

# CITY OF BLOOMINGTON



August 23, 2018 @ 5:30 p.m.  
CITY OF BLOOMINGTON  
UTILITIES BOARD ROOM  
600 E. MILLER DR.

**CITY OF BLOOMINGTON  
BOARD OF ZONING APPEALS  
August 23, 2018 at 5:30 p.m.**

**◆COB Utilities Board Room – 600 E. Miller Dr.**

**ROLL CALL**

**MINUTES TO BE APPROVED:**

May 2018  
No June Minutes—meeting cancelled  
July 2018

**REPORTS, RESOLUTIONS, AND COMMUNICATIONS:**

**PETITIONS:**

- AA-12-18     **Bryan Rental, Inc.**  
3175 W. 3<sup>rd</sup> St.  
Request: Administrative Appeal from the Planning and Transportation Department's decision to limit the size of an individual tenant panel.  
*Case Manager: Eric Greulich*
- V-14-18     **Michael Boulton (Storage Express)**  
606 W. Gourley Pike  
Request: Variance from landscaping standards to allow riprap to be placed around the perimeter of a building without landscaping.  
*Case Manager: Eric Greulich*
- AA-19-18     **Indiana Center for Recovery Residence, LLC**  
909 W. 1<sup>st</sup> St.  
Request: Administrative Appeal from the Planning and Transportation Department's decision to issue a Notice of Violation of non-compliance of the Unified Development Ordinance (UDO) Section 20.02.550.  
*Case Manager: Jackie Scanlan*
- AA-20-18     **Indiana Center for Recovery, LLC**  
1004 W. 1<sup>st</sup> St.  
Request: Administrative Appeal from the Planning and Transportation Department's decision to issue a Notice of Violation of non-compliance of the Unified Development Ordinance (UDO) Section 20.02.550.  
*Case Manager: Jackie Scanlan*
- AA-24-18     **Bloomington Transitions**  
411 W. 1<sup>st</sup> St.  
Request: Administrative Appeal from the Planning and Transportation Department's decision regarding the classification of a use as a rehabilitation clinic.  
*Case Manager: Jackie Scanlan*
- V-25-18     **Chad Vencel**

**\*\*Next Meeting: September 20, 2018**

*Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call [812-349-3429](tel:812-349-3429) or e-mail [human.rights@bloomington.in.gov](mailto:human.rights@bloomington.in.gov).*

1110 S. Covenanter Dr.

Request: Determinate sidewalk variance to not require the installation of a sidewalk to allow the construction of a new single-family residence.

Case Manager: Eric Greulich

CU-26-18

**Bloomington Transitions**

411 W. 1<sup>st</sup> St.

Request: Conditional Use approval for a rehabilitation clinic in the Medical (MD) zoning district.

Case Manager: Jackie Scanlan

**\*\*Next Meeting: September 20, 2018**

*Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call 812-349-3429 or e-mail human.rights@bloomington.in.gov.*

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 3175 W. 3<sup>rd</sup> Street**

**CASE #: AA-12-18**  
**DATE: August 23, 2018**

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**PETITIONER:** Bryan Rental, Inc.  
1440 S. Liberty Drive, Bloomington

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**REQUEST:** The petitioner is requesting an administrative appeal of the Department's interpretation regarding the limitation of size of an individual tenant panel for a proposed multi-tenant sign.

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**REPORT:** This appeal request is the result of an interpretation by the Department regarding the size of an individual tenant panel in a multi-tenant sign. The sign in question is for the former "K-Mart" business that was in Whitehall Plaza. This business is in the Whitehall Plaza PUD and a variance (V-42-80) was approved to allow this individual tenant to have a larger sign than what would be allowed for an individual tenant. The zoning code at the time limited individual outlots in a shopping center to a freestanding sign of not more than 72 square feet per side (144 sq. ft. total). Based on the size of the shopping center, a total of four, 300-square foot center signs would be allowed for the entire shopping center. The BZA granted the variance to allow this individual tenant to use one of the possible center signs allowed for the center for this individual tenant.

The zoning code in effect at that time had language that limited individual tenant panels in a multi-tenant center sign to no more than 36 square feet. That same limitation on individual tenant panels was in the 1995 zoning code and is also in place in the current Unified Development Ordinance. The developer of the Whitehall Plaza PUD was aware of the 36 square foot limitation on individual tenant panels and no changes to that restriction were approved with the PUD. No deviations from the sign code were requested with the PUD establishment. There was not a variance granted from the 36 square foot limitation as part of the variance approved for K-Mart.

The petitioner requests to be able to convert the 244 square foot (two-sided) K-Mart sign into possible future panels for individual tenants and the Department informed the petitioner that the individual panels would be restricted to no more than 36 square feet in size each. The petitioner is appealing that decision.

The Department concludes that the sign can continue to be used as one tenant sign in its current location and dimension, but if it is converted into a multi-tenant sign, then the individual panels are restricted to 36 square feet each since that is the restriction that was in place when the PUD was approved and is also the current restriction. The original variance was specifically given for an individual tenant user.

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**RECOMMENDATION:** Based on the findings in this report, the Department recommends denial of Case # AA-12-18.

20.17.02.06--20.17.03.00

(e) Signs for required parking areas showing entrances and exits are not to exceed four square feet and one sign defining conditions of use is not to exceed twelve square feet. (Ord. 75-54 §1(part),1975).

20.17.02.06 Planned commercial development (shopping center). Regardless of the zone in which it is located, the following regulations shall apply to property which is developed for or occupied by a planned commercial development (shopping center).

(a) Individual stores or business establishments within a planned commercial development are limited on the front wall of the building to two square feet of sign area for each one lineal foot of building frontage.

(b) Independently placed buildings or buildings with corner locations are limited on each side or rear wall to one-half the amount of sign area permitted on the front wall, or to one and one-half square feet of sign area for each lineal foot of building on the side or rear of the building, whichever is less.

(c) In addition to signs permitted for individual establishments within a planned commercial development, general shopping center signs, bearing the name of the planned commercial development, will be permitted on the basis of one sign for each fifty thousand square feet of building floor coverage, or major fraction thereof, within the development, with a total limit of four such signs. These signs must be limited to the name of the development, except that signs not exceeding thirty-six square feet may be allowed for individual commercial enterprises as part of the main sign. The total area of each such sign shall not exceed three hundred square feet in area. Such signs shall not be in a required front yard, or in the required side yard on the street side of a corner lot, except that such signs may be so placed if they are reduced in size by fifty percent. (Ord. 75-54 §1(part), 1975).

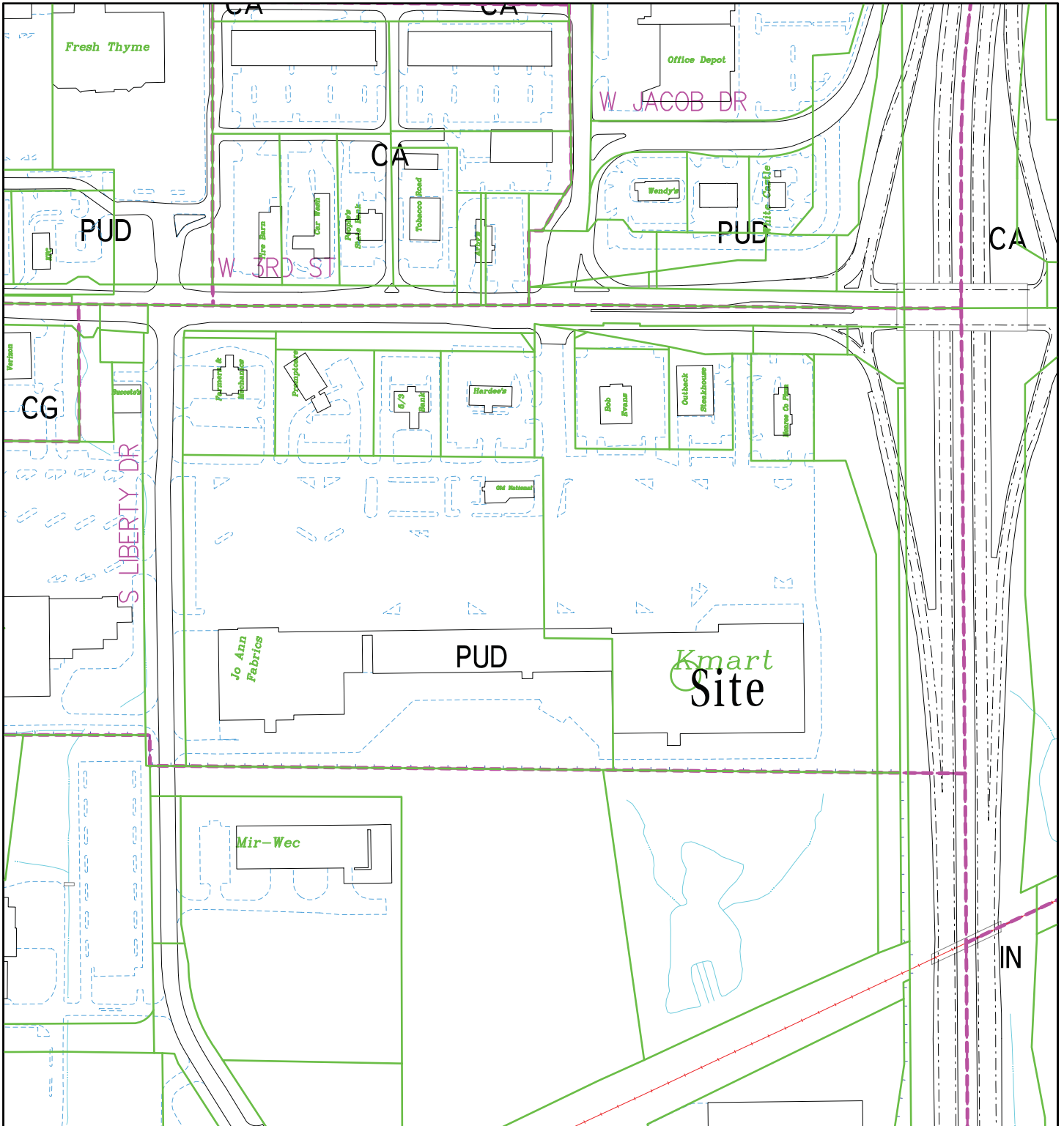
20.17.03.00 Off-premises signs.

20.17.03.01 Restrictions near scenic roads.

(a) No sign shall be erected or installed within five hundred feet of that part of any road, street, or highway which shall have been designated by the common council as a scenic road, except for signs for on-premises use in a designated commercial zone or industrial zone. All such signs shall meet the same requirements as in Section 20.17.02.02.

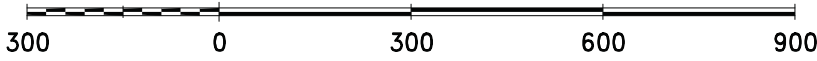
(b) The designation of such scenic roads shall be made by the common council upon the basis of the topography, vegetation, and structures adjacent to such road.

AA-12-18  
1973 zoning code sign  
regulations for PUDs.

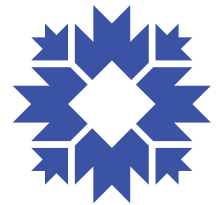


AA-12-18 Bryan Rental, Inc.  
 3175 W. 3rd Street  
 Board of Zoning Appeals  
 Site Location, Zoning, Land Use

By: greulice  
 13 Jul 18

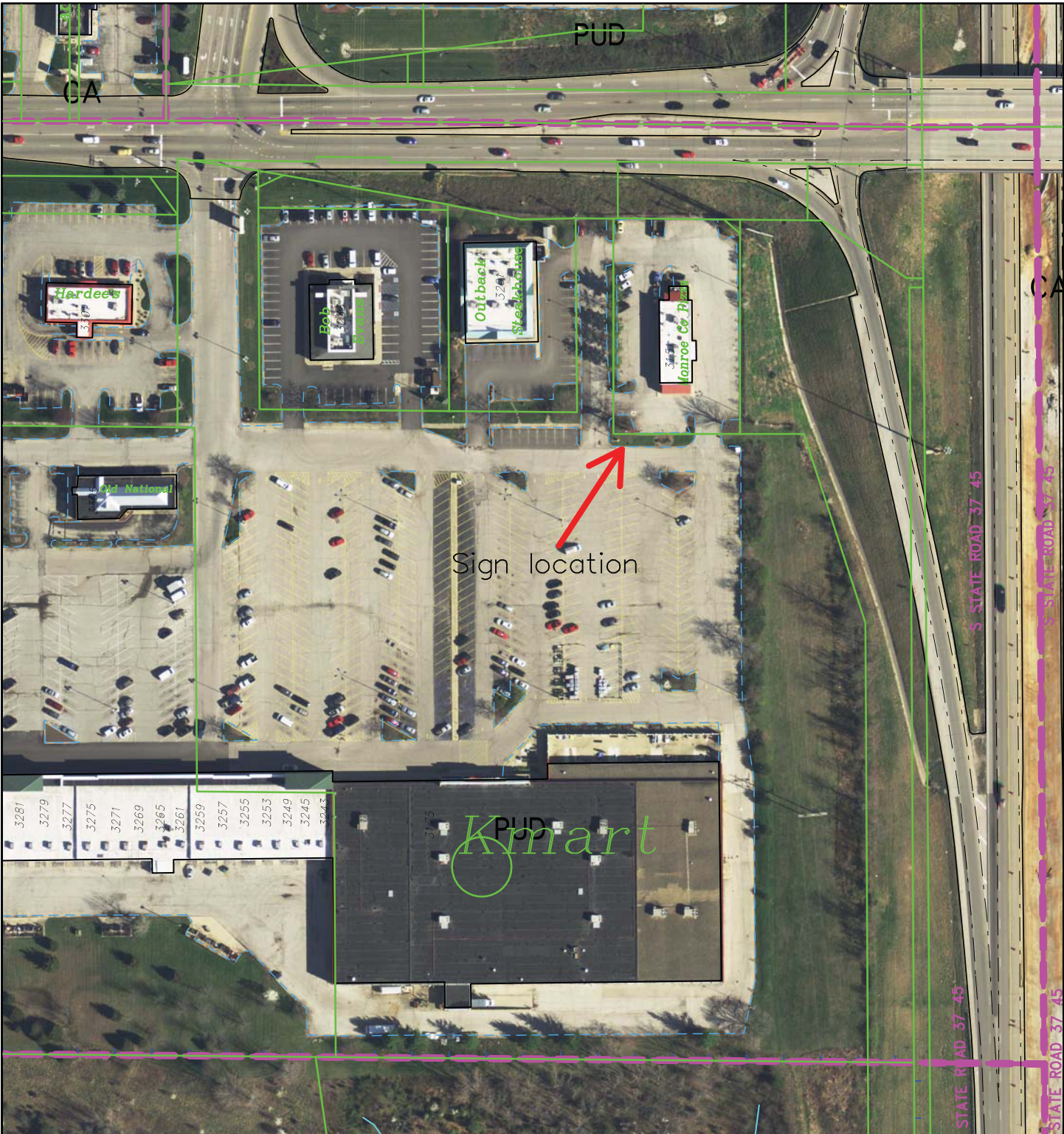


City of Bloomington  
 Planning & Transportation



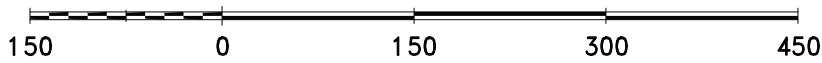
Scale: 1" = 300'

For reference only; map information NOT warranted.



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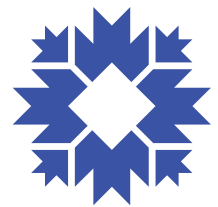
By: greulice  
13 Jul 18



For reference only; map information NOT warranted.



City of Bloomington  
Planning & Transportation



Scale: 1" = 150'

Mr. Mueller stated that he wanted to qualify that approval by the Board does not relieve Goodrich of access control obligations for decel lane construction. That will be worked out to the satisfaction of the City Engineer.

\*\*\* Ms. Pryor amended her motion to the effect that Goodrich is not relieved of access control obligations, Mr. Sturbaum seconded, motion passed unanimously.

\*\* Mr. Wise moved for a 5 minute recess, Ms. Pryor seconded, motion passed unanimously.

CONTINUED

HO-39-80 JACK D. CASSIDY  
916 Park Ridge Court  
Request for special exception permit to operate a home occupation (woodburning stoves, telephone sales)

\*\*\* Mr. Cunningham made a motion that HO-39-80 be continued since the petitioner was not present. Ms. Wilson seconded, motion passed unanimously.

V-40-80 WAREHOUSE FURNITURE  
1320 North College  
Request for variance from signage and setback requirements.

Mr. Klotz presented the petition for V-40-80, Warehouse Furniture proposal to convert an existing changeable letter portable sign into a permanent, fixed base, ground type sign. The minimum required setback for this type of sign is one-half of that required for a building, or 15' in the B6 zone. Zoning and land uses were presented.

The staff recommended approval with the modification that the sign shall be located north of, and directly adjoining; the private sidewalk on the north (17th Street) side of the building.

Ms. Richmond asked if there was anyone to speak in favor of this petition.

Dan Slusz, owner, spoke in favor of the petition. He stated that the sign would help to identify the business, and to help distinguish Warehouse Furniture from Warehouse Carpet. The sign will also help with identification since advertising costs are always going up.

\*\*\* Ms. Pryor made a motion that V-40-80 be approved as per staff modifications, Mr. Cunningham seconded, motion passed unanimously.

V-42-80 WALDORF ASSOCIATES/ALIG ASSOCIATES  
Whitehall Plaza  
Request for variance from signage requirements.

Mr. Klotz presented the petition for Waldorf Associates, proposal for a very substantial (565 sq. ft.) individual pole sign for K-Mart as an element of the overall signage package for Whitehall Plaza PCD. Based on the proposed future size of the PCD, four pole signs of up to 300 sq. ft. total area each would be permitted. One pole sign has already been erected in the PCD. Based on the proposed future size of the PCD, Farmers and Mechanics Savings and Loan Association, with the question of individual tenant use of the permitted pole signs being considered by the Board as V-25-75. This requested sign would be the

APPROVED as per staff modifications

APPROVED



second of the permitted pole signs to be erected for the PCd with a third to follow as a center identification sign that would include identification of some of the major tenants (other than K-Mart and Farmers and Mechanics). Use of the fourth permitted sign is undecided at this time.

He explained that as a policy, the staff is not opposed to the use of the permitted pole signs by individual tenants where this is within the scope of the developer's overall signage plans. However, it is the staff's feeling that all attempts should be made to keep the size of individual tenant pole signs within the 300 sq. ft. maximum. If a facility that is a tenant of PCd in this instance was a free standing operation, then that facility would be permitted only 144 sq. ft. (72 sq. ft. per side) of total pole signage. An overall center identification sign, with opportunities for smaller scale identification of individual major tenants, would be far more appropriate for size variance consideration than is an individual tenant sign.

Zoning and land uses were presented.

The staff recommended approval of the individual tenant pole sign for K-Mart but recommended denial of the size request variance. The staff would support and recommend approval of an individual tenant pole sign for K-Mart at this location if it were restricted to approximately 300 square feet in size to conform to planned commercial development regulations.

Ms. Richmond asked if there was anyone to speak in favor of this petition.

Mr. Geoffrey Grodner spoke in favor of Waldorf Associates (distinct from Whitehall Associates). He stated that there is, between the property line of Whitehall Associates (K-Mart property line) and the 37 Bypass a utility easement of 100 feet. Beyond that there is a very heavy tree line. He stated that there will be substantial screening of the K-Mart store from the 37 Bypass especially during the vegetation season. He stated that K-Mart originally came to the department with a request for a 50' high sign (standard K-Mart sign). The staff informed them that there is a 35' limitation, therefore the sign has been revised down. In order to do that and still obtain adequate visibility of the sign from the 37 Bypass they have proposed the standard K-Mart sign. He stated that they desire for the sign to face east and west rather than just north. He went on to say that only one other sign is now being planned for the shopping center (Whitehall Plaza) listing the stores. K-Mart, he said is the anchor store.

Ms. Richmond asked if there was anyone else to speak in favor of this petition. There was no one.

Ms. Richmond asked if there was anyone to speak in opposition to this petition. There was no one.

Ms. Richmond asked if Members of the Board had questions.

Mr. Sturbaum stated that the ordinance says that the sign can be 35' above grade (above the centerline of the highway). He stated that he thinks the lane is higher than the bypass.

Bob Neely of Waldorf Associates was present and explained the grading on the site. Their question was where do they establish the 35' from the center of the highway. He stated that they would be glad to abide by whatever point the staff requested that they use.

Ms. Richmond asked if there was anyone else to speak or ask questions.

Ms. Richmond asked Mr. Grodner if K-Mart didn't have several different standard size signs.

Mr. Grodner stated that Mr. Neely had told him that this was it, the one standard size for a large K-Mart Store such as this one.

Mr. Neely agreed, stating that the only thing normally that might change would be the height. He stated that it would be quite impractical to cut the sign down in size since standard signs are made up.

Ms. Richmond asked if there were any other questions.

Mr. Sturbaum asked if K-Mart would construct special signs in areas where there are signage requirements limiting the size of pole signs, or what? There are cities with more restrictive signage than Bloomington.

Mr. Neely stated that they were usually able to receive a variance for that size sign.

Mr. Wise questioned whether Mr. Klotz would concur with what Mr. Grodner said about allowing the pole sign and utilizing only one side of it.

Mr. Klotz agreed stating that it would be a one-sided pole sign. There would be 282.5 square feet permitted since it would comply with the 300 square foot requirement.

The staff expressed the concern that even though Whitehall might not want their sign dwarfed by the K-Mart sign and this could make for a potential variance at a later date.

Mr. Grodner explained that fortunately Waldorff is a part of Whitehall Associates, and they are cognizant of the size of the K-Mart sign, they do not object to it, and they do not anticipate a sign for the shopping center that will be this size. The sign for the plaza will be consistent with the kind of things done at the College Mall.

\*\*\* Ms. Wilson moved approval of the individual tenant pole sign for V-42-80. Ms. Pryor seconded, motion passed unanimously.

Discussion ensued about the size and visibility of the sign.

\*\*\* Ms. Pryor made a motion that the size be approved for V-42-80, Mr. Wise seconded, motion passed 5:1 (Mr. Sturbaum voted no).

V-43-80 SHERWOOD GREEN PHASE 4, D. Gene Rubeck, Southwest Bldg. Corp. APPROVED setback  
Winslow Road at South Walnut Street  
Request for variance from setback requirements.

Mr. Klotz presented the petition for Sherwood Green, Phase 4, variance request from setback requirements for the various buildings along their proposed public route street. The reason for variance is that the conditions of approval of this phase of Sherwood Green were altered to change this from a private street to a public street. Mr. Klotz presented the staff report. Zoning and land uses were presented.

JAMINGTON PLANNING DEPARTMENT  
GENERAL APPLICATION

Case Number V-42-80

Receiving Date 6/4/80

JUN 06 11 51 AM '80  
PLANNING DEPARTMENT HEARING

Address of Property Whitehall Pike

Applicant's Name Waldorf Associates Phone 713/621-0700

Address P. O. Box 27416, Houston, Texas 77027

Owner's Name Whitehall Associates Phone 317/639-1533

Address 211 N. Delaware, Indianapolis, IN 46204

Counsel or Consultant Geoffrey M. Grodner Phone 332-4431

- Nature of Application (check one and cite relevant section of Code if applicable):
- Change of zone from \_\_\_\_\_ to \_\_\_\_\_
  - Site plan review \_\_\_\_\_
  - Planned unit development (specify type) \_\_\_\_\_
  - Conditional or accessory use (specify type) \_\_\_\_\_
  - Plat Review \_\_\_\_\_
  - Appeal from administrative decision (attach copy) \_\_\_\_\_
  - Special exception (specify type) \_\_\_\_\_
  - Variance (specify type) Signage requirements (20.17.02.06)
  - Right-of-Way vacations (specify type) \_\_\_\_\_
  - Other \_\_\_\_\_

by certified \_\_\_\_\_

the applicants \_\_\_\_\_

are the \_\_\_\_\_

authority to \_\_\_\_\_

RECEIPT

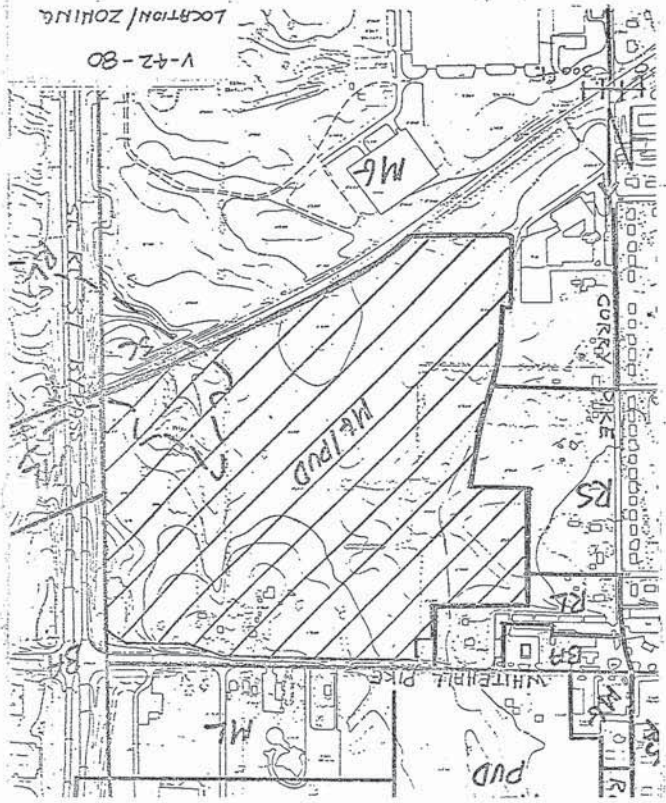
Received From Esque McDavid Grodner Date June 6 1980 No. 3514

Address \_\_\_\_\_

For 22.17.02.06 Signage requirements Dollars \$ 15.00

ACCOUNT	HOW PAID	
	AMT. PAID	BALANCE DUE
CASH		
CHECK		
MONEY ORDER		

By Geoffrey M. Grodner



**STAFF REPORT FORM**

CASE NO. V-42-80

LOCATION: Southwest corner of Whitehall Pike and the Highway 37 Bypass

TYPE OF VARIANCE: Signage requirements.

300 sq. ft. P.C.D.

565 sq. ft. Individual

REQUIRED: Identification sign

PROPOSED: Tenant pole sign

SECTION 20.19.07.03 of the Zoning Ordinance provides that a variance may be granted if the following conditions are present:

A. The use of the area adjacent to the property included in the proposed variance will not be adversely affected.

B. The variance arises from some condition topographical or other conditions.

C. Strict application of the terms of this chapter will constitute unnecessary hardship upon the property owner.

D. The grant of the variance does not interfere substantially with the metro-politan comprehensive plan for the City of Bloomington.

E. The variance will not be injurious to the public health, safety, morals, and general welfare of the community.

**Staff Report:**

The petitioner is requesting a very substantial (565 sq. ft.) signage package for Whitehall Plaza PCD. Based on the proposed future size of the PCD, four pole signs of up to 300 sq. ft. coat area each would be permitted. One pole sign has already been erected in the PCD. Farmers and Mechanics Savings and Loan Association, with the question of individual tenant use of the permitted pole signs being considered by the board as V-29-78. This requested sign would be the second of the permitted pole signs to be erected for the PCD with a third to follow as a center identification sign that would include identification of some of the major tenants (other than K-Mart and Farmers and Mechanics). Use of the fourth permitted sign is undecided at this time.

As a policy, the staff is not opposed to the use of the permitted pole signs by individual tenants where this is within the scope of the developer's overall signage plans. However, it is the staff's feeling that all attempts should be made to keep the size of individual tenant pole signs within the 300 sq. ft. maximum. If a facility that is a tenant of a PCD in this instance was a free-standing sign, the fact that it would be permitted only 167 sq. ft. (72 sq. ft. per side) of total coat area would be a significant factor in the decision to permit it. The staff would like to see the fact that it would be permitted only 167 sq. ft. per side of total coat area would be a significant factor in the decision to permit it.

For smaller scale identification of individual major tenants, would be far more appropriate for size variance consideration than is an individual tenant sign.

A. The type of sign would not have an adverse effect on adjacent areas. The size, however, seems to be totally out of proportion with other development in the area.

B. The variance arises from the needs and desires of an individual, major tenant (presumably) see back from the access street (Whitehall) PCD and partially sheltered by existing development. The proposed location of the pole sign would tend to make the proposed massive size less important.

C. Strict application would severely limit identification of this tenant, particularly prior to the completion of the rest of the Whitehall Plaza PCD, for substantial interference if the recommended size limitations are met.

E. Not injurious.

**Recommendation:**

APPROVE: Individual tenant pole sign

DENY: Size request

APPROVE WITH MODIFICATIONS: [The staff would support and recommend approval of an individual tenant pole sign in a PCD if the total area (both sides added together) was 300 sq. ft. or less.]

ATTORNEYS AT LAW  
ROGERS, McDONALD AND GRODNER

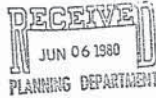
DAVID ROGERS  
THOMAS W. McDONALD  
GEOFFREY W. GRODNER  
SCOTT E. FORD  
MARC R. KELLANS

P. O. BOX 279  
WORKMENS FEDERAL BUILDING  
BLOOMINGTON, INDIANA 47402  
317/332-4421

June 6, 1980

Board of Zoning Appeals  
City of Bloomington  
P. O. Box 100  
Bloomington, IN 47402

RE: Waldorf Associates  
Sign Variance



Dear Board Members:

Waldorf Associates has submitted its application for approval of a variance to permit the erection of a sign for the K-Mart Department Store being constructed in Whitehall Plaza on Whitehall Pike. The variance requested is from the provisions for signs for Planned Commercial Developments which require all signs to bear the name of the development only and which limit the signs to a total of 300 square feet each.

Whitehall Associates, the developers of Whitehall Plaza, have agreed to permit Waldorf Associates to utilize one sign for the K-Mart Store which would ordinarily be used only for the full development. Therefore, this request will not result in a greater number of signs at Whitehall Plaza than permitted by ordinance.

Waldorf Associates is also requesting a variance from the 300 square foot limitation so that the sign, as shown on the enclosed plans, may have surfaces of approximately 282.5 feet facing both east and west. While the ordinance does not specifically state that total sign surface shall include both sides of the sign, your staff has so interpreted the ordinance. In requesting this variance, Waldorf Associates considered designing a smaller but taller sign, but concluded that the plan submitted is most consistent with the City's Sign Ordinance.

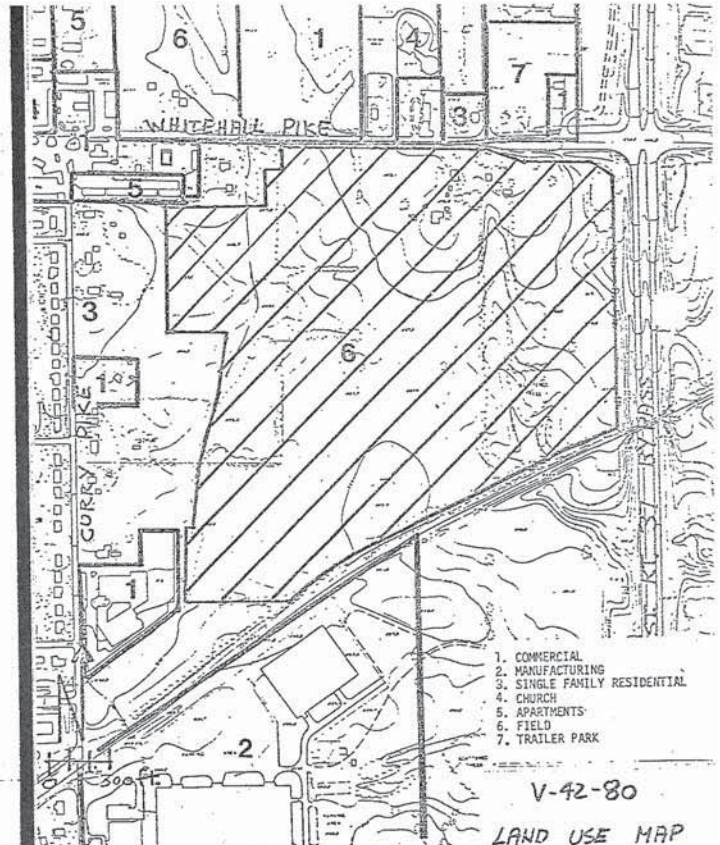
Very truly yours,  
ROGERS, McDONALD & GRODNER

*Geoffrey W. Grodner*  
Geoffrey W. Grodner

GMG:NR

V-42-80

PETITIONERS STATEMENT



- 1. COMMERCIAL
- 2. MANUFACTURING
- 3. SINGLE FAMILY RESIDENTIAL
- 4. CHURCH
- 5. APARTMENTS
- 6. FIELD
- 7. TRAILER PARK

V-42-80

LAND USE MAP

Minutes and Packet from  
V-42-80

ATTORNEYS AT LAW  
**ROGERS, McDONALD AND GRODNER**  
P. O. BOX 279  
WORKINGMENS FEDERAL BUILDING  
BLOOMINGTON, INDIANA 47402  
812/332-4431

June 16, 1980

The Plan Department  
City of Bloomington  
P.O. Box 100  
Bloomington, IN 47402

Attn: Tim Mueller, Planning Director

RE: Waldorff Associates  
Stonebelt Council for Retarded Citizens, Inc.  
Brad J. Bomba

Dear Tim:

Enclosed please find evidence of notice to adjacent and adjoining property owners for the applications of Dr. and Mrs. Bomba and the Stonebelt Council before the City of Bloomington Plan Commission and Waldorff Associates before the City of Bloomington Board of Zoning Appeals.

Best wishes,  
ROGERS, McDONALD & GRODNER  
*Mo*  
Geoffrey M. Grodner

GMG: pm  
Enc.

RECEIVED  
JUN 17 1980  
PLANNING DEPARTMENT  
V-42-80

Minutes and Packet from  
V-42-80

ATTORNEYS AT LAW

ROGERS, McDONALD AND GRODNER

DAVID ROGERS  
THOMAS M. McDONALD  
GEOFFREY M. GRODNER  
SCOTT E. FORE  
MARC R. KELLAMS

P. O. BOX 279  
WORKINGMEN'S FEDERAL BUILDING  
BLOOMINGTON, INDIANA 47402  
812/332-4431

June 6, 1980

Board of Zoning Appeals  
City of Bloomington  
P. O. Box 100  
Bloomington, IN 47402

RECEIVED  
JUN 06 1980  
PLANNING DEPARTMENT

RE: Waldorf Associates  
Sign Variance

Dear Board Members:

Waldorf Associates has submitted its application for approval of a variance to permit the erection of a sign for the K-Mart Department Store being constructed in Whitehall Plaza on Whitehall Pike. The variance requested is from the provisions for signs for Planned Commercial Developments which require all signs to bear the name of the development only and which limit the signs to a total of 300 square feet each.

Whitehall Associates, the developers of Whitehall Plaza, have agreed to permit Waldorf Associates to utilize one sign for the K-Mart Store which would ordinarily be used only for the full development. Therefore, this request will not result in a greater number of signs at Whitehall Plaza than permitted by ordinance.

Waldorf Associates is also requesting a variance from the 300 square foot limitation so that the sign, as shown on the enclosed plans, may have surfaces of approximately 282.5 feet facing both east and west. While the ordinance does not specifically state that total sign surface shall include both sides of the sign, your staff has so interpreted the ordinance. In requesting this variance, Waldorf Associates considered designing a smaller but taller sign, but concluded that the plan submitted is most consistent with the City's Sign Ordinance.

Very truly yours,

ROGERS, McDONALD & GRODNER

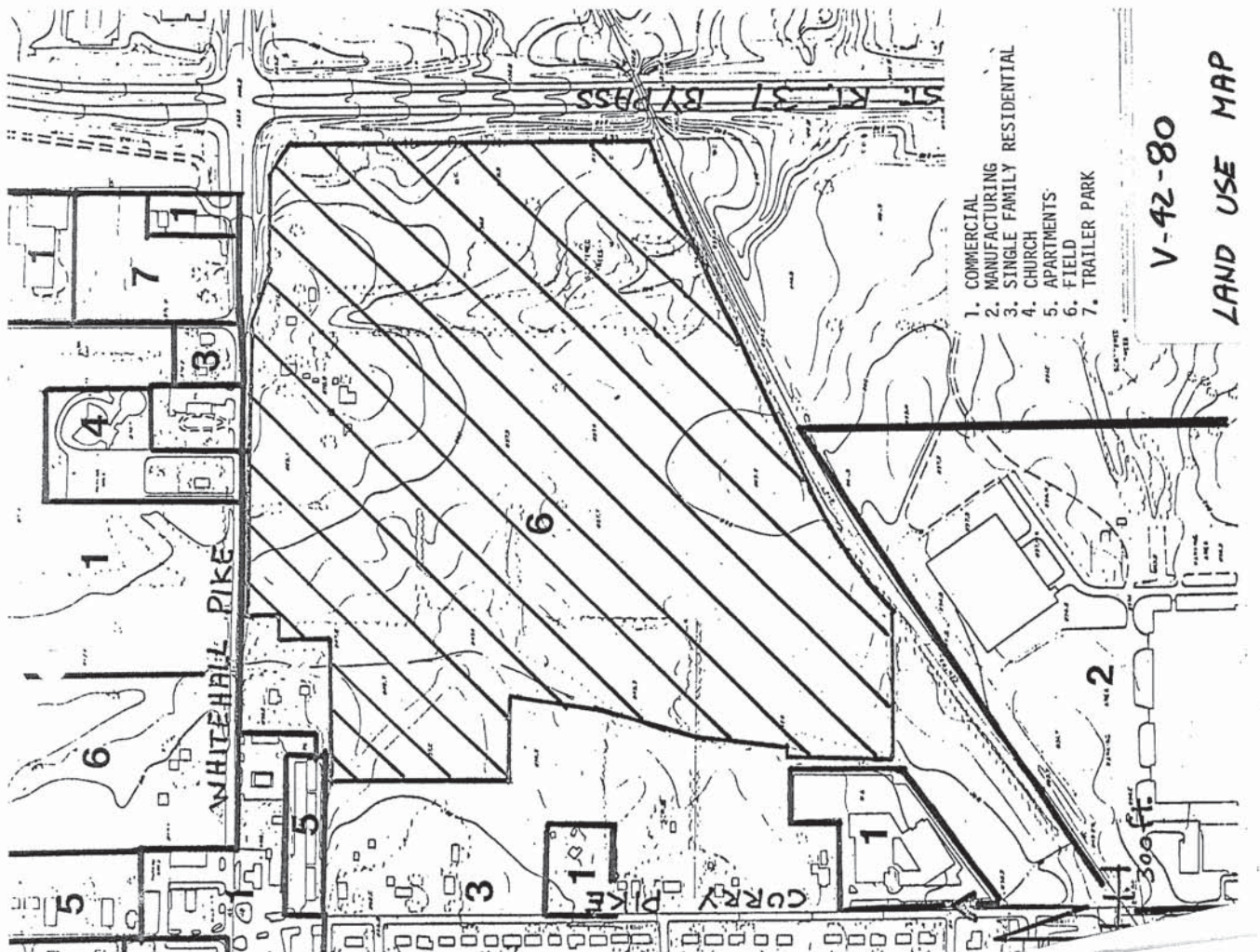
*Geoffrey M. Grodner*  
Geoffrey M. Grodner

GMG:NR

V-42-80

PETITIONERS STATEMENT

Minutes and Packet from  
V-42-80





STAFF REPORT FORM

CASE NO. V-42-80

LOCATION Southwest corner of Whitehall Pike and the Highway 37 Bypass

TYPE OF VARIANCE Signage requirements.

REQUIRED	300 sq. ft. P.C.D. identification sign	PROPOSED	565 sq. ft. individual tenant pole sign
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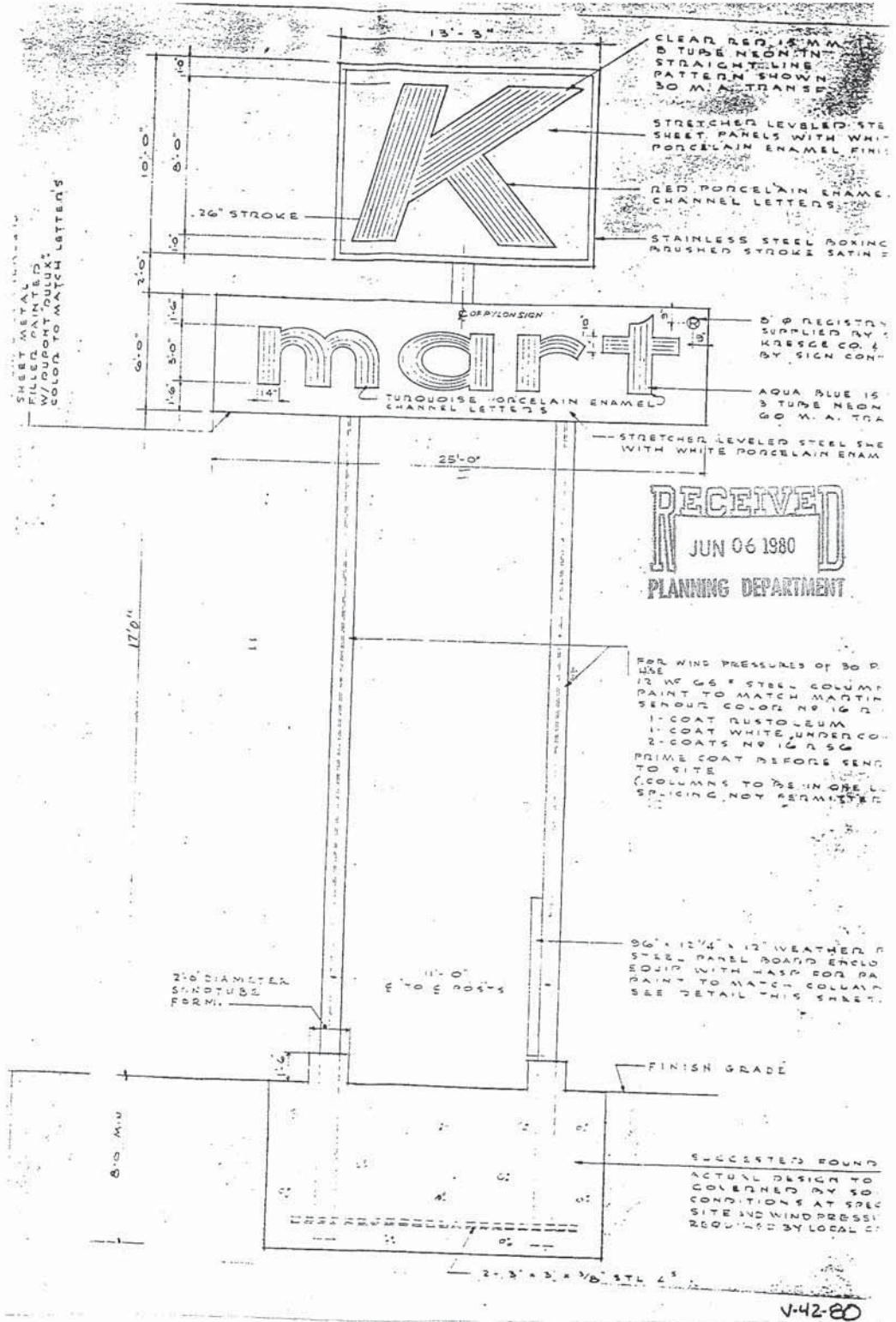
SECTION 20.19.07.03 of the Zoning Ordinance provides that a variance may be granted if the following conditions are present:

- A. The use of the area adjacent to the property included in the proposed variance will not be adversely affected.
- B. The variance arises from some condition which is not ordinarily found in the immediate area, such as exceptional topographical or other conditions.
- C. Strict application of the terms of this chapter will constitute unnecessary hardship upon the property owner.
- D. The grant of the variance does not interfere substantially with the metropolitan comprehensive plan for the City of Bloomington.
- E. The variance will not be injurious to the public health, safety, morals, and general welfare of the community.

**Staff Report:** The petitioner is requesting a very substantial (565 sq.ft.) individual pole sign for K-Mart as an element of the overall signage package for Whitehall Plaza PCD. Based on the proposed future size of the PCD, four pole signs of up to 300 sq. ft. total area each would be permitted. One pole sign has already been erected in the PCD, Farmers and Mechanics Savings and Loan Association, with the question of individual tenant use of the permitted pole signs being considered by the Board as V-25-78. This requested sign would be the second of the permitted pole signs to be erected for the PCD with a third to follow as a center identification sign that would include identification of some of the major tenants (other than K-Mart and Farmers and Mechanics). Use of the fourth permitted sign is undecided at this time.

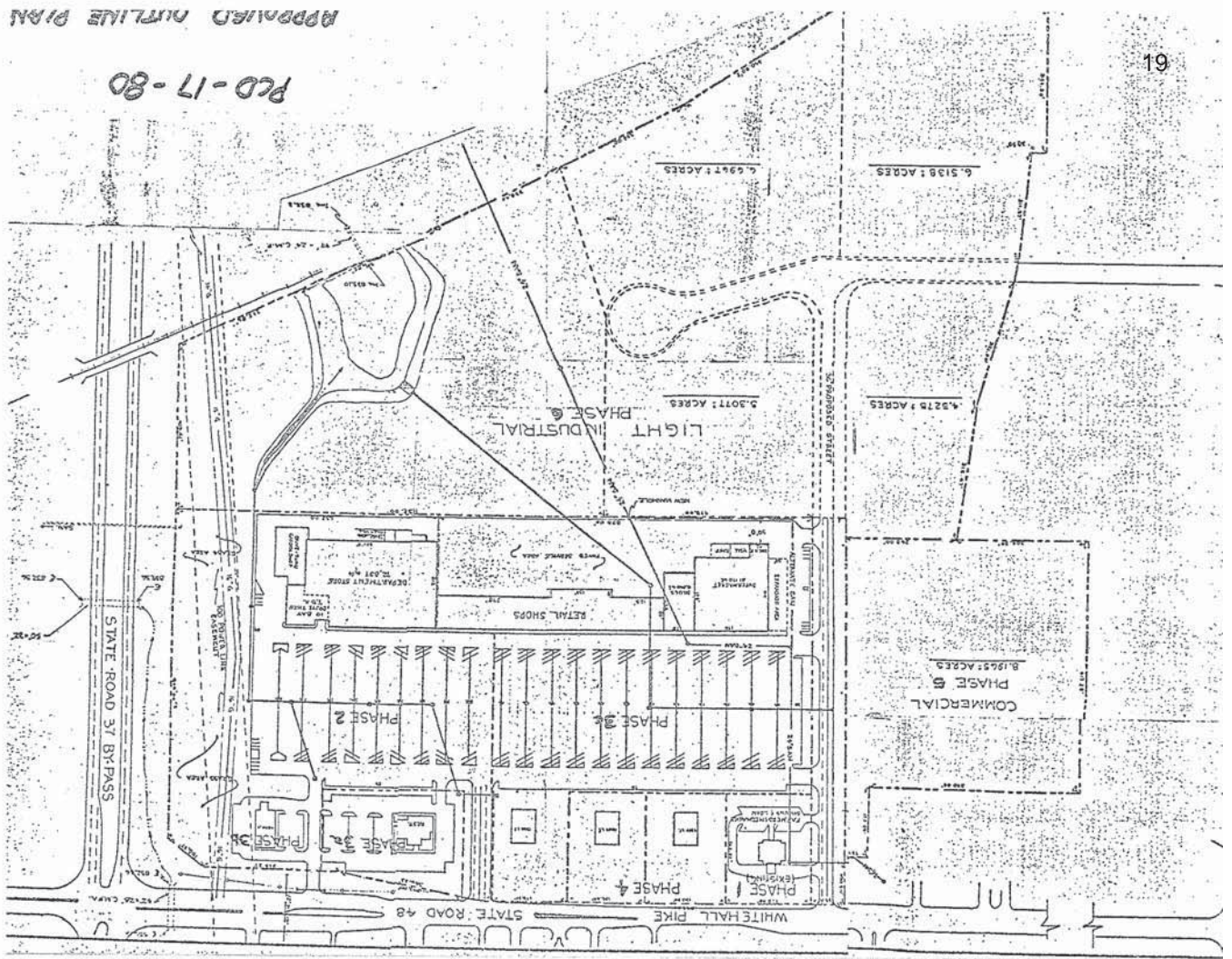
As a policy, the staff is not opposed to the use of the permitted pole signs by individual tenants where this is within the scope of the developer's overall signage plans. However, it is the staff's feeling that all attempts should be made to keep the size of individual tenant pole signs within the 300 sq. ft. maximum. If a facility that is a tenant of a PCD in this instance was a free-standing operation, then that facility would be permitted only 144 sq. ft. (72 sq. ft. per side) of total pole signage. An overall center identification sign, with opportunities for smaller scale identification of individual major tenants, would be far more appropriate for size variance consideration than is an individual tenant sign.

- A. The type of sign would not have an adverse effect on adjacent areas. The size, however, seems to be totally out of proportion with other development in the area.
- B. The variance arises from the needs and desires of an individual, major tenant substantially set back from the access street (Whitehall Pike) and partially sheltered by outlot development. The proposed location of the pole sign would tend to make the proposed massive size less important.
- C. Strict application would severely limit identification of this tenant, particularly prior to the completion of the rest of the Whitehall Plaza PCD.
- D. No substantial interference if the recommended size limitations are met.
- E. Not injurious.

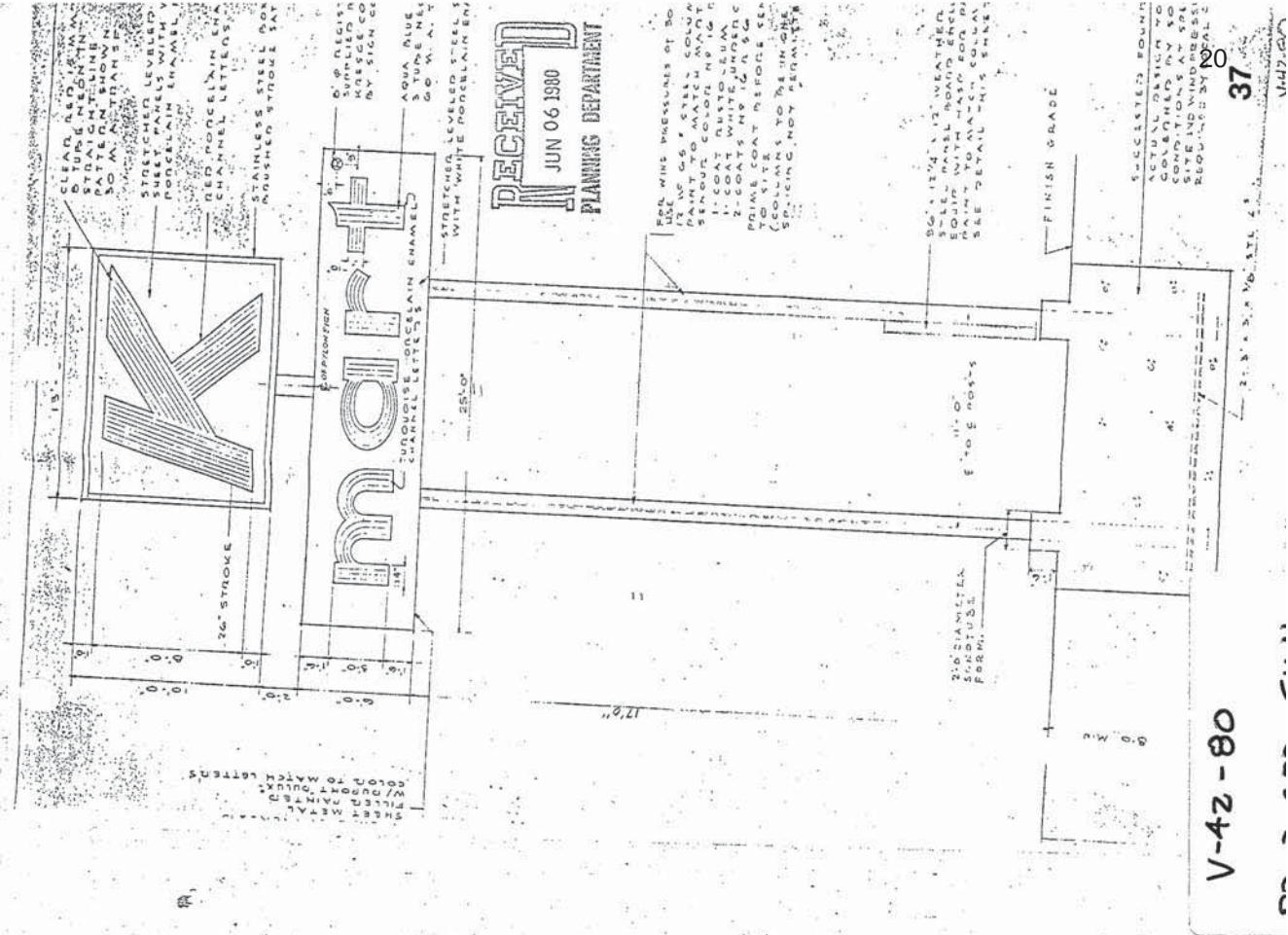


Minutes and Packet from  
V-42-80

PCD-17-80



Minutes and Packet from V-42-80



CLEAR LEAD GLASS  
SIZES INDICATED  
PATTERN SHOWN  
30 M. APPROX. SP.

STRETCHED LEVELLED  
SHEET PANELS WITH  
STAINLESS STEEL ENAMEL  
CHANNEL LETTERS

RED PORCELAIN  
CHANNEL LETTERS

STAINLESS STEEL  
ROUGHED STROKE TAY

6" Ø RECT.  
SUPPLIED BY  
MILWAUKEE  
BY 1/16" DIA.

30" DIA. RISE  
30" DIA. RISE  
30" DIA. RISE

STRETCHED LEVELLED SHEETS  
WITH WHITE ROUGH ENAMEL

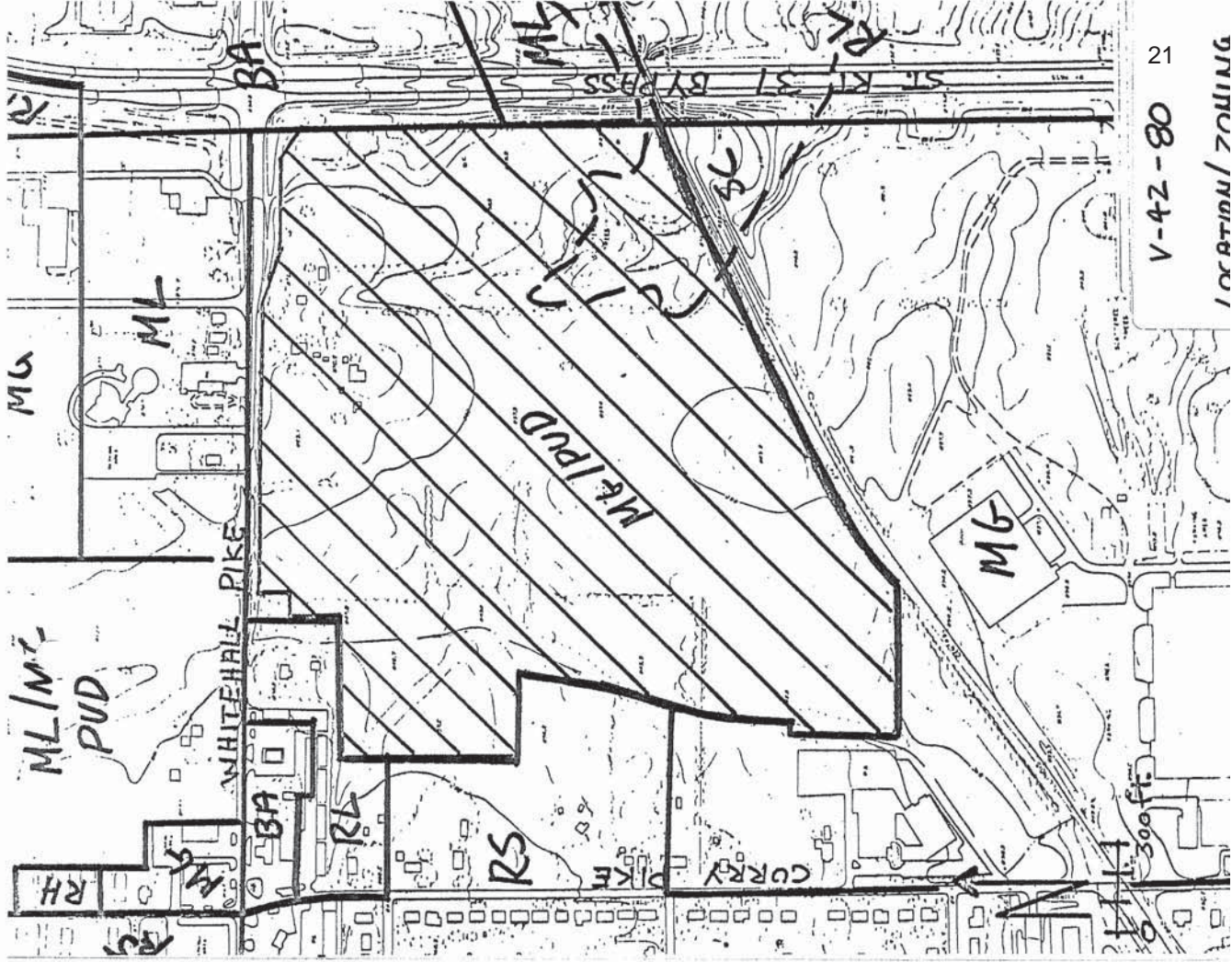
ROLL WIND PRELINES OF 30"  
1 1/2" DIA. RISE  
PAINT TO MATCH COLOR  
SCHEDULE COLOR NO. 10 C  
1. COAT WHITE PRIMER  
2. COAT WHITE PRIMER  
PRIME COAT BEFORE  
COATING WITH  
SPACING NOT PERMITTED

60" DIA. WEATHER  
SHEET PANELS  
EQUIP WITH HARD ROLL  
SHEET TO MATCH COLOR  
SEE DETAIL THIS SHEET

SCHEDULED FOUND  
CONSTRUCTION TO  
CONFORM TO  
CONDITIONS BY  
SITE INDIVIDUALS  
RECORDED BY NO. 14

SHEET METAL  
FILLS PAINTED  
W/ BURGENT OIL  
COLOR TO MATCH LETTERS

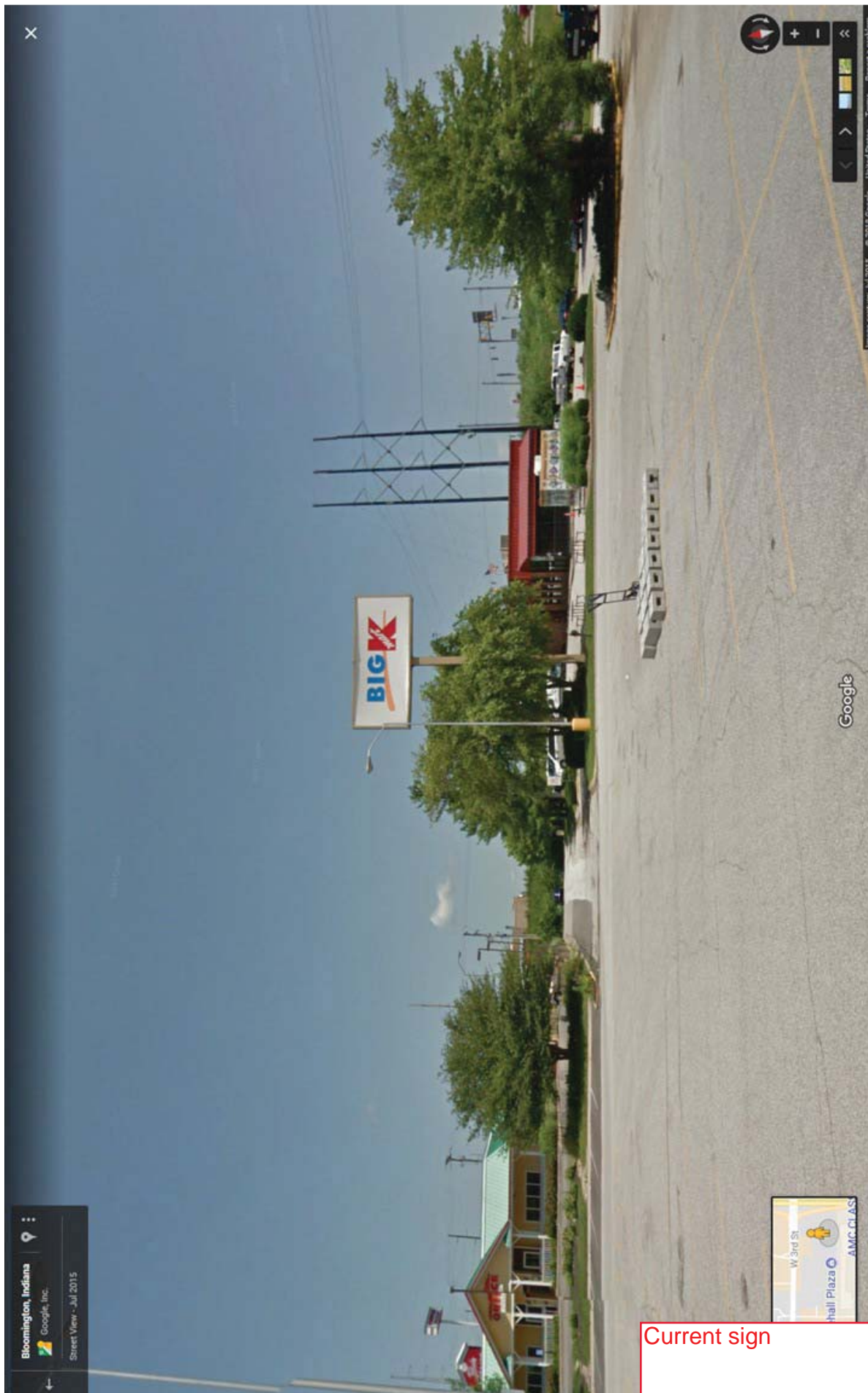
Minutes and Packet from  
V-42-80



21  
V-42-80

LOCATION/ ZONING

Minutes and Packet from  
V-42-80



Current sign

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
 Location: 606 W. Gourley Pike

**CASE #: V-14-18**  
**DATE: August 23, 2018**

**PETITIONER:** Storage Express  
 606 W. Gourley Pike, Bloomington

**REQUEST:** The petitioner is requesting a variance from landscaping standards to allow riprap to be placed around the perimeter of the building.

**STAFF REPORT:** This property is zoned Commercial Arterial (CA) and has been developed with a mini-warehouse facility. Surrounding land uses include a funeral home to the west, a motorcycle dealership to the east, hotels to the north, and multi-family residences to the south.

The petitioners constructed 2 new mini-warehouse buildings on the site in 2017. Due to a lack of gutters being installed along the roof, there was significant erosion around the perimeter of one the buildings from rainwater runoff and riprap was installed to address the exposed soil. The riprap extends approximately 4' around 2 sides of one of the buildings. The riprap was not shown on the approved landscape plan or site plan. The Unified Development Ordinance allows decorative mulch and stone planting beds only around the perimeter of trees and shrubs and all other portion of a site are required to be planted with grass or other vegetative ground cover.

Section 20.05.052 of the Unified Development Ordinance states that-

- (e) Ground Cover: Grass and other vegetative ground cover shall be used for all open space including parking lot bumpouts and islands. The exceptions are as follows:
- (1) Decorative mulch or stone planting beds shall not extend more than one (1) foot beyond the drip line of shrubbery, and shall be no more than six (6) feet in diameter surrounding the trees.

The petitioner is requesting a variance from section 20.05.052 (e)(1) of the Landscaping requirements in order to allow riprap to be placed around the perimeter of the buildings.

**CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE**

**20.09.130 e) Standards for Granting Variances from Development Standards:** A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

**PROPOSED FINDING:** The granting of the variance from the standards to allow the riprap will not be injurious to the public health, safety, or morals. However, it

does conflict with the stated goals of the comprehensive plan to increase the amount of vegetative cover within the City.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

**PROPOSED FINDING:** No negative effects from this proposal are found on the use and value of the areas adjacent to the property.

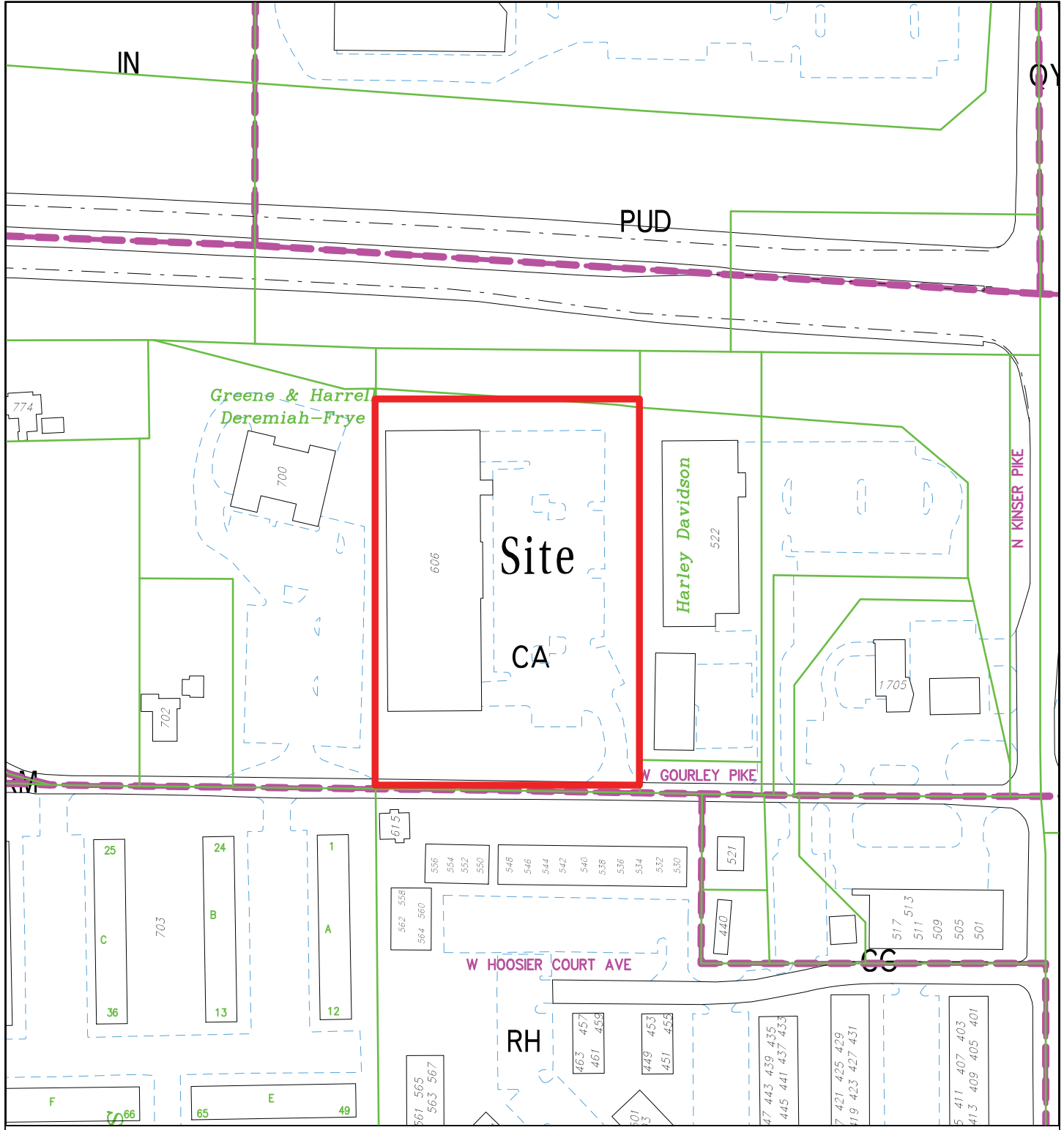
- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

**PROPOSED FINDING:** The strict application of the UDO will not result in practical difficulty in the use of property. The lack of gutters on the building and associated stormwater runoff is a self-imposed hardship and is something that can be fixed by the petitioner and is not unique to the property. There are no peculiar conditions on this property that are different than other commercial properties that do not allow them to meet the landscaping restrictions of the UDO.

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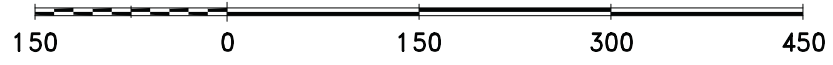
**RECOMMENDATION:** The Department recommends that the Board of Zoning Appeals adopt the proposed findings and deny the variance.





V-14-18 Storage Express  
 606 W. Gourley Pike  
 Board of Zoning Appeals  
 Site Location, Zoning, Parcels

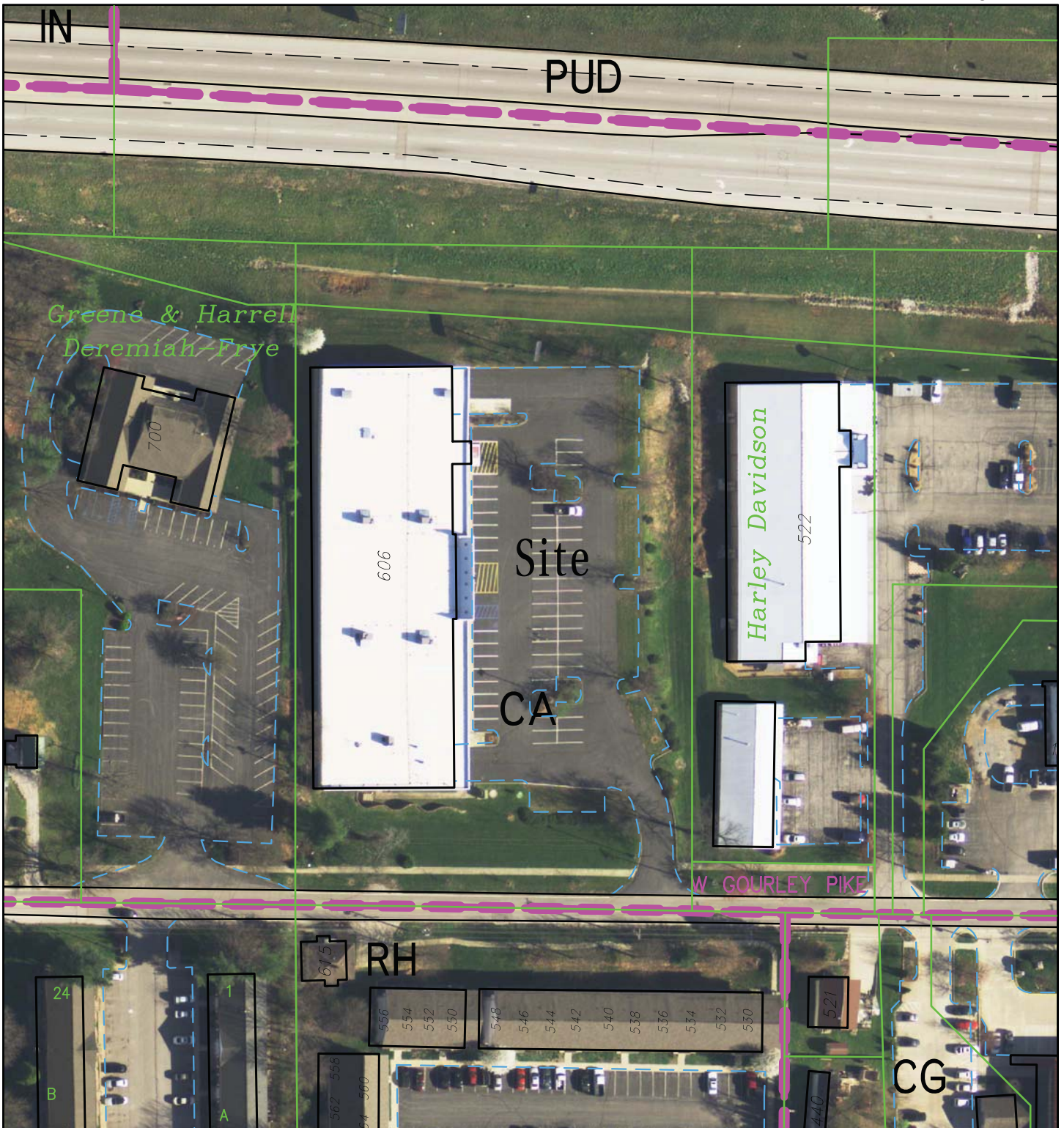
By: greulice  
 18 May 18



City of Bloomington  
 Planning & Transportation

Scale: 1" = 150'

For reference only; map information NOT warranted.



V-14-18 Storage Express

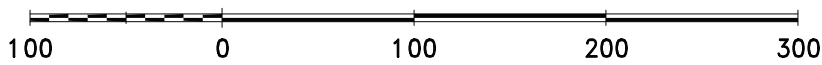
606 W Gourley Pike

Board of Zoning Appeals

2016 Aerial Photograph

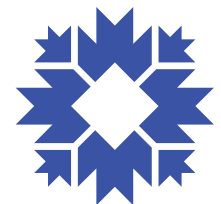
By: greulice

18 May 18



For reference only; map information NOT warranted.

City of Bloomington  
Planning & Transportation



Scale: 1" = 100'

April 25, 2018

Mr. Eric Greulich  
Planning and Transportation Dept.  
401 N. Morton St., Suite 130  
P.O. Box 100  
Bloomington, IN 47402

Re: Development Standards Variance Application  
606 Gourley Pike Property

Dear Mr. Greulich:

Subject property is located on Gourley Pike directly behind the Harley Davison dealership off of Rogers and the 46 Bypass. The original property was the old HH Gregg store, a single story 30,000 SF masonry building. The HH Gregg property was purchased and redeveloped as an interior heated/cooled facility in 2014. Property was required to go through "change of use" permit process which required new/additional landscaping, reduction in permeable pavement, revised (reduction) of site lighting and revised, (reduction) in building and site signage.

In the Spring of 2017 we constructed two new storage buildings in the parking lot area in front of the above referenced building. Both of the new buildings were required to have "special exterior design" on all four sides, we increased the site landscaping and again we revised (reduced) the site lighting.

The site has one driveway entrance onto Gourley Pike and the required parking (8 stalls) is adjacent to the main building entrance of the original structure. We added 45 spaces of exterior storage to the facility.

The land between our eastern most building and the Harley Davison property is a retention basin (8200 SF) that takes the run-off from our property (including the roof of the 30,000 SF original building), the two new buildings, the remaining asphalt parking area and the driveways. We were required by Phil Peden to do maintenance clearing and grubbing of 20 years of growth in the retention basin as part of our permit to construct the two new buildings. No additional grading or expansion of the existing retention basin was required. The west bank of our retention basin (directly behind building #3) is a 3:1 slope (33%) and it drops in excess of 7' from the back of the building (top of the slope) to the center line of the retention basin. (See attached plan C-1 dated 4/24/18)

The UDO violation is that a 6' strip of rip-rap was installed at the top of the slope directly behind building #3 to prevent erosion of the bank as the water sheds off of the roof of the building. This work was completed without notifying the Planning Department that we were modifying the plans. Because there were 2 other areas on the approved plans showing rip-rap, the assumption was made that adding rip-rap for purposes of erosion control was acceptable. If required to remove the material in question, I will still have an erosion control problem. If the variance is granted, I would make the offer to:

- a. Provide screening on the north end of the retention basin with an approved hedge or pine trees.
- b. Cover the entire west bank of retention basin (including the rip-rap) with an approved ground cover (ivy or other approved material).
- c. Provide approved landscape enhancement in other areas of the property.

I believe that the strict application of the terms of the UDO may create additional erosion control problems for this area of the property. I also believe that if allowed to leave this area in its current condition, the downstream impact of sedimentation run-off will continue to be improved.

Best Regards,



Mike Boulton  
*Construction Manager*



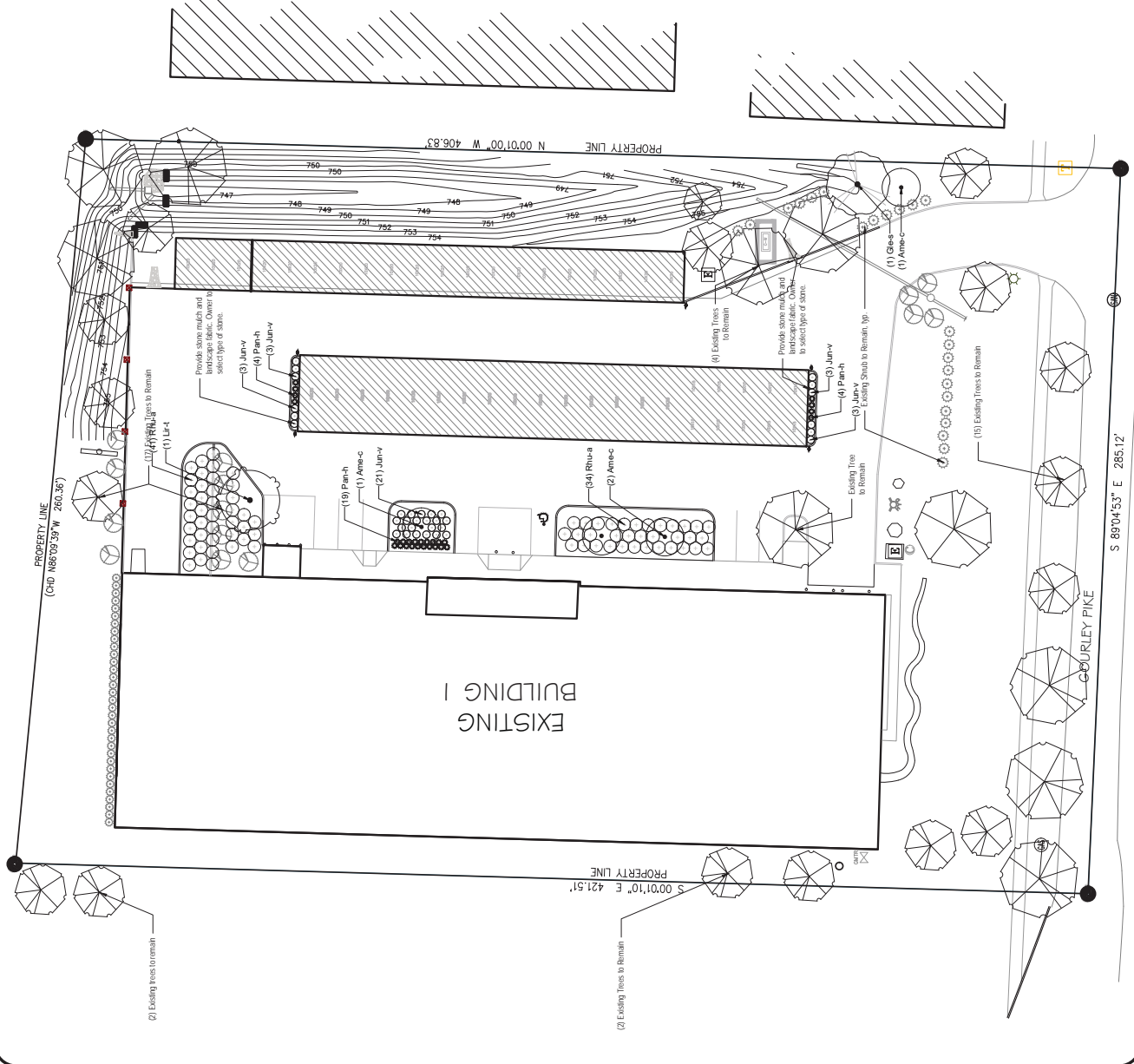






### LANDSCAPE AND PLANTING NOTES

- Plant materials included and measured by a qualified and experienced landscape architect. All materials are subject to the approval of the Landscape Architect and Owner at any time. Landscape Architect to inspect all plant locations and plant bed conditions prior to installation. Site and plant locations are approved by the Landscape Architect before planting. On-site adjustments may be made to the planting plan to accommodate site conditions. The Contractor shall be responsible for the final shape, composition, health, or after the characteristics of plant materials.
- Plant materials shall meet or exceed size standards as set forth in American Standards for Nursery Stock (ANSI Z60.1-2013) and shall be inspected and approved by the Landscape Architect before planting and installation. Plant materials shall be inspected and approved by the Landscape Architect before planting and installation. Plant materials shall be inspected and approved by the Landscape Architect before planting and installation.
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### LANDSCAPE ORDINANCE REQUIREMENTS

- 20.05.05.2.d STREET TREES  
 Requirement: 1 Canopy Tree / 40 LF adjacent to public right-of-way  
 Provide: 1 Canopy Tree / 40 LF adjacent to public right-of-way  
 Style: Road 4546; 132 LF of Improvements / 40 LF = 4 Canopy Trees  
 Gourelly Pike; 132 LF of Improvements / 40 LF = 4 Canopy Trees  
 Provide: 4 Existing Trees to Remain  
 Gourelly Pike: 4 Existing Trees to Remain
- 20.05.05.3 BUFFER ZONES  
 Requirement: 1 Tree per 100 SF of lot area  
 Provide: 1 Tree per 100 SF of lot area  
 Style: Zoned CA, no buffer yard required  
 South: see Street Trees above  
 West: Zoned CA, no buffer yard required
- 20.05.05.3.a PARKING LOT PERMEABLE PLANTINGS  
 Requirement: 1 Tree per 4 parking spaces (min. 75% Canopy Trees), 3 Shrubs per 1 parking space (min. 50% Canopy Trees)  
 Provide: 1 Tree per 4 parking spaces (min. 75% Canopy Trees), 3 Shrubs per 1 parking space (min. 50% Canopy Trees)  
 Requirement: 1 Tree per 4 parking spaces provided facing streets or adjacent uses, no parking lot perimeter plantings required
- 20.05.05.3.b LANDSCAPE BARRIERS AND ISLANDS  
 Requirement: 1 Landscape barrier or island per 10 parking spaces; 1 Large Canopy Tree per rampour or island  
 Provide: 1 Landscape barrier or island per 10 parking spaces; 1 Large Canopy Tree per rampour or island
- 20.05.56.a INTERIOR PLANTINGS  
 Requirement: 1 Large Canopy Tree + 3 Evergreen Trees + 3 Medium or Small Canopy Trees + 27 Shrubs per 1,000 SF of floor area; 1 Large Canopy Tree + 3 Evergreen Trees + 3 Medium or Small Canopy Trees + 27 Shrubs per 2,284 SF of new green space + 43,560 SF = 41.05 acres + 41.05 acres = 82.10 acres  
 Provide: 1 Large Canopy Tree + 1 Evergreen Tree + 1 Medium or Small Canopy Tree + 2 Shrubs (min. 1' height) per 1,000 SF of floor area; 1 Large Canopy Tree + 1 Evergreen Tree + 1 Medium or Small Canopy Tree + 2 Shrubs (min. 1' height) per 2,284 SF of new green space + 43,560 SF = 41.05 acres + 41.05 acres = 82.10 acres  
 Provide: 1 Large Canopy Tree + 1 Evergreen Tree + 1 Medium or Small Canopy Tree + 2 Shrubs (min. 1' height) per 1,000 SF of floor area; 1 Large Canopy Tree + 1 Evergreen Tree + 1 Medium or Small Canopy Tree + 2 Shrubs (min. 1' height) per 2,284 SF of new green space + 43,560 SF = 41.05 acres + 41.05 acres = 82.10 acres



Property info:  
BL-GP, #012

EXISTING SELF-STORAGE FACILITY AT:  
BLOOMINGTON-GOURLEY PIKE  
606 Gourley Pike, Bloomington, IN 47404  
EXISTING SITE PLAN

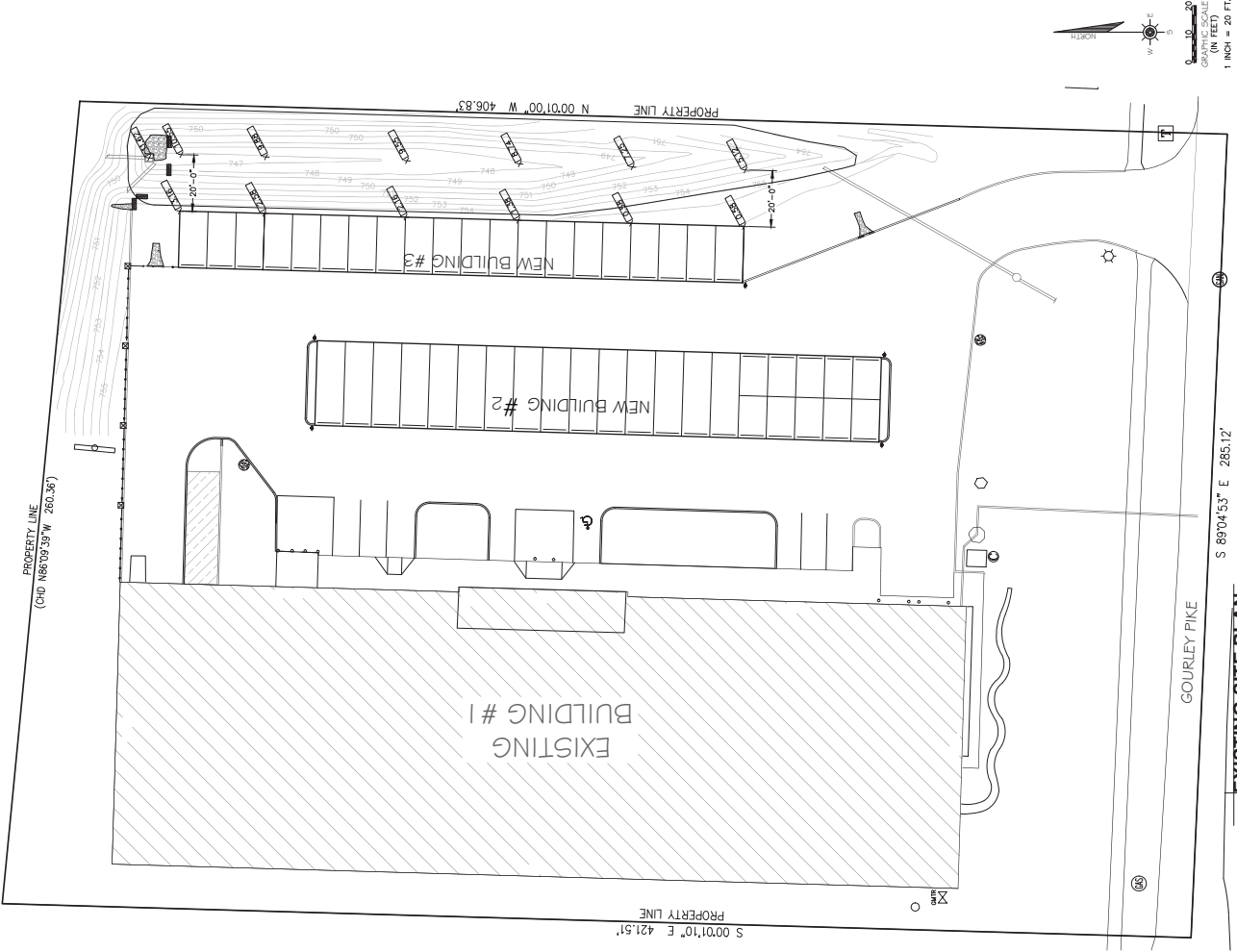
P.O. BOX 70 BLOOMINGTON IN 47402 PH 812-339-6339  
**STORAGE EXPRESS**

Date: 4/24/2018

Revision:

Drawn by:  
CJB

Sheet  
C-1  
33



**EXISTING SITE PLAN**  
SCALE: 1" = 20'

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 909 W. 1<sup>st</sup> Street**

**CASE #: AA-19-18**  
**DATE: August 23, 2018**

**PETITIONER:** ICFR Residence, LLC  
 909 W. 1<sup>st</sup> Street, Bloomington

**COUNSEL:** Clendening, Johnson, & Bohrer, PC  
 409 W. Patterson Drive, Suite 205 Bloomington

**REQUEST:** The petitioner is requesting an administrative appeal of staff's decision to issue a Notice of Violation of non-compliance with Unified Development Ordinance Section 20.02.550.

**REPORT:** This appeal request is the result of issuance of a Notice of Violation related to a non-permitted land use enforcement action against the property at 909 W. 1<sup>st</sup> Street. The property is located on the south side of 1<sup>st</sup> Street between Walker and Wylie Streets. The property is zoned Medical (MD). Surrounding properties to the north, west, and east are also zoned MD. Adjacent property to the south is zoned Manufactured/Mobile Home Park (MH). The violation is a result of the business operating as a 'Rehabilitation Clinic' as defined in the Unified Development Ordinance (UDO) without a Conditional Use approval.

'Rehabilitation Clinic' is defined in the UDO as:

A facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction.

'Rehabilitation Clinic' is a Conditional Use in the MD zoning district. The building at 909 W. 1<sup>st</sup> Street previously operated as a 'Dwelling, Multifamily'. The building currently appears to house Indiana Center for Recovery clients exclusively. A building permit application was received by the Planning and Transportation Department on April 11, 2018 with the use for the site listed as 'rehabilitation/treatment center'. Department staff spoke with the applicant indicating that the listed use was not a permitted use in the district, therefore the Certificate of Zoning Compliance related to the building permit application could not be issued until a Conditional Use was approved.

The petitioner has requested an appeal of the City's Notice of Violation issued June 6, 2018 that stipulated that the property requires a Conditional Use approval from the Board of Zoning Appeals to continue its use on the site.

The petitioner maintains that ICFR Residence LLC is a separate owner and operator from the ICFR that operates a treatment clinic at 1004 W. 1<sup>st</sup> St. Petitioner also states that "ICFR Residence does not provide treatment services, but leases units at the Property to tenants on a weekly basis. The tenants are typically patients of ICFR, but ICFR does not render treatment services at the ICFR Residence." The petitioner states further, "The property is used as a multi-family residence, and continues to operate under a valid occupancy permit issued by Bloomington Housing and Neighborhood Development."

While it may be true as a matter of corporate law that ICFR and ICFR Residence LLC are separate entities, is disingenuous to say that these two entities are unrelated and one provides treatment but the other does not. The petitioner claims there are no treatment services offered or performed at the ICFR Residence; however, the petitioner admits that the residents of said location “are typically patients of ICFR”. Moreover, the ICFR Website (Viewed August 15, 2018) states “Our spacious grounds allow us to offer a genuine residential experience, where guests live and receive addiction treatment in comfortable, peaceful surroundings 24 hours a day. This is the setting where our guests receive highly-customized, relapse-battling recovery plans to help them develop recovery not only today but long after they return home to their lives.” Petitioner cannot simultaneously advertise itself as a residential treatment facility on its website and argue to the City that it is simply a standard multi-family apartment building that will rent to anyone who wants to live there.

Lastly, under the Facilities option on the ICFR Website, the housing option is advertised as “Private Recovery Housing.”

Staff disagrees with the petitioner’s claim that 909 W. 1<sup>st</sup> Street is equivalent to other multi-family residential properties around Bloomington. Indeed staff’s conclusion is based on information readily available from the ICFR itself that the Property is an extension of the ICFR Clinic at 1004 W. 1<sup>st</sup> St. and that patients receive addiction treatment at the Property as part of their recovery.

Petitioner further claims the City’s action constitutes discrimination in violation of the Americans with Disabilities Act. The City responds that the BZA’s role in this proceeding is not to address legal questions related to issues of federal discrimination law.

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**RECOMMENDATION:** Based on the findings in this report, staff recommends denial of Case # AA-19-18, adopting staff’s findings, and affirming the staff’s determination.



**City of Bloomington**  
**Planning and Transportation Department**

June 5, 2018

ICFR Residence LLC  
 1004 W. 1<sup>st</sup> Street  
 Bloomington, IN 47403

Cheyenne Riker  
 409 W. Patterson Drive Suite 205  
 Bloomington, IN 47403

Tenant  
 909 W. 1<sup>st</sup> St.  
 Bloomington, IN 47401

**Re: Notice of Violation**

Illegal Land Use at 909 W. 1<sup>st</sup> St.

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with Unified Development Ordinance (UDO) Section 20.09.150 [Conditional Use] at 909 W. 1<sup>st</sup> St. Records show that you are the owner (or tenant) of this property.

On April 11, 2018, the Planning and Transportation Department received a building permit application packet for 909 W. 1<sup>st</sup> Street, listing the use as 'residential/treatment center'. Upon further investigation it was determined that the use 'rehabilitation clinic' is in use at both 1004 & 909 W. 1<sup>st</sup> St. These properties are located in a Medical (MD) zoning district. Rehabilitation clinic is a conditional use in this zoning district which requires a Conditional Use approval from the Board of Zoning Appeals. According to UDO Section 20.09.150 [Conditional Use];

(b) Prerequisites:

- (1) No use classified as conditional may be conducted without first obtaining a Conditional Use approval under Chapter 20.09: Processes, Permits and Fees. No Conditional Use shall be conducted except in compliance with all applicable provisions of this Unified Development Ordinance and with any conditions upon such Conditional Use approval.

Through counsel, you were notified to file for the Conditional Use approval on or before May 24, 2018 in order to appear at the June 21, 2018 Board of Zoning Appeals hearing. Per a phone call with counsel from Clendening Johnson and Bohrer on May 24, 2018, you will not be filing the Conditional Use request.

In accordance with UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Each location is considered a distinct and separate violation. Subsequent

June 6, 2018

violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500).

**You have the following options to remedy the situation and avoid further enforcement:**

1. Cease use of the rehabilitation clinics at 1004 & 909 W. 1<sup>st</sup> St. by 6/19/18, **OR**;
2. A property owner or lessee of property within the City or its zoning jurisdiction may file for a Conditional Use approval through the Board of Zoning Appeals in accordance with the UDO Sections 20.09.030 [Applications; General] and Section 20.09.150 [Conditional Use]. The next available Board of Zoning Appeals hearing date is 7/19/18. The filing date for this meeting is 6/21/18. In order for your case to be considered at this meeting, a Pre-Application Meeting must be scheduled with a planner by 6/14/18.

If you dispute the City's assertion that these properties are operating as rehabilitation clinics without Conditional Use approval, you may file an appeal with the City's Board of Zoning Appeals. Said appeal shall be filed with the Planning and Transportation Department within five (5) days of your receipt of this Notice of Violation and shall conform to the requirements of UDO Section 20.09.350.

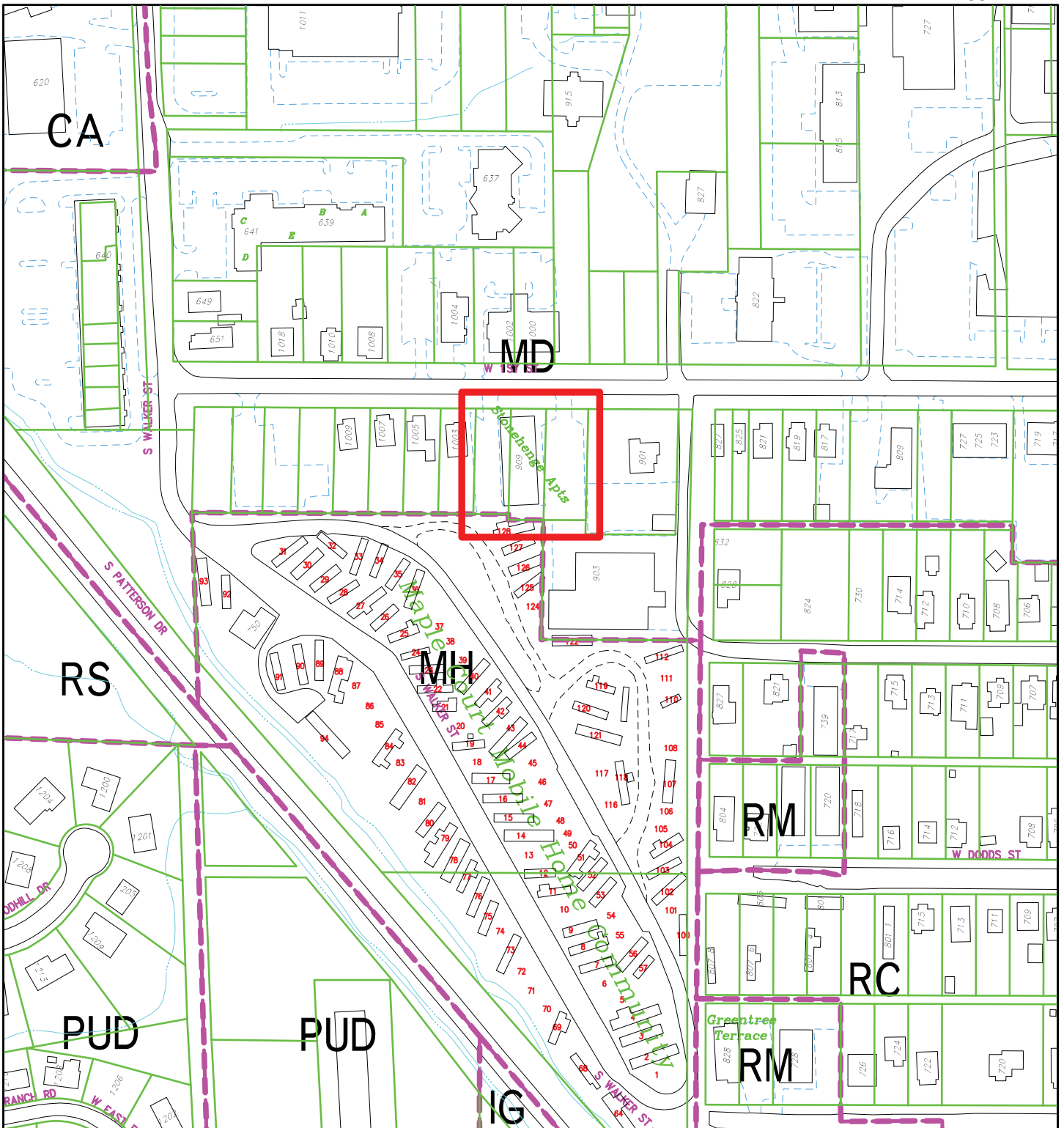
If a fine is issued, the final fine amount shall be paid to the City of Bloomington Planning and Transportation Department and directed to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47402. All fines may contested in the Monroe County Circuit Courts. Failure to resolve this violation or to pay the final fine amount may result in further legal action.

Please contact the Planning and Transportation Department at [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov) or 812-349-3423 with any questions or concerns.

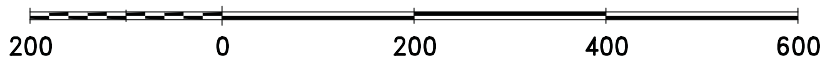
Sincerely,



Carl Buddin  
Zoning Compliance Planner

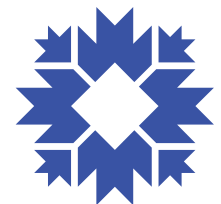


By: scanlanj  
16 Aug 18

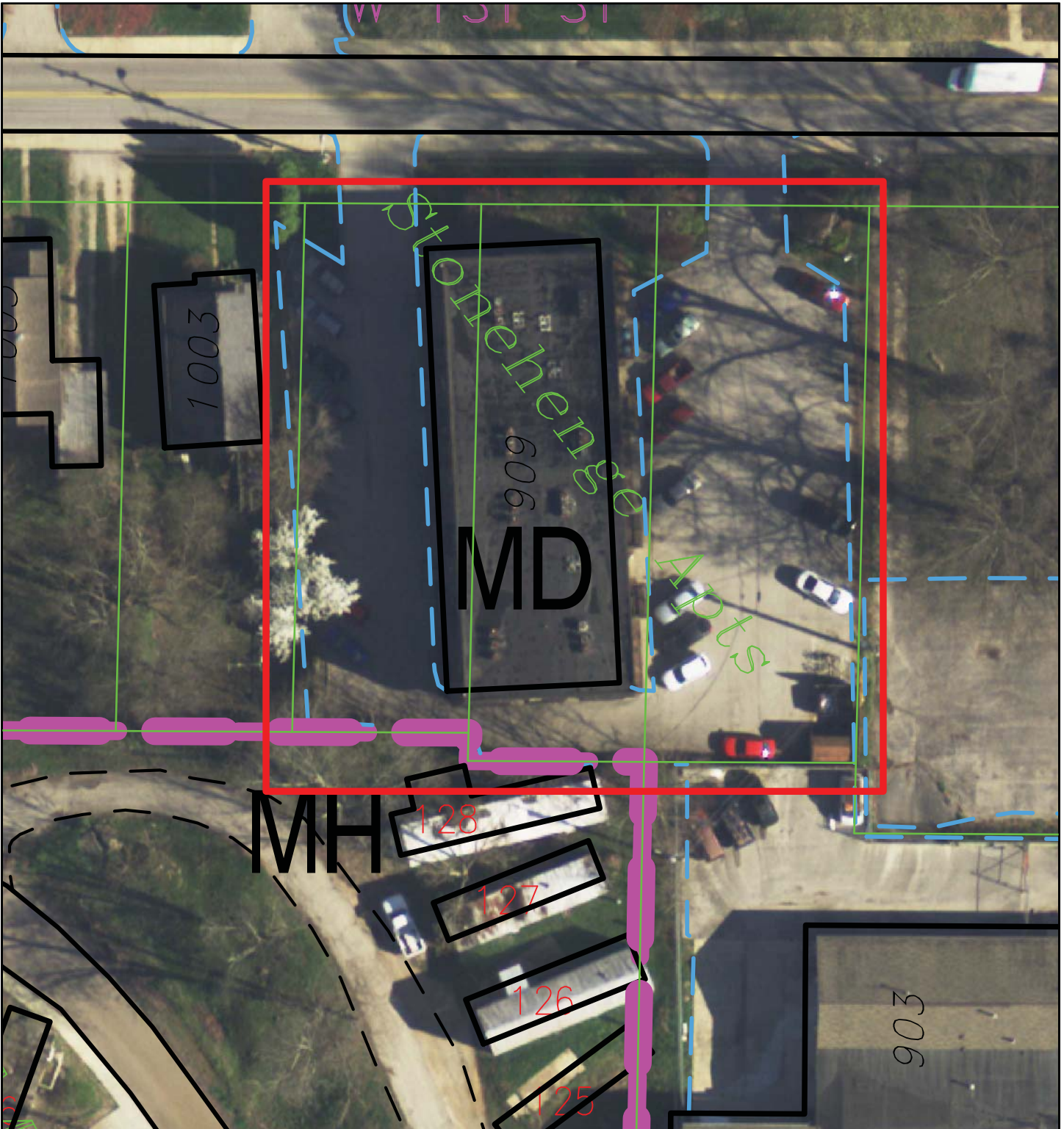


For reference only; map information NOT warranted.

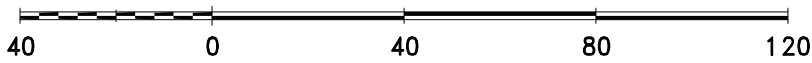
City of Bloomington  
Planning & Transportation



Scale: 1" = 200'



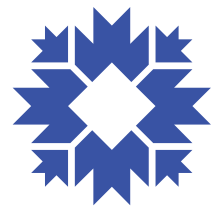
By: scanlanj  
16 Aug 18



For reference only; map information NOT warranted.



City of Bloomington  
Planning & Transportation



Scale: 1" = 40'



CLDENING  
JOHNSON  
& BOHRER, P.C.

**James F. Bohrer**  
*Attorney at Law*

[jfbohrer@lawcjb.com](mailto:jfbohrer@lawcjb.com)

**Cheyenne N. Riker**  
*Attorney at Law*

[criker@lawcjb.com](mailto:criker@lawcjb.com)

June 11, 2018

City of Bloomington  
Board of Zoning Appeals  
401 N. Morton St.  
Bloomington, Indiana 47404

*Sent via E-Mail: [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov)*

**RE: Appeal of Notice of Violation for 909 W. 1<sup>st</sup> St., Bloomington, Indiana**

Dear Board Members,

Clendening Johnson & Bohrer, P.C. represents ICFR Residence LLC ("ICFR Residence"), the owner of the real property located at 909 W. 1<sup>st</sup> Street ("the Property"). This appeal is made on behalf of ICFR pursuant to Bloomington's Unified Development Ordinance ("UDO") Section 20.10.060, which permits appeals of Notices of Violation.

On or about June 5, 2018, the City of Bloomington ("the City") delivered to the Bloomington Herald-Times newspaper a Notice of Violation for the Property. ICFR Residence received the Notice of Violation from the City on June 8, 2018 by regular mail, a true and exact copy of which is attached hereto as "Exhibit A."

The City states in the Notice of Violation that a permitting application that had been previously delivered to the City for the Property stated that the Property was being utilized as a "rehabilitation/treatment center." A true and exact copy of the application is attached hereto as "Exhibit B." The application was filed by Joshua Westerfield of Brown Sprinkler Corporation for work to be performed at the Property.

On this basis, the City erroneously determined that the Property was being operated as a "rehabilitation clinic" as defined in the UDO and the City issued a Notice of Violation to ICFR Residence.

409 W. PATTERSON DR., SUITE 205, BLOOMINGTON, IN 47403 · P.O. Box 428, BLOOMINGTON, IN 47402-0428

201 NORTH ILLINOIS STREET, 16TH FLOOR, SOUTH TOWER, INDIANAPOLIS, IN 46204

T·812-332-1000 · F·812-332-7601

WWW.LAWCJB.COM



Board of Zoning Appeals

June 11, 2018

Page 2

### **Summary of Appeal**

The ICFR Residence is an apartment building housing individual tenants under a valid occupancy permit issued by HAND. ICFR Residence does not operate as a temporary or long-term inpatient facility. Accordingly, the City's position that ICFR Residence is operating as a "rehabilitation clinic" is unsupported by substantial evidence.

### **Factual Overview**

Indiana Center for Recovery ("ICFR") is an organization that operates an outpatient treatment clinic in Bloomington, Indiana whose primary goal is to ensure the health and safety of its patients while providing services that enable its patients to find gainful employment, strong support networks, and a bright path to healthy futures. ICFR does not own real estate, nor does it perform services other than outpatient treatment services. ICFR operates at 1004 West First Street.

On the other hand, ICFR Residence is an Indiana limited liability company, which owns the Property. ICFR Residence is a real estate owner and landlord. ICFR Residence does not provide treatment services, but leases units at the Property to tenants on a weekly basis. The tenants are typically patients of ICFR, but ICFR does not render treatment services at the ICFR Residence. The ICFR Residence houses forty-four (44) residents in twelve (12) two-bed, one-bath apartment units, and ten (10) one-bed, one-bath apartment units. There are two (2) offices located on the Property used by ICFR Residence employees.

The ICFR Residence employees ensure the tenants comply with the Bloomington noise ordinance and comply with the other rules of the ICFR Residence lease. ICFR Residence has not received notice of any noise ordinance violation, nor has it been made aware of any police reports generated as a result of activities that have taken place at the Property.

Each of the apartment units is leased to individual tenants, and each tenant who leases a unit at the Property is obligated to sign a lease prior to entry. The lease terms are weekly, and payable weekly in the amount of sixty-five dollars (\$65.00) per week. Each unit has its own bathroom and kitchen facilities.

### **The Present Dispute**

The Property is used as a multi-family residence, and continues to operate under a valid occupancy permit issued by Bloomington Housing and Neighborhood Development. A true and exact copy of the occupancy permit is attached hereto as "Exhibit C." No temporary or long-term treatment of residents occurs at the Property.

In issuing its Notice of Violation, the City contends, in error, that the Property is being utilized as a "rehabilitation clinic" despite the fact that no treatment occurs on the Property. The UDO defines "rehabilitation clinic" as follows:

Board of Zoning Appeals

June 11, 2018

Page 3

A facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction.

The City's position fails because ICFR Residence does not offer or perform treatment services. In order to sustain the City's position, the language defining a "rehabilitation clinic" in the UDO must be read as follows:

Residential buildings where tenants reside.

The City misreads the definition of "rehabilitation center" in the UDO. The City leaves the word "treatment" out of its reading of the definition or they must assert that because people who may receive treatment for a medical condition related to drug or alcohol addiction in another location live on the Property, the Property must be a rehabilitation center. Either interpretation of the UDO is not reasonable.

There is no basis for the City's position. The Property is an apartment operating under a valid occupancy permit.

**The City's Action Constitutes Discrimination in Violation of the Americans with Disabilities Act.**

The City's efforts are an ill-conceived and wrong-headed attempt to reduce the number of addicts in the City of Bloomington. Facts very similar to this case occurred in 2002, when the City of Covington, Kentucky denied a zoning permit to a methadone clinic. In *MX Group, Inc. v. City of Covington*, the Court of Appeals addressed a situation where neighbors of a property owner who wished to open a methadone clinic had complained that they were concerned about the effects of a nearby methadone clinic. 293 F.3d 326 (6<sup>th</sup> Cir. 2002). The court found that the zoning code at issue in that case was facially discriminatory against victims of addiction because it included any "place whose primary function is to care for the chemically dependent." *Id.* at 330.

On or about June 1, 2018, Isabelle Piedmont-Smith, a member of the Bloomington City Council, stated to RTV 6, an Indianapolis news station, that the neighbors surrounding the Property have cited "[p]eople yelling obscenities among other things. Cars revving their engines at all hours. Things like that." Attached hereto as "Exhibit D" is a true and exact copy of the article in which Ms. Piedmont Smith, the Vice President of the Bloomington City Council, is quoted as having made the statements about some of the disabled patients that reside at the Property.

The City's representations are a clear indication that it is not concerned with the use of the Property, as much as it is concerned that the persons who reside in the Property are undesirable. As stated in *City of Covington*, the City of Bloomington cannot discriminate against ICFR due to its "prospective clients" disabilities. In this case, the City is doing just that – it is discriminating against the owner of the ICFR Residence and the persons who reside there on the basis that the persons who reside in the ICFR Residence are disabled as defined under the ADA.

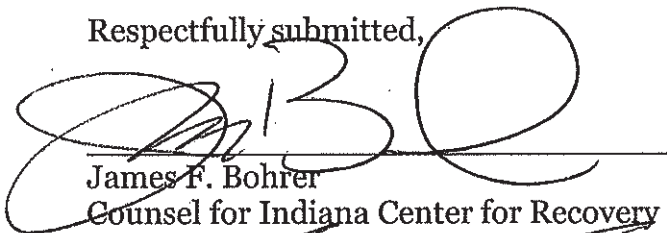
Board of Zoning Appeals  
June 11, 2018  
Page 4

### Conclusion

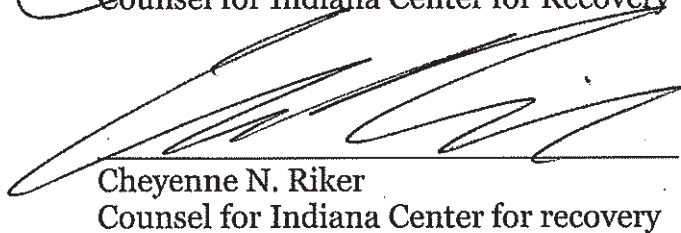
The ICFR Residence owner is operating the Property in accordance with the UDO and City rules and regulations. The City's interpretation of the language in the UDO is not supported by a reasonable reading of the UDO. The City's efforts to enforce the UDO against the ICFR Residence owner and its tenants are discriminatory against people with medical disabilities.

The Notice of Violation should be vacated. The Board of Zoning Appeals should grant the appeal by the ICFR Residence owner by denying the City's unreasonable interpretation of the UDO that the Property is being operated as a "rehabilitation clinic."

Respectfully submitted,



James F. Bohrer  
Counsel for Indiana Center for Recovery



Cheyenne N. Riker  
Counsel for Indiana Center for recovery

# EXHIBIT A



**City of Bloomington**  
**Planning and Transportation Department**

June 5, 2018

ICFR Residence LLC  
 1004 W. 1<sup>st</sup> Street  
 Bloomington, IN 47403

Cheyenne Riker  
 409 W. Patterson Drive Suite 205  
 Bloomington, IN 47403

Tenant  
 909 W. 1<sup>st</sup> St.  
 Bloomington, IN 47401

**Re: Notice of Violation**  
 Illegal Land Use at 909 W. 1<sup>st</sup> St.

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with Unified Development Ordinance (UDO) Section 20.09.150 [Conditional Use] at 909 W. 1<sup>st</sup> St. Records show that you are the owner (or tenant) of this property.

On April 11, 2018, the Planning and Transportation Department received a building permit application packet for 909 W. 1<sup>st</sup> Street, listing the use as 'residential/treatment center'. Upon further investigation it was determined that the use 'rehabilitation clinic' is in use at both 1004 & 909 W. 1<sup>st</sup> St. These properties are located in a Medical (MD) zoning district. Rehabilitation clinic is a conditional use in this zoning district which requires a Conditional Use approval from the Board of Zoning Appeals. According to UDO Section 20.09.150 [Conditional Use];

(b) Prerequisites:

(1) No use classified as conditional may be conducted without first obtaining a Conditional Use approval under Chapter 20.09: Processes, Permits and Fees. No Conditional Use shall be conducted except in compliance with all applicable provisions of this Unified Development Ordinance and with any conditions upon such Conditional Use approval.

Through counsel, you were notified to file for the Conditional Use approval on or before May 24, 2018 in order to appear at the June 21, 2018 Board of Zoning Appeals hearing. Per a phone call with counsel from Clendening Johnson and Bohrer on May 24, 2018, you will not be filing the Conditional Use request.

In accordance with UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Each location is considered a distinct and separate violation. Subsequent

June 6, 2018

violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500).

**You have the following options to remedy the situation and avoid further enforcement:**

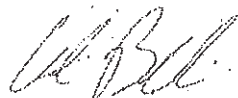
1. Cease use of the rehabilitation clinics at 1004 & 909 W. 1<sup>st</sup> St. by 6/19/18, **OR**;
2. A property owner or lessee of property within the City or its zoning jurisdiction may file for a Conditional Use approval through the Board of Zoning Appeals in accordance with the UDO Sections 20.09.030 [Applications; General] and Section 20.09.150 [Conditional Use]. The next available Board of Zoning Appeals hearing date is 7/19/18. The filing date for this meeting is 6/21/18. In order for your case to be considered at this meeting, a Pre-Application Meeting must be scheduled with a planner by 6/14/18.

If you dispute the City's assertion that these properties are operating as rehabilitation clinics without Conditional Use approval, you may file an appeal with the City's Board of Zoning Appeals. Said appeal shall be filed with the Planning and Transportation Department within five (5) days of your receipt of this Notice of Violation and shall conform to the requirements of UDO Section 20.09.350.

If a fine is issued, the final fine amount shall be paid to the City of Bloomington Planning and Transportation Department and directed to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47402. All fines may be contested in the Monroe County Circuit Courts. Failure to resolve this violation or to pay the final fine amount may result in further legal action.

Please contact the Planning and Transportation Department at [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov) or 812-349-3423 with any questions or concerns.

Sincerely,



Carl Buddin  
Zoning Compliance Planner

# EXHIBIT B

# COMMERCIAL BUILDING PERMIT APPLICATION

## MONROE COUNTY BUILDING DEPARTMENT

501 N. Morton St. Rm 220, Bloomington, Indiana 47404

Phone Number: (812) 349-2580 FAX: (812) 349-2967

<http://www.co.monroe.in.us/buildingdept.html>

Project Name Indiana Recovery Center Project Address 909 W 1st St  
 City Bloomington State IN Zip Code 47403 Parcel No. 53-08-05-100-146-000-009  
 Township \_\_\_\_\_ Section No. \_\_\_\_\_ Lot No. \_\_\_\_\_

Property Owners Name Kirill Vesselov Phone No. 561-616-9087  
 Property Owners Address 1004 W 1st St, Bloomington State IN Zip Code 47403

Applicants Name Josh Westerfield Phone No. 317-889-4225  
 Applicants Address 5250 Commerce Cir, Indy State IN Zip Code 46237

Proposed Work:  New Construction  Addition  Remodel  Other Sprinkler System  
 Type of use (ie. office) \_\_\_\_\_ Rental:  Yes  No Total number of units: 24  
 Total Square Footage of proposed structure/remodel/addition 0 sq. ft.  
 First Floor Area sq ft 6025 Second Floor Area sq ft 6025 Third Floor Area sq ft 6025  
 Basement Area sq ft - Other Floors Area sq ft -

State Construction Design Release number: 398575 Sprinkler System  Yes  No

Type of Construction Wood Construction Use group Residential / Treatment Center  
 Maximum number of employees per shift: 5 Building height in stories: 3 Height in feet: 30'  
 Maximum number of Public 68

General Contractor: BROWN SPRINKLER HVAC Contractor \_\_\_\_\_  
 Phone Number 317-889-4225 Phone Number \_\_\_\_\_  
 Plumbing Contractor \_\_\_\_\_ Electrical Contractor \_\_\_\_\_  
 License Number \_\_\_\_\_ Phone # \_\_\_\_\_ License Number \_\_\_\_\_ Phone # \_\_\_\_\_

Driveway Permit No. \_\_\_\_\_  State of Indiana  Monroe County  City of Bloomington  
 Wastewater system to be connected to:  City of Bloomington Sewer  Other sanitary system  Septic  
 Flood Plain:  Yes  No Sink Holes:  Yes  No Watershed:  Yes  No  
 Sign specification submitted with plans:  Yes  No

The applicant hereby certifies and agrees as follows: (1) I am authorized to make application. (2) I have read this application and attest that the information furnished is correct, including that contained in plans. (3) If there is any misrepresentation in this application, or associated documents, Monroe County may revoke any permit or Certificate of Occupancy issued based upon this misinformation. (4) I agree to comply with all Monroe County Ordinances, permit conditions and State statutes which regulate building construction, use, occupancy and site development. (5) I grant and will request Monroe County Officials to enter onto the property listed on this application for the purpose of inspecting the work permitted by this application and posting notices. (6) I will retain the Certificate of Occupancy in my records upon completion of the project. NOTE: Plans shall mean all site and construction plans and specifications, whether furnished prior to or subsequent to the application date. All plans furnished subsequent to application date constitute an amendment to the original application and must be specifically approved by the County with an appropriate endorsement and the signature of the approving official prior to plan implementation. The Permit is not valid, and work is not permitted until signed and issued by the agent of the Monroe County Building Department. As the Person eligible and responsible for obtaining a permit or permits as required in Section 430-7 of the Monroe County Building Code, and based upon information contained within these plans, I certify that these plans are identical to those released for construction by the Indiana Department of Fire and Building Services. I also understand that if it is determined that these plans are not identical, all permits obtained as a result of their submittal may be revoked as stated in Section 430-15 of the Monroe County Building Code.

Signature of Applicant: Josh Westerfield Date: 04-11-18  
 Email address joshwesterfield@brown (212318) Bldg/Reviews/Forms  
sprinkler.com



# EXHIBIT C

Rental Permit

<https://apps.bloomington.in.gov/rentpro/Permit/ID=2519>

City of Bloomington  
Housing and Neighborhood Development

A COPY OF THIS PERMIT AND THE RENTAL FILE ARE AVAILABLE FOR THE PUBLIC TO VIEW DURING  
REGULAR BUSINESS HOURS AT THE HOUSING AND NEIGHBORHOOD DEVELOPMENT OFFICE

RESIDENTIAL RENTAL OCCUPANCY PERMIT  
HOUSING AND NEIGHBORHOOD DEVELOPMENT DEPARTMENT  
*City of Bloomington, Indiana*

08/18/2015

Location: 909 W 1st ST

Zone: MD

Owner: Facilitech 738 S Morton Street Bloomington, IN 47403

Structures/Units: 1/24

Inspector: Matt Swinney

Structure	Units	Bedrooms per Unit	Max Occupant Load per Unit
1	12	2	5
1	10	1	5
1	2	Eff	5

The permit certifies compliance with the provision of Title 16 of the Bloomington Municipal Code, "Property Maintenance Code," and does not represent compliance with any other Title of the Bloomington Municipal Code or other relevant statutes or ordinances, particularly in regards to laws which regulate the zoning of this property. No change of use shall be made in this location without the prior approval of the applicable departments.

Date Inspected: 05/18/2015

Date Complied: 08/06/2015

PERMIT EXPIRES 08/06/2020

Housing Official

A copy of the permit must be displayed on the inside of the main entrance of the rental units

401 N. Morton Street  
Bloomington, IN 47404  
Fax: (812) 349-3582

City Hall

[www.bloomington.in.gov](http://www.bloomington.in.gov)

Rental Inspections: (812) 349-342  
Neighborhood Division: (812) 349-342  
Housing Division: (812) 349-342

# EXHIBIT D

# Bloomington proposes one-year moratorium on new drug rehab facilities

BY: Derrick Thomas

POSTED: 11:54 PM, Jun 1, 2018

UPDATED: 11:59 PM, Jun 1, 2018

Share Article

BLOOMINGTON, Ind. -- City leaders in Bloomington want to put a one-year moratorium on new drug rehabilitation facilities opening in their community.

There are currently 13 drug rehab facilities in Bloomington including Indiana Center for Recovery. It serves 40 patients who live across the way from a treatment center located on West 1st Street.

Neighbors have complained about the noise.

"People yelling obscenities among other things. Cars revving their engines at all hours. Things like that," said Isabel Piedmont-Smith, Bloomington City Council Vice President.

The co-founder of Indiana Center for Recovery says there might be a little noise, but that doesn't mean you should impose moratoriums.

"Indiana is ninth in the United States in drug overdose deaths. The notion of the idea that the city is going after things in this manner is scary," said Saul Kane, Indiana Center for Recovery Co-Founder.

Bloomington officials say they want to take a step back and evaluate what's going on.

"That's why we want to hit this pause button and make really good, well-informed decisions based on the best practices to avoid the pitfalls that other communities may have experienced," said Mary Catherine Carmichael, Bloomington Director of Public Engagement.

Melanie Kilbury says she needs a place to get clean.

"In my opinion, the way drug use is going up here in Bloomington, there needs to be more. Less would not help nothing," said Kilbury.

It costs about \$10,000 for inpatient treatment at the Indiana Center for Recovery. 60 percent of the patients have insurance, ten percent pay cash, and 30 percent are on scholarship.

Christopher Abert from the Indiana Recovery Alliance issued this statement when he learned of the city's plan:

"We are in the midst of an opioid sydemic, and misguided policies such as this ordinance will ultimately deny vital services to those who are at most risk."

Abert was contacted late Friday afternoon by city leaders and will meet with them to hash out some of the problems with the proposal.

The ordinance will be presented to the Bloomington Plan Commission on June 11 and to the Bloomington City Council on June 13.

**MORE TOP STORIES** | Teacher, student wounded when another student opened fire at Noblesville middle school | Science teacher Jason Seaman being called a hero for stopping school shooter | Woman can't get DirecTV to cancel service | Four Indiana dog breeders on list of 'Horrible Hundred' puppy mills | CALL 6: Tainted diesel from Kroger gas station in Lebanon damages multiple vehicles

### Top Trending Videos

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## LOCAL NEWS

### **3 accused of illegally purchasing firearms**

Three people are facing federal charges for illegally purchasing the weapons used to kill a Boone County deputy and a Terre Haute police...

### **Student in transgender name policy goes public**

A Brownsburg teacher came forward last week claiming administrators forced him to resign for refusing to use a transgender student's...

### **More rain & t'storms ahead**

Isolated strong to severe storms tonight. Heavy rain potential.

### **Protesters arrested outside home of HHS chief**

More than two dozen protesters were arrested outside the home of Health and Human Services Secretary Alex Azar on Sunday.

### **TIMELINE: Storm chances pick up overnight**

Storm chances increase throughout the day on Sunday across central Indiana.

## MONROE COUNTY

### **Bloomington drops proposed drug rehab moratorium**

City leaders in Bloomington dropped a proposal Friday to put a one-year moratorium on new drug rehabilitation facilities opening in...

### **Long-delayed I-69 project is nearing an end**

The long-delayed I 69 project between Martinsville and Bloomington should be complete by the end of August, according to the Indiana...

### **Police called on Bloomington BLM leader**

An employee with Bloomington Transit called the police on a man and accused him of stealing a bus pass shortly after he bought a ticket.

### **Lauren Spierer's family still hoping for closure**

Seven years after Lauren Spierer disappeared her family is still hoping for that one piece of information that will bring...

### **Bloomington proposes moratorium on drug rehabs**

City leaders in Bloomington want to put a one-year moratorium on new drug rehabilitation facilities opening in their community.

### **Man's body recovered from Lake Monroe**

After a two-day search crews located the body of a Bloomington man who went missing while swimming at Monroe Reservoir on Friday.



Jacqueline Scanlan &lt;scanlanj@bloomington.in.gov&gt;

---

**Fwd: [Planning] Fwd: Drug Rehab Center**

---

**Hannah Duncan** <duncanh@bloomington.in.gov>  
To: Jacqueline Scanlan <scanlanj@bloomington.in.gov>

Thu, Aug 16, 2018 at 1:20 PM

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

From: **Mark Jackman** <mrkjackman31@gmail.com>  
Date: Thu, Aug 16, 2018 at 10:33 AM  
Subject: [Planning] Fwd: Drug Rehab Center  
To: [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov)

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

From: **THE PRUETTS** <cjpruett2225@msn.com>  
Date: Tue, Jul 17, 2018 at 11:46 PM  
Subject: Drug Rehab Center  
To: "mrkjackman31@gmail.com" <mrkjackman31@gmail.com>

To Whom It May Concern?  
RE: Drug Rehab Center

My sister and I own the house at 1005 West First St. Bloomington, IN. I have been advised there is now a drug rehab center one door away and across the street.

The person who rents our house (Mr. Mark Jackman) says there is a lot of noise coming from this Center in the form of loud music, car engines being revved, and a lot of yelling, and people going back and forth the street from one center to another.

This has always been a quiet area where families could enjoy sitting on their porches and seniors could walk without fear. My sister and I were both raised in this house and neighborhood.

I spoke to Judith Sharp, the assessor, in May about the amount our real estate taxes had raised. She said this was a very desirable area and the amount our taxes had risen was indicative of this desirability. Now that this drug center has been placed here, I don't think a young family or a senior person would find it a very good place to live. I don't think they would feel safe here.

I feel this Center will bring down property values and rental prices.

Thank You,



Carol Pruett  
10044 S. Ocean Dr. #304  
Jensen Beach, FL 34957  
772-229-5261  
772-333-5150 (cell)

To whom it may concern:

We live on West First Street below the Indiana Recovery Center. Why the tenants of Stonehenge Apts were put out for this we don't know. Yes, people need help, however don't put this situation in our neighborhood. We were not even advised, about this coming into our neighborhood, no meeting, no letter, not anything.

These people are loud, and obnoxious. They were setting off fireworks before the 4<sup>th</sup> keeping people awake. We also have a 90+ year old neighbor that should not be subjected to this type of behavior. Please return Stonehenge apts. back to the quiet apt complex that it was built to be.

Perry D Glascoe  
Perry D Glascoe

Sarah E. Young  
Sarah E. Young

We, the undersigned, either live or own property in the vicinity of the block of 1000 West First Street in Bloomington, Indiana. We have also experienced problems with the patients or Staff of the Indiana Center for Recovery. These problems include loud vehicles or loud vehicle stereos arriving at or leaving the Center. They also include disruptive behaviors, shouting, vulgar language, and inattentiveness to traffic as patients cross First Street. These behaviors have deteriorated the peacefulness of the neighborhood and we wish them to cease.

Printed Name	Signature	Street
Cristiaan Braderich	Cristiaan Braderich	West 1st St.
SARAH Young	sarah young	west 1st st.
Perry Glascoe	Perry Glascoe	West 1 <sup>st</sup> St.
Morgan Sims	Morgan Sims	S Walker St.
Bandi Sims	Bandi Sims	S Walker St
Alysha McPhearson	Alysha McPhearson	S Walker St
Nikki Albright	<del>Nikki Albright</del>	West 1st St.
Jesse Sowers	Jesse Sowers	W 1 <sup>st</sup> St.
Ibrahim El-Awady	Ibrahim El-Awady	W. Wylie St.
Brad Doyle	Brad Doyle	1003 W 1 <sup>st</sup>
Stacy Doyle	Stacy Doyle	1003 W 1 <sup>st</sup>
Jerrek Johnson	Jerrek Johnson	827 W 1 <sup>st</sup>
Joe Tolbant	Joe Tolbant	827 W 1 <sup>st</sup>
William Kinser	William Kinser	750 S WALKER 120 <sup>th</sup>
ANN KINSER	Ann Kinser	750 S. WALKER 126 <sup>th</sup>
Dave Ferguson	Dave Ferguson	750 S. Walker
Shelley Durr	Shelley Durr	750 S. Walker



**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 1004 W. 1<sup>st</sup> Street**

**CASE #: AA-20-18**  
**DATE: August 23, 2018**

**PETITIONER:** Indiana Center for Recovery, LLC  
 1004 W. 1<sup>st</sup> Street, Bloomington

**COUNSEL:** Clendening, Johnson, & Bohrer, PC  
 409 W. Patterson Drive, Suite 205 Bloomington

**REQUEST:** The petitioner is requesting an administrative appeal of staff's decision to issue a Notice of Violation of non-compliance with Unified Development Ordinance Section 20.02.550.

**REPORT:** This appeal request is the result of issuance of a Notice of Violation related to a non-permitted land use enforcement action against the property at 1004 W. 1<sup>st</sup> Street. The property is located on the north side of 1<sup>st</sup> Street between Walker and Wylie Streets. The property is zoned Medical (MD). All surrounding properties to the east are also zoned MD. The violation is a result of the business at this location operating as a 'Rehabilitation Clinic' as defined in the Unified Development Ordinance (UDO) without a Conditional Use approval.

"Rehabilitation Clinic" is defined in the UDO as:

"A facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction."

'Rehabilitation Clinic' is a Conditional Use in the MD zoning district. The building at 1004 W. 1<sup>st</sup> Street previously operated as a "Medical Clinic". The building is currently used as a "Clinical Facility" operating in conjunction with ICFR's location at 909 W. 1<sup>st</sup> St. to comprise what Indiana Center for Recovery calls a 'Family-Owned Addiction Rehab Center' on its website. A building permit application was received by the Planning and Transportation Department on April 11, 2018 for 909 W. 1<sup>st</sup> Street with the use for the site listed as 'rehabilitation/treatment center'. 1004 W. 1<sup>st</sup> Street was listed as the property owner address on that application. Department staff spoke with the applicant indicating that the listed use was not a permitted use in the district, therefore the Certificate of Zoning Compliance related to the building permit application could not be issued until a Conditional Use was approved.

The petitioner has requested an appeal of the Notice of Violation issued June 6, 2018 that stipulated that the property requires a Conditional Use approval from the Board of Zoning Appeals to continue its use on the site. The petitioner makes four claims.

First, Petitioner claims that ICFR is not a rehabilitation clinic because there is no inpatient treatment at the 1004 W. 1<sup>st</sup> St. address. Petitioner is reading the definition of Rehabilitation Clinic too narrowly. This definition covers any kind of treatment for alcohol or drug use addiction, including temporary treatment, whether inpatient or outpatient, and long-term inpatient treatment. Petitioner cannot focus on one element of the definition and ignore another equally important element, i.e. the portion including the essence of the type of treatment being provided.

While staff agrees with the petitioner's statement that ICFR does not provide long-term inpatient treatment at the 1004 W. 1st St. address, based on information provided by ICFR, it is clear that ICFR primarily provides temporary treatment of addiction for its patients at this location. The petitioner argues, however, that ICFR provides services solely on an outpatient basis and that outpatient treatment is not temporary treatment. In fact, Petitioner argues that "temporary" means "inpatient." In making this argument, the petitioner refers to a few other sections of the UDO where the word temporary describes a timeframe longer than one (1) day, and claims that this means temporary in the definition of Rehabilitation Clinic therefore must mean treatment of longer than one day, or inpatient treatment. The petitioner's argument is not compelling. Where words are undefined, they should be afforded their plain meaning. By any standard dictionary definition, the word "temporary" does not have an inherent meaning of either "inpatient stay" or a period of longer than 24 hours. It is important to note that the sections cited by Petitioner specify "temporary" time periods that are set by the City code precisely because the City *wanted* to limit the length of time during which a certain activity was permissible. That is not the case with addiction treatment. Had the City Council intended to specify a minimum time period applicable to the word temporary in this particular context, it could have done so when it codified the UDO. Council did not, however, as a course of addiction treatment is not so easily delimited, and indeed should not be.

Petitioner's second claim is that ICFR's location at 1004 W. 1<sup>st</sup> St. is not a rehabilitation clinic because it is simply an outpatient, medical clinic that provides treatment for opioid dependency among other general holistic medical treatments. Petitioner describes this location as an addiction service provider certified to provide addiction services and states that ICFR's treatment programs include group and individual therapy, case management, vocational assistance, medication management (if applicable), medication assisted therapies (limited to Vivitrol and Naltrexone), medical evaluation, and nursing services. By adding a list of ancillary services that support clients in their efforts to overcome addiction, Petitioner is clearly attempting to characterize addiction treatment services as simply medical services.

ICFR is not merely a medical clinic. A "Medical Clinic" is defined in the UDO as: "A facility for examining and treating patients with medical problems on an outpatient basis, providing medical services, usually by appointment only, that generally require a stay of less than twenty-four (24) hours."

A "Medical Clinic" use is different than what ICFR provides to its patients at the 1004 W. 1<sup>st</sup> St. location, namely temporary treatment of alcohol or drug use addiction. ICFR's Website confirms staff's findings as well by advertising the facility as a "Family-Owned Addiction Rehab Center." (<https://treatmentindiana.com/about-us/>)

## FAMILY-OWNED ADDICTION REHAB CENTER

### True Commitment, From Treatment To Aftercare

As an independent and family-owned addiction treatment center, we have the freedom to ensure that our clients' interests always come first. Our spacious grounds allow us to offer a genuine residential experience, where guests live and receive addiction treatment in comfortable, peaceful surroundings 24 hours a day. This is the setting where our guests receive highly-customized, relapse-battling recovery plans to help them develop recovery not only today but long after they return home to their lives.

It's possible to regain control over your life, and through effective treatment you can gain the tools needed to live a happy lifestyle in recovery. For more information on the different treatment we offer at the [Indiana Center for Recovery](#), contact our treatment experts today. We can truly help you recover!

The petitioner also argues that the BZA should not consider any evidence in applications submitted by the Brown Sprinkler Corporation when making a finding as to whether or not ICFR requires a conditional use approval. Staff trusts the BZA to consider and weigh evidence appropriately—taking into account the identity of the speaker and/or author and affording evidence its appropriate importance.

Lastly, ICFR claims the City's action constitutes discrimination in violation of the Americans with Disabilities Act. The City responds that the BZA's role in this proceeding is not to address legal questions related to issues of federal discrimination law.

Therefore, based on the treatment ICFR provides to its patients, based on its own statements, and based on the information available on ICFR's Website, ICFR provides temporary treatment for its patients and is a rehabilitation clinic.

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**RECOMMENDATION:** Based on the findings in this report, staff recommends denial of Case # AA-20-18, adopting staff's findings, and affirming the staff's determination.



**City of Bloomington**  
**Planning and Transportation Department**

June 5, 2018

Kelly Caitilin  
3161 S. Highpoint Ln.  
Bloomington, IN 47401

Tenant  
1004 W. 1<sup>st</sup> St.  
Bloomington, IN 47401

Cheyenne Riker  
409 W. Patterson Drive Suite 205  
Bloomington, IN 47403

**Re: Notice of Violation**

Illegal Land Use at 1004 W. 1<sup>st</sup> St.

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with Unified Development Ordinance (UDO) Section 20.09.150 [Conditional Use] at 1004 W. 1<sup>st</sup> St. Records show that you are the owner (or tenant) of this property.

On April 11, 2018, the Planning and Transportation Department received a building permit application packet for 909 W. 1<sup>st</sup> Street, listing the use as 'residential/treatment center'. The property at 1004 W. 1<sup>st</sup> Street was listed as 'Property Owner's Address' on the application. Upon further investigation it was determined that the use 'rehabilitation clinic' is in use at both 1004 & 909 W. 1<sup>st</sup> St. These properties are located in a Medical (MD) zoning district. Rehabilitation clinic is a conditional use in this zoning district which requires a Conditional Use approval from the Board of Zoning Appeals. According to UDO Section 20.09.150 [Conditional Use];

(b) Prerequisites:

- (1) No use classified as conditional may be conducted without first obtaining a Conditional Use approval under Chapter 20.09: Processes, Permits and Fees. No Conditional Use shall be conducted except in compliance with all applicable provisions of this Unified Development Ordinance and with any conditions upon such Conditional Use approval.

Through counsel, you were notified to file for the Conditional Use approval on or before May 24, 2018 in order to appear at the June 21, 2018 Board of Zoning Appeals hearing. Per a phone call with counsel from Clendening Johnson and Bohrer on May 24, 2018, you will not be filing the Conditional Use request.

In accordance with UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Each location is considered a distinct and separate violation. Subsequent



~~June 6, 2018~~ June 5, 2018

violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500).

**You have the following options to remedy the situation and avoid further enforcement:**

1. Cease use of the rehabilitation clinics at 1004 & 909 W. 1<sup>st</sup> St. by 6/19/18, **OR**;
2. A property owner or lessee of property within the City or its zoning jurisdiction may file for a Conditional Use approval through the Board of Zoning Appeals in accordance with the UDO Sections 20.09.030 [Applications; General] and Section 20.09.150 [Conditional Use]. The next available Board of Zoning Appeals hearing date is 7/19/18. The filing date for this meeting is 6/21/18. In order for your case to be considered at this meeting, a Pre-Application Meeting must be scheduled with a planner by 6/14/18.

If you dispute the City's assertion that these properties are operating as rehabilitation clinics without Conditional Use approval, you may file an appeal with the City's Board of Zoning Appeals. Said appeal shall be filed with the Planning and Transportation Department within five (5) days of your receipt of this Notice of Violation and shall conform to the requirements of UDO Section 20.09.350.

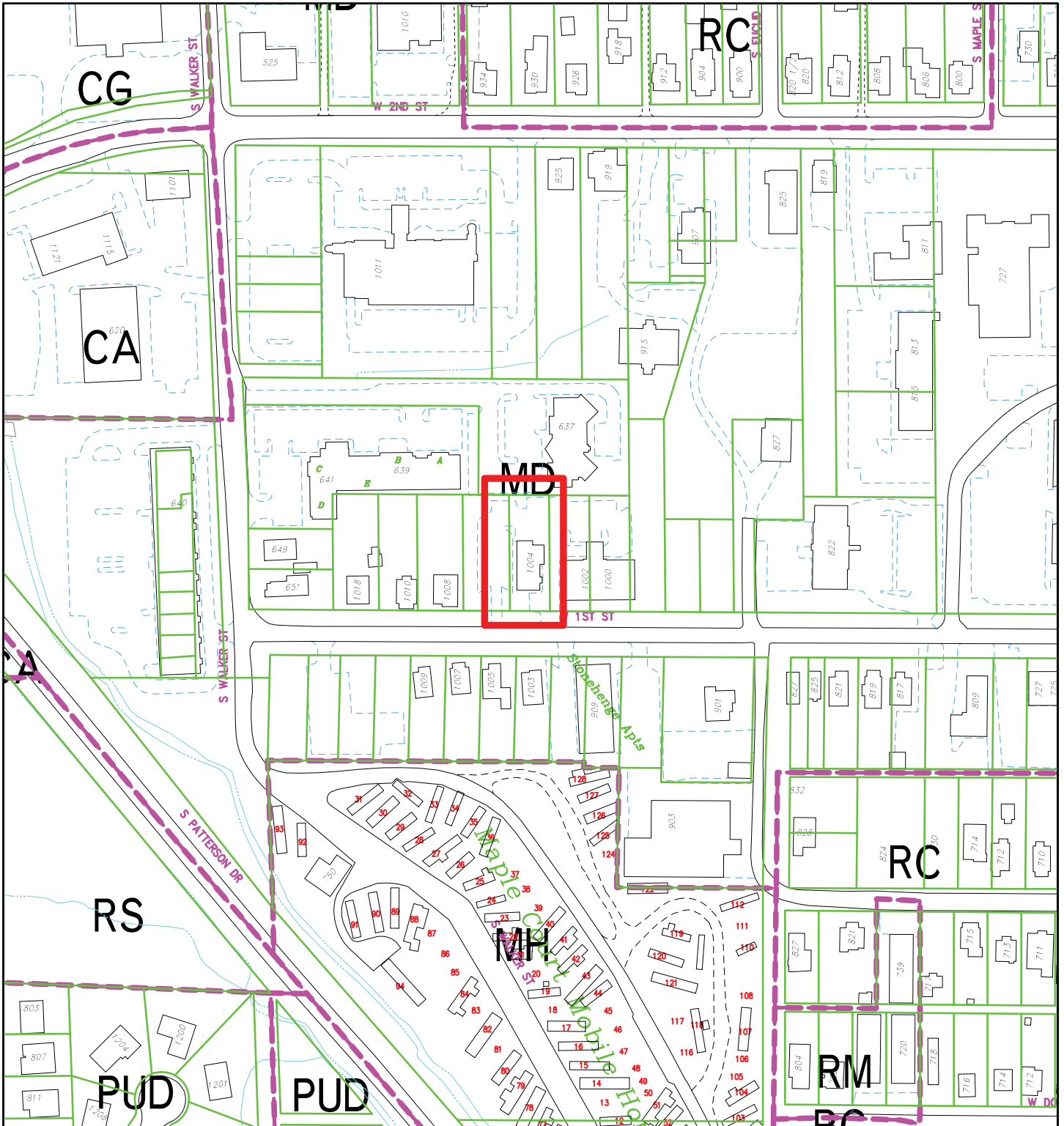
If a fine is issued, the final fine amount shall be paid to the City of Bloomington Planning and Transportation Department and directed to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47402. All fines may be contested in the Monroe County Circuit Courts. Failure to resolve this violation or to pay the final fine amount may result in further legal action.

Please contact the Planning and Transportation Department at [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov) or 812-349-3423 with any questions or concerns.

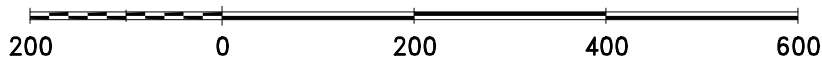
Sincerely,



Carl Buddin  
Zoning Compliance Planner



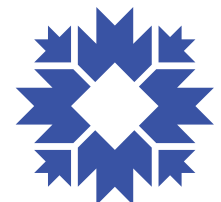
By: scanlanj  
16 Aug 18



For reference only; map information NOT warranted.



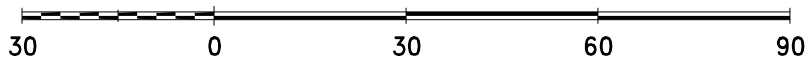
City of Bloomington  
Planning & Transportation



Scale: 1" = 200'



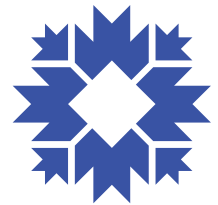
By: scanlanj  
16 Aug 18



For reference only; map information NOT warranted.



City of Bloomington  
Planning & Transportation



Scale: 1" = 30'



CLENDENING  
JOHNSON  
& BOHRER, P.C.

**James F. Bohrer**  
*Attorney at Law*

[jfbohrer@lawcjb.com](mailto:jfbohrer@lawcjb.com)

**Cheyenne N. Riker**  
*Attorney at Law*

[criker@lawcjb.com](mailto:criker@lawcjb.com)

June 11, 2018

City of Bloomington  
Board of Zoning Appeals  
401 N. Morton St.  
Bloomington, Indiana 47404

*Sent via E-Mail: [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov)*

**RE: Appeal of Notice of Violation for 1004 W. 1<sup>st</sup> St., Bloomington, Indiana**

Dear Board Members,

Clendening Johnson & Bohrer, P.C. represents Indiana Center for Recovery, LLC (“ICFR”), the tenant of the real property located at 1004 W. 1<sup>st</sup> Street (“the 1004 Property”). This appeal is made on behalf of ICFR pursuant to Bloomington’s Unified Development Ordinance (“UDO”) Section 20.10.060, which permits appeals of Notices of Violation.

On or about June 5, 2018, the City of Bloomington (“the City”) delivered to the Bloomington Herald-Times newspaper a Notice of Violation for the Property. ICFR received the Notice of Violation from the City on June 8, 2018 by regular mail, a true and exact copy of which is attached hereto as “Exhibit A.”

The City states in the Notice of Violation that an application delivered to the City for property located at 909 W. 1<sup>st</sup> Street (“the 909 Property”)(collectively, the 1004 Property and the 909 Property are hereinafter referred to as “the Properties”) stated that the Properties were being utilized as a “rehabilitation/treatment center.” A true and exact copy of the application is attached hereto as “Exhibit B.” The application was filed by Joshua Westerfield of Brown Sprinkler Corporation.

On this basis, the City erroneously determined that the Properties were being operated as a “rehabilitation clinic” as defined in the UDO and the City issued a Notice of Violation to ICFR.

### **Summary of Appeal**

ICFR is an outpatient medical clinic with a demonstrated record of providing quality outpatient medical treatment services to persons suffering from medical conditions related to addiction. ICFR does not operate as a temporary or long-term inpatient treatment facility, but operates as a medical clinic as that term is defined in the UDO. The City's position that ICFR is operating as a "rehabilitation clinic" is unsupported by substantial evidence. The City's issuance of the Notice of Violation is arbitrary and capricious and should be overturned.

### **Indiana Center for Recovery Operations**

ICFR operates at 1004 W. First St., Bloomington. It is an addiction service provider certified to provide addiction services by the Indiana Division of Mental Health and Addiction as described on the attached "Exhibit C." As part of its certification, ICFR obtained accreditation from The Joint Commission, whose "standards are the basis of an objective evaluation process that can help health care organizations measure, assess and improve performance."<sup>1</sup> The Joint Commission accredits and certifies nearly 21,000 health care organizations and programs in the United States. Joint Commission accreditation and certification is recognized nationwide as a symbol of quality that reflects an organization's commitment to meeting certain performance standards.<sup>2</sup>

ICFR's treatment programs include group and individual therapy, case management, vocational assistance, medication management (if applicable), medication assisted therapies (limited to Vivitrol and Naltrexone, neither of which is a controlled substance), medical evaluation, and nursing services. ICFR does not provide temporary or long-term inpatient treatment of its patients.

ICFR employs a highly-credentialed staff, including two (2) licensed clinical social workers, a licensed mental health counselor, a medical doctor (medical director), two (2) registered nurses, one psychiatric nurse practitioner, and sixteen (16) behavioral health technicians (one of whom is OSHA certified).

As part of treatment, ICFR's patients undergo Cognitive Behavioral Therapy and CBT Relapse Prevention, art and creative therapies, eye-movement desensitization and reprocessing, trauma therapy, matrix model<sup>3</sup>, integrated dual-diagnosis therapy, acceptance and commitment therapy, behavioral modification and contingency management, dialectical behavioral therapy, and family therapy. Patients also take

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<sup>1</sup> See, The Joint Commission, [https://www.jointcommission.org/facts\\_about\\_joint\\_commission\\_accreditation\\_standards/](https://www.jointcommission.org/facts_about_joint_commission_accreditation_standards/) (date visited, June 9, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> Under the matrix model, a method of addiction treatment that has seen widespread success since the 1980s, utilizes aspects of many different therapeutic styles and psychological orientations, an intensive outpatient program that is time-limited and highly structured.

Board of Zoning Appeals

June 11, 2018

Page 3

advantage of health and wellness services as part of the matrix model, which includes yoga, life-skills training, service-based learning, and 12-step program participation<sup>4</sup>.

The wholistic level of treatment by ICFR also includes patient participation in weekly community service hours. Since opening in 2017, ICFR's patients have performed over 500 hours of public service in Bloomington, including volunteer service at Habitat for Humanity, The Warehouse, Opportunity House, IU Health Bloomington Hospital, and Indiana University.

Since June 2017, Two Hundred Thirty-Four (234) patients have been treated at ICFR. Sixty-Seven Percent (67%) of patients complete treatment with full-time employment in Monroe County. During the same timeframe, ICFR has successfully aided sixty-two (62) patients in finding gainful employment.

The manner in which ICFR conducts its operations at the 1004 Property is as a medical clinic, as that term is defined in the UDO. It does not perform inpatient procedures, and none of ICFR's patients stay at the 1004 Property overnight or on an inpatient basis.

#### **Indiana Center for Recovery Operates as a Permitted Use in its Current Zone**

The 1004 Property is located within the Medical District, which contains a number of permitted uses, and a number of conditional uses. The City's position is that because ICFR offers quality treatment services on an outpatient basis, it must be a "rehabilitation center" as defined in the UDO.

The City's position misstates the UDO as written, and flies in the face of the City's prior claims that it has an interest in alleviating the negative effects of opioid abuse. ICFR's use of the 1004 Property is limited to outpatient treatment, not temporary or long-term inpatient treatment.

The City claims that the definition of "rehabilitation clinic" also applies to "outpatient" facilities. Rehabilitation clinic is defined in the UDO as follows:

A facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction.

The City's argument fails because ICFR does not offer temporary inpatient treatment, nor does it offer long-term inpatient treatment, of victims of alcohol or drug use addiction. The City's previously-cited reason for determining that ICFR is operating as a rehabilitation clinic is that the term "temporary" actually includes "outpatient"

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<sup>4</sup> A study conducted by AA in 2014 showed that 27 percent of the more than 6,000 who participated in the study were sober for less than a year. In addition, 24 percent of the participants were sober 1-5 years while 13 percent were sober 5-10 years. Fourteen percent of the participants were sober 10-20 years, and 22 percent were sober for 20 or more years. See, American Addiction Centers, <https://americanaddictioncenters.org/rehab-guide/12-step/whats-the-success-rate-of-aa/> (date visited, June 9, 2018).

procedures. However, the City's interpretation of the UDO flies in the face of the plain meaning of the language used in the UDO and the construction of other sections of the UDO which make specific reference to "outpatient" operations and specify "temporary" periods of time to be more than one (1) day.

Under Indiana law, ordinances are to be given their plain meaning, while considering the ordinance as a whole. *Brant v. City of Indianapolis*, 975 N.E.2d 376 (Ind. Ct. App. 2012). Ambiguous Ordinances are interpreted according to the same rules of construction that apply to ambiguous statutes. *Id.* at 379.

The City's interpretation of the UDO disregards the plain meaning of the definition of "rehabilitation clinic," as well as the remaining sections of the UDO regarding outpatient facilities. The City also disregards the use of the term "temporary" throughout the UDO to mean periods of longer than one (1) day. The Board should grant this appeal and deny the City's attempt to strain the clear language used in the UDO in order to characterize ICFR's operation as a "rehabilitation clinic."

#### **ICFR Renders Services Solely on an Outpatient Basis.**

The term "outpatient" is mentioned seven (7) times in other sections of the UDO. The City's contention, that "temporary" inpatient described in the UDO means an "outpatient" facility, is fundamentally flawed. If the City, in drafting the UDO, had intended the word "temporary" inpatient to mean an "outpatient," the City would have used "outpatient."

In this case, the City does not interpret the UDO as a whole, and the City disregard's the clear intent set forth in the UDO that the term "temporary" and the term "long-term" both relate to the term "inpatient." This is the only reasonable interpretation, otherwise the terms "inpatient" and "outpatient" would not be given their ordinary and plain meanings.

To suggest that the term "temporary" does not relate to the term "inpatient" effectively destroys the disjunctive aspect of the definition. The definition is written as a disjunctive to ensure that the term "temporary" relates to "inpatient" the same as the term "alcohol" relates to the term "use addiction" at the end of the definition. In effect, the City's reading of the ordinance is as follows:

A facility used for the purposes of outpatient or long-term inpatient treatment of alcohol.

A facility used for the purposes of outpatient or long-term inpatient treatment of drug use addiction.

The City's reading of the ordinance is nonsensical. If the adjective preceding a disjunction does not relate to its noun, then it stands alone without a noun to describe. In this case, the City claims that the adjective, "temporary," relates only to the noun "treatment," and not "inpatient treatment." Effectively, then, the City disregards the UDO's use of the term "outpatient" in other definitions. The City takes the term "temporary" to be synonymous

Board of Zoning Appeals

June 11, 2018

Page 5

with the term “outpatient,” and this is inconsistent with the UDO’s use of the term “outpatient” in other regards.

Instead, the definition should be given its plain meaning, in light of the UDO as a whole. The UDO as a whole requires that if a person is operating a temporary inpatient facility that renders treatment of alcohol abuse addiction or drug abuse addiction, then they must be operating under a conditional use variance within the Medical District. ICFR does not issue temporary or long-term inpatient treatment. It does, however, issue the outpatient treatment services described above.

The term “temporary” is not defined in the UDO, but is used in other sections of the UDO. Each instance in which it is used in relation to a timeframe, that timeframe is always more than one (1) day. Each of the following represents an instance in which the term “temporary” appears in the UDO with a reference to a time frame, and in each instance the timeframe is longer than one (1) day:

- UDO 20.05.080 SI-02 [Sign Standards; Residential](3 periods of 30 days);
- UDO 20.05.081 SI-03 [Sign Standards Nonresidential](3 periods of 30 days);
- UDO 20.05.082 SI-04 [Sign Standards; Commercial Limited](3 periods of 30 days);
- UDO 20.05.083 SI-05 [Sign Standards; Commercial Downtown](3 periods of 30 days);
- UDO 20.05.107 TU-01[Temporary Uses and Structures; General](90 day max);
- UDO 20.05.108(a)(2)-(e) TU-02 [Temporary Uses and Structures; Commercial, Industrial, Business Park and Institutional](a “Temporary Use Permit” shall be valid for a maximum of thirty (30) days; or in the case the seasonal sale of farm produce, a maximum of one hundred eighty (180) days; or in the case of book buybacks, two (2) periods of seven (7) consecutive days; or in the case of a temporary retail permit, a maximum of forty-five (45) days; or other retail or wholesale activities, a maximum of fifteen (15) consecutive days).

There is no instance in the UDO in which the term “temporary” is used to describe a period of twenty-four (24) hours or less.

It is clear that when the UDO says “temporary,” the term means a period of longer than a day. Accordingly, the only way to read the definition of “rehabilitation clinic” in a manner that is consistent with the rest of the UDO is to interpret it to mean that “temporary” applies to “inpatient.” We believe there is no reasonable basis to sustain the City’s interpretation of the UDO, however, if the BZA should find that the City’s argument is persuasive, the UDO fails to define the term “temporary” which would make the application of the UDO to ICFR unconstitutionally vague.

Because the UDO requires inpatient services to be rendered at a given facility in order for it to qualify as a “rehabilitation center,” the Property cannot be a “rehabilitation center.” Accordingly, the Board should grant this Appeal and deny the City’s characterization of the Property as a “rehabilitation center.”



**ICFR Operates under the Definition of Medical Clinic, a Permitted Use  
within the Medical District.**

Under Section 20.02.540 of the UDO, medical clinic is a permitted use, which does not require any permitting or applications, which the City insists are required. The definition of "Medical Clinic" is as follows:

A facility for examining and treating patients with medical problems on an outpatient basis, providing medical services, usually by appointment only, that generally require a stay of less than twenty-four (24) hours.

ICFR's use of the 1004 Property is consistent with that of a medical clinic.

ICFR examines and treats patients with medical problems on an outpatient basis. The medical problems sought to be treated at the 1004 Property are addiction related medical problems. Under the Americans with Disabilities Act, persons with drug and alcohol addiction are considered "disabled," and federal courts frequently refer to drug and alcohol addiction treatment as "medical treatment." *See, e.g. Schmidt v. Safeway, Inc.*, 864 F.Supp. 991, 996-997 (D. Oregon 1994)(referring to an employee's treatment of alcohol addiction as "medical treatment"); *Doe v. Goord*, 2005 WL 3116413 (S.D.N.Y. 2005)(pointing out that "[d]rug addiction therapy can fall in the category of necessary medical treatment..."); *U.S. v. Billiot*, 2003 WL 22271225 (U.S.A.F. Ct. of Crim. App. 2003)(referring to "drug addiction therapy" as falling within the category of "necessary medical treatment").

ICFR does not treat any patients at the Property for more than twenty-four (24) hours, nor does it hold any patient for longer than twenty-four (24) hours. ICFR's treatments are a provision of medical services on an outpatient basis which are a permitted use.

The City's flawed position is that ICFR is operating as a "rehabilitation clinic," but the *actual* use of the 1004 Property is as a medical clinic. The Board should grant this appeal and deny the City's assertion that ICFR is operating as a "rehabilitation clinic" as defined in the UDO.

**ICFR Did Not Apply for the Building Permit Referenced by the City**

In an effort to improve the safety of the 909 Property, Brown Sprinkler Corporation ("Brown") filed an application with an erroneous "Use group" description. Mr. Westerfield is not an agent of ICFR, did not have the authority, either apparent, actual, or implied, to refer to any property as a "residential/treatment center."

Further, the application was made by Brown for the 909 Property, which is not owned by ICFR. The 909 Property is owned by ICFR Residence, LLC, a separate and distinct legal entity. The owner of the 909 Property was issued a separate Notice of Violation for the same alleged activity. Accordingly, neither the existence, nor the filing of the application

Board of Zoning Appeals  
June 11, 2018  
Page 7

shows any evidence whatsoever that ICFR operates a “rehabilitation clinic” as defined in the UDO.

**The City’s Action Constitutes Discrimination in Violation of the Americans with Disabilities Act.**

The City’s efforts are a wrong-headed attempt to reduce the number of addicts in the City of Bloomington. Facts very similar to this case occurred in 2002, when the City of Covington, Kentucky denied a zoning permit to a methadone clinic. In *MX Group, Inc. v. City of Covington*, the Court of Appeals addressed a situation where neighbors of a property owner who wished to open a methadone clinic had complained that they were concerned about the effects of a nearby methadone clinic. 293 F.3d 326 (6<sup>th</sup> Cir. 2002). The court found that the zoning code at issue in that case was facially discriminatory against victims of addiction because it included any “place whose primary function is to care for the chemically dependent.” *Id.* at 330.

On or about June 1, 2018, Isabelle Piedmont-Smith, a member of the Bloomington City Council, stated to RTV 6, an Indianapolis news station, that the neighbors surrounding the Properties have cited “[p]eople yelling obscenities among other things. Cars revving their engines at all hours. Things like that.” Attached hereto as “Exhibit D” is a true and exact copy of the article in which Ms. Piedmont Smith, the Vice President of the Bloomington City Council, is quoted as having made the statements about the disabled patients of ICFR.

The City’s representations are a clear indication that it is not concerned with the use of the Properties, as much as it is concerned that the victims of addiction at the 909 Property are acting in a manner that it finds undesirable. As stated in *City of Covington*, the City of Bloomington cannot discriminate against ICFR due to its “prospective clients” disabilities. In this case, the City is doing just that – it is discriminating against ICFR on the basis that its proposed patients are disabled as defined under the ADA.

**Conclusion**

ICFR operates a Medical Clinic on 1004 W. First St., Bloomington, Indiana. ICFR does not operate a “rehabilitation clinic.” The City’s efforts are discriminatory against people with the medical disability of drug addiction.

The Board should grant the appeal and deny the City’s false assertion that the Property is being operated as a “rehabilitation clinic.”

Respectfully submitted,

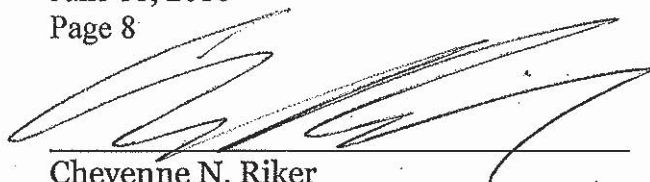


James E. Bohrer  
Counsel for Indiana Center for Recovery

Board of Zoning Appeals

June 11, 2018

Page 8

A handwritten signature in black ink, appearing to read 'Cheyenne N. Riker', is written over a horizontal line. The signature is stylized and cursive.

Cheyenne N. Riker  
Counsel for Indiana Center for Recovery

Cc: Mike Rouker, Bloomington City Attorney

# EXHIBIT A



**City of Bloomington**  
**Planning and Transportation Department**

June 5, 2018

Kelly Caitilin  
 3161 S. Highpoint Ln.  
 Bloomington, IN 47401

Tenant  
 1004 W. 1<sup>st</sup> St.  
 Bloomington, IN 47401

Cheyenne Riker  
 409 W. Patterson Drive Suite 205  
 Bloomington, IN 47403

**Re: Notice of Violation**  
 Illegal Land Use at 1004 W. 1<sup>st</sup> St.

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with Unified Development Ordinance (UDO) Section 20.09.150 [Conditional Use] at 1004 W. 1<sup>st</sup> St. Records show that you are the owner (or tenant) of this property.

On April 11, 2018, the Planning and Transportation Department received a building permit application packet for 909 W. 1<sup>st</sup> Street, listing the use as 'residential/treatment center'. The property at 1004 W. 1<sup>st</sup> Street was listed as 'Property Owner's Address' on the application. Upon further investigation it was determined that the use 'rehabilitation clinic' is in use at both 1004 & 909 W. 1<sup>st</sup> St. These properties are located in a Medical (MD) zoning district. Rehabilitation clinic is a conditional use in this zoning district which requires a Conditional Use approval from the Board of Zoning Appeals. According to UDO Section 20.09.150 [Conditional Use];

(b) Prerequisites:

(1) No use classified as conditional may be conducted without first obtaining a Conditional Use approval under Chapter 20.09: Processes, Permits and Fees. No Conditional Use shall be conducted except in compliance with all applicable provisions of this Unified Development Ordinance and with any conditions upon such Conditional Use approval.

Through counsel, you were notified to file for the Conditional Use approval on or before May 24, 2018 in order to appear at the June 21, 2018 Board of Zoning Appeals hearing. Per a phone call with counsel from Clendening Johnson and Bohrer on May 24, 2018, you will not be filing the Conditional Use request.

In accordance with UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Each location is considered a distinct and separate violation. Subsequent

# EXHIBIT B

## COMMERCIAL BUILDING PERMIT APPLICATION MONROE COUNTY BUILDING DEPARTMENT

501 N. Morton St. Rm 220, Bloomington, Indiana 47404

Phone Number: (812) 349-2580 FAX: (812) 349-2967

<http://www.co.monroe.in.us/buildingdept.html>

Project Name Indiana Recovery Center Project Address 909 W 1st St.  
City Bloomington State IN Zip Code 47403 Parcel No. 53-08-05-100-146-000-009  
Township \_\_\_\_\_ Section No. \_\_\_\_\_ Lot No. \_\_\_\_\_

Property Owners Name Kerill Vossalou Phone No. 561-616-9087  
Property Owners Address 1004 W 1st St, Bloomington State IN Zip Code 47403

Applicants Name Josh Westfield Phone No. 317-889-4225  
Applicants Address 5250 Commerce Cir, Indy State IN Zip Code 46237

Proposed Work:  New Construction  Addition  Remodel  Other Sprinkler System  
Type of use (ie. office) \_\_\_\_\_ Rental:  Yes  No Total number of units: 24  
Total Square Footage of proposed structure/remodel/addition 0 sq. ft.  
First Floor Area sq ft 6025 Second Floor Area sq ft 6025 Third Floor Area sq ft 6025  
Basement Area sq ft - Other Floors Area sq ft -

State Construction Design Release number: 398575 Sprinkler System  Yes  No

Type of Construction Wood Construction Use group Residential / Treatment Center  
Maximum number of employees per shift: 5 Building height in stories: 3 Height in feet 30'  
Maximum number of Public 68

General Contractor: BROWN SPRINKLER HVAC Contractor \_\_\_\_\_  
Phone Number 317-889-4225 Phone Number \_\_\_\_\_  
Plumbing Contractor \_\_\_\_\_ Electrical Contractor \_\_\_\_\_  
License Number \_\_\_\_\_ Phone # \_\_\_\_\_ License Number \_\_\_\_\_ Phone # \_\_\_\_\_

Driveway Permit No. \_\_\_\_\_  State of Indiana  Monroe County  City of Bloomington  
Wastewater system to be connected to:  City of Bloomington Sewer  Other sanitary system  Septic  
Flood Plain:  Yes  No Sink Holes:  Yes  No Watershed:  Yes  No  
Sign specification submitted with plans:  Yes  No

The applicant hereby certifies and agrees as follows: (1) I am authorized to make application. (2) I have read this application and attest that the information furnished is correct, including that contained in plans. (3) If there is any misrepresentation in this application, or associated documents, Monroe County may revoke any permit or Certificate of Occupancy issued based upon this misinformation. (4) I agree to comply with all Monroe County Ordinances, permit conditions and State statutes which regulate building construction, use, occupancy and site development. (5) I grant and will request Monroe County Officials to enter onto the property listed on this application for the purpose of inspecting the work permitted by this application and posting notices. (6) I will retain the Certificate of Occupancy in my records upon completion of the project. NOTE: Plans shall mean all site and construction plans and specifications, whether furnished prior to or subsequent to the application date. All plans furnished subsequent to application date constitute an amendment to the original application and must be specifically approved by the County with an appropriate endorsement and the signature of the approving official prior to plan implementation. The Permit is not valid, and work is not permitted until signed and issued by the agent of the Monroe County Building Department. As the Person eligible and responsible for obtaining a permit or permits as required in Section 430-7 of the Monroe County Building Code, and based upon information contained within these plans, I certify that these plans are identical to those released for construction by the Indiana Department of Fire and Building Services. I also understand that if it is determined that these plans are not identical, all permits obtained as a result of their submittal may be revoked as stated in Section 430-15 of the Monroe County Building Code.

Signature of Applicant: Josh Westfield Date: 04-11-10  
Email address joshwestfield@brown (02/31/8)1/B/dg/Reviews/Forms  
sprinkler.com

# EXHIBIT C





State of Indiana  
Family and Social Services Administration  
Division of Mental Health and Addiction

**ADDICTION SERVICES PROVIDER REGULAR CERTIFICATION**

*THIS IS TO CERTIFY: That a Certification is hereby granted to*

*Indiana Center for Recovery LLC  
dba Indiana Center for Recovery, LLC  
1004 W. First St., Bloomington, IN 47403*

*THIS CERTIFICATION is subject to the provisions of IC 12-23 and rules of the Division of Mental Health and Addiction. This Certificate is not assignable or transferable, and is subject to revocation at any time by the Director of the Division of Mental Health and Addiction for failure to comply with the laws of the State of Indiana or the rules issued thereunder.*

*IN WITNESS WHEREOF, this Certificate is issued by:*

*Kevin M. [Signature]*  
DIRECTOR  
Division of Mental Health and Addiction

*Effective: 11/01/2017  
Expires: 11/08/2020  
Reference: 1759-0-ASR*

# EXHIBIT D

# Bloomington proposes one-year moratorium on new drug rehab facilities

BY: Derrick Thomas

POSTED: 11:54 PM, Jun 1, 2018

UPDATED: 11:59 PM, Jun 1, 2018

Share Article

BLOOMINGTON, Ind. -- City leaders in Bloomington want to put a one-year moratorium on new drug rehabilitation facilities opening in their community.

There are currently 13 drug rehab facilities in Bloomington including Indiana Center for Recovery. It serves 40 patients who live across the way from a treatment center located on West 1st Street.

Neighbors have complained about the noise.

"People yelling obscenities among other things. Cars revving their engines at all hours. Things like that," said Isabel Piedmont-Smith, Bloomington City Council Vice President.

The co-founder of Indiana Center for Recovery says there might be a little noise, but that doesn't mean you should impose moratoriums.

"Indiana is ninth in the United States in drug overdose deaths. The notion of the idea that the city is going after things in this manner is scary," said Saul Kane, Indiana Center for Recovery Co-Founder.

Bloomington officials say they want to take a step back and evaluate what's going on.

"That's why we want to hit this pause button and make really good, well-informed decisions based on the best practices to avoid the pitfalls that other communities may have experienced," said Mary Catherine Carmichael, Bloomington Director of Public Engagement.

Melanie Kilbury says she needs a place to get clean.

"In my opinion, the way drug use is going up here in Bloomington, there needs to be more. Less would not help nothing," said Kilbury.

It costs about \$10,000 for inpatient treatment at the Indiana Center for Recovery. 60 percent of the patients have insurance, ten percent pay cash, and 30 percent are on scholarship.

Christopher Abert from the Indiana Recovery Alliance issued this statement when he learned of the city's plan:

"We are in the midst of an opioid syndemic, and misguided policies such as this ordinance will ultimately deny vital services to those who are at most risk."

Abert was contacted late Friday afternoon by city leaders and will meet with them to hash out some of the problems with the proposal.

The ordinance will be presented to the Bloomington Plan Commission on June 11 and to the Bloomington City Council on June 13.

**MORE TOP STORIES** | Teacher, student wounded when another student opened fire at Noblesville middle school | Science teacher Jason Seaman being called a hero for stopping school shooter | Woman can't get DirecTV to cancel service | Four Indiana dog breeders on list of 'Horrible Hundred' puppy mills | CALL 6: Tainted diesel from Kroger gas station in Lebanon damages multiple vehicles

### Top Trending Videos

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## LOCAL NEWS

### **3 accused of illegally purchasing firearms**

Three people are facing federal charges for illegally purchasing the weapons used to kill a Boone County deputy and a Terre Haute police...

### **Student in transgender name policy goes public**

A Brownsburg teacher came forward last week claiming administrators forced him to resign for refusing to use a transgender student's...

### **More rain & t'storms ahead**

Isolated strong to severe storms tonight. Heavy rain potential.

### **Protesters arrested outside home of HHS chief**

More than two dozen protesters were arrested outside the home of Health and Human Services Secretary Alex Azar on Sunday.

### **TIMELINE: Storm chances pick up overnight**

Storm chances increase throughout the day on Sunday across central Indiana.

## MONROE COUNTY

### **Bloomington drops proposed drug rehab moratorium**

City leaders in Bloomington dropped a proposal Friday to put a one-year moratorium on new drug rehabilitation facilities opening in...

### **Long-delayed I-69 project is nearing an end**

The long-delayed I 69 project between Martinsville and Bloomington should be complete by the end of August, according to the Indiana...

### **Police called on Bloomington BLM leader**

An employee with Bloomington Transit called the police on a man and accused him of stealing a bus pass shortly after he bought a ticket.

### **Lauren Spierer's family still hoping for closure**

Seven years after Lauren Spierer disappeared her family is still hoping for that one piece of information that will bring...

### **Bloomington proposes moratorium on drug rehabs**

City leaders in Bloomington want to put a one-year moratorium on new drug rehabilitation facilities opening in their community.

### **Man's body recovered from Lake Monroe**

After a two-day search crews located the body of a Bloomington man who went missing while swimming at Monroe Reservoir on Friday.

**BLOOMINGTON POLICE DEPARTMENT**

220 East 3rd Street - Bloomington, IN 47401 - (812) 339-4477

**1004 and 1005 W. 1st Street from 6-1-17 to 8-1-18**

**NOTE:** Some of the Calls for Service listed below may have occurred on the street or sidewalk outside the location and may not be directly related to the physical address, business or residence.

<b>CAD Call ID</b>	<b>Incident #</b>	<b>When Reported</b>	<b>Nature of Call</b>	<b>Location</b>	<b>Case</b>	<b>Disposition</b>
170618127	B17-23694	13:23 06/18/2017	NOISE	1005 W 1ST ST	N	
170630124		10:37 06/30/2017	AMBULANCE DUAL	1004 W 1ST ST		
170816292	B17-32944	17:05 08/16/2017	DRUGS NP	1004 W 1ST ST; INDIANA CENTER FOR RECOVERY	N	
170820071	B17-33569	02:17 08/20/2017	SUSPICIOUS ACTIVITY IP	1004 W 1ST ST; INDIANA RECOVERY CENTER	N	
170912093		10:17 09/12/2017	AMBULANCE	1004 W 1ST ST		
170912226	B17-37405	18:22 09/12/2017	ATTEMPT TO LOCATE	1004 W 1ST ST	N	
170914189	B17-37720	13:52 09/14/2017	WELFARE CHECK IP	1004 W 1ST ST; INDIANA CENTER OF RECOVERY	Y	INACTIVE
171022193		14:46 10/22/2017	AMBULANCE	1004 W 1ST ST ; INDIANA CENTER FOR RECOVERY		
171031319	B17-44889	20:47 10/31/2017	NOISE	1005 W 1ST ST	N	
171031337	B17-44897	22:27 10/31/2017	HARASSMENT IP	1004 W 1ST ST	N	
171114187	B17-46800	16:01 11/14/2017	FORGERY	1004 W 1ST ST; 220 E 3RD	Y	INACTIVE
171204040	B17-49437	04:09 12/04/2017	SUSPICIOUS ACTIVITY IP	1004 W 1ST ST; INDIANA CENTER FOR RECOVERY	N	
171212309		20:59 12/12/2017	AMBULANCE DUAL	1004 W 1ST ST		
180120259		18:38 01/20/2018	AMBULANCE	1004 W 1ST ST; INDIANA CENTER FOR RECOVERY		
180222351	B18-07283	19:22 02/22/2018	WELFARE CHECK IP	1004 W 1ST ST ; INDIANA RECOVERY	N	
180321151		12:26 03/21/2018	AMBULANCE	1004 W 1ST ST ; INDIANA CENTER FOR RECOVERY		
180412167	B18-14406	12:28 04/12/2018	MISSING PERSON	1004 W 1ST ST; 220 E 3RD ST; BPD LOBBY	N	
180422355	B18-16252	18:32 04/22/2018	ATTEMPT TO LOCATE	1005 W 1ST ST	N	
180427287	B18-17036	18:07 04/27/2018	ATTEMPT TO LOCATE	1004 W 1ST ST; RECOVERY CENTER	N	
180429337	B18-17367	20:21 04/29/2018	NOISE	1004 W 1ST ST; RECOVERY CENTER 1005 W 1ST ST	N	
180508251	B18-18688	18:15 05/08/2018	SUSPICIOUS ACTIVITY IP	1005 W 1ST ST	N	
180619122	M18-17973	10:30 06/19/2018	COURT	1004 W 1ST ST	N	
180717433	B18-28673	23:59 07/17/2018	EXTRA PATROL	1004 W 1ST ST	N	
180720001	B18-28969	00:00 07/20/2018	EXTRA PATROL	1004 W 1ST ST; INDIANA RECOVERY CENTER	N	
180729085	B18-30313	06:57 07/29/2018	SUSPICIOUS ACTIVITY IP	1004 W 1ST ST	Y	INACTIVE

\*NP=Not in Progress

\*IP=In Progress



Jacqueline Scanlan &lt;scanlanj@bloomington.in.gov&gt;

---

**Fwd: [Planning] Fwd: Drug Rehab Center**

---

**Hannah Duncan** <duncanh@bloomington.in.gov>  
To: Jacqueline Scanlan <scanlanj@bloomington.in.gov>

Thu, Aug 16, 2018 at 1:20 PM

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

From: **Mark Jackman** <mrkjackman31@gmail.com>  
Date: Thu, Aug 16, 2018 at 10:33 AM  
Subject: [Planning] Fwd: Drug Rehab Center  
To: [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov)

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

From: **THE PRUETTS** <cjpruett2225@msn.com>  
Date: Tue, Jul 17, 2018 at 11:46 PM  
Subject: Drug Rehab Center  
To: "mrkjackman31@gmail.com" <mrkjackman31@gmail.com>

To Whom It May Concern?  
RE: Drug Rehab Center

My sister and I own the house at 1005 West First St. Bloomington, IN. I have been advised there is now a drug rehab center one door away and across the street.

The person who rents our house (Mr. Mark Jackman) says there is a lot of noise coming from this Center in the form of loud music, car engines being revved, and a lot of yelling, and people going back and forth the street from one center to another.

This has always been a quiet area where families could enjoy sitting on their porches and seniors could walk without fear. My sister and I were both raised in this house and neighborhood.

I spoke to Judith Sharp, the assessor, in May about the amount our real estate taxes had raised. She said this was a very desirable area and the amount our taxes had risen was indicative of this desirability. Now that this drug center has been placed here, I don't think a young family or a senior person would find it a very good place to live. I don't think they would feel safe here.

I feel this Center will bring down property values and rental prices.

Thank You,



Carol Pruett  
10044 S. Ocean Dr. #304  
Jensen Beach, FL 34957  
772-229-5261  
772-333-5150 (cell)

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 411 W. 1<sup>st</sup> Street**

**CASE #: AA-24-18**  
**DATE: August 23, 2018**

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**PETITIONER:** Bloomington Transitions  
411 W. 1<sup>st</sup> Street, Bloomington

**COUNSEL:** Slotegraaf Niehoff, PC  
200 E. 3<sup>rd</sup> Street, Bloomington

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**REQUEST:** The petitioner is requesting an administrative appeal of the staff's determination that the use on the property is a 'rehabilitation clinic' operating without a Conditional Use approval.

---

**REPORT:** This appeal request is the result of issuance of a Notice of Violation related to a non-permitted land use enforcement action against the property at 411 W. 1<sup>st</sup> Street. The property is located in a multitenant center at the southeast corner of S. Rogers and W. 1<sup>st</sup> Streets. The property is zoned Medical (MD). All surrounding properties are also zoned MD. The violation is a result of the business at this location operating as a 'Rehabilitation Clinic' as defined in the Unified Development Ordinance (UDO) without a Conditional Use approval.

'Rehabilitation Clinic' is defined in the UDO as:

A facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction.

'Rehabilitation Clinic' is a Conditional Use in the MD zoning district.

The petitioner has requested an appeal of the City's Notice of Violation issued June 28, 2018 that stipulated that the property requires a Conditional Use approval from the Board of Zoning Appeals to continue its use on the site. The petitioner has stated that "Bloomington Transitions is not a facility used for the purposes of inpatient care and would therefore not meet the definition of rehabilitation clinic as defined under UDO Section 20.11.020." Further, the petitioner argues that Bloomington Transitions is not a rehabilitation clinic but is simply an outpatient, medical clinic that provides treatment for opioid dependency among other general medical treatments.

Staff disagrees.

First, Petitioner claims that Bloomington Transitions is not a rehabilitation clinic because it does not provide inpatient treatment. Petitioner is reading the definition of Rehabilitation Clinic too narrowly. This definition covers any kind of treatment for alcohol or drug use addiction, including temporary treatment, whether inpatient or outpatient, and long-term inpatient treatment.

Petitioner also claims that Bloomington Transitions is just a standard medical clinic. This claim is counteracted by the organization's own website. The Bloomington Transitions website (<https://www.bedfordtransitions.com/>) refers to the two existing locations, Bedford Transitions, LLC and Bloomington Transitions, as "Outpatient Addiction Treatment." Further, on the same page the following claims are displayed:

“We are an experienced team of medical and behavioral health professionals dedicated to addiction recovery and relapse prevention. We help those suffering from the disease of addiction to return to a better quality of life.”

“Our goal is to provide compassionate and caring medical and counseling services that will have a profound positive impact on the health and well-being of those recovering from addiction. We strive to provide compassionate, caring, respectful, knowledgeable, & helpful service in a safe, friendly, responsive, & patient-centered environment.”

In addition, the only two services that appear under the ‘Our Services’ tab on the website are Suboxone and Vivitrol. Both are medications that are directly related to the treatment of addiction. Per confirmation by the business owner at a meeting with the Executive Committee of the McDoel Gardens Neighborhood Association at which staff was present, Vivitrol is kept and administered onsite.

While it may be that the Bloomington Transitions location provides individuals recovering from addiction with other medical treatments in the course of providing its addiction services, the main focus of the facility is providing addiction treatment. Therefore, the facility falls under Rehabilitation Clinic as defined by the UDO.

---

**RECOMMENDATION:** Based on the findings in this report, the Department recommends denial of Case # AA-24-18, adopting said findings, and affirming the staff’s determination.



**City of Bloomington**  
**Planning and Transportation Department**

June 28, 2018

Medical Properties Management LLC  
 419 W 1<sup>st</sup> St.  
 Bloomington, IN 47401

Bloomington Transitions  
 411 W. 1<sup>st</sup> St.  
 Bloomington, IN 47403

**Re: Notice of Violation**

Illegal Land Use at 411 W. 1<sup>st</sup> St.

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with Unified Development Ordinance (UDO) Section 20.09.150 [Conditional Use] at 411 W. 1<sup>st</sup> St. Records show that you are the owner (or tenant) of this property.

It has been brought to the attention of the Planning and Transportation Department that the property located at 411 W. 1<sup>st</sup> St. is operating as a rehabilitation clinic. UDO Section 20.11.020 [Defined Words] defines rehabilitation clinic as: A facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction. This property is located in a Medical (MD) zoning district. Rehabilitation clinic is a conditional use in this zoning district which requires a Conditional Use approval from the Board of Zoning Appeals.

According to UDO Section 20.09.150 [Conditional Use];

(b) Prerequisites:

(1) No use classified as conditional may be conducted without first obtaining a Conditional Use approval under Chapter 20.09: Processes, Permits and Fees. No Conditional Use shall be conducted except in compliance with all applicable provisions of this Unified Development Ordinance and with any conditions upon such Conditional Use approval.

In accordance with UDO Section 20.10, a violation of this nature may result in a two thousand five hundred dollar (\$2,500) fine. Each day a violation is allowed to continue is considered a distinct and separate violation. Subsequent violations are twice the previous fine, up to a maximum daily fine of seven thousand five hundred dollars (\$7,500).

**You have the following options to remedy the situation and avoid further enforcement:**

1. Cease use of the rehabilitation clinic at 411 W. 1<sup>st</sup> St. by 7/12/18, **OR**;
2. A property owner or lessee of property within the City or its zoning jurisdiction may file for a Conditional Use approval through the Board of Zoning Appeals in accordance with the UDO Sections 20.09.030 [Applications; General] and Section 20.09.150 [Conditional Use]. The next available Board of Zoning Appeals hearing date is 8/23/18. The filing date for this meeting is 7/26/18. In

order for your case to be considered at this meeting, a Pre-Application Meeting must be scheduled with a planner by 7/19/18.

If you dispute the City's assertion that these properties are operating as rehabilitation clinic without Conditional Use approval, you may file an appeal with the City's Board of Zoning Appeals. Said appeal shall be filed with the Planning and Transportation Department within five (5) days of your receipt of this Notice of Violation and shall conform to the requirements of UDO Section 20.09.350.

If a fine is issued, the final fine amount shall be paid to the City of Bloomington Planning and Transportation Department and directed to the following address: City of Bloomington, Planning and Transportation Department, 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47402. All fines may be contested in the Monroe County Circuit Courts. Failure to resolve this violation or to pay the final fine amount may result in further legal action.

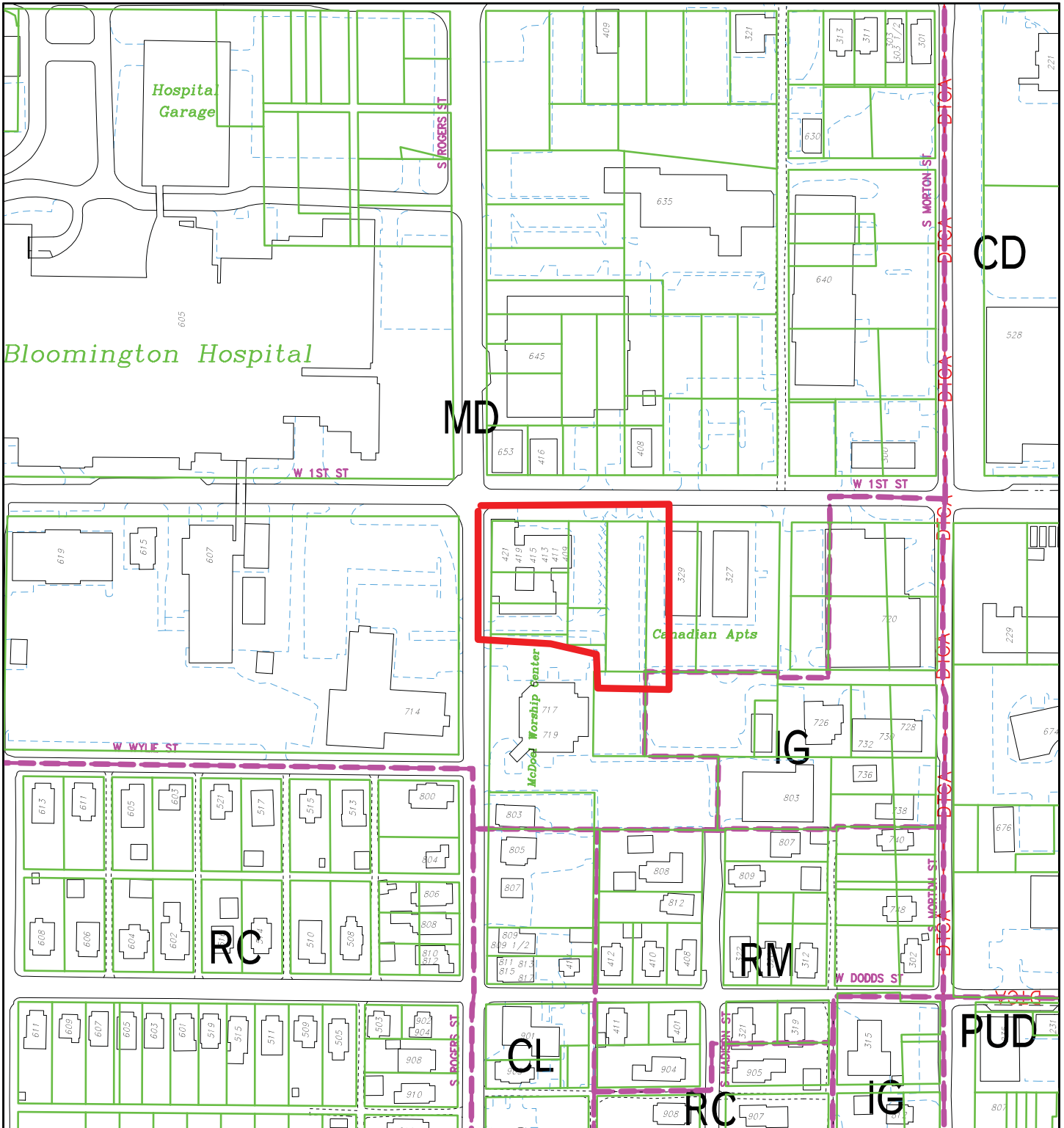
Please contact the Planning and Transportation Department at [planning@bloomington.in.gov](mailto:planning@bloomington.in.gov) or 812-349-3423 to schedule a Pre-Application Meeting with a Planner or with any questions or concerns.

Sincerely,

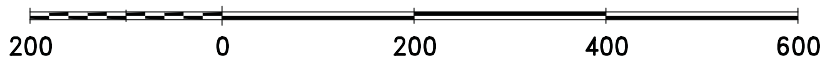
A handwritten signature in black ink, appearing to read "Terri Porter". The signature is stylized with a large, looped initial "T" and a cursive "P".

Terri Porter  
Director, Planning and Transportation

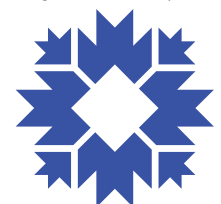
CC: Jackie Scanlan, AICP  
Scott Robinson, AICP



By: scanlanj  
16 Aug 18

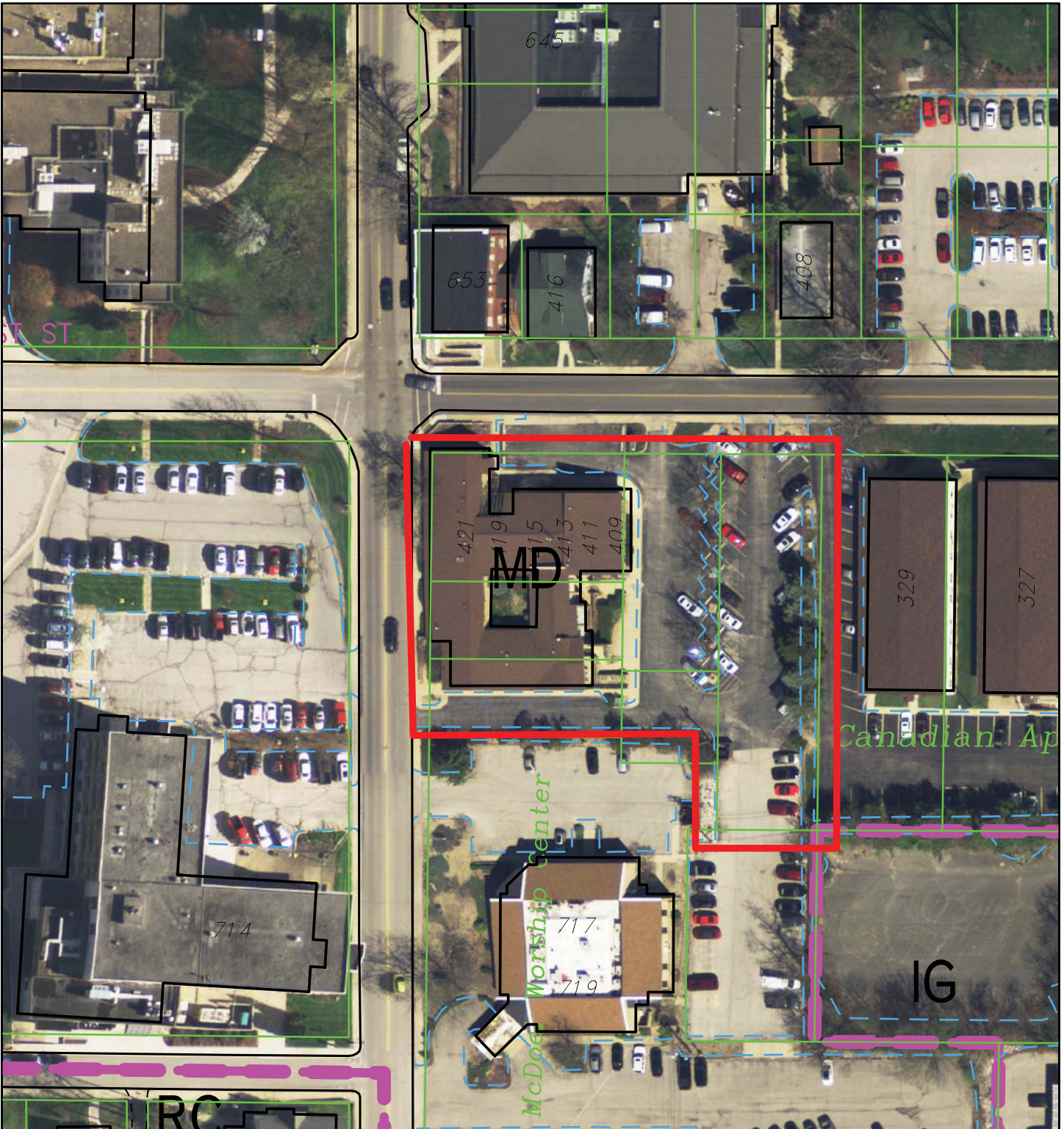


City of Bloomington  
Planning & Transportation

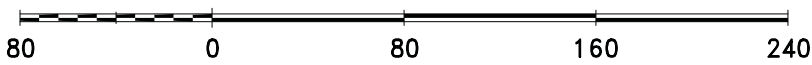


Scale: 1" = 200'

For reference only; map information NOT warranted.



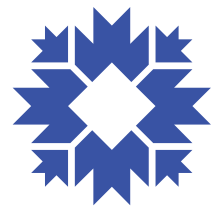
By: scanlanj  
16 Aug 18



For reference only; map information NOT warranted.



City of Bloomington  
Planning & Transportation



Scale: 1" = 80'

### ADMINISTRATIVE APPEAL – Petitioner’s Statement

Pursuant to Unified Development Ordinance (“UDO”) Section 20.09.350, ~~Medical Properties Management LLC~~ and Bloomington Transitions appeal the Planning and Transportation Department’s determination that Bloomington Transitions, which is located at 411 W. 1<sup>st</sup> St., is operating as a rehabilitation clinic without Conditional Use approval.

The City of Bloomington (“City”) has set forth that 411 W. 1<sup>st</sup> St. is located in a Medical (MD) zoning district and that Bloomington Transitions is operating as a rehabilitation clinic, which is a conditional use in a medical district. Yet, Bloomington Transition contends that it is not a rehabilitation clinic, as the term is defined under UDO Section 20.11.020, and does not, therefore, require Conditional Use approval. UDO Section 20.11.020 defines a “rehabilitation clinic” as “a facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction.” Bloomington Transitions is not a facility used for the purposes of inpatient care and would, therefore, not meet the definition of rehabilitation clinic as defined under UDO Section 20.11.020.

Rather, Bloomington Transitions contends that it is a medical clinic or, alternatively, a medical care clinic, immediate. UDO Section 20.11.020 defines a “medical clinic” as “a facility for examining and treating patients with medical problems on an outpatient basis, providing medical services, usually by appointment only, that generally require a stay of less than twenty-four hours” and defines “medical care clinic, immediate” as “a walk-in medical facility providing care for minor illnesses and injuries for people requiring immediate but not emergency-level care, where no appointments are necessary and stay is less than twenty-four hours.” Medical clinics and medical care clinics, immediate are both permitted uses in a Medical zoning district and would, therefore, not require Conditional Use approval. *See* UDO Section 20.02.540 (setting forth permitted uses in a Medical zoning district). Bloomington Transitions examines and treats patients with medical problems on an outpatient basis. It does not offer inpatient care. For all these reasons, Bloomington Transitions is more appropriately categorized as a medical clinic or, alternatively, a medical care clinic, immediate.

Accordingly, Bloomington Transitions appeals Planning and Transportation Department’s determination that it is a rehabilitation clinic in non-compliance of Section 20.09.150. Bloomington Transitions requests that the Board of Zoning Appeals find that Bloomington Transition is not a rehabilitation clinic requiring Conditional Use approval and is instead engaged in a permitted use within a Medical zoning district.

Respectfully submitted,



Benjamin Niehoff, # 22492-53

Tara Ali, # 30751-22

Attorneys for Appellant, Medical Properties Management LLC and  
Bloomington Transitions



### **ADMINISTRATIVE APPEAL – Amended Petitioner’s Statement**

Pursuant to Unified Development Ordinance (“UDO”) Section 20.09.350, Bloomington Transitions appeals the Planning and Transportation Department’s determination that Bloomington Transitions, which is located at 411 W. 1<sup>st</sup> St., is operating as a rehabilitation clinic without Conditional Use approval.

The City of Bloomington (“City”) has set forth that 411 W. 1<sup>st</sup> St. is in a Medical (MD) zoning district and that Bloomington Transitions is operating as a rehabilitation clinic, which is a conditional use in a medical district. Yet, Bloomington Transitions contends that it is not a rehabilitation clinic, as the term is defined under UDO Section 20.11.020, and does not, therefore, require Conditional Use approval. UDO Section 20.11.020 defines a “rehabilitation clinic” as “[a] facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction.” Bloomington Transitions is not a facility used for the purposes of inpatient care and would, therefore, not meet the definition of rehabilitation clinic as defined under UDO Section 20.11.020.

Rather, Bloomington Transitions is an outpatient, medical clinic that treats general family medical issues and opioid dependency. Bloomington Transitions offers annual exams and vaccinations. It has insurance panels from Anthem, Caresource, MHS, MDwise, SIHO, Humana, and others. It is also a Medicare provider. It does not dispense medication from this location. Thus, Bloomington Transitions contends that it is a medical clinic or, alternatively, a medical care clinic, immediate. UDO Section 20.11.020 defines a “medical clinic” as “[a] facility for examining and treating patients with medical problems on an outpatient basis, providing medical services, usually by appointment only, that generally require a stay of less than twenty-four hours” and defines “medical care clinic, immediate” as “a walk-in medical facility providing care for minor illnesses and injuries for people requiring immediate but not emergency-level care, where no appointments are necessary and stay is less than twenty-four hours.” Medical clinics and medical care clinics, immediate are both permitted uses in a Medical zoning district and would, therefore, not require Conditional Use approval. *See* UDO Section 20.02.540 (setting forth permitted uses in a Medical zoning district). Bloomington Transitions examines and treats patients with medical problems on an outpatient basis. It does not offer inpatient care. For all these reasons, Bloomington Transitions is more appropriately categorized as a medical clinic or, alternatively, a medical care clinic, immediate.

Accordingly, Bloomington Transitions appeals the Planning and Transportation Department’s determination that it is a rehabilitation clinic in non-compliance of Section 20.09.150. Bloomington Transitions requests that the Board of Zoning Appeals find that Bloomington Transitions is not a rehabilitation clinic requiring Conditional Use approval and is instead engaged in a permitted use within a Medical zoning district.

Respectfully submitted,



Benjamin Niehoff, # 22492-53

Tara Ali, # 30751-22

Attorneys for Appellant, Bloomington Transitions

**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 1110 S. Covenant Dr.**

**CASE #: V-25-18**  
**DATE: August 23, 2018**

**PETITIONER: Chad Vencel**  
**5910 N. Bottom Road, Bloomington**

**REQUEST:** The petitioners are requesting a determinate variance from sidewalk requirements.

**SITE DESCRIPTION:** This 0.36 acre property is located at 1110 S. Covenant Drive and is zoned Residential Single-family (RS). The property is currently undeveloped and the petitioner is proposing to construct a three-story, single family house on the property. Surrounding land uses include single family residences on all sides. The property has several large, mature trees scattered along the south side of the site. The petitioner would like to save as many of the existing trees as possible and has placed the proposed house to the north side of the lot to avoid the existing trees.

The petitioners are requesting a determinate variance from sidewalk requirements to not require a sidewalk along the Covenant Drive frontage. When new single family residences are built, recent changes to the UDO only require pedestrian facilities to be installed along the portions of an existing legal lot of record that are adjacent to a classified street or along non-classified streets if adjacent pedestrian facilities are present. Marilyn Drive to the south of this property is not a classified street and no sidewalks are adjacent. Covenant Drive to the north and High Street to the east are classified and therefore are required to have pedestrian facilities installed. The petitioner will be working with the City on an upcoming project to replace a culvert that runs underneath High Street on this property that will allow the installation of a sidewalk along the High Street frontage. No variance from the required pedestrian facility along High Street is being requested.

**CRITERIA AND FINDINGS FOR SIDEWALK VARIANCE**

**Determinate Sidewalk Variances 20.09.130(e)-** Pursuant to IC 36-7-4-918.5, the Board of Zoning Appeals or Hearing Officer may grant a determinate sidewalk variance from Section 20.05.010(b)(3) of the Unified Development Ordinance if, after a public hearing, it makes findings of fact in writing, that:

- (1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and*

**Proposed Finding:** The granting of the variance will not be injurious to the public health, safety, morals, or general welfare of the community since the existing condition will be maintained and a sidewalk system for the entire neighborhood should be considered and not just for a single property. Pedestrian activity is much higher on High Street and a sidewalk will be installed along that property frontage instead.

- (2) *The use and value of the area adjacent to the property included in the development standards variance will not be affected in a substantially adverse manner; and*

**Proposed Finding:** The use and value of the area adjacent to the property will not be substantially affected since there are not sidewalks on either of the adjacent properties. The installation of an alternative transportation system along the corridor is best implemented by the City after a thorough review is made.

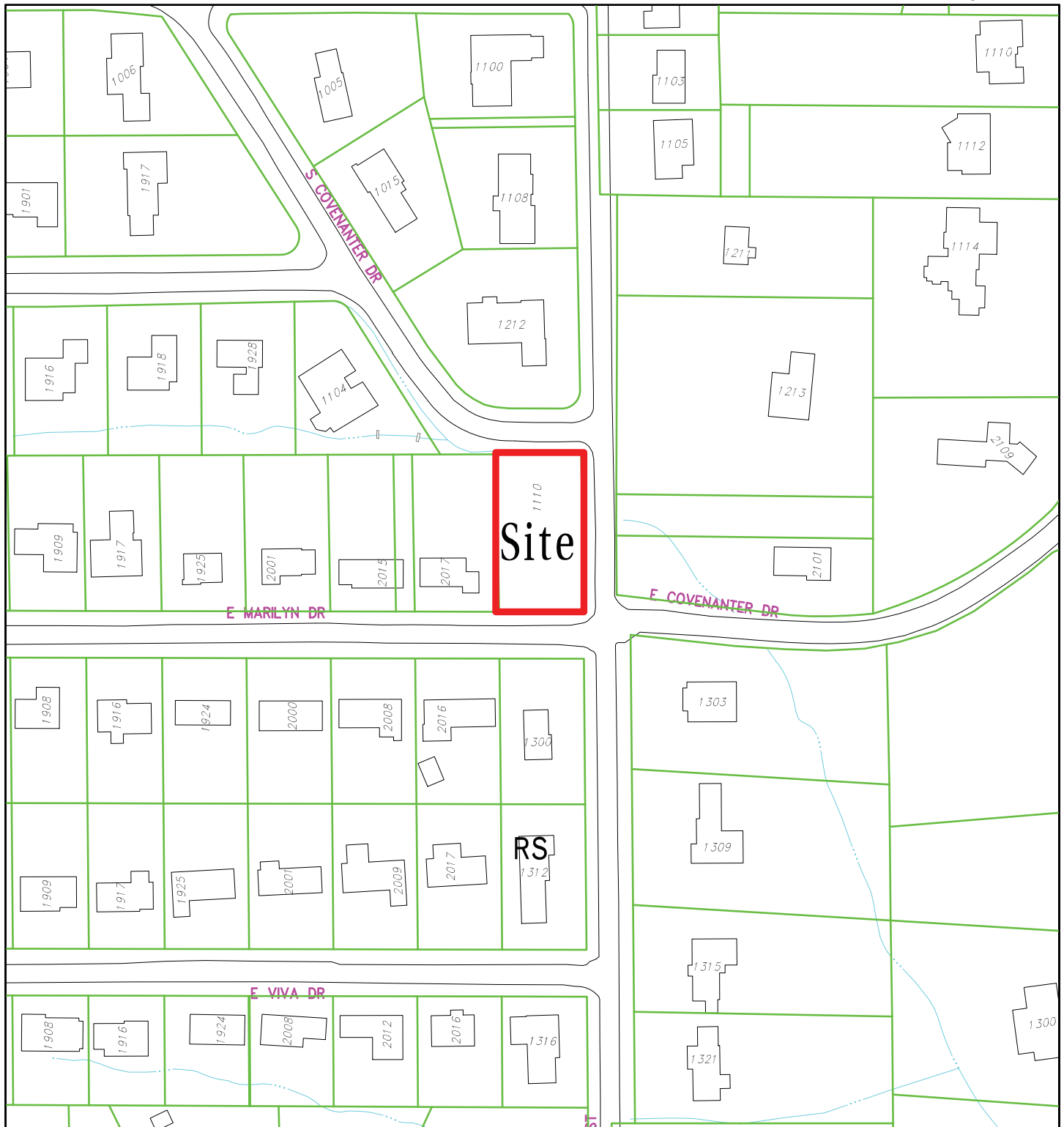
- (3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in questions; that the development standards variance will relieve the practical difficulties; and*

**Proposed Finding:** The strict application will result in practical difficulties because requiring the sidewalk to be installed along only this property without incorporating a plan for the larger overall area could result in the sidewalk having to be removed at a future time if a sidewalk plan is prepared for the overall neighborhood. The granting of the determinate variance will allow the City the opportunity to devise a plan for the corridor as a whole and can require the sidewalk to be installed at a future date after a study can be done. The adjacent parcels to the west have all been developed with single family lots without sidewalks along the street. There are no vacant lots adjacent to or along this block. Construction of a sidewalk on this property should be delayed until such time as it is possible to determine the most appropriate forms of public improvements along the entire Covenanter Street corridor. There is also a drainage ditch that runs alongside this property that presents difficulty in designing a sidewalk system.

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**RECOMMENDATION:** Based upon the written report, the Department recommends the Board of Zoning Appeals adopt the proposed findings and recommends approval of the sidewalk variance with the following conditions:

1. Prior to release of a building permit, the petitioners shall execute and record a zoning commitment which states that a determinate sidewalk variance has been approved, and at some time in the future a concrete sidewalk along Covenanter Drive may be required pursuant to 20.09.130(g).
2. A sidewalk or other approved pedestrian facility is required along the High Street frontage.

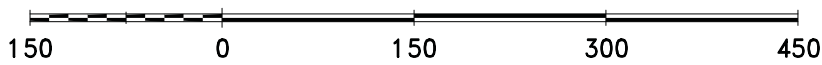


1110  
**Site**

**RS**  
1312

V-25-18 Chad Vencel  
1110 S Covenanter Drive  
Board of Zoning Appeals  
Site Location, Zoning, Parcels

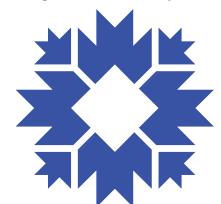
By: greulice  
16 Aug 18



For reference only; map information NOT warranted.



City of Bloomington  
Planning & Transportation

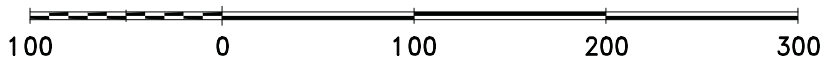


Scale: 1" = 150'



V-25-18 Chad Vencel  
 1110 S Covenanter Drive  
 Board of Zoning Appeals  
 2016 Aerial Photograph

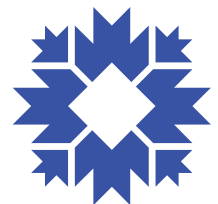
By: greulice  
 16 Aug 18



For reference only; map information NOT warranted.



City of Bloomington  
 Planning & Transportation

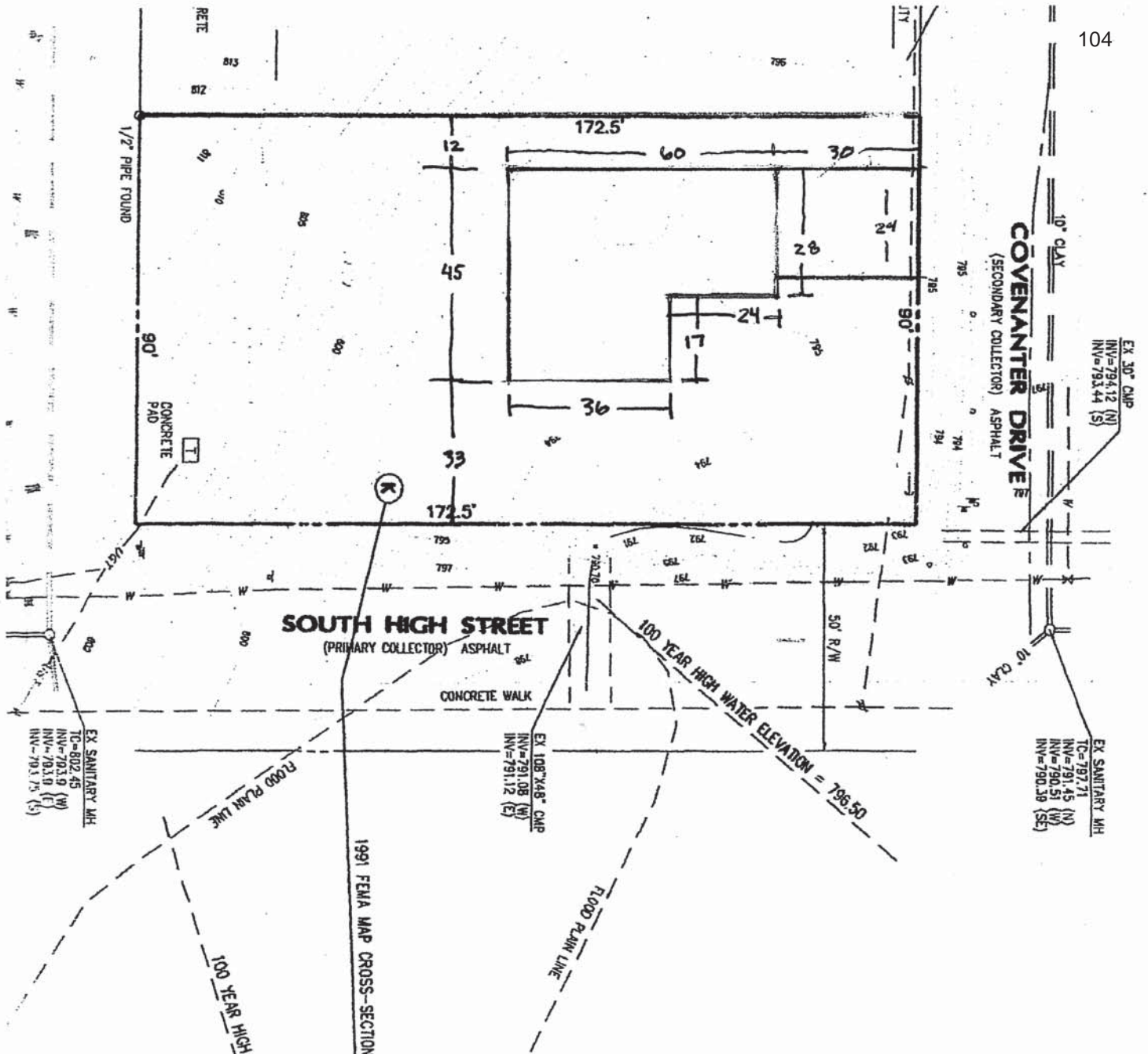


Scale: 1" = 100'

July 26 2018

I am applying for a variance from the BZA to not require the installation of a sidewalk along the north portion of the lot along Covernanter street described as 1110 S Covenanter.  
There are no sidewalks along the adjacent properties.

Thank you, Chad Vencel



**SETBACK TABLE**

SETBACK TYPE	SETBACK DISTANCE
BUILDING SETBACK	60' (from road centerline)
HIGH STREET	55' (from road centerline)
COVANTER DRIVE	25' (from Right-of-way line)
MARILYN DRIVE	N/A
REAR YARD	8'
SIDE YARD	4'
ADDITIONAL SIDE YARD PER BUILDING STORY	4'

**NOTE:** BUILDING SETBACKS ARE DETERMINED BY THE CURRENT CITY OF BLOOM WHICH HOLDS PRECEDENCE OVER THE PREVIOUSLY PLATTED SETBACK LINES.  
 \* PARKING PERMITTED IN SETBACK IF WITHIN DRIVEWAY OF 22' MAXIMUM WIDTH

**OWNER:**  
 JANICE FARIS  
 1620 MEADOWVIEW DRIVE  
 CORINTH, TEXAS 76210

**LOT #**  
 ZONE: RS  
 USE: SINGI  
 MINIMUM LO  
 MAXIMUM BL  
 MAXIMUM BL

- ADDITIONAL:**
- ① ANY SINGLE F IS REQUIRED
  - ② BRNUA FANC HOME TO BE ELEVATION OF OF FLOOD DM
  - ③ FINISHED FLOO FINISHED BAS



**BLOOMINGTON BOARD OF ZONING APPEALS**  
**STAFF REPORT**  
**Location: 411 W. 1<sup>st</sup> Street**

**CASE #: CU-26-18**  
**DATE: July 23, 2018**

**PETITIONER:** Bloomington Transitions  
411 W. 1<sup>st</sup> Street, Bloomington

**REQUEST:** The petitioner is requesting conditional use approval to allow a rehabilitation clinic in the Medical (MD) zoning district.

**REPORT:** The petition site is a tenant space in an office building located at the southeast corner of S. Rogers and W. 1<sup>st</sup> Streets. The property is zoned Medical (MD) and is completely surrounded by other MD property. Surrounding uses include a Medical Clinic to the south, apartments to the east, office and residential to the north, and the hospital to the west.

The petitioner is requesting conditional use approval for a rehabilitation clinic to allow the petitioner to use one of the tenant spaces in the building for an office-based treatment program for adults diagnosed with Substance Abuse Disorder. Patients would receive general physician care, counseling, and prescriptions at this location, as well as some Vivitrol shots, but no other medications would be dispensed on site. The petitioner's statement indicates that no medicine is distributed at this location, but the petitioner has stated that Vivitrol is used at the site. This needs to be clarified.

This approval would require the site to come into compliance with section BMC 20.08.060(b) *Nonconforming Sites and Structures; Limited Compliance* section of the UDO. The Department has identified some missing landscaping around the parking area and 4 bicycle parking spaces as the needed site improvements that would be required to bring the site into compliance. BMC 20.08.060(b) requires landscaping to the maximum extent practicable. The landscaping required by code is determined by the existing parking spaces. For the 44 parking spaces on site, 11 parking lot perimeter trees are required, as well as 132 shrubs.

The petitioner met with the Executive Committee of the McDoel Gardens Neighborhood Association. The Committee did not come to a consensus regarding support of the petition. There are a number of facilities in this area that support those experiencing addiction, and there were some concerns raised about the cumulative secondary effects of grouping similar uses.

## **CRITERIA AND FINDINGS**

### **20.05.023 Standards for Conditional Use Permits – Rehabilitation Clinic**

No Conditional Use approval shall be granted unless the petitioner shall establish that the standards for the specific Conditional Use are met and that the following general standards are met.

1. *The proposed use and development must be consistent with the Growth Policies Plan and may not interfere with the achievement of the goals and objectives of the Growth*

*Policies Plan;*

**Proposed Finding:** The Comprehensive Plan identifies this area as ‘Mixed Urban Residential’ on the edge of the West 2<sup>nd</sup> Street Focus Area. The main focus of ‘Mixed Use Corridor is on preservation and enhancement of existing residential development in this area. The proposed site would utilize an existing lease space in an existing office building. No expansion to the existing building is proposed.

In Community Services and Economics, Policy 1.2.1 gives guidance to “work with community partners to facilitate access to mental health services and addictions treatments”. The use of the property as a rehabilitation clinic will further that policy goal and will not interfere with the achievement of the goals and objectives of the Comprehensive Plan.

2. *The proposed use and development will not create nuisance by reason of noise, smoke, odors, vibrations, or objectionable lights;*

**Proposed Finding:** The proposed use will not have any impacts that are different from other medical office uses. The business will have normal operating hours of 8:00 AM to 5:00 PM.

3. *The proposed use and development will not have an undue adverse impact upon the adjacent property, the character of the area, or the public health, safety and general welfare;*

**Proposed Finding:** The proposed use will not have an undue adverse impact upon the adjacent property, the character of the area, or the public health, safety and general welfare. The building will be used in a manner similar to a medical clinic and the use will occur completely inside the existing building.

4. *The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, stormwater management structures, and other services, or that the applicant will provide adequately for such services;*

**Proposed Finding:** The use requires no additional infrastructure services. There is no new development associated with this petition. There is adequate utility service in this area and no improvements are needed. New landscaping will be required with this petition.

5. *The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets;*

**Proposed Finding:** The use is located at the corner of a Secondary Arterial road and a Primary Collector road. While a residential neighborhood to the south and southwest is in the vicinity, the location on two major roads would not require any to be directed through residential streets. There are sidewalks located along both sides of this property. In addition, the site is located on a Bloomington Transit bus route.

6. *The proposed use and development will not result in the excessive destruction, loss or damage of any natural, scenic, or historic feature of significant importance;*

**Proposed Finding:** There will be no significant natural features lost with this petition. No new construction is proposed with this petition. Additional landscaping is required with this petition.

7. *The hours of operation, outside lighting, and trash and waste collection must not pose a hazard, hardship, or nuisance to the neighborhood.*

**Proposed Finding:** Access to the facility is restricted to 8:00 AM to 5:00 PM. The site has been operating at this location since February 2018 without noticeable impacts. Trash and waste collection will continue as it has, no issues regarding trash and waste collection have been raised at this time.

8. *Signage shall be appropriate to both the property under consideration and to the surrounding area. Signage that is out of character, in the Board of Zoning Appeal's determination, shall not be approved.*

**Proposed Finding:** No changes to existing signage or new signage have been proposed at this time. Any future signage will be reviewed by staff according to the UDO standards.

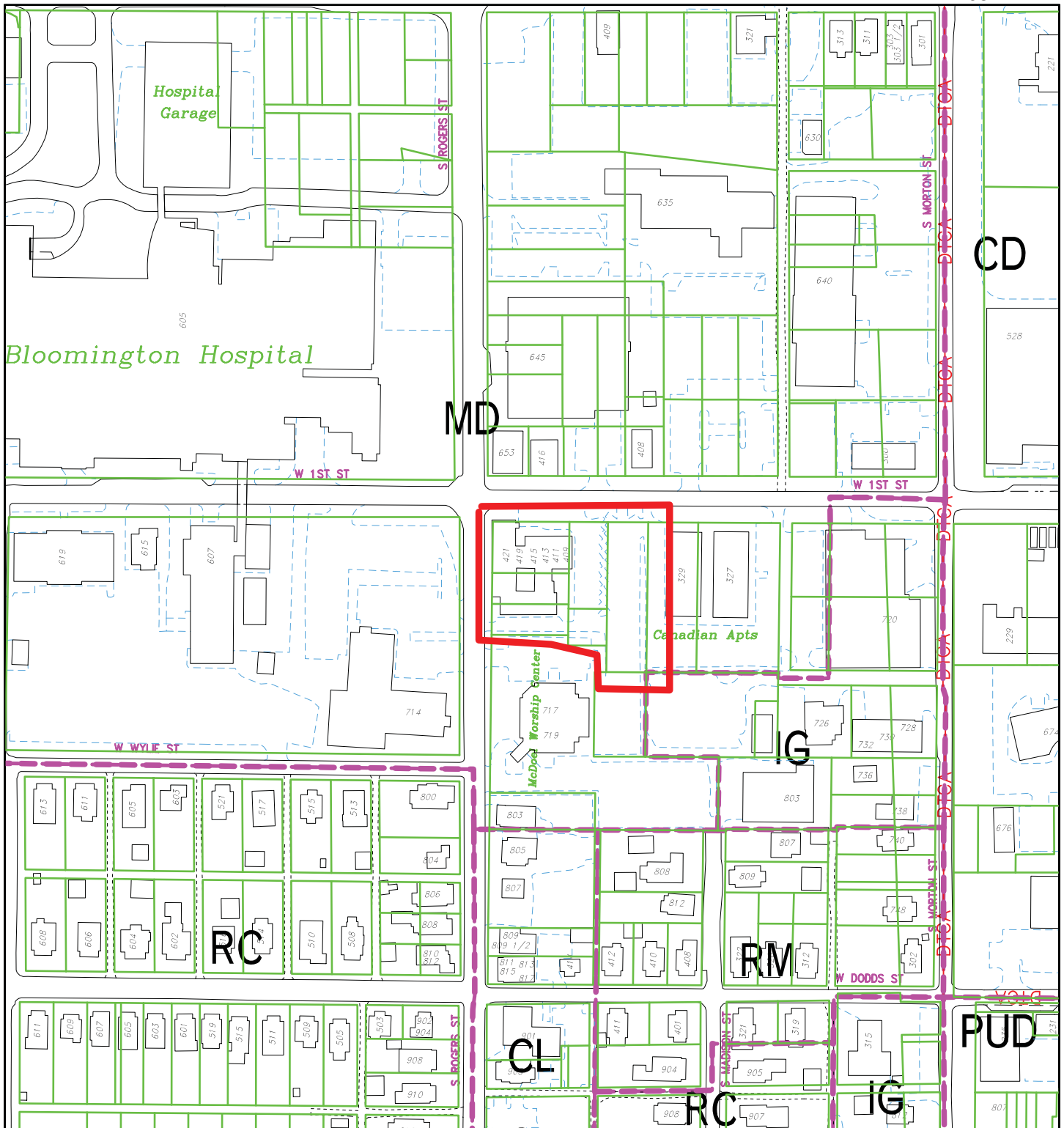
9. *The proposed use and development complies with any additional standards imposed upon the particular use by Chapter 20.05; CU: Conditional Use Standards.*

**Proposed Finding:** There are no additional standards in Chapter 20.05 for the proposed use.

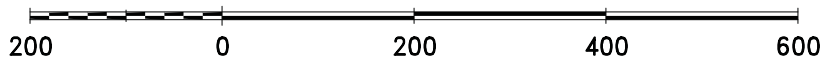
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**RECOMMENDATION:** The Department recommends the BZA adopt the recommended findings and approve CU-26-18 with the following conditions:

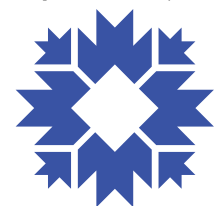
1. Petitioner will submit a site plan with a proposed landscape plan and a bike parking location suitable for at least 4 bicycles is required within 50' of the entrance to the building on or before September 24, 2018.
2. Per the petitioner statement, no medicine will be distributed from this location.



By: scanlanj  
16 Aug 18

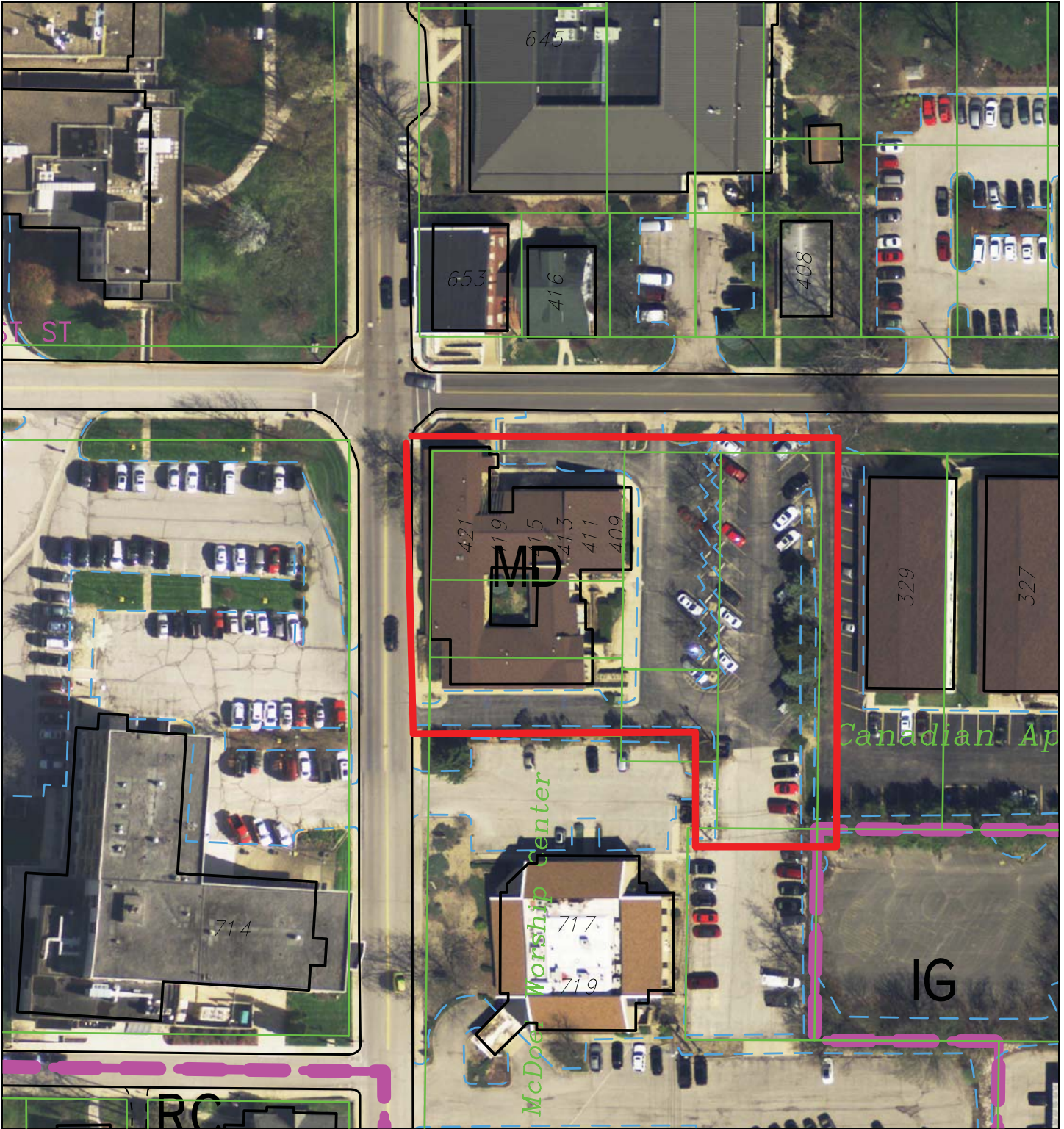


City of Bloomington  
Planning & Transportation

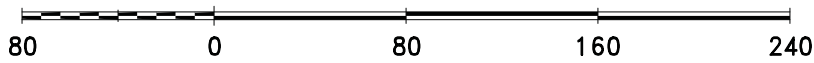


Scale: 1" = 200'

For reference only; map information NOT warranted.



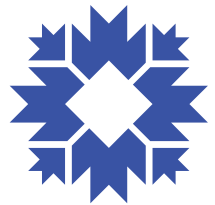
By: scanlanj  
16 Aug 18



For reference only; map information NOT warranted.



City of Bloomington  
Planning & Transportation



Scale: 1" = 80'

## Bloomington Transitions' Statement in Support of Conditional Use Approval

### A. Background Regarding Bloomington Transitions

Bloomington Transitions is located at 411 W. 1<sup>st</sup> Street, Bloomington, IN. It is an outpatient, medical clinic that treats opioid dependency and general family medical issues. Bloomington Transitions offers annual exams and vaccinations. It has insurance panels from Anthem, Caresource, MHS, MDwise, SIHO, Humana, and others. It is also a Medicare provider. It does not dispense medication from this location.

### B. Conditional Use Approval Request

411 W. 1<sup>st</sup> Street, Bloomington, IN is zoned a medical district. In a medical district, a "rehabilitation clinic" is a conditional use needing conditional use approval. Unified Development Ordinance ("UDO") Section 20.11.020 defines a "rehabilitation clinic" as "[a] facility used for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use addiction." Accordingly, Bloomington Transitions, which offers opioid dependency treatment along with its other medical services, requests conditional use approval as a rehabilitation clinic.<sup>1</sup>

### C. Conditional Use Criteria

UDO Section 20.05.023(b) sets forth Conditional Use Standards, and Bloomington Transitions contends it meets each of these standards for the following reasons:

***Standard 1: The proposed use and development must be consistent with the Growth Policies Plan and may not interfere with the achievement of the goals and objectives of the Growth Policies Plan.***

The use and development of this property by Bloomington Transitions is consistent with the City's Comprehensive Plan and growth objectives. Moreover, the property at issue is located within the current medical zoning district, which "is established to allow hospital uses *and associated medical facilities*." UDO § 20.01.230(n) (emphasis added). Permitted uses within a medical district include, but are not limited to, medical clinics, testing labs, and group care homes; a rehabilitation clinic is a conditional use within this district. UDO §§ 20.02.540, 20.02.550. Accordingly, Bloomington Transitions, which helps people dealing with opioid dependency issues and other medical problems, is consistent with other uses in this area.

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<sup>1</sup> In conjunction with this Conditional Use Approval Application, Bloomington Transitions has submitted an appeal from the City's finding that Bloomington Transitions qualifies as a rehabilitation clinic. Bloomington Transitions has disputed that categorization in its appeal, because Bloomington Transitions does not offer inpatient care and treats other medical issues, in addition to treating opioid dependency. UDO Section 20.11.020 defines a "rehabilitation clinic" as "[a] facility used for the purposes of temporary or long-term *inpatient* treatment of victims of alcohol or drug use addiction." (emphasis added). If this Board determines, however, that Bloomington Transitions does meet the definition of rehabilitation clinic, Bloomington Transitions requests, in the alternative, for conditional use approval.

***Standard 2: The proposed use and development will not create a nuisance by reason of noise, smoke, odors, vibrations, or objectionable lights.***

Bloomington Transitions operates during normal business hours—Monday through Friday, 8:00 a.m. to 5:00 p.m. Bloomington Transitions has been operating at this location since February 2018, and it has not had any noise, smoke, odor, vibration, or light issues raised to it during that time. It will not create a nuisance through noise, smoke, odor, vibrations, or objectionable lights.

***Standard 3: The proposed use and development will not have an undue adverse impact upon adjacent property, the character of the area, or the public health, safety and general welfare.***

Bloomington Transitions will not have an undue adverse impact upon the area at issue. According to the McDoel Gardens Neighborhood Association Plan, which is the neighborhood within which Bloomington Transitions is located, “[t]he north side of the neighborhood, which is adjacent to the Bloomington Hospital, consists of medical and office uses along 1<sup>st</sup> Street.” See McDoel Gardens Neighborhood Plan (2002) p. 8. Bloomington Transitions is located on 1<sup>st</sup> Street and is, therefore, appropriately located among other medical and office buildings in the neighborhood. In fact, Bloomington Transitions is located in a space that was previously utilized as a doctor’s office, and it is located within a building that is also used by IU Health and other physicians. Thus, it will not have an undue impact upon the adjacent property, the character of the area, or the public health, safety, and general welfare of the neighborhood.

***Standard 4: The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, storm water management structures, and other services, or that the applicant will provide adequately for such services.***

Bloomington Transitions is located within an already existing medical/office building, and the space utilized by Bloomington Transitions was previously a doctor’s office. As such, it will be served adequately by essential public facilities and services.

***Standard 5: The proposed use and development will neither cause undue traffic congestion nor draw significant amounts of traffic through residential streets.***

Bloomington Transitions is located within an already existing medical/office building, and its space was previously utilized as a doctor’s office. It serves approximately 14-20 patients per day. As such, the requested use will neither cause undue traffic congestion nor draw significant amounts of traffic through residential streets.

***Standard 6: The proposed use and development will not result in the excessive destruction, loss or damage of any natural, scenic or historic feature of significant importance.***

Bloomington Transitions is located within an already existing medical/office building, and its space within the building was previously utilized as a doctor’s office. Accordingly, the requested use will not result in the excessive destruction, loss or damage of any natural, scenic or historic feature of significant importance.

***Standard 7: The hours of operation, outside lighting, and trash and waste collection must not pose a hazard, hardship, or nuisance to the neighborhood.***

Bloomington Transitions is located within an already existing medical/office building, and this space was previously utilized as a doctor's office. Its hours of operation are Monday through Friday, 8:00 a.m. to 5:00 p.m., and it functions very similarly to other medical clinics and offices. In addition, Bloomington Transitions has been operating at this location since February 2018, and it has not had any light, trash, or other nuisance complaints raised to it during that time. As such, the hours of operation, outside lighting, and trash and waste collection will not pose a hazard, hardship, or nuisance to the neighborhood.

***Standard 8: Signage shall be appropriate to both the property under consideration and to the surrounding area. Signage that is out of character, in the Board of Zoning Appeals' determination, shall not be approved.***

Bloomington Transitions signage is appropriate both to the property and to the surrounding area.

***Standard 9: The proposed use and development complies with any additional standards imposed upon that particular use by Chapter 20.05; § CU: Conditional Use Standards.***

There are no additional, specified standards imposed for a rehabilitation clinic under Chapter 20.05, Section CU: Conditional Use Standards.

#### **D. Conclusion**

For all these reasons, Bloomington Transitions meets the standards for conditional use approval, and it requests that the Board grant its Application.

Respectfully submitted,



Benjamin Niehoff, # 22492-53

Tara Ali, # 30751-22

Attorneys for Appellant, Bloomington Transitions