

Special Meeting Agenda

City of Kalamazoo - Zoning Board of Appeals

November 15, 2018

City Commission Chambers, City Hall

7:00 p.m.

A. Call to Order:

B. Communications and Announcements:

C. Approval of Meeting Minutes for September 13, 2018 (Oct. 11, 2018 Meeting Cancelled)
(Nov. 8, 2018 Meeting Cancelled)

D. Public Hearings:

1. ZBA #18-10-27: 2009 Whites Road. Oakwood Animal Hospital NVA Clinic is requesting: **1)** A use variance from Chapter 9, Section 9.2A, to authorize the expansion of a nonconforming use (veterinarian clinic) which would allow a building addition of 1,758 square feet. This would increase the footprint of the structure to 3,544 square feet. **2)** A dimensional variance from Chapter 6, Section 6.1 C, of five off-street parking spaces to allow 16 off-street parking spaces where 21 are required.
2. ZBA #18-11-29: 1722 E. Alcott Street. Charise Juarez is requesting a variance from Chapter 6, Section 6.3 A2 and A3, for a six-foot privacy fence (100% opacity) in the front yard along Fulford Street, where the maximum height for fencing in a front yard is four feet with a maximum opacity of 75%.
3. ZBA #18-11-30: 409 and 427 E. Alcott Street. Boji Group LLC on behalf of BG West LLC is requesting a dimensional variance from Chapter 6, Section 6.1 J, to authorize one loading space where three are required for the 71,000 square foot office building proposed for the Michigan Department of Health and Human Services. The Zoning Ordinance requires all buildings with 50,000 to 100,000 square feet of floor area to have three loading spaces.
4. ZBA #18-11-31: 500 Golden Drive. Heritage Community of Kalamazoo is requesting a rehearing and approval of a dimensional variance from Chapter 5, Section 5.1, to authorize a new 62 unit senior living facility which will be 66 feet in height, where the maximum height for structures in Zone RM-15 is 35 feet.
5. ZBA #18-10-28: 610 E. Cork Street: Rhoades McKee Attorneys on behalf of Harbor Farmz North, LLC is requesting an appeal of administrative decisions per Chapter 8, Section 8.3 F, the applicant is appealing the administrative decisions for the following: 1) That the City will deny the Harbor Farmz North LLC application due to the 500 foot separation distance between medical marihuana facilities which includes those medical marihuana facilities located in Zone M-1 or M-2 per Chapter 4, Section 4.2 AA 4; and 2) That it is fair and appropriate to apply a 500 foot separation distance requirement across zone district boundaries between provisioning centers and other medical marihuana facilities per Chapter 4, Section 4.2, AA 5 d).

E. Other Business:

F. Adjournment:

**MINUTES
CITY OF KALAMAZOO
ZONING BOARD OF APPEALS
SEPTEMBER 13, 2018 - 7:00 p.m.
CITY COMMISSION CHAMBERS**

Members Present: Matt Lager, James Houston, Reed Youngs, Chris Flach, Jeff Carroll

Members Absent: Christina Doane

City Staff: Pete Eldridge, Zoning Administrator; Clyde Robinson, City Attorney;
Deanna Benthin, Recording Secretary

Chair Youngs called the meeting to order at 7:00 p.m.

MINUTES:

Mr. Houston moved to approve the minutes of August 9, 2018 as submitted, seconded by Mr. Lager.

Motion approved by voice vote unanimously.

NEW BUSINESS:

PUBLIC HEARINGS: Chair Youngs summarized the process and explained the Zoning Board of Appeals public hearing rules of procedures stating that a full board consists of six members and that approval requires four affirmative votes. If only four members are present the applicants would have the option to hold their requests over to the next meeting or present their requests with the hopes of getting all four affirmative votes.

Mr. Houston read the application for 1919 Kilgore Service Road, Parcel #06-35-469-001:

ZBA #18-09-23: 1919 Kilgore Service Road: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Mavcon Inc. The request concerns the property at 1919 Kilgore Service Road, which is situated in use Zone M-1, Manufacturing – Limited District. The applicant is requesting a dimensional variance from Chapter 7, Section 7.3B to install a multi – tenant freeway identification sign of 700 square feet, where the maximum size for a freeway identification sign is 150 square feet.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the items described above. There were fifteen notices of public hearing sent and zero responses were received.

James Dally, of Mavcon represented the request, stating this property had received other variances, for green space and a variance for the Biddergy sign. Now they are seeking seven total sign faces, and would relinquish their own sign if allowed this one. Mr. Eldridge clarified on Jan 14, 2010 the ZBA granted a variance for the existing sign at the property line, and stated they installed a 100 sq. ft. sign.

Mr. Dally stated they wanted seven separate signs for seven different tenants, and spoke of the adjacent property, Country Inn Suites large sign. He stated the special circumstances are due the largeness of facility, it being along I-94 and it's important to the economic vitality to the City and the business has the support of the City. The peculiar and practical difficulties are being so close to I-94, the business relies on the visibility from I-94. Most of the tenants don't get a signage allowance. Contrary to public interest, they don't believe a larger sign will have a negative impact. The sign behind them is even larger. The variance will benefit the public interest to allow more tenants to occupy their building.

Mr. Lager clarified the building is 80,000 square feet and is subdivided into seven separate units. Mr. Dally stated Biddergy and a gym are in there currently, he's ready to market the other spaces, the rest is flex space, 5,000 to 10,000 square feet each.

Mr. Eldridge clarified the sign would be on the I-94 side of the building there's no freestanding signage on E. Kilgore, and asked if there were plans for a sign there. Mr. Dally stated only directional signage and stated there would be no brand sign, only the pylon sign by the highway. Mr. Eldridge stated he couldn't even give an example of another multi-tenant sign their trying to make visible from I-94 to even compare another sign to.

Chair Youngs spoke to the Oakwood Plaza sign as a comparison, mentioned another one on Drake Rd. that was a multi-tenant sign. He questioned the height. Mr. Dally stated it'd be about 35 feet tall.

Chair Youngs questioned if I-94 had any proposed changes upcoming. Mr. Dally stated he had communications with MDOT and there will be no changes to his property lines.

Mr. Carroll questioned if the intent for the sign was for location or marketing. Mr. Dally stated for both, the tenants need to be able to have a sign for visibility. Mr. Carroll questioned if there would be a "for lease" sign in the sign. Mr. Dally stated that's probably the intent. Mr. Carroll had concerns for the community looking at that large of a sign.

Mr. Eldridge stated they are limited to only one "for lease" sign on the pylon sign. Mr. Dally stated they will only have signs for building tenants and it would be two sided.

Mr. Carroll questioned the building signage for Biddergy. Mr. Eldridge stated wall signage is separate; they can have signage on the building. Mr. Eldridge clarified the size of the panels, height between panels and the overall height of 35 feet stated earlier was actually going to be 50 feet. Mr. Dally stated that appeared to be correct, but this was still within the airports guidelines.

Mr. Lager questioned if seven separate signs were on seven different pylons would it be allowed. Mr. Eldridge stated the code allows for only one freeway id sign within 200 feet of

the highway that's maximum allowance is 150 sq. ft. and 80 feet high and discussed the wall signage allowances.

Chair Youngs questioned if Mr. Dally could move the sign to the Kilgore side. Mr. Eldridge commented the maximum size would still be 150 sq. ft. and 25 ft. in height for a public street.

There were no comments from the public.
Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Carroll moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 1919 Kilgore Service Road shall include all information included in the notice of public hearing dated August 29, 2018.
- 2.) Fifteen notices of public hearing were sent and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.
- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, aerial photographs, site plans, elevations and a letter.
- 5.) The Finding of Fact shall include those documents just described and also all facts and comments made during the public hearing, which are summarized to include without limitation, the following: James Dally of Mavcon spoke on behalf of the request. The sign would be taller than the building at 50' high. There are actually two parcels but is under one parcel id. The property has not been given a plaza name.

Mr. Houston seconded the Finding of Fact.

Motion approved for the Finding of Fact by voice vote unanimously.

Mr. Lager moved to approve the application, seconded by Mr. Houston.

Mr. Carroll stated his concerns with setting a precedence that other applicants could ask for a similar variance request, there'd be a precedence that indicates that a larger sign is acceptable and other multi-tenant businesses could be listed on signs. He doesn't feel it's aesthetically pleasing.

Mr. Lager commented he understands the rationale for the seven identification signs for seven different separate tenants. However, the elements for granting a dimensional variance require

there are special circumstances that are peculiar to this land or structure. Having an 80,000 sq. ft. building with seven separate tenants isn't a special circumstance in his opinion and doesn't meet the requirements for granting the variance.

Mr. Flach questioned if the sign ordinance changes would affect these requirements. Mr. Eldridge stated the highway signage is an added sign allotment for properties within 200 feet of the highway. These sign requirements will not change.

Chair Youngs spoke to the highway sign requests that have come before the Board, the Fabrical and Wings Event Center sign were approved. This sign with seven tenants, there are no special circumstances; he doesn't feel meets the requirements to approve.

Mr. Eldridge stated if this request was approved the existing Biddergy sign would have to come down first, prior to installing the new one.

Motion denied by roll call vote.

Yes: Houston

No: Carroll, Lager, Youngs, Flach

Mr. Houston read the application for 824 Portage Street, Parcel #06-22-286-002:

ZBA #18-09-24: 824 Portage Street: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Richard Stewart. The request concerns the property at 824 Portage Street, which is situated in use Zone M-1, Manufacturing – Limited District. The applicant is requesting a use variance from Chapter 4, Section 4.1, to allow a dwelling unit on the second floor of an existing building located in Zone M-1 where the former Pride Care Ambulance business was located. No new dwelling units are permitted in the manufacturing zoning districts.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the items described above. There were thirty-three notices of public hearing sent and zero responses were received.

Richard Stewart, the applicant for the variance stated he sold his current property needs to relocate his office. He has to relocate within a certain district and explained his firm is REO Specialists, a real estate brokerage, certified by the small business administration as a diverse employer. HUBZone is a designation that allows him benefits for government set asides from his certification, and receives government accounts and can employ people who live in the HUBZone, but he has to reside in the HUBZone also. He will reside at this address and have his home office there also. He stated the City Planner, Christina Anderson had provided an email in support stating his proposed use will be appropriate for the area and where the zoning is headed. He stated the special use is due to the building is economically obsolete and has been vacant around ten years. He will have to remove an existing radio tower, and it will require a new roof. This building provides security and has indoor parking. It doesn't require modifications to the interior there's already two bathrooms and a kitchen. There's a waiting area on the lower level and a conference room for business stating his business is mostly internet based. Mr. Stewart stated it won't have a negative effect on the neighborhood. This

will meet the practical purpose of the 2025 Master Plan. The conditions that are peculiar to the land or structure, this building has been vacant for over ten years. The special circumstances are not the result of any of his actions. This will not be contrary to any public interest, it will be the only residence, surrounding buildings are used car dealerships, and is on the railroad tracks. He feels it will be generally consistent with the intent of the ordinance.

Mr. Eldridge mentioned the email from the City Planner, and spoke of the enhancements to the 2005 Portage street scape plans, improving pedestrian access, enhancing the retail space of the corridor, which is geared towards a mixed use commercial corridor. He gave the background of the 2025 Master Plan map identifies this area as neighborhood edge and refers to mid small scale development area and would include offices.

There were no comments from the public.
Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Flach moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 824 Portage Street shall include all information included in the notice of public hearing dated August 29, 2018.
- 2.) Thirty-three notices of public hearing were sent and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.
- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, aerial photographs, site plans, elevations and a letter. A document from the SBA provided by the applicant.
- 5.) The Finding of Fact shall include those documents just described and also all facts and comments made during the public hearing, which are summarized to include without limitation, the following: Richard Stewart stated he's had a hard time finding a property to relocate too within the HUBZone. This property has been vacant for over 10 years. There are already amenities and he has no intentions of changing the structure of the building. He stated he had an email of support by the City Planner, Christina Anderson.

Mr. Lager seconded the Finding of Fact.

Motion approved for the Finding of Fact by voice vote unanimously.

Mr. Lager moved to approve the application, seconded by Mr. Houston.

Mr. Houston stated this is in accordance with the 2025 Master Plan and he's in favor of the request.

Chair Youngs stated he was in favor, as well as the City Planner, and it's a good use for the building. The special circumstances are not the result of the applicant; it's in a M-1 Zone. It's the minimum action to make use of the property, it's not contract to the public interest. There won't be a negative effect on adjacent property in a material way.

Mr. Flach stated he was in support it meets the HUBZone requirements.

Motion approved by roll call vote unanimously.

Mr. Houston read the application for 3406 Stadium Drive, Parcel #06-30-241-005:

ZBA #18-09-25: 3406 Stadium Drive: An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Enterprise Leasing Company of Detroit LLC. The request concerns the property at 3406 Stadium Drive, which is situated in use Zone CC, Commercial – Community District. The applicant is requesting a use variance from Chapter 4, Section 4.1, to allow commercial truck rentals at this location in addition to car rentals and car sales. In Zone CC, heavy equipment sales and rental is not a permitted use.

Please note that this request will not change the zoning classification of the property. This is a request for a variance only regarding the items described above. There were seventeen notices of public hearing sent and zero responses were received.

Scott Inman, Facilities Supervisor of Enterprise and Kent Kamba, Regional Vice President were present to represent the request. Mr. Inman stated they want to be a transportation solution for the people of Kalamazoo. Regarding the truck variance, they feel they it should be granted; this is a transportation hub for the city. There are nine dealerships in the area, two rental agencies working, and a U-Haul across the road. Trucks would allow them to be a solution for the community to support businesses. They would update the current building, create employment opportunities. He discussed the heavy equipment sales and rentals. Their trucks are 26" foot trucks, cargo vans, the size of U-Haul size trucks. They discussed the gross vehicle weight, but wasn't sure. There wouldn't be any maintenance at the facility, but the cleaning of the vehicles. They gave a brief history of Enterprise, spoke of their Grand Rapids location, they've outgrown the building their in, there's not enough parking.

Chair Youngs questioned if they would demolish the current building. Mr. Kamba stated no, they'll be investing approximately 1.5 million dollars into refurbishing it.

Chair Youngs questioned what the truck inventory would be. Mr. Kamba commented their goal is to have the trucks on the road; their occupancy is currently around 90%. Mr. Inman commented they have five truck divisions they move trucks around to. He stated holiday time, school moving are high volume times for them.

Mr. Houston questioned if there'd be improvements to the parking lot. Mr. Kamba stated they'd seal coat the parking lot, green belts and improve the looks.

Mr. Carroll questioned how many employees they have. Mr. Kamba commented approximately an additional 35 to 40 employees between the truck, rental and car sales. They would combine the business across the street

Mr. Eldridge clarified the light equipment sales/rental category is permitted by right in that CC Zone District, it allows for trucks 10,000 pounds or less. The heavy equipment brought them before the ZBA. He discussed the allowable vehicles in that category. These trucks are not exactly heavy vehicles like a large Ryder truck.

Mr. Lager questioned if the motion should contain a 26' length restriction. Mr. Eldridge questioned if 26' or if 28' is the max. Mr. Kamba commented he wasn't sure of the exact length, but would prefer 28' to be safe. Chair Youngs commented these are single axle trucks, with no air brakes, and citizens can rent them. Mr. Kamba stated no CDL is required, anyone can rent them.

There were no comments from the public.
Chair Youngs closed the public hearing.

FINDING OF FACT

Mr. Lager moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 3406 Stadium Drive shall include all information included in the notice of public hearing dated August 29, 2018.
- 2.) Seventeen notices of public hearing were sent and zero responses were received.
- 3.) A public hearing was held before the board and public comments were accepted.
- 4.) The Zoning Board of Appeals received documents on the request including lot diagrams with boundaries and drawings, aerial photographs, site plans, elevations and a letter.
- 5.) The Finding of Fact shall include those documents just described and also all facts and comments made during the public hearing, which are summarized to include without limitation, the following: Scott Inman, Facility Supervisor, and Ken Kamba, Regional Vice President for Enterprise spoke on behalf of the applicant and stated the intent of the facility is be a transportation hub that combines car rental, car sales and truck leasing. They indicated the use fits with the character of Stadium Drive area. It allows Enterprise to better service the transportation needs of Kalamazoo. This is in the former Wayside building and transforms a vacant building with aesthetically pleasing upgrades.

Trucks to be rentable are 26' in length, U-Haul moving type trucks, rentable by consumer's, trucks such as F-150's. There will be no maintenance of the vehicles on the property except for cleaning. Enterprise is currently located across the street and has outgrown the location. There is a similar operation in Grand Rapids currently. They intend to improve the parking lot, resurfacing and installing appropriate green balance.

Mr. Houston seconded the Finding of Fact.

Motion approved for the Finding of Fact by voice vote unanimously.

Attorney Robinson commented in response to Mr. Lager's question, he suggested, because it's a variance, they are permitted to place conditions. In terms of defining what the trucks can be, he would have the motion state exactly what the limitations are. If Enterprise leaves the property a new tenant could place big vehicles on the premises because a variance has been granted that goes with the property.

Mr. Eldridge commented on the 28' as discussed earlier as the limitation.

Mr. Lager moved to approve the application with the condition the commercial truck rentals being non-CDL required and no longer than 28 feet overall, in addition to car rentals and car sales, seconded by Mr. Houston.

Chair Youngs reviewed the criteria conditions that must be met to qualify and stated he was in favor. There won't be a negative effect on adjacent property, and it's the minimum action to make use of the land and is not contrary to the public interest.

Motion approved by roll call vote unanimously.

OTHER BUSINESS:

Mr. Eldridge commented at October's meeting there will be an appeal on an administrative decision that was filed related to the medical marijuana ordinance; he'll get a staff memo out to them. They are appealing how they interpreted the ordinance they approved.

Mr. Carroll stated he would be out of town for the October meeting.

Chair Youngs questioned if Heritage would be returning with their request. Mr. Eldridge stated their looking at the November meeting. The Board members discussed going to a neighborhood meeting, and if they could attend so long as they don't have a quorum. Attorney Robinson commented as long as they don't engage in discussions and just sit and listen to the information that is o.k.

ADJOURNMENT:

The meeting was adjourned at 8:20 p.m.

Submitted By _____ **Date** _____
Recording Secretary

Reviewed By _____ **Date** _____
City Staff

Approved By _____ **Date** _____
Chair

DRAFT



Community Planning and Development

415 Stockbridge Avenue

Kalamazoo, MI 49001

PH: (269) 337-8044

FAX (269) 337-8429

www.kalamazoocity.org

NOTICE OF PUBLIC HEARING

October 29, 2018

**RE: 2009 Whites Road
Parcel #06-29-496-002
ZBA #18-10-27**

REVISED MEETING DATE

Dear Property Owner:

An application for a variance from the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Oakwood Animal Hospital NVA Clinic. The request concerns the property at 2009 Whites Road, which is situated in use Zone CN-1, Commercial – Neighborhood District.

The applicant is requesting: **1)** A use variance from Chapter 9, Section 9.2A, to authorize the expansion of a nonconforming use (veterinarian clinic) which would allow a building addition of 1,758 square feet. This would increase the footprint of the structure to 3,544 square feet. **2)** A dimensional variance from Chapter 6, Section 6.1 C, of five off-street parking spaces to allow 16 off-street parking spaces where 21 are required.

Please note that this request will not change the zoning classification of the property. This is a request for variances only regarding the items described above.

A public hearing will be held on **Thursday, November 15, 2018 at 7:00 p.m.** in the City Commission Chambers in City Hall (241 W. South Street), at which time you may submit your views on this matter in person, by writing, or by representative. If you should know of any interested person who has not received a copy of this letter, please inform them of the time and place of the hearing.

Further information, including property diagrams and drawings are available at the Community Planning and Development Department at 415 Stockbridge Avenue. Meeting agenda packets will also be available to view on-line 10 days prior to the meeting at: www.kalamazoocity.org/boards

If you have any questions, please call (269) 337-8026 or submit by email at eldridgep@kalamazoocity.org.

Sincerely,
ZONING BOARD OF APPEALS

A blue ink signature of Peter C. Eldridge.

Peter C. Eldridge, AICP
Zoning Administrator

c: Property File



Zoning Board of Appeals (ZBA) Application Form

Community Planning & Development Department

415 Stockbridge

Kalamazoo, MI 49001

Phone: 269-337-8026

www.kalamazoocity.org

Your fully completed application, fee, and all related documents must be submitted to the Community Planning & Development Department **at least four (4) weeks prior** to the Zoning Board of Appeals meeting.

Applicant: Name Heidi Robertson - Oakwood Animal Hospital NVA Clinic
 Address 2009 Whites Road
 City, State, Zip Kalamazoo, MI 49008 Phone 269-993-3450
 Cell _____
 Fax _____ Email heidi.robertson@nvanet.com

Owner: Name Thomas & Diane Eberhard
 Address 2009 Whites Road
 City, State, Zip Kalamazoo MI 49008
 Phone _____ Cell _____
 Fax _____ Email _____

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Street or Street Address 2009 Whites Road

This property is located between Oakland Drive street and Parkland Avenue street, on the

north south east west side of the street.

CCN# 06-29-496-002 Zone Local Neighborhood Commercial (CN-1)

Type of Request

Interpretation of Chapter(s) _____ Sections(s) _____

Paragraph(s) _____ of the City of Kalamazoo Zoning Ordinance.

Use Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, unnecessary hardship to the applicant will result. All Use Variance Requirements must be met. (See *Requirements List*.)

Dimensional Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, practical difficulties to the applicant will result. All Dimensional Variance Requirements must be met. (See *Requirements List*.)

Appeal of an Administrative Decision

Description _____

Attachments

- ~~4~~ \$495 Fee
- Brief narrative (less than one type-written page) describing the nature of the request (2 copies)
- Sketch plan of the property in questions (2 copies)
- Additional attachments as needed e.g. (pictures, architectural drawings, petitions, etc. (2 copies)

Heidi Robertson
Signature of Applicant

9-10-18
Date

Thomas L. Eberhard
Signature of Owner (if different than applicant)

9/10/18
Date

September 7, 2018

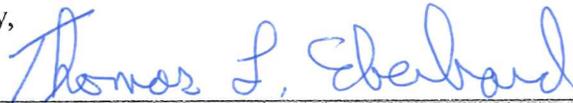
City of Kalamazoo Zoning Board
415 E Stockbridge Ave
Kalamazoo, MI 49001

RE: Addition onto Oakwood Animal Hospital

To: The City of Kalamazoo Zoning Board

I, Thomas Eberhard, Owner of 2009 Whites Rd DBA Oakwood Animal Hospital respectfully request and support the hospital to add the much needed expansion. Thank you for your consideration.

Sincerely,



Thomas Eberhard

9/10/18

Date

September 12, 2018

Variance Narrative

Oakwood Animal Hospital Expansion, 2009 Whites Road, Kalamazoo, MI

Project Narrative

Oakwood Animal Hospital is proposing to construct a 1,758 square foot addition to the east side of the southeast corner of the existing animal hospital as illustrated on the attached site plan (plan sheet C1.2). The proposed addition will include a break/conference room, mechanical room, laundry/storage room, an imaging (ultrasound and x-ray) room, a bathroom, four (4) indoor kennels for patients, and area for surgical and other medical procedures (i.e. dental procedures). The property is zoned CN-1, Neighborhood Commercial District. Pursuant to Appendix A (Zoning Ordinance), Attachment 3 of the City of Kalamazoo Code of Ordinances, Veterinary Clinics and Hospitals are not listed as permitted uses or special uses in the CN-1 District.

The proposed development seeks relief from Section 9.2 A. of the City of Kalamazoo Code of Ordinances (Nonconforming Uses) which states *"a nonconforming use shall not be enlarged or expanded in area, except that a nonconforming use may be enlarged in any area of the same structure that was manifestly designed for such use prior to the date the use became a nonconformity. The structure shall not be physically enlarged to accommodate a nonconforming use."*

The proposal also requests a variance to the parking standards found in Table 6.1-1 (Parking Requirements Table) found in Section 6.1 C. of the City of Kalamazoo Code of Ordinances which requires Veterinary Clinics or Veterinary Hospitals provide one (1) parking space per 200 square feet of gross floor area. Upon project completion, the gross floor area of the subject facility will total 4,183 square feet. Based upon Code standards, 21 parking spaces are required; the design will provide for 16 parking spaces requiring a variance for a five (5) space reduction from the Code required number of spaces.

September 12, 2018

Variance Petition Standards

Oakwood Animal Hospital Expansion, 2009 Whites Road, Kalamazoo, MI

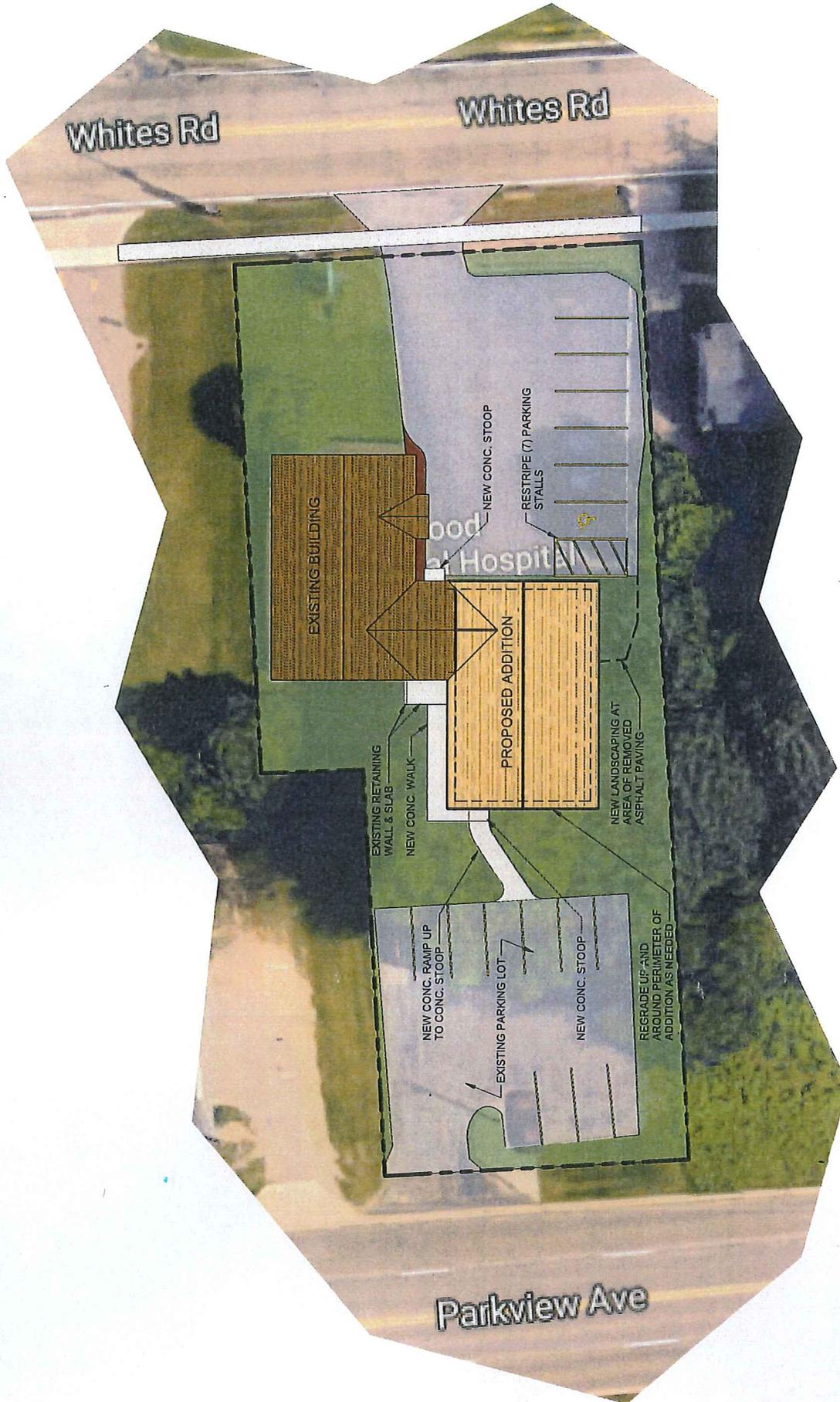
USE VARIANCE STANDARDS

1. Deprivation of Use: The current veterinary facility was constructed in 1982 with the specific purpose of the building being a veterinary clinic. Denial of the variance will prevent the applicant from making the long-standing use of the property more efficient and keeping up with the latest in veterinary care.
2. Unnecessary Hardship: As noted above, the animal hospital use has existed at the subject location since 1982. The expansion will not result in an increase in increase in the scope of services offered or a change in use. Denial of the use variance will result in unnecessary hardship and be unreasonably burdensome to the applicant as it will not allow them to physically expand the facility which will prevent them from meeting client demand and the ability to practice progressive medicine in a less congested office and lab environment.
3. Special Circumstances: The existing building was constructed in 1982 as a veterinary clinic/animal hospital. This is the original and only use of the property since that time.
4. Public Interest/Spirit of Ordinance: By granting the variance, the owner will be provided with the minimal relief necessary to continue to provide a quality service to their patrons (the public) in a more efficient manner and less congested work environment without negatively impacting adjacent properties as noted below.
5. Impact on Adjacent Land: The proposed addition will not negatively impact the adjacent properties. The property to the east is buffered from the proposed addition by mature trees; those same trees and the existing south parking lot provide a buffer to the property to the south which consists of a school parking lot/playground on the opposite side of Parkview Avenue. The properties to the west consist of an electrical substation and a bank parking lot and drive aisles. The property to the north (Oakwood Plaza) is a commercial area located on the opposite side of Whites Road.
6. Consistency with Purpose and Intent of Ordinance: The property does not contain environmentally sensitive areas; the proposed building expansion complies with all applicable setbacks, height restrictions and impervious surface/greenspace requirements. The current use

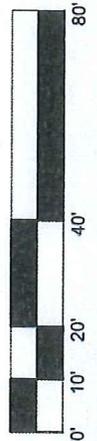
has existed on the subject property for 36 years, does not negatively impact the adjacent properties, and does not stress or overburden public infrastructure and facilities. For these stated reasons, the granting of the variance will be generally consistent with the purposes and intent of the Ordinance.

Dimensional Variance Standards (Parking Space Reduction)

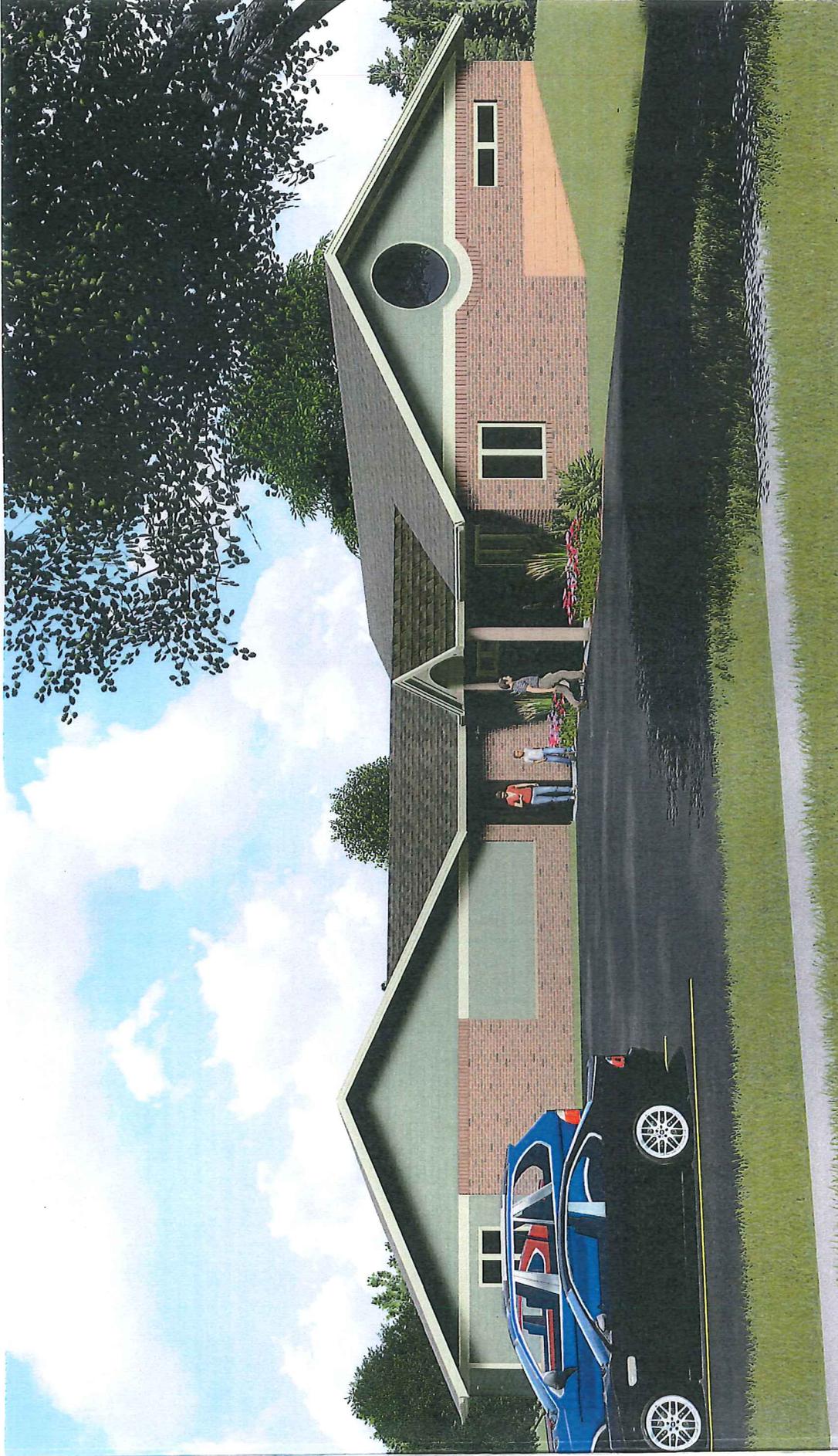
1. **Special Circumstances:** The north half of the property is topographically three feet (3') higher in elevation than the south which requires the proposed addition to be located as shown to provide for handicap accessibility to the building and to provide for an efficient work flow pattern and sufficient work area; this results in the elimination of two (2) existing parking spaces in the front/north parking lot.
2. **Cause of Special Circumstances:** The special circumstances are not caused by the applicant or owner but are due to the natural features of the property as noted below:
 - a. Three foot (3') change in elevation between the north and south end of the property.
 - b. Narrow width of property preventing construction of additional parking spaces.
3. **Deprivation of Rights:** The proposed building addition complies with all dimensional standards of the Code relative to setback, height, and lot coverage. The proposed addition will not result in an increase in the number of employees. Furthermore, the proposed addition will be utilized for utility areas (mechanical room, laundry/storage area, break/conference room, rest room, holding kennels), surgical, dentistry, hospitalization, and treatment areas. These areas are patient only areas; the customer will drop off the animal patient and leave while the procedure is being performed so no long term parking is required.
4. **Public Interest/Spirit of Ordinance:** By granting the variance, the owner will be provided with the minimal relief necessary to continue to provide a quality service to their patrons (the public) in a more efficient manner and less congested work environment without negatively impacting adjacent properties as noted below.
5. **Impact on Adjacent Land:** The proposed addition will not negatively impact the adjacent properties. The property to the east is buffered from the proposed addition by mature trees; those same trees and the existing south parking lot provide a buffer to the property to the south which consists of a school parking lot/playground on the opposite side of Parkview Avenue. The properties to the west consist of an electrical substation and a bank parking lot and drive aisles. The property to the north (Oakwood Plaza) is a commercial area located on the opposite side of Whites Road.
6. **Consistency with Purpose and Intent of Ordinance:** The property does not contain environmentally sensitive areas; the proposed building expansion complies with all applicable setbacks, height restrictions and impervious surface/greenspace standards. The current use has existed on the subject property for 36 years, does not negatively impact the adjacent properties, and does not stress or overburden public infrastructure and facilities. For these stated reasons, the granting of the variance will be generally consistent with the purposes and intent of the Ordinance.



CONCEPTUAL SITE PLAN
1" = 20'-0"



THE LOT DIMENSIONS AND BEARINGS SHOWN ON THIS PLAN



NVA-OAKWOOD ANIMAL HOSPITAL

KALAMAZOO, WISCONSIN

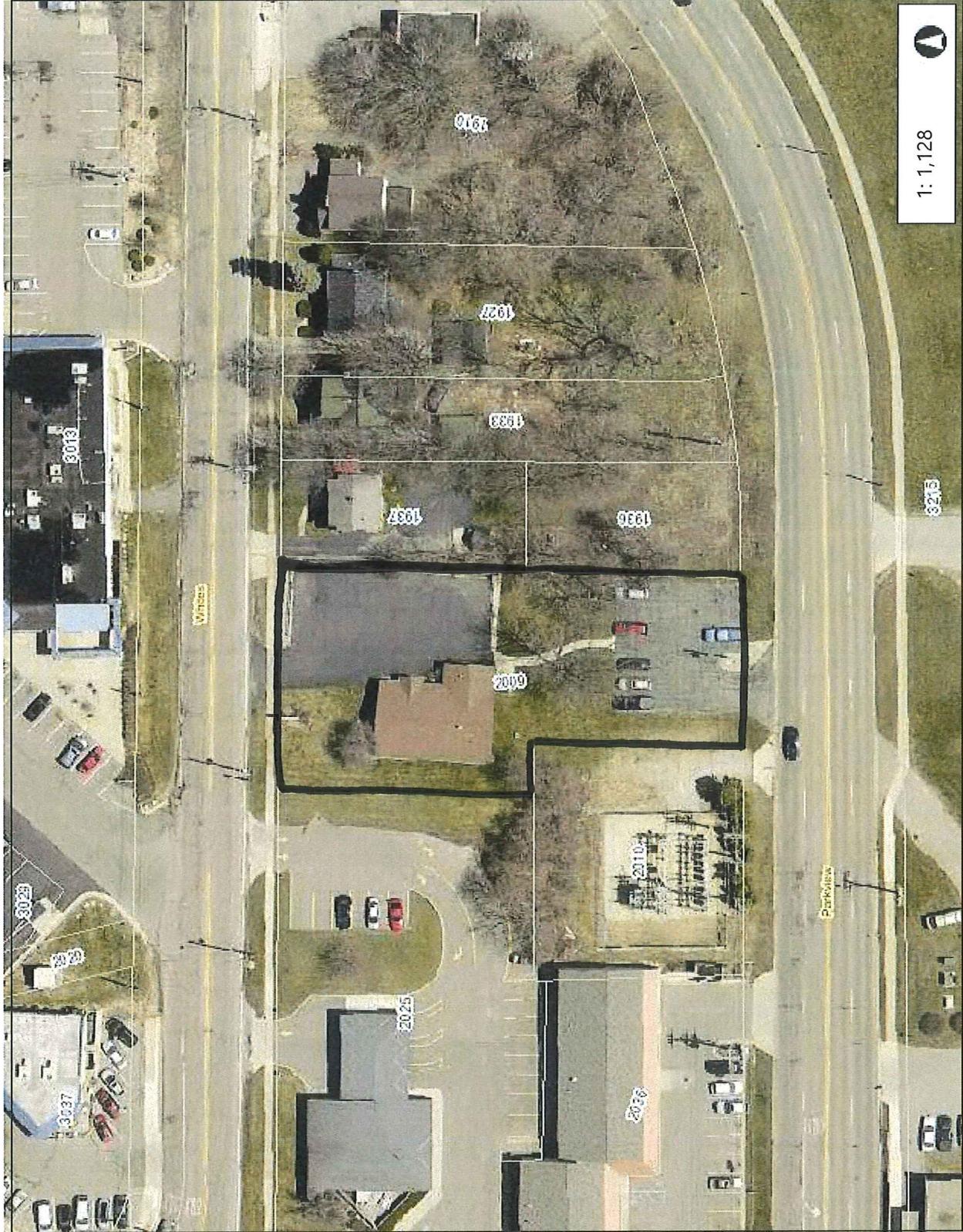




NVA-OAKWOOD ANIMAL HOSPITAL

KALAMAZOO, WISCONSIN

2009 Whites Road (Zone CN-1)



1: 1,128

0.0 Miles

0.02

0

0.0

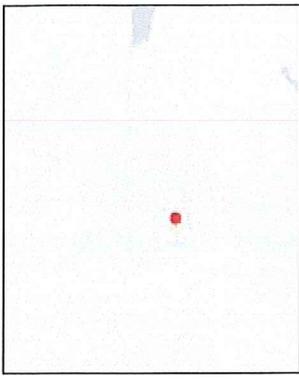
WGS_1984_Web_Mercator_Auxiliary_Sphere

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Legend

Street Names - City

Parcels





Community Planning and Economic Development

415 Stockbridge Avenue

Kalamazoo, MI 49001

PH: (269) 337-8044

FAX (269) 337-8429

www.kalamazoocity.org

NOTICE OF PUBLIC HEARING

October 29, 2018

**RE: 1722 E. Alcott Street
Parcel #06-26-222-013
ZBA #18-11-29**

REVISED MEETING DATE

Dear Property Owner:

An application for a variance to the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Charise Juarez. The request concerns the property at 1722 E. Alcott Street, which is situated in use Zone RS-5, Residential – Single Dwelling District.

The request, if approved, would authorize a variance from Chapter 6, Section 6.3 A2 and A3, for a six-foot privacy fence (100% opacity) in the front yard along Fulford Street, where the maximum height for fencing in a front yard is four feet with maximum opacity of 75%.

Please note that this request will not change the zoning classification of the properties. This is a request for a variance only regarding the items described above.

A public hearing will be held on **Thursday, November 15, 2018 at 7:00 p.m.** in the City Commission Chambers in City Hall (241 W. South Street), at which time you may submit your views on this matter in person, by writing, or by representative. If you should know of any interested person who has not received a copy of this letter, please inform them of the time and place of the hearing.

Further information, including property diagrams and drawings are available at the Community Planning and Development Department at 415 Stockbridge Avenue. Meeting agenda packets will also be available to view on-line 10 days prior to the meeting at: www.kalamazoocity.org/boards

If you have any questions, please call (269) 337-8026 or submit by email at eldridgep@kalamazoocity.org.

Sincerely,
ZONING BOARD OF APPEALS

Peter C. Eldridge, AICP
Zoning Administrator

c: File



Zoning Board of Appeals (ZBA) Application Form

Community Planning & Development Department

415 Stockbridge

Kalamazoo, MI 49001

Phone: 269-337-8026

www.kalamazoocity.org

Your fully completed application, fee, and all related documents must be submitted to the Community Planning & Development Department at least four (4) weeks prior to the Zoning Board of Appeals meeting.

Applicant: Name Charise Juarez
Address 1405 NAZARETH RD.
City, State, Zip Kalamazoo, MI 49048
Phone 269 910 2639 Cell _____
Fax _____ Email _____

Owner: Name Charise Juarez
Address 1405 NAZARETH RD
City, State, Zip KAL., MI 49048
Phone 269 910 2639 Cell _____
Fax _____ Email Cherise_e@hotmail.com

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Street or Street Address 1722 E. AICOTT, KAL., MI 4900

This property is located between _____ street and _____ street, on the

north south east west side of the street.

CCN# 06-26-222-013 Zone RS-5

Type of Request

Interpretation of Chapter(s) _____ Sections(s) _____
Paragraph(s) _____ of the City of Kalamazoo Zoning Ordinance.

Use Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, unnecessary hardship to the applicant will result. All Use Variance Requirements must be met. (See *Requirements List.*)

Dimensional Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, practical difficulties to the applicant will result. All Dimensional Variance Requirements must be met. (See *Requirements List.*)

Appeal of an Administrative Decision

Description _____

Attachments

- \$275 Fee pd. p/c
- Brief narrative (less than one type-written page) describing the nature of the request (2 copies)
- Sketch plan of the property in questions (2 copies)
- Additional attachments as needed e.g. (pictures, architectural drawings, petitions, etc. (2 copies)

Charise Juarez 10/4/18
Signature of Applicant Date

Signature of Owner (if different than applicant) Date

To Who It May Concern (Community Planning & Development Dept.):

I, Charise Juarez am the current owner of 1722 E. Alcott, Kalamazoo, Michigan, Parcel Number: 06-26-222-013 . I am beginning to rehabilitate this property which is located on a corner lot front facing Alcott and side facing Fulford Avenue. Adjacent and in full view from property are commercial buildings. I have attached photos with perspectives from all angles of the home showing that although residential I am surrounded and in full view of all commercial building.

I would like a variance allowing me to erect a 6ft wooden privacy fence that would allow for better use of the yard as well as safety for my children if they were at play. This area maintains steady foot traffic as well as vehicle traffic throughout the day and evening. I have reviewed the zoning ordinance and a decorative 4ft fence would be inadequate in maintaining any privacy as well as the desire to have a yard to beautify would not be possible with the commercial buildings at the side and rear of the property in full view.

I would like to maintain the front view of the home by beginning the fencing 5ft in from the front left corner of the home and extending it out to the current fence line, which is a chain link fence I would remove. I would like to extend the fence to the rear of the yard inside the back corner utility pole and then to the garage where a wooden gate would be added. At the front right perspective of the home a 6-~~7~~ ft section would be added at the 5ft from front of home section for added security and access from front of home. I have attached images that show the perspectives I'm referring to as well as the fencing in question.

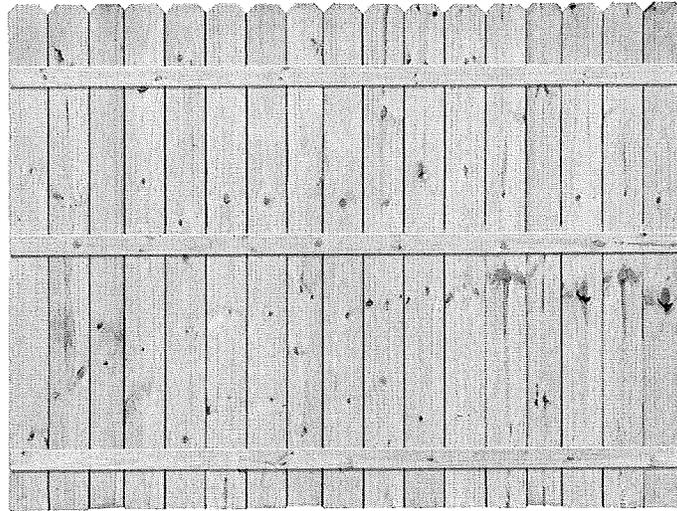
Thank you for your time on this matter,

Charise Juarez

269-910-2639

Home / Lumber & Composites / Fencing / Wood Fencing / Wood Fence Panels

Model # 158083 Internet #203733689 Store SKU #897671



Save to Favorites

6 ft. H x 8 ft. W Pressure-Treated Pine Dog-Ear Fence Panel

★★★★★ (198) Write a Review

\$48⁵⁹ /each

Quantity

Pick Up In Store Today

43 in stock at Plainwell

Add to Cart

Check Nearby Stores

or

We'll Deliver It to You

Schedule delivery to your home or jobsite
on the day of your convenience

Get it as soon as tomorrow**Express Delivery**

Your local store: Plainwell
Store Details & Services

Or buy now with

Easy returns in store and online

Learn about our return policy

Product Overview >

- Pressure-treated to resist termites and fungal decay
- Panel comes pre-assembled for easy, DIY installation
- Dog ear panel provides privacy and adds beauty to your home

Model #: 158083**Sku #:** 897671**Internet #:** 203733689

This heavy-duty, pine fence panel features a classic dog ear design. The pre-built panel installs hassle-free. Made from pressure-treated lumber, this panel is protected against termites, fungal decay and rot. For any outdoor projects where lumber will be exposed to the elements, pressure-treated wood is a smart investment. This wood fence panel may also be painted or stained to suit your personal preferences. Please note that posts are not included with this panel.



WARNING! Drilling, sawing, sanding, or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or

other safeguards for personal protection. For more information go to [www. P65Warnings.ca.gov/wood](http://www.P65Warnings.ca.gov/wood).

- Limited lifetime warranty against rot and termites
- 6 ft. x 8 ft. (1 in. x 6 in. pickets)
- Treated with MCA (Micronized copper azole)
- Compatible with aluminum and carbon steel (Black iron) fasteners
- Pre-assembled panel for easy installation
- Please note that posts are not included with this panel
- Note: product may vary by store

Info & Guides

- [FAQ](#)
- [Installation Guide](#)
- [Instructions / Assembly](#)
- [Use and Care Manual](#)
- [Warranty](#)

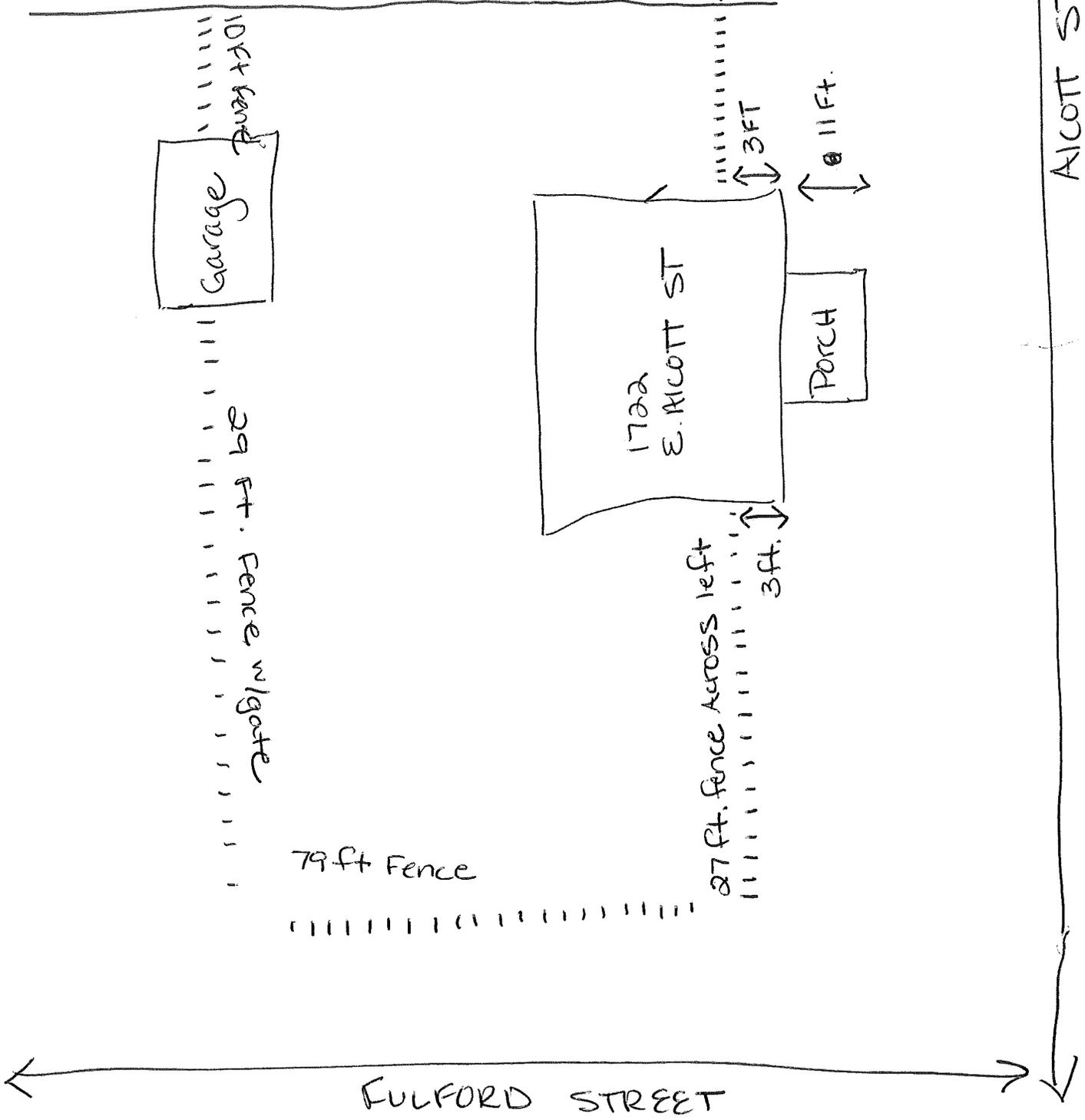


Charise Suarez
1722 E. Alcott
(Attachment for
variance request)

RECEIVED OCT 13 2018

← CURRENT Neighboring
Fence

← 11.5 ft fencing w/gate
at right facing front



Garage

10 ft fence

29 ft. Fence w/gate

79 ft Fence

1722
E. Alcott St

Porch

11 ft.

3 ft

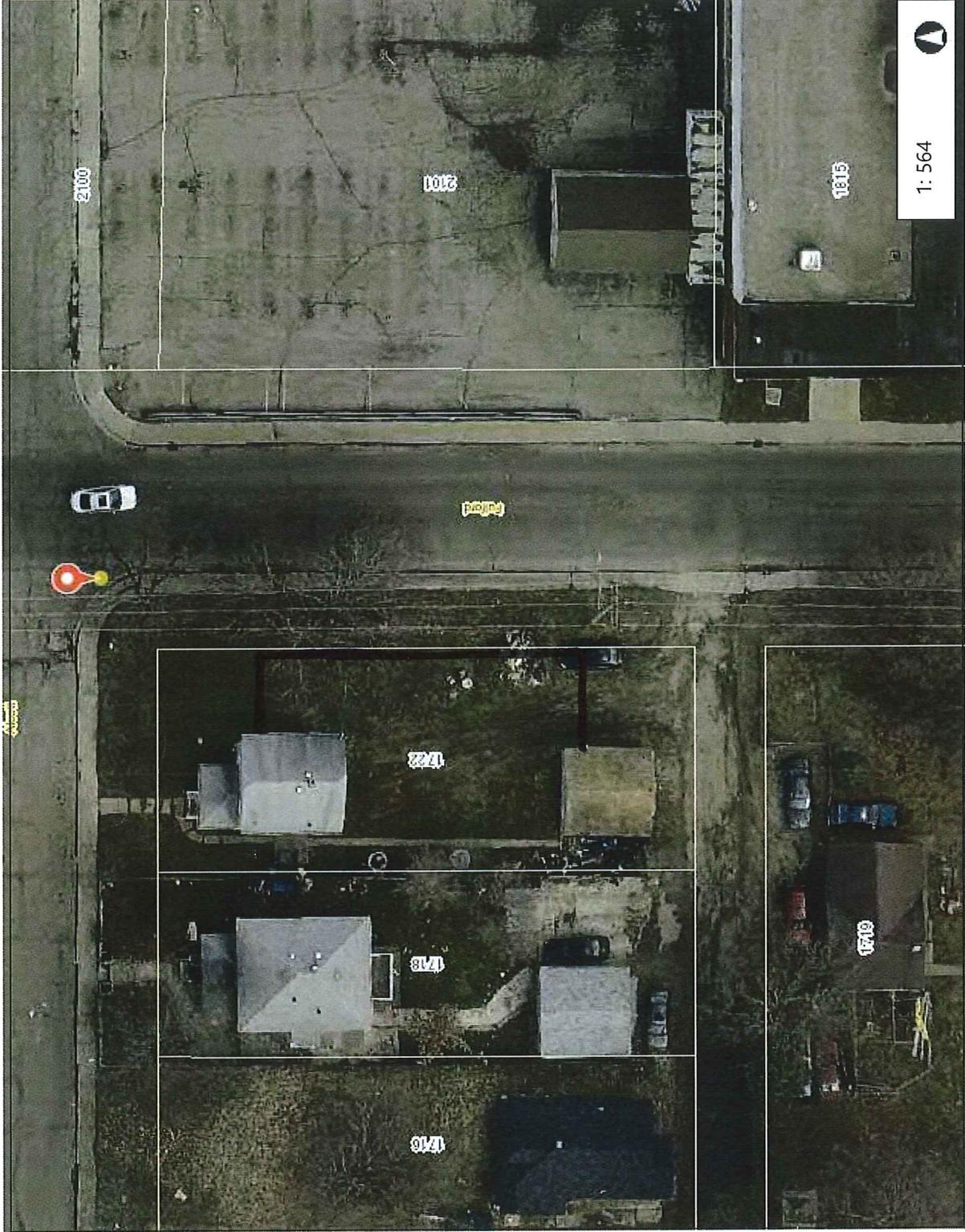
3 ft.

27 ft. fence across left

ALCOTT ST

FULFORD STREET

City of Kalamazoo GIS



0.0 0 0.01 0.0 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere

This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 564

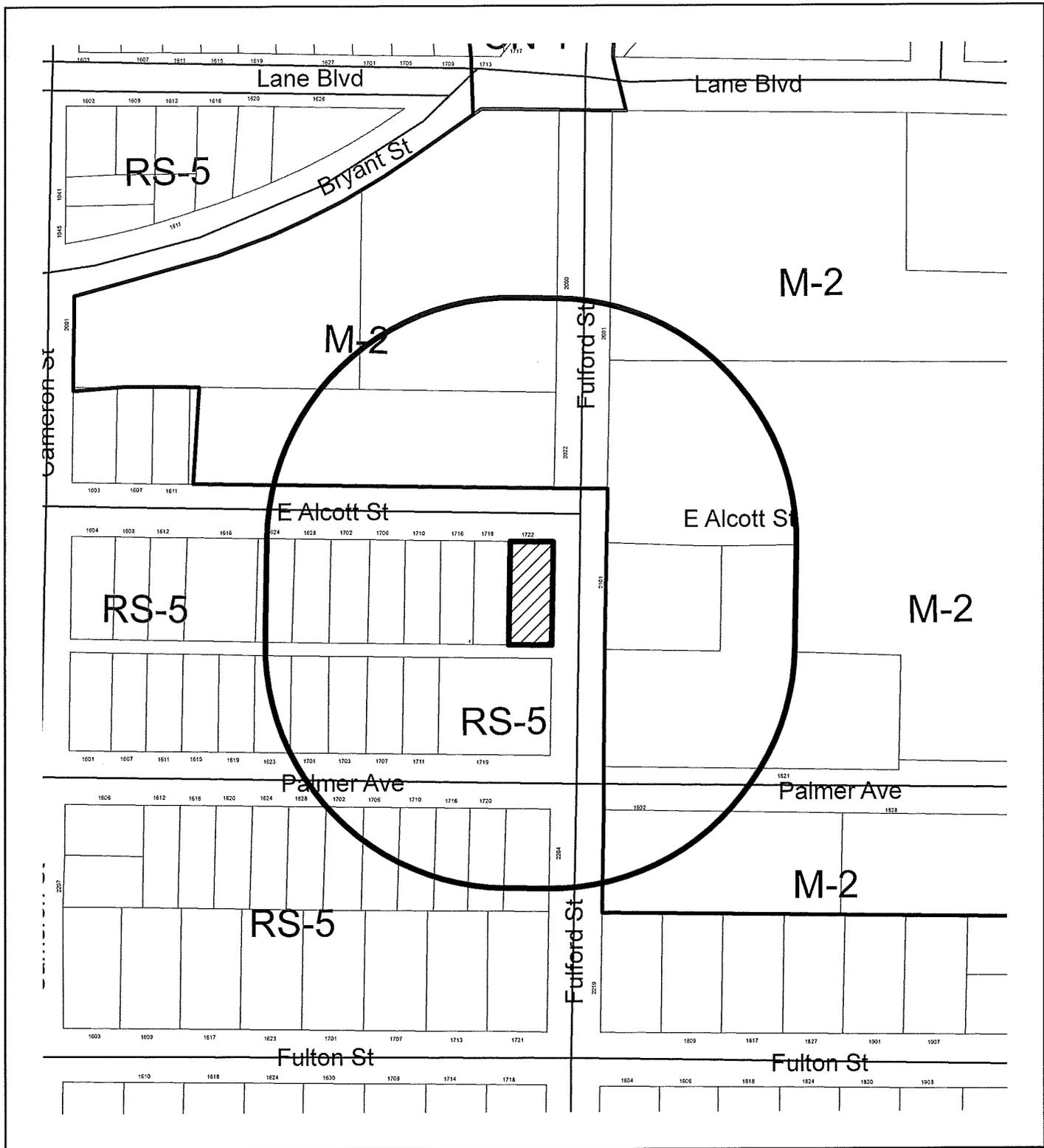


Legend

Street Names - City

Parcels





300' Mailing Boundary
1722 E. Alcott





Community Planning and Economic Development

415 Stockbridge Avenue
Kalamazoo, MI 49001
PH: (269) 337-8044
FAX (269) 337-8429
www.kalamazoocity.org

NOTICE OF PUBLIC HEARING

October 29, 2018

**RE: 409 and 427 E. Alcott Street
Parcel #06-27-222-002 and 06-27-224-002
ZBA #18-11-30**

REVISED MEETING DATE

Dear Property Owner:

An application for a variance from the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by the Boji Group LLC on behalf of BG West LLC. The request concerns the properties at 409 and 427 E. Alcott Street, which are situated in use Zone M-1, Manufacturing - Limited District.

The applicant is requesting a dimensional variance from Chapter 6, Section 6.1 J, to authorize one loading space where three are required for the 71,000 square foot office building proposed for the Michigan Department of Health and Human Services. The Zoning Ordinance requires all buildings with 50,000 to 100,000 square feet of floor area to have three loading spaces.

Please note that this request will not change the zoning classification of the properties. This is a request for variance only regarding the item described above.

A public hearing will be held on **Thursday, November 15, 2018 at 7:00 p.m.** in the City Commission Chambers in City Hall (241 W. South Street), at which time you may submit your views on this matter in person, by writing, or by representative. If you should know of any interested person who has not received a copy of this letter, please inform them of the time and place of the hearing.

Further information, including property diagrams and drawings are available at the Community Planning and Development Department at 415 Stockbridge Avenue. Meeting agenda packets will also be available to view on-line 10 days prior to the meeting at: www.kalamazoocity.org/boards

If you have any questions, please call (269) 337-8026 or submit by email at eldridgep@kalamazoocity.org.

Sincerely,
ZONING BOARD OF APPEALS

Peter C. Eldridge, AICP
Zoning Administrator

c: Property File



Zoning Board of Appeals (ZBA) Application Form

Community Planning & Development Department

415 Stockbridge

Kalamazoo, MI 49001

Phone: 269-337-8026

www.kalamazoocity.org

Your fully completed application, fee, and all related documents must be submitted to the Community Planning & Development Department at least four (4) weeks prior to the Zoning Board of Appeals meeting.

Applicant: Name Boji Group, LLC for BG West, LLC
 Address 124 W. Allegan St., Ste. 2100
 City, State, Zip Lansing, MI 48933
 Phone 517-377-3050 Cell 517-410-6172
 Fax _____ Email tfitzpatrick@bojigroup.com

Owner: Name Kalamazoo Brownfield Redevelopment Authority
 Address 241 West South Street
 City, State, Zip Kalamazoo, MI 49007
 Phone _____ Cell _____
 Fax _____ Email _____

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Street or Street Address 409 and 427 East Alcott Street
 This property is located between Burdick street and Portage street, on the
 north south east west side of the street.
 CCN# _____ Zone _____

Type of Request

Interpretation of Chapter(s) _____ Sections(s) _____
 Paragraph(s) _____ of the City of Kalamazoo Zoning Ordinance.

Use Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, unnecessary hardship to the applicant will result. All Use Variance Requirements must be met. (See Requirements List.)

Dimensional Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, practical difficulties to the applicant will result. All Dimensional Variance Requirements must be met. (See Requirements List.)

Appeal of an Administrative Decision

Description _____

Attachments

- \$275 Fee pd. PCC
- Brief narrative (less than one type-written page) describing the nature of the request (2 copies)
- Sketch plan of the property in questions (2 copies)
- Additional attachments as needed e.g. (pictures, architectural drawings, petitions, etc. (2 copies)

Maitripatski _____ 10/8/18
 Signature of Applicant Date

See attached letter _____
 Signature of Owner (if different than applicant) Date



Brownfield Redevelopment Authority
241 W. South Street
Kalamazoo, MI 49007
Phone 269.337.8082 | Fax 269.337.8182
COKeconomicdevelopment@kalamazoo.org
www.kzoobiz.org

October 3, 2018

Zoning Board of Appeals
Community Planning & Development Department
City of Kalamazoo
415 Stockbridge
Kalamazoo, Michigan 49001

RE: Zoning Variance Request – 409 and 427 East Alcott Street

Dear Zoning Board of Appeals:

This letter authorizes BG West, LLC and/or Boji Group, LLC to pursue a zoning variance for the above referenced property, and confirms Owner's agreement with the request.

Please feel free to contact me at (269) 337-8041 should you have any questions or require further information.

Sincerely,


Jerome R. Kisscorni
Assistant City Manager

THE CITY OF





October 7, 2018

Zoning Board of Appeals
Community Planning & Development Department
City of Kalamazoo
415 Stockbridge
Kalamazoo, MI 49001

RE: Zoning Variance Request- 409 and 427 East Alcott Street

Dear Zoning Board of Appeals:

Please accept this zoning variance request for the above referenced property that will be home to the new State of Michigan, Department of Health & Human Services Kalamazoo office. Specifically, the request is to have only one loading dock, rather than the three required by the Ordinance, with explanation for our request below:

1. The site, pre-determined by the State in collaboration with the City of Kalamazoo, has various environmental, topographical and site restrictions that are peculiar to this project. In addition to the site challenges, the State has an extraordinary parking requirement, further compounding the situation.
2. The special circumstances are not the result of the applicant or titleholder of the land.
3. The literal interpretation of the Ordinance would cause practical difficulty: The building and parking are designed to meet the State's requirements, and the site is at capacity to meet them. Requiring more loading docks than are needed for the user's operations, would take away both parking and office space. The use of the facility has limited deliveries and no semi-truck deliveries, with a typical schedule being box trucks coming once per day to deliver mail and twice per week to deliver office supplies. Additionally, access to the loading dock, as illustrated on the included site plan, is through the parking lot so there is ample room to accommodate any stacking that could occur.
4. The granting of the variance is the minimum action that will make possible the use of the land and structure and is not contrary to the public interest.
5. The granting of the variance will not adversely affect adjacent land in a material way.
6. The granting of the variance will be generally consistent with the purposes and intent of the Ordinance.

Please contact me at 517.377.3000 or tfitzpatrick@bojigroup.com should you have any questions or require further information.

Sincerely,

Terri L. Fitzpatrick

Terri L. Fitzpatrick
Chief Operating Officer

409 and 427 E. Alcott Street
October 23, 2018



STATE OF MICHIGAN

KALAMAZOO, MICHIGAN
409 & 427 EAST ALCOTT STREET

DEPARTMENT OF HEALTH AND HUMAN SERVICES



Setting the Standard

VIEW FROM ALCOTT STREET

71,142 S.F. of Office Space with secured onsite parking for 389 cars and visitor parking for 75 cars



STATE OF MICHIGAN

KALAMAZOO, MICHIGAN
409 & 427 EAST ALCOTT STREET

DEPARTMENT OF HEALTH AND HUMAN SERVICES



Setting the Standard

VIEW FROM ALCOTT STREET

71,142 S.F. of Office Space with secured onsite parking for 389 cars and visitor parking for 75 cars



krieger klatt
ARCHITECTS
architecture interiors consulting

STATE OF MICHIGAN

KALAMAZOO, MICHIGAN
409 & 427 EAST ALCOTT STREET

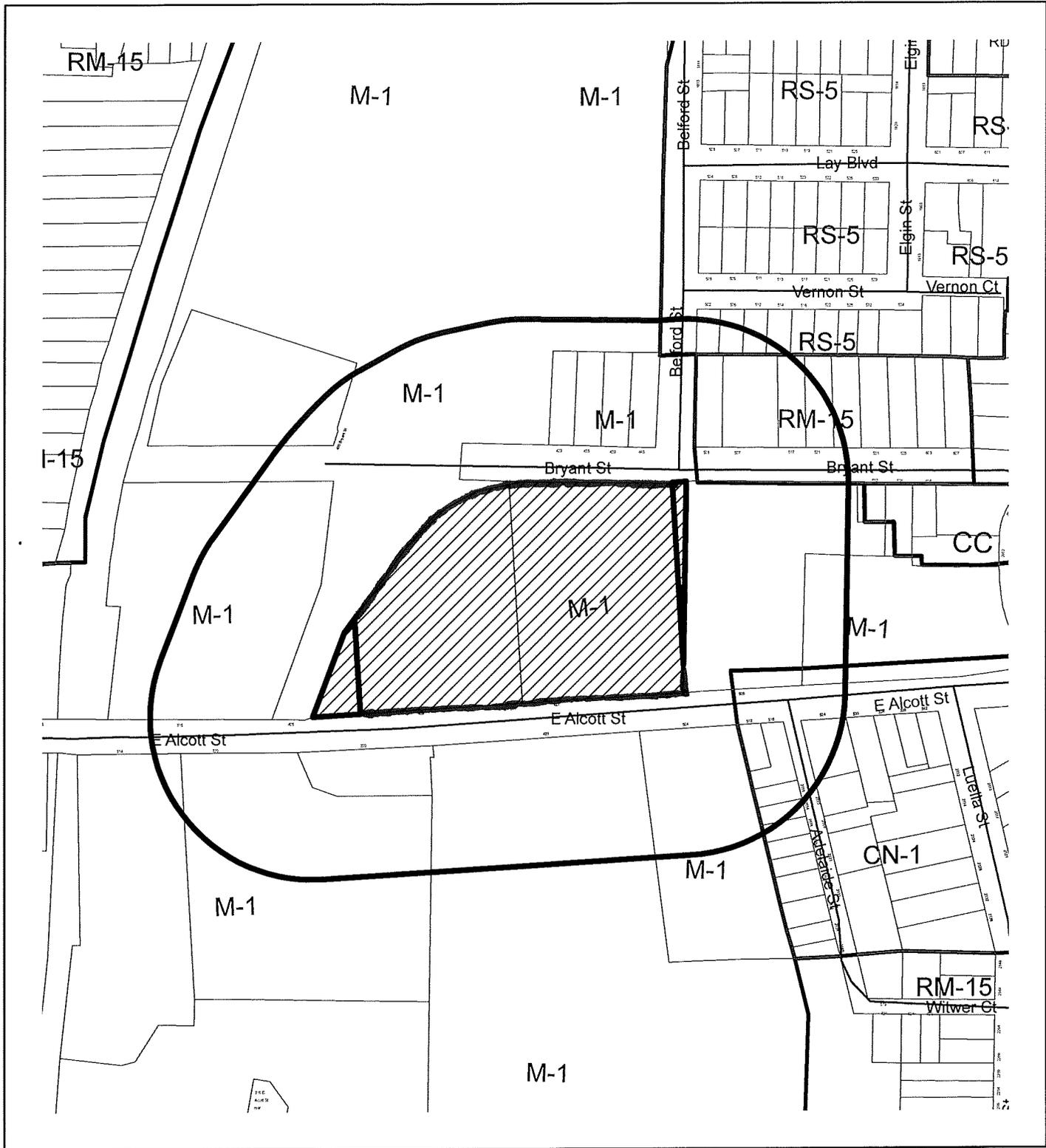
DEPARTMENT OF HEALTH AND HUMAN SERVICES



Setting the Standard

VIEW FROM REAR PARKING LOT
71,142 S.F. of Office Space with secured onsite parking for 389 cars and visitor parking for 75 cars





300' Mailing Boundary
 409 & 427 E. Alcott St.





Community Planning and Economic Development

415 Stockbridge Avenue

Kalamazoo, MI 49001

PH: (269) 337-8044

FAX (269) 337-8429

www.kalamazoo.org

NOTICE OF PUBLIC HEARING

October 29, 2018

**RE: 500 Golden Drive
Parcel #06-27-425-002
ZBA #18-11-31**

REVISED MEETING DATE

Dear Property Owner:

An application for a variance from the provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by the Heritage Community of Kalamazoo. The request concerns the property at 500 Golden Drive, which is situated in use Zone RM-15, Residential – Multi Dwelling District.

The applicant is requesting a rehearing and approval of a dimensional variance from Chapter 5, Section 5.1, to authorize a new 62 unit senior living facility which will be 66 feet in height, where the maximum height for structures in Zone RM-15 is 35 feet.

Please note that this request will not change the zoning classification of the property. This is a request for variance only regarding the item described above.

A public hearing will be held on **Thursday, November 15, 2018 at 7:00 p.m.** in the City Commission Chambers in City Hall (241 W. South Street), at which time you may submit your views on this matter in person, by writing, or by representative. If you should know of any interested person who has not received a copy of this letter, please inform them of the time and place of the hearing.

Further information, including property diagrams and drawings are available at the Community Planning and Development Department at 415 Stockbridge Avenue. Meeting agenda packets will also be available to view on-line 10 days prior to the meeting at: www.kalamazoo.org/boards

If you have any questions, please call (269) 337-8026 or submit by email at eldridgep@kalamazoo.org.

Sincerely,
ZONING BOARD OF APPEALS

A handwritten signature in blue ink that reads "Peter C. Eldridge".

Peter C. Eldridge, AICP
Zoning Administrator

c: Property File



Zoning Board of Appeals (ZBA) Application Form

Community Planning & Development Department

415 Stockbridge

Kalamazoo, MI 49001

Phone: 269-337-8026

www.kalamazoocity.org

Your fully completed application, fee, and all related documents must be submitted to the Community Planning & Development Department at least four (4) weeks prior to the Zoning Board of Appeals meeting.

Applicant: Name Heritage Community of Kalamazoo
Address 2400 Portage Road
City, State, Zip Kalamazoo, MI 49001
Phone (269) 382-1255 Cell (616) 808-6523
Fax (269) 382-2424 Email jprince@heritagecommunity.com

Owner: Name Heritage Community of Kalamazoo
Address 2400 Portage Road
City, State, Zip Kalamazoo, MI 49001
Phone (269) 382-1255 Cell (616) 808-6523
Fax (269) 382-2424 Email jprince@heritagecommunity.com

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Street or Street Address 500 Golden Drive, Kalamazoo MI 49001

This property is located west of Portage Road between Miller Road and Roseland Ave.

north south east west side of the street.

CCN# Parcel ID: 06-27-425-002 Zone RM-15

Type of Request

[] Interpretation of Chapter(s) Sections(s)
Paragraph(s) of the City of Kalamazoo Zoning Ordinance.

[] Use Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, unnecessary hardship to the applicant will result. All Use Variance Requirements must be met. (See Requirements List.)

[X] Dimensional Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, practical difficulties to the applicant will result. All Dimensional Variance Requirements must be met. (See Requirements List.)

[] Appeal of an Administrative Decision

Description Dimensional Variance for relief to Chapter 5, Section 5.1 Residential District Standards Table 5.5-1 Maximum Building Height in RM-15 District. Refer to attached Letter Narrative.

Attachments

- [X] \$275 Fee
[X] Brief narrative (less than one type-written page) describing the nature of the request (2 copies)
[X] Sketch plan of the property in questions (2 copies)
[X] Additional attachments as needed e.g. (pictures, architectural drawings, petitions, etc. (2 copies)

Signature of Applicant

Date

10-11-18

Signature of Owner (if different than applicant)

Date



RECEIVED OCT 11 2018

HERITAGE COMMUNITY

OF KALAMAZOO

Local Roots. Vibrant Senior Living.

Independent Living

Wyndham Apartments

Heritage Hills Apartments

Assisted Living

Directors Hall

Wyndham West

Skilled Nursing

Harold & Grace Upjohn
Care & Rehabilitation Center

Memory Care

Amber Way

Amber Place

Amber Gardens

Heritage Community of Kalamazoo Foundation

2400 Portage Street
Kalamazoo, MI 49001
p: 269.382.1255
f: 269.382.2424
heritagecommunity.com

October 10, 2018

City of Kalamazoo Zoning Board of Appeals (the "ZBA")
c/o: Mr. Peter C. Eldridge, AICP
415 Stockbridge Ave.
Kalamazoo, Michigan 49001
Phone: (269) 337-8026

Re: Heritage Community of Kalamazoo: New Independent Living
500 Golden Drive, Kalamazoo, MI, 49001
Variance Request to the Zoning Board of Appeals

Dear Zoning Board of Appeals:

Heritage Community of Kalamazoo (HCK) submits this letter as reference to the submitted *Application Request to the Zoning Board of Appeals*, requesting a Dimensional Variance to the City of Kalamazoo Zoning Ordinance (the "Zoning Ordinance") requirements. The below-requested variance pertains to a multi-unit residential apartment structure as a site-specific project proposed for the Heritage Campus parcel addressed at 500 Golden Drive, within the City of Kalamazoo's RM-15 Residential Zoning District.

This variance request is resubmitted under Section 8.1.0.2 of the Zoning Ordinance following the denial of HCK's initial variance application (the "Original Application") at the July 12, 2018, ZBA Meeting (the "Denial"). In the several months since the Denial, HCK has worked extensively with City staff and the neighboring community to substantially redesign its proposal which we believe satisfies subsections (a) through (c) of Section 8.1.02 for waiver of the time limit requirement. HCK and its team have had multiple meetings with City staff and have had two full outreach and engagement meetings with individuals in the neighboring communities. HCK has taken the input from both City staff and from the neighbors and redesigned the proposed building several times since the Denial to address the concerns reflected by these stakeholders. Although these changes came at significant cost to HCK, the net result of all of that effort is a product that has significant (if not unanimous) support from the neighboring community. To that end, we direct your attention to the enclosed letter of support from the neighbors, most of whom were previously opposed to the variance, and many of whom attended and spoke out against the project at the July 12, 2018, ZBA meeting.

The proposed new multi-unit residential development is planned to be an expansion of HCK's Independent Living program currently offered on the existing campus. Collaborating with Heritage Community in the planning and design of this project is Perkins Eastman as architect, Byce & Associates, Inc. as civil engineer, Greenbrier Development as financial and development consultant, Miller Davis as pre-construction consultant, and Miller Johnson as land use and development counsel.

The new Independent Living building will provide new market-rate apartments in a split three- and four-story structure containing approximately 74,800 aggregate unit square footage targeted for sale to the senior community of greater Kalamazoo. The development will also include underground parking, an internal dining venue with satellite kitchen, a wellness component, outdoor terrace and support spaces. The initial application anticipated a building consisting of approximately 83,650 aggregate unit square footage. Following the Denial, HCK worked extensively with its team, City staff, and the neighboring community to work on a design that was satisfactory to all stakeholders. While those efforts were successful, the result includes a reduction in the aggregate unit square footage of approximately 8,850 square feet.

Currently residing on the proposed development parcel is Heritage Hills, a collection of 73 HUD apartment units distributed amongst eight separate single-story buildings. These existing structures to be demolished to facilitate proposed development are nearly 50 years old and would require substantial renovation and repair to remain in operation. In addition to having surpassed their serviceable life expectancy, these barracks-style buildings appear dated and unsightly by modern standards and present significant accessibility challenges to their elderly user group. The proposed new Independent Living building will be constructed at the location of these outdated structures once all current residents have been successfully relocated. This consolidation has the added benefit of creating opportunity for significant open space near Portage Creek. Although HCK has not had success obtaining funding for a new HUD project, they have been fortunate to partner with a local HUD community to provide new housing options for relocation of the current Heritage Hills HUD residents.

Dimensional Variance Request - Relief to Maximum Building Height Requirement

We kindly request that the City ZBA exercise their reasonable flexibility in granting approval of a single necessary dimensional variance to facilitate the proposed Independent Living Building development; requesting relief from the maximum building height requirement applicable to the RM-15 Zoning District, as noted in Table 5.1-1 Residential District Standards [Amended 3-19-2007 by Ord. No. 1822] to be 35 feet maximum building height. We request a height variance be granted, to extend the allowable building height to 65 feet, 8 inches, or 30 feet, 8 inches beyond the allowable maximum building height, according to Zoning Ordinance definition for determination of building height for mansard roofs. This request reflects an overall reduction in the requested variance of three feet from the request made in the Original Application, but there is much more being done here than initially meets the eye.

While a three foot reduction may not seem significant on its face, as can be seen from the enclosures, the reality is that the height and square footage reduction has been much more extensive than that figure lets on for the following reasons:

- First, the style of roof was changed from pitched to mansard. Although this change resulted in a substantial decrease in the overall height of the roof, it ironically resulted in a higher roof calculation under the Zoning Ordinance than would have been the case had the roof been kept pitched. This is because, under the Zoning Ordinance, mansard roofs are measured from their ridgeline whereas pitched roofs are measured from their midpoint. This "technical" issue is graphically depicted in the attached drawings. The mansard-style roof was selected in direct response to neighbor input. Not only did the neighbors prefer the appearance of the mansard-style roof, but one of the primary

concerns raised by the neighbors was the location of the building mechanicals. A mansard roof creates opportunity for locating mechanicals on the roof. To be responsive to the neighborhood input, HCK has relocated the mechanicals from outside the building to inside the roof wells created by the mansard design.

- Second, although the Zoning Ordinance requires that we seek a variance for the greatest height variance from the Zoning Ordinance standards, over 2/3rds (and, importantly, the 2/3rds with the most direct massing facing the neighboring property owners) is actually substantially lower than that (54'4" at the ridge line and 46'11" at the midpoint). In addition to the changes to the roof and the overall reduction in floor-to-floor height, an entire floor was taken out of the majority of the building, and importantly, the portion that has the greatest impact to the neighbors.
- Third, as you are aware, setback distance and height regulation are directly related to one another – the further a building is away from a point, the shorter it appears from that point. In this case, HCK is further mitigating the impact of the height by setting the building significantly further back from the property line than is required under the Zoning Ordinance. Indeed, as proposed, the building will be double the distance from the property line than is strictly required by the Zoning Ordinance. This is actually an increase from the distance contained in the Original Application and another 20' further away than the design that received majority support from the neighbors. Not only does this distancing mitigate the impact of the height of the building, but it also facilitates the keeping and maintaining of a significant tree buffer between the building and the neighboring property owners (which tree buffer would be significantly impacted if HCK were to construct the building at or near the setback line).
- Finally, these modifications do not come without cost. Although the change from pitched roof to mansard, change to a "split-story" layout, and doubling of the required setback were all done in an effort to reduce the height and massing of the building in a way that was directly responsive to both City staff and neighbor input, the fact of the matter is that the topography of the site and its proximity to a Consumer's Energy substation makes it virtually impossible to substantively "move" the building in any material way. The net result of those two competing factors – moving the building further away and making it shorter on the one hand and being hemmed in by the topography and substation on the other – means that the only way to accommodate the City's and the neighbor's concerns was to repeatedly redesign the building and remove substantial square footage out of it. In this case, the building was essentially redesigned 3 additional times since the Denial and just as importantly, nearly 9,000 square feet was taken out of the units before landing on a proposal that satisfied all of the stakeholders.

The new Independent Living (IL) building will enable HCK to offer an enhanced residential product to the Kalamazoo Senior Living community; one that is currently lacking in the Kalamazoo senior living market, according to demographic studies produced by Greenbrier Development. The proposed IL building will incorporate features designed to meet the expectations of this market. These include, but are not limited to; taller (\pm 9 ft) ceilings, generous green space and smaller, more compact, building footprints.

The compact floor-plate will enable reduced travel distances and thereby affords shorter corridors as opposed to those typically found in market-rate, multi-unit environments. The proposed split-story building structure is necessary to achieve the smaller building footprint demanded in the older adult housing market while maintaining the pro forma requirement of 62 dwelling units at an average of 1,220 square feet (reduced from 1,400 in the Original Application). This will necessitate a building height in excess of the 35 foot maximum prescribed for the RM-15 District.

Please provide ample consideration to the following design objectives, which we feel facilitate a necessity for the requested increased building height, in order to provide a more compact floorplate:

- **More open green space:** A smaller building footprint affords more opportunities for landscaping while naturally providing less impervious surfaces and therefore less drainage run-off. It will also present opportunities for incorporation of additional walking trails in conjunction with Portage Creek Corridor Master Planning efforts.
- **Closer proximity to campus:** The compact/taller building will be positioned in closer proximity to the greater HCK campus. This will promote community inclusion and discourages the “us versus them” dynamic that sometimes occurs when senior living communities construct new components.
- **Solution to topographical concerns with the site:** the proposed building footprint works with the severe grade change on the site without requiring multiple level changes to access residential and commons spaces.
- **Taller ceilings:** The targeted demographic expects a gracious interior environment, including ceilings approximating \pm 9 feet.

We believe the above-requested Dimensional Variance request for relief to maximum building height is consistent with the required standards pursuant to the *City of Kalamazoo Zoning Ordinance Article 8.3 E. 4 b)*, as required for ZBA approval of the noted variance request. Please also consider the following comments to the review standards set forth, in your deliberation:

- 1) *There are special circumstances or conditions that are peculiar to the land or structure for which the variance is sought, that is not applicable to other land or structures in the same zone district.*

Comment: The structure is designed to meet the expectations of an age-specific demographic not common to some of the other structures in the same RM-15 zone district, which is the Heritage Community campus. As cited above, the desire to build taller/more compact qualifies as a special circumstance required to attract the unique target market in order to ensure the fiscal and competitive viability of the project, and, in so doing, Heritage Community as a whole. Moreover, the topography, Consumer’s Energy substation, and location of the site makes it virtually impossible to materially relocate or reorient the building. Through several months of effort working with City staff and the neighboring community stakeholders through several design iterations, the current proposal is, in essence, the smallest viable configuration on this location.

- 2) *The special circumstances are not the result of the actions of the applicant or titleholder of the land.*

Comment: Special conditions are not the result of the applicant, or current titleholder of the land, rather of the current market expectations, site demographics, a desire to preserve the existing tree buffer with the neighboring community, a shared desire with the City to maximize open space, and above all else, topography and substation proximity.

- 3) *The literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zone district, and would cause practical difficulty.*

Comment: The enforcement of the terms and provisions specific to the 35 foot height restriction for

the RM-15 district would deprive the applicant of privileges already appreciated by other land within the same district, which includes surrounding properties within the Heritage Campus. A point of comparison and precedence is HCK's other independent living product, the existing Wyndham Apartments; constructed in 1990 on the parcel at the southeast corner of Portage and Phillips Streets. The height of Wyndham's highest pitched roof section, measured to the mean height between the eaves and ridge per § 5.3.E.1 c), measures approximately 51 feet above the average grade plane, exceeding the 35 foot restriction by at least 16 feet. Enhancing this condition, the Wyndham building resides on the HCK property characterized by the highest grade plane of the entire campus. The practical difficulty here is in attempting to balance the needs of HCK's guests, residents, and customers with the challenging topography on which the HCK campus is situated while protecting the neighboring community's interests as well as those of the City.

- 4) *The granting of the variance is the minimum action that will make possible the use of the land or structure that is not contrary to the public interest, and that would carry out the spirit of this Ordinance.*

Comment: Construction of Independent Living senior housing presents one of the least impactful uses of the site. Traffic impact is minimal based on senior driving habits (average age 75), and will most likely be less impactful than the current property use. Staffing at HCK only increases by approximately 2 employees as a result of this Project. The quality of the building exteriors, the surrounding landscaping, and the walking trails will improve the aesthetic on the site and will increase neighbor pedestrian interaction on the site. Moreover, as can be seen from the enclosed drawings, HCK has worked diligently to minimize the extent of the requested variance to the bare minimum required to permit the project to proceed forward while preserving and protecting the interests of the neighboring community and the City.

- 5) *The granting of the variance will not adversely affect adjacent land in a material way.*

Comment: Granting of the requested variance, and thus facilitating the development of the new Independent Living building at 500 Golder Drive, would be beneficial to adjacent land and surrounding stakeholders by allowing construction of an attractive residential structure with high quality exterior materials, surrounded by open green space and opportunities for enhanced landscaping. The southernmost projection of the building footprint will be positioned twice as far from the southern property line as is required by the Zoning Ordinance, offering additional opportunities for trees and shrubs to screen residential views from south. The existing vegetated buffer between development and southerly residential properties is intended to be preserved to the maximum extent feasible. The building has been substantially redesigned and reduced in overall size since the Denial taking the input from the neighboring community into account at every step along the way. At this point, we believe we have majority (if not unanimous) approval of the project design from the neighboring community.

Additionally, we wish to note that the location of the proposed new building relative to the overall campus will be significantly "inboard" of major street frontage to the east and north. The building's easternmost building face will be more than 1,000 feet to the west of Portage Street, and its northernmost building face will be more than 600 feet to the south of Phillips Street.

The building's inboard location in reference to these streets can be further underscored with reference to topography. The southwesterly fall in grade on the HCK campus from its highest point (El. 852', near the corner of Portage and Phillips Streets) to its lowest point (El. 784, where its southern property

line meets Portage Creek) is significant. The anticipated positioning of the new building's 1st floors at El. 818.0 will negate its height due to this drop in grade.

- 6) *The granting of the variance will be generally consistent with the purposes and intent of this Ordinance.*

Comment: It is our understanding that the prescriptive requirements of the current zoning ordinance, and specifically its requirements for the RM-15 zone district, are based on what can be described as "traditional" apartments. The proposed Independent Living project is a more "specific" age-segregated use commonly provided in senior living communities such as HCK, several types of which are listed in the Use Table in § 4.1 as Specific Uses under "Group Living". Several of these typologies have been reviewed, approved, and constructed at HCK as Special Uses. In our opinion, the new Independent Living building warrants that same consideration. Moreover, the purpose of a height restriction is to minimize the visual impact of the building on the surrounding properties. IN this case, the combination of reducing the building height, implementing a mansard roof structure in which mechanicals are "hidden" in the roof well, employing a split-story scheme which dramatically reduces the perceived size of the building, preserving the existing tree buffer, and doubling the setback results in building that is viable, but which nevertheless respects that purpose and is consistent with the purpose and intent of the Zoning Ordinance, as evidenced by the assent of the neighbors.

We appreciate your consideration to the circumstances of the above noted variance request to the City of Kalamazoo Zoning Board of Appeals. Please feel free to contact us with any questions pertaining to the above noted exceptions.

Sincerely,

HERITAGE COMMUNITY OF KALAMAZOO



Jay Prince
President & CEO

cc: Rachel Olmsted, HCK
Gene Hooton, Greenbrier Development
Jerry Walleck, Perkins Eastman
Dennis Ryan, Perkins Eastman
Danielle Rhodes, Byce & Associates
Matthew Van Dyk, Miller Johnson

Enclosure:

- Application Request To The Zoning Board of Appeals
- ZBA Application Fee (\$275)
- Letter of Support from Neighbors
- Graphics Package (14 pages)



RECEIVED OCT 11 2018

HERITAGE
COMMUNITY
OF KALAMAZOO

Local Roots. Vibrant Senior Living.

I have attended one or both public neighbor meetings held by Heritage Community of Kalamazoo regarding their intention to apply for a height variance. I was shown concept drawings on September 26th, 2018 and by signing my name, support the proposed project from Heritage Community of Kalamazoo that will go before the Zoning Board of Appeals on November 8th, 2018.

NAME: ADDRESS: PHONE:

John V Hall 509 Homecrest 388-4671

Diane Delach 613 Homecrest 569-0864

Randy Johnson 627 Homecrest 313-1182

Tom O'Leary 718 Homecrest 598-8760

Steve Wilkins 708 Homecrest 381-6334

Peter Wilkins

John & Susan Bradshaw 640 Homecrest 605-668-760-4198

Josie & Nathan Richards 431 Homecrest 517-745-3591

Mary Beth Thompson 730 Norton 231-920-9450

Marilyn D. (Dessler) 736 Norton 269-271-6384

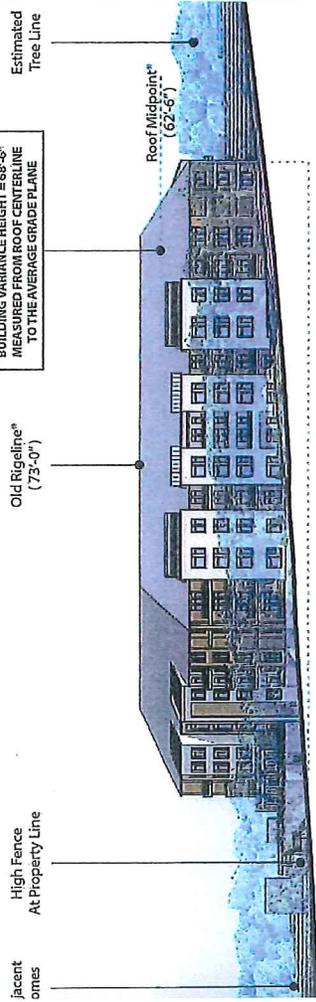
Daniel Davie 609 Norton 269-759-4741

Ohella Swift 620 Norton 269-382-6055

Garrylee McCormick 509 Homecrest 269-345-7648

ORIGINAL SCHEME

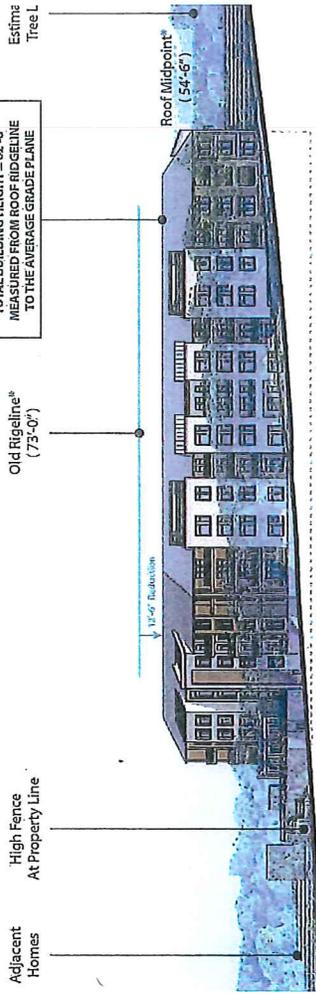
SITE SECTION (EAST / WEST) (08.08.2018)



* Measurements taken from 1st floor; does not measure from average grade plane. (additional 3'-0")

REDUCED HEIGHT SCHEME

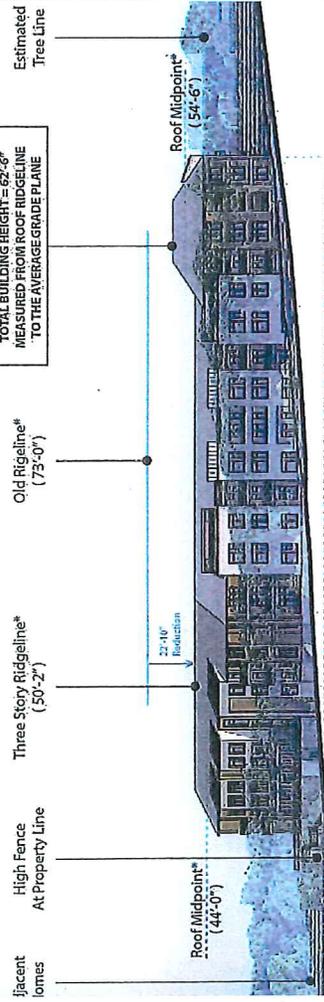
SITE SECTION (EAST / WEST) (08.08.2018)



* Measurements taken from 1st floor; does not measure from average grade plane. (additional 3'-0")

SPLIT STORY SCHEME

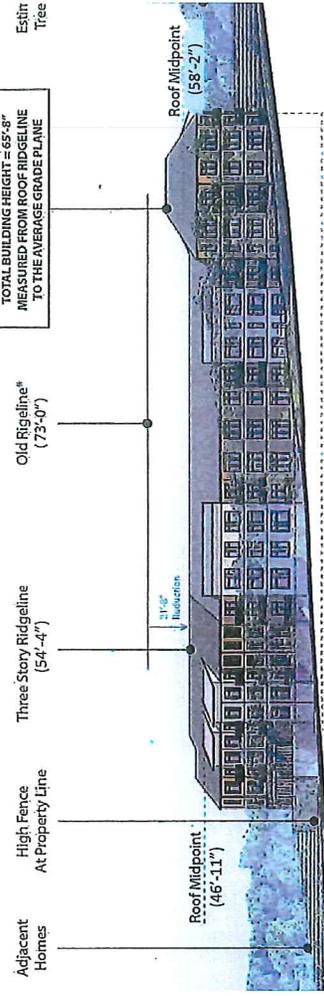
SITE SECTION (EAST / WEST) (08.08.2018)



* Measurements taken from 1st floor; does not measure from average grade plane. (additional 3'-0")

REVISED | SPLIT STORY SCHEME

SITE SECTION (EAST / WEST) (08.08.2018)

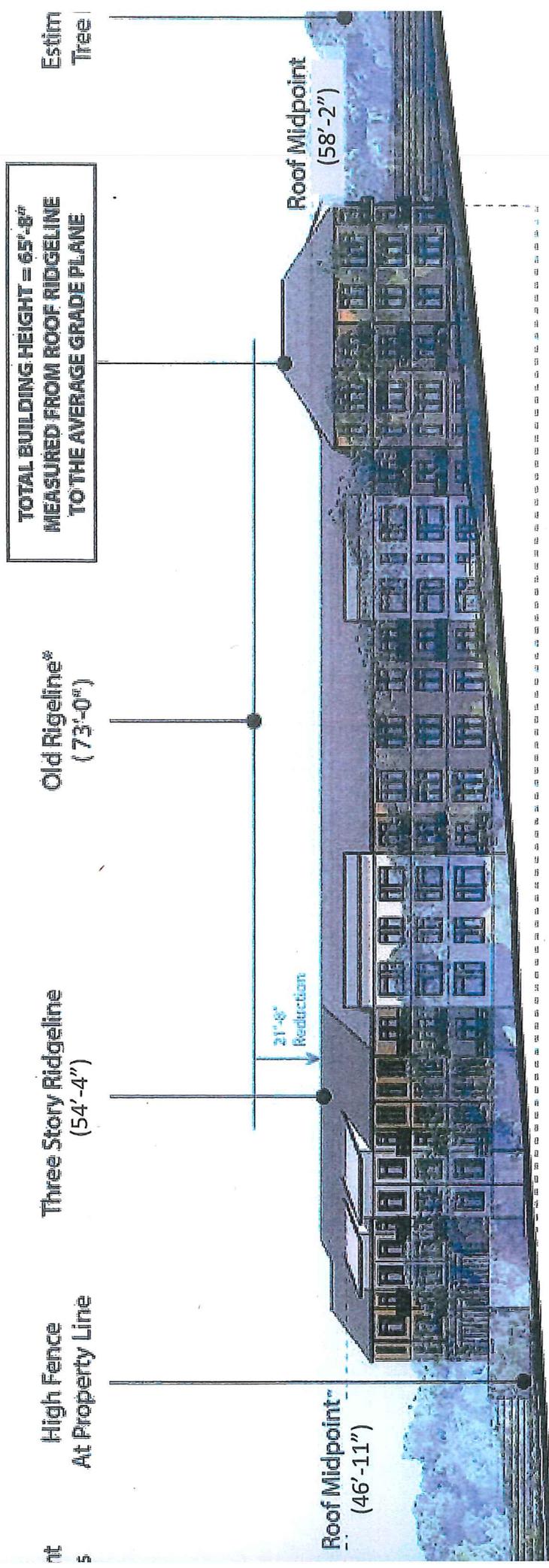


* Measurements taken from 1st floor; does not measure from average grade plane. (additional 3'-0")

This is the current proposal.
See next page for enlarged image.

PROPOSED | SPLIT STORY SCHEME (CURRENT PROPOSAL)

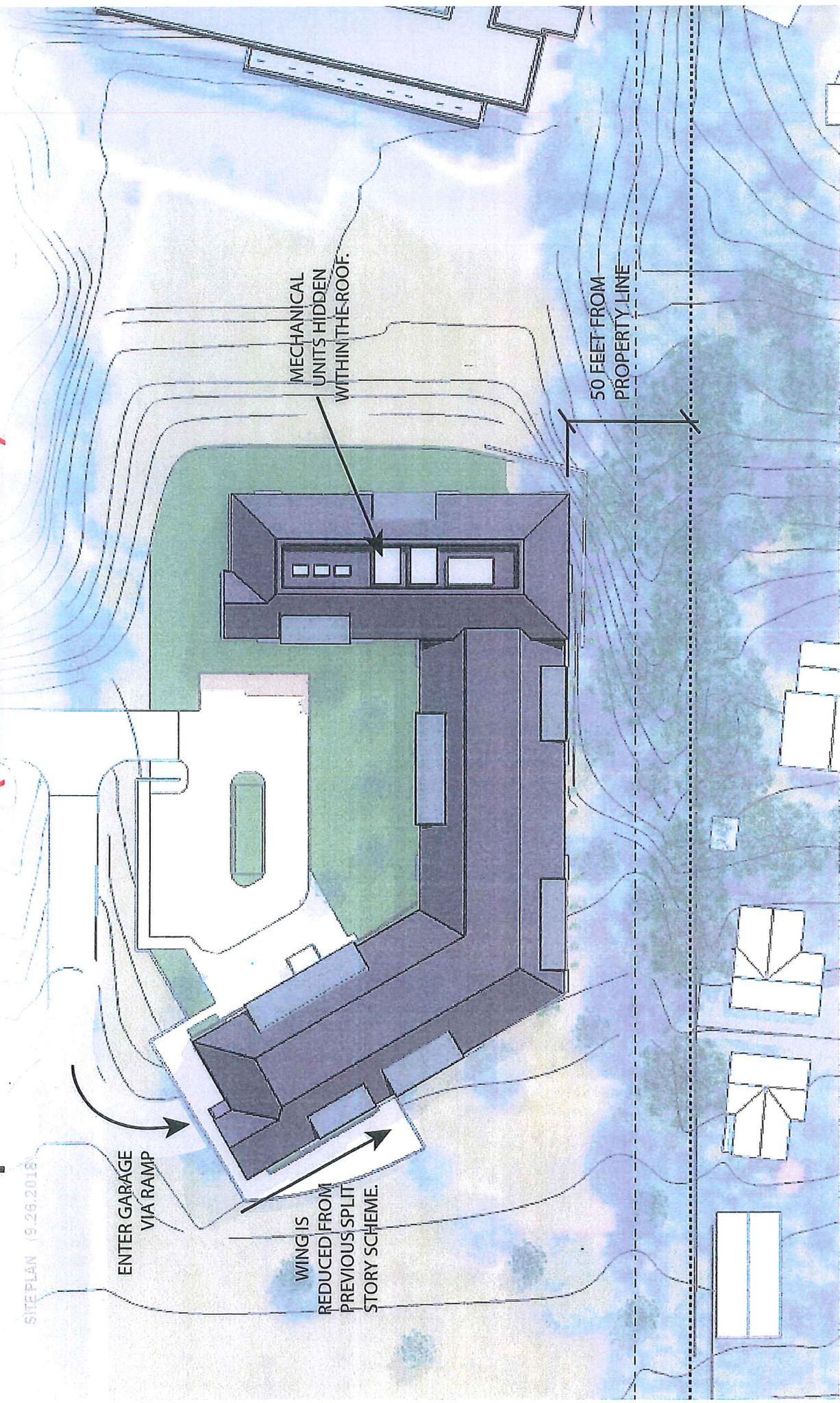
SECTION: EAST / WEST - (1/16/2018)



Measurements taken from 1st floor
not measure from average grade plane.
(vertical 3'-0")

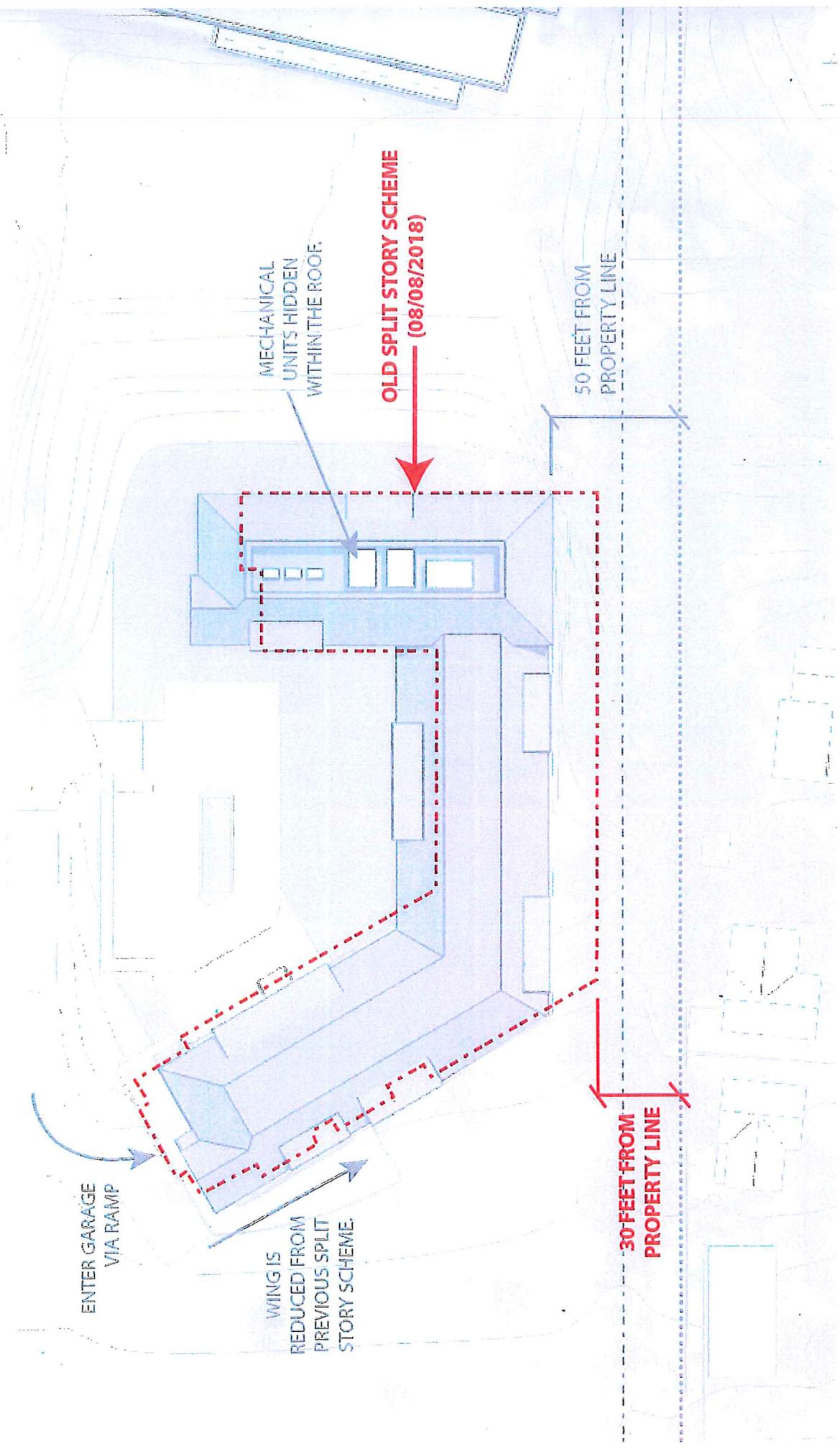
REVISED | SPLIT STORY SCHEME (CURRENT PROPOSAL)

SITE PLAN (9.26.2018)



REVISED | SPLIT STORY SCHEME (CURRENT PROPOSAL)

SITE PLAN (08/08/2018)



REVISED | SPLIT STORY SCHEME (CURRENT PROPOSAL)

REAR PERSPECTIVE (9-26-2018)



REVISED | SPLIT LEVEL (CURRENT PROPOSAL)

FRONT PERSPECTIVE VIEW 10.26.2018



City of Kalamazoo

MEMO

To: Chair Youngs and Zoning Board of Appeals Members

From: Pete Eldridge, Zoning Administrator
Community Planning and Economic Development Department

Date: November 1, 2018

Subject: Request for a Rehearing of a Dimensional Variance for 500 Golden Drive

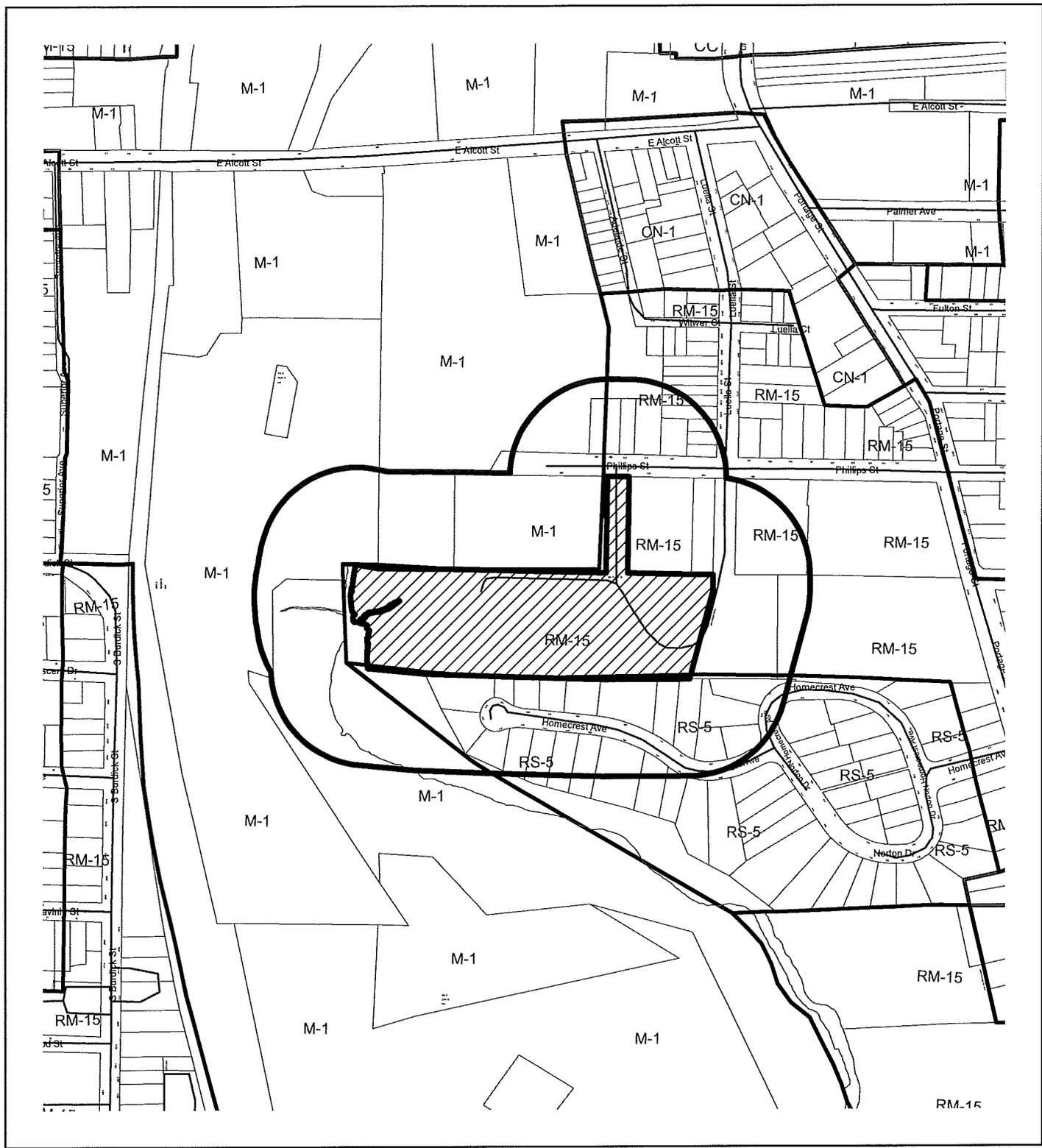
The Heritage Community has been working on a plan to redevelop 500 Golden Drive for a significant period of time. This summer a proposal was presented to the Zoning Board of Appeals for a 60 unit senior living facility with a maximum building height of 68.5 feet. The maximum building height in Zone RM-15 is 35 feet. Therefore, this resulted in the need for a dimensional variance of 33.5 feet. This dimensional variance request was denied by the Board on July 12, 2018.

Zoning Board of Appeals Rules of Procedure, Article VIII:

Section 8.2 Rehearing – Change of Circumstances/Newly Discovered Evidence: Any person whose request for a variance was not approved, or whose appeal was not granted may submit a written request for a rehearing based on a change in circumstances or the discovery of new evidence (not available or known at prior hearing due to no fault of that person) which facts accompany the request. In order for ZBA to grant a rehearing it must first determine, based on the evidence presented at the public hearing that a change in circumstances occurred or that new evidence does exist. ZBA shall consider the request for rehearing at the next regularly scheduled meeting that will comply with the notice requirements for a public hearing.

Required Board Actions:

- 1) The applicant will be given the opportunity to present changes in the circumstances and new information about the redevelopment project. At the conclusion of the presentation the Board will vote to 'approve' or 'deny' the rehearing.
- 2) If the rehearing is approved, the applicant will begin their presentation of the dimensional variance for this redevelopment project. The Board Chair will then treat this like a regular public hearing with a public comment period.



300' Mailing Boundary
500 Golden Dr.



1" = 100 Feet
0 100 200



Community Planning and Economic Development

415 Stockbridge Avenue

Kalamazoo, MI 49001

PH: (269) 337-8044

FAX (269) 337-8429

www.kalamazoocity.org

NOTICE OF PUBLIC HEARING

October 30, 2018

**RE: 610 E. Cork Street
Parcel #06-34-227-004
ZBA #18-10-28**

REVISED MEETING NOTICE

Dear Property Owner:

An application for an appeal of administrative decisions has been filed with the Zoning Board of Appeals by Rhoades McKee Attorneys on behalf of Harbor Farmz North, LLC. The request concerns the property at 610 E. Cork Street, which is situated in Zone CC, Commercial – Community District.

Pursuant to the Zoning Ordinance, Chapter 8, Section 8.3 F, the applicant is appealing the administrative decisions for the following: **1)** That the City will deny the Harbor Farmz North LLC application due to the 500 foot separation distance between medical marihuana facilities which includes those medical marihuana facilities located in Zone M-1 or M-2 per Chapter 4, Section 4.2 AA 4; and **2)** That it is fair and appropriate to apply a 500 foot separation distance requirement across zone district boundaries between provisioning centers and other medical marihuana facilities per Chapter 4, Section 4.2, AA 5 d).

Please note that this request will not change the zoning classification of the property. This is a request for an appeal of administrative decisions only regarding the items described above.

A public hearing will be held on **Thursday, November 15, 2018 at 7:00 p.m.** in the City Commission Chambers in City Hall (241 W. South Street), at which time you may submit your views on this matter in person, by writing, or by representative. If you should know of any interested person who has not received a copy of this letter, please inform them of the time and place of the hearing.

Further information, including property diagrams and drawings are available at the Community Planning and Economic Development Department at 415 Stockbridge Avenue. Meeting agenda packets will also be available to view on-line 10 days prior to the meeting at: www.kalamazoocity.org/boards

If you have any questions, please call (269) 337-8026 or submit by email at eldridgep@kalamazoocity.org.

Sincerely,

ZONING BOARD OF APPEALS

Peter C. Eldridge, AICP
Zoning Administrator

c: Property File



Zoning Board of Appeals (ZBA) Application Form

Community Planning & Development Department

415 Stockbridge

Kalamazoo, MI 49001

Phone: 269-337-8026

www.kalamazoocity.org

Your fully completed application, fee, and all related documents must be submitted to the Community Planning & Development Department at least four (4) weeks prior to the Zoning Board of Appeals meeting.

Applicant: Name Harbor Farmz North, LLC
Address c/o Joseph A. Lucas - Rhoades McKee PC
City, State, Zip 55 Campau Avenue, N.W., Suite 300, Grand Rapids, MI 49503
Phone (616) 235-3500 Cell _____
Fax (616) 233-5269 Email jalucas@rhoadesmckee.com

Owner: Name Michael Ward
Address 1940 Millburne Road
City, State, Zip Lake Forest, IL 60045
Phone (847) 772-4786 Cell _____
Fax _____ Email michael@harborfarmz.com

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Street or Street Address E. Cork Street, Kalamazoo, Michigan

This property is located between _____ street and _____ street, on the

north south east west side of the street.

CCN# _____ Zone Commercial

Type of Request

Interpretation of Chapter(s) _____ Sections(s) _____
Paragraph(s) _____ of the City of Kalamazoo Zoning Ordinance.

Use Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, unnecessary hardship to the applicant will result. All Use Variance Requirements must be met. (See Requirements List.)

Dimensional Variance: Applicant must demonstrate that if the Zoning Ordinance is applied strictly, practical difficulties to the applicant will result. All Dimensional Variance Requirements must be met. (See Requirements List.)

Appeal of an Administrative Decision

Description Denial of medical marihuana facility conditional approval certificate

Attachments

- \$ 275.00 fee *PA. PCE*
- Brief narrative (less than one type-written page) describing the nature of the request (2 copies)
- Sketch plan of the property in questions (2 copies)
- Additional attachments as needed e.g. (pictures, architectural drawings, petitions, etc. (2 copies)

[Signature] _____ Date 8/30/2018

Signature of Applicant _____ Date _____

Signature of Owner (if different than applicant) _____

Summary of Harbor Farmz North, LLC Appeal of Conditional Approval Certificate Denial

The City Clerk's decision to reject Harbor Farmz' ("HF") application for a provision center permit under the Medical Marijuana Facilities Zoning Ordinance ("the Ordinance") must be overturned for 2 reasons. They are explained more fully in the letter accompanying this submission, but are summarized as follows:

1. The Ordinance Should Not Be Interpreted In A Manner That Gives Rise To An Absurd Result. Provisioning centers located in a CC Zone cannot be located within 500 feet of any other medical marijuana facilities (MMFs). See, §4.2(AA)(5)(d). Safety compliance facilities in a CC Zone must also have a separation distance of five hundred (500) feet from any other licensed MMFs. See, §4.2(AA)(4)(c). The Ordinance is silent with regard to separation distances for safety facilities in manufacturing zones, so the Clerk says there is no separation requirement, even if the manufacturing zone is within 500' of a MMF located in a different zone. When HF submitted its application on June 21, there were no MMFs located within 500' of its site. When Palmatier Enterprises, Inc. ("Palmatier") submitted its application on June 27 – six days after HF had already identified its site at 610 E. Cork – it identified a potential site in an adjacent manufacturing zone that was closer than 500' away from HF's site.

Rule 14 of the City's Administrative Rules says that when a conflict arises between two or more entities seeking to locate their businesses within the separation distances required by Code, "The City will use a single lottery to determine which applications receive Provisional Approval Certificates in situations where two or more proposed MMF's are within the required separation distance of each other." (Emphasis added).¹ The Clerk, contrary to Rule 14 and the procedure set forth in the City's FAQ page, initially disqualified HF and any other applicant whose site was located within 500' of Palmatier's proposed site. In other words, despite the fact that Palmatier's application – which should have been considered no earlier than HF's, since it was received after HF's – caused the 500' distance issue, the Clerk granted Palmatier's application and then, relying on the distance issue that it created, rejected HF's application. When HF appealed that decision, the Clerk conducted the lottery mandated by the Rules, and HF won, thereby securing its permit, but the Clerk has labeled those results "tentative" pending this appeal.

Accepting the Clerk's argument renders the Ordinance's lottery provisions meaningless excess, contrary to Michigan law, which forbids interpreting ordinances in any way that would render any portion of them surplusage or meaningless. Ordinances can't be interpreted in a manner that leads to absurd results. *Brandon Charter Tp v Tippett*, 241 Mich App 417, 424 (2000). Here, HF fully complied with the Ordinance, and no MMF exists within 500 feet of its proposed site. Palmatier's subsequent application created a separation distance issue preventing both parties' applications from being accepted, so those applications (along with everyone else's within that "cluster,") should have been and eventually were put in the lottery. The lottery results should stand.

The Clerk's claim that: a) a safety compliance facility in a CC zone must be 500' away from all other MMFs in that zone; b) a provisioning center (which can't be in a CC zone) must be at least 500 feet away from all other MMFs regardless of what zone the other facility is in; but c) no separation restrictions apply to any safety compliance facility that is directly adjacent to a CC Zone is patently absurd. That would permit a situation where the City could have an established compliance facility in the first parcel inside a CC zone (subject to a 500-foot separation rule), and then have 5 later applicants get permits for similar facilities directly across the street in the first block of a manufacturing zone, where they were not subject to the distance restrictions. And if the Clerk is correct, then Palmatier suffers no harm in delaying consideration of its application until after the Lottery results are upheld: if there are no separation requirements for compliance facilities in a manufacturing zone, then Palmatier can open its facility even if HF is up and running (even though that would arguably violate HF's 500-foot separation distance requirement).

2. The Clerk's Decision Rewards Gamesmanship. HF fully complied with the Ordinance: it identified and spent money obtaining a facility in a CC zone from which to run its provision center, and submitted its application for a permit on June 21. As a safety compliance facility, Palmatier could have chosen to locate its facility in any CC or manufacturing zone approved by the City. Instead, Palmatier (which is owned by the mother of one of Harbor Farmz' provisioning competitors), waited until the proverbial 11th hour to submit its application on June 27, and "conveniently" chose to locate its site that – if the Clerk's interpretation is correct – would automatically disqualify HF and several others from the lottery, thereby increasing her son's chances to obtain a permit. The City should neither promote nor condone any interpretation of its Ordinance that would permit one competitor to avoid having its application reviewed on a fair and equal basis as its counterparts'.

Conclusion. Interpreting the Ordinance to exempt the party who created the "separation distance" issue is absurd, illogical and unfair.

¹ See, <https://www.kalamazoocity.org/docman/forms/medical-marihuana/4518-medical-marihuana-facility-permits-faq/file>,



August 31, 2018

FEDERAL EXPRESS

Community Planning & Development Dept.
415 Stockbridge
Kalamazoo, MI 49001

Re: Harbor Farmz North, LLC Appeal of Conditional Approval Certificate Denial

To Whom It May Concern:

We represent Harbor Farmz North, LLC, ("Harbor Farmz"), winner of the August 3, 2018 lottery held pursuant to the City's applicable zoning ordinance, which is planning to open a medical marihuana provisioning center at 610 E. Cork Street. The purpose of this letter is to supplement Harbor Farmz's appeal of the City Clerk's denial of a conditional approval certificate to operate at that location.

This appeal arises out of the preliminary application process for permits awarded under the City of Kalamazoo's Medical Marihuana Facilities Zoning Ordinance ("Ordinance"). Anyone seeking a permit to operate any sort of medical marijuana facility ("MMF") under that Ordinance was required to submit an application between June 7 and June 28, 2018. Since the Ordinance is newly-enacted, there were no licensed MMFs in operation before that application process concluded.

The question before the Planning Commission is this: does the City Clerk have authority to disregard the provisions of the applicable Zoning Ordinance to award a permit to one medical marihuana facility even though that facility's site is located within 500' of another applicant's proposed site without first conducting the lottery called for in Rule 14 of the Administrative Rules (and confirmed in the City's "Frequently Asked Questions" publication) governing such conflicts?

Here, the Clerk's position that the application of a safety compliance facility within the 500' separation distance required for a previously-submitted application for a provisioning center somehow "trumps" the provisioning center's application without putting both applications into the prescribed lottery not only ignores significant portions of the Ordinance, but results in an absurd outcome that is contrary to relevant Michigan law.

For reasons explained more fully below, Harbor Farmz is entitled to a ruling from this Commission that the Clerk's initial disqualification of Harbor Farmz' application was improper, and that the August 3, 2018 lottery held in accordance with the Ordinance and Administrative Rules should be enforced. Anything else will likely result in legal action including an injunction forbidding any award of permits for properties located in the "Cork Street Cluster" of properties.

Background

A. Kalamazoo's Medical Marihuana Facilities Ordinance And "Separation Distance" Requirements

Harbor Farmz has worked closely with the City for nearly two years, helping to draft the very Ordinance at issue in this appeal. It has spent hundreds of hours' time and more than \$40,000 in direct out-of-pocket costs specifically devoted to opening a medical marihuana provisioning center located at 610 E. Cork Street, which is located in a Commercial Zone (known as a CC zone). The City of Kalamazoo's Medical Marihuana Facilities Zoning Ordinance provides that provisioning centers, which are only allowed in commercial zones, must maintain a "separation distance" of five hundred (500) feet between them and any other licensed medical marihuana facilities ("MMFs"). See, §4.2(AA)(5)(d). There are no MMFs located within 500' of 601 E. Cork Street. The Ordinance is silent about what happens to a provisioning center in a CC zone when another entity applies for a permit to open a safety compliance facility less than 500' away but in an adjacent manufacturing zone.

That is what happened here. Several other applicants submitted applications for various MMFs all located within the 500' separation distance that Harbor Farmz is required to maintain per the Ordinance. Included among those applications was one for a "safety compliance facility" less than 500' away, but in a neighboring manufacturing zone, rather than the same CC zone.

A safety compliance facility can be located in a commercial zone, or a manufacturing zone. Section 4.2(AA)(4)(c) of the applicable Rules provides that a safety compliance facility in a CC Zone must be more than five hundred (500) feet away from any other MMF. The Ordinance is silent about how much distance there must be between MMFs in a manufacturing zone, so the City Clerk has interpreted this silence to mean that no separation distances are mandated among safety compliance facilities all located in a manufacturing zone. The Ordinance is also silent about what happens if a compliance facility seeks to locate at a site in a manufacturing zone that is adjacent to a CC zone and less than 500' away from an existing MMF in that CC zone.

B. Per City Rules, If MMF Applicants Submit Applications Otherwise Barred By Separation Zone Distances, Their Applications Are Put Into A Lottery

On or about May 16, 2018, the City adopted administrative rules for the medical marihuana facilities permit process. Rule 14 covers resolution of separation distance conflicts. It provides:

Any MMF (medical marijuana facility) permit application that would be otherwise "eligible" for approval, **except for** the minimum separation distances required by the Zoning Code [Section 4.2(AA)] between the MMF proposed by the applicant and the MMF proposed by another applicant will be entered into a lottery as provided in Rule 15 to determine which of those applications will be issued a Provisional Approval Certificate and which will not. (Emphasis in original)

See also, Rule 15: "All applicants whose proposed licensed facility is less than the minimum spacing distance required by Section 4.2(AA) of the Zoning Code from another proposed licensed facility will be entered in a lottery to determine which applicant will receive a Provisional Approval Certificate."

Rule 14 therefore obviously intends to apply to a situation where (as here), multiple applications are pending which trigger the issue of maintaining minimum separation distances between MMFs.

The City also published a FAQ page to answer questions about how priorities would be determined when applicants submitted plans that would raise separation distance issues:

Q: The Zoning Code specifies minimum separation distances between certain types of MMF's – and specifically 1,000 feet between Provisioning Centers. During the initial application period how is the City going to determine which applicants receive Provisional Approval Certificates when two or more applications have been submitted for premises that are within the separation distances?

A: The City will use a single lottery to determine which applications receive Provisional Approval Certificates in situations where two or more proposed MMF's are within the required separation distance of each other. (Emphasis added).¹

Thus, if two or more applicants submit applications that trigger the “separation distance” rules, “a single lottery” must be held to determine which application is to be granted.

C. Harbor Farmz Submitted Its Application For A Provisioning Center Permit Before The Safety Compliance Facility Submitted Its Application

On June 21, 2018, Harbor Farmz submitted an application for a permit to operate a provisioning center at 610 E. Cork St. in Kalamazoo (the “HF Site”). The HF Site is in a CC Zone. When Harbor Farmz submitted its application, there were no other licensed medical marijuana facilities within 500' of its proposed provisioning center, because the City had not granted any provisional approval certificates.

Six days later, Palmatier Enterprises, Inc. (“Palmatier”) proposed a safety compliance facility for 550 E. Cork. That location is in an M-2 zone, but is less than 500' away from the HF Site. Several other applicants submitted similar applications that would also have been impacted by the location of Palmatier's proposed site. Thus, Palmatier's proposed site is within the 500' separation distance of several of the other applicants whose sites are with what is known as the “Cork Street Cluster.”

Consistent with the City's Administrative Rules and the information conveyed on its “Frequently Asked Questions” page, the City scheduled a lottery for August 3, 2018. However, on July 30, 2018, before the lottery, the Kalamazoo City Clerk issued a conditional approval certificate to Palmatier and notified applicants whose proposed locations were within 500' of Palmatier's, (including Harbor Farmz), that their applications were being denied and that they were being removed from the lottery because they *no longer* met the separation distance requirement of 500' from Palmatier's facility. In other words, even though Palmatier's proposed site was located within the separation distance of several of the Cork Street Cluster sites, the Clerk exempted Palmatier from the lottery and automatically rejected any application within the CC Zone that fell within 500' of the Palmatier site.

¹ See, “Frequently Asked Questions,” <https://www.kalamazoo.org/docman/forms/medical-marijuana/4518-medical-marijuana-facility-permits-faq/file>, last viewed on August 30, 2018.

The City Clerk reasoned that despite what its Rules say, the “separation distance” lottery does not impact proposed safety compliance facilities located within 500’ of other proposed MMFs – even if those other MMFs applied for permits before the safety compliance facility did – because the zoning ordinance does not require a minimum separation distance for safety compliance facilities located in a manufacturing zone. See, letter from City Attorney attached as **Exhibit 1**. Harbor Farmz and one other applicant appealed their permit denials on the grounds that Palmatier should not have been given a certificate, and should have been included in the lottery.

While not acknowledging that Palmatier received a certificate in error, the City Clerk went ahead with the August 3 lottery, and included in the lottery all eligible certificate applicants, including Harbor Farmz and Palmatier. Harbor Farmz won the lottery for the Cork Street location. However, the lottery results are tentative, pending the outcome of this appeal.

Argument

Harbor Farmz asks the Planning Commission to grant its appeal on one of two grounds: Either the minimum distance requirements should not apply across zoning borders, or the City Clerk erred when it determined that Palmatier Enterprises was exempt from the lottery.

1. The Ordinance Should Not Be Interpreted In A Manner That Gives Rise To An Absurd Result.

Accepting the City Clerk’s argument would render the Ordinance’s lottery provisions meaningless excess whenever they involve safety compliance facilities located in a manufacturing zone within 500’ of any zoning boundary. This is contrary to Michigan law, which forbids interpreting ordinances in any fashion that would render any portion of them surplusage or meaningless. Ordinances cannot be interpreted in a manner that leads to absurd results. *Brandon Charter Tp v Tippett*, 241 Mich App 417, 424; 616 NW2d 243, 246 (2000). Here, when Harbor Farmz submitted its application, no other medical marihuana facility existed within 500’ of its proposed location. It fully complied with the Ordinance and was eligible for a permit.

The Medical Marihuana Ordinance contains a provision which the City already interpreted to answer the question of what happens if, during the initial application period, two applicants apply who fall within the same separation distance: both are put into the single-time lottery to determine which will receive the permit. That is only fair.

Here, Palmatier submitted an application that fell within the 500’ separation distance that Harbor Farmz is required to maintain. Following the Rules and explanations adopted by the City, placing both of those applications in the lottery with all other eligible applications is the most logical, fair and consistent interpretation of the City’s Ordinance.

Adopting the Clerk’s position that: a) a safety compliance facility in a CC zone must be 500’ away from every other MMF in that zone; b) a provisioning center (which cannot be in a CC zone) is required to be at least 500’ away from every other MMF regardless of what zone the other facility is in; but c) no separation restrictions apply to any safety compliance facility that is directly adjacent to a CC Zone is patently absurd. That would permit a situation where the City could have an established compliance facility in the first parcel inside a CC zone (subject to a 500’ separation rule), and then have five later applicants get permits for similar facilities directly across the street in the first block of a manufacturing zone, where they were not subject to the distance restrictions.

Even worse, that original safety compliance facility, which complied with all zoning ordinances when it submitted its permit application, could be forced out of business! Although its competitors in the manufacturing zone would be exempted from the distance requirements and therefore unimpacted by the existence of an MMF within 500', the existence of those new facilities in the neighboring zone within 500 feet of the previously-qualified safety compliance facility violates the Zoning Ordinance, rendering the first facility ineligible for a permit "solely because of the minimum separation distances required by the Zoning Code."

Further, if the City Clerk is correct and no distance requirement applies to a safety compliance facility in a manufacturing zone regardless of where other MMF facilities are located, there is nothing to prevent Palmatier from obtaining a permit even after Harbor Farmz or another MMF (regardless of its classification) received a permit and opened its doors. In other words, if Palmatier (which created the separation distance issue by proposing a facility located within 500' of a location where Harbor Farmz already sought permission to open an MMF) can avoid the lottery just because it is a safety compliance facility in a commercial zone, that renders much of the Administrative Rules regarding the lottery nugatory and superfluous.

Here, both applicants submitted plans to open facilities within the same 500' radius. Solely because of the 500' separation distance imposed on one of those parcels, they both cannot receive permits. Especially under these circumstances, where both businesses became eligible for permits for the first time at the same time, the most logical and fair interpretation of the Ordinance is that set forth in the City's Q&A sheet: both applicants were appropriately put into the August 3 lottery, where Harbor Farmz fairly was selected as a permit recipient.

2. The Ordinance Should Not Be Interpreted To Reward Gamesmanship

Harbor Farmz fully complied with the Ordinance. It identified and spent money obtaining a facility from which to run its provision center, and submitted its application for a permit on June 21, 2018.

As a safety compliance facility, Palmatier could have chosen to locate its facility in any CC or manufacturing zone approved by the City. Instead, Palmatier (which coincidentally is owned by the mother of one of Harbor Farmz' competitors), waited until the proverbial 11th hour to submit its application on June 27, 2018, and conveniently chose as its location a site that was within 500' of the location already identified in Harbor Farmz' permit application.

The City should neither promote nor condone any interpretation of its Ordinance that would permit one competitor to avoid having its application reviewed on a fair and equal basis as its counterparts'. Either the separation distance rules apply equally to all regardless of classification and across zoning district boundaries, or they do not apply to anyone across zoning district boundaries.

CONCLUSION

Harbor Farmz complied with all of the rules and restrictions imposed by the Ordinance, and was one of the winners of the lottery required to take place whenever separation distance issues arise between applicants. To interpret the Ordinance to exempt the party who created the "separation distance" issue in the first place is absurd, illogical and unfair.

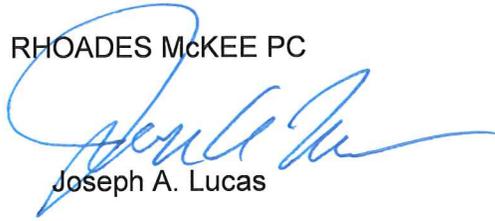
If the City Clerk is correct, then there is no harm to Palmatier in delaying consideration of its application until after implementing the outcome of the Lottery. If the City Clerk's interpretation of

the Ordinance is correct, and safety compliance facilities in a manufacturing zone are exempt from any separation distance requirements across zoning boundaries, then Palmatier can open its facility even if Harbor Farmz is up and running.

But unless the City enforces the outcome of the Lottery, its application of the Ordinance will result in the unconstitutional taking of Harbor Farmz' permit without just cause or compensation.

Very truly yours,

RHOADES McKEE PC



Joseph A. Lucas

JAL:kjh
Enclosures
cc Michael Ward (w/enc)

EXHIBIT 1



Office of the City Attorney

241 W. South Street
Kalamazoo, MI 49007-4707
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www.kalamazoocity.org

RECEIVED AUG 17 2018

August 14, 2018

Dear Medical Marihuana Facility City Permit Applicant:

Prior to the medical marijuana provisional certificate lottery held by the City Clerk on August 3, 2018, the City of Kalamazoo had determined that only the 3 provisioning center applicants located in the 700 and 800 blocks of East Cork, Street were eligible for the lottery.

The City reached this conclusion because the safety compliance facility application for 550 E. Cork, located in Zone M-2 precluded any medical marijuana facility within 500 feet of that location in the adjacent Zone CC commercial area. This resulted in the elimination of the 3 provisioning center applications located in the 600 block of E. Cork St.

The regulations applicable to each facility type are established by zone district in the City Zoning Ordinance. Section 4.1 (USE TABLE) states: Zone M-1 (Manufacturing – Limited District) and Zone M-2 (Manufacturing-General District) permits Grow, Processor, Secure Transport and Safety Compliance Facilities. Section 4.1 (USE SPECIFIC STANDARD) states: That there are no separation distance requirements between facilities located in Zone M-1 or Zone M-2. Under the 'Applicable Standards for Safety Compliance', if located in a Zone CC the size of the building is limited, all testing must be conducted with an enclosed building and a separation distance of 500 feet is required from other licensed marijuana facilities in a Zone CC.

As such, the City was prepared to proceed with the lottery using only the three Provisioning Center applicants located in the 700 and 800 blocks of E. Cork St. However, on August 1, 2018 the City received correspondence from an attorney representing MPM-R West, LLC, located in the 600 block of E. Cork St., protesting that the City had misinterpreted its ordinance and administrative rules. MPM-R West requested, under the threat of a possible lawsuit, that the City include their application and that of the safety compliance center at 550 E. Cork in the lottery. Although the City's position regarding which applicants were eligible to receive a provisioning Center provisional certificate did not change, the request was granted so that the lottery results would be known as part of any appeal or legal action stemming from the lottery. Despite acquiescing to the request to include the safety compliance facility and any provisioning center applicant located in the 600 block of E. Cork St. in the lottery, such did not reflect any change by the City in its interpretation and application of the applicable zoning ordinance provisions governing which provisioning center applicants were eligible to receive a medical marijuana facility provisional certificate.

As explained by the City Clerk on August 3, the lottery results for the E. Cork Street cluster were tentative subject to resolution of the protest which had been filed by MPM-R West. The results of the lottery drawing did not change the City's position. It remains the position of the City that the safety compliance facility at 550 E. Court St. is entitled to a provisional certificate which has been issued; that the three Provisioning Center applicants in the 600 block of E. Cork St. are not eligible to receive a provisional certificate due to their proximity to the safety compliance facility at 550 E. Cork Street; and that the City should issue a provisioning center provisional certificate to the applicant located at 736 E. Cork St. since both the first and second lottery selections are within 500 feet of the safety compliance facility.

Since the conclusion of the lottery, an additional protest has been filed by Harbor Farms North, LLC. Any appeal of the City's interpretation of its Zoning Code is properly heard by its Zoning Board of Appeals. All interested parties will be provided notice of any hearing and given an opportunity to be heard before the Board hearing the appeal.

Enclosed are the Appeal Form and the Schedule of Fees. Any appeal must be filed no later than September 4, 2018 with the City of Kalamazoo Community Planning and Economic Development Department, 415 E. Stockbridge, Kalamazoo, MI 49001 and directed to the attention of Peter Eldridge.

Yours,



Clyde J. Robinson
City Attorney

Cc: Scott Borling, City Clerk
Christina Anderson, City Planner
Peter Eldridge, Zoning Administrator

City of Kalamazoo

MEMO

To: Chair Youngs and Zoning Board of Appeals Members

From: Pete Eldridge, Zoning Administrator
Community Planning and Economic Development Department

Date: November 2, 2018

Subject: Pursuant to the Zoning Ordinance, Chapter 8, Section 8.3 F, the applicant is appealing the administrative decision for the following: **1)** That the City will deny the Harbor Farmz North LLC application due to the 500 foot separation distance between medical marihuana provisioning centers and other medical marihuana facilities including those medical marihuana facilities located in other zoning districts (in this case in Zone M-1 or M-2) per Chapter 4, Section 4.2 AA 4; and **2)** That it is fair and appropriate to apply a 500 foot separation distance requirement across zone district boundaries between provisioning centers and other medical marihuana facilities per Chapter 4, Section 4.2, AA 5 d).

Background on Land Use Regulations:

The Medical Marihuana Facilities Licensing Act (MMFLA) was approved in 2016 by the State of Michigan. In 2017, the City convened a workgroup to research and draft ordinances and administrative rules to allow for medical marihuana facilities within the City of Kalamazoo. In April 2018, the City of Kalamazoo adopted amendments to its Zoning Ordinance and Municipal Code allowing medical marihuana facilities in Kalamazoo. This adoption followed a lengthy process to create the regulations which included public forums and public hearings in front of the Planning Commission and the City Commission. The amendments to the Zoning Ordinance focused on the five types of permitted medical marihuana facilities (grower, processor, secure transporter, safety compliance and provision centers), what districts each are permitted, and what development standards need to be followed for each of the five facility types. The amendments to the Municipal Code focus on licensing, fees, administration, including the establishment of a lottery system to determine which applicant's would receive provisional licenses in the event that multiple provisioning center applications would be received in close proximity creating a distance separation issue.

The City of Kalamazoo allows each of the five types of facilities, but regulates each differently based on the intensity of use. The following is a summary of each facility type.

Grow Facility is defined as *a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.* This use is one of the more intensive uses in regards to land utilization and potential for noise/odor generation. This facility type is only permitted in the manufacturing districts Zone M-1 and M-2.

Processor Facility is defined as *a commercial entity that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in*

packaged form to a provisioning center or another processor. This use is also one of the more intensive uses in regards to land utilization and potential for noise/odor generation. This facility type is only permitted in the manufacturing districts Zone M-1 and M-2.

Secure Transport Facility is defined as *a commercial entity that stores and transports marihuana between marihuana facilities for a fee.* Secure transport, which includes vehicle storage and warehousing are permitted in Zone M-1 and M-2, but also allowed in Zone CC with the following applicable standards:

- a) Secure transporter facilities located in Zone CC are limited to a gross floor area of less than 3,500 square feet.
- b) Secure transporter facilities located in Zone CC are only permitted as a warehousing activity as an accessory use to the principal permitted secure transporter use.
- c) A separation distance of 500 feet is required from other licensed marihuana facilities in a Zone CC.

Safety Compliance Facility is defined as *a commercial entity that takes marihuana from a marihuana facility or receives marihuana from a registered primary caregiver, tests the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.* Facilities typically have lab space, lab equipment, secure storage of products being tested and offices. Safety compliance facilities are permitted in Zone M-1 and M-2 but also allowed in Zone CC, with the following applicable standards:

- a) Safety compliance facilities located in Zone CC are limited to a gross floor area of less than 3,500 square feet.
- b) All testing must be conducted within an enclosed building.
- c) A separation distance of 500 feet is required from other licensed marihuana facilities in Zone CC.

Provisioning Center is defined as *a commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. "Provisioning center" includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers and includes medical cannabis dispensaries. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the Department's marihuana registration process in accordance with the Michigan Medical Marihuana Act is not a provisioning center for purposes of this chapter.* This facility functions like a retail sales establishment with displays of products. Provisioning centers are the point of sale for medical marihuana products making commercial corridors the most appropriate locations.

During the Ordinance drafting, concern was raised as to the concentration or clustering of marihuana facilities in commercial areas. This resulted in the inclusion of the 500 foot and 1000 foot separation distances in the zoning regulations. This technique of establishing separation distances for specific land uses is already in practice in Kalamazoo for package liquor stores and convenience store and gas stations selling alcoholic beverages. Provisioning centers are permitted only in Zone CC with the following applicable standards:

- a) Only one provisioning center license per parcel or lot shall be permitted.
- b) All provisioning center activities must be conducted within an enclosed building.
- c) A provisioning center is not allowed within 660 feet of the following designated nodes: The

intersection of East Cork Street and South Burdick Street, the intersection of East Cork Street and Portage Street, and the intersection of West Ransom Street and North Westnedge Avenue.

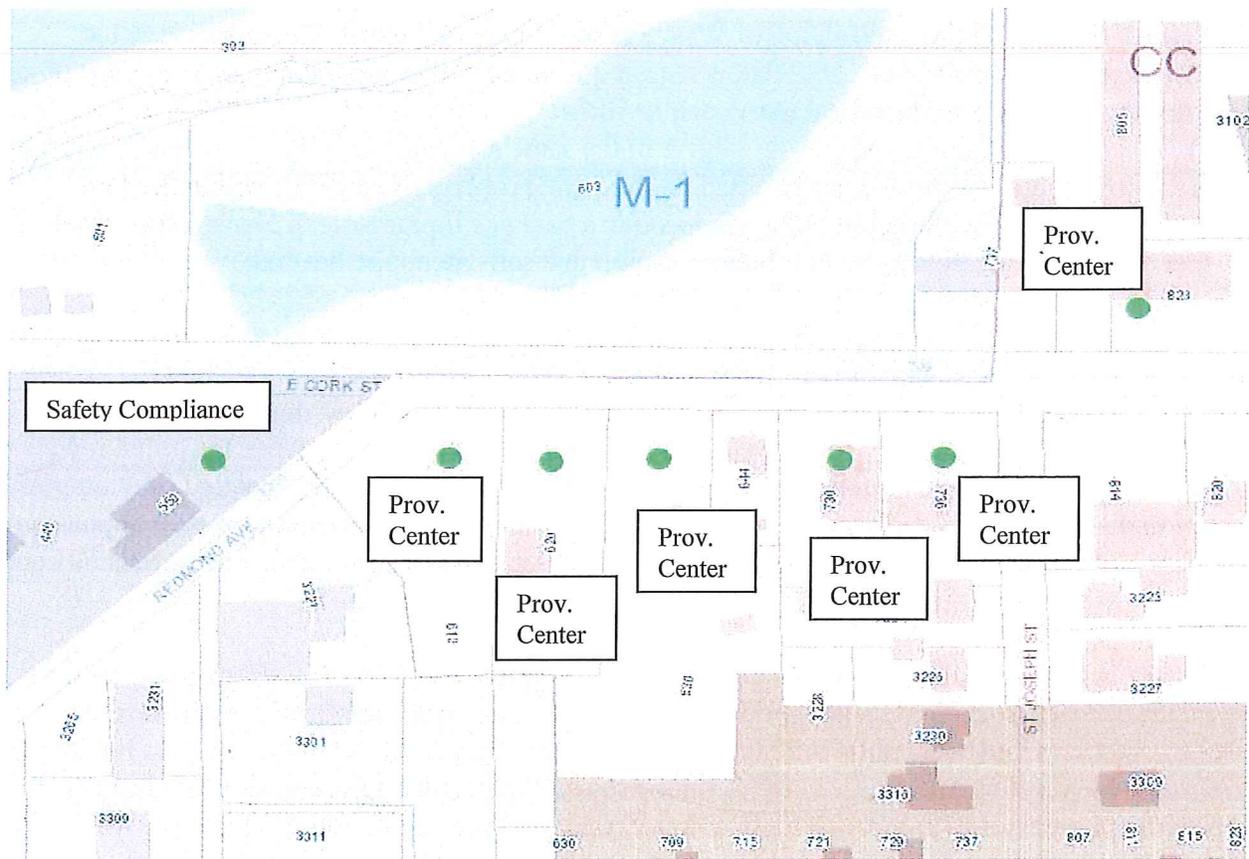
- d) A separation distance of 1,000 feet is required from any other provisioning center and 500 feet from any other licensed medical marijuana facilities.
- e) A medical cannabis dispensary is subject to the same standards required of provisioning centers.
- f) A provisioning center is not permitted on the same property or parcel or within the same building where any of the following are located: a package liquor store, a convenience store that sells alcoholic beverages or a fueling station that sells alcoholic beverages.

Application of the Medical Marihuana Ordinances:

The City of Kalamazoo accepted applications for medical marihuana facilities during a three week window from June 7th to June 28th of this year. 38 applications were received. After the initial review was completed: 15 applicants were issued provisional certificates, 20 applicants were entered into lotteries due to separation distance issues, and 3 applicants were denied/withdrawn. Provisioning center applicants were the only ones subject to the lottery due to the required separation distance between provision center locations.

Harbor Farmz North, LLC filed an application for a provisioning center at 610 E. Cork Street in June during the three week open application period. This provisioning center application was one of six received by the City Clerk all within 1000 feet of one another along E. Cork Street. Prior to holding the medical marihuana lottery on August 3, 2018, three provisioning center applications were deemed ineligible for the lottery due to the proximity to a safety compliance facility, located in Zone M-2, which had already received a provisional certificate of approval from the City. This conclusion was reached based on the ordinance language for provisioning centers when located in Zone CC under Chapter 4, Section 4.2, AA 5 d) *A separation distance of 1,000 feet is required from any other provisioning center and 500 feet from any other licensed medical marijuana facilities.*

A letter was received on August 1, 2018 from one of the three applicants determined to be ineligible due to proximity to an existing medical marihuana safety compliance facility and questioning the interpretation of the ordinance. This letter also requested that the safety compliance facility be included in the lottery to allocate provisional certificates. The City attorney agreed to place all six provisioning center applications in the lottery as well as the already approved safety compliance facility. The intent of this action was so that no applicant could make the argument that they were unfairly excluded from the lottery. At the same time, the City Attorney made it clear to all parties that this action did not change how the City interpreted the ordinance and application of the 500 foot separation distance requirement as it related to the existing safety compliance facility, in other words, their provisional certificate would not be impacted by the outcome of the lottery.



TENTATIVE Lottery Results for E. Cork Street. This list represents the order in which the applications were selected in the lottery:

1. Harbor Farmz North, LLC (Provisioning Center) – 610 E. Cork Street
2. Green Bronco, LLC (Provisioning Center) – 620 E. Cork Street
3. 736 Relief, LLC (Provisioning Center) – 736 E. Cork Street
4. Green Bronco, LLC (Provisioning Center) – 730 E. Cork Street
5. MPM-R West, LLC (Provisioning Center) – 630 E. Cork Street
6. 420 Holiday, LLC (Provisioning Center) – 823 E. Cork Street
7. Palmatier Enterprises, Inc/ The Spott (Safety Compliance) – 550 E. Cork Street

ACTUAL Lottery Results for E. Cork Street. This list represents the order after applying the required separation distances from the Zoning Ordinance to determine eligibility. :

1. Harbor Farmz North, LLC (Provisioning Center) – 610 E. Cork Street
-INELIGIBLE, location within 500 feet of another medical marihuana facility
2. Green Bronco, LLC (Provisioning Center) – 620 E. Cork Street
-INELIGIBLE, location within 500 feet of another medical marihuana facility
3. 736 Relief, LLC (Provisioning Center) – 736 E. Cork Street
– Provisioning Center LOTTERY WINNER
4. Green Bronco, LLC (Provisioning Center) – 730 E. Cork Street
-INELIGIBLE, location within 500 feet of another medical marihuana facility
5. MPM-R West, LLC (Provisioning Center) – 630 E. Cork Street
6. 420 Holiday, LLC (Provisioning Center) – 823 E. Cork Street

7. Palmatier Enterprises, Inc/ The Spott (Safety Compliance) – 550 E. Cork Street
- LICENSE PREVIOUSLY APPROVED - **LOTTERY NOT REQUIRED due to facility being located in Zone M-2.**

Administrative Appeal. The applicant is arguing that staff has misinterpreted the ordinance language for the separation distances that are applicable between facilities. First, the applicant is stating they should not be denied a provisional certificate due to the safety compliance facility being located within 500 feet of 610 E. Cork Street because the safety compliance facility is in Zone M-2 not Zone CC. Second, the applicant believes that 500 foot separation distance being applied across zoned district boundaries is not fair or appropriate can only be applied to facilities within Zone CC. Lastly, The applicant asserts that submittal of the application for the provisioning center at 610 E. Cork Street to the City Clerk before the application was received for the safety compliance facility at 550 E. Cork Street has bearing on the decision making by the City Clerk.

Action Required by the Board:

The Zoning Board of Appeals shall affirm; partly affirm; modify; or reverse the order, decision, determination, or interpretation, if the facts demonstrate there is competent, material and substantial evidence in the record that the order, decision, determination or interpretation fails to comply with either the procedural or substantive requirements of this Ordinance, state law or the federal or state constitutions.

Staff Recommendation:

Community Planning & Economic Development, Public Safety, City Attorney and City Clerk spent a year crafting ordinances to create a balanced approach to the implementation of this new industry in the City of Kalamazoo. These standards were approved this spring.

The applicable standards for each medical marihuana facility type are established by zone district. Therefore, in the case of E. Cork Street with property in Zone M-2 adjacent to property in Zone CC, this does not change the applicability of the zoning standards including the 500 separation distance. There is nothing absurd or out of order with a municipality establishing land use regulations and assigning specific land uses to zone districts. Further, development standards such as separation distances between facilities are common to protect the health, safety and welfare of a community.

Administrative Rule 14 was referenced to by the applicant (Mr. Lucas from Rhoades McKee PC). Administrative Rule 14 covers the lottery procedure which is utilized for applications which do not meeting the required distance separation. City staff applied the separation distance requirements from the Zoning Ordinance and then in accordance with Administrative Rule 14 assigned applications to the lottery process. So, Administrative Rule 14 was adhered to during the review process.

The timing of application submittal to the City Clerk is not a relevant argument. The City intentionally made it known that it would accept applications over a three week period and that there was a lottery process established. This was done specifically to avoid individuals camping out at City Hall to be first to submit their application. Due to the separation distances in certain zone districts it was necessary to review all applications at the same time.

Staff recommends the Board “affirm”: *1) The denial of the Harbor Farmz North LLC application due to the 500 foot separation distance between medical marihuana facilities which includes those medical marihuana facilities in other zoning districts (in this case in Zone M-1 or M-2)per Chapter 4, Section 4.2 AA 4;*

Staff further recommends the Board “affirm”: *2) That it is fair and appropriate to apply a 500 foot separation distance requirement across zone district boundaries between provisioning centers and other medical marihuana facilities per Chapter 4, Section 4.2, AA 5 d).*

Attachment: Zoning Ordinance Amendments to 4.1, 4.2 and 12.3 for Medical Marihuana Facilities
Administrative Rules for Medical Marihuana Facility Process
August 14, 2018 Correspondence from City Attorney Clyde Robinson

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. 1957

AN ORDINANCE TO AMEND SECTIONS 4.1, 4.2 AND 12.3 OF THE CITY OF KALAMAZOO ZONING ORDINANCE REGARDING THE LOCATION OF MEDICAL MARIHUANA FACILITIES

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Section 4.1, Use Table, of the City of Kalamazoo Zoning Ordinance, being Appendix A to the Kalamazoo City Code is amended to add the following types of Marihuana Facilities, per the Medical Marihuana Facilities Licensing Act (Act 281 of 2016), as permitted uses in the following zoning districts:

“Grower: For the Class A and Class B designations: Permitted use in the M-1, Manufacturing – Limited District and M-2, Manufacturing – General District. The Class C designation is a permitted use in the M-2, Manufacturing – General District.

Processor: Permitted use in the M-1, Manufacturing – Limited District and M-2, Manufacturing – General District.

Secure Transporter: Permitted use in the CC, Commercial – Community District, M-1, Manufacturing – Limited District and M-2, Manufacturing – General District.

Safety Compliance Facility: Permitted use in the CC, Commercial – Community District; M-1, Manufacturing – Limited District, and M-2, Manufacturing – General District.

Provisioning Center: Permitted use in the CC, Commercial – Community District.”

Section 2. Section 4.2, Use Specific Standards, of the City of Kalamazoo Zoning Ordinance, being Appendix A to the Kalamazoo City Code, is amended to add the following regulations for marihuana facilities:

“AA. Marihuana Facilities:

1. Applicable Standards for Grower facilities:

- a) Except as permitted by State regulatory rules for Class C Growers, only one Medical Marihuana Grower facility license is allowed per parcel or lot.
- b) Class C Grower facilities only allowed in Zone M-2.
- c) All Grower facilities and operations must be within an enclosed building.
- d) Licensees may occupy the same premises if holding separate Grower and Processor licenses for the premises.
- e) Any building or unit housing medical marihuana operations shall located at least five hundred (500) feet from a residential zone district.

2. Applicable Standards for Processor facilities:

- a) Only one Medical Marihuana Processor facility license permitted per parcel or lot
- b) All Processing operations must be conducted within an enclosed building
- c) Licensees may occupy the same premises if holding separate Grower and Processor licenses for the premises.
- d) Any building or unit housing medical marihuana operations shall be located at least five hundred (500) feet from a residential zone district.

3. Applicable Standards for Secure Transporter:

- a) Secure Transporter facilities located in Zone CC are limited to a gross floor area of less than 3,500 square feet.
- b) Secure Transporter facilities located in Zone CC are only permitted warehousing activity as an accessory to the principal permitted Secure Transporter use.
- c) A separation distance of five hundred (500) feet is required from other licensed marihuana facilities in a CC Zone.

4. Applicable Standards for Safety Compliance:

- a) Safety Compliance facilities located in Zone CC are limited to a gross floor area of less than 3,500 square feet.
- b) All testing must be conducted within an enclosed building.
- c) A separation distance of five hundred (500) feet is required from other licensed marihuana facilities in a CC Zone.

5. Applicable Standards for Provisioning Centers:

- a) Only one Provisioning Center license per parcel or lot.
- b) All Provision Center activities must be conducted within an enclosed building.
- c) A Provisioning Center is not allowed within six hundred sixty (660) feet of the following designated nodes: The intersection of E. Cork St. and S. Burdick St., the intersection of E. Cork St. and Portage St., and the intersection of W. Ransom St. and N. Westledge Ave.
- d) A separation distance of one thousand (1000) feet is required from any other Provisioning Center and five hundred (500) feet from any other licensed medical marijuana facilities.
- e) A Medical Cannabis Dispensary is subject to the same standards required of Provisioning Centers.
- f) A Provisioning Center is not permitted on the same property or parcel or within the same building where any of the following are located: a package liquor store, a convenience store that sells alcoholic beverages or a fueling station that sells alcoholic beverages.

6. General Provisions

- a) The location criteria contained in this Section is applicable to any proposed change in the location of an existing marihuana facility.
- b) A licensee shall not operate a marihuana facility at any place in the City other than the address provided in the application on file with the City Clerk.
- c) A licensee shall operate the licensed facility in compliance with all applicable State and City regulations for that type of facility.
- d) A licensee shall not operate a marihuana facility within one thousand (1,000) feet of:
 - 1) any private or public preschool, elementary, secondary, vocational or trade school, college or university;
 - 2) any park or playground;
 - 3) any public library; or
 - 3) a housing facility owned by a public housing authority.
- e) A licensee shall not operate a marihuana facility within five hundred (500) feet of:
 - 1) any existing licensed child care center,
 - 2) any existing place of worship or religious assembly,
 - 3) any public pool or recreation facility,
 - 4) any public or private youth center, or
 - 5) any juvenile or adult halfway house, correctional facility or substance abuse rehabilitation or treatment center.
- f) The distances described in this Section shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated in this Section above to the nearest portion of the building or unit in which the medical marihuana facility is located.
- g) A licensee shall not operate a marihuana facility within the boundaries of any residential zoning district or in a residential unit.
- h) The separation distances contained in this Section are applicable to marihuana facilities and protected uses located in adjacent governmental jurisdictions.
- i) It shall be unlawful to operate a medical marihuana business outside of an enclosed building. All medical marihuana commercial entity licenses shall be issued for a specific fixed location. A medical marihuana commercial entity license may be issued only if the business qualifies as a use permitted as a matter of right in the zoning district where it is proposed to be located.
- j) The provisions of this Section shall be applicable to all persons and facilities described herein, whether the operations or activities associated with a marihuana facility were established without authorization before the effective date of this ordinance.
- k) Any marihuana facility in operation on the effective date of this ordinance, unless such facility has been temporarily authorized to continue operations under the terms of an ordinance, is deemed an unlawful public nuisance and shall cease operations. Noncompliance with this provision shall subject the

owner and/or operator of the facility to applicable criminal and civil sanctions brought by the City Attorney for violation of this provision.

- l) Nothing in this ordinance shall be construed to “grandfather” or provide any legal, equitable, or property right to the owner or occupier of property on which a medical marihuana facility is operating, before a City operating license for such facility or business is issued, to continue such use.
- m) No medical marihuana facility shall be located within 250 feet of the municipal boundary shared by the City of Kalamazoo with the Charter Township of Kalamazoo except where the adjoining property in the Township is similarly zoned to zoning districts within the City that permit marihuana facilities.”

Section 3. Section 12.3, Definitions and Use Categories, of the City of Kalamazoo Zoning Ordinance, being Appendix A to the Kalamazoo City Code, is amended to add the following terms and definitions:

“MARIHUANA or MARIJUANA – Means that term as defined in the Public Health Code, MCL 333.1101 et seq.; the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.

MARIHUANA FACILITY: Means an enterprise at a specific location at which a licensee is licensed to operate under the Medical Marihuana Facilities Act, MCL 333.27101 et seq., including a marihuana grower, marihuana processor, marihuana provisioning center, marihuana secure transporter, or marihuana safety compliance facility. The term does not include or apply to a “primary caregiver” or “caregiver” as that term is defined in the Michigan Marihuana Act, MCL 333.26421 et seq.

- a) GROWER – Means a licensee that is a commercial entity located in this state that cultivates, dries, trims or cures and packages marijuana for sale to a processor or provisioning center.
 - 1. Class A: A licensed grower who is authorized to grow not more than 500 marihuana plants.
 - 2. Class B: A licensed grower who is authorized to grow not more than 1,000 marihuana plants.
 - 3. Class C: A licensed grower who is authorized to grow not more than 1,500 marihuana plants.
- b) PROCESSOR – Means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center
- c) PROVISIONING CENTER – Means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or

through the patients' registered primary caregivers. Provisioning Center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver in accordance with the Michigan Medical Marihuana Act, MCL 333.26421 et seq., is not a provisioning center for purposes of this article.

- d) SAFETY COMPLIANCE FACILITY – Means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
- e) SECURE TRANSPORTER – Means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.
- f) MEDICAL CANNABIS DISPENSARY: Means a provisioning center operated and whose license to operate is held solely by one or more registered qualifying patients and/or registered primary caregivers operating at a fixed location.
- G) PUBLIC LIBRARY: Means a library established and operated by an accredited college or university, community college district, the City, a public school district, or other local unit of government or authority, or combination of local units of governments and authorities, and whose services are available for use by the public.”

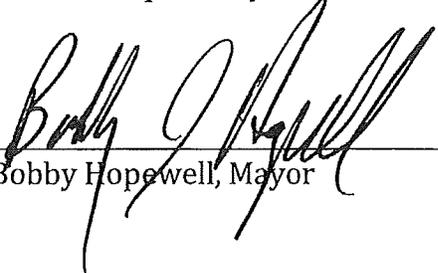
Section 4. Repealer. All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the remaining portions of this ordinance.

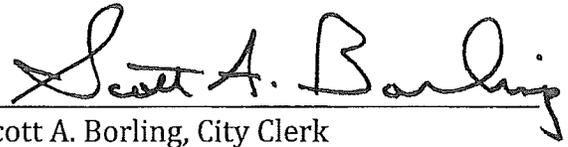
Section 6. Effective Date. Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage, but only if an ordinance is adopted by the City Commission amending the Kalamazoo City Code to permit the licensure and regulation of medical marihuana facilities in the City.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on April 2, 2018. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976, M.C.L. § 15.261 et. seq). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.



Bobby Hopewell, Mayor



Scott A. Borling, City Clerk

City of Kalamazoo Administrative Rules Medical Marihuana Facilities Permit Process

1. **General Description.** The City of Kalamazoo's Medical Marihuana Facility (MMF) local permit process is comprised of two stages: **Stage 1** begins with the submission of a MMF permit application to the City Clerk's Office and concludes with the issuance of a Provisional Medical Marihuana Facility Approval Certificate (Provisional Approval Certificate); **Stage 2** begins when an applicant submits to the City Clerk's Office a copy of a State Operating License issued by the Medical Marihuana Licensing Board (and other documents), and concludes with the issuance of a City Medical Marihuana Operating Permit (City Operating Permit).
2. **Initial Application Period.** An initial application period will be announced by the City Clerk during which the Clerk will accept permit applications for all five MMF's (grower, processor, secure transporter, safety/compliance, and provisioning center). New MMF permit applications will not be accepted before the opening of the initial application period or after the close of the initial application period.
3. **Submission of Applications; Number of Applications Allowed.** Applicants must submit MMF permit applications in person at the City Clerk's Office, 241 W. South Street, Room 104 during normal business hours (8 a.m. – 5 p.m., M-F). A separate permit application shall be required for each premise from which a medical marihuana facility is operated. Only one (1) application per premise will be accepted.
4. **Multiple Permits on the Same Premises.** Applicants may apply for both Grower and Processing Facility permits on the same premises using the same application. Applicants may apply for multiple Class C Grower permits on the same premises using the same application, as long as the premises are located in Zone M-2. *No other combinations of MMF's are allowed on the same site/premises in the City of Kalamazoo.* [Sec. 20B-5(F)]
5. **Complete Application Required; Definition.** In accordance with Section 20B-8 of the Kalamazoo City Code, incomplete applications will not be accepted when presented for submission. For the purposes of this section the following elements must be submitted simultaneously in order for an application to be accepted by the City Clerk or his designee: the appropriate permit fee; acceptable verification of applicant identity (photo ID); an application form that is signed by the applicant with all required sections filled-in; and all necessary attachments as specified on the application and in City ordinance.
6. **Permit Fee; Refunds.** The appropriate MMF permit fee must be paid in full at the time an application is submitted. Payment can be made with cash, check (made payable to the "City of Kalamazoo") and credit card (for an additional fee). The permit fee is comprised of refundable and non-refundable portions. The non-refundable portion will not be returned to the applicant under any circumstances. The refundable portion will be returned to the applicant under the following circumstances: 1) the application is rejected or denied according to City Code Section 20B-8; 2) the Provisional Approval Certificate

expires or is cancelled according to City Code Sections 20B-9(D)-(F); 3) an applicant withdraws their application with a written request sent to the City Clerk; or 4) the City determines during the initial application process that an applicant's proposed licensed facility does not comply with Section 4.2(AA) of the Zoning Code. Regardless of the reason for the refund, the Clerk will return the refundable portion of the application fee after the close of the administrative review period. Refunds will be issued via check through the City's accounts payable system.

7. **Persons Required to Produce Photo Identification.** At the time an MMF permit application is submitted, the person physically submitting the application (defined as the "Applicant" on the application form) must show acceptable photo identification.
8. **Acceptable Forms of Photo Identification.** The following forms of identification will be accepted to fulfill the requirements of Section 20B-7A of the Kalamazoo City Code: a Michigan Driver's License; a Michigan State Identification Card; a Kalamazoo County Identification Card; a current driver's license issued by another state; a current identification card issued by another state; or a U.S. Passport.
9. **Order of Processing; Administrative Review Period.** Applications will be reviewed in the order they are accepted by the City Clerk or his designee. The City Clerk will review MMF permit applications as soon as is practically possible upon acceptance and shall have 10 business days following the close of the initial application period to complete the administrative review process.
10. **Application Deficiencies; Notification; Ability to Remedy.** If during the administrative review process an application is found to have deficiencies, the City Clerk will notify the applicant via electronic message sent to an email address supplied by the applicant for the purpose of communications regarding the application, application process, Provisional Approval Certificate, and MMF permit. The applicant is responsible to accurately supply an active email address to the City Clerk. The City is not responsible for any undeliverable emails. The applicant shall have five (5) business days from the date the email is sent to correct any and all deficiencies. If the identified deficiencies are not remedied by 5:00 p.m. on the fifth business day the Clerk will deny the application. [Sec. 20B-7(D); Sec. 20B-8]
11. **Application Resubmission Prohibited.** An applicant whose application has been denied due to an uncorrected deficiency may **not** resubmit the denied application or submit a new application for the same premises and the same facility type(s).
12. **"Eligible" Applications.** MMF permit applications submitted during the initial application period will be considered "eligible" for approval if they fully comply with the requirements of Chapter 20B of the Kalamazoo City Code and Sections 4.1, 4.2, and 12.3 of the City of Kalamazoo Zoning Ordinance including, but not limited to, compliance with all buffer zones, setback requirements, and separation distances.

13. **Issuance of Provisional Approval Certificates.** At the close of the 10-day administrative review period, the City Clerk will issue Provisional Approval Certificates for all “eligible” applications.
14. **Resolution of Separation Distance Conflicts.** Any MMF permit application that would be otherwise “eligible” for approval except for the minimum separation distances required by the Zoning Code [Section 4.2(AA)] between the MMF proposed by the applicant and the MMF proposed by another applicant will be entered into a lottery as provided for in Rule 15 to determine which of those applications will be issued a Provisional Approval Certificate and which will not.
15. **Lottery Procedure.** All applicants whose proposed licensed facility is less than the minimum spacing distance required by Section 4.2 (AA) of the Zoning Code from another proposed licensed facility will be entered in a lottery to determine which applicant will receive a Provisional Approval Certificate. The name of each such applicant will be drawn individually in sequence, with each applicant being assigned a number corresponding to the order in which their name was drawn. The lottery will continue until the names of all such applicants are drawn and assigned a number. The location of the medical marijuana facility proposed by the applicant whose name is drawn first in the lottery shall then be reviewed to determine if the proposed location of the applicant will comply with the applicable separation distances in Section 4.2(AA) for the proposed licensed facility with respect to any proposed licensed facility for which it previously has been determined will be issued a Provisional Approval Certificate. If the proposed licensed facility complies with the separation distances with respect to any proposed facility for which it previously has been determined will be issued a Provisional Approval Certificate, the applicant will be issued a Provisional Approval Certificate. Otherwise, the applicant will be denied a provisional certificate. The location of the facility proposed by each of the other applicants will then be evaluated in the same manner and in the same order as their name was drawn to determine compliance with the applicable separation distances of Section 4.2(AA), and will be issued a Provisional Approval Certificate if the location complies with the separation distances with respect to any proposed licensed premises for which it previously has been determined will be issued a Provisional Approval Certificate, and will be denied provisional certificate if it will not. All lottery drawings shall be conducted publicly by the City Clerk or the Clerk’s designee with all entrants in the lottery advised of the date and time of the lottery and afforded the opportunity to attend and witness the drawing.
16. **Use of Lottery Results to Award Additional Provisional Approval Certificates.** The City Clerk will maintain a record of the lottery results (the “lottery results list”) for one year following the date of the lottery. If during that time: 1) an applicant’s Provisional Approval Certificate is cancelled or voided as described in Sec. 20B-9(D)-(F); OR if an applicant makes a written request to withdraw their application; OR if a City Operating Permit is revoked under Sec. 20B-15; AND 2) the applicant participated in the lottery described in Rule 15, the City Clerk shall determine whether the elimination of the cancelled or voided Provisional Approval Certificate or revoked City Operating Permit removes a separation distance conflict that caused an applicant to be denied a Provisional

Approval Certificate during the lottery process. To make this determination the City Clerk or his designee shall consult the lottery results, shall identify the first applicant who was denied a license, and shall evaluate whether that applicant's proposed licensed premises will comply with the separation distances with respect to any facility for which a Provisional Approval Certificate or City Operating Permit has been issued. If the proposed licensed facility will comply with the separation distances with respect to any proposed licensed premises that has been issued Provisional Approval Certificate or City Operating Permit, the applicant will be issued a Provisional Approval Certificate. Otherwise, the applicant will not be issued a provisional certificate. The location of the facility proposed by each of the other applicants denied a provisional certificate during the lottery will then be evaluated in the same manner and in the same order as their name was drawn during the lottery to determine compliance with the applicable separation distances of Section 4.2(AA), and will be issued a Provisional Approval Certificate if the location will comply with the separation distances with respect to any proposed licensed premises that has been issued Provisional Approval Certificate or City Operating Permit, and will not be issued a provisional certificate if it does not. Applicants who participate in the lottery and withdraw their applications after the lottery are not eligible for reevaluation under this rule.

17. **Proof of Application to the State; Cancellation for Non-Compliance.** Within 30 days from the issuance of a Provisional Approval Certificate by the City Clerk, the applicant must submit proof to the City Clerk that the applicant has either: 1) applied for prequalification with the State for a state operating license; or 2) submitted full application for a state operating license, if prequalification has been obtained prior to issuance of the Provisional Approval Certificate. If the applicant fails to submit such proof, then the Provisional Approval Certificate will be cancelled by the City Clerk. [Sec. 20B-9(E)]
18. **Final City Inspection.** The MMF inspections described in Sec. 20B-10(B) will be scheduled and coordinated through the City's Community Planning and Economic Development Department (CPED). If the inspection is satisfactory, CPED will issue a Medical Marihuana Facility Compliance Certificate to the applicant.
19. **Issuance of City Operating Permit; Required Documentation.** In order to receive a City Operating Permit, applicants must be in possession of an unexpired Provisional Approval Certificate and submit the following documents to the City Clerk: a copy of a valid State Operating License for the same facility type and premises/location for which the City has granted provisional approval; a copy of the Medical Marihuana Facility Compliance Certificate (see Rule 17 above); a Safety Plan as described in Sec. 20B-22; and a Hazardous Materials Plan as described in Sec. 22B-23(B).



Office of the City Attorney
241 W. South Street
Kalamazoo, MI 49007-4707
(269) 337-8185
Fax (269) 337-8922
www.kalamazoo.org

RECEIVED AUG 17 2018

August 14, 2018

Dear Medical Marijuana Facility City Permit Applicant:

Prior to the medical marijuana provisional certificate lottery held by the City Clerk on August 3, 2018, the City of Kalamazoo had determined that only the 3 provisioning center applicants located in the 700 and 800 blocks of East Cork, Street were eligible for the lottery.

The City reached this conclusion because the safety compliance facility application for 550 E. Cork, located in Zone M-2 precluded any medical marijuana facility within 500 feet of that location in the adjacent Zone CC commercial area. This resulted in the elimination of the 3 provisioning center applications located in the 600 block of E. Cork St.

The regulations applicable to each facility type are established by zone district in the City Zoning Ordinance. Section 4.1 (USE TABLE) states: Zone M-1 (Manufacturing – Limited District) and Zone M-2 (Manufacturing-General District) permits Grow, Processor, Secure Transport and Safety Compliance Facilities. Section 4.1 (USE SPECIFIC STANDARD) states: That there are no separation distance requirements between facilities located in Zone M-1 or Zone M-2. Under the 'Applicable Standards for Safety Compliance', if located in a Zone CC the size of the building is limited, all testing must be conducted with an enclosed building and a separation distance of 500 feet is required from other licensed marijuana facilities in a Zone CC.

As such, the City was prepared to proceed with the lottery using only the three Provisioning Center applicants located in the 700 and 800 blocks of E. Cork St. However, on August 1, 2018 the City received correspondence from an attorney representing MPM-R West, LLC, located in the 600 block of E. Cork St., protesting that the City had misinterpreted its ordinance and administrative rules. MPM-R West requested, under the threat of a possible lawsuit, that the City include their application and that of the safety compliance center at 550 E. Cork in the lottery. Although the City's position regarding which applicants were eligible to receive a provisioning Center provisional certificate did not change, the request was granted so that the lottery results would be known as part of any appeal or legal action stemming from the lottery. Despite acquiescing to the request to include the safety compliance facility and any provisioning center applicant located in the 600 block of E. Cork St. in the lottery, such did not reflect any change by the City in its interpretation and application of the applicable zoning ordinance provisions governing which provisioning center applicants were eligible to receive a medical marijuana facility provisional certificate.

As explained by the City Clerk on August 3, the lottery results for the E. Cork Street cluster were tentative subject to resolution of the protest which had been filed by MPM-R West. The results of the lottery drawing did not change the City's position. It remains the position of the City that the safety compliance facility at 550 E. Court St. is entitled to a provisional certificate which has been issued; that the three Provisioning Center applicants in the 600 block of E. Cork St. are not eligible to receive a provisional certificate due to their proximity to the safety compliance facility at 550 E. Cork Street; and that the City should issue a provisioning center provisional certificate to the applicant located at 736 E. Cork St. since both the first and second lottery selections are within 500 feet of the safety compliance facility.

Since the conclusion of the lottery, an additional protest has been filed by Harbor Farms North, LLC. Any appeal of the City's interpretation of its Zoning Code is properly heard by its Zoning Board of Appeals. All interested parties will be provided notice of any hearing and given an opportunity to be heard before the Board hearing the appeal.

Enclosed are the Appeal Form and the Schedule of Fees. Any appeal must be filed no later than September 4, 2018 with the City of Kalamazoo Community Planning and Economic Development Department, 415 E. Stockbridge, Kalamazoo, MI 49001 and directed to the attention of Peter Eldridge.

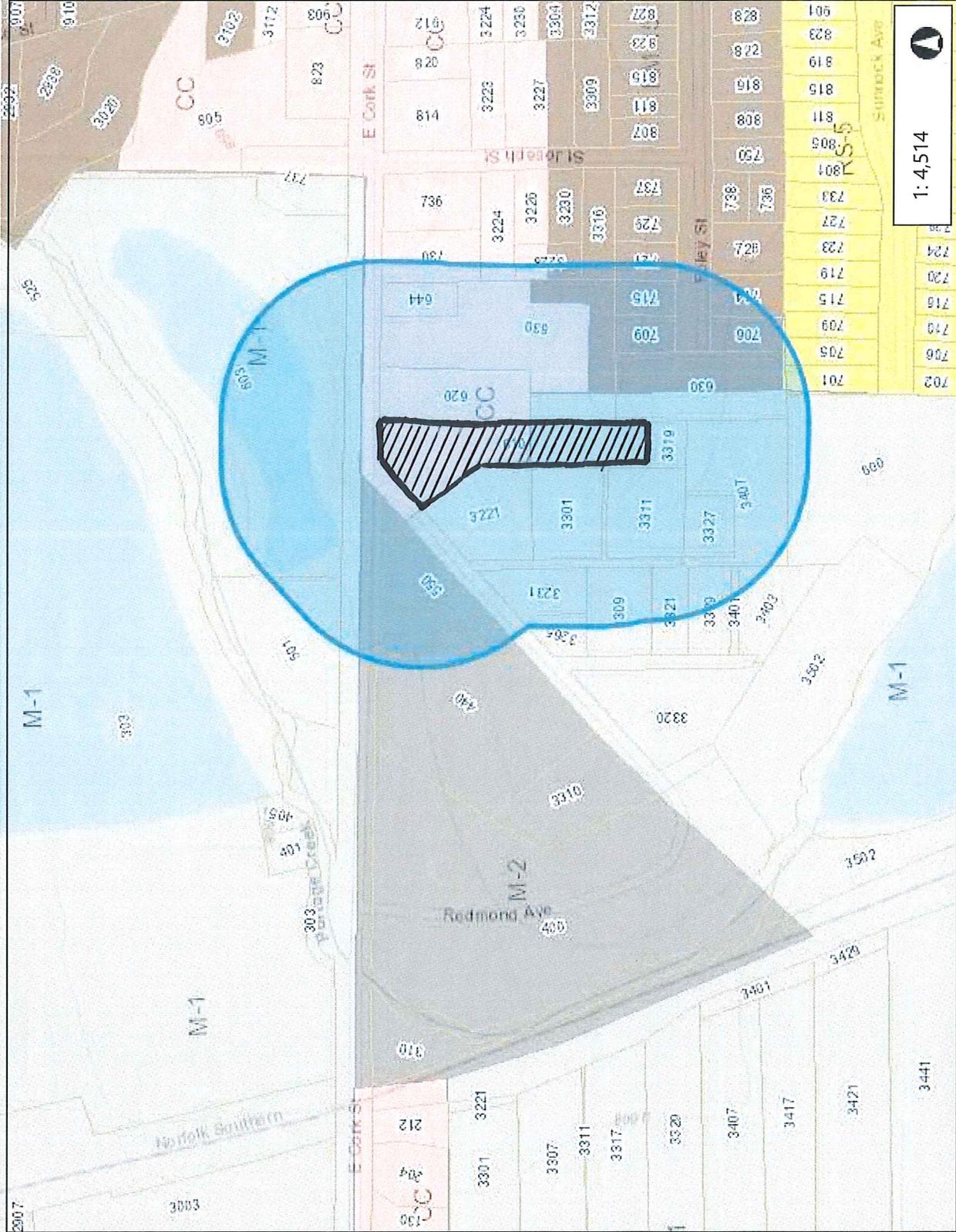
Yours,



Clyde J. Robinson
City Attorney

Cc: Scott Borling, City Clerk
Christina Anderson, City Planner
Peter Eldridge, Zoning Administrator

300' Mailing Boundary - 610 E. Cork St.



- Legend**
- Parcels
 - Zoning
 - CBTR
 - CC
 - CCBD
 - CMU
 - ON-1
 - CO
 - IC
 - M-1
 - M-2
 - PUD
 - RD-19
 - RM-15
 - RM-15C
 - RM-24
 - RM-36
 - RMU
 - RS-5
 - RS-7



1:4,514

0.1 Miles



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