



ZONING BOARD OF APPEALS

July 11, 2016

CITY OF PORTAGE ZONING BOARD OF APPEALS

Agenda

Monday, July 11, 2016

(7:00 pm)

Portage City Hall
Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES

- * June 13, 2016 meeting

OLD BUSINESS:

- * ZBA #15-29, Nick's Gyros, 7206 South Westnedge Avenue: Requesting a Temporary Use Permit to operate a mobile food trailer at 7206 South Westnedge Avenue from June 14, 2016 through December 14, 2016.

NEW BUSINESS:

- * ZBA #16-1, Meyer C. Weiner, 251 and 325 Mall Drive: Requesting: a) a 36 foot setback variance to construct an 8,996 square-foot commercial building 39 feet from the front (north) property line where a minimum 75-foot setback is required; and b) a variance to provide an off-street loading area in the required front yard and west side yard, where a rear yard loading area is required.
- * ZBA #16-2, Gary Gifford, 6328 Surrey Street: Requesting a variance to retain a 10-foot by 14-foot three season porch, a small portion of which is located 38 feet from the rear (west) property line where a minimum 40-foot setback is required.

OTHER BUSINESS:

- * Amendments to Rules of Procedure
Election of officers

STATEMENT OF CITIZENS:

ADJOURNMENT:

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS

DRAFT

Minutes of Meeting – June 13, 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 four people were in the audience.

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

MEMBERS EXCUSED: Phillip Schaefer and Randall Schau.

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

APPROVAL OF THE MINUTES: Learned moved and Byrnes seconded a motion to approve the May 9, 2016 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS

ZBA #15-27, Chick-Fil-A, 6018, 6026, 6060, 6110, 6150, 6190, 6202, 6278, 6284, 6294 South Westnedge Avenue & 200, 240 Mall Drive: Robbe stated he had a conflict of interest and left the room for this item. Mais summarized the requested variances to retain a nonconforming 50 square-foot freestanding sign with an 18 square-foot changeable copy board after a substantial improvement has occurred, that is not permitted, and does not meet the minimum 300-foot sign separation requirement; or erect a new 55 square-foot freestanding sign with a 22 square-foot changeable copy board. Robbe excused himself from this item due to a conflict of interest. Cheryl Scales (Progressive AE) and Justin Bark (representative for Chick-Fil-A) stated they thought the variance is needed due to being part of the Southland Mall zoning lot and Chick-Fil-A does not have any rights to use the existing Southland Mall freestanding signs. Learned inquired when the applicant discovered there would be an issue with the existing sign. Mr. Bark responded before getting site plan approval. Learned stated the applicant was requesting to either keep the existing sign or erect a new one and inquired which the applicant preferred. Ms. Scales said erecting a new sign was preferred and noted the new sign would meet the 300-foot sign separation requirement. Seyburn acknowledged staff's recommendations to consolidate signage, but stated the Board has also granted sign variances when they resulted in a reduction in the degree of nonconformity. Bright stated he thought a separate freestanding sign would improve wayfinding.

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 Philipp, to grant a variance to construct a new 45 square foot free standing sign with an 18 square foot changeable copy board on the north end of the property (at least 300 feet from the central Southland Mall sign), with the condition that no banner signs be used in connection with Chick-Fil-A 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 non-standard buy-lease agreement and inclusion into a new zoning lot; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to erect a freestanding sign; the immediate practical difficulty causing the need for the variance was not caused by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the zoning ordinance. 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, Eichstaedt-Yes, Bright-Yes, Byrnes-No, Seyburn-Yes, The motion passed 5-1.

ZBA #15-28, Pfizer, Inc., 7171 Portage Road: Mais summarized the variance requests to construct an approximate 98,000 square-foot building addition 65 feet in height where a maximum 60-foot building height is permitted. Mr. Patrick McAvoy was available to answer questions. Learned inquired if construction is still on schedule for the new warehouse. Mr. McAvoy stated it should be starting very soon.

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 Phillip, to grant a variance to construct a 98,000 square foot building addition with a height of 65 feet where a maximum of 60 feet is allowed 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 size and shape of the lot; 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. 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, Eichstaedt-Yes, Bright-Yes, Byrnes-yes, Robbe-yes, Seyburn-Yes. The motion passed 7-0.

ZBA #15-29, Nick's Gyros, 7206 South Westnedge Avenue: Eichstaedt stated he had a conflict of interest and left the room for this item. The applicant was not in attendance to present his case to the board. A motion to postpone the item until the July 11, 2016 meeting was made by Robbe, seconded by Learned. Upon voice vote the motion passed 6-0.

OTHER BUSINESS:

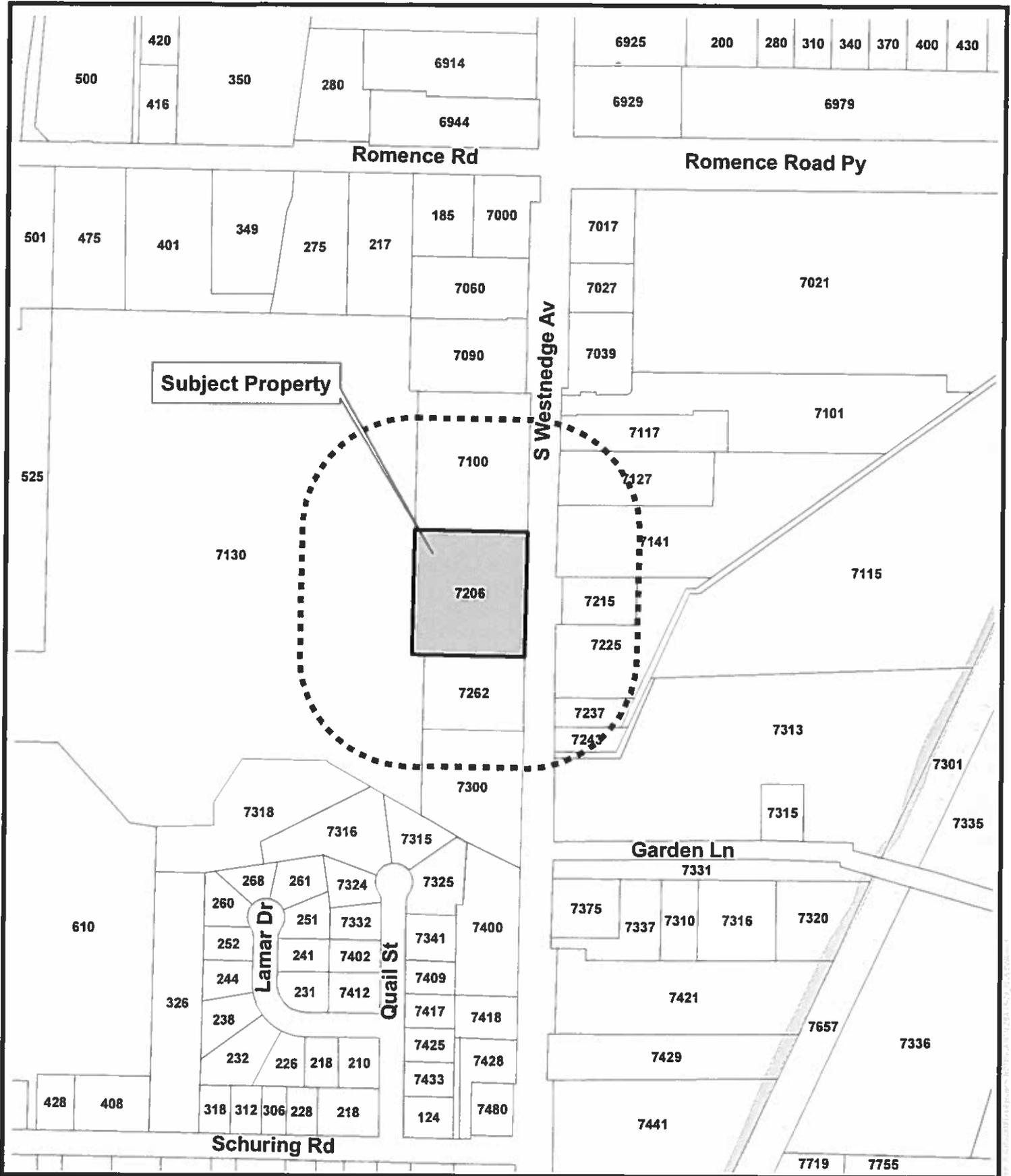
Zoning Board of Appeals Rules of Procedure: Mr. Learned stated to the board that the subcommittee is continuing to work on the "Conflict of Interest" amendment and should be able to present their recommendation to the board for the July 11, 2016 meeting.

Election of Officers: Due to the absence of two members, the Board agreed that the election of officers be postponed until the July 11, 2016 meeting. Mr. Learned requested that if anyone is interested in a position as an officer, the board member should email Chairman Bright for consideration.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



Legend

-  300' Notification
-  7206 SWA

ZBA 15-29

7206 South Westnedge Avenue



1 inch = 333 feet



Subject Property

7130

7100

7127

7141

7206

7215

7225

S Westnedge Av

7262

7237

7243

7300

Legend

 7206 SWA

ZBA 15-29
 7206 South Westnedge Avenue



1 inch = 75 feet



Department of Community Development

RECEIVED

MAY 18 2016

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

COMMUNITY DEVELOPMENT

Application Date 5/17/2016

Name of Applicant Nicholas Lambright
Print

Nick Lambright
Signature

Applicant's Address 2727 West Michigan

Phone No. 269-532-9616-cell

Name of Property Owner (if different from Applicant) Plaza Corp. / 7206 Westnedge LLC.

Address 7206 South Westnedge Phone No. 269-383-5775

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

Street Address 7206 S. Westnedge, Portage, MI

For Platted Property: Lot _____ of _____ Plat _____

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

Applicant's interest in Property that is the subject of this Application: Location to set-up local food trailer

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

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

_____ **Variance from Zoning Ordinance:** Article _____ Section _____ Paragraph _____
Regarding: Use _____ Area _____ Yards _____
Setbacks _____ Parking _____ Other _____

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

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

Reason for Request: _____

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

Reason for Request: _____

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

Reason for Request: _____

FOR STAFF USE

Application Number: <u>15-29</u>	Filing Date: <u>5/18</u>	Tentative Hearing Date: <u>6/13</u>
Previous Application Filed Regarding This Property: _____		

Reason For Variance

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

N/A

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

N/A

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

NO, variance is required to set-up a temporary business on a daily basis.

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.)

This variance is the minimum needed to operate.

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

The variance being to be obtained is currently a vacant lot. The mobile unit would leave it unbothered & add value.

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

The area & variance are near a high traffic area... however, the lot is secluded & has an existing parking lot to decrease congestion in the area. (As shown in drawing.)

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

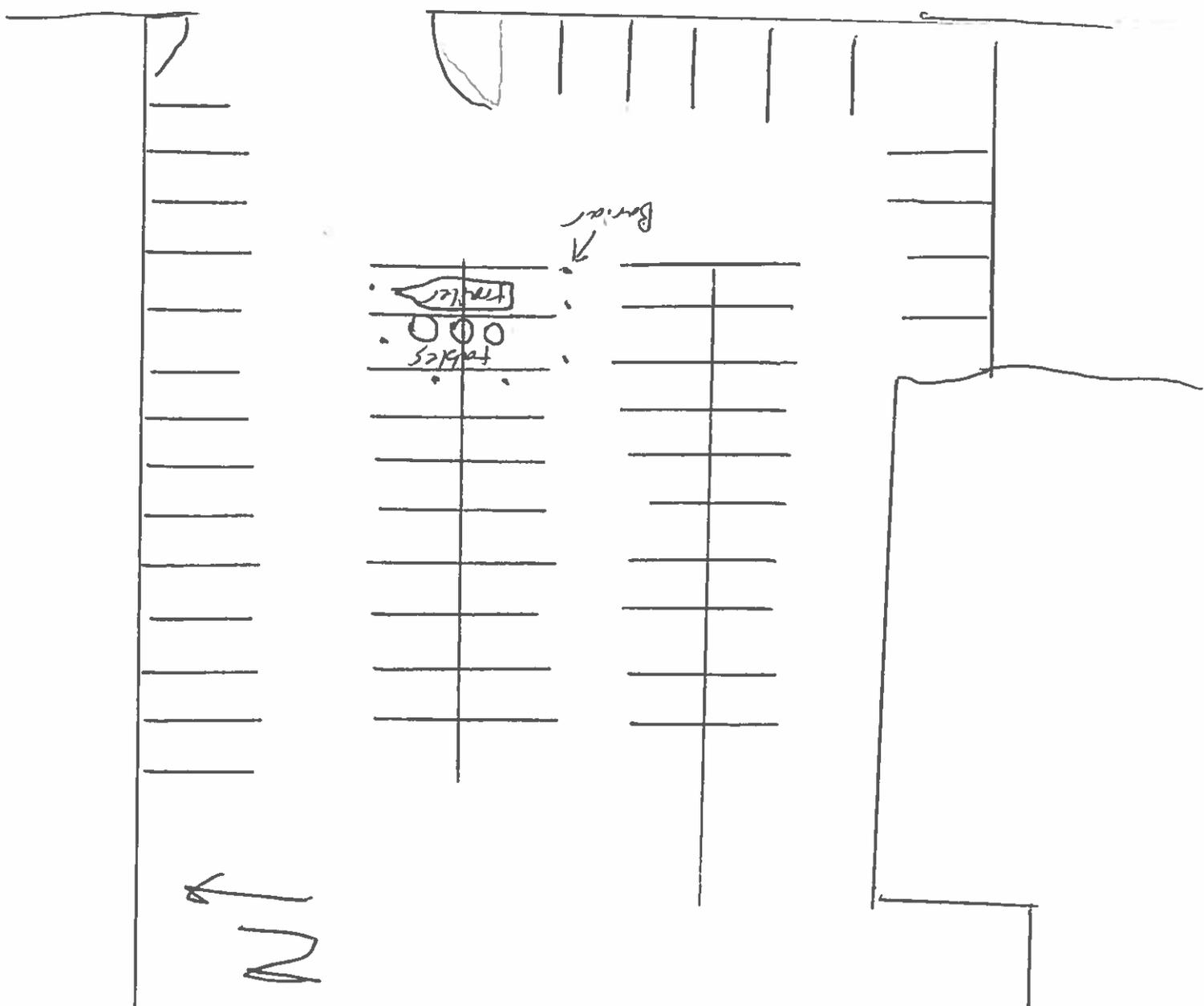
N/A

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


Signature of Applicant

5/17/16
Date

Westridge Ave



RECEIVED
MAY 24 2016
COMMUNITY DEVELOPMENT

Dear Board Members,

I am requesting a variance for 7206 South Westnedge in order to set up my food trailer. I would be setting up in the spot starting June 14th through December 14th. I would be setting up in the front of the properties parking lot (see attached drawing). The trailer would be there from 9am-8:30 pm Monday through Sunday. However, there are times that we would not be set up due to weather and if we have other events. On the property we would keep trash receptacles as well as make sure to clean up at the end of each operation day. Last year I set up in a very similar manner and was approved a variance which I believe was very successful. I am requesting the variance because this is currently the only way for me to set up and use my food truck in portage. I hope you will consider my application, for I would love the chance to serve our great city some great food.

Nicholas Lambright

Owner, Nick's Gyros

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MAY 24 2016

COMMUNITY DEVELOPMENT

Jeff Mais

From: Andy Wenzel <andy@plazacorp.net>
Sent: Wednesday, May 25, 2016 5:23 PM
To: Jeff Mais
Cc: Clayton Nicholson; nicksgyrotrailer@gmail.com
Subject: Nick's Gyros, LLC/7206 South Westnedge Avenue

Hi Jeff-

I'm confirming that our ownership entity for the above address, 7206 Westnedge, LLC, has given authorization to Nick's Gyros, LLC to temporarily operate a food truck at the above address. We've requested them to work with the city for the required permits, etc... Let me know if you have any questions. Thanks!

Andy

Andy Wenzel
Director of Acquisitions and Development
PlazaCorp Realty Advisors, Inc.

PLAZACORP
Management, Development, Brokerage, Leasing

211 East Water Street, Suite 201

Kalamazoo, MI, 49007

Phone: 269.383.5775

Fax: 269.383.5774

Cell: 269.342.2100

andy@plazacorp.net

Plazacorp.net

TO: Zoning Board of Appeals **DATE:** June 3, 2016
FROM: Vicki Georgeau,  Director of Community Development
SUBJECT: ZBA #15-29, Nick's Gyros, 7206 South Westnedge Avenue, B-3, General Business
CODE SECTION: 42-622(D), Temporary Uses, p. CD42:140.3
APPEAL: Requesting a Temporary Use Permit to operate a mobile food trailer at 7206 South Westnedge Avenue from June 14, 2016 through December 14, 2016.

STAFF RECOMMENDATION:

The applicant is requesting the above referenced Temporary Use Permit per the enclosed application, site sketch and related materials. The 2.27 acre parcel has a 4,600 square foot vacant building, off-street parking area and related improvements. The property is currently listed for sale, is zoned B-3, General Business, and is adjacent to a developed commercial property to the north, south, and east (across the street), and to a wetlands area to the west.

As background information for the Board, food trucks or trailers are most commonly "mobile", move from site to site, and have the option of applying for a Business Special Event (BSE) permit for periods up to 28 days a year on a commercial zoning lot. While Portage does not have specific ordinance provisions for mobile food trucks/trailers, many other communities have adopted such regulations that most often: limit food trucks/trailers to commercial areas and require a permit; include provisions for trash disposal; health department approval; length of time at any given location; and include separation requirements from brick and mortar restaurants. For example, Kalamazoo requires a 150 foot distance from existing restaurants, whereas Grand Blanc Township requires 500 feet. Grand Rapids allows the Planning Commission to consider distance separation from existing restaurants when evaluating a special land use permit.

Although mobile food vendors can add to place making efforts, they may compete with established brick and mortar restaurants that have a much higher overhead cost. As measured from property line to property line, the proposed Nick's Gyros mobile food trailer will be approximately 50 feet from Culver's and 80 feet from Monelli's Sports Bar and Grill. Culver's and Monelli's have received notice of this public hearing and can comment on the proposed application.

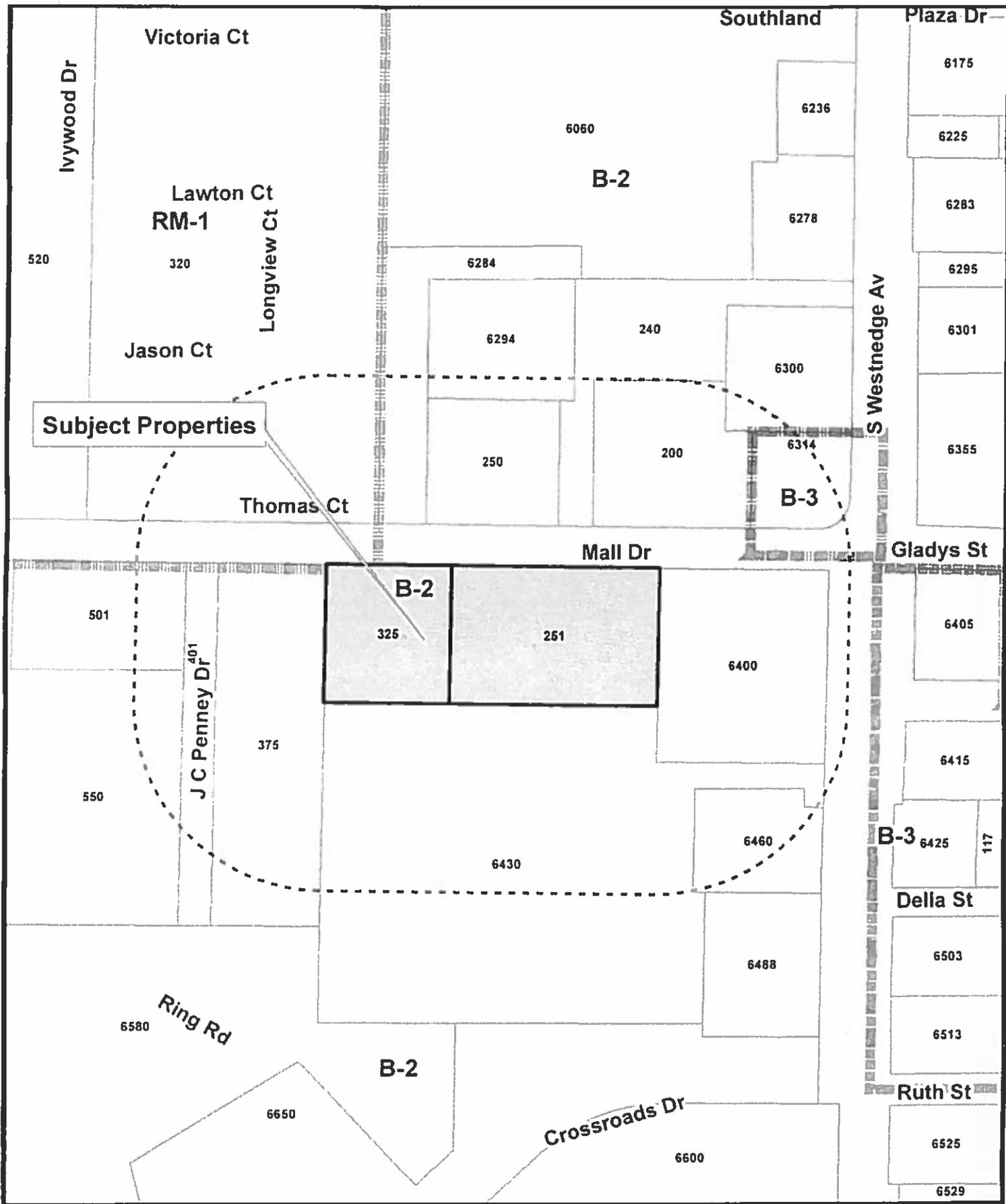
While the applicant has the option of obtaining BSE permits at various locations in the community consistent with the intent of a mobile food vendor operation, the applicant is requesting to operate the food trailer at this one location from June 14 – December 14, 2016. As the Board may recall, Nick's Gyros received a prior Temporary Use Permit to operate for a six month period at 7540 South Westnedge Avenue from July – December 2015. During this time, there were no complaints or issues with the Temporary Use for the Nick's Gyros food trailer.

Section 42-622(D)(2)(c), Temporary Uses states that the “use shall be in harmony with the general intent of the district.” Subject to any additional information brought before the Board, staff recommends the Temporary Use permit for Nick’s Gyros, 7206 South Westnedge Avenue be approved subject to the following conditions:

1. The Temporary Use be approved from June 14 – December 14, 2016.
2. The food trailer be licensed by the Kalamazoo County Department of Health and Community Services.
3. Food trailer tables and off-street parking set-up be consistent with the submitted site sketch.
4. Hours of operation be limited to 9:00 a.m. to 8:30 p.m. seven days a week.
5. The site be kept free from trash and refuse.
6. Temporary signage be limited to one sign not exceeding 40 square feet.
7. There be no sound amplifying equipment with the exception of a portable generator which must meet the requirements of Chapter 24, Article 4 (Noise)
8. The trailer must meet B-3 setback requirements (30 feet from front property line).

**PRACTICAL
DIFFICULTY:**

Not applicable for Temporary Use.

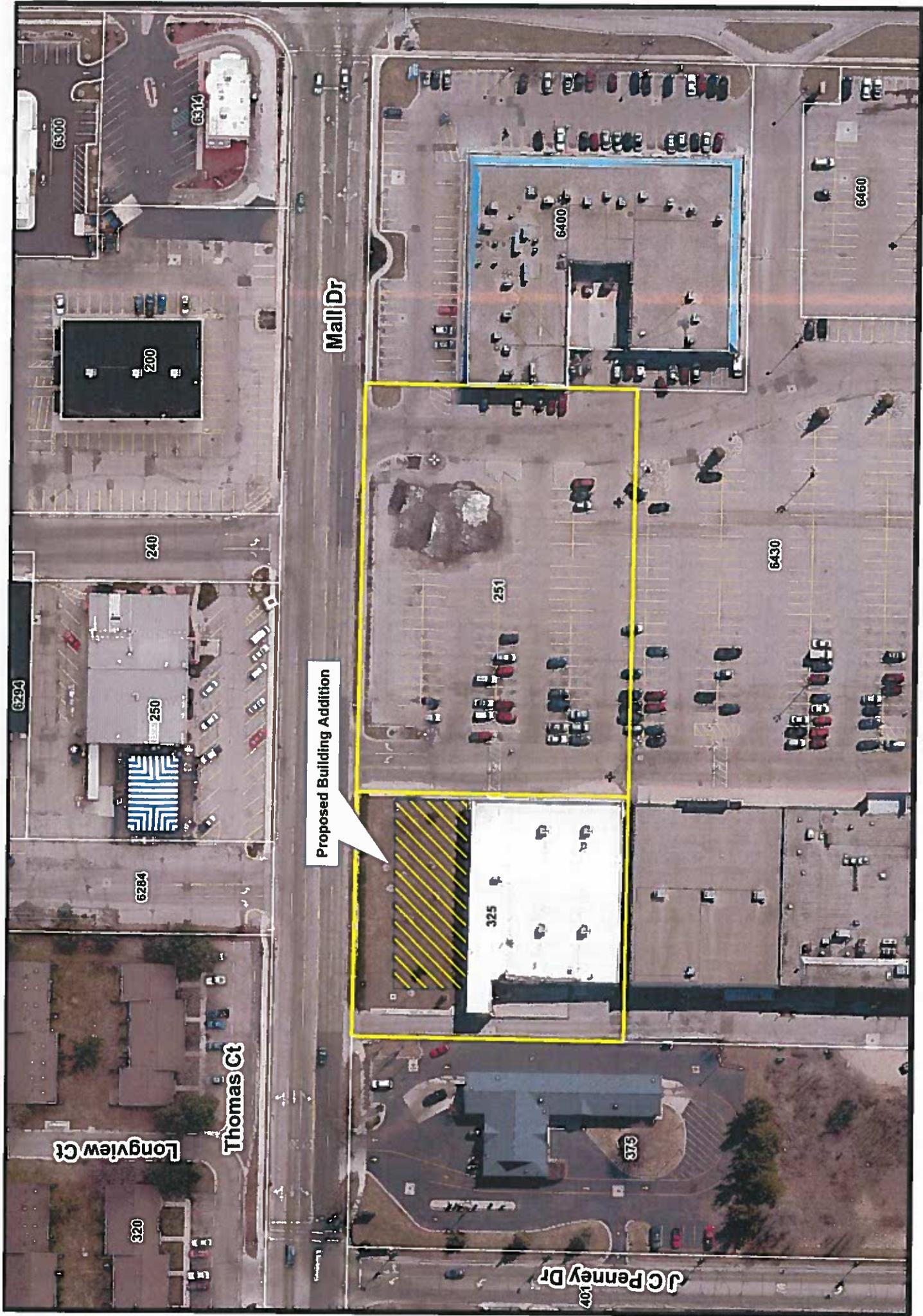


-  Zoning Boundary
-  Subject Properties
-  Notification

ZBA 16-01
251 & 325 Mall Drive



1 inch = 200 feet



Proposed Building Addition

Aerial Photography 251 & 325 Mall Drive

-  ZBA16-01-Building
-  Subject Properties



1 inch = 100 feet

RECEIVED

MAY 27 2016

COMMUNITY DEVELOPMENT



Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 5/27/16

Name of Applicant Meyer C. Weiner (Tim Timmons) Print

Signature

Applicant's Address 700 Mall Drive, Portage, MI 49024

Phone No. 269-323-2441

Name of Property Owner (if different from Applicant) DOLLAR ACQUISITIONS, LLC

Address C/O Meyer C Weiner 700 Mall Dr, Portage, MI 49024 Phone No. 269-323-2441

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

Street Address 321 Mall Drive, 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:

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 Division 4 Section 42-350 Paragraph A

Regarding: Use Area Yards

Setbacks x Parking Other

Reason for Request (Also complete page 2 of application): To allow construction of a 8,996 sq. ft. building for CSL Plasma. Requesting a setback variance of 35'-8"

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

Table with 3 columns: Application Number (2016-04), Filing Date, Tentative Hearing Date (7/11/16), and Previous Application Filed Regarding This Property.

RECEIVED

MAY 27 2016

COMMUNITY DEVELOPMENT

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.)
Buildable site without variance is 23' which only allows a depth of 100'. Total sf of 2,300 sf is too small for exposure in the 2nd row of the retail corridor. Larger deeper space can't be marketed. The small 2,300 sf loses the economics of scale to make it work economically. The space is hidden from the Westnedge corridor and needs prominence.
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
The only other property that may share a similar characteristic would be Hodgson Light and Log. This subject property is near many B-3 zoned properties requiring a 30' setback (Fanny May, Taco Bell, Gladys to Ruth on on S. Westnedge Avenue as examples.)
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
It is not reasonable to develop this property with only 23' of frontage. It would be too small and too hidden to benefit from the all important South Westnedge.
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.)
This variance is the minimum necessary to accommodate a tenant willing to go such a distance from S. Westnedge and meet the economics needed to build in such a difficult economic environment blocked by a 31,000 sf out building (Galleria). Additionally, Dollar Tree wants their entire space and they have many years of term and options on their lease.
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.)
We believe CSL will bring increased traffic to the area and benefit Crossroads Car Wash to the west, Dollar Tree, Hardings and Planet Fitness to the south. This is in keeping with the character of the area. When, mature, CSL will have 200-300 visitors in a day all leaving with money to spend in the area.
6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)
The variance would increase much needed patron traffic to the area. There is plenty of parking, multiple access points and extended co-tenancy that should preclude any traffic congestion.
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.)
No. The previous owner leased Dollar Tree without carving out additional frontage needed to develop this parcel. The hardship is one of size and visibility.
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
The variance would allow the land owner to develop an otherwise narrow parcel that benefits from a large, nearly unused parking field that would add traffic and value to the Shopping Center.


Signature of Applicant

5/27/16
Date



RECEIVED

MAY 27 2016

COMMUNITY DEVELOPMENT

May 26, 2016

Michael West, AICP
Senior City Planner
Department of Community Development
City of Portage
7900 South Westnedge Avenue
Portage, MI 49002

Re: Setback variance for construction of a new 8,996 sq. ft. building at 321 Mall Drive

Dear Mike,

Attached is our application, check and plans for a ZBA hearing requesting a setback variance on Mall Drive. We have included a large and small site plan as well as north elevations providing a look of the building facing the street.

Background: We purchased this development (Dollar Acquisitions) in 2006 after being outbid by an out of state developer for the former Frank's Nursery property which was sold by the bankruptcy court. We felt it made sense for us to own it as it was adjacent to our Harding's, Dunham's (now Planet Fitness) property and shared parking and access. The development included 23' of additional frontage on S. Westnedge (without setback variance) which has proven difficult to market because of the distance from S. Westnedge, blocked site lines from Galleria and limited size with only 23' of frontage. We have learned there are suitable options for the property if we can create the frontage and thus mass of size to gain presence. In 2013 the board granted a variance for 29' and a 7,575 sq. ft. building for a proposed Buffalo Wild Wings which ultimately was not approved by the franchisor.

The proposed use is a blood Plasma Center named CSL with a proposed size of 8,996 sq. ft. and we are requesting a set-back variance of 35'8". You can learn more about the company by visiting their web site at cslplasma.com.

Thanks for your consideration and please advise of a date for our hearing.

Sincerely,

Timothy A. Timmons
Meyer C. Weiner Company

Enc.

Jeff Mais

From: Timothy Timmons <TTimmons@mcweiner.com>
Sent: Tuesday, June 14, 2016 3:10 PM
To: Jeff Mais
Cc: Victoria Georgeau; Joshua Weiner
Subject: FW: Zoning Board of Appeals setback variance for CSL in Portage
Attachments: CSL Portage MI TEST FIT- 2016 05 25.pdf

Jeff,

Here is some additional narrative and a revised plan. Hopefully this gives you the information you need to find a way to support our request. We would like to schedule a meeting to further discuss with staff before a formal recommendation is made to the board. Thanks and please advise of your and Vicki's availability for such a meeting.

Tim

Timothy A. Timmons CPM® CLS CSM CRX
Meyer C. Weiner Co.
700 Mall Drive
Portage, MI 49024
ttimmons@mcweiner.com
269-323-2441
269-998-1935 c
www.mcweiner.com

From: James.Sory@CSLPLASMA.COM [mailto:James.Sory@CSLPLASMA.COM]
Sent: Tuesday, June 14, 2016 10:41 AM
To: Timothy Timmons
Subject: RE: Zoning Board of Appeals setback variance for CSL in Portage

Tim-
Space that is less than 9,000 SF with limited frontage is difficult for us. We recently completed a draft space plan, which I believe your architects have seen, that shows the frontage to be 59" +/- and with 36 donor beds. This limited amount is atypical from our standard centers as we usually need frontage of 70' to adequately design our centers. We need the larger space because of our internal circulation and donor flow does not work with smaller frontage if we were to get the same number of donor beds. If we were forced to reduce the size to 7,600 SF, we would be forced to reduce the number of donor beds. Anything less than 36 donor beds would not be feasible to CSL from an investment/donations point of view. Hope this helps.

Thanks-
Jay

From: Timothy Timmons [mailto:TTimmons@mcweiner.com]
Sent: Tuesday, June 14, 2016 9:51 AM
To: Sory, James US/BCT
Cc: Joshua Weiner
Subject: [EXT] Zoning Board of Appeals setback variance for CSL in Portage

Hi Jay,

Attached is the application that we made to the City. They also asked for a floor plan so we sent them the one from Grand Rapids with the notation that it would be slightly condensed. They have now asked me to ask you to explain why

your floor plan would not fit in the space that was previously approved in 2013 when ZBA approved a 7575 sq.ft. building and a setback variance of 29'. FYI the buildable site without variance is 23' (23' + 29' previously approved =52' of frontage) so they would like to hear specifically why the smaller building and smaller setback variance cannot work with your layout. Perhaps you can provide some detail in an email to me that explains why you need 8996 sq.ft. and frontage of 58' 8". I will amend our application to include your narrative. Thanks for your help and please let me know if you have questions.

Tim

Timothy A. Timmons CPM® CLS CSM CRX
Meyer C. Weiner Co.
700 Mall Drive
Portage, MI 49024
ttimmons@mcweiner.com
269-323-2441
269-998-1935 c
www.mcweiner.com

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RECEIVED
 JUN 9 2009
 COMMUNITY DEVELOPMENT

1 FLOOR PLAN

1/16" = 1'-0"
 PROJECT INFORMATION
 8,896 OVERALL SF
 APPROX. 3,598 USABLE SF
 SPRINKLERED

- 36 BEDS
- 2 NEW DONOR BOOTHS
- 2 VIDEO CONSENT BOOTHS
- 5 RETURN DONOR VITALS BOOTHS
- 3 KIOSKS
- SD-1

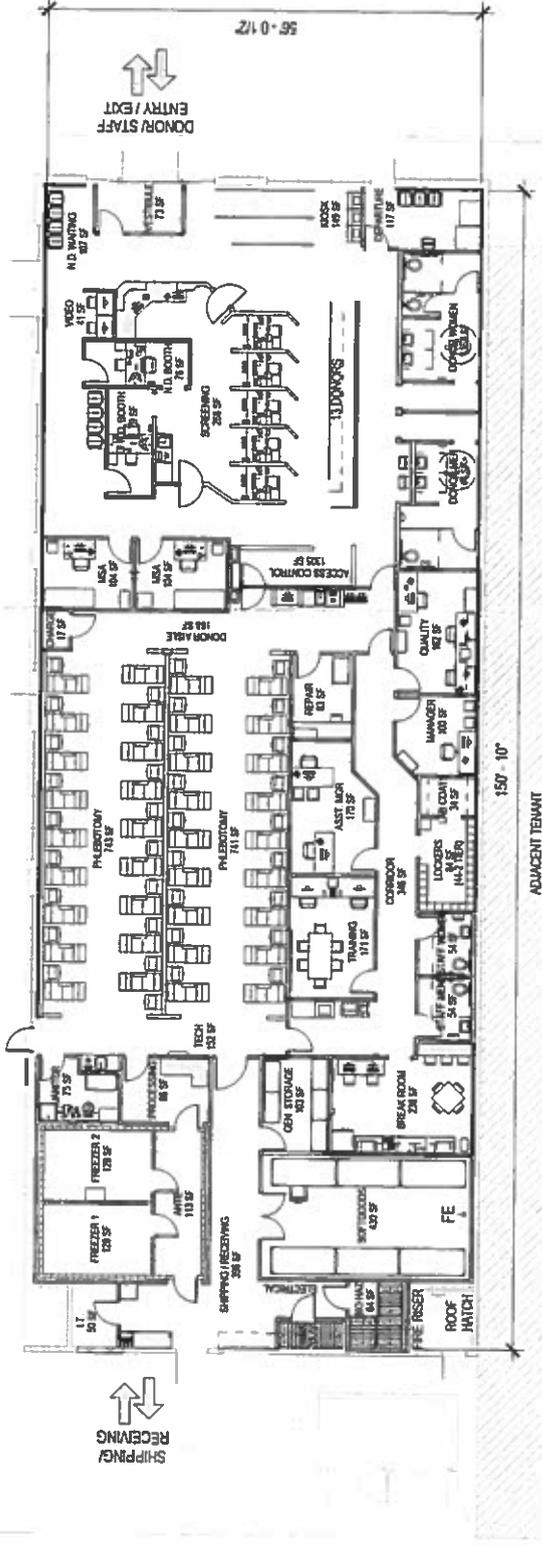
PROPOSED PLAN

CSL Plasma
 NEW CENTER - CITY

325 MALL DRIVEPORTAGE, MI 49024

MAY 25, 2016

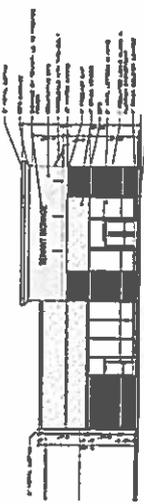
TEST FIT



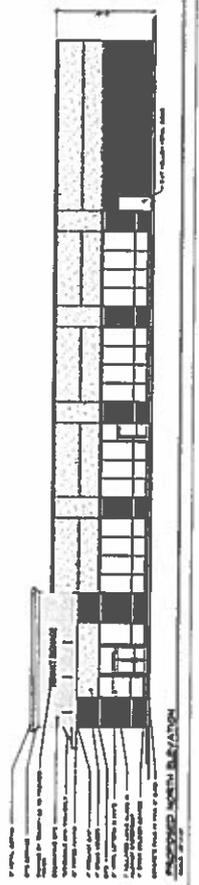
PLAN NORTH
 TRUE NORTH



NOVUS



PROPOSED EAST ELEVATION



PROPOSED NORTH ELEVATION



Department of Community Development

TO: Zoning Board of Appeals **DATE:** July 1, 2016
FROM: Vicki Georgeau, Director of Community Development
SUBJECT: ZBA #16-01, Meyer C. Weiner, 251 and 325 Mall Drive, B-2, Community Business

CODE SECTION: 42-350, Schedule of Regulations, p. CD42:84
42-522(B), Loading Facilities, p. CD42:117

APPEAL: Requesting: a) a 36 foot setback variance to construct an 8,996 square-foot commercial building 39 feet from the front (north) property line where a minimum 75-foot setback is required; and b) a variance to provide an off-street loading area in the required front yard and west side yard, where a rear yard loading area is required.

STAFF RECOMMENDATION:

The applicant is requesting the above referenced variance per the enclosed application, letter of explanation, site plan and related materials. The zoning lot consists of two parcels (251 and 325 Mall Drive) and is improved with an 18,534 square-foot commercial building (Dollar Tree), off-street parking lot, and associated improvements. The property is zoned B-2, community business and is surrounded by other B-2 commercial properties.

As background, the existing commercial building was previously occupied by Frank's Nursery and Crafts. In 1979 the Board granted a variance (ZBA #79-38) to permit the construction of a covered/screened outdoor sales area 35 feet from the front (north) property line, where a 75-foot setback is required. In 2005, Frank' Nursery and Crafts vacated the premises and Dollar Tree reoccupied the building in 2006. As part of the transition between Frank's and Dollar Tree, the outdoor garden center was removed and landscaping (grass, shrubs, and trees) was installed. In 2013, the Board approved a variance (ZBA #12-18) to allow construction of a 7,575 square-foot Buffalo Wild Wings to within 46 feet of the (north) front property line. The restaurant, however, was not constructed and the variance approval expired.

The applicant now proposes to construct an 8,996 square-foot blood plasma center. The building would be 58.66 feet deep by 153.4 feet wide, and would extend 36 feet within the required 75-foot front setback. A 500 square-foot loading/unloading area would be located in the required front and west side yard, adjacent to the west side of the proposed building.

When the building was constructed in 1979, the building was setback 98 feet from Mall Drive, 23 feet more than the required minimum. The applicant maintains a building width of 23 feet is not practical or economically feasible to meet the needs of a blood plasma center or future tenants. In addition, the applicant

indicates it is not possible to reconfigure the Dollar Tree store to accommodate a portion of the proposed tenant. Furthermore, the blood plasma center operator has provided information that the proposed tenant space is smaller than their typical clinic and efforts have been made to reduce the size of the facility to minimize the setback variance requests.

Based on information provided by the applicant, the building elevation depicts a low-profile building with brick veneer, the bulk of which is approximately 21'5" in height, with an architectural element near the main entry that extends to 26'9", whereas 35 feet is permitted in the B-2 district. Several large window openings are also shown to add interest to the building façade. The proposed building materials and design will compliment other adjacent businesses and will result in an improved streetscape appearance along Mall Drive. In addition, the greenspace between Mall Drive and the proposed building addition will be retained and additional landscape upgrades are proposed on the zoning lot.

Concerning request a), the location of the existing retail building and limited building area along the north side of the building are exceptional or extraordinary circumstances applying to this property that do not apply generally to other properties in the same zoning district. The immediate practical difficulty causing the need for the variance was not created by the applicant, as the existing building was constructed in a location to accommodate an outdoor display area. The variance can be recommended conditioned upon: 1) the building height be limited to 26'9" as shown in the elevation drawings, to ensure a low-profile building; 2) the building design and materials be consistent with the building elevations submitted with the application; and 3) there be no off-street parking or maneuvering lane between the building addition and Mall Drive.

With regard to request b), a loading/unloading area cannot be placed in the rear (south) yard, as the proposed building directly abuts the existing Dollar Tree building. The immediate practical difficulty causing the need for the variance was not created by the applicant, and no practical conforming alternatives are available. Furthermore, the loading area will be adjacent to the west side of the building, out of general view of the public right-of-way. Based on the above, the variance is recommended, conditioned upon no loading/unloading activities occur in the front yard area between the proposed building addition and Mall Drive.

**PRACTICAL
DIFFICULTY:**

Location of existing building and limited building area width along north side of building. See Suggested Motion form.

SUGGESTED NON-USE VARIANCE MOTION FORM

Mr. Chairman:

I move, in regard to ZBA # _____, the application by _____
for a variance from _____

be:

a. granted for all of the following reasons:

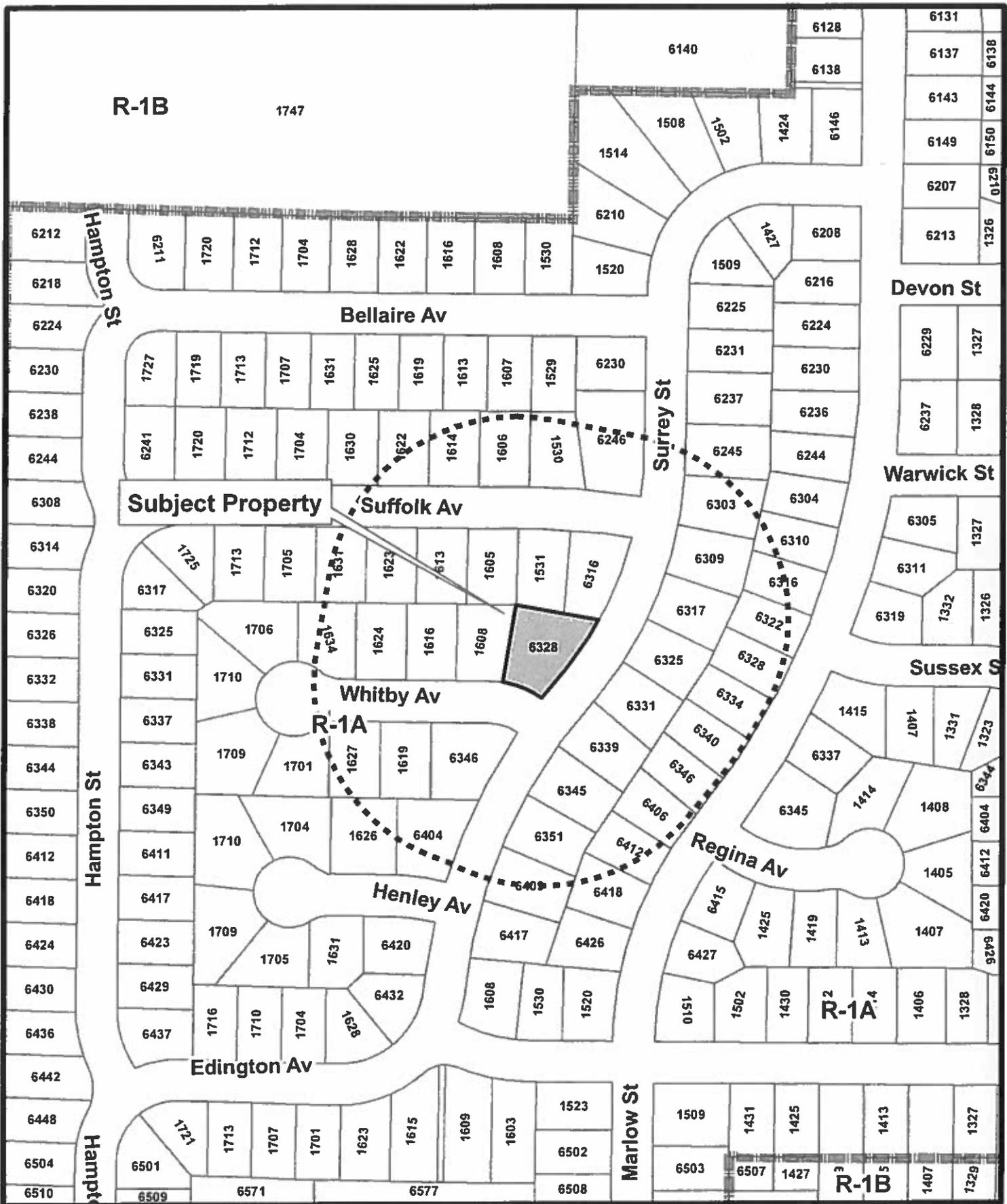
- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to _____, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

-Or-

b. denied for one of more of the following reasons:

- 1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;
- 2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as _____;
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

c. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**

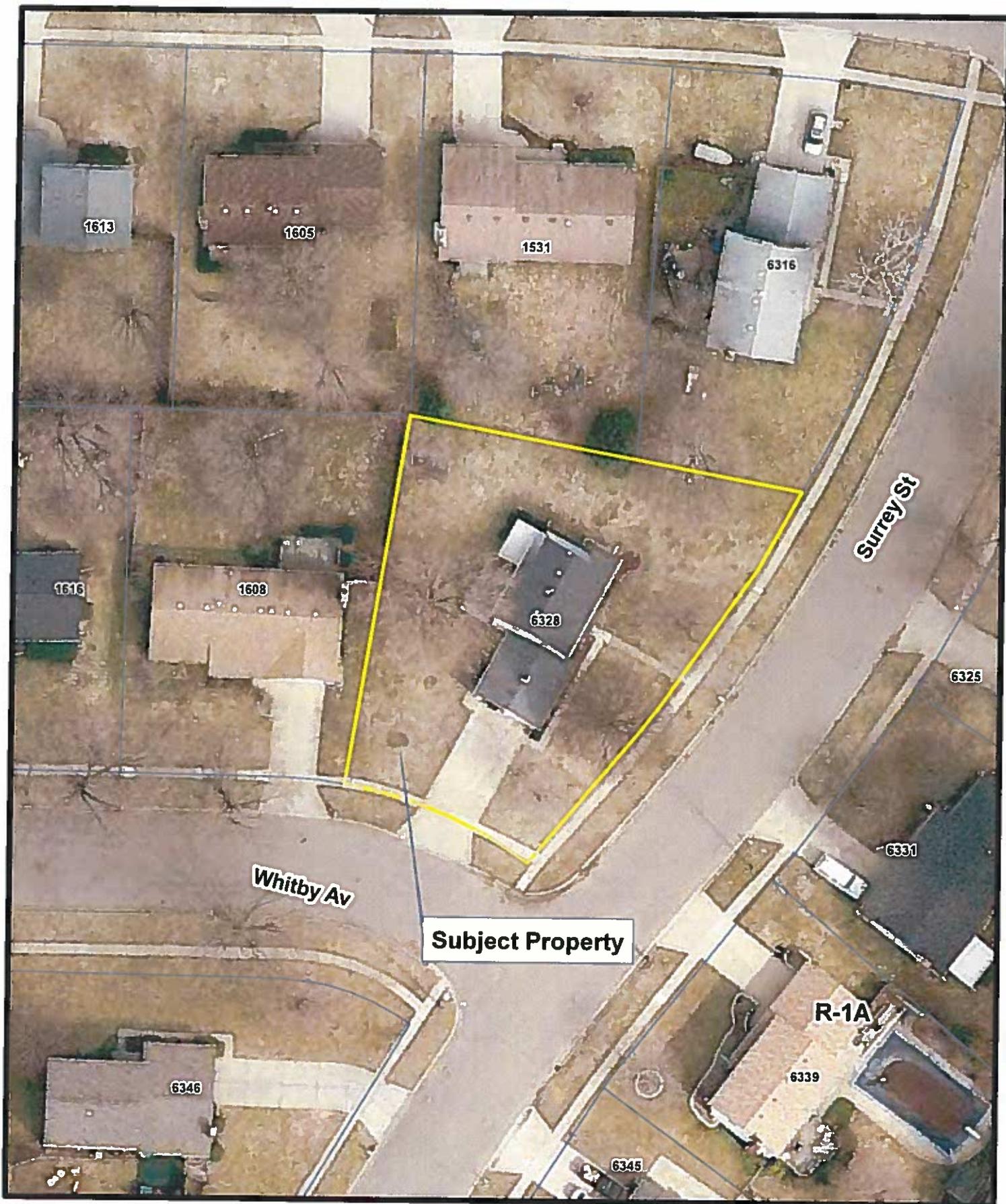


-  Zoning Boundary
-  300' Notification
-  6328 Surrey

ZBA #16-02
6328 Surrey Street



1 inch = 200 feet



ZBA #16-02

6328 Surrey Street

 6328 Surrey



1 inch = 42 feet



RECEIVED

JUN 08 2016

Department of Community Development

COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date June 8, 2016
Name of Applicant Gary Gifford
Applicant's Address 6328 Surrey St.
Name of Property Owner (if different from Applicant)
Address
Phone No. 616-886-6232

Address of the Property that is the subject of this Application:
Street Address 6328 Surrey St.
For Platted Property: Lot 368 of 'Coventry Village No. 6' 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 (Residential Uses) (All Other Uses)

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

[X] Variance from Zoning Ordinance: Article 42 Section 350 Paragraph
Regarding: Use Area Yards
Setbacks X 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

Table with 3 columns: Application Number (16-2), Filing Date (6/8/16), Tentative Hearing Date (7/11/16). Row 2: Previous Application Filed Regarding This Property:

Reason For Variance

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

Lot is of irregular shape. It has a short side and is compounded by being a corner lot.

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

See attached letter.

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

See attached letter

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.)

Yes, it is minimum.

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

See attached letter of explanation.

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

See attached letter of explanation.

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

See attached letter of explanation

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

See attached letter of explanation


Signature of Applicant

6/8/2016
Date

Letter of Explanation

To the Portage City Board of Appeals:

In 1994, I hired a local reputable construction company to add one of their stress panel sunrooms to my residence at 6328 Surrey St. The structure is 14' x 10' on a permanent wood foundation. It was built over a 12' x 10' patio. Neither I nor the builder pulled a permit for this structure. I was made aware of this issue when seeking a building permit for adding a deck. As the owner of this property, I understand that I am ultimately accountable for this situation and carry a weighty desire to make it right. No one has compelled me to pursue remedy for this situation other than my own conscience.

In my attempt to remedy the this situation by getting a building permit 22 years later, I have found that the existing structure only has a 38 foot setback on the southwest corner where a 40 foot setback is required. There is essentially a 2' x 5' right triangular intrusion into the rear setback (see attached drawing). Modifying the structure to comply with the zoning ordinance by lopping off approximately a 5 square foot triangle at the corner would be much less aesthetically pleasing. Additionally, it would be much less usable as the 140 square feet is modest to begin with. Given the cost to modify I expect that my only reasonable option besides obtaining a variance would be to remove the structure completely.

Had I been aware of this situation back in 1994, I believe I would have petitioned the board at that time for a variance. My rear property line is along my neighbor's side property line. There is a garage followed by a privacy fence on my adjoining neighbor's side. My lot, unlike most in the Kirkshire plat, has the extra ordinary condition of being a very irregular corner lot with two front yard setbacks to contend with. It is sort of a trapezoid with two curved sides one of which is short (70 feet) making it difficult to utilize the full square footage of the lot. The result of the shape leaves me with a wide, shallow, irregular rear yard but a relatively large side yard to the north. The attached drawing shows the building envelope with dashed lines. To stay within the envelope, I would have to place the sunroom on the north side of the house which is very undesirable for a sunroom and where it would not articulate with the existing floor plan. Further, it would expose the sunroom fully to the front elevation and that would reduce the curb appeal, thus reducing the aesthetic of the neighborhood.

This variance is necessary to preserve the right to have and enjoy an attached sunroom, a reasonable use of land, which is common to many other properties near me with the same zoning in this plat.

While it may appear that the immediate practical difficulty for this variance was created by me having the sunroom constructed without a permit, I contend that it only increases the negative impact on me should my request be denied. The underlying immediate practical difficulty was created by the very irregular corner lot with a shallow rear yard in which I had no part in laying out. My house was constructed in 1974 as a spec. house. The house was placed on the lot about as far south into the building envelope as it could go. While this is aesthetically pleasing as it aligns with other houses in the plat it leaves almost no room for modifications to the rear of the house. I purchased it in 1991 from the original owner and thus had no part in the placement of the house on the lot.

Granting this variance will not be detrimental to adjacent property or the surrounding neighborhood. It is a very small variance when considered in terms of square feet. I am seeking an exception for about 5 square feet of setback into a rear yard of more than 4,920 square feet where after 22 years of existence,

I have never had a single complaint or negative comment from my neighbors concerning this structure, rather, I have had many complimentary. I have also included a letter signed by thirteen of my neighbors inclusive of those with adjoining property that supports the granting of this variance.

The variance will not materially impair the intent and purpose of the zoning ordinance rather it will support it by giving me maximum utility and livability of my property which is part of the purpose of the Subdivision and Land Division Regulations.

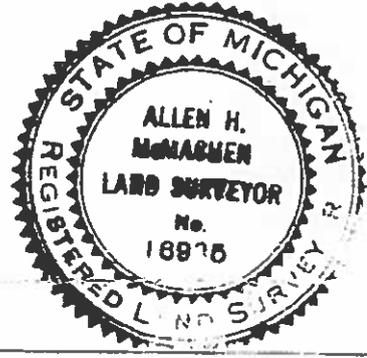
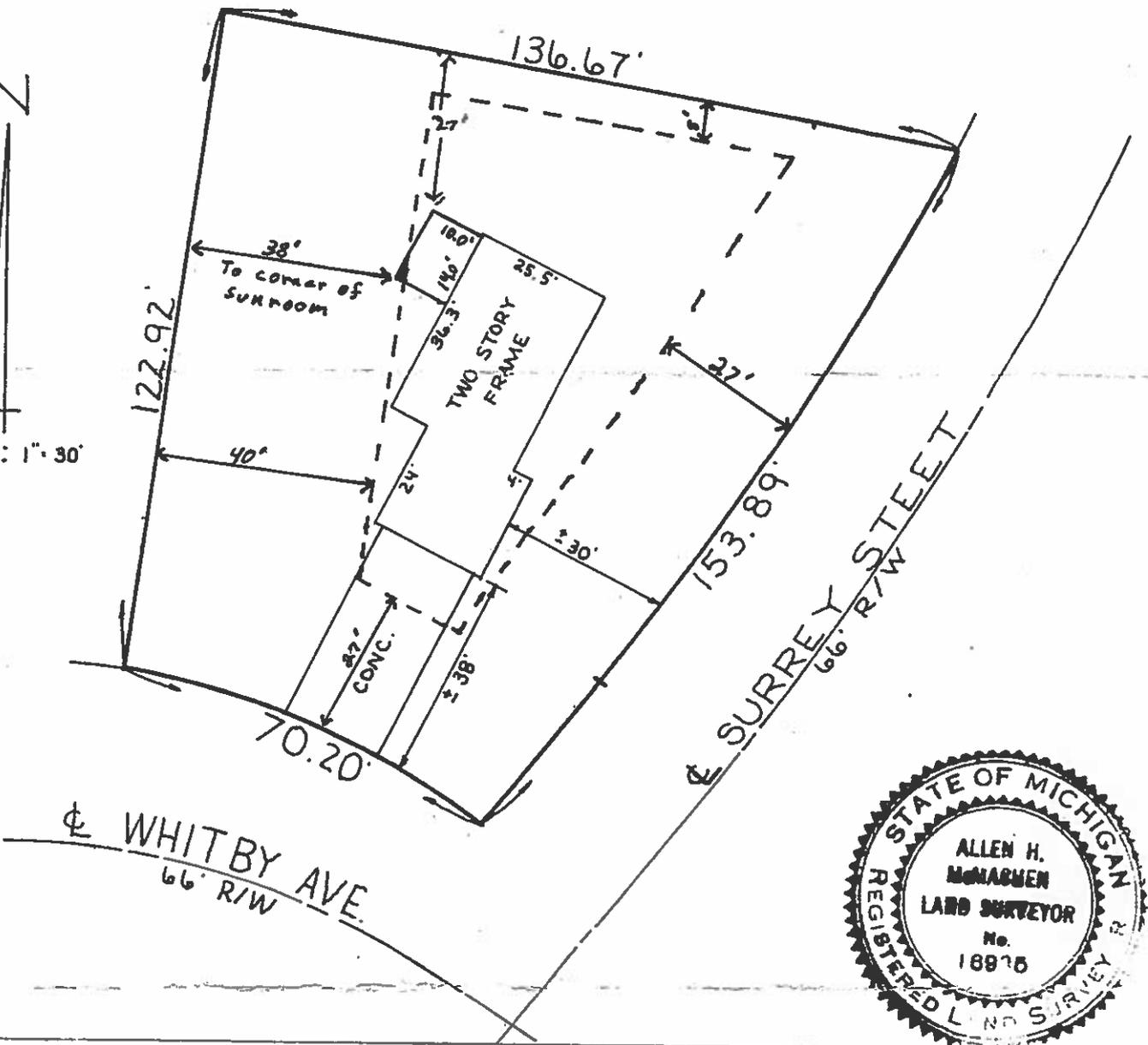
It is with great humility that I request a variance of a 38 foot rear setback in an R-1A zone where a 40 foot setback is normally required so that I might legitimately retain and enjoy my sunroom.

Respectfully,

Gary Gifford



SCALE : 1" = 30'



May 30, 2016

To the Portage City Board of Appeals:

We the undersigned understand that Gary and Elizabeth Gifford of 6328 Surrey St. are seeking a variance for 38' rear setback where a 40' rear setback is prescribed. This variance is to cover an existing sunroom attached to their dwelling. We have no objection to this variance being approved and in fact support it.

<u>Printed name</u>	<u>Street Address</u>	<u>Signature</u>
Beverly Hatt	6331 Surrey	Beverly Hatt
Marilyn Duke	1608 Whitby	Marilyn Duke
Becky Mansfield	6325 Surrey	B Mansfield
Kenneth Heidel	6346 Surrey	Kenneth A. Heidel
Nancy Pulliam	1605 Suffolk	Nancy Pulliam
Ones Odewi	6314 Surrey	Ones Odewi
Heather Miller	1531 Suffolk	Heather Miller
Bridgette Elston	6345 Surrey St.	Bridgette Elston
DONA HENDERSON	6339 SURREY ST.	Donna Henderson



Department of Community Development

TO: Zoning Board of Appeals **DATE:** July 1, 2016
FROM: Vicki Georgeau, Director of Community Development
SUBJECT: ZBA #16-02, Gary Gifford, 6328 Surrey Street; R-1A, One Family Residential.
CODE SECTION: 42-350 Schedule of Regulations; p. CD42:84.

APPEAL: Requesting a variance to retain a 10-foot by 14-foot three season porch, a small portion of which is located 38 feet from the rear (west) property line where a minimum 40-foot setback is required.

STAFF RECOMMENDATION:

The applicant is requesting the variance per the enclosed application, survey/plot plan, and related materials. The corner lot is approximately 14,000 square feet in area and is improved with a 1,837 square-foot two-story dwelling constructed in 1974, 528 square-foot attached garage, and 140 square-foot attached three-season porch. The property is zoned R-1A, one family residential and is located within a residential neighborhood.

In 1994, a 10-foot by 14-foot three-season porch was constructed on the rear (west side) of the dwelling. The applicant has indicated in the attached letter that no building permit was obtained to construct the three-season porch. The property owner recently inquired about a permit to construct a new deck and at that time it was discovered no permit had ever been issued for the porch. Because a corner of the three-season porch extends two feet into the required 40-foot rear yard, a variance is therefore needed.

It is unfortunate a building permit was not applied for in 1994, as staff could have identified the minimum property line setback requirement and encouraged conforming alternatives at that time, such as building a slightly smaller porch or relocating it slightly to the north. The property, however, does have some exceptional or extraordinary circumstances including the location and orientation of the dwelling on the lot. The request is minimal since the portion of the structure that falls within the required setback is approximately five square feet in area. Also, no complaints concerning the three-season porch have been received by the city since it was constructed 22 years ago.

Subject to any additional comment received during the public hearing, if the Board determines a practical difficulty exists, the setback variance can be approved, subject to ensuring the three-season porch complies with the residential building code.

PRACTICAL

DIFFICULTY: Shape of lot and location and orientation of dwelling on lot noted by applicant. See suggested motion form.

T:\COMMDEV\2015-2016 Department Files\Board Files\Zoning Board\15-25, 4622 Deep Point\2016 04 29 VG ZBA 15-25 Deep Point, 4622 (staff rpt) docx

SUGGESTED NON-USE VARIANCE MOTION FORM

Mr. Chairman:

I move, in regard to ZBA # _____, the application by _____
for a variance from _____

be:

a. granted for all of the following reasons:

- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to _____, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

-or-

b. denied for one of more of the following reasons:

- 1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;
- 2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as _____;
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

c. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**



Department of Community Development

TO: Zoning Board of Appeals

DATE: July 1, 2016

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: Zoning Board of Appeals Rules of Procedure Amendments

During the May 9, 2016 meeting, the Board created a subcommittee to investigate possible changes to the rules of procedure with regard to clarifying how the Board should address potential conflicts of interest. Based on their findings, the subcommittee recommends the Board consider adoption of the attached proposed language, specifically the addition of Section 11: Conflict of Interest, and Section 12, Ex Parte Contact.

T:\COMMDEV\2015-2016 Department Files\Board Files\Zoning Board\2016 07 01 VG Rules of Procedure.docx

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:

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Minutes
5. Old Business
6. New Business
7. Statements of Citizens
8. 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 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. However, 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 Rule:

- 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: Conflict of Interest:

- A. A conflict of interest is any interest by a member in an issue before the board that is not held by the community at large and that could bias the member's opinion on that issue, or that could reasonably be perceived to have that effect.
- B. Among the examples of a conflict of interest are those in which the member:
 - 1. Has family or close friends involved in the issue;
 - 2. Has a monetary interest in the issue;
 - 3. Lives within 300 feet of the property involved; or
 - 4. Stands to gain or lose from the resolution of the issue.
- C. If a member has at least a possible conflict of interest, the member should disclose the nature of it at the meeting in question, then announce whether he or she believes that it is in fact a conflict.
- D. If the member's decision is that it is in fact not a conflict, the board may, by majority vote, rule that it is in fact a conflict.
- E. If a conflict is either self-declared by a member or so determined by the board, that member shall have no involvement in the discussion in any capacity or voting on the issue, and shall leave the room during the time the issue is discussed and voted upon.
- F. Failure of a member to reveal a conflict of interest shall constitute malfeasance of office.
- G. None of the above shall preclude a member from submitting his or her own request and if he or she feels it necessary, presenting it to the board. Where a member of the Zoning Board of Appeals is an actual petitioner or person requesting action of the board, it is recommended that the member present the matter to the board for consideration and not be involved in discussions.

Section 12: Ex Parte Contact:

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

Section 13: Attendance:

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

Section 14: 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 15: 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 a 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 16: 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
Amended: July, 2016