

CITY OF PORTAGE ZONING BOARD OF APPEALS

AGENDA

**Monday, October 11, 2021
7:00 PM**

**Portage City Hall
Council Chambers**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES:

1. September 13, 2021 Meeting Minutes

OLD BUSINESS:

NEW BUSINESS:

- * 1. ZBA #21-02, Justin Comer, 10824 South Westnedge Avenue, requesting variances to operate an ammunition loading business as a home occupation that will: a) be located in an accessory building, and b) involve the use, storage and manufacture of hazardous materials in excess of quantities permitted in residential structures.
- * 2. ZBA #21-06; W.B.C. Properties, Limited Partnership, 5220 South Westnedge Avenue, CPD, Commercial Planned Development requesting a variance from the requirement that a marihuana retailer be allowed to locate within 941 feet from a church/school where a minimum 1,000 feet separation distance is required.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

Star (*) indicates printed material within the agenda packet.

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – September 13, 2021

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Finch at 7:00 p.m

MEMBERS PRESENT: Linda Finch, Linda Fry, Jay Eichstaedt, Lena Jomaa, Alexander Philipp, Lynn Haddow, Don Platt.

MEMBERS EXCUSED:

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator; Jake Eccleston, Assistant City Attorney.

APPROVAL OF THE MINUTES: Eichstaedt moved and Philipp seconded a motion to approve the July 12, 2021 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #21-01; 6929 South Westnedge Avenue: Mais summarized the request for a variance to orient service bay doors facing a public street. Robert Behar of BCP Development stated the main reason for the request is that placing bay doors on the east elevation created too tight of a turning radius. Jomaa inquired if the site entrance location would change. The applicant said no. Fry inquired if more than one tenant would be located in the building. The applicant stated yes. Jomaa inquired if the applicant found staff's recommendation to have the door color match the building acceptable. The applicant said yes. Eichstaedt inquired if the red doors were similar to other stores and/or part of their national branding. The applicant responded yes. Philipp inquired if the fir trees would be retained by the applicant. Mais responded the trees are located in the right-of-way, and the city has no plans to remove them.

A public hearing was opened. No public comments were made. The public hearing was closed.

After additional discussion, a motion was made by Finch, seconded by Haddow to grant a variance to orient service bay doors facing Romence Road, conditioned upon the number of doors not exceed the three shown in the application materials, for the following reasons: there are exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the building has two elevations, and the south elevation is screened by mature trees; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and vicinity, the right to remodel for ease of vehicular access; the immediate practical difficulty causing the need for the variance request 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 materials, staff report, and all comments 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. Upon roll call vote: Finch-Yes, Jomaa-Yes, Eichstaedt-Yes, Haddow-Yes, Philipp-Yes, Platt-Yes, Fry-Yes. Motion passed 7-0.

ZBA #21-03; 2725 Radcliffe Avenue: Mais summarized the request for a variance to construct a 20-foot by 15-foot addition that would extend to within 35 feet of the rear (south) property line where a minimum 40-foot setback is required. Mike and Rachel Simonds were present to answer questions. Jomaa inquired if they planned to start work right away. The applicant responded yes. Eichstaedt inquired how it came to be the property was ten feet shallower than all the other properties in the area. Mais said when the lot was split the owner of the parent parcel (2724 Romence) likely wanted to retain more land for their lot. The applicant confirmed that was what happened.

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

After additional discussion, a motion was made by Eichstaedt, seconded by Haddow, to a grant variance to construct a 20-foot by 15-foot addition that would extend to within 35 feet of the rear (south) property line where a minimum 40-foot setback is required for the following reasons: there are exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same

zoning district, which include the shallow lot depth; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and vicinity, the right to improve ones dwelling; the immediate practical difficulty causing the need for the variance request 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 materials, staff report, and all comments 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. Upon roll call vote: Finch-Yes, Jomaa-Yes, Eichstaedt-Yes, Haddow-Yes, Philipp-Yes, Platt-Yes, Fry-Yes. Motion passed 7-0.

ZBA #21-04; 1827 Woodland Drive: Mais summarized the request for a variance to construct a 16-foot by 16-foot addition that would extend to within 24 feet of the rear (south) property line where a minimum 40-foot setback is required. Tim Marsh stated the variance was needed to accommodate a family member with a heart condition, and wished to construct a bedroom and bathroom addition on the main floor of their trilevel home to reduce the amount of stairs that needed to be climbed.

A public hearing was opened. An anonymous letter opposed to the request was read into the record. The public hearing was closed.

After additional discussion, a motion was made by Eichstaedt, seconded by Jomaa, to grant a variance to construct a 16-foot by 16-foot addition that would extend to within 24 feet of the rear (south) property line where a minimum 40-foot setback is required for the following reasons: there are exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the shallow substandard corner lot; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and vicinity, the right to improve one's dwelling; the immediate practical difficulty causing the need for the variance request 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 materials, staff report, and all comments 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. Upon roll call vote: Finch-Yes, Jomaa-Yes, Eichstaedt-Yes, Haddow-Yes, Philipp-Yes, Platt-Yes, Fry-Yes. Motion passed 7-0.

ZBA # 21-05; 1314 Forest Drive: Mais summarized the request for a variance to construct a detached garage 18 feet from the (north) front property line where a minimum 27-foot front setback is required. Richard Hemphill was present to answer questions. Finch inquired if the traffic engineer had reviewed the plan. Mais confirmed he had. The applicant provided the Board a final revised drawing (titled revision #4) of the proposed garage.

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

After additional discussion, a motion was made by Fry, seconded by Eichstaedt, to grant a variance to construct a detached garage 18 feet from the (north) front property line where a minimum 27-foot front setback is required for the following reasons: there are exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the shallow and narrow lot size; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and vicinity, the right to construct a garage; the immediate practical difficulty causing the need for the variance request 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 materials, staff report, and all comments 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. Upon roll call vote: Finch-Yes, Jomaa-Yes, Eichstaedt-Yes, Haddow-Yes, Philipp-Yes, Platt-Yes, Fry-Yes. Motion passed 7-0.

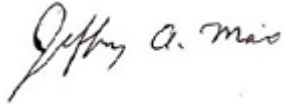
OTHER BUSINESS: Officer elections were held with the following results: Eichstaedt – Chair, Haddow – Vice Chair, Fry - Secretary.

Director of Community Development, Kelly Peterson, explained the Board will be transitioning from paper agendas to electronic agendas over the next two months, and wanted to select a date Board members could attend Civic Clerk software training. The Board agreed to meet for training on September 27, 2021 at 7:00 p.m.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: The meeting was adjourned at 8:40 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jeff Mais".

Jeff Mais
Zoning & Codes Administrator

TO: Zoning Board of Appeals

DATE: October 11, 2021

FROM: Kelly Peterson, Director of Community Development

SUBJECT: ZBA #21-02, Justin Comer, 10824 South Westnedge Avenue; R-1C, One Family Residential

CODE SECTION: 42-129(A)(7); Passive Home Occupations

APPEAL: Requesting variances to operate an ammunition loading business as a home occupation that will: a) be located in an accessory building, and b) involve the use, storage and manufacture of hazardous materials in excess of quantities permitted in residential structures.

**STAFF
RECOMMENDATION:** The applicant is requesting the variance per the enclosed application and plot plan. The subject property is 100 feet wide by 170 feet deep. The property is zoned R-1B, one family residential, is located in a residential neighborhood, and improved with a 1,500 square-foot ranch, 484 square-foot attached garage both constructed in 1993 and a 672 square-foot detached accessory building, constructed in 2008.

The applicant proposes to operate an ammunition loading business in a detached accessory building. The Bureau of Alcohol, Tobacco, and Firearms guidelines state one may store for personal use up to 50 pounds of gunpowder or smokeless propellant in a wooden box or cabinet, and up to 750,000 small arms primers. However, as the applicant proposes to operate a business on premises (regardless of any voluntary self-imposed limits an applicant may or may not agree to), the applicable standards for the quantity of gunpowder or smokeless propellant permitted on premises increase the quantity up to 100 pounds. Variances are therefore requested.

Concerning a) the applicant has stated he wishes to operate an ammunition reloading business in an accessory building, which the code does not allow, but provides no practical difficulties. The Zoning Code prohibits the operation of home occupations in accessory buildings because accessory buildings have lesser setbacks, and greater potential for negative impacts affecting the character of a residential area. There are no extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. The variance is not necessary to protect the enjoyment of any substantial property right shared by other properties in the same zoning district and, lastly, the variance could potentially be very detrimental to adjacent property. For these reasons the variance is not recommended.

With regard to request b) the Code is expressly intended to prohibit the

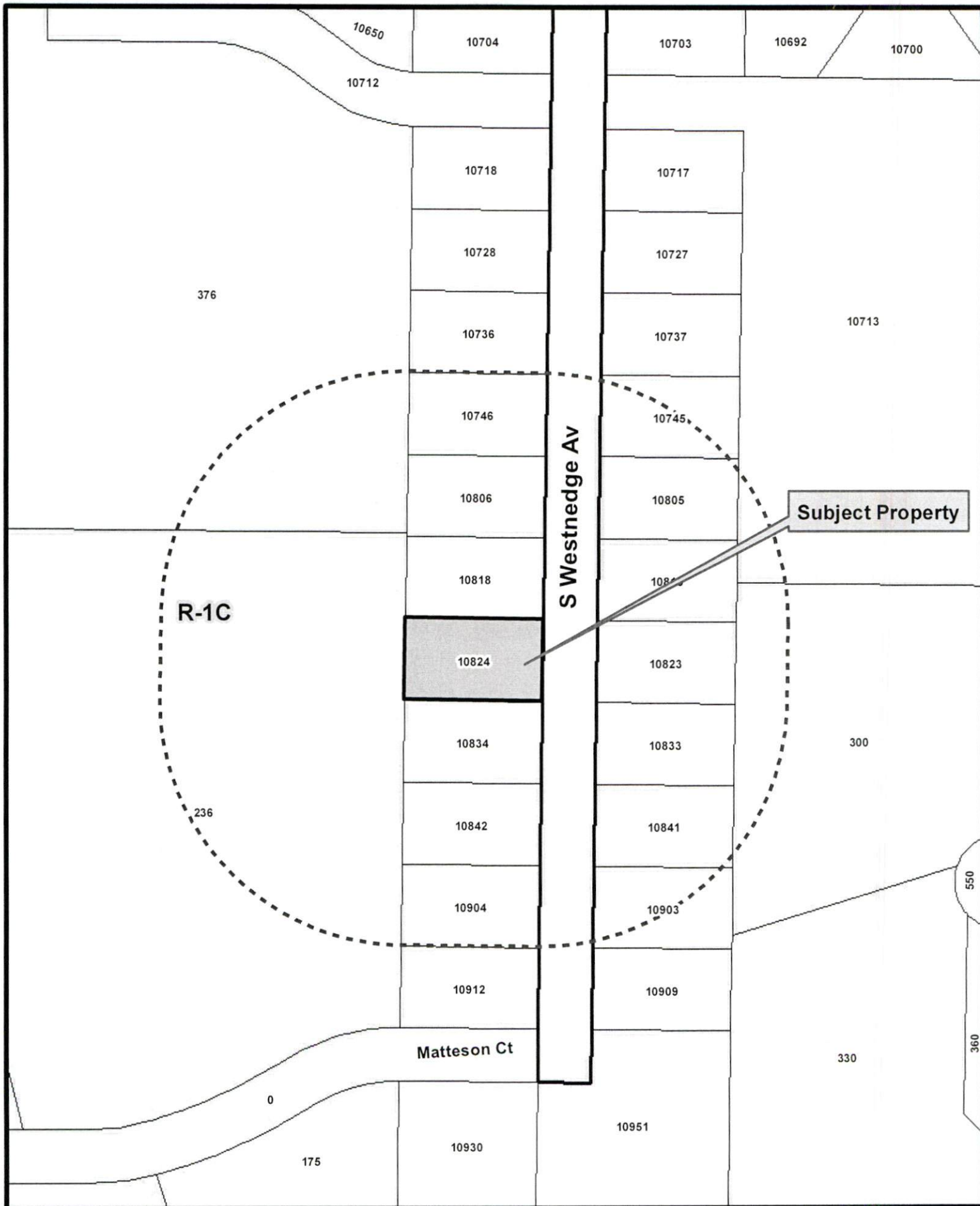
presence of hazardous materials in residential areas. Gunpowder, small arms primers, and projectiles are the definitions of hazardous materials. Two factors can make ammunition loading potentially dangerous: lack of knowledge (ie. practitioner does not know what they are doing), and lack of carefulness. Even if it were conceded the applicant possessed adequate knowledge of safe ammunition loading processes, there is no way for staff to guarantee or enforce these safe practices at all times. For these reasons, hazardous materials do not belong in residential neighborhoods, but rather, are appropriately conducted in commercial facilities located in industrial zones that are constructed in compliance with the appropriate class of building and fire code standards. For these reasons, the variance is not recommended.

**PRACTICAL
DIFFICULTY:**

None noted by staff or applicant

Attachments:

1. Maps
2. ZBA application
3. Background information and communications
4. Motion form



-  Subject Property
-  Zoning Boundary
-  300' Notification Area

ZBA #21-02
10824 South Westnedge Avenue



1 inch = 150 feet
(7)



 Subject Property

2021 Nearmap Imagery

ZBA #21-02
10824 South Westnedge Avenue



1 inch = 100 feet
(8)

RECEIVED

AUG 10 2021

COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 7-23-2021
 Name of Applicant Justin Michael Comer Justin Comer
 Print Signature
 Applicant's Address 10824 South Westnedge Phone No. 269 365-8311
 Name of Property Owner (if different from Applicant) Same as above
 Address 10824 South Westnedge Phone No. 269 365-8311

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

Street Address 10824 South Westnedge, Portage, MI 49002

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: Start an ammunition loading business in my detached pole barn

Application Fee _____ (Residential Uses) \$140.00 (All Other Uses)

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

☒ **Variance from Zoning Ordinance:** Article B Section 42-129 Paragraph 7th

Regarding: Use _____ Area _____ Yards _____

Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): See second page for variance request

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>24-02</u>	Filing Date: <u>8/10/21</u>	Tentative Hearing Date: <u>9/13/21</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.)
Only variance needing approval is to conduct the reloading & loading of ammunition in my pole barn on my own property.
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
Yes, my pole barn is fully located on my property and great distance from any of my neighbors residences
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
Business shall be conducted solely in the detached pole barn and not in the primary residence.
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.)
No business will be conducted in the residential home, all business will be done solely in the detached pole barn.
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.)
All business will be conducted inside my pole barn that has a lock on every door & window to keep it safe from the public & secure.
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.)
All business would be conducted by myself solely inside the enclosed building. I will maintain safe practices to ensure no impact to the surrounding community.
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, I simply want to be approved for the variance to conduct an active at home business in my pole barn and follow all other codes & variances within the law.
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
Granting approval to conduct my at home small business will allow me to safely run my business in a safe, controlled environment, without adverse affects on my neighbors.

Justin Lomer
Signature of Applicant

7-28-2021
Date

Jeff Mais

From: justin comer <1976justinc@gmail.com>
Sent: Sunday, August 22, 2021 11:06 PM
To: Jeff Mais
Subject: Fwd: Justin Comer's Floor plan- Pole Barn
Attachments: ATT00001.txt; IMG_6992.JPG

Jeff,

Attached above is a picture of the Floor plan drawing of my pole barn.

The structure is fully up to code and passed building inspection when it was built before I took ownership of the home.

The interior of the barn also has a poured concrete floor, free of cracks or damage.

All walls are covered with 3/4 plywood on the outer shell , then covered with 50 year rated siding.

The structure has a main garage overhead door, which is lockable from the inside.

The structure also has a side door which has double locks to prevent entry by any unwanted intruders.

I will have 2 workbenches on the South facing wall where I will conduct business within the confines of the building.

I plan on having multiple fire extinguishers on premises and other safety equipment to follow all safety precautions and follow all fire and OSHA safety standards to ensure a safe environment for conducting business.

Materials:

To follow ATF (Alcohol, Tobacco, and Firearms) guidelines, I will not be storing large quantities of Gunpowder or smokeless propellants. Per ATF guidelines, if I'm to store quantities exceeding 20 LBS, but not more than 50 LBS. it needs to be stored in a wooden box or cabinet. If you look at the floorplan I provided above, the said materials will be stored in a Metal storage locker, with a locking mechanism so no one can access it but me, making it unable to be tampered with.

I will also be using primers for the production during normal business operations. All of these will also be stored in their original packaging and not in large numbers. Per the National Fire protection association and following ATF guidelines , NFPA 495 Explosive Materials code, small arms primers code is as follows:
11-5.6 (a) Quantities not exceeding 750,000 may be stored in a building if not more than 100,000 are stored in any one pile and piles are at least 15 feet apart. Storage will be kept separate from gunpowders or propellants so safety is maintained.

I intend to follow these safety rules and store the primers safely in accordance with these codes to ensure proper storage.

The other material would be brass for loading. The brass will be stored on the storage shelves and brought over to the work bench areas as needed.

If you have any other questions , I will be happy to provide more information.

Justin Comer

----- Forwarded message -----

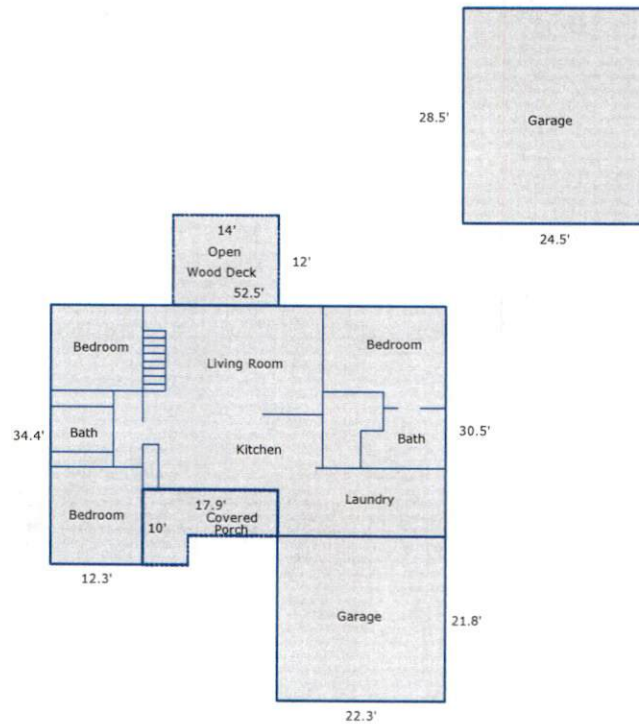
From: Justin Comer <J.Comer@sgiheating.com>
Date: Sun, Aug 22, 2021 at 10:28 PM

Subject: Justin Comer's Floor plan- Pole Barn

To: 1976justinc@gmail.com <1976justinc@gmail.com>

FLOORPLAN SKETCH

Borrower: Justin & Nancy Comer		File No.: 9500017837
Property Address: 10824 S Westnedge Ave		Case No.:
City: Portage	State: MI	Zip: 49002
Lender: Consumers Credit Union		



Sketch by Apex Medina™

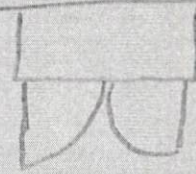
Comments:

AREA CALCULATIONS SUMMARY			
Code	Description	Net Size	Net Totals
GLA1	First Floor	1540.0	1540.0
GAR	Garage	486.1	
	Garage	698.2	1184.4
P/P	Porch	132.6	
	Wood Deck	168.0	300.6
Net LIVABLE Area		(rounded)	1540

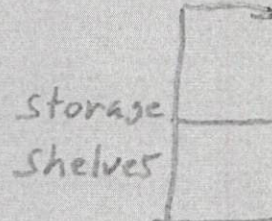
LIVING AREA BREAKDOWN			
Breakdown			Subtotals
First Floor			
22.3	x	6.1	136.0
52.5	x	24.4	1281.0
10.0	x	12.3	123.0
3 Items			(rounded) 1540

West

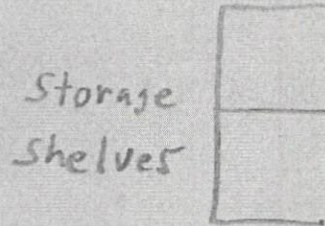
Rear



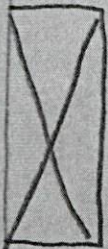
Storage
locker



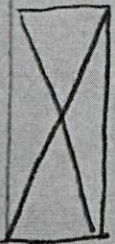
Storage
shelves



Storage
shelves



workbench



workbench



Door



electric Panel

RECEIVED

AUG 23 2021

COMMUNITY DEVELOPMENT

Front

East

Jeff Mais

From: Stacy French
Sent: Monday, August 23, 2021 8:29 AM
To: Jeff Mais
Cc: Brady VanderVeen
Subject: Justin Comer Reloading Business

Jeff,

A couple comments on the copy of an e-mail you provided to me from Justin to you on August 22, 2021.

As he is proposing the use of the pole barn for commercial purposes, I have the following:

- Smokeless propellants not exceeding 100 pounds shall be stored in portable wooden boxes having a nominal thickness of at least 1 inch.
- Gunpowder (black powder) up to 50 pounds must be stored in a Type 4 indoor magazine.
- He is correct that he is able to have up to but not exceeding 750,000 primers where there are not more than 100,000 stored in any one pile and where piles are at least 15 feet apart.

Thank you,

Stacy French
Fire Marshal
City of Portage
(269) 548-4058

Kent & Laura Williams

10805 S Westnedge Ave
Portage, MI 49002
269-649-7512
kalamazookent@hotmail.com

27 September 2021

Dept. of Community Development

Portage, MI 49002

To whom it may concern,

Regarding a variance requested by Justin Comer, 10824 S. Westnedge Ave, to operate an ammunition loading business on his home property.

We object to him receiving the variance. Storing large amounts of possibly explosive materials in a storage building in a residential neighborhood isn't a good idea. Assuming that Mr. Comer is experienced and responsible, many things could still go wrong and result in damage or loss of life.

Thank you for your time.

Sincerely,

Kent & Laura Williams

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.**

TO: Zoning Board of Appeals**DATE:** October 11, 2021**FROM:** Kelly Peterson, Director of Community Development**SUBJECT:** ZBA #21-06; W.B.C. Properties, Limited Partnership, 5220 South Westnedge Avenue, CPD, Commercial Planned Development**CODE SECTION:** 42-262(B)(16)(a)(ii); Marihuana Retailer**APPEAL:** Requesting a variance from the requirement that a marihuana retailer be allowed to locate within 941 feet from a church/school where a minimum 1,000 feet separation distance is required.**STAFF****RECOMMENDATION:** The applicant requests the above variance per the enclosed application, map, and letter of explanation. The subject property is zoned CPD, Commercial Planned Development is improved with two commercial buildings, an off-street parking lot and related improvements. The property is located along the South Westnedge Avenue business corridor and is primarily adjacent to other commercial properties.

For Board information, a marihuana retailer is a commercial entity that, consistent with the State of Michigan Adult-Use Act and Rules, purchases marihuana products from an adult-use grower or adult-use processor and sells, supplies, or provides marihuana to persons over 21 years of age or older. A retailer includes any commercial property where marihuana products are sold at retail to registered persons over 21 years of age or older as provided in the Adult-Use Act and Rules.

Marihuana retailers are a principal permitted use in Commercial Planned Development zones subject to several locational standards. Section 42-262(B)(16)(a)(ii) requires a minimum 1,000 feet separation distance between any provisioning center and a school. There must also be a separation distance of 1,000 feet between zoning lots occupied by marihuana businesses. Attached is a map that shows the location of marihuana eligible businesses in this area of the city. Because the subject property is located 941 feet from St. Monica Parish & School property, a variance is requested.

The 1,000-foot separation distance requirement is measured from the boundary of the zoning lot to the nearest point of the zoning lot occupied by any of the uses listed in subsection 42-262(B)(16)(a)(ii) and is intended to provide adequate spacing between marihuana retailers and schools, child day care centers, recreation facilities, parks, and similar uses where children may be present. The ordinance is also intended to prevent a concentration of marihuana facilities in a specific location. The Board may recall granting a request for an applicant to operate a dispensary at 7215 South Westnedge

Avenue (ZBA #18-09), located 972 feet from Celery Flats Park. In that case, the Board cited significant physical barriers between the marihuana retailer and the park, including wooded wetlands, railroad tracks, and Portage Creek. With regard to the current request, such physical barriers are absent. The applicant notes the tenant space where the proposed marihuana retailer is located is more than 1,000 feet from St. Monica Parish & School property line (GIS mapping shows the distance between the tenant suite and the school property is 1,195 feet) which may be considered a mitigating factor.

As information for the Board, if the variance is approved and a marihuana retailer opens in the Willow Creek Shopping Center, the three existing eligible marihuana locations to the south and east across South Westnedge Avenue (refer to the attached map) would lose their eligibility status since the 1,000-foot separation requirement between establishments could not be met.

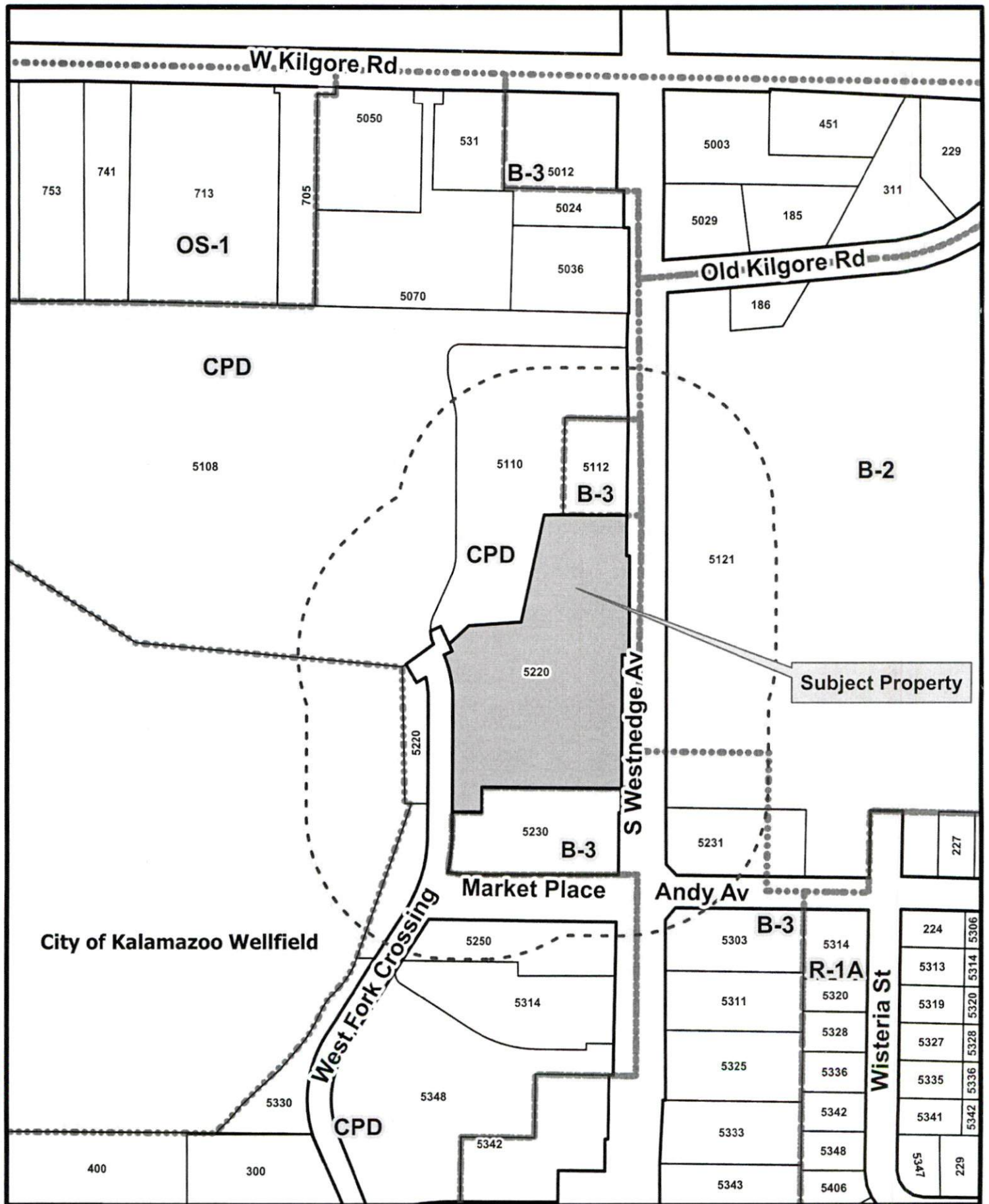
If the Board finds a practical difficulty exists, the variance may be granted.

**PRACTICAL
DIFFICULTY:**

None noted by staff. Applicant indicates the distance from the tenant space is more than 1,000 feet to school property line. See Suggested Motion form.

Attachments:

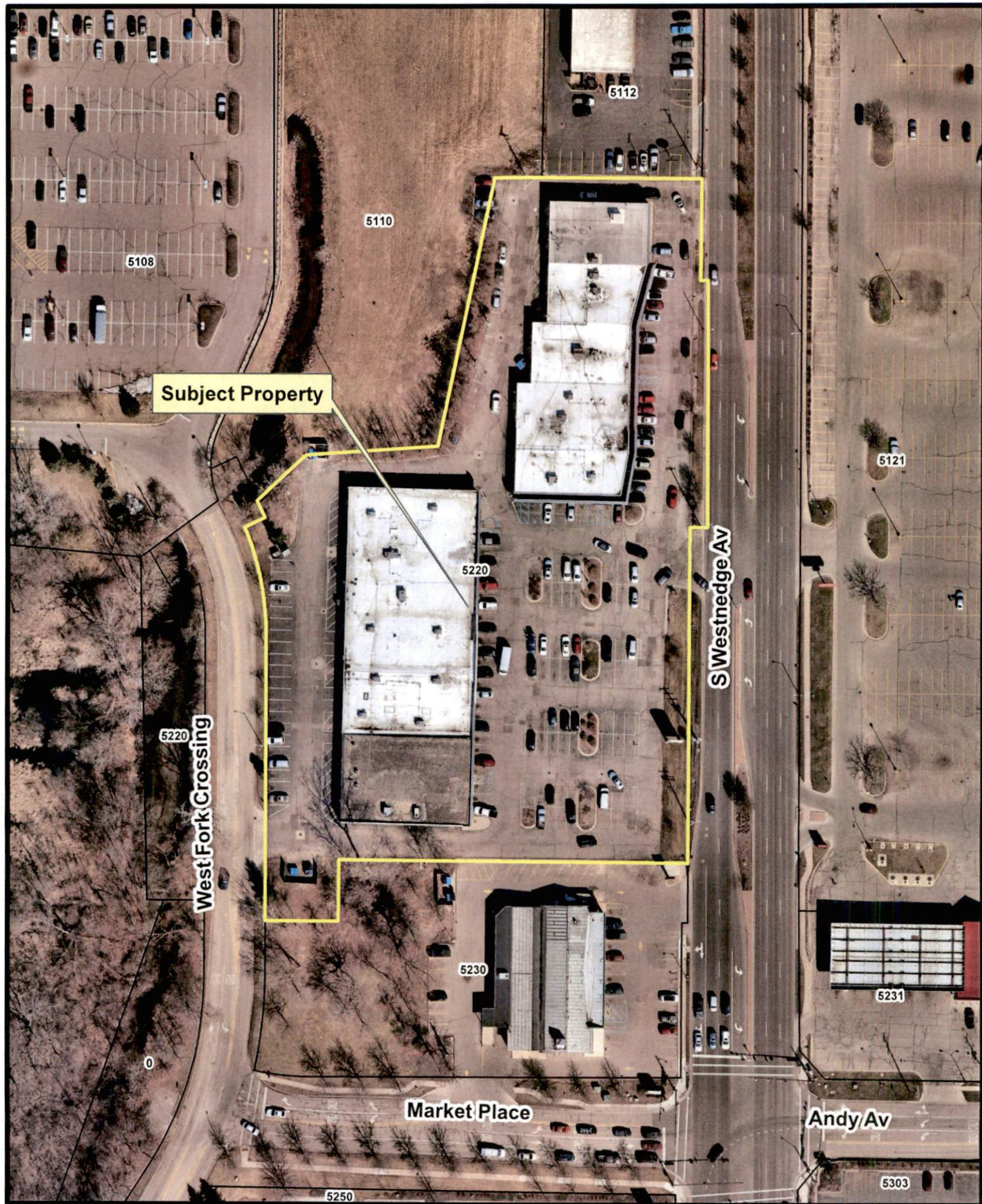
1. Maps
2. Communication James Pollock
3. Application
4. Motion form



-  Subject Property
-  Zoning Boundary
-  300' Notification Area

ZBA #21-06
5220 South Westnedge Ave





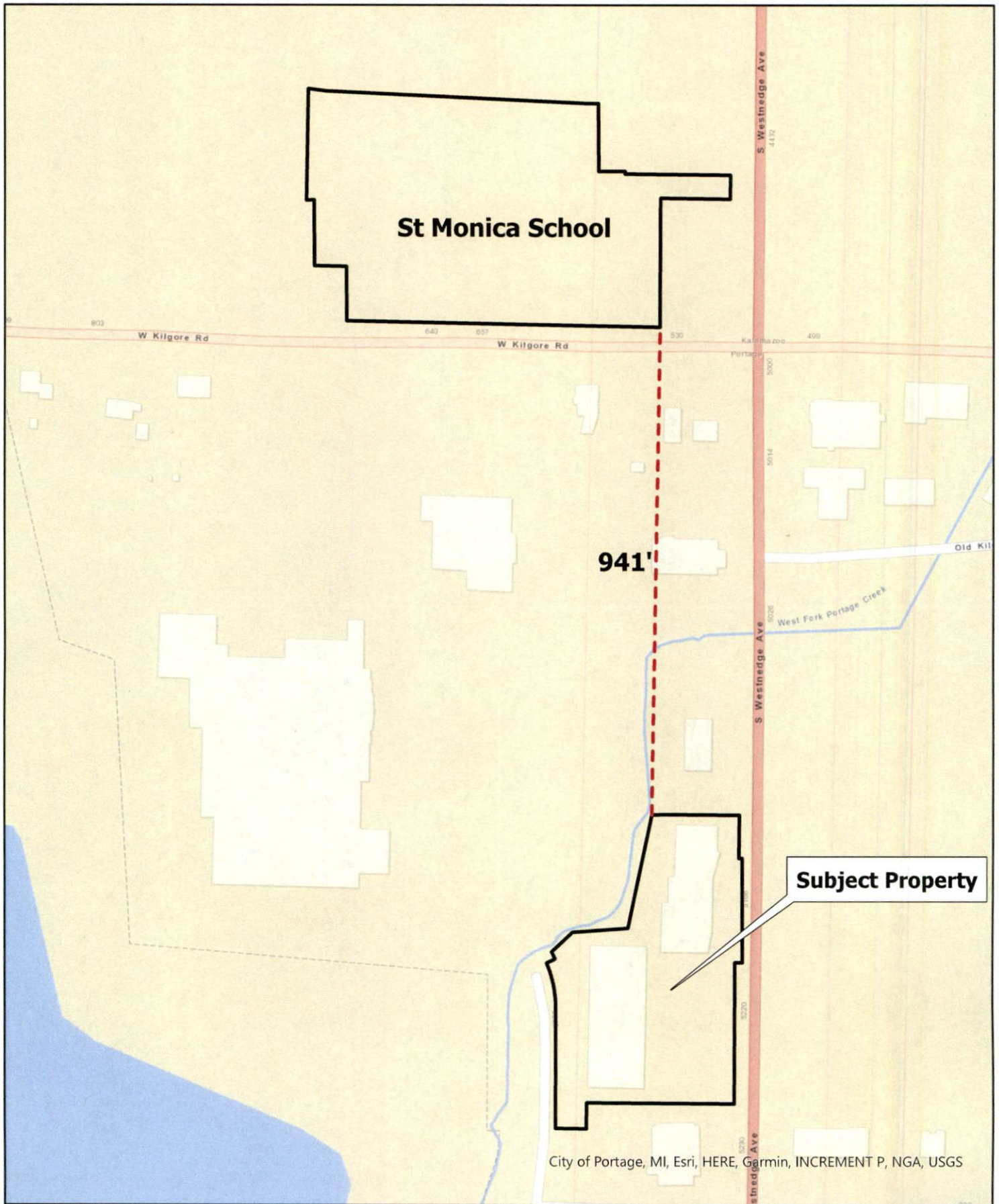
 Subject Property

2021 Nearmap Imagery

Aerial Photo 5220 South Westnedge Ave



(21) 200

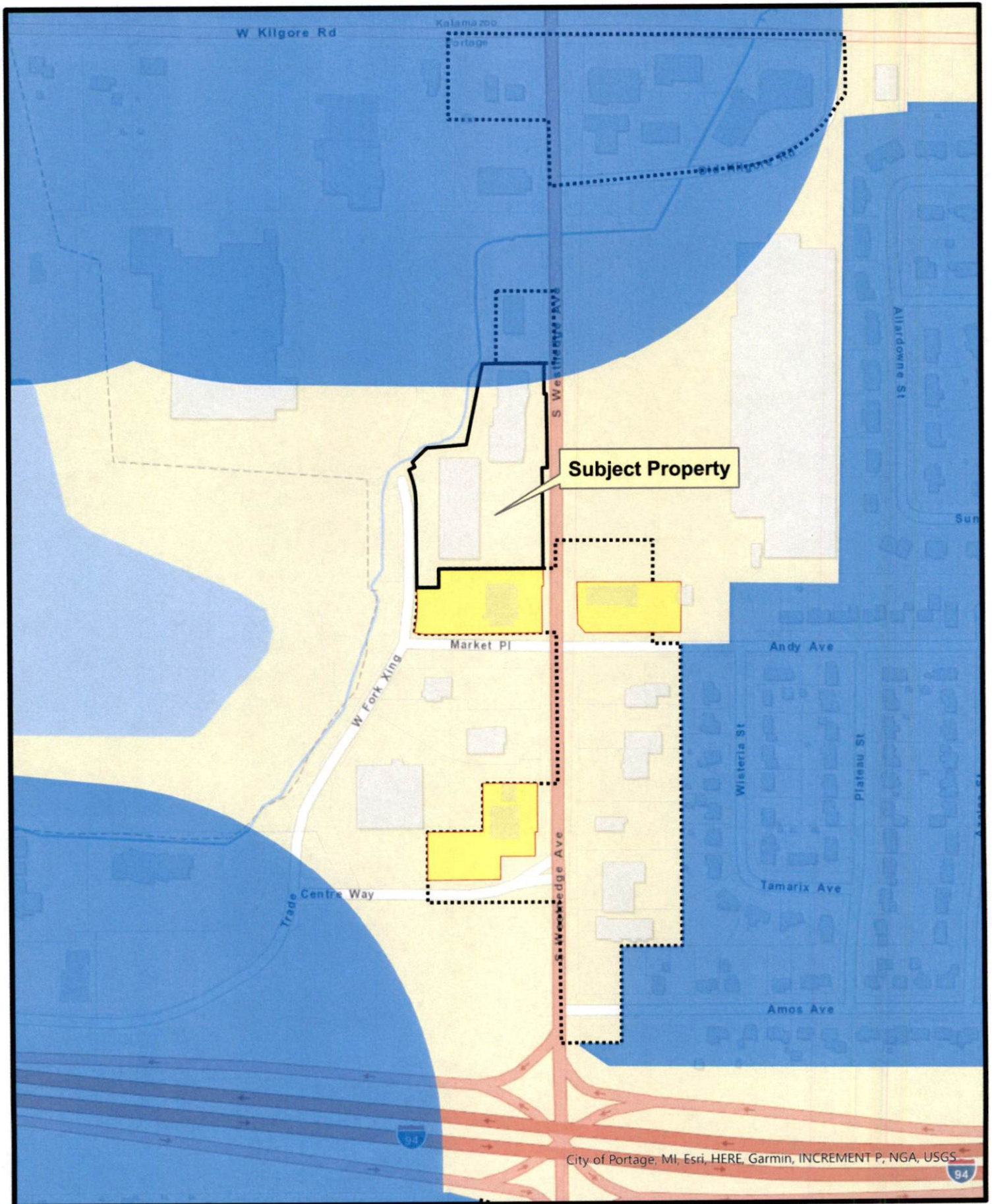


 Property Line

ZBA #21-06
5220 South Westnedge Ave
Distance From School



1:3,000
(22)



-  B3 Zoning
-  Eligible Properties
-  Excluded Areas

ZBA #21-06
5220 South Westnedge Ave
Marihuana Map



1:4,000



VIA EMAIL ONLY

August 23, 2021

City of Portage
Attn: Zoning Board of Appeals (ZBA)
7900 S Westnedge Avenue
Portage, MI 49002

RE: W.B.C Properties Limited Partnership (W.B.C.) zoning variance from Section 42-262, Paragraph B16(a)(ii), 1000' Exclusion Zone for a Tenant of W.B.C.'s that will operate a Recreational Marijuana Dispensary at W.B.C.'s property.

Dear ZBA:

On behalf of W.B.C., owner of the property located at 5220 South Westnedge Avenue, Portage, MI 49002 (the "Property") please accept the enclosed zoning variance application for a non-use variance from the above referenced ordinance related to the distance with which a marijuana dispensary can be located from a school or religious institution.

The Property known as the Willow Creek Shopping Center contains two retail buildings, a north building and a south building. As can be seen from the enclosed drawing of the shopping center, the north line of the property is technically within the 1000-foot exclusion zone referenced above by approximately five percent (5%) and is 970 feet from the school, however, the actual location of where the dispensary will be a tenant in the southernmost building is outside the exclusion zone and approximately 1,178 feet from the school.

The dispensary will have leasehold rights only to their specific leased premises, not ownership rights to the entire property where the Willow Creek Shopping Center Exists. Pursuant to the lease agreement between the owner and the dispensary, under no condition would the tenant be allowed to relocate or expand in the shopping center any closer to the school.

The variance is the minimum necessary to allow the use given the actual distance from the dispensary meets and exceeds the spirit of the ordinance requirements at 1178 feet. Precedence exists for a reduced distance variance similar to the request being made by the owner: A similar minimum variance was granted to the owner of the property at 7215 S. Westnedge property by the ZBA this past March, 2021. In that case, a similar 972-foot distance was approved, but with the actual storefront being the 972 feet from the dispensary (and in our case the actual storefront will be 1178 feet from the school).

The spirit and intent of the 1000-foot exclusion requirement is to keep the City's dispensaries a reasonable distance (in this case 1000 feet) away from schools and religious institutions. While a portion of the property impedes the exclusion zone by approximately 30 feet, the dispensary will be a tenant at the owner's property

and will only be able to operate at the leased premises location in the shopping center and that measured distance exceeds the 1000 foot exclusion zone.

For these reasons and the reasons stated in the attached application, we respectfully request that you approve this variance.

Regards,

A handwritten signature in black ink, appearing to read 'J. Pollock', with a long horizontal flourish extending to the right.

James M. Pollock
General Counsel

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date August 18, 2021

Name of Applicant W.B.C. Properties Limited Partnership

Applicant's Address 750 Trade Centre, Suite 100, Portage, MI Phone No. (269) 342-8600

Name of Property Owner (if different from Applicant) _____

Address _____ Phone No. _____

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

Street Address 5216 South Westnedge, Portage, MI 49002

For Platted Property: Lot _____ of _____ Plat _____

Please provide a Legal Description. (attach a separate sheet).

Applicant's interest in Property that is the subject of this Application: _____
Owner/Landlord to prospect tenant.

☐ Application Fee \$140 (One-family Residential Uses) ☒ \$340 (All Other Uses)

Type of Appeal (The zoning code can be found in Chapter 42, Article 4, of the Codified Ordinance):

1. ☒ **Variance from Zoning Ordinance:** Section 42-262 Paragraph B16(a)(ii)
Regarding: Use _____ Area _____ Yards _____
Setbacks _____ Parking _____ Other Non-Use

Reason for Request (Also complete page 2 of application): Allow a tenant to operate a dispensary a distance of
at owner's property where the property line of the multi-tenant shopping center is 970 feet from a

2. ☐ **Appeal of Administrative Decision:** Section _____ Paragraph _____
Reason for Request: _____

3. ☐ **Interpretation of the Zoning Ordinance:** Section _____ Paragraph _____
Reason for Request: _____

4. ☐ **A Temporary Permit for:** Building _____ Use _____ Other Approval _____
Section _____ Paragraph _____
Reason for Request: _____

FOR STAFF USE

Application Number: <u>ZBA #21-06</u>	Filing Date: <u>8/18/21</u>	Tentative Hearing Date: <u>10/11/21</u>
Previous Application Filed Regarding This Property:		

Reasons 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.**

The Zoning Ordinance assumes a dispensary will have use of the entire zoning lot it occupies which therefore prevents compliance with the zoning ordinance at Willow Creek due to the nature of its long and linear property boundary line to the south, when in fact the leasehold rights to where the dispensary would be located will exceed the 1000-foot distance. The actual store for the dispensary will be in the center's southernmost building having a common address of 5216 S. Westnedge and will actually be approx. 1,178 feet from the school/religious institution (refer to drawing attached hereto as Exhibit A). The dispensary will have leasehold rights only to their specific leased premises, not ownership rights to the entire property where the Willow Creek Shopping Center Exists. The 970' distance from the school is the northern most boundary of the multi-tenant Willow Creek Shopping Center property / zoning lot (See Exhibit A). Pursuant to the lease agreement between the owner and the dispensary, under no condition would the tenant be allowed to relocate or expand in the shopping center any closer to the school.

- 2. Are the physical characteristics you explained above unique and not shared by neighboring properties?**

Yes, for reasons stated in 1-8 herein. Additionally, the actual northern property line of the shopping center is only 5% in the exclusion zone, whereby the actual physical location of the dispensary will be 1,178 feet from the school. There are numerous physical and visual obstructions and businesses between the school and the dispensary and grade differences: an entire building, shopping center (Homegoods/Earthfare) as well as a road (Kilgore) in between the proposed dispensary and the school, therefore making a direct traverse of the land from the school institution impractical or difficult (i.e., the dispensary use is not directly visible to or directly and easily accessible to the school).

- 3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance?**

No. The dispensary use is a permitted use and without the variance, we cannot lease to a dispensary in this building by the sole virtue of the fact that the building they would occupy shares a property line within the exclusion zone despite that the use and occupancy will be well outside of the 1000 foot exclusion zone.

- 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 their property owners in the area?**

Yes. The variance is the minimum necessary to allow the use given the actual distance from the dispensary meets and exceeds the spirit of the ordinance requirements at 1178 feet. Precedence

exists for a reduced distance variance similar to the request being made by the owner: A similar minimum variance was granted to the owner of the property at 7215 S. Westnedge property by the ZBA this past March, 2021. In that case, a similar 972-foot distance was approved, but with the actual storefront being the 972 feet (and in our case the actual storefront will be 1178 feet).

5. **Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area.**

It would not alter the character of the area as the dispensary is going into an existing/established retail center where the use is allowed had the Zoning Ordinance considered leasehold rights or had the property line been located 30 feet further to the south. A dispensary use could locate on several adjacent properties to the immediate south without a variance. A majority of the retail tenants at the shopping center are supportive of the dispensary use at the shopping center. In fact, many of the retailers feel the use will positively impact their business. The use would be a synergistic use with the existing surrounding grocery and other retail corridor uses.

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.**

The shopping center already exists and the leased space to be occupied by the dispensary could be leased to a use, without this variance, that that is has greater intensity impact on noise, traffic and other adverse effects. The expected traffic and noise would be consistent with the current shopping center traffic and noise. We do not expect increased congestion or noise worse than other uses that occupy the center or could occupy the space. To our knowledge, there is no increased risk in dangers from fire, flood, or other hazards. The school and the dispensary to do not share the same road for access, do not share parking lots or drives. There are significant physical and visual barriers between the school and the proposed location of the dispensary. The lease agreement also includes maintenance provisions and rules & regulations that are consistent with all other tenants of the shopping center which further protects the integrity of the area which is a benefit to the area by having only leasehold interests.

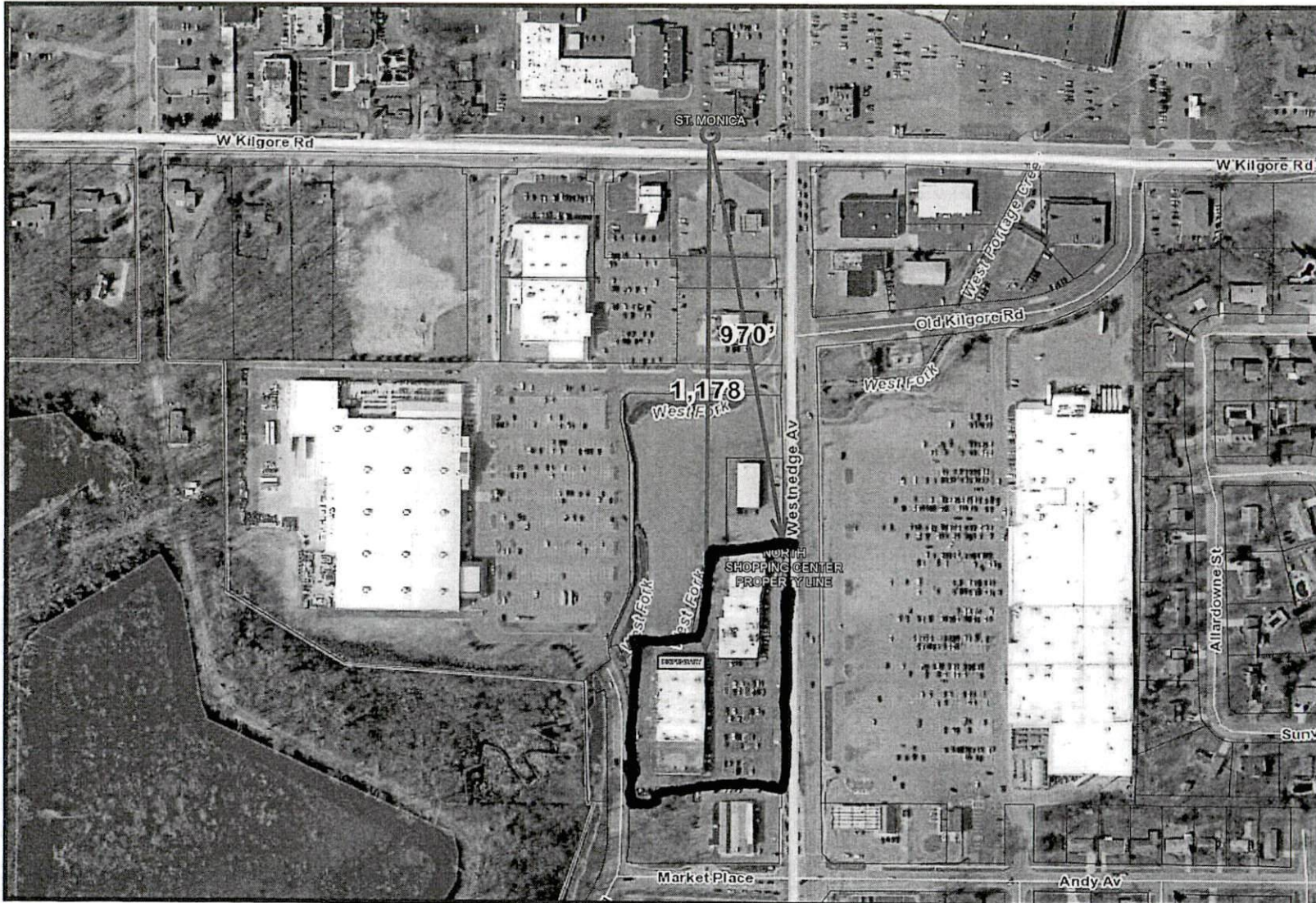
7. **Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner?**

No. The reason for the request was not created by the applicant or the previous owner. The unique nature of the request is that the actual physical location of the dispensary is greater than 1000 feet where the dispensary will be located on the property via leasehold rights. The spirit of the ordinance is met because although the property line of the shopping center is located 970 feet from the school, the actual location of the dispensary will be approximately 1200 feet away from the school.

8. **Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance.**

The zoning of the property permits the use. The spirit and intent of the 1000 foot requirement is to keep the City's dispensaries a reasonable distance (in this case 1000 feet) away from schools

and religious institutions. While a portion of the property impedes the exclusion zone by approximately 30 feet, the dispensary will be a tenant at the owner's property and will only be able to operate at the leased premises location in the shopping center and that measured distance exceeds the 1000 foot exclusion zone. The dispensary will not have any rights to operate in any other locations on the property and through the lease agreement is prohibited from relocating or expanding closer to the school. Therefore the spirit of the ordinance is met as the actual location of the use is approx. 1178 feet away thereby exceeding the 1000 feet intended by the spirit and intent of the Zoning Ordinance. Furthermore, other than the leasehold rights, the owner of the property and the owner of the dispensary are not common.



Portage GIS



Map Publication:
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100m
300ft

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Disclaimer: This map does not represent a survey or legal document and is provided on an "as is" basis. City of Portage expresses no warranty for the information displayed on this map document.

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.**