

AGENDA

REGULAR MEETING OF THE MIDLAND ZONING BOARD OF APPEALS, TO TAKE PLACE ON TUESDAY, JULY 19, 2016, 6:30 P.M., COUNCIL CHAMBERS, CITY HALL, MIDLAND, MICHIGAN

1. Roll Call
2. Election of Officers
2. Approval of the Minutes
 - a. Regular Meeting – May 17, 2016
3. Public Hearings
 - a. **No. 16-03 – Elizabeth Camp**, for consideration of a use variance to the provisions of the Community Zoning District as it applies to property located at 202 Post Street. The petition would recognize an existing single family residential use on the property and permit improvements to the residence. Residential uses are not currently permitted or recognized by the Community Zoning District that applies to the property.
 - b. **No. 16-04 – Daniel Smith, Telecad Wireless, on behalf of Skyway Towers** for a dimensional variance to permit the construction of a wireless communication tower. The property is located at 3600 and 4812 E. Wheeler Road and is zoned AG Agricultural. The application is requesting a variance to permit a tower height of 195 feet on the property whereas a maximum tower height of only 150 feet is currently permitted.
4. Old Business

None
5. Public Comments (not related to items on the agenda)
6. New Business

None
7. Decision Sheet Signatures
 - a. 16-02 Review Findings of Fact
8. Adjournment

**MINUTES OF THE MEETING OF THE ZONING BOARD OF APPEALS,
TUESDAY, MAY 17, 2016
6:30 P.M., IN COUNCIL CHAMBERS, CITY HALL,
MIDLAND, MICHIGAN**

1. ROLL CALL

PRESENT: Board Members –Higgins, Lichtenwald, Pnacek, Poprave and Siemer

ABSENT: Board Member – Green

OTHERS PRESENT: Brad Kaye, Assistant City Manager for Development Services; Grant Murschel, Community Development Planner; and others (2) other.

2. APPROVAL OF MINUTES

It was moved by Higgins and supported by Lichtenwald to approve the meeting minutes of February 16, 2016. The motion was approved unanimously.

3. PUBLIC HEARINGS

- a. **No. 16-02 – TVC Midland Co., LLC and Wolverine Bank**, for consideration of a variance to maximum allowable number of parking spaces to permit 55 parking spaces, being 11 more parking spaces than is permitted by ordinance, on the parcel presently developed as CVS Pharmacy. The property is located at 1015 South Saginaw Road and 1107 South Saginaw Road and is zoned Regional Commercial. The variance petition requests relief from Section 5.01.C.7 of the City of Midland Zoning Ordinance to allow the 55 parking spaces proposed, whereas only 44 parking spaces are presently permitted for the use.

Kaye gave the staff presentation of the petition starting with the background on the subject site and shared parking situation. The CVS site plan was approved with 44 parking spaces. The development team for CVS, after site plan approval, then petitioned the Planning Commission to construct the 11 additional parking spaces. The petition was denied by the Planning Commission as the body found that a need for the additional spaces was not adequately demonstrated. The 11 spaces were then allowed to be built as accessory to a proposed dentist/medical office, with that building to be built by September of 2017. He reviewed each of the five criteria giving staff's responses followed by the response provided by the applicant.

Higgins wondered if the Wolverine Bank site plan approved required the 11 spaces on the CVS site. Kaye confirmed that if the variance is not approved the parking space would need to be physically removed from the CVS site if the Wolverine Bank site is not developed.

Rick Rosinski, Chief Operating Office of Wolverine Bank, gave a detailed background on how Wolverine Bank came to own the parcel abutting to the south of the subject site. The medical or dental use was chosen with parking needs in mind as well as the marketability of the use. Wolverine Bank is bound by legal regulations of the Office of the Comptroller of the Currency to sell this property in the next three years since the bank cannot act as a landlord. He feels it is a burden on the bank to act as their own developer and contractor as they have not been able to find the right developer to hand the project off to. He reviewed the five criteria.

Jay Brown, the legal counsel for Wolverine Bank, indicated that the ideal situation would be to identify a user of the building before construction begins rather than building a spec building. He indicated that approval of the variance would be a temporary solution effectively as the property will be developed; at that time, a variance will no longer be necessary as the spaces will be needed and required. He reviewed the five criteria and added that the need for the variance is because a tenant has not yet been identified for the future building on the Wolverine Bank parcel. The reciprocal easement places, in perpetuity, the eleven parking spaces into a shared arraignment.

Higgins commented that the petition relates to the CVS site owned by TVC Midland Company and not the agreements that are in place between the two properties. Kaye confirmed this understanding.

Rosinski indicated that the CVS development would not have been built without the 55 parking spaces on the site. Brown said that the transaction between Wolverine Bank and TVC Midland happened in November 2014, after both the CVS and the medical/dental site plans were approved.

Higgins wondered if Wolverine Bank would be willing to accept the contingency of approval that the site be developed in three years. Poprave indicated that he would suggest asking for a performance bond to better ensure that the Wolverine Bank property is developed within the deadline.

Higgins wondered if Wolverine Bank has spoken with any real estate professionals to see if there is any demand for a medical or dental tenant. Rosinski indicated their conversations have been only with builders in order to sell the property to a developer rather than Wolverine Bank having to develop the property itself. Brown said that the agreement with TVC Midland prohibit Wolverine from allowing the property to be developed in something other than a medical or dental use.

Kaye commented that an option could be to add a contingency that requires a performance bond to require that the building be built rather than a performance bond tied to the removal of the parking spaces. Brown and Rosinski indicated that they would be agreeable to such a requirement to ensure development of the Wolverine parcel.

Higgins commented that he feels the TVC and CVS folks are simply trying to circumvent the ordinance requirements by placing the burden on Wolverine Bank.

Siemer closed the public hearing.

Findings of Fact:

- 1. The site is zoned RC Regional Commercial.**
- 2. A reciprocal, shared-parking easement agreement is in place between the TVC Midland site and the Wolverine Bank site.**
- 3. The Wolverine Bank parcel that is associated with the request is irregular in shape.**
- 4. 1107 S. Saginaw Road is the address of the associated Wolverine Bank parcel.**
- 5. The 11 parking spaces are approved for the medical/dental use only.**
- 6. In May 2014, the CVS site plan was approved by City Council with 44 parking spaces.**

7. **In July 2014, the CVS development team's request for the additional 11 parking spaces was denied by the Planning Commission.**
8. **In September 2014, an administrative site plan was approved for the medical/dental building on the Wolverine Bank property, which required the 11 parking spaces on the CVS site.**
9. **Construction of the CVS development started after September 2014.**
10. **The Wolverine Bank parcel is required to be developed within two years of the associated site plan approval, by September 2016.**
11. **The proposed building on Wolverine Bank parcel was approved at 3,350 square feet.**
12. **The 11 parking spaces associated with the medical/dental use were built in sequence with the CVS development.**

Motion: It was moved by Poprave and supported by Pnacek to approve Petition No. 16-02 based on the findings of fact for a dimensional variance to allow 55 parking spaces, being 11 more parking spaces than is permitted by ordinance at 1015 South Saginaw Road and 1107 South Saginaw Road, subject to the following conditions:

1. That future construction of a building on the adjacent Wolverine Bank parcel shall be assured by no later than September 30th of 2019 through an agreement and/or financial security to the satisfaction of the City Attorney; and
2. That the variance shall expire upon construction of the future building on the adjacent Wolverine Bank parcel.

Higgins indicated that he sees the CVS site as fully capable to function with 44 spaces. He does not think that the first criterion is met and is struggling with petition meeting the other criteria.

Poprave expressed his hesitation with the strike compliance criterion being met. He also believes that it is not a minimum amount being requested as the request pertains to more parking than the standard that is in place. Lichtenwald said that he thinks the need for the variance was self-created.

Pnacek indicated that this proposal is an attempt by CVS to circumvent the system in order to ensure the 55 spaces on the site.

Siemer called for a vote on the motion by Poprave and Pnacek.

Higgins: No

Lichtenwald: No

Poprave: No

Pnacek: Yes

Siemer: Yes

The motion was denied by a vote of 2-3.

4. OLD BUSINESS

None

5. PUBLIC COMMENTS (not related to items on the agenda)

None

6. NEW BUSINESS

None

7. DECISION SHEET SIGNATURES

- a. 16-01 Review Findings of Fact

8. ADJOURNMENT

The meeting was adjourned by Vice-Chairman Siemer at 8:09 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "C. Bradley Kaye". The signature is written in dark ink on a light-colored background.

C. Bradley Kaye, AICP, CFM
Assistant City Manager for Development Services

Report No. 16-03

Date: July 12, 2016

STAFF REPORT TO THE ZONING BOARD OF APPEALS

SUBJECT: Proposed Use Variance
PETITIONER: Elizabeth Camp
LOCATION: 202 Post St.
PROPOSED: Use variance to permit a single family residence in a Community COM Zoning District
ZONING: Residential A-1

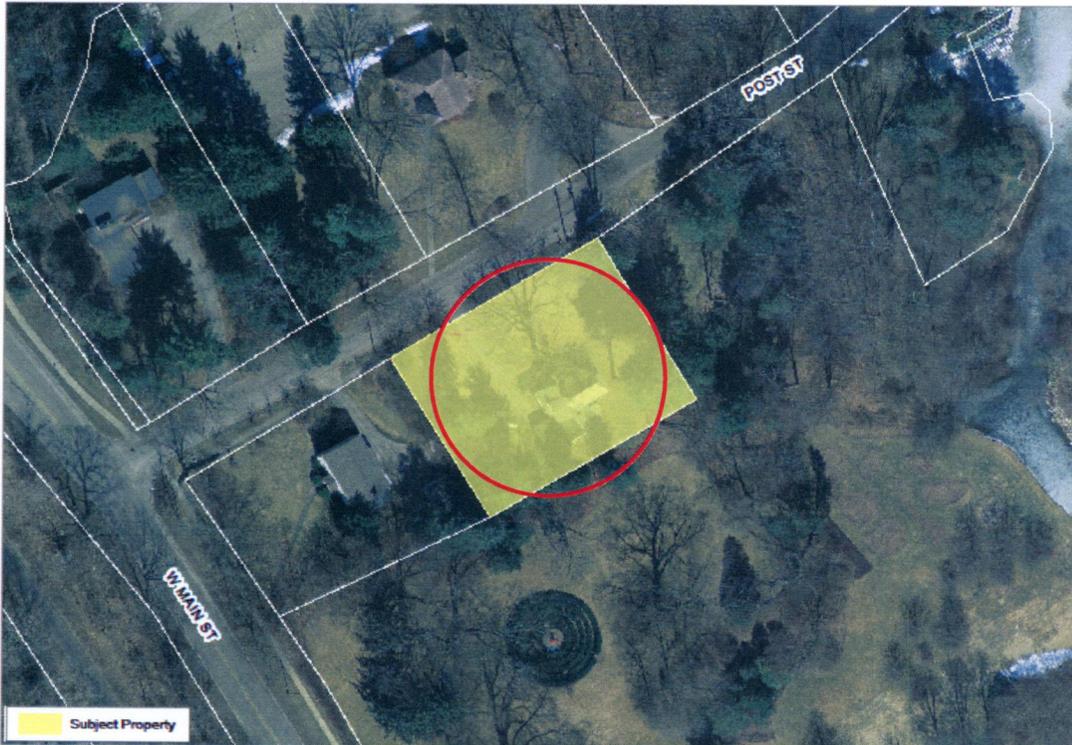
REPORT

PETITION SUMMARY

The petitioner is requesting a use variance to permit a single family residential dwelling in a COM Community Zoning District. The petition, if approved, would recognize an existing dwelling located on the parcel. If recognized, the petitioner has indicated a desire to expand the existing dwelling. Should the petition be denied, the use would remain a non-confirming use under the current City of Midland Zoning Ordinance. Expansion of the dwelling would then not be permitted.

Aerial view of property

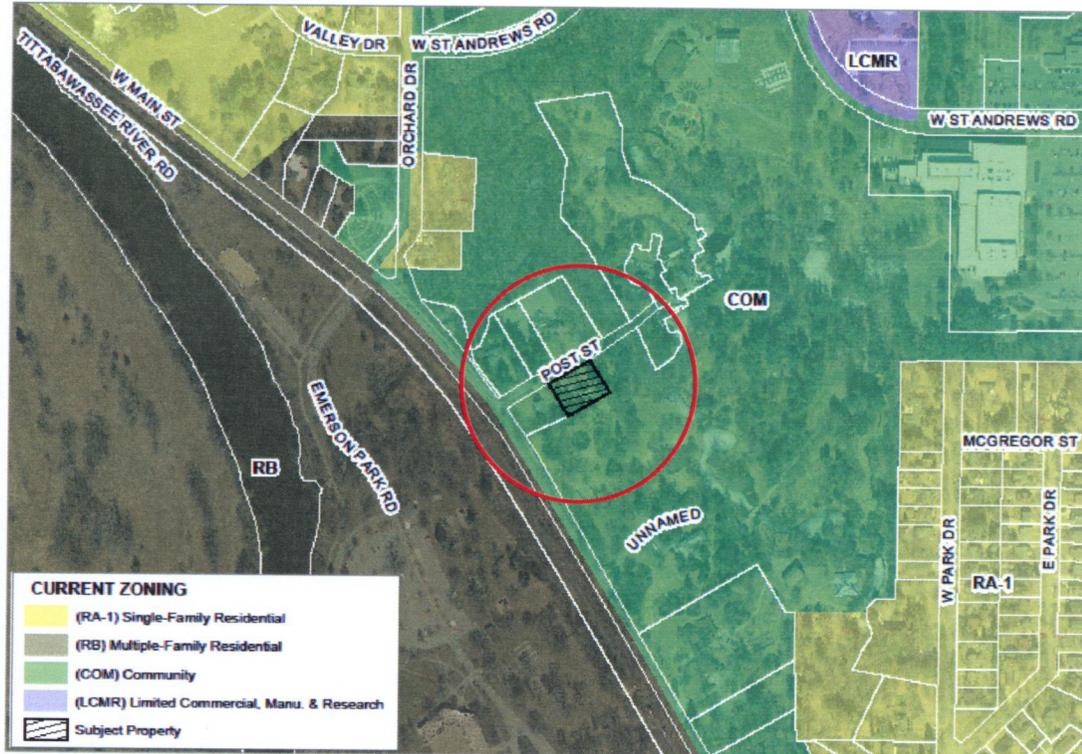
ZBA #16-03 | Elizabeth Camp
> 202 Post Street



Zoning of property

ZBA #16-03 | Elizabeth Camp

> 202 Post Street



REVIEW CRITERIA FOR USE VARIANCES

The Zoning Board of Appeals may grant a requested “use” variance only upon finding that an unnecessary hardship exists. An unnecessary hardship is when the restrictions of the zoning ordinance on the property, when its environment is considered, is so unreasonable as to constitute an arbitrary and capricious interference with basic private property rights. A “use” variance is a variance that permits a use that is otherwise prohibited in a zoning district. A finding of unnecessary hardship shall require demonstration by the applicant of all of the following:

- A. **The property cannot be reasonably used for any purpose permitted in the zoning district without a variance.**

Petitioner’s response: Yes it could although the home was built in 1992 (correct date is 1929) as a residential primary residence. At that time the zoning was residential. Since that time, to my knowledge, the home has only been used as a primary residence. The zoning was changed to Community property in 1992 from Residential (RA-1) this included a 30 acre parcel now encompassing the Dow Gardens and Post St. The future intent would be to keep the home as a single family primary residence. The proposed improvements to the home are not allowed under the current zoning and would request a variance.

Staff commentary: The property was built in 1929 and is understood to have been used continuously since as a single family dwelling. In 1982, while held by Craig McDonald and as part of the Dow Foundations holdings, the property was rezoned to COM Community. It was subsequently sold of May of 2004 to the petitioner. The current City of Midland Zoning

Ordinance was adopted in November of 2004 and the property remained zoned COM Community. No changes in ownership or zoning have occurred since.

Under the COM Community District, a range of community-type uses are permitted. The subject parcel, being approximately 0.52 acres in size, would have difficulty accommodating most of the uses listed in this district. It may, however, be able to be used for some of the less intensive uses including charitable organization offices, social service agencies, hospitality homes, day shelters and transitional housing. The location of this dwelling is such that these uses are unlikely to take place on the site.

Residential uses are not a recognized use in the COM Community District. Despite the long-standing use of this parcel for a single family dwelling, the use is therefore non-conforming and no external expansion of the building, as intended by the petitioner, is permitted.

B. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.

Petitioner's response: I am the only outside registered owner of the property in the community zoned area other than Dow Foundations and the City of Midland (per the City of Midland tax information website), the property to the east is 1136 W Main St and is rented as a single family residence. Across the street is the Post Street archives, which is currently rented by an IT company. On the corner of Post and Main is Little Forks Conservancy. All property surrounding 202 Post St is currently zoned as Community property.

Staff Comments: The dwelling and parcel were at one time held by persons associated with the Dow Foundation and the surrounding parcels now known as Dow Gardens. After changing the zoning of the parcel, it appears that the previous owners determined that the parcel had no value to them either personally or as part of the Dow Gardens site. It was subsequently sold for continued use as a single family dwelling. No subsequent change to the zoning, however, was pursued by either the current or previous owner.

Prior to submittal of this petition, a rezoning petition was discussed at length between the current owner and Planning Staff. Given the isolated nature of the property (from a zoning perspective) the petitioner was directed to contact the adjacent property at 1136 W Main St owned by the Alden and Vada Dow Fund. Both that parcel and the subject parcel are identified on the Future Land Use Map of the City's Master Plan as Low Density Residential, thus supportive of a rezoning for residential purposes.

Upon contacting the adjacent property owner, that owner expressed no interest in rezoning the other parcels and structures in the area to a residential zoning district. Similarly, the Herbert H and Grace A Dow Foundation expressed concern about rezoning a single parcel in the midst of the Community District to a distinct residential zoning district. As a rezoning petition would therefore result in a single parcel being zoned distinct from all surrounding parcels, a spot zoning situation would have arisen. Given these unique circumstances, the rezoning petition option was therefore dismissed in favor of this use variance petition.

- C. **The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.**

Petitioner's response: No. Everything will remain the same. The neighboring photos as you have seen support a residential feel and ambiance.

Staff Commentary: If granted, this use variance would permit expansion of the existing single family dwelling and the construction of normal accessory buildings. In this specific case, the petitioners desires to construct an addition to the dwelling as well as an attached garage. These changes to the site would be consistent with its past and present use and would have no negative impact on the character of the area.

- D. **The problem and resulting need for the variance has not been self-created by the applicant.**

Petitioner's response: This property was purchased as a primary residential home. My Great Grandfather built it for my Great Uncle Leo so it is pretty cool that I have been able to live there. I have made many updates to the home and always anticipated that one day I would add the two car garage and consider a main floor master suite. At the time of purchase, I was not aware of the zoning restriction.

Staff Response: The applicant purchased this property as a single family dwelling and intends to maintain that use. The zoning change was initiated by a previous property owner prior to sale of the property to the current owner. The unique circumstances surrounding the original rezoning and the conditions today that make a return to residential zoning difficult are beyond the control of the applicant.

ACTION REQUIRED

An affirmative vote of 2/3 (4 members) of the ZBA is necessary to approve a use variance request.

PUBLIC COMMENTS TO DATE

No comments have been received as of July 12, 2016.

Respectfully Submitted,



C. Bradley Kaye, AICP, CFM
Assistant City Manager for Development Services

City of Midland Zoning Board of Appeals
Application-Letter of intent

Dear Midland Zoning Board,

This request is for a use variance to the property owned by Elizabeth Camp (Kaweck) at 202 Post Street Midland MI 48640.

In March of 2016, I began talking to builders in regards to adding a two car garage and master bedroom addition. I was informed the property was zoned Community Property (COM) and that as a primary residence it was non-conforming under the current zoning ordinance. Pages two and three shows the current location of my home and the current zoning for the surrounding area. After a discussion with Grant Murschel I was informed that I would not be allowed to change the original foot print of the home, and so it was suggested I look to rezone the property to residential (RA-3). I would have been the only home on Post Street zoned residential so he suggested I look into combining with my neighbor The Alden and Vada Dow Family foundation at 1136 West Main Street (residential rental) so as to avoid spot zoning and this may better my chance of approval. A request was made to the Alden and Vada Dow Foundation (page 4) and a return letter was received (page 5) indicating they were not in favor of rezoning 1136 West Main St but hoped there would be another option available to me.

I then requested the assistance of Daryl Griggs, who helped me renovate my kitchen in 2009, to navigate this proposal.

Daryl contacted Steve Tagular, City of Midland Building Inspector, regarding the setbacks but this initial discussion was based on rezoning to A-1 or A-2 residential. He also contacted Craig McDonald to confirm there were no objections to the proposed renovations. He reached out to Jenee Vasquez, on behalf of the HH Dow Foundation and she referred the proposal to Ed Haycock Director of the Dow Gardens for his input. He requested that a variance be applied for rather than a zoning change. This information was presented to Grant Murschel and Brad Kaye and they indicated that a variance was a suitable option and given the circumstances of the area a sound argument could be made for the request. The recap of these communications are located in the back of this proposal.

In this proposal is included:

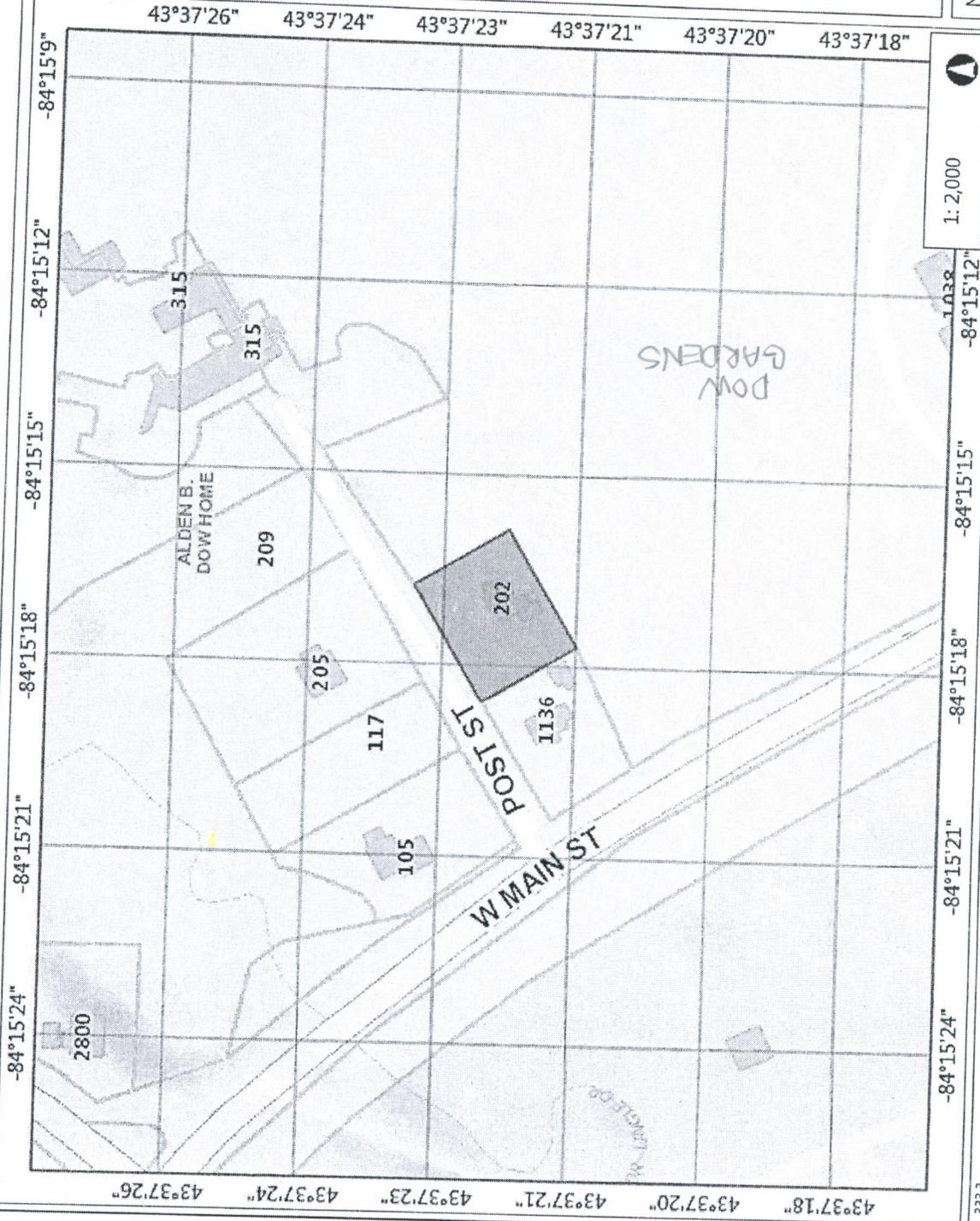
1. My letter of request for a use variance
2. A location map of the proposed site
3. Adjacent lots and photos indicating current use
4. Existing drawing of structure showing current dimensions and set backs
5. Proposed drawing indicating new setbacks that comply with current zoning restrictions
6. Sketch of front view of home from Post St
7. Completed Zoning Board application form with property description attached
8. Completed criteria for approval
9. Griggs Building recap of preliminary discussions with Alden and Vada Dow Foundation and Dow Gardens

2



Map My Midland

Map My Midland



1:2,000

333.3 Feet

0 166.67 333.3 Feet

NAD 1983 StatePlane_Michigan_South_FIPS_2113_Feet_Intl
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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Legend

- City Boundary
- Address Points
- Tax Parcels

- Trees
 - Coniferous
 - Deciduous

Pavement Marking Symbols

- Left turn, White
- Right turn, White
- Arrow, White
- Handicap, Blue
- Left turn, Yellow
- Right turn, Yellow
- Arrow, Yellow

Pavement Marking Lines

- Center line, Yellow
- Center line broken, Yellow
- Cross-hatch, Blue
- Cross-hatch, White
- Crosswalk, White
- Lane line dotted, White
- Lane line broken, White
- Lane line, White
- Other, White
- Other, Yellow
- Parking, Blue

Notes

Enter a Map Description



Map My Midland

Map My Midland



Legend

- Zoning
 - AG
 - C
 - CC
 - COM
 - D
 - IA
 - IB
 - LCMR
 - NC
 - OS
 - RA-1
 - RA-2
 - RA-3
 - RA-4
 - RB
 - RC
 - RD
- City Boundary
- Address Points
- Tax Parcels

Notes

Enter a Map Description



This map is a user-generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

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NAD_1983_StatePlane_Michigan_South_FIPS_2113_Feet_Intl
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CHEMICAL BANK®

Member FDIC



Elizabeth Camp
Cell: 989-488-9056

April 5, 2016

The Dow and Vada Fund
315 Post St
Midland MI 48640

Dear Trustees,

This letter is to request your approval for the rezoning of 202 Post Street and 1136 W Main Street from Community Property (COM) to Single Family Residential (RA-3). The request for both properties and not just 202 Post St was suggested by Grant Muschel, Community Development Planner for the City of Midland. This is to avoid one property being zoned differently in the middle of another zoned area otherwise defined as "spot zoning"

This all started when I was talking to builders about adding a laundry/entry way and two car garage. I discovered that the currently Community property zoning does not allow you to change the original footprint of the home. The change requested will move the two homes from non-conforming in community property to conforming in residential due to the present use as a primary residential household.

I have attached a proposed drawing of what I would like to do. I will not move any closer to the back lot line than is currently in place and will be well inside the 30 ft. variance on both side lot lines. The request to include 1136 W Main Street on the application to the city requires your written consent as an owner. Please let me know if you have any other questions or concerns.

I can be reached at 989-839-5292 during the day or my cell phone at 989-488-9056 almost anytime.

Thank you for your time and consideration.

Sincerely,

Elizabeth Camp (Kaweck)



The Alden and Vada Dow Family Foundations



22 April 2016

Elizabeth Camp
202 Post Street
Midland, MI 48640

Dear Elizabeth,

On behalf of the trustees, I want to thank you for the letter of April 5, 2016 regarding the request to have your property at 202 Post Street and our property at 1136 West Main Street rezoned.

After careful consideration and looking at potential, future uses for all the properties we own on Post Street, at this time, we are not in favor of having our property at 1136 West Main Street rezoned to Residential (RA-3). We are sorry that this does not correspond with your request and hope there might be another option available to you.

All my best,

Craig McDonald
Foundation Representative

cc: City of Midland Zoning Department



202 Post St – Subject Property

Use: Primary Residential

Owner: Elizabeth Camp (Kaweck)



1136 W Main St- Adjacent to Subject

Use: Single Family Residence (rental)

Owned by Alden & Vada Dow Foundation



205-Post St-Commercial Rental

Use: Commercial

Owned by Alden & Vada Dow Foundation

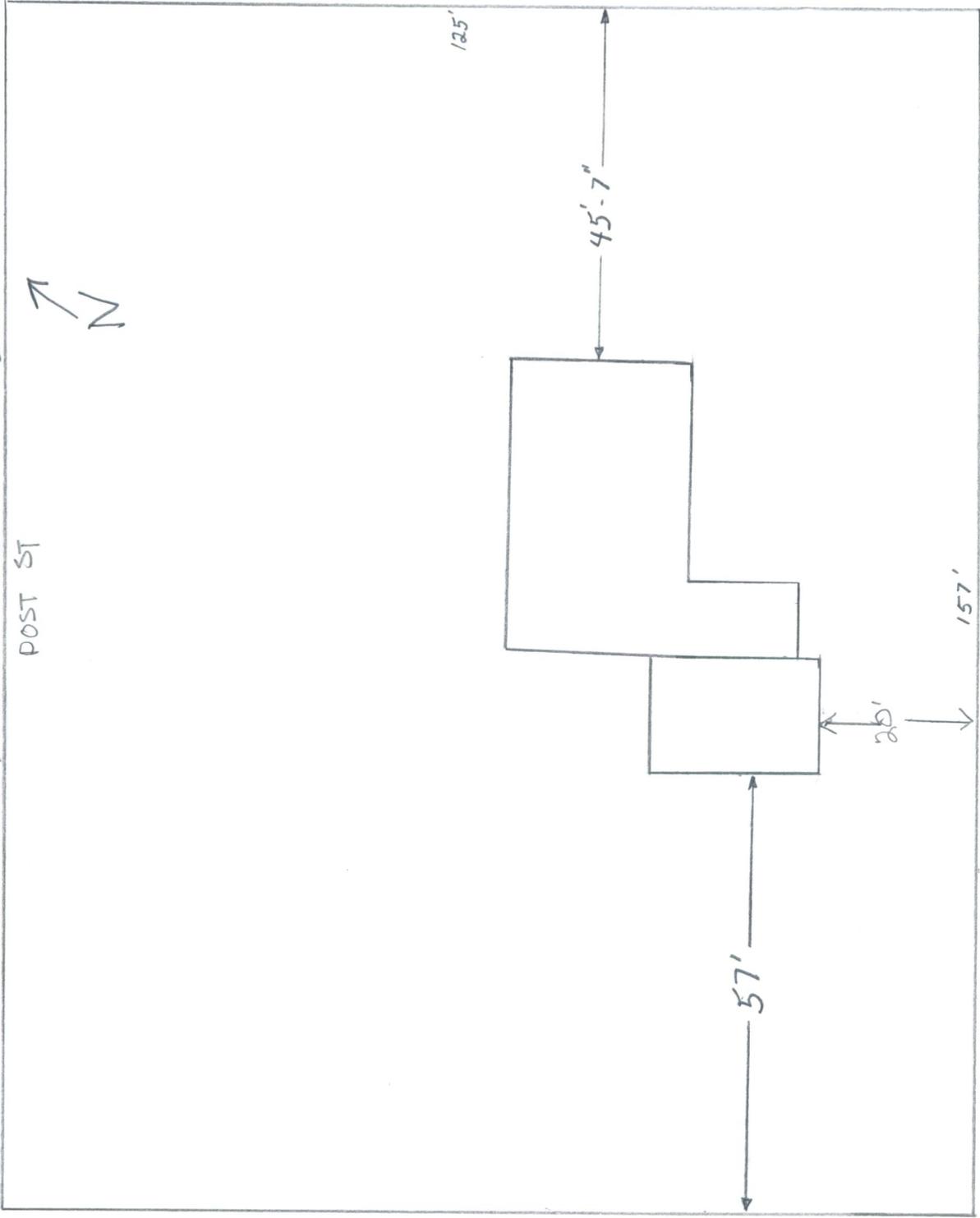


105 Post St- Little Forks Conservancy

Use: Office Space

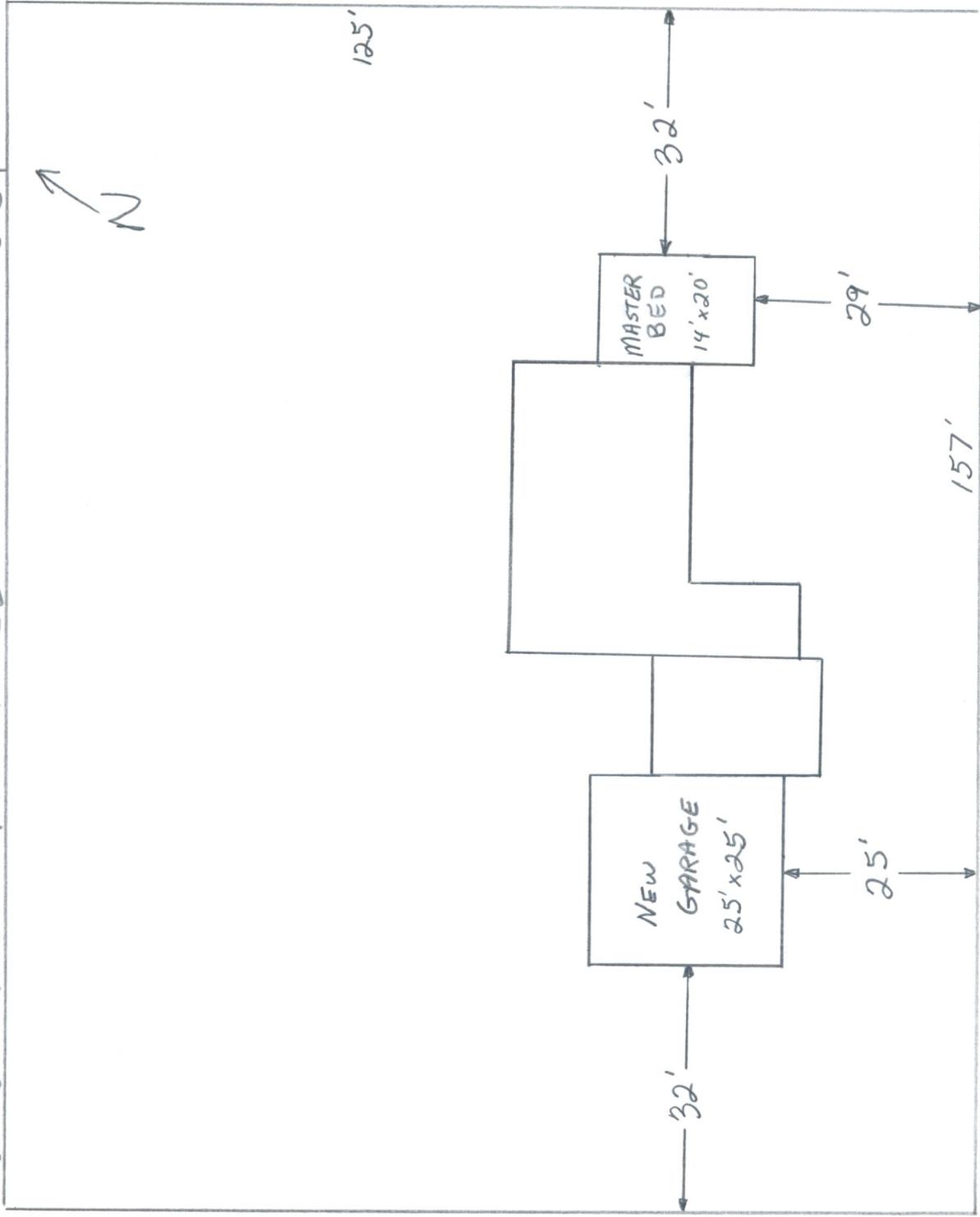
Owned by Alden and Vada Dow Foundation

202 Post St. PARCEL 14-17-20-264

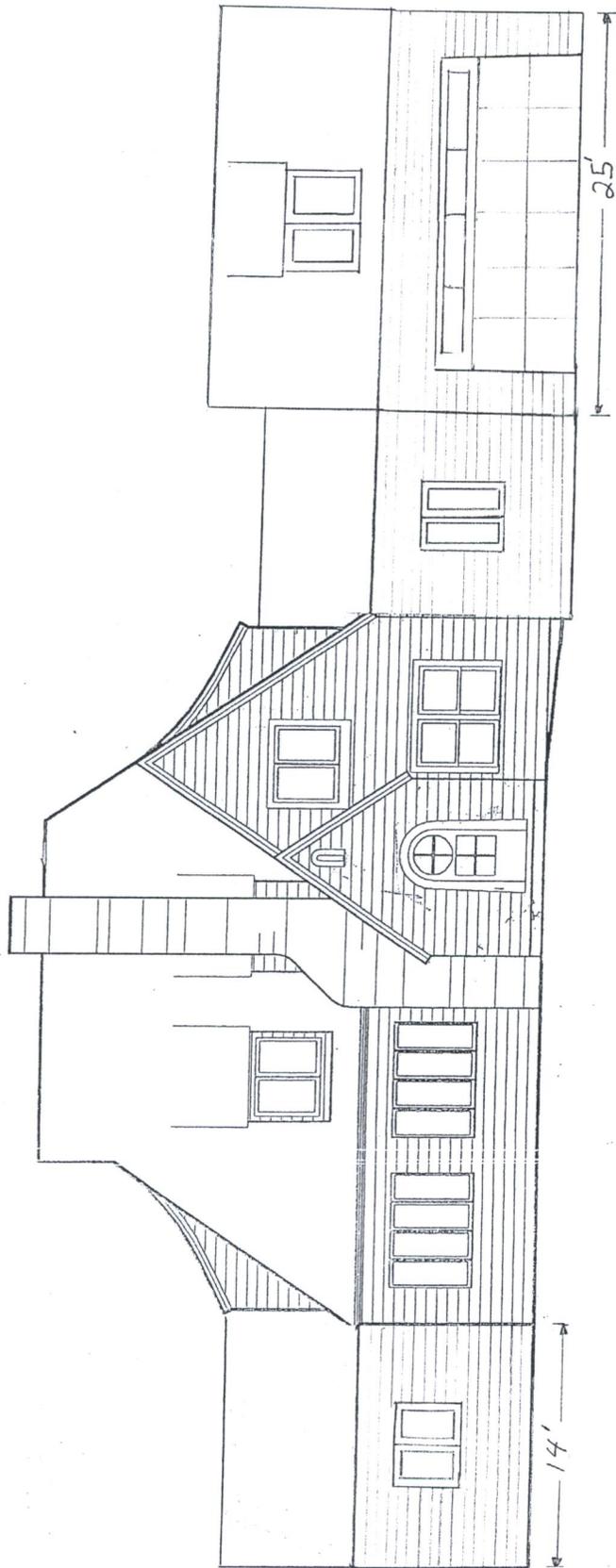


POW GARDENS
EXISTING PROPERTY PLOT PLAN

202 POST ST. PARCEL 14-17-20-264



PROPOSED PROPERTY PLOT PLAN



PROPOSED NEW FRONT ELEVATION



Report No. 16-04

Date: July 12, 2016

STAFF REPORT TO THE ZONING BOARD OF APPEALS

SUBJECT: Proposed Wireless Communication Tower
PETITIONER: David Smith, Telecad Wireless on behalf of Skyway Towers
LOCATION: 3600 and 4812 E Wheeler Rd
PROPOSED: Variance from the maximum height standard of the Zoning Ordinance to permit a 195 ft tall wireless communication tower
ZONING: AG Agricultural

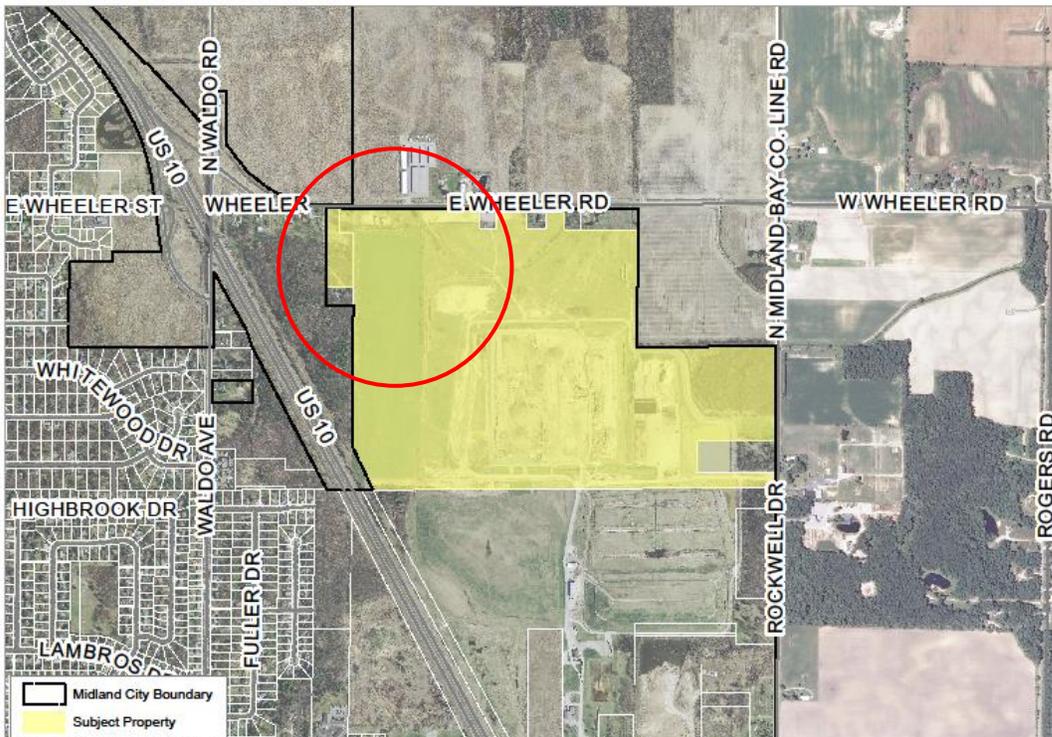
REPORT

PETITION SUMMARY

The applicant is requesting a variance to the maximum allowable height applicable to a wireless communication tower in the AG Agricultural District. The application requests permission to construct a 195 ft high wireless communication tower to improve cellular phone service for Verizon Wireless whereas current ordinance standards permit a maximum height of 150 ft.

Site Location

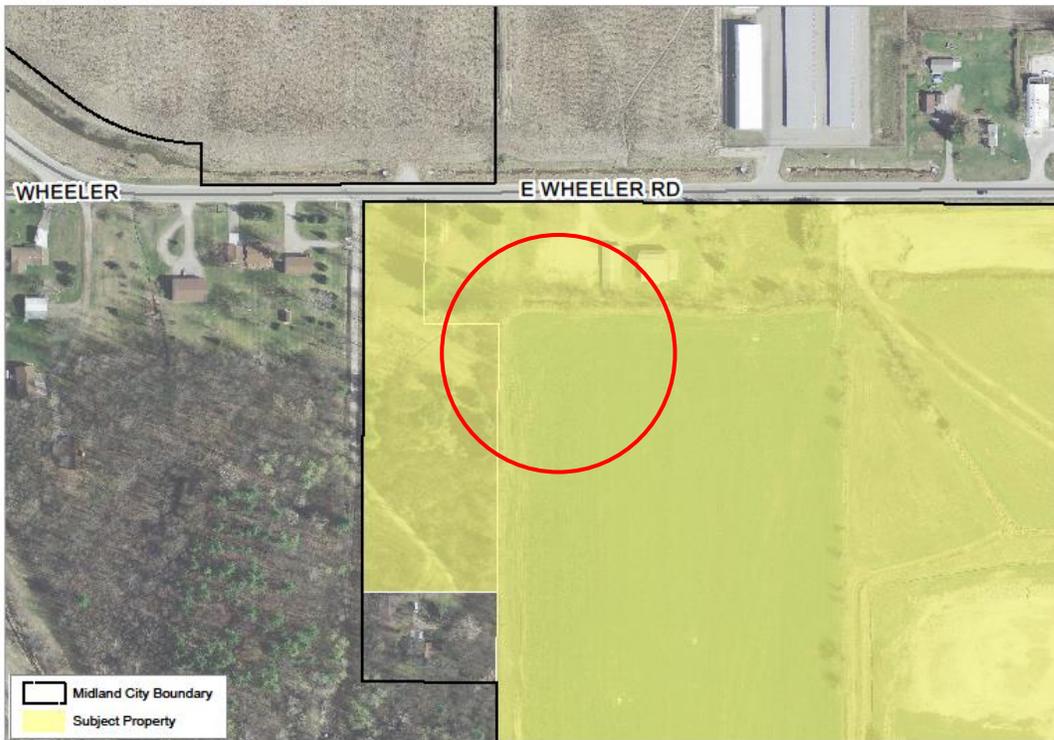
ZBA #16-04 | Telecad Wireless
> 3600 & 4812 E Wheeler Road



Site Location

ZBA #16-04 | Telecad Wireless

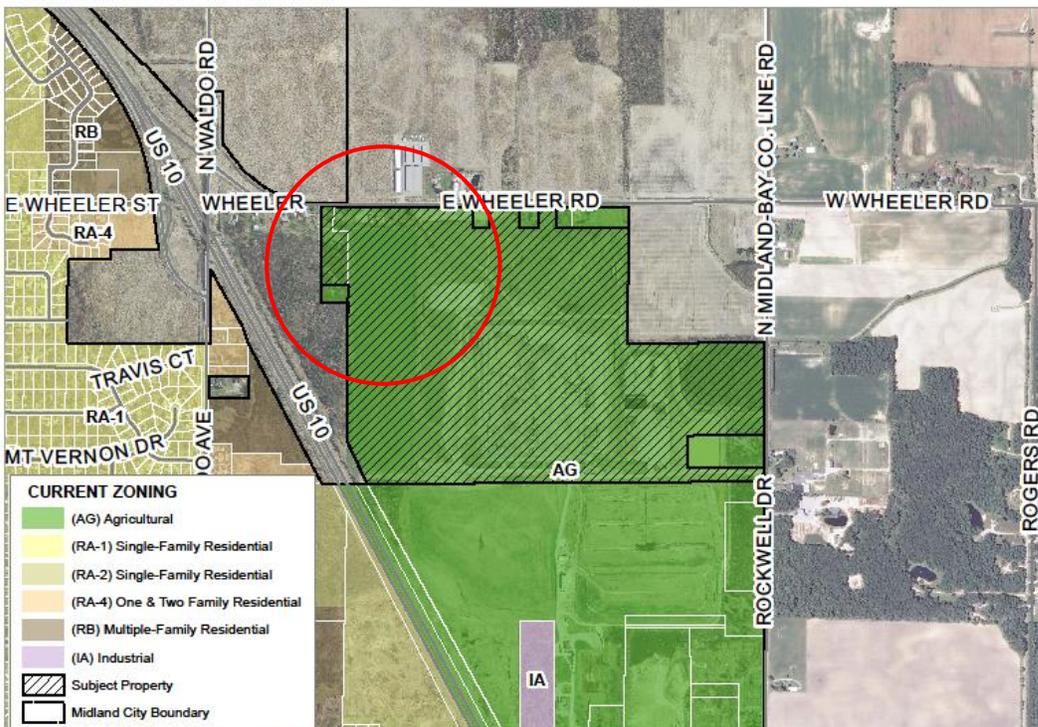
> 3600 & 4812 E Wheeler Road



Site Zoning

ZBA #16-04 | Telecad Wireless

> 3600 & 4812 E Wheeler Road



REVIEW CRITERIA FOR DIMENSIONAL VARIANCES

The Zoning Board of Appeals may grant a “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulty is when the applicant has demonstrated all of the following:

- A. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.**

Petitioner’s response:

By not allowing the height variance, it will affect Skyway’s ability to provide a structure that is capable of being used by the wireless industry to broadcast a signal over the landfill. As the landfill rises it will (be) harder to get a wireless signal to the south east side of the landfill.

Staff commentary:

The applicant has not yet demonstrated, through evidence and professional evaluation, that additional tower height beyond the ordinance-permitted 150 ft is necessary to provide cellular phone service in this area. Further, that applicant has not provided evidence that speaks directly to the specific need for a 195 ft tower. Absent this evidence, the applicant has not yet proven that strict compliance with the current ordinance standards relative to tower height would unreasonably restrict the provision of such service and/or be burdensome by requiring multiple towers instead of the single tower proposed.

Additionally, the applicant has not provided proof that a new tower of any height is necessary. Although this test will more directly apply at the site plan review stage, the need for any tower is a justified question in advance of a variance to permit a tower exceeding currently allowable ordinance standards.

The applicant has been advised of these shortcomings in the application.

- B. The variance will do substantial justice to the applicant, as well as to other property owners.**

Petitioner’s response:

It will reduce the need for additional towers in the area by providing Verizon (the first co-locator on the Skyway Tower) with the height they need to provide better capacity coverage. It (will) also allow for additional co-locations at a higher RAD.

Staff Commentary:

The proposed height variance has not yet been proven necessary and reasonable to provide coverage. In particular, the applicant has not documented how the proposed tower location and height will reduce the need for future towers in this general area.

As a general comment, higher towers do provide additional coverage and may therefore reduce the number of other towers necessary. Further, location on the landfill property will help minimize impacts on other land uses and users in the area.

The applicant has also been advised of these application deficiencies.

- C. The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.**

Petitioner's response:

Yes. This variance is needed to reach the capacity objective of the registered Verizon RF Engineer. It will also allow for additional co-locator's. This will reduce the need for additional towers in this area of the city.

Staff Commentary:

As above, the proposed height variance has not been justified by expert evidence and, based upon that record, to be the minimum variance necessary.

- D. What are the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district, which would require this variance?**

Petitioner's response:

This is the location the registered Verizon RF has identified with a need to expand their wireless capacity in the area. The (absence) of wetlands and residential properties in the immediate area also are factors in choosing this parcel for the proposed Skyway Tower.

Staff Response:

The need for any tower of any height in this area of the city has not been demonstrated through competent documentation and evidence.

Should the applicant be able to demonstrate the need for a tower at 195 ft in height, any property within the city of Midland would require this variance.

- E. The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors.**

Petitioner's response:

Yes. The Zoning Ordinance restricts the height of towers, but wireless industry require heights to broadcast signal over ground features in the area (I.e. trees, hills and in this instance the landfill). I understand both needs, the zoning ordinance needs to protect the community and Skyway needs the additional height, in this case, to provide Verizon the capacity coverage to their existing network. We are asking for this variance in an area that we feel will have the best effect for all parties involved.

Staff Comments:

Required tower heights are typically established based on engineering analysis. This is beyond the ability of the applicant to control or address, short of constructing multiple cell towers to service the area.

That said, the applicant is required to demonstrate need and has not yet done so. Whether any problem exists requiring variance approval has therefore not been proven.

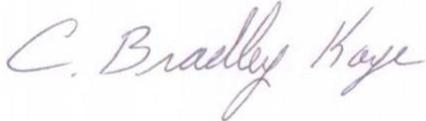
ACTION REQUIRED

An affirmative vote of a majority of ZBA members is necessary to approve this variance request.

PUBLIC COMMENTS TO DATE

No public comments have been received relative to the application as of July 12, 2016.

Respectfully Submitted,

A handwritten signature in cursive script that reads "C. Bradley Kaye". The signature is written in a dark ink and is positioned above the typed name and title.

C. Bradley Kaye, AICP, CFM
Assistant City Manager for Development Services



PLANNING DEPARTMENT
HEARING DATE: 5-17-16
CITY OF MIDLAND, MICHIGAN
PETITION NO: 16-02

ZONING BOARD OF APPEALS

The petition of TVC Midland Co., LLC and Wolverine Bank, 1015 South Saginaw Road and 1107 South Saginaw Road, for an appeal from the requirements of Section 14.03 of the Zoning Ordinance No. 1585, said regulations and requirements being invoked by the Building Inspector in his determination, for an area/dimension variance X , a use variance , an Interpretation , an administrative review , so as to permit: 55 parking spaces, being 11 more parking spaces than is permitted by ordinance.

Findings of Fact:

1. The site is zoned RC Regional Commercial.
2. A reciprocal, shared-parking easement agreement is in place between the TVC Midland site and the Wolverine Bank site.
3. The Wolverine Bank parcel that is associated with the request is irregular in shape.
4. 1107 S. Saginaw Road is the address of the associated Wolverine Bank parcel.
5. The 11 parking spaces are approved for the medical/dental use only.
6. In May 2014, the CVS site plan was approved by City Council with 44 parking spaces.
7. In July 2014, the CVS development team's request for the additional 11 parking spaces was denied by the Planning Commission.
8. In September 2014, an administrative site plan was approved for the medical/dental building on the Wolverine Bank property, which required the 11 parking spaces on the CVS site.
9. Construction of the CVS development started after September 2014.
10. The Wolverine Bank parcel is required to be developed within two years of the associated site plan approval, by September 2016.
11. The proposed building on Wolverine Bank parcel was approved at 3,350 square feet.
12. The 11 parking spaces associated with the medical/dental use were built in sequence with the CVS development.

Motion: It was moved by Poprave and supported by Pnacek to approve Petition No. 16-02 based on the findings of fact for a dimensional variance to allow 55 parking spaces, being 11 more parking spaces than is permitted by ordinance at 1015 South Saginaw Road and 1107 South Saginaw Road, subject to the following conditions:

1. That future construction of a building on the adjacent Wolverine Bank parcel shall be assured by no later than September 30th of 2019 through an agreement and/or financial security to the satisfaction of the City Attorney; and
2. That the variance shall expire upon construction of the future building on the adjacent Wolverine Bank parcel.

Higgins: No
Lichtenwald: No
Poprave: No
Pnacek: Yes
Siemer: Yes

The motion was denied by a vote of 2-3.

All permits necessary for prosecution of the work shall be obtained within six months from the date.

BEG AT NW COR BLK 1 ASSESSORS PLAT OF EASTLAWN ADDITION, TH E 423.23 FT, S 186.02 FT, W 272.68 FT, N 38D 38M 00S W 237.67 FT, SEC 15, T14N R2E, 1.49 AC

COM AT A PT 423.23 FT E & 186.02 FT S OF NW COR BLK 1 ASSESSORS PLAT OF EASTLAWN ADDITION, TH S 13.38 FT, S 51D 50M 48S W 204.94 FT, N 38D 38M 00S W 178.39 FT, E 272.68 FT TO POB, SEC 15, T14N R2E, 0.46 AC