PORTAGE

A Natural Place to Move

ZONING BOARD OF APPEALS

May 9, 2016

CITY OF PORTAGE ZONING BOARD OF APPEALS
Agenda

Monday, May 9, 2016
(7:00 pm)
Portage City Hall
Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES

* April 11, 2016 meeting

OLD BUSINESS:

* ZBA #15-11, Christine Pelletier, 4415 Raborn Court: Requesting a variance to b) retain a partially constructed 58-foot by 19-foot (1,102 sq. ft.) two story accessory building in the rear (south) yard that is 19.5 feet in height where a maximum 14-foot height is permitted.

NEW BUSINESS:

* ZBA #15-24, David Keyte, 6039, 6043 South Westnedge Avenue: Requesting a variance from the parking requirements to provide 23 off-street parking spaces where a minimum 44 spaces are required.

* ZBA #15-25, Kathleen Kline, 4622 Deep Point Drive: Requesting variances to: a) construct a second story addition above the existing garage located two feet from the front (west) property line where a minimum 25-foot front setback is required; b) retain the existing dwelling and attached garage that have 26% lot coverage where a maximum 25% is permitted; and c) construct a 10-foot by 7-fot master bathroom addition that will result in 27% lot coverage where a maximum 25% lot coverage is permitted.

OTHER BUSINESS:

Conflict of interest rules of procedure discussion (see materials transmitted)

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED:

April 28, 2016 City Attorney communication

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS DRAFT

Minutes of Meeting – April 11, 2016

The City of Portage Zoning Board of Appeals meeting was called to order by Jeffrey Bright at 7:00 p.m. in the Council Chambers. Approximately sixty people were in the audience.

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

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

APPROVAL OF THE MINUTES: Learned moved and Schau seconded a motion to approve the March 28, 2016 minutes with corrections recommended by staff. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #15-11, Christine Pelletier, 4415 Raborn Court: Bright noted the applicant submitted a request to postpone the item until the May 9, 2016 meeting. Mais stated the applicant reportedly encountered difficulties getting structural engineers to evaluate the barn's foundation and lumber.

A motion was made by Schaeffer, seconded by Seyburn to postpone the item until the May 9, 2016 meeting. Upon voice vote, motion passed 7-0.

ZBA #15-17, Bickford Cottage Assisted Living and Memory Care, 4707 West Milham Avenue: Bright inquired of staff if there were any updates since the item got tabled at the March 28, 2016 meeting. Mais reported the property owner of 4707 West Milham Avenue (Richard Eby) and 4721 West Milham (Michael Busche) had come to an agreement whereby some additional landscaping would be provided by the applicant, and Mr. Busche was now in support of the variance. Learned inquired if the support was due to the supplemental landscaping. Mr. Busche responded yes.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

A motion was made by Learned, seconded by Schau to approve a variance to retain an approximate 8,400 square-foot building addition along the west side of the existing Bickford Cottage facility to within 10-feet of the west property line where a 30-foot setback is required conditioned upon the applicant completing the supplemental landscaping as shown in plans included in the supplemental agenda, for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district which include the significant grade differences along the southern portion of the site and the surrounding zoning/land use pattern; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity; the right to develop a property with setbacks similar to other uses in the district; the immediate practical difficulty causing the need for the variance request was not created by the applicant; and the variance would not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-15; Ol' Moose BBQ, 7540 South Westnedge Avenue: Mais summarized the request for a Temporary Use Permit to operate a mobile food truck at 7540 South Westnedge Avenue from April 12 – June 5, 2016 and July 7 – October 12, 2016. Bright inquired if the applicant had anything to add. Chris Slocum responded no, except he wondered if it was possible to get a Temporary Use Permit for next year as well. Bright inquired if the Board could do that. Mais stated the Board can grant Temporary Uses for 12 month periods with up to one additional 12 month extension, and the Board could if they wanted approve the Temporary Use permit for the same date range in 2017 subject to city staff review. Seyburn inquired if portable bathrooms would be provided. Mais responded none were proposed. Learned inquired if food trucks

were subject to health inspections like brick and mortar restaurants. Mr. Slocum stated yes. Schau inquired why a Temporary Use permit was needed. Mais stated Temporary use permits are needed for uses not otherwise permitted in the district, and that food trucks were not permitted to operate in the same location for six months at a time.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

A motion was made by Learned, seconded by Robbe, to approve a Temporary Use Permit to operate a mobile food truck at 7540 South Westnedge Avenue from April 12 – June 5, 2016 and July 7 – October 12, 2016 subject to the following conditions: 1) The operation of the Ol' Moose BBQ be limited to April 12 – June 5, 2016 and July 7 – October 12, 2016 and for the same date ranges in 2017 subject to city staff review; 2) the food trailer be licensed by the Kalamazoo County Department of Health and Community Services; 3) food trailer tables and off-street parking set-up be consistent with the submitted site sketch; 4) hours of operation be limited to 11:00 a.m. to 8:00 p.m. Monday through Sunday; 5) the site be kept free from trash and refuse; 7) temporary signage be limited to one sign not exceeding 40 square feet; and 8) there be no sound amplifying equipment with the exception of a portable generator which must meet the requirements of Chapter 24, Article 4 (Noise). Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-16, Meyer Wood Products, 7518 South Westnedge Avenue: Mais summarized the request for a Temporary Use Permit to allow outdoor wood product and accessory building sales from April 29 – October 29, 2016 and April 29 – October 29, 2017. Roy Meyer was present to answer questions. Bright stated he thought it was better the property be used to sell wood products than let it sit vacant while the property was for sale. Seyburn inquired if there had been any problems connected with operation of the Temporary Use during the last two years. Mais stated no.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

A motion was made by Seyburn, seconded by Learned to grant a Temporary Use Permit to allow outdoor wood product and accessory building sales from April 29 – October 29, 2016 and April 29 – October 29, 2017 with the following conditions: 1) placement of all inventory meet minimum B-3 district setback (30-foot front, 10-foot side, 20-foot rear) 2) that the permit be subject to administrative review and approval in 2017, and 3) the site must be regularly monitored and maintained by the applicant. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-19, Lynn Van Pelt, 4580 Caribou Street: Mais summarized the request to construct a 12-foot by 14-foot three season porch 28 feet from the south (rear) property line where a minimum 40-foot setback is required. Lynn Van Pelt admitted she did not consider construction of a three season porch when the house was originally constructed but when the idea arose recently, she did not think it would be an issue as there were other houses in the neighborhood that had three season rear porches. Schau inquired if the applicant had considered conforming alternatives. Ms. Van Pelt stated she had, but putting the porch on the north side of the house was undesirable as it would get no sun, and a retractable awning in the rear yard would not protect lawn furniture very well. Robbe noted the Board has fairly consistently denied variance requests for accessory buildings simply because applicants wanted to build them and had run out of space to do so. Learned stated he struggled with how to get around this not being a self-created hardship, as there appeared to be adequate space on the lot to accommodate a three season porch if they had pursued a different house design in 2007 when it was originally constructed. Ms. Van Pelt stated the hardship was being on a corner lot, and that was not her fault. Ms. Van Pelt stated they also had mature vegetation along their south property line which should help minimize impacts on the neighbors to the south. Seyburn stated with regard to conforming original designs, garages are not usually placed behind the dwelling on corner lots, and that the larger dimensions required of corner lots place an additional burden on their owners.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

Seyburn stated he was sympathetic to people with corner lots, and thought placing a garage in the rear yard so as to leave adequate space for a three season porch, while perhaps conforming, would impact the neighbors more than the proposed three season porch. Learned stated he was concerned with creating an undesirable precedent, as buyers should know the drawbacks associated with corner lots when they purchase them. Robbe stated the house was functional without a three season porch and noted they had conforming alternatives. A motion was made by Seyburn, seconded by Bright to grant a variance to construct a 12-foot by 14-foot three season porch 28 feet from the south (rear) property line where a minimum 40-foot setback is required for the following reasons: there are exceptional circumstances which include that the property is a corner lot and the only reasonable place to located a screened in porch is on the south side of the dwelling; the variance is necessary for the preservation of a substantial property right, the right to develop the property in manner similar to other properties in the vicinity; the immediate practical difficulty causing the need for the variance was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Philipp-No, Learned-No, Seyburn-Yes, Bright-Yes, Robbe-No, Schau-No, Schaefer-Yes. The motion failed 3-4.

ZBA #15-20, Matt Nieuwenhuis, 3221 West Milham Avenue: Mais summarized the request to reconstruct a historic accessory building that is: a) 27.5 feet in height where a maximum 14-foot building height is permitted; b) is 2,600 square feet in area and exceeds the ground floor living area by 1,456 square feet; and c) exceeds 20 percent of the required rear yard by 600 square feet. Mr. Nieuwenhuis stated the barn design had already been approved by the Historic District Commission (HDC) and that the large structure was needed to store cars, contractor equipment, tools, and scaffolding. Robbe inquired how long the applicant had owned the property and noted it was currently in disrepair. Mr. Nieuwenhuis responded he has owned it for 13 years and the barn was already in disrepair when he purchased the property. Learned inquired if the applicant thought 60 days was a reasonable time to deconstruct the barn. The applicant stated 120 days was more realistic. Seyburn noted storage of contractor's equipment is not permitted in residential accessory buildings. The Board discussed various sizes of barns that might be functional and still maintain consistency with the HDC's approval. Learned stated he thought the barn should be reconstructed to conforming dimensions. Schau inquired what the smallest barn the applicant could get by with. Mr. Nieuwenhuis stated 24-foot by 50-foot (1,200 square feet). Schau inquired how tall would that make the barn (from grade to mid-roof). Mr. Nieuwenhuis stated 18 feet.

A public hearing was opened. A letter of opposition from Ellen Holt, 3310 West Milham Avenue was read. There being no further comment, the public hearing was closed.

A motion was made by Schau, seconded by Robbe, to grant a variance to reconstruct a historic accessory building that is a) up to 1,200 square feet in area, which will accommodate a 24-foot by 50-foot building, and b) up to 18 feet in height where a maximum 14-foot building height is permitted, conditioned upon completing deconstruction of the barn within 120 days, for the following reasons: there are exceptional circumstances which include the size being the minimum necessary to address the lack of accessory storage space, the historic character and size of the existing barn; the variance is necessary for the preservation of a substantial property right, the right replace the historic barn that will be dismantled; the immediate practical difficulty causing the need for the variance was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-22, Jimmie's BBQ, 5331 South Sprinkle Road: Mais summarized the request for a Temporary Use Permit to operate an outdoor barbecue grill at 5331 South Sprinkle Road from April 25 – October 25, 2016.

Jimmie Harvey was present to answer questions. Bright inquired if Perry Harley Davidson was okay with his customers using their bathroom. Mr. Harvey stated yes. Robbe inquired if the area where the proposed Temporary Use would be setting up would be using required parking spaces for Perry Harley Davidson. Mais stated no, surplus parking was available even with the Temporary Use in place.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

A motion was made by Schau, seconded by Robbe, to grant a Temporary Use Permit to operate an outdoor barbecue grill at 5331 South Sprinkle Road from April 25 – October 25, 2016 with the following conditions: 1) the Temporary use be permitted from April 25 – October, 25, 2017 subject to city staff review; 2) the outdoor barbeque be licensed by the Kalamazoo County Department of Health and Community Services; 3) table (under tent), pedestrian barrier, and tent set-up be consistent with the submitted site sketch; 4) hours of operation be limited to 10:00 a.m. to 8:00 p.m. Tuesday through Saturday; 5) the site be kept free from trash and refuse; 6) temporary signage be limited to one sign not exceeding 40 square feet (and not the two non-permitted flags shown in the application); 7) no sound amplifying equipment be permitted. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-23, John Krasinkiewicz, on behalf of Comerica Bank, 7941 South Westnedge Avenue: Mais summarized the request to construct a vestibule 25 feet from the west (front) property line where a minimum 30-foot setback is required. John Krasinkiewicz and Leonard Murz were available to answer questions. Learned noted the applicant did not have to construct the tower/vestibule and could simply leave the building like it is. Mr. Krasinkiewicz stated they propose to do both interior and exterior modifications and the interior layout could not be made any tighter while maintaining both visual lines for security and ADA compliance. Seyburn inquired if the building was currently in full compliance with ADA requirements. Mr. Krasinkiewicz said no.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

Learned stated wanting the tower branding did not constitute a practical difficulty. Robbe noted the Board had approved a similar request for Moe's Grill. Mr. Murz stated the proposed changes are not just for branding and cosmetic reasons. The ATM will be removed from its current location in the lobby for security reasons and relocated to a drive-thru lane, also the grade change near the existing entrance presents additional challenges with regard to providing access from the parking lot that is ADA compliant, which the proposed design will address. A motion was made by Robbe, seconded by Learned, to grant a variance to construct a vestibule 25 feet from the west (front) property line where a minimum 30-foot setback is required for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district which include the security and regulatory requirements; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity; the right to develop a property in compliance with ADA requirements; the immediate practical difficulty causing the need for the variance request was not created by the applicant; and the variance would not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-14, Jevin Weyenberg, 8314 Portage Road: Mais summarized the request for: a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 8314 Portage Road; or b) a use variance to operate a medical marihuana patient-caregiver exchange at 8314 Portage Road. Mr. Weyenberg stated that when the state passed the Michigan Medical Marihuana Act (MMMA) in 2008 he assumed citizens would have reasonable means to obtain it and doing so through a Home Occupation was not in his opinion reasonable. Mr. Weyenberg shared a video promoting the purported benefits of medical marihuana. Following the video, Learned stated he appreciated the sentiments expressed but wanted to give

the applicant the opportunity to address deficiencies in the application with specific regard to matters the Zoning Board rules on, as the Board only has authority to interpret the Zoning Ordinance, not re-write it. Mr. Weyenberg stated they have prepared an ordinance amendment and will provide it to City Council tomorrow. Seyburn stated he hoped the applicant understood that because a use variance was being requested they had to demonstrate the property could not otherwise be reasonably used for any other permitted use in the B-3 zoning district. Attorney Travis Copenhaver, speaking on behalf of Mr. Weyenberg said they understood this and while the property might be suitable for other permitted uses the reasons they were present were primarily for the purpose of the public hearing and to preserve their right of appeal. It was his client's position that the city's medical marihuana ordinance violates state statute. Seyburn stated the Board had no authority to determine whether or not the zoning code complies with state statute. Mr. Copenhaver said he understood that and the applicant's goal is to cooperate with the city in devising a new ordinance that complies with state statute, and to that end wanted the Board to table the request to allow them reasonable time to work with City Council. Robbe stated the time for doing that should have been before opening the business. Mr. Copenhaver responded their position is the city's ordinance is invalid and they are not required to obtain permission to operate. Schau stated that even if the Board agreed with the applicant's position, the Board is bound to act upon the ordinances as currently written, not how they might be re-written. Mr. Copenhaver responded if that was the case, the Board should table the item. Mr. Weyenberg was sworn in as a witness. Attorney Bear inquired if Mr. Weyenberg had employees and if so how many. Mr. Weyenberg responded he has five employees. Bear asked at any given time how many are working. Mr. Weyenberg responded approximately four. Bear asked if his employees were qualifying patients under the MMMA. Mr. Weyenberg responded yes, all have cards. Bear asked if they were also registered caregivers. Mr. Weyenberg responded yes. Bear inquired how many customers/patients they sold marihuana to on an average day. Mr. Weyenberg responded he did not know. Steve Bliss was sworn in and responded they consult with 30 to 40 patients a day. Bear inquired how they respond if someone comes in without a card. Mr. Bliss responded they set up a consultation with a caregiver and what transpires between the caregiver and patient is private. Bear inquired if there is marihuana on premises that can be transferred from caregivers to patients. Mr. Bliss stated yes and clarified the marihuana belongs to the caregiver, not the company. Bear inquired how much marihuana does a caregiver have at any given time. Mr. Bliss stated that depends on the individual caregiver and how many patients they have. Bear asked how the marihuana is stored. Mr. Bliss responded in airtight jars. Mr. Copenhaver interjected he did not understand the purpose of attorney Bear's questions. Bear stated to determine if the applicant was operating in compliance with the MMMA. Learned stated he did not think the Board was to determine whether or not they were in compliance with the MMMA. Bear responded the city is being asked by the applicant to approve a use, but the city cannot approve an illegal use, and it was therefore appropriate to ask questions to determine if the applicant is in compliance with the MMMA. Learned stated the Board should limit itself to determining whether or not the applicant meets the criteria for a use variance and that it sounded like the applicant has already conceded they do not, so the specifics of the business operations were not relevant.

A public hearing was opened. Brianna Hill stated the building at 8314 Portage Road incurs a hardship as it has attracted few tenants over the years. Mike Sims, Eric Johnson, Steve Bliss, Erin Hugett, Mark McMartin, Jacob Parker, John Rockwood and Scott Healy spoke in favor of allowing the applicant to operate at 8314 Portage Road. Minnie Tai spoke in opposition to the request. Attorney Glen Smith stated he was recently hired to represent Ms. Hill (ZBA #15-21) and while that is a separate case, the two cases were very similar in character. Mr. Smith stated Council would be considering a moratorium on the medical marihuana ordinance in the near future. Attorney Bear stated while nothing has yet been officially placed before Council, he was aware of the possibility and Council may consider this matter as soon as April 26th and could possibly impose a moratorium as soon as May 10th. Mr. Smith stated he thought ZBA #15-14 and ZBA #15-21 should both be tabled. There being no further comments the public hearing was closed.

A motion was made by Robbe, seconded by Learned, to deny a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 8314 Portage Road; and b) a use variance to operate a medical marihuana patient-caregiver exchange at 8314 Portage Road for the following reasons: the condition, location or situation of the specific piece of property is not unique to that property and the zoning

district in which it is located; the building, structure or land can be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located; the use variance may alter the character of the neighborhood or the intent of the comprehensive plan, and may be a detriment to adjacent properties; the variance will materially impair the intent and purpose of this article or the district in which it is located; the immediate unnecessary hardship causing the need for the variance was created by the applicant when they opened their business at this location without permission. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately. The Board discussed the option of tabling the item but decided to call the question. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-21, Brianna Hill/Jonathan Rockwood, 5090 (5092) South Sprinkle Road: Mais summarized the requests for: a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 5090 Sprinkle Road; or b) an appeal of the administrative decision not to permit a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road; or c) a use variance to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road; or d) a Temporary Use Permit to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road. Attorney Glen Smith requested his April 11, 2016 letter to Vicki Georgeau requesting ZBA #15-21 be postponed be read into the record. The letter was read into the record. The applicant also provided Board members copies of a September 10, 2012 Michigan v Brandon McQueen, and Matthew Taylor, d/b/a/ compassionate apothecary, LLC amicus brief, a LARA Medical Marihuana Act statistical report for fiscal year 2015, and a paper titled "Health Effects Associated with Indoor Marijuana Grow Operations." Mr. Smith stated the reason he was requesting a postponement was because he had been hired only 10 days earlier and needed an opportunity to research the law concerning this case. Schau inquired if the applicant could withdraw the request and resubmit later. Bear stated if the Board made a decision to deny the request the applicant could re-apply after a year. Learned inquired if it would be possible for an applicant to file an appeal and at the time of the meeting withdraw the request and re-file and withdraw repeatedly so one could effectively stay enforcement indefinitely. After some discussion, the Board determined that would be contrary to Section 42-622(A). Mr. Smith reiterated the applicant was requesting the item be postponed to give him time to research the issue, and he could not recall any instances of the Board not postponing a request during the time he served on the Board. Robbe stated most times the Board has postponed an item it had been because the Board wanted additional information. Mr Smith stated he was requesting postponement to the next regularly scheduled meeting to fully research all issues surrounding the request.

A public hearing was opened. Mike Sims spoke in favor of postponing the item. Steve Bliss stated the Board felt they had adequate information to act on the nearly identical request, ZBA #15-14, and saw no reason why this application should get a stay of enforcement when they did not. The public hearing was then closed.

The Board discussed postponement or possibly re-opening ZBA #15-14. A motion was made by Schaefer, seconded by Learned to table ZBA #15-21. Upon roll call vote: Robbe-No, Schaefer-Yes, Phillip-No, Schau-No, Seyburn-No, Learned-Yes, Bright-Yes. The motion failed 3-4. A motion was made by Schau, seconded by Robbe to deny a) a favorable interpretation that a medical marihuana patient-caregiver exchange is permitted at 5090 Sprinkle Road, as the text was quite clear that it is only permitted as a home occupation; b) uphold the administrative decision not to permit a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road; c) deny a use variance to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road, as the property can reasonably be used by other uses permitted in the district; and d) a Temporary Use Permit to operate a medical marihuana patient-caregiver exchange at 5090 Sprinkle Road, as the property can reasonably be used by other uses permitted in the district. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

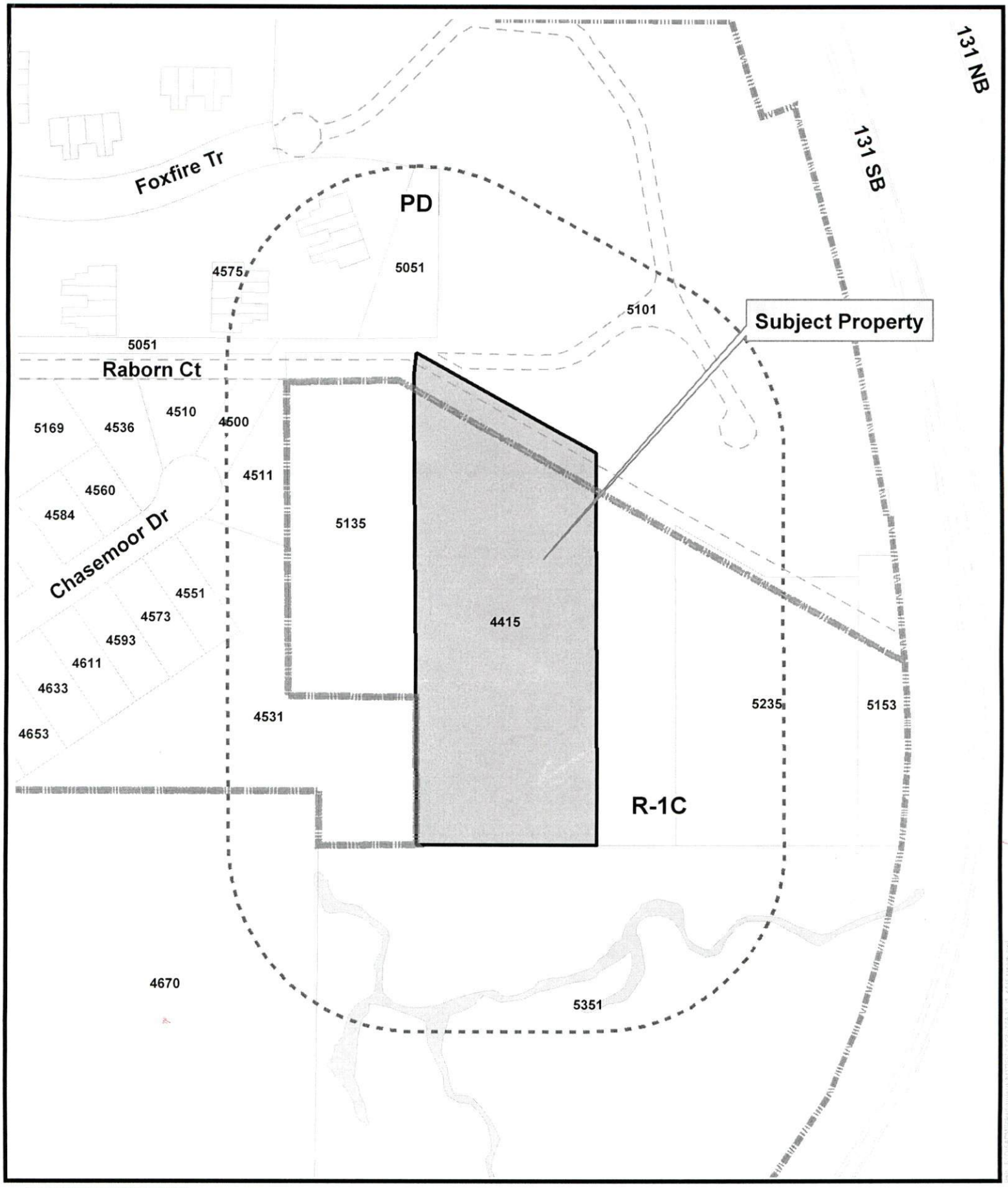
OTHER BUSINESS: A handout from the Michigan Association of Planning containing information about how Boards should handle potential conflicts of interest was provided by staff.

STATEMENT OF CITIZENS: John Cavanaugh, friend of Jonathan Rockwood, stated he thought the medical marijuana items should have been postponed. Seyburn stated he hoped everyone understood that the Board acted in accordance with the scope of its authority in rendering its decisions, and the previous two applicants may find relief from City Council, who does have authority to change the ordinances. Robbe stated as a developer he must thoroughly investigate whether a proposal complies with all local ordinances and if not then first working with the community to change those ordinances or getting variances before opening for business, and takes exception to times when applicants do not do the same. Brianna Hill stated she had worked hand in hand with city officials such as the City Manager and the Director of Community Development who personally came on site, walked them through the process and advised them to handle things exactly the way they did.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:15 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



Legend

- Zoning Boundary
- Subject Property
- Notification Area

ZBA 15-11
4415 Raborn Court

1 inch = 200 feet

PORTAGE
A Natural Place to Move

Department of Community Development

TO: Zoning Board of Appeals **DATE:** April 29, 2016

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: ZBA #15-11, Christine Pelletier, 4415 Raborn Court; R-1C, One Family Residential.

CODE SECTION: 42-121(B)(1) Accessory Buildings; p. CD42:29

APPEAL: Requesting a variance to retain a partially constructed 58-foot by 19-foot (1,102 sq. ft.) two-story accessory building in the rear (south) yard that is 19.5 feet in height where a maximum 14-foot height is permitted.

STAFF RECOM-MENDATION: At the February 8, 2016 meeting, the Board granted a variance to retain a 13-foot by 13-foot two-story accessory building, but postponed action on the above referenced variance to give the applicant the opportunity to investigate the extent of work necessary to bring the barn into compliance with code and secure estimates for the same.

The applicant has provided a copy of estimated costs to either complete construction of the barn in compliance with building codes, or demolish the partially-completed structure. It is recommended the Board proceed with rendering its decision on the final variance. Should the Board find a practical difficulty (presupposing the applicant still wishes to proceed with completion of the structure at the time of the hearing), the Board is advised to include the conditions that a building permit be obtained within 14 days of granting the variance, and work on the barn be completed by no later than November 9, 2016.

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

T:\COMMDEV\2015-2016 Department Files\Board Files\Zoning Board\15-21; 5090 Sprinkle\2016 04 29 VG ZBA 15-11 Raborn, 4415 (staff rpt)3.docx

RECEIVED
APR 22 2016
COMMUNITY DEVELOPMENT

Dreamswork Construction
12720 Bellevue Road
Battle Creek, MI 49014

Estimate # 090490

4/21/2016

Estimate for:
Christine Pelletier
4415 Raborn Ct
Portage MI 49024

Finish pole barn in back yard to meet Portage city requirements :
Plans and Permits $350.00

Complete Construction of the barn structure (Option One) $22,500.00
1.) Re-frame for building height of 19 ft or less.
2.) Finish out siding
3.) Install proper load barring beams and supports
4.) Finish and level grade
If we can reduce the need to shorten the building then that would reduce the cost of the finished construction by $8500.00

Demolition/Site Work (Option Two)
If decided, the removal cost would include
1) Bonding as required from the City
2.) Tear down and remove from property the structure
3.) Dig out and remove from property the cement foundation. $8,020.00

John N Swartz
Dreamswork Construction

Phone # (269) 209 5869
Fax # (269) 962 1092
Dreamswork.john@yahoo.com
Lic# 2101196677

Legend

Subject Property

Aerial Photography
4415 Raborn Court

1 inch = 100 feet

Jeff Mais

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

Dear Board Members:

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

Sincerely,

Christine Pelletier

PORTAGE
A Natural Place to Move

Department of Community Development

RECEIVED
JAN 06 2016
COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 1/6/2016

Name of Applicant Christine Pelletier (Print) Christine Pelletier (Signature)

Applicant's Address 4415 Raborn Ct, Portage, MI 49024 Phone No. 269-655-5970

Name of Property Owner (if different from Applicant) _____

Address _____ Phone No. _____

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

Street Address 4415 Raborn Ct., Portage, MI 49024

For Platted Property: Lot _____ of _____ Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: owner

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

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

✓ **Variance from Zoning Ordinance:** Article _____ Section 41-121 Paragraph B

Regarding: Use ✓ Area ✓ Yards _____

Setbacks _____ Parking _____ Other _____

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

____ **Appeal of Administrative Decision:** Article _____ Section _____ Paragraph _____

Reason for Request: _____

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

Reason for Request: _____

____ **A Temporary Permit for:** Building _____ Use _____ Other Approval _____

Article _____ Section _____ Paragraph _____

Reason for Request: _____

FOR STAFF USE

Application Number: ZBA 15-11	**Filing Date:** 1/6/16	**Tentative Hearing Date:** 2/8/16
Previous Application Filed Regarding This Property:		

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)
The two buildings I would like to keep were built without permits. (See attached photograph of Barn and Boiler building.) They both exceed the fourteen foot (14') height limit. (See attached sheet)

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

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets is needed.)
No, we can't use these two buildings without this variance

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)
As the buildings have already been built, it is required for reasonable use.

5. Explain how the variance would <u>not</u> result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)
The buildings are not visible from the road nor from any neighboring structure. These two structures create no adverse affect to my neighbors. (See attached sheet)

6. Explain how the variance would <u>not</u> result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)
These buildings are not for commercial use. They have no effect on traffic, noise, or other problems.

7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)
My husband and eldest son started construction of the buildings. I had no knowledge of any permit requirements. I moved away after my husband died

8. Explain how the variance <u>would fulfill</u> the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
The intent of the Zoning Ordinance is to make sure the actions of the homeowners are safe and do not unreasonably harm neighbors. I believe (See attached sheet)

Christine Pelton
Signature of Applicant

1/6/2016
Date

Reason for Variance: (Continued)

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

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

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

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

1/26/16

TO: DEPARTMENT OF COMMUNITY DEVELOPMENT

ATTN: VICKI GEORGEAU

SUBJECT: PELLETIER REQUEST FOR VARIANCE

TOTAL PAGES: 2

FROM: KAREN/WAYNE DEBROSKE

PHONE: 269-372-0872

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

January 25, 2016

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

RE: Christine Pelletier, 4415 Raborn Court request for variances

Dear Zoning Board:

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

Thank you,

Karen DeBroske

Wayne DeBroske

Jan/26/2016 11:06:29 AM art van kalamazoo pure sleep 2693825625 2/2

PORTAGE
A Natural Place to Move

Department of Community Development

TO: Zoning Board of Appeals **DATE:** January 29, 2016

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: ZBA #15-11, Christine Pelletier, 4415 Raborn Court; R-1C, One Family Residential.

CODE SECTION: 42-121(B)(1) Accessory Buildings; p. CD42:29

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

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

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

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

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

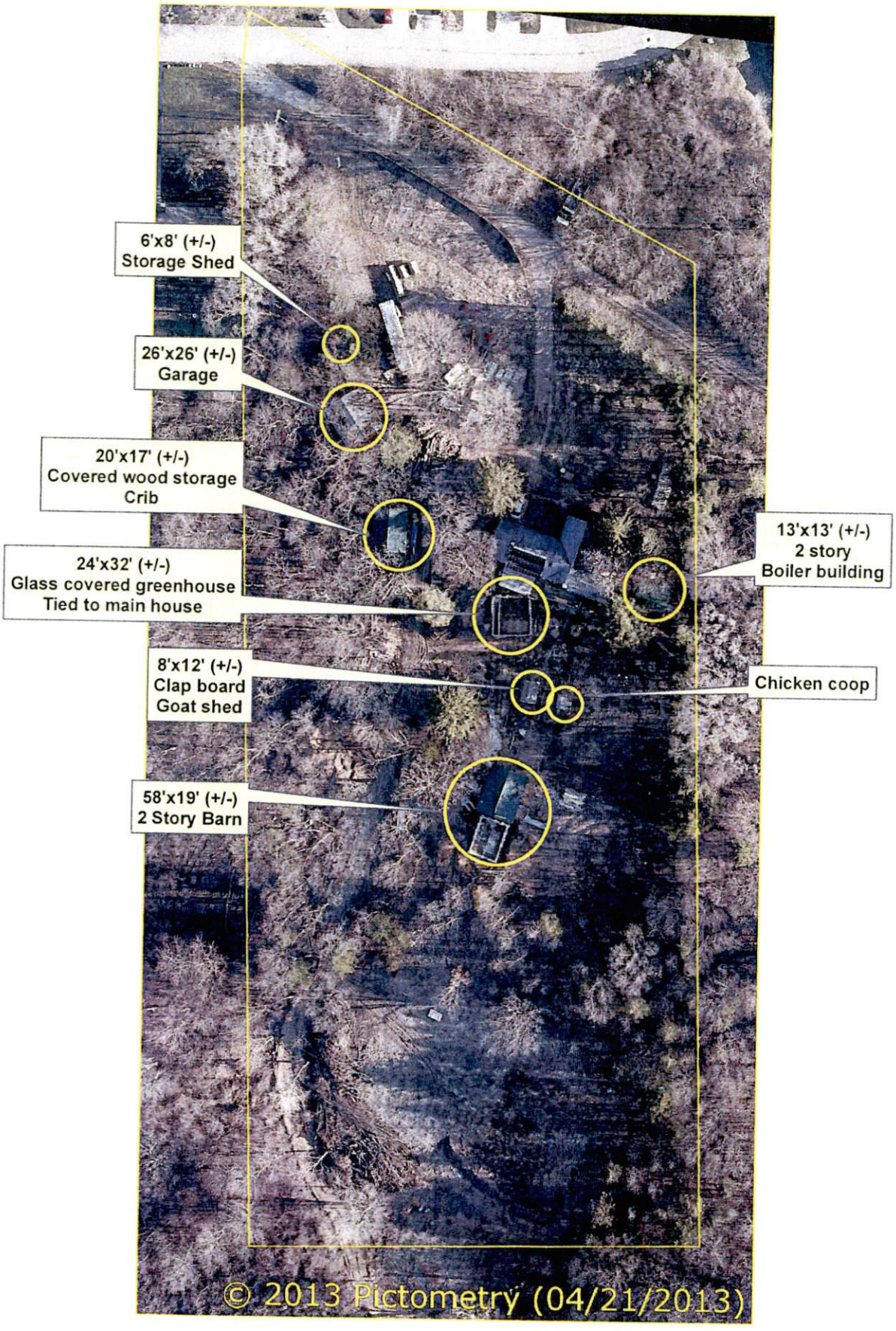
If the Board finds a practical difficulty exists, the variances may be granted. It is recommended that any variance approval be conditioned upon the following:

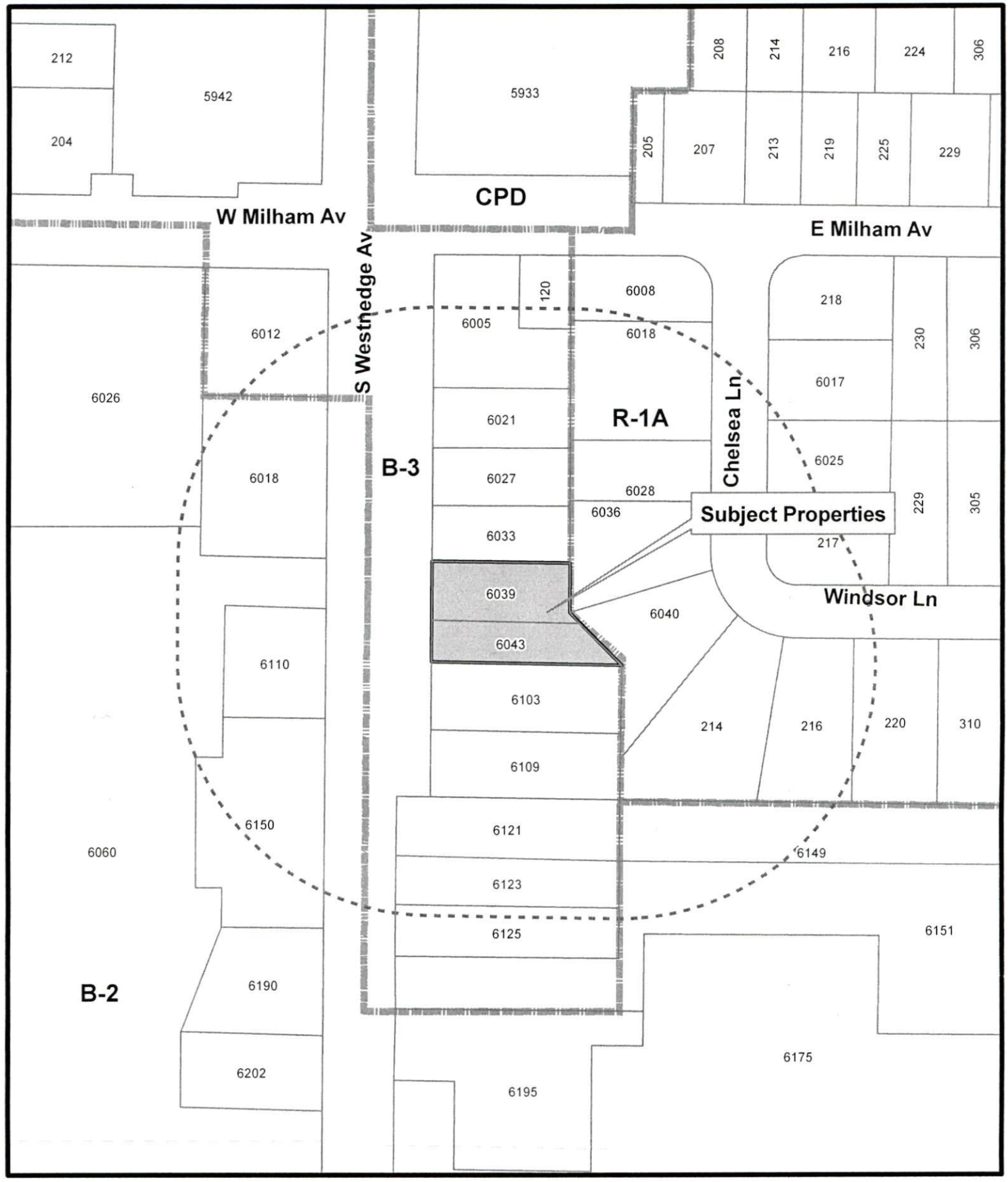
1. Obtain a building permit for both structures within 30 days;
2. The buildings be brought into compliance with all applicable building codes within six months; and
3. The 20-foot by 17-foot covered wood storage crib, partially constructed 24-foot by 32-foot attached greenhouse, 8-foot by 12-foot clapboard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

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

T:\COMMDEV\2015-2016 Department Files\Board Files\Zoning Board\15-11; 4415 Raborn Ct\2016 01 29 VG ZBA 15-11 Raborn, 4415 (staff rpt).docx

Aerial Photography - 2013
4415 Raborn Court
(Overhead)

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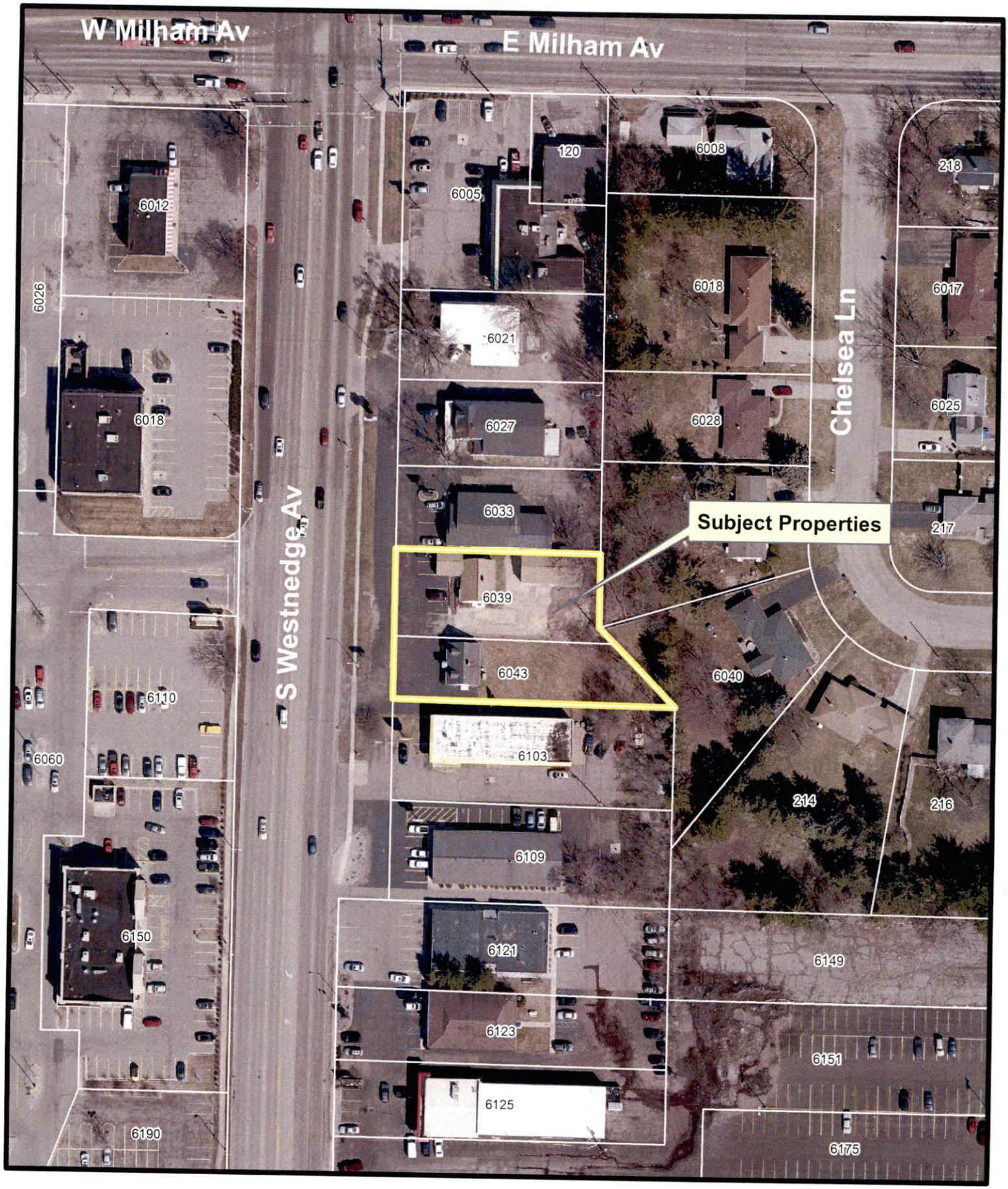
CPD
W Milham Av
E Milham Av
S Westnedge Av
120
6008
6005
6018
6012
6026
6021
R-1A
Chelsea Ln
218
230
306
6017
6025
6018
B-3
6027
6028
6036
Subject Properties
229
305
6033
217
6039
6040
Windsor Ln
6043
6110
6103
214
216
220
310
6109
6150
6121
6149
6060
6123
6125
6151
B-2
6190
6175
6202
6195
Zoning Boundary
Subject Property
Notification Area
ZBA 15-24
6039, 6043 South Westnedge Avenue
1 inch = 150 feet



Subject Property

Aerial Photography
6039, 6043 South Westnedge Avenue

1 inch = 99 feet

PORTAGE
A Natural Place to Move

Department of Community Development

RECEIVED
APR 04 2016
COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 4-4-2016

Name of Applicant David Keyte (Print) _____ (Signature)

Applicant's Address 329 Parkland, Portage 49024 Phone No. 269 806-0554

Name of Property Owner (if different from Applicant) _____

Address _____ Phone No. _____

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

Street Address 6039 and 6043 S Westnedge

For Platted Property: Lot _____ of _____ Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: _____

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

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

X **Variance from Zoning Ordinance:** Article_____ Section _____ Paragraph_____

Regarding: Use _____ Area _____ Yards _____

Setbacks _____ Parking _____ Other _____

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

_____ **Appeal of Administrative Decision:** Article_____ Section _____ Paragraph _____

Reason for Request: _____

_____ **Interpretation of the Zoning Ordinance:** Article_____ Section_____ Paragraph_____

Reason for Request: _____

_____ **A Temporary Permit for:** Building _____ Use _____ Other Approval _____

Article _____ Section _____ Paragraph _____

Reason for Request: _____

FOR STAFF USE

Application Number: 15-24	**Filing Date:** 4/4	**Tentative Hearing Date:** 5/9/16
Previous Application Filed Regarding This Property:		

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)

See Attachment

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

See Attachment

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

See Attachment

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)

See Attachment

5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)

See Attachment

6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)

See Attachment

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

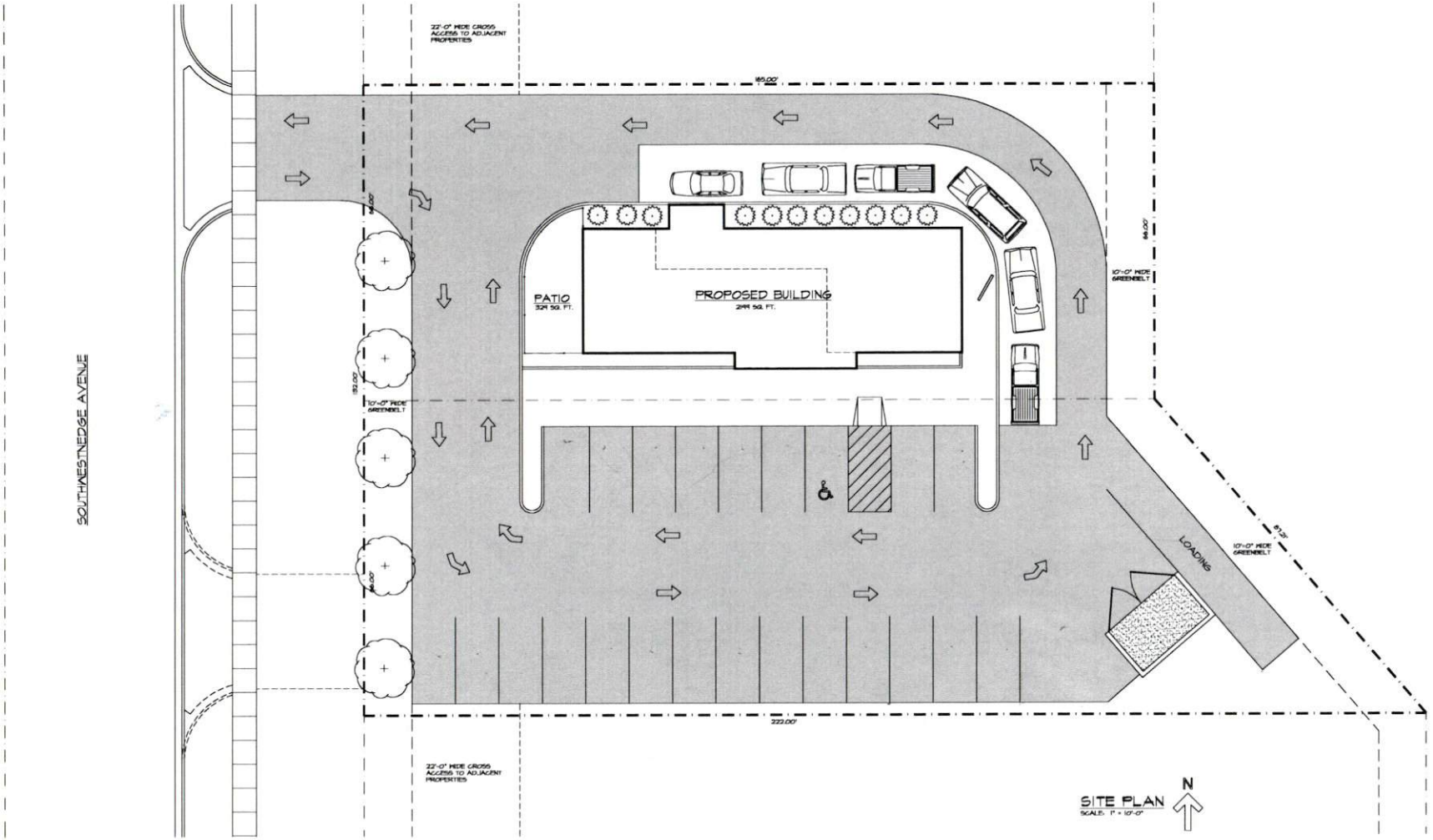
See Attachment

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

See Attachment

Signature of Applicant

4-4-2016
Date



NEW FACILITY FOR:
STARBUCKS COFFEE COMPANY
639 & 6048 SOUTH WESTNEDGE AVENUE
PORTAGE, MICHIGAN

SITE PLAN

HOWARD L. OVERBECK
ARCHITECT, P.C.

198 EAST CENTRE
PORTAGE, MICHIGAN

PHONE (269) 323-2422
FAX (269) 323-2440

PROJECT NO.
1603

DATE
1/25/16

REVISION

SHEET
S1

Callander Commercial

628 West Milham Road, Portage MI 49024
office 269.349.1000 / fax 269.349.0710

50 Louis NW, Ste. 614, Grand Rapids, MI 49503
office 616.459.8000 / fax 616.459.3300

4-4-2016

Zoning Board of Appeals
City of Portage
7900 South Westnedge
Portage, MI 49002

RECEIVED
APR 04 2016
COMMUNITY DEVELOPMENT

RE: 6039 &6043 South Westnedge Parking Variance

Dear ZBA Board Member,

Please see the attached site plan as an exhibit to this letter requesting a parking variance for 6039 &6043 South Westnedge. Said parking variance will be for a Starbucks Drive Through establishment. Currently, the use categories make it hard to pinpoint where a Starbucks should fall as it isn't a McDonalds (1/25SF of UFA) type restaurant or a sit down restaurant with wait staff (1/75 SF of UFA). The UFA is approximately 1,100 SF, which, under the closest guideline (1/25 SF of UFA) would require Starbucks to have 44 parking spots. Starbucks has a good deal of history and has indicated that the attached site plan with 23 parking spots is more than adequate for their use. Starbucks has provided developer with the attached letter and some examples of similar site plans to assist in the parking variance.

Also, the parking variance would be a good fit for the site should a change in use occur. The parking ratios for office and retail are supported by the current site plan.

I am excited to work with the City of Portage and Starbucks to have a store in Portage and will look forward to your response for support.

Please contact me with any questions.

Sincerely,

David Keyte

David Keyte
Callander Commercial
628 W Milham
Portage MI 49024
Email: dkeyte@ccmichigan.com

David,

By way of introduction, Starbucks Coffee Company has approximately 12,000 US stores and nearly 24,000 worldwide. With a combination of café, kiosk, and drive-thru stores, Starbucks continues to fine-tune its store development process and business model for each individual concept. Based on our experience with both free-standing and multi-tenant drive-thrus producing an avg of 60% - 70% of sales through the drive thru window, we feel confident the site plan for 6039/6043 South Westnedge will satisfy the number of parking spaces required to support our store operations at this location.

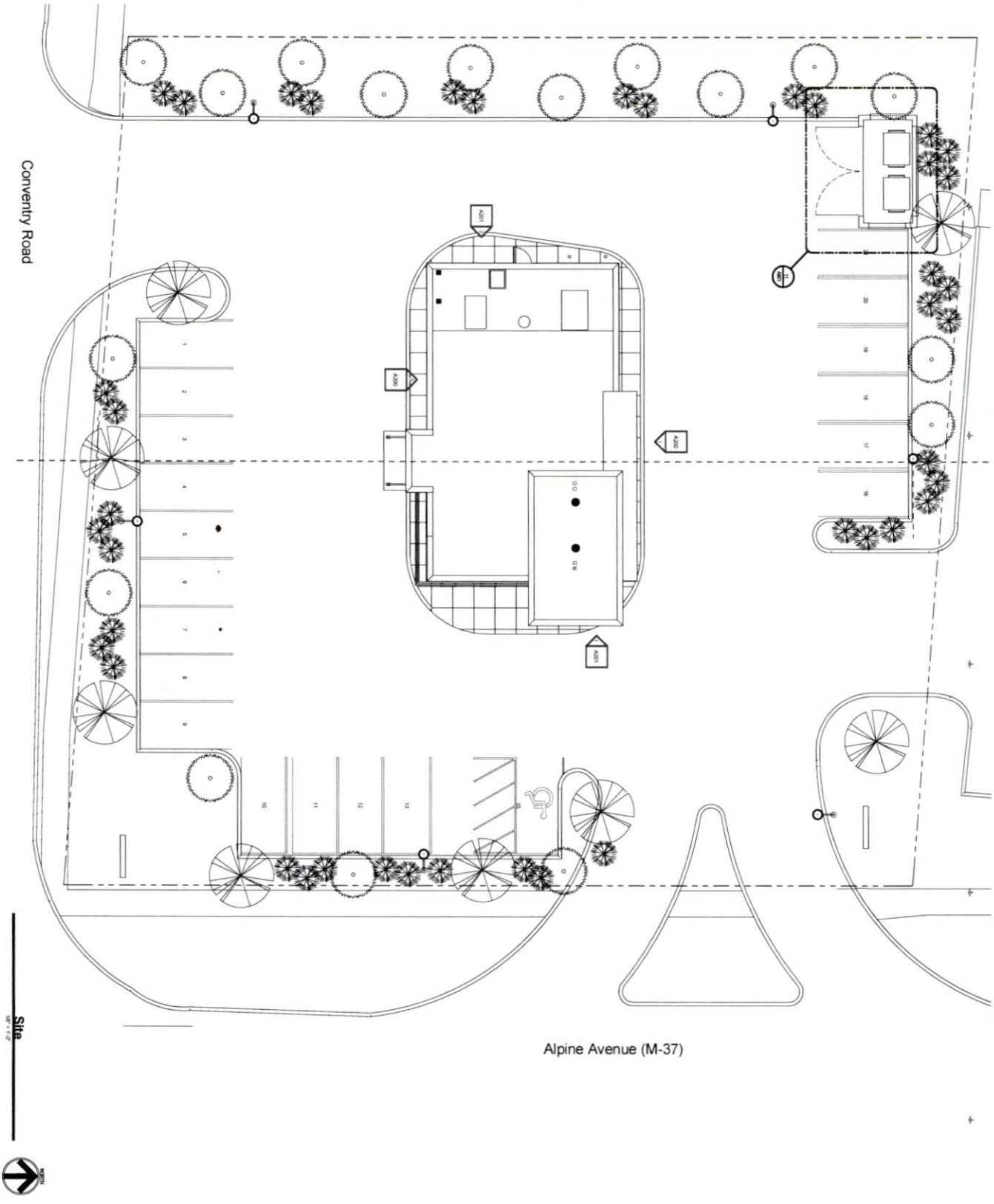
In support of this, I have attached a few site plan examples of existing Starbucks free-standing drive thru stores. One in particular, located on Alpine Ave in Grand Rapids, stands out as a very similar store to the one proposed at 6039/6043 South Westnedge. This site plan and the others attached, represent prototypes for drive-thrus, with the ideal number of parking spaces between 20 -25. In this instance, there are 21 spaces, which has been sufficient to support the 51k VPD traffic on Alpine Ave. Based on a comparable car count for South Westnedge Ave, the 23 spaces provided in the current site plan should also be sufficient to support the store operations.

Please let me know if the City of Portage has any further questions regarding our parking requirements. We look forward to proceeding on this project.

Sincerely,

Dave Alkema

Dave Alkema
Starbucks Coffee Company
Store Development Manager
Grand Rapids, MI
dalkema@starbucks.com



NOT FOR CONSTRUCTION

Coordination Review

A100

PLANNING TITLE
- Starbucks
- Project Overview
- 06239

INFO
- DSoud
- JAnunson

CLIENT INFO
- Royal Seal Development
- 3287 Alpine Ave. NW
- Walker, Michigan 49544

DATE ISSUED FOR

DATE ISSUED FOR

REVISIONS ON SHEET

Design+

LEGEND

- PROPERTY LINE
- PROPOSED SCREEN FENCE
- PROPOSED CURB & GUTTER (SEE DETAIL ON SHEET XX.X)
- PROPOSED SIDEWALK (SEE DETAIL ON SHEET XX.X)
- PROPOSED CONCRETE (SEE DETAIL ON SHEET XX.X)
- PROPOSED ASPHALT PAVEMENT
- PROPOSED LIGHT
- PROPOSED SIGN & STOP BAR (SEE DETAIL(S) ON SHEET XX.X)
- PARKING LANE COUNT
- PROPOSED TRANSFORMER
- EXISTING SIGN
- EXISTING LIGHT POLE
- EXISTING UTILITY POLE

LAYOUT & PAVING NOTES

1. ALL ON-SITE WORK AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT SPECIFICATIONS AND STANDARD DETAILS OF **CITY OF ROYAL OAK**, UNLESS OTHERWISE SPECIFIED.
2. ALL ITEMS NOT INDICATED AS EXISTING SHALL BE PROPOSED.
3. SITE CONSTRUCTION SHALL NOT COMMENCE WITHOUT APPROVAL OF THE ENGINEERING PLANS.
4. ANY SIDEWALK DAMAGED DURING CONSTRUCTION SHALL BE REPLACED AT NO ADDITIONAL COST TO THE OWNER.
5. DETECTABLE WARNINGS AS SHOWN ON THE CURB RAMP DETAIL SHALL BE PLACED AT ALL CURB RAMPS AND ISLAND CUT-THROUGHS WHERE THE PEDESTRIAN WALKWAY IS DIRECTED INTO A VEHICULAR TRAFFIC AREA, UNLESS NOTED OTHERWISE.
6. ALL PAVING SHALL CONFORM TO THE CURRENT STANDARDS AND SPECIFICATIONS OF **CITY OF ROYAL OAK, OAKLAND COUNTY** STANDARD SPECIFICATIONS FOR CONSTRUCTION AS APPLICABLE.
7. THE CONTRACTOR IS RESPONSIBLE FOR PROPER TRAFFIC CONTROL DURING CONSTRUCTION.
8. ALL ACCESSIBLE PARKING, SIGNAGE, AND STRIPING SHALL BE CONSTRUCTED IN ACCORDANCE WITH ADA STANDARDS.
9. CONTRACTOR TO ENSURE 1:12 (W:H) MAX CROSS SLOPE IS INSTALLED ACROSS CURB DROP AT ADA RAMPS. DETECTABLE WARNINGS AS SHOWN ON THE CURB RAMP DETAIL SHALL BE PLACED AT ALL CURB RAMPS AND ISLAND CUT-THROUGHS WHERE THE PEDESTRIAN WALKWAY IS DIRECTED INTO A VEHICULAR TRAFFIC AREA UNLESS NOTED OTHERWISE.
10. A 1/2" EXPANSION JOINT SHALL BE PLACED WHERE PROPOSED CONCRETE SIDEWALK MEETS EXISTING.

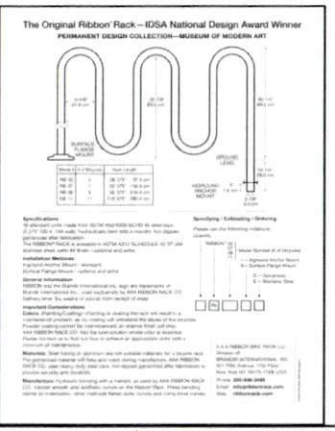
SITE DATA BLOCK

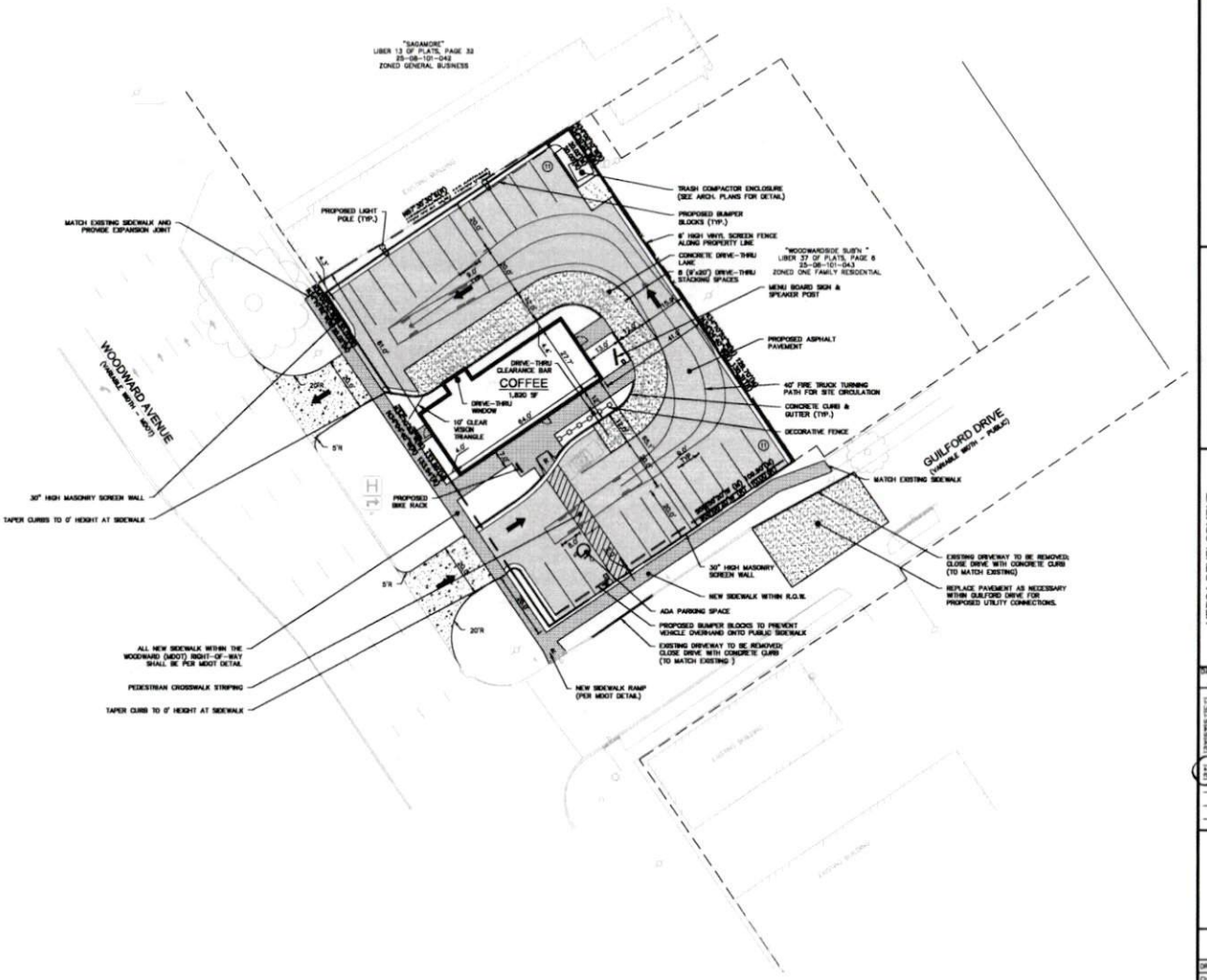
PARCEL DATA		
SITE ZONING	GENERAL BUSINESS	
PROPOSED USE	COMMERCIAL	
PARCEL SIZE	0.38 ACRES	

BUILDING DATA	REQUIRED	PROPOSED
BUILDING HEIGHT	30' MAX	17'-8"
GROSS BUILDING AREA	N/A	1,820 SF
NET USEABLE FLOOR AREA	N/A	1,480 SF
SETBACKS	**REQUIRED**	**PROPOSED**
FRONT (WOODWARD)	0'	4'
SIDE	5'	SEE PLAN
REAR	25' (FROM C/L ALLEY)	41.5'

PARKING	REQUIRED	PROPOSED
PARKING SPACES	22 SPACES*	22 SPACES
1,480 SF/65 = 22.4 SPACES		
*1/65 SF OF USEABLE FLOOR AREA		

LANDSCAPING / OPEN SPACE	REQUIRED	PROPOSED
LANDSCAPING AREA	1,699 SF (10%)**	1,339 SF (8.0%)**
**MINIMUM 10% SITE AREA		





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

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

NOTICE:
CONSTRUCTION SITE SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR; NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

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ATWELL
Land Development & Real Estate
Power & Energy
Telecommunications
Infrastructure & Transportation
Environmental & Solid Waste
Water & Natural Resources
OFFICES IN NORTH AMERICA AND ASIA

SECTION 8
TOWN 1 NORTH, RANGE 11 EAST
CITY OF ROYAL OAK
OAKLAND COUNTY, MICHIGAN

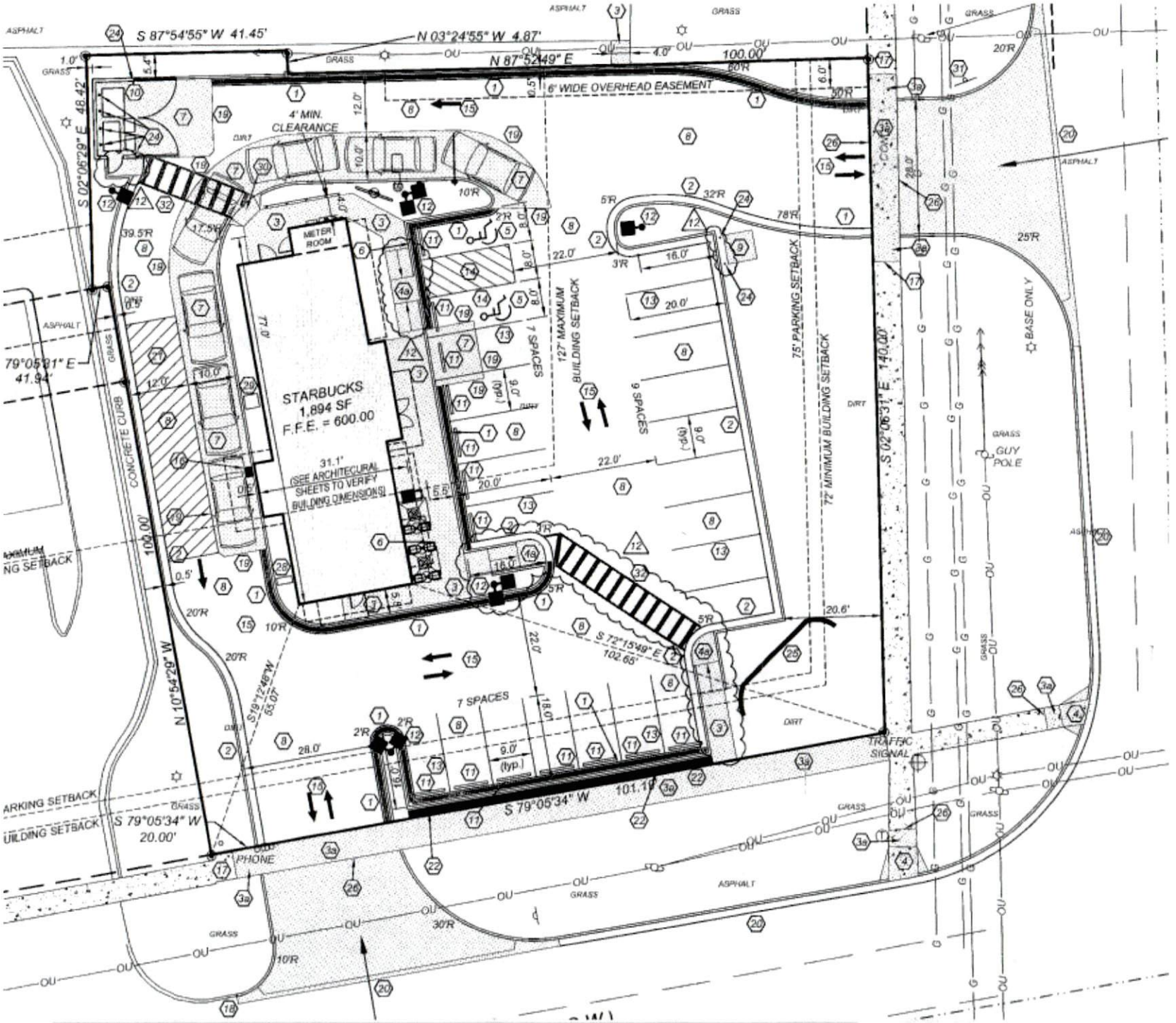
VERSA DEVELOPMENT
VERSA DEVELOPMENT – ROYAL OAK
SITE PLAN
SITE LAYOUT PLAN

DATE
JANUARY 6, 2014

REVISIONS/SUBMITTALS
1-6-2014 SITE PLAN AND USE SUBMITTAL
1-27-2014 CITY SPECIAL LAND USE & SITE PLAN REVIEW COMMENTS
2-5-2014 CITY SPECIAL LAND USE REVIEW COMMENTS
3-20-2014 MODIFIED BUILDING FOOTPRINT, SITE PLAN RE-SUBMITTAL
4-18-2014 MODIFIED BUILDING FOOTPRINT, SITE PLAN RE-SUBMITTAL

SCALE: 1"=20'

DRAWN BY: EM
CHECKED BY: DB
PROJECT MANAGER: MM
CAD:13001555P-3.0-L
JOB # 13001555
FILE CODE: SP
SHEET NO. 3.0


STARBUCKS
1,894 SF
F.F.E. = 600.00
S 87°54'55" W 41.45'
N 03°24'55" W 4.87'
N 87°52'49" E
100.00'
6" WIDE OVERHEAD EASEMENT
4' MIN. CLEARANCE
METER ROOM
127' MAXIMUM BUILDING SETBACK
75' PARKING SETBACK
72' MINIMUM BUILDING SETBACK
7 SPACES
6 SPACES
7 SPACES
S 02°06'31" E 140.00'
S 02°06'29" E 48.42'
S 79°05'31" E 41.94'
N 10°54'29" W 100.00'
S 72°15'49" E 102.65'
S 79°12'46" W 63.07'
S 79°05'34" W 20.00'
S 79°05'34" W 101.19'
31.1' (SEE ARCHITECURAL SHEETS TO VERIFY BUILDING DIMENSION)
CONCRETE CURB
TRAFFIC SIGNAL
GUY POLE
PHONE
BASE ONLY
ASPHALT
GRASS
DIRT

PORTAGE
A Natural Place to Move

Department of Community Development

TO: Zoning Board of Appeals **DATE:** April 29, 2016

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: ZBA #15-24, David Keyte, 6039, 6043 South Westnedge Avenue, B-3, General Business

CODE SECTION: 42-523, Off-Street Parking Requirements, p. CD42:120

APPEAL: Requesting a variance from the parking requirements to provide 23 off-street parking spaces where a minimum 44 spaces are required.

STAFF RECOM-MENDATION: The applicant is requesting the above referenced variance per the enclosed application, letter of explanation, site plan and related materials. The properties at 6039 South Westnedge Avenue and 6043 South Westnedge Avenue are both zoned B-3, general business, and are adjacent to other commercial properties to the north, south, and across the street to the west. To the east is a residential neighborhood.

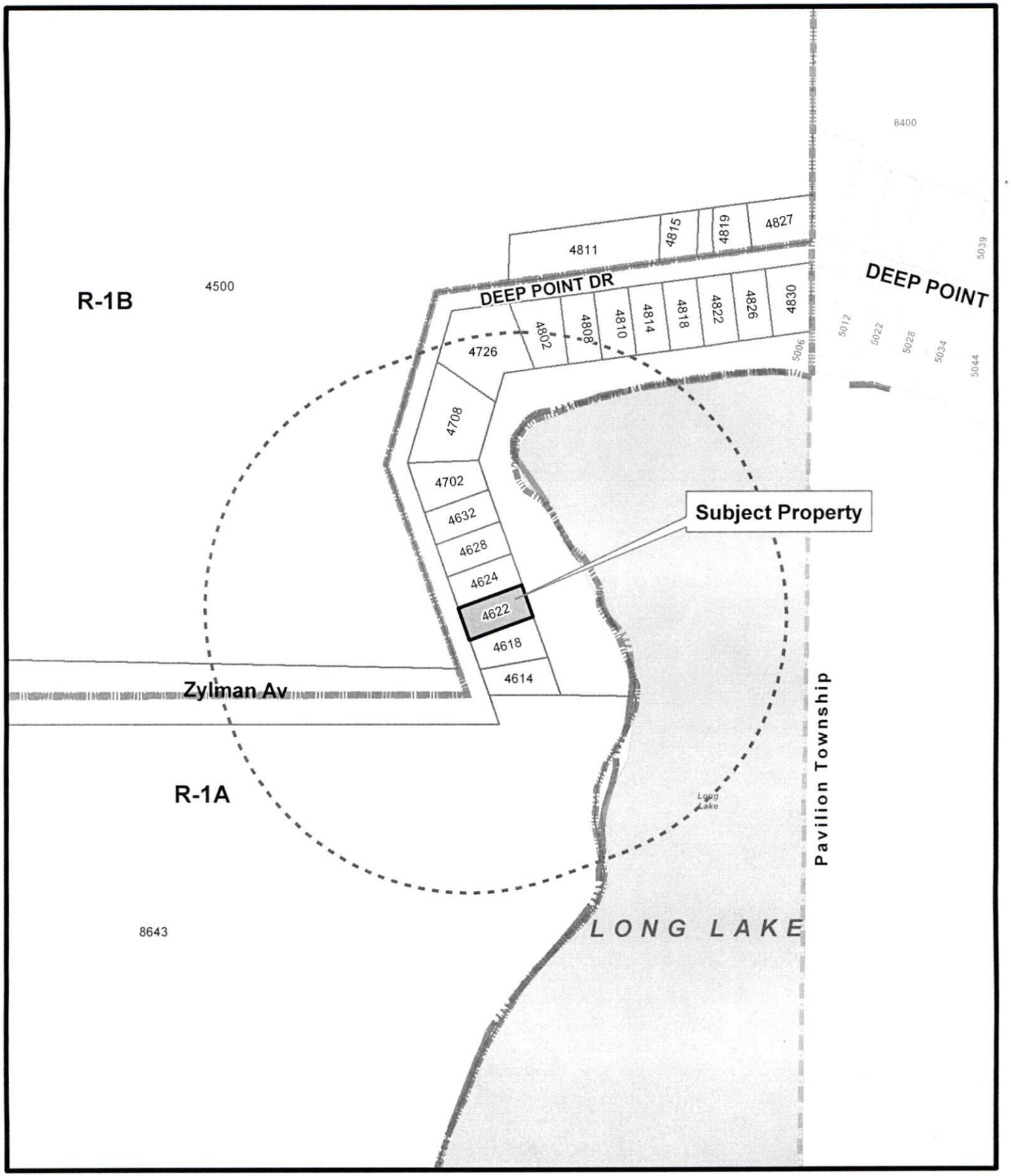
The two properties are currently under separate ownership/control and accommodate two different businesses. The applicant proposes to acquire and combine the properties into a single zoning lot, demolish the existing buildings and redevelop the site with a 2,199 square-foot freestanding Starbucks drive-through store, off-street parking lot and related improvements. The proposed store will have a usable floor area (UFA) of approximately 1,100 square feet. The Zoning Ordinance requires one parking space for every 25 square feet of UFA for "fast food restaurants that provide both takeout and table areas but do not provide waiter/waitress service to the table or in-car service." While 44 spaces are required, the applicant proposes to provide 23 spaces.

The applicant indicates the Starbucks business model differs from traditional fast food restaurants, and on average generates 60-70% of their sales via the drive-thru window, and as a result needs approximately half the parking required by ordinance. In support of the request, the applicant has provided site plans for similar sized facilities having a similar number of parking spaces. Additionally, the Starbucks Store Development Manager, Dave Alkema, reports the parking lots at these facilities are typically 80% filled during peak hours. City staff contacted the cities of Royal Oak, Walker, Woodhaven, and Oshtemo Township, and all four municipalities report no problems with parking at their respective locations.

In order to comply with the parking requirements, the applicant would have to reduce the usable floor area of the store to 575 square feet or acquire additional land area, neither of which are practical. As noted above, it is apparent that similar sized facilities have operated in other communities for several years with

comparable parking and have not experienced any parking difficulties. Based on the unique characteristics of the Starbucks operations and documentation provided regarding parking demand for similar stores in other communities, the variance can be recommended.

PRACTICAL DIFFICULTY: Applicant notes unique business operational characteristics and parking demand with similar stores.



Zoning Boundary
Subject Property
Notification Area

ZBA 15-25
4622 Deep Point Drive

1 inch = 150 feet

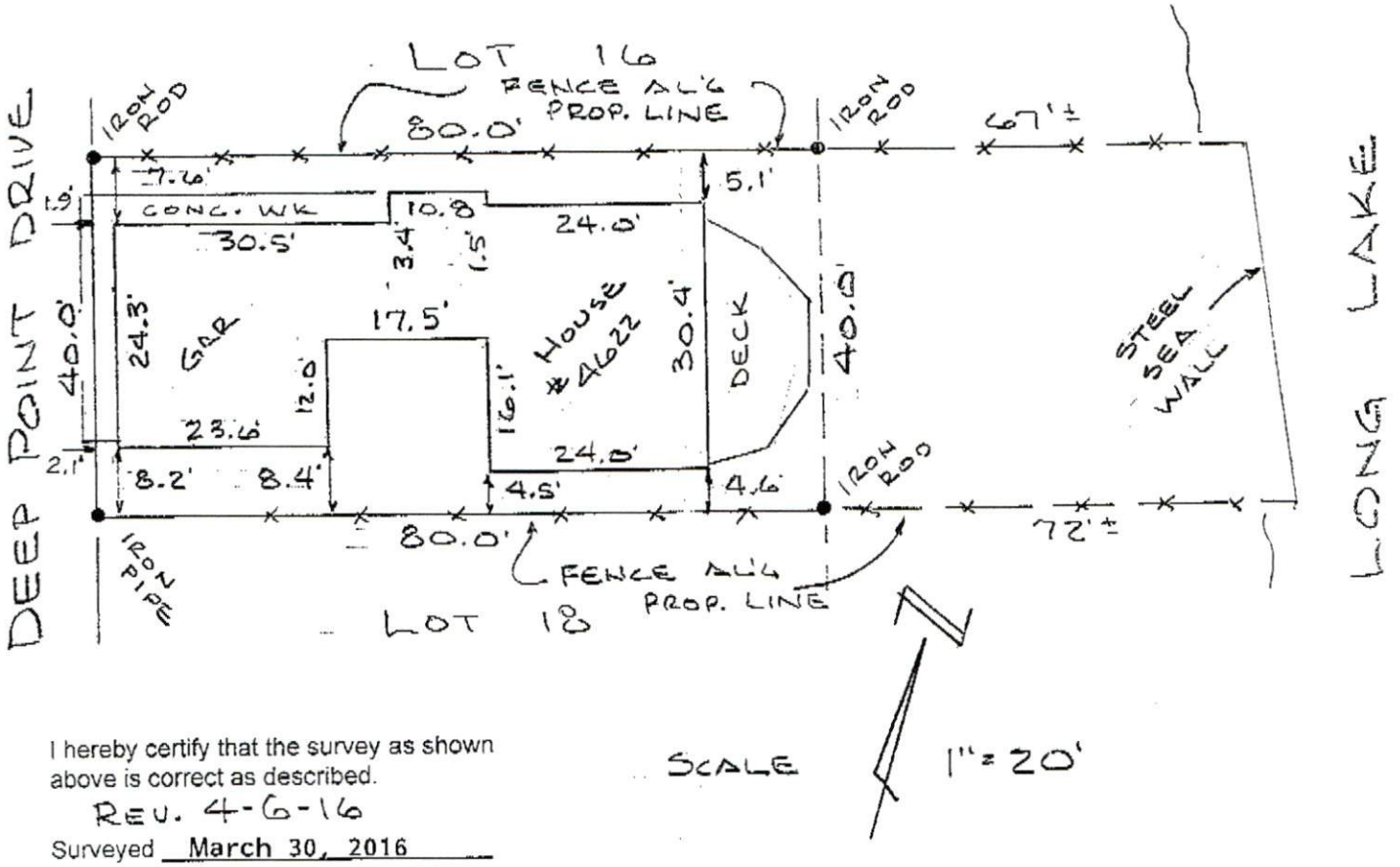
CERTIFICATE OF SURVEY

The undersigned, a Registered Land Surveyor under the laws of the State of Michigan, certifies that he has made a survey of the following described property. Measurements were made and corners perpetuated in accordance with the true and established lines of the property as described.

Situated in the City of Portage, Kalamazoo County, Michigan:

Lot 17, Bauierla's Cove, Section 24, Town 3 South, Range 11 West, Kalamazoo County, Michigan, according to the plat thereof as recorded in Liber 9 of Plats, on Page 21, Kalamazoo County Records.

Owner: Kathleen Kline
Property Address: 4622 Deep Point Drive, Portage, MI 49002



I hereby certify that the survey as shown above is correct as described.

REV. 4-6-16

Surveyed March 30, 2016

Survey No. 2016-02

By: _____
Professional Surveyor #22446

WOLDRING SURVEYING
1801 Schuring Road
Portage, MI 49024
Ph: 269-327-8643

1 inch = 50 feet

Aerial Photography

4622 Deep Point Drive

PORTAGE
A Natural Place to Move

Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 4-7-16

Name of Applicant Kathleen Kline (Print) Kathleen Kline (Signature)

Applicant's Address 4622 Deep Point Drive Phone No. 269-341-1209

Name of Property Owner (if different from Applicant) _____

Address _____ Phone No. _____

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

Street Address 4622 Deep Point Drive

For Platted Property: Lot 17 of Bauierla's Cove Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: Owner

Application Fee 135.00 (Residential Uses) _____ (All Other Uses)

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

X **Variance from Zoning Ordinance:** Article 4 Section 42-350 Paragraph A

Regarding: Use _____ Area _____ Yards _____

Setbacks Front Parking _____ Other Lot coverage

Reason for Request (Also complete page 2 of application): 1. Addition of living space above garage and laundry room. 2. Addition of a master bath

____ **Appeal of Administrative Decision:** Article _____ Section _____ Paragraph _____

Reason for Request: _____

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

Reason for Request: _____

____ **A Temporary Permit for:** Building _____ Use _____ Other Approval _____

Article _____ Section _____ Paragraph _____

Reason for Request: _____

FOR STAFF USE

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

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)

The lot is narrow and shallow at 40 feet by 80 feet. The garage is already constructed within the front setback. A variance was granted in 1992 for 18 feet to allow the construction of the current structure.

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

These characteristics are similar to the neighboring lake lots. The garages of adjacent lots are also within the front setback.

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

1. The proposed expansion cannot be built above the garage without a variance.
2. The bath addition cannot be built without affecting lot coverage.

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)

1. The minimal variance seems reasonable to build within the current footprint and keep within the side yard setbacks.
2. The bath addition has minimal impact on lot coverage, increasing from 26% to 27%.

5. Explain how the variance would <u>not</u> result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)

The additions do not impair the view to the lake for adjacent residents. The houses on either side do not have any windows that would be blocked by the additions. See support from neighbors.

6. Explain how the variance would <u>not</u> result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)

The two car garage will continue to accommodate resident vehicles without altering access to the site.

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

The need for the variance results from the placement of the garage by the previous owner(s). The current footprint will be used for this

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

Granting these variances would promote adding value to the property for comfort and convenience with minimal impact to neighboring lots.

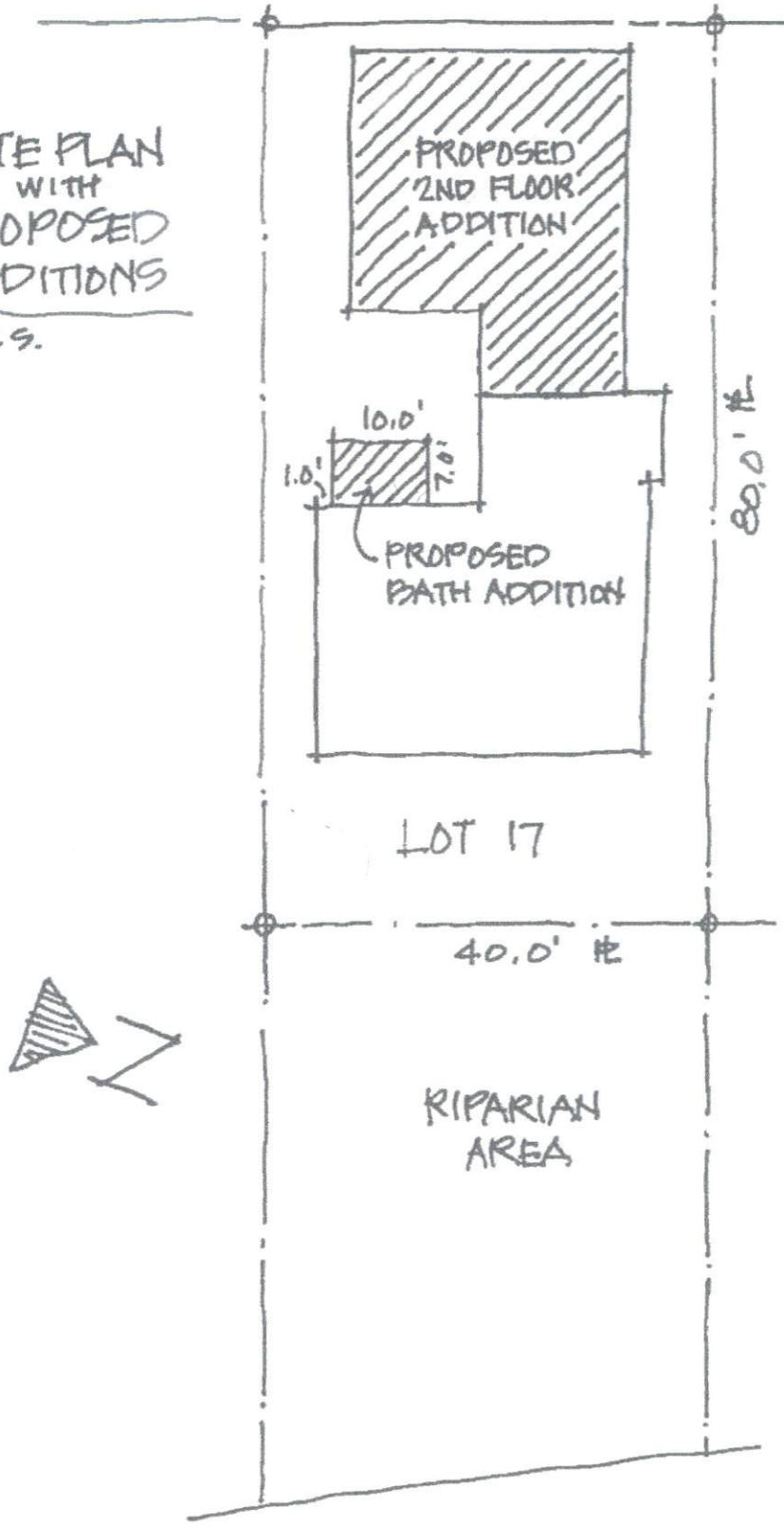
Kathleen Klein
Signature of Applicant

4-7-16
Date

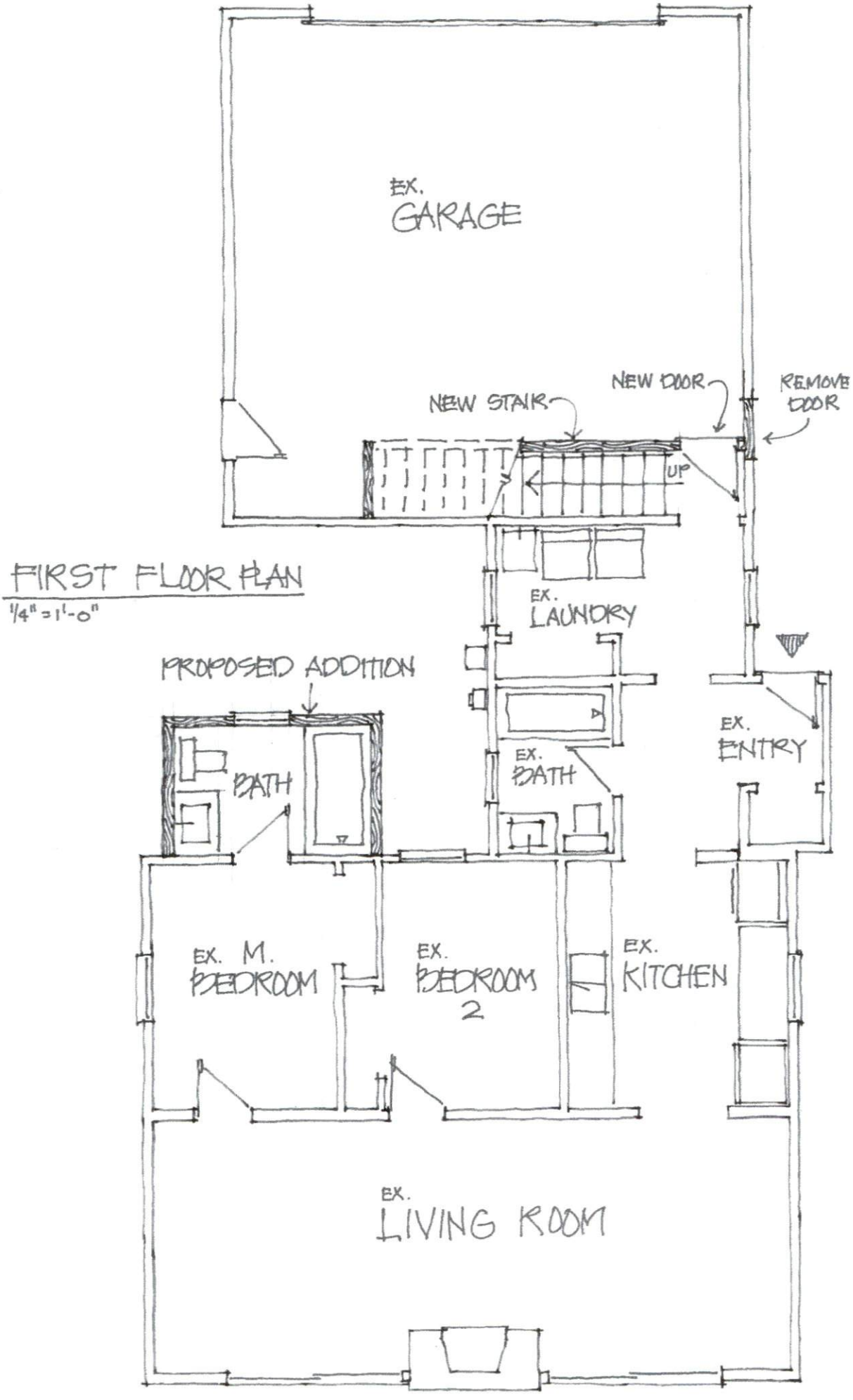
DEEP POINT DRIVE

SITE PLAN
WITH
PROPOSED
ADDITIONS

N.T.S.

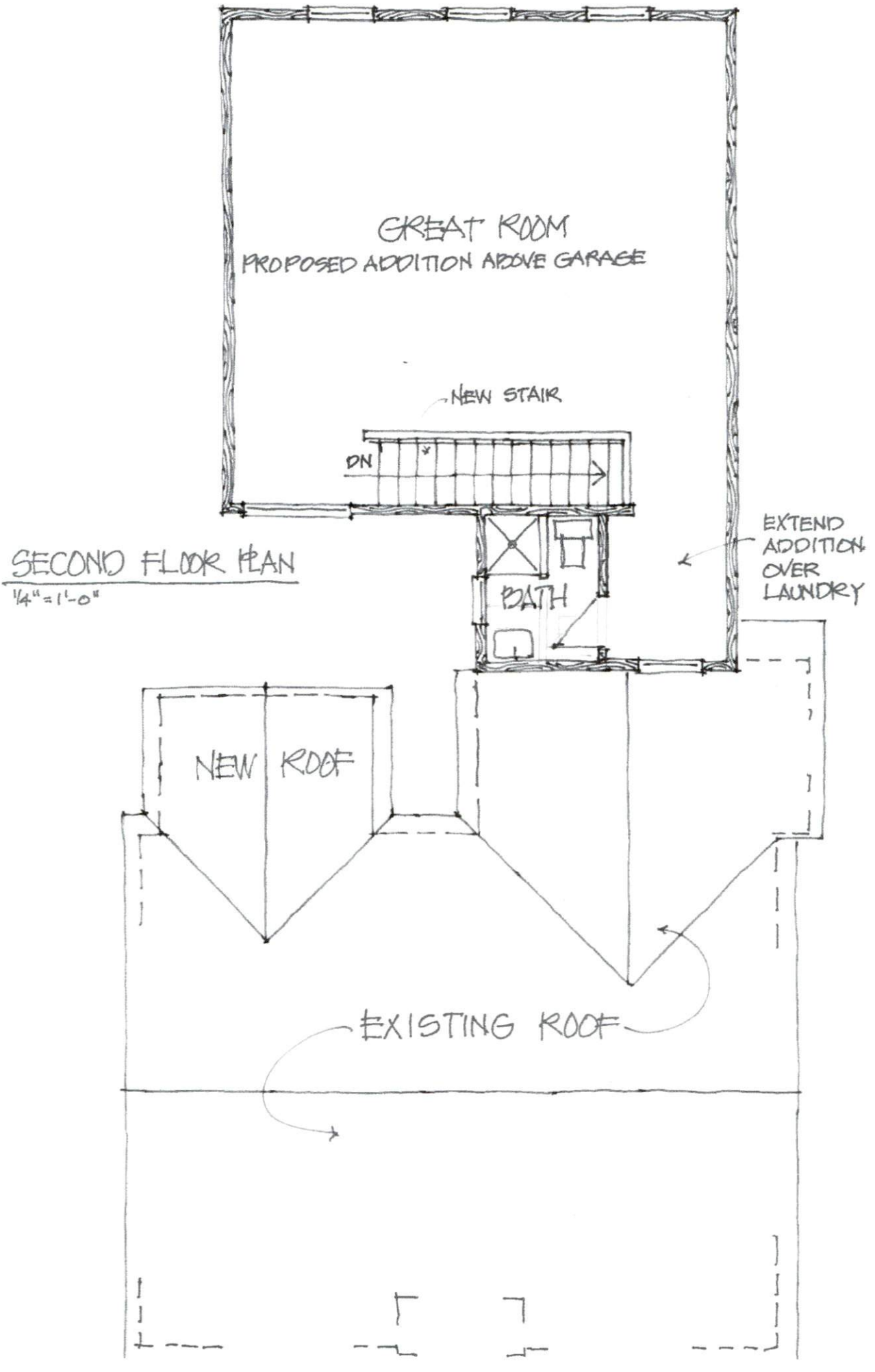


LONG LAKE



FIRST FLOOR PLAN

1/4" = 1'-0"



SECOND FLOOR PLAN

1/4" = 1'-0"

Blue line = lot dimensions Green line = proposed living space above garage and laundry room Tan line = proposed master bath

Purple line = alignment with neighboring garages Orange line = original city map

As a neighbor of Kathleen Kline of 4622 Deep Point Drive I (we) support her proposal for additional living space above the garage and the addition of a master bathroom.

Address 4614 Deep Point Dr.
Portage, MI 49002
Phone 269-217-1842
Print Name Brian Krul
Signature (s) Brian Krul
Date 4/17/16

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

Address 4618 Deep Point Dr.
Portage, MI 49002
Phone 269-552-8598
Print Name Troy Roller
Signature (s) _____
Date 4-26-2016

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

Address 4624 Deep Point Dr.
Portage, MI 49002
Phone 269-329-0791
Print Name Jeanne Bloemsma
Signature (s) Jeanne Bloemsma
Date 4-4-2016

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

Address 4628 Deep Point Dr.
Portage, MI 49002
Phone 989-860-1447
Print Name Nancy Johnson
Signature (s) Nancy Johnson
Date 4-7-16

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

As a neighbor of Kathleen Kline of 4622 Deep Point Drive I (we) support her proposal for additional living space above the garage and the addition of a master bathroom.

Address 4632, 4702 + 4708 Deep Point Dr.
Portage MI 49002
Phone (269)330-3707 + Soy
Print Name Mark Nakayama
Signature (s) Soy Nakayama
Date 4/26/16

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

Address 4726 Deep Point Dr.
Portage, MI 49002
Phone 269-357-5834
Print Name Scott Sampson
Signature (s) [signature]
Date 4-26-16

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

Address 4802 Deep Point Dr.
Portage, MI 49002
Phone 329-1875
Print Name Joyce Jackson
Signature (s) Joyce Jackson
Date 4-4-16

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

Address _____
_____
Phone _____
Print Name _____
Signature (s) _____
Date _____

PORTAGE
A Natural Place to Move

Department of Community Development

TO: Zoning Board of Appeals **DATE:** April 29, 2016

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: ZBA #15-25, Kathleen Kline, 4622 Deep Point Drive; R-1A, One Family Residential.

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

APPEAL: Requesting variances to: a) construct a second story addition above the existing garage located two feet from the front (west) property line where a 25-foot front setback is required; b) retain the existing dwelling and attached garage that have 26% lot coverage where a maximum 25% is permitted; and c) construct a 10-foot by 7-foot master bathroom addition that will result in 27% lot coverage where a maximum 25% lot coverage is permitted.

STAFF RECOM-MENDATION: The applicant is requesting the variances per the enclosed application, survey, floor plan, plot plan, and related materials. The 40-foot wide by 80-foot deep lakeside lot (3,200 square feet) has an additional 2,780 square feet of 'riparian area,' is zoned R-1A, one-family residential, and is improved with a nonconforming 981 square-foot dwelling constructed in 1925, a (non-permitted) 75 square-foot metal garden shed, and a nonconforming 573 square-foot attached garage constructed in 1992. The property is adjacent to single family residences to the north and south and to a 62 acre agricultural property, zoned R-1B, one family residential, across the street to the west.

As background for the Board, a variance was granted to a previous owner in 1992 (ZBA #92-02) permitting construction of the existing attached garage seven feet from the front property line. This measurement was apparently based upon a sewer as-built drawing and previous owner's site sketch. The current owner recently had a boundary survey conducted, which found the property is not as deep as originally represented to the Board in 1992. Consequently, the garage was constructed approximately two feet from the front (west) property line, and also less riparian area is available to count towards total lot size. The house, attached garage and shed total 1,630 square feet and represent a 27% lot coverage.

Concerning request a) the applicant proposes to construct additional living space and a laundry room above the existing garage to accommodate an aging parent. The proposed addition will not alter the footprint of the dwelling, but because it adds additional usable living space (vertically) within the required front setback, a variance is necessary. Compliance with the code is generally encouraged, however, in this instance there are no apparent conforming options available. The dwelling is nonconforming in size and cannot be expanded in the manner proposed without further exceeding the maximum lot cover. Additionally, the builder indicates a second story addition above the house is not feasible due to structural limitations. There are exceptional circumstances applying to the property

which do not apply generally to other properties within the zoning district which include the narrow lot width and substandard lot area. The immediate practical difficulty was not caused by the applicant. The front setback is not out of character with the area, and aligns with several other dwellings and/or garages in the immediate vicinity. Finally, construction of the proposed addition on the street side, as opposed to the lake side, should minimize impacts on adjacent property and the surrounding neighborhood, and the variance will not materially impair the intent and purpose of the Zoning Ordinance. For the reasons noted above the variance can be recommended.

Concerning request b), the existing lot coverage has existed in its current state for the past 24 years with no reported complaints. The applicant purchased the property earlier this year in its current condition, and the practical difficulty causing the need for the variance was not created by the applicant. In addition, the applicant has agreed to remove the 75 square-foot shed, which will reduce the lot coverage to 26%. The lot's substandard dimensions are an exceptional circumstance, the variance will not be detrimental to adjacent property and the surrounding neighborhood, and will not materially impair the intent and purpose of the Zoning Ordinance. For these reasons the variance can be recommended with the condition that the shed be removed.

With regard to request c), the applicant's desire to have a third bathroom is acknowledged, but this desire does not in itself constitute a practical difficulty. The applicant has not demonstrated why a third bathroom is the minimum necessary to reasonably use the property. The lot coverage already exceeds the maximum allowed, and, therefore staff does not recommend the variance.

PRACTICAL DIFFICULTY: Size and shape of substandard lot. See suggested motion form.

7900 South Westnedge Avenue • Portage, Michigan 49002 • (269) 329-4477
www.portagemi.gov

PORTAGE
A Natural Place to Move

Department of Community Development

TO: Zoning Board of Appeals **DATE:** April 29, 2016

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: Zoning Board of Appeals Rules of Procedure

During the March 28, 2016 Zoning Board of Appeals (ZBA) meeting, Board member Learned provided a recommendation (attached) to amend the ZBA Rules of Procedure pertaining to conflict of interest.

In response to this recommendation, city staff and the City Attorney have discussed this proposal and concur that a revision to the Rules of Procedure is appropriate with regard to conflict of interest. Based on this review, it is recommended that the ZBA Rules of Procedure be amended consistent with Section 7 of the attached Planning Commission Rules of Procedure. In addition to adding language regarding conflict of interest, it is also recommended that the ZBA Rules of Procedure be amended to add language consistent with Section 8, which requires disclosure of ex parte communication with an applicant.

T:\COMMDEV\2015-2016 Department Files\Board Files\Zoning Board\2016 04 29 VG ZBA Rules of Procedure (staff rpt).docx

City of Portage – Zoning Board of Appeals

RECEIVED
MAR 28 2016
COMMUNITY DEVELOPMENT

Subject: Rules of Procedure Amendment Consideration Request

Regarding: *Conflicts of Interest*

Submitted by:
Chadwick Learned (Member ZBA)
6813 Gertrude Dr
Portage, MI 49002

Premise: Given a number of recent occurrences regarding conflicts of interest by board members on appeal request from citizen I believe the Zoning Board of Appeals should amend our Rules of Procedure to address our conduct in such matters.

Under authority in Michigan Zoning Enabling Act -2006 PA 110: The board has the authority to set procedures for handling "conflicts of interest" among other items. Only the board has this authority, it does not rest with the city government or council.

The last amendment to our Rules of Procedure was made in July 1995 and there is currently no written procedure addressing conflicts of interest.

Proposed Section Addition:

Conflicts of Interest:

Board members whom believe a conflict of interest exist between them and a matter before the ZBA shall adhere to the following procedures:

1) Declare the apparent conflict of interest before discussion on such matter starts.
2) In your judgement state your intent on voting or abstaining from voting on the matter with rationale for either.
3) The chairman (or current acting chairman) shall accept the decision of the member OR if either the chairman himself OR any member request a vote on the matter shall be taken before the full board. 4 votes will be required for action on any motion regarding the matter.
4) No member can be compelled to refrain from voting simply because it is perceived that he or she may have some "conflict of interest" with respect to the motion under consideration. If a member has a direct personal or pecuniary (monetary) interest in a motion under consideration not common to other members, he *should not* vote on such a motion, but even then he or she cannot be *compelled* to refrain from voting.
5) If board member is abstaining from voting on the matter, he/she shall vacate his/her seat on the board for the duration of consideration on the matter.

Subsection 1: Abstaining member's participation in public hearing or discussion of appeals.

The board recognizes that membership in the ZBA does not deprive a citizen of their free speech rights regarding matters before the board. Indeed a board member's conflict may be because of a material interest in the matter and as such they have the rights afforded all citizens.

However, all attempts to avoid undue influence shall be taken and the public made fully aware of the citizens position on the board and potential conflicts.

Remaining board members will consider each conflict of interest regarding another board member who has a material interest in a matter before the board on a CASE BY CASE basis before consideration of the matter ensues. The board reserves rights to set additional rules of procedure in these cases.

CITY OF PORTAGE ZONING BOARD OF APPEALS

RULES OF PROCEDURE

Section 1. Convening of Meeting; Quorum:

The Chairperson, or in his/her absence or at his/her direction, the Vice-Chairperson, shall, at the time fixed for meeting, take the chair for convening the Board. The presence of four (4) members at the meeting shall constitute a quorum for the transacting of business. The Chairperson shall summarize the rules of order and those portions of the Zoning Ordinance pertaining to the Board's operations. A total of four (4) affirmative votes will be necessary to approve a request for a variance or temporary use. (This shall be the case regardless of the number of members present.) A total of five (5) affirmative votes will be necessary to approve a request for a use variance.

Section 2. Order of Business:

The business of all regular meetings shall be transacted as far as possible in the following order:

Call to Order	Old Business
Pledge of Allegiance	New Business
Roll Call	Statements of Citizens
Approval of Minutes	Adjournment

Section 3. Reading of Minutes:

Unless a reading of the minutes of a meeting is requested by a member of the Board, such minutes may be approved or corrected without reading if the Director of Community Development or his/her designee has previously furnished each member with a true copy thereof.

Section 4. Agenda for Meeting:

The Director of Community Development, or his/her designate, shall prepare an agenda of the business to be considered at each regular Board meeting. No business shall be considered by the Board unless placed upon the agenda for the meeting not later than 5:00 o'clock p.m. on Monday, ten working days preceding the meeting. A total of eight items will be accepted for any one meeting (old and new business items), and will be placed on the agenda in the order received. Any number of requests over eight will be placed on the next regularly scheduled meeting agenda (See also Section 6).

Section 5. Regular Meeting; time - place:

The Board shall routinely convene on the second Monday of each month at 7:00 p.m. in the City Council Chambers; provided, however, that when the day fixed for any regular meeting falls upon a National Holiday, or the eve of a National Holiday, or upon any regular or special election day, or when the Board may determine to hold such meeting at a different hour or day, the notice of the time and place of the changed meeting date shall be given by mail to all concerned at least five (5) days prior to the meeting and at least one (1) notice shall be posted in or at the entrance to the Council Chambers in Portage City Hall.

Section 6. Special Meetings; Notices Required:

(a) Special meetings may be called, as may be necessary, by the Director of Community Development when the presiding

officer is advised that:

1) an applicant requests a special meeting, submits the required special meeting fee and four (4) or more Board members can schedule to attend (five (5) or more Board members if the application involves a use variance); or

2) two (2) or more applications are received after a regular meeting agenda is full and before the normal closing date of that meeting agenda, and four (4) or more Board members can schedule to attend (five (5) or more Board members if the application involves a use variance). Normal variance application fees apply in this case.

(b) The Chairperson, or any four (4) members of the Board, may on written request to the Director of Community Development call a special meeting.

(c) No more than eight items will be placed on any special meeting agenda.

Section 7. Officers of the Board:

(a) The officers of the Board shall consist of a Chairperson, Vice-Chairperson and Secretary. Said officers shall be elected by the Board from among its members at the regularly scheduled June meeting and shall serve for a period of one year, or until their successors are elected.

(b) Presiding Officer; Powers and Duties: The Chairperson shall be the presiding officer of the Board. He/she shall state every request coming before the Board, announce the decision of the Board on all matters, and decide all questions of order; provided, however, that upon an appeal to the Board, a majority vote of the Board shall conclusively determine such question of order. He/she shall vote on all questions. He/she shall at the request of the a Board member divide any question, if such question in his/her opinion is subject to division, and he/she shall submit it as divided. He/she shall provide all in attendance the opportunity to be heard, and will read all correspondence submitted to the Board.

(c) Vice-Chairperson; Powers and Duties: In the event the office of the Chairperson shall become vacant by death, resignation or otherwise, the Vice-Chairperson shall become Chairperson for the unexpired term of this office. In the absence of the Chairperson or due to his/her inability to discharge the duties of this office, such duties shall for the time being devolve upon the Vice-Chairperson.

(d) Secretary; Powers and Duties: In the event the Vice-Chairperson is for like reason, unable to act, such duties shall for the time being devolve upon the Secretary. Pursuant to Section 8, if a time limit is set for Statement of Citizens, the Secretary shall keep the time and advise the presiding officer. Any communications received by the Board will be read by the Secretary during the applicable public hearing. The Secretary shall perform other duties as directed by the Chairperson.

Section 8. Statements of Citizens:

All citizens shall have a reasonable opportunity to be heard for a reasonable length of time in the course of each meeting after standing, being recognized by the presiding officer, and stating their name and address. The presiding officer may set a reasonable time limit on the length of time a citizen or any other person may address the Board if, in the presiding officer's judgment, such time limit will aid in the orderly and efficient administration of the Board's business. If such time limit is imposed by the presiding officer, the Board shall accept written materials from any citizen or person. If it appears there is a number of people who wish to make a statement on a business item, they shall be encouraged by the presiding officer to elect a spokesperson or limit their statements to only providing the Board with new information.

Section 9. Rules of Debate:

(a) There shall be no debate or discussion of any issue prior to the proper introduction of said issue.

(b) When a motion is under debate, only the following resolutions shall be in order:

1. Motion to adjourn.
2. Motion to take a recess.
3. Motion to lay on the table.
4. Motion for the previous question.
5. Motion to postpone to a day certain.
6. Motion to refer to a committee of the Board.
7. Motion to amend or substitute.
8. Motion to postpone indefinitely.

(c) A motion to adjourn and a motion to lay on the table shall always be in order and without debate.

(d) After a motion is made to close debate, the presiding officer shall poll the Board on the question of closing the debate and put the principal question to an immediate vote of the Board. If the yesses prevail, the presiding officer shall immediately poll the Board on the principal question, or questions, without further debate.

(e) All votes shall be taken by yes and no, and be entered upon the journal to show the names of those voting in the affirmative and in the negative, or abstaining except if the vote is unanimous, the record need merely so state.

Section 10. Suspending; Amending Rules:

(a) These rules may be suspended by a vote of five (5) members of the Board present and voting.

(b) These rules may be amended by a vote of five (5) members of the Board present and voting.

Section 11. Attendance:

Board members who will be absent shall, if possible, notify the Department of Community Development prior to meeting.

Section 12. Governing Rules of Order:

Roberts Rules of Order may apply to all other items not provided for in these rules, except where they may be inconsistent with said rules.

Section 13. Appeals; Hearings:

(a) An appeal may be taken to the Zoning Board by any person affected by a decision of the Director of the Department of Community Development. The appeal shall be filed with the Director of the Department of Community Development within ten (10) working days of the Director's decision. The appeal shall be filed on the form provided by the Department of Community Development. The grounds for the appeal must be documented at the time of filing. The ten (10) day appeal period shall begin from the date said decision is written and transmitted to the affected person.

(b) Agenda items, once brought before the Board, may not be resubmitted for consideration or appeal unless a substantial change in circumstances shall have occurred. The concurring vote of a simple majority of members shall be necessary to determine the significance of the change.

(c) If the Zoning Board of Appeals denies a request for a variance, the Board may, if it chooses, grant a variance for a lesser degree if moved and voted upon at the same meeting as the denial. If the Board does not take such action, then the request may not be resubmitted for consideration unless a substantial change in circumstances has occurred. The concurring vote of the simple majority shall be necessary to determine if a substantial change in circumstance has occurred.

Section 14. Board Authority:

The Board shall exercise such powers and perform such duties as are authorized and provided by the statutes and laws of the State of Michigan, and particularly Act 207 of 1921 as amended.

Approved: October 8, 1973
Amended: February 20, 1985
Amended: December 12, 1988
Amended: July 1995

CITY OF PORTAGE PLANNING COMMISSION

RULES OF PROCEDURE

ARTICLE I – COMMISSION AUTHORITY, PURPOSE AND OBJECTIVES

Section 1. The Commission shall exercise such powers and perform such duties as are authorized and required by P.A. 33 of 2008, Michigan Planning Enabling Act (M.C.L 125.3801 *et seq.*), as amended, P.A. 110 of 2006, Michigan Zoning Enabling Act (M.C.L. 125.3101 *et seq.*), as amended, and City of Portage City Charter and Code of Ordinances.

Section 2. The Commission shall make and approve a master plan as a guide for development within the City of Portage. The Commission shall review and act upon all proposed zoning ordinances, zoning amendments, special land use permits, site plans, preliminary plats, amendments to land use plans, capital improvement programs, plans from adjacent and contiguous governmental units, and other related duties, pursuant to statutory and ordinance requirements.

Section 3. The Commission shall adopt these Rules of Procedures for the transaction of business, and shall keep a public record of its resolutions, transactions, findings, and determinations.

Section 4. The Commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.

ARTICLE II – MEMBERSHIP AND OFFICERS OF COMMISSION

Section 1. Membership of the Commission shall consist of nine members. Members of the Commission shall be appointed by the Mayor subject to approval of a majority of City Council elected and serving in accordance with the Michigan Planning Enabling Act and per City Charter.

Section 2. The officers of the Commission shall consist of a Chairperson, Vice-Chairperson and a Secretary and other officers as may be considered advisable, per the Michigan Planning Enabling Act.

Section 3. Said officers shall be elected by a vote of the Commission at the annual meeting in June and shall serve for a period of one year, or until their successors are elected. Nomination of officers shall be made from the floor of the meeting and the election shall be immediately thereafter. Vacancies in office shall be filled by regular election procedure.

Section 4. The Chairperson shall preside at all meetings of the Commission. The Chairperson shall have a vote upon all actions as a Commissioner. The Chairperson shall sign all documents authorized by the Commission. The Chairperson may appoint members to committees and advisory committees, subject to Commission approval.

Section 5. In the event the office of the Chairperson shall become vacant by death, resignation or otherwise, the Vice-Chairperson shall become Chairperson for the unexpired term of this office.

Section 6. In the event of the absence of the Chairperson or the inability of the Chairperson to discharge the duties of this office, such duties shall for the time being devolve upon the Vice-Chairperson. In the event the Vice-Chairperson is for like reason, unable to act, such duties shall for the time being devolve upon the Secretary.

Section 7.

(a) Each member of the Commission shall avoid conflicts of interest and not deliberate on, vote on, or review a matter where a conflict of interest exists. Conflicts of interest include, but are not limited to the following: where the concern involves the member, the immediate family or household of the member; where the subject property is owned by or is within 300 feet to property owned by the member; or where there is a corporation, partnership or other entity in which the member has an ownership, employment, or other financial interest. Conflicts of interest of a member may also arise where the member may derive a personal profit or gain, directly or indirectly, from his or her official position or authority or benefit financially from confidential information which the member has obtained or may obtain by reason of that position or authority or where the member has a substantial direct or indirect financial, personal or ownership interest other than an interest similar to that of other citizens affected.

(b) Potential conflicts of interest shall be raised by a member as soon as known by the member and if a conflict of interest exists, the member shall not receive materials concerning the conflict of interest, participate in discussions regarding the matter, attend a closed session in which the matter is discussed and shall exit the meeting room during deliberation of the matter.

(c) Other Commissioners may vote on whether there is a reasonable conflict that disqualifies a Commissioner from voting and may also vote to disqualify a member from participating, reviewing or voting on a matter if the interested member neglects or fails to disqualify him or herself.

(d) Failure of a member to disclose a potential conflict of interest as required by these Rules of Procedure constitutes malfeasance in office.

Section 8. If a member of the Commission has *ex parte* contact with an applicant who has a request before the Commission, the member shall disclose such contact to the Commission at the public hearing or deliberation of the matter.

ARTICLE III – MEETINGS

Section 1. Regular meetings of the Commission shall be held the 1st and 3rd Thursday of each month at Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan 49002 for the transaction of such business as may be brought before the Commission. When a regular meeting falls on or near a holiday, the meeting schedule may be adjusted as determined by the Commission. Special meetings to accommodate applicant requests and additional business may also be scheduled periodically by the Commission. All meetings of the Commission shall be open to the public and shall comply with the Open Meetings Act.

Section 2. The second regular meeting held in the month of June shall constitute the annual meeting of the Commission.

Section 3. Members of the Commission shall be notified in writing of the time and place of all meetings not less than 48 hours before the meeting. Notices of meetings of the Commission shall specify the business to be transacted and no other business shall be officially considered at said meeting, unless added by the affirmative vote of at least five members of the Commission.

Section 4. A written agenda shall be prepared for all meetings before the Commission. The normal order of business shall be as follows:

(a) Call to Order
(b) Pledge of Allegiance
(c) Approval of Minutes
(d) Site/Final Plans
(e) Public Hearings
(f) Plats/Residential Condominiums
(g) Old Business
(h) New Business
(i) Statement of Citizens
(j) Adjournment

Section 5. During meetings where a large number of citizens may be anticipated to be present who may wish to speak regarding an agenda item, the Chairperson may establish a time limit for public comment and request that citizens not repeat previously voiced comments. Further, the Commission may adjourn the public hearing to a larger venue if circumstances require.

Section 6. The City Manager, or designate, on behalf of the Commission, shall prepare all public notices for agenda items pending before the Commission consistent with the Michigan Planning Enabling Act, Michigan Zoning Enabling Act, Open Meetings Act and other applicable statutes.

Section 7. The City Manager, or a member of the City Administration as designated by the City Manager, shall attend all Commission meetings.

Section 8. The City Attorney, or designate, shall provide professional legal advice and attend all Commission meetings.

Section 9. Following every meeting, the City Manager, or designate, shall prepare summary meeting minutes for review and approval by the Commission at the next scheduled meeting.

ARTICLE IV – QUORUM AND VOTING

Section 1. Five members of the Commission shall constitute a quorum for the transaction of business.

Section 2. At least five concurring votes shall be necessary for all decisions made by the Commission, except when a motion involves an amendment to the Master Plan, which shall require an affirmative vote of at least 2/3 (six concurring votes) of the membership of the Commission and unless otherwise provided by law or these Rules of Procedure

Section 3. Each Commissioner present shall be entitled to one vote in meetings of the Commission.

Section 4. The City Manager, or designate, City Attorney and other officials of the City may participate in Commission discussions, but shall not vote, introduce motions or initiate any other parliamentary action.

ARTICLE V – COMMITTEES

Section 1. The Commission may approve committees of Commission members with such duties and functions as it deems available. The Chairperson with approval of the Commission may approve appointment of advisory committees whose members are not members of the planning commission, per the Michigan Planning Enabling Act.

Section 2. The Commission may also authorize advisory committees whose membership may consist of individuals whose experience, training or interest may qualify them to lend valuable assistance to the Commission by acting in an advisory capacity in consulting with the Commission on the technical and special phases of its programs.

ARTICLE VI – AMENDMENTS

Section 1. These Rules of Procedure may be altered or suspended, amended or repealed by the Commission at any regular or special meeting,

ARTICLE VII – RULES OF ORDER

Section 1. In all cases not covered by these rules, Roberts Rules of Order will govern.