



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  
MONDAY, SEPTEMBER 13, 2021 AT 7:00 P.M.  
UPSTAIRS – COUNCIL CHAMBERS

1. CALL TO ORDER: PLEDGE OF ALLEGIANCE, ROLL CALL
2. APPROVAL OF AGENDA
3. APPROVAL OF THE MINUTES OF PREVIOUS MEETINGS
  - a. August 9, 2021 – Regular Meeting
4. PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA
5. OLD BUSINESS
  - a. Public Hearing – 805 E. Main St. – Site Plan Review/Special Land Use
6. NEW BUSINESS
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, AUGUST 09, 2021 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 Chair Bruce Barker.

Present: Commissioners Tony Ellis, Amanda Schrauben, Dave Cadwallader, Marty Chambers and Chair Bruce Barker.

Absent: Commissioner Collins Plank and Commissioner Michael Gadula.

Also Present: Mayor DeVore, Andy Moore with William & Works, Lowell City Clerk Sue Ullery.

2. **EXCUSE OF ABSENCES.**

IT WAS MOVED BY CHAMBERS and seconded by ELLIS to excuse the absence of Commissioners Gadula and Plank.

YES: 5. NO: None. ABSENT: Commissioners Plank and Gadula. MOTION CARRIED.

3. **APPROVAL OF AGENDA.**

IT WAS MOVED BY CADWALLADER and seconded by ELLIS to approve the agenda as written.

YES: 5. NO: None. ABSENT: Commissioner Gadula and Plank. MOTION CARRIED.

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

IT WAS MOVED BY CHAMBERS and seconded by ELLIS to approve minutes of the July 12, 2021 Regular Meeting as written.

YES: 5. NO: None. ABSENT: Commissioner Gadula and Plank. MOTION CARRIED.

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

There were no comments.

6. **OLD BUSINESS.**

a.) **Public Hearing – 2384 W. Main – Special Land Use.**

Chair Barker opened Public Hearing.

Andy Moore with Williams & Works then provided background info. This will be focused on use of building not site plan review as this was already done.

Chair Barker stated that the landscaping has not been completed & driveway and lighting detail not provided.

Chair Barker opened it up for comments from the Public.

Cody Newman with Driven Design, 117 W Michigan Ave, Battle Creek, MI introduced himself.

James McNeely, 1129 W Washington Ave, Lansing MI stated he had contacted Bartkus Engineering for additional 18 spaces.

Moore then reviewed the special land use standards A through F.

Red McClure, 148 Southwest Street, stated his concern with a marijuana establishment on a residential street.

Cassidy Postema, 159 S West St stated her concern about the fence and people going to fast, for the safety of children in the area and the amount of traffic it will bring to the residential area.

Mike DeVore, 424 Elm Street, stated his concern that this is not a good location for a marijuana store. Additional parking would be a lease and it is very hard to turn onto main street left from this area.

Ray Closure, 325 S. Division, supports these business and this one is in the C3 District and it is in compliance.

Ryan Closure, 325 S. Division, supports this business and their location.

Mike DeVore, 424 Elm Street, then explained the difference between businesses already on that side of the road in same area is they also have entrances on main street and that he is in support of the marihuana facility just not at this location.

Chair Barker then closed the Public Hearing.

Chair Barkers expressed that the directional signage is important as well as a camera at the corner of the parking lot.

Moore and the Commissioners found that all the Special Land Use Standard A-F are met.

IT WAS MOVED BY BARKER and seconded by ELLIS to accept that all the Special Land Use Standards A- F are met.

YES: Commissioner Cadwallader, Commissioner Chambers, Commissioner Ellis, Commissioner Schrauben, and Chair Barker.

NO: None.                      ABSENT: Commissioners Gadula and Plank.                      MOTION CARRIED.

Moore then reviewed Adult Use Marihuana Special Land Use Standards B through M.

Chair Barker stated the fence on west property needs to be repaired. Barker wants fence installed to close off a specific section.

Applicant indicated fence would be installed.

Chair Barker asked if there were any public comments on Adult Use Marihuana Special Land Use Standards B – M.

There were no public comments.

Moore and the Commissioners found that all the Adult Use Marihuana Special Land Use Standards B through M are met.

IT WAS MOVED BY BARKER and seconded by CADWALLADER to accept that the Adult Use Marihuana Special Land Use Standards B- M are met.

YES: Commissioner Cadwallader, Commissioner Chambers, Commissioner Ellis, Commissioner Schrauben, and Chair Barker.

NO: None.

ABSENT: Commissioners Plank and Gaduala.

MOTION CARRIED.

Moore then went through the conditions.

Based on the foregoing review and finding of fact, the proposed special land use and site plan is subject to the following conditions:

1. Prior to issuance of any City permits, the applicant shall have paid all application, permit, reimbursable escrow, and other fees related to the request.
2. The applicant shall comply with any requirements from the City's Department of Public Works, City Engineer, Lowell Area Fire Department, City Police Department, or other approving agencies.
3. The proposed special land use shall comply with all applicable federal, state, and local requirements, and copies of all applicable permits shall be submitted to the City.
4. The applicant shall continually comply with applicable ordinances, codes, and requirements of the City of Lowell.
5. The applicant shall all submit missing site plan items of Section 18.04 B and 17.04 FF, and identified above under Completeness of Submission, unless specifically waived by the Planning Commission.
6. The applicant shall comply with the landscape requirements of Section 4.26 of the Zoning Ordinance, unless specifically modified by the Planning Commission.
7. Any outdoor lighting shall be added to the site plan and comply with Section 4.24 of the Zoning Ordinance.
8. The applicant shall provide one ADA van accessible space on the site.
9. The loading/unloading space shall meet the requirements of Section 19.08 of the Zoning Ordinance, including a 40-foot length, unless specifically modified by the Planning Commission.
10. The applicant shall receive a sign permit for any signage on the site in accordance with Chapter 20 of the Zoning Ordinance.
11. The applicant shall submit a copy of a provisional license issued by the City of Lowell pursuant to Chapter 28 of the city of Lowell code of ordinances. The facility shall not open until appropriate operating licenses have been obtained from the City of Lowell and the State of Michigan.
12. All landscaping, buffers and/or greenbelts shall be continuously maintained to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property.
13. Doors and windows shall remain closed, except for the minimum time length needed to allow people to ingress or egress the building.

14. The marihuana establishment shall not be operated from a business that also sells alcoholic beverages or tobacco products.
15. The marihuana establishment shall comply at all times and in all circumstances with the MRTMA and applicable Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
16. The security plan shall address the items outlined in our confidential memo dated July 8, 2021, and any other items identified by the City's law enforcement personnel.
17. In the event of any conflict, the terms of this approval are preempted and the controlling authority shall be the statutory regulations set forth by the MRTMA or the adopted Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.
18. The applicant shall submit a copy of the 3-year lease for at least 18 spaces located directly to the south of the subject property for review and approval by the City. Such parking area and the conditions of the lease shall become a part of this special land use approval and any change to the terms of the agreement shall be subject to the approval of the City and may require an amendment to the special land use permit. These 18 spaces shall be striped and signed for use by Iconic Lowell, and signage shall be installed that directs traffic north toward Main Street when exiting the site. These spaces shall be monitored by the applicant via a security camera acceptable to the city.

IT WAS MOVED BY BARKER and seconded by ELLIS to approve the Special Land Use for Iconic Wellness & Provisioning Center - 126 S West with the above conditions as listed.

YES: Commissioner Cadwallader, Commissioner Chambers, Commissioner Ellis, Commissioner Schrauben and Chair Barker.

NO: None.

ABSENT: Commissioners Plank and Gaduala.

MOTION CARRIED.

8. **STAFF REPORT.**

There was none.

9. **COMMISSIONERS REMARKS.**

Commissioner Cadwallader asked what we need to do to get some boats docks down at the River.

Mayor DeVore stated he would look into it.

Commissioner Ellis asked if there were any more ideas on cleaning the vegetation out at the River. Ellis also requested zoning maps for the Commissioners to view at Planning Commission meetings.

Mayor DeVore stated we can't clean out the river or have boat docks unless we get approval from EGLE.

Chair Barker asked about the combined City and Township meeting date and asked City Clerk Sue Ullery if we could send out a save the date for everyone involved.

Sue Ullery will work on getting that out.

10. **ADJOURNMENT.**

IT WAS MOVED BY CADWALLADER and seconded by ELLIS to adjourn at 8:07 p.m.

DATE:

APPROVED:

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Bruce Barker, Chair

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Susan Ullery, Lowell City Clerk

Request Number: \_\_\_\_\_

Filing Fee: \_\_\_\_\_



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## APPLICATION FOR SITE PLAN REVIEW / SPECIAL LAND USE

- 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 four weeks 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: 805 E Main St
2. Parcel Identification Number (Tax I.D. No.): #41-20- 01-302-001
3. Applicant's Name: HIVE wellness LLC Phone Number 616 550 3516  
Address: 805 E Main St Lowell MI 44331  
Street City State Zip  
Fax Number — Email Address Connor.Baker.Biz@gmail
4. Are You: ☐ Property Owner ☐ Owner's Agent ☐ Contract Purchaser ☐ Option Holder
5. Applicant is being represented by: Connor Baker Phone Number 616 550 3516  
Address: 423 Pine St, Belding, MI, 48809
6. Present Zoning of Parcel C3 Present Use of Parcel Vacant
7. Description of proposed development (attach additional materials if needed):  
Adult Use Marijuana Retailer Establishment

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

Signature: Connor Baker Date: 7-17-21

Type or Print Your Name Here: Connor Baker

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. Connor Baker 7-17-21  
Owner Date

The following 16 points make up the **CHECKLIST** of required information needed on the drawing for final plan approval (unless specifically waived by the Planning Commission). Please go over this **CHECKLIST** with the City Manager and Zoning Administrator before presenting to the Planning Commission.

1. Date, north arrow and scale (not more than 1" = 100', supplementary site plans at a 1" = 50' or larger scale are encouraged)	INITIAL <u>CB</u>
2. A city locational sketch	<u>CB</u>
3. Legal description and City address of the subject property	<u>CB</u>
4. The size in acres or square feet of the subject property	<u>CB</u>
5. All lot and/or property lines with dimensions, including building setback lines	<u>CB</u>
6. The location of all existing structures within one hundred (100) feet of the subject property's boundary	<u>CB</u>
7. The location and dimensions of all existing and proposed structures on the subject property	<u>CB</u>
8. The location and dimensions of all existing and proposed:	
▪ Drives	<u>CB</u>
▪ curb openings (NOTE: all new openings onto M-21 (Main Street) must receive State Transportation Department approval)	<u>CB</u>
▪ sidewalks	<u>CB</u>
▪ exterior lighting	<u>CB</u>
▪ curbing	<u>CB</u>
▪ parking areas (include and delineate the total number of parking spaces showing dimensions of a typical space)	<u>CB</u>
▪ unloading areas	<u>CB</u>
▪ recreation areas	<u>CB</u>
▪ common use areas	<u>CB</u>
▪ areas to be conveyed for public use and purpose	<u>CB</u>
9. The location, pavement width and right-of-way width of abutting roads, alleys or easements	<u>CB</u>
10. The existing zoning of all properties abutting the subject project	<u>CB</u>
11. The location of all existing and proposed:	
▪ landscaping and vegetation	<u>CB</u>
▪ location, height and type of existing and proposed fences and walls	<u>CB</u>
12. Proposed cost estimates of all site improvements	
13. Size and location of existing and proposed hydrants and utilities including proposed connections to public sewer or water supply systems	<u>CB</u>
14. The location and size of septic and drain fields	<u>CB</u>
15. Contour intervals shown at five (5) foot intervals	<u>CB</u>
16. <b>FOR RESIDENTIAL DEVELOPMENT</b> , the following information is required (affixed to the drawing):	
▪ Net developable area, in acres or in square feet, defined as all areas that could be developed subtracted by lands used or dedicated for existing easements and rights of way	_____
▪ the number of dwelling units proposed (by type), including typical floor plans for each type of dwelling	_____
▪ the number and location of efficiency and one or more bedroom units	_____
▪ typical elevation views of the front, side and rear of each type of building	_____
▪ Dwelling unit density of the site (total number of dwellings / net developable area)	_____



Section 17.03 of the City of Lowell Zoning Ordinance specifies that to approve a special land use, the Planning Commission must find that the request meets the following standards. Please describe how the proposed project would meet each standard.

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. Be 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;

Will comply

2. Be served adequately by essential public facilities and services such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities;

The Proposed Marijuana Establishment Does Not have a Negative effect on any utilities. Existing utilities will remain.

3. Not create excessive additional requirements at public cost for public facilities and services; and

The Proposed Marijuana Establishment is under 24/7/365 Surveillance + therefore will not have Any Negative impact on services.

4. 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.

The Proposed Marijuana Establishment will not have a Negative impact on the overall welfare of the Neighborhood by any of the mentioned items Above

Section 17.04 of the City of Lowell Zoning Ordinance lists specific standards pertaining to special land uses that must be met. Please respond to those standards below as it pertains to the proposed project, describing how the standards would be met by this proposal:

Hive wellness LLC's goal is to be a valued member of the community + work together to ensure they have a clean, smell free, establishment.

# williams&works

engineers | surveyors | planners

## MEMORANDUM

**To:** City of Lowell Planning Commission  
**Date:** September 10, 2021  
**From:** Andy Moore, AICP  
Whitney Newberry  
**RE:** **Hive Wellness LLC Special Land Use**

Mr. Conner Baker of Hive Wellness LLC has applied for site plan review and special land use approval to open an adult use marihuana establishment at 805 and 825 E. Main Street SE (PPN 41-20-01-302-001 & 41-20-01-302-005). The purpose of this memorandum is to review the request pursuant to Chapter 17 Special Land Uses and Chapter 18 Site Plan Review of the City of Lowell Zoning Ordinance.

### Background

The marihuana establishment is proposed on two lots, which have a combined area of approximately 0.84 acres. For the purposes of this review, both lots will be considered as a single property, as they are both proposed as an integral part of the marihuana use. The subject property is located in the C3 General Business zoning district and is surrounded by the R2 Single or Two Family Residential district and the R3 Multiple Family Residential district. The property contains an existing building that was previously used as the Rollaway Family Fun Center. The applicant is proposing to renovate the building and operate an adult use marihuana retail establishment in it. No on-site cultivation or consumption of the product is proposed. By definition, "marihuana retailer" is a type of adult use marihuana establishment. Adult use marihuana establishments are permitted in the C3 district only with special land use approval by the Planning Commission.

It is worth noting that until recently, marihuana establishments were not permitted at this location due to the presence of a preschool at the Lowell United Methodist Church. The zoning ordinance prohibits the operation of a marihuana establishment within 1,000 feet of a daycare center. However, with the preschool recently closed, this property is now outside the isolation radii required for marihuana establishments in the City.



This was discussed with the Planning Commission at the June meeting. At that time, the Planning Commission held a public hearing and ultimately recommended approval of an amendment to the Zoning Ordinance that would prohibit all adult use marihuana establishments on any property east of the Flat River. However, this proposed amendment was not accepted by the City Council. Thus, this and other properties east of the Flat River remain available as potential locations for adult use marihuana establishments, subject to the terms of the Zoning Ordinance.

### **Completeness of Submission**

The applicant has submitted site plan documents for review. Section 18.04 B provides a list of information required for a detailed site plan review unless deemed unnecessary by the zoning enforcement officer. The following items were not included:

- Name and address of the property owner or petitioner
- Size (in acres) of the subject property
- The location of all existing structures, driveways, and parking areas within 100 feet of the subject property's boundary
- The dimensions of all existing structures on the subject property, including existing or proposed signs
- Dimensions and radii of existing and proposed drives, and location of proposed sign(s)
- Pavement and right-of-way width of all streets within 100 feet of the subject property
- Existing zoning and use of all properties abutting the subject property
- Location, type, and size of all proposed landscaping
- Size and location of existing/proposed utilities
- Size and location of all surface water drainage facilities
- Existing and proposed topographic contours at a minimum of two-foot intervals
- Location and type of drainage, storm sewers and other facilities, including surface and subsurface drainage for all impermeable surfaces on the site and all drainage calculations
- Existing and proposed water main and sanitary sewer, natural gas, electric, telephone, cable television and other utilities, the proposed location of connections to existing utilities, and any proposed extensions thereof

Since the applicant is proposing to utilize an existing building, several of the items identified above may remain unchanged and are likely not necessary to include on the site plan. However, there are still many items that should be included to fully understand the existing site conditions, such as drainage, building and dimensions, utility locations, and landscaping. The Planning Commission may request the inclusion of additional items on the site plan to ensure compliance with applicable standards.

Section 17.04 FF (3) and (4) requires additional application and site plan materials to be submitted for adult use marihuana establishments. The applicant included some of the additional site plan materials; however, the following items were not received:

- Verification and Consent documents
- Narrative describing how the enclosed areas with marihuana have been secured and how permitted individuals will be given access
- A lighting plan showing the lighting outside of the marihuana establishment for security purposes and compliance with Section 4.24 and any other applicable city requirements
- Existing and proposed building elevations, including building materials, window calculations, descriptions of glass to be used, and other pertinent information that describes building construction or structural alterations
- The applicant's procedures for accepting delivery of marihuana at the establishment, including procedures for how and where it is received, where it is stored, and how the transaction is recorded

## **SITE PLAN REVIEW**

**Setbacks and Dimensional Requirements.** The applicant is proposing to use an existing building and is not apparently proposing any exterior structural modifications. Required setbacks are not indicated on the site plan. The site is irregularly shaped and considered a corner lot surrounded by roads on four sides. The zoning ordinance definition for a "front lot line" provides some clarity for identifying setbacks and allows the zoning administrator to determine the principal front lot line where it is not otherwise evident. Our interpretation of this definition is that the principal front lot line exists along E. Main Street and the rear lot line exists along Avery Street. The remaining lot lines would be secondary front lot lines. The definition for a front lot line allows all secondary front lot lines to be one-half of the principal front lot line setback requirement.

While the applicant is not proposing any increases to the building footprint, it should be noted that the building appears to be legally nonconforming with regard to setbacks. The secondary front yard setback along Horatio Street and the rear yard setback along Avery Street do not appear to meet the setback requirements of Section 12.04. While the building may continue to be used as a legally nonconforming structure, the applicant should be aware that any exterior modifications may be limited by Section 4.13 related to nonconformities.

Other dimensional requirements such as lot coverage, lot area, and lot width appear to be met. While building height also appears to be met, the building height is not included in the site plan. This should be requested on building elevations. Height in the C3 district is not permitted to exceed 40 feet or 3 stories.

**Landscaping.** The applicant did not submit a landscape plan. The site plan indicates that a portion of the subject property consists of a lawn and tree growth area, which used to be a miniature golf course. Section 4.26 E(1) requires a buffer between any non-residential use that is adjacent to a residential zoning district in the form of a six-foot privacy fence or landscaped

buffer at least partially comprised of evergreen trees. The subject property is surrounded by residential zoning districts. Because of the property shape and existing site features, it is likely impractical to require a buffer along all sides of the property. Yet, the intent of this section is to mitigate negative impacts between uses through landscaping. Therefore, at least some landscaping is likely necessary to buffer surrounding residences from impacts such as traffic, glare, and noise. The Planning Commission may modify the landscape requirements in accordance with Section 4.26 B.

Front yard landscaping is also required in the C3 zoning district, with a minimum of 1 canopy tree and 3 deciduous shrubs for every 30 feet of lot width. The subject property has one principal and two secondary front lot lines. Therefore, landscaping is required along all front yards. Based on our estimation of dimensions, the front yard landscape requirement would include 9 trees and 28 shrubs along Main Street, 5 trees and 17 shrubs along Horatio Street, and 3 trees and 9 shrubs along Grove Street. While some front yard landscaping may not be possible due to existing site conditions, an alternative arrangement may be discussed with the applicant to ensure adequate landscaping is provided on the site.

Further, the previous mini-golf area appears to be generally overgrown and contains considerable amounts of gravel based on aerial imagery. The site plan currently labels this as a lawn and tree growth area. An existing planting bed is identified on the site plan in front of the building, but also appears overgrown based on aerial imagery. Proposed landscaping should be discussed for these areas.

The applicant is not proposing any major changes to the existing parking lot, so the parking lot landscape requirements in Section 4.26 E(3) are not applicable.

**Lighting.** The applicant is proposing four new wall pack lights around the building and two new recessed downlights under the front canopy. There appears to be an existing parking lot light near the shed that is not included on the site plan. Parking lot lighting should be discussed with the applicant. Further, the Planning Commission may request a photometric plan and lighting cut sheets to ensure adjacent residential areas are protected from glare and light, as well as to determine compliance with Section 4.24 and 19.03 C.

**Parking.** The applicant is not proposing any structural changes to the parking lot but is proposing to re-stripe it with 23 parking spaces, two of which would be barrier-free. The applicant is proposing to use 3,477 square feet for the marijuana retailer, although the total building size is not indicated in the site plan submittal. Based on the use of this proposed floor area, 18 parking spaces would be required. However, future uses of the building would also require additional parking. Considering that the applicant is not proposing to use the second story and a portion of the main floor for the marijuana use, this could result in a sizeable increase in the parking requirement should another use be proposed in the remainder of the building. While the parking requirement is currently met, any future expansions should be cognizant of parking requirements.

The site plan indicates a secure delivery area that would be used for loading/unloading. The dimensions of this area are not included. This area should provide a space that meets the requirements of Section 19.08.

Two barrier-free spaces are proposed, one of which must be van accessible. Van-accessible spaces may be eight feet wide as long as the access aisle is also eight feet wide. This appears to be met. However, the access aisle must also extend the length of the parking space. For one of the spaces, the proposed design does not extend the access aisle the entire length of the barrier-free space. This should be addressed.

Where a nonresidential parking lot is located across the street from a residential district, the parking setback area should be a minimum of 10 feet from any lot line, unless a greater setback is required by the Planning Commission (Section 19.03 D). While most parking areas appear to exceed this setback, the eastern row of parking adjacent to E. Main Street would be within 10 feet of the lot line. This should be discussed.

Lastly, the maneuvering aisle for a parking lot must be at least 24 feet wide for two-way traffic (Section 19.06 B). While drive aisle dimensions are not included on the site plan, this width does not appear to be met by some spaces in front of the building.

**Signage.** An existing sign is located on the property; it is unknown if the applicant will use this sign or propose a new sign. A logo was included in the submittal, but signage details were not provided. Any new signage should comply with Chapter 20 of the Zoning Ordinance.

**Provisional License.** The Planning Commission shall require an operating license from the City of Lowell as a condition of special land use approval in accordance with Section 17.04 FF.

**Site Development Requirements.** Section 12.04 contains site development requirements for all businesses in the C3 zoning district. Following are two of those standards, which are applicable to the subject property:

- B. Entrance driveways shall be located as far as practicable from two (2) intersecting streets and shall be at least one hundred (100) feet from an intersection or from any other driveway.
- C. Only one (1) driveway per principal use, or collective principal use, per street shall be permitted. A second driveway may be permitted provided that such drive is constructed and permitted to share access with an abutting or adjacent principal use or existing lot. The planning commission may permit additional driveways, if justified by a professional traffic study indicating the need for such additional driveways.

There are three existing curb cuts on the property. However, an additional curb cut is proposed on Avery Street to provide access to a secure delivery area. This is proposed approximately 40 feet from the intersection of Avery and Horatio Streets and therefore not permitted by Section 12.04 B. Further, the placement of a second driveway on this street is prohibited by Section 12.04 C, unless a traffic study indicates a need for such driveway. The Planning Commission should discuss this driveway with the applicant.

**Site Plan Review Standards.** In order to approve a special land use, the Planning Commission must find that each of the standards listed in Section 18.06 would be met. Following are those standards and our remarks on each:

- 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 is a recreational marihuana retail establishment, which is permitted as a special land use in the C3 zoning district. Surrounding uses are entirely residential (R2 and R3 zoning districts) and the general land use pattern in this area is almost entirely residential. There are only three C3-zoned properties east of the Flat River. The predominance of residences in this area has established a relatively low-intensity land use pattern and we question whether a marihuana retailer would be appropriate in this context. Potential impacts of marihuana facilities have been accepted at many other commercial properties on West Main Street due to the predominance of auto-oriented commercial uses, and in cases where marihuana facilities have abutted residential districts, screening, fencing, and/or landscaping have been proposed to address these impacts. No such screening has been proposed here, and the ability to provide buffers on this site is also limited due to its size, location, and geometry.

The site was previously developed and there is substantial pavement around the building and extending to the road, leaving little to no greenspace for landscaping around the building. The building is also legally nonconforming as it is closer to the road than would typically be permitted. While landscaping can often be used to mitigate the impacts of a more intense use, the existing building, site design, and infrastructure limit the extent to which a buffer could be an effective mitigation tool. This could potentially exacerbate the real or perceived impact of the establishment. The Planning Commission should carefully consider the surrounding land use context and site condition when evaluating this application. Public comments should also be considered in this regard.

- 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 proposing to retain three existing curb cuts and add a fourth curb cut on Avery Street for a secure delivery area. As noted under our Parking and Site Development Requirements above, several issues should be addressed related to parking and curb cuts, including the dimensions of maneuvering aisles, parking lot setbacks, and barrier-free design. Currently, the proposed parking arrangement has spaces located at several different alignments in front of the building. While this reflects changes in the building exterior footprint, this may create some confusion and circulation

issues for vehicle parking. Of particular concern is the potential creation of blind spots due to changes in the building exterior and associated parking spaces. Visibility of other vehicles in the lot should be carefully considered to ensure all vehicles can enter and exit spaces safely.

Pedestrian circulation is provided by an existing sidewalk along E. Main Street. Other methods of pedestrian circulation are not provided. Pedestrian safety should be carefully considered, as there are no sidewalks proposed to help facilitate people from parking spaces to the building entrance. This requires many people to walk behind parking spaces and across maneuvering aisles to access the building entrance.

- 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 proposing a new curb cut on Avery Street to accommodate deliveries. This new proposed curb cut does not comply with site development standards, as it is located too close to the intersection of Avery and Horatio Streets. Curb cuts on E. Main Street also do not comply with the zoning ordinance. MDOT requires a driveway permit for any change in use and it may require that these be closed.

Further, increased traffic on the site may create conflicts between vehicles at these curb cuts and on the street system. Their proximity to each other and Horatio Street may impact turning movements and visibility for vehicles entering or leaving the site. To help mitigate these impacts, it may be beneficial to close the curb cut closest to the intersection of Horatio and E. Main Street.

- 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:** The applicant is not proposing the removal or alteration of any natural features on the site. The site is mostly paved around the building. The previous mini-golf area contains some existing trees and shrubs, which are proposed to remain. The applicant has not proposed any landscaping; this has been addressed under our Landscaping comments, above. If approved, the Planning Commission may include continual maintenance of landscaping as a condition of approval.

- 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:** A condition of approval can stipulate continual compliance with applicable codes and ordinances.



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

**Remarks:** The purpose of the zoning ordinance is to “insure that uses of land shall be situated in appropriate locations and relationships; to limit the inappropriate overcrowding of land and transportation systems and other public facilities; to facilitate adequate and efficient provision of transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility needs; and to promote public health, safety, and welfare.”

Further, the purpose of the C3 General Business district is to permit a mixture of residential, office, and commercial uses that do not necessarily adhere to the style of downtown buildings, including “automobile related uses which would ordinarily be incompatible with the character of residential districts.” The proposed development should be carefully evaluated with regard to its location and resulting relationships with surrounding residential uses. Due to the incompatibility of many C3 uses with residential districts noted in the Ordinance, the Planning Commission should evaluate the use in terms of its site impacts (traffic, noise, etc.), the ability to ameliorate those impacts from residential uses, and building aesthetics or site improvements that would align with the residential character of the area.

The City of Lowell’s Master Plan was adopted in 2007 and outlines a desired vision for land uses in the city. The subject property is in the Mixed Use future land use category. This district is intended for a mix of residential, office, and commercial land uses that are not necessarily located in downtown-style buildings. However, buildings should be pedestrian-oriented in this category. Because the applicant is proposing to use an existing building, new development is not proposed that would need to align with building placement and parking suggestions in this category. However, the site should be evaluated for its ability to contribute to a pedestrian-oriented environment.

**Special Land Use Review Standards.** To approve a special land use, the Planning Commission must find that the proposed special land use meets each of the following standards in accordance with Section 17.03. Following are these standards and our remarks on each:

- A. The proposed special land use shall be 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;

**Remarks:** The applicant is proposing to use an existing building, so its design and construction were previously accepted for this area. However, the building has been vacated and maintenance of the building and site appears to have declined. Landscaping is largely overgrown and the previous mini-golf area appears to still contain structures and gravel for that previous use. The applicant has noted that improvements are proposed but has not submitted building elevations or proposed landscaping, so the extent of exterior improvements is unclear at this time.

As discussed in Site Plan Review Standard A, above, there would be a considerable difference between the intensity of the proposed use and surrounding residences, which may increase the impacts perceived by adjacent properties. The existing land use pattern is residential, pedestrian-oriented, and of a relatively low intensity. The C3 district is only located on three properties east of the Flat River (the subject property being two of them) and while this district allows more intense uses than surrounding residential districts, its impact should be carefully considered within its surrounding residential context.

Adult use marihuana establishments have been typically associated with higher-intensity land use impacts (such as traffic, odor potential, etc.) that may not be harmonious or appropriate in such a predominately residential area. The Planning Commission must carefully consider whether this use would be harmonious with the character of the existing area.

Landscape buffers are often used to help mitigate the impacts of a more intense commercial use on a less intense residential use. The applicant has not proposed any landscaping or buffers, and given the size and geometry of the site, landscaping/screening to a degree that sufficiently ameliorates its impacts on neighboring properties may be difficult to achieve. It is also surrounded by streets and residential districts on all sides, making it impractical to require a buffer on every side even if it were feasible. We have serious concerns about whether the proposed use would be compatible with the existing and intended character of the general vicinity and remain appropriate in this context given the lack of landscaping and its proximity to residential uses.

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

**Remarks:** Please see our comments under Site Plan Review, F above.

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

**Remarks:** Because the applicant is proposing to use an existing building, utility connections are already present on the site. The applicant is not proposing any major changes to the parking lot, so drainage structures are also expected to be adequate; however, drainage is not indicated on the site plan and the Planning Commission may defer to the City Engineer for any concerns regarding drainage. Emergency vehicle access is expected to be acceptable on the site; however, the Planning Commission may defer to the Fire Department for additional comments.

A new curb cut is proposed for marihuana delivery, which would require a driveway permit from the City. The presence of four curb cuts on the site may cause concern for traffic circulation on public streets. Because the site is surrounded by roads on all sides, points of ingress and egress should be carefully considered to ensure safe entrance

and exit of vehicles on the site. Marihuana establishments have typically been associated with higher levels of traffic than many other commercial establishments, traffic circulation may be of particular concern on this site. While three curb cuts already exist, the current circulation should be carefully evaluated to ensure safety for traffic on the site and along public roads. MDOT approval will be required for the cuts on Main Street due to the change in use.

Security measures are expected to mitigate impacts on the local police department, and the fee charged by the City for an operating license would help offset any costs incurred.

- D. The proposed special land use shall not create excessive additional requirements at public cost for public facilities and services;

**Remarks:** Public facilities and services, including water and sewer connections, are already present on the site. The proposed use does not involve any grow rooms that would require facilities or services beyond a typical retail operation. The Planning Commission may find this standard met.

- E. The proposed special land use shall 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.

**Remarks:** The narratives submitted with the site plan lack the detail needed to adequately describe the operation, including but not limited to secure storage areas, permitted access in the building, and procedures for accepting and storing marihuana. The lack of some information was identified under the Completeness of Submittal. The Planning Commission may also request additional information to expand upon the submitted narratives and better understand the operation.

No on-site marihuana consumption would be permitted and the applicant is not proposing to grow any marihuana on-site. Negative air pressure and a carbon filter are proposed in the HVAC system. This may mitigate odors associated with the operation; however, specific details were not described in the odor plan. The Planning Commission may discuss specific odor plan details with the applicant.

The Planning Commission should determine the extent to which noise and traffic may be present on the site and its potential impact on neighboring residential uses. Noise and traffic may have a greater impact in this area due to the presence of residences entirely around the subject property. Without an appropriate buffer or landscaping, noise and traffic may negatively impact surrounding residential areas. The Planning Commission may discuss mitigation of these impacts with the applicant.

- F. The proposed special land use shall comply with all applicable federal, state, and local requirements, and copies of all applicable permits shall be submitted to the City.

**Remarks:** This standard will be addressed as a condition of approval.

**Adult Use Marihuana Establishment Special Land Use Standards.** In addition to the general standards for special land uses of section 17.03, the Planning Commission must also find that the proposed special land use would comply with specific standards established for adult use marihuana establishments as listed in Section 17.04 FF. Our remarks related to the security concerns plan pursuant to Section 17.04 FF(5)(a) are in a separate confidential memorandum. Following are the standards of 17.04 FF(5)(b-m), and our remarks on each:

- b. Separation distances. The distances described in this subsection shall be computed by measuring a straight line from the nearest property line of the land used for the purposes stated in this subsection to the nearest property line of the parcel used as a marihuana establishment. The following minimum-distancing regulations shall apply to all marihuana establishments. A marihuana establishment shall not be located within:
  - i. 1,000 feet of a preschool or child care center, whether or not it is within the city of Lowell;
  - ii. 1,000 feet of a public or private K-12 school, whether or not it is within the city of Lowell;
  - iii. 500 feet of a property within the C-2, Central Business District as illustrated on the City of Lowell Zoning Map.
- iv. Exception. The requirements above do not apply if the marihuana establishment was lawfully established prior to the location of an establishment or zoning district specified in items i - iii above.

**Remarks:** The applicant submitted a sensitive use map depicting a 1,000-foot radius around the subject property. There are no schools or childcare facilities within 1,000 feet of the proposed location and no new child care centers registered with the Michigan Department of Regulatory Affairs. The Planning Commission may find this standard met.

- c. Odors. The marihuana establishment shall be designed to provide sufficient odor-absorbing ventilation and exhaust systems so that any odor generated inside the establishment is not detected outside the building in which it operates, on adjacent public rights-of-way, private road easements, or within other units located within the same building as the establishment if it occupies only a portion of the building. Odors must be controlled and eliminated by the following methods:
  - i. The building must be equipped with an activated air scrubbing and carbon filtration system that eliminates all odors prior to leaving the building. Fan(s) must be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

- ii. Air scrubbing and filtration systems must be maintained in working order and must be in use at all times. Filters must be changed per manufacturers' recommendations to ensure optimal performance.
- iii. Negative air pressure must be maintained inside the building.
  - 1. At a ratio of 1:4 between the air intake (CFM) and exhaust fan (CFM), or a similar ratio as approved by the planning commission.
  - 2. A minimum negative pressure of 0.01" water column relative to the building exterior and to adjacent spaces without product.
  - 3. A minimum exhaust rate of 0.2 CFM per square foot of floor area or greater.
- iv. Doors and windows must remain closed, except for the minimum time length needed to allow people to ingress or egress the building.
- v. The planning commission may approve an alternative odor control system if a mechanical engineer licensed in the State of Michigan submits a report that sufficiently demonstrates the alternative system will be equal or superior to the air scrubbing and carbon filtration system otherwise required above.

**Remarks:** The Mechanical Plan (Sheet M1.1) notes that the HVAC equipment would be designed for negative air pressure inside the building to prevent odors outside, along with an added charcoal filter system. The ratio of negative air pressure was not included and may be discussed with the applicant. Further, details regarding the carbon filtration system may be discussed with the applicant if determined necessary, such as if carbon filters would be installed in every room with marihuana or as part of the general HVAC system.

- d. The marihuana establishment shall be operated and maintained at all times so that any by-products or waste of any kind shall be properly and lawfully kept and disposed of so as to preclude any risk of harm to the public health, safety, or welfare.

**Remarks:** The applicant has proposed to dispose of marihuana waste with cat litter at a 50/50 ratio. This is proposed in a dumpster located in a locked and fenced area, which is shown on the site plan within the secure delivery area and includes an eight-foot-tall fence. Cat litter is not listed as an acceptable non-consumable solid waste in accordance with R 420.211 of the Marihuana Operations rules promulgated by LARA, unless approved in writing by the agency that will render the marihuana product waste unusable and unrecognizable. The Planning Commission may discuss compliance with LARA with the applicant.

- e. The marihuana establishment shall not be operated out of a residence or any building used wholly or partially for residential purposes.

**Remarks:** There would not be a residence associated with the marihuana establishment. The second story of the building is not proposed for the marihuana use

and is currently vacant. The Planning Commission may include this standard as a condition of approval, if approved.

- f. Any portion of the structure where energy usage and heat exceed typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Fire Department to ensure compliance with applicable fire codes. Any fuel, fertilizer, pesticide, fungicide, rodenticide, herbicide, or other substance toxic to wildlife, children, or pets shall be stored in a secured and locked area and be in compliance with State pesticide laws and regulations.

**Remarks:** The proposed use will not involve the processing or growing of marihuana. Chemical storage is not proposed. The Planning Commission may find this standard met.

- g. A marihuana establishment shall not be operated from a business that also sells alcoholic beverages or tobacco products.

**Remarks:** The site plan indicates that there will be no sale of alcoholic beverages or tobacco products. The Planning Commission may find this standard met.

- h. No drive-through facilities shall be permitted.

**Remarks:** No drive-through facilities are proposed. The Planning Commission may find this standard met.

- i. The marihuana establishment shall comply at all times and in all circumstances with the MRTMA and the Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

**Remarks:** This may be addressed as a condition of approval, if approved.

- j. The Planning Commission may require additional landscape buffers or screening beyond what is required in Section 4.26 of the Zoning Ordinance.

**Remarks:** Landscaping is not proposed in the application. Please see our landscape comments provided under Landscaping in Site Plan Review, Site Plan Review Standard A, and Special Land Use Standard A.

- k. The owner and/or licensee shall maintain clear and adequate records and documentation demonstrating that all cannabis or cannabis products have been obtained from and are provided to other permitted and licensed cannabis operations. The city shall have the right to examine, monitor, and audit such records and documentation, which shall be made available to the city upon request.

**Remarks:** The applicant is proposing to use a variety of methods to maintain records and has permitted random record evaluations and availability of all records to the state and City of Lowell. The application references both METRIC and METRC. Unless the applicant is proposing two different tracking services, the application should be updated to reference the correct name.

- I. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any portion of the structure which contains electrical wiring, lighting, and/or watering devices that support the cultivation growing or harvesting of marihuana.

**Remarks:** The applicant will not be growing or harvesting marihuana on the site, so this standard is not applicable.

- m. In the event of any conflict, the terms of this ordinance are preempted and the controlling authority shall be the statutory regulations set forth by the MRTMA or the adopted Rules for Adult Use Marihuana Establishments, as amended, promulgated by LARA.

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

### Conclusion

At the September 13 public hearing, the Planning Commission should discuss the site plan, application, and carefully consider any comments from the public and the applicant. Based on the information received to date, we do not recommend that the application be approved at this time.

1. **Completeness of Submission.** The application is lacking items that are necessary to determine compliance with the ordinance. Of particular concern is information pertaining to landscaping, how marihuana would be secured and individuals given access, security lighting, building elevations and descriptions of materials, and procedures for accepting marihuana deliveries. Narratives submitted with the application are generally lacking in sufficient detail to describe the operation.
2. **Landscaping.** Landscaping should be addressed to ensure all surrounding residential uses are adequately buffered by impacts from the marihuana establishment. Currently, no landscaping is proposed and the existing landscape areas do not appear well maintained. Due to the nature of the proposed use and its location in what we consider to be a low-intensity residential area, we are concerned that an adequate buffer is not provided on the site (and may not be possible due to the existing infrastructure on the site). Further, front yard landscaping standards are not met. Landscape requirements and the ability for landscaping to buffer between uses should be addressed.
3. **Lighting.** A lighting and photometric plan should be submitted to ensure all residences are protected from excessive lighting on the site and comply with the ordinance. This should include cutsheets of all new lighting and identification of all existing lighting on the site. Lighting should also be adequate to provide security on the site, including adequate light around security cameras.
4. **Parking.** The arrangement of parking spaces does not adequately accommodate ADA-accessible spaces and does not allow for clear pedestrian travel to the building entrance. The parking setback from E. Main Street is not met and maneuvering aisle dimensions do not appear to be met in front of the building. To meet these standards, the parking lot design may have to be altered and re-evaluated.

5. **Safety & Circulation.** The number of curb cuts around the building may cause concern for traffic circulation on public roads. The proposed new curb cut is not permitted by the Ordinance in Section 12.04 B and C, and the existing curb cuts do not meet ordinance standards. Because there are more curb cuts than typically permitted, and these are closer to road intersections, traffic circulation and safety should be considered. Marihuana uses may have a higher level of traffic than many other retail uses. Further, pedestrian safety should be considered, as there are no defined walkways on the site plan. The presence of several curb cuts and various parking areas may create hazardous conditions for customers without providing a designated sidewalk or other pathway for travel.

Irrespective of the above five issues, we question whether the proposed use is compatible at all, given its location within a completely residential area. Even if the applicant adequately addresses (or attempts in good faith to address) the issues identified above, the Planning Commission may find that no amount of screening, buffering, landscaping, and other considerations would make the proposed use compatible with its surroundings. This is a particularly important consideration given that in June the Planning Commission recommended the adoption of an amendment to the Zoning Ordinance that would have prohibited the establishment of an adult use marihuana facility on this parcel, and all others east of the Flat River.

Further, the inability to adequately landscape/screen the site, traffic, noise, and other issues may lead the Commission to find that several of the special land use standards (specifically 17.03(A) and 17.03(E)) are not met, in which case the application should be denied. In any event, these standards should be carefully discussed and evaluated to ensure the protection of all surrounding residences and ensure a harmonious environment in a predominantly residential area.

### **Recommendation**

If the Planning Commission feels that there may be steps that the applicant could take that would make the application acceptable, it should postpone a decision on the application and provide the applicant with sufficient direction so that the application materials may be updated and reconsidered at a future meeting.

If the Commission maintains its position that this property (and others east of the Flat River) is fundamentally incompatible with adult use marihuana establishments, and if there are no steps that the applicant may take to make it compatible, it should deny the application. In the event of a denial, the Commission should specifically detail which of the site plan, special land use, and/or specific standards for adult use marihuana establishments have not been satisfied so there is a clear record of findings and justification for the denial.

As always, feel free to contact us if you have any questions.



2021					
Open Date	Close Date	Address	Name/Business	Subject	
02/04/2021	02/04/2021	514 N. Monroe	Home Speciallists	Remodel	
03/30/2021	03/30/2021	1490 Sibley	Christian Hattis	Re-Roof	
03/16/2021	07/01/2021	510 Kent	Matt Garrison	New Home	
04/08/2021	04/13/2021	318 E. Main	BGR Investments	Fence	
04/21/2021	04/27/2021	226 S. Jefferson	Donald Lasby	Addition	
04/22/2021	04/28/2021	418 N. Jefferson	Patty Story	Fence	
05/04/2021	05/04/2021	1401 W. Main	Rite Aid	Updated Signs	
06/03/2021	06/03/2021	781 Foreman	Mark Batchelor	Fence	
06/04/2021	06/09/2021	151 N. Center	Paula Rittersdorf	Deck	
06/08/2021	06/08/2021	2420 Gee Drive	Lori Gerard	Deck	
06/09/2021	06/10/2021	804 Riverside	Taylor Bonga	Fence	
06/01/2021	06/11/2021	206 S. Division	Noah Trulock	Fence	
06/29/2021	06/29/2021	257 Donna	Elizabeth Sparks	Re-Roof	
07/08/2021	07/08/2021	2601 W. Main	Mercantile Bank	Interior Remodel	
07/20/2021	07/20/2021	820 N. Jefferson	Craig Kalman	Garage	
07/22/2021	07/22/2021	716 N. Monroe	Matt Collins	Fence	
07/20/2021	07/28/2021	820 N. Jefferson	Victor/Karrie Scudder	Accessory Building	
07/29/2021	07/29/2021	96 W. Main	Scott Brown	Inside Remodel	
07/29/2021	07/29/2021	2601 W. Main	Mercantile Bank	Inside Remodel	
08/09/2021	08/10/2021	1510 Carol Lynne	Jack/Nancy Rutledge	Back Entry Enclosure	
08/19/2021	08/19/2021	301 Elizabeth Dean	Tyler Dykhous	Garage	