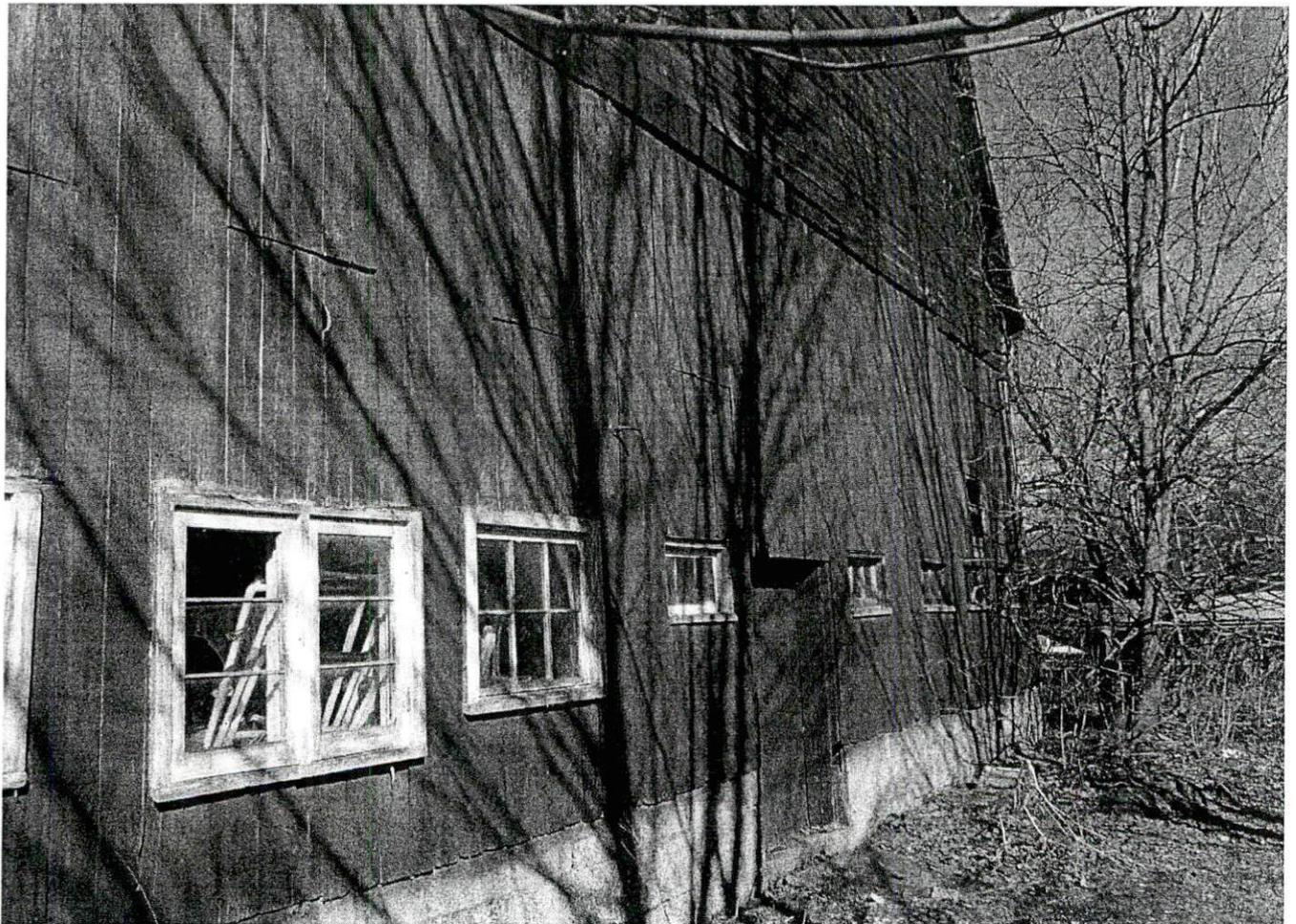
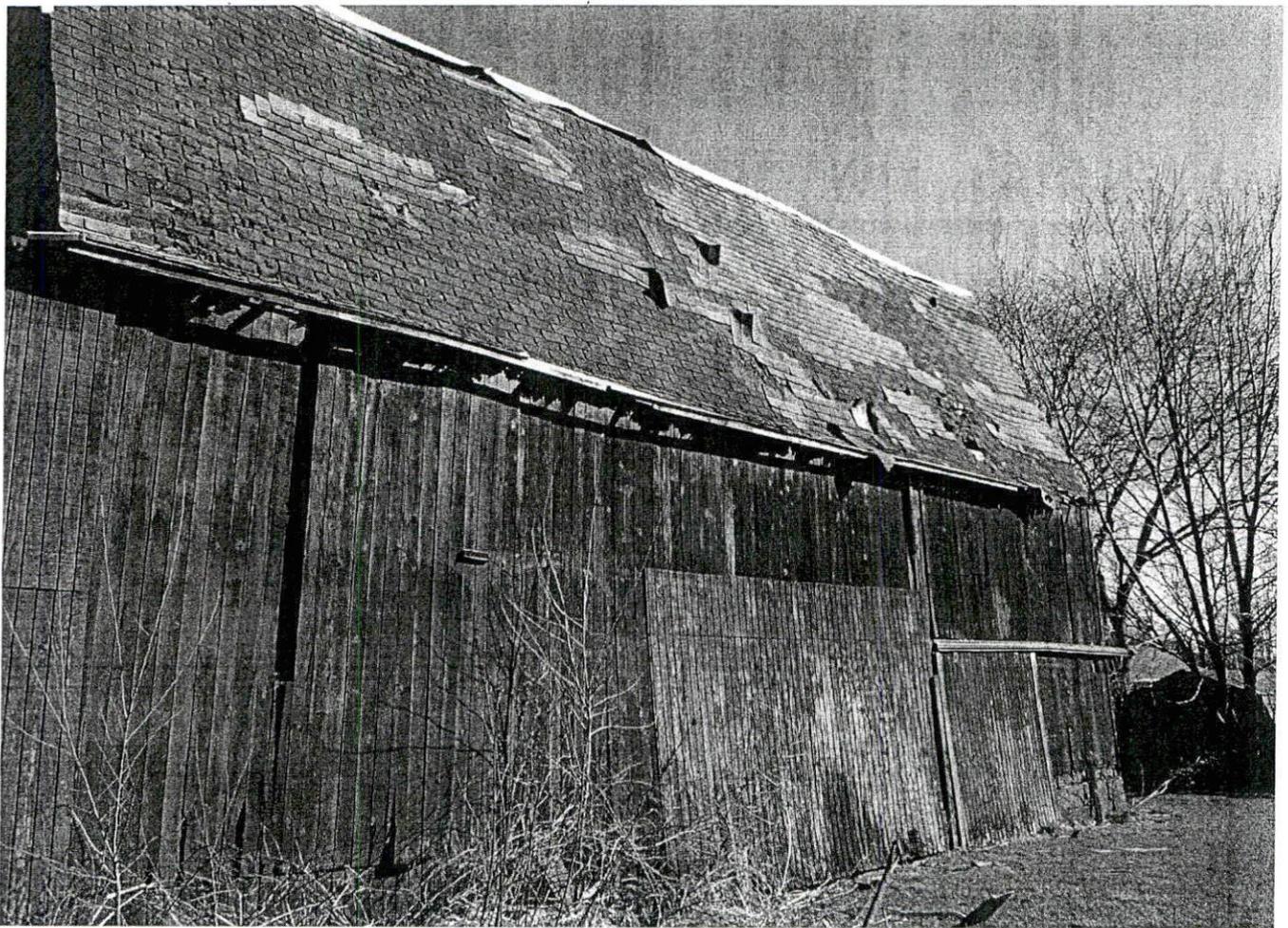
12'

Metal Siding



11' 6"

Diamond Vent



TO: Zoning Board of Appeals **DATE:** April 1, 2016
FROM: Vicki Georgeau, ^{VA} Director of Community Development
SUBJECT: ZBA #15-20, Matt Nieuwenhuis, 3221 West Milham Avenue; R-1B, One Family Residential.

CODE SECTION: 42-121(B)(1)(4) Accessory Buildings; p. CD42:28.

APPEAL: Requesting variances to reconstruct a historic accessory building that: a) is 27.5 feet in height where a maximum 14-foot building height is permitted; b) is 2,600 square feet in area and exceeds the ground floor living area by 1,456 square feet; and c) exceeds 20 percent of the required rear yard by 600 square feet.

STAFF RECOMMENDATION: The applicant is requesting the variance per the enclosed application, letter of explanation, and plot plan. The 250-foot wide by 207-foot deep corner lot is zoned R-1B, one-family residential, and is improved with a 1,976 square-foot two-story dwelling (with a ground floor living area of 1,144 square feet) constructed around 1850, and a nonconforming historic 2,600 square-foot barn constructed around 1900.

As background for the Board, the historic barn has been in disrepair for an extended period of time and has been the subject of ongoing code enforcement since March 2014. In addition, the entire property is designated as a historic district. All buildings located on a property within a historic district are required to obtain a Certificate of Appropriateness from the Historic District Commission (HDC) if modifications to the property and structures are proposed. In response to code enforcement efforts, the applicant obtained the enclosed Certificate of Appropriateness from the HDC on March 2, 2016 based on plans depicting a similar or matching 720 square foot, 30-foot by 24-foot pole barn (utilizing as much materials from the old barn as possible) that would measure 18 feet in height (height is calculated from grade to mid-point between roof peak and eaves). At the meeting, the applicant mentioned that the pole barn may be larger than 720 square feet depending on his budget and what gets approved by the Zoning Board of Appeals. The HDC has indicated that while repair/rehabilitation of the existing barn to retain the actual historic structure is preferred, due to the extensive structural degradation, a replacement barn of a similar size and design is desirable in an effort to retain the historic character of the property.

It is unfortunate the applicant has allowed the historic barn to continue to fall into disrepair. A 2,600 square-foot accessory building may have been necessary when the barn was originally constructed and used as an agricultural building. However, the applicant has provided no rationale why a substantial building is needed for the current residential use. It is acknowledged that once the barn is dismantled, the applicant will have no garage or other accessory buildings on premises for storage. Staff notes the applicant currently

has two boats parked in the east side yard, in addition to two other vehicles also regularly observed in the driveway. In addition, the property at 3221 West Milham Avenue is over an acre in size and larger than the properties to the south and west. Furthermore, the size and height of the existing historic barn has been a prominent feature of the property for well over 100 years, and the HDC is recommending the retention of the historic character of the property. It is therefore recommended the Board grant a lesser variance for an accessory building that is 18 feet in height, and that does not exceed the ground floor living area of the dwelling (1,144 square feet) with the following conditions: 1) the existing barn be dismantled within 60 days, and 2) following the dismantling of the barn the applicant report to the HDC by no later than July 6, 2016 regarding the variance approved by the Board and the quantity of salvageable materials to be used in the construction of a new barn. The lesser variance would be consistent with the approval granted by the HDC and would also strike a balance permitting the applicant fair and equitable use of the land, as well as being just and logical to other property owners in the area.

PRACTICAL

DIFFICULTY: Lack of accessory storage space, long term historic character, location and size of the historic barn. 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:

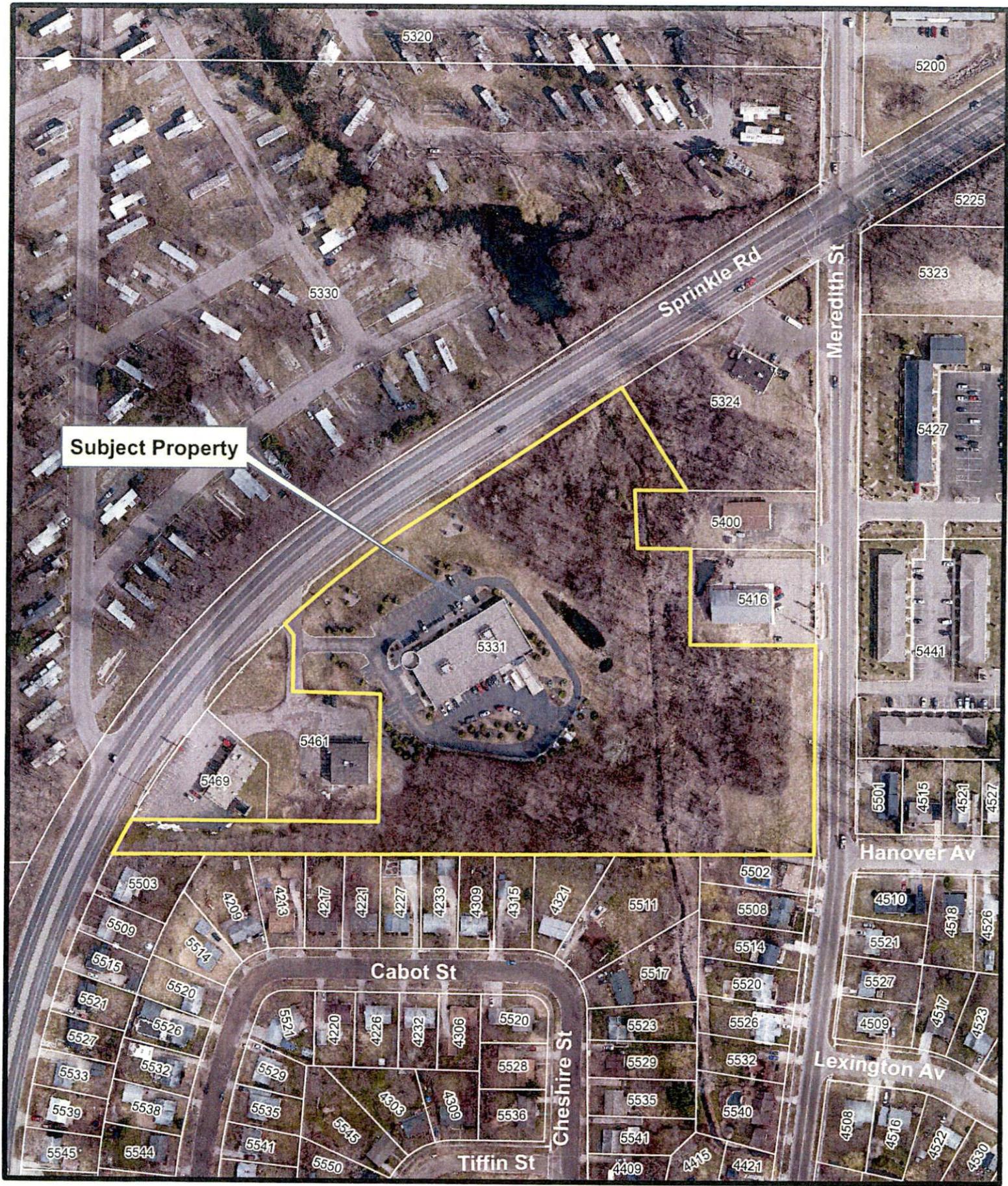
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right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

Aerial Photography 5331 South Sprinkle Road

 Subject Property



1 inch = 200 feet

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date _____

Name of Applicant Jimmie HARVEY Jimmie Harvey
Print Signature

Applicant's Address 5710 Meredith Phone No. 616-318-8982

Name of Property Owner (if different from Applicant) Perry Harley-Davidson, Inc.

Address 5331 South SPRINKLE RD Phone No. 269-329-3450

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

Street Address _____

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: _____

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: _____

FOR STAFF USE

Application Number: <u>15-22</u>	Filing Date: <u>3/10/16</u>	Tentative Hearing Date: <u>4/11/16</u>
Previous Application Filed Regarding This Property:		

Open Tuesday to Saturday

Set up time
7:00 AM

* Services *

From 10:00 AM to 6:00 PM

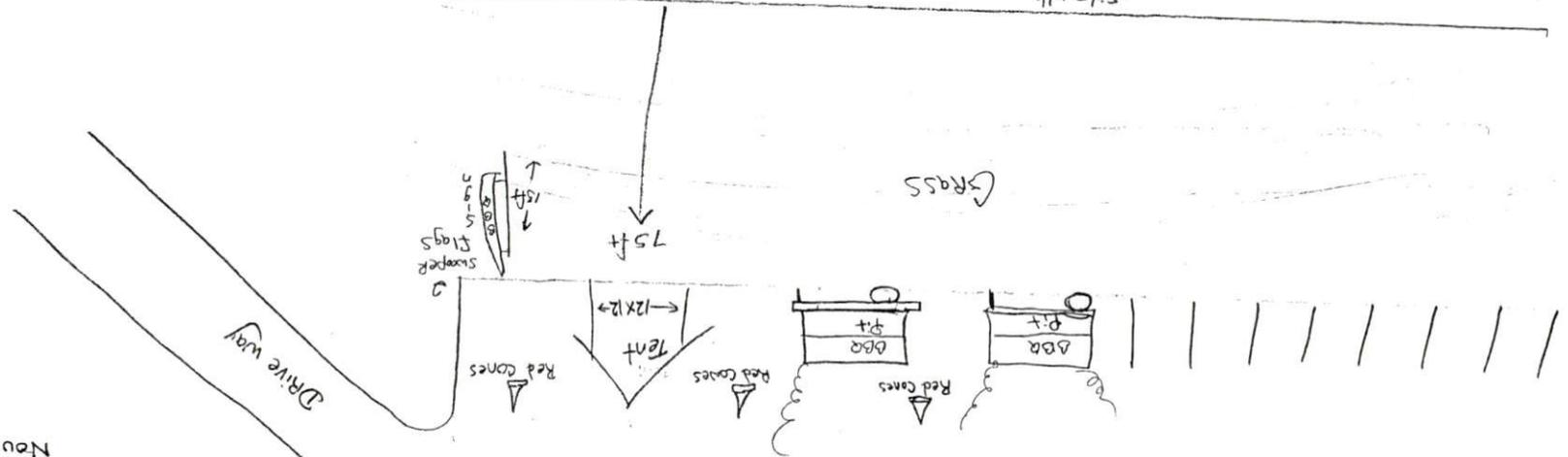
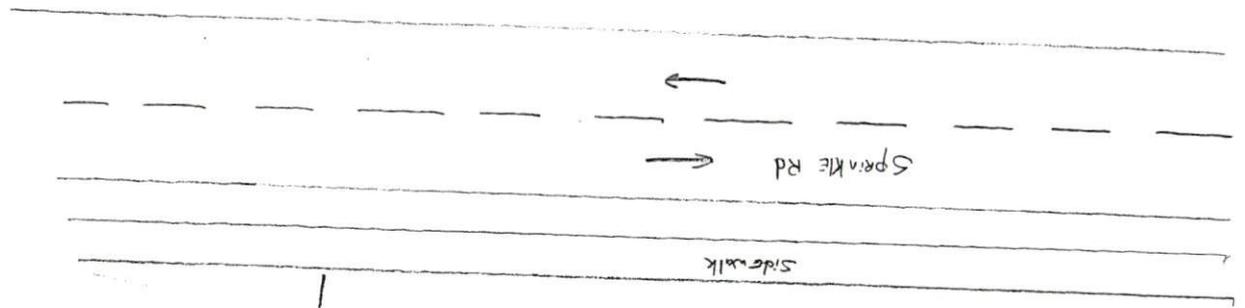
* Items Set up *

Tent
Tables
Chairs
Grook pots
Trash can
Cones
ALL will be
Taken down
at night!

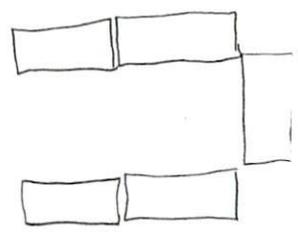
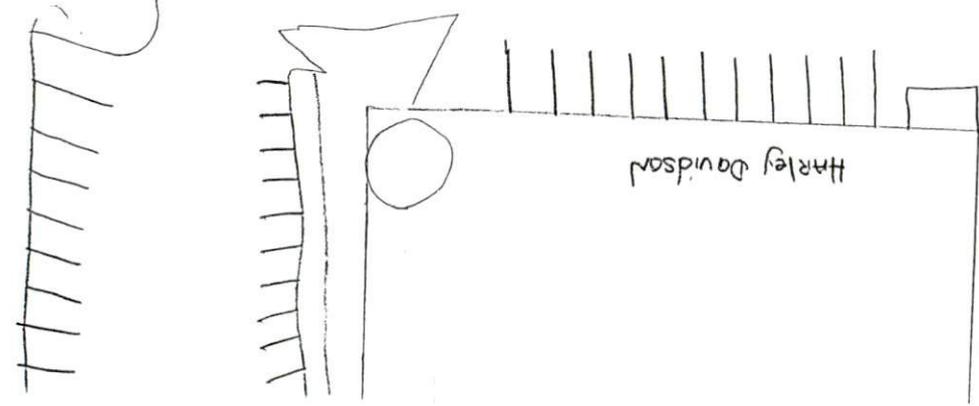
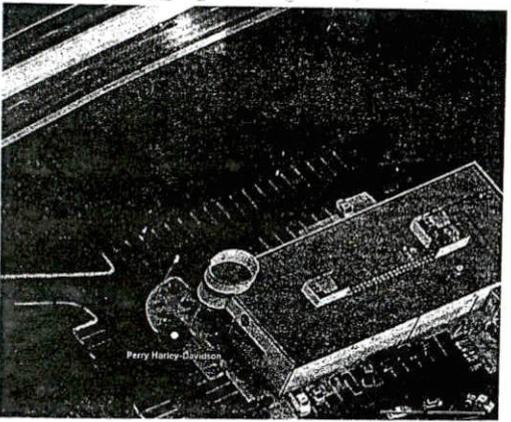
B&B GRILLS → will remain
on site

Harvey's BBQ

Harvey Davidson located on Spawick Rd
5331



Start Date
 April 25
 End Date
 November 1



March 22, 2016

To whom it may concern,

I am writing this letter to inform the City of Portage that Perry Harley-Davidson has given Jimmy's BBQ permission to set up and operate on our property from the months of April to October. Jimmy's BBQ is taking full responsibility for their actions while on our property. Please contact us if there is anything else that is needed for this.

Thank you,

Randi Knill

MotorClothes and Marketing Manager

ServSafe

National Restaurant Association

EXAM FORM NO. 10418

CERTIFICATE NO. 12064628

ServSafe® CERTIFICATION

TO **JIMMIE J HARVEY**

for successfully completing the standards set forth for the ServSafe® Food Protection Manager Certification Examination, which is accredited by the American National Standards Institute (ANSI)-Conference for Food Protection (CFP).

03/05/2015

DATE OF EXAMINATION

03/05/2020

DATE OF EXPIRATION

Local laws apply. Check with your local regulatory agency for recertification requirements.



#0655

©2014 National Restaurant Association Educational Foundation (NRAEF). All rights reserved. ServSafe is a registered trademark of the NRAEF, used under license by National Restaurant Association Solutions, LLC. The logo appearing next to ServSafe is a trademark of the National Restaurant Association.

This document cannot be reproduced or altered.
14013002

v.1401

Sherman Brown
SVP, National Restaurant Association Solutions

Contact us with questions at 175 W Jackson Blvd. Ste 1500, Chicago, IL 60604 or ServSafe@restaurant.org.

In accordance with Maritime Labour Convention 2006,
Resolution ADM N 068-2013 (Regulation 3.2, Standard
A3.2) of the Maritime Labour Convention, 2006.

TO: Zoning Board of Appeals **DATE:** April 1, 2016
FROM: Vicki Georgeau, ¹⁶³Director of Community Development
SUBJECT: ZBA #15-22, Jimmie's BBQ, 5331 South Sprinkle Road, B-2, Community Business
CODE SECTION: 42-622(D), Temporary Uses, p. CD42:140.3
APPEAL: Requesting a Temporary Use Permit to operate an outdoor barbecue grill at 5331 South Sprinkle Road from April 25 - October 25, 2016.

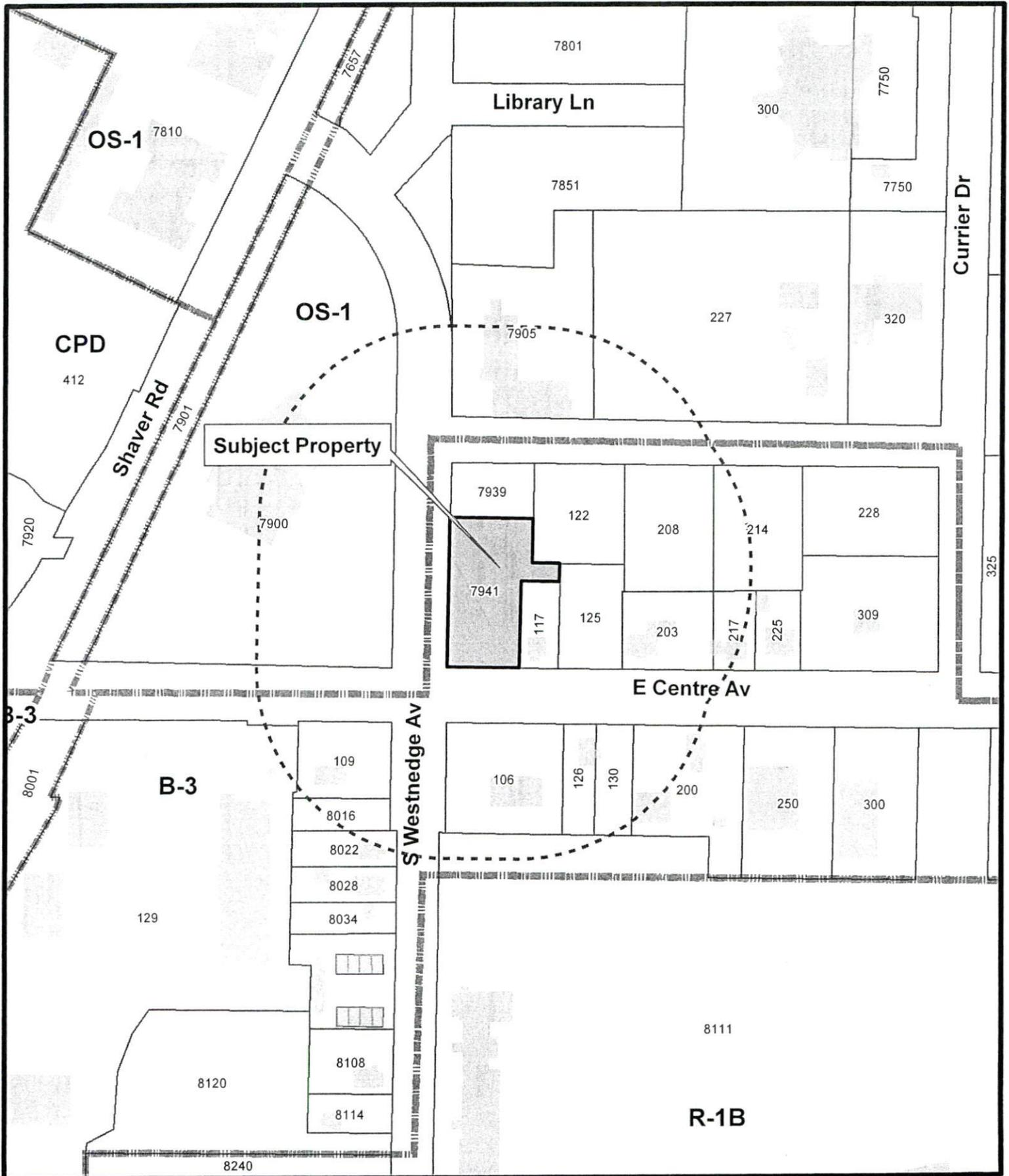
STAFF RECOMMENDATION:

The applicant is requesting the above referenced Temporary Use Permit per the enclosed application, site sketch and related materials. The 9.64 acre parcel is improved with a 16,000 sq. ft. commercial building, off street parking lot and related improvements. The property is zoned B-2, is adjacent to a residential neighborhood (R-1A) to the south; a manufactured home community to the north, and commercial properties to the west.

The applicant proposes to operate an outdoor barbeque in the off-street parking lot at 5331 South Sprinkle Road (Perry Harley-Davidson motorcycle dealership) from April 25 - October 25, 2016. The setup will include two barbeque grills/smokers, waste receptacle(s), picnic table and chairs, 12 x 12 foot tent, and will operate Tuesdays through Saturdays between the hours of 10 a.m. through 6 p.m. The outdoor barbecue grills will remain on site for the duration of the event, but all other equipment will be removed daily at the close of business. The proposed outdoor barbecue Temporary Use will be approximately 90 feet from the front property line, over 600 feet from the convenience store located on the corner of South Sprinkle Road and Meredith Street (5324 Sprinkle Road), and approximately 300 feet from The Sprinkle Road Laundry (5469 Sprinkle Road). Section 42-622(D)(2)(c), Temporary Uses states that the use shall be in harmony with the general intent of the district, and shall not require the erection of any capital improvements of a structural nature. While the applicant has the option to obtain a Business Special Event Permit for up to 28 days per year, staff can recommend the Temporary Use permit for Jimmie's BBQ, 5331 South Sprinkle Road be approved subject to the following conditions:

1. The Temporary use be permitted to April 25 – October, 25, 2016
2. The outdoor barbeque be licensed by the Kalamazoo County Department of Health and Community Services.
3. Table (under tent), pedestrian barrier, and tent set-up be consistent with the submitted site sketch.
4. Hours of operation be limited to 10:00 a.m. to 6:00 p.m. Tuesday 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 (and not the two non-permitted flags shown in the application).
7. No sound amplifying equipment be permitted.

PRACTICAL DIFFICULTY: Not applicable.

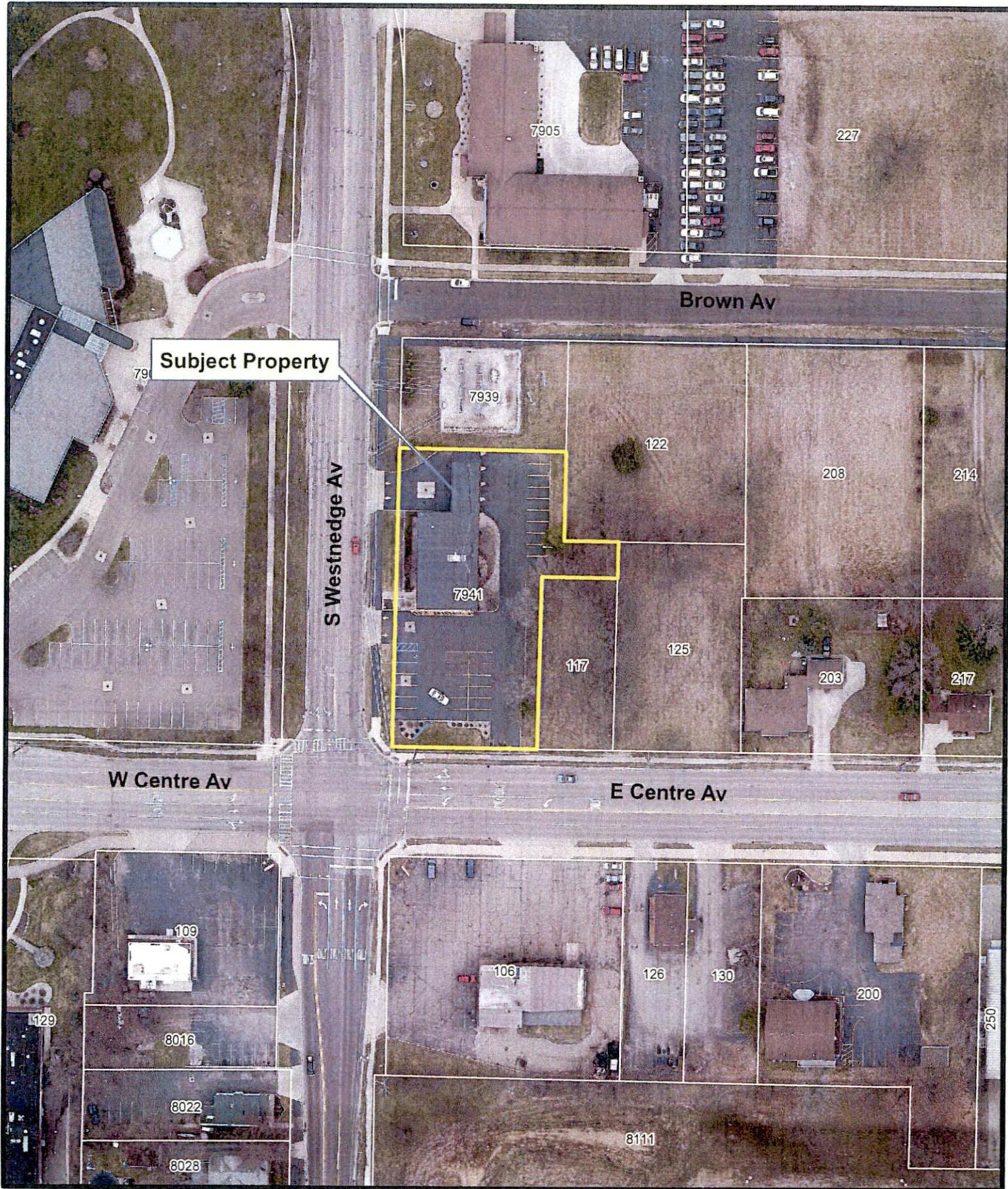


-  Subject Property
-  Zoning Boundary
-  Notification Area

ZBA 15-23
7941 South Westnedge Avenue



1 inch = 200 feet



 Subject Property

Aerial Photography 7941 South Westnedge Avenue



1 inch = 100 feet

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date MARCH 11, 2016

Name of Applicant JOHN KRASINKIEWICZ [Signature]
Signature

Applicant's Address 2215 COLE ST., BIRMINGHAM, MICH. Phone No. (248) 646-5765

Name of Property Owner (if different from Applicant) COMERICA BANK / CBRE

Address 3501 HAMLIN ROAD, AUBURN HILLS, MICH Phone No. (248) 371-7157 ←
LEONARD MURZ

Address of the Property that is the subject of this Application:
 Street Address 7941 S. WESTNEDGE, PORTAGE, MICHIGAN, 49002
 For Platted Property: Lot 000153100 of SOUTHWEST 1/4 OF SEC. 15, TOWN 3, RANGE 11 WEST Plat PORTAGE

[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: ARCHITECT REPRESENTING
COMERICA BANK / CBRE (PROJECT MANAGER)

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: _____

FOR STAFF USE

Application Number: <u>15-23</u>	Filing Date: <u>3/14</u>	Tentative Hearing Date: <u>4/11</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.)

The building is being renovated and updated to reflect current COMERICA Brand. A tower is being added that encroaches on setback.

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

We are proposing to encroach on setback by 4'-8". Current building is on setback limit. We are not doing anything unique that properties adjacent to Comerica property are doing.

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 property can be using without granting variance. However, current bank improvements and branding (adding tower) would suffer. Comerica Bank wants to invest and improve property image.

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.)

The variance would improve COMERICA BANK brand/building appearance and serve local customers.

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.)

Comerica Bank is located on a corner lot. The tower addition is being added to the intersection (South Westnedge ave & East Centre ave.) side of site, away from adjacent properties.

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.)

The tower will add approximately 89 S.F. of area to the southwest corner of the building. The height of the tower is 27 feet.

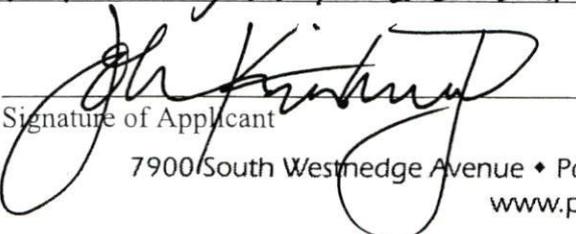
7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)

The previous owner of the building set the building on the setback line limit. Comerica Bank wants to improve the building appearance and add the tower to improve Bank Brand.

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

The tower and improvements to the existing building will make the area more attractive and show the community that COMERICA is investing in the area and improving customer services.

Signature of Applicant



Date

MARCH 11, 2016

**NIAGARA
MURANO**

March 11, 2016

Portage Dept. of Community Development
7900 South Westnedge Ave
Portage, MI 49002

Re: Comerica Bank Branch 524
7941 S. Westnedge
Portage, MI 49002

NM Pr. No.: # 15134.0

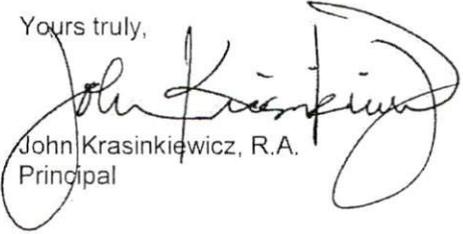
Dear Mr. Jeff Mais:

Please find forwarded the documents required for the Zoning Board of Appeals for April's meeting. The intent of this project is to upgrade the appearance of existing Comerica Branch 524. The extent of this renovation will consist of both exterior and interior renovations, including new finishes, new brick, new fascia and a small entry tower addition. Our intent is to acquire a variance to allow the protrusion of the additional tower 4'-8" into the existing setback to allow it to extend past the existing canopies. This addition will significantly upgrade the appearance of the bank and bring this branch up to Comerica Bank branding standards.

The Niagara Murano Team reviewed placing the proposed Comerica Bank Tower further east in the current layout. However, ADA issues arose within the new bank layout that were difficult to overcome. The existing vault-safe, mechanical room and toilet room cannot be relocated to accommodate the coupon booth. In addition, the size of the coupon booth was designed to support ADA requirements as well as provide visual sight lines for staff to view customers using the vault and coupon booth. The tower extends 8 inches past the current building overhang.

On behalf of NM and all Team members, I thank you for your help on this project. Should you have any additional questions, please call us at your convenience.

Yours truly,


John Krasinkiewicz, R.A.
Principal

ARCHITECTURE
2215 COLE STREET
BIRMINGHAM, MICHIGAN 48009
TELEPHONE: 248.646.5765
FACSIMILE: 248.646.5813



CONCEPTUAL RENDERING



EXISTING BUILDING

TO: Zoning Board of Appeals **DATE:** April 1, 2016
FROM: Vicki Georgeau, ^{VJ} Director of Community Development
SUBJECT: ZBA #15-23, John Krasinkiewicz, on behalf of Comerica Bank, 7941 South Westnedge Avenue; B-3, General Business.
CODE SECTION: 42-350(A); Schedule of Regulations, p. CD42:84

APPEAL: Requesting a variance to construct a vestibule 25 feet from the west (front) property line where a minimum 30-foot setback is required.

STAFF RECOMMENDATION:

The applicant is requesting the above referenced variance per the enclosed application, site plan, letter of explanation and related materials. The subject property is zoned B-3, general business and is improved with a 2,870 square-foot commercial building (Comerica Bank), covered drive-through, off-street parking lot and related site improvements. The property is adjacent to a Consumers Energy substation to the north, undeveloped property zoned B-3, general business to the east, commercial property across the street to the south and City Hall across the street to the west.

The bank was originally constructed in 1970. The applicant plans to make both interior and exterior renovations. The exterior façade improvements will include new brick, new fascia, and the addition of an entry tower/vestibule at the southwest corner of the building. This design feature can be found at other branches and the architectural element is part of Comerica Bank's branding. The building is currently located 30 feet from the west (front) property line, and the proposed vestibule will project five feet into the required setback.

The applicant has explored conforming alternatives, such as moving the entry tower/vestibule east so that it would be flush with the west elevation, however, the interior layout presents practical difficulties, as the existing vault-safe, mechanical room, and toilet room cannot be relocated to accommodate the new coupon booth (a private area for customers to view deposit materials). In addition, the coupon booth is designed to meet ADA requirements as well as provide visual sight lines for staff to view customers using the vault and coupon booth. The variance would not be detrimental to adjacent property and the surrounding neighborhood and would not materially impair the intent and purpose of the zoning ordinance. For these reasons the variance is recommended.

PRACTICAL DIFFICULTY:

Interior layout. Security and regulatory requirements. 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:

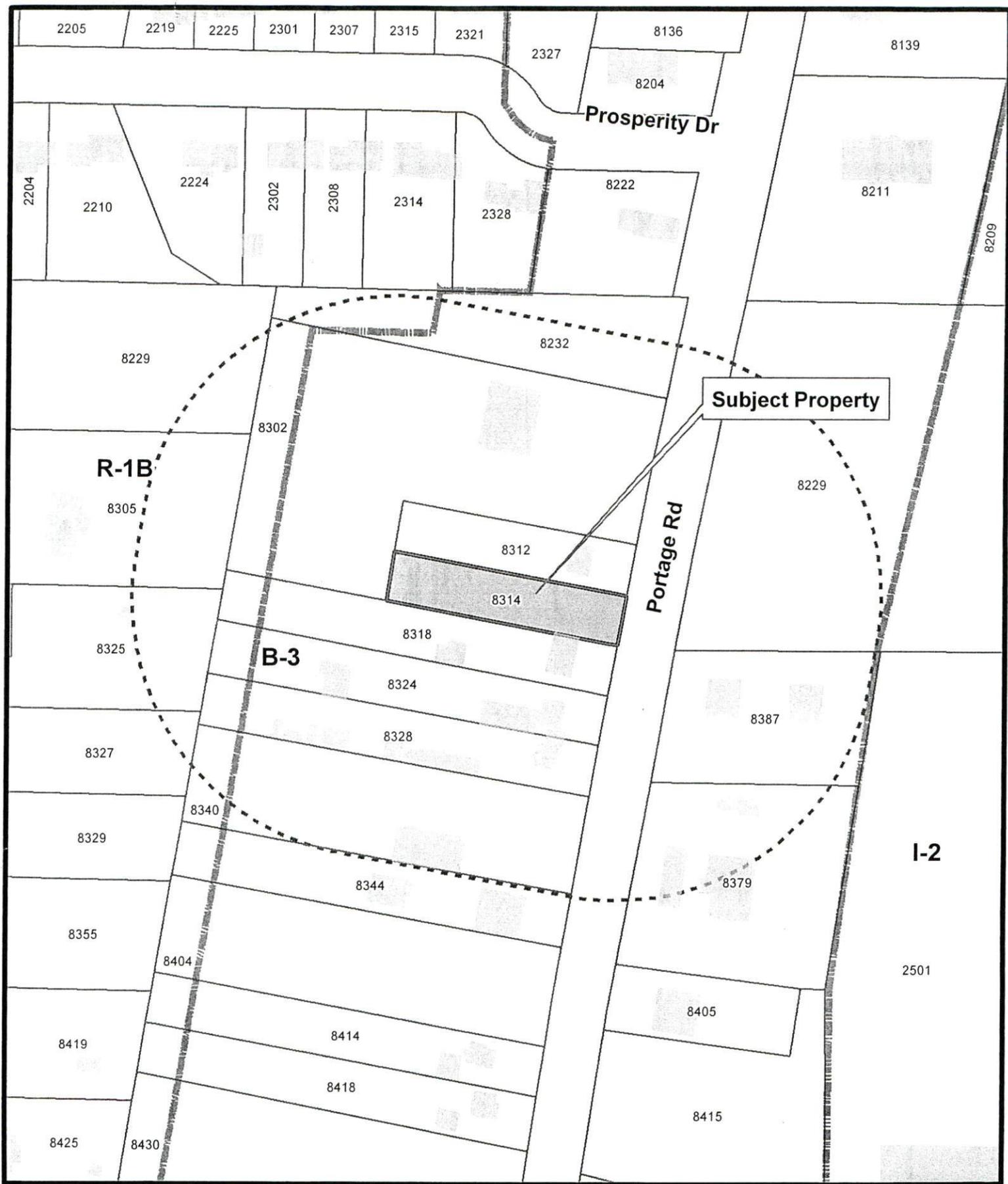
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right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

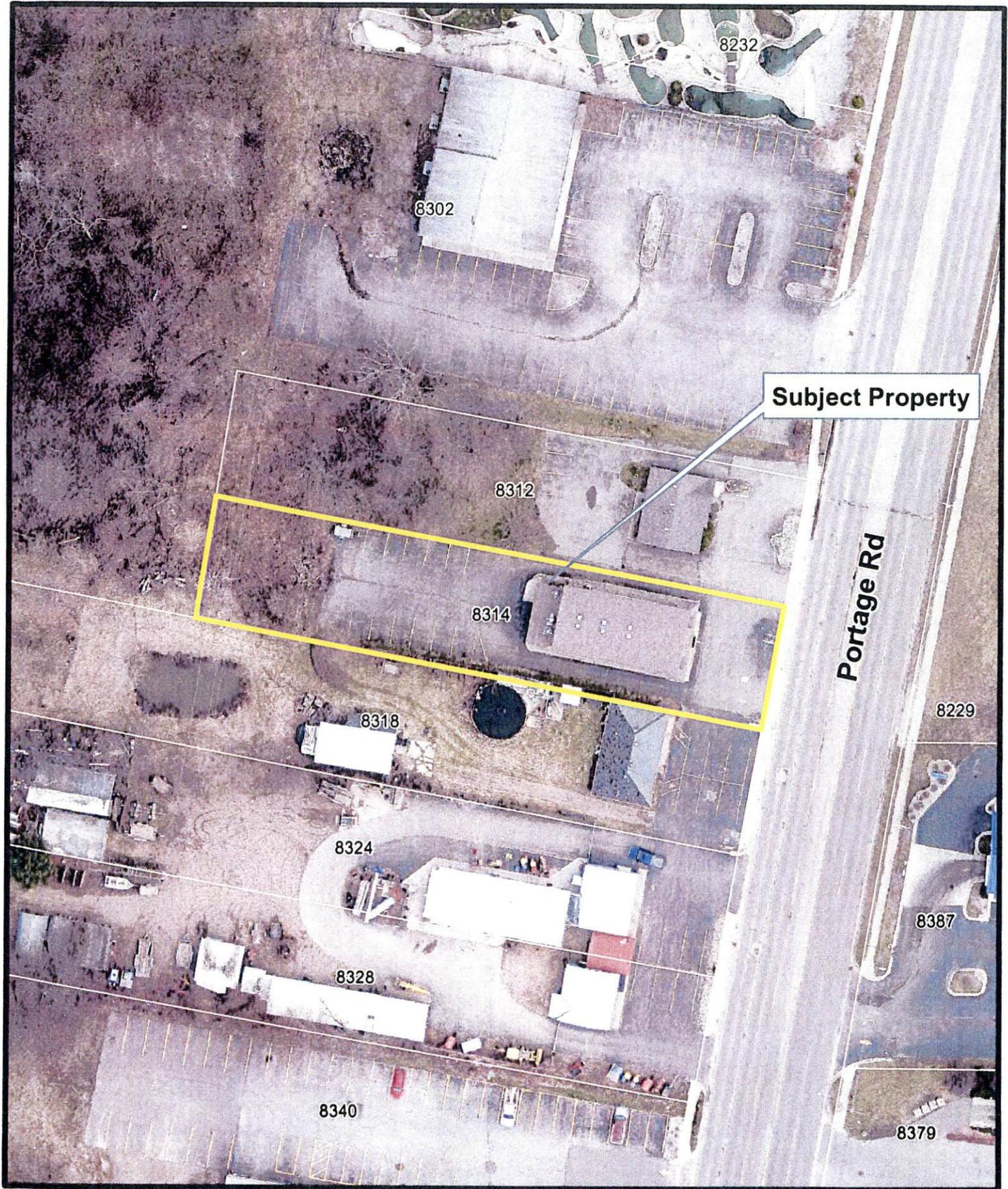
-OR-

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

Aerial Photography 8314 Portage Road



1 inch = 60 feet

RECEIVED
FEB 19 2016
COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 2/19/16
 Name of Applicant Jerin Weyenberg Jerin Weyenberg
Signature
 Applicant's Address 5817 Chesire St. Phone No. 269 806 5590
 Name of Property Owner (if different from Applicant) Dennis Simon
 Address 8314 Portage Rd. Phone No. _____

Address of the Property that is the subject of this Application:
 Street Address 8314 Portage Rd.
 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: managing Partner, patient, customer

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 II Section 90-35 Paragraph 2
 Regarding: Use Area _____ Yards _____
 Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): see attached

Appeal of Administrative Decision: Article _____ Section _____ Paragraph _____

Reason for Request: _____

Interpretation of the Zoning Ordinance: Article II Section 42-129 Paragraph C

Reason for Request: A home occupation is not a realistic place for patients to get medicine

A Temporary Permit for: Building _____ Use Other Approval _____
 Article 112 Section 129 Paragraph C

Reason for Request: Provide medicine for medical marijuana patients in as safe a way as possible

FOR STAFF USE

Application Number:	Filing Date:	Tentative Hearing Date:
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.)

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

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

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.)

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.)

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.)

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.)

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

X John Wengen
Signature of Applicant

X 2/19/16
Date

City of Portage, Zoning Board of Appeals, Department of Community Development

I'm writing in response to a zoning violation notice for 8314 Portage rd. Unauthorized Building Improvements and use.

The building at said location, is being used as a commercial space for a caregiver to patient exchange of medical marijuana. The space provides patients with safe, secure access to medical marijuana that has been tested and certified by The Spott, a testing facility in Kalamazoo. Medical Marijuana patients from around southwest Michigan, have no place that's safe and secure to obtain medicine for themselves that's been batch tested. The most recent data available shows that there are about 15 medical marijuana patients for every 1000 residents. That data would indicate that there are about 3,000 medical marijuana patients in Kalamazoo County alone. Given that information, it's clear that a "home occupation" ordinance 42-129 is not an adequate, realistic way for suffering patients to obtain medicine. There are not enough home occupations in Portage to supply the needs of patients, nor is it practical for someone in a home occupation to have batch tested marijuana on a regular basis for patients.

I am appealing to you for a zoning use variance of said property. Currently the property is zoned B-3 Interchange Business District. There are no schools or churches within 1000 feet of the property, private parking for customers is located in the rear and the owner of the building Dennis Simon has given us permission to use the space. Finding another property owner in Portage to lease from knowing the risk involved in this type of business was not feasible, and proved fruitless. I would like a use variance for operating a medical marijuana patient to caregiver exchange, as I don't believe there is another place in Portage where we could conduct this business. Given this use variance we will absolutely comply with any future licensing regulations the city of Portage deems necessary.

In addition to appealing for a use variance, I would also like to appeal the interpretation of the zoning ordinance. Section 90-35 B-3 lists of permitted use include personal or professional service. We are providing the personal and professional service of exchanging safe marijuana to patients of the Michigan medical marijuana act.

In conclusion, it's my opinion and experience that I have been presented with an opportunity to do whats right for people that are suffering. I've only had one thought through this and that's to try and help people that need help. I know in my heart I'm doing the right thing. Your attention to this is very much appreciated, thank you.



THE SPOTT

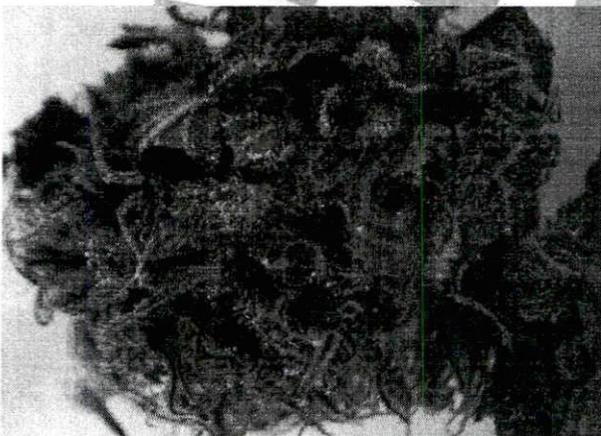
901 Riverview Drive
Kalamazoo, MI 49048
(269)459-6462

Customer
Sample Name
Sample Type
Sample ID
Instrument
Date Tested
Comments

Great Lakes Wellness
Blue Dream
Flower
512 134 bd
UPLC
1/21/2016
None

Ultra Performance Liquid Chromatography

Δ9-THCA	15.60	%
Δ9-THC	0.11	%
Δ8-THC	0.05	%
THCV	<.05	%
CBDA	<.05	%
CBD	<.05	%
CBGA	3.11	%
CBG	0.07	%
CBC	0.07	%
CBN	<.05	%
CBCA	0.10	%
*TC	19.11	%
*TPAC	16.81	%



All results generated on sample as received.* TC represents the total concentration of cannabinoids.*TPAC - represents the cannabinoid concentration when product is fully cooked or burned prior to consumption.

CANNABIS TESTING FACILITY
Kalamazoo MI, 49001
269-459-6462

Gas Chromatography

N/A

QuantaCann 2

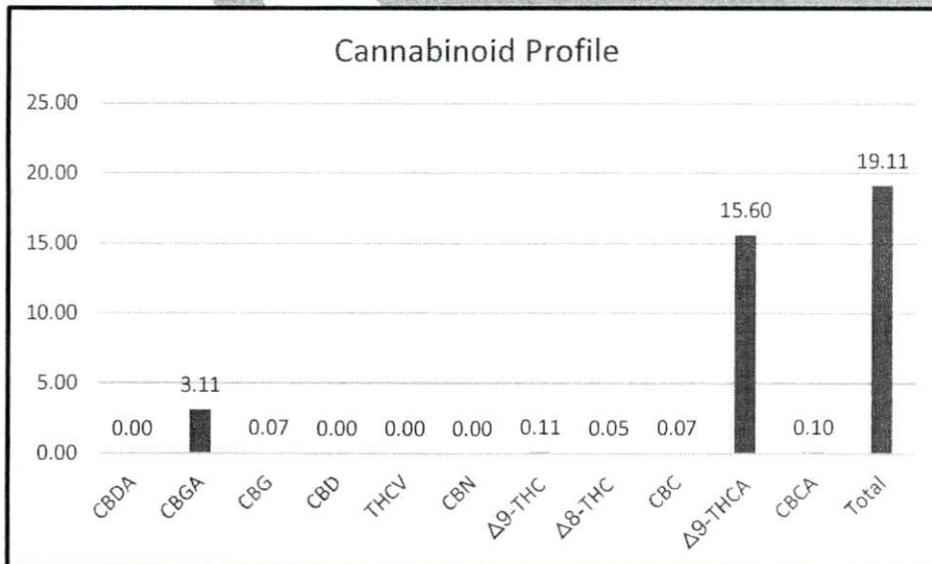
Raw (HPLC)		
THC + THCA	0	%
CBD + CBDA	0	%
Heated (GC)		
THC	0	%
CBD	0	%
Moisture	0	%

Foreign Matter

Digital Microscopy

Mold:	NO
Pests:	NO
Other:	N/A

Cannabinoid Profile



Lab Manager Approval: *J.P.*



THE SPOTT

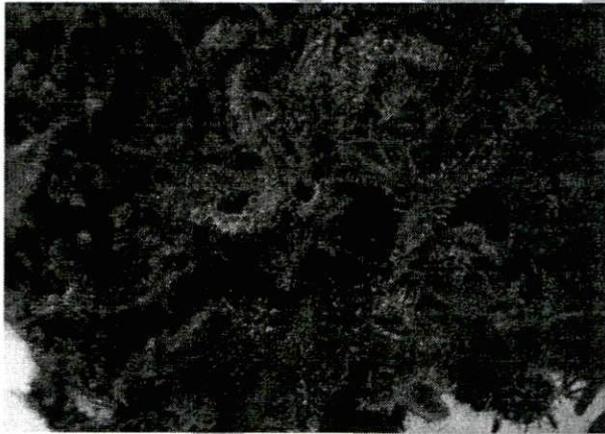
901 Riverview Drive
Kalamazoo, MI 49048
(269)459-6462

Customer
Sample Name
Sample Type
Sample ID
Instrument
Date Tested
Comments

Great Lakes Wellness
G S C
Flower
511 134 gsc
UPLC
1/21/2016
None

Ultra Performance Liquid Chromatography

Δ9-THCA	14.72	%
Δ9-THC	0.11	%
Δ8-THC	0.06	%
THCV	<.05	%
CBDA	<.05	%
CBD	<.05	%
CBGA	2.22	%
CBG	0.09	%
CBC	0.06	%
CBN	<.05	%
CBCA	0.11	%
*TC	17.37	%
*TPAC	15.28	%



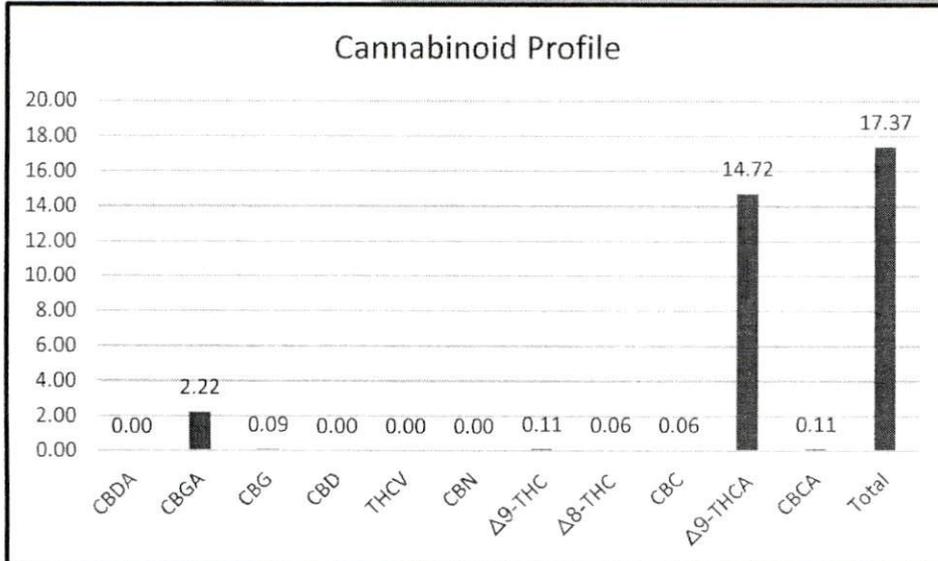
All results generated on sample as received. *TC represents the total concentration of cannabinoids. *TPAC - represents the cannabinoid concentration when product is fully cooked or burned prior to consumption.

CANNABIS TESTING FACILITY
Kalamazoo MI, 49001
269-459-6462

Gas Chromatography

N/A

Cannabinoid Profile



QuantaCann 2

Raw (HPLC)		
THC + THCA	0	%
CBD + CBDA	0	%
Heated (GC)		
THC	0	%
CBD	0	%
Moisture	0	%

Foreign Matter Digital Microscopy

Mold:	NO
Pests:	NO
Other:	N/A

Lab Manager Approval: *J.P.*

TO: Zoning Board of Appeals **DATE:** April 1, 2016
FROM: Vicki Georgeau, Director of Community Development
SUBJECT: ZBA #15-14, Jevin Weyenberg, 8314 Portage Road; B-3 General Business.
CODE SECTION: 42-129 (C) Medical Marihuana Home Occupations; p. CD42:40.1
42-622(C)(1) Interpretations; p. 42:140.2
42-622(B)(2) Use Variances; p. 42:140.2

APPEAL: Requesting: a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 8314 Portage Road; or b) a use variance to operate a medical marihuana patient-caregiver exchange at 8314 Portage Road.

STAFF RECOMMENDATION:

The applicant is requesting the interpretation or use variance per the enclosed application, letter of explanation and related materials. The 0.3 acre parcel is zoned B-3, general business, and is improved with a 3,912 square-foot commercial building, off-street parking lot and related improvements. The property is adjacent on all sides to other commercially zoned properties.

As background for the Board, a medical marihuana patient-caregiver exchange operation was established at 8314 Portage Road without city review or approval and is now the subject of code enforcement. The applicant has been advised that medical marijuana patient-caregiver exchanges are not permitted in B-3 zones and are restricted to residential areas as a Medical Marihuana Home Occupation, consistent with Section 42-129 (C) of the Zoning Code.

Following the passage of the Michigan Medical Marihuana Act in 2008, the City of Portage determined medical marihuana grow operations and patient-caregiver exchanges would be allowed as home occupations. Consequently, paragraph (C) of Section 42-129 of the Zoning Code was adopted. The Code is unambiguous and explicitly states:

“Medical marihuana home occupation. A primary caregiver acting in compliance with the General rules of the Michigan Department of Community Health, the Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26421 et seq., and the requirements of this section, *shall only be allowed as a home occupation.*” [emphasis added]

Had the intent been to permit medical marihuana patient-caregiver exchanges as businesses in commercial zones, the code would have been amended such that the use would be specifically listed among the principal permitted or special uses in the Zoning District regulations. That, however, is not the case. As noted above, the property at 8314 Portage Road is zoned B-3, general business and accommodates a commercial building, not a private residence. The Board is therefore advised to make an interpretation that a medical marihuana patient-caregiver exchange is not a permitted use at 8314 Portage Road.

Concerning request b) the application has not provided any information that demonstrates the criteria in Section 42-622(B)(2) for a use variance is met: the condition or location of the property is not unique; the land can reasonably be used in a manner consistent with uses allowed in the B-3 district, as there are other permitted commercial tenants present; the use variance would materially impair the intent and purpose of the code as the use is expressly permitted only as a home occupation; and the immediate unnecessary hardship causing the need for the variance was created by the applicant when the patient-caregiver exchange was established at 8314 Portage Road without obtaining approval by the City. The use variance, therefore, should not be approved.

**PRACTICAL
DIFFICULTY:**

None noted by staff. See suggested motion form.

T:\COMMDEV\2015-2016 Department Files\Board Files\Zoning Board\15-14, 8314 Portage\2016 04 01 VG ZBA 15-14, Portage, 8314 (staff rpt).docx

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 _____

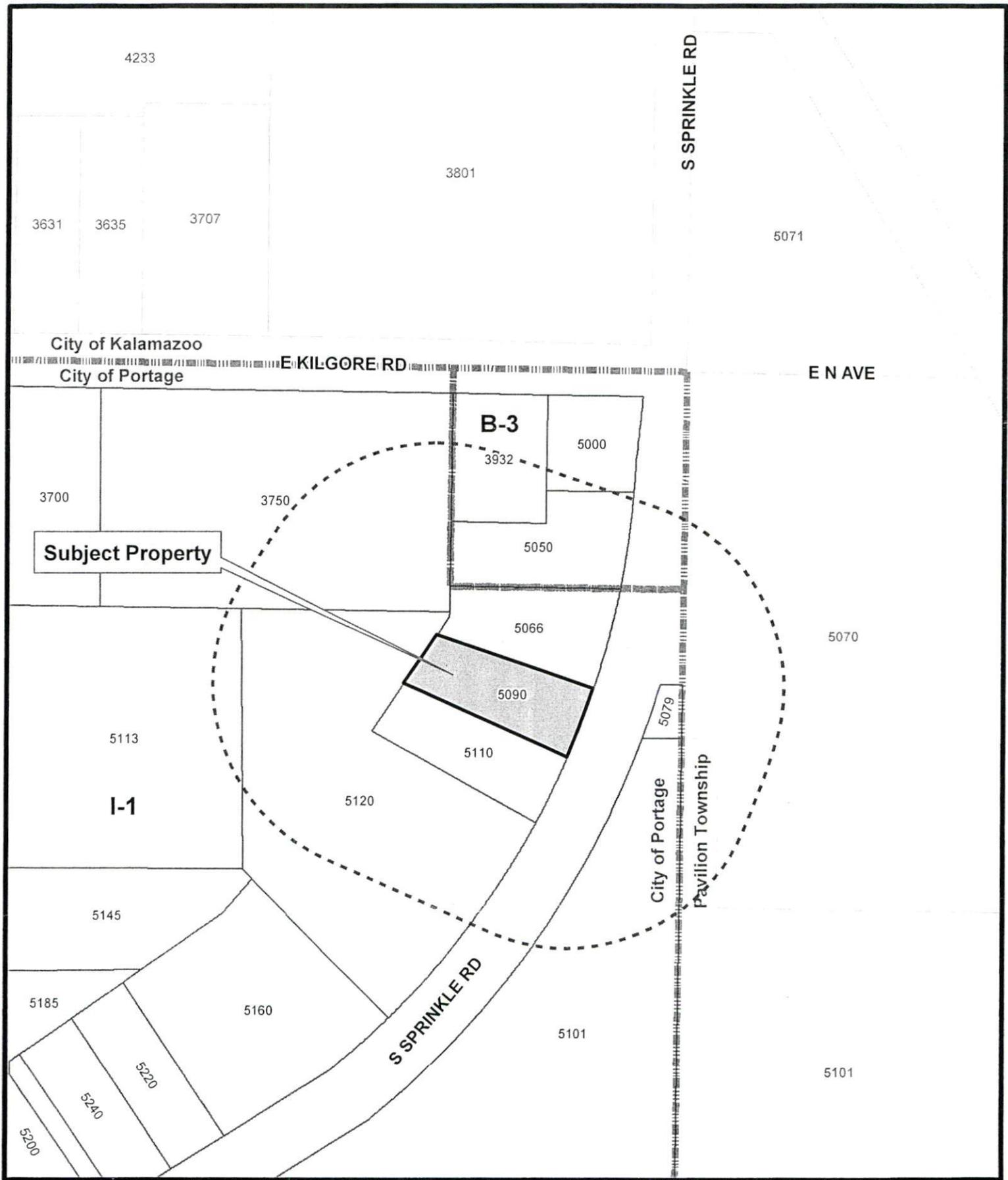
- 3a. That the use variance will not alter the essential character of the neighborhood or the intent of the comprehensive plan, nor be a detriment to adjacent properties.
- 4a. The variance will not materially impair the intent and purpose of this article or the district in which the property is located.
- 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.**

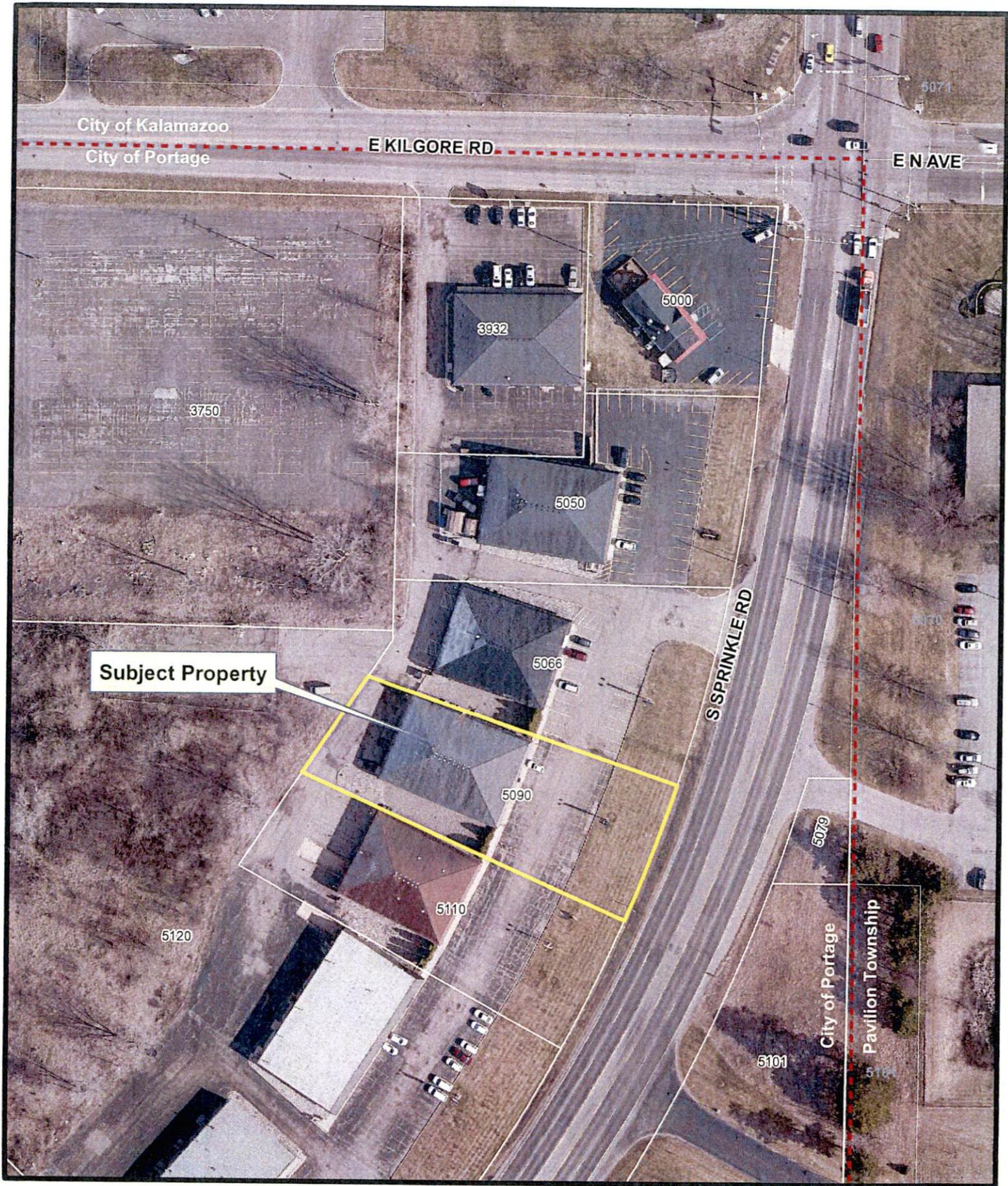


ZBA 15-21
5090 South Sprinkle Road
(5092 South Sprinkle Road)

-  Subject Property
-  Zoning Boundary
-  Notification Area



1 inch = 200 feet



 Subject Property
 City Boundary

Aerial Photography

5090 South Sprinkle Road



1 inch = 100 feet

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 3/10/2016

Name of Applicant Bri Hill / Jonathan Rockwood
Print

Applicant's Address 5092 S Sprinkle, Portage, MI 49002 Phone No. 269.377.2085

Name of Property Owner (if different from Applicant) 5090 Sprinkle LLC / Jonathan Rockwood

Address 5090 S Sprinkle Rd, Portage, MI 49002 Phone No. _____

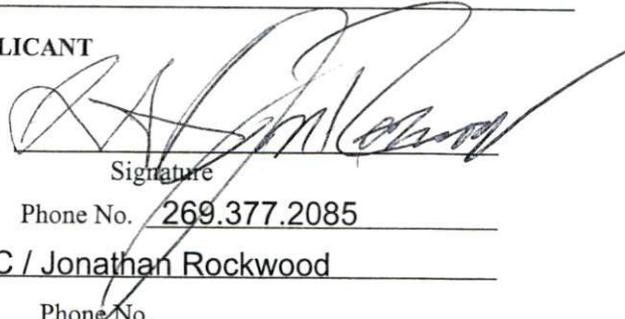
Address of the Property that is the subject of this Application:

Street Address 5092 S Sprinkle Rd, Portage, MI 49002

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: Operator / Owner



Signature

Application Fee _____ (Residential Uses) X _____ (All Other Uses)

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

X **Variance from Zoning Ordinance:** Article Chapter 42 Section 42-129.C Paragraph _____

Regarding: Use _____ Area _____ Yards _____

Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): _____

X **Appeal of Administrative Decision:** Article Chapter 42 Section 42-129.C Paragraph _____

Reason for Request: Please See Attached

X **Interpretation of the Zoning Ordinance:** Article Chapter 42 Section 42-129.C Paragraph _____

Reason for Request: Please See Attached

X **A Temporary Permit for:** Building 5092 S Sprinkle Use Medical /Home Caregiver Occupation

Article _____ Section _____ Paragraph _____

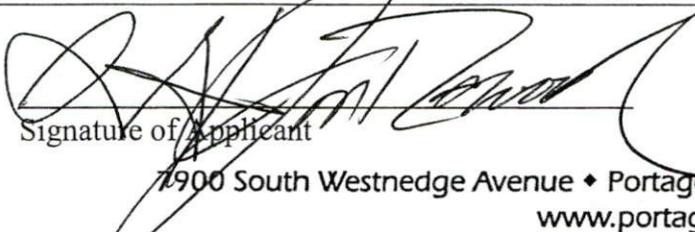
Reason for Request: Please See Attached.

FOR STAFF USE

Application Number:	Filing Date:	Tentative Hearing Date:
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.)
Not applicable
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
Not applicable
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
Not applicable, not seeking variance for current permitted use
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.)
Not applicable
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.)
Providing access to legal medical services under the MMMA, at stricter safety and security standards than currently available under residential home caregiver role. These increased safety protocols, parking lot guidelines and Membership Policy hold our patients to a higher standard, and bring new business.
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.)
No changes to the existing parking and traffic through the area will be required. Again, the Membership Policy holds patients to a higher standard of behavior.
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.)
It is due to a practical difficulty caused by Chapter 42-129.C being out of date.
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
The original ordinance was intended to provide safe access to patients, caregivers and citizens for legal MMMA. Restricting the sale and growth to a home invites a degree of danger and will not sustain the patient demand. This can be industrialized in a safe transfer center, for which we are requesting.


Signature of Applicant

3/10/16
Date

Releaf
5092 S. Sprinkle Rd., Portage, MI 49002
Releafmmj@gmail.com



MARCH 10, 2016

City of Portage

Department of Community Development

7900 South Westnedge Avenue, Portage, MI 49002

Variance from zoning ordinance:

Reason for request: The current zoning ordinance is based off of outdated legal information. This leaves the current zoning ordinance in direct conflict with the definition of a "Home Business Occupation" as currently defined by Community Development as 42-129.B. Further, based on Walsh v. City of River Rouge, your ordinance is void. Walsh v. City of River Rouge states, "A city ordinance that purports to prohibit what a state statute permits is void".

Appeal of administrative decision:

Reason for request: Currently, basing the ordinance on out of date legal information that has created an unsafe and impractical ordinance; restricting legal activity permitted by the MMMA.

Interpretation for the zoning ordinance:

Reason for request: Why is the ordinance allowed to supersede a state law when Walsh v City of River Rouge states otherwise? Please explain 42-129.B being in direct conflict with 42.129.C. One ordinance states you need a permit while the other states you do not need a permit.

A temporary permit for:

Reason for request: Medical use legally protected under the MMMA. The zoning ordinance is aspiring to create a viable method for the acquisition of medical marijuana. We are attempting to facilitate the same agenda in a safe environment. West Michigan holds 15,000 licensed patients. Restricting the sale and growth to a home invites a degree of danger and will not sustain the patient demand. This can be industrialized in a safe transfer center, for which we are requesting.



Membership Policy

As a Member of the Releaf Collective you are asked to abide by a set of guidelines while using our services. We ask of our Members:

1. No medicating on site or in the parking lot.
2. No cell phones allowed within the main room.
3. No Redistribution of any tangible service provided by Releaf.
4. Limited information is allowed to be given out over the phone. Pricing and services will not be discussed over the phone.
5. Appropriate behavior and language is required at all times; any aggressive talk or behavior is not permitted.

A violation of any of these guidelines will subject the individual to a review of their Membership by Releaf administration. ***Redistribution of tangible services provided by Releaf is cause for immediate termination of Membership.***

Member Name: _____ Member ID#: _____
(Please Print)

Member Signature: _____ Date: _____

Releaf Representative Signature: _____

Date: _____



NOTICE OF PRIVACY PRACTICES

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

Each time you visit us, we keep a record of your care and treatment. We take the protection of your personal information seriously. We are required to provide you with this Notice of Privacy Practices to tell you about our legal duties and ways we may use and share your information, and to inform you about your rights regarding your health information. We give a small number of examples to describe what the categories mean, but not every use or disclosure can be listed on this Notice.

You have a right to a paper copy of this Notice of Privacy Practices.

This Notice is effective as of: February 8, 2016. We will ask you to sign a written acknowledgment of receipt of our Notice. We reserve the right to change the terms of this Notice and post the current Notice in our office. You may obtain an updated Notice from our practice at any time.

If you have any questions about this Notice of Privacy Practices, please contact our Privacy Officer: Bri Hill, RELEAFmmj@gmail.com.

How We May Use and Disclose Protected Health Information:

For Treatment: We will use and disclose your protected health information to provide, coordinate, or manage your healthcare and related services in our office or with a third party. For example, we may share your protected health information with a pharmacy for filling prescriptions, a laboratory or imaging center if you need diagnostic services, with a specialist to whom we refer you, or with a home health agency that provides care to you. We may share information with persons involved in your care, such as family members.

For Payment: We will use your protected health information to get paid for your healthcare services. We may share information with your insurance company to obtain payment for services or to seek pre-approval for a hospital stay or procedures.

For Our Healthcare or Business Operations: We may disclose your protected health information to support the business activities of this office, such as reviewing our care and our employees, for education and training, to support our electronic health record system, or for legal or accounting matters. We may use a sign-in sheet at the registration desk so that we may call you by name when we are ready to see you, and we may contact you to remind you of your appointment. If we involve third parties, such as billing services, in our business activities, we will have them sign a "business associate agreement" obligating them to safeguard your protected health information according to the same legal standards we follow.

When Allowed by Law: The law allows us to use or disclose your protected health information in certain situations, including:

- When required by state or federal law;
- To report abuse or neglect;
- To persons authorized by law to act on your behalf, such as a guardian, health care power of attorney or surrogate;
- For disaster relief purposes, such as to notify family about your whereabouts and condition;

- For public health activities such as reporting on or preventing certain diseases;
- To comply with Food and Drug Administration requirements;
- For health oversight purposes such as reporting to Medicare, Medicaid or licensing audits, investigations or inspections;
- Where required by U.S. Department of Health and Human Services to determine our compliance;
- In connection with Workers' Compensation claims for benefits; and
- To assist coroners or funeral directors in carrying out their duties.
- To comply with a valid court order, subpoena or other appropriate administrative or legal request if you are involved in a lawsuit or to assist law enforcement where there was a possible crime on the premises. We may also share your information where necessary to prevent or lessen a serious or imminent threat to you or another.
- If you are an inmate, we may release your information for your health or safety in the correctional facility; We may share your information with appropriate military entities if you are a member or veteran of the armed forces; We may be required to disclose information for national security or intelligence purposes.

With your Authorization: Other uses and disclosures will be made only with your written authorization. For example, we will ask for your written permission before promoting a product or service to you for which we will be paid by a company, and generally before sharing your health information in a way that is considered a sale under the law. If you sign an authorization, you may revoke it at any time, except where we have already shared your information based upon your permission.

Your Rights: Following is a statement of your rights with respect to your protected health information.

You have the right to access, inspect and copy your protected health information.

- This usually includes medical and/or billing records. You must submit a written request to us, and you agree to pay the reasonable costs associated with complying with your request before we provide you with your record
- You may ask us to provide your electronic record in electronic format. If we are unable to do provide your record in the format you request, we will provide the record in a form that works for you and our office. You may ask us to transmit your record to a specific person or entity by making a written, signed request. *[If your practice uses unencrypted email add: You may request the information be sent via our email system if you sign a statement that you understand that email comes with inherent risks for which our office is not responsible.]*
- Under certain circumstances, your provider may not allow you to see or access certain parts of your record. You may ask that this decision be reviewed by another licensed professional.

You have the right to request to receive confidential communications, and request contact from us by alternative means or at an alternative location.

You have the right to request a restriction of your protected health information.

- This means you may ask us not to use or disclose all or part of your protected health information for certain purposes. We will consider your request carefully, and may honor reasonable requests where possible. The law does not require us to agree to every request.

- However, if you wish to restrict certain sensitive or other health information from your insurer after you or your personal representative have paid out of pocket in full for your services, please discuss this request with us. We will honor your request where we are not required by law to make the disclosure. *[If applicable: You will need to make a new restriction request at each office visit.]* If your insurance plan “bundles” your services together so that we cannot withhold only one item or service from your claim, we will discuss your options with you.
- You may also request that any part of your protected health information not be disclosed to family members or friends who may be involved in your care or for notification purposes as described in this Notice of Privacy Practices. Your request must state the specific restriction requested and to whom you want the restriction to apply.

You have the right to receive an accounting of certain disclosures we have made of your protected health information. Please speak with us if you have this request.

You may have the right to request amendment of your protected health information. While we cannot erase your record, we may add your written statement to your protected health information to correct or clarify the record where your provider approves. If the provider disapproves, you may submit a statement of disagreement and we may submit a rebuttal, which will remain with your record.

Fundraising. *[If applicable: We do not currently conduct fundraising campaigns. If we do so in the future,...]*

You have the right to opt-out of any fundraising solicitation or communication.

Breach notification. We are required to have safeguards in place that protect your health information. In the event that there is a breach of those protections, we will notify you, the U.S. Department of Health and Human Services and others, as the law requires.

You may file a complaint with us by notifying our Privacy Officer with your written complaint. We will not retaliate against you for filing a complaint with us or the Office of Civil Rights.

You may complain to the Office of Civil Rights at the Department of Health and Human Services (OCR) if you believe your privacy rights have been violated by us. You should contact the OCR in writing at:

<http://www.hhs.gov/ocr/privacy/hipaa/complaints/index.html>

March 1, 2016

Sent First Class & Certified Mail

Briana Hill
ReLeaf
5092 South Sprinkle Road
Portage, MI 49002

John Lockwood
5090 Sprinkle, LLC
3416 Winchell Avenue
Kalamazoo, MI 49008

Dear Ms. Hill and Mr. Lockwood:

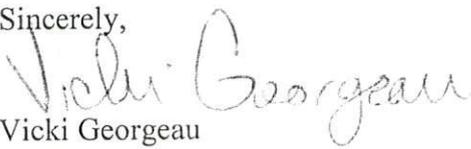
RE: Violation Notice for 5092 South Sprinkle Road: Zoning and Use

I am writing as a follow-up to an inspection of the above property conducted last week Wednesday, February 24, 2016 by Senior Building Inspector, Mike Beery and Senior City Planner, Mike West. Based on this inspection, conversations with Ms. Hill, a review of the ReLeaf web site and an inspection by the Portage Police Department yesterday evening (February 29, 2016), the building is being used as a medical marihuana facility, which is not permitted since the City of Portage Zoning Ordinance specifies a medical marihuana facility is only permitted by a primary caregiver as a home occupation, as outlined in Section 43-129.C of the Zoning Code 42-129.C (see attached).

The unauthorized use of the building for a medical marihuana facility must cease immediately. Please discontinue the use not later than Friday, March 11, 2016 to avoid initiation of legal enforcement action. If it is your intention to use the building for some other purpose, a signed affidavit from you indicating in detail the proposed use and material/goods associated with the business will need to be provided to the Department of Community Development for further review.

If you have any questions or wish to discuss this matter, please contact me in the Department of Community Development 269-329-4477.

Sincerely,


Vicki Georgeau
Director, Department of Community Development



Attachments: Medical Marihuana – Summary of Regulations for Primary Caregiver Home Occupations

C: Larry Shaffer, City Manager
Randy Brown, City Attorney
Chris Forth, Deputy Director of Planning, Development and Neighborhood Services
Mike West, Senior City Planner

Property Owner: Certified Mail Property Owner: 1st Class Mail Occupant: 1st Class Mail

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Department of Community Development

March 1, 2016

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Chris Forth, Deputy Director of Planning, Development and Neighborhood Services
Mike West, Senior City Planner

Property Owner: Certified Mail Property Owner: 1st Class Mail Occupant: 1st Class Mail

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MEDICAL MARIHUANA

Summary of Regulations for Primary Caregiver Home Occupations

The State Law – Michigan Medical Marihuana Act. On November 4, 2008, voters in Michigan approved a statewide ballot initiative to create the Michigan Medical Marihuana Act (MMMA). The Act did not authorize the broad legalization of the cultivation, distribution or use of marihuana. Rather, the MMMA allows qualifying patients with a serious debilitating medical condition to obtain, possess, cultivate/grow and use marihuana for medicinal purposes. The MMMA also allows a primary caregiver to assist a qualifying patient with the medical use of marihuana, in accordance with state law.

The Local Ordinance – Medical Marihuana Home Occupation. State of Michigan registered primary caregivers who desire to possess, cultivate/grow and distribute medical marihuana in the city on behalf of a registered qualifying patient(s) consistent with the MMMA, must conduct the activity only as a home occupation, as provided in the City of Portage Zoning Code (attached). A home occupation is an activity or service conducted by the resident(s) of the dwelling. A home occupation use must be subordinate and accessory to the principal residential use of the property. The local ordinance does not apply to qualifying patients who possess, cultivate/grow and use medical marihuana for personal use.

The requirements to operate a Medical Marihuana Home Occupation. A primary caregiver may operate a medical marihuana home occupation in the City of Portage subject to the following conditions:

1. The home occupation must be operated only in a dwelling unit.
2. Only one primary caregiver is allowed per dwelling unit.
3. The primary caregiver shall:
 - Assist no more than five qualifying patients who are connected with the primary caregiver through the Michigan Department of Community Health registration process.
 - Cultivate no more than 12 marihuana plants for each qualifying patient.
 - Possess no more than 2.5 ounces of marihuana per qualifying patient.
4. The home occupation must not be located within:
 - 500 feet of a public or private elementary, vocational or secondary school, public or private college, junior college or university; playground, or housing facility owned by a public housing authority, or
 - 100 feet of a public or private youth center, public swimming pool, or video arcade facility.
 - If the primary caregiver's qualifying patient(s) are permanent residents of the primary caregiver's household, the distance provisions do not apply.
 - The attached map illustrates the distance locations within the City of Portage.
5. All medical marihuana plants must be located in the residential dwelling unit in an enclosed, locked facility, accessible only by the primary caregiver or qualifying patient. Use of an attached or detached accessory building is not permitted.
6. The home occupation must comply with all applicable City Code requirements, including:
 - Building, Electrical, Plumbing, Mechanical and Fire codes;
 - Noise ordinance requirements;
 - Safety, Sanitation and Health code; and
 - Housing/Property Maintenance code.
7. Lighting used in the grow operation that is visible to adjacent property owners and exceeds normal residential use must be shielded between the hours of 11:00 p.m. and 6:00 a.m.
8. Qualifying patients may only visit the site for purposes permitted under the MMMA and local ordinance between the hours of 8:00 a.m. and 8:00 p.m.

9. All vehicles must park on an improved surface normally required for the residential use.
10. No signs of any kind may be displayed identifying the home occupation.

The permits needed.

- A zoning permit from the City of Portage to operate a medical marihuana home occupation is not required. However, the primary caregiver must know and adhere to all conditions and requirements of the MMMA and local ordinance.
- Building or related permits may be required for the home occupation as a result of the medical marihuana grow operation. The following checklist will help you. If you answer yes, or do not know the answer to any of the questions below, a permit from the City of Portage may be required.

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Is the electrical system adequate for the use of all equipment used, such as grow lights, humidifiers, and other devices? Changes to the electrical system such as new circuits and/or service panel upgrades require a permit. In addition, is all equipment installed and operated in accordance with manufacturer specifications, and approved for indoor residential use? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Is the heating, cooling and ventilation system adequate to ensure proper temperatures, humidity levels and air quality are maintained? Modifications to the heating, cooling and ventilation systems require a permit. In addition, is all equipment installed and operated in accordance with manufacturer specifications, and approved for indoor residential use? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Is the plumbing system adequate for the use of all equipment such as hydroponics or other devices? Modifications to the plumbing system require a permit. In addition, is all equipment installed and operated in accordance with manufacturer specifications, and approved for indoor residential use? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Are you planning to alter any to walls, ceilings or floors? Such modifications require a permit. |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Are carbon dioxide tanks and/or generators used in connection with the grow operation? The use of such equipment may require a permit. In addition, is all equipment installed and operated in accordance with manufacturer specifications, and approved for indoor residential use? |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Are chemicals such as fertilizers, pesticides and other substances used in connection with the grow operation? While no specific permits are required, are all chemicals used in accordance with manufacturer specifications (including safe storage and proper disposal) and approved for indoor residential use? |

If one or more boxes have been checked, please contact the Department of Community Development for further assistance.

You are encouraged to contact the Department of Community Development at 269-329-4477 if you have any questions or require additional assistance to ensure compliance with City code.

Thank you for your cooperation.

[ORDINANCE FOR ADOPTION]
ORDINANCE TO AMEND THE CODE OF ORDINANCES
OF THE CITY OF PORTAGE, MICHIGAN
BY AMENDING SECTION 42-129 OF CHAPTER 42,
LAND DEVELOPMENT REGULATIONS

THE CITY OF PORTAGE ORDAINS:

That Section 42-129 of Chapter 42, Land Development Regulations, is hereby amended to add Section 42-129(C) as follows:

Section 42-129. Home occupations.

- A. No change.
- B. No change.

C. Medical Marihuana Home Occupation. A primary caregiver acting in compliance with the General Rules of the Michigan Department of Community Health ("General Rules"), the Michigan Medical Marihuana Act, P.A.2008, Initiated Law, MCL 333.26421, et. seq., (the "Act") and the requirements of this section, shall only be allowed as a home occupation. The conditions and requirements contained in Section 42-129(A) and (B) (Passive and Active Home Occupations) shall not be applicable to medical marihuana home occupations under this section and no permit under the Portage Zoning Code is required for a medical marihuana home occupation. The Act was passed by Michigan Voters through the initiative process. Both the summary of the Act appearing on the ballot and the Act as a whole reflect an intent to create a private and confidential patient/caregiver relationship to facilitate the lawful cultivation, distribution and use of marihuana strictly for medical purposes. The Act does not authorize the broad legalization of the cultivation, distribution or use of marihuana and a reading that permits such broad legalization is inconsistent with the fundamental intent of the Act read as a whole in context with generally applicable Michigan law. A primary caregiver may assist only a qualifying patient to whom he or she is connected through the Department of Community Health's ("Department") registration process for the medical use of marihuana. The following requirements for a primary caregiver as a home occupation shall apply:

1. A primary caregiver shall comply at all times and in all circumstances with the Act and the General Rules of the Department as they may be amended from time to time.
2. The home occupation shall only be conducted in a dwelling unit (as defined by the Zoning Code) where no more than one primary caregiver:
 - a. Cultivates up to the maximum number of marihuana plants permitted by the Act (12 for each qualifying patient)
 - b. Possesses up to the maximum amount of marihuana permitted by the Act (2.5 ounces for each qualifying patient), including any incidental amounts of seed, stalks and unusable roots; and

- c. Assists no more than the maximum number of qualifying patients permitted by the Act (maximum of 5) who have been issued and possess a registry identification card and who are connected with the primary caregiver through the Department's registration process for the medical use of marihuana. Assistance to a qualifying patient by someone other than his or her designated primary caregiver is prohibited.

3. The following shall apply to a primary caregiver conducting a home occupation under this section:

- a. Considering the federal "Drug Free School Zone" requirements, the home occupation shall not be located:
 - i. Within five hundred (500) feet from the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university, or a playground, or housing facility owned by a public housing authority; or
 - ii. Within one hundred (100) feet of a public or private youth center, public swimming pool, or video arcade facility.
- b. Measurements for purposes of Section 3(a)(i) and (ii) above shall be made from the property boundary of the zoning lot occupied by the home occupation to the nearest point of the property occupied by any of the uses listed above, using a straight line without regard to intervening structures or objects. "Zoning lot" is defined by Article 42, Section 42-112, Definitions, of the Portage Code of Ordinances, as amended. A map showing the uses and facilities listed in Section 3(a) above, as well as the protected areas, is available for review in the Department of Community Development at the Portage City Hall and on the City's website under the Department of Community Development.
- c. The distance provisions of this subsection do not apply to a primary caregiver whose qualifying patient(s) (up to the maximum permitted under the Act) are permanent residents of the primary caregiver's household and whose residence is shared with the primary caregiver.

4. If the primary caregiver is not an owner of the premises, nothing contained in this section shall limit an owner of the premises from prohibiting the home occupation on the premises occupied by the primary caregiver nor limit an owner's right to pursue any private right of action allowed by law.

5. All medical marihuana plants shall be contained within the main residential structure in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the primary caregiver or qualifying patient. The home occupation shall not be conducted in an attached or detached accessory building or structure.

6. The home occupation shall be conducted consistent with the Portage Code of Ordinances including but not limited to securing all building, electrical, plumbing and mechanical permits for any portion of the residential structure in which electrical wiring, lighting, and/or watering devices are located, installed or modified that support the cultivation, growing or harvesting of marihuana, compliance with Article 4, Chapter 24 Noise, Article 5, Chapter 24 Safety, Sanitation and Health as well as Article 14, Chapter 42 Housing/Property Maintenance Code.
7. If a room with windows is utilized as a marihuana growing location, any lighting methods that exceed usual residential use between the hours of 11 p.m. and 6 a.m. shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that causes or creates a distraction or nuisance to adjacent residential properties.
8. Qualifying patients may visit the site for the purposes permitted under the Act only during the hours of 8:00 a.m. to 8:00 p.m. No more than 5 qualifying patients may visit the site at any one time.
9. Off street parking provided for the home occupation shall be provided on an improved driveway that fulfills the requirements of Article 5, Section 24-111, Definitions, of the Portage Code of Ordinances, as amended. There shall be no other vehicular parking other than the off street parking facilities normally required for the residential use.
10. There shall be no sign of any nature identifying the home occupation and the use of window displays are not permitted.
11. Nothing in this section, or in any companion regulatory provision adopted in any other provision of this Code is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for, growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with the Act and the General Rules and this section. To this end, the sale, distribution, cultivation, manufacture, possession, delivery or transfer of marihuana to treat a qualifying patient shall only be conducted as a home occupation, and shall not be permitted in any other zoning classification of this Zoning Code. Also, since federal law is not affected by the Act or the General Rules, nothing in this section, or in any companion regulatory provision adopted in any other provision of this Code, is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under federal law. Neither this ordinance nor the Michigan Medical Marihuana Act protects users, caregivers or the owners of properties on which the medical use of marihuana is occurring from federal prosecution, or from having their property seized by federal authorities under the Federal Controlled Substances Act.
12. Definitions. As used in this section:

a. MARIHUANA

This term shall have the meaning given to it in Section 7601 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106, as is referred to in Section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26423(d).

b. PRIMARY CAREGIVER

A person who is at least 21 years old who has agreed to assist with a patient's medical use of marihuana, who has never been convicted of a felony involving illegal drugs and who has been issued and possesses a registry identification card.

c. QUALIFYING PATIENT

A person who has been diagnosed by a physician as having a debilitating medical condition.

d. REGISTRY IDENTIFICATION CARD

A document issued by the Department that identifies a person as a registered qualifying patient or a registered primary caregiver or a document or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana.

FIRST READING: June 14, 2011
SECOND READING: July 12, 2011
EFFECTIVE DATE: July 26, 2011
ORDINANCE NUMBER: 11-11



Peter J. Strazdas, Mayor

CERTIFICATION

STATE OF MICHIGAN)
)SS
COUNTY OF KALAMAZOO)

I, James R. Hudson, do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the 26th day of July, 2011.


James R. Hudson, City Clerk

PREPARED BY:
Randall L. Brown (P34116)
Portage City Attorney
1662 East Centre Avenue
Portage, MI 49002
(269) 323-8812

Approved as to form
Date: 7/27/11


City Attorney

TO: Zoning Board of Appeals **DATE:** April 1, 2016
FROM: Vicki Georgeau, ^{VG} Director of Community Development
SUBJECT: ZBA #15-21, Brianna Hill/Jonathan Rockwood, 5090 (5092) Sprinkle Road; I-1, Light Industrial.

CODE SECTION: 42-129(C) Medical Marihuana Home Occupations; p. CD42:40.1
42-622(A) Appeals; p. CD42:140.1
42-622(C)(1) Interpretations; p. 42:140.2
42-622(B)(2) Use Variances; p. 42:140.2
42-622(D) Temporary Uses; p. 42:140.3

APPEAL: Requesting: a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 5090 Sprinkle Road; or b) an appeal of the administrative decision to not permit a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road; or c) a use variance to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road; or d) a Temporary Use Permit to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road.

STAFF RECOMMENDATION:

The applicant is requesting the appeal, interpretation, use variance, and Temporary Use Permit per the enclosed application, letter of explanation and related materials. The 0.6 acre parcel is zoned I-1, light industrial, and is improved with a 7,000 square-foot commercial building, off-street parking lot and related improvements. The property address is 5090 Sprinkle Road and has two tenant addresses: 5090 and 5092 Sprinkle Road. The medical marihuana patient-caregiver exchange is located in the 5092 South Sprinkle Road tenant suite. As information for the Board, the applicant and property owner were advised by staff before they moved into the tenant suite located at 5092 South Sprinkle Road and opened for business, that a medical marihuana patient-caregiver exchange was not a permitted use. The property is adjacent on all sides to other industrial zoned properties.

With regard to a), interpretation, following the passage of the Michigan Medical Marihuana Act in 2008, the City of Portage determined medical marihuana grow operations and patient-caregiver exchanges would be allowed as home occupations. Consequently, paragraph (C) of Section 42-129 of the Zoning Code was adopted and explicitly states:

“Medical marihuana home occupation. A primary caregiver acting in compliance with the General rules of the Michigan Department of Community Health, the Michigan Medical Marihuana Act, P.A. 2008, Initiated Law, MCL 333.26421 et seq., and the requirements of this section, *shall only be allowed as a home occupation.*” [emphasis added]

During development of the medical marihuana ordinance, the location of a grow operation and patient-caregiver exchanges (or dispensaries) in commercial and/or industrial zoning

districts was considered. Based on the language of Michigan Medical Marihuana Act, an Attorney General opinion concerning commercial dispensaries, research that had been completed and similar ordinances adopted by other Michigan communities, establishment of medical marihuana facilities as a home-based business was considered to be the best local option. Had the intent been to permit medical marihuana patient-caregiver exchanges as businesses in commercial or industrial zones, the code would have been amended such that the use would be specifically listed among the principal permitted or special uses in the Zoning District Regulations. As noted above, the property at 5090 (5092) South Sprinkle Road is zoned I-1, light industrial and accommodates a commercial building, not a private residence. The Board is therefore advised to make an interpretation that a medical marihuana patient-caregiver exchange is not a permitted use at 5090 (5092) South Sprinkle Road.

The applicant also requests an interpretation/explanation why Section 42-129(B) is “in direct conflict with Section 42-129(C).” Simply stated they are not in conflict. Following the rules of construction, the specific always governs the general. Section 42-129 Home Occupations, consists of three sections dealing with three different types of home occupations: paragraph a) deals with passive home occupations, and specifically states a permit is not needed for a passive home occupation; paragraph b) deals with active home occupations and specifically states Planning Commission approval is needed; paragraph c) deals with medical marihuana home occupations, and states specifically a permit is not needed due to confidentiality issues. In other words, Medical Marihuana Home Occupations allowed under paragraph c) are not subject to the requirements listed in paragraph b).

Concerning b) the appeal of the administrative decision to not permit a medical marihuana patient-caregiver exchange at 5090 (5092) Sprinkle Road, the applicant was provided written notice on March 1, 2016 (see attached letter) advising that the medical marijuana facility was observed in operation at the subject address, and was in violation of Section 42-129(C). Staff acted correctly in applying this code section and would have no authority to permit a medical marihuana patient-caregiver exchange at the subject location. The basis for the applicant’s appeal is “currently, basing the ordinance on out of date legal information that has created an unsafe and impractical ordinance; restricting legal activity permitted by the MMMA.” Section 42-622(A)(5) states:

“In deciding the appeal, the Board shall be limited to determining whether or not the decision that was made was done so using the proper standards and guidelines *in the ordinance...*”
[emphasis added]

The applicant in this instance is not disputing staff’s administration of the code so much as calling into question the validity of the ordinance itself. Determining whether or not an ordinance is valid or complies with State statute exceeds the scope of the Board’s authority. It is recommended the Board uphold staff’s decision that consistent with Section 42-129(C), a medical marihuana patient-caregiver exchange is not permitted at 5090 (5092) Sprinkle Road.

With regard to request c) for a use variance, and similar to the request for an appeal, it appears the applicant is asking the Board to make a determination that the ordinance is

invalid. The applicant, however, has not provided any information that demonstrates the criteria listed in Section 42-622(B)(2) for a use variance is met: the condition or location of the property is not unique; the land can reasonably be used in a manner consistent with uses allowed in the I-1 district, as there are other permitted tenants already present; the use variance would materially impair the intent and purpose of the code as the use is expressly permitted only as a home occupation; and the immediate unnecessary hardship causing the need for the variance was created by the applicant. The use variance, therefore, should not be approved.

Concerning request d), Section 42-622(D)(2)(a) Temporary Use Permits states:

“The temporary use shall not require the erection of any capital improvement of a structural nature. In classifying uses as not requiring capital improvements, the Board shall determine that they are either demountable structures relating to the permitted use of the land; temporary recreational developments such as but not limited to golf driving ranges, outdoor archery courts or amusement rides; or other structures which do not require foundations, heating systems or permanent sanitary or other permanent utility connections.”

Temporary Use Permits are generally intended for mobile/outdoor activities. The building and indoor office space at 5092 Sprinkle Road is not a demountable structure, requires a foundation, heating system, permanent sanitary and utility connections and is therefore ineligible for consideration under a Temporary Use Permit.

**PRACTICAL
DIFFICULTY:**

None noted by staff. See suggested motion form.

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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.**