



Andy Schor
Mayor

**LANSING BOARD OF ZONING APPEALS
REGULAR MEETING
DEPARTMENT OF ECONOMIC DEVELOPMENT AND PLANNING
600 W. Maple (Neighborhood Empowerment Center)
Thursday, July 12, 2018, 6:30 PM**

AGENDA

- I. ROLL CALL**
- II. APPROVAL OF AGENDA**
- III. PUBLIC COMMENT**
- IV. HEARINGS/ACTION**
 - A. BZA-4037.18, 230 S. Holmes Street**
 - B. BZA-4038.18, 3815 S. Cedar Street**
- V. OLD BUSINESS**
- VII. NEW BUSINESS**
 - A. Rules of Administrative Procedure**
- VI. APPROVAL OF MINUTES**
 - A. Regular Meeting, May 10, 2018**
- VIII. PUBLIC COMMENT**
- IX. ADJOURNMENT**

FOR SPECIAL ACCOMMODATIONS, PLEASE GIVE 24 HOURS NOTICE PRIOR TO THE MEETING BY CALLING SUSAN STACHOWIAK IN THE PLANNING OFFICE AT 517-483-4085 OR 517-483-4479 (TDD).

- @ PLANNING OFFICE LOBBY**
- @ CITY CLERK'S OFFICE**
- @ CITY COUNCIL OFFICE**

GENERAL INFORMATION

APPLICANT/OWNER: Unity Spiritual Center of Lansing
230 S. Holmes Street
Lansing, MI 48912

REQUESTED ACTION: Variance to the front yard setback requirement to permit an addition to the west side of the existing building at 230 S. Holmes Street

EXISTING LAND USE: Church

EXISTING ZONING: "C" Residential District

PROPERTY SIZE & SHAPE: Irregular Shaped Lot – 15,042 square feet (.345 acres)

SURROUNDING LAND USE: N: Single Family Residential
S: Single Family Residential
E: Single Family Residential
W: Single Family Residential

SURROUNDING ZONING: N: "C" Residential District
S: "C" Residential District
E: "C" Residential District
W: "C" Residential District

MASTER PLAN DESIGNATION: The Design Lansing Master Plan designates the subject property for medium-low density residential use. S. Holmes & Prospect Streets are both designated as local roads.

ANALYSIS

This is a request by Unity Spiritual Center of Lansing for a variance to permit an addition on the west side of the building at 230 S. Holmes Street that would have a setback of 3 feet from the front property line along Prospect Street to the nearest point of the covered entrance the proposed addition. Section 1250.07 of the Zoning Ordinance requires a front yard setback of 20 feet in the "C" Residential district which is the zoning designation of the property at 230 S. Holmes Street. A variance of 17 feet to the front yard setback requirement is therefore, being requested.

Required	Proposed	Variance
20 foot front yard setback	3 foot front yard setback	17 feet

ANALYSIS

Section 1244.06 (c)(1-4) of the Zoning Code sets forth the criteria and standards which must be used to evaluate a variance request. They are: (1) Does a practical difficulty or unnecessary hardship exist; (2) Is the Location, Size and Character in harmony with surrounding uses; and (3) Will the request impact vehicular and pedestrian traffic?

Practical Difficulty or Hardship

The applicant bases a practical difficulty on the need to provide barrier-free access to the building and the inability to do so in compliance with the required setbacks given the small size of the property and its irregular shape.

Several criteria are described in Section 1244.06(c) for the Board to consider in determining the adequacy of a practical difficulty:

1. The hardship results from the application of this Zoning Code to his or her lot, rather than from some other factor.
2. The hardship is not the result of his or her own actions.
3. The hardship is peculiar to the lot of the applicant.
4. If the owner of the lot complies with this Zoning Code, he or she can secure no reasonable return from, or make no reasonable use of, his or her property.

The request does meet the first criteria since the practical difficulty is directly related to the ordinance regulation which requires a 20 foot front yard building setback. The applicant is proposing to construct an 864 square foot addition to the west side of the building at 230 S. Holmes Street that would have a front yard setback of 3 feet from the Prospect Street front property line to the nearest point of the covered entrance to the proposed addition. Section 1250.07 of the Zoning Ordinance requires a front yard setback of 20 feet in the "C" Residential district which is the zoning designation of the property at 230 S. Holmes Street. A variance of 17 feet to the front yard setback requirement is therefore, being requested.

With respect to the second criteria, the practical difficulty cannot be considered self-created. The primary purpose of the proposed addition is to make the building handicap accessible. According to the application, the addition will accommodate a vertical chair lift, a barrier-free restroom, 2 offices, a meeting room and storage rooms. Although the exact date that the church was built is unknown, it is clearly at least 50 years old and thus, predates existing code requirements for building setbacks, lot size, barrier-free access and other code requirements. Like most neighborhood churches that have been in existence for several decades, the site is very small which makes it difficult to make changes to the building/site in order to bring it into compliance with current requirements without relief from setback requirements.

The third criteria relates to whether the practical difficulty is sufficiently unique. By assuring that the practical difficulty is adequate to differentiate it from a claim that could be made by most other

property owners, the intent of the ordinance standard is preserved. Correspondingly, the practical difficulty must be more than a matter of mere preference. The uniqueness in this case involves the small size of the lot for a church. Under the current zoning ordinance, a church on a residentially zoned parcel of land must contain at least 2 acres. The subject property, by contrast, is 14,505.5 square feet in area or .33 acres which is extremely small for a nonresidential parcel of land. This create an uncommonly difficult situation for the applicant in bringing the site into compliance with current code requirements for handicap accessibility that is sufficiently unique to warrant relief from the ordinance standard.

The other consideration relates to whether there is a viable use of the property without the variance. This standard is typically applied to use variances, however, which require a much higher threshold than a 'dimensional' variance such as this one.

IMPACT STANDARDS

The Ordinance also establishes four standards under Section 1244.06 (e) that must be satisfied relating to the impact of the variance on the surrounding properties and general public. These standards and the manner in which they relate to the request are as follows:

1. **The use will be in harmony with the appropriate and orderly development of the surrounding neighborhood.**

The reduced setback will not be disruptive to the appropriate and orderly development of the area. As depicted on the attached site plan, the proposed addition will be directly in line with the existing church building, although the proposed covered entrance will extend approximately 5 feet closer to the front property line in order to make it functional and provide shelter from the elements. The intent of setback requirements is to establish uniform patterns so that areas develop in an orderly manner. Since it is only the covered entranceway to the proposed addition that will breach the setback pattern already established on the site, the requested variance will not be contrary to the intent of the ordinance.

2. **The use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved.**

The variance will have no negative impacts on vehicular or pedestrian traffic. The proposed addition will not extend any closer to Prospect Street than the existing church building. The new covered entrance will extend approximately 5 feet closer to the front property line but will be visually open. The proposal, thus, will not impact visibility when exiting the driveway just west of the proposed addition. Furthermore, the addition will not interfere with use of the public sidewalk along Prospect Street as the proposed entrance to the addition will be located approximately 7 feet from the sidewalk.

The amount of parking required for churches is based on the seating in the sanctuary. Since the proposed addition will not increase seating in the sanctuary, no additional parking will be required. The proposed addition, will not result in a loss of any parking spaces on the site.

3. **The use will be designed to eliminate a possible nuisance emanating there from.**

The proposed variance will not generate any nuisances.

4. **The use will not interfere with or discourage the appropriate development and use of adjacent land and structures or unreasonably affect their value.**

See response to item 1 above. Additionally, given the unique characteristics of the site as described in this report, approval of the variances will not set a negative precedent for future requests to vary the front yard setback requirement.

FINDINGS

This is a request by Unity Spiritual Center of Lansing for a variance to permit an addition to the west side of the building at 230 S. Holmes Street that would have a front yard setback of 3 feet. Section 1250.07 of the Zoning Ordinance requires a front yard setback of 20 feet in the "C" Residential district which is the zoning designation of the property at 230 S. Holmes Street. A variance of 17 feet to the front yard setback requirement is therefore, being requested.

The available information supports a finding that the requested variance is consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e).

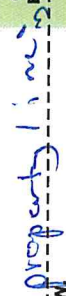
RECOMMENDATION

Based on the information and findings described above, the following motion is offered for the Board's consideration:

BZA 4037.18 be approved for a variance of 17 feet to the 20 foot front yard setback requirement to permit an addition with a covered entrance to the west side of the building at 230 S. Holmes Street that would have a setback of 3 feet from the nearest edge of the covered entrance on the proposed addition to the Prospect Street front property line, on a finding that the variance is consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Respectfully Submitted,

Susan Stachowiak
Zoning Administrator







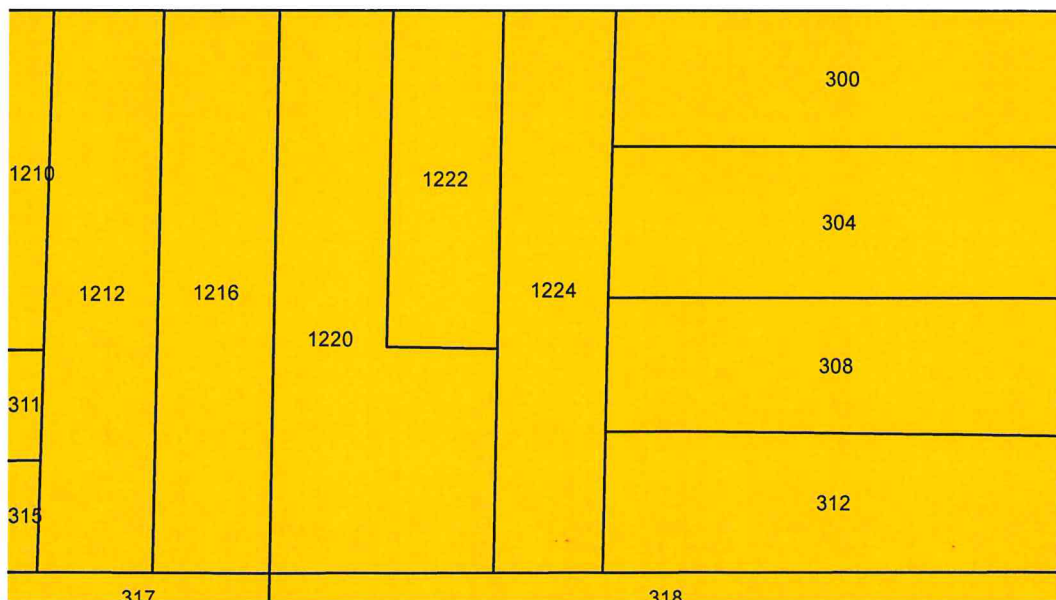
Legend

- roads_final
- roads_final
- Parcels_2014
- Tax Parcels
- A Residential-Single
- B Residential-Single
- C Residential-2 Unit
- NONE
- CUP Community Unit Plan
- D-1 Professional Office
- D-2 Residential/Office
- DM-1 Residential-Multiple
- DM-2 Residential-Multiple
- DM-3 Residential-Multiple
- DM-4 Residential-Multiple
- E-1 Apartment Shop
- E-2 Local Shopping
- F Commercial
- F-1 Commercial
- G-1 Business
- G-2 Wholesale
- H Light Industrial
- I Heavy Industrial
- J Parking
- ROW Right of Way



Prospect

Holmes



309

313

GENERAL INFORMATION

APPLICANT: Elaine Westhouse
4653 Plainfield Avenue, NE
Grand Rapids, MI 49525

OWNER: Immaculate Heart of Mary Church
3815 S. Cedar Street
Lansing, MI 48910

REQUESTED ACTION: Variance to the front yard setback requirement for a parking in the "A" Residential zoning district.

EXISTING LAND USE: Church/Vacant

EXISTING ZONING: "A" Residential, "B" Residential, "J" Parking & "F" Commercial Districts

PROPERTY SIZE & SHAPE: Irregular Shaped Lot – 15,042 square feet (.345 acres)

SURROUNDING LAND USE: N: Speedway Gas Station
S: Vehicle Dealer & Single Family Residential
E: Single & Multi-Family Residential
W: Commercial

SURROUNDING ZONING: N: "F" Commercial & "A" Residential Districts
S: "F" Commercial & "A" Residential Districts
E: "A" & "C" Residential Districts
W: "F" Commercial, "G-2" Wholesale, "J" Parking & "A" Residential Districts

MASTER PLAN DESIGNATION: The Design Lansing Master Plan designates the subject property as "Urban Mixed Use Corridor". S. Cedar Street is designated as a principal arterial. Rosemont and Hunter Blvd.'s are both designated as local roads.

ANALYSIS

This is a request by Elaine Westhouse on behalf of Immaculate Heart of Mary Church for a variance to permit a new parking lot at the southwest corner of Rosemont Street and Hunter Blvd. that would have a setback of 8 feet from the front property line along Rosemont Street. Section 1284.03(a) of the Zoning Ordinance prohibits parking within the required 20 foot front yard setback in the "A" Residential district, which is the zoning designation of the subject property. A variance of 12 feet to the required parking lot setback is therefore, being requested.

Required	Proposed	Variance
20 foot front yard setback	8 foot front yard setback	12 feet

ANALYSIS

Section 1244.06 (c)(1-4) of the Zoning Code sets forth the criteria and standards which must be used to evaluate a variance request. They are: (1) Does a practical difficulty or unnecessary hardship exist; (2) Is the Location, Size and Character in harmony with surrounding uses; and (3) Will the request impact vehicular and pedestrian traffic?

Practical Difficulty or Hardship

The applicant bases a practical difficulty on the small size and irregular shape of the lot.

Several criteria are described in Section 1244.06(c) for the Board to consider in determining the adequacy of a practical difficulty:

1. The hardship results from the application of this Zoning Code to his or her lot, rather than from some other factor.
2. The hardship is not the result of his or her own actions.
3. The hardship is peculiar to the lot of the applicant.
4. If the owner of the lot complies with this Zoning Code, he or she can secure no reasonable return from, or make no reasonable use of, his or her property.

The request does meet the first criteria since the practical difficulty is directly related to the ordinance regulation for parking lot setbacks in the "A" Residential district, which is the zoning designation of that area of the property where the parking lot would be located. The proposed parking lot would have a setback of 8 feet from the front property line along Rosemont Street. A variance of 12 feet to the required 20 foot front yard setback is therefore, being requested.

With respect to the second criteria, the practical difficulty cannot be considered self-created. The practical difficulty in this case involves the irregular shape of the lot which the applicant had no control over. The subject property was platted many decades ago, but was just purchased by the church in 2015 and subsequently combined with the rest of the church property to the south. The applicant is in need of the proposed 28 parking spaces, not only for the existing church facilities but also to support the use of the proposed new building. The irregular shape of the lot makes it difficult to design a parking lot that would comply with all of the applicable dimensional requirements and still accommodate a reasonable number of parking spaces to make the project worthwhile. As evidenced by the attached site plan, there will be a significant amount of green space north of the proposed parking lot. Denial of the variance to reduce the setback on the east side of the lot, however, will result in the loss of 7 of the 28 proposed parking spaces. The applicant has designed the parking lot to respect the required setbacks to the greatest extent possible. The parking lot will comply with the required setback along Hunter Blvd. and will have a setback of 8 feet from the front property line along Rosemont Street which is sufficient to provide an effective landscape buffer to soften its view from the street.

The third criteria relates to whether the practical difficulty is sufficiently unique. By assuring that the practical difficulty is adequate to differentiate it from a claim that could be made by most other property owners, the intent of the ordinance standard is preserved. Correspondingly, the practical difficulty must be more than a matter of mere preference. The uniqueness in this case involves the irregular size of the property which, when coupled with the additional setbacks that apply to corner lots, makes any development of the site very difficult. Since the property is zoned "A" Residential, aside from being used for some type of facilities to support the church, it can only be used for a single family home which would not be desirable given its location, size and the surrounding land uses. The proposed use for additional church facilities, thus, seems to be the most appropriate use of the property and without a variance, the church cannot make reasonable use of the property. The circumstances surrounding this request are therefore, sufficiently unique to warrant relief from the ordinance standard.

The other consideration relates to whether there is a viable use of the property without the variance. This standard is typically applied to use variances, however, which require a much higher threshold than a 'dimensional' variance such as this one.

IMPACT STANDARDS

The Ordinance also establishes four standards under Section 1244.06 (e) that must be satisfied relating to the impact of the variance on the surrounding properties and general public. These standards and the manner in which they relate to the request are as follows:

1. **The use will be in harmony with the appropriate and orderly development of the surrounding neighborhood.**

The reduced setback will not be disruptive to the appropriate and orderly development of the area. As depicted on the attached aerial photograph, there are already parking lots on the subject property that have a zero foot setback from the front property line along Rosemont Street, including the existing parking lot located directly south of the proposed parking lot. Since the intent of setback requirements is to establish uniform development patterns along roadways, the requested variance will not be contrary to the intent of the ordinance.

2. **The use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved.**

The variance will have no negative impacts on vehicular or pedestrian traffic. As evidenced by the attached site plan, the proposed parking lot will be setback far enough from the Hunter Blvd./Rosemont Street intersection that it will not impede visibility for motorists. In addition, the proposed parking lot will provide much needed parking for the existing church facilities and for the proposed building so that traffic related to the church does not over utilize the on-street parking in the area.

3. **The use will be designed to eliminate a possible nuisance emanating there from.**

The proposed variance will not generate any nuisances.

4. **The use will not interfere with or discourage the appropriate development and use of adjacent land and structures or unreasonably affect their value.**

See response to item 1 above. Additionally, given the unique characteristics of the site as described in this report, approval of the variance will not set a negative precedent for future requests to vary the parking lot setback requirement.

FINDINGS

This is a request by Elaine Westhouse on behalf of Immaculate Heart of Mary Church for a variance to permit a new parking lot at the southwest corner of Rosemont Street and Hunter Blvd. that would have a setback of 8 feet from the front property line along Rosemont Street. Section 1284.03(a) of the Zoning Ordinance prohibits parking within the required 20 foot front yard setback in the "A" Residential district, which is the zoning designation of the subject property. A variance of 12 feet to the required parking lot setback is therefore, being requested.

The available information supports a finding that the requested variance is consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e).

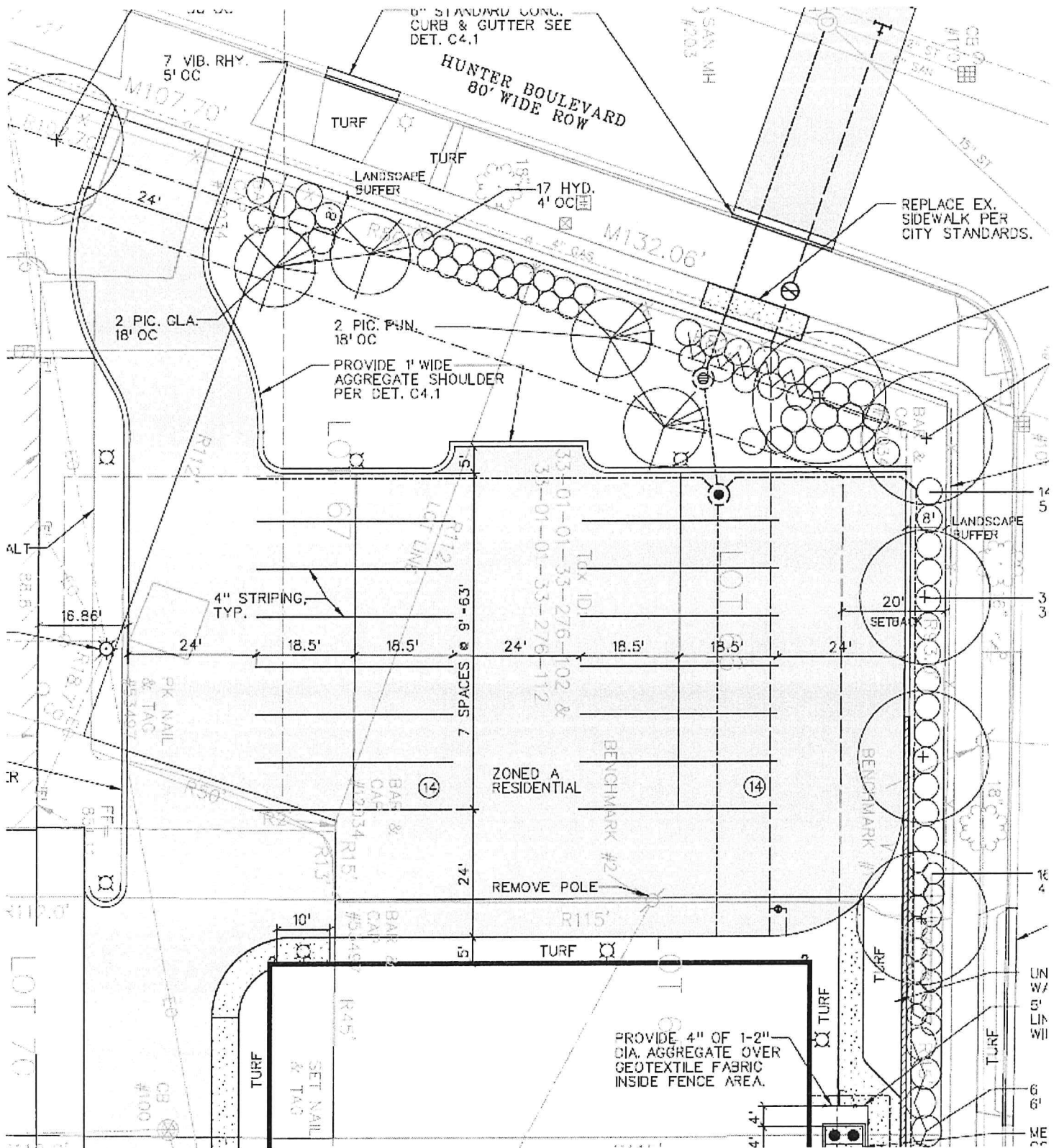
RECOMMENDATION

Based on the information and findings described above, the following motion is offered for the Board's consideration:

BZA 4038.18 be approved for a variance of 12 feet to the 20 foot front yard setback requirement to permit a parking lot at 3815 S. Cedar Street that would have a setback of 8 feet from the front property line along Rosemont street, on a finding that the variance is consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Respectfully Submitted,

Susan Stachowiak
Zoning Administrator



LOT 62

10' BRICK WALL

14'

R45'

WOOD GARAGE

1-STORY BRICK BUILDING

4' WOOD WALL

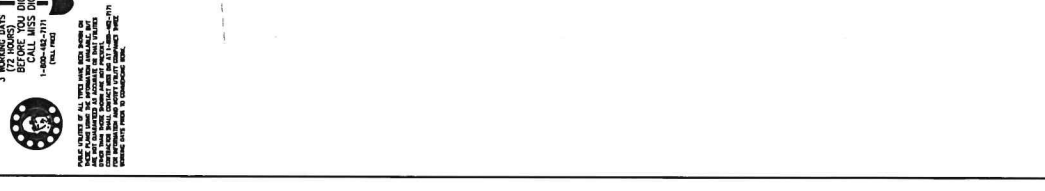
LOT 73

LOT 61

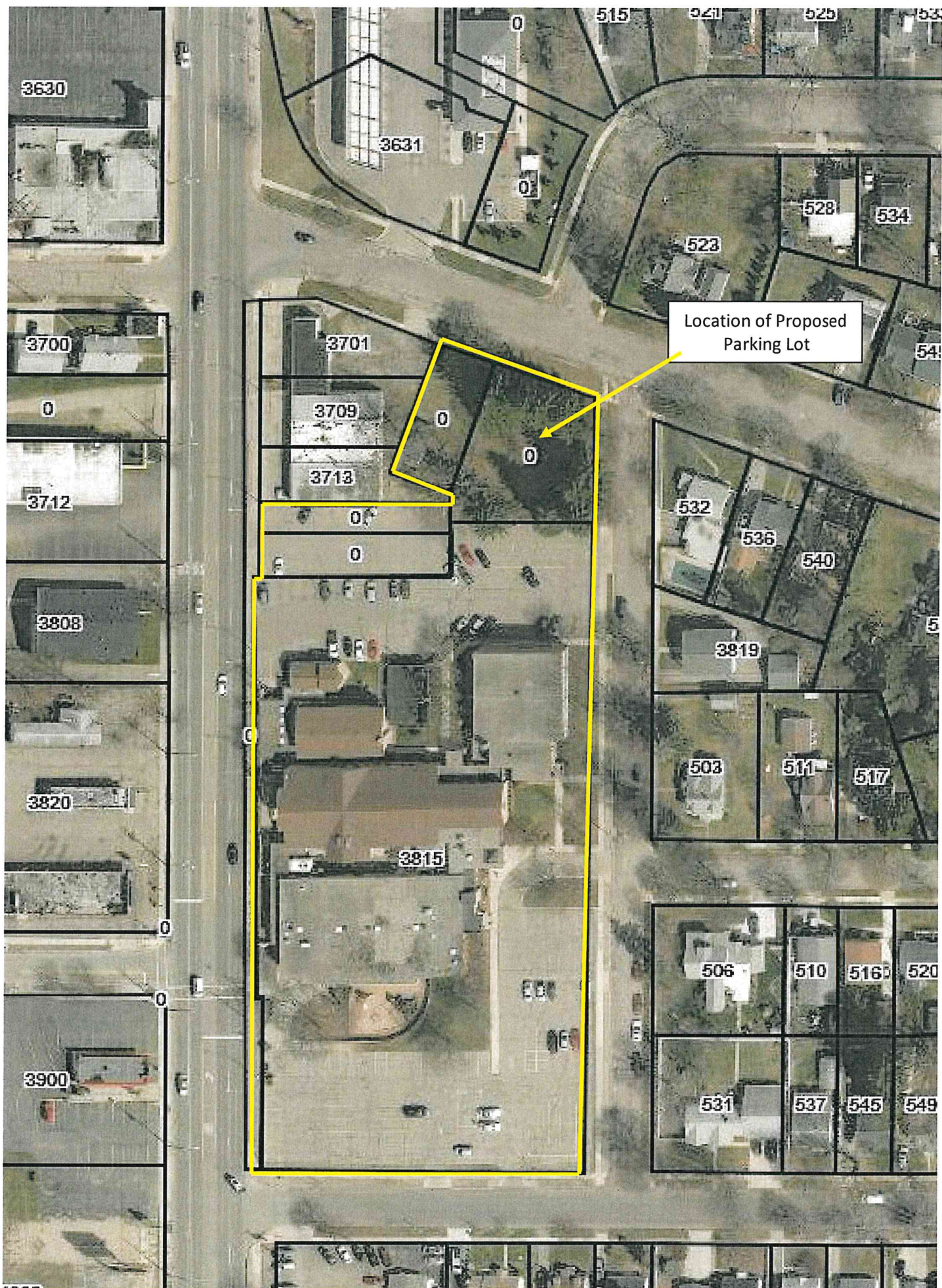
12' BRICK WALL

LOT 74

42.00' R.O.W. PER
LIBER 1784, PAGE 991







Legend

roads_final

FEMA Flood Zones

Flood Zone

0.2 PCT ANNUAL CHANCE FLOOD HAZARD

A

AE

Tax Parcels

A Residential-Single

B Residential-Single

C Residential-2 Unit

NONE

CUP Community Unit Plan

D-1 Professional Office

D-2 Residential/Office

DM-1 Residential-Multiple

DM-2 Residential-Multiple

DM-3 Residential-Multiple

DM-4 Residential-Multiple

E-1 Apartment Shop

E-2 Local Shopping

F Commercial

F-1 Commercial

G-1 Business

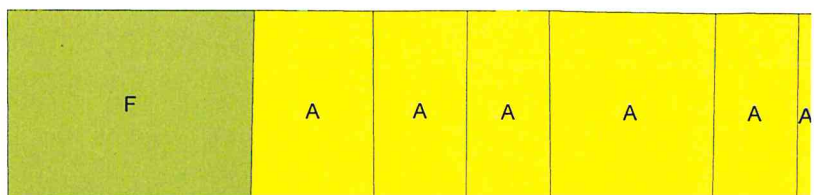
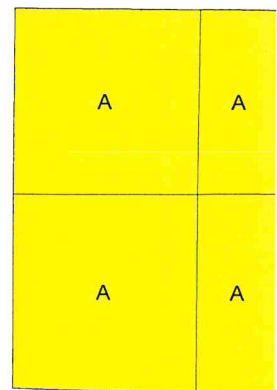
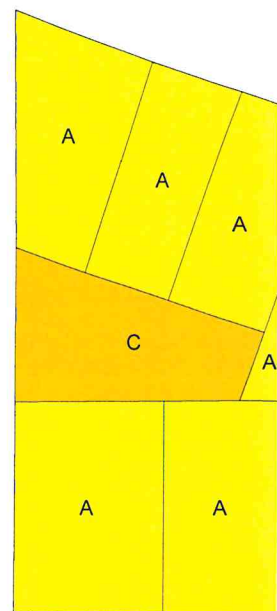
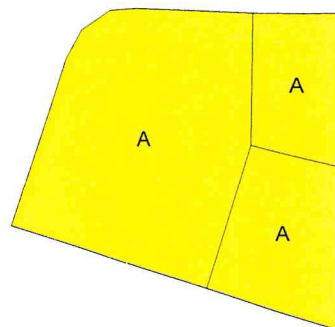
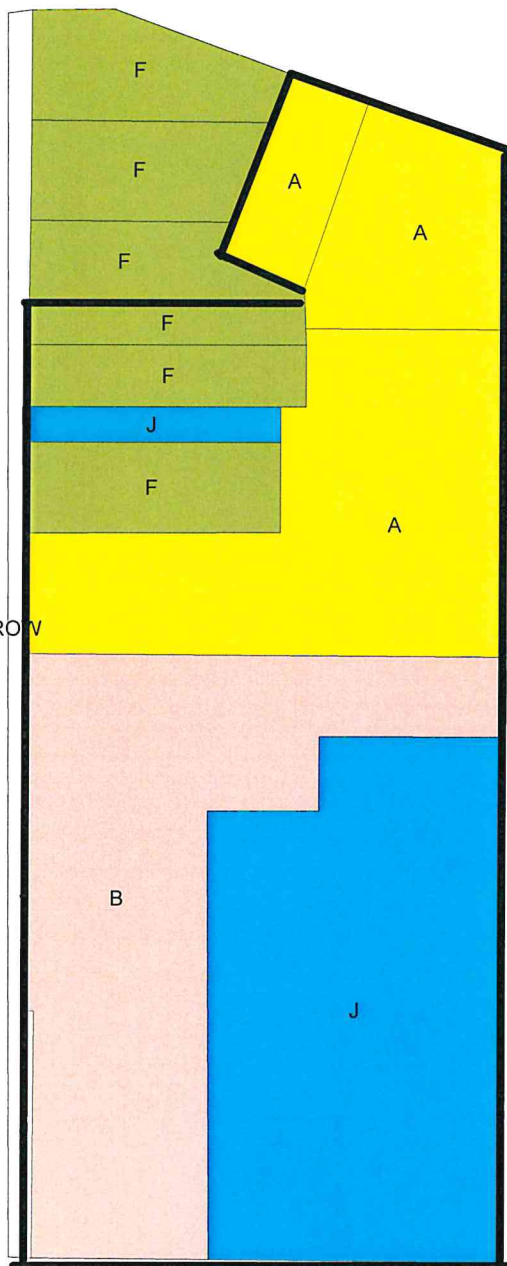
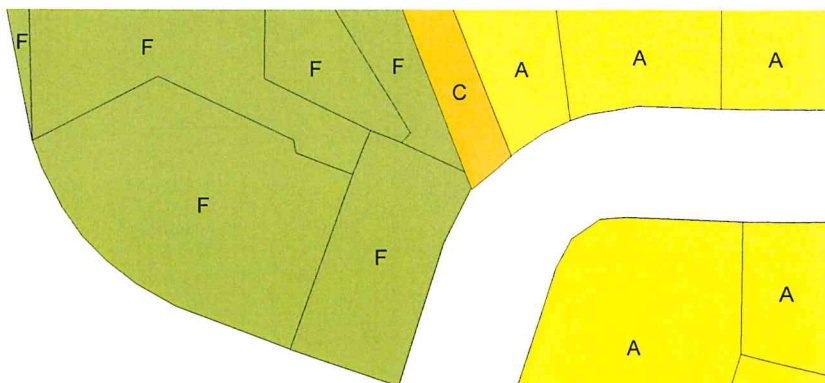
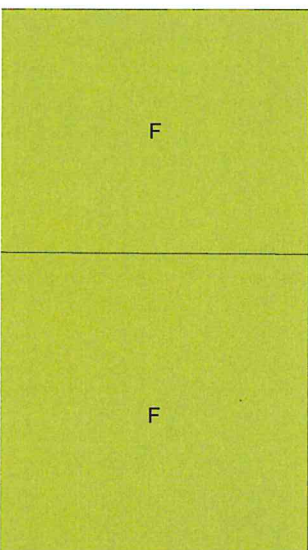
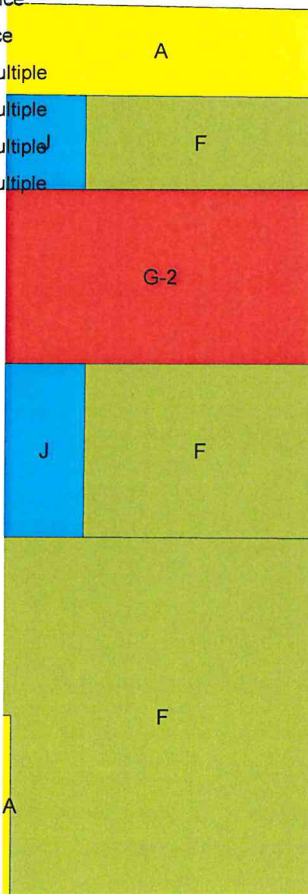
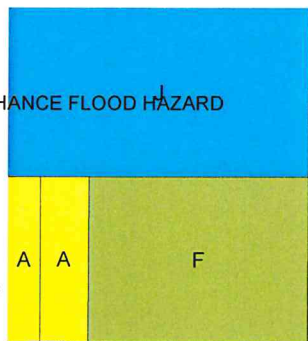
G-2 Wholesale

H Light Industrial

I Heavy Industrial

J Parking

ROW Right of Way



Board of Zoning Appeals

RULES OF PROCEDURE

July, 2018 DRAFT

The following rules of procedure are adopted by the Lansing Board of Zoning Appeals to facilitate the performance of its duties and the exercising of its responsibilities, functions and powers in accordance with the Michigan Zoning Enabling Act (Act 110 of 2006), MCL 125.3101, as amended, other applicable statutes, the Lansing City Charter and applicable city ordinances including Chapter 1244 (Board of Zoning Appeals) of Title Six (Zoning) of the Codified Ordinances of the City of Lansing. A copy of ACT 207 Section 5, the Lansing City Charter and Chapter 1244 are included as Appendices 1, 2 and 3 respectively. Chapter 1244 of the Zoning Code includes the following subsections:

SECTION 1.0 DUTIES AND FUNCTIONS OF THE BOARD, GENERALLY

- (a) The Board of Zoning Appeals shall hear and decide appeals from, and review any order, requirement, decision or determination made by, the Planning Division related to the Zoning Code.
- (b) The Board of Zoning Appeals shall determine if a Class A nonconformity may be restored or reconstructed pursuant to Section 1294.06(c).
- (c) If requested by an applicant, the Board of Zoning Appeals shall review any decision of the Planning Board, which decision is made under Chapter 1294.
- (d) The ability to alter or change the Zoning Code or the Zoning Map is reserved for the City Council in the manner provided by law.
- (e) The Board of Zoning Appeals shall hear and determine requests for variances in accordance with Section 1244.06.

SECTION 2.0 MEMBERSHIP

- (a) The Board of Zoning Appeals shall consist of nine members who are appointed by the Mayor with the advice and consent of Council. To be eligible for appointment, each person shall possess the qualifications required by the City Charter for holding office.
- (b) After the effective date of the Zoning Code (Ordinance 636, passed March 7, 1983), each subsequent appointment to the Board shall be for one, two or three years, respectively, so as to provide for the appointment of an equal number of members each year. Thereafter, each member

shall be appointed for a full three-year term. The Mayor shall attempt to appoint at least one member to the Board who is serving as a member of the Planning Board.

SECTION 3.0 SELECTION OF OFFICERS

- (a) At its first meeting in June, The Board shall elect from among the voting members a Chairperson and a Vice Chairperson.
- (b) Whenever one or both positions are vacated, the remaining members shall elect from the members serving a new Chairperson, Vice chairperson, or both to fill the unexpired terms.
- (c) Whenever both the Board Chairperson and Vice-Chairperson are absent from a meeting, the remaining members shall elect from the members present a temporary chairperson to conduct the meeting.

SECTION 4.0 SECRETARY

- (a) The Planning Office staff shall serve as Secretary of the Board of Zoning Appeals.
- (b) The duties of the Secretary shall be as follows:
 - 1. The Secretary shall post a list of the dates, times and places of the meetings of the Board, including any changes, on the City's website and in all appropriate places pursuant to the Open Meetings Act.
 - 2. The Secretary shall post the agenda of each meeting of the Board pursuant to the Open Meetings Act.
 - 3. The Secretary shall be responsible for ensuring that all hearings are duly noticed in accordance with the requirements of all applicable City Ordinances and with the provisions of the Michigan Zoning Enabling Act.
 - 4. The Secretary shall take the minutes of Board meetings and shall maintain them on the City web site. The minutes shall be distributed to all Board members prior to the next scheduled meeting.
 - 5. The Secretary shall file the minutes of each Board meeting in the office of the City Clerk as a public record in accordance with the Lansing City Charter, Section 5-105.10.

6. The Secretary shall be responsible for keeping a record of all of the Board's transactions.
7. The Secretary shall provide written notice of the Board's decision to the applicant. This notification shall include details of any petition, findings and action and any other information as may be required by ordinance or statute.
8. The Secretary shall perform other duties as the Board may direct and as are normal and customary to the office.
9. The Secretary shall be responsible for all releases of information to the public related to committee discussions, decisions reached by the Board, and other information relating to the work of the Board.
10. The Secretary shall cooperate and assist the City F.O.I.A. office in responding to requests for information in accordance with the Freedom of Information Act, P.A. 442 of 1977, as amended.

SECTION 5.0 QUORUM

- (a) Five (5) members, or a majority of the persons seated on the Board of Zoning Appeals, shall constitute a quorum for the transaction of business and the taking of official actions.
- (b) At any meeting without a quorum, those present may adjourn the meeting to another time, or continue the meeting for the purpose of accepting comments from the public. Public comments may be received, but no official action may be taken at a meeting without a quorum.

SECTION 6.0 MEETINGS

- (a) Regular meetings of the Board of Zoning Appeals shall be held on the second Thursday of each month at 6:30 p.m. at a location designated by the Board and posted in accordance with the Open Meetings Act (P.A. 267 of 1976, as amended). Meetings shall not be held at times which conflict with the regular or special meetings of City Council.
- (b) Special meetings shall be called at the request of the Board Chairperson, Secretary, or five (5) members of the Board. Notice of a special meeting shall be given by the Secretary to the members of the Board at least forty-eight (48) hours prior to the meeting and shall state the purpose, date, time, and place of the meeting. Notice of the special meeting shall also be posted in accordance with the Open Meetings Act. Meetings shall not be

held at times which conflict with the regular or special meetings of City Council.

- (c) Any special meeting of the Board shall be a legal meeting if a quorum is present and if there has been compliance with the Open Meetings Act.

SECTION 7.0 PUBLIC INVOLVEMENT

- (a) All regular and special meetings, hearings, records, resolutions, findings and determinations and other transactions of the Board shall be open to the public in accordance with the Open Meetings Act.
- (b) The public shall be given reasonable opportunity to be heard at all regular and special meetings in accordance with Lansing City Charter provision 5-150.5. The opportunities for public comment shall include:
 - 1. Scheduled Public Hearings: A person having an application or petition shall be permitted a reasonable amount of time for presentation, generally not to exceed five (5) minutes. All others shall be given a reasonable amount of time to speak, generally not to exceed three (3) minutes.
 - 2. General Public Comments: All persons shall be given a reasonable amount of time, generally not to exceed three (3) minutes, to speak on issues before the Board or on topics of general interest to the Board after approval of the agenda and prior to adjournment of the meeting.
- (c) The Board may, by a majority vote of the Board, grant additional time to any speaker.

SECTION 8.0 CONFLICT OF INTEREST

- (a) Board members who believe they may have a potential conflict of interest should disclose the possible conflict prior to any discussion of the matter giving rise to the potential conflict. Once disclosed, the potential conflict shall be discussed by the entire Board and a determination made whether or not a conflict exists.
- (b) A conflict of interest exists when an issue involves a member's personal interest, or affects his or her employer or where the member stands to benefit financially from the outcome of the issue being considered by the Board.

- (c) A vote to excuse a member shall be by simple majority of the remaining members of the Board who are present and the motion shall state the reason for why the member is being excused.
- (d) Any Board member excused on a particular issue shall leave the meeting room during any discussion of the matter which gave rise to the conflict.
- (e) All excuses for conflict of interest shall be stated in the official communication from the Board Secretary and be reflected in the official minutes of the Board.
- (f) The provisions of this section shall be subject to the provisions and stipulations of the Ethics Ordinance, Chapter 290 of the Codified Ordinances of Lansing, Michigan, included in Appendix 4.

SECTION 9.0 ATTENDANCE

- (a) Board members shall regular attend the meetings.
- (b) Following the roll call of Board members at any meeting, the Chairperson shall inquire whether any absent member had requested that the absence be excused. A motion to excuse a member shall be approved by a majority vote of the Board.
- (c) Any Board member who is absent without excuse from three (3) consecutive regular meetings, or twenty-five percent (25%) of the regular meetings in any calendar year, may be removed from the Board in accordance with Section 5-105.7 of the Lansing City Charter.
- (d) A member may voluntarily resign from the Board. When a member adopts a principal residence outside the corporate limits of the City, the Board shall consider the member as having voluntary resigned, and shall notify the member of this consideration.

SECTION 10.0 ORDER OF BUSINESS

- (a) The Chairperson shall call the meeting to order and read a statement explaining the procedure for conducting business by the Board, before proceeding with the items listed on the agenda.
- (b) The agenda for each regular meeting shall be prepared by the Secretary, and shall contain the following items in the following order, unless modified by majority vote of the Board members as part of the approval of the agenda:

- I. Roll Call
- II. Approval of Agenda
- III. Public Comment
- IV. Hearings/Action
- V. Old Business
- VII. New Business
- VI. Approval of Minutes
- VIII. Public Comment
- IX. Adjournment

- (c) The agendas for each special meeting shall be prepared by the Secretary and approved by the Board.

SECTION 11.0 VOTING

- (a) Voting shall be recorded by verbal “yes” and “no”.
- (b) Any action, including an amendment to a motion, is by majority vote of those present.
- (c) A roll call vote shall be taken if requested by any Board member. The Chairperson shall vote last.
- (d) All members of the Board in attendance shall vote on all matters unless excused pursuant to Section 6.0 herein.

SECTION 12.0 BOARD ACTION

- (a) Final action on any matter for which a public hearing is required or requested shall not occur until after the public hearing has been concluded.
- (b) A written notice containing the decision of the Board shall be sent to applicant(s), petitioner(s), titleholder(s), and all other interested persons required to be notified by law.

SECTION 13.0 PARLIAMENTARY PROCEDURE

Meetings shall be conducted according to Roberts Rules of Order. A majority vote of the Board members present may suspend the use of such rules, as authorized by the Open Meetings Act.

SECTION 14.0 AMENDMENTS

These rules may be amended by majority vote by the Board during any regular meeting, provided that all members have received an advance copy of the proposed amendments at least three (3) days prior to the meeting at which any amendments are to be considered.

THESE RULES OF PROCEDURE, TOGETHER WITH THE APPENDICES IN PART II, ARE ADOPTED AND ARE EFFECTIVE ON THE _____ DAY OF _____, 2018. THE FIRST ELECTION OF OFFICERS SHALL TAKE PLACE UNDER THESE RULES IN _____, 2018.

LANSING BOARD OF ZONING APPEALS

**MINUTES OF REGULAR MEETING
BOARD OF ZONING APPEALS
May 10, 2018, 6:30 P.M.
Neighborhood Empowerment Center - 600 W. Maple Street**

I. ROLL CALL

The meeting was called to order by Chairperson Marcie Alling at 6:30 p.m. Roll call was taken.

Present: M. Alling J. Quick J. Leaming M. Rice K. Berryman

Absent: J. Hovey K. Litwiller

Staff: S. Stachowiak

A quorum of four members was present, allowing voting action to be taken at the meeting.

II APPROVAL OF AGENDA

It was moved by Mr. Quick, seconded by Mr. Leaming to approve the agenda as printed. On a voice vote, the motion carried 5-0.

III. PUBLIC COMMENT

John Frazer, Grewal Law, PLLC, on behalf of the RODA Investments, LLC & Tru ReLeaf Collective, spoke in support of the request. He stated that he supplied the Board members with some supplemental information that should be included in the meeting packet. Mr. Frazer said that this is not a referendum on whether medical marijuana should be permitted. The issue is strictly the distance between the applicant's property at 4929 S. Cedar Street and Victory Clinical Services at 4902 S. Cedar Street. Mr. Frazer stated that Victory Clinical Services has not objected to the variance and in fact, there have been a significant number of letters/emails submitted in support of the variance. He said that the request complies with all 6 of the criteria set forth in Ordinance No. 1217 for evaluating variances. Mr. Frazer said that there are 66 applications pending with the City for medical marijuana dispensary licenses. 19 have already been denied. 14 of the 66 are on S. Cedar Street. Mr. Frazer stated that there were originally 20 license applications for locations on S. Cedar Street. 6 of them have been denied and of the 66 total licenses pending, 46 are going to be denied which means that there will be a conservable reduction in the number of dispensaries throughout the City.

Mary Fuhrman, 119 E. Syringa Drive, spoke in opposition to the request. She said that she is the neighborhood watch coordinator for the area in which the subject property is located. Ms. Fuhrman said that the variance request does not comply with the 1st and 3rd criterions listed in the ordinance. She said that the McQueen ruling prohibits dispensary medical marijuana from a storefront. Ms. Fuhrman said that Tru ReLeaf knew that they were within 500 feet of a substance abuse treatment facility and decided to located at 4929 S. Cedar anyway, thus creating their own conflict with the ordinance. She said that there is no practical difficulty or unnecessary hardship in this case that would warrant a variance.

Deb Parish, 526 Avon Street, stated that Tru ReLeaf opened illegally and now wants the BZA to grant a variance to make them legal. She said that the ordinance that was technically in effect at the time that Tru ReLeaf went into business at its current location required a 1,000 foot distance between dispensaries and substance abuse treatment facilities. Ms. Parish said that the decided to locate there anyway, knowing that there did not comply with the ordinance. She also said that there is no guarantee that Tru ReLeaf will even be one of the 20 licenses that will rank in the top 20, even if the variance is granted. She asked that the variance be denied.

Jeff Fuhrman, 119 E. Syringa Drive, spoke in opposition to the variance. He said that even with the licenses that have been denied so far, there are still too many of them on S. Cedar Street. Mr. Fuhrman stated that the request does not comply with the criteria that Ms. Stachowiak described in her staff report and therefore, the variance should be denied.

Elaine Womboldt, 4815 Tressa Drive, Facilitator for Rejuvenating South Lansing, spoke in opposition to the variance. She said she was present at the February 27th meeting and expressed concerns about the variance at that time. Ms. Womboldt stated that the City Ordinance prohibits medical marijuana dispensaries within 500 feet of a substance abuse treatment facility because allowing them would negatively impact the treatment that the clients are receiving at those facilities. She said that there is another medical marijuana dispensary 300 feet away that does not violate any of the separation requirements set forth in the ordinance. She also said that there are letters of opposition from 3 Councilmembers, Darrel Slaughter of the Old Everett Neighborhood Association, Twin Oaks Condominiums, a petition containing multiple signatures in opposition to the variance and 26 additional emails/letters in opposition to the variance.

Rachel White, 2027 Pleasant View, also representing the Southwest Action Group, spoke in opposition to the variance. She said that she owns a business just 2 blocks away. Ms. White said that there are taxes owing to the City for the property at 4929 S. Cedar Street and the dispensary has been a public nuisance. She said that approving this variance, particularly when it does not comply with the criteria listed in the ordinance for evaluating variances, will set a precedent for future requests to vary the ordinance at other locations.

IV. OLD BUSINESS

A. BZA-4036.18, 6041 S. Pennsylvania Avenue

The public hearing was held at the April 12, 2018 meeting at which there was not a quorum to take action on the request. No comments were received at the public hearing.

Ms. Stachowiak stated that this is a request by Speedway, LLC to construct a new 165 square foot, 29.6 foot high, freestanding sign at 6041 S. Pennsylvania Avenue (Speedway Gas Station) that would have setbacks of 7.3 feet from the front property line along S. Pennsylvania Avenue and 6 feet from the front property line along E. Miller Road. Section 1442.12(h)(5)(b) of the Sign Code requires setbacks of 30 feet for a freestanding sign with this dimensions. Variances of 22.7 feet and 24 feet to the required setbacks are therefore, being requested. Ms. Stachowiak stated that staff is recommending approval of the variance based upon its consistency with the practical difficulty criteria listed in Section 1244.06 (c) of the Zoning Ordinance and the impact criteria of Section 1244.06 (e), as described in the staff report for this request.

Ms. Stachowiak stated that the applicant is in the process of obtaining the necessary approvals to reconstruct the Speedway gas station at the northeast corner of S. Pennsylvania Avenue and E. Miller Road. As part of this project, the applicant would like to replace the existing ground sign with a new ground sign in the same location on the site. Ms. Stachowiak said that the existing sign has been in its current location for many years and has not been disruptive to the appropriate and orderly development of the area; nor has it created any issues with regard to visibility at the street intersection. She said that the practical difficulty involves the inability to construct a ground sign in a location on the site that would be visible to traffic from both directions without interfering with vehicular circulation on the site.

Ms. Stachowiak said that she received supplemental information from Attorney John Frazer representing the applicant for 4929 S. Cedar Street that is included in the packet. She also received a letter and a petition from Elaine Womboldt containing 206 signatures in opposition to variance, 29 letters/emails in opposition to the variance and 41 letter/emails in support of the variance.

Mr. Leaming asked if the new sign will be in the same location as the existing sign and if so, when was the variance for the existing sign granted.

Ms. Stachowiak said that the new sign will be in the same location as the existing sign but the City's records do not go back far enough to determine when the variance was granted for the existing sign. She said that it has been there for decades. She also said that the applicant is permitted 2 ground signs under the ordinance because it is located at the corner of 2 major thoroughfares. She said that the applicant is only proposing the one sign.

Mr. Leaming made a motion, seconded by Mr. Quick to approve BZA 4036.18 for variances of 22.7 feet and 24 feet to the requires setbacks to permit a 29.6 foot high, 165 square foot ground pole sign at 6041 S. Pennsylvania Avenue that would have setbacks of 7.3 feet from the front property line along S. Pennsylvania Avenue and 6 feet from the front property line along E. Miller Road, on a finding that the variances are consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. On a roll call vote, the motion carried unanimously (5-0).

B. BZA-4034.18, 4929 S. Cedar Street

This is a request by RODA Investments, LLC/Tru Releaf Collective to establish a medical marijuana dispensary at 4929 S. Cedar Street. Section 1300.13(A)(2) of City Ordinance 1217 prohibits medical marijuana dispensaries within 500 feet of a substance abuse treatment or rehabilitation facility. The medical marijuana dispensary at 4929 S. Cedar is located approximately 340 feet from a substance abuse treatment/rehabilitation facility at 4902 S. Cedar Street. A variance to the required separation distance between the 2 facilities is therefore, being requested.

Ms. Stachowiak stated that the BZA held a public hearing and subsequently voted 3-1 to approve BZA-4034.18 at its February 27, 2018 meeting. Following the vote on this matter, it was announced by the Chair that based on the vote, the variance was approved. It was later determined that a majority of the members serving on the board, rather than a majority of those present at the meeting is required to approve a variance. She said that since 4 votes are required to approve a variance, the variance was not approved at the February meeting. Following the meeting, a court order was issued remanding this matter back to the BZA for reconsideration and a revote on the matter.

Heather Sumner, Assistant City Attorney, stated that the court order is to ensure that the decision of the BZA does not violate any provisions of the Open Meetings Act since there was a conflict between what was announced at the February 27, 2018 meeting as to the Board's decision on the variance and what was later determined to be the true outcome. She said that the public hearing requirements have been fulfilled but the Board does need to revote on the matter.

Mr. Leaming stated that there are 2 members present at this meeting that were not at the February meeting. He said that there are 6 factors listed in the ordinance that the Board is to use in determining whether to grant a variance to the separation requirements between medical marijuana dispensaries and various other uses such as churches, child care centers, substance abuse treatment facilities, etc. Mr. Leaming said that in this case, the dispensary is located less than 500 feet from a substance abuse treatment facility. He said that this is a very emotional issue and a lot of the concerns that have been expressed are not things that the BZA can take into consideration when making its decision such as unpaid taxes, enforcement proceedings by the City with regard to medical marijuana facilities and how one feels about medical marijuana facilities in general.

Mr. Leaming said that some of the criteria set forth in the ordinance for evaluating these types of

variances is very subjective and thus, puts the BZA in a difficult position of determining whether to a request should be approved. He said that criterion number 4 in particular is impossible to determine since the locations that will be approved by the City for dispensary licenses are not known at this time. Mr. Learning stated that there is a great deal of opposition to this request and he is not satisfied that the variance complies with the criteria and thus, will be voting no just as he did at the February meeting.

Ms. Alling said that there a lot of issues have been brought up that cannot be considered by the Board in making its decision. She said that the Board must only consider the 6 criteria listed in the Ordinance for evaluating these types of variances. She also said that a decision needs to be made on the variance so that the City knows whether to consider the applicant's request for a dispensary license. If the variance is not approved, the licenses application will be out of consideration for one of the 20 licenses that will ultimately be approved by the City.

Mr. Quick stated that the Board cannot determine if criterion number 4 which is the "need for a provisioning center at the location in order to provide the safe and efficient access to medical marijuana with the City" can be met until such time as the City determines the 20 licenses that will be approved and this one may or may be one of them, regardless of whether the variance is approved or not.

Mr. Berryman said that this is his first meeting and asked if there are any legal concerns with him voting on this matter, not having been at the February meeting when the hearing was held and the first vote was taken.

Mr. Sumner stated that there is nothing legally preventing Mr. Berryman from voting on this matter. She said that he has been provided with all of the information and is may vote on the matter. Ms. Sumner said that the issue the first time was the result of not having enough members serving on the Board.

Ms. Alling said that the criteria traditionally used to evaluate variances do not apply in these cases. She said that the City did a good just of establishing the criteria and she is satisfied that it is met to the degree that it can be at this point and will be voted in favor of the variance just as she did at the February meeting.

Mr. Learning asked is the only issue that has been called into question from the February meeting was the vote and if the reason that it was sent back to the BZA was to make sure that the variance was considered and voted upon in full compliance with the provisions of the Open Meetings Act.

Ms. Sumner stated that the ordinance regulating medical marijuana went into effect on October 17, 2017. She said that issues occurring prior to that date are not relevant at this time. Ms. Sumner stated that the applicant for this request applied for his dispensary license in accordance with the ordinance requirements for doing so and prior to the deadline for such applications. She said that when the top 20 licenses are selected, if 2 of them are within 500 feet of each other, the applicants for those licenses can seek variances to the 500 foot separation requirement between 2 dispensaries. She said that past practices/issues for medical marijuana dispensaries will be taken into consideration in the overall process of selecting the top 20 applications but are not relevant in determining whether to grant variances. Ms. Sumner said that if the variance for this request is denied, the license application will be denied and thus, not given any further consideration for one of the 20 licenses that will be granted.

Mr. Berryman asked if there have been any complaints against the applicant's dispensary.

Ms. Stachowiak stated that she has not received any complaints.

Ms. Sumner said that there is no record of any complaints since 10/17/17. She also said that the existing facilities that applied for licenses prior to the deadline can continue operating temporarily while their applications are pending. Those that have been denied are required to

cease and desists all operations.

Mr. Leaming said that most of the criteria are difficult if not impossible to determine compliance because everyone is in limbo right now while the determination is being made as to who will be approved for a license. He said that the second, fifth and sixth criterions have some relevance. Mr. Leaming stated that there has been a great deal of input from the public on this matter and most of it is in opposition to the request.

Mr. Rice made a motion, seconded by Mr. Leaming to reconsider BZA 4034.18 for a variance of 140 feet to the required 500 foot separation between a medical marijuana dispensary at 4929 S. Cedar Street and the substance abuse treatment facility at 4902 S. Cedar Street. On a roll call vote, the motion was approved (4-1). Mr. Leaming cast the dissenting vote.

Mr. Quick made a motion, seconded by Mr. Rice to approve BZA 4034.18 for a variance of 140 feet to the required 500 foot separation between a medical marijuana dispensary at 4929 S. Cedar Street and the substance abuse treatment facility at 4902 S. Cedar Street, on a finding that the variance is consistent with the variance evaluation criteria set forth in Section 1300.18(3) of Ordinance 1217. On a roll call vote, the motion failed (3-2). Mr. Leaming and Mr. Rice cast the dissenting votes.

C. BZA-4035.18, 1106 N. Larch Street

This is a request by Caleb Wilson to permit a medical marijuana dispensary at 1106 N. Larch Street. Section 1300.13(A)(2) of City Ordinance 1217 prohibits medical marijuana dispensaries within 500 feet of a substance abuse treatment or rehabilitation facility. The medical marijuana dispensary at 1106 N. Larch Street is located approximately 444 feet from a substance abuse treatment/rehabilitation facility at 610 E. Grand River Avenue. A variance to the required separation distance between the 2 facilities is therefore, being requested.

Ms. Stachowiak stated that the circumstances surrounding this request and the one at 4929 S. Cedar Street are exactly the same with regard to it coming back to the BZA for reconsideration.

Mr. Quick made a motion, seconded by Mr. Leaming to reconsider BZA 4035.18 for a variance of 56 feet to the required 500 foot separation between the medical marijuana dispensary at 1106 N. Larch Street and the substance abuse treatment facility at 610 E. Grand River Avenue. On a roll call vote, the motion was approved (4-1). Mr. Leaming cast the dissenting vote.

Mr. Rice made a motion, seconded by Mr. Quick to approve BZA 4035.18 for a variance of 56 feet to the required 500 foot separation between the medical marijuana dispensary at 1106 N. Larch Street and the substance abuse treatment facility at 610 E. Grand River Avenue, on a finding that the variance is consistent with the variance evaluation criteria set forth in Section 1300.18(3) of Ordinance 1217. On a roll call vote, the motion failed (3-2). Mr. Leaming and Mr. Rice cast the dissenting votes.

V. PUBLIC COMMENT

Elaine Womboldt, 4815 Tressa Drive, Facilitator for Rejuvenating South Lansing, stated that the decisions on the medical marijuana requests were difficult but the Board made the right decision.

Mary Fuhrman, 119 E. Syringa, thanked the Board for its decision on the 4929 S. Cedar variance request.

Marilyn Irvine, 5211 Tulip Avenue, stated that she appreciates the Board's decision to deny the variance at 4929 S. Cedar.

Kat Tyler, 1106 Clark Street, Northtown Neighborhood Association, stated that Northtown is not opposed to the medical marijuana facilities but they need to be regulated and they need to comply with the ordinance requirements.

Deb Parrish, 526 Avon, stated that the Board made the right decision on the medical marijuana cases as it is not a good idea to have such facilities in such close proximity to methadone clinics. She said that the applicant's knew that the clinics were there when they moved in.

VI. APPROVAL OF MINUTES

Minutes of special meeting held on February 27, 2018

Mr. Quick stated that the word "not" needs to be deleted from the third line of the fifth paragraph on page four.

Mr. Leaming made a motion, seconded by Mr. Quick to approve the minutes from the special meeting held on February 27, 2018 meeting, with the change noted by Mr. Quick. On a voice vote (5-0), the motion carried unanimously.

VII. NEW BUSINESS

Mr. Rice made a motion, seconded by Mr. Berryman to approve excused absences for Mr. Hovey & Ms. Litwiller. On a voice vote, the motion carried unanimously (5-0).

VIII. ADJOURNMENT AT 7:33 P.M.

Respectfully Submitted,

Susan Stachowiak, Zoning Administrator