

## Meeting Agenda

### City of Kalamazoo - Zoning Board of Appeals

December 13, 2018

City Commission Chambers, City Hall

7:00 p.m.

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- A. Call to Order:
- B. Communications and Announcements:
- C. Approval of Special Meeting Minutes for December 15, 2018
- D. Public Hearings:
  - 1. ZBA #18-12-32: 819 S. Westnedge Avenue. Muhammed M. Abbas, the property owner, is requesting a use variance from Chapter 9, Section 9.2 F, to change the nonconforming use which is a convenience store with an SDM License to sell beer and wine to another nonconforming use which is a convenience store with an SDM and SDD License to sell beer wine and hard liquor. The South Westnedge Market is nonconforming with regard to alcoholic beverage sales because it is located approximately 1,780 feet from the Food Max Convenience Store with alcoholic beverage sales, where the Zoning Ordinance requires a separation distance of 2,640 feet (1/2 mile).
- E. Other Business:
- F. Adjournment:

**MINUTES  
CITY OF KALAMAZOO  
SPECIAL MEETING FOR  
ZONING BOARD OF APPEALS  
November 15, 2018 - 7:00 p.m.  
CITY COMMISSION CHAMBERS**

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

**Members Absent:**

**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. Matt Lager moved to approve the minutes of September 13, 2018 as submitted, seconded by Mr. Houston.**

**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 2009 Whites Road, Parcel # 06-29-496-002:

**ZBA #18-10-27: 2009 Whites Road: An application for a variance to 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 a variance only regarding the items described above. There were fourteen notices of public hearing sent and zero responses were received.

Jim Dallas, Keller Construction stated the clinic needs the expansion of two exam rooms. It will help the customers from having to wait.

Mr. Lager questioned the layout design. Mr. Dallas clarified the layout. Mr. Houston questioned with two existing exam rooms now, what affect will adding two more have on the parking. Mr. Dallas commented with additional rooms clients will be able to come and go quicker, turning the cars over quicker.

Mr. Eldridge spoke to there being no screening between the residential use and the clinic. Mr. Dallas commented screening and green stripes would be put in, all handled through the site plan review.

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

### **FINDING OF FACT**

Ms. Doane moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 2009 Whites Road shall include all information included in the notice of public hearing dated October 29, 2018.
- 2.) Fourteen 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: Jim Dallas spoke in favor, changes were needed to alleviate crowding and wait times, less wait times mean fewer cars and will not need the five parking spots the proposal lacks, there will be a fence on the side with the private home, green space and more in compliance with related ordinances.

**Mr. Houston seconded the Finding of Fact.**

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

**Mr. Houston moved to approve the application, for part 1 for 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, seconded by Mr. Carroll.**

Chair Youngs reviewed the criteria conditions that must be met to qualify and stated he was in favor.

**Motion approved by roll call vote unanimously.**

**Chair Youngs moved to approve the application for part 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, seconded by Mr. Houston.**

Mr. Lager stated he was in support of the request.

**Motion approved by roll call vote unanimously.**

Mr. Houston read the application for 1722 E. Alcott Street, Parcel # 06-26-222-013:

**ZBA #18-11-29: 1722 E. Alcott Street: 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 property. This is a request for a variance only regarding the items described above. There were twenty-seven notices of public hearing sent and one response was received.

Charise Juarez, owner of the property stated she is rehabbing this former blighted property and house. The front is across from a commercial building and church, on the side of the house is a commercial building. There is a lot of heavy traffic on the road. The fence would be about 3 feet back from the front porch and wrap around, back to the garage to make the yard useful and for privacy.

Mr. Lager clarified the front faces Alcott. Ms. Juarez replied correct. They discussed the garage is off the alley. Mr. Eldridge referred to the aerial photograph in the Board's packet.

Mr. Carroll questioned the reason for the six foot fence in the back. Ms. Juarez commented there is a lot of foot traffic back there. She would want to have privacy if sitting back there. Mr. Carroll asked if her neighbors to the south have a six foot fence. She stated no. Ms. Juarez stated up the road on Fulford St. there is a house with a six foot fence.

Mr. Eldridge commented it's the Fulford St. frontage only affected; the proposed fencing on the Alcott St. side is in compliance. The proposed fence will not cause a vision obstruction on

the alley side, nor the corner of Fulford and Alcott St.

Mr. Houston stated he drove by and understands the request for a need for a privacy fence with all the industrial traffic.

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 1722 E. Alcott Street shall include all information included in the notice of public hearing dated October 29, 2018.
- 2.) Twenty-seven notices of public hearing were sent and one response was 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: Charise Juarez purchased the property about two months ago, the lot itself is located in an area of high traffic, industrial and commercial buildings, the applicant feels to enjoy the yard a privacy fence is required. The fence will be three feet back from the house with the front of the house and yard open on the E. Alcott Street side. There are other neighbors in the area with six foot fences.

**Mr. Houston seconded the Finding of Fact.**

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

**Mr. Houston moved to approve the application, seconded by Chair Youngs.**

There was discussion on the placement of the fence only needing the Fulford Street frontage requiring the approval.

Mr. Houston commented when the house was built, there wasn't as much industrial business in the area. The businesses have grown since, a four foot fence worked years ago. He stated there

are no neighbors here complaining either.

Mr. Lager stated he was in favor of the request. There are special circumstances with the location of this house.

Mr. Flach commented there are no neighbor associations here complaining either. Ms. Doane agreed.

**Motion approved by roll call vote unanimously.**

Mr. Houston read the application for 409 and 427 E. Alcott Street, Parcel #06-27-222-002 and #06-27-224-002:

**ZBA# 18-11-30: 409 and 427 E. Alcott Street: An application for a variance to 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 property. This is a request for a variance only regarding the items described above. There were twenty-nine notices of public hearing sent and zero responses were received.

Jeff Klatt, Krieger Klatt Architects, he was speaking on behalf of the Boji Group. They are proposing a 71,000 square foot office building for the Michigan Department of Health & Human Services. The site plan shows several challenges in the placement of the building with the natural topography with a slope and environmental concerns from the former mill building. To compound that the State has a very heavy parking demand of over 450 parking spaces for the building. They are near capacity on the site plan, from the loading standpoint the State requires one loading dock and that's what they propose. They have very limited deliveries to the site. They have no semi-truck traffic, get mail once a day, and deliveries twice a week from box trucks like FedEx, UPS, with office supplies. The variance request, if forced to have three loading zones would severely impact their site, building size or parking would be affected. He stated the literal interpretation of the Ordinance would cause practical difficulty for the above reasons. The granting of the variance is the minimum that will make possible the use of the land and structure and is not contrary to the public interest. The granting of the variance will not adversely affect adjacent land. The granting of the variance will be will be generally consistent with the purposes and intent of the Ordinance.

Mr. Eldridge stated the Ordinance is black and white on the required loading area standards. A 50,000 to 100,000 sq. ft. building requires three loading zones. There's no differentiation to a manufacturing building or to 100% office use. They don't have truck deliveries, the site layout shows one loading area, and is sized for a FedEx or UPS type truck. The ordinance doesn't line up with the use of the building. The proposed use of the building is permitted in this zone.

This use doesn't need three large loading areas on the property. He stated Staff doesn't have any concerns with this request.

Mr. Houston questioned the applicant if in the future they'd see a need for heavier deliveries. Mr. Klatt stated his understanding is there is no room for expansion due to parking requirements. They have a twenty year lease the State signed with extension options.

Mr. Eldridge asked for clarification on the parking layout diagram. Mr. Klatt explained the visitor's parking area and the location where the workers will park in regards to the retaining wall.

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 409 and 427 E. Alcott Street shall include all information included in the notice of public hearing dated October 29, 2018.
- 2.) Twenty-nine 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: Jeff Klatt representing the Boji Group, was proposing an office building for the Michigan Department of Health and Human Services. The site has unique topographical conditions and the State has an exceptionally heavy need for parking. Because its office use only deliveries include, mail and delivery of office supplies. City Staff stated based upon the need of the user, and office use there are no concerns.

**Mr. Houston seconded the Finding of Fact.**

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

**Chair Youngs moved to approve the application, seconded by Mr. Houston.**

Mr. Lager commented it's great to see the vacant land being used. There are special circumstances to the property and reviewed the criteria conditions that must be met to qualify and stated he was in favor.

Mr. Houston questioned if environmental studies had been done on the property. Mr. Eldridge stated yes.

**Motion approved by roll call vote unanimously.**

Mr. Eldridge clarified that there are two parts, the first request, there is a motion to rehear due to a prior dimensional variance request that was denied. The applicant indicated there is new information and substantial changes and would like the opportunity to present the information. The Board would vote to re-hear. If approved the applicant would then present their request.

**Gene Hooten, Development Consultant for Heritage Community, stated they are requesting a waiver for the one year waiver from the denial. He stated they conducted two meetings with the neighborhood members and addressed their concerns and have had redesigns done. The one being submitted takes approximately 65% of the building footprint and lowers it to three stories. There is a portion still at four stories, because of the topography that is a portion that wasn't as prevalent to the neighbors, and lowered the roof height, by cutting the elevation in half, creating a mansard roof. He explained the request dimensions, with the mansard roof. They shrunk the unit's square footage by 8800 sq. ft. to maintain the setbacks, which is double the required. They've shrunk the building program to make that happen. In the two meetings they have gained support from the neighbors.**

**Mr. Carroll made a motion to rehear the request, seconded by Ms. Doane.**

There were no comments from the public.

**Motion approved by roll call vote unanimously.**

Mr. Houston read the application for 500 Golden Drive, Parcel #06-27-425-002:

**ZBA #18-11-31: 500 Golden Drive: An application for a variance to 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 a variance only regarding the items described above. There were forty-three notices of public hearing sent and zero responses were received.

Jay Prince, President and CEO of Heritage Community stated they are a local non-profit

retirement community. They know the importance of quality senior housing, since they were denied in July; they have worked hard with their neighbors. They had several meetings with the neighbors and the Board also attended. This proposal has made stronger bonds between the neighbors and Heritage Community. They spoke of listening to the neighbor's concerns and addressing those concerns. They have reduced the square footage of the building and have a mansard roof and showed the Board the elevation plans.

Gene Hooten showed the original plans and new submittal plans. He spoke to the three and four story elevations, the first floor apartments would actually be buffered by a retaining wall. The neighbors see only a three story building. He spoke to reducing the unit's square footage. They dropped the roof line, and pulled the mechanical into a roof well. The look of the height of the building was changed by the roof line and changing both the ground entrance and setback from the property lines, the setback was increased to 50 feet. The height of the roof at its tallest at four stories is only three feet lower than originally designed, however the majority of the building has a significantly lower roof and is at 50 feet with a mid-point at 46 feet.

Mr. Lager questioned the top roof height of the four story building portion with the mansard roof. Mr. Hooten stated its 54 foot to the top of the roof line. He mentioned the neighbors who spoke in opposition at the last meeting now support the request.

Matt Van Dyk, Miller Johnson, Development Council for Heritage Community, he spoke to:

- 1.) The special circumstances peculiar to the land, the topography slopes down, there's a Consumers Energy substation they had to work around when building.
- 2.) The literal interpretation and enforcement of the Ordinance would cause practical difficulty. It would render the project impossible due to limitations required.
- 3.) The granting of the variance will not adversely affect adjacent land in a material way, the building position will be placed double the setback required. He spoke to the additional trees, vegetative buffer between the residents behind. He spoke to burying the mechanicals in the roof well.
- 4.) The granting of the variance will be generally consistent with the purpose and intent of the Ordinance, the purpose of the height restriction is to minimize the visual impact on the surround properties. He spoke to reducing the building height, hidden mechanicals in the roof well, the split-story scheme, preserving the existing tree buffer, maintain the location within the hollow of the topography and removing substantial square footage from the building.

Mr. Carroll questioned the landscaping between the building and the neighbors' concerns with tree types. Mr. Eldridge commented those issues would be handled in the site plan review.

Bill Millard, 211 E. Water, on the Board of Directors of Heritage Community stated they are a non-profit organization and spoke in favor. In supporting the Heritage Community mission they need to increase the number of independent units on the campus.

Matt Shankle, 2400 Portage Rd., the Director of Sales and Marketing of Heritage Community, spoke to the process that started over seven months ago. After seeing the opposition at the last ZBA meeting they knew they needed to share their vision with their neighbors. After meetings with the neighbors their questions were answered and details were shown and discussed. He spoke to the signatures of support from the adjoining neighbors.

Don Neepkins, a resident of Wyndham, moved in after the loss of his wife, he stated it's more than a retirement home, it provides a way of life, he exercises, diets, has friends, they watch movies, play cards, etc. He now is on the Heritage Community Board of Directors.

Daniel Davie, 609 Norton Dr. stated he spoke in opposition at the last meeting, after attending the neighborhood meetings, Heritage Community listened to the neighbors and the roof line was lowered and their concerns heard, the new design meets the neighborhood, he now is in favor.

Rachael Longstead, 2400 Portage Rd., stated she went to the meetings and spoke to the efforts of Heritage Community on redesigning the project from the neighbor's concerns and still meets the needs of the residents.

Chair Youngs closed the public hearing.

### **FINDING OF FACT**

Mr. Lager moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 500 Golden Drive shall include all information included in the notice of public hearing dated October 29, 2018.
- 2.) Forty-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.
- 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: Mr. Prince, spoke on behalf of the applicant, describing the business of the applicant as providing housing for seniors, the project was before the Board a couple months ago, and was denied, the applicant met with the neighbors on a couple of occasions and redesigned the project. Gene Hooten, spoke about the elements of the redesign, the building is still being used as senior living housing, the current design is significantly lower, the height and look of the height of the building by changing the roof line and changing both the ground entrance and setback from the property lines, the setback was increased to 50 feet, they added trees and shrubs to screen the neighbors adjacent to the building, The height of the roof at its tallest at four stories is only three feet lower than

originally designed, however the majority of the building has a significantly lower roof and is at 50 feet with a mid-point at 46 feet. The redesign reduced the unit's space approximately 9,000 sq. ft. Matt Van Dyk, spoke on behalf of the applicant and analyzed the various elements for determining whether the motion for a dimensional variance be granted. Speaking in favor were Bill Millard, on the Board of Directors, Matt Shankle, Director of Sales for the applicant, Rachael Homestead, Don Neepkins resident of Wyndham, Daniel Davie originally didn't support the application but after hearing the input of the redesign felt the neighbor's concerns were addressed with care adequately and feels the building fits the character of the neighborhood.

**Mr. Carroll seconded the Finding of Fact.**

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

**Chair Youngs moved to approve the application, seconded by Mr. Houston.**

Mr. Houston stated he was impressed with the modifications of the design and collaborating with the neighbors.

Mr. Flach stated he attended the neighborhood meeting and the building will add value to the community.

Chair Young spoke to the time and effort that went into the redesign of the building and reviewed the criteria conditions that must be met to qualify and stated he was in favor.

**Motion approved by roll call vote unanimously.**

Mr. Houston read the application for 610 E. Cork Street, Parcel # 06-34-227-004:

**ZBA# 18-10-28: 610 E. Cork Street: An application for a variance to the provisions of the Zoning Ordinance 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 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).**

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 two responses were received.

Joe Lucas, Attorney for Rhodes McKee stated he was speaking on behalf of Harbor Farmz North, LLC the applicant. He thanked the City for adopting a Medical Marihuana Facility (MMF) Ordinance, without that framework people wouldn't be able to obtain the medicine they need. Attorney Lucas stated they were appealing the City's disqualification of Harbor Farmz from the lottery process that awarded a conditional certificate to operate. He gave a brief background stating the City passed a medical marihuana ordinance and the ordinance facilities ordinance has separation distance requirements to prevent congestion and clustering in commercial zones. If too many applicants apply for the limited space the City enacted rules which set forth the lottery process whereby a winner is chosen. To receive a certificate Harbor Farmz submitted an application on June 21, 2018 seeking to operate a Provisioning Center at 610 Cork St. that is located in a CC Zone. Since then Harbor Farmz has received prequalification from the State of Michigan and is ready to go as soon as the facility is approved at the local level. On June 27, 2018 Palmatier Enterprises applied for a permit to operate a Safety Compliance Facility at 550 Cork St. in a M1 Zone which is within 500 feet of 610 Cork St. where Harbor Farmz seeks to operate. He spoke of the other applicants seeking to operate dispensaries in that Cork St. cluster. Many were within 500 feet of each other and the City scheduled a lottery to pick who gets the certificate. Just a couple days before the lottery was held the City Clerk awarded the certificate to Palmatier Enterprises at 550 Cork St. then told Harbor Farmz that they were excluded because they were too close to an existing MMF and the zoning ordinance doesn't allow it. Harbor Farmz and other applicants objected, the City heard them, but scheduled the lottery none the less. The certificate awarded to Palmatier Enterprises is conditional pending the outcome of the hearing tonight. As is the results of the lottery also conditional pending the outcome. Harbor Farmz won the lottery, the Board has to overturn the City's denial of Harbor Farmz right to be in the lottery and therefore to get it's certificate which it won in the lottery. He stated it's a question of fairness when the City gave Palmatier Enterprises it conditional operating certificate it knew it would be within 500 feet of all the other applicants seeking to operate at 610 Cork St.. It knew the lottery process would be applicable, but gave Palmatier Enterprises a certificate none the less outside the lottery process. He feels the City ignored the lottery process required for applicants when there are separation distance conflicts. In circumventing the lottery process and the City's rules and the Zoning Ordinance the City is favoring one applicant over another. The law has to be applied evenly. He feels the City made a mistake when they granted Palmatier Enterprises a conditional approval certificate without making that company participate in the lottery process. Palmatier Enterprises location at 550 Cork St. clearly creates a separation distance under the zoning ordinance and the rules governing the resolution of the conflicts have to be applied. Section 4.2 AA4 of the Zoning Ordinance specifically applies to safety compliance facilities; this states the separations distance of 500 feet is required from other licensed MMF's in the CC Zone. In granting Palmatier Enterprises certificate outside of the lottery process the City Clerk reasoned that that section of the zoning code does not impose a separation distance on facilities located in an M1 Zone. That language is not found anywhere in the statute, the language that he stated is a direct quote from the statue. Nothing says that there are no separations distance requirements for facilities located in a manufacturing zone. Therefore there's clearly a separation distance requirement that's applicable to safety compliance facilities from other facilities in a CC Zone. That provision in the ordinance is clear, the ordinance doesn't say that separation distance of 500 feet is required from a licensed facility in the CC Zone unless the safety compliance facility is located in an M1 or M2 Zone that would have been clear. It mandates a distance for safety compliance facilities from other facilities in a CC Zone. He

gave scenarios if Harbor Farmz had their certificate in prior to Palmatier Enterprises and the different outcomes that could have occurred. He questioned if the City Clerk's right how can Harbor Farmz be required to be 500 feet apart Palmatier Enterprises, but Palmatier Enterprises doesn't have to be 500 feet from Harbor Farmz, it's an absurd interpretation in his opinion. He discussed other scenarios and their outcomes. He stated the only conclusion is the lottery process is applicable to facilities in the M1 or M2 Zone if they were going to be within 500 feet of a facility in a CC Zone. That's the only way that statue can be interpreted. He stated to resolve the matter they could withdraw the conditional certificate given to Palmatier Enterprises and honor the lottery results, or the Board could consider the separation distance don't cross zoning boundaries. There probably won't be another problem like this again, the separation distance requirements have worked, there won't be congestion, or concentration of facilities in a CC Zone clearly the City wasn't that concerned about it in a manufacturing zone since there are no other setback requirements in a manufacturing zone. Palmatier Enterprises if allowed to keep their certificate won't experience tons of traffic, they only have secure transporters bringing product in and out.

Mr. Houston questioned the time frame if Harbor Farmz received their approval first, then Palmatier Enterprises had later received approval they wouldn't have to adhere to the 500 foot distance requirement due to the zone they are in. Mr. Lucas stated that's what the Clerk seems to conclude too. If Harbor Farmz received their certificate first the City Clerk reasoned that there is no minimum distance requirement in an M1 Zone, therefore if Harbor Farmz is going into a M1 Zone there's no separation distance requirement so Palmatier Enterprises should get the certificate and Harbor Farmz would have their certificate.

Mr. Carroll questioned if Harbor Farmz received theirs first then Palmatier Enterprises still could have received there's regardless because the 500 foot distance wouldn't apply. Mr. Houston agreed.

Mr. Eldridge clarified how the process was structured, there was a three week window for accepting applications to avoid applicants camping outside of City Hall weeks in advance waiting for the moment the applications could be accepted. It didn't matter if the application was the first or last one to come in, they were all reviewed, in no priority. Then they were looked at for the applicable standards, the zone they were in, there was no MMF's at all in the City at that time. There was a clean slate to begin with. They determined what went to the lottery.

Mr. Houston clarified there was a qualification determined before the lottery. Mr. Eldridge replied that had to do with the separation distance requirements that were applicable.

Mr. Carroll questioned which trumps which, the ordinance trump the rule or the rule trump the ordinance.

Mr. Eldridge stated the Administrative Rules, the authority given the City Clerk that created the rules comes from the Ordinance, and so the Ordinance trumps the Administrative Rules.

Chair Youngs questioned why were these facilities allowed for in only one type of zone.

Mr. Eldridge stated they started by looking at the facilities and where those land use classifications fit into the ordinance. All the others ones except the provisions centers fit best

in the Manufacturing Zone District, your growing, processing, transporting, testing. The safety compliance facility could be a smaller laboratory, or larger, doing high volume testing of product. They started with those facilities being allowed in the Manufacturing Zone District, this is laid out clearly when looking at the first page of Ch. 4 Sec. 4.2 AA where it talks about each facility type and the zone district they are allowed in. The second page breaks out the applicable standards for each of the facility types that apply when that facility type is in the CC Zone District there are specific standards that apply. Four of the five best fit into the manufacturing zone, on a smaller scale it would be ok in a CC Zone District and created the applicable standards. The provisioning centers are more related to retail, they walk in and pay for a product and walk out with it, fits best in a Commercial Zone District. It's easier to police on a commercial corridor for our Public Safety Department.

Mr. Carroll asked Attorney Lucas to explain his interpretation of the language of the M1 and M2 Zone District.

Attorney Lucas commented when the City Attorney stated the Zoning Code doesn't impose any distance requirements for facilities in an M1 or M2 Zone that might be true among facilities in that zone, keyword being "among" and "in that zone". The statute clearly establishes the 500 foot setback requirement for distance requirement from any other facility in a commercial zone, even though it's in an M1 Zone it's within 500 feet of a CC Zone, it creates a separation conflict, which clearly it did. The awarding of the certificate to Palmatier Enterprises stopped Harbor Farmz from being eligible for the lottery, therefore the only way to look at the ordinance is to look at the express language, that says there is a separation distance requirement because that will trump any silence contained in the statute.

Mr. Houston clarified Attorney Lucas was inferring that this should only be applicable to facilities in the same zone if in the CC Zone it should have the 500 foot distance? But in the M1 and M2 Zone, but in that zone they don't have to abide by that separation.

Attorney Lucas replied correct, facilities in an M1 and M2 can be right next to each other. The law doesn't say a provisioning center can be within 500 feet, the statute says it must be 500 feet from the nearest other facility. Mr. Houston stated it doesn't speculate if it's in the same zone or different. Attorney Lucas agreed it doesn't specify that right, in a way that would allow the City to allow Palmatier Enterprises to keep its certificate and just say the separation distance requirements don't cross zone boundaries, therefore Harbor Farmz should be allowed to participate in the lottery and receive their certificate.

Mr. Carroll questioned about precedence already set for packaged liquor sales. He questioned the M1 Zone, is it legal it doesn't say there's a separation in M1, does it reverse the case for CC Zone.

Attorney Lucas commented he believes it's the City's position that facilities in the M1 and M2 Zone have no separation distance requirements that might be the case because the law doesn't specify any separation distance requirements for facilities among facilities in an M1 and M2 Zone. But it does specify a separation distance from testing facilities, in the CC Zone, which is Harbor Farmz. It clearly created a separation distance conflict that the lottery has to control. To award Palmatier Enterprises a certificate outside the lottery process was an error and therefore they eliminated Harbor Farmz from the lottery and its eligibility. The lottery was still held, Harbor Farmz still won and they should get their certificate.

Mr. Houston clarified it's the inconsistency of the application of the law he's objecting to. Attorney Lucas replied yes. Mr. Houston commented it's the administrative ruling, of the zoning requirement, if there's inconsistency should it be considered on the Board's perspective.

Attorney Lucas stated the City Clerk got it wrong when it awarded the certificate and held Harbor Farmz out of the lottery.

Mr. Eldridge commented in the architecture of the ordinance there are the facility types identified to which zone district they are allowed, the applicable standards that apply to each facility types in certain circumstances and it ends with a general provision which is the section that applies to all the facilities and then addresses things like being 1000 feet from schools, it's very well laid out and not as grey as some are looking at it.

Mr. Houston commented on the M Zones not having the 500 foot rule apply, if that's correct. Mr. Eldridge replied the one facility type the Administration had concerns with was the number of provisioning centers in the City of Kalamazoo that would result from adopting an ordinance to allowed MMF's. They discussed a certain number City wide, then shifted to being more flexible, and created a reasonable separation distance so when the City grows and changes and is rezoned there could be more provisioning centers added. There's no other facility type that has a 1000 foot separation distance between the same type of facility. The provisioning centers are being treated differently because they are the point of contact for the public to acquire the product.

Mr. Carroll questioned if Palmatier Enterprises showed up in January after the lottery had taken place and Harbor Farmz was in place and granted a license or they won the lottery. If Harbor Farmz won the lottery and Palmatier Enterprises was not in the picture and Palmatier Enterprises comes into the picture in January 2019 and wanted a safety compliance facility in the M1 Zone where they are, would Harbor Farmz be allowed to stay and would Palmatier Enterprises be granted a license?

Mr. Eldridge commented they would look at the facility type being a safety compliance facility they would look at the zone district in which it was located in and what the standards were that apply to a safety compliance facility in the Manufacturing Zone District and if it met all the criteria then they would issue it a provisional certificate. Mr. Houston by happenstance they could be within 500 feet of each other. Mr. Eldridge commented if that circumstance came to be, they would look at the face of the application, the property involved, underlying zone district.

Mr. Carroll rephrased his question, if Palmatier Enterprises applied now, assume they had done that in January, after Harbor Farmz had won the lottery. Palmatier Enterprises had been granted a conditional permit, with that assumption, moving it to January, then Harbor Farmz would already have had a license and Palmatier Enterprises would not have been denied.

Mr. Eldridge commented if the provisioning center was already established, then that is how they would look at it, it would be next to a provisioning center but in a different zone district. Attorney Lucas commented that's what the City Clerk concluded that there aren't setback requirements if the testing facility is located in an M1 Zone, using that rationale, Palmatier Enterprises gets its certificate. Mr. Eldridge commented however, that is the reason the City

accepted the applications over a three week period and then evaluated what was in front of them and made the determination. Going forward, they are talking about scenarios that “could occur”.

Mr. Carroll commented on alternate scenarios and if they would not have a problem with both being 500 feet from each other. He asked for clarification on the ten day rule that the City had to review applications and make provisional or conditional license grants. Mr. Eldridge commented at the close of the three week window, that was to determine which went into the lottery and which received the provisional certificate. Mr. Carroll stated the ten day period should have been done in that ten day time frame in his opinion. The lottery occurred after causing issues. He felt that two City people have indicated and quoted. “The Zoning Administrator due to the separation distance and certain zones it is necessary to review “all” applications at the same time.” Then the City Clerk who he wished was present stated “ a key point to understanding in considering the application process, the order of the application filing was irrelevant to the disposition of the applications. As indicated an Administrative Rule 14 and described in Rule 15 a lottery system was used to determine which applicants would receive provisional approval. Certificates in situations where there were facility to facility separation conflicts the lottery was used in pursuant to Rule 14 and 15. Administrative Rule 9 states “that applications will be reviewed in order received.” The disposition is irrelevant and everyone is equal, but they get reviewed in the order received. In the three week window, the application filing dates were they irrelevant to the disposition of the applicant or was it Rule 9 states that the applications will be reviewed in the order received. Given the facility to facility separation distance requirements in the Zoning Code, it would have been impossible to evaluate the applications from the Zoning perspective until all applications were received and the groupings and clusters of the proposed facility locations could be seen. He stated he didn’t understand the City Clerk is stating they should be reviewed in order, yet the order is irrelevant.

Attorney Robinson stated the City Clerk couldn’t be present, he’s in Colorado for the State Elections Bureau training for an audit of certain systems, Kalamazoo was picked as an audit jurisdiction. In terms of working with the City Clerk and reviewing the rules, when he meant “reviewing” all he was reviewing to make sure the applications were complete. He reviewed them in the order they came in, in regards to were all the requirements set forth in the Ordinance met. Some applications did not, some applicants wanted to occupy a space, but didn’t own it, they were in the process of leasing it, and the lease wasn’t included in the application. There were some problems with tenants stating they were willing to sub-lease, some applications came in with no proof of insurance, not meeting the insurance requirements. He was reviewing applications to make sure they are administratively complete. He reviewed them as they came in and gave the City Clerk’s Office ten days after the application period closed to again complete the Administrative review. At that time is when he set down with the Planning Department and gave them the addresses that were being applied for, and determined which ones did or didn’t have problems, or were clustered, one of the clusters was on E. Cork Street. Clusters involved the CC Zone and the M1 Zone. He explained to Mr. Houston, the rationale was there is no separation distance in M1 and M2, the rationale was they initially in 2017 they had a work group that included himself, Mr. Eldridge, the City Clerk, a member of Economic Development and a member of the Public Safety Department that worked on the Ordinances that eventually went to City Commission and were passed. Two Ordinances, the Licensing Ordinance and the Zoning Ordinance, there were two public hearings in late July 2017 in which they brought forth their drafts, and received public input into the draft. Nothing was set in stone, there were only ideas, they did have separation distances in the M1 and M2

Zones, but one point that came up by the Industry was they preferred they not have a separation distance, it's more efficient and safer for them to be clustered, it reduces the transportation of product between facilities of the grower, processor, to the safety compliance center and testing center if they are all in close proximity. It made sense, they listened to what they had to say, that's why there is no separation distance in M1 & M2 Zones. There are certain facilities that are restricted to M1 & M2, growers under State law are restricted to manufacturing, agricultural and un-zoned areas that's where growers must be. Because processor's are like a light industrial, the Planning Department decided it belongs in M1 & M2 Zones. Secure transporters can be in an M1, but are not as intense, they are like a fleet of vehicles, need a paved parking lot, behind a fence. Safety compliance centers, a lab it makes sense for them to be in an M1 or M2 close to where the product is being grown and can be easily tested, but it's not as intensive of a business and looks like an office facility and can be located in a CC Zone. He understands the argument from the petitioner that the language states "safety compliance centers are permitted in a CC or M1 and M2" that's what Palmatier Enterprises is, that's what they are, a testing center.

Mr. Houston commented they can be located in either. However, if they are in a M1 they can be anywhere, in a CC Zone they have to be 500 feet from other licensed facilities in a CC Zone. The key there, is it was carefully drafted with the word "other" if they wanted to say that a separation distance is required from licensed MMF's in a CC Zone they could have said that, and that would have required Harbor Farmz to maintain the 500 foot separation from an adjacent CC Zone, but the word "other" was inserted there to say that if you locate in a CC Zone you have to be 500 feet from "other" facilities in that CC Zone. Hence, the City Clerk along with his advice, the advice of the Planning Department that the Palmatier Enterprises application being in an M1, didn't have to worry about that, because they weren't in a CC Zone, they were in an M1 and therefore the 500 foot separation from the CC Zone didn't apply because there weren't a "other" facility in a CC Zone. Provisioning centers were limited to the CC Zone and can't locate anywhere else; as a result they had one right after another along E. Cork St. and six provisioning center applicants along that stretch, the ones furthest west would have be fine, they were within 1000 feet of each other, but well away from Palmatier Enterprises M1 location. The three to the east were all too close which includes the applicant, they were the closest one. The location requirements were carefully thought out and that's the way it was applied, that's the rationale for the way ordinance was drafted and applied.

Mr. Houston commented even though they are in two different zone districts the provisioning center facility can't be within 500 feet of the facility in the M1 Zone.

Attorney Lucas commented but the facility in the M1 Zone can be within 500 feet of a facility in CC Zone. He feels that's a discrimination of properties and the M1 and M2 will always win. The only way Harbor Farmz could get a permit is if they were 501 feet into a CC Zone away from a boundary from an M1 Zone, but the statue doesn't say that. Mr. Houston stated all that is legal may not always be fair.

Mr. Carroll questioned if the tentative lottery results became the actual results would all seven applicants receive permits? Mr. Eldridge stated no, only Harbor Farmz, the six provisioning centers are within 1000 feet of one another. There can only be one provisioning center awarded. They discussed different scenarios and outcomes. There was another applicant and a law firm that was threatening to cause the lottery to come to a halt.

Attorney Robinson stated the MPM-R West initially was in the same position as Harbor Farmz, stating it wasn't fair and threatened to sue to prevent the lottery, they wanted everyone to be included. They initially were only going to include the three provisioning centers to the west, they were the only ones 500 feet away from Palmatier Enterprises, but they stated they had to include them (MPM-R), and they wanted to include the safety compliance centers. The rationale was they didn't want to hold the lottery to have a Judge say, they should have included everybody, because they wouldn't have known what the results would have been. So they put everyone in and the lottery was held that it was tentative, that Palmatier Enterprises, Harbor Farmz, Green Bronco and MPM-R were not eligible to win but were including them in case there was a law suit they want a Judge to see how things would have played out. They didn't want to have to redo the lottery process again, someone might have won in this round and but in the next round they might have lost and there would have been an inconsistency. It's possible, and probably would have foreclosed this hearing is if Palmatier Enterprises had won, that could have been a possibility as well. He had conversations with the Attorney representing MPM-R and asked if they wanted Palmatier Enterprises in the mix, and they did. Harbor Farmz didn't make any statements about threatening lawsuits until they were the winner and then they started talking about a lawsuit.

Chair Youngs asked how many areas or more conflicts with the M1 and the CC Zones being next to each other. Is this the only site in the City of Kalamazoo where this could occur. Mr. Eldridge stated there are others near Sprinkle and Miller Rd. , it's not unique, and it's also not unusual for the City, because they have a separation distance between alcohol beverage sales locations that's a half mile, it could be a gas station in a CC Zone District, and if a convenience store within a half mile in a CN1 Zone District, they can't get a license to sell beer and wine.

Attorney Robinson commented the likelihood of another conflict like this in the future would be somewhat remote, the reason being, with the passage of the recreational marihuana, the only people who can get a recreational license for the first twenty-four months are people who already have their medical license, that won't take place for another two years. There are a couple of exceptions, if you're a Class A grower, you may be able to get a license, or a micro business (a mom and pop grow process sell operation) you can get a license. Everybody else Class B Class C, transporters, provisioning centers, and the like you have to have a Medical Facilities License to get the Recreational Establishment License, and those licensing aren't going to be available from the State at the earliest until about a year from now, the State then has ninety days to act, accept or reject those applications, the first Recreational Commercial Facilities will be in early 2012.

Mr. Lager commented they are relying on an interpretation of Rule 14, the resolution of separate separation distance conflicts and that all the parties should have been put into the lottery, was there something in Sec. 4.2AA of the Ordinance that makes Palmatier Enterprises ineligible for a provisional approval certificate.

Attorney Lucas commented that Sec. 4.2AA4 applies specifically for safety compliance facilities and states "a separation distance of 500 feet is required from other licensed medical marihuana facilities in a CC Zone" It's his position that imposes separation distance requirement on testing faculties thus, Palmatier Enterprises should have been in the lottery. Alternatively and Mr. Carroll hit on the solution that if the City's interpretation of the Zoning Ordinance that is silent as to separation distances for testing facilities in a M1 or M2 Zone. If there is no separation distance requirement applicable to safety complaisance facilities in M1 or

M2 Zones then go with the lottery, give Harbor Farmz their certificate and give Palmatier Enterprises their certificate because it's in a M1 and M2 Zone where there's no distance requirements.

Mr. Lager questioned again in Sec. 4.2 AA 4 c what his response was to what Attorney Robinson seems to be saying that he is not interpreting the word "other". Attorney Lucas replied "so then the City is saying that "other" necessarily means that the testing facility has to be in CC Zone in order for that to kick in." Mr. Houston clarified for the "other" to kick in. Attorney Lucas stated the City believes that, but in his opinion that is not what that sentence says, even though the word "other" is in there, the City could have been more clear than that, and been specific as to how that would have been such as that by saying a separation distance is required for other licensed facilities in a CC Zone "unless" the safety compliance facility is located in a M1 or M2 Zone. Clarify it then, but it isn't clear.

Mr. Houston clarified Attorney Lucas doesn't feel it's complete. Attorney Lucas states it's subject to interpretation and was interpreted wrongly and precludes Harbor Farmz from getting a certificate.

Attorney Robinson pointed out that the law doesn't require the specificity that Mr. Lucas is arguing. He also pointed out there is a difference, at 4 it says from "other" licensed facilities in a CC Zone, the word used is "other". If you look at applicable standards for provisioning centers at Sec. 4.2 AA 5d it says, a provisioning center must be at least 500 feet from any "other". The word "any" is used before the word "other" licensed MMF's. That means "any other" that means even within one in an adjacent zone.

Attorney Lucas added the interpretation does yield the result that if Harbor Farmz got in first then Palmatier Enterprises is free to get its permit because it's not subject to a distance requirement.

Mr. Carroll asked if Palmatier Enterprises and Harbor Farmz are competitors. Attorney Lucas stated no, Harbor Farmz does not operate a safety compliance facility.

Mr. Carroll questioned what the spirit of three week window. Mr. Eldridge stated it was meant to create a controlled structured environment for the introduction of MMF's into the City of Kalamazoo's landscape, there were the Zoning Ordinance amendments, the Chapter 20 B Ordinance for the licensing process, the Administrative Rules the City Clerk was allowed to create to govern how the process worked. It was structured from start to finish how it was to be carried out and the three week window was a very particular control point to collect all the applicant's information and go through the applications.

Attorney Robinson added that the whole process was done with all due diligence speed, they knew there was a pent up interest in MMF's being located in Kalamazoo. Once it became a law, he received inquiries about when the ordinance would be adopted, and constant questions. Mr. Eldridge had the same responses and questions. The Administration had no idea of what kind of response they'd get or how many facilities would be applied for. What they didn't want from a planning perspective and social equity in the neighborhoods was the replication of what was seen from packaged liquor stores. At an intersection where three out of the four corners have liquor stores on them and seem to be concentrated in low income neighborhoods. They didn't want that to occur, they wanted to restrict where provisioning centers could be

located, let the market determine how many could be in operation by using separation distances between them so there isn't a clustered affect. To make sure they were in various areas of the City being equitable in throughout the community and not all located in the north entrance. It was a carefully considered, controlled approach, but didn't know what the demand was, and they didn't want an unlimited period where applicants would come in at the last minute. They wanted a finite idea, the landscape is always changing, to know what was being applied for and where to see how the ordinance is working out. They knew there was the possibility of clusters and used the lottery system to be as fair as possible. All the individuals had to have complete applications to be placed in the lottery, and were all equal in that regards. Some people wanted a merit based system, but that would be based on subjectivity, and would create another set of problems, so that was the rationale and process to apply.

Mr. Houston commented if Harbor Farmz was located farther away from Palmatier Enterprises they would still be able to operate. Attorney Robinson commented the clustering didn't know what was going to occur in the M1 Zone, and got an option to purchase to lease knowing they were 500 feet away from the M1 Zone.

Attorney Lucas commented in closing when Palmatier Enterprises filed its application they identified where they were going, there's no way to deny that it did create a separation distance conflict. At that point the rule referenced by the statute kicks in and requires the lottery to be held, in balancing the equities of the situation by denying Harbor Farmz on the basis that is being discussed creates a huge harm to Harbor Farmz and doesn't hurt Palmatier Enterprises at all because they can still get their permit because they are in an M1 Zone.

Mr. Houston commented at least the land owner hadn't begun to build on the property, they could seek other locations. Attorney Lucas stated its 370 feet away from Palmatier Enterprises, there will be no retail traffic from them. The clustering and congestion the City wanted to avoid is still accomplished, it's just 120 feet short, the letter of the law isn't met, but the spirit of the law is.

Speaking in favor:

Michael Ward, owner of Harbor Farmz stated he made a commitment to the City, he's worked with the City, been involved with the ordinance discussions, the lighting versus LED lights, and they are in the process of purchasing land from the Brownfield Development. Developing an Industrial Park on Cork St. creating jobs, and investing over six million dollars, building there. He's all about fairness, there was a cluster on Cork St. by design in that zone. Everyone knew it was going to happen, he saw the people who applied and where, there was going to be a lottery. Then he found out Palmatier Enterprises who he welcomes as a safety compliance center in the area, he had no problem with them. He asked for fairness, unfortunately he was kicked out of the lottery and forced to sue the City. He took offense that by giving one person a certificate took him out of the race. They were picked first and he asks for as shot tonight.

Speaking in opposition:

Joey Kejbou, 21150 Coolidge Hwy Oak Park, Michigan. Attorney and representative of 736 Relief, stated they were in second place behind Harbor Farmz. He reviewed all the documents and ordinance, in summary Harbor Farmz position is two-fold, their first point is the City is improperly interpreting an ordinance that four different bodies, the law requirements, the City

Clerk, the Planning Department, and Public Safety all collaborated over for a whole year to put together, very carefully throughout and they are interpreting their own ordinance improperly. The second point is, they now find the process absurd in the aftermath of what took place. With respect to the first argument, the ordinance is very clearly, verbatim it says a “a provisioning center may not be located within 1000 feet of “any other” provisioning center and 500 feet of “any other” MMF.” It doesn’t identify or distinguish a class based on zoning. With respect to safety compliance facility they are allowed in M1, M2 and CC Zones, if found in the M1 or M2 it clearly states there are no buffers, the industrial park is an area where there should be clusters and there should be a segregated population of medical marijuana businesses. It also identifies the keyword “other” it cannot be near “other” facilities in a commercial zone if it itself is in a commercial zone. That is the distinguishing factor. Palmatier Enterprises is in an industrial zone, Harbor Farmz was not, they are in a CC Zone, and they could have taken the initiative to find a property that did qualify, that was 500 or 1000 feet away from another facility or all the other provisioning centers so they could have been in the lottery. They did their due diligence, their homework and submitted, they’ve spent tens of thousands of dollars on this project like others did. While others are complaining about Palmatier Enterprises and Harbor Farmz plight in the lottery, what about them, they did everything asked, fairly participated, spent all the money, investing in the City, they are being overlooked at this point. In respect to Harbor Farmz response “it’s an absurd result” he finds it interesting they didn’t file a formal appeal before the fact, he personally spoke with Mr. Eldridge and that was the end of it. There was no formal appeal, they were only a part of this process because MPM-R filed an appeal, got put into the lottery and after the fact, Harbor Farmz wanted to appeal. He’s been an Attorney in the medical marijuana field for over five years and stated, the City with different government bodies have got the Medical Marijuana Ordinance implemented and have carefully thought out and systematically placed the different facilities that would be within the City to make it a fair process and allowed everyone an opportunity within a twenty-one day period to apply. He stated if the Board grants the appeal tonight, they will undermine everything the City has worked towards and sets precedence for the State and asked they deny the appeal.

Omar Fakhouri, partner of 736 Relief, representing the property a 736 Cork St., commented he’d been a part of the process from the beginning, from the public discussion to drafting the ordinance. He understands the intent of the ordinance, and the interpretation from the City. They actually had property they submitted at 620 E. Cork also. They knew there was a safety compliance center there, and submitted for 620 E. Cork in case Palmatier Enterprises didn’t submit a complete application or they were denied for some reason. They were deemed ineligible after Palmatier Enterprises submitted their application, they understood the ordinance and knew it didn’t qualify. They are asking the Board to follow the Ordinance, and how it was written and for the spirit of how it was drafted to be upheld.

Mr. Carroll questioned how they knew about Palmatier Enterprises. Mr. Fakhouri commented Palmatier Enterprises had been operating or had initial approval he believed to potentially operating a testing facility, not a formal approval and they’d heard about it. He searched who owned property along Cork St. to determine the ownership the properties.

Mr. Eldridge commented Palmatier Enterprises old location on Riverview Dr. was called “The Spott.” That zoning didn’t allow for Safety Compliance Facilities and knew they had to relocate, and had already leased the building on E. Cork St.

Attorney Robinson commented Palmatier Enterprises operating and “The Spott” is unique, they were a Safety Compliance Center, and he believes they were the only one in Southwest Michigan and there were a lot of caregivers who take their products to “The Spott” to be tested and in late 2017 the State permitted and emergency rule that permitted the cities to grandfather for a short period of time Marihuana Operations to continue. Some communities had dispensaries operating in those communities that had concerns they’d be closed in December of 2017 and “The Spott” the believes is the only Testing Facility Center actively testing marihuana and the City Commission pursuant to that authority granted by the State of Michigan granted “The Spott” continued permission to operate while they had to get a State license. He discussed the timeline that has pushed from June to October, and now have received a License from the State to operate as a Safety Compliance Center, or are very close. They still have to get their local license. They are a unique circumstance.

Mr. Eldridge commented from the correspondence in opposition from Joel Ritesma, 3221 Redmond, Ritesma Precision Machining, Inc. asking the Board to uphold current zoning classifications and deny the application request.

Chair Youngs closed the public hearing.

## **FINDING OF FACT**

Mr. Carroll moved the Finding of Fact as follows:

- 1.) The Finding of Fact for 610 E. Cork St. shall include all information included in the notice of public hearing dated October 30, 2018.
- 2.) Thirty-three notices of public hearing were sent and two 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: Both Harbor Farmz and Palmatier Enterprises submitted license applications between the dates of June 7th and June 28<sup>th</sup>, 2018. The Zone CC has a separation distance requirement of 500 feet between all MMF’s. Zone M1 and M2 have no MMF separation distance requirements. Harbor Farmz proposed provisioning location is within 500 feet of other MMF applicants. Palmatier Enterprises was granted a conditional permit from the City of Kalamazoo.

**Mr. Houston seconded the Finding of Fact.**

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

**Chair Youngs moved to approve the application for part 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, seconded by Mr. Carroll.**

Mr. Lager clarified responding to deny is to uphold the City's position. Mr. Eldridge replied correct.

Yes: Carroll, Lager, Youngs, Flach, Doane

No: Houston

**Motion denied by roll call vote.**

**Chair Youngs moved to approve the application for part 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). , seconded by Ms. Doane.**

Mr. Carroll commented to vote yes because of the precedence already set by the packaged liquor sales in the same situation.

Yes: Doane, Carroll, Lager, Youngs

No: Houston, Flach

**Motion denied by roll call vote.**

**OTHER BUSINESS:**

Mr. Eldridge reminded the Board members of the training on January 28<sup>th</sup> and he'd have a new copy of the Zoning Ordinance to hand out.

**ADJOURNMENT:**

**The meeting was adjourned at 10:04 p.m.**

**Submitted By** \_\_\_\_\_ **Date** \_\_\_\_\_  
Recording Secretary

**Reviewed By** \_\_\_\_\_ **Date** \_\_\_\_\_  
City Staff

Approved By \_\_\_\_\_ Date \_\_\_\_\_  
Chair

DRAFT



**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

November 27, 2018

**RE: ZBA #18-12-32  
819 S. Westnedge Avenue  
Parcel #06-22-160-002**

Dear Property Owner:

An application for a variance for provisions of the Zoning Ordinance has been filed with the Zoning Board of Appeals by Muhammed M. Abbas, the property owner. The request concerns the property at 819 S. Westnedge Avenue, which is situated in use Zone CN-1, Commercial – Neighborhood District.

The applicant is requesting a use variance from Chapter 9, Section 9.2 F, to change the nonconforming use which is a convenience store with an SDM License to sell beer and wine to another nonconforming use which is a convenience store with an SDM and SDD License to sell beer wine and hard liquor. The South Westnedge Market is nonconforming with regard to alcoholic beverage sales because it is located approximately 1,780 feet from the Food Max Convenience Store with alcoholic beverage sales, where the Zoning Ordinance requires a separation distance of 2,640 feet (1/2 mile).

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, December 13, 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](http://www.kalamazoocity.org/boards)

If you have any questions, please call (269) 337-8026 or submit by email at [eldridgep@kalamazoocity.org](mailto: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 muhammad m Abbas  
 Address 819 S westnedge ave.  
 City, State, Zip Kalamazoo, MI, 49008  
 Phone 269-383-0000 Cell 269-779-7656  
 Fax \_\_\_\_\_ Email \_\_\_\_\_

**Owner:** Name muhammad m Abbas  
 Address 8348 E N ave  
 City, State, Zip Kalamazoo, mi. 49048  
 Phone 269-383-0000 Cell 269-779-7656  
 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 819 S. westnedge ave. Kalamazoo

This property is located between Ranney st street and Vine st street, on the

north  south  east  west side of the street.

CCN# 06-22-160-002 Zone 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

- \$ 200 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)

M. N. A. Signature of Applicant 10-9-18 Date

\_\_\_\_\_  
Signature of Owner (if different than applicant) Date

## ATTACHMENT TO APPLICATION

### I. Introduction and Factual Background:

Mohammed Abbas (“Abbas”) owns certain real property commonly known as 819 S. Westnedge Avenue, Kalamazoo 49008 (the “Property”), on which he operates South Westnedge Market, LLC d/b/a South Westnedge Market (the “Market”). Since approximately 2012, the Market has held a Specially Designated Merchant (“SDM”) license issued by the Michigan Liquor Control Commission (“MLCC”) for use at the Property. While a license holder, the Market has not committed any MLCC violations. On or around August 28, 2018, the Market was issued a separate Specially Designated Distributor (“SDD”) license by the MLCC.<sup>1</sup>

On September 5, 2018, Peter Eldridge (“Eldridge”), Zoning Administrator for the City of Kalamazoo, informed Abbas that the Market was unable to utilize the SDD license on the Property. Use was impermissible because:

The subject building for said license is approximately 1,780 feet from another convenience store with an SDM License (Food Max, 802 S. Burdick Street).<sup>2</sup> The Zoning Ordinance requires a minimum spacing of 2,640 feet from another store with packaged alcoholic beverage sales.<sup>3</sup> Therefore, these locations are legal nonconforming as they do not meet the separation distance requirement. Any additional MLCC license which would result in the increased intensity of a nonconforming use is not permitted.

On September 19, 2018, Eldridge reiterated that

The noncompliance alcoholic beverage sales locations which are too close together in the City of Kalamazoo are deemed legal to continue to operate but nonconforming in regard to the alcohol sales. In this circumstance, the adding of the SDD License would result in an expansion of this nonconforming use.

Consequently, while the Market is permitted to continue to operate under the SDM license, the addition of the SDD license has been deemed an impermissible “expansion.” Eldridge directed Abbas to seek a use variance.<sup>4</sup> Respectfully, Abbas now requests that the Zoning Board of Appeals reverse the above interpretation and permit the use of the SDD license on the Property or, in the alternative, issue a use variance.

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<sup>1</sup> There are various types of licenses that the MLCC issues. Under a SDM license, a licensee is permitted to sell beer and wine for offsite consumption. By comparison, under a SDD license, a licensee is permitted to sell liquor for offsite consumption. Where otherwise available and permitted, a licensee is free to have both a SDM and SDD license.

<sup>2</sup> The distance requirement in this instance was adopted by amendment to the Zoning Ordinance in June of 2014.

<sup>3</sup> The MLCC previously had a similar requirement concerning distances between SDD licensees. However, as of April 17, 2018, the MLCC has rescinded the so-called “Half-Mile Rule.”

<sup>4</sup> See attached email.

## II. Analysis and Argument:

### A. There is No “Increased Intensity” or “Expansion” of Legal Nonconforming Use

Under the Zoning Ordinance (the “Ordinance”) “packaged alcoholic liquors” is defined as “including beer, wine, and spirituous liquors.” Ordinance, §12.3 (included within the definition of “packaged liquor store”). “Packaged alcoholic liquors” include not only beer and wine, but also “spirituous liquors.” Prior to issuance of the SDD license (permitting the sale of “spirituous liquors”), the Market was already in possession of the SDM license (permitting the sale of beer and wine). Consequently, the Market was and continues to sell “packaged alcoholic liquors.” There is no increasing intensity in use. The use remains the same. At most, another category of “packaged alcoholic liquors” is being added.

Similarly, there is no expansion or enlargement of a lawful nonconforming use. Concerning enlargement or expansion, the Ordinance 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.

Ordinance, 9.2A. “Expansion” or “enlargement” under the Ordinance contemplates spatial expansion only. Selling liquor, where previously only beer and wine were sold is not within the definition. To the extent liquor is being added to inventory at the Market on the Property, there will be no enlargement or expansion of the space. Instead, the liquor will simply take the place of other inventory.

### B. Minimum Distance Requirements are Satisfied

In measuring distances, the Ordinance states, “all distances specified in this Ordinance are to be measured as the length of an imaginary straight line.” Ordinance, §5.3A (emphasis added). By using “are to” instead of the terms “shall” or “must” it is arguable that the use of an “imaginary straight line” should not be used in measuring distances in this instance. See Ordinance, §1.6H (stating the “words ‘shall’ and ‘must’ are always mandatory . . .”). Distance measurements when one is driving or walking are simply not done on a straight-line basis. There are three routes to travel from the Property to the other purported packaged liquor store and/or convenience store selling packaged alcoholic liquors (on 802 S Burdick Street). In terms of distance, those routes are measured as: 4,224 feet; 5,280 feet; and 5,808 feet. Each route, therefore, is well in excess of the limitation (2,640) relied upon to prevent use of the SDD license at the Property.

### C. The Request Differs From ZBA #16-06-16: 1110 Weaver Avenue

Counsel for Abbas reviewed the minutes from the Zoning Board of Appeals in an attempt to locate factual circumstances similar to the present case. In ZBA #16-06-16: 1110 Weaver Avenue, the applicant was attempting to add an SDD license to a location already in possession of an SDM license; however, like the Property, it was less than 2,640 feet from an existing licensee. As reflected in the minutes from the July 14, 2016 meeting of the Zoning Board of Appeals, the

applicant's request was denied *solely* because the applicant had *abandoned* the otherwise lawful nonconforming use. Here, there has been no abandonment. The Market has been continuously offering beer and wine for sale and offsite consumption at the Property since 2012. As such, the reason for the denial in ZBA #16-06-16: 1110 Weaver Avenue is inapplicable.

#### D. Requirements for Use Variance Satisfied

To the extent that it is determined that a use variance is required, then all of the elements for one to issue in this instance have been satisfied with competent, material, and substantial evidence.

1. Based on Abbas' experience in the convenience store business, the Market can no longer be operated solely with an SDM license. The market for this type of business dictates that liquor also be offered. A literal interpretation and enforcement of the Ordinance in this instance will deprive Abbas from operating the Market on the Property as required for its survival.

2. The special circumstance in this instance is manifest. Using any reasonable distance measurement, the Property is well over 2,640 feet from another package liquor store. Even using an imaginary straight line measurement, the Property is between one-tenth of a mile and two-tenths of a mile from complying with the distance requirement.

3. The special circumstances are not the result of actions of Abbas. There would have been no issue prior to 2014 with Abbas utilizing the SDD license at the Property. The Property and its established use and development was in place well before the adoption of the applicable amendment in this instance. Moreover, the MLCC has abandoned enforcement of similar distance provisions in issuing SDD licenses.

4. Granting the variance is the minimum necessary to carry out the spirit of the Ordinance and is not contrary to the public interest. The Market was already selling "packaged alcoholic liquors." At most, it would now be offering another category of "packaged alcoholic liquors."

5. Granting the variance will not adversely impact adjacent land in any material way. The sale of "packaged alcoholic liquors" on the Property has been on-going and predated the amendatory language at issue in the present instance.

6. Granting a variance will be generally consistent with multiple purposes of the Ordinance, including without limitation conservation of the Property's value and the value of adjacent buildings.

#### III. Conclusion and Request for Relief

To ensure the continuing viability of his business, Abbas has secured an SDD license for the Market's use on the Property. The City of Kalamazoo has adopted the position that the addition of the SDD license represents an enlargement, expansion, or increase of a lawful nonconforming use. However, adding liquor to beer and wine inventory is not an enlargement, expansion, or

increase of a lawful nonconforming use. Moreover, the distance requirements in this instance have been satisfied using any reasonable measure of distance. Wherefore, Abbas and the Market respectfully request that they be permitted to utilize the SDD license at the Property.

Respectfully submitted,

BODMAN, PLC

By



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John D. Gardiner (P72641)  
Attorneys for Applicant

John,

I appreciate your review of the facts involved in this particular circumstance. The Michigan Liquor Control Commission has made administration of the Zoning Ordinance in Kalamazoo more difficult due to their lack of regard for local ordinances. The City of Kalamazoo has been placed in a position where sometimes we find out after the licenses are issued that the MLCC either did not advise of the a license under review or we were advised of the a license under review, sent a response that it did not meet local ordinance and the MLCC still issued the license.

The Zoning Board of Appeals is the correct means of appeal. The noncompliance alcoholic beverage sales locations which are too close together in the City of Kalamazoo are deemed legal to continue to operate but nonconforming in regard to the alcohol sales. In this circumstance, the adding of the SDD License would result in an expansion of this nonconforming use.

Fee for the Zoning Board of Appeals Use Variance Request: \$495

The upcoming Zoning Board of Appeals schedule is as follows:

- November 8<sup>th</sup>, 7 PM (Application Deadline Oct 11<sup>th</sup>.)
- December 13, 7 PM (Application Deadline Nov. 15<sup>th</sup>.)

Please let me know if you have any questions.

**Peter C. Eldridge, AICP**  
**Zoning Administrator**

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Community Planning & Economic Development Dept.  
City of Kalamazoo  
415 Stockbridge Avenue  
Kalamazoo, MI 49001  
PH: 269-337-8806  
FAX: 269-337-8513  
EMAIL: [eldridgep@kalamazoo-city.org](mailto:eldridgep@kalamazoo-city.org)

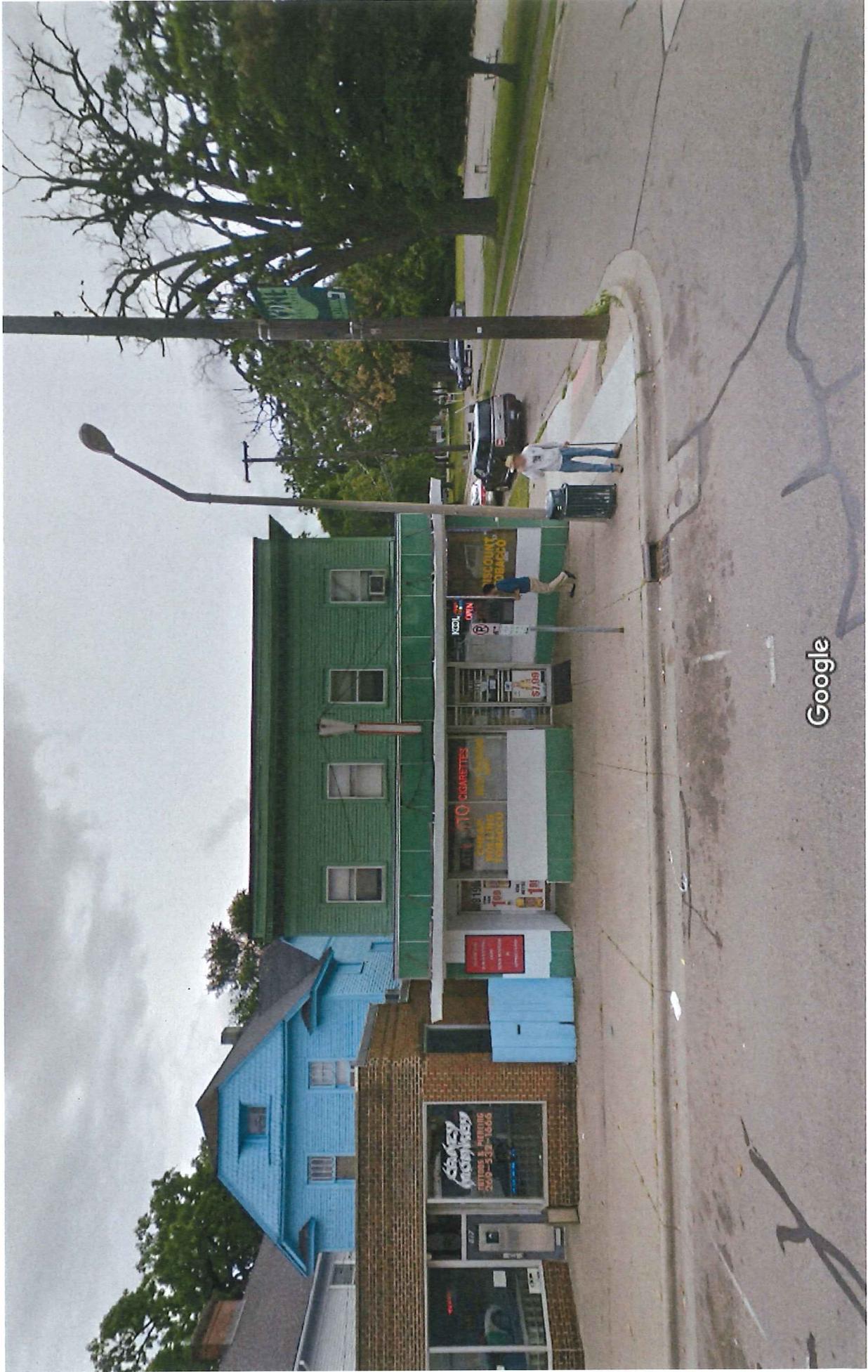
## NARRATIVE

Mohammed Abbas ("Abbas") owns certain real property commonly known as 819 S. Westnedge Avenue, Kalamazoo 49008 (the "Property"), on which he operates South Westnedge Market, LLC d/b/a South Westnedge Market (the "Market"). Since approximately 2012, the Market has held a Specially Designated Merchant ("SDM") license issued by the Michigan Liquor Control Commission ("MLCC") for use at the Property. On or around August 28, 2018, the Market was issued a separate Specially Designated Distributor ("SDD") license by the MLCC.

The SDD license permits Abbas to sell liquor, in addition to the beer and wine that is already being sold at the Market. The continuing viability of Abbas' business is dependent on being able to utilize the SDD license. Abbas has received favorable responses from customers. While a license holder, Abbas has not committed any MLCC violations.

Abbas respectfully requests that they he is permitted to utilize the SDD license at the Property.

Google Maps 820 S Westnedge Ave



**South Westnedge Market**

819 S. Westnedge Avenue

November 21, 2018





**Community Planning and Economic Development**

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

**COPY**

Mohammed M. & Muhammad W.R. Abbas  
Ali & Raza Raza / Ali Hussain  
446 Ranney Street  
Kalamazoo, MI 49001

September 5, 2018

**RE: Proposed SDD License**  
**Name of Applicant: South Westnedge Market LLC**  
**Location: 819 S. Westnedge Avenue. (Parcel #06-22-160-002)**

Dear Property Owners,

The Community Planning & Economic Development Department has been informed that you have been issued an SDD License for the South Westnedge Market at 819 S. Westnedge Avenue. This correspondence is intended to clearly state that you are not able to exercise the use of said license as it is in direct conflict with Chapter 4 of the City of Kalamazoo Zoning Ordinance.

The subject building for said license is approximately 1,780 feet from another convenience store with an SDM License (Food Max, 802 S. Burdick Street). The Zoning Ordinance requires a minimum spacing of 2,640 feet from another store with packaged alcoholic beverage sales. Therefore, these locations are legal nonconforming as they do not meet the separation distance requirement. Any additional MLCC license which would result in the increased intensity of a nonconforming use is not permitted.

If you have any questions, please contact me in the Community Planning & Economic Development Department at (269) 337-8806.

Sincerely,

Peter C. Eldridge, AICP  
Zoning Administrator

C: South Westnedge Market LLC, 2615 West Devon Avenue, Chicago IL 60659  
Michigan Liquor Control Commission, Department of Licensing and Regulatory Affairs  
525 W. Allegan Rd, P.O. Box 30005. Lansing, MI 48909  
Scott Borling, City Clerk  
Property File

RM-36

CN-1

W Vine St

W Vine St

Central Pl  
M15

S Westnedge Ave

CN-1

CN-1



Ranney St

Hage St

CN-1

RM-36

Westnedge Ct

CN-1

CO

borne St

300' Mailing Boundary  
819 S. Westnedge Ave.



Feet  
3123