



ZONING BOARD OF APPEALS

May 13, 2013

CITY OF PORTAGE ZONING BOARD OF APPEALS

Monday, May 13, 2013

(7:00 pm)

Portage City Hall

Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES:

- April 8, 2013

OLD BUSINESS:

NEW BUSINESS:

- ZBA #12-26, Wolverine Development Corporation, 5303 South Westnedge Avenue: Requesting variances from a) perimeter parking lot landscape requirements along the north property line and b) refuse container setback and corresponding conflicting land use screening requirements along the east property line.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS

DRAFT

Minutes of Meeting – April 8, 2013

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Seyburn at 7:00 p.m. in the Council Chambers. One person was in the audience.

MEMBERS PRESENT: Bob Soltis, Lowell Seyburn, Timothy Bunch, Doug Rhodus, James White, Michael Robbe, Mariana Singer, Jeff Bright, and Glenn Smith.

MEMBERS EXCUSED:

None

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

APPROVAL OF THE MINUTES: Singer moved and Schimmel seconded a motion to approve the February 11, 2013 minutes as submitted. Upon voice vote, motion was approved 7-0.

OLD BUSINESS:

None

NEW BUSINESS:

ZBA #12-23, 6685 South Westnedge Avenue: Mr. Mais summarized the request for a Temporary Use Permit to allow an additional 36-foot by 72-foot area for plant sales in the parking lot at 6685 South Westnedge Avenue from April 9 through June 30, 2013, and from April 1 through June 30th annually thereafter. Brian Gibson was present on behalf of Home Depot to answer questions. Bright inquired what type of goods they would be selling in the parking lot. Mr. Gibson stated live plants. Bunch inquired if any structures were proposed. Mr. Mais stated the code prohibited any capital improvements for temporary uses. Mr. Gibson stated the only structure would be the fence around the sales/display area.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Bright, seconded by Singer to approve a Temporary Use Permit to allow an additional 36-foot by 72-foot area for plant sales in the parking lot at 6685 South Westnedge Avenue from April 9 through June 30, 2013, and from April 1 through June 30th annually thereafter, with the following conditions: 1) no other outdoor display/storage be permitted outside of the proposed Temporary use areas unless a business special event permit is obtained; 2) hours of operation coincide with regular store operations; 3) no outdoor storage of bagged goods, pallets of pavers, landscape block and rack storage; 4) the permit be subject to staff review and approval on an annual basis. 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. Upon roll call vote: Bunch-Yes, Smith-Yes, Robbe-Yes, Singer-Yes, Smith-Yes, Rhodus-Yes, Seyburn-Yes. Motion passed 7-0.

OTHER BUSINESS:

Elections for officer vacancies were held. Jeffrey Bright was elected Vice Chair and Marianna Singer was elected Secretary.

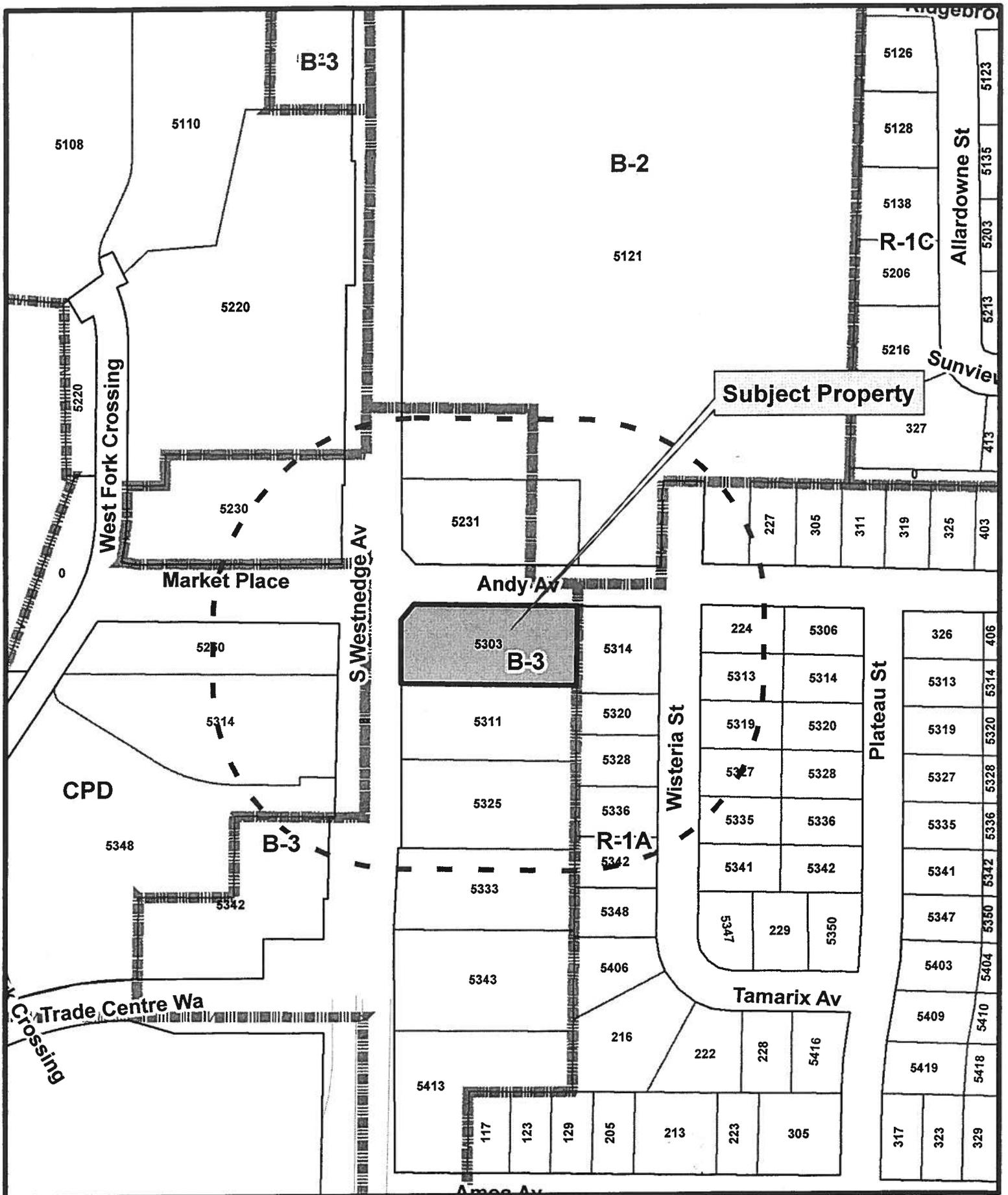
STATEMENT OF CITIZENS:

None

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:22 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



-  Zoning Boundary
-  Subject Properties
-  Notification Area

ZBA 12-26
5303 South Westnedge Avenue



1 inch = 200 feet



RECEIVED
APR 25 2013
COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 4/24/13
Name of Applicant Joseph P. Maguire, Pres. CEO Wolverine Dev. Corp. [Signature]
Print Signature
Applicant's Address 1350 E. Lake Lansing Road, East Lansing, MI Phone No. (517) 337-8282
Name of Property Owner (if different from Applicant) Wolverine Development Corporation
Address _____ Phone No. _____

Address of the Property that is the subject of this Application:
Street Address 5303 S. Westnedge Ave. Portage, MI
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: President, CEO of owning Company

Application Fee _____ (Residential Uses) \$330.00 (All Other Uses)

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

Variance from Zoning Ordinance: Article 42 Section 572 Paragraph _____
Regarding: Use _____ Area _____ Yards _____
Setbacks _____ Parking _____ Other Perimeter Screening 42-572
Refuse container location 42-574

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

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>12-26</u>	Filing Date: <u>4/25</u>	Tentative Hearing Date: <u>5/13/13</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.)

see attached document for both variance requests

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

see attached document for both variance requests

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

see attached document for both variance requests

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 document for both variance requests

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 document for both variance requests

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 document for both variance requests

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 document for both variance requests

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

see attached document for both variance requests

WOLVERINE DEVELOPMENT CORPORATION

Signature of Applicant

Joseph P. Musgrave
President & CEO

Date

4-24-13

7900 South Westnedge Avenue • Portage, Michigan 49002 • (269) 329-4477

www.portagemi.gov

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MAY 01 2013

COMMUNITY DEVELOPMENT

Reason for Perimeter Screening Variance

1. The Property is unique due to having been fully built-out and existing from a previous business (Pappy's). This site has been in place and non-compliant for over 30 years. With the current lot configuration there is not room for 10' of green space. There is also not room adjacent to Andy Ave. for the required 1 deciduous tree / 30 linear feet of parking adjacent to the road. The thin strip of plantable space still available is not adequate in size for healthy, prolonged tree life. On the east end of the property the existing site is paved to the property line, and there is an existing non-compliant dumpster located within the 10' required greenspace.
2. The site in question, having been in place for over 30 years, is currently vacant and the proposed tenant wishes to upgrade the building quickly and change as little of the existing site as possible. The neighboring properties were redeveloped more recently, constructed completely new structures, and were able to design their sites to comply with current standards.
3. No, the property cannot be reasonably used without granting a variance. The site cannot be updated to allow for the required green space and tree planting without significantly reducing the existing building footprint and further decreasing provided parking. To add the 10 feet of greenspace would require the loss of about 19 parking spaces.
4. The developer is requesting the minimum variance possible to maintain current conditions that have been in place for over 30 years. The landscape screening would not be a change from what other property owners in the area have experienced with the existing site.
5. The developer is requesting to improve current conditions at the north by adding 4' of green space and maintain current conditions at the west parking edge that have been in place since the City widened the adjacent roads. However, we propose to add parking lot screening to the south and building foundation plantings so we enhance what adjacent owners have experienced in the past. In addition, on the east side of the property the developer plans to implement the required 10' greenstrip where the site allows. The dumpster is in a non-compliant location and there is only room for 3' of greenspace between the dumpster enclosure and the property line. The dumpster enclosure will be modified to meet current city standards and reduced in size and the developer will replace the 6' tall wooden privacy fence along the east property line.
6. A variance to reduce required green space for an existing site will not result in increased traffic congestion, noise, or other types of hazards.
7. The existing hardship is the long standing, non-compliant nature of the site.
8. The existing green space adjacent to the rights-of-way of Andy Ave. is intended to be maintained as is and the green space adjacent to S. Westnedge Ave. right-of-way will be altered with trees and hedges according to the ordinance. Along the east property line the developer will create the required greenspace as the ordinance requires with the exception of the existing dumpster location. Also, additional interior landscape will be

provided. The spirit and intent of the ordinance is maintained by softening the impact of parking and other hardscape improvements on adjacent uses.

Reason for Refuse Container Variance

1. The Property is unique due to having been fully built-out and existing from a previous business (Pappy's). This site has been in place for over 30 years. In the years since the original development, the City of Portage has required the site provide access across the back of the property for the uses to the south while this cross access has not yet been formalized on this property, the owner is amenable to providing it. The required access route has pushed the location of the existing dumpster enclosure closer than the required 20 feet to the east property line which is a residential adjacent use. The enclosure is located 3.5 feet from the east property line.
2. Yes, the physical characteristics detailed above are unique to this property. Without tearing down the existing building and fully redeveloping the dumpster cannot be moved and still maintain the desired cross access.
3. The building, drive to Andy Ave. and property to the south, and dumpster pad are all currently existing and have operated for many years in their current configuration. It is not reasonable to expect that these items can be relocated and reconfigured without great cost and disruption, not only to the site in question, but to the southern adjacent properties as well.
4. The developer is requesting the minimum variance possible to maintain current conditions that have been in place since the properties to the south connected access drive to this property.
5. The site has been developed for over 30 years and so granting the variance would not be a change from what adjacent residential users have experienced or alter the character of the area.
6. The variance requested would maintain the current dumpster location and avoid increasing traffic congestion by squeezing the current loading area and the cross access for the properties to the south. The connection to Andy Ave. is an important, safe route to a traffic light to allow left hand turns.
7. This hardship was imposed on the owner by the City of Portage when the City required a cross access connection with the property to the south.
8. The developer complies with the spirit and intent of the ordinance by providing an updated enclosure and replacing the current 6' high wooden privacy fence screening views to the residential property to the east.

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 MAY 01 2013
 COMMUNITY DEVELOPMENT

ZONING REQUIREMENTS

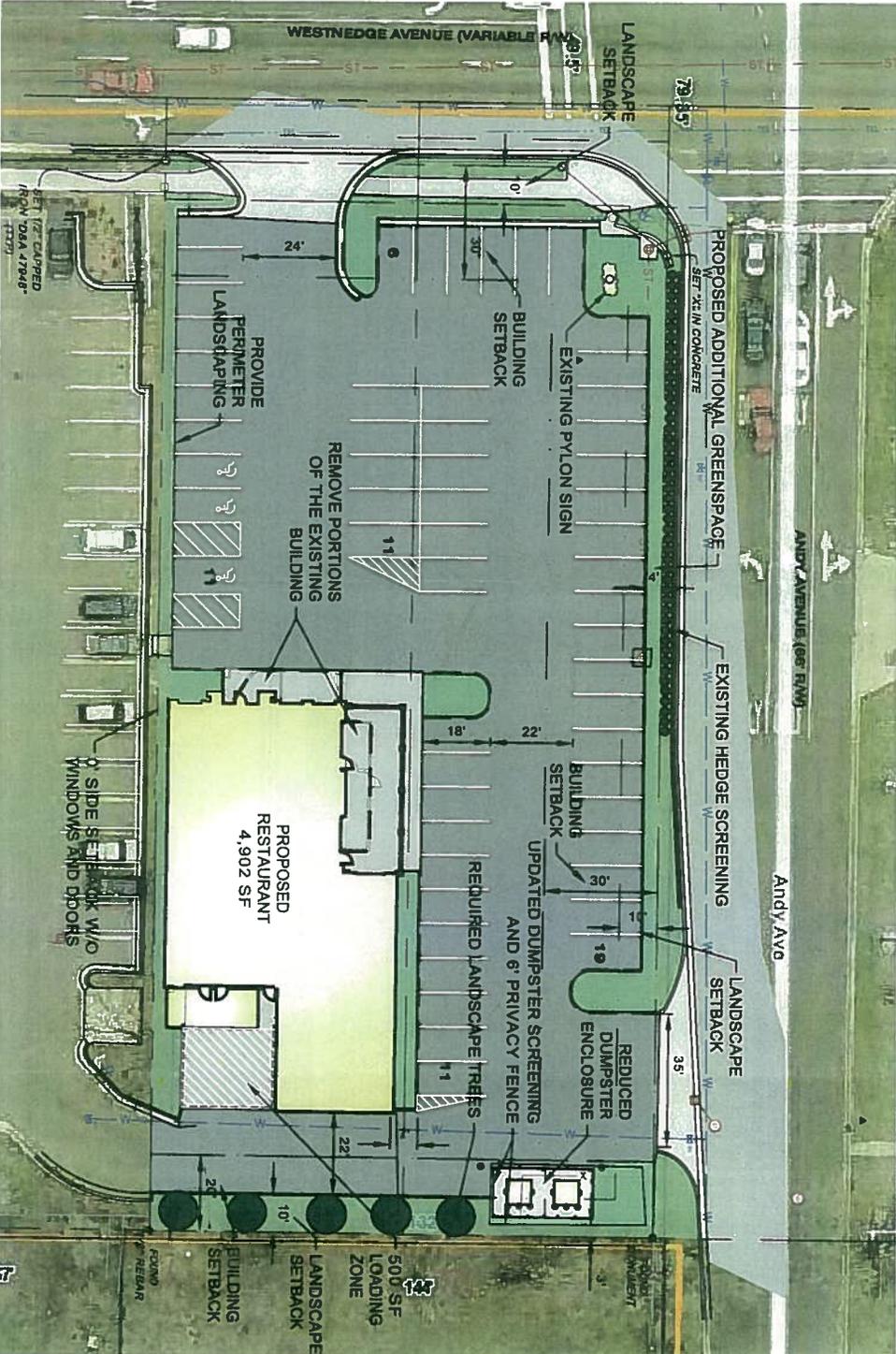
B-3 GENERAL BUSINESS
 SETBACKS BUILDING SETBACKS:
 FRONT = 30' WESTNEDGE AVE. AND ANDY AVE.
 SIDE = 10' W/ DOORS AND WINDOWS, 0' W/O REAR = 20' ADJACENT TO RESIDENTIAL
 LANDSCAPE SETBACKS:
 FRONT = 10' WESTNEDGE AVE. AND ANDY AVE.
 SIDE = 0'
 REAR YARD = 10' ADJACENT TO RESIDENTIAL

PARKING

REQUIRED: 1 SPACE / 25 SF UFA FAST FOOD 626 SF/25 SF=25 SPACES
 1 SPACE / 75 SF UFA SIT-DOWN RESTAURANT 1,914 SF/75 SF= 26 TOTAL: 51
 PROVIDED: 58 SPACES
 BARRIER FREE SPACES 3
 ALL BARRIER FREE SPACES DESIGNED PER ADA REQUIREMENTS
 TYPICAL PARKING SPACE DIMENSION = 9'x18'
INTERIOR LANDSCAPE
 PARKING LOT AREA EXCLUDING THE PAVED AREA WITHIN 20 FEET OF THE PERIMETER LANDSCAPE = 2,526 SF
 INTERIOR REQUIREMENTS 1 SF/19 SF OF PARKING LOT AREA=835 SF
 INTERIOR PROVIDED 939 SF

REQUESTING VARIANCE

1 GREENSPACE SETBACKS INSUFFICIENT (NO TREES ALONG ANDY AVE.)
 EAST PROPERTY LINE ONLY HAS 3' OF GREEN SPACE AT THE DUMPSTER AREA
 2 DUMPSTER ENCLOSURE LESS THAN 20' FROM RESIDENTIAL



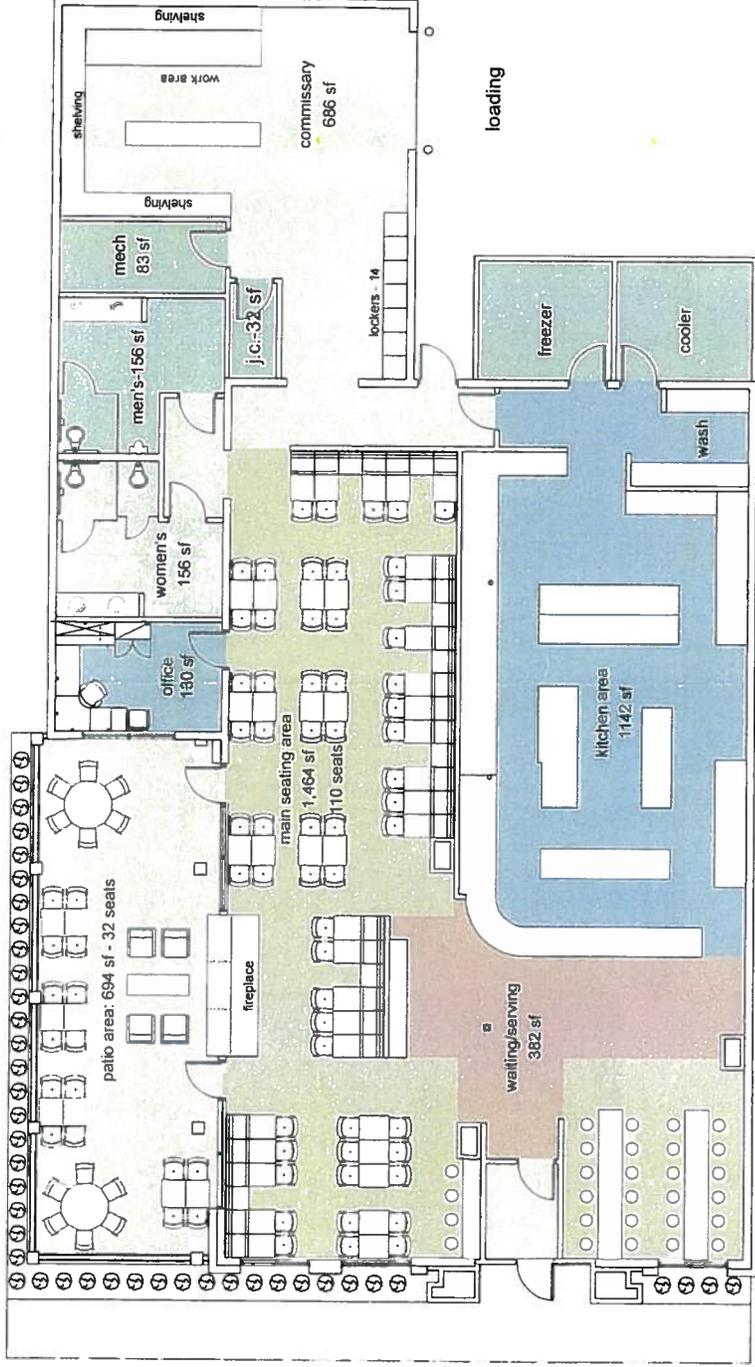
1 Drawing No.

Title: **PROPOSED SITE PLAN WESTNEDGE REDEVELOPMENT**

Client: **WOLVERINE DEV. CORP.**

Job No.: 13-009D
 Date: 05/01/2013
 Scale: 1"=30'
 P.M.: TAS
 Dft: LAD
 QA/QC: 04/11/13

hurley & stewart, llc
 2800 south 11th street
 kalamazoo, michigan 49009
 269.552.4960 fax 269.552.4961
 www.hurleystewart.com



total building: 4902 sf



grand traverse pie company | plan

scale



20'

23 April 2013

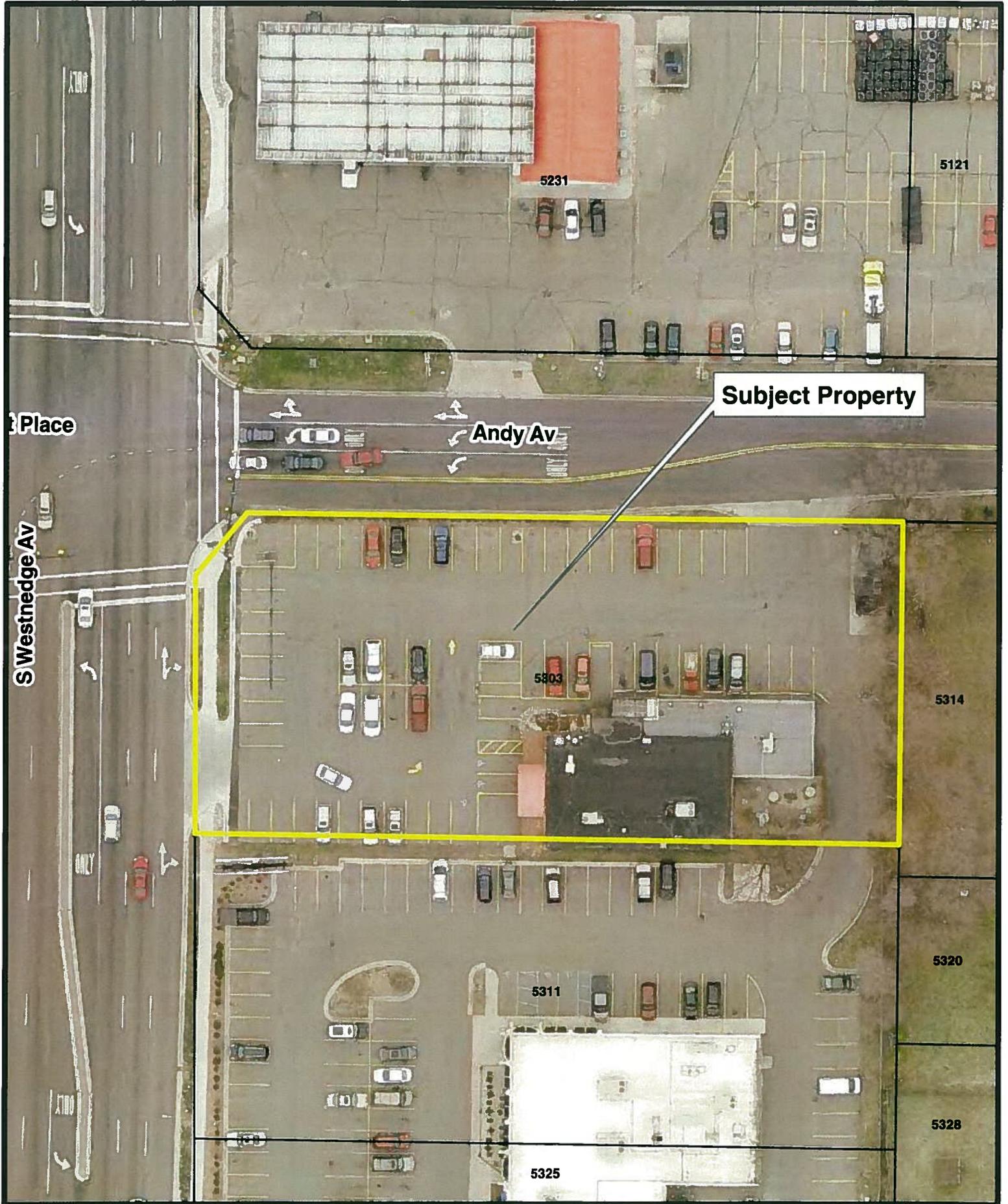
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5303 Westnedge Ave.

Portage, Michigan

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Aerial Photography
5303 South Westnedge Avenue

 Subject Property



1 inch = 50 feet

TO: Zoning Board of Appeals **DATE:** May 2, 2013

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

SUBJECT: ZBA #12-26; Wolverine Development Corporation, 5303 South Westnedge Avenue; B-3, General Business

CODE SECTION: 42-572(A); Perimeter Landscaping, p. CD42:133
42-573(A)(B); Conflicting Land Use Screening, p. CD42:134
42-574(B); Refuse Containers, p. CD42:135

APPEAL: Requesting variances from a) perimeter parking lot landscape requirements along the north property line and b) refuse container setback and corresponding conflicting land use screening requirements along the east property line.

**STAFF RECOM-
MENDATION:**

The applicant requests the above variances per the enclosed application, site plan and letter of explanation. The 0.9 acre parcel is improved with an approximate 5,000 square foot restaurant building and associated parking lot that were constructed in 1967. The property is zoned B-3, General Business and single family residences zoned R-1A, one family residential abut the site to the east. According to the applicant, the requested variances will help facilitate reuse of the former Pappy's Restaurant building/site by the Grand Traverse Pie Company.

In regard to perimeter landscaping along the north property line, the applicant is requesting a six-foot variance from the 10-foot greenstrip requirement and no tree and shrub plantings. The existing parking lot along Andy Avenue is nonconforming since it does not have a 10-foot wide greenstrip area and associated tree and shrub plantings. The original restaurant site was developed in the 1960s and the existing parking lot is setback approximately one-foot from the north property line/Andy Avenue right-of-way. Providing the required 10-foot wide greenstrip area would result in the loss of an entire row of parking spaces (approximately 19 spaces), while the applicant has agreed to remove a portion of the existing asphalt in order to provide of four-foot wide greenstrip. This is the maximum greenstrip area that can be provided while still maintaining the minimum 18-foot long parking spaces and 22-foot wide maneuvering lane. Given the limited width of this greenstrip (four-feet), the applicant is also requesting relief from the required tree and shrub plantings. As information for the Board, a retaining wall and hedge of shrubs is present within the Andy Avenue right-of-way, adjacent to this greenstrip area, which were installed by the City of Portage as part of the Andy Avenue widening project. These shrubs do not extend along the entire length of Andy Avenue and a gap of approximately 75-feet exists just west of the Andy Avenue driveway. While relief from the tree/shrub plantings appears reasonable given the limited planting area, staff believes the applicant should install an off-set row of shrub plantings within the newly established four-foot wide greenstrip area where this approximate 75-foot gap is present.

ZBA #12-26 (Wolverine Development)
5303 South Westnedge Avenue

In regard to the refuse container setback and corresponding conflicting land use screening greenstrip along the east property line, the applicant is requesting a 17-foot variance from the 20-foot setback requirement for the refuse container and a seven-foot variance from the 10-foot conflicting land use screening greenstrip requirement. The existing refuse container enclosure is nonconforming since it is not setback 20-feet from the adjacent residential district boundary. Additionally, the existing conflicting land use screening arrangement along the east side of the site is also nonconforming since there is not a 10-foot wide greenstrip area or tree plantings. The original restaurant site was developed in the 1960s and the existing refuse container enclosure and maneuvering lane are setback approximately two-feet from the east property line. While the applicant has agreed to reduce the size of the refuse container enclosure and remove existing asphalt to provide the required 10-foot wide greenstrip area along the east property line, the area adjacent to the reduced refuse container enclosure will result in an approximate three-foot setback/greenstrip area along the northeast portion of the site. In conjunction with establishing the greenstrip area, the applicant has also agreed to install the required tree plantings within the greenstrip and replace the existing dilapidated fence with a new six-foot tall wooden screening fence along the eastern property line.

Given the nonconforming status of the site and the applicant's efforts to reduce/minimize the degree of nonconformity, where possible, the variances are recommended for approval. The existing conditions of the property create unique circumstances and practical difficulties in strict compliance with current ordinance standards. Approval of variance request a) is recommended to be conditioned upon installation of an off-set row of shrubs within the newly established four-foot wide greenstrip area where a gap in plantings currently exists along the Andy Avenue frontage (approximately 75-feet west of the Andy Avenue driveway). Approval of variance request b) is recommended to be conditioned upon installation of a new six-foot tall screening fence along the east property line.

**PRACTICAL
DIFFICULTY:**

Existing site conditions (location of building, parking lot, refuse container enclosure); Reduction in degree of nonconformity. 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.**