



301 East Main Street
Lowell, Michigan 49331
Phone (616) 897-8457
Fax (616) 897-4085

PLANNING COMMISSION-CITIZEN ADVISORY COMMITTEE
CITY OF LOWELL, MICHIGAN
AGENDA

FOR THE REGULAR MEETING OF
MONDAY, FEBRUARY 13, 2017 AT 7:00 P.M.

AT THE
LOWELL CITY HALL
CITY COUNCIL CHAMBERS
SECOND FLOOR
301 EAST MAIN STREET

1. CALL TO ORDER: PLEDGE OF ALLEGIANCE, ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF THE MINUTES OF PREVIOUS MEETINGS
 - a. January 9, 2017 – Regular Meeting
4. PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA
5. OLD BUSINESS
 - a. Zoning Ordinance Revisions – Chapter 4
6. NEW BUSINESS
 - a. King Milling – Site Plan Review
 - b. Memo provided from Andy Moore regarding the Medical Marijuana Act
 - c. Zoning Ordinance Revisions – Chapter 17
 - d. Discussion regarding West Michigan Regional Planning Commission (WMRPC)
7. STAFF REPORT
8. COMMISSIONERS REMARKS
9. ADJOURNMENT

**OFFICIAL PROCEEDINGS
OF THE
PLANNING COMMISSION-CITIZEN ADVISORY COMMITTEE
CITY OF LOWELL, MICHIGAN
FOR THE REGULAR MEETING OF
MONDAY, JANUARY 9, 2017, AT 7:00 P.M.**

1. CALL TO ORDER: PLEDGE OF ALLEGIANCE, ROLL CALL.

The Meeting was called to order at 7:00 p.m. by City Clerk Susan Ullery and the Pledge of Allegiance was recited.

Present: Commissioners David Cadwallader, Bruce Barker, Marty Chambers, John Gerard, Jim Salzwedel, Alan Teelander and Chair James Zandstra.

Absent: None.

Also Present: City Clerk Susan Ullery and Williams and Works Planner David Jirousek

2. ELECTION OF OFFICERS

A. CHAIR

IT WAS MOVED BY CHAMBERS to nominate Bruce Barker as Chair for the Lowell Planning-Citizen Advisory Commission.

No further nominations were made.

IT WAS MOVED BY ZANDSTRA and seconded by CADWALLADER to elect Bruce Barker as Chair for the Lowell Planning-Citizen Advisory Commission.

YES: 6. NO: 0. ABSTAIN: 1. (Barker) ABSENT: 0.

MOTION CARRIED.

The meeting was turned over to Chair Barker.

B. VICE CHAIR

IT WAS MOVED BY CHAMBERS and seconded by ZANDSTRA to elect Jim Salzwedel as Vice Chair for the Lowell Planning-Citizen Advisory Commission.

No further nominations were made.

YES: 7. NO: 0. ABSENT: 0. MOTION CARRIED.

C. REVIEW AND ADOPTION OF PLANNING COMMISSION RULES OF PROCEDURE. The Rules of Procedure were reviewed.

IT WAS MOVED BY ZANDSTRA and seconded by CADWALLADER to adopt the Rules of Procedure as written.

YES: 7. NO: 0. ABSENT: 0. MOTION CARRIED.

3. **APPROVAL OF AGENDA.**

IT WAS MOVED BY SALZWEDEL and seconded by ZANDSTRA to approve the agenda as written.

YES: 7. NO: 0. ABSENT: 0. MOTION CARRIED.

4. **APPROVAL OF THE MINUTES OF THE PREVIOUS MEETINGS.**

IT WAS MOVED BY TEELANDER and seconded by CADWALLADER that the minutes of the November 14, 2016 regular meeting be approved as written.

YES: 7. NO: 0. ABSENT: 0. MOTION CARRIED.

5. **PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA.**

No comments were received.

6. **OLD BUSINESS.**

a. **Zoning Ordinance Revisions – Chapter 4.**

Williams and Works Planner David Jirousek reviewed various changes of “Chapter 4 – General Provisions” as discussed previously by the Commission. Discussion continued amongst the Commissioners.

By general consensus, the Commission agreed to review Chapter 17 next.

7. **NEW BUSINESS.**

a. **Approval of 2017 meeting dates:**

IT WAS MOVED BY CADWALLADER and seconded by GERARD to approve the meeting dates as written.

YES: 7. NO: 0. ABSENT: 0. MOTION CARRIED

8. **STAFF REPORT.**

There were no questions or comments.

9. **COMMISSIONERS REMARKS**

Commissioner Zandstra congratulated Chair Barker.

Vice Chair Salzwedel commented on medical marijuana and dispensary shops and suggested this be discussed further at the next meeting. Salzwedel also congratulated Chair Barker.

Commissioner Teelander congratulated both Chair Barker and Vice Chair Salzwedel.

Commissioner Chambers congratulated Chair Barker and Vice Chair Salzwedel. Chambers also commented on the idea of building on roof tops and if it can or cannot be regulated. Chair Barker stated he would be in favor of this.

Chair Barker commented on the fairground property and suggested the City Council and Planning Commission work together regarding the future of the property.

IT WAS MOVED BY SALZWEDEL and seconded by TEELANDER to adjourn at 7:55 p.m.

DATE:

APPROVED:

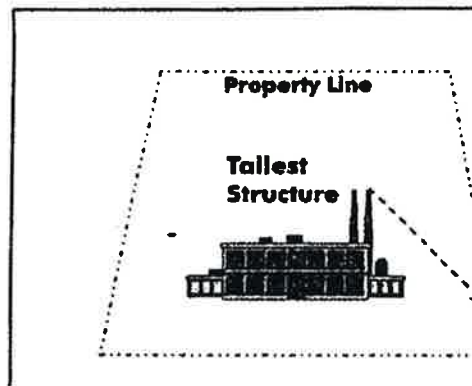
Bruce Barker, Chair

Susan S. Ullery, City Clerk

CHAPTER 4. - GENERAL PROVISIONS

SECTION 4.01. - REQUIRED AREA, SPACE, HEIGHT, AND USE CONDITIONS AND EXCEPTIONS.

- A. No lots or lots in common ownership and no yard, parking area or other space shall be so divided, altered or reduced as to make such area or dimension less than the minimum required under this ordinance. If already less than the minimum required under this ordinance, said area or dimension shall not be further divided or reduced.
- B. A lot which is platted, or otherwise lawfully of record as of the effective date of this ordinance, may be used as specified in the district in which it is located. The side yards of such lots may be reduced by the same percentage the area of such lot bears to its zoning district requirements, provided that no side yard shall be less than five (5) feet. In all cases, the minimum front and rear yard requirements of this ordinance shall be met.
- C. Height exceptions.
1. The following buildings and structures shall be exempt from height regulations in all districts: parapet walls not exceeding four (4) feet in height, chimneys, cooling towers, elevator bulkheads, fire towers, grain elevators and bins, silos, stacks, elevated water towers, stage towers, scenery lofts, monuments, cupolas, domes, spires, penthouses housing necessary mechanical appurtenances, wind-powered electrical generator, wireless communication antenna, and television and radio reception and transmission antennas and towers which do not exceed one hundred (100) feet in height.
 2. Additions to existing buildings and structures which now exceed the height limitations of their district may be constructed to the height of the existing to which the addition is attached if the lot is large enough to encompass a circular area with a radius at least equal to the height of the tallest structure or building.
 3. In the industrial districts stack chimneys, cooling and fire towers, elevator building and bulkheads, storage tanks and other necessary structures are permitted, provided the lot is large enough to encompass a circular area with a radius at least equal to the height of the tallest structure or building.



(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.02. - PRINCIPAL USE.

- A. No lot or parcel of land shall contain more than (1) main building or one (1) principal use, except as may be permitted otherwise in this ordinance.
- B. Multiple buildings and/or multiple uses of land on a parcel may be considered a principal building or use collectively if the following conditions are met:
 - 1. The land and buildings are planned and designed as a single integral development, including joint parking, compatible architecture, shared driveways, shared signs, and other similar features.
 - 2. All uses, if not the same, shall be similar in function and/or operation.

(Ord. No. 95-06, § 1, 12-27-95)

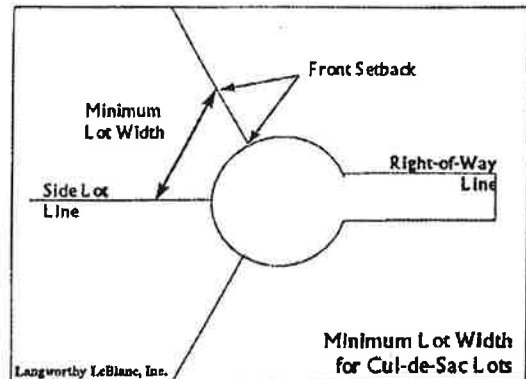
SECTION 4.03. - STREET ACCESS.

Any lot of record created after the effective date of this ordinance shall front upon a public or private street right-of-way for the minimum lot width required by this ordinance.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.04. - BASIS OF DETERMINING YARD AND LOT REQUIREMENTS.

- A. The minimum lot width for a lot on a cul-de-sac or other irregularly shaped lot shall be measured at the required front yard setback line and shall not be diminished throughout the rest of the lot. Such lots shall have a minimum width of forty (40) feet from the front property line to the required front yard setback line.
- B. The required front yard setback line shall be measured from the right-of-way line or property line, to an imaginary line across the width of the lot drawn at the minimum required front setback distance for that district, excepted as noted in C., below.
- C. Where an average setback line which is less than that required by this ordinance has been established by existing buildings located within three hundred (300) feet of the proposed building, such average setback shall apply.
- D. Corner and through lots. On corner and through lots, the front yard requirements shall apply on both streets. In such cases, the remaining yards shall be side yards, with no rear yard. In the case of a row of through lots, all yards of said lots adjacent to streets shall be considered frontage, and through yard setbacks shall be provided as required.



(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.05. - PROJECTIONS INTO YARDS.

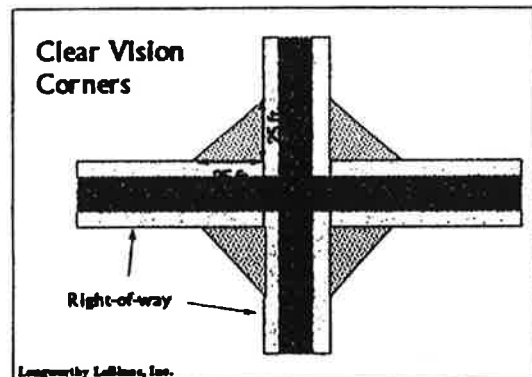
- A. Certain architectural features, such as cornices, bay windows (or windows without foundations), gutters, chimneys, pilasters and similar features:
1. May project a maximum of four (4) feet into a required front or rear yard; and
 2. Shall not project into the required side yard.
- B. Porches, terraces, decks, balconies, window awnings, and similar structures which are open on all sides, unenclosed, and uncovered:
1. May project a maximum of ten (10) feet into a required front yard;
 2. May project a maximum of fifteen (15) feet into a required rear yard;
 3. Shall not project into a required side yard; and
 4. Shall not be placed closer than ten (10) feet to any front or rear lot line.
 5. If such structures enclosed on any side or covered in any manner they shall be considered part of and subject to the same setbacks as the main building.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.06. - CLEAR VISION.

- A. Except for lots within the C-2 or MU districts, no plantings, fencing, or other obstruction shall be established or maintained on any corner lot which will obstruct the view of a vehicle driver approaching the intersection. Such unobstructed corner shall mean a triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the case of a rounded property corner from the intersection of the street property lines extended. This shall not prohibit the planting of shrubbery which will not achieve a height at maturity of more than thirty (30) inches.
- B. No plantings shall be established in any required front yard which, in the opinion of the zoning enforcement officer, will obstruct the view from of vehicles entering or leaving the site from driveways or adjacent roadways.

(Ord. No. 95-06, § 1, 12-27-95)



SECTION 4.07. - FENCES AND WALLS.

- A. Fences or walls shall be located on the same property as the use to which they apply.

- B. No fences or walls may be erected or maintained within the right-of-way of any public street, alley or other public way or in a clear vision area required by section 4.06 hereof.
- C. The height of a fence shall be measured from the average grade elevation within thirty (30) inches of each side of the proposed fence. The artificial raising of the land on which a fence is located in order to increase the height of a fence is prohibited.
- D. Unless specifically provided for elsewhere in this ordinance, a fence or wall or that portion of a fence or wall that is greater than fifty (50) percent solid may not exceed a height of thirty-six (36) inches within any required primary front yard. A fence that is less than fifty (50) percent solid may not exceed a height of forty-eight (48) inches within any required primary front yard.
- E. Fences shall not exceed a height of seventy-two (72) inches in any other area, except as noted in F. below. Fences shall be measured from the finished grade to the top of the fence. Posts will not be considered a part of fence height unless in the opinion of the zoning enforcement officer they obstruct vision.
- F. No fence or wall shall contain any exposed spike, nail, barb, other pointed instrument or electrification unless necessary for security in a nonresidential district, or for the protection of public utility buildings or improvements, or for livestock containment in agricultural areas. The exposed spike, nail, barb or other pointed instrument portion of the fence or wall shall be at least six (6) feet from the finished grade, in which case the height of the fence or wall may extend to a maximum of seven (7) feet above the finished grade.
- G. Fences in residential districts shall be residential in appearance and intent. Farm type fences are allowed on farmland in residential districts.
- H. In an industrial district, an open, wire protective fence may be constructed in the required front yard, where necessary, to enclose secure areas or to prevent access to potentially hazardous areas.
- I. All fences located along a property line shall have exposed posts and/or bracing of the fence located so as to face the interior of the property, and the finished side shall face the outside of the property.
- J. Any fence or wall erected or maintained along or near a lot line or other property boundary line shall be located and maintained so that no part of the fence or wall is located upon or encroaches on or above any other adjacent lot or parcel of property.
- K. All fences and walls shall be kept in good repair and condition: Both sides of a fence or wall, including a fence erected along a property line, shall be maintained in good repair and condition to maintain the original aesthetic of the fence including but not limited to finish, shape and style. If not maintained as prescribed, the city may require that the fence be repaired or removed.
- L. A zoning permit shall be obtained from the zoning enforcement officer prior to the installation of a fence or wall and the design of all fences and walls, including openings for vehicular traffic or other purpose, shall only be as permitted in this section and the permit issued by the zoning enforcement officer.

(Ord. No. 95-06, § 1, 12-27-95; Ord. No. 04-1, § 4, 3-15-04)

SECTION 4.08. - ACCESSORY BUILDING AND USES.

- A. Accessory buildings attached to dwellings or other main buildings, including enclosed porches and garages, shall be deemed a part of such buildings and must conform to all regulations of this ordinance applicable to such main buildings.
- B. An accessory building or use shall only be permitted on lot which contains a principal use or main building.
- C. No part of an accessory building shall be used as a dwelling for residential purposes.
- D. On corner lots, where the side lot line is a continuation of the front lot line of the lot to its rear, the accessory building or use shall be located no nearer than the required front yard setback line on the lot behind the corner lot.
- E. No more than two (2) detached accessory buildings may be permitted on any lot or parcel.
- F. Detached accessory buildings shall be located:
 - 1. A minimum of ten (10) feet from any main building;
 - 2. A minimum of three (3) feet to any side or rear lot line, as measured to the eave of the building;
 - 3. No nearer than the front yard setback required for the main building.
- G. Detached accessory buildings -Maximum total floor areas for all such buildings:
 - 1. For single- and two-family dwellings, including a garage:
 - a. On lots of less than nine thousand (9,000) square feet, nine hundred and sixty (960) square feet; and
 - b. On lots of nine thousand (9,000) square feet or more: one thousand two hundred (1,200) square feet.
 - 2. Other uses:
 - a. Multiple-family developments: nine hundred sixty (960) square feet, excluding garages for the use of residents.
 - b. Manufactured home parks: as permitted by Chapter 9 hereof;
 - c. For uses in the C-3 district zoning districts: not to exceed the floor area of the main building(s); and
 - d. For uses in all other nonresidential zoning districts other than the C-3 zoning districts: not to exceed 25% the floor area of the main building(s).
- H. No detached accessory building in a residential district shall exceed the height of the main building located on the same lot.
- I. Any accessory building with a floor area greater than six hundred (600) square feet shall be permanently constructed on a concrete foundation and shall conform to all applicable building codes and other similar codes and regulations that apply to such structures.

- J. Accessory buildings with a floor area greater than two hundred (200) square feet shall (i) comply with applicable building codes and other similar codes and regulations that apply to such structures and (ii) be compatible in design and similar to the main building with respect to exterior finish materials, color, overall design and aesthetic quality. The following additional standards shall apply to such accessory buildings:
1. Accessory buildings covered with vinyl, canvas, nylon or other similar membrane materials shall not exceed two hundred (200) square feet in ground coverage and shall be securely attached or anchored to the ground.
 2. Bright contrasting stripe or patterned covers and orange tarp covers shall not be permitted.
 3. An accessory building shall be well maintained and kept in a clean and safe condition; rips in the cover, hanging cover material, leaning frames and other visual detriments that present an unkept image shall not be permitted.
 4. An accessory building shall not detract from or undermine the character or quality of the surrounding neighborhood.
 5. Gazebos, pergolas or other accessory buildings erected and used by a retail and commercial business for no more than one hundred eighty (180) days during any consecutive 12-month period and accessory buildings erected for no more than three (3) consecutive days during any consecutive three-month period for social events such as weddings, graduations and family reunions shall be exempt from the requirements of this subsection.
- K. Accessory buildings not meeting the requirements of subsection J. of this section may be permitted as a special land use in an I-L Light Industrial District and an I-Industrial District as regulated by chapter 17.
- L. Upon construction of a primary accessory building or the construction of an additional bay(s) to the primary accessory building, a hard surfaced driveway must be constructed from the public street or alley to the primary accessory building. The intent of this section of the ordinance is to create a dustless surface, minimize maintenance and establish an attractive pathway to garages.
- M. A minimum width of ten (10) feet for a driveway and a minimum of twelve (12) feet for a new curb cut shall be established.

(Ord. No. 95-06, § 1, 12-27-95; Ord. No. 99-6, § 1, 8-16-99; Ord. No. 04-1, § 5, 3-15-04; Ord. No. 11-02, §§ 1—4, 1-3-11)

SECTION 4.08A. - REQUIREMENTS FOR PLACEMENT OF TEMPORARY STORAGE UNITS.

The following shall apply to the placement of temporary storage units within the City:

- A. Temporary storage units may only be placed upon or within a driveway or parking area, or, if access exists at the side or rear of a lot, the side or rear yard.
- B. No temporary storage unit shall be placed upon or within public property or a public place including without limitation a street, sidewalk or out-lawn between a public street and sidewalk.

- C. A limit of one (1) temporary storage unit may be located upon or within a lot for a maximum of thirty (30) consecutive days, including the day of delivery and removal, within any six-month period.
- D. A temporary storage unit may not exceed eight (8) feet in height, eight (8) feet six (6) inches in width or sixteen (16) feet in length.
- E. A temporary storage unit shall be secured in a manner that does not endanger the safety of persons or property.
- F. A temporary storage unit shall at all times, be maintained in good condition, free from evidence of deterioration, graffiti, rust, ripping, tearing, holes or breaks.
- G. No temporary storage unit shall be used for human occupancy or to store solid waste, construction debris, demolition debris, business inventory, commercial goods, goods for property other than the property where the temporary storage unit is located, or any illegal or hazardous material. Upon reasonable notice, the city may inspect the contents of any temporary storage unit at any reasonable time to confirm that it is not being used to store said materials.
- H. A temporary storage unit which is not removed at the end of the time for which it may lawfully remain in place, may be removed by the city, without notice, and the cost of such removal shall be a lien upon the property on which such unit was located which costs may be collected by the city in the same manner as the city collects delinquent and ad valorem property taxes.
- I. A sign advertising the company or vendor supplying a temporary storage unit located on a temporary storage unit shall not be subject to the provisions of chapter 20 hereof provided the temporary storage unit is in compliance with this section 4.08A.

(Ord. No. 07-10, § 2, 11-5-07)

SECTION 4.09. - REGULATIONS APPLICABLE TO ALL SINGLE-FAMILY DWELLINGS.

It is the intent of this section to establish minimum standards of appearance and construction for all single-family dwellings placed in the city, whether constructed on a lot or a manufactured home. Construction and/or placement of a single-family dwelling on any lot or parcel shall be permitted only if the dwelling complies with all of the following standards:

- A. If the dwelling unit is a manufactured home, the manufactured home must either be:
 - 1. New and certified by the manufacturer and/or appropriate inspection agency as meeting the Mobile Home Construction and Safety Standards of the U.S. Department of Housing and Urban Development, as amended, or any similar successor or replacement standards which may be promulgated; or
 - 2. Used and certified by the manufacturer and/or appropriate inspection agency as meeting the standards referenced in subsection (1) above, and found, on inspection by the building inspector or his designee, to be in excellent condition and safe and fit for residential occupancy.

- C. The dwelling unit shall comply with all applicable building, electrical, plumbing, fire energy and other similar codes which are or may be adopted by the city, and with applicable federal or state standards or regulations for construction. Appropriate evidence of compliance with such standards or regulations shall be provided to the building inspector.
- D. The dwelling unit shall comply with all restrictions and requirements of this ordinance, including, without limitation, the lot area, lot width, residential floor area, yard, and building height requirements of the district in which it is located.
- E. The dwelling unit shall be firmly attached to a permanent continuous foundation which complies with applicable provisions of the building code adopted by the city.
- F. If the dwelling unit is a manufactured home, the manufactured home shall be installed with the wheels and towing mechanism removed.
- G. The dwelling unit shall have a minimum horizontal dimension across any front, side or rear elevation of twenty (20) feet at time of manufacture, placement or construction.
- H. The dwelling shall be provided with one (1) accessory building or garage, either attached to the dwelling unit or detached on the same lot, having minimum dimensions of ten (10) feet in width by twenty (20) feet in length.
- I. The dwelling unit shall be connected to public sewer and water supply systems approved by the City of Lowell.
- J. The foregoing standards shall not apply to a manufactured home located in a manufactured home park licensed by the Michigan Mobile Home Commission and approved by the city according to the provisions contained in Chapter 12 of this ordinance except to the extent required by state or federal law.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.10. - TEMPORARY USES OR BUILDINGS REQUIRING ZONING ENFORCEMENT OFFICER AUTHORIZATION.

- A. Upon application, the zoning enforcement officer may issue a permit for the following temporary buildings or uses. Each permit shall specify a location for such building or use and shall be valid for a period of not more than six (6) calendar months. Permits may be renewed by the zoning enforcement officer for one (1) additional successive period of six (6) calendar months or less at the same location and for the same purpose.
 - 1. Temporary office building or construction yard incidental and necessary to construction at the site where located.
 - 2. Temporary sales office or model home incidental and necessary for the sale or rental of real property in a new subdivision or housing project. In any case, such temporary office or model home shall be removed when fifty (50) percent or more of the lots or units have been sold or leased.
- B. In considering authorization for all temporary uses or buildings, the zoning enforcement officer shall consider the following standards and may attach reasonable conditions to temporary

uses or structures to ensure that the standards of this section are met. The zoning enforcement officer shall determine that:

1. The use or structure will not have an unreasonable detrimental effect upon adjacent properties;
2. The use or structure is reasonably necessary for the convenience and safety of the construction proposed;
3. The use or structure does not adversely impact the character of the surrounding neighborhood;
4. Access to the use area or structure is located at a safe location.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.11. - HOME OCCUPATIONS.

- A. No person other than members of the resident family shall be engaged in the home occupation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than a total of twenty-five (25) percent of the floor area of the dwelling unit and/or accessory building shall be used in the conduct of the home occupation.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one (1) sign, not exceeding two (2) square feet in area, non-illuminated, and mounted flat against the wall of the main building.
- D. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood. Parking areas for such home occupation shall be located off the street and other than in a required front yard.
- E. No merchandise or articles for sale shall be displayed for advertising purposes and no sign or device relative to the sale of such merchandise shall be displayed on the premises. Only those materials produced on the premises as a result of such home occupation may be submitted for sale.
- F. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises, if the occupation is conducted in a single-family dwelling, or outside the dwelling unit if conducted in other than a single-family dwelling. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or cause fluctuation in line voltage off the premises.
- G. Nothing in this Section shall be construed to prohibit the instruction of a fine art or craft in a single-family residence in the City pursuant to MCL 125.3204, provided that the provisions of this Section are met.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.12. - SATELLITE DISH ANTENNAS.

A. In any nonresidential district, the following restrictions shall apply:

1. The dish antenna shall be permitted in the side and rear yard or mounted on top of a building, and securely anchored.
2. The nearest part of the antenna shall be at least five (5) feet from any property line.
3. The height shall not exceed the height restrictions in the district in which the proposed device is to be located.
4. No portion of the dish antenna shall contain any name, message, symbol, or other graphic representation.
5. A site plan shall be prepared and submitted to the building inspector for approval prior to issuance of a building permit. The site plan shall include the proposed location and an elevation drawing showing the proposed height and foundation details.

B. In any residential district, the following restrictions shall apply:

1. The dish antenna shall be permitted in the rear yard only, unless such location prohibits the antenna from receiving signals in which case the zoning enforcement officer may approve another location on the lot.
2. The nearest part of the antenna shall be at least (5) feet from any property line.
3. The unit shall be securely anchored as determined by the building inspector.
4. The maximum height measured from the ground to the top edge of the dish shall be fifteen (15) feet.
5. The antenna shall be an unobtrusive color, as approved by the building inspector. Nor shall any portion of the dish antenna contain any name, message, symbol, or other graphic representation.
6. A site plan shall be submitted to the building inspector for approval prior to the issuance of a building permit. The site plan shall include the proposed location of the antenna and an elevation drawing showing the proposed height, color, and foundation details.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.13. - NONCONFORMITIES.

It is recognized that within the zoning districts established by this Ordinance or amendments thereto, there exist uses, buildings, structures and/or parcels and characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Ordinance or an amendment thereto. It is the intent of this section to permit these nonconformities to continue until they are removed.

A. General provisions for nonconformities.

1. Except where specifically provided to the contrary, and subject to the provisions of this section, a lawful building or structure, or the lawful use of any building or structure or of any land or premises which is existing and lawful on the effective date of this ordinance, or in the case of an amendment of this ordinance, then on the effective date of such amendment, may be continued even though such use does not conform with the provisions of this ordinance or any amendment thereto.
2. Any lot, use of land, building or structure which has been established in violation of the provisions of a previous Zoning Ordinance having jurisdiction at the time the use of land or structure was established, and any lot, use of land, building or structure which has been lawfully established under a previous Zoning Ordinance and subsequently violates the terms of the permit under which it was established, shall continue to be in violation of this Ordinance.
3. An existing lot, use of land, building or structure which does not fully comply with the provisions of this Ordinance, as amended, and either was lawfully established under a previous Zoning Ordinance, created or commenced during a period of time when no valid Zoning Ordinance was in effect, or was lawfully established under the jurisdiction of this Ordinance (before amendment), and remains in compliance with the terms of a permit issued at that time, shall be permitted to continue provided that such lot, use of land, building or structure is in compliance with this section.
4. Any building, structure or use shall be considered existing and lawful and for purposes of this section if on the effective date of this ordinance, a building permit has been obtained therefor, if required, or, if no building permit is required, a substantial start has been made toward construction and construction is thereafter pursued diligently to conclusion.
5. On any nonconforming building or structure, or on any building or structure located on a nonconforming lot or devoted in whole or in part to any nonconforming use, work may be done in on ordinary repairs or on repair or replacement of walls, fixtures, wiring or plumbing, provided that the building or structure as it existed on the effective date or amendment of this Ordinance, shall not be altered or increased except in compliance with this section.
6. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof, or parcel declared to be unsafe by any official charged with protecting the public safety, upon order of such official

7. The change of tenancy, ownership or management of any existing nonconforming lots, uses of land, buildings or structures, or of lots, uses of land, buildings or structures in combination, shall be permitted
8. Structures, buildings or uses nonconforming by reason of height, area and/or parking and loading space provisions may be extended, enlarged, altered, remodeled or modernized only when the following conditions are met:
 - a. The building or structure shall comply with all height, area, and/or parking and loading provisions with respect to such extension, enlargement, alteration, remodeling or modernization.
 - b. The zoning enforcement officer shall determine that such alteration, remodeling, or modernization will not substantially extend the life of any nonconforming building or structure.
 - c. Any use of a building or structure which is nonconforming by reason of parking and loading provisions and which is thereafter made conforming or less nonconforming by the addition of parking and/or loading space shall not thereafter be permitted to use such additionally acquired parking and/or loading space to meet requirements for any extension, enlargement, or change of use which requires greater areas for parking and/or loading space.
 - d. Legal nonconforming buildings and structures in the MU District may be extended, enlarged, remodeled or modernized only if the extension, enlargement, remodeling or modernization does not increase the degree of the nonconformity.

B. Nonconforming uses

1. No nonconforming use of any land or structure shall hereafter be moved, enlarged or extended unless such movement, enlargement or extension does not increase the degree of the nonconformity.
2. The nonconforming use of a building or structure or of any land or premises shall not be:
 - a. Changed to any other nonconforming use.
 - b. Re-established after it has been changed to a conforming use.
 - c. Re-established after abandoned or discontinued for a continuous period of twelve (12) months. A nonconforming use shall be determined to be abandoned if one or more of the following conditions exists, and which shall be deemed to constitute an intent on the part of the property owner to abandon the nonconforming use:
 - 1) Utilities, such as water, gas and electricity to the property, have been disconnected;
 - 2) The property, buildings, and grounds, have fallen into disrepair;
 - 3) Signs or other indications of the existence of the nonconforming use have been removed;

- 4) Removal of equipment or fixtures which are necessary for the operation of the nonconforming use;
 - 5) Other actions, which in the opinion of the zoning enforcement officer, constitute an intention of the part of the property owner or lessee to abandon the nonconforming use
3. In the event any non-residential nonconforming use is damaged by fire, wind, Act of God or public enemy such that the cost of restoration or repair would exceed sixty (60) percent of the true cash value of the improvements prior to its damage or destruction, a substantial improvement, rebuilding or restoration of the nonconforming use shall only be permitted if first authorized by the board of zoning appeals. In considering such authorization, the board of zoning appeals shall consider the following standards:
 - a. Whether such substantial improvement will significantly extend the probable duration of the nonconforming use.
 - b. Whether or not the land previously occupied by the nonconforming use can be reasonably used for a use permitted in the applicable district.

C. Nonconforming buildings and structures

1. In the event any non-residential nonconforming building or structure is damaged by fire, wind, Act of God or public enemy, it may be rebuilt or restored to its original nonconforming condition if the cost thereof does not exceed sixty (60) percent of the true cash value of the nonconforming building or structure prior to its damage or destruction.
2. In the event any residential nonconforming building or structure is damaged by fire, wind, Act of God or public enemy such that its replacement cost would exceed sixty (60) percent of the true cash value of the nonconforming building or structure prior to its damage or destruction, it may be rebuilt or restored only in compliance with all provisions of this Ordinance.
3. If a building or structure that is considered an historic resource pursuant to Chapter 11.5 of the Code of Ordinances by the historic district commission is damaged by fire, wind, act of God or public enemy, such building or structure may be rebuilt or restored to its original nonconforming condition, regardless of the extent of the damage.
4. A nonconforming residential structure may be enlarged or increased as long as such enlargement does not increase the degree of nonconformance.

D. Nonconforming lots of record

1. In any district in which residential dwellings are permitted, notwithstanding other limitations imposed by the provisions of this zoning ordinance, a residential dwelling and permitted accessory building may be constructed or located on a single lot of record in existence at the effective date of the adoption of or applicable amendment to this zoning ordinance, provided, the lot meets at least eighty (80) percent of the required lot area, lot width and side yard setback required by that district and, further, provided, that any building or structure constructed or located on the lot complies with all other yard setback requirements.

2. Except as noted in (2) below, if two (2) or more lots of record or combination of lots and portions of lots of record, in existence at the time of the passage of this ordinance, or an amendment thereto, are:

- a. In common ownership;
- b. Abutting each other or have continuous frontage, and;
- c. Individually do not meet the lot width or lot area requirements of this ordinance,

Then the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance. Such parcels shall be combined into such lot or lots meeting the lot width and lot size requirements of this ordinance. No portion of such parcel shall be used or divided in a manner which diminishes compliance with lot width and area requirements of this ordinance.

3. The planning commission may permit use of abutting nonconforming lots of record in common ownership provided that the commission finds that:
 - a. The nonconforming lots of record were not created by the owner of the properties; and
 - b. There is not a substantial number of vacant, nonconforming lots of record in a similar situation within the vicinity of the lot(s) proposed for use that, if used, would alter the character of the neighborhood.

(Ord. No. 07-03, § 1, 4-2-07)

SECTION 4.14. - ESSENTIAL SERVICES.

The erection, construction, alteration or maintenance of essential services, shall be permitted as authorized or regulated by law and other ordinances in any use district, it being the intention hereof to exempt such erection, construction, alteration, and maintenance from the application of this ordinance, except those which may be considered a danger to the community health, safety and welfare.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.15. - EXCAVATIONS OR HOLES.

- A. The construction, maintenance, or existence within the city of any unprotected, unbarricaded, open, or dangerous excavations, holes, pits, or wells, which constitute or are likely to constitute a danger or menace to the public health, safety, or welfare, are hereby prohibited.
- B. This section shall not prevent any excavation under a permit issued by the zoning enforcement officer, planning commission and/or building inspector where such excavations are properly protected and warning signs posted in such manner as approved by the building inspector.
- C. This section shall not apply to streams, natural bodies of water, or to ditches, reservoirs, and other such bodies of water created or existing by authority of governmental units or agencies.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.16. - RECREATIONAL VEHICLE STORAGE IN RESIDENTIAL DISTRICTS.

Licensed and operable recreational vehicles may be stored or parked in residential districts, provided the following regulations are complied with:

- A. Recreational vehicles may be stored or parked to the rear of the front building line of the primary structure.
- B. Recreational vehicles may be stored or parked in a driveway not less than ten (10) feet from the front lot line.
- C. Recreational vehicles may be used for temporary occupancy for one (1) period not to exceed nine (9) consecutive days during any six (6) consecutive calendar months as long as they are otherwise in compliance with this section 4.16.

(Ord. No. 95-06, § 1, 12-27-95; Ord. No. 02-3, § 1, 7-16-02)

SECTION 4.17. - SWIMMING POOLS.

- A. Pools used for swimming or bathing shall conform with the requirements of this section; provided, however, these regulations shall not be applicable to any such pool less than twenty-four (24) inches deep or having a surface area less than two hundred and fifty (250) square feet, except where such pools are permanently equipped with a water recirculating system or involve structural materials.
- B. A swimming pool or appurtenances thereto shall not be constructed, installed, enlarged or altered until a permit has been obtained from the zoning enforcement officer.
- C. The outside edge of the pool wall shall not be located closer than six (6) feet from any rear or side lot line; provided, that if any part of the pool walls are more than two (2) feet above the surrounding grade level, such pool shall be placed or erected not less than ten (10) feet from any lot line. No pool shall be located under any electrical wiring or in a front yard. In the case of a waterfront lot, a pool may be located between the water's edge and the dwelling, but shall not be located within a required yard.
- D. Unless otherwise permitted by the State Construction Code, each pool shall be enclosed by a fence or wall with a height of at least four (4) feet, sufficient to make such body of water inaccessible to small children. Such enclosure, including gates therein, must be not less than four (4) feet above the underlying ground; all gates must be self-latching with latches placed four (4) feet above the underlying ground or otherwise made inaccessible from the outside to small children.
- E. All swimming pool installations shall comply with the State Construction Code and all standard codes referred to therein.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.18. - MECHANICAL WORK.

- A. Mechanical work on trucks over one (1) ton or more, or race cars, stock cars or otherwise, owned by the occupant of a dwelling, or on any vehicles not owned by an occupant of the premises is prohibited in residential districts. Any permitted work on vehicles must be performed entirely within a building, and no parts or vehicles not in a legally operable condition shall be stored outside.
- B. In all residential districts, motor vehicles not intended for private passenger use shall be garaged at all times.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 4.19. - KEEPING OF PETS AND OTHER ANIMALS.

- A. No more than three (3) adult dogs or cats in combination shall be kept or housed in one (1) residential unit in any residential district.
- B. One (1) horse may be kept on a lot of not less than one and one-half (1½) acres, providing the structure containing such use is located not less than one hundred (100) feet from all adjoining residential district lot lines or residential use. An additional horse may be permitted for each one-half (½) acre over one and one-half (1½) acres.
- C. As long as applicable public health standards are met, fowl (excluding roosters), rabbits or similar animals may be kept within the living space of a residential unit in all residential zone districts. Fowl (excluding roosters), rabbits or similar animals kept outside or in an outside enclosure in any residential zone districts is (i) permitted by right if the lot is at least an acre in size and (ii) permitted by special use permit if the lot is less than an acre, but at least one-half (½) acre. Two (2) such animals are permitted for each one-half (½) acre in lot size. Roosters may not be kept either inside or outside in any residential zone district. Any outside structure housing such animals shall be located not less than fifty (50) feet from all adjoining lot lines. Setback requirements do not, however, apply to such animals housed within the living space of a residential unit.

(Ord. No. 95-06, § 1, 12-27-95; Ord. No. 07-08, § 1, 6-4-07)

SECTION 4.20. - PRIVATE STREETS.

- A. Purpose. The city determines that it is in the best interest of the public health, safety, and welfare to regulate the construction, improvement, extension, relocation, and use of private streets. These provisions have been enacted to assure that private streets:
 - 1. Will not be detrimental to the public health, safety, or general welfare;
 - 2. Will not adversely affect the long term development policies of the city;
 - 3. Will be designed and constructed with width, surface, and grade to assure safe passage and maneuverability of private vehicles, police, fire, ambulance, and other safety vehicles.
 - 4. Will be constructed so as to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and natural-environment of the city.

- B. Definitions. As used in this section, "safe and unimpeded route of travel" shall mean a roadway of adequate width to accommodate the safe, two-way passage of vehicles, and of sufficient construction to accommodate any fire, police, rescue, or other emergency vehicle which may be utilized by the city.
- C. Frontage and access.
1. Any lot not having frontage on a public street shall have frontage upon a private street.
 2. All parcels utilizing a private street shall have frontage on the private street for a distance equal to or greater than the minimum lot width required for the district in which the parcel is located.
 3. All private streets shall have direct access to a public street.
- D. Permits.
1. No individual, association, corporation, or entity, either public or private, shall construct a private street without first having obtained a private street permit from the city council.
 2. The building inspector shall not issue building permits for construction of any building or structure on lots served by a private street until construction of the private street as approved by the city council has been completed.
 3. A driveway permit shall be obtained from the Michigan Department of Transportation, where applicable, or from the City of Lowell.
 4. A soil erosion and sedimentation control permit shall be obtained, as may be required by the Soil Erosion and Sedimentation Control Act of 1972, as amended.
 5. All other required State of Michigan permits shall be obtained.
 6. The city council may elect to have all design and construction plans reviewed by the city's attorney, fire chief, engineer, or planner prior to consideration of the application for the private street permit.
- E. Application. An application for a private street permit shall contain the following:
1. A completed private street permit application, provided by the city.
 2. A detailed written description of the development to be served by the private street.
 3. Seven (7) copies of a plan, drawn to scale, prepared by a registered engineer, showing the precise location, grade, route, elevation, dimensions, and design of the private street and any proposed extensions thereto, existing and proposed curb cuts, and the location and distance to any public streets which the private street is to intersect. However, the plan may be prepared by a registered surveyor, rather than a registered engineer, if the proposed private street is to serve five (5) or fewer parcels or main buildings, and if the zoning enforcement officer waives in writing the requirement for the plan to be prepared by a registered engineer.
 4. A survey of the right-of-way by a registered land surveyor, together with surveys for each parcel to be served by the private street.

5. The location of all public utilities, including, but not limited to, water, sewer, telephone, gas, electricity, and television cable to be located within the private street right-of-way or within twenty (20) feet of either side thereof. Copies of the instruments describing and granting such easements shall be submitted with the application.
 6. The location of any lakes, streams, wetlands, and drains within the proposed right-of-way or within one hundred (100) feet thereof.
 7. The location of any other buildings and structures located, or to be located, within one hundred (100) feet of the private street right-of-way.
- F. Design requirements.
1. The specifications for width, surface and base materials, curbing, drainage utility locations and method of construction of a private street shall conform to the standards set forth in sub-subsections 2. and 3. below based on the number of dwelling units served by such private streets as well as the other provisions of this subsection F.
 2. Private streets serving three (3) to five (5) dwelling units shall:
 - a. Have a minimum sixty-six (66) foot right-of-way easement granted to adjacent properties principally served by such private street.
 - b. Be constructed in a good and workmanlike manner upon and parallel to the centerline of the right-of-way easement.
 - c. Be constructed so as to control storm water runoff and permit effective storm water drainage by such means as ditches and valley gutters constructed parallel to and on either side of the street, sloping the sides of the street from the center thereof or other effective methods.
 - d. Have a driving surface of either asphalt or concrete with a firmly compacted base consisting of the following cross sections:
 - 1) Asphalt
 - i. six (6) inches of sand in accordance with specifications as established from time to time by the City
 - ii. six (6) inches of gravel in accordance with specifications as established from time to time by the City
 - iii. three (3) inches of asphalt placed as two (2) layers in accordance with specifications as established from time to time by the City.
 - 2) Concrete -
 - i. six (6) inches of sand in accordance with specifications as established from time to time by the City
 - ii. six (6) inches of concrete in accordance with specifications as established from time to time by the City.

- a. Have a finished driving surface width of not less than sixteen (16) feet with a six (6) inch thick by two (2) feet wide gravel shoulder on each side of the driving surface.
 - b. Be constructed, when and where necessary, over adequate culverts.
 - c. If ending with a cul-de-sac, have a minimum turnaround radius of forty-five (45) feet.
 - d. Not be expanded to serve more than five (5) dwelling units without meeting the requirements of subsection 3 immediately below.
 - e. If in the future a determination is made to convert the private street to a public street, conform to public street specifications.
3. Private streets serving six (6) or more dwelling units shall:
- a. Have a minimum sixty-six (66) foot right-of-way easement granted to adjacent properties principally served by such private street.
 - b. Be constructed in a good and workmanlike manner upon and parallel to the centerline of the right-of-way easement.
 - c. Have culverts placed at all natural drainage courses or other waterways; sizes and grades shall be determined using the appropriate stormwater runoff formula calculations and culvert materials shall conform to city engineer specifications.
 - d. Receive the approval of the engineer designated by the City of all designs, materials and methods of installation where the placement of underground storm sewers and valley gutters is determined necessary by the city engineer.
 - e. Shall receive the approval of the engineer designated by the City of the layout including their location, intersections, cul-de-sacs, vertical street alignment, street grades, street signs, horizontal curves, curb openings at or near intersections and other aspects as determined by the engineer designated by the City.
 - f. Have a driving surface of either asphalt or concrete with a firmly compacted base consisting of the following cross sections:
 - 1) Asphalt -
 - i. twelve (12) inches of sand in accordance with specifications as established from time to time by the City
 - ii. six (6) inches of gravel in accordance with specifications as established from time to time by the City
 - iii. three (3) inches of asphalt placed as two (2) layers in accordance with specifications as established from time to time by the City.
 - 2) Concrete -
 - i. twelve (12) inches of sand in accordance with specifications as established from time to time by the City
 - ii. six (6) inches of concrete in accordance with specifications as established from time to time by the City.

- g. Have a finished driving surface width of not less than twenty-four (24) feet with a six (6) inch thick by two (2) feet wide gravel shoulder on each side of the driving surface.
 - h. If ending with a cul-de-sac, have a minimum turnaround radius of forty-five (45) feet.
 - i. If in the future a determination is made to convert the private street to a public street, conform to public street specifications.
- 4. Length of private streets.
 - a. No private street shall extend for a distance of more than eight hundred (800) feet in length from the nearest public street right-of-way from which access is gained, as measured along the centerline of the private street to the furthest point of any private street, except as otherwise noted, without a private street access complying with this section being provided to another public street.
 - b. The maximum length of a proposed private street may be exceeded if the city council, after recommendation of the planning commission, finds that at least one (1) of the following conditions exists:
 - 1) That topography or other significant natural features preclude access to any other public street or adjoining property on which a public street may be constructed. Such significant natural features shall be clearly identified and marked on the proposed private street plans.
 - 2) That not allowing a longer private street would result in inefficient use of land. Alternate development plans demonstrating that no other development is feasible shall be submitted by the applicant and reviewed by the city council prior to confirming this finding.
 - 3) That other methods of access are available such that emergency vehicles are assured a safe and unimpeded route of travel to the properties served by the private street. Such access shall be reviewed by the fire chief and the recommendation forwarded to the planning commission.
 - c. The city council, upon a finding that at least one (1) of the above conditions exists, shall establish the maximum length of the proposed private street.
- 5. Right-of-way/easement width.
 - a. All private streets constructed after the effective date of this ordinance shall have a recorded permanent right-of-way and easement with a minimum width of at least sixty-six (66) feet. The right-of-way shall also expressly permit public or private utilities to be installed within the right-of-way.
 - b. Private streets in existence as of the effective date of this ordinance whose right-of-way or easement width is less than sixty-six (66) feet need not provide additional right-of-way or easement width, but such width shall not be subsequently reduced so as to increase its noncompliance with these requirements.
 - 6. The layout of the private street and the intersections of the private street with either a public or private street shall be such that clear vision, safe turning and travel in all

directions at the posted speed limit is assured, as determined by the city engineer. The minimum distance between intersections of public and/or private street rights-of-way shall not be less than one hundred and fifty (150) feet, as measured along the right-of-way line thereof.

7. Existing private streets.

- a. A private street existing on the effective date of this ordinance may continue in existence and be maintained and used, though it may not comply with the provisions of this section. Such private streets shall be continuously maintained so as to provide a safe and unimpeded route of travel for motor vehicle traffic, pedestrians, and emergency vehicles in all weather conditions.
- b. Any private street existing on the effective date of this ordinance to which one (1) or more additional lots or parcels are created or otherwise permitted access, shall have the entire length of the existing private street upgraded to comply with the applicable requirements of this subsection F.
- c. If a private street existing on the effective date of this ordinance is extended by the construction and use of an additional length of private street the entire private street, including the existing portion and the additional portion, shall comply with the applicable requirements of this subsection F.

C. Review standards; modification of certain requirements.

1. Prior to approving a private street permit application, the city council shall determine the following:
 - a. The proposed private street will not be detrimental to the public health, safety, or general welfare.
 - b. The proposed private street will not adversely affect the use of land.
 - c. The private street is constructed to assure a safe and unimpeded route of travel for motor vehicle traffic, pedestrians, and emergency vehicles in all weather conditions.
 - d. The private street is constructed so as to protect against or minimize soil erosion and prevent damage to the lakes, streams, wetlands, and natural environment of the city.
 - e. The construction of the private street will conform to the requirements of this section.
2. The city council may require that the applicant comply with reasonable conditions relative to the design and construction of the private street.
3. Upon application the city council may modify any of the private street requirements of this section after finding that all of the following conditions exist:
 - a. Topography, soils, and/or other significant natural features physically preclude or prevent compliance with the requirements of this section without substantial alteration of such natural features. Such natural features shall be clearly identified and described in the application for any such modification;

- b. The justification of any modification is not due solely to financial considerations which, upon approval of the requested modification would provide a financial benefit;
- c. That no other reasonable private street design alternatives are available that would comply with the requirements of this section; and
- d. That the request for modification was reviewed by the fire chief and/or city engineer, and/or any other person or official designated by the city council and a recommendation submitted to the council.

D. Maintenance and repairs.

- 1. Private streets shall be maintained in a manner that complies with the provisions of this section.
- 2. All private streets shall be continuously maintained in such a way that they will not constitute a danger to the health, safety, and welfare of the inhabitants of the city. All private streets shall be continuously maintained in such a way that they assure a safe and unimpeded route of travel for motor vehicle traffic, pedestrians, and emergency vehicles in all weather conditions.
- 3. All costs for maintenance and repair of the private street shall be the responsibility of the property owners or any property owners association served by the private street.
- 4. Private street maintenance or restrictive covenant agreements.
 - a. The applicant(s)/owner(s) of the proposed private street right-of-way or private street shall provide the city council with a recordable private street maintenance or restrictive covenant agreement between the owner(s) of the private street right-of-way and any other parties having any interest therein, or other documentation satisfactory to the city council which shall provide for and assure that the private street shall be regularly maintained, repaired, and snow plowed so as to assure that the private street is safe for travel at all times and the cost thereof paid.
 - b. The applicant(s) agree, by filing an application for and receiving a permit under this ordinance, that they will assure that any building(s) or parcels thereafter created or constructed on the private street shall also be subject to the street maintenance or restrictive covenant agreement and that said agreement shall be recorded and shall run with the land. A copy of said agreement shall be furnished to the city council prior to the issuance of the permit.

E. Performance guarantee. The city council may, as a condition of the private street construction permit, require that the applicant provide a performance guarantee, in accordance with the provisions of Act 207 of the Public Acts of Michigan of 1921, as amended.

F. Inspections/certificate of compliance.

- 1. Upon completion of construction of the private street, the city engineer shall inspect the completed construction to determine whether it complies with the approved plans, specifications, permit, and this ordinance.

2. The applicant(s), at the applicant(s)'s expense, shall provide the city with a set of "as built" drawings bearing a certificate and statement from a registered engineer certifying that the private street has been completed in accordance with the requirements of the permit and the City of Lowell.
 3. If the completed private street does not satisfy the requirements of the permit or this ordinance, the applicant(s) shall be notified of the noncompliance in writing and shall be given a reasonable period of time within which to correct the deficiencies. Failure to correct the deficiencies within the time provided shall subject the applicant(s) to the penalties provided for in this ordinance.
- G. Fees for the permits required hereunder shall be set by the city council from time to time by resolution. Additionally, the city council may require that the applicant(s) put sufficient funds in escrow to cover the costs of having the city attorney, engineer, planner, or other professional review the private street plans, specifications, and maintenance agreements, and to do the necessary inspections.
- H. The applicant(s)/owner(s) of the private street agree that by applying for or securing a permit to construct the private street that they shall indemnify and hold the city harmless from any and all claims for personal injury and/or property damage arising out of the use of the private street or of the failure to properly construct, maintain, use, repair, and replace the private street.

(Ord. No. 95-06, § 1, 12-27-95; Ord. No. 04-3, § 1, 7-19-04)

SECTION 4.21. - WIRELESS COMMUNICATION TOWERS.

- A. A different use of an existing structure on the same lot shall not preclude the installation of a commercial wireless communication tower on such lot when such tower is approved in accordance with the provisions hereof.

Commercial wireless communication antennas and related equipment may be permitted within any zone district if mounted on an existing commercial wireless communication tower, publicly-owned tower or other structure and provided the conditions in section 17.04BB have been met, and provided the height of the tower or other structure will not be increased, and provided the footprint of the related buildings, structures and supports will not be increased. If these conditions have not been met, the applicant must obtain site plan review and approval from the planning commission. The planning commission shall have the discretion of holding a public hearing on the review of the site plan.

(Ord. No. 00-4, § 7, 9-18-00)

SECTION 4.22. - AMATEUR RADIO ANTENNAS.

Amateur radio antennas (being antennas operating for the purpose of receiving or transmitting communications by a radio station described in section 153(q) of title 42 of the United States Code and licensed by the federal communications commission) may be approved by the planning commission as a special land use in any zone district if it is reasonably demonstrated that the

application of any of the provisions of this article would be to preclude or prevent the operation of such amateur radio antenna. In granting such special land use, the planning commission may impose reasonable conditions upon such approval, but such conditions shall not interfere with the reasonable accommodation of amateur radio communications. Such conditions, if any, shall not be more than the minimum practicable regulations necessary to accomplish the city's legitimate purposes in regulating such amateur radio antennas.

(Ord. No. 00-4, § 8, 9-18-00)

SECTION 4.23. - CANOPIES AND AWNINGS.

Canopies and awnings are permitted in C-1, C-2, C-3 and PF Districts to be placed around door or window openings in buildings and structures without limitation as to number. The height of such canopies and awnings from the lowest point on canopies and awnings shall not encroach beyond the public sidewalk into the public street. In addition, canopies and awnings are permitted over installed equipment attached to a building or structure. Such awnings shall be compatible with the building or structure. In addition to the provisions of this section, chapter 11.5 of the Code shall apply to awnings and canopies located in a historic district. **Signage located on a canopy or awning shall comply with Chapter 20 of this Ordinance.**

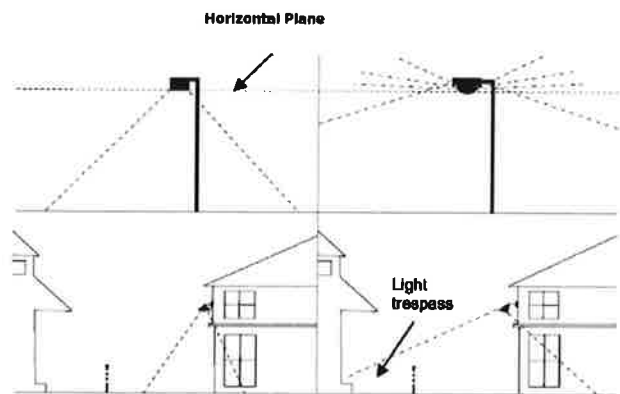
(Ord. No. 06-01, § 3, 2-21-06)

SECTION 4.24. - OUTDOOR LIGHTING REQUIREMENTS AND RESTRICTIONS.

- A. Purpose. The purpose of this section 4.24 is to allow for nighttime use of property through proper illumination while creating and maintaining safety for pedestrians and motorists by minimizing glare directed onto public rights-of-way. In addition, the requirements of this section 4.24 are meant to preserve the restful quality of nighttime by eliminating intrusive, artificial light and illumination that unnecessarily contributes to "sky glow," and to reduce light pollution and light trespass onto adjacent properties.
- B. Exempted lighting. Lighting commonly associated with single-family or two-family dwellings, including porch lights, low-level lawn lights, soffit-mounted facade illumination and special seasonal lights, such as holiday decorations, shall be exempted from the requirements of this section 4.24, provided, however, that flood lights, spot lights or yard lights mounted higher than ten (10) feet above grade shall be subject to the standards of section 4.24E hereof. Lighting associated with temporary or special events, may be exempted from the requirements of this section 4.24 hereof upon prior request and approval of the city manager or his or her designee.
- C. Scope and application.
 - 1. The requirements of this section 4.24 shall apply to any new development or renovation requiring a site plan pursuant to chapter 18 of this ordinance and to the installation of any new regulated lighting as provided under section D of this section 4.24. New developments shall comply with this section 4.24, as shall existing developments under consideration for an other than minor changes in a site plan as described in section 18.09 hereof.

2. Any new development or renovation requiring a site plan pursuant to chapter 18 of this ordinance shall include detail on the design and location of all exterior lighting, including light poles, wall-mounted fixtures and illuminated signs. The planning commission or zoning enforcement officer may require submission of additional details, including lighting output, bulb type, planned lighting coverage and other elements to determine the extent of proposed lighting on the site and any potential impacts off the property subject to site plan approval.
- D. Regulated lighting. The following types of outdoor lighting shall be regulated by this section:
1. Lighting intended to illuminate a site, facade and/or parking area for commercial, industrial, institutional and multiple family residential uses.
 2. Private street lighting and public street lighting, including that installed by a municipality or power company.
 3. All forms of neon lighting.
 4. Lighting of signs.
 5. Lighting not exempted under section 4.24B hereof.
- E. General standards. Outdoor lighting shall be designed, constructed and maintained in compliance with the following standards:
1. Direct light and directly-reflected light shall be confined to the subject property by screening, shielding, landscaping or other measures such that no lighting in excess of one-half ($\frac{1}{2}$) foot candle shall be cast on adjoining private property. This standard shall not apply to internally lit signs meant to be visible from the adjoining public right-of-way.
 2. Lamps or bulbs, fixtures and other physical parts of the fixture assembly shall be shielded or hooded to prevent glare from traveling beyond the subject property and to ensure that the light source is not directly visible from beyond the boundary of the subject property.
 3. Light fixture assemblies shall have one hundred (100) percent cut-off above the horizontal plane at the lowest part of the light source. The light rays may not be emitted by the installed fixture at angles above the horizontal plane as illustrated by figure 4.24.
 4. There shall be no lighting of a blinking, flashing or fluttering nature including changes in light intensity, brightness or color. Beacon, strobe and search lights shall be prohibited. No colored lights shall be used at any location or in any manner which might be confused with or construed as traffic control devices.

Figure 4.24. Fully Cut-off, Downward Facing Fixtures



5. In addition to the requirements of this section 4.24, parking area lighting shall comply with the standards of section 19.03C of this ordinance.
 6. The planning commission or zoning enforcement officer may impose additional conditions on site illumination to further the purpose of this section 4.24.
 7. Internally-lit signs, electronic message boards, back-lit changeable copy signs and signs incorporating light emitting diode (LED), liquid crystal, video or other types of internally-lit systems shall be designed, shielded and oriented so as not to interfere with adjacent public rights-of-way or adjacent property and such signs shall not emit light exceeding either ten (10) foot candles measured four (4) feet perpendicular to the sign face or one-half (½) foot candle measured at the property line of adjoining privately-owned property.
- F. Departures. Outdoor lighting shall comply with the requirements of this section 4.24, provided, the planning commission may, upon written application approve departures from the standards of this section 4.24 if the planning commission finds that the following standards are demonstrated by the applicant:
1. The use is a permitted or special land use in the zoning district.
 2. The applicant will undertake reasonable measures to assure that the public health, safety and welfare would not be undermined by approving the proposed departure.
 3. The proposed plan includes reasonable measures to mitigate any glare, annoyance, intrusion or distraction would be caused by the proposed lighting.
 4. The general public would benefit from the proposed lighting and the proposed lighting and related land use are consistent with the city master plan.

(Ord. No. 11-01, § 2, 1-3-11)

SECTION 4.25. - OUTDOOR FURNACES.

- A. Purpose. The city desires to regulate the location and operation of outdoor furnaces to secure and promote the health, safety and welfare of the public. Outdoor furnaces are an alternative to traditional home-heating methods and have increased in popularity because of rising fuel costs. This increased usage has led to the recognition that outdoor furnaces can impact health, safety and welfare if not designed and used properly and these impacts are multiplied when used in densely populated areas. Outdoor furnaces shall only be permitted under certain circumstances and only when specific requirements are met in order to broaden home-heating options for city residents while insuring regulations are in place to protect residents from, health, safety and welfare impacts.
- B. Application. An outdoor furnace shall not be installed on any property unless a certificate of zoning compliance and any required mechanical and building permits have been issued by the city. A mechanical permit application along with the applicable fee shall be submitted to the city with descriptive information that is necessary to determine compliance with the requirements of this section and any applicable building codes. In addition, the applicant shall submit a signed acknowledgement indicating that combustion in the outdoor furnace of

material prohibited by this section is grounds for revocation of the certificate of zoning compliance requiring immediate discontinuance of its use.

- C. Eligibility. Outdoor furnaces are permitted in side and rear yards as an accessory use to residential dwellings (i) on parcels in a SR-Suburban Residential District and (ii) on parcels in a R-1 Residential District with a parcel area of at least twenty thousand (20,000) square feet. In a R-1 Residential District the application for a mechanical permit shall include a recordance deed restriction in a form acceptable to the city signed by the property owner prohibiting the subdivision or splitting of the parcel in a manner which would result in the outdoor furnace being located on a parcel of less than twenty thousand (20,000) square feet or with isolation and setback dimensions less than those required by this section.
- D. Isolation and setback. An outdoor furnace shall be located a minimum of eighty (80) feet from any residential dwelling on an adjacent parcel and shall be located a minimum of forty (40) feet from the property line of the parcel where it is located.
- E. Stack height. Stack or chimney height of an outdoor furnace shall extend to an elevation at least two (2) feet above the roof peak of any residential dwelling within three hundred (300) feet of the outdoor furnace.
- F. Combustion materials. Only dry, seasoned wood or pellets manufactured for use in an outdoor furnace may be used in an outdoor furnace. The city may approve an alternative fuel if it is recommended by the outdoor furnace manufacturer and will result in air emissions no greater than that of dry, seasoned wood or pellets manufactured for outdoor furnace use. Combustion of toxic or other materials that generate offensive odors or excessive smoke or that are harmful to human health are prohibited. Such prohibited materials include, but are not limited to, trash, garbage, plastics of any kind, wood that is painted, varnished or treated, gasoline, oil, rubber, naphtha, materials treated with petroleum products, leaves and paper products including cardboard. Any use of prohibited construction materials shall result in the revocation of the zoning compliance certificate requiring the immediate discontinuance of use of the outdoor furnace.

(Ord. No. 11-05, § 2, 4-18-11)

SECTION 4.26. - LANDSCAPING

The intent of this section is to establish minimum standards for the design, installation, and maintenance of landscaping along public streets, between uses, on the interior of sites and within parking lots. Landscaping is viewed as a critical element contributing to the aesthetics and quality of development and redevelopment within the City of Lowell.

The standards of this Article are also intended to screen headlights to reduce glare, integrate various elements of a site, help ensure compatibility between land uses, minimize negative impacts of storm-water runoff, minimize noise, air and visual pollution, and promote the preservation of healthy, desirable trees.

The landscape standards of this Section are considered the minimum necessary to achieve the intent. In several instances, the standards are intentionally flexible to encourage creative design.

Applicants are encouraged to provide additional landscaping to improve the function, appearance, and value of their property.

- A. Exemptions. Individual single-family dwellings, two-family dwellings, home occupations, agricultural uses and other uses not requiring site plan review are not subject to the provisions of this Section. When a site plan is required pursuant to Article 16, landscaping shall be incorporated into the site and a landscape plan shall be submitted in conjunction with the site plan. The landscape plan shall clearly describe the location, type, size, height, and spacing of plant materials.
- B. Modification of Requirements. The City may modify requirements of this Section when it finds circumstances that warrant a change in the requirements of this section, or in finding that existing landscaping or screening, or existing conditions on the site, will be preserved and would meet the intent of this section.
- C. Installation. Wherever this Ordinance requires landscaping, it shall be planted within six (6) months from the date of issuance of a certificate of occupancy and shall thereafter be reasonably maintained with permanent plant materials which may be supplemented with other plantings. The Zoning Administrator may allow a postponement of installation of up to six (6) months upon request of an applicant based on seasonal weather conditions, but all landscaping must be installed within one (1) year of issuance of a certificate of occupancy. Whenever possible, selection of plant and tree species and minimum installation sizes shall conform to the guidelines and recommendations of the Lowell Arbor Board.
- D. Maintenance. Landscaped areas and plant materials required by this Ordinance shall be kept free from refuse and debris. Plant materials, including lawn areas, shall be maintained in a healthy condition and be neat and orderly in appearance. If any plant material required by this Ordinance dies or becomes diseased, it shall be replaced within six (6) months of written notice from the Zoning Enforcement Officer, or within an extended time period as specified in said notice.
- E. Specific Landscaping Requirements.
 - 1. Buffers between Uses. For non-residential uses abutting or adjacent to a residential zoning district and/or a residential use, there shall be provided and maintained on those sides a wall or wooden privacy fence six (6) feet in height, or between six (6) feet and eight (8) feet in height in industrial districts, or a landscaped buffer or berm, at least partially comprised of evergreen trees, sufficient to provide adequate screening between uses for the purpose of protecting the quality and integrity of the residential use.
 - 2. Front Yard Landscaping. In the C-1, C-3, I-L and I districts, front yard landscaping is required as specified below:
 - a. Landscaping shall consist of a minimum of one (1) canopy tree and three (3) deciduous shrubs for each thirty (30) feet of lot width.
 - b. Upon approval of the City, the equivalent landscaping may be located in areas other than the front yard and the street side of a corner lot. Additional front yard landscaping

is encouraged and may be required by the City where it is found that such additional landscaping would further the intent of this section.

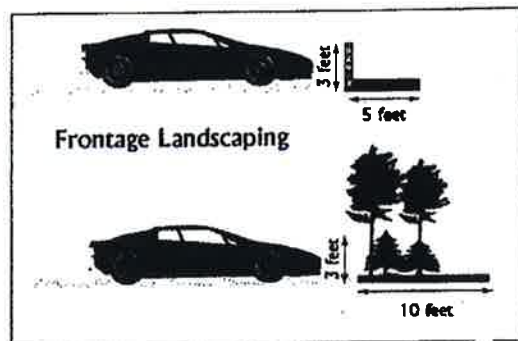
3. Parking Lot Landscaping.

- a. Changes to existing parking lots. The Planning Commission shall review landscaping plans for major changes to an existing parking lot. Major changes to parking lots shall comply with the landscaping requirements of this section unless modifications are approved by the Planning Commission as required in Section 4.26(B):

- 1) Replacement or alteration of existing drainage elevations or structures affecting more than fifty (50) percent of the existing parking lot.
- 2) Any expansion or addition of a parking lot equal to or greater than twenty-five (25) percent of the area of the existing parking lot.
- 3) Reconstruction of the parking lot, including the removal of existing pavement or drainage structures, which affects more than twenty-five (25) percent of the existing parking lot.
- 4) Any other change which, in the opinion of the zoning enforcement officer, constitutes a major change. The phased expansions or replacement of parking lots and/or surfaces in order to circumvent the requirements of this section is prohibited.

- b. Frontage landscaping. Where any parking area abuts or faces a public street, landscaping shall be required between the parking area and the street right-of-way. Such landscaping shall consist of, at a minimum, one (1) of the following:

- 1) A strip of land at least five (5) feet in width as well as a solid screen of a hedge or decorative wall, or any combination thereof, which measures at least three (3) feet in height; or
- 2) A strip of land at least ten (10) feet in width containing at least one (1) canopy tree and three (3) deciduous shrubs for each thirty (30) feet of lot width.



The required strip of land specified in items 1 and 2 above shall also be covered with grass or other approved ground cover.

- c. Interior parking lot landscaping. In addition to frontage landscaping, parking lots shall also contain landscaping within the interior of the parking lots as specified below:

- 1) Interior landscaping shall be provided for any parking area containing **twenty (20)** or more parking spaces.
- 2) The interior of the parking lot shall be considered as any point from the outside boundary of the parking area.

- 3) The interior area of any parking lot shall incorporate planting islands at a minimum ratio of one (1) island per each twenty (20) parking spaces, or part thereof.
- 4) Each planting island shall be at least ninety (90) square feet in area with a minimum horizontal dimension of nine (9) feet.
- 5) Landscaped islands shall be dispersed evenly throughout the entire area of the parking lot in order to break up large expanses of pavement and may be used to separate pedestrian areas, maneuvering areas, and drives.
- 6) A minimum of one (1) approved canopy tree shall be provided for each planting island, with the balance of the island covered with grass, or approved shrubs or ground cover.
- 7) Fifty (50) percent of the required trees shall be installed in the interior of the parking area and fifty (50) percent on the perimeter. The required trees shall be in addition to those which may otherwise be required by this section.

williams&works

engineers | surveyors | planners

MEMORANDUM

To: City of Lowell Planning Commission
Date: February 10, 2017
From: Andy Moore, AICP
Nathan Mehmed
RE: King Milling Company – Site Plan Review

Roosien & Associates, on behalf of King Milling Company, has submitted an application for site plan review for the construction of two grain bins and a drier, located on parcels 41-20-02-451-005 (149 S. Hudson St.) and 41-20-02-451-009 (140 S. Broadway St.). The purpose of this memorandum is to review the request pursuant to Section 18.09 of the City of Lowell Zoning Ordinance.

Background

The subject properties have a combined area of approximately 2.35 acres and are located on 149 S. Hudson Street and 140 S. Broadway Street. The applicant is seeking to construct two grain bins and a drier on the subject properties, which are zoned I, General Industrial. The grain bins are proposed to be approximately 76 feet in diameter with a height at peak of approximately 127 feet. The proposed dryer will be 24 feet in diameter and the MCC building will be approximately 400 square feet. Manufacturing, compounding, assembly or treatment of food products and warehouse and storage uses are permitted by right in the General Industrial zoning district. The properties are currently utilized for similar uses. The proposal seeks to expand King Milling's operation into the unused northwest portion of the two properties. Due to common ownership, the two subject properties will be treated as one parcel for the purposes of this review.

Site Plan Review

Dimensional Requirements. The proposed structures meet the setback requirements as specified in Section 13.04 with the exception of the side yard setback to the north where the northern most bin proposed is 19.4 feet from the side lot line. Section 13.04 requires a side yard setback of 20 feet. The Planning Commission should address this with the applicant.

Section 4.01(D)(1) allows for grain elevators, silos and other structures to exceed the maximum height requirement for the district in which it is located. It is our opinion that the proposed grain bin is similar to a silo or grain elevator to be considered exempt from the height limitations of the Zoning Ordinance.

Lighting. The site plan notes indicate that there are wall mounted light fixtures proposed on the MCC building and that the fixtures will be downcast and fully shielded in compliance with the City's lighting standards. However, lighting details and/or a photometric plan have not been

provided. The applicant should provide lighting details that indicate the type of lighting fixtures being proposed. The Planning Commission may address this as a condition of approval.

Parking. The applicant is not proposing any additional off-parking spaces. Section 19.07 requires warehouses and storage buildings to have one parking space per 2,000 square feet of GFA, with a minimum of four spaces. Section 19.02, B allows readily accessible public parking lots within 400 feet of the site to count toward the required minimum, but there do not appear to be any public parking lots near the subject property. The applicant has indicated that there is sufficient parking within walking distance of the proposed structures but has not indicated where these spaces are. The Planning Commission may wish to address this with the applicant to obtain a justification for sufficient parking.

Landscaping. The applicant is not proposing the installation of additional landscaping at the site. Section 13.04,C of the Zoning Ordinance requires that the first 25 feet of the front yard area, except for necessary entrance drives, shall be landscaped. "Such landscaping shall consist of a minimum of one (1) canopy tree and three (3) deciduous shrubs for each 20 feet of lot width." The property has approximately 276 feet of frontage along Hudson Street; however, approximately 70 feet of this frontage is occupied by an existing structure built out to the front lot line. Thus, there are effectively 206 feet of frontage along Hudson Street, which would require ten canopy trees and 31 shrubs. There are approximately 11 existing evergreen trees and one deciduous tree in the front yard screening the property along Hudson Street. Section 13.04,C permits the Planning Commission to allow equivalent landscaping to be located in areas other than the front yard. The Planning Commission may address general landscaping with the applicant or as a condition of approval.

Floodplain Issues and Compensating Cut. Like many projects near downtown Lowell, the proposed project is within the 100-year floodplain, so the provisions of the Floodplain Overlay district also apply. The site plan indicates that the grain bins would be constructed at an elevation of about 633 feet, while the floodplain elevation is 635.4 feet. The Zoning Ordinance (section 14.04(B)(1) requires that buildings built below flood elevation be:

"...watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that these standards are met and that the floodproofing methods employed are adequate to withstand the flood depths, pressures, velocities, impact, and uplift forces and other factors associated with the base flood in the location of the structure. Such certification shall be submitted as provided in this ordinance and shall indicate the elevation to which the structure is floodproofed."

The applicant should submit a certification from a registered professional engineer pursuant to this standard.

Additionally, on February 8 the applicant submitted plans for "floodplain fill and excavation" which would occur at Stony Lakeside Park for floodplain mitigation purposes related to the construction of the proposed grain bins, apparently required by the DEQ. The plans show an

area that would be disturbed to be about 15,000 sq ft. Approximately 1,500 cubic feet of material would be removed of the northwest portion of the lake at the park. Further detail has not been provided.

Site Plan Review Standards

Section 18.09 of the Zoning Ordinance sets forth six standards that must be utilized by the Planning Commission in reviewing site plans. Those standards, along with our remarks, are below:

- A. The uses proposed will not adversely affect the public health, safety, or welfare. Uses and structures located on the site shall be planned to take into account topography, size of the property, the uses on adjoining property and the relationship and size of buildings to the site. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this ordinance.

Remarks: The proposed use of grain storage is similar to adjacent uses and buildings on the same parcels which also contain grain bins for grain storage. The subject property abuts properties zoned I, General Industrial to the north and I, General Industrial to the east, west, and south across Broadway, Hudson, and Ottawa. The Planning Commission may find that this standard is met.

- B. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation shall be provided for ingress/egress points and within the site. Drives, streets and other circulation routes shall be designed to promote safe and efficient traffic operations within the site and at ingress/egress points.

Remarks: The applicant is not proposing any modifications to ingress and egress points. Existing drives and pedestrian facilities are proposed to remain. The Planning Commission may find that this standard is met.

- C. The arrangement of public or private vehicular and pedestrian connections to existing or planned streets in the area shall be planned to provide a safe and efficient circulation system for traffic within the City of Lowell.

Remarks: The applicant is not proposing any modifications to the vehicular or pedestrian connections to existing or planned streets. The Planning Commission may find that this standard is met.

- D. Removal or alteration of significant natural features shall be restricted to those areas, which are reasonably necessary to develop the site in accordance with the requirements of this ordinance. The planning commission requires that approved landscaping, buffers, and/or greenbelts be continuously maintained to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property.

Remarks: Significant natural features will not be impacted by this expansion, as there are limited features on the site. The applicant has proposed to keep an existing

evergreen buffer along Hudson Street. The Planning Commission may find that this standard is met.

- E. Satisfactory assurance shall be provided that the requirements of all other applicable ordinances, codes, and requirements of the City of Lowell will be met.

Remarks: This may be addressed as a condition of approval.

- F. The general purposes and spirit of this ordinance and the Comprehensive Plan of the City of Lowell shall be maintained.

Remarks: The Master Plan indicates that the subject properties are split between the "Industrial" and "Downtown Edge" Future Land Use designations. According to the Master Plan, "areas planned for Industrial land uses are intended to accommodate continued industrial uses," and "the Downtown Edge land use category is intended to create buildings with a similar size and scale as those recommended in the Downtown area, but with a more limited range of uses permitted in those buildings." The proposal is an expansion of existing industrial uses adjacent to Downtown Lowell that have existed for decades. The Planning Commission may find that this standard is met.

Engineering Comments

Note 11 of the site plan outlines the approach to handling the drainage and calls for collecting the stormwater and discharging in to the existing storm sewer system. This appears to be adequate given the limited increase in non-pervious area being added. (*note: the City Engineer has not reviewed the proposed compensating cut as of this writing.*)

Recommendation

At the February meeting, the Planning Commission should discuss the site and consider comments from the applicant and public, if any. Generally the project meets the standards of the City's Zoning Ordinance. However, we believe that the proposed compensating cut requires additional investigation from the City that has not been completed yet. Therefore we recommend that the Planning Commission table the application until the March meeting to allow for the City to more thoroughly investigate the DEQ requirements and compensating cut at Stony Lakeside Park.

Additionally, the Planning Commissions should discuss the following issues with the applicant:

1. The Planning Commission may require additional landscaping to meet the standards of Section 13.04, C.
2. The applicant shall submit lighting details to be reviewed and approved by the City Zoning Enforcement Officer.
3. The Planning Commission should discuss parking provisions for the proposed use.
4. The applicant should submit additional detail additional details regarding the degree to which the structure will be "floodproofed" in accordance with Section 14.04(B) of the Zoning Ordinance.

Please feel free to contact me if there are additional questions or comments.

Request Number: _____

Filing Fee: _____



301 East Main Street
Lowell, Michigan 49331
Phone (616) 897-8457
Fax (616) 897-4085

APPLICATION FOR SITE PLAN REVIEW

- All drawings must be sealed by an architect, engineer or surveyor unless waived by the Zoning Administrator.
- 15 copies of the site plan must be submitted to the City Manager's office no later than three weeks before the Planning Commission meeting to allow adequate staff review.
- The Planning Commission meets the second Monday of the month at 7:00 p.m. where plans are approved, rejected or modified.
- Preliminary plans may be presented for Planning Commission comment, but no final approval is given until all required conditions are met.
- After approval, public works and building permits must be secured before construction may commence.

1. Street Address and/or Location of Request: 149 S. Hudson St & 140 S. Broadway St.
2. Parcel Identification Number (Tax I.D. No.): #41-20- 02-451-005 & 02-451-009
3. Applicant's Name: King Milling Co. Phone Number (616) 897-9264
Address: 115 S. Broadway Lowell MI 49331
Street City State Zip
Fax Number (616) 897-4350 Email Address jdoyle@kingflour.com
4. Are You: ☒ Property Owner ☐ Owner's Agent ☐ Contract Purchaser ☐ Option Holder
5. Applicant is being represented by: Reosign! Assoc. Phone Number (616) 361-7220
Address: 5055 Bainfield Ave. NE, Ste "A", Grand Rapids MI 49525
6. Present Zoning of Parcel I-Industrial Present Use of Parcel Industrial
7. Description of proposed development (attach additional materials if needed):
Install two (2) grain bins and a drier
as shown on site plan.

The facts presented above are true and correct to the best of my knowledge.

Signature: James M. Doyle Date: 1/11/2017

Type or Print Your Name Here: James M. Doyle

Property Owner Approval: As owner I hereby authorize the submittal of this application and agree to abide by any decision made in response to it. James M. Doyle 1/11/2017
Owner Date

williams&works

engineers | surveyors | planners

MEMORANDUM

To: City of Lowell Planning Commission
Date: February 10, 2017
From: Andy Moore, AICP
RE: Medical Marihuana Facilities

The intent of this memo is to provide background information concerning state medical marihuana laws and local authority over primary caregivers and other newly designated marihuana facilities.

Michigan Medical Marihuana Act

In November 2008, Michigan voters approved the Michigan Medical Marihuana Act ("MMMA"). The purpose of the MMMA was to permit qualifying patients to legally use and possess marihuana for pain relief, nausea, or other debilitating medical conditions as specified in the Act and to allow or an authorized caregiver-patient relationship. The MMMA also protects patient and caregiver confidentiality and provides for the security of marihuana plants. The MMMA was limited in its scope in that it did not approve, nor was it designed to encourage, commercial or industrial opportunities or promote economic development relating to the medical use of marihuana.

Additionally, two important cases clarified the MMMA after 2008:

- The Michigan Supreme Court clarified in *State v McQueen* that dispensaries and cooperatives were not permitted by the MMMA.
- The Michigan Supreme Court ruled in *Ter Beek v the City of Wyoming* that prohibition of medical marihuana is preempted by the MMMA, however, local ordinances can regulate it (the extent of appropriate regulations is likely debatable).

Many jurisdictions in Michigan have enacted ordinances to regulate primary caregivers. A zoning ordinance can regulate where operators are permitted to locate and may adopt reasonable regulations to mitigate any potential negative impacts associated with the facility. In many jurisdictions, primary caregivers have been limited to operating within a home as a special type of permitted home occupation. Other jurisdictions have been silent on the matter and others attempted to limit it to commercial or industrial areas.

Recent Enacted Laws

Three recently approved laws have now changed the regulation of medical marihuana in Michigan, Acts 281, 282 and 283 of 2016. From a zoning and land use perspective, perhaps

the most significant change is under PA 281, under which dispensaries and other marihuana facilities that were not permitted under the MMMA are now authorized. Summaries of the three Acts are as follows:

- Medical Marihuana Facilities Licensing Act (PA 281 of 2016), referred to as the “MMFLA.”
 - Defines different types of marihuana facilities: growers, processors, safety compliance facilities, provisioning centers, and secure transporters.
 - Creates a licensing board.
 - Requires compliance and licensing.
 - Imposes taxes and fees. There is a 3% tax on gross receipts, 25% of which is allocated to municipalities proportionately to their number of permitted facilities. In addition, local annual license fees of up to \$5,000 are permitted.
- Marihuana Tracking Act (PA 282 of 2016)
 - Monitors and verifies state-issued registry cards.
 - Tracks sales of medical marihuana.
 - Monitors amount sold to each qualified patient.
- Michigan Medical Marihuana Act Amendment (PA 283 of 2016)
 - Allows useable marihuana equivalents, including infused products such as edibles.
 - Verifies registration ID cards.

Local Authority

MMFLA. One interesting aspect of the MMFLA is that local governments may totally prohibit medical marihuana facilities as defined by the MMFLA, if desired. Alternatively, a local unit may allow all types of facilities, or may allow some, but not others. Additionally, local governments may limit the number of facilities within their boundaries or place other special requirements on them (such as separation and setbacks). This is notable because the Michigan Zoning Enabling Act generally forbids the total prohibition of an otherwise lawful land use within a municipality unless there is no reasonable place where the land use could be located.

It is also important to note that the state will not issue licenses for marihuana facilities if the facility is not permitted at the local level. Further, the MMFLA states that growers can only locate in agricultural or industrial zoning districts (Section 501 7). This is likely because of the increased number of plants that may be grown and harvested by a single grower (up to 1,500 plants versus 60 plants under the current law).

MMMA. Although local governments have a high level of regulatory authority over marihuana facilities under the MMFLA, they still cannot prohibit growing by primary caregivers or qualified patients, or enact any restrictions that are incompatible with state law. In other words, many of the regulatory restrictions on individual caregivers and patients still apply. Similarly, local units may continue to regulate primary caregivers as home occupations (or some other technique) with reasonable parameters.

Many ordinances require permits for all home occupations, which we do not recommend for medical marihuana home occupations due to the confidentiality requirements of the MMMA. Others regulate odor control measures and separation between permitted operations. It is unclear if restrictions based on separation or odor control requirements have been challenged in the courts.

Questions

Local officials should consider the following questions as a starting point for assessing the local position on the newly-termed medical marihuana facilities authorized by the MMFLA. The MMFLA will not allow applications to be submitted until December of 2017, so there is some time for the City to determine its policy on how to deal with them. The following questions can help the City determine the direction it wants to take, and from this point we will work with City staff and legal counsel to draft an appropriate amendment.

1. Should marihuana facilities be permitted in Lowell? If not, it may be prudent to amend the Zoning Ordinance to specifically state that the uses are prohibited (although it is not technically necessary).
2. What type of facilities should be permitted?
3. How many facilities should be permitted?
4. Where should facilities be permitted?
5. What type of separation should be required between facilities or from churches, schools, or other sensitive land uses?
6. What is the financial impact? (up to \$5,000 per permit annually and a proportionate share of state revenue allocated to municipalities).

Terminology

As the City discusses this issue, it should become familiar with the following terms:

1. "Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center (note- a primary caregiver is currently limited to 60 plants).
 - a. Class A – 500 marihuana plants.
 - b. Class B – 1,000 marihuana plants.

- c. Class C – 1,500 marihuana plants.
2. "Processor" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.
 3. "Provisioning center" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. A provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this act.
 4. "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
 5. "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

City of Lowell Zoning Districts

The following list contains the different types of land uses authorized by the MMFLA and in which of the City's zoning districts we feel each may be appropriate:

- Grower – Growing operations could be conducted in an agricultural or industrial district. In Lowell, agricultural activities are only allowed in the SR Suburban Residential district, and lots are probably not large enough to support a large growing operation. Therefore, if the City were to permit growing facilities at all, the C-3 General Business, IL Light Industrial or I Industrial districts are likely the only feasible options.
- Processor – Based on the definition, no retail sales would take place at a processor. The IL Light Industrial or I Industrial districts provide for industrial activities so it may be feasible for a processor to locate here.
- Provisioning center – Provisioning centers are locations registered caregivers or patients can purchase medical marihuana and would seem to be the closest thing to a retail establishment. Therefore, the C-3 General Business, in addition to the IL Light Industrial or I Industrial districts, could be appropriate locations.
- Safety compliance facility – The IL Light Industrial or I Industrial districts provide for industrial activities so it may be feasible for a processor to locate here.

- Secure transporter – Since secure transporters are primarily concerned with storage and transportation of marihuana, the IL Light Industrial or I Industrial districts would be the most appropriate locations.

As you know, the City has the ability to allow, or disallow, any of the above medical marihuana land uses as it feels is appropriate. This may include requiring special land use permits and additional specific standards for some of the land uses, or allowing them by right after site plan review and approval.

This memorandum is intended to be a starting point as the City begins its discussion on this topic. We would be happy to draft a zoning ordinance amendment to authorize and regulate these land uses, if desired. If the City has no desire to permit marihuana facilities, then no action is needed. Obviously, it will be important to rely on the City's legal counsel as we work through this process.

Please let us know if you have any questions.

c: Richard A Wendt, City Attorney
Michael Burns, City Manager

CHAPTER 17. - SPECIAL LAND USES

SECTION 17.01. - SCOPE.

This section provides a set of procedures and standards for special uses of land or structures which, because of their unique characteristics, require special consideration in relation to the welfare of adjacent properties and the community as a whole. The regulations and standards, herein, are designed to allow, on one hand, practical latitude for the applicant, but at the same time maintain adequate provision for the protection of the health, safety, convenience, and general welfare of the city. For purposes of this ordinance, all special land uses within the various districts are subject to the conditions and standards of this chapter. In addition, the following uses shall conform to the specific standards cited in section 17.04, as applicable.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 17.02. - APPLICATION AND REVIEW PROCEDURES.

- A. Required Information. An application for special land use approval shall be submitted through the zoning enforcement officer. Each application shall be accompanied by:
1. The payment of a fee as established by the city council;
 2. A completed application form, as provided by the city;
 3. Complete site plans pursuant to as-specified in Chapter 18; and
 4. A written statement indicating compliance with section 17.03, A., and the applicable provisions of section 17.04.
- B. Applications. Applications for a special land use shall be ~~submitted~~ submitted to the zoning enforcement officer at least ~~thirty-two~~ thirty-two (3021) days prior to the next regular planning commission meeting. Upon receiving all materials required in Section 17.02(A), the application and accompanying materials shall be forwarded to the planning commission at its next scheduled meeting for a public hearing.
- C. Public Hearing Required. The planning commission shall hold a public hearing on the application, providing the notice of such hearing in accordance with the Michigan Zoning Enabling Act, Act 110 of 2006, as amended.
- D. Planning Commission Review and Decision. ~~Following the public hearing, the~~ the planning commission shall ~~then~~ review the application materials, comments received at the public hearing -and such-any other information related to the application-available to it through the public hearing or from any other sources, including recommendations or reports from the city planner, engineer, or other party, and shall approve, approve with conditions, or deny the request for special land use approval. In arriving at its decision, the Planning Commission shall refer to and be guided by those standards set forth in this Chapter and any other standards in this Ordinance that are applicable to the proposed special land use. The Planning Commission shall and-incorporate the basis for the decision and any conditions which should be imposed into its decision.
- E. Issuance of a Special Land Use Permit. A special land use permit shall be issued by the zoning enforcement officer upon approval of the special land use by the Planning Commission. The special land use permit shall list all the conditions of approval stipulated by the Planning Commission. The zoning enforcement officer shall forward a copy of the

special land use permit to the applicant and the City Clerk. A site plan submitted as an attachment to a special land use application may be considered and reviewed in conjunction with said special land use application and shall be processed according to the procedures of Chapter 18.

F. Appeals. No decision or condition related to a special land use application shall be taken to the Board of Zoning Appeals.

G. Amendments. Amendments to a special land use permit shall be handled in the same manner as the initial special land use application. Minor non-substantive changes to a site plan may be made to an existing special land use permit with the approval of the Zoning Administrator.

B-H. Transfers. The special land use permit, with any and all associated benefits, conditions and required security may be transferred to a new owner upon the sale or transfer of the property in question. The prior owner, upon transferring the special land use permit, shall advise the zoning enforcement officer of said transfer in order to insure the continued validity of the permit and compliance with the terms and conditions of the approved permit.

C-I. Reapplication. No petition for special land use approval, which has been disapproved, shall be resubmitted for a period of one (1) year from the date of disapproval, except as may be permitted after learning of new and significant facts or conditions which might result in favorable action upon resubmission.

D-J. Expiration. A special land use approved pursuant to this chapter shall be valid for one (1) year from the date of approval. Each development shall be under construction and proceeding meaningfully toward completion within one (1) year after the date of approval of the special land use, except as noted below.

1. The planning commission may grant one (1) six (6) month extension of such time period, provided the applicant requests the extension prior to the date of the expiration of the special land use approval.
2. The extension shall be approved if the applicant presents reasonable evidence to the effect that said development has encountered unforeseen difficulties beyond the control of the applicant, and the project will proceed within the extension period.
3. If neither of the above provisions are fulfilled or the six (6) month extension has expired prior to construction, the special land use approval shall be null and void.

K. Abandonment. Any permitted special land use shall be considered abandoned, and such use shall not be resumed thereafter, if any of the following conditions apply:

1. The owner declares or otherwise makes evident an intent to discontinue such use.
2. When the use has been replaced by a different use.
3. If the use has been abandoned for more than one (1) year, and the zoning enforcement officer finds that one or more of the following conditions exist:
 - a. Utilities, such as water, gas and electricity to the property, have been disconnected.
 - b. The property, Buildings, and grounds, have fallen into disrepair.
 - c. Signs or other indications of the existence of the use have been removed.

d. Removal of equipment or fixtures that are necessary for the operation of the special land use.

e. Other actions, which in the opinion of the zoning enforcement officer constitute an intention of the part of the property owner or lessee to abandon the use.

E.L. Violations. The planning commission shall have the authority to suspend or revoke any special land use approval after it has been shown that the holder of the approval has failed to comply with any of the applicable requirements of this chapter, other applicable sections of this ordinance, or conditions of the special land use approval. Prior to any action, the planning commission shall conduct a public hearing as required by this chapter. The permit holder shall be provided with a reasonable opportunity to correct the violation(s).

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 17.03. - ~~GENERAL SPECIAL LAND USE REVIEW~~ STANDARDS.

The Planning Commission shall approve a special land use upon finding that the proposed special land use meets all applicable regulations of this Ordinance and complies with each of the of the following standards, in addition to those specific standards in this Chapter that are established for certain uses. ~~The following general standards, in addition to those specific standards established for certain uses, shall be satisfied before the planning commission makes a decision regarding a special land use application.~~

A. Each application shall be reviewed for the purpose of determining that the proposed special land use meets the following standards and, in addition, that each use of the proposed site will:

1. The proposed special land use shall Bbe designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance, with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed;

1.2. The proposed special land use shall be generally consistent with the City of Lowell Master Plan;

2.3. The proposed special land use shall bBe served adequately by essential public facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities;

3.4. The proposed special land use shall Nnot create excessive additional requirements at public cost for public facilities and services; and

4.5. Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

B. The planning commission may stipulate such additional conditions and safeguards deemed necessary to accomplish the following purposes. Failure to comply with such conditions may result in the revocation of the special land use approval, pursuant to section 17.02, G. Conditions imposed shall be those necessary to:

1. Meet the intent and purpose of the zoning ordinance;

2. Relate to the standards established in the ordinance for the land use or activity under consideration;

3. Insure compliance with those standards;
 4. Protect the general welfare;
 5. Protect individual property rights; and
 6. Ensure that the intent and objectives of this ordinance will be observed.
- C. As a condition of approval of a special land use the planning commission or zoning enforcement officer, whichever is designated as the approving authority, may require a financial guarantee of sufficient sum to assure the installation of those features or components of the approved activity or construction which are considered necessary to protect the health, safety, and welfare of the public and of users or inhabitants of the proposed development. Such features or components, hereafter referred to as "improvements," may include, but shall not be limited to, roadways, curbing, landscaping, fencing, walls, screening, lighting, drainage facilities, sidewalks, driveways, utilities, and similar items. Performance guarantees shall be processed as required in section 22.03, B.

(Ord. No. 95-06, § 1, 12-27-95)

SECTION 17.04. - SITE DESIGN STANDARDS.

The general standards and requirements of section 17.03 are basic to all special land uses. The specific and detailed requirements set forth in this section relate to particular uses and are requirements which must be met by those uses in addition to the foregoing general standards and requirements.

Those uses specified in this ordinance as permitted by right or as special land uses shall be subject to the requirements of the district in which the use is located in addition to all applicable conditions, standards, and regulations as are cited in the following:

- A. Country clubs, golf courses, riding stables, and public and private athletic grounds and parks, and other similar uses, including related uses, such as snack bars or small retail shops selling goods directly related to the primary use.
 1. The use shall be located on property with direct access to a public street.
 2. Any outdoor activity areas shall be set back a minimum of fifty (50) feet from any residential district or use.
 3. Lighting for parking areas or outdoor activity areas shall be shielded to prevent light from spilling onto any residential district or use.
 4. Access driveways shall be located no less than fifty (50) feet from the nearest part of the intersection of any street or any other driveway.
 5. Buildings housing animals, storage equipment, or other similar buildings shall be located at least fifty (50) feet from any lot line.
- B. Commercial greenhouses and nurseries, when operated primarily as wholesaling operations and limited retail sales.
 1. Minimum lot area shall be one (1) acre.
 2. Minimum lot width shall be two hundred (200) feet.